WORLD TRADE ORGANIZATION

WT/AB/20

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Page: 1/103

APPELLATE BODY

ANNUAL REPORT FOR 2013

MARCH 2014

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

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

CONTENTS

WTO ABBREVIATIONS USED IN THIS ANNUAL REPORT

Abbreviation	Description
ATC	Agreement on Textiles and Clothing
Anti-Dumping Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATS	General Agreement on Trade in Services
GATT 1994	General Agreement on Tariffs and Trade 1994
Rules of Conduct	Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes, adopted by the DSB on 3 December 1996, WT/DSB/RC/1
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SPS 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
Working Procedures	Working Procedures for Appellate Review, WT/AB/WP/6, 16 August 2010
WTO	World Trade Organization
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization

FOREWORD

In 2013, we witnessed the beginning of a new cycle in the Mayan calendar. This new cycle began both with sorrow – as we said goodbye to Pascal Lamy, and with happiness – as we welcomed Roberto Azevêdo, our new Director-General. 2013 was also a year in which the multilateral trading system was put to the test and showed that it could deliver. Fruitfully, WTO Members achieved consensus in Bali on a number of decisions that will streamline trade, allow developing countries more flexibility to ensure food security for their populations, boost trade for least developed countries, and help promote development more generally. This success was possible thanks to the willingness of the WTO Membership, as well as the efforts of the staff of the Organization, starting with our new Director-General.

With respect to dispute settlement, this new cycle has coincided with a high level of activity. The year 2013 saw the largest number of panels established since 2006. It is to be expected that the majority of these cases will eventually lead to appeals in the Appellate Body. This underscores the great measure of confidence that Members continue to place in the WTO dispute settlement mechanism.

In the summer of 2013, the Appellate Body sent a communication to the Membership highlighting several trends in dispute settlement activity, in particular as regards appellate proceedings. This paper, entitled "The Workload of the Appellate Body" (the "Workload Paper"), is reproduced in Annex 1 to this Annual Report. In the Workload Paper, several trends are identified. First, there has been significant growth in the average size of disputes brought before the Appellate Body. Second, the number of issues raised on appeal has increased considerably as compared to the early years of the WTO, including more frequent challenges under Article 11 of the DSU to the objectivity of panels' factual assessments. Third, the number of participants and third participants in appeals has grown over the years. Furthermore, the Workload Paper reveals a significant increase in the volume of submissions filed with the Appellate Body, as well as in the size of Appellate Body reports. In short, the paper demonstrates that, while the workload of the Appellate Body is cyclical and, as such, shares a feature of the Mayan calendar, the overall trend since 1995 has been a significant increase in the workload of the Appellate Body. The year 2013 has been an exceptionally busy year for WTO panels and it is to be expected that this will translate into a heavy workload for the Appellate Body in 2014 and beyond. The Appellate Body stands ready to face the upcoming challenges, and to make the most efficient use of the resources that will be made available to it.

Even during this relatively quiet year, the Appellate Body was confronted with challenging legal questions. The Appellate Body heard the appeals in *Canada – Certain Measures Affecting the Renewable Energy Generation Sector* and *Canada – Measures Relating to the Feed-in Tariff Program*. These disputes involved important questions regarding the use of subsidies in markets created by governments, such as the renewable energy sector, and marked the first time that the Appellate Body has been asked to clarify the scope and limits of Article III:8(a) of the GATT 1994, which allows governments to discriminate in favour of domestic products in certain government procurement transactions.

The last month of 2013 also brought with it the conclusion of the second term of office of our dear colleague David Unterhalter. Throughout his tenure as an Appellate Body Member, David was a leading voice contributing to the development of the international rule of law. In hearing and deciding appeals, David invariably deployed his formidable skills in logic and legal reasoning while adhering scrupulously to the values of independence and impartiality. I trust and expect that the WTO Membership realises the urgent need to fill the void that his departure has left, and recognizes the constraints that an empty seat on the Appellate Body places on the functioning of the Appellate Body and of the dispute settlement system as a whole.

2013 also marked the end of the first term of office on the Appellate Body of Peter Van den Bossche. I am glad that, in renewing his tenure for a second term, the Membership recognized Peter's many attributes, including his steadfast commitment to independence and impartiality.

Finally, on behalf of the WTO Appellate Body, I participated in the ninth meeting of the Brandeis Institute for International Judges. From 28-31 July 2013, 16 judges from 13 international courts and tribunals attended the meeting in Lund, Sweden. I am happy to report that the WTO dispute settlement system continues to serve as a model for the adjudication of international disputes. My colleagues and I are fully devoted to ensuring that this remains the case.

Ricardo Ramírez-Hernández
Chair, Appellate Body

WORLD TRADE ORGANIZATION
APPELLATE BODY

ANNUAL REPORT FOR 2013

1 INTRODUCTION

This Annual Report summarizes the activities of the Appellate Body and its Secretariat for the year 2013.

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 contained in Annex 2 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). Article 3.2 of the DSU states the overarching purposes of the dispute settlement system as such: "The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system." Further, Article 3.2 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 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[2], trade in services[3], and the protection of intellectual property rights[4], as well as the DSU itself. Pursuant to Article 1.2 and Appendix 2 of the DSU, where the covered agreements contain special or additional rules and procedures, these rules and procedures prevail over those contained in the DSU to the extent that there is an inconsistency. The application of the DSU to disputes under the plurilateral trade agreements annexed to the WTO Agreement[5] is subject to the adoption of decisions by the parties to these agreements setting out the terms for its application to the individual agreement.[6]

Proceedings under the DSU take place in stages. In the first stage, Members are required to hold consultations with a view to reaching a mutually agreed solution to the matter in dispute.[7] If these consultations fail to produce a mutually agreed solution, the dispute may advance to the adjudicative stage in which the complaining Member requests the DSB to establish a panel to examine the matter.[8] Panelists are chosen by agreement of the parties, based on nominations proposed by the Secretariat.[9] However, if the parties cannot agree, either party may request the WTO Director-General to determine the composition of the panel.[10] Panels shall be composed of well-qualified governmental and/or non-governmental individuals with expertise in international trade law or policy.[11] In discharging its adjudicative function, a panel is required 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."[12] The panel process includes written submissions by the

[1] Article 3.3 of the DSU.
[2] Annex 1A to the WTO Agreement.
[3] Annex 1B to the WTO Agreement.
[4] Annex 1C to the WTO Agreement.
[5] Annex 4 to the WTO Agreement.
[6] Appendix 1 to the DSU.
[7] Article 4 of the DSU.
[8] Article 6 of the DSU.
[9] Article 8.6 of the DSU.
[10] Article 8.7 of the DSU.
[11] Article 8.1 of the DSU.
[12] Article 11 of the DSU.

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 first issued to the parties, and is subsequently circulated to all WTO Members in the three official languages of the WTO (English, French, and Spanish), at which time it is also posted on the WTO website.

Article 17 of the DSU establishes a standing Appellate Body. The Appellate Body is composed of seven Members who are each appointed to a four-year term, with a possibility to be reappointed once. The expiration dates of terms are staggered in order to ensure 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. They shall be unaffiliated with any government. Moreover, the Appellate Body membership shall 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[13] (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 a dispute, other than third parties, may appeal a 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[14] (Working Procedures), drawn up by the Appellate Body in consultation with the Chairperson of the DSB and the Director-General of the WTO, and communicated to WTO Members. Proceedings involve the filing of written submissions by the participants and third participants, as well as an oral hearing. The Appellate Body report is to be 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. 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 present at the meeting formally object to its adoption.[15] Upon adoption, Appellate Body reports and panel reports (as modified by the Appellate Body) become binding upon the parties.

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

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

[14] Working Procedures for Appellate Review, WT/AB/WP/6, 16 August 2010.

[15] Articles 16.4 and 17.14 of the DSU.

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 the existence or consistency with a covered agreement of measures taken to comply", the matter may be referred to the original panel in compliance proceedings under Article 21.5 of the DSU. In these Article 21.5 compliance proceedings, a panel report is issued and may be appealed to the Appellate Body. 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 under Article 22.6 of the DSU if it objects to the level of suspension proposed or considers that the principles and procedures concerning the sector or covered agreement to which the suspension may apply have not been followed. In principle, the suspension of concessions or other obligations must relate to the same trade sector or agreement as the measure found to be inconsistent. However, if this is impracticable or ineffective for the complaining Member, and if circumstances are serious, the complaining Member may seek authorization to suspend concessions with respect to other sectors or agreements. The arbitration under Article 22.6 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.[16]

A party to a dispute may request good offices, conciliation, or mediation as alternative methods of dispute resolution at any stage of dispute settlement proceedings.[17] 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.[18] Recourse to arbitration, including the procedures to be followed in such arbitration proceedings, is subject to mutual agreement of the parties.[19]

2 COMPOSITION OF THE APPELLATE BODY

The Appellate Body is a standing body composed of seven Members, each appointed by the DSB for a term of four years with the possibility of being reappointed once for another four-year term. The first four-year term of Mr Ricardo Ramírez-Hernández expired at the end of June 2013. Mr Ramírez expressed his interest and willingness to be appointed for a second four-year term. No WTO Member expressed any reservations regarding the reappointment of Mr Ramírez during consultations conducted by the Chair of the DSB. In the light of this, the DSB reappointed Mr Ramírez for a second four-year term beginning on 1 July 2013.[20]

The first four-year term of Mr Peter Van den Bossche expired on 11 December 2013. Mr Van den Bossche expressed his interest and willingness to be appointed for a second four-year term. During consultations conducted by the Chair of the DSB, no WTO Member expressed reservations

[16] Article 22.1 of the DSU.
[17] Article 5 of the DSU.
[18] 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)*)
[19] Articles 21 and 22 of the DSU apply *mutatis mutandis* to decisions by arbitrators.
[20] WT/DSB/M/330.

regarding the reappointment of Mr Van den Bossche. Consequently, the DSB reappointed Mr Van den Bossche for a second four-year term beginning on 12 December 2013.[21]

The second term of office of Mr David Unterhalter expired on 17 December 2013.[22] In order to fill the vacancy arising from the expiration of Mr Unterhalter's term, the DSB, at its meeting on 24 May 2013, launched a selection process for the appointment of a new Appellate Body Member.[23] Based on the procedures set forth in document WT/DSB/1, the DSB established a Selection Committee consisting of the Director-General and the 2013 Chairpersons of the General Council, Goods Council, Services Council, TRIPS Council, and the DSB.[24]

Four candidates were nominated by four WTO Members, namely, Australia, Cameroon, Egypt, and Kenya. These four candidates were interviewed by the Selection Committee on 21 October 2013. At the DSB meeting held on 22 October, Members wishing to express their views on any of the candidates were invited to meet with the Selection Committee. As previously agreed, the Selection Committee was to make its recommendation to the DSB no later than 7 November 2013, in order to enable the DSB to consider the recommendation at its regularly scheduled meeting on 25 November 2013.[25] However, on 14 November 2013, the Chair of the DSB informed Members that, due to the intensive consultation process in preparation for the 9th Ministerial Conference in Bali in December 2013, the Selection Committee had not been able to complete its deliberations on a recommendation regarding a new Member of the Appellate Body. The Selection Committee proposed to resume its deliberations in 2014 with a view to making its recommendation as soon as practicable.

The composition of the Appellate Body in 2013 and the respective terms of office of its Members are set out in Table 1.

Table 1: Composition of the Appellate Body in 2013

Name	Nationality	Term(s) of office
Ujal Singh Bhatia	India	2011–2015
Seung Wha Chang	Korea	2012–2016
Thomas R. Graham	United States	2011–2015
Ricardo Ramírez-Hernández	Mexico	2009–2013 2013–2017
David Unterhalter	South Africa	2006–2009 2009–2013
Peter Van den Bossche	Belgium	2009–2013 2013–2017
Yuejiao Zhang	China	2008–2012 2012–2016

Pursuant to Rule 5.1 of the Working Procedures, the Members of the Appellate Body had elected Mr Ricardo Ramírez-Hernández to serve as Chairperson of the Appellate Body for the period 1 January to 31 December 2013.[26] In December 2013, Mr Ramírez was re-elected to serve a second term as Chairperson from 1 January to 31 December 2014.[27]

Biographical information about the Members of the Appellate Body is provided in Annex 2. A list of former Appellate Body Members and Chairpersons is provided in Annex 4.

[21] WT/DSB/M/339.
[22] Mr Unterhalter delivered a farewell speech at the DSB meeting held on 22 January 2014. His remarks are attached as Annex 3 to this Annual Report.
[23] WT/DSB/60.
[24] WT/DSB/M/332.
[25] WT/DSB/338.
[26] WT/DSB/59.
[27] WT/DSB/62.

The Appellate Body receives legal and administrative support from the Appellate Body Secretariat, in accordance with Article 17.7 of the DSU. As at 31 December 2013, the Secretariat comprised a Director, thirteen lawyers, one administrative assistant, and three support staff. Werner Zdouc has been Director of the Appellate Body Secretariat since 2006.

3 APPEALS

Pursuant to Rule 20(1) of the Working Procedures and Article 16(4) of the DSU, an appeal is commenced by a party to the dispute giving written notice 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 5 days of the filing of the Notice of Appeal.

Two panel reports were appealed in 2013. Both disputes related to original proceedings and an "other appeal" was filed pursuant to Rule 23(1) of the Working Procedures in each. Table 2 sets out further information regarding appeals filed in 2013.

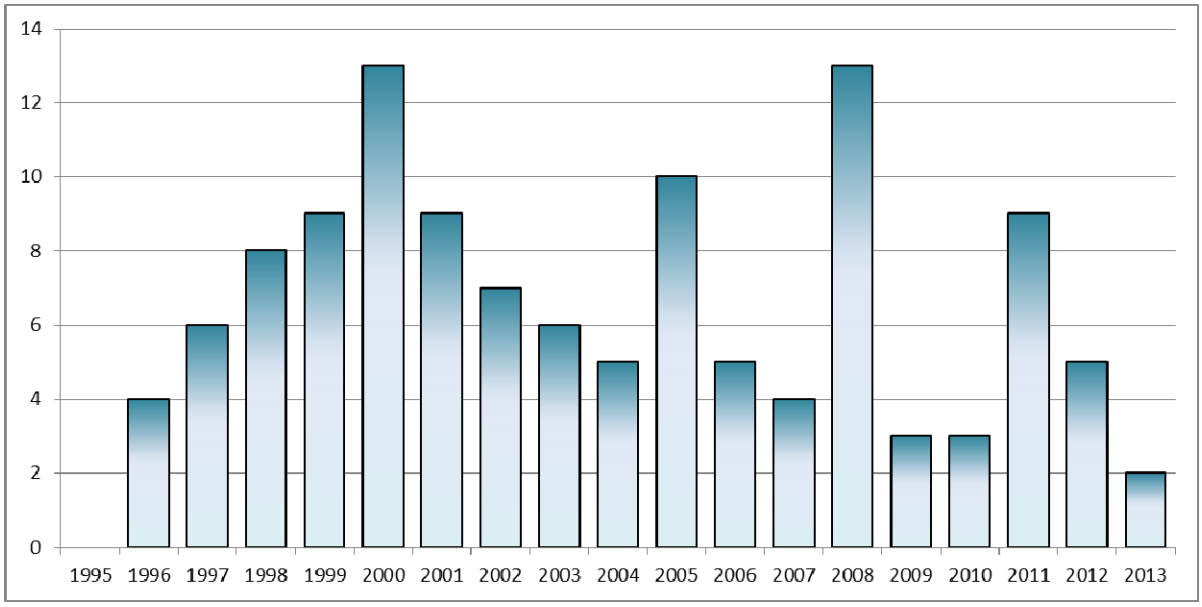
Table 2: Appeals filed in 2013

Panel report appealed	Date of appeal	Appellant [a]	Document symbol	Other appellant [b]	Document symbol
Canada – Certain Measures Affecting the Renewable Energy Generation Sector	5 February 2013	Canada	WT/DS412/10	Japan	WT/DS412/11
Canada – Measures Relating to the Feed-in Tariff Program	5 February 2013	Canada	WT/DS426/9	European Union	WT/DS426/10

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

Information on the number of appeals filed each year since 1995 is provided in Annex 5. Chart 1 shows the number of appeals filed each year between 1995 and 2013.

Chart 1: Total number of appeals 1995–2013



The overall average of panel reports that have been appealed from 1995 to 2013 is 67%. A breakdown of the percentage of panel reports appealed each year is provided in Annex 6.

4 APPELLATE BODY REPORTS

Two Appellate Body reports were circulated in 2013, the details of which are summarized in Table 3. As of the end of 2013, the Appellate Body has circulated a total of 119 reports.

Table 3: Appellate Body reports circulated in 2013

Case Title	Document symbol	Date circulated	Date adopted by the DSB
*Canada – Certain Measures Affecting the Renewable Energy Generation Sector**	WT/DS412/AB/R	6 May 2013	24 May 2013
*Canada – Measures Relating to the Feed-in Tariff Program**	WT/DS426/AB/R	6 May 2013	24 May 2013

* These two Appellate Body reports were circulated in a single document.

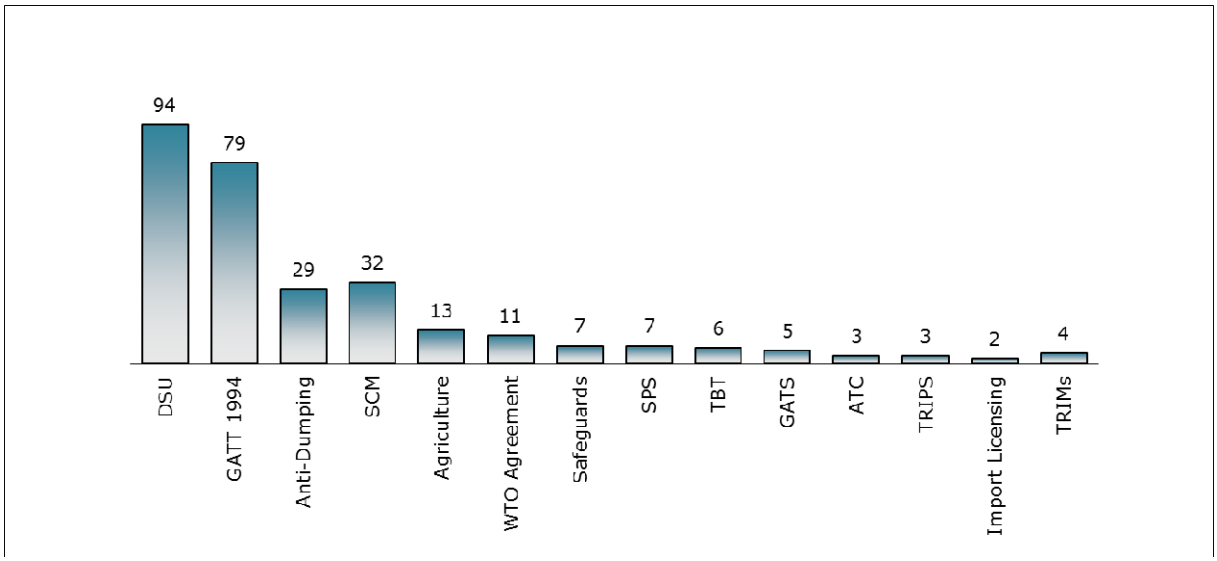
The following table shows which WTO agreements were addressed in the Appellate Body reports circulated in 2013.

Table 4: WTO Agreements addressed in Appellate Body reports circulated in 2013

Case	Document symbol	WTO agreements addressed
Canada – Certain Measures Affecting the Renewable Energy Generation Sector	WT/DS412/AB/R	GATT 1994 SCM Agreement TRIMs Agreement
Canada – Measures Relating to the Feed-in Tariff Program	WT/DS426/AB/R	GATT 1994 SCM Agreement TRIMs Agreement

Chart 2 shows the number of times specific WTO agreements have been addressed in the 119 Appellate Body reports circulated from 1996 through 2013.

Chart 2: WTO agreements addressed in appeals 1996–2013



Annex 7 contains a breakdown by year of the frequency with which the specific WTO agreements have been addressed in appeals from 1996 through 2013.

The findings and conclusions contained in the Appellate Body reports circulated in 2013 are summarized below.

4.1 Appellate Body Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector*, WT/DS412/AB/R, and *Canada – Measures Relating to the Feed-in Tariff Program*, WT/DS426/AB/R

These disputes concerned challenges brought by Japan and the European Union (complainants) against Canada with respect to the Canadian Province of Ontario's Feed-in Tariff Program (FIT Programme) and related FIT and microFIT Contracts relating to wind and solar photovoltaic (PV) electricity generation projects.

The FIT Programme is a scheme implemented by the Government of Ontario since 2009 to increase the supply of electricity generated from certain renewable sources of energy into the Ontario electricity system. Generators of electricity participating in the FIT Programme "are paid a guaranteed price per kWh of electricity delivered into the Ontario electricity system under 20-year or 40-year contracts with the [Ontario Power Authority]".[28] Participation in the FIT Programme is open to facilities located in Ontario that produce electricity from the following renewable energy sources: wind, solar PV, renewable biomass, biogas, landfill gas, and waterpower.[29]

The relationship between Article III:8(a) of the GATT 1994 and Article 2.2 of the TRIMs Agreement and the Illustrative List annexed thereto

The Appellate Body began by examining the European Union's claim that the Panel erred in finding that Articles 2.1 and 2.2 of the Agreement on Trade-Related Investment Measures (TRIMs Agreement) and paragraph 1(a) of the Illustrative List of measures in the Annex thereto do not preclude the application of Article III:8(a) of the General Agreement on Tariffs and Trade 1994 (GATT 1994). The European Union argued that the disciplines applying to measures falling within the scope of the Illustrative List are conclusively regulated in the TRIMs Agreement and that therefore Article III:8(a) is not applicable to such measures.

The Appellate Body explained that the cross-reference in Article 2.1 of the TRIMs Agreement to Article III of the GATT 1994 is not limited to specific sections of Article III and is thus a reference to that Article in its entirety. This means that a measure that is inconsistent with Article III:4 of the GATT 1994 would also be a TRIM that is incompatible with Article 2.1 of the TRIMs Agreement. The Appellate Body noted, however, that the cross-reference to Article III also includes paragraph 8(a) of that provision. Hence, a measure that falls within the scope of paragraph 8(a) does not violate Article III of the GATT 1994. This, in turn, means that such a measure would not be inconsistent with Article 2.1 of the TRIMs Agreement.

The Appellate Body found that Article 2.2 of the TRIMs Agreement provides further specification as to the type of measures that are inconsistent with Article 2.1. The operative part of Article 2.2 is the reference to the Illustrative List, which provides examples of measures that are inconsistent with the national treatment obligation. Accordingly, Article 2.2 and the Illustrative List provide clarification as to which TRIMs are subject to the general obligation in Article 2.1. However, the Appellate Body explained that the absence of a reference to Article III:8(a) of the GATT 1994 in Article 2.2 of the TRIMs Agreement and in the Illustrative List indicates that these provisions are neutral as to the applicability of Article III:8(a).

On appeal, the European Union emphasized that "the object and purpose of the TRIMs Agreement was … to 'elaborate' 'further' or 'additional' provisions to the already existing ones"[30], and that the Panel's interpretation would make Article 2.2 and the Illustrative List largely redundant. The Appellate Body observed that the "further" provisions that the TRIMs Agreement contains clarify the application of Articles III and XI of the GATT 1994 to a specific set of measures – namely, TRIMs. The Appellate Body saw no indication that the provisions of the TRIMs Agreement were intended to override rights recognized in the GATT 1994, such as the right provided in Article III:8(a). To the contrary, several provisions of the TRIMs Agreement – particularly the initial clause of Article 2.1, and Articles 3 and 4 – reflect reiterative attempts to safeguard rights recognized in the GATT 1994.

[28] Panel Reports, para. 7.64.

[29] Panel Reports, para. 7.66. Under the FIT Programme, all renewable fuels other than waterpower are awarded 20-year contracts. Waterpower facilities are awarded 40-year contracts. (Ibid., paras. 7.64 and 7.195)

[30] European Union's other appellant's submission (DS426), para. 35. (fn omitted)

For these reasons, the Appellate Body concluded that the Panel correctly rejected the European Union's claim that the Panel erred in finding that Articles 2.1 and 2.2 of the TRIMs Agreement and paragraph 1(a) of the Illustrative List in the Annex thereto do not preclude the application of Article III:8(a) of the GATT 1994. Accordingly, the Appellate Body upheld the Panel's finding that "Paragraph 1(a) of the Illustrative List in the Annex to the TRIMs Agreement d[id] not obviate the need for [the Panel] to undertake an analysis of whether the challenged measures are outside of the scope of application of Article III:4 of the GATT 1994 by virtue of the operation of Article III:8(a) of the GATT 1994."

Article III:8(a) of the GATT 1994

Canada, requested the Appellate Body to reverse the Panel's finding that the FIT Programme and related FIT and microFIT Contracts were not covered by Article III:8(a), to find instead that the FIT Programme and Contracts fell within the scope of Article III:8(a), and consequently to find that these measures were not in breach of Article III:4 of the GATT 1994 or Article 2.1 of the TRIMs Agreement. The European Union and Japan requested the Appellate Body to uphold the Panel's finding that the FIT Programme and Contracts were not covered by Article III:8(a) and that, consequently, Canada could not rely on that provision to exclude the application of Article III:4 of the GATT 1994. The European Union and Japan also supported the Panel's conclusion that the FIT Programme and Contracts were inconsistent with Article 2.1 of the TRIMs Agreement and Article III:4 of the GATT 1994. However, in their other appeals, the European Union and Japan each appealed several aspects of the Panel's interpretation and application of Article III:8(a) of the GATT 1994 and requested the Appellate Body to modify certain intermediate findings by the Panel.

Article III:8(a) of the GATT 1994 provides:

> The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

The Appellate Body explained that this provision establishes a derogation from the national treatment obligations of Article III for certain government procurement transactions. Measures satisfying the requirements of Article III:8(a) are not subject to the national treatment obligations set out in other paragraphs of Article III. The Appellate Body also clarified that the characterization of the provision as a derogation does not pre-determine the question as to which party bears the burden of proof with regard to the requirements stipulated in the provision.

The Appellate Body then considered several elements of the text of Article III:8(a) describing the types and the content of measures falling within the ambit of the provision. The Appellate Body emphasized the linkages between the different terms used in the provision and the contextual connections to other parts of Article III, as well as to other provisions of the GATT 1994.

With regard to the types of measures falling within the ambit of the provision, the Appellate Body considered that Article III:8(a) requires an articulated connection between the laws, regulations, or requirements and the procurement, in the sense that the act of procurement is undertaken within a binding structure of laws, regulations, or requirements. Furthermore, the Appellate Body distinguished the concepts of "procurement" and "purchase in Article III:8(a), understanding the term "procurement" as referring to the process pursuant to which a government acquires products. The word "purchased" is used to describe the type of transaction used to put into effect the procurement. The Appellate Body clarified that "procurement" does not always be effectuated by means of a purchase. Article III:8 also specifies what is procured and by whom. The subject matter of the procurement is a "product", and it is being procured by a "governmental agency". The Appellate Body found that a "governmental agency" is an entity acting for or on behalf of the government and performing governmental functions within the competences conferred on it.

With respect to the term "products purchased", the Appellate Body recalled its finding that Article III:8(a) stipulates conditions under which derogation from the obligations in Article III takes place. The Appellate Body added that the derogation of Article III:8(a) becomes relevant only if there is discriminatory treatment of foreign products that are covered by the obligations in

Article III, and this discriminatory treatment results from laws, regulations, or requirements governing procurement by governmental agencies. The Appellate Body explained that, because Article III:8(a) is a derogation from the obligations contained in other paragraphs of Article III, the same discriminatory treatment must be considered both with respect to the obligations contained in Article III and with respect to the derogation of Article III:8(a). Accordingly, the Appellate Body held that Article III:8(a) concerns, in the first instance, the product that is subject to the discrimination. In addition, the coverage of Article III:8 extends to "like" products and to products that are directly competitive to, or substitutable with, the product purchased under the challenged measure. The Appellate Body noted that the determination of the range of products in such a competitive relationship may require consideration of inputs and processes of production used to produce the product. However, the Appellate Body did not decide in this case whether the derogation in Article III:8(a) can extend also to discrimination relating to inputs and processes of production used in respect of products purchased by government.

Furthermore, the Appellate Body found that the requirements of procurement being made for "governmental purposes" and not "with a view to commercial resale" are cumulative requirements. Therefore, a purchase that does not fulfil the requirement of being made "for governmental purposes" will not be covered by Article III:8(a) regardless of whether it complies with the requirement of being made "not with a view to commercial resale". With regard to the phrase "products purchased for governmental purposes" in Article III:8(a), the Appellate Body considered that a harmonious reading of the clause in the three official languages suggested that the provision refers to what is consumed by government or what is provided by government to recipients in the discharge of its public functions. The Appellate Body considered that this reading was further supported by context, in particular Article XVII:2 of the GATT 1994, which refers to "imports of products for immediate or ultimate consumption in governmental use". The Appellate Body found that this provision identifies instances in which a product is purchased for governmental purposes. While Article III:8(a) does not refer to "immediate or ultimate" consumption, it does refer to what is consumed by government or what is provided by government to recipients in discharge of public functions. The Appellate Body also noted that the word "for" relates the term "products purchased" to "governmental purposes", and thus indicates that the products purchased must be intended to be directed at the government or be used for governmental purposes.

With respect to the phrase "and not with a view to commercial resale or with a view to use in the production of goods for commercial sale", the Appellate Body considered that a "commercial resale" is a resale of a product at arm's length between a willing seller and a willing buyer. The participants held different views with respect to the question of whether procurement "with a view to commercial resale" must involve profit. The Appellate Body held that whether a transaction constitutes a "commercial resale" must be assessed having regard to the entire transaction, taking into account the perspective of the seller as well as that of the buyer, and saw profit-orientation generally as an indication that a resale is at arm's length. However, the Appellate Body also noted that there may be circumstances where a seller enters into a transaction out of his or her own interest without making a profit, or sometimes even without fully recouping cost. The Appellate Body found it useful to look in such circumstances at the seller's long-term strategy, because loss-making sales could not be sustained indefinitely and a rational seller would be expected to be profit-oriented in the long term.

With regard to the last clause of Article III:8(a), "not … with a view to use in the production of goods for commercial sale", the Appellate Body held that, where the provision uses the same words as in the phrase "not with a view to commercial resale", the words have the same meaning in both clauses. Furthermore, the Appellate Body explained that the use of the words "in the production" suggests that the product must have a role in the production of goods.

With regard to the measure at issue, the Appellate Body considered whether the Panel erred in finding that the Minimum Required Domestic Content Levels of the FIT Programme and related FIT and microFIT Contracts were not covered by Article III:8(a) and that they were therefore subject to the disciplines of Article III:4 of the GATT 1994. The Appellate Body found that the derogation under Article III:8(a) must be understood in relation to the obligations stipulated in the other paragraphs of Article III, and that, accordingly, the product of foreign origin allegedly being discriminated against must be in a competitive relationship with the product purchased. The Appellate Body noted that, in the case at hand, the product being procured was electricity, whereas the product discriminated against for reason of its origin was generation equipment. The

Appellate Body found that these two products were not in a competitive relationship, and that consequently the discrimination relating to generation equipment contained in the FIT Programme and Contracts was not covered by the derogation of Article III:8(a) of the GATT 1994.

Having found that the Minimum Required Domestic Content Levels did not fall within the ambit of the derogation in Article III:8(a), the Appellate Body considered that it did not need to address further the allegations of error raised by the European Union and Japan seeking reversal of interpretations and intermediate findings by the Panel, because these findings were moot.

In the light of its finding that the Minimum Required Domestic Content Levels did not fall within the ambit of Article III:8(a), and in the light of the fact that Canada had not otherwise appealed the Panel's finding that the FIT Programme and Contracts were inconsistent with Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement, the Appellate Body upheld the Panel's conclusion, that the Minimum Required Domestic Content Levels prescribed under the FIT Programme and related FIT and microFIT Contracts were inconsistent with Article 2.1 of the TRIMs Agreement and Article III:4 of the GATT 1994.[31]

The Panel's exercise of judicial economy regarding Japan's "stand-alone" claim under Article III:4 of the GATT 1994

Before the Panel, Japan claimed that the measures at issue were inconsistent with Article III:4 of the GATT 1994 because they imposed "requirements" on renewable energy generators "affecting" the "internal" "sale", "purchase", and "use" of renewable energy generation equipment, and accorded imported equipment treatment less favourable than "like products" of Ontario origin. This claim was independent from, and additional to, its claim of violation of the TRIMs Agreement, which also included Article III:4.[32] For convenience, the first claim of Japan's was referred to as the "stand-alone Article III:4 claim". The second claim was referred to as Japan's "TRIMs–Article III:4 claim". Having accepted Japan's TRIMs-Article III:4 claim, the Panel did not believe it was necessary for the purpose of resolving the disputes also to address Japan's stand-alone Article III:4 claim. Japan alleged on appeal that, in proceeding in this manner, the Panel exercised false judicial economy.

The Appellate Body noted that the Panel had made a finding of violation of Article III:4 of the GATT 1994, and that this finding rested on an assessment of the measures at issue under the Illustrative List of TRIMs annexed to the TRIMs Agreement, and in particular on paragraph 1(a). The Appellate Body noted that paragraph 1(a) is an instance in which an imported product is treated less favourably than a like domestic product. The Appellate Body rejected Japan's contention that a stand-alone finding of violation of Article III:4 would result in broader implementation obligations.

The Appellate Body was not persuaded that the Panel's failure to make a finding on Japan's stand-alone Article III:4 claim provided only a "partial resolution of the matter at issue" or that an additional finding on Japan's stand-alone Article III:4 claim was "necessary in order to enable the DSB to make sufficiently precise recommendations and rulings so as to allow for prompt compliance"[33] by Canada with those recommendations and rulings. Therefore, the Appellate Body rejected Japan's claim that the Panel failed to fulfil its obligations under Article 11 of the DSU and exercised false judicial economy by declining to make a finding on Japan's stand-alone Article III:4 claim.

Claims under the SCM Agreement

Article 1.1(a) – "Financial contribution" or "income or price support"

Japan appealed the Panel's finding that the measures at issue constituted government "purchases [of] goods" pursuant to Article 1.1(a)(1)(iii) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). In addition, Japan asserted that the Panel erred in finding that

[31] Japan Panel Report, para. 8.2 and EU Panel Report, para. 8.6.
[32] Japan's first written submission to the Panel (DS412), para. 295 et seq.
[33] Appellate Body Report, *US – Tuna II (Mexico)*, para. 403 (quoting Appellate Body Report, *Australia – Salmon*, para. 223).

subparagraphs (i) and (iii) of Article 1.1(a)(1) of the SCM Agreement were mutually exclusive.[34] The Appellate Body disagreed with the Panel's finding to the extent it meant that the coverage of subparagraphs (i) and (iii) of Article 1.1(a)(1) were mutually exclusive. The Appellate Body held that, when determining the proper legal characterization of a measure under Article 1.1(a)(1) of the SCM Agreement, a panel should scrutinize the measure both as to its design and operation and identify its principal characteristics.[35] A transaction may fit into one of the types of financial contributions listed in Article 1.1(a)(1). However, transactions may also be complex and multifaceted, and thus different aspects of the same transaction may qualify as different types of financial contributions. It may also be the case that the attributes of a measure do not allow identification of a single category of financial contribution and thus, as explained by the Appellate Body in *US – Large Civil Aircraft (2nd complaint)*, a transaction may fall under more than one type of financial contribution.

Consequently, the Appellate Body declared moot and of no legal effect the Panel's finding that government purchases of goods could not also be legally characterized as direct transfers of funds without infringing the principle of effective treaty interpretation[36], inasmuch as it negated the possibility that a transaction might fall under more than one type of financial contribution under Article 1.1(a)(1) of the SCM Agreement.

The Appellate Body then turned to Japan's claim that the Panel erred in its application of Article 1.1(a)(1) of the SCM Agreement by finding that the FIT Programme and Contracts were government "purchases [of] goods" within the meaning of Article 1.1(a)(1)(iii). The Appellate Body recalled that the Panel concluded that the measures at issue were government "purchases [of] goods" on the basis of three elements. First, the Ontario Power Authority pays for electricity that is delivered into Ontario's electricity grid. Second, the Government of Ontario takes possession of the electricity and therefore purchases electricity. Third, the Panel took into account that "the *Electricity Act of 1998*, the Ministerial Direction, the FIT and microFIT Contracts and other documents, all in one way or another characterize the challenged measures as a procurement or purchase of electricity".[37] The Appellate Body agreed with the Panel that "the combined actions of all three 'public bodies'"[38] – Ontario Power Authority, Hydro One, and the IESO – demonstrated that the Government of Ontario purchases electricity within the meaning of Article 1.1(a)(1)(iii) of the SCM Agreement. In the light of this, the Appellate Body upheld the Panel's finding that the FIT Programme and related FIT and microFIT Contracts were government "purchases [of] goods".[39]

Japan claimed, furthermore, that the measures at issue may also be characterized as "direct transfer[s] of funds" or "potential direct transfers of funds" within the meaning of Article 1.1(a)(1)(i).[40] The Appellate Body noted that Japan's arguments in this respect did not present any new characteristics of the measures at issue that went beyond, or were different from those considered in finding that the measures at issue were properly characterized as government purchases of goods. Therefore, the Appellate Body found that Japan had not established that the measures at issue should be characterized as "direct transfer[s] of funds" or "potential direct transfers of funds" under Article 1.1(a)(1)(i) of the SCM Agreement, in addition to being characterized as government purchases of goods.

Moreover, the Appellate Body rejected Japan's claim that the Panel improperly exercised judicial economy with respect to Japan's claim that the FIT Programme and related FIT and microFIT Contracts constitute "income or price support" under Article 1.1(a)(2) of the SCM Agreement, and thereby failed to make an objective assessment of the matter as required by Article 11 of the DSU. In the Appellate Body's view, an additional finding by the Panel that the

[34] Panel Reports, para. 7.246.

[35] Appellate Body Reports, *China – Auto Parts*, para. 171. See also, Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 586.

[36] Panel Reports, para. 7.246.

[37] Panel Reports, para. 7.242.

[38] Panel Reports, para. 7.239. (emphasis added; fn omitted)

[39] Panel Reports, paras. 7.243 and 7.328(i).

[40] Given that Japan also claimed that the Panel acted inconsistently with Article 11 of the DSU by exercising false judicial economy with respect to its claim that the challenged measures constitute "income or price support", the Appellate Body decided to address Japan's request to find that the measures at issue may be characterized as "income or price support" once it had made a determination on whether the Panel exercised false judicial economy regarding this claim of Japan.

challenged measures constituted "income or price support" was not necessary to resolve the dispute. Given that it rejected Japan's claim that the Panel exercised false judicial economy, the Appellate Body declined to make a finding on whether the FIT Programme and Contracts could be characterized as "income or price support" under Article 1.1(a)(2) of the SCM Agreement.

Article 1.1(b) – "Conferral of benefit"

The European Union and Japan requested the Appellate Body to reverse the Panel's finding that they had failed to establish that the challenged measures conferred a benefit within the meaning of Article 1.1(b) of the SCM Agreement, and to complete the legal analysis and find that the challenged measures conferred a benefit, based on the factual findings made by the Panel and uncontested facts on the Panel record. In the alternative, the European Union and Japan claimed that the Panel failed to make an objective assessment of the matter, under Article 11 of the DSU, in concluding that there was not sufficient evidence on the record that would allow it to make findings on the existence of benefit under Article 1.1(b) of the SCM Agreement, based on its own approach to the question of benefit. Under both lines of argumentation, both the European Union and Japan requested the Appellate Body to complete the analysis and find that the challenged measures constituted subsidies prohibited under Articles 3.1(b) and 3.2 of the SCM Agreement.

The legal standard for the determination of benefit under Article 1.1(b) of the SCM Agreement

The Appellate Body began by reviewing the legal standard adopted by the Panel in its Article 1.1(b) analysis. First, the Appellate Body found that the Panel had not erred in the interpretation of Article 1.1(b) of the SCM Agreement by analysing whether a benefit is conferred on the basis of the guidelines contained in Article 14(d). The Appellate Body noted that whether a financial contribution confers an advantage on its recipient cannot be determined in absolute terms, but requires a comparison with a benchmark, which, in the case of subsidies, derives from the market. Article 14(d) contains guidelines for determining whether government purchases of goods make a recipient "better off" than it would otherwise be in the marketplace. Thus, the Appellate Body concluded that the Panel's approach to the question of benefit under Article 1.1(b) of the SCM Agreement, including the reliance on the context found in Article 14(d), was correct. Indeed, a determination of the existence of a benefit under Article 1.1(b), read in the context of Article 14(d) of the SCM Agreement, requires a comparison between actual remuneration and a market-based benchmark or proxy, and thus between amounts, in order to determine the existence of a benefit.

The relevant market

The Appellate Body saw several problems with the Panel's analysis of the relevant market for the purpose of the benefit comparison in these disputes. First, the Appellate Body considered that the Panel should have addressed the definition of the relevant market at the outset of its analysis, rather than addressing it after its benefit analysis. The Appellate Body highlighted that the definition of the relevant market was central to, and a prerequisite for, a benefit analysis under Article 1.1(b) the SCM Agreement.

Second, the Appellate Body found that the Panel had not analysed supply-side factors in its examination of the relevant market. The Appellate Body stated that, had the Panel undertaken an analysis of supply-side factors, the significance of government intervention in the electricity market to the definition of the relevant market would have become evident. Such an analysis would have permitted the Panel to define separate markets for wind and solar PV electricity, particularly if it was of the view, as it explained later, that the competitive wholesale electricity market was not the appropriate focus of the benefit analysis in these disputes.

The Appellate Body considered that, in circumstances where electricity generated from different sources was sold as an undistinguished product and, for as long as the differences in production costs for conventional and renewable electricity were so significant, markets for wind- and solar PV-generated electricity could only come into existence as a matter of government regulation. It was therefore often due to the government's choice of supply-mix of electricity generation technologies that markets for wind- and solar PV-generated electricity were created. A government may choose the supply-mix by setting administered prices for technologies that would

not otherwise be able to recover their costs on the spot market or by requiring private distributors or the government itself to buy part of their requirements of electricity from certain specified generation technologies. The Appellate Body indicated, however, that, in both instances, the definition of a certain energy supply-mix by the government could not in and of itself be considered as conferring a benefit within the meaning of Article 1.1(b) of the SCM Agreement.

Identification of a benefit benchmark for electricity produced from windpower and solar PV technologies

Bearing in mind the relevant market in the light of the Government of Ontario's definition of the energy supply-mix and the prevailing market conditions for wind- and solar PV-generated electricity in Ontario, the Appellate Body then turned to identify what it considered to be the appropriate benchmark for a benefit comparison under Article 1.1(b) of the SCM Agreement.

The Appellate Body indicated that a benefit analysis under Article 1.1(b), read in the context of Article 14(d) of the SCM Agreement, necessarily involves a comparison with a market benchmark or proxy. While policy considerations are not to be included in the determination of benefit under Article 1.1(b), the Appellate Body clarified that a market-based approach to benefit benchmarks does not exclude taking account of the fact that governments intervene to create markets that would otherwise not exist. The Appellate Body observed that considerations relating to the choice of energy supply-mix by a government, including wind- and solar PV-generated electricity, might be crucial to the viability and sustainability of the electricity market in the long term. Government intervention in favour of the substitution of fossil energy with renewable energy today was meant to ensure the proper functioning or the existence of an electricity market with a constant and reliable supply of electricity in the long term. The Appellate Body explained that, although this type of intervention had an effect on market prices, as opposed to a situation where prices were determined by unconstrained forces of supply and demand, it did not exclude *per se* treating the resulting prices as market prices for the purposes of a benefit analysis under Article 1.1(b) of the SCM Agreement.

The Appellate Body cautioned, however, that a distinction should be drawn between, on the one hand, government interventions that created markets that would otherwise not have existed and, on the other hand, other types of government interventions in support of certain players in markets that already existed, or to correct market distortions therein. Where a government created a market, it cannot be said that the government intervention distorted the market, as there would not have been a market if the government had not created it. In the light of the above, the Appellate Body concluded that benefit benchmarks for wind- and solar PV-generated electricity should be found in the markets for wind- and solar PV-generated electricity that result from the supply-mix definition.

The Panel's benefit benchmark analysis

The Appellate Body then turned to examine the European Union's and Japan's challenges of the Panel's assessment of the benefit benchmarks submitted by the complainants. The European Union and Japan argued that the Panel erred in engaging in the examination of market counterfactuals to determine "benefit" and that it should have determined the existence of "benefit" based on a "but for" test. The Appellate Body observed that if, as the Panel acknowledged, windpower and solar PV energy generation would not occur in Ontario absent the government's definition of the energy supply-mix, a "but for" approach would be inapposite for establishing benefit, because such an approach would, by definition, not measure what the recipient could obtain in the marketplace for windpower and solar PV energy generation. For this reason, the Appellate Body did not consider that the Panel should have determined that benefit existed based on a "but for" approach. Rather, in the Appellate Body's view, the relevant question was whether windpower and solar PV electricity suppliers would have entered the wind- and solar PV-generated electricity markets absent the FIT Programme, not whether they would have entered the blended wholesale market of electricity generated from all energy generation technologies.

Japan further contended that the Panel wrongly rejected the weighted-average wholesale rate and the commodity portion of Ontario retail prices under the Regulated Price Plan (RPP retail prices) as market benchmarks because they were distorted by government intervention. The Appellate Body found that the weighted-average wholesale rate and the RPP retail prices reflected prices for

blended electricity (i.e. electricity generated from all sources of energy supply) and thus, were not appropriate benchmarks to determine whether the FIT Programme conferred a benefit on windpower and solar PV generators. For the same reason, the Appellate Body rejected the other in-province and out-of-province (Alberta, New York State, New England and Mid-Western United States) blended electricity benchmarks that had been submitted to the Panel.

In the light of the above, the Appellate Body considered that the Panel committed an error in not conducting the benefit analysis on the basis of a market that was shaped by the government's definition of the energy supply-mix, and that was based on a benchmark located in that market reflecting competitive prices for windpower and solar PV generation. Therefore, the Appellate Body reversed the Panel's findings that Japan and the European Union failed to establish that the challenged measures conferred a benefit within the meaning of Article 1.1(b) of the SCM Agreement and thereby that Canada acted inconsistently with Articles 3.1(b) and 3.2 of the SCM Agreement.[41]

Having reversed the Panel's findings under Article 1.1(b) of the SCM Agreement, the Appellate Body did not address the complainants' conditional claim that in its analysis of "benefit" the Panel acted inconsistently with Article 11 of the DSU, as the condition on which it was premised did not occur.

The Appellate Body noted that, having reversed the Panel's findings under Article 1.1(b) of the SCM Agreement, no determination existed as to whether or not the challenged measures conferred a benefit within the meaning of Article 1.1(b) of the SCM Agreement. Thus, the Appellate Body turned to determine whether, on the basis of factual findings of the Panel and undisputed facts on the Panel record, it could complete the analysis and determine whether the challenged measures conferred a benefit within the meaning of Article 1.1(b) and whether Canada had acted inconsistently with Articles 3.1(b) and 3.2 of the SCM Agreement.

The Appellate Body found it appropriate to compare the remuneration obtained by solar PV and windpower generators under the FIT Programme with a market benchmark that reflected the Government of Ontario's definition of energy supply-mix, as including solar PV- and windpower-generated electricity. The Appellate Body examined the relevant facts and arguments submitted by the participants. In particular, the Appellate Body considered evidence concerning contracts for solar PV and wind projects awarded by competitive bidding under the FIT predecessor in Ontario, that is, the Renewable Energy Supply (RES) initiative, and contracts for wind projects awarded by competitive bidding in the Province of Quebec.

The Appellate Body did not consider that a comparison of FIT prices with the prices of wind-generated electricity in Quebec would be possible for the purposes of completing the analysis in this appeal, considering that the "standard of comparability", including the necessary adjustments that are required under Article 14(d) for an out-of-country benefit benchmark, that would be required for such an out-of-province benchmark was not raised before the Panel, or before the Appellate Body.

Turning to the RES initiative, the Appellate Body observed that, while in principle RES I, II, and III prices, which resulted from competitive bidding, might have represented a market outcome for renewable electricity generation, in order to carry out a meaningful comparison of the FIT Programme and the RES initiative, it would be necessary to ensure that the comparison was made between prices referring to the same period, the same type of generation technology, the same overall supply-mix, projects of the same or similar scale, and supply contracts of the same duration. In the Appellate Body's view, if any of these conditions was not met by the proposed benchmark, adjustments in the light of the factors listed in Article 14(d) and of the supply-mix defined by the government would be necessary to ensure comparability.

With respect to solar PV generators, the Appellate Body noted that, although the RES initiative was also open to this type of technology, there did not seem to be any evidence on the Panel record that solar PV generators were awarded contracts under any of the three RES initiatives. Thus, it did not appear that the FIT remuneration for solar PV generators could be compared to prices under the RES initiative to establish whether the FIT Programme conferred a benefit in respect of solar PV energy generation.

[41]Panel Reports, para. 7.328(ii); Japan Panel Report, para. 8.3; EU Panel Report, para. 8.7.

In contrast, the Appellate Body considered that it would be, in principle, possible to make a comparison of the FIT remuneration of windpower generators with the remuneration that windpower generators obtained under the RES initiative to determine whether the former conferred a benefit. However, because the relevant evidence had not been sufficiently debated before the Panel and before the Appellate Body, the Appellate Body found itself not in position to complete the analysis. The Appellate Body recalled that in previous cases it had also refrained from completing the legal analysis in the light of the complexity of the issues and in the absence of full exploration of the issues before the Panel. Consequently, the Appellate Body made no determination as to whether the challenged measures conferred a benefit within the meaning of Article 1.1(b) of the SCM Agreement and whether they constituted prohibited subsidies inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement.

5 PARTICIPANTS AND THIRD PARTICIPANTS IN APPEALS

Table 5 lists the WTO Members that participated in appeals for which an Appellate Body report was circulated in 2013. It distinguishes between Members that filed a Notice of Appeal pursuant to Rule 20 of the Working Procedures (appellants) and Members that filed a Notice of Other Appeal pursuant to Rule 23(1) (known as the "other appellants"). 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 5 days of the filing of the Notice of Appeal.

Table 5 also identifies those Members that participated in appeals as third participants under paragraphs (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 21 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 and that does not file a written submission with the Appellate Body may, within 21 days of the filing of the Notice of Appeal, notify its intention to appear at the oral hearing and indicate whether it intends to make a statement at the hearing. Rule 24(4) provides that a Member that was a third party to the panel proceedings and neither files a written submission in accordance with Rule 24(1), nor gives notice in accordance with Rule 24(2), may notify its intention to appear at the oral hearing and request to make a statement.

Table 5: Participants and third participants in appeals for which an Appellate Body report was circulated in 2013

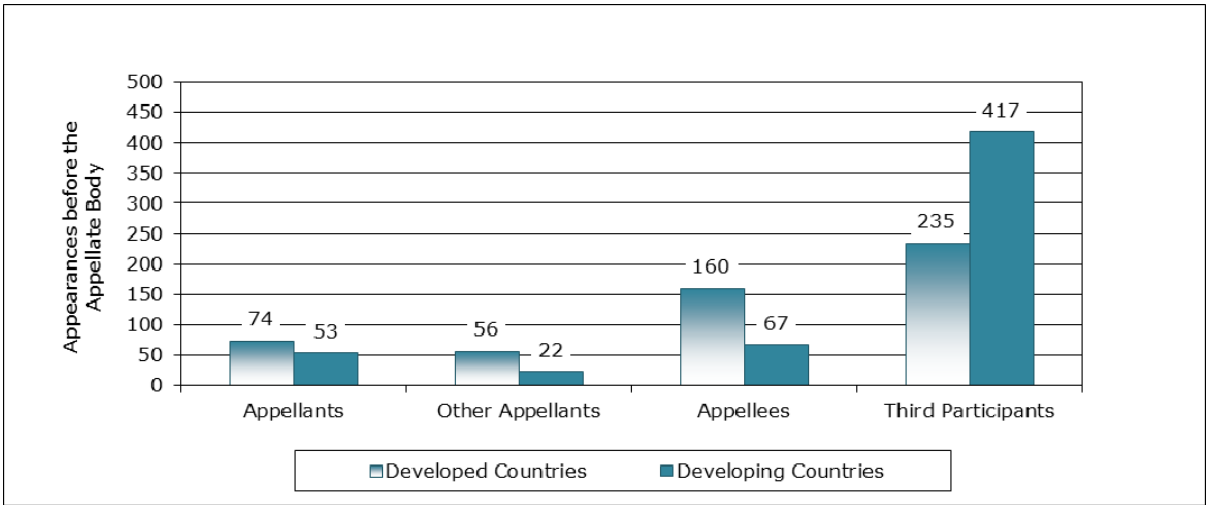
Case	Appellant[a]	Other appellant[b]	Appellee(s)[c]	Third participants		
				Rule 24(1)	Rule 24(2)	Rule 24(4)
Canada – Certain Measures Affecting the Renewable Energy Generation Sector	Canada	Japan	Japan Canada	Australia Brazil China Saudi Arabia United States	El Salvador European Union Honduras India Korea Mexico Norway Chinese Taipei	
Canada – Measures Relating to the Feed-in Tariff Program	Canada	European Union	European Union Canada	Australia Brazil China Saudi Arabia United States	El Salvador India Japan Korea Mexico Norway Chinese Taipei Turkey	

[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 16 WTO Members appeared at least once as appellant, other appellant, appellee, or third participant in appeals for which an Appellate Body report was circulated in 2013. Of these 16 WTO Members, 6 were developed country Members, and 10 were developing country Members.

Chart 3 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 appeals for which an Appellate Body report was circulated from 1996 through 2013.

Chart 3: WTO Member participation in appeals 1996–2013



Annex 8 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 2013.

6 WORKING PROCEDURES FOR APPELLATE REVIEW

6.1 Procedural issues arising in appeals in 2013

6.1.1 Amendment to the Notice of Appeal

In *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, the European Union sent a letter to the Appellate Body Secretariat on 12 February 2013 indicating that there was a "clerical mistake" in its Notice of Other Appeal, filed on 11 February, and requesting authorization to correct it. In accordance with Rule 18(5) of the Working Procedures, the Appellate Body Division hearing the appeal provided Canada, Japan, and the third participants with an opportunity to comment in writing on the request. No objections were received and, on 15 February 2013, the Division authorized the correction to the European Union's Notice of Other Appeal.

6.1.2 Amendments to the Working Schedule for Appeal

On 5 February 2013, the day that the Notice of Appeal was filed by Canada in *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, the Appellate Body received a letter from Japan requesting that the oral hearing in the appellate proceedings not be scheduled during the period 11-13 March 2013. Because the Working Schedule for Appeal drawn up by the Appellate Body Division hearing the appeal provided for the oral hearing to be held on 14-15 March 2013, it was unnecessary for the Division to consider further Japan's request.

6.1.3 Open oral hearing

In the proceedings in *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, the Appellate Body received letters from Canada, Japan, and the European Union requesting the Appellate Body to allow observation by the public of the oral hearing in the appellate proceedings. Canada requested public observation of the oral statements and answers to questions of the Appellate Body by the participants, as well as those of third participants who agreed to make their statements and responses to questions public. Canada proposed that public observation be permitted via simultaneous closed-circuit television broadcasting with the option for the transmission to be turned off should the participants find it necessary to discuss confidential information, or if a third participant had indicated its wish to keep its oral statement confidential. In its letter, Japan supported Canada's request, indicating that it also wished to make public its statements and answers to questions by the Appellate Body in the course of the hearing, and that it agreed with Canada's request that the Appellate Body hold an open hearing in this appeal. Japan further agreed that public observation be allowed by means of simultaneous closed-circuit video broadcasting. For its part, the European Union stated that it agreed and associated itself with Canada's request for an open hearing.

The Appellate Body Division hearing the appeal invited the third parties to comment in writing on the requests of the participants to open the hearing to public observation. Responses were received from Australia, Brazil, China, El Salvador, India, Mexico, Norway, Saudi Arabia, Turkey, and the United States. In their respective comments, Brazil, China, El Salvador, India, Mexico, Saudi Arabia, and Turkey stated that they did not object to allowing public observation of the oral hearing in the present disputes. Brazil, China, India, Mexico, and Turkey further emphasized that it was without prejudice to the systemic views each had on the issue of public observation of panel and Appellate Body hearings. Australia, Norway, and the United States stated their support for the participants' request to allow public observation of the oral hearing. China, India, and Saudi Arabia indicated that they wished to maintain the confidentiality of their statements and responses to questions during the hearing.

On 19 February 2013, the Division issued a Procedural Ruling authorizing the opening of the hearing to public observation and adopting additional procedures for the conduct of the hearing.[42] Public observation of the oral hearing in the proceedings took place via simultaneous closed-circuit television broadcast to a separate room. Transmission was turned off during statements made by those third participants who had indicated their wish to maintain the confidentiality of their statements.

6.1.4 Unsolicited *amicus curiae* briefs

The Appellate Body received two unsolicited briefs from an energy company and from an academic during the *Canada – Renewable Energy / Canada – Feed-in Tariff Program* proceedings. The participants and third participants were given an opportunity to express their views on the briefs at the oral hearing. Ultimately, the Division did not find it necessary to rely on these briefs in rendering its decision.[43]

6.1.5 Request for separate findings in the reports

In the appellate proceedings in *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, Japan and the European Union requested the Appellate Body to issue two reports in one single document with separate sections containing findings and conclusions for each complainant. Canada was afforded an opportunity to comment on the requests of Japan and the European Union, and raised no objection. The Appellate Body issued the reports in the form of a single document constituting two separate Appellate Body Reports: *Canada – Certain Measures Affecting the Renewable Energy Generation Sector*, WT/DS412/AB/R; and *Canada – Measures relating to the Feed-in Tariff Program*, WT/DS426/AB/R.

7 ARBITRATIONS UNDER ARTICLE 21.3(c) OF THE DSU

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

One Article 21.3(c) arbitration proceeding was carried out in 2013. Further information about this arbitration is provided below.

7.1 Award of the Arbitrator, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*, WT/DS414/12

Background

This dispute concerned the United States' challenge of China's anti-dumping and countervailing duties on imports of grain oriented flat-rolled electrical steel (GOES) from the United States. On 16 November 2012, the DSB adopted the Appellate Body Report and the Panel Report, as upheld by the Appellate Body Report in this dispute.

The Panel found that China had acted inconsistently with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement) and the SCM Agreement in relation to various aspects of the underlying anti-dumping and countervailing duty investigations, including the initiation of the countervailing duty investigation, the treatment of confidential information, the use of "facts available" in the calculation of dumping margins and subsidy rates, the causation determination, and the related disclosure of certain facts in

[42] The Procedural Ruling was attached as Annex 4 to the Appellate Body Reports in *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, WT/DS412/ABR / WT/DS426/AB/R.

[43] Appellate Body Reports, *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, para. 1.30.

connection with the determinations made by the Ministry of Commerce of the People's Republic of China (MOFCOM). China did not appeal these findings of the Panel.

The Panel also found that China had acted inconsistently with Articles 3.1 and 3.2 of the Anti-Dumping Agreement and Articles 15.1 and 15.2 of the SCM Agreement, because MOFCOM's price effects finding was neither made pursuant to an objective examination, nor based on positive evidence. Furthermore, the Panel found that China had acted inconsistently with Articles 6.9 and 12.2.2 of the Anti-Dumping Agreement and Articles 12.8 and 22.5 of the SCM Agreement, because MOFCOM's disclosure and public notice regarding the facts underlying its finding as to the "low price" of subject imports did not fulfil the requirements of these provisions. China appealed these findings of the Panel.

The Appellate Body upheld, albeit for different reasons, the Panel's findings on appeal.[44]

At the DSB meeting of 30 November 2012, China indicated its intention to implement the recommendations and rulings of the DSB in this dispute, and stated that it would require a reasonable period of time in which to do so. Consultations between the parties failed to result in an agreement on the reasonable period of time for implementation of the DSB's recommendations and rulings. Therefore, the United States requested that such period be determined through binding arbitration pursuant to Article 21.3(c) of the DSU. The United States and China were unable to agree on the appointment of an arbitrator and, consequently, the United States requested the Director-General to appoint an arbitrator pursuant to footnote 12 of Article 21.3(c). On 28 February 2013, the Director-General, after consultation with the parties, appointed former Appellate Body Member, Mr Claus-Dieter Ehlermann, as Arbitrator in these proceedings.

Award of the Arbitrator

Withdrawal or modification of the measure at issue

China requested a reasonable period of time for implementation of 19 months from the date of adoption by the DSB of the Panel and Appellate Body reports. This period reflected: (i) 9.5 months for the purpose of adopting rules providing MOFCOM with legal authority and a mechanism to implement the DSB's recommendations and rulings concerning trade remedies; and (ii) a further 9.5 months to conduct an administrative redetermination of the anti-dumping and countervailing duties at issue.

The United States argued that the reasonable period of time for implementation of the recommendations and rulings of the DSB should be either: (i) 1 month, if China revoked the relevant anti-dumping and countervailing duties in the absence of clear legal authority to revise these duties; or (ii) 4 months and 1 week, if China conceded that an existing administrative reconsideration procedure could be used to implement the recommendations and rulings of the DSB in this dispute.

The Arbitrator began by addressing the United States' contention that, if China maintained that there was no clear legal basis pursuant to which MOFCOM could modify the anti-dumping and countervailing duties at issue through remedial action, the reasonable period of time for implementation should be based on the time necessary for China to withdraw those duties. The Arbitrator noted that, although withdrawal of an inconsistent measure was the preferred means of implementation, it was not necessarily the only means of implementation consistent with the covered agreements.[45] The Arbitrator recalled, in this connection, that an implementing Member retains the discretion to select its preferred means of implementation, provided that the method chosen falls within the range of permissible actions that can be taken to implement the recommendations and rulings of the DSB. The Arbitrator thus reasoned that, even assuming that withdrawal of the relevant duties were possible under China's existing legal system, it did not follow that the reasonable period of time for implementation must be based on that method of implementation, as opposed to modification of the measure through remedial action. The

[44] See *Appellate Body Annual Report for 2012*, Section 4.6, pp. 82-90.

[45] The Arbitrator agreed with the arbitrator in *Japan – DRAMs (Korea) (Article 21.3(c))* that "a Member whose measure has been found to be inconsistent with the covered agreements may generally choose between two courses of action: withdrawal of the measure; or modification of the measure by remedial action". (Award of the Arbitrator, *Japan – DRAMS (Korea) (Article 21.3(c))*, para. 37)

Arbitrator therefore proceeded to consider China's request for a reasonable period of time for implementation on the basis of the two stages of implementation that China proposed.

Administrative rulemaking

China requested a period of 9.5 months for the purpose of adopting rules providing MOFCOM with legal authority and a mechanism to implement the DSB's recommendations and rulings in this dispute. China explained that, because China's Anti-Dumping Regulations and Countervailing Duty Regulations did not clearly authorize the implementation of the DSB's recommendations and rulings, MOFCOM could not take such action while complying with the requirement to act in accordance with those Regulations. The United States countered that MOFCOM did in fact have the ability to re-examine duties, including in response to adverse DSB recommendations and rulings.

As an initial matter, the Arbitrator noted that the question of whether MOFCOM could conduct an administrative redetermination of the anti-dumping and countervailing duties at issue only after adopting specific rules authorizing such action hinged on the scope and meaning of China's laws. The Arbitrator accepted China's assertion that, under China's existing laws, there was no legal authority and mechanism allowing it to implement the DSB's recommendations and rulings in this dispute. The Arbitrator then considered whether the reasonable period of time for implementation should be determined on the basis of the proposition that China had to adopt rules providing MOFCOM with legal authority and a mechanism to take specific implementation action in respect of DSB recommendations and rulings concerning trade remedies.

The United States pointed out that the DSB had not adopted any findings with respect to China's "broader legislative or regulatory system". The United States further argued that, while "nothing prevent[ed] China from undertaking a more ambitious legislative endeavour", the time necessary to undertake such an endeavour was not relevant to the determination of the reasonable period of time for implementation in this dispute.

The Arbitrator disagreed with the United States to the extent that it suggested that, when an implementing Member's laws or regulations have not been the subject of recommendations and rulings of the DSB, the time required to amend such laws or regulations, as a first step of the implementation process, was not relevant to the determination of the reasonable period of time for implementation under Article 21.3(c). Instead, the Arbitrator did not exclude that there may be circumstances in which bringing a measure into conformity with the recommendations and rulings of the DSB may require, as a first step, legislative action or administrative rulemaking by the implementing Member.

Although the Arbitrator accepted China's assertion that MOFCOM lacked legal authority and a mechanism to implement the recommendations and rulings of the DSB, he found it relevant, nonetheless, that China, through its proposed first stage of implementation, was seeking to fill a gap in its legal system that long pre-dated the DSB's recommendations and rulings in this dispute.[46] The Arbitrator considered that circumstances pre-dating the adoption of panel or Appellate Body reports may inform what is reasonable in a given case, and may thus be relevant to the determination of the reasonable period of time for implementation under Article 21.3(c).[47] He noted, in particular, that the United States had filed a request for the establishment of a panel in this dispute on 11 February 2011, and considered that, as of that time, China was apprised that the measure at issue would be scrutinized by a WTO panel, and that the range of possible outcomes of the panel proceedings included the challenged measure being found to be inconsistent with China's WTO obligations. In the Arbitrator's view, those circumstances served notice to China that its trade remedy system might have to accommodate adverse recommendations and rulings of the DSB.

The Arbitrator further considered that the circulation of the Panel report on 15 June 2012 should also have alerted China to the possible eventual need to bring its measures into compliance with recommendations and rulings of the DSB. He explained that this was not altered by the fact that

[46] China acceded to the WTO on 11 December 2001.

[47] In doing so, the Arbitrator recalled that the arbitrator in *US – COOL (Article 21.3(c))* took into account the United States' "awareness of the need to modify the COOL measure even before the adoption of the Panel and Appellate Body Reports." (Award of the Arbitrator, *US – COOL (Article 21.3(c))*, para. 84)

on 20 July 2012 China appealed certain aspects of the adverse findings contained in the Panel report.

Against this background, the Arbitrator considered that China should have, in the circumstances of this case, taken steps to ensure, in a timely manner, that it had a legal basis, if necessary, to implement the DSB's recommendations and rulings concerning trade remedies well before the adoption of the Panel and Appellate Body reports in this dispute. He therefore declined to award China time for the purpose of adopting rules providing MOFCOM with legal authority and a mechanism to implement adverse DSB recommendations and rulings concerning China's anti-dumping and countervailing duty measures.

Administrative action

Regarding China's second step of implementation – namely, conducting a redetermination of the anti-dumping and countervailing duties imposed on imports of GOES from the United States – China requested the Arbitrator to allocate a total of 11 months, consisting of 45 days for "preparatory work", in particular, translation and study of the Panel and Appellate Body reports, and 9.5 months to conduct the actual redetermination of the anti-dumping and countervailing duties imposed on imports of GOES from the United States.

Like arbitrators in previous arbitrations under Article 21.3(c) of the DSU, the Arbitrator considered that, in determining the reasonable period of time for implementation, time may be allocated for preparatory work. He expressed concern, however, that China had not commenced this preparatory work until the Panel and Appellate Body reports were adopted on 16 November 2012. The Arbitrator considered that, while the reasonable period of time for implementation under Article 21.3(c) is measured from the date of adoption of a panel and/or Appellate Body report by the DSB, China could have commenced translation and study of the relevant reports immediately after circulation, rather than waiting for them to be adopted by the DSB.

The Arbitrator turned next to address China's request for 9.5 months to conduct an administrative redetermination in respect of the anti-dumping and countervailing duties at issue. China's envisaged administrative redetermination procedure consisted of the following steps and associated timeframes: drafting and approval of the public notice of the redetermination (20 days); consideration of comments of interested parties (30 days); submission of rebuttal comments from interested parties (30 days); holding a hearing (37 days); drafting the initial determination (30 days); internal review of the relevant documents and approval of the disclosure documents by MOFCOM's Bureau of Fair Trade for Imports and Exports and Investigation Bureau for Industry Injury (30 days); review of the approved documents by MOFCOM's Department of Treaty and Law (10 days); consideration of comments from interested parties on the documents (20 days); drafting and review of the final determination (40 days); approval of the final determination by the Tariff Commission (30 days); and publication of the announcement and notice (10 days).

The United States argued that the timeframes envisaged by China for the various steps of its proposed administrative redetermination procedure were inflated, and would result in a redetermination process that would take four times longer to complete than the average time in which MOFCOM had, thus far, completed reviews under China's Anti-Dumping Regulations and China's Administrative Reconsideration Law.

The Arbitrator did not agree with the United States to the extent that it suggested that the time within which MOFCOM should conduct a redetermination in this case should be based on the average time in which MOFCOM completed three previous reviews under China's Anti-Dumping Regulations and Administrative Reconsideration Law. In this regard, the Arbitrator noted that these reviews were conducted pursuant to procedures that were, by nature, distinct from a redetermination for the purpose of implementing DSB recommendations and rulings.

Turning to the steps of China's proposed redetermination procedure, the Arbitrator noted that, at the oral hearing in this arbitration, China had clarified that only two steps of its proposed procedure had specific timeframes prescribed by law, and that the other timeframes that China associated with the steps of its proposed redetermination procedure were inspired by MOFCOM's "practice and experience" in original investigations.

China argued that "many of the time periods" that would apply to the specific steps that MOFCOM considered necessary for implementation were based on important procedural obligations arising under the Anti-Dumping Agreement and the SCM Agreement, including, for example: giving "all interested parties … a full opportunity for the defense of their interests"; providing "timely opportunities" for interested parties to see information relevant to their cases and to prepare presentations based on that information; and giving public notice and explanation of preliminary and final determinations. China argued further that, given the Panel and Appellate Body findings on issues such as the choice of adverse "facts available", the determination of the "all others rates" for unknown companies, and the findings related to MOFCOM's injury determination, interested parties would certainly have views that MOFCOM would need to consider and address.

The Arbitrator noted that even if some steps and time periods may not be required by law, they may nonetheless be useful in ensuring that implementation is effected in a transparent and efficient manner, fully respecting due process for all interested parties. The Arbitrator further considered that a determination of the reasonable period of time for implementation involves balancing various considerations. Article 21.1 of the DSU indicates that implementation of the recommendations and rulings of the DSB must be prompt. To that end, all flexibilities within the legal system of an implementing Member must be employed in the implementation process. At the same time, implementation must be effected in a transparent and efficient manner that affords due process to all interested parties. The Arbitrator explained that the imperatives of prompt compliance, on the one hand, and of ensuring the due process rights of interested parties, on the other hand, are not mutually exclusive. Rather, a reasonable period of time for the implementation of DSB recommendations and rulings is capable of accommodating both. This requires striking a balance between respecting the due process rights of interested parties and the promptness required in implementation.

Ultimately, the Arbitrator was not persuaded that each of the steps of China's proposed redetermination procedure, and their associated timeframes, reflected China's use of the flexibility available to it within its legal system. The Arbitrator observed that China had available to it a considerable degree of flexibility to conduct a redetermination in a shorter period of time than it had proposed, as evidenced by, *inter alia*, the absence of mandatory timeframes in relation to the majority of the component steps of its proposed redetermination procedure. Moreover, he was not convinced that conducting a redetermination in a shorter period of time than China had proposed would, in the circumstances of this dispute, infringe upon the due process rights of interested parties.

In the light of these considerations, the Arbitrator determined that the "reasonable period of time" for China to implement the recommendations and rulings of the DSB in this dispute was eight months and 15 days, which expired on 31 July 2013.

8 WTO TECHNICAL ASSISTANCE AND TRAINING PLAN

Appellate Body Secretariat staff participated in the WTO Biennial Technical Assistance and Training Plan: 2012–2013[48], particularly in activities relating to training in dispute settlement procedures. Annex 9 provides a list of the technical assistance activities carried out by Appellate Body Secretariat staff in 2013 under the WTO Technical Assistance and Training Plan.

[48] WT/COMTD/W/180/Rev.1.

9 OTHER ACTIVITIES

9.1 Meeting with representatives of the International Law Commission

On 6 June 2013, Appellate Body Members and Members of the United Nations International Law Commission held an informal meeting to discuss issues of common interest in the field of international adjudication and the work of both institutions.

9.2 The Brandeis Institute for International Judges

The Chairman of the Appellate Body, Mr Ricardo Ramírez-Hernández, represented the Appellate Body at a meeting of the Brandeis Institute for International Judges held at the University of Lund, Sweden, from 28 to 31 July 2013. The Brandeis Institute brings together judges serving on international courts and tribunals around the world to reflect on the practical challenges, as well as philosophical aspects, of their work. The overarching theme of the 2013 conference was "The International Rule of Law in a Human Rights Era" and was attended by 16 judges from 13 international courts and tribunals.

9.3 Briefings, conferences, moot court competitions

Appellate Body Secretariat staff participate in briefings organized for groups visiting the WTO, including students. In these briefings, Appellate Body Secretariat staff speak to visitors about the WTO dispute settlement system in general, and appellate proceedings in particular. Appellate Body Secretariat staff also participate as judges in moot court competitions. A list of these activities carried out by Appellate Body Secretariat staff during the course of 2013 can be found in Annex 10.

9.4 WTO internship programme

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 in general, and WTO dispute settlement procedures in particular. Interns in the Appellate Body Secretariat obtain first-hand experience of the procedural and substantive aspects of WTO dispute settlement and, in particular, appellate proceedings. The internship programme is open to nationals of WTO Members and to nationals of countries and customs territories engaged in accession negotiations. An internship is generally for a three-month period. During 2013, the Appellate Body Secretariat welcomed interns from Canada, China, Egypt, Ethiopia, India, Spain, Ukraine, and the United States. A total of 115 post-graduate students, of 50 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:

<https://erecruitment.wto.org/public/hrd-cl-vac-iew.asp?jobinfo_uid_c=3475&vaclng=en>

9.5 The WTO Digital Dispute Settlement Registry

The WTO Digital Dispute Settlement Registry is being developed as a comprehensive application to manage the workflow of the dispute settlement process, as well as to maintain digital information about disputes. This application features: (i) a secure electronic registry for filing and serving dispute settlement documents online; (ii) a central electronic storage facility for all dispute settlement records; and (iii) a research facility on dispute settlement information and statistics.

The Digital Registry will provide for the electronic filing of submissions in disputes, and for the creation of an e-docket of all documents submitted in a particular case. The system will feature: (i) a facility to securely file submissions and other dispute-related documents electronically; (ii) a means of paperless and secure service on other parties of submissions and exhibits; and (iii) a comprehensive calendar of deadlines to assist Members and the Secretariat with workflow management.

As a storage facility, the Digital Registry will provide access to information about WTO disputes, in particular, it will serve as an online repository of all panel and Appellate Body records. Over the course of 2013, a large amount of dispute-related documents were scanned, catalogued and entered into the system. This work will continue in 2014.

As a research facility, the Digital Registry will allow Members and the public to search the digital records of publicly available data of past disputes. Users will have access to a broader range of information and statistics than in the past. With the extent of the information available, WTO Members and the Secretariat, as well as the interested public, will be able to generate more in-depth and informative statistics on WTO dispute settlement activity.

The creation of the Digital Registry is a cross-divisional project led by the Legal Affairs Division and involving the Appellate Body Secretariat, the Rules Division, and the Information Technology Solutions, Languages, Documentation and Information Management Divisions. Work on this project began in 2010. In 2013, work focused on the development of the design, functionality, and security of the new system. The Appellate Body Secretariat participated in the review and cataloguing of data to be uploaded into the database.

ANNEX 1

In May 2013, the Appellate Body issued a communication addressing the development of the workload of the Appellate Body over time based on a number of different variables. This paper describes various trends that can be observed in the practice of dispute settlement. This paper was communicated to the WTO Membership, the DSB, and the Committee on Budget, Finance and Administration, in particular, and is reproduced below.

JOB/AB/1 30 May 2013

COMMUNICATION FROM THE APPELLATE BODY

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THE WORKLOAD OF THE APPELLATE BODY

This note on the workload of the Appellate Body contains three parts. Part I provides a brief overview of the appellate process. Part II surveys the evolution of the size and complexity of appeals over time based on a number of variables and an analysis of various data sets. Part III looks at the recent increase in dispute settlement activity.

I. The appellate process

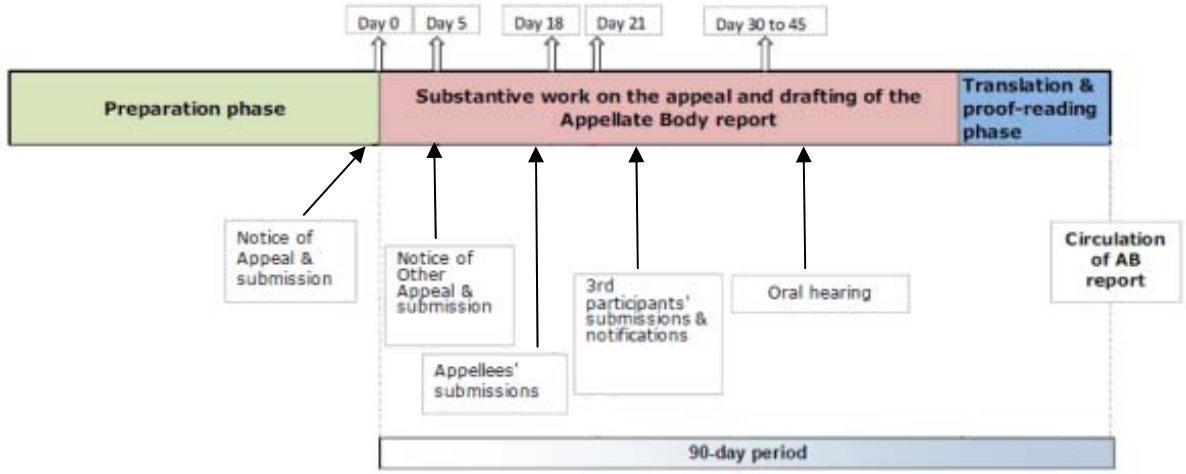
Article 17.1 of the DSU provides that the Appellate Body shall be composed of seven Members. While appeals are heard by Divisions of three, all Members read all submissions and participate in the exchange of views with the Division. Divisions are assisted by teams composed of 3-4 lawyers and support staff. At the date of writing, the Appellate Body Secretariat comprises a Director, eleven lawyer posts, an administrative assistant and three support staff posts.[1]

For the Appellate Body, work on an appeal typically begins with the circulation of a panel report and ends with the circulation of the Appellate Body report in the three official languages of the WTO.[2] The following timeline illustrates the phases of an appeal process and indicates the timeframes set out in Articles 16.4 and 17.5 of the DSU.

[1] As of 13 May 2013.

[2] In accordance with the requirement in Article 17.3 of the DSU for Appellate Body Members to stay abreast of dispute settlement activities, and in an effort to organize its work efficiently and minimize delays, the Appellate Body seeks to prepare for potential appeals well in advance. This work is done even in cases where an appeal is eventually not filed. Pursuant to Article 16.4 of the DSU, a panel report must be adopted or appealed within a period of 60 days from the date of its circulation to WTO Members. In many cases there is considerable uncertainty regarding whether an appeal will be filed, regarding when, during the 60-day period it will be filed, as well as regarding the scope of the appeal.

Chart 1 - Phases of the appellate process



II. Evolution of the size and complexity of appeals over time

In order to assess the evolution of the size and complexity of appeals over time, we consider, as a first step, the size of the underlying dispute. We do this by surveying the length of each panel report subject to appeal as well as the size of the factual (panel) record in each case (as evidenced by the number of exhibits submitted to the panel).[3] As a second step, we consider factors having a direct bearing on the size and complexity of the appellate proceeding: (i) the number of issues raised on appeal, including claims under Article 11 of the DSU and procedural issues; (ii) the number of pages of submissions to the Appellate Body per appeal; and (iii) the number of third participants in appeals.[4]

Starting with factors relating to the size of the underlying dispute, we note that the average length of WTO panel reports that have been appealed has more than doubled since the early years of WTO dispute settlement to an average of approximately 364 pages.[5] Moreover, some panels in recent years have involved two or three complaining parties, and all disputes have involved several third parties.[6] This multiplies the number of written and oral submissions as well as exhibits to be considered. In addition, the number of claims raised per panel request has been significant, often rising to double digits. Requests for preliminary rulings have also become a common feature of panel work.[7] This increase in the workload of panels translates into an increase in the Appellate Body's workload given that all panel reports, as well as relevant parts of the panel record, must be thoroughly read by Appellate Body Members and lawyers of the Appellate Body Secretariat, in order to prepare for an upcoming appeal as well as potential appeals.

[3] We use these metrics to provide a rough measure of the size of the underlying dispute while recognizing that not all issues before a panel will be appealed.

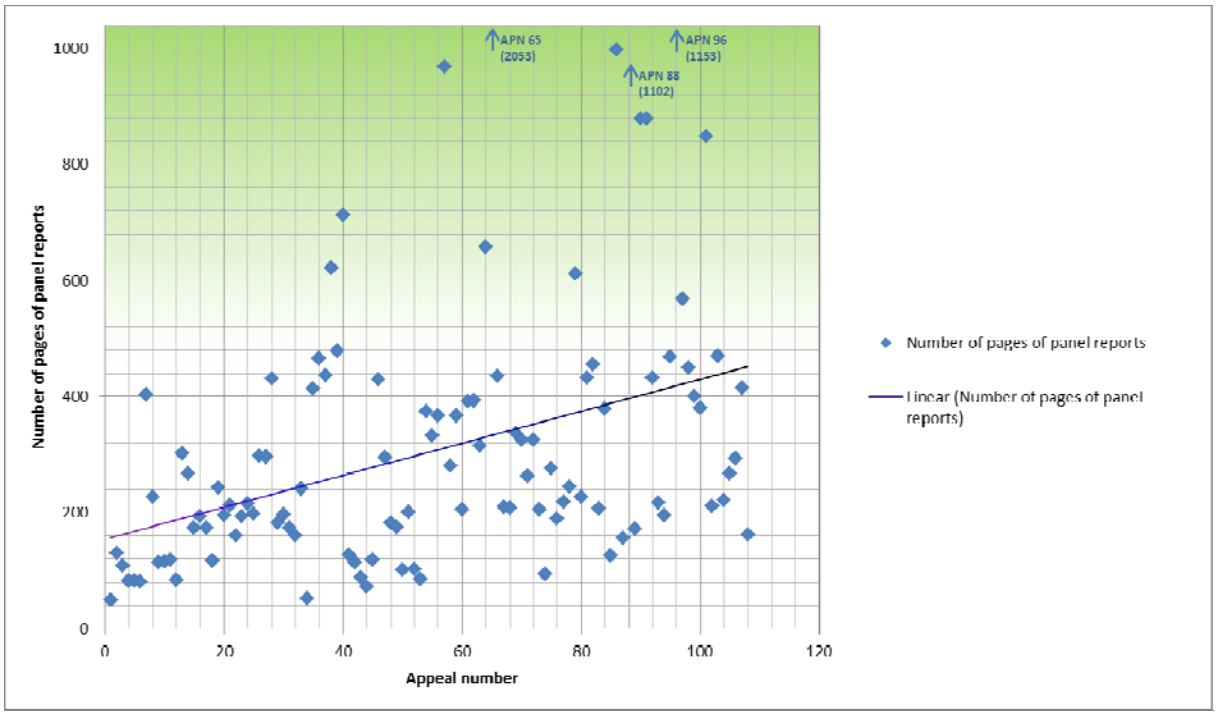
[4] To the extent possible, we have charted the evolution of each indicator from the time of the first appeal in 1996 to the last appeal completed in 2012 (Appeal Number 108).

[5] For the ten most recent panel reports appealed by the end of 2012.

[6] High numbers of third parties in proceedings were the exception in the early years of WTO dispute settlement, and only very rarely did early disputes involve *more* than five Members as third parties. In contrast, over the last five years, only four proceedings have had five or *fewer* third parties. The average number of third parties in currently active panels is 10.

[7] A total of sixteen panel reports containing preliminary rulings were circulated in the period between 2010 and 2012.

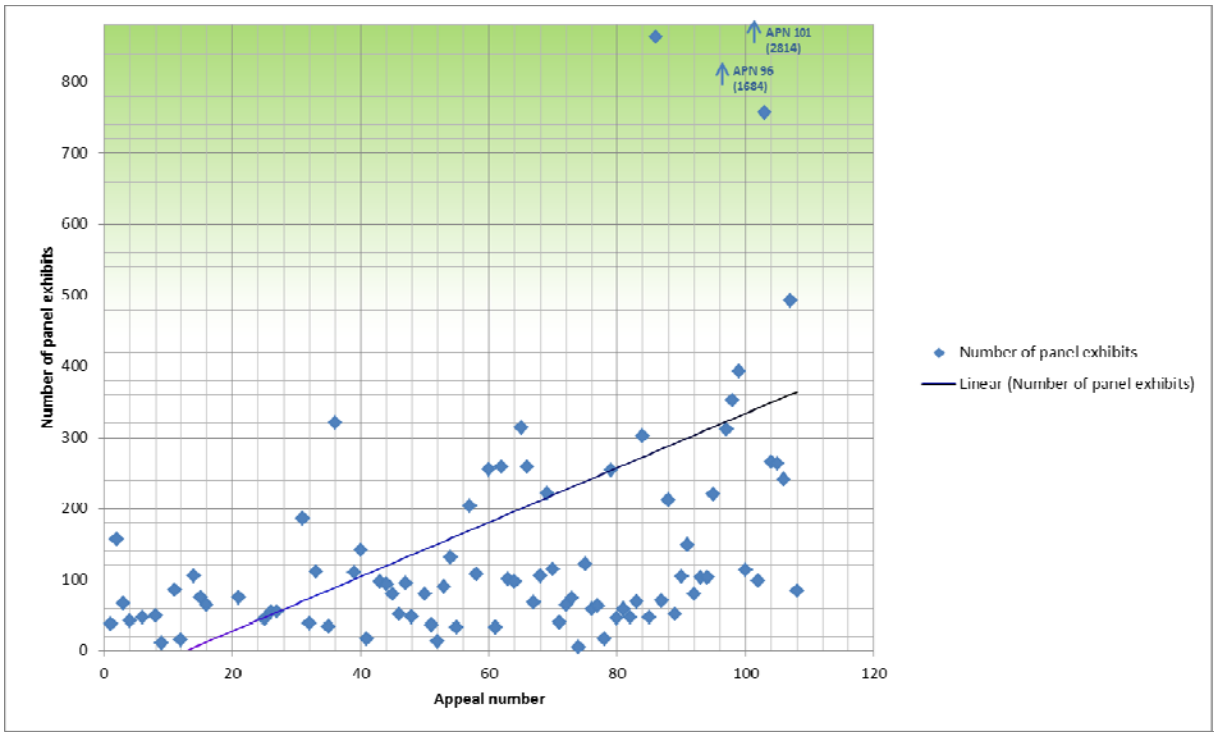
Chart 2 - The number of pages in panel reports appealed



The factual complexity of disputes before panels and the Appellate Body has also grown over time. The following chart demonstrates how the average number of exhibits submitted by the parties to panels has increased from 62 in the early years of WTO dispute settlement to 552 today.[8]

[8] These numbers reflect a comparison of the average number of exhibits submitted by the parties to the panels in the first ten appeals for which data was available as compared to the number of panel exhibits in the ten most recent appeals decided by the end of 2012.

Chart 3 - The number of panel exhibits

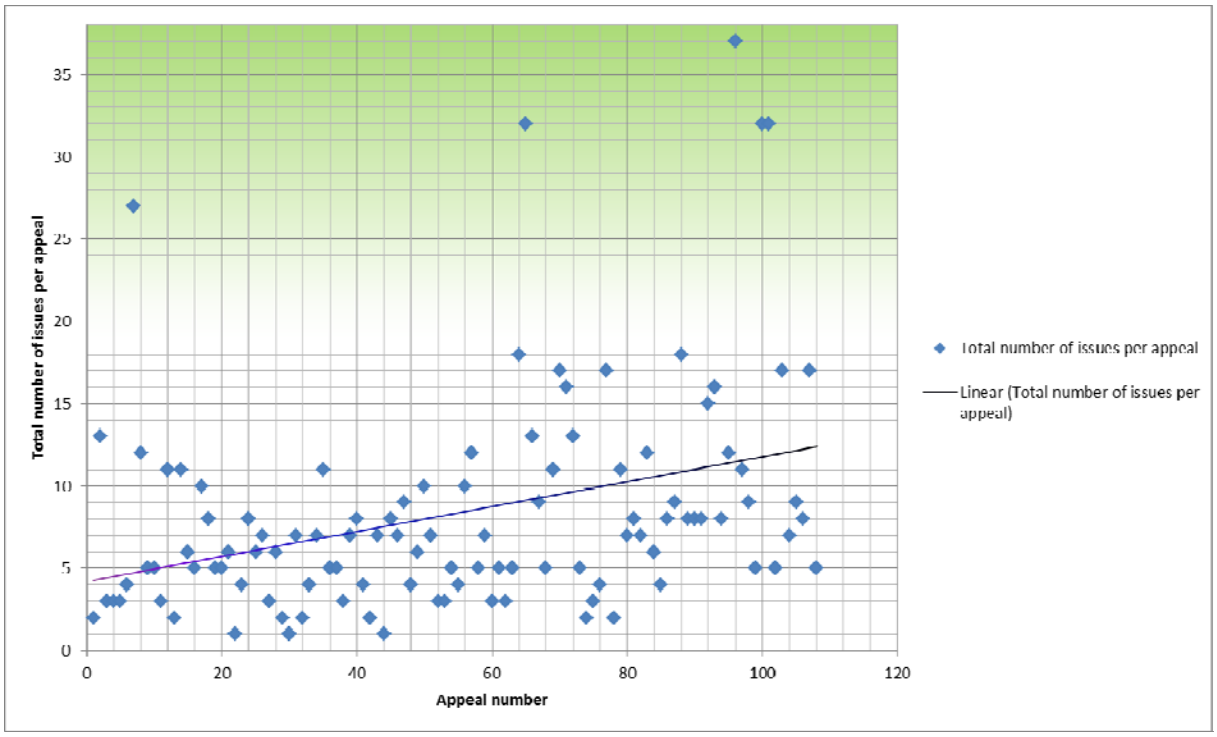


Turning to factors that have a direct bearing on the amount of work associated with an appellate proceeding, we recall the Appellate Body's obligation under Article 17.12 of the DSU to address each of the issues raised by the participants on appeal.[9] As can be seen from the chart below, the average number of issues raised in each appeal has increased by more than 160% from approximately eight issues per case in the first ten appeals during the period between 1996 and early 1998 to more than 13 issues per case in the ten appeals adjudicated by the Appellate Body between the beginning of 2011 and the end of 2012.[10]

[9] This includes issues raised in "other appeals", often called "cross-appeals". These are appeals by a party to the dispute other than the original appellant. Cross-appeals (involving one or more claims) have been filed in 77 of the 108 disputes (71%) brought before the Appellate Body.

[10] This may reflect the growing number of claims brought before WTO panels.

Chart 4 - The number of issues per appeal



The number of appeals including claims relating to the scope of original proceedings or compliance proceedings under Article 21.5 of the DSU has also increased over time. While such claims were raised in only four of the first 20 appeals (20%), ten of the 20 most recent appeals (50%) included such claims. Although the Appellate Body's jurisdiction is limited by Article 17.6 of the DSU to issues of law, the factual complexity of a dispute has nonetheless an impact on the work involved in an appeal for two main reasons. First, in order to properly discharge its functions, which include reviewing a panel's application of the law to the facts of the case, the Appellate Body must familiarize itself with the panel record. Second, Article 11 of the DSU requires a WTO panel to make an objective assessment of the matter before it, including an objective assessment of the facts of the case. When parties to the dispute raise claims under that provision on appeal, the Appellate Body must engage in a review of whether the panel's assessment of those facts was objective while, at the same time, being mindful of the need to give due deference to the discretion of the panel, as the "trier of fact", to weigh the evidence before it.

The number of claims brought under Article 11 of the DSU has increased over time.[11] In fact, such claims were raised in 18 of the 20 most recent appeals decided by the end of 2012 (90%), and in many of these appeals multiple Article 11 claims were raised. This represents a significant increase compared to the first 20 appeals, only eight of which (40%) included claims alleging that a panel acted inconsistently with Article 11.

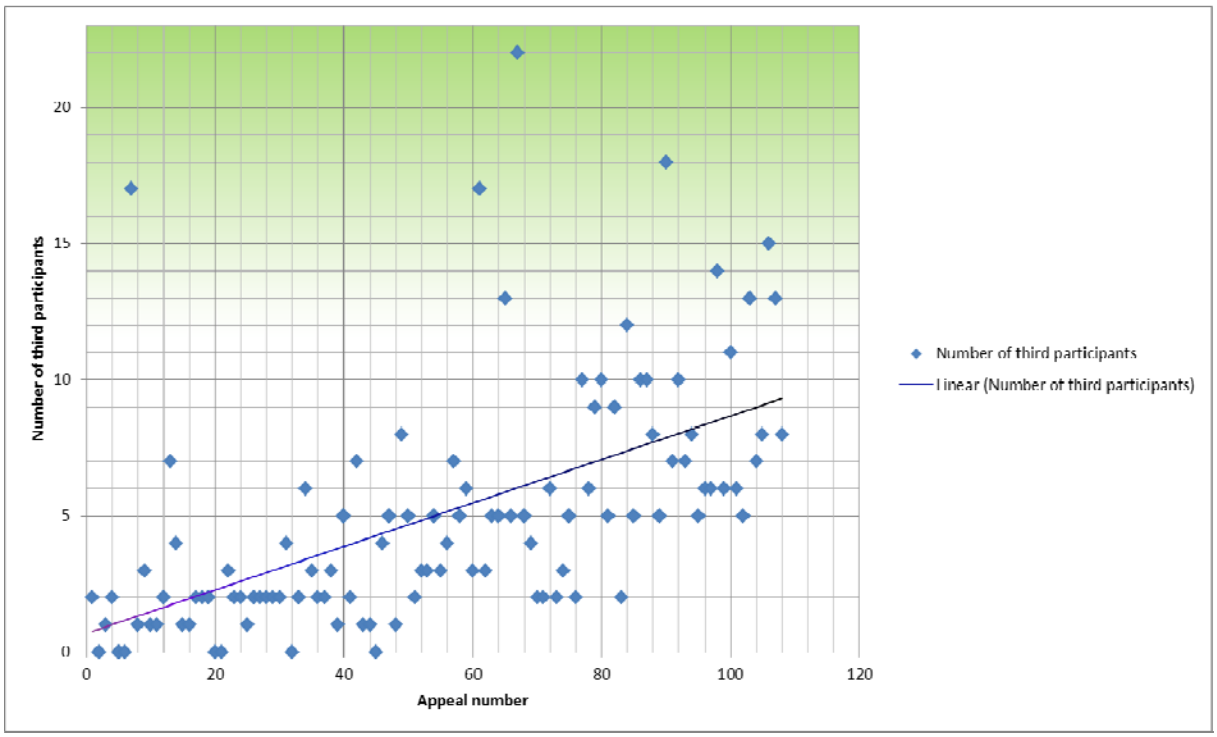
It has also become increasingly common for participants or third participants in disputes to make procedural requests of or seek procedural rulings from the Appellate Body during appellate proceedings. Procedural issues have arisen in all but one case completed in the last three years.[12]

[11] This phenomenon may be attributable to the growing factual complexity of disputes. It may also reflect increasing legalistic tendencies or sophistication in parties' argumentation.

[12] Requests for procedural rulings may concern, for example, extensions of the time-limits for filing written submissions, the timing of the oral hearing, the protection of business confidential information, public observation of oral hearings, the correction of clerical errors in written submissions, and the issuance of separate Appellate Body reports.

As already explained, the number of parties and third parties in disputes has increased since the early years of WTO dispute settlement, resulting in a greater number of submissions to be reviewed and considered by the Appellate Body.[13] The following chart shows that the average number of third participants has nearly tripled between 1996 and today to an average of eight third participants in the ten most recent appeals decided by the end of 2012.

Chart 5 - The number of third participants in appeals

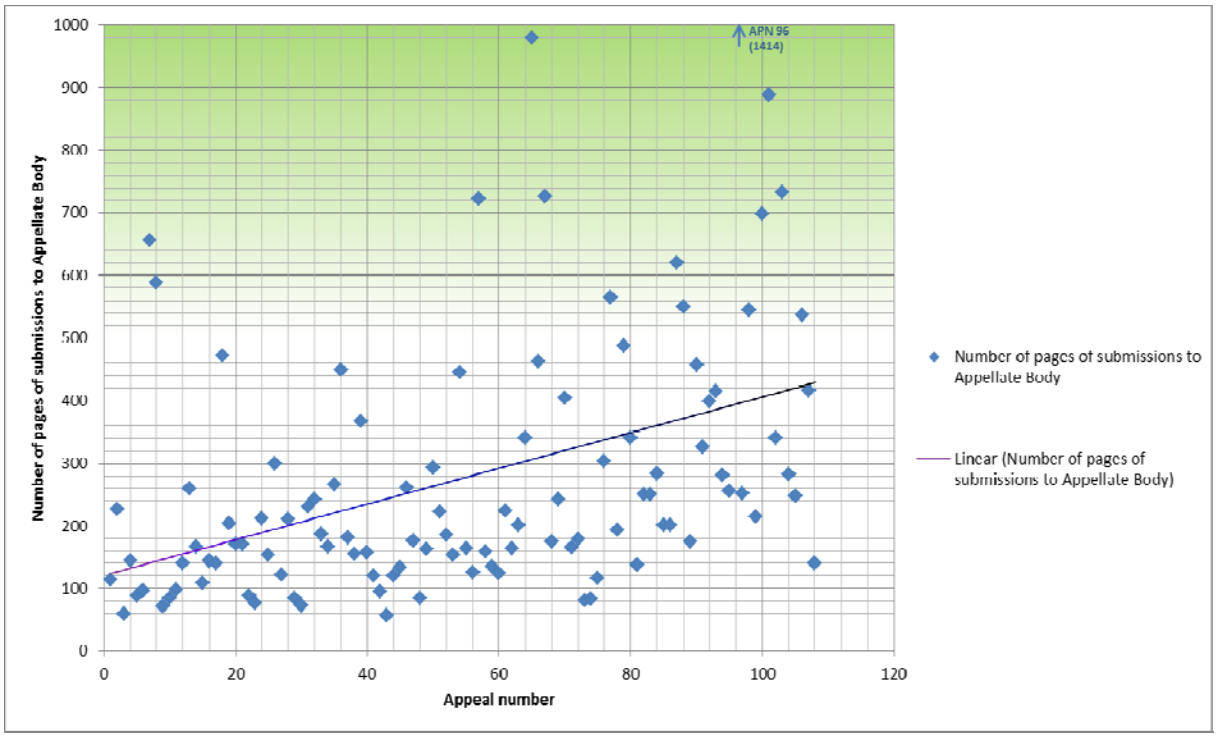


The existence of a substantial and growing body of WTO jurisprudence also contributes to the total length of submissions filed with the Appellate Body in a given appeal. One reason for this is that WTO Members invariably cite prior panel and Appellate Body reports in support of their arguments in any particular case. In order to address these arguments, and in an effort to ensure consistency and coherence of WTO jurisprudence, panels and the Appellate Body are called upon carefully to consider prior panel and Appellate Body reports.[14] As can be seen from the following chart, the number of pages of submissions filed with the Appellate Body has more than doubled to an average of 450 pages per case in the ten most recent appellate proceedings completed by the end of 2012.

[13] Most third parties file a third participant's submissions and/or make an opening statement at the oral hearing.

[14] At the time of the first appeal in 1996, only 84 adopted panel reports under GATT 1947 existed. Today, in addition to those reports, there are 109 Appellate Body reports and 177 WTO panel reports, comprising thousands of pages of jurisprudence.

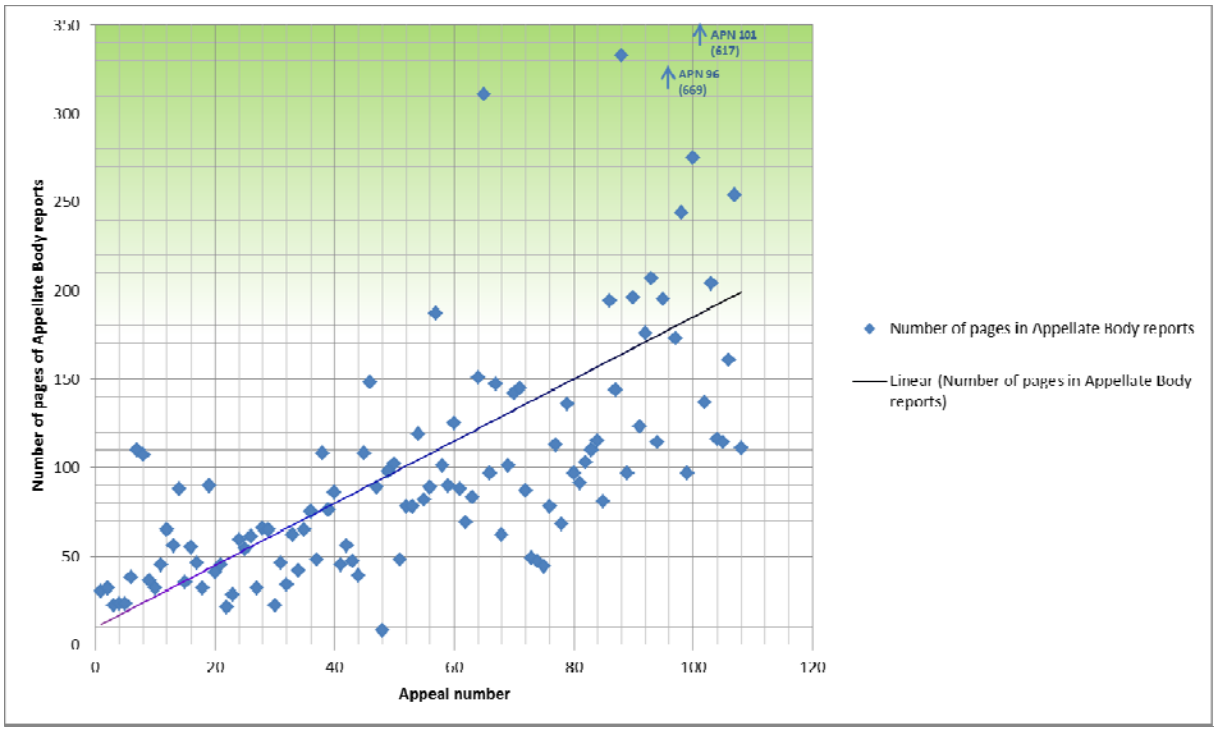
Chart 6 - The number of pages of submissions to the Appellate Body



In sum, our analysis reveals: (i) a growth in the size of disputes appealed to the Appellate Body; (ii) a higher number of issues raised on appeal, including more frequent claims under Article 11 of the DSU; (iii) an increased number of participants and third participants in appeals; and (iv) a consequent increase in the total length of submissions filed with the Appellate Body in an average appeal. Taken together these factors naturally have led to a significant increase in the average length of Appellate Body reports. As can be seen from the chart below, the average length of Appellate Body reports has more than quadrupled from the early years of WTO dispute settlement to close to 210 pages per Appellate Body report.[15]

[15] This figure reflects the average number of pages for the ten most recent Appellate Body reports circulated by the end of 2012.

Chart 7 - The number of pages in Appellate Body reports



The Appellate Body's workload is particularly intense in situations where several appeals in different disputes are filed simultaneously or within a short period of time.[16] As explained above, the Appellate Body is composed of seven Appellate Body Members, three of whom serve on any one case. When three or more appeals are pending at the same time, several of the seven Appellate Body Members will be on more than one appeal. When an Appellate Body Member is on the Divisions in two simultaneous appeals, there can be no overlap in the scheduling of hearings and internal meetings for those appeals. In each appeal, Division Members will spend several weeks engaged in thorough deliberations. In addition to participating in such deliberations, the Division Members must also read and analyse voluminous submissions and documents from the panel record and prepare and revise drafts. It is not possible for an Appellate Body Member to simultaneously do this for multiple appeals that are on identical or largely overlapping time schedules. It is also extremely difficult for one individual to complete the necessary work at the required level of engagement when serving as a Division Member on multiple overlapping appeals that have staggered schedules.

[16] The timing of panel report circulation depends on a number of variables, including the date of the request for the establishment of the panel, the time required for panel composition, the requests of the parties concerning scheduling and the size of the underlying dispute. Because each panel of three is composed of different individuals, multiple panel proceedings may run in parallel and multiple panel reports may be circulated within a short period of time. No mechanism currently exists for staggering the working schedules of WTO panels so as to make more efficient use of translation resources available to the WTO and permit the staggering of panel report circulation.

III. Outlook

Panel activity has been intense in recent years. For the period 2010 through 2012, 25 panel reports were circulated, compared to 18 in the previous three year period of 2007-2009.[17]

According to the Legal Affairs Division and the Rules Division, a large number of panels will continue to be active for the foreseeable future. Twenty-seven requests for consultations were received in 2012, the highest number since 2002. This led to the establishment of 11 panels in 2012, the highest number in five years.[18] There are currently seven panels in composition, and six more panel requests are pending before the DSB.[19] Third party participation continues to be high.[20] Four new requests for consultations have been received in 2013, and four panels have already been established this year covering five disputes.[21] Significantly, the compliance proceedings in the aircraft subsidy disputes between the United States and the European Union are also presently under way. Thus, a large number of panel proceedings are currently in progress or about to begin. Assuming: (1) that panel proceedings take, on average, one year from the time of establishment of the panel; (2) that the compliance panel proceedings in the aircraft subsidy disputes will take 1.5-2 years; and (3) that, based on the consistent practice of WTO Members involved in disputes since 1996, roughly two-thirds of all panel reports circulated will be appealed[22] the Appellate Body can expect to receive up to a dozen appeals towards the end of 2013 and in 2014. Such an increase in the number of appeals, on top of the increased complexity and size of the average appeal, is likely to exacerbate the challenges confronting the WTO dispute settlement system in the near future.[23]

[17] These figures include the very voluminous panel reports in the large civil aircraft disputes between the European Union and the United States.

[18] These panels cover 13 disputes. Similar disputes may be consolidated under a single panel pursuant to Article 9 of the DSU.

[19] As of 13 May 2013.

[20] In one dispute, 35 Members have reserved third party rights. In two others, 19 and 17 Members, respectively, have reserved third party rights.

[21] As of 13 May 2013.

[22] The overall average of panel reports that were appealed from 1995 to 2012 was 67%.

[23] The increased workload of panels and the Appellate Body will exacerbate the burden already placed on the translation resources available to the WTO. Indeed, it is well-known that panel and Appellate Body reports are circulated simultaneously in the three official languages of the WTO and therefore require translation. Highly specialized expertise is required in order to ensure the quality of translations and, in turn, the coherence and consistency of reports in the three official language versions. The translation process has become particularly intense and demanding given the increased size and complexity of disputes brought to the WTO together with the short amount of time available for translation. This is so particularly given that allowance must also be made for revision of translations, as well as for text-processing, production control, and the printing process.

ANNEX 2

MEMBERS OF THE APPELLATE BODY
(1 JANUARY TO 31 DECEMBER 2013)

BIOGRAPHICAL NOTES

Ujal Singh Bhatia (India) (2011–2015)

Ujal Singh Bhatia was born in India on 15 April 1950. He was India's Permanent Representative to the WTO from 2004 to 2010 and represented India in a number of dispute settlement cases. He also served as a WTO dispute settlement panelist in 2007–2008.

Mr Bhatia has also served as Joint Secretary in the Indian Ministry of Commerce, as well as Joint Secretary of the Ministry of Information and Broadcasting, apart from two decades in Orissa State in various fields and State-level administrative assignments that involved development administration and policy-making. His legal and adjudicatory experience spans three decades, and focused on domestic and international legal/jurisprudence issues, negotiations in trade agreements and policy issues at the bilateral, regional, and multilateral levels, and the implementation of trade and development policies in the agriculture and service industries.

Mr Bhatia has often lectured on international trade issues and has published numerous papers and articles on a wide range of trade and economic topics. He holds an MA in Economics from the University of Manchester and from Delhi University, as well as a BA (Hons) in Economics, also from Delhi University.

Seung Wha Chang (Korea) (2012–2016)

Born in Korea on 1 March 1963, Seung Wha Chang is currently Professor of Law at Seoul National University where he teaches International Trade Law and International Arbitration.

He has served on several WTO dispute settlement panels, including *US – FSC*, *Canada – Aircraft Credits and Guarantees*, and *EC – Trademarks and Geographical Indications*. He has also served as Chairman or Member of several arbitral tribunals dealing with commercial matters. In 2009, he was appointed by the International Chamber of Commerce (ICC) as a Member of the International Court of Arbitration.

Professor Chang began his professional academic career at the Seoul National University School of Law in 1995, and was awarded professorial tenure in 2002. He has taught international trade law and, in particular WTO dispute settlement, at more than ten foreign law schools, including Harvard Law School, Yale Law School, Stanford Law School, New York University, Duke Law School, and Georgetown University. In 2007, Harvard Law School granted him an endowed visiting professorial chair title, the Nomura Visiting Professor of International Financial Systems.

In addition, Professor Chang previously served as a Seoul District Court judge, handling many cases involving international trade disciplines. He also practised as a foreign attorney at an international law firm in Washington DC, handling international trade matters, including trade remedies and WTO-related disputes.

Professor Chang has published many books and articles in the field of international trade law in internationally recognized journals. In addition, he serves as an Editorial or Advisory Board Member of the *Journal of International Economic Law* (Oxford University Press) and the *Journal of International Dispute Settlement* (Oxford University Press).

Professor Chang holds a Bachelor of Laws degree (LLB) and a Master of Laws degree (LLM) from Seoul National University School of Law; and a Master of Laws degree (LLM) as well as a Doctorate in International Trade Law (SJD) from Harvard Law School.

Thomas R. Graham (United States) (2011–2015)

Born in the United States on 23 November 1942, Tom Graham is the former head of the international trade practice at a large international law firm, and the founder of the international trade practice at another large international law firm. He was one of the first US lawyers to represent respondents in trade remedy cases in various countries around the world, and he was among the first to bring economists, accountants, and other non-lawyer professionals into the international trade practices of private law firms. Mr Graham also headed his international trade practice group's committee on long-term planning and development.

In private law practice, Mr Graham often collaborated with local counsel and national authorities in various countries to develop legal interpretations of laws and regulations consistent with GATT/WTO agreements, and in negotiating the resolution of international trade disputes.

Mr Graham served as Deputy General Counsel in the Office of the US Trade Representative, where he was instrumental in the negotiation of the Tokyo Round Agreement on Technical Barriers to Trade and where he represented the US Government in dispute settlement proceedings under the GATT. Earlier in his career, Mr Graham served for three years in Geneva as a Legal Officer at the United Nations Conference on Trade and Development (UNCTAD).

Mr Graham was the first chairman of the American Society of International Law's Committee on International Economic Law, and the chair of the American Bar Association's Subcommittee on Exports. He has been a visiting professor at the University of North Carolina Law School and an adjunct professor at the Georgetown University Law Center and the American University Washington College of Law. He has edited books on international trade policy, and international trade and environment, and he has written many articles and monographs on international trade law and policy as a Guest Scholar at the Brookings Institution, and as a Senior Associate at the Carnegie Endowment for International Peace.

Mr Graham holds a BA in Political Science, with emphasis on International Relations and Economics, from Indiana University and a JD from Harvard Law School.

Ricardo Ramírez-Hernández (Mexico) (2009–2017)

Born in Mexico on 17 October 1968, Ricardo Ramírez-Hernández holds the Chair of International Trade Law at the Mexican National University (UNAM) in Mexico City. He was Head of the International Trade Practice for Latin America of an international law firm in Mexico City. His practice focused on issues related to NAFTA and trade across Latin America, including international trade dispute resolution.

Prior to practicing with a law firm, Mr Ramírez-Hernández was Deputy General Counsel for Trade Negotiations of the Ministry of Economy in Mexico for more than a decade. In this capacity, he provided advice on trade and competition policy matters related to 11 free trade agreements signed by Mexico, as well as with respect to multilateral agreements, including those related to the WTO, the Free Trade Area of the Americas (FTAA), and the Latin American Integration Association (ALADI).

Mr Ramírez-Hernández also represented Mexico in complex international trade litigation and investment arbitration proceedings. He acted as lead counsel to the Mexican government in several WTO disputes. He has also served on NAFTA panels.

Mr Ramírez-Hernández holds an LLM degree in International Business Law from the American University Washington College of Law, and a law degree from the Universidad Autónoma Metropolitana.

David Unterhalter (South Africa) (2006–2013)

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.

Peter Van den Bossche (European Union; Belgium) (2009–2017)

Born in Belgium on 31 March 1959, Peter Van den Bossche is Professor of International Economic Law at Maastricht University, the Netherlands. Van den Bossche is also visiting professor at the College of Europe, Bruges (since 2010); the University of Barcelona (IELPO Programme) (since 2008); the China-EU School of Law, Beijing (since 2008); and the World Trade Institute, Berne (MILE Programme) (since 2002). He is member of the Board of Editors of the *Journal of International Economic Law* and member of the Advisory Board of the *Journal of World Investment and Trade* and the *Revista Latinoamericana de Derecho Comercial International*. He is also member of the Advisory Board of the WTO Chairs Programme (WCP).

Mr Van den Bossche holds a Doctorate in Law from the European University Institute in Florence, an LLM from the University of Michigan Law School, and a Licence en Droit *magna cum laude* from the University of Antwerp. From 1990 to 1992, he served as a référendaire of Advocate General W. van Gerven at the European Court of Justice in Luxembourg. From 1997 to 2001, Mr Van den Bossche was Counsellor and subsequently Acting Director of the WTO Appellate Body Secretariat. In 2001, he returned to academia and from 2002 to 2009 frequently acted as a consultant to international organisations and developing countries on issues of international economic law. He also served on the faculty of the Université libre de Bruxelles (2002–2009); at the Trade Policy Training Centre in Africa (trapca), Arusha, Tanzania (2008 and 2013); at the Foreign Trade University, Hanoi & Ho Chi Minh City, Vietnam (2009 and 2011); at the Universidad San Francisco de Quito, Ecuador (2013); and at the Law School of Koç University, Istanbul, Turkey (2013).

Mr Van den Bossche has published extensively in the field of international economic law. He is author of the book *The Law and Policy of the World Trade Organization*. The third edition (with Werner Zdouc) was published by Cambridge University Press in 2013.

Yuejiao Zhang (China) (2008–2016)

Yuejiao Zhang is Professor of International Economic Law at Tsinghua University and at Shantou University in China. She is an arbitrator at the International Chamber of Commerce (ICC) and at China's International Trade and Economic Arbitration Commission (CIETAC). She served as Vice-President of China's International Economic Law Society. She is also a member of the Advisory Board of the International Development Law Organization (IDLO).

Professor 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. She was the head of the ADB experts group on international trade and the ADB contact point to the WTO. 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). She participated in the preparation of China's first joint-venture law, general principles of civil law, contract law, and foreign trade law. 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 GATT resumption. Between 1982 and 1985, she worked as legal counsel at the World Bank. She was a Member of the Governing Council of the International Institute for the Unification of Private Law (UNIDROIT) from 1987 to 1999 and a Board Member of IDLO from 1988 to 1999. Professor Zhang was a member of the UNIDROIT and UNCITRAL drafting committees concerning several international trade and economic conventions, such as the General Principles of Commercial Contract and the International Financial Leasing Convention.

Professor Zhang has authored several books and articles on international economic law and international dispute settlement. She has a BA from China High Education College, a BA from Rennes University, France, and an LLM from Georgetown University. Professor Zhang also lectured at universities in France and in Hong Kong, Macau of China.

* * *

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 many developing countries. He became legal counsellor at the Appellate Body Secretariat in 2001. He has been a lecturer and Visiting Professor for international trade law at Vienna Economic University, the Universities of Zurich and Barcelona. From 1987 to 1989, he worked for governmental and non-governmental development aid organizations in Austria and Latin America. Dr Zdouc has authored various publications on international economic law and is a member of the Trade Law Committee of the International Law Association.

ANNEX 3

FAREWELL SPEECH OF DEPARTING APPELLATE BODY MEMBER

Farewell remarks of Mr David Unterhalter to the Dispute Settlement Body of the WTO, Geneva, 22 January 2014

It has been a very great privilege and pleasure to serve this institution, first as a panel member and then as a Member of the Appellate Body.

I always considered my appointment to the Appellate Body improbable, and have carried with me, over the years of my tenure, a debt of gratitude to those who gave me this most fulfilling and unexpected opportunity.

It is usually imprudent for adjudicators to speak on the issues they are asked to decide, far better to leave reflections about what they do or ought to do to others.

The good thing about sensible advice is that there are occasions not to follow it: and this may be one such occasion. Forgive me then, if I offer a few modest observations about the WTO dispute settlement system and the Appellate Body, as I take my leave.

What I wanted to say is divided into three parts. First, I will say something about the importance of WTO dispute settlement, as it enters a somewhat premature middle age. Second, I will offer some thoughts on the challenges faced by the system. And finally, in a more sentimental vein, I will reflect on some of the internal aspects of the Appellate Body that have lent it such vigour.

Those who serve institutions for some time are not always reliable or objective guides to their value. Insiders are given to inflationary assessment.

But that the institutions of WTO dispute settlement have gained such widespread acceptance, and, I think, legitimacy, in a relatively short period of time, is somewhat remarkable. There is much that evidences this legitimacy.

First, in a world where the multilateral trade project so often appears assailed by ambitious regional and bilateral agreements, the WTO remains the forum of choice for resolving trade disputes. Second, the system is used by more and more WTO Members to ventilate ever greater numbers of disputes across diverse areas of the covered agreements. Third, the WTO dispute settlement system is now regarded by international lawyers as one of the most prolific sources of international law. Fourth, the system has generated those hallmarks of institutional recognition: robust academic discourse on WTO law and the legal professions now count WTO law as a specialty.

This legitimacy and authority of the WTO dispute settlement system has been earned. It rests upon a number of key values. Above all else, adjudication is independent. Those who make decisions may fall into error. Their decisions may, by turns, infuriate, captivate or be considered banal. But they suffer no taint that they have not been rendered honestly, without favour, and under no conflict of interest. The virtue of independence may seem self-evident, but it is not to be taken for granted. Undue influence, conflicts of interest, compromised positions can arise all too easily, and, unchecked, can do grave damage to an institution. The price of independence is paid in a certain institutional distance. But it is indispensable.

Legitimacy comes about also because of the quality of decision-making. This has a twofold aspect. First, it matters that parties to a dispute are heard. And not just in a formal sense, but also that those who decide the dispute have come to grips with the issues and can engage fully on these issues with the parties. This permits those who must decide to make better decisions. And since litigation requires that in the end, on an issue, one party must prevail, it is essential that the losing party comes away from the process with the conviction that its case was properly understood and considered. Appellate Body hearings are sometimes thought too protracted. I think otherwise. I have never come out of a hearing with anything but a much better understanding of the case as a

result of the debates that have taken place. And I think that parties who lose on an issue may consider the decision wrong, but will have little reason to think it unfair.

The second aspect of decision-making is the quality of judgment. Good judgment is made up of many parts. There are those with a compendious knowledge of the law; those who excel at grasping principle and its logical implications; those who marshal complex facts and render them coherent; and those whose practical reasoning guides sensible outcomes. Very few people embody all of these qualities, and certainly not in equal measure. The Appellate Body has been fortunate to have attracted Members who have had many of the qualities that matter in rendering sound judgments. One way in which to measure the significance of decision-making is to consider the extent to which reliance is placed upon past decisions to incline the outcome of a new dispute. In a system that knows no formal doctrine of precedent, the discourse before the Appellate Body and panels engages the content of past decision-making. That is not just a function of convenience, but recognition of the value of what past decisions have had to contribute to the interpretation of the covered agreements.

Of course there are decisions that have not won universal acceptance and some that have been controversial. But, in the round, the body of law that has been developed is well regarded. It is a body of jurisprudence that has mostly proceeded step by step; it strives for coherence and clarity in the interpretation of negotiated texts; it has applied WTO law to diverse systems of domestic law; it has sought to strike the right balance between the imperatives of domestic policy and the disciplines of WTO law; and has navigated its way through large, complex disputes that have often seemed intractable.

A further source of legitimacy is the question of access. It is said that WTO litigation requires patience, a great deal of time, significant resources and the ability to engage an increasingly complex body of law and procedure. There is some truth in this, though it is not true of all cases. And yet, more and more Members use the system, and do so repeatedly. The procedural rules are clear and deployed without undue formality. Decisions of the Appellate Body are for the most part rendered in 90 days. Third party submissions are encouraged. The system may require some understanding to engage, but it is not opaque. It is rule-bound and privileges procedural fairness. These attributes all foster access and hence legitimacy.

Finally, there is the issue of composition. The Appellate Body is a central part of the adjudicative voice of the WTO membership. It does not represent the membership, but it must reflect the diversity that makes up the membership. It has always been a strength of the Appellate Body that its Members come from very different legal traditions, and very different societies. These perspectives are brought to bear upon a common purpose: the resolution of disputes under the discipline of WTO law. The decisions of the Appellate Body yield singular answers. The decision-makers are diverse. The result is the richer for it.

This is my summation of the attributes of the WTO dispute settlement system.

What then of its challenges? I turn next to this matter.

As international trade constitutes an ever-greater share of global commerce, its regulation is ever-less effectively located within the domestic law of individual states. This is well known. What is emerging, however, is a palimpsest of legal regimes: private arbitration, investment treaties, and bilateral, regional, and multilateral agreements. The landscape of supranational regulation is fractured, overlapping; it proceeds in unpredictable ways and with complex interconnections. It is a process the end point of which is unforeseeable.

In this ever-shifting space, the project of multilateralism is not assured. If the WTO was to become but a historical commitment to a foundational set of rights and obligations, then the institution will wither, and with it, the system of dispute settlement. If the WTO agreements no longer capture the commitments of the membership to new trade issues, dispute settlement within the WTO will lose its pre-eminence. First, because many of the key issues in the covered agreements will, over time, have been clarified in disputes. Second, because trade issues of greatest currency will be regulated elsewhere, and disputes will be resolved at the point where the rights and obligations are located. Third, because, if the main business of the WTO became dispute resolution, the institution would not hold together. Adjudication is robust when it lives in a dynamic relationship

with legislative competence. If too much rests upon dispute settlement, the system gets out of kilter, and the atrophy of one part of the system ultimately takes hold of everything else.

During the long period over which the Doha Round failed to produce results, the stresses upon dispute settlement started to show. The Appellate Body was said to be too powerful, it was making decisions beyond its proper remit. I don't think this is so. But these voices reflect the inability to move forward the treaty commitments of the membership, important among them being the competence to change the interpretations of the Appellate Body.

There is of course little that those charged with the functioning of the dispute settlement system can do to address the wider context of negotiation. But it is important to recognize that the system is fragile: its success depends upon its utility to the membership; and it will develop only if the WTO project as a whole does so.

Those who serve the system of dispute settlement and believe in its values always run the risk of thinking that the system is a self-standing good. It is not. If Members of the WTO cannot agree as to how they wish to take the multilateral project forward, the virtues of dispute settlement will not be saved from their disaffection. Happily, the outcome at Bali suggests that there is renewed faith that Doha and beyond is not out of reach.

There are other challenges, though I suspect these too are a symptom of the over-arching challenge I have just described. The WTO dispute settlement system has many attributes, but it needs to adapt to the changing nature of the disputes that come before it.

When the WTO dispute settlement system was conceived, it did not have in mind the complex, fact-heavy disputes that now come before panels and the Appellate Body, nor the number of such disputes. The system generates a high incidence of appeals, and a high rate of success on appeal. This suggests some disequilibrium in the system. Of course, I recognize that Members, in seeking authoritative clarifications of the covered agreements, will incline towards seeking a second opinion from the Appellate Body. But many disputes do not rest solely on issues of law, and thus the system should be more efficient so as to resolve issues at first instance. This suggests that some reform of the panels is needed. I favour an established body that will adjudicate at first instance to lend greater consistency to the results of adjudication at this level. Some think this unnecessary. But what is unfortunate is that we have no measured response to the need to conceive of better ways of doing things.

Even where there is consensus for change, we seem to have reached a point of stasis. Everyone accepts that disputes should have meaningful outcomes. That is sometimes not possible because of the limits of the findings made by a panel. The solution is to give the Appellate Body a remand power. Everyone thinks this sensible. But again that recognition flounders in technical circumlocution – and nothing gets done.

Lastly, by way of example, the workload of the Appellate Body is unpredictable. There are periods when there are more appeals to decide than capacity permits. In these circumstances, we need some rules as to the order of determining appeals. And we need a relaxation of the 90-day rule. Even this practical but important issue has been debated, but not resolved. So too, there should, in a rational system, be rules that determine when appeals are brought and the number that may be dealt with at one time. This would lend predictability to the process of appellate review, both for the Appellate Body and for the parties; it would also allow for the rational use of resources. The orderly, expeditious disposal of appeals must always be preferred to an unregulated free-for-all.

With every passing year, I have observed the incoming Chair of the Dispute Settlement Body fired with enthusiasm to do something about these and other issues. And every year, that enthusiasm comes up hard against the seeming impossibility of effecting even modest change.

None of these matters imperils the system. They are the kind of incremental changes that would make the system work better. But they speak to a wider malaise that we should be careful to arrest.

I have emphasized the institutional value of independence. That is tested every time an appointment is made to the Appellate Body. As in the past, we all trust that a new Member will be appointed soon around whom there is consensus.

The WTO system of dispute resolution has won justified praise. When Tribunals and Courts that consider questions of international law are assessed, the WTO panels and the Appellate Body are highly regarded for the reach, quality and number of their decisions. In a world where so many issues must now be faced outside of the remit of domestic legal systems, supranational regimes require dispute settlement. The WTO system is a fine model of how this can be done. It should remain so.

It is my great hope that all those who participate in the system will assist to redeem its promise, rather than tread water and allow others to eclipse its pre-eminence.

I turn finally to say something of those who have made my time here so fruitful and enjoyable.

When I was appointed to the Appellate Body, I think there may have been some apprehension that I would be a dissonant voice (I had previously participated in a WTO panel that had taken a somewhat different line to the Appellate Body). What I found was an enormously friendly and welcoming place.

Judging disputes can be an isolating business. It is important to observe degrees of separation from litigants, or likely litigants. Appellate Body Members are thrown together for long periods of time. They must determine appeals under pressure of time. Appeals raise many issues over which reasonable people can disagree. The Appellate Body engages in robust debate. And there is ample scope for seared feelings. But it has not been that way at all.

What prevails is captured by the idea of collegiality. All voices are heard. There is an abundance of analysis. There is a shared desire to come up with an answer that shows fidelity to the agreements and reflects consensual positions hammered out on the anvil of full debate.

This engagement fosters friendship and respect, and I am very grateful to all my colleagues, past and present, who have made this such a fruitful time to contribute to the work of the Appellate Body. They have been companions on many long, legal roads. They have guided, assisted and made the work so very worthwhile, and my gratitude is, I hope, plain.

I began life at the WTO as a panelist. There too, I engaged with dedicated people of great ability. And I thank them and the Secretariat that supports the panels for so generously educating me in the ways of WTO law and overlooking my many frailties as I attempted to come to grips with the system.

The Members of the Appellate Body depend heavily on the assistance they receive from the Appellate Body Secretariat. The Secretariat is the lifeblood of the institution. First, I pay tribute to the lawyers of the Secretariat who have assisted the Appellate Body over the years. It is hard to imagine more talented people. Their collective knowledge of the law and their industry in researching and preparing for appeals is exemplary. The Secretariat is headed by its Director. Throughout my time, he has guided the work of the Secretariat with great intellectual leadership, an unmatched eye for talent, and the ability to nurture that talent.

The Appellate Body also rests heavily on the enormous efforts of those who administer the work of the Appellate Body. With calm efficiency they assemble the Members of the Appellate Body from the four corners of the world, and keep us here free of many burdens that would otherwise take time from our principal task. To them all my great thanks.

Finally, as I say farewell to the WTO, there are many people both inside and outside of the House who have made my time here memorable. Among them, WTO interpreters and translators, though seldom seen, are indispensable in a multilingual organization. Thank you. Importantly, to the delegates who appeared before the Appellate Body in the many cases we have heard over the last seven years, it is the quality of your arguments and the acuity of your engagements with us that have helped to produce an important body of law to which I was privileged to make a contribution.

Goodnight and goodbye.

ANNEX 4

I. FORMER APPELLATE BODY MEMBERS

Name	Nationality	Term(s) of office
Said El-Naggar	Egypt	1995–2000 *
Mitsuo Matsushita	Japan	1995–2000 *
Christopher Beeby	New Zealand	1995–1999 1999–2000
Claus-Dieter Ehlermann	Germany	1995–1997 1997–2001
Florentino Feliciano	Philippines	1995–1997 1997–2001
Julio Lacarte-Muró	Uruguay	1995–1997 1997–2001
James Bacchus	United States	1995–1999 1999–2003
John Lockhart	Australia	2001–2005 2005–2006
Yasuhei Taniguchi	Japan	2000–2003 2003–2007
Merit E. Janow	United States	2003–2007 **
Arumugamangalam Venkatachalam Ganesan	India	2000–2004 2004–2008
Georges Michel Abi-Saab	Egypt	2000–2004 2004–2008
Luiz Olavo Baptista	Brazil	2001–2005 2005–2009
Giorgio Sacerdoti	Italy	2001–2005 2005–2009
Jennifer Hillman	United States	2007–2011
Lilia Bautista	Philippines	2007–2011
Shotaro Oshima	Japan	2008–2012 ***

* 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 Oshima's resignation became effective on 6 April 2012.

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
David Unterhalter	South Africa	18 December 2008 – 11 December 2009 12 December 2009 – 16 December 2010
Lilia Bautista	Philippines	17 December 2010 – 14 June 2011
Jennifer Hillman	United States	15 June 2011 – 10 December 2011
Yuejiao Zhang	China	11 December 2011 – 31 May 2012 1 June 2012 – 31 December 2012

ANNEX 5

APPEALS FILED: 1995–2013

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 [g]	10	3
2009	3	1	2
2010	3	3	0
2011	9	9	0
2012	5	5	0
2013	1	1	0
Total	**120**	**101**	**19**

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

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

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

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

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

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

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

ANNEX 6

PERCENTAGE OF PANEL REPORTS APPEALED BY YEAR OF ADOPTION: 1995–2013[a]

	All panel reports			Panel reports other than Article 21.5 reports [b]			Article 21.5 panel reports		
Year of adoption	Panel reports adopted [c]	Panel reports appealed [d]	Percentage appealed [e]	Panel reports adopted	Panel reports appealed	Percentage appealed	Panel reports adopted	Panel reports appealed	Percentage appealed
1996	2	2	100%	2	2	100%	0	0	–
1997	5	5	100%	5	5	100%	0	0	–
1998	12	9	75%	12	9	75%	0	0	–
1999	10	7	70%	9	7	78%	1	0	0%
2000	19	11	58%	15	9	60%	4	2	50%
2001	17	12	71%	13	9	69%	4	3	75%
2002	12	6	50%	11	5	45%	1	1	100%
2003	10	7	70%	8	5	63%	2	2	100%
2004	8	6	75%	8	6	75%	0	0	–
2005	20	12	60%	17	11	65%	3	1	33%
2006	7	6	86%	4	3	75%	3	3	100%
2007	10	5	50%	6	3	50%	4	2	50%
2008	11	9	82%	8	6	75%	3	3	100%
2009	8	6	75%	6	4	67%	2	2	100%
2010	5	2	40%	5	2	40%	0	0	–
2011	8	5	63%	8	5	63%	0	0	–
2012	18	11	61%	18	11	61%	0	0	–
2013	4	2	50%	4	2	50%	0	0	–
Total	**186**	**123**	**67%**	**159**	**104**	**66%**	**27**	**19**	**70%**

[a] No panel reports were adopted in 1995.

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

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

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

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

ANNEX 7

WTO AGREEMENTS ADDRESSED IN APPELLATE BODY REPORTS CIRCULATED THROUGH 2013[a]

Year of circulation	DSU	WTO Agmt	GATT 1994	Agri-culture	SPS	ATC	TBT	TRIMs	Anti-Dumping	Import Licensing	SCM	Safe-guards	GATS	TRIPS
1996	0	0	2	0	0	0	0	0	0	0	0	0	0	0
1997	4	1	5	1	0	2	0	0	0	1	1	0	1	1
1998	7	1	4	1	2	0	0	0	1	1	0	0	0	0
1999	7	1	6	1	1	0	0	0	0	0	2	1	0	0
2000	8	1	7	2	0	0	0	0	2	0	5	2	1	1
2001	7	1	3	1	0	1	1	0	4	0	1	2	0	0
2002	8	2	4	3	0	0	1	0	1	0	3	1	1	1
2003	4	2	3	0	1	0	0	0	4	0	1	1	0	0
2004	2	0	5	0	0	0	0	0	2	0	1	0	0	0
2005	9	0	5	2	0	0	0	0	2	0	4	0	1	0
2006	5	0	3	0	0	0	0	0	3	0	2	0	0	0
2007	5	0	2	1	0	0	0	0	2	0	1	0	0	0
2008	8	1	9	1	2	0	0	0	3	0	3	0	0	0
2009	3	0	4	0	0	0	0	0	3	0	0	0	1	0
2010	1	0	0	0	1	0	0	0	0	0	0	0	0	0
2011	7	1	6	0	0	0	0	0	1	0	2	0	0	0
2012	9	0	7	0	0	0	4	0	1	0	2	0	0	0
2013	0	0	2	0	0	0	0	2	0	0	2	0	0	0
Total	**94**	**11**	**77**	**13**	**7**	**3**	**6**	**2**	**29**	**2**	**30**	**7**	**5**	**3**

[a] No appeals were filed in 1995.

ANNEX 8

PARTICIPANTS AND THIRD PARTICIPANTS IN APPEALS: 1995–2013

As of the end of 2013, there were 159 WTO Members, of which 70 have participated in appeals in which Appellate Body reports were circulated between 1996 and 2013.[1]

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	0	1	1	0	2
Argentina	2	3	5	13	23
Australia	2	2	6	34	44
Bahrain, Kingdom of	0	0	0	1	1
Barbados	0	0	0	1	1
Belize	0	0	0	4	4
Benin	0	0	0	1	1
Bolivarian Republic of Venezuela	0	0	1	6	7
Bolivia, Plurinational State of	0	0	0	1	1
Brazil	5	7	12	28	52
Cameroon	0	0	0	3	3
Canada	12	9	20	23	64
Chad	0	0	0	2	2
Chile	3	0	2	12	17
China	10	2	6	37	55
Colombia	0	0	0	15	15
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	4	6

[1] 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
Ecuador	0	2	2	10	14
Egypt	0	0	0	2	2
El Salvador	0	0	0	4	4
European Union	21	16	41	59	137
Fiji	0	0	0	1	1
Ghana	0	0	0	2	2
Grenada	0	0	0	1	1
Guatemala	1	1	1	8	11
Guyana	0	0	0	1	1
Honduras	0	2	2	3	7
Hong Kong, China	0	0	0	8	8
India	6	2	7	36	51
Indonesia	0	1	1	1	3
Israel	0	0	0	1	1
Jamaica	0	0	0	5	5
Japan	6	5	12	53	76
Kenya	0	0	0	1	1
Korea	3	4	6	27	40
Kuwait, the State of	0	0	0	1	1
Madagascar	0	0	0	1	1
Malaysia	1	0	1	0	2
Malawi	0	0	0	1	1
Mauritius	0	0	0	2	2
Mexico	5	4	7	33	49
New Zealand	0	3	6	13	22
Nicaragua	0	0	0	4	4
Nigeria	0	0	0	1	1
Norway	0	1	1	21	23
Pakistan	0	0	2	3	5
Panama	0	0	0	3	3
Paraguay	0	0	0	5	5
Peru	0	0	1	4	5
Philippines	3	0	3	1	7
Poland	0	0	1	0	1
Senegal	0	0	0	1	1
Saint Lucia	0	0	0	4	4
Saudi Arabia, Kingdom of	0	0	0	7	7
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	35	35
Tanzania	0	0	0	1	1
Thailand	3	2	5	20	30
Trinidad &Tobago	0	0	0	1	1
Turkey	1	0	0	10	11
United States	33	21	71	32	157
Viet Nam	0	0	0	3	3
Total	**119**	**89**	**225**	**638**	**1071**

II. DETAILS BY YEAR OF CIRCULATION

1996

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

1997

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

1998

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

1999

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

2000

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

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

2001

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

2002

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

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

2003

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

2004

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

2005

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

2005 (CONT'D)

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

2006

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

2007

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Zeroing (Japan) WT/DS322/AB/R	Japan	United States	United States Japan	Argentina China European Communities [d] 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

[d] By virtue of the Treaty of Lisbon, as of 1 December 2009, "European Union" replaced and succeeded "European Communities". For disputes that began before the entry into force of the Treaty, the WTO dispute settlement reports refer to "European Communities".

2008

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Stainless Steel (Mexico) WT/DS344/AB/R	Mexico	- - -	United States	Chile China European Communities Japan Thailand
US – Upland Cotton (Article 21.5 – Brazil) WT/DS267/AB/RW	United States	Brazil	Brazil United States	Argentina Australia Canada Chad China European Communities India Japan New Zealand Thailand
US – Shrimp (Thailand) WT/DS343/AB/R	Thailand	United States	United States Thailand	Brazil Chile China European Communities India Japan Korea Mexico Viet Nam
US – Customs Bond Directive WT/DS345/AB/R	India	United States	United States India	Brazil China European Communities Japan Thailand

2008 (CONT'D)

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

2008 (CONT'D)

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

2009

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Continued Zeroing WT/DS350/AB/R	European Communities	United States	European Communities United States	Brazil China Egypt India Japan Korea Mexico Norway Chinese Taipei Thailand
US – Zeroing (EC) *(Article 21.5 – EC)* WT/DS294/AB/RW and Corr.1	European Communities	United States	European Communities United States	India Japan Korea Mexico Norway Chinese Taipei Thailand
US – Zeroing (Japan) *(Article 21.5 – Japan)* WT/DS322/AB/RW	United States	- - -	Japan	China European Communities Hong Kong, China Korea Mexico Norway Chinese Taipei Thailand
China – Publications and Audiovisual Products WT/DS363/AB/R	China	United States	China United States	Australia European Communities Japan Korea Chinese Taipei

2010

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
Australia – Apples WT/DS367/AB/R	Australia	New Zealand	New Zealand Australia	Chile European Union Japan Pakistan Chinese Taipei United States

2011

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Anti-Dumping and Countervailing Duties (China) WT/DS379/AB/R	China	- - -	United States	Argentina Australia Bahrain Brazil Canada European Union India Japan Kuwait Mexico Norway Saudi Arabia Chinese Taipei Turkey
EC and certain member States – Large Civil Aircraft WT/DS316/AB/R	European Union	United States	United States European Union	Australia Brazil Canada China Japan Korea
Thailand – Cigarettes (Philippines) WT/DS371/AB/R	Thailand	- - -	Philippines	Australia China European Union India Chinese Taipei United States

2011 (CONT'D)

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
EC – Fasteners (China) WT/DS397/AB/R	European Union	China	China European Union	Brazil Canada Chile Colombia India Japan Norway Chinese Taipei Thailand Turkey United States
US – Tyres (China) WT/DS399/AB/R	China	- - -	United States	European Union Japan Chinese Taipei Turkey Viet Nam
Philippines – Distilled Spirits (European Union) WT/DS396/AB/R	Philippines	European Union	European Union Philippines	Australia China India Mexico Chinese Taipei Thailand
Philippines – Distilled Spirits (United States) WT/DS403/AB/R	Philippines	- - -	United States	Australia China Colombia India Mexico Chinese Taipei Thailand

2012

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
China – Raw Materials (United States) WT/DS394/AB/R	China	United States	China United States	Argentina Brazil Canada Chile Colombia Ecuador India Japan Korea Norway Saudi Arabia Chinese Taipei Turkey
China – Raw Materials (European Union) WT/DS395/AB/R	China	European Union	China European Union	Argentina Brazil Canada Chile Colombia Ecuador India Japan Korea Norway Saudi Arabia Chinese Taipei Turkey
China – Raw Materials (Mexico) WT/DS398/AB/R	China	Mexico	China Mexico	Argentina Brazil Canada Chile Colombia Ecuador India Japan Korea Norway Saudi Arabia Chinese Taipei Turkey

2012 (CONT'D)

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – Large Civil Aircraft (2nd complaint) WT/DS353/AB/R	European Union	United States	United States European Union	Australia Brazil Canada China Japan Korea
US – Clove Cigarettes WT/DS406/AB/R	United States	- - -	Indonesia	Brazil Colombia Dominican Republic European Union Guatemala Mexico Norway Turkey
US – Tuna II (Mexico) WT/DS381/AB/R	United States	Mexico	Mexico United States	Argentina Australia Brazil Canada China Ecuador Guatemala Japan Korea New Zealand Chinese Taipei Thailand Turkey Venezuela
US – COOL (Canada) WT/DS384/AB/R	United States	Canada	Canada United States	Argentina Australia Brazil China Colombia European Union Guatemala India Japan Korea New Zealand Peru Chinese Taipei

2012 (CONT'D)

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
US – COOL (Mexico) WT/DS386/AB/R	United States	Mexico	Mexico United States	Argentina Australia Brazil China Colombia European Union Guatemala India Japan Korea New Zealand Peru Chinese Taipei
China – GOES WT/DS414/AB/R	China	- - -	United States	Argentina European Union Honduras India Japan Korea Saudi Arabia Viet Nam

2013

Case	Appellant	Other appellant(s)	Appellee(s)	Third participant(s)
Canada – Certain Measures Affecting the Renewable Energy Generation Sector WT/DS412/AB/R	Canada	Japan	Japan Canada	Australia Brazil China El Salvador European Union Honduras India Korea Mexico Norway Saudi Arabia Chinese Taipei United States
Canada – Measures Relating to the Feed-in Tariff Program WT/DS426/AB/R	Canada	European Union	European Union Canada	Australia Brazil China El Salvador India Japan Korea Mexico Norway Saudi Arabia Chinese Taipei Turkey United States

ANNEX 9

APPELLATE BODY SECRETARIAT PARTICIPATION IN
THE WTO TECHNICAL ASSISTANCE AND TRAINING PLAN IN 2013

Course / Seminar	Location	Dates
Advanced Training Programme for Senior Government Officials (OAS)	Washington, DC, USA	19-21 June 2013
Advanced Trade Policy Course (Dispute Settlement)	Geneva, Switzerland	9-11 July 2013
Regional Trade Policy Course for the Asia-Pacific Region (Basic Principles)	New Delhi, India	11-12 September 2013
Advanced Course and Regional Dialogue on WTO Dispute Settlement for Latin American Countries	Brasilia, Brazil	8-11 October 2013
National Seminar	Brasilia, Brazil	14-16 October 2013
Advanced Dispute Settlement Course	Geneva, Switzerland	14-18 October 2013
Regional Trade Policy Course for the Asia-Pacific Region (Dispute Settlement)	New Delhi, India	23-25 October 2013
Specialized Course on the WTO Dispute Settlement Mechanism	Bogotá, Colombia	23-26 October 2013
Short Trade Policy Course for ALADI Member States (Dispute Settlement)	Montevideo, Uruguay	7-8 November 2013
National Seminar	Tehran, Iran	16-21 November 2013

ANNEX 10

APPELLATE BODY SECRETARIAT PARTICIPATION IN BRIEFINGS, CONFERENCES, AND MOOT COURT COMPETITIONS IN 2013

Activity	Location	Dates
5th General GNLU Moot Court Competition	Ahmedabad, India	11-14 February 2013
ELSA Moot Court Competition	Barcelona, Spain	11-12 February 2013
ELSA Moot Court Competition	San José, Costa Rica	11-14 March 2013
107th ASIL Annual Meeting	Washington, DC, USA	3-5 April 2013
IELPO Moot Court Competition	Barcelona, Spain	20-21 June 2013
IELPO/WTI Moot Court Competition	Barcelona, Spain	27 June 2013
Asian International Economic Law Network (AIELN) III: "WTO at 20 and the Future of the International Law on Trade, Investment and Finance"	Seoul, Korea	18-19 July 2013
4th Annual WTO/FTA Moot Court Competition	Seoul, Korea	20 July 2013
Seoul National University – Summer Course in International Trade Law	Seoul, Korea	22 July-3 August 2013
2nd Biennial Conference of the Latin American Network in International Economic Law	Lima, Peru	27-30 October 2013
Conference on BRICS and WTO Dispute Settlement	Shanghai, China	4-11 November 2013

ANNEX 11

WTO DISPUTE SETTLEMENT REPORTS AND ARBITRATION AWARDS: 1995–2013

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, p. 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, p. 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, p. 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, p. 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, p. 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, p. 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, p. 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, p. 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, p. 1033
Australia – Apples	Appellate Body Report, *Australia – Measures Affecting the Importation of Apples from New Zealand*, WT/DS367/AB/R, adopted 17 December 2010, DSR 2010:V, p. 2175
Australia – Apples	Panel Report, *Australia – Measures Affecting the Importation of Apples from New Zealand*, WT/DS367/R, adopted 17 December 2010, as modified by Appellate Body Report WT/DS367/AB/R, DSR 2010:VI, p. 2371
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, p. 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, p. 1189
Australia – Salmon	Appellate Body Report, *Australia – Measures Affecting Importation of Salmon*, WT/DS18/AB/R, adopted 6 November 1998, DSR 1998:VIII, p. 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, p. 3407

Short title	Full case title and citation
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, p. 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, p. 2031
Brazil – Aircraft	Appellate Body Report, *Brazil – Export Financing Programme for Aircraft*, WT/DS46/AB/R, adopted 20 August 1999, DSR 1999:III, p. 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, p. 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, p. 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, p. 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/RW2, adopted 23 August 2001, DSR 2001:X, p. 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, p. 19
Brazil – Desiccated Coconut	Appellate Body Report, *Brazil – Measures Affecting Desiccated Coconut*, WT/DS22/AB/R, adopted 20 March 1997, DSR 1997:I, p. 167
Brazil – Desiccated Coconut	Panel Report, *Brazil – Measures Affecting Desiccated Coconut*, WT/DS22/R, adopted 20 March 1997, upheld by Appellate Body Report WT/DS22/AB/R, DSR 1997:I, p. 189
Brazil – Retreaded Tyres	Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007, DSR 2007:IV, p. 1527
Brazil – Retreaded Tyres	Panel Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS332/AB/R, DSR 2007:V, p. 1649
Brazil – Retreaded Tyres (Article 21.3(c))	Award of the Arbitrator, *Brazil – Measures Affecting Imports of Retreaded Tyres – Arbitration under Article 21.3(c) of the DSU*, WT/DS332/16, 29 August 2008, DSR 2008:XX, p. 8581
Canada – Aircraft	Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R, adopted 20 August 1999, DSR 1999:III, p. 1377
Canada – Aircraft	Panel Report, *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/R, adopted 20 August 1999, upheld by Appellate Body Report WT/DS70/AB/R, DSR 1999:IV, p. 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, p. 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, p. 4315

Short title	Full case title and citation
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, p. 849
Canada – Aircraft Credits and Guarantees (Article 22.6 – Canada)	Decision by the Arbitrator, *Canada – Export Credits and Loan Guarantees for Regional Aircraft – Recourse to Arbitration by Canada under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, WT/DS222/ARB, 17 February 2003, DSR 2003:III, p. 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, p. 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, p. 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, p. 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, DSR 2008:XIV, p. 5373
Canada – Continued Suspension	Panel Report, *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute*, WT/DS321/R and Add.1 to Add.7, adopted 14 November 2008, as modified by Appellate Body Report WT/DS321/AB/R, DSR 2008:XV, p. 5757
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, p. 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, p. 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, p. 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, as reversed by Appellate Body Report WT/DS103/AB/RW, WT/DS113/AB/RW, DSR 2001:XIII, p. 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, p. 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, p. 255
Canada – Patent Term	Appellate Body Report, *Canada – Term of Patent Protection*, WT/DS170/AB/R, adopted 12 October 2000, DSR 2000:X, p. 5093

Short title	Full case title and citation
Canada – Patent Term	Panel Report, *Canada – Term of Patent Protection*, WT/DS170/R, adopted 12 October 2000, upheld by Appellate Body Report WT/DS170/AB/R, DSR 2000:XI, p. 5121
Canada – Patent Term (Article 21.3(c))	Award of the Arbitrator, *Canada – Term of Patent Protection – Arbitration under Article 21.3(c) of the DSU*, WT/DS170/10, 28 February 2001, DSR 2001:V, p. 2031
Canada – Periodicals	Appellate Body Report, *Canada – Certain Measures Concerning Periodicals*, WT/DS31/AB/R, adopted 30 July 1997, DSR 1997:I, p. 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, p. 481
Canada – Pharmaceutical Patents	Panel Report, *Canada – Patent Protection of Pharmaceutical Products*, WT/DS114/R, adopted 7 April 2000, DSR 2000:V, p. 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, p. 3
Canada – Renewable Energy / Canada – Feed-in Tariff Program	Appellate Body Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program*, WT/DS412/AB/R / WT/DS426/AB/R, adopted 24 May 2013
Canada – Renewable Energy / Canada – Feed-in Tariff Program	Panel Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program*, WT/DS412/R / WT/DS426/R / and Add.1, adopted 24 May 2013, as modified by Appellate Body Reports WT/DS412/AB/R / WT/DS426/AB/R
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, p. 2739
Canada – Wheat Exports and Grain Imports	Panel Report, *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain*, WT/DS276/R, adopted 27 September 2004, upheld by Appellate Body Report WT/DS276/AB/R, DSR 2004:VI, p. 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, p. 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, p. 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, p. 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, p. 3045 (Corr.1, DSR 2006:XII, p. 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, p. 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, p. 1237

Short title	Full case title and citation
Chile – Price Band System (Article 21.5 – Argentina)	Appellate Body Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products – Recourse to Article 21.5 of the DSU by Argentina*, WT/DS207/AB/RW, adopted 22 May 2007, DSR 2007:II, p. 513
Chile – Price Band System (Article 21.5 – Argentina)	Panel Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products – Recourse to Article 21.5 of the DSU by Argentina*, WT/DS207/RW and Corr.1, adopted 22 May 2007, upheld by Appellate Body Report WT/DS207/AB/RW, DSR 2007:II, p. 613
China – Auto Parts	Appellate Body Reports, *China – Measures Affecting Imports of Automobile Parts*, WT/DS339/AB/R / WT/DS340/AB/R / WT/DS342/AB/R, adopted 12 January 2009, DSR 2009:I, p. 3
China – Auto Parts	Panel Reports, *China – Measures Affecting Imports of Automobile Parts*, WT/DS339/R / WT/DS340/R / WT/DS342/R / Add.1 and Add.2, adopted 12 January 2009, upheld (WT/DS339/R) and as modified (WT/DS340/R / WT/DS342/R) by Appellate Body Reports WT/DS339/AB/R / WT/DS340/AB/R / WT/DS342/AB/R, DSR 2009:I, p. 119
China – Broiler Products	Panel Report, *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*, WT/DS427/R and Add.1, adopted 25 September 2013
China – Electronic Payment Services	Panel Report, *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413/R and Add.1, adopted 31 August 2012
China – GOES	Appellate Body Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*, WT/DS414/AB/R, adopted 16 November 2012
China – GOES	Panel Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*, WT/DS414/R and Add.1, adopted 16 November 2012, upheld by Appellate Body Report WT/DS414/AB/R
China – GOES (Article 21.3(c))	Award of the Arbitrator, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States – Arbitration under Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes*, WT/DS414/12, 3 May 2013
China – Intellectual Property Rights	Panel Report, *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, WT/DS362/R, adopted 20 March 2009, DSR 2009:V, p. 2097
China – Publications and Audiovisual Products	Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/AB/R, adopted 19 January 2010, DSR 2010:I, p. 3
China – Publications and Audiovisual Products	Panel Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/R and Corr.1, adopted 19 January 2010, as modified by Appellate Body Report WT/DS363/AB/R, DSR 2010:II, p. 261
China – Raw Materials	Appellate Body Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, adopted 22 February 2012
China – Raw Materials	Panel Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/R / WT/DS395/R / WT/DS398/R / Add.1 and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R

Short title	Full case title and citation
China – X-Ray Equipment	Panel Report, *China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union*, WT/DS425/R and Add.1, adopted 24 April 2013
Colombia – Ports of Entry	Panel Report, *Colombia – Indicative Prices and Restrictions on Ports of Entry*, WT/DS366/R and Corr.1, adopted 20 May 2009, DSR 2009:VI, p. 2535
Colombia – Ports of Entry (Article 21.3(c))	Award of the Arbitrator, *Colombia – Indicative Prices and Restrictions on Ports of Entry – Arbitration under Article 21.3(c) of the DSU*, WT/DS366/13, 2 October 2009, DSR 2009:IX, p. 3819
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, p. 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, p. 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, p. 11665
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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Short title	Full case title and citation
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