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WTO Dispute Settlement: One-Page Case Summaries

1995–2025



2026 EDITION

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Using this publication

Each one-page summary comprises three sections: the core facts; the key findings contained in the reports; and, where relevant, other matters of particular significance. The disputes are presented in chronological order (by DS number). Two indexes at the end of the publication list the disputes by WTO agreement and by WTO member responding to the complaint.

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Contents

Foreword 7

Abbreviations 8

DS2 US – Gasoline 9

DS8, 10, 11 Japan – Alcoholic Beverages II 10

DS18 Australia – Salmon 11

Australia – Salmon (Article 21.5 – Canada) 12

DS22 Brazil – Desiccated Coconut 13

DS24 US – Underwear 14

DS26, 48 EC – Hormones 15

DS27 EC – Bananas III 16

EC – Bananas III (Article 21.5 – Ecuador) 17

EC – Bananas III (Article 21.5 – Ecuador II) 18

EC – Bananas III (Article 21.5 – US) 18

DS31 Canada – Periodicals 19

DS33 US – Wool Shirts and Blouses 20

DS34 Turkey – Textiles 21

DS44 Japan – Film 22

DS46 Brazil – Aircraft 23

Brazil – Aircraft (Article 21.5 – Canada) 24

Brazil – Aircraft (Article 21.5 – Canada II) 25

DS50 India – Patents (US) 26

DS54, 55, 59, 64 Indonesia – Autos 27

DS56 Argentina – Textiles and Apparel 28

DS58 US – Shrimp 29

US – Shrimp (Article 21.5 – Malaysia) 30

DS60 Guatemala – Cement I 31

DS62, 67, 68 EC – Computer Equipment 32

DS69 EC – Poultry 33

DS70 Canada – Aircraft 34

Canada – Aircraft (Article 21.5 – Brazil) 35

DS75, 84 Korea – Alcoholic Beverages 36

DS76 Japan – Agricultural Products II 37

DS79 India – Patents (EC) 38

DS87, 110 Chile – Alcoholic Beverages 39

DS90 India – Quantitative Restrictions 40

DS98 Korea – Dairy 41

DS99 US – DRAMS 42

DS103, 113 Canada – Dairy 43

Canada – Dairy (Article 21.5 – New Zealand and US) 44

Canada – Dairy (Article 21.5 – New Zealand and US II) 45

DS108 US – FSC 46

US – FSC (Article 21.5 – EC) 47

US – FSC (Article 21.5 – EC II) 48

DS114 Canada – Pharmaceutical Patents 49

DS121 Argentina – Footwear (EC) 50
DS122 Thailand – H-Beams 51
DS126 Australia – Automotive Leather II 52
Australia – Automotive Leather II (Article 21.5 – US) 53
DS132 Mexico – Corn Syrup 54
Mexico – Corn Syrup (Article 21.5 – US) 55
DS135 EC – Asbestos 56
DS136, 162 US – 1916 Act 57
DS138 US – Lead and Bismuth II 58
DS139, 142 Canada – Autos 59
DS141 EC – Bed Linen 60
EC – Bed Linen (Article 21.5 – India) 61
DS146, 175 India – Autos 62
DS152 US – Section 301 Trade Act 63
DS155 Argentina – Hides and Leather 64
DS156 Guatemala – Cement II 65
DS160 US – Section 110(5) Copyright Act 66
DS161, 169 Korea – Various Measures on Beef 67
DS163 Korea – Procurement 68
DS165 US – Certain EC Products 69
DS166 US – Wheat Gluten 70
DS170 Canada – Patent Term 71
DS174, 290 EC – Trademarks and Geographical Indications 72
DS176 US – Section 211 Appropriations Act 73
DS177, 178 US – Lamb 74
DS179 US – Stainless Steel 75
DS184 US – Hot-Rolled Steel 76
DS189 Argentina – Ceramic Tiles 77
DS192 US – Cotton Yarn 78
DS194 US – Export Restraints 79
DS202 US – Line Pipe 80
DS204 Mexico – Telecoms 81
DS206 US – Steel Plate 82
DS207 Chile – Price Band System 83
Chile – Price Band System (Article 21.5 – Argentina) 84
DS211 Egypt – Steel Rebar 85
DS212 US – Countervailing Measures on Certain EC Products 86
US – Countervailing Measures on Certain EC Products (Article 21.5 – EC) 87
DS213 US – Carbon Steel 88
DS217, 234 US – Offset Act (Byrd Amendment) 89
DS219 EC – Tube or Pipe Fittings 90
DS221 US – Section 129(c)(1) URAA 91
DS222 Canada – Aircraft Credits and Guarantees 92
DS231 EC – Sardines 93
DS236 US – Softwood Lumber III 94
DS238 Argentina – Preserved Peaches 95
DS241 Argentina – Poultry Anti-Dumping Duties 96
DS243 US – Textiles Rules of Origin 97
DS244 US – Corrosion Resistant Steel Sunset Review 98

DS245 Japan – Apples 99
Japan – Apples (Article 21.5 – US) 100
DS246 EC – Tariff Preferences 101
DS248, 249, 251, 252, 253, 254, 258, 259 US – Steel Safeguards 102
DS257 US – Softwood Lumber IV 103
US – Softwood Lumber IV (Article 21.5 – Canada) 104
DS264 US – Softwood Lumber V 105
US – Softwood Lumber V (Article 21.5 – Canada) 106
DS265, 266, 283 EC – Export Subsidies on Sugar 107
DS267 US – Upland Cotton 108
US – Upland Cotton (Article 21.5 – Brazil) 109
DS268 US – Oil Country Tubular Goods Sunset Reviews 110
US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina) 111
DS269, 286 EC – Chicken Cuts 112
DS273 Korea – Commercial Vessels 113
DS276 Canada – Wheat Exports and Grain Imports 114
DS277 US – Softwood Lumber VI 115
US – Softwood Lumber VI (Article 21.5 – Canada) 116
DS282 US – Anti-Dumping Measures on Oil Country Tubular Goods 117
DS285 US – Gambling 118
US – Gambling (Article 21.5 – Antigua and Barbuda) 119
DS291, 292, 293 EC – Approval and Marketing of Biotech Products 120
DS294 US – Zeroing (EC) 121
US – Zeroing (EC) (Article 21.5 – EC) 122
DS295 Mexico – Anti-Dumping Measures on Rice 123
DS296 US – Countervailing Duty Investigation on DRAMs 124
DS299 EC – Countervailing Measures on DRAM Chips 125
DS301 EC – Commercial Vessels 126
DS302 Dominican Republic – Import and Sale of Cigarettes 127
DS308 Mexico – Taxes on Soft Drinks 128
DS312 Korea – Certain Paper 129
Korea – Certain Paper (Article 21.5 – Indonesia) 130
DS315 EC – Selected Customs Matters 131
DS316 EC and certain member States – Large Civil Aircraft 132
EC and certain member States – Large Civil Aircraft (Article 21.5 – US) 133
DS320 US – Continued Suspension 134
DS321 Canada – Continued Suspension 134
DS322 US – Zeroing (Japan) 135
US – Zeroing (Japan) (Article 21.5 – Japan) 136
DS331 Mexico – Steel Pipes and Tubes 137
DS332 Brazil – Retreaded Tyres 138
DS334 Turkey – Rice 139
DS335 US – Shrimp (Ecuador) 140
DS336 Japan – DRAMs (Korea) 141
DS337 EC – Salmon (Norway) 142
DS339, 340, 342 China – Auto Parts 143
DS341 Mexico – Olive Oil 144
DS343, 345 US – Shrimp (Thailand), US – Customs Bond Directive 145
DS344 US – Stainless Steel (Mexico) 146

DS350 US – Continued Zeroing 147
DS353 US – Large Civil Aircraft (2nd complaint) 148
US – Large Civil Aircraft (2nd complaint) (Article 21.5 – EU) 149
DS360 India – Additional Import Duties 150
DS362 China – Intellectual Property Rights 151
DS363 China – Publications and Audiovisual Products 152
DS366 Colombia – Ports of Entry 153
DS367 Australia – Apples 154
DS371 Thailand – Cigarettes (Philippines) 155
DS375, 376, 377 EC – IT Products 156
DS379 US – Anti-Dumping and Countervailing Duties (China) 157
DS381 US – Tuna II (Mexico) 158
US – Tuna II (Article 21.5 – Mexico) 159
US – Tuna II (Mexico) (Article 21.5 – United States)/US – Tuna II (Mexico) (Article 21.5 – Mexico II) 160
DS382 US – Orange Juice (Brazil) 161
DS383 US – Anti-Dumping Measures on PET Bags 162
DS384, 386 US – COOL 163
US – COOL (Article 21.5 – Canada and Mexico) 164
DS392 US – Poultry (China) 165
DS394, 395, 398 China – Raw Materials 166
DS396, 403 Philippines – Distilled Spirits 167
DS397 EC – Fasteners (China) 168
EC – Fasteners (China) (Article 21.5 – China) 169
DS399 US – Tyres (China) 170
DS400, 401 EC – Seal Products 171
DS402 US – Zeroing (Korea) 172
DS404 US – Shrimp (Viet Nam) 173
DS405 EU – Footwear (China) 174
DS406 US – Clove Cigarettes 175
DS412, 426 Canada – Renewable Energy/Canada – Feed-in Tariff Program 176
DS413 China – Electronic Payment Services 177
DS414 China – GOES 178
China – GOES (Article 21.5 – US) 179
DS415, 416, 417, 418 Dominican Republic – Safeguard Measures 180
DS422 US – Shrimp and Sawblades (China) 181
DS425 China – X-Ray Equipment 182
DS427 China – Broiler Products 183
China – Broiler Products (Article 21.5 – US) 184
DS429 US – Shrimp II (Viet Nam) 185
DS430 India – Agricultural Products 186
DS431, 432, 433 China – Rare Earths 187
DS435, 441, 458, 467 Australia – Tobacco Plain Packaging 188
DS436 US – Carbon Steel (India) 189
DS437 US – Countervailing Measures (China) 190
US – Countervailing Measures (Article 21.5 – China) 191
DS438, 444, 445 Argentina – Import Measures 192
DS440 China – Autos (US) 193
DS442 EU – Fatty Alcohols (Indonesia) 194
DS447 US – Animals 195
DS449 US – Countervailing and Anti-Dumping Measures (China) 196

DS453 Argentina – Financial Services 197
DS454, 460 China – HP-SSST (Japan/European Union) 198
DS456 India – Solar Cells 199
DS457 Peru – Agricultural Products 200
DS461 Colombia – Textiles 201
DS464 US – Washing Machines 202
DS468 Ukraine – Passenger Cars 203
DS471 US – Anti-Dumping Methodologies (China) 204
DS472, 497 Brazil – Taxation 205
DS473 EU – Biodiesel (Argentina) 206
DS475 Russia – Pigs (EU) 207
DS477, 478 Indonesia – Import Licensing Regimes 208
DS479 Russia – Commercial Vehicles 209
DS480 EU – Biodiesel (Indonesia) 210
DS482 Canada – Welded Pipe 211
DS483 China – Cellulose Pulp 212
DS484 Canada – Indonesia – Chicken 213
DS485 Russia – Tariff Treatment 214
DS486 EU – PET (Pakistan) 215
DS487 US – Tax Incentives 216
DS488 US – OCTG (Korea) 217
DS490, 496 Indonesia – Iron or Steel Products 218
DS491 US – Coated Paper (Indonesia) 219
DS492 EU – Poultry Meat (China) 220
DS493 Ukraine – Ammonium Nitrate 221
DS495 Korea – Radionuclides 222
DS499 Russia – Railway Equipment 223
DS504 Korea – Pneumatic Valves (Japan) 224
DS505 US – Supercalendered Paper 225
DS511 China – Agricultural Producers 226
DS512 Russia – Traffic in Transit 227
DS513 Morocco – Hot-Rolled Steel (Turkey) 228
DS517 China – TRQs 229
DS524 Costa Rica – Avocados (Mexico) 230
DS529 Australia – Anti-Dumping Measures on Paper 231
DS546 United States – Safeguard Measure on Imports of Large Residential Washers 232
DS577 US – Ripe Olives from Spain 233
US – Ripe Olives from Spain (Article 21.5 – EU) 234
DS583 Turkey – Pharmaceutical Products (EU) 235
DS591 Colombia – Frozen Fries 236
Colombia – Frozen Fries (Article 21.5 – EU) 237
DS593 EU – Palm Oil (Indonesia) 238
DS595 EU – Safeguard Measures on Steel (Turkey) 239
DS600 EU and certain Member States – Palm Oil (Malaysia) 240
DS601 China – AD on Stainless Steel Products from Japan 241
DS603 Australia – AD/CVD on Certain Products (China) 242
DS611 China – IPRs Enforcement (EU) 243

Panel reports subject to pending appeals

DS316 EC and certain member States – Large Civil Aircraft (Article 21.5 – EU) 246
DS371 Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines) 247
Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II) 248
DS436 US – Carbon Steel (India) (Article 21.5 – India) 249
DS461 Colombia – Textiles (Article 21.5 – Colombia)/
Colombia – Textiles (Article 21.5 – Panama) 250
DS476 EU – Energy Package 251
DS484 Indonesia – Chicken (Article 21.5 – Brazil) 252
DS494 EU – Cost Adjustment Methodologies II (Russia) 253
DS510 US – Renewable Energy (India) 254
DS518 India – Iron and Steel Products 255
DS523 US – Pipe and Tube Products (Turkey) 256
DS533 US – Softwood Lumber VII 257
DS534 US – Differential Pricing Methodology 258
DS538 Pakistan – BOPP Film (UAE) 259
DS539 US – Anti-Dumping and Countervailing Duties (Korea) 260
DS541 India – Export Related Measures 261
DS543 US – Tariff Measures 262
DS544, 552, 556, 564 US – Steel and Aluminium Products 263
DS553 Korea – Stainless Steel Bars 264
DS558 China – Additional Duties (US) 265
DS561 Turkey – Additional Duties (US) 266
DS562 US – Safeguard Measure on PV Products (China) 267
DS567 Saudi Arabia – Protection of IPRs 268
DS578 Morocco – Definitive AD Measures on Exercise Books (Tunisia) 269
DS579, 580, 581 India – Sugar and Sugarcane 270
DS582, 584, 588 India – Tariffs on ICT Goods 271
DS592 Indonesia – Raw Materials 272
DS597 US – Origin Marking (Hong Kong, China) 273
DS599 Panama – Import Measures (Costa Rica) 274
DS605 Dominican Republic – AD on Steel Bars (Costa Rica) 275
DS616 EU – CVD/AD on SSCRFP (Indonesia) 276
DS618 EU – CVDs on Biodiesel (Indonesia) 277

Appendices

1. WTO dispute settlement reports and arbitration awards 280
2. Index of Disputes by WTO Agreement 303
3. Index of Disputes by WTO Member 332

Foreword

This updated edition of WTO Dispute Settlement: One-Page Case Summaries has been prepared by the Legal Affairs Division of the WTO with assistance from the Rules Division. This new edition includes all panel and Appellate Body reports adopted by the WTO Dispute Settlement Body up to 31 December 2025. It also includes a separate section with summaries for panel reports that have been circulated to WTO Members and made available on the WTO website, but that have not been adopted by the DSB as they remain subject to pending appeals. Given the unfilled vacancies on the Appellate Body these appeals cannot be advanced or completed. To provide for review of panel reports in the absence of a functioning Appellate Body, parties in several disputes have resorted to an alternative mechanism based on arbitration proceedings under Article 25 of the DSU to address appeals. Where applicable, reference has been made to these arbitrations.

This publication summarizes on a single page the core facts and substantive findings contained in panel and Appellate Body reports for each dispute. Where relevant, the publication also sums up key findings on significant procedural matters. The additional case summaries provided in this 2026 edition also illustrate the continued recourse of WTO Members to resolve their disputes through the WTO Dispute Settlement Understanding. The consistent downloading of the One-Page Summaries from the WTO's website demonstrates that the summaries continue to be a useful tool for students, practitioners, and researchers of the WTO system.

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Director, Legal Affairs Division

Note

The European Union succeeded the European Community for WTO purposes as of 1 December 2009.

The cases are listed in order of their dispute settlement (DS) number, which is created when the WTO receives the consultations request from the complaining member.

Abbreviations

AA	Agreement on Agriculture
AB	Appellate Body
ADA	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ASCM	Agreement on Subsidies and Countervailing Measures
ATC	Agreement on Textiles and Clothing
CVA	Agreement on Implementation of Article VII 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	General Agreement on Tariffs and Trade 1994
GPA	Government Procurement Agreement
Licensing Ag	Agreement on Import Licensing Procedures
ROA	Agreement on Rules of Origin
SA	Agreement on Safeguards
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
VCLT	Vienna Convention on the Law of Treaties

US – GASOLINE[1]
(DS2)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Brazil, Venezuela*	*GATT Arts. III and XX*	Establishment of Panel	*10 April 1995 (Venezuela) 31 May 1995 (Brazil)*
			Circulation of Panel Report	*29 January 1996*
Respondent	*United States*		Circulation of AB Report	*29 April 1996*
			Adoption	*20 May 1996*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The "Gasoline Rule" under the US Clean Air Act that set out the rules for establishing baseline figures for gasoline sold on the US market (different methods for domestic and imported gasoline), with the purpose of regulating the composition and emission effects of gasoline to prevent air pollution.

- **Product at issue:** Imported gasoline and domestic gasoline.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that the measure treated imported gasoline "less favourably" than domestic gasoline in violation of Art. III:4, as imported gasoline effectively experienced less favourable sales conditions than those afforded to domestic gasoline. In particular, under the regulation, importers had to adapt to an average standard, i.e. "statutory baseline", that had no connection to the particular gasoline imported, while refiners of domestic gasoline had only to meet a standard linked to their own product in 1990, i.e. individual refinery baseline.

- **GATT Art. XX(g) (general exceptions – exhaustible natural resources):** In respect of the US defence under Art. XX(g), the Appellate Body modified the Panel's reasoning and found that the measure was "related to" (i.e. "primarily aimed at") the "conservation of exhaustible natural resources" and thus fell within the scope of Art. XX(g). However, the measure was still not justified by Art. XX because the discriminatory aspect of the measure constituted "unjustifiable discrimination" and a "disguised restriction on international trade" under the chapeau of Art. XX.

3. OTHER ISSUES[2]

- **GATT Art. III:1 (national treatment – general principles):** The Panel considered it unnecessary to examine the consistency of the Gasoline Rule with Art. III:1, given that a finding of violation of Art III:4 (i.e. more specific provision than Art. III:1) had already been made.

- **Appeal of an issue (Appellate Body working procedures):** The Appellate Body held that participants can appeal an issue only through the filing of a Notice of Appeal and an "appellant's" submission, but not through an "appellee's" submission.

- **VCLT (general rule of interpretation):** The Appellate Body stated that the general rule of interpretation under VCLT Art. 31 has attained the status of a rule of customary or general international law and thus forms part of the "customary rules of interpretation of public international law" which the Appellate Body has been directed, by DSU Art. 3(2), to apply in seeking to clarify the provisions of the General Agreement and the other "covered agreements" of the "WTO Agreement". It also said that one of the corollaries of the "general rule of interpretation" in VCLT Art. 31 is that "interpretation must give meaning and effect to all the terms of a treaty" and an interpreter may not adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility.

1 *United States – Standards for Reformulated and Conventional Gasoline*
2 Other issues addressed: ceased measure; terms of reference.

JAPAN – ALCOHOLIC BEVERAGES II[1]
(DS8, 10, 11)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Canada, European Communities, United States*	*GATT Art. III*	Establishment of Panel	*27 September 1995*
			Circulation of Panel Report	*11 July 1996*
Respondent	*Japan*		Circulation of AB Report	*4 October 1996*
			Adoption	*1 November 1996*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Japanese Liquor Tax Law that established a system of internal taxes applicable to all liquors at different tax rates depending on which category they fell within. The tax law at issue taxed shochu at a lower rate than the other products.

- **Product at issue:** Vodka and other alcoholic beverages such as liqueurs, gin, genever, rum, whisky and brandy, and domestic shochu.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. III:2 (national treatment – taxes and charges), first sentence (like products):** The Appellate Body upheld the Panel's finding that vodka was taxed in excess of shochu, in violation of Art. III:2, first sentence, accepting the Panel's interpretation that Art. III:2, first sentence requires an examination of the conformity of an internal tax measures by determining two elements: (i) whether the taxed imported and domestic products are like; and (ii) whether the taxes applied to the imported products are in excess of those applied to the like domestic products.

- **GATT Art. III:2 (national treatment – taxes and charge), second sentence (directly competitive or substitutable products):** The Appellate Body upheld the Panel's finding that shochu and whisky, brandy, rum, gin, genever, and liqueurs were not similarly taxed so as to afford protection to domestic production, in violation of Art. III:2, second sentence. Modifying some of the Panel's reasoning, the Appellate Body clarified three separate issues that must be addressed to determine whether a certain measure is inconsistent with Art. III:2, second sentence: (i) whether imported and domestic products are directly competitive or substitutable products; (ii) whether the directly competitive or substitutable imported and domestic products are not similarly taxed; and (iii) whether the dissimilar taxation of the directly competitive or substitutable imported and domestic products is applied so as to afford protection to domestic production.

- **GATT Art. III:1 (national treatment – general principles):** The Appellate Body agreed with the Panel that Art. III:1, as a provision containing general principles, informs the rest of Art. III, and further elaborated that, because of the textual differences in the two sentences, Art. III:1 informs the first and second sentences of Art. III:2 in different ways.

3. OTHER ISSUES[2]

- **Status of prior panel reports**: Although reversing the Panel's finding that adopted GATT and WTO panel reports constitute subsequent practice under VCLT Art. 31(3)(b), the Appellate Body found, however, that such reports create "legitimate expectations" that should be taken into account where they are relevant to a dispute.

1 *Japan – Taxes on Alcoholic Beverages*
2 Other issues addressed: treaty interpretation (VCLT); terms of reference.

AUSTRALIA – SALMON[1]
(DS18)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*SPS Arts. 5.1, 5.5 and 5.6*	Establishment of Panel	*10 April 1997*
			Circulation of Panel Report	*12 June 1998*
Respondent	*Australia*		Circulation of AB Report	*20 October 1998*
			Adoption	*6 November 1998*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Australia's import prohibition of certain salmon from Canada.
- **Product at issue:** Fresh, chilled or frozen ocean-caught Canadian salmon and certain other Canadian salmon.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **SPS Art. 5.1 (risk assessment):** The Appellate Body, although reversing the Panel's finding because the Panel had examined the wrong measures (i.e. heat-treatment requirement), still found that the correct measure at issue – Australia's import prohibition – violated Art. 5.1 (and, by implication, Art. 2.2) because it was not based on a "risk assessment" requirement under Art. 5.1.
- **SPS Art. 5.5 (prohibition on discrimination and disguised restriction on international trade):** The Appellate Body upheld the Panel's finding that the import prohibition violated Art. 5.5 (and, by implication Art. 2.3) as "arbitrary or unjustifiable" levels of protection were applied to several different yet comparable situations so as to result in "discrimination or a disguised restriction" (i.e. more strict restriction) on imports of salmon, compared to imports of other fish and fish products such as herring and finfish.
- **SPS Art. 5.6 (appropriate level of protection):** The Appellate Body reversed the Panel's finding that the heat-treatment violated Art. 5.6 by being "more trade-restrictive than required", because heat treatment was the wrong measure. The Appellate Body, however, could not complete the Panel's analysis of this issue under Art. 5.6 due to insufficient facts on the record. (In this regard, the Appellate Body said that it would complete the Panel's analysis in a situation like this "to the extent possible on the basis of the factual findings of the Panel and/or of undisputed facts in the Panel record".)

3. OTHER ISSUES[2]

- **False judicial economy:** The Appellate Body found that the Panel in this case exercised "false judicial economy" by not making findings for all the products at issue, in particular, findings in respect of Arts. 5.5 and 5.6 for other Canadian salmon. The Appellate Body clarified that, in applying the principle of judicial economy, panels must address those claims on which a finding is necessary to secure a positive solution to the dispute. Providing only a partial resolution of the matter at issue would be "false judicial economy".

1 *Australia – Measures Affecting Importation of Salmon*

2 Other issues addressed: SPS Arts. 5.5 and 5.6 as applied to "certain other Canadian salmon" than certain ocean-caught Canadian salmon (in connection with the Appellate Body's finding on the Panel's exercise of false judicial economy); relationship between SPS Arts. 5.5 and 2.3; panel's terms of reference; scope of appellate review (in relation to burden of proof); DSU Art. 11; panel's admission and consideration of evidence; scope of interim review (DSU Art. 15.2); evidentiary issues; claims and arguments; applicability and relationship between the GATT and the SPS Agreement; order of the claims to be addressed.

AUSTRALIA – SALMON (ARTICLE 21.5 – CANADA)[1]
(DS18)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*SPS Arts. 2.2, 2.3, 5.1, 5.5 and 5.6* *DSU Art. 10.3*	Referred to the Original Panel	*28 July 1999*
			Circulation of Panel Report	*18 February 2000*
Respondent	*Australia*		Circulation of AB Report	*NA*
			Adoption	*20 March 2000*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Australia published the "1999 Import Risk Analysis" which included additional analyses that considered the health risks associated with the importation into Australia of fresh, chilled and frozen salmon. Australia also modified its legislation on the quarantine of imports by allowing, pursuant to permits, non-heated salmon to be imported and released from Australian quarantine facilities in cases where the salmon was in a "consumer-ready" form. Similar regulations were adopted, around the same time, regarding imports of herring and finfish.

2. SUMMARY OF KEY PANEL FINDINGS

- **SPS Art. 5.1 (risk assessment):** The Panel found that Australia was in violation of Art. 5.1 and by implication, therefore, of the general obligations of Art. 2.2. Reiterating the three requirements laid down previously by the Appellate Body that are essential to constitute a "risk assessment", the Panel noted that for a measure to be "based on" a risk assessment there needs to be a "rational relationship" between the measure and the risk assessment, and that none of the experts consulted by the Panel could find any justification in Australia's risk assessment measure for the requirement that salmon be "consumer-ready". Based on the same rationale, the Panel found that the ban on the imports of salmon enacted by the Tasmanian government was also in violation of Arts. 5.1 and 2.2.

- **SPS Art. 5.5 (prohibition on discrimination and disguised restriction on international trade):** The Panel concluded that Australia was not in violation of Art. 5.5, as it found that although Australia was employing different levels of protection to different, but sufficiently comparable, situations, the different treatment was scientifically justified, and not arbitrary or unjustifiable and the different treatment was thus not a disguised restriction on international trade.

- **SPS Art 5.6 (appropriate level of protection – alternative measures):** Upon examining the Australian measure in light of the three elements needed to demonstrate an inconsistency with Art. 5.6, the Panel found that Australia had acted inconsistently with Art. 5.6. The Panel found that, taking into account the technical and economic feasibility of alternative measures (first element), there were other less-trade restrictive measures available to Australia that would provide the appropriate level of protection (second element), and these alternative measures (i.e. requirement for "special packaging" as an alternative to the current "consumer-ready" requirement) would lead to significantly more imported salmon in the Australian market (third element).

3. OTHER ISSUES[2]

- **Terms of reference (DSU Art. 21.5 panels):** The Panel refused to grant Australia's request to impose jurisdictional limits on Art. 21.5 compliance panels and stated that there is no suggestion in the text of Art. 21.5 that only certain issues of consistency of measures may be considered, but that a compliance panel can potentially examine the consistency of a measure taken to comply with a DSB recommendation or ruling in light of any provision of *any* of the covered agreements.

1 *Australia – Measures Affecting Importation of Salmon – Recourse to Article 21.5 of the DSU by Canada*
2 Other issues addressed: protection of confidential information; *amicus curiae* submission; third party rights; SPS Art. 8 and Annex C, para. 1(c).

BRAZIL – DESICCATED COCONUT[1]
(DS22)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Philippines*	*GATT Arts. I, II and VI* *AA Art. 13*	Establishment of Panel	*5 March 1996*
			Circulation of Panel Report	*17 October 1996*
Respondent	*Brazil*		Circulation of AB Report	*21 February 1997*
			Adoption	*20 March 1997*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** A countervailing duty Brazil imposed on 18 August 1995 based on an investigation initiated on 21 June 1994.
- **Product at issue:** Desiccated coconut and coconut milk imported from the Philippines.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Arts. I (most-favoured-nation treatment), II (schedules of concessions) and VI (anti-dumping and countervailing duties):** The Appellate Body upheld the Panel's finding that GATT Arts. I, II and VI did not apply to the Brazilian countervailing duty measure at issue because it was based on an investigation initiated prior to 1 January 1995, the date that the WTO Agreement came into effect for Brazil. Specifically, the Panel found: (i) the subsidy rules in the GATT cannot apply independently of the ASCM; and (ii) non-application of the ASCM renders the subsidy rules in the GATT non-applicable. As for GATT Arts. I and II, they did not apply to this dispute because the claims under these provisions derived from the claims of inconsistency with Art. VI.
- **AA Art. 13 (due restraint):** The Panel found that the exemption for countervailing duties contained in AA Art. 13 did not apply to a dispute based on a countervailing duty investigation initiated prior to the date the WTO Agreement came into effect.

3. OTHER ISSUES[2]

- **Terms of reference**: The Appellate Body noted that a panel's terms of reference serve two important functions: (i) they fulfil the important due process objective of giving parties and third parties sufficient information about the claims at issue to allow them an opportunity to respond to the complainant, and (ii) they establish the panel's jurisdiction by defining the precise claims at issue.

1 *Brazil – Measures Affecting Desiccated Coconut*
2 Other issues addressed: special terms of reference (DSU Art. 7.3); requirements of panel request (DSU Art. 6.2).

US – UNDERWEAR[1]
(DS24)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Costa Rica*	*ATC Art. 6* *GATT Art. X:2*	Establishment of Panel	*5 March 1996*
			Circulation of Panel Report	*8 November 1996*
Respondent	*United States*		Circulation of AB Report	*10 February 1997*
			Adoption	*25 February 1997*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Quantitative import restriction imposed by the United States, as a transitional safeguard measure under ATC Art. 6.
- **Product at issue:** Underwear imports from Costa Rica.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ATC Art. 6.10 (transitional safeguard measures – prospective application):** The Appellate Body reversed the Panel's finding and concluded that in the absence of express authorization, the plain language of Art. 6.10 creates a presumption that a measure may be applied only prospectively, and thus may not be backdated so as to apply as of the date of publication of the importing Member's request for consultation.
- **ATC Art. 6.2 (transitional safeguard measures – serious damage and causation):** The Panel refrained from making a finding on whether the United States demonstrated "serious damage" within the meaning of Art. 6.2, stating that ATC Art. 6.3 does not provide sufficient and exclusive guidance in this case. However, the Panel found that the United States had not demonstrated actual threat of serious damage, and therefore had violated Art. 6. The Panel also found that the United States failed to comply with its obligation to examine causality under Art. 6.2.
- **GATT Art. X:2 (trade regulations – enforcement):** Although disagreeing with the Panel's application of Art. X:2 to the issue of backdating under ATC Art. 6.10, the Appellate Body agreed with the Panel's general interpretation of Art. X:2 that certain country-specific measures may constitute "measures of general application" under Art. X:2, although a company or shipment-specific measure may not. It also noted the fundamental importance of Art. X:2 which reflects the "principle of transparency" and has "due process dimensions".

3. OTHER ISSUES[2]

- **Standard of review (DSU Art. 11):** This was the first panel to refer to Art. 11 as its standard of review in examining a determination reached by a WTO Member under a WTO Agreement. The Panel found that its standard of review in this case was to make an "objective assessment" which entails "an examination of whether the US investigating authority had examined all relevant facts before it, whether adequate explanation had been provided of how the facts as a whole supported the determination made, and consequently, whether the determination made was consistent with the international obligation of the United States".

1 *United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear*

2 Other issues addressed: burden of proof (ATC Art. 6 as an exception); treaty interpretation (VCLT in relation to the interpretation of the ATC); structure of ATC Art. 6; panel's evidentiary scope of review (DSU Art. 4.6).

EC – HORMONES[1]
(DS26, 48)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*United States, Canada*	*SPS Arts. 3 and 5*	Establishment of Panel	*20 May 1996 (United States) 16 October 1996 (Canada)*
			Circulation of Panel Report	*18 August 1997*
Respondent	*European Communities*		Circulation of AB Report	*16 January 1998*
			Adoption	*13 February 1998*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** EC prohibition on the placing on the market and the importation of meat and meat products treated with certain hormones.
- **Product at issue:** Meat and meat products treated with hormones for growth purposes.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **SPS Art. 3.1 (international standards):** The Appellate Body rejected the Panel's interpretation and said that the requirement that SPS measures be "based on" international standards, guidelines or recommendations under Art. 3.1 does not mean that SPS measures must "conform to" such standards.
- **Relationship between SPS Arts. 3.1, 3.2 and 3.3 (harmonization):** The Appellate Body rejected the Panel's interpretation that Art. 3.3 is the exception to Arts. 3.1 and 3.2 assimilated together and found that Arts. 3.1, 3.2 and 3.3 apply together, each addressing a *separate* situation. Accordingly, it reversed the Panel's finding that the burden of proof for the violation under Art. 3.3, as a provision providing the exception, shifts to the responding party.
- **SPS Art. 5.1 (risk assessment):** While upholding the Panel's ultimate conclusion that the EC measure violated Art. 5.1 (and thus Art. 3.3) because it was not based on a risk assessment, the Appellate Body reversed the Panel's interpretation, considering that Art. 5.1 requires that there be a "rational relationship" between the measure at issue and the risk assessment.
- **SPS Art. 5.5 (prohibition on discrimination and disguised restriction on international trade):** The Appellate Body reversed the Panel's finding that the EC measure, through arbitrary or unjustifiable distinctions, resulted in "discrimination or a disguised restriction of international trade" in violation of Art. 5.5, noting: (i) the evidence showed that there were genuine anxieties concerning the safety of the hormones; (ii) the necessity for harmonizing measures was part of the effort to establish a common internal market for beef; and (iii) the Panel's finding was not supported by the "architecture and structure" of the measures.

3. OTHER ISSUES[2]

- **Burden of proof (SPS Agreement):** The Appellate Body reversed the Panel's finding that the SPS Agreement allocates the "evidentiary burden" to the Member imposing an SPS measure.
- **Standard of review (DSU Art. 11):** The Appellate Body noted that the issue of whether a panel has made an objective assessment of the facts under Art. 11 is a "legal question" that falls within the scope of appellate review under DSU Art. 17.6. The Appellate Body further said that the duty to make an objective assessment of facts is an "obligation to consider the evidence presented to a panel and to make factual findings on the basis of that evidence." The Appellate Body found that the Panel did comply with the DSU Art. 11 obligation because although the Panel sometimes misinterpreted some of the evidence before it, these mistakes did not rise to the level of "deliberate disregard" or "wilful distortion" of the evidence.
- **Claims vs arguments**: The Appellate Body held that while a panel is prohibited from addressing legal claims not within its terms of reference, a panel is permitted to examine any legal argument submitted by a party or "to develop its own legal reasoning".

1 *European Communities – Measures Concerning Meat and Meat Products*

2 Other issues addressed: standard of review (DSU Art. 11); precautionary principle; retroactivity of treaties (VCLT Art. 28); objective assessment (DSU Art. 11); expert consultation; additional third party rights to the United States and Canada (DSU Art. 9.3); judicial economy.

EC – BANANAS III[1]
(DS27)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*Ecuador, Guatemala, Honduras, Mexico, United States*	*GATT Arts. I, III, X and XIII* *GATS Arts. II and XVII* *Licensing Ag Art. 1.3* *Lomé Waiver*	Establishment of Panel	*8 May 1996*
			Circulation of Panel Report	*22 May 1997*
Respondent	*European Communities*		Circulation of AB Report	*9 September 1997*
			Adoption	*25 September 1997*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The European Communities' regime for the importation, distribution and sale of bananas, introduced on 1 July 1993 and established by EEC Council Regulation 404/93.
- **Product at issue:** Bananas imported from third countries.[2]

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. XIII (non-discriminatory administration of quantitative restrictions):** The Appellate Body upheld the Panel's finding that the allocation of tariff quota shares to some Members not having a substantial interest in supplying bananas, but not to others, was inconsistent with Art. XIII:1. The Appellate Body also agreed with the Panel that the BFA tariff quota reallocation rules[3], under which a portion of a tariff quota share not used by one BFA country could be reallocated exclusively to other BFA countries, were inconsistent with Arts. XIII:1 and XIII:2, chapeau.
- **Lomé Waiver**: The Appellate Body reversed the Panel's finding and found that the Lomé Waiver does not apply to (i.e. exempt) violations of GATT Art. XIII given that the Waiver refers only to Art. I:1 and that waivers must be narrowly interpreted and be subject to "strict disciplines".
- **GATT Art. I (most-favoured-nation treatment):** The Appellate Body upheld the Panel's finding that the activity function rules, which applied only to licence allocation rules for imports from other than traditional ACP countries, were inconsistent with Art. I:1. The Appellate Body also agreed with the Panel that the EC export certificate requirement accorded an advantage to some Members only, i.e. the BFA countries, in violation of Art. I:1. In an issue not appealed to the Appellate Body, the Panel found that tariff preferences for ACP countries were inconsistent with Art. I:1, but that they were justified by the Lomé Waiver.
- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Appellate Body agreed with the Panel that the EC procedures and requirements for the distribution of licences for importing bananas from non-traditional ACP suppliers were inconsistent with Art. III:4.
- **GATT Art. X:3(a) (trade regulations – uniform, impartial and reasonable administration) and Licensing Agreement Art. 1.3 (neutral application and fair and equitable administration of rules):** The Appellate Body reversed the Panel's findings of violations of GATT Art. X:3(a) and Licensing Agreement Art. 1.3, on the grounds that these provisions applied only to the administrative procedures for rules, not the rules themselves.
- **GATS Arts. II (most-favoured-nation treatment) and XVII (national treatment):** The Appellate Body upheld the Panel's finding that the EC measures were inconsistent with Arts. II and XVII because they were discriminatory, and clarified that the "aim and effect" of a measure is irrelevant under Arts. II and XVII.

3. OTHER ISSUES

- **Private counsel**: The Appellate Body ruled that private lawyers may appear on behalf of a government during an Appellate Body oral hearing. (c.f. the Panel did not allow them.)

1 *European Communities – Regime for the Importation, Sale and Distribution of Bananas*
2 Third countries are those countries other than (i) 12 African, Caribbean and Pacific (ACP) countries who have traditionally exported bananas to the European Communities and (ii) ACP countries that were not traditional suppliers of the EC market.
3 The Framework Agreement on Bananas (BFA).

EC – BANANAS III (ARTICLE 21.5 – ECUADOR)[1] [2]
(DS27)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Ecuador*	*GATT Arts. I and XIII* *GATS Arts. II and XVII*	Referred to the Original Panel	*12 January 1999*
			Circulation of Panel Report	*12 April 1999*
Respondent	*European Communities*		Circulation of AB Report	*NA*
			Adoption	*6 May 1999*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- EC Regulation No. 1637/98 which was adopted to amend Regulation (EEC) No. 404/93 – the measure at issue in the original dispute – together with EC Regulation No. 2362/98, which laid down implementing rules for the amended Regulation. The Regulation pertained to imports of bananas into the European Communities and access to the EC market for three categories of bananas.

2. SUMMARY OF KEY PANEL FINDINGS[3]

- **GATT Art. XIII:1 (non-discriminatory administration of quantitative restrictions – general principles):** The Panel found that the Regulation was inconsistent with Art. XIII:1 as it resulted in disparate treatment between the traditional ACP suppliers and other non-substantial suppliers and third countries by not being "similarly restricted" as required by the GATT.

- **GATT Art. XIII:2 (non-discriminatory administration of quantitative restrictions – rules on distribution):** The Panel also found a violation of Art. XIII:2 as the EC Banana regime provided for a large quota to ACP countries of which collectively, they used only 80 per cent was used over a two-year period, whereas the most-favoured-nation quota had always been filled and even some out-of-quota imports had been made. Therefore, the Panel found that the regime did not aim at a distribution of trade that would represent as closely as possible the market share that countries would have had in the absence of restrictions.

- **GATT Art. XIII:2(d) (non-discriminatory administration of quantitative restrictions – quota allocation):** In the case of the tariff quota allocated to Ecuador under the revised EC regime, the Panel found a violation of Art. XIII:2(d), as the EC regulations under which the base period was calculated to determine future quota allocations were WTO-inconsistent.

- **GATT Art. I:1 (most-favoured-nation treatment):** The Panel found that a quota level more favourable for ACP countries was a requirement under the Lomé Convention. However, it found a violation of Art. I:1 in the collective allocation of the quota to the ACP countries, calculated on the basis of individual countries' pre-1991 best-ever export volume as it could have resulted in some countries exporting more than their pre-1991 best-ever export volume, which would not have been justified under the Lomé Waiver. As for the preferential zero-tariff for non-traditional ACP countries' imports, the Panel found no violation since the Lomé Convention allows the European Communities to grant preferential treatment to ACP countries as well as discretion as to the form of that preferential treatment.

- **GATS Arts. II (most-favoured-nation treatment) and XVII (national treatment):** The Panel first found that the European Communities had committed to accord no less favourable treatment within the meaning of Arts. II and XVII to the range of principle and subordinate "wholesale trade services". The Panel then examined the design, architecture and revealing structure of the measure at issue and concluded that Ecuador's suppliers of wholesale services were *de facto* granted less favourable treatment than the EC and ACP suppliers, in violation of Arts. II and XVII. The Panel also found that the "newcomer" licences scheme and the "single-pot" licensing rules challenged by Ecuador violated Art. XVII, as both measures also resulted in *de facto* less favourable conditions of competition than to like EC service suppliers.

1 *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by Ecuador*
2 A report was circulated on 12 April 1999 in respect of *EC – Bananas III (Article 21.5 – EC).* However as it was not put on the agenda of the DSB, it remains unadopted.
3 Other issues addressed: DSU Arts. 7, 21.5 and 19; GATS Arts II and XVII.

EC – BANANAS III (ARTICLE 21.5 – ECUADOR II)
EC – BANANAS III (ARTICLE 21.5 – US)[1]
(DS27)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Ecuador, United States*	*GATT Arts. I, II and XIII DSU Art. 21.5*	Referred to the Original Panels	*20 March 2007 (Ecuador) 12 July 2007 (United States)*
			Circulation of Panel Reports	*7 April 2008 (Ecuador) 19 May 2008 (United States)*
Respondent	*European Communities*		Circulation of AB Reports	*26 November 2008*
			Adoption	*11 December 2008 (Ecuador) 22 December 2008 (United States)*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The European Communities' bananas import regime, contained in EC Regulation No. 1964/2005 of 24 November 2005. The regime consisted of a duty-free quota of 775,000 mt for bananas from ACP countries and a tariff rate of €176/mt for all other imported bananas.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. XIII (non-discriminatory administration of quantitative restrictions):** In the case initiated by Ecuador, the Appellate Body upheld the Panel's finding that, to the extent that the European Communities argued that it had implemented a suggestion pursuant to DSU Art. 19.1, the Panel was not prevented from conducting the assessment requested by Ecuador under DSU Art. 21.5. In both cases, the Appellate Body upheld, albeit for different reasons, the Panel's finding that the EC bananas import regime, in particular its duty-free tariff quota reserved for ACP countries, was inconsistent with Arts. XIII:1 and XIII:2.

- **GATT Art II (schedules of concessions):** The Appellate Body reversed the Panel's finding that the waiver approved in November 2001 by the Ministerial Conference in Doha constituted a subsequent agreement between the parties extending the tariff quota concession for bananas listed in the European Communities' Schedule of Concessions beyond 31 December 2002, until the rebinding of the European Communities' tariff on bananas. The Appellate Body also reversed the Panel's finding that the European Communities' tariff quota concession for bananas was intended to expire on 31 December 2002 on account of para. 9 of the Framework Agreement on Bananas and found that it remained in force until the rebinding process had been completed, and the resulting tariff rate had been consolidated into the European Communities' Schedule. Finally, the Appellate Body upheld, albeit for different reasons, the Panel's finding that the tariff applied by the European Communities to MFN imports of bananas, set at €176/mt, without consideration of the tariff quota of 2.2 million mt bound at an in-quota tariff rate of €75/mt, was an ordinary customs duty in excess of that provided for in the European Communities' Schedule of Concessions, and thus was inconsistent with Art. II:1(b).

- **GATT Art I (most-favoured-nation treatment):** In an issue not appealed to the Appellate Body, both Panels found that the preference granted by the European Communities of an annual duty-free tariff quota of 775,000 mt of imported bananas originating in ACP countries constituted an advantage, which was not accorded to like bananas originating in non-ACP WTO Members, and was therefore inconsistent with Art. I:1. The Panel also found that the European Communities had failed to demonstrate the existence of a waiver from Art. I:1 for the time after the expiration of the Doha Waiver to cover the preference granted by the European Communities to the duty-free tariff quota of bananas from ACP countries.

3. OTHER ISSUES

- **Multiple complaints (DSU Art. 9.3):** The Appellate Body found that the Panels did not act inconsistently with DSU Art. 9.3 by maintaining different timetables in the two Art. 21.5 proceedings. The Appellate Body upheld, albeit for different reasons, the Panel's finding that Ecuador and the United States were not barred by the Understanding on Bananas, signed in April 2001, from initiating the compliance proceedings. In the case initiated by the United States, the Appellate Body upheld, albeit for different reasons, the Panel's finding that the EC bananas import regime constituted a "measure taken to comply" within the meaning of DSU Art. 21.5 and was therefore properly before the Panel. In that case, the Appellate Body also found that the Panel did not err in making findings with respect to a measure that had ceased to exist subsequent to the establishment of the Panel, but before the Panel issued its report, and that deficiencies in the EC Notice of Appeal did not lead to the dismissal of the appeal.

1 *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Second Recourse to Article 21.5 of the DSU by Ecuador;* and *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Article 21.5 of the DSU by the United States*
2 Art. II was invoked only by Ecuador.

CANADA – PERIODICALS[1]
(DS31)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. III, XI and XX*	Establishment of Panel	*19 June 1996*
			Circulation of Panel Report	*14 March 1997*
Respondent	*Canada*		Circulation of AB Report	*30 June 1997*
			Adoption	*30 July 1997*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Tariff Code 9958, which prohibited the importation into Canada of any periodical that was a "special edition"[2]; (ii) the Excise Tax Act, which imposed, in respect of each split-run edition[3] of a periodical, a tax equal to 80 per cent of the value of all the advertisements contained in the split-run edition; and (iii) the postal rate scheme under which different postal rates were applied to domestic and foreign periodicals.

- **Product at issue:** Imported periodicals (from the United States) and domestic periodicals.

2. SUMMARY OF KEY PANEL/AB FINDINGS[4]

- **GATT Art. XI (prohibition on quantitative restrictions) and Art. XX(d) (exceptions – necessary to secure compliance with laws):** The Panel found that Tariff Code 9958, which prohibited the importation of certain periodicals, violated Art. XI, and was not justified under Art. XX(d) because it could not be regarded as a measure to secure compliance with Canada's Income Tax Act.

- **GATT Art. III:2, first and second sentences (national treatment – taxes and charges):** The Appellate Body reversed the Panel's finding that imported split-run periodicals and domestic non-split run periodicals were "like products" (Art. III:2, first sentence). The Appellate Body concluded that the Excise Tax Act was inconsistent with Art. III:2, second sentence because (i) imported split-run periodicals were "directly competitive or substitutable" with domestic non-split-run periodicals; (ii) imported and domestic products were not similarly taxed; and (iii) the tax was applied so as to afford protection to domestic products.

- **GATT Art. III:4 (national treatment – domestic laws and regulations) and III:8(b) (national treatment – subsidies exception):** The Panel found that the application of discriminatory postal rates for domestic and imported periodicals under Canada's postal rate scheme violated Art. III:4. The Appellate Body reversed the Panel's further finding that this postal scheme, however, was justified under Art. III:8(b), on the ground that the kinds of measures covered by Art. III:8(b), and thus exempt from the obligations of Art. III, are "only the payment of subsidies which involves the expenditure of revenue by a government". Under Canada's postal rate scheme at issue, however, no subsidy payments were made to private entities, and certain companies simply received a reduction in postal rates.

1 *Canada – Certain Measures Concerning Periodicals*

2 "Special edition" is a periodical that "contains an advertisement that was primarily directed to a market in Canada and that does not appear in identical form in all editions of that issue of the periodical that were distributed in the periodical's country of origin".

3 The Excise Tax Act defines "split-run edition" as an edition of an issue of a periodical: (i) that is distributed in Canada; (ii) in which more than 20 per cent of the editorial material is the same or substantially the same as editorial material that appears in one or more excluded editions of one or more issues of one or more periodicals; and (iii) contains an advertisement that does not appear in identical form in all of the excluded editions.

4 Other issues addressed: applicability of the GATT and/or the GATS (Excise Tax Act); status of panel finding not appealed; Appellate Body's completion of a panel's analysis.

US – WOOL SHIRTS AND BLOUSES[1]
(DS33)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*India*	*ATC Arts. 6 and 2.4*	Establishment of Panel	*17 April 1996*
			Circulation of Panel Report	*6 January 1997*
Respondent	*United States*		Circulation of AB Report	*25 April 1997*
			Adoption	*23 May 1997*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Temporary safeguard measure imposed by the United States in the form of a quota on certain imports from India.
- **Product at issue:** Woven wool shirts and blouses from India.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ATC Art. 6 (transitional safeguard measures):** The Panel found that the United States violated Arts. 6.2 and 6.3 because it failed to meet the causation and serious damage (and threat of serious damage) requirements therein when imposing its transitional safeguard measure, in particular, by not examining the data relevant to the "woven wool shirts and blouses industry", as opposed to the "woven shirts and blouses industry in general". The Panel also considered the list of industry impact factors in Art. 6.3 to be a mandatory list: an investigating authority must demonstrate that it considered the relevance or otherwise of each of the listed items in Art. 6.3. Moreover, the Panel stated that under Art. 6.3, "some consideration and a relevant and adequate explanation have to be provided of how the facts as a whole support the conclusion that the termination is consistent with the requirements of the ATC".
- **ATC Art. 2.4 (prohibition on new restrictions):** The Panel found that, by violating Art. 6, the United States also violated Art. 2.4, which prohibits the imposition of restraints on the import of textiles and clothing beyond those restraints permitted under the ATC.

3. OTHER ISSUES[2]

- **Burden of proof**: The Appellate Body upheld the Panel's interpretation and adopted the rule used by most international tribunals, clarifying the rule on the burden of proof by stating that "the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence". Also, the Appellate Body found that ATC Art. 6, which governs transitional safeguards with respect to textile products, does not constitute an affirmative defence, but rather a "fundamental part of the rights and obligations of WTO Members… during the [ATC] transition period", and thus, a Member claiming that the United States violated this right must "assert and prove its claim."
- **Judicial economy**: The Appellate Body upheld the Panel's exercise of judicial economy and found that, under DSU Art. 11, panels are not required to make a finding on every claim raised, but rather panels may practise "judicial economy" and make findings on only those claims necessary to resolve a dispute.

1 *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*

2 Other issues addressed: Appellate Body's revised schedule (Working Procedures for Appellate Review, Rule 16(2)); scope of appellate review (DSU Art. 17.13); expired measure (panel's mandate in its terms of reference); standard of review; role of the TMB and dispute settlement mechanism.

TURKEY – TEXTILES[1]
(DS34)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*India*	*GATT Arts. XI, XIII and XXIV* *ATC Art. 2.4*	Establishment of Panel	*13 March 1998*
			Circulation of Panel Report	*31 May 1999*
Respondent	*Turkey*		Circulation of AB Report	*22 October 1999*
			Adoption	*19 November 1999*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Turkey's quantitative import restrictions pursuant to the Turkey-EC customs union.
- **Product at issue:** Textiles and clothing from India.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Arts. XI (prohibition on quantitative restrictions) and XIII (non-discriminatory administration of quantitative restrictions):** The Panel found that the quantitative restrictions at issue were inconsistent with Arts. XI and XIII. (Turkey did not deny this.)
- **ATC Art. 2.4 (prohibition on new restrictions):** The Panel found that Turkey's measures were *new* restrictions, that did not exist at the time of the entry into force of the ATC, and, thus, were prohibited by Art. 2.4.
- **GATT Art. XXIV (regional trade agreements):** The Appellate Body agreed with the Panel's ultimate conclusion that Turkey's measures were not justified under Art. XXIV because there were alternatives available to Turkey that would have met the requirements of Art. XXIV:8(a), which were necessary to form the customs union, other than the adoption of the quantitative restrictions. The Appellate Body, therefore, modified the Panel's legal reasoning and concluded that to determine whether a measure found inconsistent with certain other GATT provisions can be justified under Art. XXIV, a panel should examine two conditions: (i) whether a "customs union", as defined in Art. XXIV:8 exists (compatibility of a customs union with the provisions of Art. XXIV); and (ii) whether the formation of a customs union would be prevented without the inconsistent measure (i.e. whether the measure is necessary for the formation of a customs union). (The Panel had assumed the existence of the customs union and moved on to examine the necessity of the measure.)

3. OTHER ISSUES[2]

- **Burden of proof (GATT Art. XXIV):** The Appellate Body agreed with the Panel that Art. XXIV may be considered as a "defence" or "exception" to a violation. The Panel also held that the burden of proof under Art. XXIV was on the party invoking it.
- **Information from non-party Member (DSU Art. 13.2):** Despite the fact that the European Communities was not a party or a third party to the dispute, the Panel asked the European Communities, pursuant to Art. 13.2, for relevant factual and legal information so as to to have "the fullest possible understanding of this case". The European Communities provided answers to the Panel's questions.

1 *Turkey – Restrictions on Imports of Textile and Clothing Products*

2 Other issues addressed: preliminary ruling on Turkey's claim for the dismissal of India's claims (non-participation of European Communities as respondent); entity to which the measures could be attributed (Turkey, European Communities or the Turkey-European Communities customs union); preliminary ruling on the sufficiency of the Panel request (DSU Art. 6.2, identification of measures); role of the TMB; adequacy of consultations (GATT Art. XXII and DSU Art. 4); scope of disputes under GATT Art. XXIV.

JAPAN – FILM[1]
(DS44)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. XXIII:1(b), III:4 and X:1*	Establishment of Panel	*16 October 1996*
			Circulation of Panel Report	*31 March 1998*
Respondent	*Japan*		Circulation of AB Report	*NA*
			Adoption	*22 April 1998*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Actions by Japan affecting the distribution, offering for sale, and internal sale of imported consumer photographic film and paper, in particular, (i) distribution measures; (ii) restrictions on large retail stores; and (iii) promotion measures.

- **Product at issue:** Imported consumer photographic film and paper.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. XXIII:1(b) (non-violation claim):** The Panel found that the United States failed to demonstrate that the measures at issue nullified or impaired benefits accruing to the United States within the meaning of Art. XXIII:1(b). The Panel considered that a complaining party must demonstrate three elements under Art. XXIII:1(b): (i) application of a measure by a WTO Member; (ii) a benefit accruing under the relevant agreement: and (iii) nullification or impairment of the benefit as the result of the application of the measure.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that the distribution measures were generally origin-neutral and did not have a disparate impact on imported film or paper. The Panel therefore found that the United States had not proved that the distribution measures were inconsistent with Art. III:4.

- **GATT Art. X:1 (trade regulations – prompt publication):** The Panel considered that the publication requirement in Art. X:1 extends to two types of administrative rulings: (i) administrative rulings of "general application"; and (ii) "administrative rulings addressed to specific individuals or entities" that establish or revise principles or criteria applicable in future cases. Based on this legal standard, the Panel found that Japan was not in violation of Art. X:1 because the United States failed to demonstrate that Japan's administrative rulings at issue in this case amounted to either of these administrative rulings in respect of which the publication requirement under Art. X:1 should be applied.

3. OTHER ISSUES[2]

- **Requirements of panel request (DSU Art. 6.2):** The Panel found that, for a "measure" not explicitly described in a panel request to be included for its consideration as part of the specific measure in the request, such an unidentified measure must be subsidiary or have a clear relationship to a specifically identified measure. According to the Panel, "only if a measure is subsidiary or closely related to a specifically identified measure will notice be adequate" so as not to cause prejudice to Japan or third parties.

1 *Japan – Measures Affecting Consumer Photographic Film and Paper*
2 Other issues addressed: order of examination of claims; burden of proof; procedures for translation.

BRAZIL – AIRCRAFT[1]
(DS46)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ASCM Arts. 3.1(a), 4.7 and 27.4; Annex I, item (k)*	Establishment of Panel	*23 July 1998*
			Circulation of Panel Report	*14 April 1999*
Respondent	*Brazil*		Circulation of AB Report	*2 August 1999*
			Adoption	*20 August 1999*

1. MEASURE AND INDUSTRY AT ISSUE

- **Measure at issue:** Brazilian government payment for the regional aircraft export under the interest rate equalization component of a Brazilian export financing programme: the *Programa de Financiamento às Exportações* (PROEX).
- **Industry at issue**: Regional aircraft manufacturing industry.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies) and Annex I, Illustrative List of Export Subsidies, item (k):** Brazil did not dispute that its PROEX interest rate equalization scheme was a subsidy contingent upon export performance, but argued that it was "permitted" under item (k) of the Illustrative List of Export Subsidies. The Appellate Body reversed and modified the Panel's interpretation of "used to secure a material advantage in export credit terms" but upheld the Panel's conclusion that Brazil failed to establish that the payments fell within the first para. of item (k) as well as its consequential finding that the PROEX payments were prohibited export subsidies under Art. 3.1(a).
- **ASCM Art. 27 (S&D treatment):** The Appellate Body upheld the Panel's finding that Brazil's measure was not justified under Art. 27.4, as Brazil had increased the level of its export subsidies and had not complied with the phase-out period under the terms of Art. 27 by continuously granting subsidies after the date on which they should have been terminated. The Appellate Body also upheld the Panel's finding that the burden of proof under Art. 27.4 is on the complaining party as Art. 27.4 constitutes positive obligations for developing country Members as opposed to an affirmative defence.
- **ASCM Art. 4.7 (recommendation to withdraw a prohibited subsidy):** The Appellate Body upheld the Panel's recommendation that Brazil withdraw the PROEX export subsidies "without delay", specifically, within 90 days from the date of adoption of the report, and noted that there was a significant difference between the relevant rules and procedures of the DSU on implementation and the special or additional rules and procedures in ASCM Art. 4.7. Hence in this instance, the provisions of DSU Art. 21.3 were not relevant to determining the period of time for implementation.

3. OTHER ISSUES[2]

- **Terms of reference (DSU Arts. 4 and 6):** Regarding whether and to what extent the panel's consideration of the matter identified in its terms of reference is limited by the scope of the consultations, the Appellate Body upheld the Panel's finding that consultations and panel requests must relate to the same "dispute", but there need not be a "precise identity" between the two. The Appellate Body noted that DSU Arts. 4 and 6 and ASCM Art. 4 (paras. 1-4) do not require a "precise and exact identity" between the specific measures that were the subject of consultations and the measures identified in the panel request. In this case, certain regulatory instruments which came into effect after consultations had been held were nonetheless properly before the Panel because they were specifically identified in the request for establishment of the panel and they did not change the essence of the export subsidies on which consultations had been held.

1 *Brazil – Export Financing Programme for Aircraft*
2 Other issues addressed: methodology for calculating the level of export subsidies granted for purposes of ASCM Art. 27.4; business confidential information.

BRAZIL – AIRCRAFT (ARTICLE 21.5 – CANADA)[1]
(DS46)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ASCM Art. 4.7; Annex I, item (k)*	Referred to the Original Panel	*9 December 1999*
			Circulation of Panel Report	*9 May 2000*
Respondent	*Brazil*		Circulation of AB Report	*21 July 2000*
			Adoption	*4 August 2000*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Brazil indicated that it had put in place laws through which the interest rate equalization payments under PROEX would be revised, to the effect that the net interest rate applicable to any subsidized transaction under that programme would be brought down to the appropriate market "benchmark".

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 4.7 (recommendation to withdraw a prohibited subsidy):** The Appellate Body upheld the Panel's findings that Brazil was in violation of Art. 4.7 as it had not withdrawn the export subsidies for regional aircraft within 90 days of the adoption of the original panel and Appellate Body reports. The Appellate Body stated that Brazil's argument that it was continuing to make payments under letters of commitment (private contractual obligations under domestic law), which had been made before the expiry of the 90-day period of implementation, was not an adequate defence against the implementation of DSB recommendations.

- **ASCM Annex I, Illustrative List of Export Subsidies, item (k):** The Appellate Body upheld the Panel's conclusion and found that Brazil had failed to demonstrate that the PROEX payments were not used to secure a material advantage in the field of export credit terms within the meaning of item (k) because Brazil had not identified an appropriate "market benchmark" for comparison with the export credit terms available under the measure at issue. The market benchmark (i.e. US Treasury Bond rate plus 20 basis points) was inappropriate since it was not based on evidence from relevant, comparable transactions in the marketplace. In light of its above findings of violation (i.e. Brazil had not proved that PROEX payments met the conditions of the first para. of item (k)), the Appellate Body concluded that it was not necessary to rule on whether export subsidies under PROEX were "payments" or whether "export subsidies" were "permitted" under item (k) and found that the Panel's findings on these issues were moot, and, thus, of no legal effect.

3. OTHER ISSUES

- **Burden of proof**: Upholding the Panel's findings, the Appellate Body stated that since Brazil was clearly asserting an "affirmative defence" to a violation of ASCM Art. 3.1(a) under the first para. of item (k) of the Illustrative List of Export Subsidies, the burden was on Brazil to prove that the measure put in place was justified under the terms of item (k).

1 *Brazil – Export Financing Programme for Aircraft – Recourse by Canada to Article 21.5 of the DSU*

BRAZIL – AIRCRAFT (ARTICLE 21.5 – CANADA II)[1]
(DS46)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ASCM Arts. 1 and 3; Annex I, item (k)*	Referred to the Original Panel	*16 February 2001*
			Circulation of Panel Report	*26 July 2001*
Respondent	*Brazil*		Circulation of AB Report	*NA*
			Adoption	*23 August 2001*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Following authorization by the DSB of countermeasures to be imposed by Canada against Brazil, Brazil announced that it had revised the interest rate equalization component of PROEX, its export financing programme related to the sale of regional aircraft, and had, thereby, eliminated the prohibited export subsidy found to be in violation of the ASCM by the original Panel, under its new PROEX III scheme.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Art. 1 (definition of a subsidy):** On the question of whether the PROEX III payments constituted a subsidy within the meaning of Art. 1 (i.e. whether it was a (i) financial contribution that conferred a (ii) benefit), the Panel found that PROEX III payments did constitute a financial contribution and that the PROEX III scheme conferred a benefit on producers of regional aircraft, as it did not preclude granting of the payments to reduce the interest rates below those which could be obtained commercially. However, the Panel concluded that Canada had failed to establish that PROEX III *mandated* that the Brazilian government conferred a "benefit" on producers of regional aircraft. Since it was a discretionary provision, PROEX III was not found to amount to an as such violation.

- **ASCM Art 3.1(a) (prohibited subsidies – export subsidies):** The Panel found that PROEX III applied only to export financing operations and therefore, was contingent upon export under Art. 3.1(a). However, the Panel concluded that because Brazil maintained the discretion to limit the provision of the PROEX III interest rate equalization payments to circumstances where a benefit was not conferred, Brazil was not required by the PROEX III scheme to provide a "subsidy" within the meaning of Art. 1.1. Therefore, there was no prohibited export subsidy and no violation of Art. 3.1(a).

- **ASCM Annex I, Illustrative List of Export Subsidies, item (k):** (second para. of item (k)) The Panel found that PROEX III constituted "interest rate support" and was, therefore, an export credit practice subject to the interest rate provisions of the OECD Arrangement. The Panel nevertheless concluded that PROEX III, as such, allowed Brazil to act in conformity with the OECD Arrangement and that Brazil had, therefore, successfully invoked the safe haven provided for by the second para. of item (k).

  (first para. of item (k)) Regarding Brazil's claim that, even if PROEX III was not covered by the safe haven provided under the second para. of item (k), the payments under PROEX III were still permitted as they were not used to secure a material advantage in the field of export credit terms under the first para. of item (k), the Panel found that Brazil failed to establish that PROEX III was justified under the first para. because the payments made under PROEX III were not "payments" within the meaning of the first para.: while PROEX III allowed Brazil to make payments that did not secure a material advantage in the field of export credits, the financial institutions involved in financing PROEX III-supported transactions provided "export credits", but they could not be seen as "*obtaining* export credits" as indicated in the first para. of item (k). The Panel also found that the first para. of item (k) cannot, as a legal matter, be invoked as an affirmative defence to a violation of ASCM Art. 3.1(a).

1 *Brazil – Export Financing Programme for Aircraft, Second Recourse by Canada to Article 21.5 of the DSU*
2 Other issues addressed: ASCM (general); private counsel; confidentiality; mandatory vs discretionary legislation distinction.

INDIA – PATENTS (US)[1]
(DS50)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*TRIPS Arts. 70.8 and 70.9*	Establishment of Panel	*20 November 1996*
			Circulation of Panel Report	*5 September 1997*
Respondent	*India*		Circulation of AB Report	*19 December 1997*
			Adoption	*16 January 1998*

1. MEASURE AND INTELLECTUAL PROPERTY AT ISSUE

- **Measure at issue:** (i) India's "mailbox rule" – under which patent applications for pharmaceutical and agricultural chemical products could be filed; and (ii) the mechanism for granting exclusive marketing rights to such products.

- **Intellectual property at issue**: Patent protection for pharmaceutical and agricultural chemical products, as provided under TRIPS Art. 27.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **TRIPS Art. 70.8 (filing of patent application):** The Appellate Body upheld the Panel's finding that India's filing system based on "administrative practice" for patent applications for pharmaceutical and agricultural chemical products was inconsistent with Art. 70.8. The Appellate Body found that the system did not provide the "means" by which applications for patents for such inventions could be securely filed within the meaning of Art. 70.8(a), because, in theory, a patent application filed under the administrative instructions could be rejected by the court under the contradictory mandatory provisions of the existing Indian laws: the Patents Act of 1970.

- **TRIPS Art. 70.9 (exclusive marketing rights):** The Appellate Body agreed with the Panel that there was no mechanism in place in India for the grant of exclusive marketing rights for the products covered by Art. 70.8(a) and thus Art. 70.9 was violated.

3. OTHER ISSUES[2]

- **Interpretation of the TRIPS Agreement**: The Appellate Body rejected the Panel's use of a "legitimate expectations" (of Members and private right holders) standard, which derives from the non-violation concept, as a principle of interpretation for the TRIPS Agreement. The Appellate Body based its conclusion on the following: (i) the protection of "legitimate expectations" is not something that was used in GATT practice as a principle of interpretation; and (ii) the Panel's reliance on the VCLT Art. 31 for its "legitimate expectations" interpretation was not correct because the "legitimate expectations of the parties to a treaty are reflected in the language of the treaty itself." Pointing to DSU Arts. 3.2 and 19.2[3], the Appellate Body clarified that the process of treaty interpretation should not include the "imputation into a treaty of words that are not there or the importation into a treaty of concepts that were not intended."

1 *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products* (Complaint by the United States)
2 Other issues addressed: terms of reference (DSU Art. 6.2 in relation to US claim on TRIPS Art. 63); burden of proof.
3 DSU Arts. 3.2 and 19.2 make clear that panels and the Appellate Body "cannot add to or diminish the rights and obligations provided in the covered agreements".

INDONESIA – AUTOS[1]
(DS54, 55, 59, 64)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*European Communities, Japan, United States*	*TRIMs Art. 2.1* *GATT Arts. I:1 and III:2* *ASCM Arts. 5(c), 6, 27.9 and 28*	Establishment of Panel	*12 June 1997*
			Circulation of Panel Report	*2 July 1998*
Respondent	*Indonesia*		Circulation of AB Report	*NA*
			Adoption	*23 July 1998*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) "The 1993 Programme" that provided import duty reductions or exemptions on imports of automotive parts based on the local content percent; and (ii) "The 1996 National Car Programme" that provided various benefits such as luxury tax exemption or import duty exemption to qualifying (local content and etc.) cars or Indonesian car companies.

- **Product at issue:** Imported motor vehicles and parts and components thereof.

2. SUMMARY OF KEY PANEL FINDINGS

- **TRIMs Agreement Art. 2.1 (local content requirement):**[2] The Panel found the 1993 Programme to be in violation of Art. 2.1 because (i) the measure was a "trade-related investment"[3] measure; and (ii) the measure, as a local content requirement, fell within para. 1 of the Illustrative List of TRIMs in the Annex to the TRIMs Agreement, which sets out trade-related investment measures that are inconsistent with national treatment obligation under GATT Art. III:4.

- **GATT Art. III:2, first and second sentences (national treatment – taxes and charges):** The Panel found that the sales tax benefits under the measures violated both Art. III:2, first and second sentences. The Panel noted that under the Indonesian car programmes, an imported motor vehicle would be taxed at a higher rate than a like domestic vehicle in violation of Art. III:2, first sentence, and also, any imported vehicle would not be taxed similarly to a directly competitive or substitutable domestic car due to these Indonesian car programmes whose purpose was to promote a national industry.

- **GATT Art. I:1 (most-favoured-nation treatment):** The Panel found the measures to be in violation of Art. I:1 because the "advantages" (duty and sales tax exemptions) accorded to Korean imports were not accorded "unconditionally" to "like" products from other Members.

- **ASCM Art. 5(c) (serious prejudice):** The Panel found that the duty and sales tax exemptions under the 1996 National Car Programme were "specific subsidies" which had caused "serious prejudice" (through significant price undercutting under Art. 6.3(c)) to like imports of EC (but not US) imports under Art. 5(c).

3. OTHER ISSUES[4]

- **Private counsel**: Following the Appellate Body's ruling in *EC – Bananas*, the Panel, for the first time at this stage, allowed private counsels to be present in panel hearings as part of a party's delegation.

1 *Indonesia – Certain Measures Affecting the Automotive Industry*

2 Regarding the relationship between the TRIMs Agreement and GATT Art. III, the Panel noted that the TRIMs Agreement applies independently of Art. III and has autonomous legal existence. It then examined the claims on the TRIMs Agreement first since it is more specific than Art. III:4. The Panel eventually exercised judicial economy on the Art. III claim.

3 In respect of "investment" measures, the Panel noted that "*domestic* investment", in addition to "*foreign* investment", is also subject to the TRIMs Agreement.

4 Other issues addressed: Annex V (ASCM); terms of reference (DSU Art. 6.2, expired measure); protection of business confidential information; applicability (relationship) of multiple agreements (GATT Art. III, TRIMs Agreement and ASCM; ASCM Arts. 6, 27.8 and 28).

ARGENTINA – TEXTILES AND APPAREL[1]
(DS56)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. II and VIII*	Establishment of Panel	*25 February 1997*
			Circulation of Panel Report	*25 November 1997*
Respondent	*Argentina*		Circulation of AB Report	*27 March 1998*
			Adoption	*22 April 1998*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Argentina's system of minimum specific import duties, known as "DIEM", on textiles and apparel (under which textiles and apparel were subject to either a 35 per cent *ad valorem* duty or a minimum specific duty, whichever was higher); and (ii) statistical services tax imposed on imports to finance "statistical services to importers, exporters and the general public".

- **Product at issue:** Imported textiles and apparel.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. II (schedules of concessions):** The Appellate Body found Argentina's measure was, in fact, inconsistent with Art. II:1(b). It held that "the application of a type of duty different from the type provided for in a Member's Schedule is inconsistent with GATT Art. II:1(b), first sentence, to the extent that it results in ordinary customs duties being levied in excess of those provided for in that Member's Schedule." In this case, the Appellate Body concluded that "the structure and design of the Argentine system is such that for any DIEM ... the possibility remains that there is a 'break-even' price below which the *ad valorem* equivalent of the customs duty collected is in excess of the bound *ad valorem* rate of 35 per cent."

- **GATT Art. VIII (fees and formalities):** The Appellate Body upheld the Panel's findings that the statistical tax on imports violated Argentina's obligations under Art. VIII:1(a) "to the extent it results in charges being levied in excess of the approximate costs of the services rendered as well as being a measure designated for fiscal purposes". The Appellate Body also rejected Argentina's argument that the Panel had violated DSU Arts. 11 and 12.7 based on the Panel's failure to consider Argentina's IMF obligations as set forth in a "Memorandum of Understanding" between Argentina and the IMF. The Appellate Body held, *inter alia*, that Argentina failed to show "an irreconcilable conflict" between the Understanding and GATT Art. VIII, and that no other international agreements or understandings regarding the WTO and IMF justified a conclusion that a Member's IMF commitments prevail over its GATT Art. VIII obligations.

3. OTHER ISSUES[2]

- **Panel's right to seek expert advice (DSU Art. 13):** The Appellate Body found that the Panel acted within the bounds of its discretionary authority under DSU Art. 13 when it did not accede to the parties' request to seek the advice of the IMF on Argentina's statistical tax. It noted that while an IMF consultation might have been useful, the Panel did not abuse its discretion by declining to engage in such a consultation. (It also noted that the only provision that requires consultations with the IMF is GATT Art. XV:2.)

- **Review of a revoked measure**: The Panel declined to review a revoked measure (revoked after the panel request but before its establishment), when Argentina raised an objection to the Panel's examination of such a measure.

1 *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*
2 Other issues addressed: objective assessment (DSU Art. 11); terms of reference (revoked measure); burden of proof; submission of evidence.

US – SHRIMP[1]
(DS58)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*India, Malaysia, Pakistan, Thailand*	*GATT Arts. XI and XX*	Establishment of Panel	*25 February 1997*
			Circulation of Panel Report	*15 May 1998*
Respondent	*United States*		Circulation of AB Report	*12 October 1998*
			Adoption	*6 November 1998*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US import prohibition of shrimp and shrimp products from non-certified countries (i.e. countries that had not used a certain net in catching shrimp).

- **Product at issue:** Shrimp and shrimp products from the complainant countries.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. XI (prohibition on quantitative restrictions):** The Panel found that the US prohibition, based on Section 609, on imported shrimp and shrimp products violated Art. XI. The United States apparently conceded the measure's violation of Art. XI because it did not put forward any defending arguments in this regard.

- **GATT Art. XX(g) (general exceptions – exhaustible natural resources):** The Appellate Body held that although the US import ban was related to the conservation of exhaustible natural resources and, thus, covered by an Art. XX(g) exception, it could not be justified under Art. XX because the ban constituted "arbitrary and unjustifiable" discrimination under the chapeau of Art. XX. In reaching this conclusion, the Appellate Body reasoned, *inter alia*, that in its application the measure was "unjustifiably" discriminatory because of its intended and actual coercive effect on the specific policy decisions made by foreign governments that were Members of the WTO. The measure also constituted "arbitrary" discrimination because of the rigidity and inflexibility in its application, and the lack of transparency and procedural fairness in the administration of trade regulations.

  While ultimately reaching the same finding on Art. XX as the Panel, the Appellate Body, however, reversed the Panel's legal interpretation of Art. XX with respect to the proper sequence of steps in analysing Art. XX. The proper sequence of steps is to first assess whether a measure can be provisionally justified as one of the categories under paras. (a)-(j), and, then, to further appraise the same measure under the Art. XX chapeau.

3. OTHER ISSUES[2]

- ***Amicus curiae* briefs**: The Appellate Body held that it could consider *amicus curiae* briefs attached to a party's submission since the attachment of a brief or other material to either party's submission renders that material at least prima facie an integral part of that party's submission. Based on the same rationale, the Appellate Body reversed the Panel and ruled that a panel has the "discretion either to accept and consider or to reject information and advice submitted to it, whether requested by a panel or not" under DSU Arts. 12 and 13.

1 *United States – Import Prohibition of Certain Shrimp and Shrimp Products*
2 Other issues addressed: adequacy of the notice of appeal (Working Procedures for Appellate Review, Rule 20(2)(d)).

US – SHRIMP (ARTICLE 21.5 – MALAYSIA)[1]
(DS58)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Malaysia*	*GATT Arts. XI and XX*	Referred to the Original Panel	*23 October 2000*
			Circulation of Panel Report	*15 June 2001*
Respondent	*United States*		Circulation of AB Report	*22 October 2001*
			Adoption	*21 November 2001*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Revised Guidelines for the Implementation of Section 609, under which certain countries were exempt from the import prohibition on shrimp pursuant to the criteria provided therein.[2]

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. XI (prohibition on quantitative restrictions):** The Panel concluded that, as with the measure at issue in the original proceedings, the US import prohibition on shrimp and shrimp products under Section 609 was inconsistent with Art. XI:1.

- **GATT Art. XX(g) (general exceptions – exhaustible natural resources):** The Appellate Body upheld the Panel's finding that Section 609, as implemented by the revised guidelines and as applied by the United States, was justified under Art. XX(g), as (i) it related to the conservation of exhaustible natural resources as set out in Art. XX(g) and (ii) it now met the conditions of the chapeau of Art. XX when applied in a manner that no longer constituted a means of arbitrary discrimination. This was because the United States had made serious, good faith efforts to negotiate an international agreement and the new measure allowed "sufficient flexibility" by requiring that other Members' programmes simply be "comparable in effectiveness" to the US programme, as opposed to the previous standard that they be "essentially the same". In this regard, the Appellate Body rejected Malaysia's contention and agreed with the Panel that the United States had only an obligation to make best efforts to negotiate an international agreement regarding the protection of sea turtles, not an obligation to actually conclude such an agreement because all that was required of the United States to avoid "arbitrary or unjustifiable discrimination" under the chapeau was to provide all exporting countries "similar opportunities to negotiate" an international agreement. The Appellate Body noted that "so long as such comparable efforts are made, it is more likely that 'arbitrary or unjustifiable discrimination' will be avoided between countries where an importing Member concludes an agreement with one group of countries, but fails to do so with another group of countries".

3. OTHER ISSUES

- **Terms of reference (DSU Art. 21.5 panels):** The Appellate Body concluded that when the issue concerns the consistency of a new measure "taken to comply", the task of a DSU Art. 21.5 panel "is to consider that new measure in its totality", which requires a consideration of both the measure itself and its application. The Appellate Body further stated that "the task of the Panel was to determine whether Section 609 has been applied by the United States, through the Revised Guidelines, either on their face, or in their application, in a manner that constitutes 'arbitrary or unjustifiable discrimination'". The Appellate Body found that the Panel correctly fulfilled its mandate by examining the measure in the light of the relevant provisions of the GATT and by correctly using and relying on the reasoning in the original Appellate Body report.

1 *United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia*

2 The Appellate Body noted that the measure at issue in this dispute consists of three elements: (1) Section 609; (2) the Revised Guidelines for the Implementation of Section 609; and (3) the application of both Section 609 and the Revised Guidelines in the practice of the United States.

GUATEMALA – CEMENT I[1]
(DS60)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Mexico*	*DSU Art. 6.2* *ADA Art. 17.4 (Art. 5)*	Establishment of Panel	*20 March 1997*
			Circulation of Panel Report	*19 June 1998*
Respondent	*Guatemala*		Circulation of AB Report	*2 November 1998*
			Adoption	*25 November 1998*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Guatemala's anti-dumping investigation (both the initiation and various decisions and conduct of the Ministry).

- **Product at issue:** Grey Portland cement from Mexico.

2. SUMMARY OF KEY PANEL/AB FINDING

- **DSU Art. 6.2 and ADA Art. 17.4 (requirements of panel request):** The Appellate Body, reversing the Panel, concluded that Mexico had failed to identify in its panel request the "specific measures at issue" in accordance with DSU Art. 6.2 and ADA Art. 17.4, i.e. one of the three measures to be specified in a dispute involving anti-dumping investigations: (i) a definitive anti-dumping duty, (ii) the acceptance of a price undertaking, or (iii) a provisional anti-dumping measure.

  According to the Appellate Body, the special dispute settlement rules in the ADA and the DSU provisions together create a "comprehensive, integrated dispute settlement system" rather than the former replacing the more general rules in the DSU as the Panel had erroneously found. The Appellate Body rejected the Panel's reasoning that the term "measure" under DSU Art. 6.2 should be interpreted broadly, and clarified that both identification of "measure" and identification of the alleged "violations" are separately required under DSU Art. 6.2.

  Consequently, the Appellate Body found that the dispute was not properly before the Panel (i.e. there was no measure properly within the Panel's terms of reference), and, as such, dismissed the case without further reviewing any substantive issues.[2]

3. OTHER ISSUES

- **Status of panel's findings**: As a result of the Appellate Body's decision to dismiss the case as summarized above, the Panel's substantive findings (that Guatemala had violated the notification provisions in ADA Art. 5.5 and the substantive requirements for initiation of an anti-dumping investigation in ADA Art. 5.3) became moot.

1 *Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico*

2 After the Appellate Body dismissed this case, Mexico brought the case again (*Guatemala – Cement II*) with a new panel request in which Mexico specified the relevant measure at issue – i.e. the definitive anti-dumping duty. In *Guatemala – Cement II*, the Panel reached the same conclusions regarding initiation as the Panel in *Guatemala – Cement I*, and it also considered other issues raised by Mexico.

EC – COMPUTER EQUIPMENT[1]
(DS62, 67, 68)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Art. II:1*	*Establishment of Panel*	*25 February 1997*
			Circulation of Panel Report	*5 February 1998*
Respondent	*European Communities*		*Circulation of AB Report*	*5 June 1998*
			Adoption	*22 June 1998*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The European Communities' application of tariffs on local area networks: (LAN) equipment and multimedia personal computers (PCs) in excess of those provided for in the EC Schedules through changes in customs classification.

- **Product at issue:** Computer equipment associated with LAN namely, (i) LAN equipment such as network or adaptor cards and (ii) multimedia PCs.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. II:1 (schedule of concessions – LAN):** The Appellate Body reversed the Panel's finding of a violation by the European Communities of Art. II:1 with respect to LAN equipment on the basis of the Panel's erroneous legal reasoning and consideration of only selective evidence. In this regard the Appellate Body rejected the Panel's finding that a tariff concession in the Schedule can be interpreted in light of an exporting Member's "legitimate expectations" – a concept relevant to a non-violation complainant under GATT Art. XXIII:1(b) – in the context of a violation complaint. Rather, the Appellate Body found that a tariff concession provided for in the Member's Schedule should be interpreted according to the general rules of treaty interpretation set out in Arts. 31 and 32 of the VCLT[2]; Moreover, the Appellate Body said that the Panel should have further examined the following: the Harmonized System and its Explanatory Notes as context in interpretation of the terms of the Schedule; the existence and relevance of subsequent practice; the European Communities' classification practice during the Tokyo Round, in addition to that during the Uruguay Round; relevant US practice with regard to the classification of the product at issue; and the EC legislation governing customs classification at the time.

- **Clarification of the scope of tariff concessions**: The Appellate Body reversed the Panel's finding that the United States, as an exporting Member, was not required to clarify the scope of the European Communities' tariff concessions. The Appellate Body emphasized the "give and take" nature of tariff negotiations and that Members' Schedules "represent a common agreement among all Members", particularly in light of the fact that they are an integral part of the GATT, and thus found that clarification is a "task for *all* interested parties".

- **GATT Art. II:1 (schedule of concessions – PCs):** The Panel found that the United States failed to provide sufficient evidence to demonstrate that the European Communities had violated GATT Art. II:1 with respect to PCs.

3. OTHER ISSUES[3]

- **VCLT Art. 32 (supplementary means of interpretation):** The Appellate Body explained that the European Communities' classification practice during the Uruguay Round constituted "supplementary means of interpretation" under VCLT Art. 32. According to the Appellate Body, the value of this evidence as a supplementary means of interpretation was subject to certain qualifications. For example, the Panel should have also considered as relevant the US practice with regard to the classification of this equipment, given that the common intention of the parties was at issue. Similarly, the Panel should have examined the EC legislation governing customs classification at the time, namely the EC "General Rules for the Interpretation of the Combined Nomenclature".

1 *European Communities – Customs Classification of Certain Computer Equipment*
2 The Appellate Body explained that the purpose of treaty interpretation under VCLT Art. 31 is "to ascertain the common intentions of the parties".
3 Other issues addressed: measure and products covered (DSU Art. 6.2); scope of the defending parties.

EC – POULTRY[1]
(DS69)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*GATT Arts. XIII and X* *Licensing Ag*[a] *AA Art. 5*	Establishment of Panel	*30 July 1997*
			Circulation of Panel Report	*12 March 1998*
Respondent	*European Communities*		Circulation of AB Report	*13 July 1998*
			Adoption	*23 July 1998*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** European Communities' tariff rate quota (TRQ) system incorporated into EC Schedule LXXX with respect to frozen poultry and the European Communities' licensing requirements for importers of the product at issue.

- **Product at issue:** Frozen poultry imported from Brazil.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. XIII:2 (non-discriminatory administration of quantitative restrictions):** The Appellate Body upheld the Panel's finding that the TRQ must be administered on a non-discriminatory basis – as opposed to it being awarded exclusively to Brazil – based on the text of the EC Schedule LXXX and pursuant to Art. XIII, and thus, the European Communities had acted consistently with its WTO obligations. The Appellate Body also upheld the Panel's finding that, even when a TRQ is the result of an Art. XXVIII compensation negotiation, it must be administered in a non-discriminatory manner (total imports, including those from non-Members). The Appellate Body also agreed with the Panel that TRQ shares must be calculated on the basis of "total imports", including imports coming from non-Members, and thus, the European Communities acted consistently with Art. XIII:2 by including imports from non-Members in its TRQ calculation.

- **GATT Art. X (publication and administration of trade regulation):** The Appellate Body upheld the Panel's finding that Art. X applies only to measures of "general application", as opposed to specific transactions such as individual poultry shipments, and thus, Brazil's claims were outside the scope of Art. X.

- **AA Art. 5.1(b) (special safeguard mechanism – trigger price):** Having found that the special safeguard mechanism in AA Art. 5.1(b) is triggered when the CIF price *alone* (i.e. not including customs duties) falls below the reference or "trigger price", the Appellate Body reversed the Panel and concluded that the European Communities had not violated the requirements of Art. 5.1(b). (Art. 5.5) The Appellate Body found that Art. 5.5 *mandates* the use of CIF import prices as the relevant price for calculating additional duty imposed under Art. 5.1(b). Thus, regarding the consistency of the EC Regulation, which provided for two methods for determining the amount of duty: one using the CIF price and one using an alternative "representative price" – the Appellate Body found that the Regulation was inconsistent with Art. 5.5.

3. OTHER ISSUES[2]

- **Dissenting opinion**: This was the first WTO dispute in which one member of a panel dissented from the majority opinion: In interpreting the "trigger price" under AA Art. 5.1(b), one panelist found that use of the CIF price alone met the requirements of Art. 5.1(b) (c.f. The Panel majority concluded that the trigger price was "CIF price plus customs duty").

1 *European Communities – Measures Affecting the Importation of Certain Poultry Products*

a The Panel rejected all of Brazil's claims under *the Licensing Agreement*. Upon appeal by Brazil against some of these Panel's findings, the Appellate Body upheld the Panel's findings.

2 Other issues addressed: scope of appellate review (DSU Art. 17.6); relevance of the 1994 Oilseeds Agreement; terms of reference.

CANADA – AIRCRAFT[1]
(DS70)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*ASCM Arts. 1, 3.1 and 4.7*	Establishment of Panel	*23 July 1998*
			Circulation of Panel Report	*14 April 1999*
Respondent	*Canada*		Circulation of AB Report	*2 August 1999*
			Adoption	*20 August 1999*

1. MEASURE AND INDUSTRY AT ISSUE

- **Measure at issue:** Canadian measures providing various forms of financial support to the domestic civil aircraft industry.
- **Industry at issue**: Civil aircraft industry.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 1.1 (definition of a subsidy):** The Panel found that a "financial contribution" confers a "benefit" and constitutes a subsidy under Art. 1 when provided on terms more advantageous than those otherwise available to the recipient on the market. The Appellate Body, while upholding this finding, concluded that the word "conferred", in conjunction with "thereby", calls for an inquiry into what was conferred on the recipient, not an inquiry into the cost to the government as argued by Canada.
- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies):** The Appellate Body upheld the Panel's finding that contingency exists if there is a relationship of conditionality or dependence between the grant of the subsidy and the anticipated exportation or export earnings.
- **Examination of Canada's individual measures (as such/as applied distinction for discretionary and mandatory measures):** The Panel concluded that the EDC programme as such was discretionary legislation and, upon examination of its application, found no prima facie case that these were export subsidies. Although the Panel also found that the Canada Account programme *per se* was discretionary legislation that could not be challenged as such, it concluded that the programme *as applied* conferred a benefit and was an export subsidy contingent upon export performance. The Panel also found that TPC assistance was a subsidy contingent in fact upon export performance. In this respect, it applied the standard whether "the facts demonstrate that [TPC contributions] would not have been granted *but for* anticipated exportation". The Appellate Body upheld these findings by the Panel.

3. OTHER ISSUES[2]

- **Adverse inference**: The Appellate Body found that panels have discretion to draw inferences from all the facts including where a party to a dispute refuses to submit information sought by a panel pursuant to DSU Art. 13. In this case, it held that the Panel did not err in refusing to draw adverse inferences from Canada's refusal to provide information. The Appellate Body stated that parties are under an obligation to cooperate with a panel.

1 *Canada – Measures Affecting the Export of Civilian Aircraft*

2 Other issues addressed: panel's terms of reference; relationship between consultations and panel requests; application of the ASCM to measures in place prior to 1 January 1995; adoption of special working procedures on business confidential information.

CANADA – AIRCRAFT (ARTICLE 21.5 – BRAZIL)[1]
(DS70)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*ASCM Art. 3.1(a)*	Referred to the Original Panel	*9 December 1999*
			Circulation of Panel Report	*9 May 2000*
Respondent	*Canada*		Circulation of AB Report	*21 July 2000*
			Adoption	*4 August 2000*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- **(i) Canada Account debt financing** for regional aircraft exports – a new policy guideline under which all Canada Account transactions were required to comply with the rules set out in the OECD Arrangement on Guidelines for Officially Supported Export Credits (the "OECD Arrangement"); and **(ii) Technology Partnerships Canada (TPC) assistance** – no disbursements pursuant to any existing TPC Contribution Agreement to the Canadian regional aircraft industry; cancellation of conditional approval that had been given for two other regional aircraft industry projects established prior to circulation of the Appellate Body Report; and restructuring of the TPC to comply with the ASCM.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies):** The Appellate Body first held that the obligation of an Art. 21.5 Panel is to review the consistency of the revised measure with the relevant Agreement (i.e. in this case, whether the "revised" TPC was consistent with ASCM Art. 3.1(c)) and that it was *not limited* to examining the measure from the perspective of the original proceedings (i.e. the issue of whether or not Canada has implemented the DSB recommendation). The Appellate Body then found that the Panel had erred in this case in declining to examine Brazil's new argument related to "specific targeting" because the argument was not part of the original proceeding. Having completed the legal analysis of this issue based on the standard it had set out, the Appellate Body then rejected Brazil's argument that Canada's regional aircraft industry was "specifically targeted" for assistance because of its "high export-orientation", since (i) the high export-orientation of a subsidized industry was not enough for the Appellate Body to find export contingency; and (ii) Brazil relied on the evidence relevant to the previous TPC programme and not to the revised programme. Consequently, the Appellate Body found that Brazil had failed to establish that the revised TPC programme was inconsistent with ASCM Art. 3.1(a) and had failed to establish that Canada had not implemented the recommendations and rulings of the DSB.

- **ASCM Annex I, Illustrative List of Export Subsidies, item (k), second para.**: In addressing whether the new policy guideline for Canada Account debt financing was consistent with Canada's obligation to "withdraw" the prohibited export subsidy by ceasing to provide the subsidy, the Panel examined whether the policy guideline "ensure[d]" that future Canada Account transactions in the regional aircraft sector would qualify for the "safe haven" provided by the second para. of item (k) of the Illustrative List of Export Subsidies. In this regard, the Panel set out the legal standard for item (k): an "export credit practice which is in conformity with the interest rates provisions of the OECD Arrangement shall not be considered an export subsidy prohibited by the [ASCM]". Having applied this standard to Canada's policy guideline, the Panel found that the policy guideline was not sufficient to ensure that future Canada Account transactions in the regional aircraft sector would be in conformity with the interest rate provisions of the OECD Arrangement, and thus qualify for the "safe haven" in the second para. of item (k) of Annex I of the ASCM. Thus, Canada was found to have failed to implement the DSB's recommendations and rulings.

1 *Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU*
2 Other issues addressed: DSU Art. 19.1.

KOREA – ALCOHOLIC BEVERAGES[1]
(DS75, 84)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*European Communities, United States*	*GATT Art. III:2, second sentence*	Establishment of Panel	*16 October 1997*
			Circulation of Panel Report	*17 September 1998*
Respondent	*Korea*		Circulation of AB Report	*18 January 1999*
			Adoption	*17 February 1999*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Korea's tax regime for alcoholic beverages, which imposed different tax rates for various categories of distilled spirits.

- **Product at issue:** Imported distilled liquors and Soju (traditional Korean alcoholic beverage).

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **GATT Art. III:2 (national treatment – taxes and charges), second sentence (directly competitive or substitutable products):** The Appellate Body upheld the Panel's conclusion that the Korean tax measures at issue were inconsistent with Art. III:2, second sentence: More specifically, the Appellate Body upheld the Panel's findings that the products at issue were "directly competitive or substitutable" within the meaning of Art. III:2, second sentence and that Korea's tax measures on alcoholic beverages were applied "so as to afford protection" to domestic production within the meaning of Art. III:2, second sentence.

  On the question of the interpretation and application of the term "directly competitive or substitutable product", the Appellate Body upheld the Panel's approach: (i) the Panel correctly considered evidence of "*present* direct competition", not the future evolution of the market, by referring to the potential for the products to compete in a market free of protection because in a protected market consumer preferences may have been influenced by that protection; (ii) the Panel was not wrong in looking to the Japanese market for an indication of how the Korean market may develop without the distortions caused by protection; and (iii) the Panel's approach of grouping the products, which was based in part on a collective assessment of the products and in part on individual assessment, was not flawed.

  In addressing the issue of "so as to afford protection" under Art. III:2, second sentence, both the Panel and the Appellate Body once again emphasized the importance of examining the "design, structure, and architecture" of the measures, as previously clarified by the Appellate Body in *Japan – Alcoholic Beverages II*.

1 *Korea – Taxes on Alcoholic Beverages*

2 Other issues addressed: burden of proof; objective assessment (DSU Art. 11); panel's obligation (DSU Art. 12.7); requirements of panel request (DSU Art. 6.2); adequacy of consultations (DSU Art. 3.3, 3.7 and 4.5); confidentiality of consultations (DSU Art. 4.6); late submission of evidence; private counsel; GATT Art. III:2 (general); GATT Art. III:2, first sentence.

JAPAN – AGRICULTURAL PRODUCTS II[1]
(DS76)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*SPS Arts. 2.2, 5.7, 5.6 and 5.1*	Establishment of Panel	*18 November 1997*
			Circulation of Panel Report	*27 October 1998*
Respondent	*Japan*		Circulation of AB Report	*22 February 1999*
			Adoption	*19 March 1999*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Varietal testing requirement (Japan's Plant Protection Law), under which the import of certain plants was prohibited because of the possibility of their becoming potential hosts of codling moth.

- **Product at issue:** Eight categories of plants originating from the United States, namely, apricots, cherries, plums, pears, quince, peaches (including nectarines), apples and walnuts.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **SPS Art. 2.2 (sufficient scientific evidence):** The Appellate Body upheld the Panel's finding that Japan's varietal testing requirement was maintained without sufficient scientific evidence in violation of Art. 2.2.[3]

- **SPS Art. 5.7 (provisional measure):** The Appellate Body upheld the Panel's finding that the varietal testing requirement was not justified under Art. 5.7 because Japan did not meet all the requirements for the adoption and maintenance of a provisional SPS measure as set out in Art. 5.7.

- **SPS Art. 5.6 (appropriate level of protection – alternative measures):** Having found that the United States, as a complainant, did not claim and, therefore, could not have established a prima facie case of Japan's inconsistency with the existence of an alternative measure (determination of sorption levels) under Art. 5.6, the Appellate Body reversed the Panel's finding that Japan acted inconsistently with Art. 5.6.

  Then, as to the alternative measure proposed by the United States – i.e. testing on a product-by-product basis, the Appellate Body upheld the Panel's finding that the United States failed to prove that Japan's measure was "more trade-restrictive than required" in relation to the alternative measure proposed by the United States (testing by product) and thus that it had violated Art. 5.6 because testing by product did not achieve Japan's appropriate level of protection.[4]

- **SPS Art. 5.1 (risk assessment):** As the Appellate Body had found that the Panel improperly applied judicial economy to the US claim under Art. 5.1 in relation to apricots, pears, plums and quince – the four products that were not examined by the Panel, it completed the legal analysis and found that Japan's measure violated Art. 5.1 for these four products as it was not based on a proper risk assessment.

1 *Japan – Measures Affecting Agricultural Products*

2 Other issues addressed: objective assessment (DSU Art. 11); SPS Agreement Art. 7 and Annex B, para. 1 (measures); judicial economy; burden of proof; consultation with scientific experts; and terms of reference/specificity of panel request.

3 The Appellate Body also agreed with the Panel's legal standard for the analysis of Art. 2.2: the obligation in Art. 2.2 not to maintain an SPS measure without "sufficient scientific evidence" requires that "there be a rational or objective relationship between the SPS measure and the scientific evidence".

4 The Appellate Body referred back to *Australia – Salmon* for the three elements that an alternative measure should meet within the meaning of Art. 5.6: the alternative measure (i) is reasonably available taking into account technical and economic feasibility; (ii) achieves the Member's appropriate level of phytosanitary protection; and (iii) is significantly less restrictive to trade than the measure at issue.

INDIA – PATENTS (EC)[1]
(DS79)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*TRIPS Arts. 70.8 and 70.9*	Establishment of Panel	*16 October 1997*
			Circulation of Panel Report	*24 August 1998*
Respondent	*India*		Circulation of AB Report	*NA*
			Adoption	*22 September 1998*

1. MEASURE AND INTELLECTUAL PROPERTY AT ISSUE

- **Measure at issue:** (i) The insufficiency of the legal regime – India's "mailbox rule" – under which patent applications for pharmaceutical and agricultural chemical products could be filed; and (ii) the lack of a mechanism for granting exclusive marketing rights to such products.

- **Intellection property at issue**: Patent protection for pharmaceutical and agricultural chemical products, as provided under TRIPS Agreement Art. 27.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **TRIPS Art. 70.8 (filing of patent application):** The Panel held that India's filing system based on "administrative practice" for patent applications for pharmaceutical and agricultural chemical products was inconsistent with Art. 70.8. The Panel found that the system did not provide the "means" by which applications for patents for such inventions could be securely filed within the meaning of Art. 70.8(a), because, in theory, a patent application filed under the current administrative instructions could be rejected by the court under the contradictory mandatory provisions of the pertinent Indian law – the Patents Act of 1970.

- **TRIPS Art. 70.9 (exclusive marketing rights):** The Panel found that there was no mechanism in place in India for the grant of "exclusive marketing rights" for pharmaceutical and agricultural chemical products and thus Art. 70.9 had been violated.

1 *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products* (complaint by the European Communities). This dispute concerns the same factual issues and the same legal analyses/conclusions as those involved in the *India – Patents* case brought by the United States.

2 Other issues addressed: multiple complainants (DSU Art. 19.1); original panel (DSU Art. 10.4); *stare decisis* (binding nature of WTO precedent).

CHILE – ALCOHOLIC BEVERAGES[1]
(DS87, 110)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*GATT Art. III:2*	Establishment of Panel	*25 March 1998 (DS110)* *18 November 1998 (DS87)*
			Circulation of Panel Report	*15 June 1999*
Respondent	*Chile*		Circulation of AB Report	*13 December 1999*
			Adoption	*12 January 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Chile's tax measures that imposed an excise tax at different rates – depending on the type of product (pisco, whisky, etc.) under the "Transitional System" and according to the degree of alcohol content (35°, 36°, ... 39°) under the "New Chilean System".

- **Product at issue:** All distilled spirits falling within HS heading 2208, including pisco (Chile's domestic product) and imported distilled spirits such as whisky, vodka, rum, gin, etc.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **GATT Art. III:2 (national treatment – taxes and charges), second sentence (directly competitive or substitutable products):** The Appellate Body upheld the Panel's finding that Chile's new tax regime for alcoholic beverages violated the national treatment principle under Art. III:2, second sentence. (Chile's appeal was only in regard to the new regime.) The Panel found both Chile's transitional and new tax regimes inconsistent with Art. III:2, second sentence.

  ("not similarly taxed"): The Appellate Body agreed with the Panel that imported distilled spirits and Chilean pisco, as directly competitive and substitutable products, were not similarly taxed since the tax burden (47 per cent) on most of imported products (95 per cent of imports) would be heavier than the tax burden (27 per cent) on most of the domestic products (75 per cent of domestic production). The Appellate Body took the view that the relevant comparison between imported and domestic products had to be made based on a comparison of the taxation on *all* imported and domestic products over the *entire* range of categories, not simply a comparison of the products within each category.

  ("applied so as to afford protection"): The Appellate Body stated that an examination of the design, architecture and structure of the New Chilean System "tend[ed] to reveal" that the application of dissimilar taxation of directly competitive or substitutable products would "afford protection to domestic production", as the magnitude of difference (20 per cent) between the tax rates – 27 per cent *ad valorem* for alcohol content of 35° or less (75 per cent of domestic production) and 47 per cent *ad valorem* for alcohol content of over 39° (95 per cent of imports) – was considerable. Also, the Appellate Body stated that a measure's purpose, objectively manifested in the design, architecture and structure of the measure, was pertinent to the task of evaluating whether that measure was applied so as to afford protection to domestic production. However, the Appellate Body rejected the Panel's consideration of the relationship (logical connection) between Chile's new measure and *de jure* discrimination (against imports) found under its traditional system. In this regard, it further said that "Members of the WTO should not be assumed, in any way, to have continued previous protection or discrimination through the adoption of a new measure, as this would come close to a 'presumption of bad faith'".

1 *Chile – Taxes on Alcoholic Beverages*
2 Other issues addressed: claim on the panel's failure to provide the "basic rationale" behind its findings (DSU Art. 12.7); DSU Arts. 3.2 and 19.2.

INDIA – QUANTITATIVE RESTRICTIONS[1]
(DS90)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. XI and XVIII* *AA Art. 4.2*	Establishment of Panel	*18 November 1997*
			Circulation of Panel Report	*6 April 1999*
Respondent	*India*		Circulation of AB Report	*23 August 1999*
			Adoption	*22 September 1999*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** India's import restrictions that India claimed were maintained to protect its balance-of-payments (BOP) situation under GATT Art. XVIII: import licensing system, imports canalization through government agencies and actual user requirement for import licences.

- **Product at issue:** Imported products subject to India's import restrictions: 2,714 tariff lines within the eight-digit level of the HS (710 of which were agricultural products).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. XI:1 (prohibition on quantitative restrictions):** The Panel found, based on the broad scope of a general ban on import restrictions embodied in Art. XI:1, that India's measures, including its discretionary import licensing system, were quantitative restrictions inconsistent with Art. XI:1.

- **GATT Art. XVIII:11 (BOP measures):** The Panel found that as India's monetary reserves were adequate, and, thus, India's BOP measures were not necessary to forestall the threat of, or to stop, a serious decline in its monetary reserves within the meaning of Art. XVIII:9, India had violated Art. XVIII:11, second sentence, which provides that measures may only be maintained to the extent necessary under Art. XVIII:9.

- **Justifications under GATT Art. XVIII:11 (Ad Note and Proviso):** Since a removal of India's BOP measures would not immediately produce the conditions contemplated in Art. XVIII:9 justifying the maintenance of import restrictions, the Appellate Body upheld the Panel's finding that India's measures were not justified under Note *Ad* Art. XVIII:11. Also, the Appellate Body upheld the Panel in finding that since India was not being required to change its development policy, it was not entitled to maintain its BOP measures on the basis of proviso to Art. XVIII:11.

- **AA Art. 4.2 (tariffication):** The Panel found that the measures violated the obligation under Art. 4.2 not to maintain measures of the kind required to be converted into ordinary customs duties and that they could not be justified under footnote 1 to Art. 4.2 either since the measures were not "measures maintained under balance-of-payments provisions".

3. OTHER ISSUES[2]

- **Burden of proof (GATT Art. XVIII):** The Appellate Body upheld the Panel's findings that the burden of proof with respect to Art. XVIII:11 proviso is on the defending party (as an affirmative defence), and with respect to the Note *Ad* Art. XVIII:11 on the complaining party.

- **Competence of panels to review BOP measures**: The Appellate Body held that dispute settlement panels are competent to review any matters concerning BOP restrictions, and rejected India's argument that a principle of institutional balance requires that matters relating to BOP restrictions be left to the relevant political organs – the BOP Committee and the General Council.

1 *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*

2 Other issues addressed: special and different treatment for developing countries (DSU Arts. 12.10 and 21.2, GATT Art. XVIII:B); consultation with the IMF (DSU Art. 13.1 and GATT Art. XV:2); terms of reference; objective assessment of the matter (DSU Art. 11).

KOREA – DAIRY[1]
(DS98)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*SA Arts. 2.1, 4.2, 5.1 and 12* *GATT Art. XIX:1*	Establishment of Panel	*23 July 1998*
			Circulation of Panel Report	*21 June 1999*
Respondent	*Korea*		Circulation of AB Report	*14 December 1999*
			Adoption	*12 January 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive safeguard measure.
- **Product at issue:** Imports of certain dairy products (skimmed milk powder preparations).

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **GATT Art. XIX:1(a) (unforeseen developments):** Reversing the Panel's legal reasoning, the Appellate Body held that the clause – "as a result of unforeseen development and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions" – in Art. XIX:1(a), although not an independent condition, describes certain circumstances which must be demonstrated as a matter of fact in order for a safeguard measure to be applied consistently with the requirements of Art. XIX. The Appellate Body concluded that the phrase "as a result of unforeseen developments" requires that the developments that led to a product being imported in such quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers must have been "*unexpected*". The Appellate Body could not complete the Panel's analysis, however, due to the lack of undisputed facts in the record.

- **SA Art. 4.2(a) and (c) (injury determination – serious injury):** The Appellate Body upheld the Panel's finding that Korea's serious injury determination did not meet the requirements of Art. 4.2, as it did not adequately examine *all* serious injury factors listed in Art. 4.2 (e.g. imports increase, market share, sales, production, productivity, etc.) and neither did it provide sufficient reasoning in its explanations of how certain factors support, or detract from, a finding of serious injury.

- **SA Art. 5.1 (application of safeguard measure):** The Appellate Body partly upheld and partly reversed the Panel's legal finding: It agreed that Art. 5.1 (first sentence) "imposes an obligation on a Member applying a safeguard measure to ensure that the measure applied is not more restrictive than necessary to prevent or remedy serious injury and to facilitate adjustment"; and reversed the Panel's broad finding that Art. 5.1 imposes an obligation on a Member applying a safeguard measure to explain that the measure is necessary to remedy serious injury and to facilitate adjustment. Rather, the Appellate Body considered that the clear justification requirement under the second sentence of Art. 5.1 applies only to "a quantitative restriction that reduces the quantity of imports below the average of imports in the last three representative years for which statistics are available". The Panel had originally found that Korea had acted inconsistently with Art. 5.1, but the Appellate Body was unable to complete the analysis due to the lack of panel findings on Korea's quantitative restrictions.

3. OTHER ISSUES

- **Requirements of panel request (DSU Art. 6.2):** According to the Appellate Body, simple identification of the articles alleged to have been violated, while a "minimum requirement", may not always be enough to meet all the requirements of Art. 6.2. This requires a case-by-case examination, but the mere listing of the articles may not satisfy Art. 6.2 where those articles listed in the panel request establish multiple obligations. In addition, a panel should take into account "whether the ability of the respondent to defend itself was prejudiced[3]", this had not been proved by Korea.

1 *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*

2 Other issues addressed: "all pertinent information" (SA Art. 12.2); evidentiary issues; burden of proof; standing to bring a complaint; deadlines for submission of evidence; claims under SA Arts. 3 and 4; standard of review (concerning Members' safeguard investigations).

3 The Appellate Body referred back to its finding in this regard in *EC – Computer Equipment*. The first dispute where a panel found "prejudice" to the respondent was *Thailand – H-Beams*.

US – DRAMS[1]
(DS99)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*ADA Arts. 11, 2.2, 6.6 and 5.8*	Establishment of Panel	*16 January 1998*
			Circulation of Panel Report	*29 January 1999*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*19 March 1999*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** United States Department of Commerce (USDOC) regulation (namely, the "three zeroes" rules)[2], both as applied in the DRAMS third administrative review at issue and as such, and other aspects of the third administrative review conducted by the USDOC on DRAMS.

- **Product at issue:** DRAMS from Korea (Hyundai and LG Semicon).

2. SUMMARY OF KEY PANEL FINDINGS[3]

- **ADA Art. 11.2 (review of anti-dumping duties – the "likely" standard):** The Panel found for Korea and held that the "not likely" standard in the US regulation (as quoted in footnote 2 below), as such, is inconsistent with Art. 11.2 ("likely" standard) because a failure to find that an exporter is "not likely" to dump does not necessarily lead to the conclusion that this exporter is therefore "likely" to dump. The Panel considered that because there are situations where the not "not likely" standard is satisfied but the "likely" standard is not, the "not likely" criterion fails to provide a "demonstrable basis for consistently and reliably determining that the likelihood criterion is satisfied". The Panel also found that because the final results of the third administrative review in the DRAMS case were based on a USDOC determination under that regulation, those results, as applied, were inconsistent with Art. 11.2 as well.

- **ADA Art. 2.2.1.1 (dumping determination – acceptance of data):** The Panel rejected Korea's claim that the USDOC violated Art. 2.2.1.1 by disregarding certain cost data submitted by the respondents during the third DRAMS administrative review proceedings. The Panel found that Korea failed to establish a prima facie case because it merely relied on its own conclusory arguments that the data should have been accepted without challenging the specific bases upon which the USDOC had rejected the submitted data.

- **ADA Art. 6.6 (evidence – accuracy of the information):** The Panel rejected Korea's claim that the USDOC accepted unverified data from a petitioner in reaching decisions regarding the respondents. The Panel found that Korea failed to establish a prima facie case because it had raised no specific challenges to the use of the data other than to argue that all information should be specifically verified. Instead, the Panel was of the view that Art. 6.6 did not require verification of all information upon which an authority relies. (The authority could rely on the reputation of the original source of the information.)

- **ADA Art. 5.8 (initiation of investigation – insufficient evidence):** The Panel rejected Korea's claim that the United States violated Art. 5.8 by setting the *de minimis* margin threshold for duty assessment procedures (under Art. 9.3) at 0.5 per cent, instead of the 2 per cent standard established in Art. 5.8. The Panel considered that the scope of Art. 5.8 (*de minimis* standard) is limited to applications for investigations and investigations (as set out in Art. 5.8) and does not encompass Art. 9.3 duty assessment procedure.

1 *United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea*
2 The relevant US regulation at issue here is CFR Part 19, Section 353.25(a)(2)(ii), which provides:
"The Secretary [of Commerce] may revoke an order in part if the Secretary concludes that:
... (ii) It is not likely that those persons will in the future sell the merchandise at less than foreign market value; ..."
3 Other issues addressed in this case: general, alleged US failure to self-initiate an injury review (ADA Art. 11.2); specific recommendations (DSU Art. 19.1); and terms of reference (reviewability of pre-WTO measures).

CANADA – DAIRY[1]
(DS103, 113)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*United States, New Zealand*	*AA Arts. 9.1, 3.3, 10.1 and 8 GATT Art. II:1(b)*	Establishment of Panel	*25 March 1998*
			Circulation of Panel Report	*17 May 1999*
Respondent	*Canada*		Circulation of AB Report	*13 October 1999*
			Adoption	*27 October 1999*

1. MEASURE AND INDUSTRY AT ISSUE

- **Measure at issue:** Canadian government's support system (Special Milk Classes Scheme) for domestic milk production and export, as well as Canada's tariff rate quota (TRQ) regime for imports of fluid milk.
- **Industry at issue**: Milk and dairy product industry.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **AA Art. 9.1(a) (export subsidies – direct subsidies):** Having reversed the Panel's conclusion that Canada's measure involved export subsidies within the meaning of Art 9.1(a) (based on the Panel's erroneous interpretation of the terms "direct subsidies" and "payments-in-kind" under Art. 9.1(a)), the Appellate Body also reversed the Panel's finding that Canada had acted inconsistently with Arts. 3.3 and 8 by providing export subsidies under Art. 9.1(a) – i.e. by exceeding the support reduction commitment levels scheduled by Canada.
- **AA Art. 9.1(c) (export subsidies – payments financed by virtue of governmental action):** The Appellate Body upheld the Panel's finding that the provision of milk at discounted prices to processors for export constituted "payments" within the meaning of Art. 9.1(c) and that the relevant payments under Canada's scheme were financed by virtue of governmental action. Thus, it upheld the Panel's ultimate conclusion that Canada's scheme constituted an export subsidy within the meaning of Art. 9.1(c), which exceeded the reduction commitment, and thus, Canada had acted inconsistently with Arts. 3.3 and 8.
- **AA Art. 10.1 (export subsidies not listed in Art. 9.1):** The Panel found alternatively that in the event Canada's measures did not involve export subsidies under Art. 9.1(a) or (c), Canada's measures still constituted an "other" export subsidy in the sense of Art. 10.1 and exceed its reduction commitment levels in violation of Art. 10.1.
- **GATT Art. II:1(b) (schedules of concessions):** Recalling its earlier finding[2] that Members' Schedules should be interpreted under the general rules of interpretation set out in the VCLT, the Appellate Body concluded that Canada's limitation of cross-border purchases of fluid milk to "Canadian consumers" by specifying it as a condition in Canada's tariff schedule justified Canada's effective limitation of access to the TRQ to imports for "personal use". But, it found that Canada's value limitation set at Can$20 for each importation was inconsistent with Art. II:1(b), as there was no mention of such value limitation in Canada's schedule. (This resulted in a partial reversal of the Panel's interpretations and conclusions.)

3. OTHER ISSUES[3]

- **Burden of proof (AA Art. 10.3):** The Panel noted that AA Art. 10.3 shifts the burden of proof from the complainant to the respondent in cases dealing with export subsidies once the complainant has shown exports in excess of scheduled quantities. It is then for the respondent to prove that export quantities in excess of reduction commitment levels are not subsidized.

1 *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products*
2 *EC – Computer Equipment*
3 Other issues addressed: submission of evidence (preliminary panel decision); export subsidies under both the AA and ASCM (AA Art. 9.1(a) – "governments or their agents").

CANADA – DAIRY (ARTICLE 21.5 – NEW ZEALAND AND US)[1]
(DS103, 113)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*New Zealand, United States*	*AA Art. 9.1(c)*	Referred to the Original Panel	*1 March 2001*
			Circulation of Panel Report	*11 July 2001*
Respondent	*Canada*		Circulation of AB Report	*12 November 2001*
			Adoption	*18 December 2001*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The revised version of the system of government support for domestic milk production and export, as well as Canada's tariff rate quota regime for imports of fluid milk, which were the measures at issue in the original dispute. Canada revised the supply system for sales of domestic milk and a separate scheme governing milk to be sold for export.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **AA Art. 9.1(c) (export subsidies – payments financed by virtue of governmental action):** On the question of whether the Canadian measures were "payments on the export of an agricultural product that are financed by virtue of governmental action" and thus constituted a subsidy under Art. 9.1(c) (which was made in excess of its export subsidy and quantity commitments in violation of Arts. 3.3 and 8 thereof), the Appellate Body reversed the Panel's legal findings as follows. (The Appellate Body, however, did not complete the analyses based on the correct legal standard.)[3]

  ("payments") The Appellate Body held first that neither prices for milk destined for the domestic market *nor* world market prices could serve as the appropriate basis for determining whether prices charged for export sales constituted a "payment" within the meaning of Art. 9.1 (c). The Appellate Body, while holding that the "average total cost of production" was the appropriate standard for determining whether export sales involve "payments", did not suggest a specific method for calculating the average total cost of production.

  ("financed by virtue of governmental action") Second, (i) having found, based on a textual approach, that Canada's regulation of supply and price of milk in the domestic market was a "governmental action" and that the term "by virtue of" in Art. 9.1(c) implies that the payments must be financed "as a result of, or as a consequence of" the governmental action, and (ii) having noted that "payments" within the meaning of Art. 9.1(c) cover both the financing of monetary payments and payments-in-kind, the Appellate Body reversed the Panel's finding that the Canadian governmental action in this case "obliged" producers to sell commercial export milk and that there was a demonstrable link between the governmental action and the financing of the payments. The Appellate Body found that although the governmental action established a regulatory regime whereby some milk producers could make additional profits only if they chose to sell commercial export milk, there was *no demonstrable link* between the governmental action and the financing of the payments.

1 *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*

2 Other issues addressed: AA Arts. 3.1 and 10.1.

3 As a result of the Appellate Body's findings, New Zealand and the United States once again referred this matter to the original panel on the date of the adoption of the first compliance Panel/Appellate Body reports. (See *Canada – Dairy (Article 21.5 – New Zealand and US II)*).

CANADA – DAIRY (ARTICLE 21.5 – NEW ZEALAND AND US II)[1]
(DS103, 113)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*New Zealand, United States*	*AA Arts. 3 and 9*	Referred to the Original Panel	*18 December 2001*
			Circulation of Panel Report	*11 July 2002*
Respondent	*Canada*		Circulation of AB Report	*5 December 2002*
			Adoption	*17 January 2003*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The system of government support for domestic milk production and export, as well as Canada's tariff rate quota regime for imports of fluid milk, which were the measures at issue in the original dispute. Canada revised the supply system for sales of domestic milk and a separate scheme governing milk to be sold for export.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **AA Art. 9.1 (c) (export subsidies – payments financed by virtue of governmental action):** The Appellate Body upheld the Panel's finding that the supply of commercial export milk by Canadian milk producers, at a price below the "average total cost of production", to Canadian dairy processors involved export subsidies under Art. 9.1(c) and were accordingly "payments" within the meaning of Art. 9.1(c). The Appellate Body then considered the "role" of the Canadian government and noted that "governmental action" controls "virtually every aspect of domestic milk supply and management," and the effect of these different governmental actions is to secure a highly remunerative price for sales of domestic milk by producers. The Appellate Body concluded that these factors were sufficient to demonstrate the "nexus" between the governmental actions and the financing and hence were covered by Art. 9.1(c). Regarding the method by which to establish the production costs, which are necessary to ultimately determine the existence of "payments", the Appellate Body found that the standard is "an industry-wide average figure that aggregates the costs of production of all producers of milk" and that the industry-wide cost of production could be based on a statistically valid sample of all producers.

- **AA Art. 3.3 (export subsidy commitments):** On the basis of its findings on the export subsidies within the meaning of Art. 9.1(c), which were provided in excess of the quantity reduction commitment set forth in Canada's Schedule, the Appellate Body confirmed that Canada had acted inconsistently with its obligations under Art. 3.3.

3. OTHER ISSUES[2]

- **Burden of proof (AA Art. 10.3):** Reversing the Panel's finding that it is for the complaining Member to make a prima facie case that the exports in excess of the schedule commitments are subsidized, the Appellate Body said that Art. 10.3 "is clearly intended to alter the generally accepted rules on burden on proof" in respect of whether an export subsidy has been granted to the excess quantities. In this connection, the traditional burden of proof principle (i.e. the burden is on the complainant Member) apply only to the question of whether exports have been made in quantities above export quantity commitment levels. Despite the Panel's misapplication of the burden of proof on the issue, the Appellate Body found that the Panel ultimately arrived properly at the burden of proof situation envisaged by Art. 10.3 and that its error did not vitiate any of the Panel's substantive findings under Arts. 3.3, 8, 9.1(c) and 10.1.

1 *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*

2 Other issues addressed: AA Arts. 10.1 and 8.

US – FSC[1]
(DS108)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Arts. 1 and 3* *AA Arts. 10 and 8*	Establishment of Panel	*22 September 1998*
			Circulation of Panel Report	*8 October 1999*
Respondent	*United States*		Circulation of AB Report	*24 February 2000*
			Adoption	*20 March 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US tax exemptions for Foreign Sales Corporations (FSC)[2] in respect of their export-related foreign-source trade income.

- **Product at issue:** All foreign goods, including agricultural products, affected by the US measure.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 1.1(a): (1): (ii) (definition of a subsidy – financial contribution):** The Appellate Body upheld the Panel's finding that the FSC measure constituted government revenue foregone that was "otherwise due" and, thus a "financial contribution" within the meaning of Art. 1.1.

- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies):** The Appellate Body upheld the Panel's finding that the FSC measure constituted prohibited export subsidies under Art. 3.1(a) because the FSC exemptions (i) were based upon foreign trade income derived from "export property" and (ii) fell within the language of item (e) (full or partial exemption remission ... of direct taxes ...) of Annex I (Illustrative List of Export Subsidies). The Appellate Body (and the Panel) rejected the US argument that footnote 59 to item (e) exempted the FSC measure from constituting export subsidies.

- **AA Arts. 3.3 (export subsidy commitments) and 9.1 (export subsidies – provision of subsidies to reduce the marketing costs):** The Appellate Body reversed the Panel's finding that the FSC tax exemptions were an export subsidy under AA Art. 9.1(d) and thus violated Art. 3.3. The Appellate Body considered that "income tax liability" that was exempted or reduced under the FSC tax regime could not be considered as "the costs of marketing exports" of agricultural products that were subject to reduction commitment within the meaning of Art. 9.1(d).

- **AA Arts. 10.1 (export subsidies not listed in Art. 9.1) and 8 (export competition commitments):** The Appellate Body found that the United States violated Art. 10.1 and subsequently Art. 8 because through the FSC exemptions, which were unlimited in nature (i.e. no limitation on the amount of the exemption and no discretionary element to its grant), the United States acted inconsistently with its export subsidy commitments under the AA, first, not to provide export subsidies for *scheduled* products (Art. 9.1) *in excess of* the scheduled commitments; and, second, not to provide *any* Art. 9.1 export subsidies for *unscheduled* products.

- **ASCM Art. 4.7 (recommendation to withdraw a prohibited subsidy):** Pursuant to Art. 4.7, the Panel recommended that the United States "withdraw the FSC subsidies without delay. The parties agreed that the date for withdrawal would be 1 November 2000.

3. OTHER ISSUES[3]

- **Burden of proof (AA Art. 10.3):** The Panel concluded that an AA Art. 10.3 claim contains a special burden of proof whereby once the complainant has proved that the respondent is exporting a certain commodity in quantities exceeding its commitment levels, then the respondent must prove that such an excessive amount of exports is not subsidized. The Panel found that this rule only applies to Members' "scheduled" products.

1 *United States – Tax Treatment for "Foreign Sales Corporation"*

2 FSCs are foreign corporations in charge of specific activities with respect to the sale or lease of goods produced in the United States for export outside the US. In practice, many FSCs are controlled foreign subsidiaries of US corporations, as FSCs affiliated with its United States supplier receive greater benefits under the programme.

3 Other issues addressed: ASCM Art. 4.2 (statement of available evidence); new arguments before the Appellate Body; interpretation of footnote 59 to item (e) of Annex I; panel's jurisdiction (appropriate tax forum); DSU Art. 6.2 (identification of products (agricultural) at issue); order of consideration of ASCM issues.

US – FSC (ARTICLE 21.5 – EC)[1]
(DS108)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Arts. 1, 3 and 4* *AA Arts. 3, 8 and 10*	Referred to the Original Panel	*20 December 2000*
			Circulation of Panel Report	*20 August 2001*
Respondent	*United States*		Circulation of AB Report	*14 January 2002*
			Adoption	*29 January 2002*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The US "FSC Repeal and Extraterritorial Income Exclusion Act of 2000" (the "ETI" Act).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies):** The Appellate Body first upheld the Panel's finding that a "financial contribution" within the meaning of Art. 1.1(a)(1)(ii) existed under the ETI Act, as the United States had foregone revenue otherwise due when it excluded a portion of foreign-source income from tax obligations under the ETI Act, while taxing foreign-source income under the normal US tax rules. The Appellate Body upheld the Panel's finding that the ETI Act granted subsidies contingent, in law, upon export performance within the meaning of Art. 3.1(a) with respect to property produced within the United States by conditioning the availability of the subsidy on the sale, lease or rent "outside" the United States of the good produced within the United States.

- **ASCM footnote 59 (double taxation exception):** The Appellate Body upheld the Panel's finding that the ETI Act was not justified as a measure to avoid the double taxation of foreign-source income under footnote 59 (fifth sentence), because the Act did not exempt only "foreign-source income", but exempted both foreign and domestic-source income. The flexibility under footnote 59 does not allow Members to adopt allocation rules that systematically result in a tax exemption for income that has no link with a "foreign" country and that would not be regarded as foreign-source.

- **ASCM Art. 4.7 (recommendation to withdraw a prohibited subsidy):** As the ETI Act included certain transitional rules that effectively extended the application of the prohibited FSC provisions, the Appellate Body upheld the Panel's finding that the United States failed to implement the DSB's recommendations made under Art. 4.7 to withdraw the export subsidies without delay because it could find no legal basis for extending the time-period for the withdrawal of the subsidies.

- **AA Arts. 3.3 (export subsidy commitments), 8 (export competition commitments) and 10.1 (export subsidies not listed in Art. 9.1):** The Appellate Body upheld the Panel's finding that the ETI Act involved export subsidies under AA Art. 1(e) with respect to qualifying property produced within the United States and that it was inconsistent with Art. 10.1 (and thus with Art. 8) by applying export subsidies in a manner that threatened to circumvent US export subsidy commitments under Art. 3.3.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Appellate Body upheld the Panel's finding that the so-called "fair market value rule"[2] under the ETI Act accorded less favourable treatment to imported products than to like US domestic products in violation of Art. III:4 by providing a "considerable impetus" to use domestic products over imported products for the tax benefit under the ETI Act.

3. OTHER ISSUES[3]

- **Burden of proof (ASCM footnote 59):** As footnote 59 (fifth sentence) constitutes an exception to the legal regime under Art. 3.1(a) and thus is an "affirmative defence" with respect to measures taken to avoid the double-taxation of foreign-source income, the Appellate Body found that the burden of proof is on the party invoking the exception (i.e. United States in this case).

1 *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities*
2 Under the "fair market value rule", any taxpayer that sought an exemption under the ETI Act had to ensure that in the manufacture of qualifying property, it did not "use" imported input products, whose value comprised more than 50 per cent of the fair market value of the end-product.
3 Other issues addressed: third parties' right to rebuttal submissions in Art. 21.5 proceedings (DSU Art. 10.3).

US – FSC (ARTICLE 21.5 – EC II)[1]
(DS108)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Art. 4.7*	Referred to the Original Panel	*17 February 2005*
			Circulation of Panel Report	*30 September 2005*
Respondent	*United States*		Circulation of AB Report	*13 February 2006*
			Adoption	*14 March 2006*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The "American Jobs Creation Act of 2004" (the "Jobs Act")[2] as well as the continued operation of Section 5 of the ETI Act (i.e. the indefinite grandfather provision for FSC subsidies in respect of certain transactions) that had already been found to constitute "prohibited subsidies" in the first Art. 21.5 proceedings.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 4.7 (recommendation to withdraw a prohibited subsidy):** Having concluded that the "recommendation under Art. 4.7 remains in effect until the Member concerned has fulfilled its obligation by fully withdrawing the prohibited subsidy", the Appellate Body upheld the Panel's finding that "to the extent that the United States, by enacting Section 101 of the Jobs Act, maintains prohibited FSC and ETI subsidies through the transitional and grandfathering measures, it continues to fail to implement fully the operative DSB recommendations and rulings to withdraw the prohibited subsidies and to bring its measures into conformity with its obligations under the relevant covered agreements." In this regard, it agreed with the Panel that "the relevant recommendations adopted by the DSB in the original proceedings in 2000, and those in the first and these second Art. 21.5 proceedings, form part of a continuum of events relating to compliance with the recommendations and rulings of the DSB in the original proceedings".

3. OTHER ISSUES

- **Requirements of panel request (DSU Art. 6.2):** The Appellate Body explained that in order for a panel request under Art. 21.5 to satisfy the requirements under DSU Art. 6.2, the complainant party in an Art. 21.5 proceeding must identify, at a minimum, the following in its panel request: (i) the recommendations and rulings made by the DSB in the original dispute as well as in any preceding Art. 21.5 proceedings that have allegedly not been complied with; (ii) the measures allegedly taken to comply with those recommendations and rulings, as well as any omissions or deficiencies therein; and (iii) the legal basis for its complaint, by specifying how the measures taken, or not taken, fail to remove the WTO-inconsistencies found in the previous proceedings, or whether they have brought about new WTO-inconsistencies. On the question of whether Section 5 of the ETI Act (i.e. grandfathering prohibited subsidies) was properly identified in the European Communities' panel request so as to put the United States on sufficient notice, the Appellate Body upheld the Panel's finding that it was within the Panel's terms of reference as the European Communities' panel request referred to the *entirety* of the prohibited subsidies, including Section 5 of the ETI Act, found to exist in the original and first Art. 21.5 proceedings. The Appellate Body agreed with the Panel that the panel request should be read as a whole in this regard.

1 *United States – Tax Treatment for "Foreign Sales Corporations" – Second Recourse to Article 21.5 of the DSU by the European Communities*

2 Although the Jobs Act allegedly "repealed" the tax exclusion in the ETI Act: it contains (1) the "transition provision" in Section 101(d) of the Jobs Act for certain transactions between 1 Jan. 2005 and 31 Dec. 2006 pursuant to which the ETI scheme remained available on a reduced basis (80 per cent in 2005 and 60 per cent in 2006); and (2) the grandfather provision in Section 101(f) for certain transactions. Moreover, it did not repeal Section5(c)(1) of the ETI Act, which had indefinitely grandfathered certain FSC subsidies in respect of certain transactions.

CANADA – PHARMACEUTICAL PATENTS[1]
(DS114)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*TRIPS Arts. 27, 28 and 30*	Establishment of Panel	*1 February 1999*
			Circulation of Panel Report	*17 March 2000*
Respondent	*Canada*		Circulation of AB Report	*NA*
			Adoption	*7 April 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Certain provisions under Canada's Patent Act: (i)"regulatory review provision (Sec. 55.2(1))"[2]; and (ii)"stockpiling provision (Sec. 55.2(2))" that allowed general drug manufacturers to override, in certain situations, the rights conferred on a patent owner.

- **Product at issue:** Patented pharmaceuticals from the European Communities.

2. SUMMARY OF KEY PANEL FINDINGS

Stockpiling provision

- **TRIPS Arts. 28.1 (patent owner rights) and 30 (exceptions):** (Canada practically conceded that the stockpiling provision violated Art. 28.1, which sets out exclusive rights granted to patent owners.) Concerning Canada's defence under Art. 30, the Panel found that the measure was not justified under Art. 30 because there were no limitations on the quantity of production for stockpiling which resulted in a substantial curtailment of extended market exclusivity, and, thus, was not "limited" as required by Art. 30. Accordingly, the Panel concluded that the stockpiling provision was inconsistent with Art. 28.1 as it constituted a "substantial curtailment of the exclusionary rights" granted to patent holders.

Regulatory review provision

- **TRIPS Arts. 28.1 (patent owner rights) and 30 (exceptions):** (Canada also practically conceded on the inconsistency of the provision with Art. 28.1) The Panel found that Canada's regulatory review provision was justified under Art. 30 by meeting all three cumulative criteria: the exceptional measure (i) must be limited; (ii) must not "unreasonably conflict with normal exploitation of the patent"; and (iii) must not "unreasonably prejudice the legitimate interests of the patent owner", taking account of the legitimate interests of third parties. These three cumulative criteria are necessary for a measure to be justified as an exception under Art. 30.

- **TRIPS Art. 27.1 (non-discrimination):** The Panel found that the European Communities failed to prove that the regulatory review provision discriminated based on the field of technology (i.e. against pharmaceutical products in this case), either *de jure* or *de facto*, under Art. 27.1.

3. OTHER ISSUES[3]

- **Burden of proof (TRIPS Art. 30):** Since Art. 30 is an exception to the obligations under the TRIPS Agreement, the burden was on the respondent (i.e. Canada) to demonstrate that the patent provisions at issue were justified under that provision.

1 *Canada – Patent Protection of Pharmaceutical Products*

2 The regulatory review provision permitted the general manufacturers of pharmaceuticals to produce samples of the patented product for use during the regulatory review process. The stockpiling provision allowed producers of generic drugs to make the drugs and begin stockpiling them six months prior to the expiration of the patent.

3 Other issues addressed: application of principles of treaty interpretation (VCLT) to the provisions under the TRIPS Agreement; interpretation of three cumulative criteria under Art. 30 exception.

ARGENTINA – FOOTWEAR (EC)[1]
(DS121)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*SA Arts. 2, 4 and 12* *GATT Art. XIX:1(a)*	Establishment of Panel	*23 July 1998*
			Circulation of Panel Report	*25 June 1999*
Respondent	*Argentina*		Circulation of AB Report	*14 December 1999*
			Adoption	*12 January 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Provisional and definitive safeguard measures imposed by Argentina.
- **Product at issue:** Imports of footwear into Argentina.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **GATT Art. XIX:1(a) (unforeseen developments):** Having determined that any safeguard measure imposed after the entry into force of the WTO Agreement must comply with the provisions of both the SA and GATT Art. XIX, the Appellate Body reversed the Panel's conclusion that the GATT Art. XIX:1(a) "unforeseen developments" clause does not add anything additional to the SA in respect of the conditions under which a safeguard measure may be applied. It found instead that Art. XIX:1(a), although an independent obligation, describes certain circumstances that must be demonstrated as a matter of fact. The Appellate Body did not however complete the Panel's analysis in this regard.
- **SA Art. 2 (parallelism):** The Appellate Body upheld the Panel's ultimate conclusion that, based on the ordinary meaning of Arts. 2.1, 2.2 and 4.1(c), a safeguard measure must be applied to the imports from "all" sources from which imports were considered in the underlying investigation, and found that Argentina's investigation was inconsistent with Art. 2 since it excluded imports from MERCOSUR from the application of its safeguard measure while it had included those imports from MERCOSUR in the investigation.
- **SA Arts. 2.1 (application of safeguard measures) and 4.2(a) (injury determination – increased imports):** The Appellate Body found that the "increased imports" element under the SA requires not only an examination of the "rate and amount" (as opposed to just comparing the end points) of the increase in imports, but also a demonstration that "imports must have been recent enough, sudden enough, sharp enough and significant enough, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'". Argentina had failed to consider adequately import trends and quantities.
- **SA Art. 4.2(a) (injury determination – serious injury):** The Appellate Body agreed with the Panel's interpretation that Art. 4.2(a) requires a demonstration of "all" the factors listed in Art. 4.2(a) as well as all other factors relevant to the situation of the industry concerned. Argentina had failed to meet the requirement.
- **SA Art. 4.2(b) (injury determination – causation):** The Appellate Body upheld the Panel's legal finding that a causation analysis requires an examination of: (i) the relationship (coincidence of trends) between the movements in imports and injury factors; (ii) whether the conditions of competition demonstrate a causal link between imports and injury; and (iii) whether injury caused by factors other than imports had not been attributed to imports. The Appellate Body upheld the finding that Argentina's findings on causation were not adequately explained and supported by evidence.

1 *Argentina – Safeguard Measures on Imports of Footwear*

2 Other issues addressed: terms of reference (modified measures, DSU Art. 6.2); "All pertinent information" (SA Art. 12.2); passive observer status; terms of reference (DSU Art. 7); standard of review; basic rationale of panel findings (DSU Art. 12.7).

THAILAND – H-BEAMS[1]
(DS122)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Poland*	*ADA Arts. 2, 3, 5 and 17.6*	Establishment of Panel	*19 November 1999*
			Circulation of Panel Report	*28 September 2000*
Respondent	*Thailand*		Circulation of AB Report	*12 March 2001*
			Adoption	*5 April 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Thailand's definitive anti-dumping determination.
- **Product at issue:** H-beams from Poland.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 5 (initiation of investigation):** The Panel rejected Poland's claim that the Thai authorities' initiation of the investigation could not be justified due to the insufficiency of evidence originally contained in the application. The Panel considered that the application need not contain analysis, but only information. The Panel also rejected Poland's claim that Thailand violated Art. 5.5 by failing to provide a written notification of the filing of application for initiation of investigation. The Panel considered that a formal meeting could satisfy the requirement.
- **ADA Art. 2.2 (dumping determination – constructed normal value):** As the Panel found that, (i) for the purpose of calculating a dumping margin under Art. 2.2, Thailand used the narrowest product category that included the like product; and (ii) that no separate reasonability test was required in choosing a profit figure for constructed normal value, the Panel concluded that Thailand had not violated Art. 2.2.
- **ADA Art. 3.4 (injury determination – injury factors):** As the Appellate Body upheld the Panel's interpretation of Art. 3.4 that an investigating authority should consider *all* the injury factors listed in Art. 3.4, the Appellate Body upheld the Panel's finding that Thailand acted inconsistently with Art. 3.4.
- **ADA Arts. 3.1 (injury determination) and 17.6 (standard of review):** (Thailand only appealed the Panel's legal interpretations of Arts. 3.1 and 17.6, and not the Panel's substantive findings of a violation of certain Art. 3 provisions.) The Appellate Body reversed the Panel's interpretations that Art. 3.1 requires an anti-dumping authority to base its determination only upon evidence that was disclosed to interested parties during the investigation. Similarly, it also reversed the Panel's interpretation that, under Art. 17.6, panels are required to examine only an investigating authority's injury analysis based on the documents shared with the interested parties. The Appellate Body found that the scope of the evidence that can be examined under Art. 3.1 depends on the "nature" of the evidence, not on whether the evidence is confidential or not. A panel should consider all facts, both confidential and non-confidential, in its assessment of the establishment and evaluation of the facts by investigating authorities under Art. 17.6.

3. OTHER ISSUES[2]

- **Requirements of panel request (DSU Art. 6.2):** The Appellate Body upheld the Panel's finding that Poland's panel request met the requirements of Art. 6.2. However, it rejected the Panel's rationale for finding Poland's mere listing of Art. 5 (without sub-provisions) in the panel request to be sufficient, i.e. the fact that several of the issues related to Art. 5 had already been raised by the exporters before the Thai authority. The Appellate Body rejected this reasoning because (i) there is not always continuity between claims raised in an investigation and those in WTO dispute settlement related to that investigation; and (ii) third parties to the dispute might not be on notice of the legal basis of the claims as they would not know specific issues raised in the underlying investigation. The Appellate Body considered that reference only to Art. 5 was sufficient in the present case because the sub-provisions of Art. 5 set out "closely related procedural steps".

1 *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*
2 Other issues addressed: *amicus curiae* submission (breach of confidentiality, DSU Arts. 17. 10 and 18.2); burden of proof; standard of review; confidential information (working procedures).

AUSTRALIA – AUTOMOTIVE LEATHER II[1]
(DS126)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ASCM Arts. 1, 3.1(a) and 4.7*	Establishment of Panel	*22 June 1998*
			Circulation of Panel Report	*26 May 1999*
Respondent	*Australia*		Circulation of AB Report	*NA*
			Adoption	*16 June 1999*

1. MEASURE AND INDUSTRY AT ISSUE

- **Measure at issue:** Australian government's assistance ("grant contract" ($A 30 million) and "loan contract" ($A 25 million)) to Howe, a wholly-owned subsidiary of Australian Leather Upholstery Pty. Ltd., owned by Australian Leather Holdings, Limited (ALH).

- **Industry at issue**: Automotive leather production industry.

2. SUMMARY OF KEY PANEL FINDINGS

- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies):** As for the grant contract, the Panel found that the payments under the grant contract were subsidies prohibited under Art. 3.1(a), on the ground that the payments concerned were in fact "tied to" export performance.

  In respect of the loan contract, the Panel concluded that the payments under the loan contract did not violate Art. 3.1(a) because there was nothing in the terms of the loan contract itself that suggested a "specific link" to actual or anticipated exportation or export earnings.

- **ASCM Art. 4.7 (recommendation to withdraw a prohibited subsidy):** The Panel recommended, in accordance with Art. 4.7, that Australia withdraw the prohibited subsidies within a 90-day period, which would run from the date of adoption of the report by the DSB.

3. OTHER ISSUES[2]

- **Existence of multiple panels regarding the same matter**: The Panel rejected, through a preliminary ruling, Australia's request for the Panel to terminate its work on the grounds that the DSU does not permit the establishment of a panel when another panel exists in respect of the same matter and between the same parties.[3] In this regard, the Panel noted, *inter alia*, that the DSU does not expressly prohibit the establishment of multiple panels for the same matter.

1 *Australia – Subsidies Provided to Producers and Exporters of Automotive Leather*

2 Other issues addressed: procedures governing business confidential information; information acquired during consultations: ASCM Art. 4.2 (statement of available evidence in the consultation request); terms of reference (scope of the measures at issue); ASCM Art. 1 (definition of a subsidy).

3 A panel was established in January 1998 on the same matter and involving the same parties, but was never composed.

AUSTRALIA – AUTOMOTIVE LEATHER II (ARTICLE 21.5 – US)[1] (DS126)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ASCM Art. 4.7*	Referred to the Original Panel	*14 October 1999*
			Circulation of Panel Report	*21 January 2000*
Respondent	*Australia*		Circulation of AB Report	*NA*
			Adoption	*11 February 2000*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Australia (i) required Howe to repay $A 8.065 million, an amount which Australia argued covered "any remaining inconsistent portion of the grants made under the grant contract"; and (ii) terminated all subsisting obligations under the grant contract. Australia also provided a new $A 13.65 million loan to Australian Leather Holdings Ltd (ALH), Howe's parent company.

2. SUMMARY OF KEY PANEL FINDINGS

- **ASCM Art. 4.7 (recommendation to withdraw a prohibited subsidy):** Having concluded that the phrase "withdraw the subsidy" under Art. 4.7 encompasses "repayment", the Panel found that repayment in full of the prohibited subsidy was necessary in this case, as it considered that in the case of a one-time subsidy, there was no way other than repayment in full in which withdrawal of the subsidy could be achieved. The Panel found that Australia failed to comply with the DSB's recommendation to withdraw the subsidy within 90 days, as the provision by the Australian government of a loan of $A 13.65 million to ALH nullified the repayment by Howe of $A 8.065 million.

3. OTHER ISSUES[2]

- **Terms of reference (DSU Art. 21.5 panels):** The Panel concluded that the new loan of $A 13.65 million to ALH was within the Panel's terms of reference because: (i) the panel request, which defined the Panel's terms of reference, identified the loan; and, furthermore, (ii) the loan was "inextricably linked to the steps taken by Australia in response to the DSB's ruling in this dispute, in view of both its timing and its nature".

1 *Australia – Subsidies Provided to Producers and Exporters of Automotive Leather – Recourse to Article 21.5 of the DSU by the United States*
2 Other issues addressed: business confidential information; third parties' rights to rebuttal submissions in Art. 21.5 proceedings.

MEXICO – CORN SYRUP[1]
(DS132)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ADA Arts. 3, 5, 6, 7, 10 and 12*	Establishment of Panel	*25 November 1998*
			Circulation of Panel Report	*28 January 2000*
Respondent	*Mexico*		Circulation of AB Report	*NA*
			Adoption	*24 February 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Mexico's definitive anti-dumping duty measure.
- **Product at issue:** High-fructose corn syrup (HFCS) from the United States.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Art. 5.2 (initiation of investigation – application):** The Panel rejected the US claim that the anti-dumping application in this case was inconsistent with Art. 5.2 due to insufficient evidence of threat of material injury. The applicant need provide only such information as is reasonably available to it.
- **ADA Art. 12.1 (notice of initiation):** The Panel rejected the US claim that Art. 12.1 requires the investing authority to address, in the notice of initiation, the definition of the relevant domestic industry.
- **ADA Arts. 5.3 (initiation of investigation), 5.8 (termination of investigation) and 6.4 (evidence):** The Panel rejected the United States' claims: (i) that Mexico did not have enough evidence of a threat of injury or of a causal link between the dumped imports and injury to justify initiation of the investigation under Art. 5; and (ii) that Mexico had acted improperly under Art. 5.8 when it did not reject the domestic industry's application. Neither Art. 5.3 nor Art. 6.4 requires an authority to resolve all questions of fact prior to initiation.
- **ADA Art. 3 (injury determination – threat of injury):** The Panel found that Mexico violated Arts. 3.1, 3.4 and 3.7 by failing to consider all the factors governing injury under Art. 3, because an investigation of threat of material injury requires a consideration of not only the factors pertaining to threat of material injury, but also factors relating to the impact of imports on the domestic industry (Art. 3.4). The Panel found that Mexico failed to consider the domestic industry "as a whole" in its threat of material injury analysis, as required by Art. 3.4, when it considered only a portion of the industry's production, and thus violated Arts. 3.1, 3.2, 3.4 and 3.7. The Panel found that Mexico violated Art. 3.7(i) because it failed to consider a certain fact relevant to the context of its threat determination and the likelihood of substantially increased imports.
- **ADA Art. 7.4 (provisional measure):** The Panel found Mexico's application of the provisional anti-dumping measure beyond six months to be inconsistent with Art. 7.4.
- **ADA Arts. 10 (retroactivity) and 12 (explanation of determination):** The Panel concluded that Mexico's retroactive levying of final anti-dumping duties was inconsistent with Art. 10.2, because such retroactive application for the period of provisional measures requires an authority to make a specific finding that, in the absence of provisional measures, the effect of the dumped imports would have led to a determination of injury to the domestic industry. The Panel also found a violation of Art. 12, which sets out the requirements for a public notice of an affirmative final determination, because Mexico's determination contained no explanation of the facts and conclusions underlying Mexico's decision to retroactively apply anti-dumping duties. The Panel also found that Mexico's failure to release bonds collected under the provisional measure was inconsistent with Art. 10.4.

1 *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup from the United States*

2 Other issues addressed: requirements of panel request (DSU Art. 6.2 and ADA Art. 17.4); terms of reference (identification of measures in the context of the ADA); sufficiency of panel request (ADA Art. 17.5(i)); evidence not on record (ADA Art. 17.5(ii)); evidentiary issues (reference to NAFTA proceedings and to alleged statements made during consultations).

MEXICO – CORN SYRUP (ARTICLE 21.5 – US)[1]
(DS132)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ADA Art. 3*	Referred to the Original Panel	*23 October 2000*
			Circulation of Panel Report	*22 June 2001*
Respondent	*Mexico*		Circulation of AB Report	*22 October 2001*
			Adoption	*21 November 2001*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Mexico's redetermination on threat of injury in relation to its definitive anti-dumping duties on high-fructose corn syrup (HFCS) imports from the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ADA Art. 3.7 (injury determination – likelihood of increased imports):** The Appellate Body upheld the Panel's finding that the Mexican authority's redetermination on "likelihood of increased imports" was inconsistent with Art. 3.7(i), as it did not provide a reasoned explanation for its conclusion that there was a likelihood of substantially increased imports. The Appellate Body rejected Mexico's argument that the Panel incorrectly applied the standard of review under Arts. 17.5 and 17.6 by relying on the existence of an alleged agreement entered into by soft-drink bottlers promising restraint in their use of HFCS, even though the existence of this restraint agreement was never found as a matter of fact in the domestic investigation. The Appellate Body found that the "establishment" of facts by investigating authorities that panels are to assess under the standards set out in ADA Arts. 17.5 and 17.6(i) and DSU Art. 11 includes both "affirmative findings" of events as well as "assumptions" relating to such events made by those authorities in the course of their analyses. Since the Mexican authority made an assumption about the existence of the restraint agreement, it was logical for the Panel to examine Mexican authority's conclusions based on the same assumption. The Appellate Body also found that any assumption that the Panel made about the restraint agreement was not, in any event, the basis for its finding of inconsistency under Art. 3.7(i).

- **DSU Art. 6.2 (requirements of panel request):** The Appellate Body rejected Mexico's request that the Appellate Body reverse the Panel's substantive findings because the Panel had failed to address and consider (i) the lack of consultations between Mexico and the United States before the measure was referred to the original panel and (ii) the US failure to indicate in their panel request whether consultations had been held. Since Mexico had failed to indicate to the Panel that it was raising an objection based on these issues, the Panel in this case did not have a duty to address the issues referred to by Mexico. Nor was the Panel required to consider, on it own motion, these issues, as the lack of prior consultations or the absence, in the panel request, of an indication "whether consultations were held" is not a defect that a panel must examine even if both parties to the dispute remain silent on it.

- **DSU Art. 12.7 (basic rationale for panel's findings):** The Appellate Body held that the Panel satisfied its duty under Art. 12.7 to provide a "basic rationale" for its findings. The Appellate Body stated that Art. 12.7 obliges panels to set forth explanations and reasons sufficient to disclose the essential, or fundamental, justification for its findings and recommendations. Whether Art. 12.7 is satisfied must be determined on a case-by-case basis, and in some situations a panel's "basic rationale" might be found in other documents, such as the original panel report in the case of the Art. 21.5 proceedings, provided that such reasoning is quoted or incorporated by reference.

1 *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States, Recourse to Article 21.5 of the DSU by the United States*

2 Other issues addressed: DSU Arts. 3.7 and 6.2 (consultations, etc.); terms of reference (Art. 21.5 proceeding); panel's factual standard of review (ADA Art. 17.6(i)).

EC – ASBESTOS[1]
(DS135)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*TBT Annex 1.1* *GATT Arts. III:4, XX and XXIII:1(b)*	Establishment of Panel	*25 November 1998*
			Circulation of Panel Report	*18 September 2000*
Respondent	*European Communities*		Circulation of AB Report	*12 March 2001*
			Adoption	*5 April 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** France's ban on asbestos (Decree No. 96-1133).
- **Product at issue:** Imported asbestos (and products containing asbestos) *vs* certain domestic substitutes such as PVA, cellulose and glass (PCG) fibres (and products containing such substitutes).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **TBT Annex 1.1 (technical regulation):** The Appellate Body, having rejected the Panel's approach of separating the measure into the ban and the exceptions, reversed the Panel and concluded that the ban as an "integrated whole" was a "technical regulation" as defined in Annex 1.1 and thus covered by the TBT Agreement, as (i) the products subject to the ban were identifiable (i.e. any products containing asbestos); (ii) the measure was a whole laid down product characteristics; and (iii) compliance with the measure was mandatory. However, the Appellate Body did not complete the legal analysis of Canada's TBT claims as it did not have an "adequate basis" upon which to examine them.
- **GATT Art. III:4 (national treatment – domestic laws and regulations):** As the Appellate Body found the Panel's likeness analysis between asbestos and PCG fibres and between cement-based products containing asbestos and those containing PCG fibres insufficient, it reversed the Panel's findings that the products at issue were like and that the measure was inconsistent with Art. III:4. (The Appellate Body emphasized a competitive relationship between products as an important factor in determining likeness in the context of Art. III:4 (c.f. separate concurring opinion by one Appellate Body Member.) Then, having completed the like product analysis, the Appellate Body concluded that Canada had failed to demonstrate the likeness between either set of products, and, thus, to prove that the measure was inconsistent with Art. III:4.
- **GATT Art. XX(b) (general exceptions – necessary to protect human life or health):** Having agreed with the Panel that the measure "protects human life or health" and that "no reasonably available alternative measure" existed, the Appellate Body upheld the Panel's finding that the ban was justified as an exception under Art. XX(b). The Panel also found that the measure satisfied the conditions of the Art. XX chapeau, as the measure neither led to arbitrary or unjustifiable discrimination, nor constituted a disguised restriction on international trade.

3. OTHER ISSUES[2]

- **Scope of non-violation claim (Art. XXIII:1(b)):** The Appellate Body, rejecting the EC appeal, agreed with the Panel that Art. XXIII:1(b) (the non-violation provision) applied to the measure at issue, as (i) even a measure that conflicts with a substantive provision of the GATT falls within the scope of Art. XXIII:1(b); and (ii) a health measure justified under Art. XX also falls within the scope of Art. XXIII:1(b). The Panel, having applied Art. XXIII:1(b) to the measure at issue, ultimately rejected Canada's claim and found that the measure did not result in non-violation nullification or impairment under Art. XXIII:1(b), because Canada had had reason to anticipate a ban on asbestos. (Canada did not appeal the Panel's ultimate finding.)

1 *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*

2 Other issues addressed: Appellate Body adoption of additional procedures to deal with *amicus curiae* submissions; (DSU Art. 11 (Art. XX(b))); separate concurring opinion by one Appellate Body Member; scope of GATT Art. III:4 (applicability to the import ban); consultation of experts (DSU Art. 13); order of examination between TBT and GATT claims.

US – 1916 ACT[1]
(DS136, 162)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*European Communities, Japan*	*GATT Art. VI* *ADA Arts. 1, 4, 5 and 18*	Establishment of Panel	*1 February 1999 (European Communities)* *26 July 1999 (Japan)*
			Circulation of Panel Report	*31 March 2000 (European Communities)* *29 May 2000 (Japan)*
Respondent	*United States*		Circulation of AB Report	*28 August 2000*
			Adoption	*26 September 2000*

1. MEASURE AT ISSUE

- **Measure at issue:** United States' Anti-Dumping Act of 1916, which provided for, *inter alia*, a private right of action, the remedy of treble damages for private complaints and the possibility of criminal penalties in respect of anti-dumping practices.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. VI and ADA (applicability):** The Appellate Body upheld the Panel's finding that GATT Art. VI and the ADA applied to the 1916 Act. Art. VI applies to action taken in response to situations involving dumping and the 1916 Act provided for specific action to be taken in situations that present the constituent elements of dumping within the meaning of that provision.

- **GATT Art. VI and ADA (substantive violations):**[2] The Appellate Body upheld the Panel's findings on the following claims: the 1916 Act was inconsistent with: (i) **GATT Art. VI** (anti-dumping duties) which, read in conjunction with the ADA, limits the permissible responses to dumping to definitive anti-dumping duties, provisional measures and price undertakings; (ii) **GATT Art. VI:1** (anti-dumping duties – conditions) because it did not require a finding of "material injury"; (iii) **ADA Art. 4 (and 5 as well in case of Japan):** (definition of domestic industry) because the Act did not require that a complaint be made "on behalf of the domestic industry"; (iv) **ADA Art. 5.2 (Japan):** (initiation of investigation – application) because the Act failed to require the type of evidence (i.e. dumping, injury and causation and a *de minimis* threshold for the level of dumping) to be included in an anti-dumping application under Art. 5.2; (v) **ADA Art. 5.5 (European Communities)** (initiation of investigation – notification) because the Act failed to provide for notification to the governments concerned before a case was initiated; and finally, in conclusion, (vi) **ADA Art. 1** (and **18.1 as well for Japan**) (general principles) because the 1916 Act failed to meet the requirements of imposing anti-dumping measures in conformity with the provisions of GATT Art. VI and the ADA and to take specific action against dumping of exports only in accordance with the provisions of the GATT, as interpreted by the ADA.

- **GATT Art. VI:2 (anti-dumping duty):** The Appellate Body upheld the Panel's finding that the 1916 Act, by providing for non-anti-dumping measures (i.e. the imposition of fines, imprisonment or treble damages as a response to dumping), violates the requirement of Art. VI:2 that actions taken against dumping be limited to anti-dumping duties.

3. OTHER ISSUES[3]

- **As such claims**: The Appellate Body upheld the Panel's conclusion that the 1916 Act could be challenged as such under GATT Art. VI and the ADA, even though no monetary awards had been made, nor criminal penalties imposed, and even though not one of the measures identified in ADA Art. 17.4 had been adopted.

1 *United States – Anti-Dumping Act of 1916*
2 Unless otherwise indicated, these findings are for the claims by both Japan and the European Communities.
3 Other issues addressed: timely challenge of jurisdiction issue; mandatory/discretionary legislation; panel request (DSU Art. 6.2, preliminary ruling); enhanced third party rights (DSU Art. 10); Panel's examination of domestic law; WTO Agreement Art. XVI:4 and ADA Art. 18.4 (consequential violations); GATT Arts. III and VI (relationship); ADA and GATT Art. VI (relationship).

US – LEAD AND BISMUTH II[1]
(DS138)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Arts. 1.1, 10 and 21* *DSU Art. 19.1*	Establishment of Panel	*17 February 1999*
			Circulation of Panel Report	*23 December 1999*
Respondent	*United States*		Circulation of AB Report	*10 May 2000*
			Adoption	*7 June 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** United States Department of Commerce's (USDOC) reliance on "change-in-ownership methodology" in calculating the amount of subsidies to determine a countervailing duty rate in an administrative review.

- **Product at issue:** Certain hot-rolled lead and bismuth carbon steel products from the United Kingdom.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Arts. 1.1(b) (definition of a subsidy – benefit), 10 (application of GATT Art. VI) and 21.2 (review of countervailing duties):** The Appellate Body upheld the Panel's finding that the USDOC should not have presumed that the non-recurring subsidy given to a state-owned enterprise (BSC in this case) would have "passed through" to subsequent companies (UES and BSplc/GKN) when that state-owned enterprise (BSC) had been privatized. Rather, the USDOC was required under Art. 21.2 to examine, in the reviews at issue, whether a "benefit" had been conferred on the new owners of the company (UES and BSplc/BSES). The USDOC had failed to do so.

  The Appellate Body also upheld the Panel's factual finding that no benefit within the meaning of Art. 1.1(b) had been conferred in this case because the new company had paid "fair market value" for all the productive assets, goodwill, etc. when it purchased the formerly state-owned company to which the subsidies at issue had been originally granted. Thus, no subsidy under Art. 1 existed.

  Thus, the Appellate Body upheld the Panel's ultimate finding that the countervailing duties at issue in this case were imposed inconsistently with Art. 10.

- **DSU Art. 19.1 (Panel and Appellate Body recommendations – suggestion on implemention):** The Panel suggested, in accordance with the discretion provided under Art. 19.1, that the United States take all appropriate steps, including a revision of its administrative practices, to prevent the violation of ASCM Art. 10 from arising in the future.

3. OTHER ISSUES[2]

- **Standard of review – countervailing duty measures (DSU Art. 11):** The Appellate Body upheld the Panel's finding that DSU Art. 11 provides the standard of review for cases involving the imposition of countervailing duties, and that the special standard of review for anti-dumping measure set out in the ADA Art. 17.6 does not apply to such cases.

- **Decision vs Declaration:** In the context of addressing the proper standard of review for countervailing duty measures, the Panel noted that a Declaration lacks the "mandatory authority" of a Decision and considered that the Declaration does not impose any obligations on the Panel. The Appellate Body reached a similar conclusion, noting that the Declaration at issue was "couched in hortatory language," as it used the words "Ministers recognize …" and that it did not specify any action to be taken. The Appellate Body stated that the Decision on Review of ADA Art. 17.6 provides for review of the standard of review in ADA Art. 17.6 to determine if it is "capable of general application" to other covered agreements.

1 *United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*

2 Other issues addressed: panel's discretion to examine certain issues that it deems necessary; *amicus curiae* submissions (both panel and the AB); outside observers (panel's preliminary ruling); and a panel's authority to request information (DSU Art. 13).

CANADA – AUTOS[1]
(DS139, 142)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*Japan, European Communities*	*ASCM Arts. 1, 3 and 4.7* *GATS Arts. I and II* *GATT Arts. I and III*	Establishment of Panel	*1 February 1999*
			Circulation of Panel Report	*11 February 2000*
Respondent	*Canada*		Circulation of AB Report	*31 May 2000*
			Adoption	*19 June 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Canada's import duty exemption for imports by certain manufacturers, in conjunction with the Canadian Value Added (CVA) requirements and the production to sales ratio requirements.

- **Product at issue:** Motor vehicle imports and imported motor vehicle parts and materials.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. I (most-favoured-nation treatment):** The Appellate Body upheld the Panel's finding that the duty exemption was inconsistent with the most-favoured-nation treatment obligation under Art. I:1 on the ground that Art. I:1 covers not only *de jure* but also *de facto* discrimination and that the duty exemption at issue in reality was given only to the imports from a small number of countries in which an exporter was affiliated with eligible Canadian manufacturers/importers. The Panel rejected Canada's defence that Art. XXIV allows the duty exemption for NAFTA members (Mexico and the United States), because it found that the exemption was provided to countries other than the United States and Mexico and because the exemption did not apply to all manufacturers from these countries.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that the CVA requirements forcing the use of domestic materials to be eligible for tax exemption resulted in "less favourable treatment" to imports under Art. III:4 by adversely affecting the conditions of competition for imports.

- **ASCM Art. 3.1 (prohibited subsidies): (Art. 3.1(a) – export subsidies):** The Appellate Body upheld the Panel's finding that the duty exemption in conjunction with the ratio requirements was a prohibited "subsidy" contingent "in law" upon export performance within the meaning of Art. 3.1(a), because the amount of the duty exemption earned by a domestic manufacturer was directly dependent upon the amount exported. The Panel recommended under Art. 4.7 that Canada withdraw the subsidy within 90 days. **(Art. 3.1(b) – import substitution subsidies):** The Appellate Body, reversing the Panel, found that Art. 3.1(b) extends to subsidies that are contingent "*in fact*" upon the use of domestic over imported goods. It could not complete the Panel's analysis due to the insufficient factual basis.

- **GATS Arts. I:1 (scope of measures affecting trade in services) and II:1 (most-favoured-nation treatment):** The Appellate Body, reversing the Panel, found that (i) determination of whether a measure is covered by the GATS must be made before the assessment of that measure's consistency with any substantive obligation of the GATS; (ii) the Panel failed to examine whether the measure affected trade in services within the meaning of Art. I:1; and (iii) the Panel failed to assess properly the relevant facts and to interpret Art. II:1. Thus, the Panel's conclusion that the measure was inconsistent with Art. II:1 was reversed.

3. OTHER ISSUES[2]

- **Judicial economy**: While upholding the Panel's exercise of judicial economy in respect of the European Communities' claim under ASCM Art. 3.1(a), the Appellate Body added a cautionary remark that "for purposes of transparency and fairness to the parties, a panel should, however, in all cases, address expressly those claims which it declines to examine and rule upon for reasons of judicial economy".

1 *Canada – Certain Measures Affecting the Automotive Industry*

2 Other issues addressed: judicial economy; interpretation of "requirement" under GATT Art. III:4 (panel); deadline for elaboration of claims; order of consideration of parties' claims; Panel's discussion of the measure under GATS Arts. V and XVII.

EC – BED LINEN[1]
(DS141)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*India*	*ADA Arts. 2, 3, 5, 12 and 15* *DSU Art. 6.2*	Establishment of Panel	*27 October 1999*
			Circulation of Panel Report	*30 October 2000*
Respondent	*European Communities*		Circulation of AB Report	*1 March 2001*
			Adoption	*12 March 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping duties imposed by the European Communities, including the European Communities' zeroing method used in calculating the dumping margin.

- **Product at issue:** Cotton-type bed linen imports from India.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 2.4.2 (dumping determination – zeroing):** The Appellate Body upheld the Panel's finding that the practice of "zeroing", as applied by the European Communities in this case in establishing "the existence of margins of dumping", was inconsistent with Art. 2.4.2. By "zeroing" the "negative dumping margins", the European Communities had failed to take fully into account the entirety of the prices of *some* export transactions. As a result, the European Communities did not establish "the existence of margins of dumping" for cotton-type bed linen on the basis of a comparison of the weighted average normal value with the weighted average of prices of all transactions involving *all* models or types of cotton-type bed linen.

- **ADA Art. 2.2.2(ii) (dumping determination – profits calculation):** The Appellate Body reversed the Panel's finding and found that the method set out in Art. 2.2.2(ii) for calculating amounts for administrative, selling and general costs and profits cannot be applied where there is data for only one other exporter or producer. The Appellate Body also found that, in calculating amounts for profits, sales by other exporters or producers not made in the ordinary course of trade may not be excluded. The Appellate Body, therefore, concluded that the European Communities acted inconsistently with Art. 2.2.2(ii).

- **ADA Art. 3.4 (injury determination – injury factors):** The Panel found that the European Communities acted inconsistently with Art. 3.4 by failing to consider "all" injury factors listed in Art. 3.4. The Panel also found that the European Communities could consider under Art. 3 information related to companies outside of the sample, where such information was drawn from the "domestic industry". However, the European Communities acted inconsistently with Art. 3.4 to the extent that it relied on information on producers not part of the "domestic industry".

- **ADA Art. 15 (S&D treatment):** The Panel found that Art. 15 requires that a developed country explore the possibilities of "constructive remedies", such as the imposition of anti-dumping duties in less than the full amount and price undertakings, before applying definitive anti-dumping duties to exports from a developing country. The Panel concluded that the European Communities acted inconsistently with Art. 15 by failing to reply to India's request for such undertakings.

3. OTHER ISSUES[2]

- **Requirements of panel request (DSU 6.2):** The Panel dismissed India's claim related to ADA Art. 6, on the grounds that India failed to identify that provision in its panel request and, thus, denied the responding party and third parties of notice. The Panel did not accept India's reliance on the fact that this provision (Art. 6) was included in its consultations request and was actually discussed during consultations, considering that consultations are a tool to clarify a dispute and often issues discussed during consultations will not be brought in the actual case.

1 *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India*

2 Other issues addressed: ADA Art. 2.2 (reasonability); ADA Art. 3 (‹all' imports in the context of injury analysis); ADA Art. 5.3 (examination of evidence); ADA Art. 5.4 (industry support); ADA Art. 12.2.2 (notification); identification of provisions in panel request (India's claim under Art. 3.4); *amicus curiae* submission; standard of review under ADA Art. 17.6(ii); evidentiary issues (panel – DSU Arts. 11 and 13.2).

EC – BED LINEN (ARTICLE 21.5 – INDIA)[1]
(DS141)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*India*	*ADA Arts. 3 and 15*	Referred to the Original Panel	*22 May 2002*
			Circulation of Panel Report	*29 November 2002*
Respondent	*European Communities*		Circulation of AB Report	*8 April 2003*
			Adoption	*24 April 2003*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- EC Regulation 1644/2001 pursuant to which the European Communities reassessed the original anti-dumping measure on bed linen. Also, EC Regulation 696/2002 according to which the European Communities reassessed the injury and causal link findings.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Arts. 3.1 and 3.2 (injury determination – volume of dumped imports):** The Appellate Body reversed the Panel's findings on this issue and concluded that the European Communities' consideration of *all* imports from *un*-examined producers as dumped for the purposes of the injury analysis was based on a presumption not supported by positive evidence. Therefore, the Appellate Body held that the European Communities acted inconsistently with Arts. 3.1 and 3.2 as it had not determined the "volume of dumped imports" on the basis of "positive evidence" and an "objective assessment".

- **ADA Arts. 3.1 and 3.4 (injury determination – injury factors):** The Panel rejected India's claim that the European Communities did not have information on the economic factors and indices in Art. 3.4 (i.e. inventories and capacity utilization). The Panel concluded that the European Communities had collected data on these factors and that it did conduct an overall reconsideration and analysis of the facts with respect to the injury determination, as would an objective and unbiased investigating authority. In this relation, the Appellate Body rejected India's allegation that the Panel acted inconsistently with DSU Art. 11 and ADA Art. 17.6(ii).

- **ADA Arts. 3.5 (injury determination – causation):** The Panel rejected India's claim under Art. 3.5, as that provision does not require that the investigation authority demonstrate that the dumped imports *alone* caused the injury.

- **ADA Art. 15 (S&D treatment):** The Panel found that the European Communities had not violated the requirement of Art. 15 by failing to explore the possibilities of constructive remedies before applying anti-dumping duties because the European Communities had suspended application of these duties on Indian imports.

3. OTHER ISSUES[2]

- **Terms of reference (DSU Art. 21.5):** The Appellate Body upheld the Panel's decision not to examine India's claim on "other factors" under ADA Art. 3.5, as it had been resolved by the original panel (i.e. the claim was dismissed as India had failed to make a prima facie case) and thus was outside the Panel's terms of reference. The Appellate Body concluded that the original panel's finding, which was not appealed and was adopted by the DSB, provided a "final resolution" of the dispute between the parties regarding that particular claim and that specific component of the implementation measure.

1 *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India*
2 Other issues addressed: DSU Art. 21.2 (matters affecting interests of developing countries); DSU Art. 11; ADA Art. 17.6.

INDIA – AUTOS[1]
(DS146, 175)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*United States, European Communities*	*GATT Arts. III, XI and XVIII:B DSU Art. 19.1*	Establishment of Panel	*27 July 2000 (United States), 17 November 2000 (European Communities)*
			Circulation of Panel Report	*21 December 2001*
Respondent	*India*		Circulation of AB Report[a]	*19 March 2002*
			Adoption	*5 April 2002*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** India's (i) indigenization (local content) requirement; and (ii) trade balancing requirement (exports value = imports value) imposed on its automotive sector.[2]

- **Product at issue:** Cars and their components.

2. SUMMARY OF KEY PANEL/AB FINDINGS

Indigenization requirement

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel concluded that the measure violated Art. III:4, as the indigenization requirement modified the conditions of competition in the Indian market "to the detriment of imported car parts and components".

Trade balancing requirement

- **GATT Art. XI:1 (prohibition on quantitative restrictions):** Having found that "any form of limitation imposed on, or in relation to importation constitutes a restriction on importation within the meaning of Art. XI", the Panel found that India's trade balancing requirement, which limited the amount of imports in relation to an export commitment, acted as a restriction on importation within the meaning of Art. XI:1, and thus violated Art. XI:1. The Panel also found that India failed to make a prima facie case that this requirement was justified under the balance-of-payments provisions of Art. XVIII:B.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** As for the aspect of the trade balancing obligations, which imposed on the purchasers of imported components on the Indian market an additional obligation to export cars or components, the Panel found that the measure created a "disincentive" to the purchase of imported products and, thus, accorded less favourable treatment to imported products than to like domestic products inconsistently with Art. III:4.

3. OTHER ISSUES[3]

- **Evolution of the measures**: As regards India's claim that since the import regime that gave rise to the two requirements had already expired, and thus the Panel need not recommend to the DSB that India should bring its measures into conformity, the Panel stated that where a measure has been withdrawn so as to affect the continued relevance of the Panel's findings of violation, it is understandable for a panel to make no recommendation at all. However, the Panel found the situation in this case different, as the expiration of the import regime subsequent to the Panel's establishment did not affect the continued application of the measures. As such, the Panel recommended that the DSB request that India bring its measures into conformity with its WTO obligations.

- **Scope of GATT Arts. III and XI**: Regarding the scope of measures under (and thus the relationship between) Arts. III and XI, the Panel noted that it could not be excluded that different aspects of a measure may affect the competitive opportunities of imports in different ways, making them fall within the scope of either Art. III or XI or there may be potential for overlap between the two provisions.

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1 *India – Measures Affecting the Automotive Sector*

a India withdrew its appeal prior to the oral hearing. For this reason the Appellate Body issued a short report, which did not address the substantive legal issues, and which adopted by the DSB together with the Panel Report.

2 Both requirements were contained in Public Notice No. 60 and the MOUs signed between Indian government and car manufacturers.

3 Other issues addressed: burden of proof (GATT Art. XVIII:B); clarification of claims; terms of reference (measure at issue); *res judicata*; competence of panel (bilateral settlement); due process and good faith; unnecessary litigation; order of examination of claims under Arts. III and XI.

US – SECTION 301 TRADE ACT[1]
(DS152)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*DSU Arts. 23.2(a) and 23.2(c)*	Establishment of Panel	*2 March 1999*
			Circulation of Panel Report	*22 December 1999*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*27 January 2000*

1. MEASURE AT ISSUE

- **Measure at issue:** US legislation (i.e. Sections 301-310 of the Trade Act of 1974) authorizing certain actions by the Office of the United States Trade Representative (USTR), including the suspension or withdrawal of concessions or the imposition of duties or other import restrictions, in response to trade barriers imposed by other countries.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **DSU Art. 23.2(a) (prohibition on unilateral determinations – Section 304):** Based on the terms of Art. 23.2(a), the Panel first set out that it is for the WTO, through the DSU process, and not an individual WTO Member, to determine that a measure is inconsistent with WTO obligations. The Panel then concluded that Section 304 was "not inconsistent" with US obligations under Art. 23.2(a) because, while the statutory language of Section 304 in itself constituted a serious threat that unilateral determinations contrary to Art. 23.2(a) might be taken, the United States had (i) lawfully removed this threat by the "aggregate effect of the Statement of Administrative Action ('SAA')" and (ii) made a statement before the Panel that it would render determinations under Section 304 in conformity with its WTO obligations. In this regard, the Panel added the caveat, however, that should the United States repudiate or remove in any way its undertakings contained in the SAA and confirmed in statements before the Panel, then, the finding of conformity would no longer be warranted.

- **DSU Art. 23.2(a) (prohibition on unilateral determinations – Section 306):** Regarding Section 306, which mandated the USTR to consider whether another Member had implemented the DSB's recommendations within 30 days after the lapse of the reasonable period of time, the Panel concluded that Section 306 was not inconsistent with Art. 23.2(a) because any prima facie inconsistency under Section 306 was removed by the US undertakings in the SAA not to act inconsistently with its obligations under the WTO Agreement.

- **DSU Art. 23.2(c) (authorization of suspension – Sections 305 and 306(b)):** For the same reasoning as above, the Panel found that both Section 305 and Section 306(b) were not inconsistent with Art. 23.2(c), which obliges parties to follow the DSU Art. 22 procedures for determining the level of suspension of concessions or other obligations. As for both Section 306(b) (which required the USTR to determine within 30 days after the expiration of the reasonable period of time what further action to take under Section 301 in case of a failure to implement DSB recommendations) and Section 305 (which required the USTR to implement, within 60 days after the expiration of the reasonable period of time, the action it decided upon earlier under Section 306(b)), the Panel concluded once again that any inconsistency based on the mandate contained in the statutory languages of these provisions had been effectively curtailed by the undertakings given in the SAA and in statements made before the Panel.

1 *United States – Sections 301-310 of the Trade Act of 1974*
2 Other issues addressed: mandatory/discretionary legislation distinction; examination by panels of Members' law; GATT claims; VCLT.

ARGENTINA – HIDES AND LEATHER[1]
(DS155)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*GATT Arts. III:2, X, XI and XX*	Establishment of Panel	*26 July 1999*
			Circulation of Panel Report	*19 December 2000*
Respondent	*Argentina*		Circulation of AB Report	*NA*
			Adoption	*16 February 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Argentine regulations by which representatives of the Argentine leather tanning industry were present during the customs clearance process for bovine hides export; and (ii) advance tax payments that allegedly imposed a higher tax burden on imports.

- **Product at issue:** Argentine exports of bovine hides and calf skins, semi-finished and finished leather.

2. SUMMARY OF KEY PANEL FINDINGS[2]

Regulations on export control

- **GATT Art. XI:1 (prohibition on quantitative restrictions):** The Panel rejected the EC claim that the Argentine regulations on export procedures were an export restriction prohibited by Art. XI. The European Communities had failed to meet its burden of proving that the presence of the tanners' representatives during customs procedures, along with the disclosure of information about the slaughterhouses and any possible abuse of this information, was an export restriction under Art. XI:1.

- **GATT Art. X:3(a) (trade regulations – uniform, impartial and reasonable administration):** Having concluded that Art. X:3(a) applied to the measure at issue, as (i) the substance of the measure at issue was "administrative in nature" and did not establish substantive customs rules for enforcement of export laws and (ii) the measure was a law of "general application," rather than a law applying only to the specific shipments of products, the Panel found that the measure was not administered in a reasonable and impartial manner and consequently was inconsistent with Art. X:3(a). This finding was based on the consideration that the confidentiality of information was not guaranteed (*unreasonable* administration) and the procedure allowed persons with adverse commercial interests to obtain confidential information to which they had no right (*partial* administration).

Advance tax payments

- **GATT Art. III:2 (national treatment – taxes and charges), first sentence (like products):** Having found that advance tax payment requirements were financial burdens that tax imports in excess of domestic products (in the form of an opportunity cost (interest lost) and a debt financing (interest paid)), the Panel concluded that the requirements were in violation of Art. III:2, first sentence.

- **GATT Art. XX(d) (exceptions – necessary to secure compliance with laws):** Although the Panel found that the measures were necessary to secure compliance with Argentina's tax law and, thus, fell within the terms of Art. XX(d), it concluded that they could not be justified because they resulted in "unjustifiable discrimination" under the chapeau of Art. XX when they were not "unavoidable" for the operation of Argentina's tax law and when there were several alternative measures available.

1 *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather*
2 Other issues addressed: preliminary statements on the interpretation of Arts. X and XI (government measure, etc.); government "measure".

GUATEMALA – CEMENT II[1]
(DS156)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Mexico*	*ADA Arts. 3, 5 and 6* *DSU Art. 19.1*	Establishment of Panel	*22 September 1999*
			Circulation of Panel Report	*24 October 2000*
Respondent	*Guatemala*		Circulation of AB Report	*NA*
			Adoption	*17 November 2000*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Guatemala's anti-dumping investigation on certain imports.
- **Product at issue:** Grey Portland cement from Mexico.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Art. 5.3 (initiation of investigation – application) and 5.8 (initiation of investigation – insufficient evidence):** The Panel found that Guatemala violated Art. 5.3 because the application for the initiation of anti-dumping investigation did not have sufficient evidence of dumping, threat of injury and causal link to justify the initiation of the investigation. The Panel noted that the evidentiary standards of Art. 2 (dumping) and of Art. 3.7 (threat of injury) are relevant to an investigating authorities' consideration under Art. 5.3. Given that it had already found that there was insufficient evidence to justify initiation under Art. 5.3, the Panel concluded that Guatemala also violated Art. 5.8 by failing to reject such an application.
- **ADA Art. 6.1.2 and 6.4 (evidence – access):** The Panel found the following violations by Guatemala in relation to evidentiary treatment: (i) Art. 6.1.2 and 6.4 by failing to grant Mexico "regular and routine" access to certain evidence; (ii) Art. 6.1.2 by failing to make evidence available "promptly" (20-day delay); and (iii) Art. 6.4 for failing to provide timely opportunities to see evidence.
- **ADA Art. 6.5 (evidence – confidential information):** Regarding the confidential treatment given to the petitioner's submissions, the Panel found an Art. 6.5 violation because there was no record of "good cause" shown by the petitioner and the petitioner did not seem to have requested confidential treatment for the information.
- **ADA Art. 6.9 (evidence – essential facts):** The Panel found that Guatemala violated Art. 6.9 by failing to inform the parties of the "essential facts" under consideration for its definitive anti-dumping measure.
- **ADA Art. 6.8 and Annex II (evidence – facts available):** Having found that a Mexican exporter's refusal to permit verification was reasonable and that "best information available" (BIA) should not be used when information is verifiable and can be used in the investigation without undue difficulties, the Panel concluded that Guatemala violated Art. 6.8 by unreasonably using BIA.
- **ADA Art. 3.4 (injury determination – injury factors):** The Panel found that Guatemala violated Art. 3.4 because it failed to evaluate some injury factors (i.e. return on investments and ability to raise capital) listed in Art. 3.4.
- **DSU Art. 19.1 (Panel and Appellate Body recommendations – suggestion on implementation):** In light of the pervasiveness and fundamental nature of the violations found in this case, the Panel, under Art. 19.1, specifically recommended that Guatemala revoke its anti-dumping measure. However, Mexico's request for refund of the anti-dumping duties collected in the past was declined on the grounds that this was a systemic issue beyond the reach of the Panel's consideration in this case.

1 *Guatemala – Definitive Anti-dumping Measures on Grey Portland Cement from Mexico* (The Appellate Body dismissed, based on procedural grounds, *Guatemala – Cement I*, which dealt with essentially the same measure and claims as those in this case.)

2 Other issues addressed: ADA Arts. 2, 5.5, 5.7, 6.1, 6.2, 6.1.3, 12 (public notice); extension of POI (ADA Arts. 6.1, 6.2 and Annex II(1)); inclusion of non-governmental experts on verification team (ADA Art. 6.7 and Annex I); confidential information (Art. 6); injury and causation (Art. 3); "no prejudice" defence (panel – DSU Art. 3.8); panel composition; standard of review (ADA Art. 17.6 (i)); "harmless error" doctrine.

US – SECTION 110(5) COPYRIGHT ACT[1]
(DS160)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*TRIPS Arts. 9 and 13* *Berne Convention, Arts. 11bis and 11*	Establishment of Panel	*26 May 1999*
			Circulation of Panel Report	*15 June 2000*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*27 July 2000*

1. MEASURE AT ISSUE

- **Measure at issue:** Section 110 of the US Copyright Act that provides for limitations on exclusive rights granted to copyright holders for their copyrighted work, in the form of exemptions for broadcast by non-right holders of certain performances and displays, namely, "homestyle exemption" (for "dramatic" musical works) and "business exemption" (works other than "dramatic" musical works).

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **"Minor exceptions" doctrine**: Regarding the US argument that limitations on exclusive rights in the US Copyright Act are justified under TRIPS Art. 13, as Art 13 "clarifies and articulates the 'minor exceptions' doctrine", the Panel concluded as an initial matter: (i) that there is a "minor exceptions" doctrine that applies to Berne Convention Art. 11*bis* and 11[3]; and (ii) that the doctrine has been incorporated into the TRIPS Agreement.

- **TRIPS Art. 13 (limitations on exclusive copyrights):** The Panel clarified three criteria that parties have to cumulatively meet to make limitations or exceptions to exclusive rights under Art. 13: the limitations or exceptions (i) are confined to certain special cases; (ii) do not conflict with a normal exploitation of the work; and (iii) do not unreasonably prejudice the legitimate interests of the right holder. Based on these criteria, the Panel found as follows:

  "*Homestyle exemption*": The Panel found that the homestyle exemption met the requirements of Art. 13, and, thus, was consistent with Berne Convention Art. 11*bis*(1)(iii) and 11(1)(ii) as incorporated into the TRIPS Agreement (Art. 9.1): (i) the exemption was confined to "certain special cases" as it was well-defined and limited in its scope and reach (13-18 per cent of establishments covered); (ii) the exemption did not conflict with a normal exploitation of the work, as there was little or no direct licensing by individual right holders for "dramatic" musical works (i.e. the only type of material covered by the homestyle exemption); and (iii) the exemption did not cause unreasonable prejudice to the legitimate interests of the right holders in light of its narrow scope and there was no evidence showing that the right holders, if given opportunities, would exercise their licensing rights.

  "*Business exemption*": The Panel found that the "business exemption" did not meet the requirements of Art. 13: (i) the exemption did not qualify as a "certain special case" under Art. 13, as its scope in respect of potential users covered "restaurants" (70 per cent of eating and drinking establishments and 45 per cent of retail establishments), which is one of the main types of establishments intended to be covered by Art. 11*bis*(1)(iii); (ii) second, the exemption "conflicts with a normal exploitation of the work" as the exemption deprived the right holders of musical works of compensation, as appropriate, for the use of their work from broadcasts of radio and television; and (iii) in light of statistics demonstrating that 45 to 73 per cent of the relevant establishments fell within the business exemption, the United States failed to show that the business exemption did not unreasonably prejudice the legitimate interests of the right holder. Thus, the business exemption was found inconsistent with Berne Convention Art. 11*bis*(1)(iii) and 11(1)(ii).

1 *United States – Section 110(5) of the US Copyright Act*
2 Other issues addressed: panel's request for information from the WIPO; *amicus curiae*.
3 The Berne Convention (1971), including Art. 11*bis* and 11 on exclusive rights granted to copyright holders, are incorporated into the TRIPS Agreement (Arts. 9-13 on copyright protection) by Art. 9 of that Agreement.

KOREA – VARIOUS MEASURES ON BEEF[1] (DS161, 169)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*Australia, United States*	*GATT Arts. III:4, XX, XI:I and XVII:I AA Arts. 3, 4, 6 and 7*	Establishment of Panel	*26 May and 26 July 1999*
			Circulation of Panel Report	*31 July 2000*
Respondent	*Korea*		Circulation of AB Report	*11 December 2000*
			Adoption	*10 January 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Korea's measures affecting the importation, distribution and sale of beef, (ii) Korea's "dual retail system" for sale of domestic imported beef), and (iii) Korea's agricultural domestic support programmes.

- **Product at issue:** Beef imports from Australia and the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **AA Art. 3.2 (domestic support):** While upholding the Panel's conclusion that Korea miscalculated its domestic support (AMS) for beef, the Appellate Body reversed the Panel's ultimate finding that Korea acted inconsistently with Art. 3.2 by exceeding its commitment levels for total support for 1997 and 1998 as the Panel had also relied on an improper methodology for its own calculations.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Appellate Body agreed with the Panel's ultimate conclusion that Korea's dual retail system (requiring imported beef to be sold in separate stores) accorded "less favourable" treatment to imported beef than to like domestic beef. According to the Appellate Body, the dual retail system virtually cut off imported beef from access to the "normal" distribution outlets for beef, which modified the conditions of competition for imported beef. In this connection, the Appellate Body said that formally different treatment of imported and domestic products is not necessarily "less favourable" for imports within the meaning of Art. III:4.

  (GATT Art. XX(d) (exceptions – necessary to secure compliance with laws): Further, the Appellate Body upheld the Panel's finding that the dual retail system was not justified as a measure necessary to secure compliance with Korea's Unfair Competition Act because the dual retail system was not "necessary" within the meaning of Art. XX(d). "Necessary" requires the weighing and balancing of regulations of factors such as the contribution made by the measure to the enforcement of the law or regulation at issue, the relative importance of the common interests or values protected and the impact of the law on trade. The Appellate Body agreed with the Panel that Korea failed to demonstrate that it could not achieve its desired level of enforcement using alternative measures.

- **GATT Arts. XI:1 (prohibition on quantitative restrictions) and XVII:1(a) (state trading enterprises – non-discrimination obligations) and AA Art. 4.2 (tariffication):** The Panel concluded that the LPMO's failure to call, and delays in calling for, tenders, as well as its discharge practices (i.e. the LPMO's increase in its stocks of foreign beef, while failing to meet requests for that beef) led to import restrictions on beef contrary to GATT Art. XI. This also led to the conclusion that the measures were inconsistent with AA Art. 4.2, which prohibits Members from maintaining, resorting to, or reverting to any quantitative import restrictions, including non-tariff measures maintained through state-trading enterprises, which have been required to be converted into ordinary customs duties. The Panel also found that should the LPMO be viewed as a state-trading enterprise without full control over the distribution of its import quota share, the measures violated GATT Art. XVII:1(a) (a provision governing state-trading enterprises) as well, because they were inconsistent with the general principles of non-discriminatory treatment. (*Korea did not appeal this finding.*)

1 *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*

2 Other issues addressed: AA Arts. 6.4, and 7.2(a) (*de minimis* levels, current AMS for beef and current *total* AMS); GATT Arts. II and XI (grass-fed, grain fed beef distinction); certain aspects of distribution and sales system for imported beef (GATT Art. III:4); state-trading entities (GATT Art. XI and the *Ad* Note; AA Art. 4.2 and footnote 1 to Art. 4.2); requirements of panel request (DSU Art. 6.2).

KOREA – PROCUREMENT[1]
(DS163)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GPA Arts. I and XXII:2*	Establishment of Panel	*16 June 1999*
			Circulation of Panel Report	*1 May 2000*
Respondent	*Korea*		Circulation of AB Report	*NA*
			Adoption	*19 June 2000*

1. PROJECT AND ENTITY AT ISSUE

- **Project and entity at issue**: Construction of the Inchon International Airport (IIA) in Korea and Korea Airport Authority (KAA) and New Airport Development Group (NADG), which were allegedly responsible for the construction of IIA.

2. SUMMARY OF KEY PANEL FINDINGS

- **GPA Art. I (scope of Korea's GPA Appendix I commitment):** The Panel found, based on the terms of Korea's concessions in its GPA Schedule and the supplementary negotiating history of the Schedule, that the entities allegedly responsible for IIA procurement – i.e. NADG or KAA – were not entities covered by Korea's GPA schedule, and thus concluded that the IIA project was not covered by Korea's commitments under the GPA.

- **GPA Art. XXII:2 (non-violation nullification or impairment):** Regarding the US non-violation claim under GPA Art. XXII:2, which was based on the frustration of reasonably expected benefits from alleged promises made during "negotiations" rather than nullification or impairment of actual concessions made, the Panel considered that the concept of non-violation could be extended to contexts other than the traditional approach. As such, the Panel decided to examine the US claim "within the framework of principles of international law (Art. 48 of the VCLT) which are generally applicable not only to performance of treaties but also to treaty negotiations" (error in treaty formation).

  The Panel found that (i) under the traditional concept of non-violation, the United States failed to prove that it had reasonable expectations that a benefit had accrued, as Korea had made no concessions on the project at issue; and (ii) under the concept "error in treaty formation", the alleged error in treaty formation in this case could not be considered "excusable" under Art. 48(1) of the VCLT[2], as the United States was put on notice of the existence of the entity – i.e. KAA – and the relevant legislation within the meaning of Art. 48(2) of the VCLT.

1 *Korea – Measures Affecting Government Procurement*

2 Art. 48 of the VCLT provides:

"Error

1. A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error related to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

2. Para. 1 shall not apply if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that States on notice of a possible error."

US – CERTAIN EC PRODUCTS[1]
(DS165)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*GATT Arts. I, II:1(a) and II:1(b)* *DSU Arts. 3.7, 21.5 and 22*	Establishment of Panel	*16 June 1999*
			Circulation of Panel Report	*17 July 2000*
Respondent	*United States*		Circulation of AB Report	*11 December 2000*
			Adoption	*10 January 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Increased bonding requirements imposed on 3 March 1999 before the issuance of the Art. 22.6 Arbitrator decision on the level of concessions to be suspended (6 April 1999), which was related to the alleged European Communities' failure to implement *EC – Bananas*.

- **Product at issue:** Certain imports from the European Communities.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. I (most-favoured-nation treatment):** The Panel found that the bonding requirements violated the most-favoured-nation principle of Art. I as it only applied to imports from the European Communities.

- **GATT Art. II (schedules of concessions):** The Appellate Body reversed the Panel majority's finding that the bonding requirements violated Art. II:1(a) and II:1(b), first sentence, because the Panel's finding was related to the later measure (100 per cent tariff duties) that the United States had imposed subsequent to the Art. 22.6 Arbitration's decision, which was outside the Panel's terms of reference in this case. The Panel also found that the interest charges, costs and fees in connection with the additional bonds requirements violated Art. II:1(b), second sentence, as the requirements resulted in increased costs.

- **DSU Arts. 3.7, 22.6, 23.1 and 23.2(c) (prohibition on unilateral determinations):** Having found that the bonding requirements, as a prima facie "suspension of concessions or other obligations" without prior DSB authorization, violated DSU Arts. 3.7, 22.6 and 23.2(c), the Panel concluded that the United States failed to follow the DSU rules and thus violated Art. 23.1 prohibiting unilateral determinations on the WTO-consistency of a measure. The Appellate Body upheld the Panel's finding of a DSU Art. 3.7 violation, as, if a Member violated Arts. 22.6 and 23.2(c), it also acted contrary to Art. 3.7.

- **DSU Arts. 21.5 (compliance proceedings) and 23.2(a) (prohibition on unilateral determinations):** The Appellate Body upheld the Panel's finding that the United States violated Art. 21.5 by imposing the bonding requirements, which constituted a unilateral determination of WTO-inconsistency of the European Communities' implementing measure in relation to the *EC – Bananas* case. However, the Appellate Body reversed the Panel's finding on the violation of Art. 23.2(a), as the European Communities had neither specifically claimed nor provided evidence or arguments in support of the measure's inconsistency with Art. 23.2(a) and, thus, failed to establish a prima facie case of violation of Art. 23.2(a).

3. OTHER ISSUES[2]

- **Expired measure and panel recommendation**: The Appellate Body found that the Panel erred in recommending that a measure, which it had found no longer existed, be brought into conformity.

1 *United States – Import Measures on Certain Products from the European Communities*

2 Other issues addressed: terms of reference (measure at issue); requirements of panel request (DSU Art. 6.2, Art. 23 claims); determination of WTO-consistency of a measure (Arts. 21.5 and 22.6); DSB authorization to suspend concessions and its effects; claim on violations of the DSU and DSB meeting rules; separate opinion by a panelist.

US – WHEAT GLUTEN[1]
(DS166)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*SA Arts. 2, 4.2 and 12* *DSU Art. 11*	Establishment of Panel	*26 July 1999*
			Circulation of Panel Report	*31 July 2000*
Respondent	*United States*		Circulation of AB Report	*22 December 2000*
			Adoption	*19 January 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive safeguard measure imposed by the United States.
- **Product at issue:** Wheat gluten from the European Communities.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **SA Art. 2 (conditions for safeguard measures – increased imports):** The Panel found that the United States International Trade Commission's (ITC) finding of increased imports was consistent with SA Art. 2.1 and GATT Art. XIX, as the imports data indicated a "sharp and substantial rise" through the end of the review period.
- **SA Art. 4.2(a) (injury determination – injury factors):** Reversing the Panel's legal interpretation, the Appellate Body held that investigating authorities must examine not only all the factors listed in Art. 4.2(a), but also "all other relevant factors", including those for which they have received insufficient evidence. The Appellate Body agreed with the Panel's ultimate conclusion that the ITC in this case had acted consistently with Art. 4.2(a) when it had failed to examine the wheat gluten prices/protein content relationship, as it was found not relevant.
- **SA Art. 4.2(b) (injury determination – causation):** Having reversed the Panel's interpretation of Art. 4.2(b) that imports alone must cause serious injury, the Appellate Body concluded that the proper standard was whether the increased imports demonstrated "a genuine and substantial relationship" of cause and effect with serious injury. The Appellate Body considered that an important step in this process was separating the injurious effects caused by other factors from the injurious effects caused by increased imports so as not to attribute injurious effects from other factors to those from increased imports. By applying this interpretation to the ITC's causation analysis, the Appellate Body found that the ITC had violated Art. 4.2(b) by failing to examine whether domestic "capacity increases" were causing injury at the same time as increased imports.
- **SA Arts 2.1 and 4.2 (parallelism):** The Appellate Body upheld the Panel's finding that excluding Canada from the application of the safeguard measure at issue, after having included it in the investigation, was inconsistent with Arts. 2.1 and 4.1, as the sources of imports examined during the safeguard investigation and imports subject to the application of the measure must be identical. The Appellate Body also agreed with the Panel that as the United States did not exclude Canada from both the investigation and the application of the measure, the issue of whether, as a general principle, a free-trade area member can exclude imports from other members of that free trade area from its safeguard measure application under GATT Art. XXIV and footnote 1 to SA did not arise in this case.
- **SA Art. 12.1(c) (notification):** The Appellate Body reversed the Panel's interpretation that Art. 12.1(c) required notification of a proposed safeguard measure before that measure was implemented. The Appellate Body observed that the relevant triggering event was the "taking of a decision" and the timing of notifications is governed solely by the word "immediately" contained in Art. 12.1. Having completed the analysis based on this interpretation, the Appellate Body reversed the Panel's finding and concluded that the United States satisfied the requirement under Art. 12.1(c).
- **DSU Art. 11 (standard of review):** As the Panel's conclusion on the ITC's injury analysis, in particular, its profits allocation method, under Art. 4.2(a) was based on insufficient evidence and on statements outside the ITC Report, the Appellate Body found the Panel acted inconsistently with Art. 11 by failing to make an "objective assessment" of the facts.

1 *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*

2 Other issues addressed: DSU Art. 11 claims; SA Arts. 8 and 12 claims; judicial economy; issues related to confidential information; panel's standard of review (DSU Art. 11); adverse inference.

CANADA – PATENT TERM[1]
(DS170)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*TRIPS Arts. 33 and 70*	Establishment of Panel	*22 September 1999*
			Circulation of Panel Report	*5 May 2000*
Respondent	*Canada*		Circulation of AB Report	*18 September 2000*
			Adoption	*12 October 2000*

1. MEASURE AND PATENT AT ISSUE

- **Measure at issue:** Canada's Patent Act, Section 45, which provided the length of the patent protection for patents filed before 1 October 1989 (Old Act).[2]

- **Patent at issue**: Old Act patents, i.e. patents filed before 1 October 1989, which existed at the time when the TRIPS Agreement entered into force for Canada, for which the patent term may potentially be less than the required 20-year term.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **TRIPS Art. 70.1 and 70.2 (protection of existing subject matter):** (*Art. 70.2*) Having found that "a treaty applies to existing *rights*, even when those rights result from 'acts which occurred' before the treaty entered into force" and Art. 70.2 applies to existing inventions (rights) under Old Act patents whose patents were granted (acts) before the date of entry into force of the TRIPS Agreement, the Appellate Body concluded that Canada was bound by the obligation to provide existing patented inventions with a patent term of not less than 20 years from the filing date as required under Art. 33. (*Art. 70.1*) The Appellate Body also upheld the Panel's finding that Art. 70.1, limiting the retroactive application of the TRIPS Agreement, did not exclude Old Act patents from the scope of the TRIPS Agreement, as "acts" and the "rights created by such acts" should be distinguished and the limitation under Art. 70.1 applies to acts related to the patent, not rights provided by patent itself.

- **TRIPS Art. 33 (term of protection for patents):** The Appellate Body upheld the Panel's finding that Canada's Patent Act at issue was inconsistent with Art. 33, as the term of patent protection (i.e. the date of issue of the patent plus 17 years) under Section 45 for Old Act patents did not meet the "20 years from the filing date" requirement under Art. 33. The Appellate Body considered the texts of Art. 33 unambiguous in defining "filing date plus 20 years" as the earliest date on which the term of protection of a patent may end, and this 20-year term must be "a readily discernible and specific right, and it must be clearly seen as such by the patent applicant when a patent application is filed".

3. OTHER ISSUES[3]

- **Request to accelerate the proceedings (DSU Art. 4.9):** Although the Panel was unable to accelerate the proceedings as requested by the United States, pursuant to DSU Art. 4.9 (basis for the request being that current patent holders subject to the Canadian measure were suffering irreparable harm), the Panel, with Canada's consent, limited its schedule to the minimum periods suggested in DSU Appendix 3.

1 *Canada – Term of Patent Protection*
2 Section 45 of Canada's Patent Act provides, "45. the term limited for the duration of every patent issued under this Act on the basis of an application filed *before* October 1, 1989 is seventeen years from the date on which the patent is issued."
3 Other issues addressed: "subsequent practice" (VCLT, Art. 31(3)(b)); "non-retroactivity of treaties" (VCLT Art. 28).

EC – TRADEMARKS AND GEOGRAPHICAL INDICATIONS[1] (DS174, 290)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*United States, Australia*	*TRIPS Arts. 3, 4, 16, 17 and 24* *GATT Arts. III:4 and XX(d)* *TBT Annex 1*	Establishment of Panel	*2 October 2003*
			Circulation of Panel Report	*15 March 2005*
Respondent	*European Communities*		Circulation of AB Report	*NA*
			Adoption	*20 April 2005*

1. MEASURE AT ISSUE

- **Measure at issue:** EC Regulation related to the protection of geographical indications and designations of origin (GIs).
- **Product at issue:** Agricultural products and foodstuffs affected by the EC Regulation.

2. SUMMARY OF KEY PANEL FINDINGS[2]

National treatment (TRIPS Art. 3.1 and GATT Art. III:4)

- **Availability of protection**: The Panel found that the equivalence and reciprocity conditions in respect of GI protection under the EC Regulation[3] violated the national treatment obligations under TRIPS Art. 3.1 and GATT Art. III:4 by according less favourable treatment to non-EC nationals and products, than to EC nationals and products. By providing, "formally identical", but in fact different procedures based on the location of a GI, the European Communities in fact modified the "effective equality of opportunities" between different nationals and products to the detriment of non-EC nationals and products.
- **Application and objection procedures**: The Panel found that the Regulation's procedures requiring non-EC nationals, or persons resident or established in non-EC countries, to file an application or objection in the European Communities through their own government (but not directly with EC member states) provided formally less favourable treatment to other nationals and products in violation of TRIPS Art. 3.1 and GATT Art. III:4, and that the GATT violation was not justified by Art. XX(d).
- **Inspection structures**: In the US Report, the Panel found that the Regulation's requirement that third-country governments provide a declaration that structures to inspect compliance with GI registration were established on its territory violated TRIPS Art. 3.1 and GATT Art. III:4 by providing an "extra hurdle" to applicants for GIs in third countries and their products, and that the GATT violation was not justified by Art. XX(d). In the Australian report, the Panel found that these inspection structures did not constitute a "technical regulation" within the meaning of the TBT Agreement.

Relationship between GIs and (prior) trademarks

- **TRIPS Arts. 16.1, 17, 24.3 and 24.5**: The Panel found that Art. 16.1 obliges Members to make available to trademark owners a right against certain uses, *including* uses as a GI. Art. 24.5 provided no defence, as it creates an exception to GI rights, not trademark rights. Art. 24.3 only grandfathers individual GIs, not systems of GI protection. Therefore, the Panel initially concluded that the EC Regulation was inconsistent with Art. 16.1 as it limited the availability of trademark rights where the trademark was used as a GI. However, the Panel ultimately found that the Regulation, on the basis of the evidence presented, was justified under Art. 17, which permits Members to provide exceptions to trademark rights.

1 *European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*

2 Other issues addressed: TRIPS Art. 1, 2, 4, 8, 22, 23; Paris Convention Arts. 2 and 10*bis*; extension of submission deadline; separate panel reports; request for information from WIPO; preliminary ruling; requirements of panel request (DSU Art. 6.2); terms of reference; evidence; specific suggestions for implementation (DSU 19); order of analysis (GATT and TRIPS).

3 In order to register third-country GIs in the European Communities, third countries were required to adopt a GI protection system equivalent to that in the European Communities and provide reciprocal protection to products from the European Communities.

US – SECTION 211 APPROPRIATIONS ACT[1]
(DS176)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*TRIPS Arts. 2, 3, 4, 15, 16 and 42 Paris Convention*	Establishment of Panel	*26 September 2000*
			Circulation of Panel Report	*6 August 2001*
Respondent	*United States*		Circulation of AB Report	*2 January 2002*
			Adoption	*1 February 2002*

1. MEASURE AND INTELLECTUAL PROPERTY AT ISSUE

- **Measure at issue:** Section 211 of the US Omnibus Appropriations Act of 1998, prohibiting those having an interest in trademarks/trade names related to certain businesses or assets confiscated by the Cuban government from registering/renewing such trademarks/names without the original owner's consent.

- **Intellectual property at issue**: Trademarks or trade names related to such confiscated goods.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

Section 211(a)(1)

- **TRIPS Art. 15 (trademarks – protectable subject matter) and Art. 2.1 (Paris Convention Art. 6quinquies A(1):** As Art. 15.1 embodies a definition of a trademark and sets forth only the eligibility criteria for registration as trademarks (but not an obligation to register "all" eligible trademarks), the Appellate Body found that Section 211(a)(1) was not inconsistent with Art. 15.1, as the regulation concerned "ownership" of a trademark. The Appellate Body also agreed with the Panel that Section 211(a)(1) was not inconsistent with Paris Convention Art. *6quinquies* A(1), which addressees only the "form" of a trademark, not ownership.

Sections 211(a)(2) and (b)

- **TRIPS Arts. 16.1 (trademarks – exclusive rights of the owners and limited exceptions) and 42 (civil and administrative procedures and remedies):** As there are no rules determining the "owner" of a trademark (i.e. discretion left to individual countries), the Appellate Body found that Section 211(a)(2) and (b) were not inconsistent with Art. 16.1. The Appellate Body, reversing the Panel, found that Section 211(a)(2) on its face was not inconsistent with Art. 42, as it gave right holders access to civil judicial procedures, as required under Art. 42, which is a provision on procedural obligations, while Section 211 affects substantive rights.

- **Paris Convention Art. 2(1) (TRIPS Art. 3.1 (national treatment)):** As to the effect on "successors-in-interest", the Appellate Body found that Section 211(a)(2) violated the national treatment obligation, because it imposed an extra procedural hurdle on Cuban nationals. As for the effect on original owners, the Appellate Body reversed the Panel and found that Section 211(a)(2) and (b) violate the national treatment obligations as they applied to original owners who were Cuban nationals, but not to "original owners" who were US nationals.

- **TRIPS Art. 4 (most-favoured-nation treatment):** Reversing the Panel, the Appellate Body found that Section 211(a)(2) and (b) violated the most-favoured-nation obligation, because only an "original owner" who was a Cuban national was subject to the measure at issue, whereas a non-Cuban "original owner" was not.

Trade names

- **Scope of the TRIPS Agreement**: Reversing the Panel, the Appellate Body concluded that trade names are covered under the TRIPS Agreement, because, *inter alia*, Paris Convention, Art. 8 covering trade names is explicitly incorporated into TRIPS Art. 2.1 (MFN treatment).

- **TRIPS Arts. 3.1, 4 and 42 and Paris Convention**: The Appellate Body completed the Panel's analysis on trade names and reached the same conclusions as in the context of trademarks above, because Sections 211(a)(2) and (b) operated in the same manner for both trademarks and trade names.

1 *United States – Section 211 Omnibus Appropriations Act of 1998*
2 Other issues addressed: TRIPS Art. 15.2; Paris Convention, Art. 8; scope of appellate review (question of fact or law, DSU Art. 17.6); characterization of the measure (ownership); information from WIPO.

US – LAMB[1]
(DS177, 178)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*Australia, New Zealand*	*SA Arts. 2 and 4 GATT Art. XIX:1*	Establishment of Panel	*19 November 1999*
			Circulation of Panel Report	*21 December 2000*
Respondent	*United States*		Circulation of AB Report	*1 May 2001*
			Adoption	*16 May 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** A definitive safeguard measure imposed by the United States.
- **Product at issue:** Fresh, chilled and frozen lamb meat from Australia and New Zealand.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. XIX:1(a) (unforeseen developments):** The Appellate Body held that an investigating authority must demonstrate the existence of unforeseen developments "in the same report of the competent authorities" as that containing other findings related to the safeguard investigation at issue to show a "logical connection" between the conditions set forth in Art. XIX and the "circumstances" such as "unforeseen developments". As there was no such demonstration in the United States International Trade Commission (ITC) Report, the Panel's ultimate finding that the United States violated Art. XIX:1(a) was upheld.
- **SA Art. 4.1(c) (injury determination – domestic industry):** The Appellate Body upheld the Panel's finding that the measure was inconsistent with Art. 4.1(c), as the ITC based its serious injury analysis not only on the producers of lamb meat but also in part on lamb growers and feeders. The Appellate Body stated that the "domestic industry" under Art. 4.1(c) extends solely to the producers of the like or directly competitive products, and thus only to the lamb meat producers in this case.
- **SA Art. 4.2(a) (injury determination – threat of serious injury):** While upholding the Panel's finding that the data the ITC relied on for the threat of serious injury analysis was not sufficiently representative of the domestic industry, the Appellate Body found that it was Art. 4.2(a) ("read together with the definition of domestic industry in Art. 4.1(c)) that the United States had violated, rather than Art. 4.1(c) itself. Also, having concluded that a threat of serious injury analysis requires an assessment of evidence from the most recent past in the context of the longer-term trends for the entire investigative period, the Appellate Body reversed the Panel's interpretation of Art. 4.2(a) and concluded (after finding that the Panel had violated DSU Art. 11) that the ITC determination was inconsistent with Art. 4.2(a) as the ITC had failed to adequately explain the price-related facts.
- **SA Art. 4.2(b) (injury determination – causation):** The Appellate Body reversed the Panel's interpretation that the SA requires that increased imports be "sufficient" to cause serious injury or that imports "alone" be capable of causing or threatening serious injury. Instead the Appellate Body explained that where several factors are causing injury simultaneously, "a final determination about the injurious effects caused by increased imports can only be made if the injurious effects caused by all the different causal factors are distinguished and separated". The Appellate Body then found that the ITC had acted inconsistently with Art. 4.2(b), as the ITC Report failed to separate out the injurious effects of different factors and to explain the nature and extent of the injurious effects of the factors other than imports.

3. OTHER ISSUES[2]

- **Standard of review (SA):** Panels are required to examine whether the competent authorities (i) have examined all relevant factors; and (ii) have provided a "reasoned and adequate" explanation of how the facts support their determination.

1 *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*

2 Other issues addressed: panel's standard of review (DSU Art. 11 in general and in relation to Art. 4.2 claim); meaning of the term "threat of serious injury"; judicial economy; requirements of panel request (DSU Art. 6.2); confidential information.

US – STAINLESS STEEL[1] (DS179)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*ADA Art. 2*	Establishment of Panel	*19 November 1999*
			Circulation of Panel Report	*22 December 2000*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*1 February 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping duties imposed by the United States on certain steel imports.
- **Product at issue:** Stainless steel plate in coils and stainless steel sheet and strip from Korea.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Art. 2.4.1 (dumping determination – currency conversion):** Having found that where the prices being compared (i.e. export price and normal price) were already in the same currency, "currency conversion" was not required and thus not permissible under Art. 2.4.1, the Panel concluded that the United States acted inconsistently with Art. 2.4.1 by making a currency conversion that was not required in the Sheet investigation, but did not act inconsistently with Art. 2.4.1 in the Plate investigation.
- **ADA Art. 2.4 (dumping determination – unpaid sales):** In calculating a "constructed export price", the Panel found that Members are permitted to make only those adjustments identified in Art. 2.4 (i.e. allowances for costs, including duties and taxes, incurred between importation and resale), and thus concluded that the United States improperly calculated a constructed export price in respect of sales made through an affiliated importer by deducting the unpaid sales (from bankrupted buyer) as "allowances" under Art. 2.4. In respect of sales made directly to unaffiliated customers in the US market, the Panel found that the United States also acted inconsistently with Art. 4.2, because "differences in conditions and terms of sale" for which due allowances are allowed under Art. 2.4 do not encompass difference arising from the unforeseen bankruptcy of a customer and consequent failure to pay for certain sales and, thus, the United States Department of Commerce's (USDOC) adjustment for unpaid sales through unaffiliated importers was not a permissible due allowance.
- **ADA Art. 2.4.2 (dumping determination – multiple averaging):** The Panel concluded that using multiple averaging periods are justified only if there is a change in both prices and differences in the relative weights by volume of sales in the home market as compared to the export market within the period of investigation. Based on this conclusion, the Panel found that the USDOC had violated the Art. 2.4.2 requirement to compare "a weighted average normal value with a weighted average of all comparable export transactions" when it used multiple averaging periods in its investigations. The Panel reached this conclusion as there was no indication that the USDOC's reason for dividing up the period of investigation (POI) was based on a difference in the relative weights by volume of sales within the POI between the home and export markets. However, the Panel found no violation of Art. 2.4.1 in respect of USDOC's use of multiple averaging periods to account for the depreciation of the won, as it considered that Art. 2.4.1 addresses the selection of exchange rates, but not the permissibility of the use of multiple averaging and that Art. 2.4.2 does not prohibit a Member from addressing a currency depreciation through multiple averaging.

1 *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea*

2 Other issues addressed: ADA Art. 2.4 (fair comparison); ADA Art. 12; GATT Art. X:3; specific suggestions of implementation (DSU Art. 19.1); standard of review (ADA Art. 17).

US – HOT-ROLLED STEEL[1]
(DS184)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*ADA Arts. 2, 3, 6 and 9*	Establishment of Panel	*20 March 2000*
			Circulation of Panel Report	*28 February 2001*
Respondent	*United States*		Circulation of AB Report	*24 July 2001*
			Adoption	*23 August 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US definitive anti-dumping duties on certain imports.
- **Product at issue:** Imports of certain hot-rolled steel products from Japan.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 6.8 (evidence – facts available):** The Appellate Body upheld the Panel's findings that the United States acted inconsistently with Art. 6.8 in applying facts available to exporters, as the United States Department of Commerce (USDOC) had rejected certain information submitted after the deadline without considering whether it was still submitted within a reasonable period of time. The Appellate Body upheld the Panel's finding that the United States acted inconsistently with Art. 6.8 and Annex II when it applied "adverse" facts available to an exporter in respect of certain resale prices by its affiliated company despite the difficulties faced by that exporter in obtaining the requested information and USDOC's reluctance to take any step to assist it.
- **ADA Art. 9.4 (imposition of anti-dumping duties – "all others" rate):** Having found that margins established based *in part* on facts available are to be excluded in calculating an "all others" rate under Art. 9.4, the Appellate Body upheld the Panel's finding that the relevant US statute requiring the inclusion of margins based partially on facts available was inconsistent as such and as applied with Art. 9.4.
- **ADA Art. 2.1 (dumping determination – "ordinary course of trade"):** The Appellate Body concluded that the USDOC's 99.5 per cent test (i.e. arm's-length test) was inconsistent with Art. 2.1 because the test did not properly assess the possibility of high-priced sales, as compared to low-priced sales, between affiliates being not "in the ordinary course of trade" within the meaning of Art. 2.1. The Appellate Body found that the USDOC's reliance on downstream sales was "in principle, permissible" under Art. 2.1.
- **ADA Art. 3.1 and 3.4 (injury determination – domestic industry):** The Appellate Body upheld the Panel's finding that the captive production provision in the US statute was not inconsistent as such with Art. 3, as it allowed the United States International Trade Commission (ITC) to examine *both* the merchant market and the captive market along with the market as a whole and thus to evaluate relevant factors in an "objective manner" under Art. 3. However, the Appellate Body, reversed the Panel's finding that the statute was applied in this case consistently with Art. 3.1 and 3.4, as the ITC report did not refer to data for the captive market.
- **ADA Art. 3.5 (injury determination – causation):** Having found that the non-attribution language in Art. 3.5 requires "separating and distinguishing" the injurious effects of the other factors from the injurious effects of the dumped imports, the Appellate Body reversed the Panel's interpretation and its finding that the ITC properly ensured that the injurious effects of the other factors had not been attributed to the dumped imports.

3. OTHER ISSUES[2]

- **Special standard of review (ADA Art. 17.6):** Having observed that ADA Art. 17.6 distinguishes between a panel's "assessment of the facts" and its "legal interpretation" of the ADA, the Appellate Body noted the following: (i) that the standard of review under ADA Art. 17.6 complements the "objective assessment" requirement in DSU Art. 11. (i.e. the panels must make an "objective" assessment of the facts in order to determine whether the domestic authorities properly established the facts and evaluated them in an objective and unbiased manner); and (ii) the same rules of treaty interpretation apply to the ADA as to other covered agreements, but under the ADA, panels must determine whether a measure rests upon a "permissible interpretation" of that Agreement.

1 *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*

2 Other issues addressed: ADA Arts. 10 and 3; conditional appeal (ADA Art. 2.4); GATT, Art. X:3; DSU Art. 19.1; request to exclude certain evidence (ADA Art. 17.5(ii)); terms of reference (panel request).

ARGENTINA – CERAMIC TILES[1]
(DS189)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ADA Arts. 2 and 6*	Establishment of Panel	*17 November 2000*
			Circulation of Panel Report	*28 September 2001*
Respondent	*Argentina*		Circulation of AB Report	*NA*
			Adoption	*5 November 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Argentina's definitive anti-dumping duties on certain imports.
- **Product at issue:** Imports of ceramic floors tiles from Italy.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 6.8 and Annex II (evidence – facts available):** The Panel found that Art. 6.8, in conjunction with Annex II(6), requires an investigating authority to inform the party supplying information on the reasons why evidence or information is not accepted, to provide an opportunity to provide further explanation within a reasonable period, and to give, in any published determinations, the reasons for the rejection of evidence of information. The Panel then concluded that the Argentine investigating authority (DCD) acted inconsistently with these requirements under Art. 6.8 by failing to explain its evaluation of the information that led it to disregard in large part the information provided by exporters, resorting instead to the use of facts available. The Panel also rejected Argentina's various justifications for relying on facts available.
- **ADA Art. 6.10 (evidence – individual dumping margins):** The Panel found that the DCD acted inconsistently with Art. 6.10 by imposing the same duty rate on all imports and thus by failing to calculate individual margins for each of the four exporters in the sample and failing to provide, in its final determination, explanations on why it could not calculate individual dumping margins.
- **ADA Art. 2.4 (dumping determination – adjustments for differences affecting price comparability):** The Panel first noted that Art. 2.4 requires the investigating authority to make due allowance for differences [*inter alia*, in physical characteristics] which affect price comparability and to indicate to the parties what information is necessary to ensure a fair comparison between normal value and export prices. The Panel then found that the DCD acted inconsistently with Art. 2.4 by collecting data for only one quality type and one polish type of tiles and thus by failing to make additional adjustments for other physical differences affecting price comparability.
- **ADA Art. 6.9 (evidence – essential facts):** The Panel found that the DCD violated Art. 6.9 by failing to inform the exporters of the "essential facts under consideration which formed the basis for the decision whether to apply definitive measures". In light of the "state of the record" in this case (which contained a great deal of information collected from the exporters, the petitioner, importers and official registers), the exporters could not have been aware, simply by reviewing the complete record, that evidence submitted by petitioners, rather than that submitted by the exporters, would form the primary basis of the DCD's determination. In this regard, the Panel interpreted Art. 6.9 to mean that essential facts must be disclosed so that parties can defend their interests, for example by commenting on the completeness of the essential facts under consideration.

1 *Argentina – Definitive Anti-Dumping Measures on Imports of Ceramic Floor Tiles from Italy*

US – COTTON YARN[1]
(DS192)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Pakistan*	*ATC Art. 6*	Establishment of Panel	*19 June 2000*
			Circulation of Panel Report	*31 May 2001*
Respondent	*United States*		Circulation of AB Report	*8 October 2001*
			Adoption	*5 November 2001*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Transitional safeguard remedy imposed by the United States under the ATC on certain imports.
- **Product at issue:** Imports of combed cotton yarn from Pakistan.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ATC Art. 6.2 (transitional safeguard measure – scope of domestic industry):** The Appellate Body upheld the Panel's ultimate conclusion that the United States acted inconsistently with Art. 6.2 by excluding from the scope of the domestic industry captive production of yarn (i.e. yarn produced by and processed and consumed within integrated producers for their own use and processing), which was found to be "directly competitive" with yarn offered for sale on the merchant (open) market. In this regard, the Appellate Body considered the term "directly competitive" to suggest a focus on the competitive relationship of products, including not only actual but also "potential competition".
- **ATC Art. 6.4 (transitional safeguard measures – attribution of serious damage):** The Appellate Body found that (i) Art. 6.4 requires a "comparative analysis" when there is more than one Member from whom imports have shown a sharp and substantial increase and (ii) under such a comparative analysis, "the full effects" of the factors (i.e. level of imports, market share and prices) can be assessed only if they are compared individually with the levels of the other Members from whom imports have also increased sharply and substantially. As such, it upheld the Panel's ultimate finding that the United States acted inconsistently with Art. 6.4 by failing to examine the effect of imports from Mexico individually when attributing serious damage to Pakistan. The Appellate Body, however, declined to rule on the broader interpretive question of whether Art. 6.4 requires attribution to all Members from which imports increase in a sharp and substantial manner. (The Panel's interpretation was found to have no legal effect.) The Panel also found that the US determination of "actual threat of serious damage" was not justifiable under Art. 6.4, as the underlying US finding of serious damage in this case was found to be flawed.

3. OTHER ISSUES

- **Standard of review (DSU Art. 11 in the context of ATC Art. 6.2):** The Appellate Body found that the Panel in this case exceeded its mandate according to the standard of review under DSU Art. 11 by considering, in the context of reviewing a determination under ATC Art. 6.2, certain data, which did not exist and thus could not have been known by the investigating authority at the time of its determination. A panel was not entitled to review the determination with the benefit of hindsight and to re-investigate *de novo*. The Appellate Body, however, emphasized the limited nature of its finding and clarified that it was not deciding a more general question of, *inter alia*, whether a panel may consider evidence relating to facts that occurred subsequent to the determination.

1 *United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*

2 Other issues addressed: serious damage; injury factors (ATC Arts. 6.2 and 6.3); investigation period (ATC Art. 6); specific suggestion for implementation (DSU Art. 19.1); panel's approach to the descriptive part of the panel report.

US – EXPORT RESTRAINTS[1]
(DS194)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ASCM Art. 1.1*	Establishment of Panel	*11 September 2000*
			Circulation of Panel Report	*29 June 2001*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*23 August 2001*

1. MEASURE AT ISSUE

- **Measure at issue:** Treatment of "export restraints"[2] under US countervailing duty (CVD) law (statute), in light of the relevant Statement of Administrative Action (SAA) and Preamble to CVD Regulations, and relevant United States Department of Commerce (USDOC) practice.

2. SUMMARY OF KEY PANEL FINDINGS

- **ASCM Art. 1.1 (a): (1): (iv) (definition of a subsidy – financial contribution):** The Panel first concluded that an "export restraint" *cannot* constitute government-entrusted or government-directed provision of goods in the sense of subpara. (iv) of Art. 1.1(a)(1), and thus does not constitute a "financial contribution" within the meaning of Art. 1.1. According to the Panel, the "entrusts or directs" standard of subpara. (iv) requires an "explicit and affirmative action of delegation or command", rather definition of a subsidy – than mere government intervention in the market by itself which leads to a particular result or effect.

- **Nature of the US law at issue (mandatory vs discretionary):** To answer the ultimate question of whether the United States was in violation of the ASCM, the Panel examined whether the US law at issue "required" the USDOC (i.e. executive branch of the government) to treat export restraints as "financial contributions" in CVD investigations. Having found that the US statute, as interpreted in light of the SAA and the Preamble to the CVD Regulations, did not require the USDOC to treat export restraints as "financial contribution" and that there was no measure in the form of a US "practice" that required the treatment of export restraints as a "financial contribution", the Panel concluded that the statute at issue did not violate Art. 1.1.

3. OTHER ISSUES[3]

- **Mandatory vs discretionary legislature**: Having referred to the principle that "only legislation that mandates a violation of GATT/WTO obligations can be found as such to be inconsistent with those obligations" as the "classical test", the Panel distinguished this case (pertaining to ASCM) from the Section 301 dispute (pertaining to DSU Art. 23.2(a)) in which the panel eventually found that discretionary legislation may violate certain WTO obligations, and decided to apply the classical test to this dispute. The Panel also decided to address first the consistency of the measures with the substantive WTO rules, and then to examine the mandatory or discretionary character of the measures.

1 *United States – Measures Treating Export Restraints as Subsidies*

2 "Export restraints" for the purpose of this case were considered as referring to "a border measure that takes the form of a government law or regulation which expressly limits the quantity of exports or places explicit conditions on the circumstances under which exports are permitted, or that takes the form of a government-imposed fee or tax on exports of the product calculated to limit the quantity of exports."

3 Other issues addressed: preliminary request to dismiss claims; operation of each measure, including USDOC's practice (whether each instrument has a functional life of its own).

US – LINE PIPE[1]
(DS202)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*SA Arts. 2, 3, 4, 5 and 9*	Establishment of Panel	*23 October 2000*
			Circulation of Panel Report	*29 October 2001*
Respondent	*United States*		Circulation of AB Report	*15 February 2002*
			Adoption	*8 March 2002*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US safeguard measure on certain imports.
- **Product at issue:** Circular-welded carbon quality line pipe imported from Korea.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **SA Arts. 3.1 and 4.2(c) (safeguard investigation – injury determination):** The Appellate Body reversed the Panel's finding that the United States violated Arts. 3.1 and 4.2(c) by failing to publish in its investigation report a *discrete* finding or reasoned conclusion that the increased imports caused either "serious injury" or "threat of serious injury", on the ground that the phrase "cause or threaten to cause" should be read to mean that an investigating authority has to conclude either one *or* both in combination as the US authority had done in the case at hand.
- **SA Arts. 2 and 4 (parallelism):** The Appellate Body reversed the Panel's finding that Korea did not make a prima facie case of violation of the "parallelism" requirement under Arts. 2 and 4, and concluded that the United States violated the Articles since it had excluded Canada and Mexico from the application of the measure without providing adequate reasoning, while including them in the investigation.
- **SA Art. 4.2(b) (injury determination – causation):** The Appellate Body upheld the Panel's finding that the US authority violated Art. 4.2(b) as it did not provide an adequate explanation in its report as to how it had ensured that injury caused to the domestic industry was due to increase in imports and not due to the effects of other factors.
- **SA Art. 5.1 (application of safeguards – "to the extent necessary"):** The Appellate Body reversed the Panel's finding that Korea had not made a prima facie case and found that, by establishing a violation under Art 4.2(b), Korea had made a prima facie case that the US measure was not limited to the extent permitted under Art. 5.1 (i.e. to the extent necessary to prevent or remedy serious injury attributed to increased imports and facilitate adjustment). The Appellate Body concluded that the United States violated Art. 5.1 as it had not rebutted Korea's prima facie case under Art. 5.1.
- **SA Art. 9.1 (developing country exception):** The Appellate Body upheld the Panel's finding that the United States was in violation of Art. 9.1 since the measure imposed duties on the product at issue imported from developing countries that represented only 2.7 per cent of total imports, which is below the 3 per cent *de minimis* level for developing countries set out in Art. 9.1.

1 *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*
2 Other issues addressed: general remarks on use of safeguard measures; SA Arts. 12.3 and 8.1, GATT Art. XXIV defence.

MEXICO – TELECOMS[1]
(DS204)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATS Art. I:2(a)* *GATS Reference Paper under Mexico's GATS Schedule* *GATS Annex on Telecommunications*	Establishment of Panel	*17 April 2002*
			Circulation of Panel Report	*2 April 2004*
Respondent	*Mexico*		Circulation of AB Report	*NA*
			Adoption	*1 June 2004*

1. MEASURE AND SERVICE AT ISSUE

- **Measure at issue:** Mexico's domestic laws and regulations that govern the supply of telecommunication services and federal competition laws.

- **Service at issue**: Certain basic public telecommunication services, including voice telephony, circuit switched data transmission and facsimile services, supplied by US suppliers across the border into Mexico.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **GATS Art. I:2(a) (cross border supply):** The Panel found that the services at issue whereby US suppliers link their networks at the border with those of Mexican suppliers for termination within Mexico are services supplied cross-border within the meaning of Art. I:2(a), as the provision is silent as regards the place where the supplier operates, or is present, and thus is not directly relevant to the definition of "cross-border supply".

- **Mexico's Reference Paper[3], Sections 2.1 and 2.2**: The Panel found that (i) Mexico's commitments under Section 2 of Mexico's Reference Paper applied to the interconnection of cross-border US companies seeking to supply the services at issue into Mexico ; and (ii) Mexico was in violation of its commitments under the provision because the interconnection rates charged by Mexico's major suppliers to US suppliers were not "cost-oriented" as they were in excess of the cost rate for providing the interconnection to the US suppliers.

- **Mexico's Reference Paper, Section 1**: The Panel found that Mexico had failed to maintain appropriate measures to prevent "anti-competitive practices" in violation of Section 1. The Panel observed that the measures had effects tantamount to those of a market sharing arrangement between suppliers and in fact required practices by Mexico's major supplier that limited rivalry and competition among competing suppliers.

- **GATS Annex on Telecommunications – Section 5(a):** The Panel found that the Annex applied to a WTO Member measures that affect the access to and use of public telecommunication transport networks and services by basic telecommunications suppliers of any other Member, and that Mexico was in violation of Section 5(a), by failing to provide US suppliers the said access on "reasonable terms" when it charged US suppliers rates in excess of a cost-oriented rate and when the uniform nature of these rates excluded price competition in the relevant market of the telecommunication services.

- **GATS Annex on Telecommunications – Section 5(b):** The Panel concluded that Mexico violated its commitments under mode 3[4] (commercial presence) as it had not taken any steps (issuance of any law or regulation) to ensure access to and use of private-leased circuits for the supply of the said service in a manner consistent with Section 5(b). With respect to the supply of non-facilities-based services from Mexico to any other country, the Panel concluded that Mexico was in violation of Section 5(b) because it only authorized international gateway operators, which excluded by definition commercial agencies interconnecting with foreign public telecommunication transport networks and services to supply international telecommunication services.

1 *Mexico – Measures Affecting Telecommunications Services*
2 Other issues addressed: panel's duties under DSU Art. 12.11 (S&D considerations).
3 Mexico's specific commitments for telecommunications services under GATS Art. XVIII (Additional Commitments) consist of undertakings known as the "Reference Paper," which contains a set of pro-competitive regulatory principles applicable to the telecommunications sector.
4 GATS Art. I:2(c) (mode 3 – commercial presence) – supply of a service by a service supplier of one Member, through commercial presence in the territory of any other Member.

US – STEEL PLATE[1]
(DS206)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*India*	*ADA Arts. 6.8, 15 and 18.4*	Establishment of Panel	*24 July 2001*
			Circulation of Panel Report	*28 June 2002*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*29 July 2002*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US imposition of anti-dumping duties on certain imports manufactured by Steel Authority of India, Ltd. (SAIL).
- **Product at issue:** Certain cut-to-length carbon steel plates imported from India.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 18.4 (conformity with the ADA):** The Panel held that the US authority's practice in the application of "facts available" was not a measure that could be the subject of a claim. First, because such practice could be changed by the authority as long as it provided a reason for the change. Moreover, according to past WTO jurisprudence, a law can only be found inconsistent with WTO obligations if it mandates a violation. Second, the "practice" challenged by India was not within the scope of Art. 18.4, which only refers to "laws, regulations and administrative procedures".
- **ADA Art. 6.8 and Annex II(3) (evidence – facts available):** (as applied claim) The Panel found that the US authority acted inconsistently with the ADA in finding that SAIL had failed to provide necessary information in response to questionnaires during the course of the investigation and in consequently basing their determination entirely on "facts available", because the information provided by SAIL met all criteria laid down in Annex II(3) and, therefore, it was a must for the US authority to use that information in their determination. (as such claim) The Panel rejected India's claim that the US legislation required resort only to "facts available" in circumstances in which Art. 6.8 and Annex II(3) do not permit submitted information to be disregarded. As for India's argument that the US authority's practice reflected a policy where "facts available" were relied upon in circumstances outside the scope of Annex II(3), the Panel stated that this was a mere exercise of discretion, and the legislation itself did not, on its face, mandate WTO-inconsistent behaviour.
- **ADA Art. 15 (S&D treatment):** The Panel rejected India's claim under Art. 15, first sentence, stating that the provision imposed no specific or general obligation on the United States to undertake any particular action with respect to India's status as a developing country. The Panel also rejected India's claim under the second sentence of the Article, stating that it only requires administrative authorities to *explore* the possibilities of constructive remedies and cannot be understood to require any particular outcome.

1 *United States – Anti-Dumping and Countervailing Measures on Steel Plate from India*

CHILE – PRICE BAND SYSTEM[1] (DS207)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Argentina*	*AA Art. 4.2* *GATT Art. II:1(b)*	Establishment of Panel	*12 March 2001*
			Circulation of Panel Report	*3 May 2002*
Respondent	*Chile*		Circulation of AB Report	*23 September 2002*
			Adoption	*23 October 2002*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Chile's Price Band System, governed by Rules on the Importation of Goods, through which the tariff rate for products at issue could be adjusted to international price developments if the price fell below a lower price band or rose beyond an upper price band.
- **Product at issue:** Wheat, wheat flour, sugar and edible vegetable oils from Argentina.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **DSU Art. 11 (standard of review):** The Appellate Body reversed the Panels findings under GATT Art. II:1(b), second sentence, on the grounds that it was a claim that had not been raised by Argentina in its panel request or any subsequent submissions, and the Panel, by assessing a provision that was not part of the matter before it, acted *ultra petita* and in violation of DSU Art. 11. The Appellate Body also stated that consideration by a panel of claims not raised by the complainant deprived Chile of its due process rights under the DSU.
- **AA Art. 4.2, footnote 1 (market access):** The Appellate Body reversed the Panel's findings that the term "ordinary customs duty" was to be understood as referring to "a customs duty which is not applied to factors of an exogenous nature" and Chile's price brand system was not an "ordinary customs duty", as it was assessed on the basis of exogenous price factors. The Appellate Body however upheld the Panel's finding that Chile's price band system was designed and operated as a border measure sufficiently similar to "variable import levies" and "minimum import prices" within the meaning of footnote 1 and therefore prohibited by Art. 4.2. Thus, the Appellate Body concluded that Chile's price band system was inconsistent with Art. 4.2.

3. OTHER ISSUES[2]

- **Panel's terms of reference**: The Appellate Body stated that it was appropriate to rule on the Chile Price Band System as it currently stood, taking into account the amendments enacted after the establishment of the Panel, on the grounds that the Panel request was broad enough to cover future amendments and that the amendment did not change the essence of the measure under challenge. The Appellate Body also added that ruling on the Chile Price Band System currently in place would be in line with its obligations under DSU Arts. 3.4 and 3.7 to secure a positive solution of the dispute at hand.

1 *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*
2 Other issues addressed: Working Procedure Appellate Review Rule 20(2)(d); passive observers; "subsequent practice" (VCLT Art. 31.3(b)).

CHILE – PRICE BAND SYSTEM (ARTICLE 21.5 – ARGENTINA)[1] (DS207)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Argentina*	*AA Art. 4.2* *GATT Art. II:1(b), second sentence* *WTO Agreement Art. XVI:4*	Referred to the Original Panel	*20 January 2006*
			Circulation of Panel Report	*8 December 2006*
Respondent	*Chile*		Circulation of AB Report	*7 May 2007*
			Adoption	*22 May 2007*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The amended price band system applied by Chile, under which the total amount of duties imposed on imports of wheat, wheat flour and sugar would vary, through the imposition of additional specific duties or through the concession of rebates on the amounts payable. When the reference price determined by the Chilean authorities fell below the lower threshold of a price band, a specific duty was added to the the *ad valorem* most-favoured-nation tariff. Conversely, when the reference price was higher than the upper threshold of the price band, imports would benefit from a duty rebate.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **AA Art. 4.2 (market access – conversion of certain measures into ordinary customs duties):** The Panel found that the amended price band system continued to be a border measure similar to a variable import levy and a minimum import price and was therefore inconsistent with Art. 4.2 of the Agreement on Agriculture. This finding was upheld by the Appellate Body.

- **GATT Art. II:1(b) (schedules of concessions):** Having found that the amended price band system was inconsistent with AA Art. 4.2, the Panel considered that an additional finding on GATT Art. II:1(b) was not needed in order to resolve the dispute, and consequently exercised judicial economy. Noting the extended arguments of the parties on this issue, however, the Panel made some general observations regarding the issue of the proper mandate of a compliance Panel.

- **WTO Agreement Art. XVI:4 (WTO conformity of laws, regulations and administrative procedures):** In view of its determination under AA Art. 4.2, the Panel considered that an additional finding on the amended price band system under WTO Agreement Art. XVI:4. was not needed and therefore exercised judicial economy.

- The Panel accordingly concluded that Chile had failed to implement the recommendations and rulings of the DSB in the original dispute. This finding was also upheld by the Appellate Body.

3. OTHER ISSUES

- **Terms of reference (DSU Art. 21.5 panels):** In an unappealed section of its report, the Panel advanced some general observations regarding the issue of the proper mandate of a WTO compliance Panel under DSU Art. 21.5. The Panel suggested that, while a compliance panel may consider new claims not raised before the original panel, in order for those new claims to be "properly put" before such compliance panel, three conditions must be present: (i) the claim is identified by the complainant in its request for the establishment of the compliance panel; (ii) the claim concerns a new measure, adopted by the respondent allegedly to comply with the recommendations and rulings of the DSB; and (iii) the claim does not relate to aspects of the original measure that remain unchanged in the new measure and were not challenged in the original proceedings or, if challenged, were addressed in those proceedings and not found to be WTO-inconsistent.

1 *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products – Recourse to Article 21.5 of the DSU by Argentina*

EGYPT – STEEL REBAR[1]
(DS211)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Turkey*	*ADA Arts. 2, 3 and 6*	Establishment of Panel	*20 June 2001*
			Circulation of Panel Report	*8 August 2002*
Respondent	*Egypt*		Circulation of AB Report	*NA*
			Adoption	*1 October 2002*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Egypt's definitive anti-dumping measures.
- **Product at issue:** Steel rebar imported from Turkey.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 3.4 (injury determination – injury factors):** The Panel interpreted evaluation under Art. 3.4 to mean a process of analysis and interpretation of the facts established, in relation to each listed factor. In the light of this interpretation, the Panel concluded that Egypt acted inconsistently with Art. 3.4 in failing to evaluate six of the factors (productivity, actual and potential negative effects on cash flow, employment, wages and ability to raise capital or investments) as claimed by Turkey but was not in violation with regard to two of the factors (capacity utilization, return on investment).
- **ADA Art. 6.8 and Annex II(6) (evidence – facts available):** The Panel found that with respect to the investigation of two exporters, Egypt was in violation of Art. 6.8 and Annex II(6), as the investigating authorities, having identified and received the requested information from those companies, nevertheless concluded that the companies had failed to provide the "necessary information" and did not inform the companies that their responses were being rejected nor give them the opportunity to provide further information or clarification.
- **Rejected Claims**: The Panel found that Turkey had not established its claims under the following Articles: **ADA Arts. 3.1 and 3.2 (injury determination – volume of dumped imports):** The Panel concluded that Art. 3.2 did not require that a price-cutting analysis be conducted at any particular level of trade and that the Egyptian authorities had provided the justification for their choice of the level of trade at which prices were compared; **ADA Arts. 3.1 and 3.5 (injury determination – causation):** With regard to the authorities' failure to develop "positive evidence" in respect of a link between dumped imports and injury to domestic industry, the Panel stated that: (i) there was no basis on which to find a violation for a type of evidence or analysis not explicitly required or even mentioned in the Agreement and not pursued by an interested party during the domestic investigation; and (ii) there was "substantial simultaneity", between the time periods of the investigations for dumping and injury for the authorities to determine whether injury was caused by the dumping; and **ADA Art 2.4 (dumping determination – fair comparison):** The Panel stated that the request for certain cost information did not impose an unreasonable burden of proof upon the companies within the meaning of Art. 2.4, which seeks to ensure a fair comparison, through various adjustments as appropriate, of export price and normal value.
- **ADA Art. 6.7 (evidence – "on-the-spot" investigation):** The Panel noted that the use of the word "may" in the Article meant that "on-the-spot" investigations are permitted but not required and, therefore, found no violation.

3. OTHER ISSUES[2]

- **Standard of review**: As regards Turkey's claims under Art 6.8 and Annex II(5), Annex II(7), the Panel, after a detailed review of the evidence submitted to the investigating authority, determined that an objective and unbiased investigating authority could have reached the determinations challenged by Turkey, and, therefore, found that the Egyptian authority was not in violation of the respective provisions.

1 *Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey*
2 Other issues addressed: ADA Arts. 2.2.1.1, 2.2.2, 2.4, 6.1.1, 6.2, 6.8, ADA Annex II (1,3,5,6 and 7).

US – COUNTERVAILING MEASURES ON CERTAIN EC PRODUCTS[1] (DS212)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Arts. 1, 14 and 21*	Establishment of Panel	*10 September 2001*
			Circulation of Panel Report	*31 July 2002*
Respondent	*United States*		Circulation of AB Report	*9 December 2002*
			Adoption	*8 January 2003*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US countervailing duty law governing the treatment of subsidies provided to state-owned companies later privatized, including certain subsidy calculation methodologies developed by the United States Department of Commerce (USDOC).

- **Product at issue:** Products, in particular grain-oriented electrical steel from Italy, exported to the United States from the European Communities by privatized companies that were previously state-owned and that had received government subsidies before their privatization.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Arts. 1 (definition of a subsidy) and 14 (benefit – calculation of amount of subsidy):** The Appellate Body reversed the Panel in its findings and stated instead that privatizations at arm's length and at fair market value gave rise to a rebuttable presumption that a benefit ceased to exist after such privatization. It shifts the burden on the investigation authority to establish that the benefits from the previous financial contribution does indeed continue beyond such privatization.

- **ASCM Art. 19.1 (original investigation), Art. 21.2 (administrative review) and Art. 21.3 (sunset review):** Based on its analysis above on Arts. 1 and 14, the Appellate Body upheld the Panel's finding that the "same person" methodology was as such inconsistent with Arts. 19.1, 21.2 and 21.3. Based on this methodology and without further analysis, the USDOC had concluded that a privatized enterprise continued to receive the benefits of a previous financial contribution, irrespective of the price paid for the purchase by the new owners of the privatized enterprise. The Appellate Body also stated that since the methodology was as such inconsistent with the ASCM, it followed that the application of the method in individual cases would also be inconsistent with the ASCM.

- **Mandatory vs discretionary legislation**: The Appellate Body reversed the Panel's findings that the US law itself mandated a particular method of determining the existence of a "benefit" that was contrary to the ASCM. The Appellate Body concluded that the law did not prevent the USDOC from complying with the ASCM, although it noted that the finding did not preclude the possibility that a Member violates its WTO obligations, where it enacts legislation that grants discretion to its authorities to act in violation of its WTO obligations.

1 *United States – Countervailing Measures Concerning Certain Products from the European Communities*
2 Other issues addressed: Working Procedures for Appellate Review, Rules 16(1) and 20(2)(d); *amicus curiae* submission.

US – COUNTERVAILING MEASURES ON CERTAIN EC PRODUCTS (ARTICLE 21.5 – EC)[1]

(DS212)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Arts. 10, 14, 19 and 21*	Referred to the Original Panel	*27 September 2004*
			Circulation of Panel Report	*17 August 2005*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*27 September 2005*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- United States Department of Commerce's (USDOC) revised sunset determinations (under Section 129 of the Uruguay Round Agreements Act)[2] regarding the likelihood-of-subsidization on products from France, the United Kingdom and Spain.

2. SUMMARY OF KEY PANEL FINDINGS

- **Re-determination on France**: Having noted that the ASCM does not provide a particular methodology for analysing whether a privatization is conducted at arm's length and for fair market value (FMV), the Panel found that given the complexity of the privatization process involved, the USDOC's *individual* analysis of the conditions of the privatization for each category of share offering was reasonable. The Panel also concluded that the USDOC's analysis and conclusion that the employee share offering was not for FMV was not unreasonable. The Panel ultimately found that the United States had not failed to implement the DSB's recommendations by maintaining the existing countervailing duties given that (i) there is no obligation to recalculate a rate of subsidization in a sunset review; and (ii) the finding that a small part of the benefit passes through to the privatized producer can serve as the basis of the affirmative likelihood-of-subsidization conclusion and the maintenance of the duties.

- **Re-determination on the United Kingdom**: The Panel found that the United States failed to implement the DSB's recommendations with respect to its likelihood-of-subsidization determination on the United Kingdom, as it had failed to determine (as opposed to merely assuming) whether the privatization was at arm's length and for FMV. Having also found that ASCM Art. 21.3 requires the investigating authority during a (revised) sunset review to take into account *all* the evidence placed on the record in making its determination of likelihood-of-subsidization, the Panel concluded that the USDOC's refusal to consider new evidence presented during the Section 129 proceedings was inconsistent with ASCM Art. 21.3.

- **Re-determination on Spain**: For the same reason as above in respect of the USDOC's re-determination on the United Kingdom (i.e. failure to determine whether the privatization occurred at arm's length and for FMV), the Panel found that the United States had failed to implement the DSB's recommendations regarding Spain. However, the Panel rejected the European Communities' claim that the USDOC's treatment of evidence on the record was inconsistent with ASCM Art. 21.3, as the Panel was not aware of any new evidence that had been presented by the European Communities during the Section 129 proceedings concerning the products from Spain.

3. OTHER ISSUES[3]

- **Terms of reference (DSU Art. 21.5 panels):** The Panel concluded that the European Communities' new claim on the likelihood-of-injury was not properly before it. The Appellate Body clarified that this claim related to an aspect of the original measure, rather than the "measure taken to comply". Allowing such a claim might jeopardize the principles of fundamental fairness and due process by exposing the United States to the possibility of a finding of violation on an aspect of the original measure that the United States was entitled to assume was consistent with its obligations under the relevant agreement given the absence of a finding of violation in the original report.

1 *United States – Countervailing Measures Concerning Certain Products from the European Communities, Recourse to Article 21.5 of the DSU by the European Communities*

2 This determination was based on a new privatization methodology, which included a baseline presumption that non-recurring subsidies benefit the recipient over a period of time and are therefore allocable over that period. This presumption can be rebutted by proving, *inter alia,* the sale was at arm's length and for FMV.

3 Other issues addressed: measures taken to comply; terms of reference (DSU Art. 6.2, European Communities' claim on the USDOC's likelihood-of-injury determination); issues of a "fundamental nature".

US – CARBON STEEL[1]
(DS213)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Art. 21.3*	Establishment of Panel	*10 September 2001*
			Circulation of Panel Report	*3 July 2002*
Respondent	*United States*		Circulation of AB Report	*28 November 2002*
			Adoption	*19 December 2002*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US laws, regulations, administrative procedures and policy bulletin governing "sunset" reviews of countervailing duties (CVDs), and their application in a sunset review of a CVD order on imports from Germany (the US authorities' decision not to revoke the CVD order).

- **Product at issue:** Corrosion-resistant carbon steel flat products imported from Germany.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Art. 21.3 (sunset review – *de minimis* standard):** The Appellate Body reversed the Panel's finding that the US law was in violation of Art 21.3, on the grounds that Art. 21.3 does not require the application of a 1 per cent *de minimis* standard in sunset reviews. The Appellate Body disagreed with the Panel's reasoning that the *de minimis* requirement of Art. 11.9 of the ASCM (which applies to original investigations) is implied in Art. 21.3, on the grounds that Art. 21.3 does not have an express reference to the *de minimis* standard nor is there a textual link (cross-reference) between the two Articles.

- **ASCM Art. 21.3 (sunset review – initiation by investigating authority):** The Appellate Body upheld the Panel's findings that the automatic self-initiation of sunset reviews by investigating authorities under US law and accompanying regulations are consistent with the ASCM. The Appellate Body stated that its review of the context of Art. 21.3 revealed no indication that the ability of authorities to self-initiate a sunset review is conditioned on compliance with any evidentiary standards, including those set forth in Art. 11.4. (as such claim) The Appellate Body found no reason to disturb the Panel's finding that although the US measure imposed severe limitations on the ability of the authority to come up with a new rate of subsidization, it did not preclude the assessment of a likely rate of subsidization by the authority. Therefore, the US measure did not *mandate* WTO-inconsistent behaviour and, as such, was not in violation of Art. 21.3. (as applied claim) The Panel noted that the US authority had made the determination that the revocation of the CVD would likely lead to continuation or recurrence of subsidization, which "likelihood" determination, the Panel stated, should have been based on an adequate factual basis. The Panel found the application of US CVD law in the particular sunset review to be inconsistent with Art. 21.3 as the US authority had failed to take into account a document submitted by the German exporters that would have been relevant in its analysis on the likelihood of continuation or recurrence of subsidization. (This Panel finding of a violation was not appealed.)

1 *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*
2 Other issues addressed: panel's terms of reference; DSU Article 11; mandatory and discretionary distinction.

US – OFFSET ACT (BYRD AMENDMENT)[1]
(DS217, 234)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea, Thailand, Canada, Mexico*	*ADA Arts. 5 and 18* *ASCM Arts. 11 and 32*	Establishment of Panel	*12 July 2001 (Australia, Brazil, Chile, European Communities, India, Indonesia, Japan, Korea, Thailand), 10 September 2001 (Canada, Mexico)*
			Circulation of Panel Report	*16 September 2002*
Respondent	*United States*		Circulation of AB Report	*16 January 2003*
			Adoption	*27 January 2003*

1. MEASURE AT ISSUE

- **Measure at issue:** US Continued Dumping and Subsidy Act of 2000 under which anti-dumping and countervailing duties assessed on or after 1 October 2000 were to be distributed to the affected domestic producers for qualifying expenditures.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ADA Art. 18.1 (specific action against dumping) and ASCM Art. 32.1 (specific action against subsidies):** The Appellate Body upheld the Panel's analysis that the US measure was a specific action against dumping of exports and of subsidies as it was related to the determination of, and designed and structured to dissuade the practice of, dumping or subsidization. On this basis the Appellate Body held that the US measure was inconsistent with the ADA and the ASCM as it was a specific action that was not permissible under the said agreements.

- **ADA Art. 5.4 (initiation of dumping investigation – application by domestic industry) and ASCM Art. 11.4 (initiation of subsidy investigation – application by domestic industry):** The Appellate Body reversed the Panel's findings that the measure at issue was inconsistent with ADA Art. 5.4 and ASCM Art. 11.4. Emphasizing that the interpretation of these Articles must be based on the principles of interpretation in the VCLT, which focus on the ordinary meaning of the words of the provision, the Appellate Body stated that it found difficulty with the Panel's approach of continuing the analysis beyond the ordinary meaning of the text of the provisions of the ADA to examine whether the measure at issue defeated the object and purpose of these provisions. The Appellate Body concluded that the requirement of Arts. 5.4 and 11.4 were fulfilled when a sufficient number (quantity) of domestic producers have expressed support for the application and, contrary to the Panel's analysis, the investigation authority is not required to examine the motives (quality) of domestic producers that elect to support the investigation.

- **WTO Agreement Art. XVI:4 (WTO conformity of laws, regulations and administrative procedures):** The Appellate Body concluded that the US measure was in violation of Art. XVI:4, as it was inconsistent with ADA Art. 18.1 and ASCM Art. 32.1. Therefore, the Appellate Body found that the US measure nullified or impaired benefits accruing to the appellees under those agreements.

1 *United States – Continued Dumping and Subsidy Offset Act of 2000*
2 Other issues addressed: good faith fulfilment of treaty obligations (DSU Arts. 7, 9.2 and 17.6).

EC – TUBE OR PIPE FITTINGS[1]
(DS219)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*ADA Arts. 1, 2 and 3* *GATT Art. VI:2*	Establishment of Panel	*24 July 2001*
			Circulation of Panel Report	*7 March 2003*
Respondent	*European Communities*		Circulation of AB Report	*22 July 2003*
			Adoption	*18 August 2003*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** EC Regulation imposing anti-dumping duties on certain imports.
- **Product at issue:** Malleable cast iron tube or pipe fittings imported from Brazil.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **GATT Art. VI:2 (imposition and collection of anti-dumping duties) and ADA Art. 1 (principles):** The Appellate Body agreed with the Panel that there was nothing in the ADA that requires investigating authorities to reassess a determination of dumping on the basis of a devaluation occurring during the period of investigation (POI), and thus upheld the Panel's rejection of Brazil's claims.
- **ADA Art. 2.2.2, chapeau (dumping determination – normal value):** The Panel rejected Brazil's claim that the EC authorities should have excluded low volume sales figures from their calculation of "normal value" on the ground that the chapeau only allows investigating authorities to exclude data from production and sales that were not made in the ordinary course of trade. The Appellate Body upheld the Panel's findings.
- **ADA Arts. 3.2 (injury determination – volume of imports) and 3.3 (injury determination – cumulative assessment of the effects of imports):** The Appellate Body upheld the Panel's findings that European Communities did not act inconsistently with Arts. 3.2 and 3.3 by cumulatively assessing the effects of the dumped imports. The Appellate Body concluded volumes and prices could be assessed cumulatively without a prior country-specific assessment.
- **ADA Art. 3.5 (injury determination – causation):** While upholding the Panel's ultimate finding that the European Communities did not violate Art. 3.5, the Appellate Body rejected the reasoning used by the Panel and found that (i) under the particular facts of the case the European Communities had no obligation to examine the collective effects of all "causal" factors in determining whether injury to domestic industry might have been caused by those factors; and (ii) the European Communities had determined the cost of production difference to be minimal; and the factor claimed to be injuring the domestic industry had effectively been found not to exist.
- **ADA Arts. 6.2 (evidence – defence of parties' interests) and 6.4 (evidence – access):** The Appellate Body reversed the Panel's findings and found instead that the European Communities acted inconsistently with Art. 6.2 and 6.4 by failing to disclose to the interested parties certain information. The undisclosed information was relevant to the interested parties, had already been used by the EC authorities in the investigation, and was not confidential.

1 *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*

2 Other issues addressed: "implicit" analysis of the "growth" factor (ADA Art. 3.4); exhibit as evidence and Panel's obligation (Arts. 3.1, 3.4 and 17.6(i)); panels terms of reference.

US – SECTION 129(C)(1) URAA[1]
(DS221)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*GATT* *ADA* *ASCM*	Establishment of Panel	*23 August 2001*
			Circulation of Panel Report	*15 July 2002*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*30 August 2002*

1. MEASURE AT ISSUE

- **Measure at issue:** Section 129(c)(1) of the Uruguay Round Agreements Act of the United States, which established, *inter alia*, a mechanism that permitted the agencies concerned to issue a second determination (a "Section 129 determination"), where such action was appropriate, to respond to the recommendations in a WTO panel or Appellate Body report.

2. SUMMARY OF KEY PANEL FINDINGS

- The Panel rejected Canada's claim that Section 129(c)(1) mandated action that was inconsistent with the GATT, the ADA and the ASCM, as the Panel found that Canada had failed to establish its claim.

  Canada claimed that Section 129(c)(1) had the effect of precluding the United States from implementing adverse WTO reports with respect to what it termed "prior unliquidated entries"[2] (i.e. entries made before the end of the reasonable period of time for implementing adverse WTO reports that were not liquidated as of that date).

  The Panel found, however, that Section 129(c)(1) applied only to the treatment of unliquidated entries (i.e. entries that occurred "on or after" the end of the reasonable period of time) and did not apply to the so-called "prior unliquidated entries". Therefore, the Panel was not convinced by Canada's assertion that Section 129(c)(1) nevertheless had the effect of precluding the United States from implementing adverse WTO reports with respect to "prior unliquidated entries". In other words, the Panel concluded that because Section 129(c)(1) did not apply to "prior unliquidated entries," it neither required nor precluded the United States to act in a certain way in its treatment of "prior unliquidated entries".

  Since Canada failed in establishing that Section 129(c)(1) had the effect of precluding the United States from implementing adverse WTO reports with respect to "prior unliquidated entries", the Panel did not consider it necessary to examine whether Canada was correct in arguing that the GATT, the ADA and the ASCM required the United States to implement adverse WTO reports with respect to such "prior unliquidated entries".

3. OTHER ISSUES[3]

- **As such challenge**: The Panel stated that it was clear that a Member may challenge a statutory provision of another Member as such, provided that the statutory provision mandated the other Member to take action that was inconsistent with its WTO obligations or not to take action which was required by its WTO obligations. Thus, the Panel considered that Canada's principal claims would be sustained only if Canada established that Section 129(c)(1) mandated the United States either to take action that was inconsistent with the WTO obligations or not to take action which was required by those WTO provisions.

1 *United States – Section 129(c)(1) of the Uruguay Round Agreements Act*

2 "Liquidation", refers to the process by which the US Customs Service makes a final settlement with the importer regarding the final, definitive amount of duties owed. Accordingly, the Customs Service either returns to the importer any excess amount of the deposit paid by the importer over the definitive duties owed or collects from the importer an additional amount to the extent that the definitive duties owed are greater than the deposit. The US Customs Service liquidates based on the amount of definitive anti-dumping and countervailing duties owed as provided in the final, definitive duty determinations made by the United States Department of Commerce.

3 Other issues addressed: terms of reference.

CANADA – AIRCRAFT CREDITS AND GUARANTEES[1] (DS222)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*ASCM Arts. 1 and 3.1(a)*	Establishment of Panel	*12 March 2001*
			Circulation of Panel Report	*28 January 2002*
Respondent	*Canada*		Circulation of AB Report	*NA*
			Adoption	*19 February 2002*

1. MEASURE AND INDUSTRY AT ISSUE

- **Measure at issue:** Financing, loan guarantees or interest rate support provided by the Canadian Export Development Corporation (EDC) and other export credits, guarantees including equity guarantees etc. provided by the *Investissement Québec* (IQ) to the Canadian civil aircraft industry.

- **Industry at issue**: Civil aircraft industry.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ASCM Arts. 1 (definition of a subsidy) and 3.1(a) (prohibited subsidies – as such challenge):** The Panel found that the EDC and IQ programmes as such were not inconsistent with Art. 3.1(a) as Brazil had failed to demonstrate any specific provision in the relevant legal instruments that suggested that the EDC and IQ programmes (and related measures) mandated the conferral of a benefit, and thereby subsidization, within the meaning of Art. 1. The Panel found that even if EDC had the "ability", and the IQ "could" confer such a benefit, this did not necessarily mean that these programmes were required to do so.

- **ASCM Arts. 1 (definition of a export subsidy) and 3.1(a) (prohibited subsidies – as applied challenge):** The Panel relied on, inter alia, the definition of "benefit" established by the Appellate Body[3], i.e. that a benefit will be conferred where a recipient received a "financial contribution" on terms more favourable than those available to the recipient in the market.

  On this basis, the Panel found that since the EDC loan financing to Air Wisconsin was at rates better than those available commercially, it therefore conferred a benefit and was a subsidy under Art. 1.1(b). The Panel also found that this was a prohibited subsidy under Art. 3.1(a) as Canada itself did not deny this fact and admitted that the subsidy programme in question was intended to support Canada's export trade and hence qualified as an "export subsidy".

  Similarly, the Panel found that certain EDC finance transactions[4] conferred "benefits" on the individual recipients and also constituted prohibited export subsidies under Art. 3.1(a). However, in the case of certain other EDC financing transactions[5], the Panel found that Brazil had failed to establish the existence of a benefit to the individual recipients. The Panel concluded that in these instances no subsidy existed, and therefore no violation could be found of Art. 3.1(a).

  In the case of IQ equity guarantees, the Panel examined the level of fees charged before the issuing of guarantees, and found that only one of the IQ equity guarantee transactions at issue conferred a benefit within the meaning of Art. 1. The Panel found that this transaction was neither *de jure* nor *de facto* export contingent, and therefore it did not breach Art. 3.1(a).

  In the case of IQ loan guarantees, the Panel found that Brazil had not established that one of the two guarantees at issue conferred a benefit under Art. 1, or that the other guarantee, which did confer a benefit, was contingent upon export performance. Thus, the Panel found that Brazil had failed to establish that either of the two IQ loan guarantees were inconsistent with Art. 3.1 (a).

1 *Canada – Export Credits and Loan Guarantees for Regional Aircraft*
2 Other issues addressed: Art 21.5 panel's jurisdiction; DSU Art. 6.2 and 13.1; as applied challenge; Item (k); business confidential information.
3 *Canada – Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R, adopted 20 August 1999, para. 157.
4 In respect of Comair and Air Nostrum.
5 In respect of Atlantic Coast Airlines, Atlantic Southeast Airlines, Comair, Kendell and Air Nostrum.

EC – SARDINES[1]
(DS231)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Peru*	*TBT Annex 1.1 and Art. 2.4*	Establishment of Panel	*24 July 2001*
			Circulation of Panel Report	*29 May 2002*
Respondent	*European Communities*		Circulation of AB Report	*26 September 2002*
			Adoption	*23 October 2002*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** EC Regulation establishing common marketing standards for preserved sardines, including a specification that only products prepared from *Sardina pichardus* could be marketed/labelled as preserved sardines.

- **Product at issue:** Two species of sardines found in different waters – *Sardina pilchardus Walbaum* (mainly in Eastern North Atlantic, in the Mediterranean Sea and the Black Sea) and *Sardinops sagax sagax* (mainly in the Eastern Pacific along coasts of Peru and Chile).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **TBT Agreement Annex 1.1 (technical regulation):** The Appellate Body upheld the Panel's finding that the EC Regulation *was* a "technical regulation" within the meaning of Annex 1.1 as it fulfilled the three criteria laid down in the Appellate Body report in *EC – Asbestos:* (i) the document applied to an identifiable product or group of products; (ii) it lays down one or more product characteristics; and (iii) compliance with the product characteristics was mandatory.

- **TBT Agreement Art. 2.4 (international standard):** The Appellate Body upheld the Panel's finding that the definition of "standard" does not require that a standard adopted by a "recognized body" be approved by consensus. Therefore, the standard in question, Codex Stan 94, fell within the scope of Art. 2.4 as well.

- **TBT Agreement Art. 2.4 (international standard – burden of proof):** The Appellate Body reversed the Panel's finding that the European Communities had the burden of proving that the relevant international standard was ineffective and inappropriate under Art. 2.4 and found, instead, that the burden rested on Peru to prove that the standard was effective and appropriate to fulfil the legitimate objectives pursued by the European Communities through the EC Regulation. The Appellate Body upheld the Panel's alternative finding that Peru had adduced sufficient evidence and legal arguments to demonstrate that the international standard was not ineffective or inappropriate to fulfil the legitimate objectives pursued by the European Communities (of market transparency, consumer protection and fair competition), since it had not been established that most consumers in most member states of the European Communities have always associated the common name "sardines" only with *Sardina pilchardus Walbaum*.

3. OTHER ISSUES[2]

- The Appellate Body found that it could accept and consider an *amicus curiae* brief submitted by Morocco, a WTO Member that was not a third party to the dispute, although ultimately it did not take the brief into account.

1 *European Communities – Trade Description of Sardines*
2 Other issues addressed: working procedures for Appellate Review (Rule 30(1) – request for passive observer status); temporal scope of TBT Art. 2.4; DSU Art. 11.

US – SOFTWOOD LUMBER III[1]
(DS236)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ASCM Arts. 1.1, 14, 17 and 20*	Establishment of Panel	*5 December 2001*
			Circulation of Panel Report	*27 September 2002*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*1 November 2002*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Preliminary countervailing duty determination and preliminary critical circumstances determination made by the US authorities in respect of lumber imports and US laws on expedited reviews and "administrative reviews" in the context of countervailing measures.

- **Product at issue:** US softwood lumber imports from Canada.

2. SUMMARY OF KEY PANEL FINDINGS

- **ASCM Art. 1.1(a): (1): (iii) (definition of a subsidy – financial contribution):** The Panel concluded that the US authorities' determination that the Canadian provincial stumpage programme constituted a "financial contribution" by the government within the terms of Art. 1.1(a)(iii) was not inconsistent with the ASCM. The Panel considered that the Canadian government act of allowing companies to cut the trees amounted to the "supply" of standing timber, which is a good within the meaning of Art. 1.1(a)(1)(iii).

- **ASCM Art. 14 and 14(d) (benefit – calculation of amount of subsidy):** The Panel concluded that the US authorities acted inconsistently with Art. 14 and 14(d) by using the US stumpage prices instead of the prevailing market conditions for the product at issue in Canada, the country of provision or purchase, as required by Art. 14(d), in determining whether a "benefit" accrued from the Canadian government to the recipient.

- **ASCM Art. 1.1(b) (definition of a subsidy – benefit):** The Panel found that where a downstream producer of subject merchandise is unrelated to the allegedly subsidized upstream producer of the input, an authority is not allowed to simply assume that a benefit has passed through. Therefore, by failing to examine whether the independent lumber producers had paid an arm's-length price for the logs they purchased, the US authorities' determination that a benefit had accrued to those producers was inconsistent with the ASCM.

- **As such challenge**:[2] The Panel rejected Canada's as such challenge of the US statute and regulations on expedited and administrative review, as it did not mandate/require the US authorities to act inconsistently with the ASCM.

3. OTHER ISSUES

- **Retroactive application (ASCM Art. 20.6):** The Panel concluded that the US authorities' application of provisional measures retroactively was inconsistent with the ASCM.

- **Provisional measures (ASCM Arts. 17.3 and 17.4):** The Panel concluded that the timing (less than 60 days after initiation of investigation) and duration (for a period more than four months) of the US authorities' application of the provisional measures was in violation of the requirements of Arts. 17.3 and 17.4.

1 *United States – Preliminary Determination With Respect to Certain Softwood Lumber From Canada*
2 The as such challenge was brought under GATT Art. VI:3, ASCM Arts. 10, 19.3, 19.4, 21.2, 32.1 and 32.5 and WTO Agreement Art. XVI:4.

ARGENTINA – PRESERVED PEACHES[1]
(DS238)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Chile*	*SA Arts. 2.1, 4.1 and 4.2* *GATT Art. XIX:1(a)*	Establishment of Panel	*18 January 2002*
			Circulation of Panel Report	*14 February 2003*
Respondent	*Argentina*		Circulation of AB Report	*NA*
			Adoption	*15 April 2003*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Argentina's safeguard measures imposed, in the form of specific duties, on preserved peaches from all countries other than MERCOSUR States and South Africa.

- **Product at issue:** Preserved peaches imported into Argentina.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. XIX:1(a) (unforeseen developments):** The Panel noted the two distinct requirements under Art. XIX:1(a) to be fulfilled before the imposition of safeguard measures: (i) demonstration of increased imports and (ii) demonstration of unforeseen developments. The Panel concluded that on the facts of the case it was not evident that the Argentine authorities had discussed or offered any explanation on why the developments were "unforeseen" at the time of the negotiation of the obligations, and, therefore, that they had not fulfilled the criteria of Art. XIX:1(a).

- **SA Arts. 2.1 and 4.2(a) and GATT Art. XIX:1(a) (conditions for safeguard measures – increased imports):** The Panel noted that the increase in imports must be "qualitative" as well as "quantitative", and concluded that the Argentine authorities had failed to demonstrate that: (i) they had considered trends in imports in absolute terms, which significantly showed a decline over the period of analysis; and (ii) the increase in imports from one base year to another constituted an increase in quantities relative to domestic production. Therefore, the Panel found that Argentina had not fulfilled the criteria of the relevant provisions and had acted inconsistently with the SA.

- **SA Arts. 2.1, 4.1(b), 4.2(a) and GATT Art. XIX:1(a) (conditions for safeguard measures – threat of serious injury):** The Panel concluded that Argentina had acted inconsistently with the relevant provisions, as it had demonstrated in its determination on a threat of serious injury, neither the relevant factors having a bearing on the domestic industry nor that the serious injury was clearly imminent so as to constitute a threat under the relevant Articles.

1 *Argentina – Definitive Safeguards Measure on Imports of Preserved Peaches*

ARGENTINA – POULTRY ANTI-DUMPING DUTIES[1]
(DS241)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*ADA Arts. 2, 3, 5 and 6*	Establishment of Panel	*17 April 2002*
			Circulation of Panel Report	*22 April 2003*
Respondent	*Argentina*		Circulation of AB Report	*NA*
			Adoption	*19 May 2003*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping measures, in the form of specific anti-dumping duties, imposed by Argentina on imports from Brazil for a period of three years.

- **Product at issue:** Poultry from Brazil imported into Argentina.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Art. 5.3 (initiation of investigation – application):** The Panel found that, by basing the determination of initiation of an investigation on "some" instances of dumping, Argentina violated Art. 5.3 as a dumping determination should be made in respect of the product as a whole for "all" comparable transactions, not for individual transactions.

- **ADA Art. 5.8 (initiation of investigation – insufficient evidence):** The Panel found that Argentina violated Art. 5.8 as it failed to reject an application for investigation which was based on insufficient evidence following the issuance of a negative injury determination from the relevant investigation authority.

- **ADA Art. 6.8 (evidence – facts available):** The Panel found that Argentina was not in violation of Art. 6.8 when it disregarded information submitted by a company that had not fulfilled procedural provisions of the domestic law. As information submitted by such companies was not considered "appropriately submitted" within the meaning of Art. 6.8, Argentina was held not to be in violation as regards one other claim under this Article. However, Argentina was found in violation of Art. 6.8 by rejecting information received from three other companies, as the Panel could not find, in the record of the investigation, a reference to any of the reasons provided by Argentina for the rejection.

- **ADA Art. 6.10 (evidence – individual dumping margins):** The Panel found that Argentina violated Art. 6.10 as it did not calculate an individual dumping margin for two companies. The Panel found that an investigating authority should calculate the dumping margin for each individual exporter regardless of whether it was provided with partial, unreliable or unusable information from the exporters or producers.

- **ADA Arts. 2.4 and 2.4.2 (dumping determination – fair comparison):** The Panel found Argentina in violation of Art. 2.4 as it did not make freight cost adjustments to its calculation of the normal value in the case of a company that had provided supporting documents. However, the Panel found no violation in the case where the company had failed to provide supporting documentation. The Panel found Argentina in violation of Art. 2.4.2 as it established weighted average normal values on the basis of statistical samples of domestic sales transactions.

- **ADA Art. 3.1 and 3.5 (injury determination – causation):** The Panel stated that where an authority examines different injury factors using different periods, a prima facie case is made that it failed to conduct an "objective" examination. Since Argentina did not provide a justification for its use of different periods, it failed to rebut the prima facie case and was found in violation of Art. 3.1. The Panel found no violation of Art. 3.5 as there was nothing to suggest that the injury period should not exceed the dumping period, provided that the entire dumping period was included within the period of review for injury.

- **ADA Art. 3 (injury determination – non-dumped imports):** The Panel found Argentina had violated Art. 3.1, 3.2, 3.4 and 3.5 by including "non-dumped" imports from two companies in the injury analysis.

- **DSU Art. 19.1 (Panel and Appellate Body recommendations – suggestion on implementation):** The Panel suggested for implementation that Argentina repeal the definitive anti-dumping measure at issue.

1 *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*
2 Other issues addressed: procedural requirements under ADA Art. 6, ADA Arts. 4 and 9; relevance of prior proceedings before MERCOSUR Tribunal.

US – TEXTILES RULES OF ORIGIN[1]
(DS243)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*India*	*ROA Art. 2*	Establishment of Panel	*24 June 2002*
			Circulation of Panel Report	*20 June 2003*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*21 July 2003*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Rules of origin applied by the United States to textiles and apparel products and used in administering the textile quota regime maintained by the United States under the Agreement on Textiles and Clothing (ATC), in particular the US Trade and Development Act of 2000.

- **Product at issue:** Made-up non-apparel articles, also known as "flat goods", such as bedding articles and home furnishing articles, of export interest to India.

2. SUMMARY OF KEY PANEL FINDINGS

- **ROA Art. 2(b) (trade objectives):** The Panel rejected India's claim and concluded that although the objectives of protecting the domestic industry against import competition and of favouring imports from one Member over imports from another may in principle be considered to constitute "trade objectives" for which rules of origin may not be used, India had failed to establish that US rules of origin were being administered to pursue trade objectives in violation of Art. 2(b).

- **ROA Art. 2(c), first sentence (restrictive, distorting or disruptive effects):** The Panel rejected India's claim on the grounds that for there to be a violation of Art. 2(c), it must be proved that there is a causal link between the challenged rules of origin itself and the prohibited effects. The Panel further recognized that it would not always and necessarily be sufficient for a complaining party to show that the challenged rules of origin adversely affect one Member's trading as it may favourably affect the trade of other Members. The Panel concluded that India had not provided enough relevant evidence that the US measures created "restrictive", "distorting" or "disruptive" effects on international trade.

- **ROA Art. 2(c), second sentence (fulfilment of certain conditions):** The Panel rejected India's claim, noting that distinctions maintained in order to define the product coverage of particular rules of origin were distinct from conditions of the kind referred to in Art. 2(c), second sentence (which prohibits the imposition of condition/s unrelated to manufacturing or processing as a prerequisite to conferral of origin). The Panel concluded that India did not establish that the measures at issue required the fulfilment of conditions prohibited by Art. 2(c), second sentence.[2]

- **ROA Art. 2(d) (discrimination):** The Panel concluded that Art. 2(d) applies to discrimination between goods that are the "same", not those that are "closely related". The Panel further concluded that India had failed to demonstrate that the US legislation was in violation of Art. 2(d).

1 *United States – Rules of Origin for Textiles and Apparel Products*

2 The Panel rejected India's interpretation of the phrase "unduly strict requirements" under Art. 2(c) second sentence that rules of origin requirements are "unduly strict" if they are burdensome and do not have to be imposed to determine the country to which the good in question has a significant economic link, and concluded that there was no violation under the said provision.

US – CORROSION RESISTANT STEEL SUNSET REVIEW[1] (DS244)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*ADA Art. 11.3*	Establishment of Panel	*22 May 2002*
			Circulation of Panel Report	*14 August 2003*
Respondent	*United States*		Circulation of AB Report	*15 December 2003*
			Adoption	*9 January 2004*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) US statute for sunset review of anti-dumping duties, in conjunction with the Statement of Administrative Action (SAA), certain provisions of the US regulations related to sunset reviews and the Sunset Policy Bulletin; and (ii) application of the aforementioned measures in the sunset review determination of the product at issue.

- **Product at issue:** Corrosion-resistant carbon steel flat products from Japan.

2. SUMMARY OF KEY PANEL/AB FINDINGS

Sunset review

- **ADA Art. 11.3 (continuation of dumping and injury):** The Appellate Body made some general observations with regard to such a determination: (i) the second condition of Art. 11.3 involved a prospective determination on the part of the investigating authorities, requiring a forward-looking analysis of what would be likely to occur if the duty were terminated; (ii) as to the standard of "likely", a positive determination may be made only if the evidence demonstrated that dumping would be "probable" (not possible or plausible) if the duty were terminated; and (iii) Art. 11.3 does not prescribe any particular methodology to be used by investigating authorities in making a likelihood determination.

- **ADA Arts. 11.3 and 2.4 (fair comparison):** The Appellate Body reversed the Panel's finding and concluded that the United States violated Art. 11.3 by relying on dumping margins calculated in previous reviews using the "zeroing" methodology. While there is no obligation under Art. 11.3 for investigating authorities to calculate or rely on dumping margins in determining the likelihood of continuation or recurrence of dumping, they must calculate dumping margins in conformity with Art. 2.4 should they choose to rely upon margins in making their likelihood determination.

- **ADA Arts. 11.3 and 6.10 (individual dumping margins):** The Appellate Body concluded that the United States was not in violation of Arts. 6.10 and 11.3 by making a "likelihood" determination in a sunset review on an order-wide basis. The Appellate Body observed that Art. 11.3 does not expressly state that a likelihood determination must be separately made for each known producer (or on a company-specific basis), and that Art. 6 (which is relevant and applies to Art. 11.3 investigations by virtue of the cross reference in Art. 11.4) is also silent on this matter.

3. OTHER ISSUES

- **As such challenge**: In order to determine whether an as such challenge was possible in the present case, the Appellate Body first looked at the type of measures that can be the subject of dispute settlement proceedings and second whether there were any limitations upon the types of measures that may, as such, be the subject of dispute settlement under DSU Art. 3.3 or the applicable covered agreement. The Appellate Body found, contrary to the Panel, that the Sunset Policy Bulletin can be challenged in WTO dispute settlement. The Appellate Body did not, however, find any provision of the Bulletin to be inconsistent, as such, with the Anti-Dumping Agreement.

1 *United States – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan*

JAPAN – APPLES[1]
(DS245)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*SPS Arts. 2.2, 5.7 and 5.1* *DSU Art. 11*	Establishment of Panel	*3 June 2002*
			Circulation of Panel Report	*15 July 2003*
Respondent	*Japan*		Circulation of AB Report	*26 November 2003*
			Adoption	*10 December 2003*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Certain Japanese measures restricting imports of apples on the basis of concerns about the risk of transmission of fire blight bacterium.
- **Product at issue:** Apples from the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **SPS Art. 2.2 (sufficient scientific evidence):** The Appellate Body upheld the Panel's finding that the measure was maintained "without sufficient scientific evidence" inconsistently with Art. 2.2, as there was a clear disproportion (and thus no rational or objective relationship) between Japan's measure and the "negligible risk" identified on the basis of the scientific evidence.
- **SPS Art. 5.7 (provisional measure):** The Appellate Body upheld the Panel's finding that the measure was not a provisional measure justified within the meaning of Art. 5.7, as the measure was not imposed in respect of a situation "where relevant scientific evidence is insufficient". Having noted that the pertinent question under Art. 5.7 is whether the body of available scientific evidence does not allow, in quantitative or qualitative terms, the performance of an adequate assessment of risks as required under Art. 5.1 and as defined in Annex A of the SPS Agreement, the Appellate Body found that in light of the Panel's finding of a large quantity of high-quality scientific evidence describing the risk of transmission of fire blight through apple fruit, there was "the body of available scientific evidence" in this case that would allow "the evaluation of the likelihood of entry, establishment or spread" of fire blight in Japan through apples exported from the United States.
- **SPS Art. 5.1 (risk assessment):** The Appellate Body upheld the Panel's finding that the measure was not based on a risk assessment as required under Art. 5.1 because the pest risk analysis relied on by Japan (i.e. "1999 PRA") failed to evaluate (i) the likelihood of entry, establishment or spread of fire blight specifically through apple fruit; and (ii) the likelihood of entry "according to the SPS measures that might be applied". In this regard, the Appellate Body noted that the obligation to conduct an assessment of "risk" under Art. 5.1 is not satisfied merely by a general discussion of the disease sought to be avoided by the imposition of the SPS measure, rather an evaluation of the risk must connect the possibility of adverse effects with an antecedent or cause (i.e. in this case, transmission of fire blight "through apple fruit"). Also, the Appellate Body upheld the Panel's view that the definition of "risk assessment" requires that the evaluation of the entry, establishment or spread of a disease be conducted according to the sanitary or phytosanitary measures which might be applied, not merely measures which are being currently applied.

1 *Japan – Measures Affecting the Importation of Apples*

2 Other measures addressed: burden of proof; objective assessment under DSU Art. 11; sufficiency of notice of appeal (Working Procedures for Appellate Review, Rule 20(2)(d)); terms of reference; admissibility of evidence; consultation with scientific experts (SPS Art. 11.2 and DSU Art. 13.1).

JAPAN – APPLES (ARTICLE 21.5 – US)[1]
(DS245)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*SPS Arts. 2 and 5* *DSU Art. 11*	Referred to the Original Panel	*30 July 2004*
			Circulation of Panel Report	*23 June 2005*
Respondent	*Japan*		Circulation of AB Report	*NA*
			Adoption	*20 July 2005*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Japan's revised restrictions on imports of apples from the United States with the following modifications: (i) reduction of annual inspections from three to one; (ii) reduction of the buffer zone from 500 to ten meters; and (iii) elimination of the requirement that crates be disinfected.

2. SUMMARY OF KEY PANEL FINDINGS

- **SPS Art. 2.2 (sufficient scientific evidence):** Regarding the US claim that the Japanese compliance measures were inconsistent with the rulings and recommendations of the DSB because they were not based on "sufficient" scientific evidence, the Panel found that "sufficiency" is a "relational concept between two elements: the scientific evidence and the measure at issue" and found that for each measure at issue, except the certification requirement that fruits were free from fire blight, was not supported by "sufficient scientific evidence".

- **SPS Art. 5.1 (risk assessment):** The Panel found that in "the absence of any scientific evidence of a fire blight-risk posed by mature, symptomless apple fruit, any risk analysis which concludes otherwise would not 'take into account available scientific evidence,' and would not meet the requirements for a risk assessment under Article 5.1". Having reviewed the scientific studies in this regard, including the comments by the scientific experts, the Panel held that the new studies relied upon by Japan did not support the findings in the 2004 Pest Risk Analysis (PRA) that "mature apples could be latently infected". Consequently the Panel held that "the 2004 PRA is not an assessment, as appropriate to the circumstances, of the risks to plant life or health, within the meaning of Article 5.1 of the SPS Agreement".

- **SPS Art. 5.6 (appropriate level of protection – alternative measures):** The Panel concluded that Japan acted inconsistently with Art. 5.6 because the alleged compliance measure was "more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection" within the meaning of Art. 5.6. The Panel found that if the United States "only exports mature, symptomless apples, the alternative measure proposed by the United States [i.e. the requirement that apples imported into Japan be mature and symptomless] meets the requirements of Art. 5.6 as a substitute to Japan's current measure". In this regard, the Panel concluded that this alternative measure: (i) was reasonably available taking into account technical and economic feasibility; (ii) achieved Japan's appropriate level of sanitary or phytosanitary protection; and (iii) was significantly less restrictive to trade than the SPS measure at issue, and thus satisfied the three-pronged test confirmed by the Appellate Body in *Australia – Salmon*.

3. OTHER ISSUES[2]

- **Standard of review (DSU Art. 11):** After the establishment of the Panel, Japan adopted the Operational Criteria (OC) which were designed to function as guidelines for the compliance measures. As for the US request for a preliminary ruling that the OC was not a "measure taken to comply" on the grounds that the measure (i) was adopted after the establishment of the Panel; and (ii) was not vested with legal binding force, the Panel rejected the US arguments and held that it was obliged under DSU Art. 11 to objectively examine the facts before it: "[a]s soon as the [OC] were brought to the attention of the United States and the Panel, they became an official statement of how Japan intended to implement its legislation on fire blight on which the United States and the Panel could rely".

1 *Japan – Apples Affecting the Importation of Apples – Recourse to Article 21.5 of the DSU by the United States*
2 Other issues addressed: SPS Arts. 2.2 and 5.2; GATT Art. XI; and AA Art. 4.2.

EC – TARIFF PREFERENCES[1]
(DS246)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*India*	*GATT Art. I:1* *Enabling Clause para. 2(a)*	Establishment of Panel	*27 January 2003*
			Circulation of Panel Report	*1 December 2003*
Respondent	*European Communities*		Circulation of AB Report	*7 April 2004*
			Adoption	*20 April 2004*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** European Communities' generalized tariff preferences (GSP) scheme for developing countries and economies in transition. In particular, special arrangement under the scheme to combat drug production and trafficking (the "Drug Arrangements"), the benefits of which apply only to the listed 12 countries experiencing a certain gravity of drug problems.[2]

- **Product at issue:** Products imported from India vs products imported from the 12 countries benefiting from the Drug Arrangements under the EC GSP scheme.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. I:1 (most-favoured-nation treatment):** The Panel found that the tariff advantages under the Drug Arrangements were inconsistent with Art. I:1, as the tariff advantages were accorded only to the products originating in the 12 beneficiary countries, and not to the like products originating in all other Members, including those originating in India.

- **Enabling Clause, para. 2(a):** The Appellate Body agreed with the Panel that the Enabling Clause is an "exception" to GATT Art. I:1, and concluded that the Drug Arrangements were not justified under para. 2(a) of the Enabling Clause, as the measure, *inter alia*, did not set out any objective criteria, that, if met, would allow for other developing countries "that are similarly affected by the drug problem" to be included as beneficiaries under the measure. In this regard, although upholding the Panel's conclusion, the Appellate Body disagreed with the Panel's reasoning and found that not every difference in tariff treatment of GSP beneficiaries necessarily constituted discriminatory treatment. Granting different tariff preferences to products originating in different GSP beneficiaries is allowed under the term 'non-discriminatory' in footnote 3 to para. 2, provided that the relevant tariff preferences respond positively to a particular "development, financial or trade need" and are made available on the basis of an objective standard to "all beneficiaries that share that need".

3. OTHER ISSUES[3]

- **Burden of proof (Enabling Clause):** The Appellate Body noted that, as a general rule, the burden of proof for an "exception" falls on the respondent. Given "the vital role played by the Enabling Clause in the WTO system as means of stimulating economic growth and development", however, when a measure taken pursuant to the Enabling Clause is challenged, a complaining party must allege more than mere inconsistency with Art. I:1 and must identify specific provisions of the Enabling Clause with which the scheme is allegedly inconsistent so as to define the parameters within which the responding party must make its defence under the requirements of the Enabling Clause. The Appellate Body found that India in this case sufficiently raised para. 2(a) of the Enabling Clause in making its claim of inconsistency with GATT Art. I:1.

1 *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries*
2 The 12 countries benefiting from the Drug Arrangements are the following: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Pakistan, Panama, Peru and Venezuela.
3 Other issues addressed: nature of Enabling Clause; dissenting panellist. Art. XX(b) defence; enhanced third party rights (DSU Art. 10); joint representation of India and Paraguay by private counsel.

US – STEEL SAFEGUARDS[1]

(DS248, 249, 251, 252, 253, 254, 258, 259)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	*Brazil, China, European Communities, Japan, Korea, New Zealand, Norway, Switzerland*	*GATT Art. XIX:1* *SA Arts. 2, 3.1 and 4*	Establishment of Panel	*3 June 2002 (EC); 14 June 2002 (Japan, Korea); 24 June 2002 (China, Switzerland, Norway); 8 July 2002 (New Zealand); 29 July 2002 (Brazil)*
			Circulation of Panel Report	*2 May 2003*
Respondent	*United States*		Circulation of AB Report	*10 November 2003*
			Adoption	*10 December 2003*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US definitive safeguard measures on a wide range of steel products.
- **Product at issue:** Certain steel product imports[2], except for those from Canada, Mexico, Israel and Jordan.

2. SUMMARY OF KEY PANEL/AB FINDINGS[3]

- **GATT Art. XIX:1(a) (unforeseen developments):** The Appellate Body upheld the Panel's findings (i) that an investigating authority must provide a "reasoned conclusion" in relation to "unforeseen developments" for each specific safeguard measure at issue; and (ii) that the United States International Trade Commission (ITC) relevant explanation was *not* sufficiently reasoned and adequate and thus inconsistent with GATT Art. XIX:1(a).
- **SA Arts. 2.1 and 3.1 (conditions for safeguard measures – increased imports):** Recalling the relevant legal standard that it elaborated in *Argentina – Footwear Safeguards* and rejecting the US argument (comparison of end-points), the Appellate Body upheld the Panel's conclusions that the measures on CCFRS, hot-rolled bar and stainless steel rod were inconsistent with Arts. 2.1 and 3.1 because the United States failed to provide a "reasoned and adequate" explanation of how the facts (i.e. downward trend at the end of the period of investigation) supported the determination with respect to "increased imports" of these products. However, the Appellate Body, reversing the Panel's finding with respect to "tin mill products and stainless steel wire", found that the ITC determination containing "alternative explanations" was not inconsistent with Arts. 2.1 and 4, as the Safeguards Agreement does not necessarily "preclude the possibility of providing multiple findings instead of a single finding in order to support a determination" under Arts. 2.1 and 4.
- **SA Arts. 2 and 4 (parallelism):** The Appellate Body upheld the Panel's finding that the ITC did not satisfy the "parallelism" requirement, as it should have considered any imports excluded from the application of the measure as an "other factor" in the causation and non-attribution analysis under Art. 4.2(b) and it should have provided one single joint, rather than two separate, determination[s] (i.e. excluding either Canada and Mexico, or, alternatively, Israel and Jordan) based on a reasoned and adequate explanation on whether imports from sources other than the FTA partners (i.e. Canada, Israel, Jordan, and Mexico), *per se*, satisfied the conditions for the application of a safeguard measure.
- **SA Arts. 2.1, 3.1 and 4.2(b) (conditions for safeguard measures – causation):** As regards the Panel's findings of violations for the ITC's causation analyses concerning all products other than stainless steel rod, the Appellate Body (i) reversed the Panel's findings with respect to tin mill and stainless steel wire based on its reversal of the Panel's decision on increased imports, and (ii) declined to rule on the issue of causation for all the other seven products based on its findings of violations in respect of previous claims discussed above.

1 *United States – Definitive Safeguard Measures on Imports of Certain Steel Products*

2 Specifically, these products included the following: CCFRS (certain carbon flat-rolled steel); tin mill products; hot-rolled bar; cold-finished bar; rebar; welded pipe; FFTJ; stainless steel bar, stainless steel wire; and stainless steel rod.

3 Other issues addressed: issuance of separate panel reports (DSU Art. 9.2); time period for data relied upon by the ITC; judicial economy (panel); *amicus curiae* submission; conditional appeals (Appellate Body's completion of panel's analysis); ITC's divergent findings.

US – SOFTWOOD LUMBER IV[1]
(DS257)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ASCM Arts. 1.1(a)(1)(iii), 2, 10, 14(d) and 32* *GATT Art. VI:3*	Establishment of Panel	*1 October 2002*
			Circulation of Panel Report	*29 August 2003*
Respondent	*United States*		Circulation of AB Report	*19 January 2004*
			Adoption	*17 February 2004*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US final countervailing duty determination.
- **Product at issue:** Certain softwood lumber imports from Canada.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Art. 1.1(a): (1): (iii) (definition of a subsidy – financial contribution):** The Appellate Body upheld the Panel's finding that the United States Department of Commerce's (USDOC) "[d]etermination that the Canadian provinces were providing a financial contribution in the form of the provision of a good by providing standing timber to timber harvesters through the stumpage programmes" was not inconsistent with Art. 1.1(a)(1)(iii). It found that the ordinary meaning of "goods" should not be read so as to exclude tangible items of property, like trees, that are severable from land and also, that the way in which the municipal law of WTO Member classifies an item cannot in itself be determinative of the interpretation of provisions of the WTO covered agreements. The Appellate Body also upheld the Panel's finding that through the stumpage arrangements, the provincial governments "provide" such goods within the meaning of Art. 1.1(a)(1)(iii).
- **ASCM Art. 14(d) (benefit – calculation of amount of subsidy):** The Appellate Body reversed the Panel's finding and held that "an investigating authority may use a benchmark other than private prices in the country of provision, when it has been established that private prices of the goods in question in that country are distorted, because of the predominant role of the government in the market as a provider of the same or similar goods." It thus reversed the Panel's consequential findings that the United States acted inconsistently with Arts. 10, 14, 14(d) and 32.1 by imposing countervailing duties based on US stumpage prices rather than using the "prevailing market conditions" in Canada. However, it was unable to complete the legal analysis of whether the USDOC's determination of benefit was consistent with Art. 14(d).
- **GATT Art. VI:3/ASCM Arts. 10 and 32.1 (pass-through of benefit):** The Appellate Body concluded that "where countervailing duties are used to offset subsidies granted to producers of input products, while the duties are to be imposed on processed products, and where input producers and downstream processors operate at arm's length, the investigating authority must establish that the benefit conferred by a financial contribution directly on input producers is passed through, at least in part, to producers of the processed product subject to the investigation." Thus it upheld the Panel's finding that the USDOC's failure to conduct a pass-through analysis in respect of arm's-length sales of logs by timber harvesters who own sawmills to unrelated producers of softwood lumber was inconsistent with Arts. 10 and 32.1 and GATT Art. VI:3. However, it reversed the Panel's finding with respect to sales of lumber by sawmills to unrelated lumber manufacturers.

1 *United States – Final Countervailing Duty Determination With Respect to Certain Softwood Lumber from Canada*
2 Other issues addressed: ASCM Art. 2 (specificity); *amicus curiae* submission; Appellate Body's working procedures (Rule 24(1) – deadline for third participant's submission); terms of reference.

US – SOFTWOOD LUMBER IV (ARTICLE 21.5 – CANADA)[1]
(DS257)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ASCM Arts. 10 and 32* *DSU Art. 19.1*	Referred to the Original Panel	*14 January 2005*
			Circulation of Panel Report	*1 August 2005*
Respondent	*United States*		Circulation of AB Report	*5 December 2005*
			Adoption	*20 December 2005*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- United States Department of Commerce (USDOC) revised countervailing duty determination (i.e. Section 129 determination[2]). The "First Assessment Review",[3] including the pass-through analysis in the Review.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Arts. 10 and 32.1/GATT Art. VI:3 (pass-through):** The Panel found the United States failed to implement the DSB recommendations from the original proceedings and imposed countervailing duties inconsistently with ASCM Arts. 10 and 32.1 and GATT Art. VI:3, because the USDOC, in both the Section 129 Determination and the First Assessment Review, did not conduct a pass-through analysis in respect of certain sales. As the United States did not appeal the Panel's substantive findings on this claim, and the Appellate Body had upheld the Panel's finding below on the scope of the measures in this proceeding, the Appellate Body did not disturb the Panel's substantive findings in this regard.

- **Terms of reference (DSU Art. 21.5 panels):** On the question of whether and to what extent a panel acting pursuant to Art. 21.5 may assess a measure that the implementing Member maintains is *not* "taken to comply", but is nevertheless identified in the complainant Member's request for recourse to an Art. 21.5 panel, the Appellate Body noted that it is not up to either the complaining or implementing Member to decide whether a particular measure is one that is "taken to comply". It explained that a panel's mandate under Art. 21.5 is not necessarily limited to an examination of an implementing Member's measure declared to be "taken to comply". The Appellate Body noted that "some measures with a particularly *close relationship* to the declared 'measure taken to comply' and to the recommendations and rulings of the DSB may also be susceptible to review by a panel acting under Art. 21.5". The Appellate Body upheld the Panel's finding in this case that the pass-through analysis in the First Assessment Review fell within the Panel's scope of examination of the "measure taken to comply" because of the close connection between the Section 129 determination and the First Assessment Review.[4] The fact that the First Assessment Review was not initiated in order to comply with the DSB's recommendations and operated independently of the Section 129 determination was not sufficient to overcome the multiple and specific links between the final countervailing duty determination, the Section 129 Determination, and the pass-through analysis in the First Assessment Review.

1 *United States – Final Countervailing Duty Determination with respect to Certain Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*

2 Section 129 of the US Uruguay Round Agreements Act provides the legal basis for the US to implement adverse WTO decisions by making a re-determination(s) on the issues found to be WTO-inconsistent by the Panel/AB.

3 The "First Assessment Review" in this case refers to the US first administrative review of the countervailing duties on imports of softwood lumber from Canada, which provided for (i) retrospective final assessment of the countervailing duties to be levied on import entries of softwood lumber from Canada between 22 May 2002 and 31 March 2003; as well as (ii) the basis to set the cash deposit rate to be levied on imports of softwood lumber from Canada as of 20 December 2004.

4 For example, the Appellate Body referred to the following connections in this case: the same subject-matter (i.e. countervailing duty proceedings), the same product at issue (i.e. softwood lumber), the same "pass-through" methodology used, the same relationship with the USDOC's Final Countervailing Duty Determination, the timing of the publication and effective dates of both proceedings, and the fact that the cash deposit rate resulting from the Section 129 Determination was updated or superseded by the cash deposit rate resulting from the First Assessment Review.

US – SOFTWOOD LUMBER V[1]
(DS264)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ADA Arts. 1, 2, 4, 5, 6, 9 and 18*	Establishment of Panel	*8 January 2003*
			Circulation of Panel Report	*13 April 2004*
Respondent	*United States*		Circulation of AB Report	*11 August 2004*
			Adoption	*31 August 2004*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US final anti-dumping duties.
- **Product at issue:** Certain softwood lumber products from Canada.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

Dumping determination

- **ADA Art. 2.4 and 2.4.2 (zeroing):** The Appellate Body upheld the Panel's (majority) finding that the US acted inconsistently with the first sentence of Art. 2.4.2 in determining dumping margins on the basis of a methodology incorporating zeroing in the aggregation of results of comparisons of weighted average normal value with a weighted average of prices of all comparable export transactions. The Appellate Body ruled in this case only on the first methodology provided for in Art. 2.4.2, first sentence, that is weighted average normal value compared with a weighted average of export prices
- **ADA Art. 2.2.1.1, 2.2.2 and 2.4 (allocation of financial expenses):** The Appellate Body reversed the Panel's legal interpretation under Art. 2.2.1.1 of the phrase "consider all available evidence on the proper allocation of costs" that an investigating authority is never required to "compare various cost allocation methodologies to assess their advantages and disadvantages" and thus reversed the Panel's finding that the United States Department of Commerce (USDOC) did not act inconsistently thereof.
- **ADA Art. 2.6 (like product):** The Panel held that the USDOC's approach to defining like product was not inconsistent with Art. 2.6: the USDOC had defined the "product under consideration" – i.e. softwood lumber products – using narrative description and tariff classification.
- **ADA Art. 2.4 (fair comparison – adjustments):** The Panel found that Canada did not establish that the United States acted inconsistently with Art. 2.4 in not granting the requested adjustment for differences in dimension, because an objective and unbiased investigating authority "could have concluded that data before USDOC did not demonstrate that the remaining differences in dimensions affected price comparability".

Initiation and subsequent investigation

- **ADA Art. 5.2 (application):** The Panel found that the Canada failed to establish that the United States had acted inconsistently with Art. 5.2. as the petitioner's application [for an investigation] contained information (i) on prices at which softwood lumber was sold when destined for consumption in Canada, (ii) on its constructed value in Canada, and (iii) on export prices to the United States, as required by Art. 5.2.
- **ADA Art. 5.3 and 5.8 (sufficient evidence):** The Panel found that the United States did not violate Art. 5.3, as an unbiased and objective investigating authority could have concluded that there was sufficient evidence on dumping in the application to justify the initiation of an investigation. It also found that the authority did not violate Art. 5.8, as there was sufficient evidence to justify initiation under Art. 5.3. It further noted that Art. 5.8 does not oblige an authority to continue to assess the sufficiency of the evidence in the application and to terminate an investigation if other information undermines the sufficiency of that evidence.

1 *United States – Final Dumping Determination on Softwood Lumber from Canada*

2 Other issues addressed: COP calculation – by-product offset (Art. 2.2.1.1); role of annexes to parties' submissions; terms of reference (DSU Art. 6.2); evidence not before the investigating authority (ADA Art. 17.5(ii)).

US – SOFTWOOD LUMBER V (ARTICLE 21.5 – CANADA)[1]
(DS264)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ADA Art. 2*	Referred to the Original Panel	*1 June 2005*
			Circulation of Panel Report	*3 April 2006*
Respondent	*United States*		Circulation of AB Report	*15 August 2006*
			Adoption	*1 September 2006*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Revised anti-dumping duty determination pursuant to Section 129 of the Uruguay Agreements Act: the United States Department of Commerce (USDOC) recalculated the anti-dumping rates for the exporters, based on a transaction-to-transaction comparison (T-T comparison), as opposed to weighted average-to-weighted average comparison (W-W comparison) under ADA Art. 2.4.2, first sentence. In this connection, a negative amount (where export price was higher than normal value) was treated as "zero".

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 2.4.2 (dumping determination – zeroing in T-T comparisons):** Having set out that the Appellate Body's findings in the original proceedings, including the prohibition of the zeroing practice, were limited to the "W-W comparison" and did not apply to the "T-T comparison" under Art. 2.4.2, the Panel found that "the US interpretation of the first sentence of Art. 2.4.2, in the context of the T-T comparison methodology, as not precluding zeroing would seem at a minimum to be permissible".

  The Appellate Body however reversed the Panel's findings and found, instead, that the use of zeroing is not permitted under the T-T comparison methodology set out in Art. 2.4.2 because "[t]he 'margins of dumping' established under this methodology are the results of the aggregation of the transaction-specific comparisons of export prices and normal value", and "[i]n aggregating these results, an investigating authority must consider the results of all of the comparisons and may not disregard the results of comparisons in which export prices are above normal value."

- **ADA Art. 2.4 (dumping determination – fair comparison):** As regards the requirement under Art. 2.4 that "a fair comparison shall be made between the export price and the normal value", the Panel found that the use of the zeroing methodology at issue could not be deemed "unfair" in the context of Art. 2.4 since it had already been found to be consistent with Art. 2.4.2.

  The Appellate Body reversed the Panel's finding and found that the use of zeroing under the T-T comparison methodology in the Section 129 determination was inconsistent with the "fair comparison" requirement in Art. 2.4 because it distorted the prices of certain export transactions, which were not considered at their real value, and artificially inflated the magnitude of dumping, resulting in higher margins of dumping and making a positive determination of dumping more likely.

  On the above basis, the Appellate Body reversed the Panel's conclusion that the United States has implemented the DSB's recommendations and rulings to bring its measure into conformity with its obligations under the ADA.

1 *United States – Final Dumping Determination on Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*

EC – EXPORT SUBSIDIES ON SUGAR[1]
(DS265, 266, 283)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Australia, Brazil, Thailand*	*AA Arts. 3, 8 and 9.1*	Establishment of Panel	*29 August 2003*
			Circulation of Panel Report	*15 October 2004*
Respondent	*European Communities*		Circulation of AB Report	*28 April 2005*
			Adoption	*19 May 2005*

1. MEASURE AND INDUSTRY AT ISSUE

- **Measure at issue:** EC measures relating to subsidization of the sugar industry, namely, a Common Organization for Sugar (CMO) (set out in Council Regulation (EC) No. 1260/2001): two categories of production quotas – "A sugar" and "B sugar" – were established under the Regulation. Further, sugar produced in excess of A and B quota levels – C sugar – which was not eligible for domestic price support or direct export subsidies and must be exported.

- **Industry at Issue**: Sugar industry.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **EC export subsidy commitment levels for sugar**: The Appellate Body upheld the Panel's finding that footnote 1 in the EC Schedule relating to preferential imports from certain ACP countries and India did not have the legal effect of enlarging or otherwise modifying the European Communities' quantity commitment level contained in Section II, Part IV of its Schedule.

- **AA Arts. 9.1(c), 3.3 and 8 (export subsidies – exports of C sugar):** The Appellate Body upheld the Panel's finding that the European Communities violated Arts. 3.3 and 8 by exporting C sugar because export subsidies in the form of payments on the export financed by virtue of government action within the meaning of Art. 9.1(c) were provided in excess of the European Communities' commitment level. In this regard, the European Communities provided two types of "payments" within the meaning of Art. 9.1(c) for C sugar producers, i.e. (i) sales of C beet below the total costs of production to C sugar producers; and (ii) transfers of financial resources, through cross-subsidization resulting from the operation of the EC sugar regime. Further, the Panel concluded that the European Communities had not demonstrated, pursuant to AA Art. 10.3, that exports of C sugar that exceeded the European Communities' commitment levels since 1995 had not been subsidized.

- **AA Arts. 9.1(a), 3 and 8 (export subsidies – export of ACP/India equivalent sugar):** The Panel found that the European Communities acted inconsistently with Arts. 3 and 8 since the evidence indicated that European Communities' exports of ACP/India equivalent sugar received export subsidies within the meaning of Art. 9.1(a) and the European Communities had not proved otherwise.

3. OTHER ISSUES[2]

- **Judicial economy (export subsidies under ASCM and AA):** The Appellate Body found that the Panel's exercise of judicial economy in respect of the complainant's claims under ASCM Art. 3 (after having found a violation by the European Communities of AA Arts. 3.3 and 8) was false, as different and more rapid remedies were available to the complainant respectively under ASCM (Art. 4.7) and AA (through DSU Art. 19.1).

- **Reversal of burden of proof (AA Art. 10.3):** The Panel explained that AA Art. 10.3 reverses the usual rule of burden of proof such that once the complainant has proved that the respondent is exporting a certain commodity in quantities exceeding its commitment levels, then the respondent must prove that such an excessive amount of exports is not subsidized.

1 *European Communities – Export Subsidies on Sugar*

2 Other issues addressed: DSU Art. 9.2 (separate panel reports), Art. 10.2 (enhanced third party rights); notification of third parties' interest in participating; confidential information; timing of objection to the panel's jurisdiction; terms of reference (DSU Art. 6.2); *estoppel* from pursuing the dispute; *amicus curiae* (confidentiality); consideration of new arguments (AB); extension of time for appeal and circulation of report (AB, DSU Art. 16.4, 17.5); private counsel (AB); good faith (DSU Art. 3.10, 7.2, 11); sufficiency of notice of appeal (Working Procedures for Appellate Review, Rule (20(2)(d)).

US – UPLAND COTTON[1]
(DS267)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*AA Arts. 3.3, 8. 9.1(a) and 10 ASCM Arts. 3, 5(c) and 6.3(c)*	Establishment of Panel	*18 March 2003*
			Circulation of Panel Report	*8 September 2004*
Respondent	*United States*		Circulation of AB Report	*3 March 2005*
			Adoption	*21 March 2005*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US agricultural "domestic support" measures, export credit guarantees and other measures alleged to be export and domestic content subsidies.

- **Product at issue:** Upland cotton and other products covered by export credit guarantees.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **AA Art. 13 (due restraint (peace clause):** The Appellate Body upheld the Panel's finding that the "Peace Clause" in the AA did not apply to a number of US measures, including domestic support measures for upland cotton.

- **ASCM Art. 6.3(c) (serious prejudice):** The Appellate Body upheld the Panel's finding that the effect of subsidy programme at issue – i.e. marketing loan programme payments, Step 2 (*user marketing*) payments, market loss assistance payments, and counter-cyclical payments – is significant price suppression within the meaning of Art. 6.3(c), causing serious prejudice to Brazil's interests within the meaning of Art. 5(c).

  The Panel found that other US domestic support programmes (i.e. production flexibility contract payments, direct payments, and crop insurance payments) did not cause serious prejudice to Brazil's interests because Brazil failed to prove a necessary causal link between these programmes and significant price suppression.

- **ASCM Art. 3.1(a) and (b), AA, Art. 9.1(a) (export substitution subsidies and import subsidies – step 2 Payments):** The Appellate Body upheld the Panel's finding that Step 2 payments to *domestic* users of US upland cotton were subsidies contingent on the use of domestic over imported goods that are prohibited under ASCM Arts. 3.1(b) and 3.2. The Appellate Body also upheld the Panel's findings that Step 2 payments to *exporters* of US upland cotton constitute subsidies contingent upon export performance within the meaning of AA Art. 9.1(a) and, consequently, the United States had acted inconsistently with AA Arts. 3.3 and 8. In addition, the Appellate Body found that the Step 2 payments to exporters were prohibited export subsidies that were inconsistent with ASCM Arts. 3.1(a) and 3.2.

- **AA Art. 10.1 and ASCM Arts. 3.1(a) and 3.2 (export subsidies – export credit guarantees):** The Appellate Body upheld the Panel's finding that US export credit guarantee programmes at issue were "export subsidies" within the terms of the ASCM, and thus, circumvented the US export subsidy commitments in violation of AA Art. 10.1 and violated ASCM Arts. 3.1(a) and 3.2 of the ASCM. The Appellate Body, in a majority opinion, also upheld the Panel's finding that AA Art. 10.2 does not exempt export credit guarantees from the export subsidy disciplines in Art. 10.1. One member of the Appellate Body, however, in a separate opinion, expressed the contrary view that Art. 10.2 exempts export credit guarantees from the disciplines of Art. 10.1 until international disciplines are agreed upon.

- **ASCM Arts. 4.7 and 7.8 (panel recommendations):** The Panel recommended that (i) as for prohibited subsidies (export credit guarantees and step 2 payments), the United States withdraw them without delay (i.e. in this case, within six months of the date of adoption of the Panel/AB Report or 1 July 2005 (whichever was earlier))[3]; and (ii) as for subsidies found to cause serious prejudice, the United States should take appropriate steps to remove their adverse effects or withdraw the subsidy.

1 *United States – Subsidies on Upland Cotton*

2 Other issues addressed: DSU Arts. 11, 12.7, 17.5; terms of reference (expired measures, consultations); burden of proof; judicial economy; Appellate Body's scope of review (fact vs law); sufficiency of notice of appeal (Working Procedures for Appellate Review, Rule 20(2)); statement of available evidence (ASCM Art. 4.2); GATT Art. XVI; Item (j) of the illustrative list of the ASCM.

3 On 3 February 2006, the United States Congress approved a bill that repealed the Step 2 subsidy programme for upland cotton. The bill was signed into law on 8 February 2006, and took effect on 1 August 2006.

US – UPLAND COTTON (ARTICLE 21.5 – BRAZIL)[1]
(DS267)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*ASCM Arts. 3, 5(c) and 6.3(c); Annex I, item (j)* *AA Arts. 8 and 10.1* *DSU Arts. 11 and 21.5*	Referred to the Original Panel	*28 September 2006*
			Circulation of Panel Report	*18 December 2007*
Respondent	*United States*		Circulation of AB Report	*2 June 2008*
			Adoption	*20 June 2008*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- US export credit guarantees and agricultural domestic support measures relating to cotton, pig meat, poultry meat and other agricultural products.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **AA Arts. 10.1 and 8, and ASCM Arts 3.1(a), 3.2 and the Illustrative List of Export Subsidies, item (j):** The Appellate Body upheld the Panel's finding that export credit guarantees provided under the revised GSM 102 programme were "export subsidies" because the premiums charged were inadequate to cover the long-term operating costs and losses of the programme, within the meaning of item (j) of the Illustrative List. The Appellate Body upheld the Panel's finding under item (j) despite having found that the Panel's analysis of certain quantitative evidence concerning the financial performance of the revised GSM 102 programme did not meet the requirements of DSU Art. 11. Upon finding that the Panel acted inconsistently with DSU Art. 11, the Appellate Body completed the analysis and found that the Panel's finding on the structure, design, and operation of the revised GSM 102 programme, in the light of the quantitative evidence, provided a sufficient evidentiary basis for the conclusion that the revised GSM 102 programme operates at a loss within the meaning of item (j). The Appellate Body also upheld the Panel's consequential finding that the United States acted inconsistently with AA Arts. 10.1 and 8, and ASCM Art. 3.1(a) and 3.2, and therefore that the United States had failed to comply with the DSB's recommendations and rulings.

- **ASCM Arts. 5(c) and 6.3(c) (serious prejudice):** The Appellate Body upheld the Panel's conclusion that the United States failed to comply with the DSB's recommendations and rulings in that the effect of marketing loan and counter-cyclical payments provided to United States upland cotton producers was significant price suppression in the world market for upland cotton within the meaning of ASCM Art. 6.3(c), constituting "present" serious prejudice to the interests of Brazil within the meaning of ASCM Art. 5(c).

3. OTHER ISSUES[2]

- **Terms of reference (DSU Art. 21.5 panels):** The Appellate Body upheld the Panel's findings that Brazil's claims concerning export credit guarantees for pig meat and poultry meat were properly within the scope of the Art. 21.5 proceedings. The Appellate Body upheld the Panel's finding that Brazil's claims concerning marketing loan and counter-cyclical payments provided after 21 September 2005 were properly within the scope of the Art. 21.5 proceedings.

1 *United States – Subsidies on Upland Cotton – Recourse to Article 21.5 of the DSU by Brazil*

2 Other issues addressed: Appellate Body's scope of review (fact vs law); panels' discretion to seek information (DSU Art. 13); request for open hearing; the propriety of the panel's composition; designation of a Member as a "least developing country"; terms of reference (DSU Art. 6.2).

US – OIL COUNTRY TUBULAR GOODS SUNSET REVIEWS[1] (DS268)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Argentina*	*ADA Arts. 1, 2, 3, 6, 11, 12 and 18; Annex II*	Establishment of Panel	*19 May 2003*
			Circulation of Panel Report	*16 July 2004*
Respondent	*United States*		Circulation of AB Report	*29 November 2004*
			Adoption	*17 December 2004*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US anti-dumping duties as well as laws, regulations and practice governing sunset reviews under the Sunset Policy Bulletin (SPB).

- **Product at issue:** Oil country tubular goods (OCTG) from Argentina.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

Sunset review (ADA Art. 11.3): as such violations

- **SPB (DSU Art. 11):** The Appellate Body upheld the Panel's finding that the SPB was a "measure" subject to WTO dispute settlement; however, due to what it considered to be an insufficient analysis, it found that the Panel had failed to make an objective assessment of the matter within the meaning of DSU Art. 11 and reversed the Panel's finding that Section II.A.3 of the SPB was inconsistent, as such, with Art. 11.3. It did not complete the analysis on this issue.

- **"Affirmative and deemed waiver provisions"**:[3] The Appellate Body upheld the Panel's findings that the waiver provisions relating to waiver of participation in sunset review proceedings were, as such, inconsistent with the requirements relating to the likelihood of dumping determination under Art. 11.3 because they required assumptions about a company's likelihood of dumping. Also, having concluded that the respondents' incomplete substantive submissions should still be taken into account, the Appellate Body upheld the Panel's finding that the deemed waiver was inconsistent as such with Art. 6.1 and 6.2 (evidence). However, it reversed the Panel's finding of inconsistency regarding respondents who file no submission.

Sunset review (ADA Art. 11.3): as applied (ITC's determination[4]) violations

- **Likelihood of injury**: The Appellate Body upheld the Panel's finding that the obligations in Art. 3 "do not apply to "likelihood of injury" determinations carried out in sunset reviews". It rejected Argentina's argument that Art. 11.3, *per se*, imposes "substantive obligations" on investigating authorities to make sunset review determinations in a particular manner. It found that the Panel did not err in interpreting the term "injury" under Art. 11.3 based on the parameters of injury determinations in Art. 3, as it considered that other factors including those in Art. 3 may be relevant in a given "likelihood-of-injury" determination. Thus, it upheld the Panel's findings: (i) that the ITC determination at issue was consistent with the "likelihood" standard of Art. 11.3; and (ii) that the standard of continuation or recurrence of injury "within a reasonably foreseeable time" as provided in the Tariff Act and as applied in the review at issue was consistent with Art. 11.3.

- **Cumulation analysis**: The Appellate Body upheld the Panel's findings that: (i) Art. 11.3 does not preclude investigating authorities from cumulating the effects of likely dumped imports in the course of their "likelihood-of-injury" determinations; and (ii) the conditions for the use of cumulation set out in Art. 3.3 do not apply in sunset reviews.

1 *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*

2 Other issues addressed: terms of reference and panel requests; types of evidence that can support an investigating authority's findings; GATT Arts. VI and X:3(a); WTO Agreement Art. XVI:4.

3 Under the provisions, the United States Department of Commerce (USDOC) would consider that an interested party had waived participation in one of two ways: (i) "affirmative waiver" when an interested party waives participation by filing an explicit statement in this regard; and (ii) "deemed (or implicit) waiver" when an interested party submits an incomplete substantive response to the notice of initiation.

4 ITC (International Trade Commission).

US – OIL COUNTRY TUBULAR GOODS SUNSET REVIEWS (ARTICLE 21.5 – ARGENTINA)[1]

(DS268)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Argentina*	*ADA Arts. 11.3, 11.4, 6.1, 6.2, 6.4, 6.5.1, 6.6 and 6.9*	Referred to the Original Panel	*17 March 2006*
			Circulation of Panel Report	*30 November 2006*
Respondent	*United States*		Circulation of AB Report	*12 April 2007*
			Adoption by the DSB	*11 May 2007*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Amended US regulatory provisions regarding waivers by exporters of their right to participate in the section of sunset review investigations conducted by the United States Department of Commerce (USDOC); and a re-determination by the USDOC (the Section 129 Determination) on the likelihood that imports of oil country tubular goods (OCTG) from Argentina would be dumped if the anti-dumping duty order were revoked or the investigation were terminated.

2. SUMMARY OF KEY PANEL/APPELLATE BODY FINDINGS

- **ADA Art. 11.3 (review of anti-dumping duties – likelihood of dumping):** The Appellate Body reversed the Panel's finding that the amended waiver provisions were, as such, inconsistent with ADA Art. 11.3. The Appellate Body noted that, under the "amended" waiver provisions, a company-specific finding by the USDOC was now based on "positive evidence" (and not a mere "assumption") since an exporter waiving its right of participation from the USDOC section of the sunset review investigation now had to sign a statement that it was likely to dump if the order were revoked or the investigation terminated. Further, the Appellate Body observed that the amended waiver provisions did not preclude the USDOC from considering other evidence on the record of the sunset review before making an order-wide determination of likelihood of dumping.

- **DSU Art. 21.5 (measure taken to comply):** The Panel found, and the Appellate Body agreed, that the USDOC's analysis on the decline in the volume of dumped imports – one of the two factual bases of the original likelihood of dumping determination, and which had been incorporated into the Section 129 Determination at issue – was part of the "measure taken to comply" within the meaning of Art. 21.5. Consequently, the Appellate Body let stand the Panel's conclusion that the USDOC's findings regarding the volume of dumped imports and the "likely past dumping" (which had not been appealed) lacked a sufficient factual basis and failed to meet the requirements of Art. 11.3.

- **ADA Arts. 11.3 and 11.4 (review of anti-dumping duties – evidence and procedure):** The Panel found, and the Appellate Body agreed, that the USDOC did not act inconsistently with ADA Arts. 11.3 or 11.4 by developing a new evidentiary basis, pertaining to the initial sunset review period, for its Section 129 Determination.

- **ADA Art. 6 (evidence):** The Panel found that the USDOC did not act inconsistently with Arts. 6.1 and 6.2 by not issuing supplemental questionnaires and a preliminary determination and by not holding a hearing. It did, however, act inconsistently with Art. 6.4 by failing to make certain information available to Argentine exporters. The USDOC acted inconsistently with Art. 6.5.1 by not requiring petitioners to submit a non-confidential summary of certain confidential information. The USDOC did not act inconsistently with Art. 6.6 with regard to satisfying itself as to the accuracy of certain information. The USDOC did not violate its notification obligation under Art. 6.9.

3. OTHER ISSUES

- **Judicial economy**: The Panel applied judicial economy with regard to certain claims raised by Argentina.

- **Panel and Appellate Body recommendations – suggestion on implementation (DSU Art. 19.1):** The Panel and the Appellate Body declined Argentina's request to make a suggestion, pursuant to DSU Art. 19.1, that the United States revoke the anti-dumping duty order on Argentina's OCTG.

1 *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – Recourse to Article 21.5 of the DSU by Argentina*

EC – CHICKEN CUTS[1]
(DS269, 286)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Brazil, Thailand*	*EC Schedule GATT Art. II:1*	Establishment of Panel	*7 November 2003 (Brazil) 21 November 2003 (Thailand)*
			Circulation of Panel Report	*30 May 2005*
Respondent	*European Communities*		Circulation of AB Report	*12 September 2005*
			Adoption	*27 September 2005*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** EC measures pertaining to the tariff reclassification from heading 02.10 (relating to, *inter alia*, salted chicken) to heading 02.07 (relating to, *inter alia*, frozen chicken) of certain frozen boneless chicken cuts impregnated with salt.

- **Product at issue:** Frozen boneless chicken cuts impregnated with salt, with a salt content of 1.2-3 per cent.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **GATT Art. II:1 (schedules of concessions):** The Appellate Body upheld the Panel's ultimate finding that the EC measures (relating to tariff classification) imposed duties on the products at issue in excess of the relevant heading of the EC tariff commitment because under the EC Schedule, tariffs on frozen meat (02.07) are higher than on salted meat (02.10) and, thus, violated Arts. II:1(a) and (b).

Interpretation[3] of the term at issue "salted" in EC Schedule

- **Ordinary meaning (VCLT Art. 31(1)):** The Appellate Body upheld the Panel's finding that "in essence, the ordinary meaning of the term 'salted' ... indicates that the character of a product has been altered through the addition of salt" and that "there is nothing in the range of meanings comprising the ordinary meaning of the term 'salted' that indicates that chicken to which salt has been added is not covered by the concession contained in heading 02.10 of the EC Schedule".

- **Context (VCLT Art. 31(2)):** Having considered relevant context including explanatory notes to the EC schedule and the Harmonized System for Tariff Classification for the interpretation of the term "salted", the Appellate Body upheld the Panel's finding that the term "salted" in the relevant EC tariff commitment was not necessarily characterized by the notion of long-term preservation as argued by the European Communities, but rather encompassed both concepts, i.e. "preparation" and "preservation" by the addition of salt.

- **Subsequent practice (VCLT 31(3)(b)):** The Appellate Body, reversing the Panel's interpretation and application of the concept "subsequent practice" within the meaning of Art. 31(3)(b), provided its own interpretation of "subsequent practice" to the extent that the importing Member's practice alone could not constitute "subsequent practice". Consequently, it reversed the Panel's conclusion that the EC practice of classifying the products at issue under heading 02.10 between 1996 and 2002 amounted to "subsequent practice" within the meaning of VCLT 31(3)(b).

- **Circumstances of conclusion (VCLT 32):** The Appellate Body upheld the Panel's conclusion that the supplementary means of interpretation considered under VCLT Art. 32 (including circumstances of conclusion at the time of tariff negotiations, such as European Communities' legislation on customs classification, the relevant judgments of the European Court of Justice and EC classification practice) confirmed that the products at issue were covered by the tariff commitment under heading 02.10 of the EC Schedule.

1 *European Communities – Customs Classification of Frozen Boneless Chicken Cuts*

2 Other issues addressed: measures and products within terms of reference; executive summaries of submissions (panel working procedures, para. 12); separate panel reports; jurisdiction of the World Customs Organization (DSU Art. 13.1 – expert consultation).

3 In this case, both the Panel and the Appellate Body provided detailed analyses on treaty (EC Schedule) interpretation pursuant to the customary rules of treaty interpretation embodied in the VCLT Arts. 31 and 32.

KOREA – COMMERCIAL VESSELS[1]
(DS273)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Arts. 3.1(a), 3.2, 4.7, 5(c) and 6.3(a)*	Establishment of Panel	*21 July 2003*
			Circulation of Panel Report	*7 March 2005*
Respondent	*Korea*		Circulation of AB Report	*NA*
			Adoption	*11 April 2005*

1. MEASURE AND INDUSTRY AT ISSUE

- **Measure at issue:** Korea's various measures relating to alleged subsidies to its shipbuilding industry.[2]
- **Industry at issue**: Korean shipyard industry.

2. SUMMARY OF KEY PANEL FINDINGS[3]

ASCM Art. 3.1(a) and 3.2 (export subsidies)

- **Measures as such**: Having found that the KEXIM legal regime (KLR), APRG and PSL programmes did not "mandate" the conferral of a "benefit," the Panel rejected EC claims that these measures as such were inconsistent with Art. 3.1(a) and 3.2.
- **Measures as applied**: The Panel found that certain "KEXIM guarantees" under the APRG programme were prohibited export subsidies (specific subsidies contingent upon export performance) under Art. 3.1(a) and 3.2 and rejected Korea's argument that item (j) (i.e. export credit guarantee) of the Illustrated List could work as an affirmative defence, on the ground that item (j) does not fall within the scope of footnote 5[4] of ASCM. The Panel also found that certain "KEXIM loans" under the PSL programme were prohibited export subsidies and rejected Korea's defence under item (k) (export credit grants) since the PSLs (as credits to shipbuilders rather than foreign buyers) were not export credits.

ASCM Part III (actionable subsidies)

- **Subsidies (debt restructurings):** The Panel rejected the EC claims that the debt restructurings of Korean shipyards involved subsidization or that shipyards received subsidies through tax concessions, after having found: (i) that the European Communities had not demonstrated the existence of a benefit or subsidization in respect of the restructuring of DHI; (ii) that the European Communities had not demonstrated that either the decision to restructure or the terms were "commercially unreasonable" for Halla; (iii) that the European Communities had not argued that the determination that the going concern value for Daedong exceeded its liquidation was not proper; and (iv) in respect of Daewoo, as the assets were allocated at book value as part of the spin-off, there was no gain and thus no basis for any tax exemption.
- **ASCM Arts. 5(c) and 6.3(c) (serious prejudice):** The Panel rejected the EC claim that the subsidized APRG and PSL transactions at issue seriously prejudiced its interests by causing significant price depression within the meaning of Art. 6.3(c), finding that the evidence or arguments did not demonstrate that the subsidized transactions had such an aggregate effect.

ASCM Art 4.7 (recommendation)

- The Panel recommended that Korea withdraw the individual APRG and PSL subsidies within 90 days.

1 *Korea – Measures Affecting Trade in Commercial Vessels*
2 The Act Establishing the Export-Import Bank of Korea (KEXIM); the Pre-Shipment Loan (PSL) and Advance Payment Refund Guarantee (APRG) schemes established by KEXIM; Individual Granting of PSLs and APRGs by KEXIM to Korean shipyards; Corporate restructuring measures; Special Tax Treatment Control Law (STTCL).
3 Other issues addressed: Annex V (information gathering procedure); additional procedures for BCI; relationship of the consultations and panel requests; admissibility of certain arguments and data; Annex V(7) adverse inferences; panel request (DSU Art. 6.2).
4 Footnote 5 states that "measures listed in Annex I as not constituting export subsidies shall not be prohibited".

CANADA – WHEAT EXPORTS AND GRAIN IMPORTS[1] (DS276)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. XVII:1 and III:4*	Establishment of Panels	*31 March and 11 July 2003*
			Circulation of Panel Report	*6 April 2004*
Respondent	*Canada*		Circulation of AB Report	*30 August 2004*
			Adoption	*27 September 2004*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Canadian Wheat Board (CWB) Export Regime[2] and requirements related to the import of grain into Canada.
- **Product at issue:** Wheat and grains from the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS[3]

GATT Art. XVII:1 (State Trading Enterprise (STE))

- **Relationship between paras. (a) and (b) of Art. XVII:1**: The Appellate Body reasoned that subpara. (a) is the general and principal provision, and subpara. (b) explains it by identifying the types of differential treatment in commercial transactions that are most likely to occur in practice. Therefore, most, if not all, claims raised under Art. XVII:1 will require a sequential analysis of both subparas. (a) and (b). At the same time, because both subparas. (a) and (b) define the scope of that non-discrimination obligation, panels would not always be in a position to make any finding of violation of Art. XVII:1 until they have properly interpreted and applied both provisions. The Appellate Body, however, rejected Canada's contention that the Panel's approach constituted legal error. Although the Panel refrained from explicitly defining the relationship between the first two subparas. of Art. XVII:1 and proceeded on the basis of an assumption that inconsistency with subpara. (b) is sufficient to establish a breach of Art. XVII:1, its analytical approach was nevertheless considered consistent with the Appellate Body's interpretation. The Panel took several analytical steps under subpara. (a), in particular, identifying price differentiation allegedly practiced by the CWB, as conduct that could constitute prima facie discrimination under subpara. (a).
- **"Commercial considerations"**: The Appellate Body found that the United States' claim was based on a mischaracterization of a statement made by the Panel and, therefore, dismissed this ground of appeal. In examining an additional argument submitted by the United States, the Appellate Body agreed with the Panel that although STEs must act in accordance with "commercial" considerations, this is not equivalent to an outright prohibition on STEs using their privileges whenever such use might "disadvantage" private enterprises.
- **"Enterprises of the other Members"**: The Appellate Body also upheld the Panel's finding that the phrase "enterprises of the other Members" in the second clause of (b) includes "enterprises interested in buying the products offered for sale by an export STE" but not "enterprises selling the same product as that offered for sale by the export STE (i.e. competitors of the export STE"). It stated that this phrase refers to the opportunity to become an STE's counterpart but not to replace the STE as a participant in the transaction.
- **DSU Art. 11 (standard of review):** The Appellate Body rejected US allegations that the Panel had not made an objective assessment of the facts and the measure: (i) as for the legal and special privileges granted to the CWB, it found that the Panel properly took them into account but had found them to be of limited relevance; (ii) as regards the CWB's legal framework, it stated that the United States had not put forward arguments demonstrating such an error.

GATT Art. III:4 (national treatment – domestic laws and regulations) *and GATT Art. XX(d)* (exceptions – necessary to secure compliance with laws)

- The Panel found that Sections 57(c) and 56(1) of the Canada Grain Act were, as such, inconsistent with Art. III:4 and were not justified under Art. XX(d) as a measure necessary to secure compliance with Canada's laws and regulations. It also found that Sections 150(1) and 150(2) of the Canada Transportation Act, taken together, were, as such, inconsistent with Art. III:4. This finding was not appealed.

1 *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain*
2 The CWB legal framework, provision of exclusive and special privileges to the CWB, and certain actions of Canada and the CWB related to the sale of wheat.
3 Other issues addressed: judicial economy; timeliness of request for preliminary ruling.

US – SOFTWOOD LUMBER VI[1]
(DS277)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ADA Arts. 3, 12 and 17* *ASCM Arts. 15 and 22.5* *DSU Art. 11*	Establishment of Panel	*7 May 2003*
			Circulation of Panel Report	*22 March 2004*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*26 April 2004*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping and countervailing duties imposed by the United States.
- **Product at issue:** Softwood lumber from Canada.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 3.7/ASCM Art. 15.7 (injury determination – threat of material injury):** The Panel concluded that the International Trade Commission's (ITC) "threat of material injury" determination was inconsistent with ADA Art. 3.7 and ASCM Art. 15.7, because, in light of the totality of the factors considered and the reasoning in the ITC's determination, an objective and unbiased investigating authority could not have made a finding of a likely imminent substantial increase in imports.
- **ADA Art. 3.5 and 3.7/ASCM Art. 15.5 and 15.7 (injury determination – causation):** The Panel found that the ITC's causation analysis was inconsistent with ADA Art. 3.5 and ASCM Art. 15.5 because it was based upon the likely effect of substantially increased imports in the near future, which had already been found to be inconsistent with ADA Art. 3.7 and ASCM Art. 15.7.

  Also, the Panel considered that the overall absence of discussion of factors other than dumped/subsidized imports potentially causing injury in the future would lead to the conclusion that the ITC determination was inconsistent with the non-attribution obligation under ADA Art. 3.5 and ASCM Art. 15.5 (i.e. injuries caused by these other factors not be attributed to the subject imports).
- **ADA Art. 3.4/ASCM Art. 15.4 (injury determination – injury factors):** The Panel rejected Canada's claim that the ITC acted inconsistently with ADA Art. 3.4 and ASCM Art. 15.4 by failing to consider the injury factors listed in these provisions in its threat of injury determination. Although the factors to be considered in making an "injury" determination under these provisions should also apply to a "threat of injury" determination, once such an analysis has been carried out in the context of an investigation of present injury, no relevant provision in ADA Art. 3 and ASCM Art. 15 requires a second analysis of the injury factors in cases involving threat of injury. In this case, the ITC considered the relevant injury factors in the context of finding no present material injury and then took this into account in its threat of injury determination. The Panel, thus, concluded that once the ITC had properly considered the injury factors as part of its present injury analysis, it was not necessary to conduct a second consideration of these factors as part of its threat of injury analysis.

3. OTHER ISSUES[2]

- **Standard of review (DSU Art. 11 and ADA Art. 17.6):** The Panel did not resolve the question of whether the application of the general standard of review (DSU Art. 11) or the application of both the general standard (DSU Art. 11) and the special standard (ADA Art. 17.6) to the same determination would lead to differing outcomes, as it was not faced, in this case, with the situation where the existence of violation depended on the question of whether there was more than one permissible interpretation of the text of the ADA.

1 *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada*

2 Other issues addressed: unsolicited *amicus curiae* submission; standard of review (DSU Art. 11 and ADA Art. 17.6); positive evidence and objective examination (ADA Art. 3.1/ASCM Art. 15.1); special care in threat cases (ADA Art. 3.8/ASCM Art. 15.8); notification requirements (ADA Art. 12.2.2/ASCM Art. 22.5); ADA Art. 3.2/ASCM Art. 15.2.

US – SOFTWOOD LUMBER VI (ARTICLE 21.5 – CANADA)[1]
(DS277)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*DSU Art. 11* *ADA Art. 3* *ASCM Art. 15*	Referred to the Original Panel	*25 February 2005*
			Circulation of Panel Report	*15 November 2005*
Respondent	*United States*		Circulation of AB Report	*13 April 2006*
			Adoption	*9 May 2006*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- United States International Trade Commission's (ITC) re-determination, pursuant to Section 129 of the US Uruguay Round Agreements Act[2], on its threat of injury finding in respect of softwood lumber imports from Canada.

2. SUMMARY OF KEY PANEL/AB FINDINGS[3]

- **DSU Art. 11 (standard of review):** On the grounds that the Panel had articulated and applied an improper standard of review under DSU Art. 11, the Appellate Body reversed the Panel's finding that the United States' Section 129 determination was not inconsistent with the ADA and the ASCM. Due to insufficient "uncontested facts" on the record, however, the Appellate Body declined to complete the analysis on the substantive question of whether the United States' re-determination was consistent with the ADA and the ASCM.

  In this regard, the Appellate Body, first, clarified the proper standard of review to be applied by a panel reviewing determinations of national investigating authorities: (i) in examining factual issues, "a panel must neither conduct a *de novo* review nor simply defer to the conclusions of the national authority"; and (ii) a panel must conduct a "critical and searching" analysis of the information contained in the record to see if the conclusions reached and the explanations given by the investigating authority were "reasoned and adequate". Applying this standard to the present case, the Appellate Body found that the Panel in this case had not engaged in the sufficient degree of scrutiny and failed to engage in the type of critical and searching analysis, as required by Art. 11, in light of, *inter alia*, the brevity of the Panel's analyses of various issues. In particular, it found the following "serious infirmities" in respect of the Panel's application of the standard of review: (i) the Panel's repeated reliance on the test that Canada had not demonstrated that an objective and unbiased authority could not have reached the conclusions of the ITC imposed an undue burden on the complaining party; (ii) the Panel's repeated references to the ITC's conclusions as "not unreasonable" was inconsistent with the standard of review previously articulated by the Appellate Body; (iii) the Panel failed to analyse the ITC's findings in the light of alternative explanations of the evidence; and (iv) the Panel failed to analyse the "totality of factors and evidence", as opposed to individual pieces of evidence, considered by the ITC.

- **DSU Art. 21.5 panel proceedings (relationship with the original proceedings):** The Appellate Body noted that although an Art. 21.5 panel is not bound by the findings of the original panel, "this does not mean that a panel operating under Article 21.5 of the DSU should not take account of the reasoning of an investigating authority in an original determination, or of the reasoning of the original panel", as Art. 21.5 proceedings are part of a "continuum of events". The Appellate Body found that given the nature of the Section 129 determination, the Panel did not err in articulating its role under Art. 21.5 by stating, *inter alia*, that the Panel "is not limited by its original analysis and decision – rather, it is to consider, with a fresh eye, the new determination before it, and evaluate it in light of the claims and arguments of the parties in the Article 21.5 proceeding".

1 *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – Recourse to Article 21.5 of the DSU by Canada*

2 Section 129 of the US Uruguay Round Agreements Act provides the legal basis for the US to implement adverse WTO decisions by making a re-determination(s) on the issues found to be WTO-inconsistent by the Panel/AB.

3 Other issues addressed: nature of threat of material injury determination (ADA Art. 3.7/ASCM Art. 15.7); distinct standards of review for the ADA and the ASCM; AB's working procedures.

US – ANTI-DUMPING MEASURES ON OIL COUNTRY TUBULAR GOODS[1] (DS282)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Mexico*	*ADA Arts. 3 and 11*	Establishment of Panel	*29 August 2003*
			Circulation of Panel Report	*20 June 2005*
Respondent	*United States*		Circulation of AB Report	*2 November 2005*
			Adoption	*28 November 2005*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Determinations by the United States Department of Commerce (USDOC) and the International Trade Commission (ITC) in the sunset review of the anti-dumping duties on Oil Country Tubular Goods (OCTG) imports as well as laws and regulations governing sunset reviews.

- **Product at issue:** OCTG imports from Mexico.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ADA Art 11.3 (review of anti-dumping duties):** The Appellate Body reversed the Panel's finding that the Sunset Policy Bulletin (SPB) as such was inconsistent with ADA Art. 11.3 due to the Panel's failure to make "an objective assessment of the matter and the facts of the case" as required by DSU Art. 11. The Panel initially found that the SPB established an "irrebuttable presumption" of likelihood of dumping inconsistently with ADA Art. 11.3, as the USDOC treated the standard set out in SPB as conclusive or determinative as to the "likelihood" of continuation or recurrence of dumping in "sunset reviews".

- **ADA Art. 11.3 (review of anti-dumping duties – likelihood of dumping):** The Panel concluded that the USDOC's determination of likelihood of continuation or recurrence of dumping in the sunset review at issue was inconsistent with Art. 11.3 because it had failed to consider relevant evidence submitted by Mexican exporters and almost exclusively relied on the basis of a decline in imports volumes alone.

- **ADA Art. 11.3 (review of anti-dumping duties – likelihood of injury as such and as applied):** The Appellate Body upheld the Panel's finding that US laws dealing with the likelihood of continuation or recurrence of injury in sunset reviews were not inconsistent as such with Arts. 11 or 3, because Art. 11.3 does not establish any rules regarding the time-frame for such determination and the temporal elements of Art. 3.7 and 3.8 are not directly applicable in sunset reviews. The Appellate Body also stated that where the determination of likelihood of dumping is flawed, it does not follow that the likelihood of injury determination is *ipso facto* flawed as well. The Panel found that the ITC did not act inconsistently with Arts. 11.3 or 3 in its determination of likelihood of continuation or recurrence of injury.

- **ADA Arts. 3.3 (injury determination – cumulation analysis) and 11.3 (review of anti-dumping duties – cumulation analysis):** The Appellate Body upheld the Panel's finding that the ITC's decision to conduct a cumulative assessment of imports from different countries in its likelihood of injury determination was not inconsistent with Arts. 3.3 and 11.3. The Panel found that "the silence of the [AD] Agreement on cumulation in sunset reviews" must mean that cumulation is permitted, and hence the conditions under Art. 3.3 only apply to original investigations, not to sunset reviews.

- **ADA Art. 11.3 (review of anti-dumping duties – causation):** The Appellate Body found that the Panel did not act inconsistently with DSU Art. 11 in rejecting Mexico's claims relating to causation, as it considered that Art. 11.3 does not require re-establishing a causal link (established under Art. 3), as a matter of legal obligation, in a sunset review and that "what is essential for an affirmative determination under Art. 11.3 is proof of likelihood of continuation or recurrence of dumping and injury, if the duty expires".

1 *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico*

2 Other issues addressed: ADA Art. 11.2; GATT Art. X:2; submission of evidence at late stages; a prima facie case; panel's analysis of the evidence; terms of reference; jurisdiction to address certain issues on its own motion: panel's exercise of judicial economy; Mexico's request to make a specific recommendation for implementation.

US – GAMBLING[1]
(DS285)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Antigua and Barbuda*	*GATS Arts. XIV(a), XIV(c) and XVI*	Establishment of Panel	*21 July 2003*
			Circulation of Panel Report	*10 November 2004*
Respondent	*United States*		Circulation of AB Report	*7 April 2005*
			Adoption	*20 April 2005*

1. MEASURE AND SERVICE AT ISSUE

- **Measure at issue:** Various US measures relating to gambling and betting services, including federal laws such as the "Wire Act", the "Travel Act" and the "Illegal Gambling Business Act" (IGBA).

- **Service at issue**: Cross-border supply of gambling and betting services.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **Scope of GATS commitments**: The Appellate Body upheld, based on modified reasoning, the Panel's finding that the US GATS Schedule included specific commitments on gambling and betting services. Resorting to "document W/120" and the "1993 Scheduling Guidelines"[3] as "supplementary means of interpretation" under Art. 32 of the VCLT, rather than context (Art. 31), the Appellate Body concluded that the entry, "other recreational services (except sporting)", in the US Schedule must be interpreted as including "gambling and betting services" within its scope.

- **GATS Art. XVI:1 and 2 (market access commitment):** The Appellate Body upheld the Panel's finding that the United States acted inconsistently with Art. XVI:1 and 2, as the US federal laws at issue, by prohibiting the cross-border supply of gambling and betting services where specific commitments had been undertaken, amounted to a "zero quota" that fell within the scope of, and was prohibited by, Art. XVI:2(a) and (c). However, it reversed a similar finding by the Panel on state laws because it considered that Antigua and Barbuda ("Antigua") had failed to make a prima facie case with respect to these state laws.

- **GATS Art. XIV(a) (general exceptions – necessary to protect public morals):** The Appellate Body upheld the Panel's finding that the US measures were designed "to protect public morals or to maintain public order" within the meaning of Art. XIV(a), but reversed the Panel's finding that the United States had not shown that its measures were "necessary" to do so because the Panel had erred in considering consultations with Antigua to constitute a "reasonably available" alternative measure. The Appellate Body found that the measures were "necessary": the United States had made a prima facie case showing of "necessity" and Antigua had failed to identify any other alternative measures that might be "reasonably available". With respect to the Art. XIV(c) defence, the Appellate Body reversed the Panel due to its erroneous "necessity" analysis and declined to make its own findings on the issue.

  The Appellate Body modified the Panel's finding with respect to the chapeau of Art. XIV. The Appellate Body reversed the Panel's finding that the measures did not meet the requirements of the chapeau because the United States had discriminated in the enforcement of those measures. However, the Appellate Body upheld the second ground upon which the Panel based its finding, namely that in the light of the Interstate Horseracing Act (which appeared to authorize domestic operators to engage in the remote supply of certain betting services), the United States had not demonstrated that its prohibitions on remote gambling applied to both foreign and domestic service suppliers, i.e. in a manner that did not constitute "arbitrary and unjustifiable discrimination" within the meaning of the chapeau.

1 *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*

2 Other issues addressed: confidentiality of panel proceedings; terms of reference; the relevance of statements by a party to the DSB; measure at issue (total prohibition); practice as a measure; establishment of a prima facie case; late submission of a defence (DSU Art. 11); burden of proof.

3 "W/120", entitled "Services Sectoral Classification List", was circulated by the GATT Secretariat in 1991. It contains a list of relevant service "sectors and subsectors", along with "corresponding CPC" numbers – from the UN Provisional Product Classification – for each subsector. The "1993 Scheduling Guidelines" were set out in an "Explanatory Note" issued by the Secretariat in 1993.

US – GAMBLING (ARTICLE 21.5 – ANTIGUA AND BARBUDA)[1] (DS285)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Antigua and Barbuda*	*GATS Art. XIV chapeau* *DSU Arts. 17.14 and 21.5*	Referred to the Original Panel	*19 July 2006*
			Circulation of Panel Report	*30 March 2007*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*22 May 2007*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The Wire Act, the Travel Act and the Illegal Gambling Business Act relating to cross-border supply of gambling and betting services.

2. SUMMARY OF KEY PANEL FINDINGS

- **DSU Art. 21.5 (measures taken to comply):** No "measures taken to comply" existed within the meaning of Art. 21.5 because, since the original proceeding, there had been no change to the measures found WTO-inconsistent, nor to their application, their interpretation, or the factual or legal background bearing on them or their effects.

- **DSU Art. 17.14 (adoption of Appellate Body reports):** In accordance with Art. 17.14, an Appellate Body Report is a final decision on the claims and defences ruled upon in that Report with respect to the measures at issues as they existed at the time of the original panel proceeding. An Appellate Body Report is not simply a final decision on the evidence presented in the original proceeding. A compliance panel may not make a different finding on a claim or a defence already ruled upon without any change relevant to the measures at issue.

3. OTHER ISSUES[2]

- **Chapeau (GATS Art. XIV):** This relates to the application of measures and not simply their wording. Hence, a change in the administrative or judicial enforcement of the same measures at issue might be sufficient to comply with the DSB recommendation based on an inconsistency with the chapeau of GATS Art. XIV.

- Even if the compliance panel were entitled to re-open a defence ruled upon, the United States presented no evidence in the compliance proceeding regarding the GATS-consistency of the measures at issue that would justify a different finding from that reached in the original proceeding.

- Antigua presented additional evidence in the compliance proceeding regarding intrastate commerce that could have been the basis for additional findings on the consistency of the measures at issue with the chapeau of GATS Art. XIV, but in view of DSU Art. 17.14 the compliance panel was not entitled to make any further findings on this issue.

1 *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*

2 Other issues addressed: measures adopted after establishment of a panel serving as evidence of facts; DSU Art. 19.1, 19.2 (effect of a DSB recommendation); DSU Art. 21.3 (relevance in a compliance proceeding of a prior request for a reasonable period of time to comply, and of statements made to an Art. 21.3 arbitrator).

EC – APPROVAL AND MARKETING OF BIOTECH PRODUCTS[1]
(DS291, 292, 293)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*United States, Canada, Argentina*	*SPS Arts. 2.2, 2.3, 5.1, 5.5, 5.6, 5.7, 7, 8 and 10.1; Annexes B(1), C(1)(a), C(1)(b), C(1)(c) and C(1)(e)*	Establishment of Panel	*29 August 2003*
			Circulation of Panel Report	*29 September 2006*
Respondent	*European Communities*		Circulation of AB Report	*NA*
			Adoption	*21 November 2006*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Alleged general EC moratorium on approvals of biotech products; (ii) EC measures allegedly affecting the approval of specific biotech products; and (iii) EC member State safeguard measures prohibiting the import/marketing of specific biotech products within the territories of these member States.

- **Product at issue:** Agricultural biotech products from the United States, Canada and Argentina.

2. SUMMARY OF KEY PANEL FINDINGS[2]

General EC moratorium

- **Existence of moratorium**: The Panel found that a general *de facto* moratorium on approvals of biotech products was in effect on the date of panel establishment, i.e., August 2003. It was general in that it applied to all applications for approval pending in August 2003 under the relevant EC legislation, and *de facto* because it had not been formally adopted. Approvals were prevented through actions/omissions by a group of five EC member States and/or the European Commission.

- **SPS Arts. 5.1 (risk assessment) and 2.2 (sufficient scientific evidence):** The Panel found that the EC decision to apply a general moratorium was a decision concerning the application/operation of approval procedures, i.e., a procedural decision to delay final substantive approval decisions. It was not applied for achieving the EC level of sanitary or phytosanitary protection and, hence, was not an "SPS measure" subject to Arts. 5.1 or 2.2.

- **SPS Annex C(1): (a) and Art. 8 (control, inspection and approval procedures):** The Panel found that the general moratorium led to undue delay in the completion of the EC approval procedure conducted in respect of at least one biotech product at issue and thereby to the European Communities acting inconsistently with Annex C(1)(a) and, by implication, Art. 8.

Product-specific measures

- **SPS Annex C(1): (a) and Art. 8 (control, inspection and approval procedures):** The Panel found that in 24 of the 27 product-specific approval procedures it examined, the procedure had not been completed without undue delay. In respect of these procedures, the European Communities had, therefore, acted inconsistently with Annex C(1)(a) and, by implication, Art. 8.

EC member State safeguard measures

- **SPS Arts. 5.1, 2.2 and 5.7 (provisional measure):** According to the Panel, the record did not indicate that there was insufficient evidence to conduct a risk assessment within the meaning of Art. 5.1 and Annex A(4) for the biotech products subject to safeguard measures. As a result, Arts. 5.1 and 2.2 were applicable. In this regard, the Panel found that none of the safeguard measures at issue were based on a risk assessment as required under Art. 5.1 and defined in Annex A(4). By maintaining measures contrary to Art. 5.1, the European Communities had, by implication, also acted inconsistently with Art. 2.2.

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

2 Other issues addressed: unauthorized disclosure of confidential interim panel reports; consultation of scientific experts; submission of new evidence at interim review stage; DSU Art. 6.2: specificity required in case of *de facto* measures; findings on measures no longer in existence on the date of panel establishment and on measures that subsequently cease to exist; DSU 19: qualified recommendation; VCLT Art. 31(3)(c): relevance of other rules of international law to the interpretation of the WTO Agreement; precautionary principle in international law; precautionary approach: (i) in the context of SPS Annex C(1)(a), (ii) in the context of SPS Art. 5.1; SPS Annex A(1): (i) scope of SPS Agreement (e.g. environment, labelling, co-existence), (ii) meaning of "SPS measure"; relationship between the SPS Agreement and the TBT Agreement; SPS Art. 5.1: meaning of "appropriate to the circumstances"; SPS Art. 5.7: (i) relationship with SPS Arts. 2.2 and 5.1, (ii) relevance of appropriate level of sanitary or phytosanitary protection, (iii) time at which insufficiency of scientific evidence is to be assessed; GATT Art. III:4.

US – ZEROING (EC)[1]
(DS294)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ADA Arts. 9.3, 2.4 and 2.4.2* *GATT Art. VI:2*	Establishment of Panel	*19 March 2004*
			Circulation of Panel Report	*31 October 2005*
Respondent	*United States*		Circulation of AB Report	*18 April 2006*
			Adoption	*9 May 2006*

1. MEASURE AT ISSUE

- **Measure at issue:** US application of the so-called "zeroing methodology" in determining dumping margins in anti-dumping proceedings as well as the zeroing methodology as such.

2. SUMMARY OF KEY PANEL/AB FINDINGS

As applied claims

- **ADA Art. 9.3 and GATT Art. VI:2 (imposition and collection of anti-dumping duties):** Reversing the Panel, the Appellate Body found that the zeroing methodology, as applied by the United States in the administrative reviews at issue, was inconsistent with ADA Art. 9.3 and GATT Art. VI:2, as it resulted in amounts of anti-dumping duties that exceeded the foreign producers' or exporters' margins of dumping. Under ADA Art. 9.3 and GATT Art. VI:2, investigating authorities are required to ensure that the total amount of anti-dumping duties collected on the entries of a product from a given exporter shall not exceed the margin of dumping established for that exporter.

- **ADA Art. 2.4, third to fifth sentences (dumping determination – due allowance or adjustment):** The Appellate Body agreed with the Panel that, conceptually, zeroing is not "an allowance or adjustment" falling within the scope of Art. 2.4, third to fifth sentences, which covers allowances or adjustments that are made to take into account the differences relating to characteristics of the export and domestic transactions, such as differences in conditions and terms of sale, taxation, levels of trade, etc. Thus, the Appellate Body upheld the Panel's finding that zeroing is not an impermissible allowance or adjustment under Art. 2.4, third to fifth sentences.

As such claims

- **Zeroing methodology as such**: Although it disagreed with some aspects of the Panel's reasoning, the Appellate Body upheld the Panel's finding that the United States' zeroing methodology (which is not in a written form), as it relates to original investigations in which the weighted-average-to-weighted-average comparison method is used to calculate margins of dumping, can be challenged, as such, in WTO dispute settlement (given the sufficient evidence before the Panel), and that it is a "norm" that is inconsistent, as such, with ADA Art. 2.4.2 (original investigation) and GATT Art. VI:2.

3. OTHER ISSUES[2]

- **Measure**: The Appellate Body found that an unwritten rule or norm can be challenged as a measure of general and prospective application in WTO dispute settlement. It emphasized, however, that particular rigour is required on the part of a panel to support a conclusion as to the existence of such a "rule or norm" that is not expressed in the form of a written document. A complaining party must establish, through sufficient evidence, at least (i) that the alleged "rule or norm" is attributable to the responding Member; (ii) its precise content; and (iii) that it does have "general and prospective" application.

1 *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*

2 Other issues addressed: standard of review (ADA Art. 17.6(ii)); ADA Art. 2.4, first sentence (fair comparison); conditional appeal (Art. 2.4.2); ADA Art. 11.1 and 11.2; "measure" (general (DSU Art. 3.3) and under ADA); mandatory/discretionary distinction; DSU Art. 1.1 (Panel's obligations); prima facie case; judicial economy (Panel); "standard zeroing procedures"; zeroing "practice" as such; dissenting opinion (Panel).

US – ZEROING (EC) (Article 21.5 – EC)[1]
(DS294)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*DSU Arts. 8.7, 11, 19 and 21.5* *ADA Arts. 9.3, 9.4 and 11.3* *GATT Art. VI:2*	Referred to the Original Panel	*25 September 2007*
			Circulation of Panel Report	*17 September 2008*
Respondent	*United States*		Circulation of AB Report	*14 May 2009*
			Adoption	*11 June 2009*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The United States discontinued the use of zeroing in original investigations in which the weighted average-to-weighted average comparison methodology was used. The United States Department of Commerce issued Section 129 determinations in which it recalculated, without zeroing, the margins of dumping for the orders covered in the original proceedings.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **Terms of reference (DSU Art. 21.5 panels):** The Appellate Body reversed the Panel's finding that the reviews subsequent to the original determination that pre-dated the adoption of the recommendations and rulings of the DSB did not fall within the Panel's terms of reference. The Appellate Body found, instead, that five specific sunset reviews had a sufficiently close nexus with the declared measures taken to comply, and with the recommendations and rulings of the DSB, so as to fall within the Panel's terms of reference. The Appellate Body upheld the Panel's finding that two specific periodic reviews, which established assessment rates calculated with zeroing after the end of the reasonable period of time (RPT), fell within the Panel's terms of reference, insofar as those periodic reviews had a sufficiently close nexus, in terms of nature, effects, and timing, with the declared measures taken to comply and with the recommendations and rulings of the DSB.

- **ADA Art. 9.3 and GATT Art. VI:2 (scope of compliance obligations):** The Appellate Body reversed the Panel and found that the recommendations and rulings of the DSB required the United States to cease using zeroing by the end of the RPT, even when the assessment review had been concluded before the end of the RPT. The Appellate Body considered that the United States' implementation obligations extended to connected and consequent measures that were mechanically derived from the results of an assessment review and applied in the ordinary course of the imposition of anti-dumping duties. The Appellate Body upheld the Panel's findings that the United States had acted inconsistently with ADA Art. 9.3 and GATT Art. VI:2 by assessing and collecting anti-dumping duties calculated with zeroing in two specific periodic reviews concluded after the end of the RPT.

- **ADA Art. 11.3 (review of anti-dumping duties – zeroing):** Having reversed the Panel's findings in this regard, the Appellate Body found that the United States had acted inconsistently with ADA Art. 11.3 in five sunset reviews in which zeroing was relied upon. This resulted in the extension of the relevant anti-dumping duty orders beyond the expiry of the RPT.

- **Alleged arithmetical error**: The Appellate Body reversed the Panel's finding that the European Communities could not raise claims before the Art. 21.5 Panel in relation to an alleged arithmetical error in the calculation of margins of dumping because it could have raised them in the original proceedings, but failed to do so. However, the Appellate Body was unable to complete the analysis and therefore did not rule on whether the United States had failed to comply by not correcting such alleged error in one of its implementing measures.

- **ADA Art. 9.4 (calculation of the "all others" rate):** The Appellate Body disagreed with the Panel's interpretation that Art. 9.4 imposes no obligation in the calculation of the "all others" rate when all margins of investigated exporters individually are zero, *de minimis*, or based on facts available. However, the Appellate Body found it unnecessary to make findings on the European Communities' claim regarding the calculation of the "all others" rate in three specific cases.

1 *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities*

2 Other issues addressed: panel composition (DSU Arts. 8.7 and 21.5 and the Director-General's composition of the Panel with three new panelists); a request for a suggestion on implementation (DSU Art. 19.1).

MEXICO – ANTI-DUMPING MEASURES ON RICE[1]
(DS295)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ADA Arts. 3, 5.8, 6, 9, 11, 12 and 17*	Establishment of Panel	*7 November 2003*
			Circulation of Panel Report	*6 June 2005*
Respondent	*Mexico*		Circulation of AB Report	*29 November 2005*
			Adoption	*20 December 2005*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Mexico's definitive anti-dumping duties; several provisions of Mexico's Foreign Trade Act; and the Federal Code of Civil Procedure.
- **Product at issue:** Long-grain white rice from the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Arts. 3.1, 3.2, 3.4 and 3.5 (injury determination – period for the injury investigation):** The Appellate Body upheld the Panel's finding that Mexico violated Arts. 3.1, 3.2, 3.4 and 3.5, as it based its determination of injury on a period of investigation which ended more than 15 months before the initiation of the investigation, and thus it had failed to make an injury determination based on positive evidence, and involving an objective examination of the volume and price effects of the alleged dumped imports or the impact of the imports on domestic producers at the time measures were imposed under Art. 3.
- **ADA Art. 3.1 (injury determination – use of data from part of the investigation period):** The Appellate Body upheld the Panel's finding that the investigating authority's injury analysis was inconsistent with Art. 3.1 because it examined only part of the data from the investigation period and the choice of the limited period of investigation reflected the highest import penetration, which therefore was not the data of "an unbiased and objective" investigating authority.
- **ADA Arts. 3.1 and 3.2 (evidence on price effects and volumes):** Having agreed with the Panel that important assumptions relied upon by Mexico's investigating authority were "unsubstantiated" and hence not based on positive evidence, the Appellate Body upheld the Panel's finding that the investigating authority's injury analysis with regard to the volume and price effects of dumped imports was inconsistent with Arts. 3.1 and 3.2.
- **ADA Art. 6.8 and Annex II(7) (evidence – facts available):** The Panel found that the Mexican investigating authority's reliance on facts available for the dumping margin determination was inconsistent with Art. 6.8, read in light of Annex II(7), as it found no basis to consider that the authority undertook the evaluative, comparative assessment that would have enabled it to gauge whether the information provided by the applicant was the best available or that it used the information with "special circumspection" as required by Annex II(7).
- **ADA Arts. 6.1 and 12.1 (notification):** Having found that the notification requirements under Arts. 6.1 and 12.1 apply only to interested parties for which the investigating authority had *actual knowledge* (not those for which it could have obtained knowledge), the Appellate Body reversed the Panel finding that Mexico's authority violated Arts. 6.1 and 12.1 by not notifying all interested parties of the investigation initiation and of the information required of them. However, the Appellate Body agreed with the Panel that, pursuant to Art. 6.8 and Annex II, the dumping margin for an exporter could not be calculated on the basis of adverse facts available from the petition where that firm did not receive notice of the information required by the investigating authority.
- **ADA Art. 5.8 (termination of investigation):** Upholding the Panel's finding that the investigation in respect of the individual exporter for which a zero or *de minimis* dumping margin is found should be immediately terminated under Art. 5.8, second sentence, the Appellate Body concluded that Mexico violated Art. 5.8 "by not terminating the investigation in respect of two US exporters in such a situation".

1 *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*

US – COUNTERVAILING DUTY INVESTIGATION ON DRAMS[1] (DS296)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*ASCM Arts. 1, 2 and 15* *DSU Art. 11*	Establishment of Panel	*23 January 2004*
			Circulation of Panel Report	*21 February 2005*
Respondent	*United States*		Circulation of AB Report	*27 June 2005*
			Adoption	*20 July 2005*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US final countervailing duty order on imports from Korea.
- **Product at issue:** Dynamic Random Access Memory (DRAMS) and memory modules containing DRAMS from Hynix of Korea.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Art. 1.1(a)(1)(iv) (definition of a subsidy – "entrusts" or "directs"):** The Panel found that the ordinary meanings of "entrusts" and "directs" must contain a notion of delegation or command. The Appellate Body explained that although "direction""or "command" are two means by which a government may provide a financial contribution, the scope of actions covered by "entrustment" and "delegation" could extend beyond what is covered by the terms "direction" and "command" if strictly construed. It explained that "entrustment" occurs where a government gives responsibility to a private body, and "direction" where the government exercises its authority over a private body and that, in both cases, "the government uses a private body as proxy to effectuate one of the types of financial contributions listed in paras. (i) through (iii)." It also said that involvement of some form of "threat or inducement" could serve as evidence of entrustment or direction.
- **DSU Art. 11 (standard of review – entrustment and direction analysis):** The Appellate Body found that the Panel failed to apply the proper standard of review under DSU Art. 11 by (1) engaging improperly in a *de novo* review of the evidence before the United States Department of Commerce (USDOC) by failing to consider the USDOC evidence in its totality and requiring, instead, that individual pieces of evidence, in and of themselves, establish entrustment or direction; (2) excluding certain evidence on the record from its consideration; and (3) relying on evidence that was not on the record of the USDOC. The Appellate Body found that the errors found above invalidated the basis for the Panel's conclusion that there was not sufficient evidence to support the USDOC finding of entrustment or direction, and so reversed the Panel's finding that the USDOC's determination of entrustment or direction of certain Hynix creditors was inconsistent with Art. 1.1(a)(1)(iv).
- **DSU Art. 11 (standard of review – benefit and specificity analysis):** The Appellate Body found that the Panel's findings on "benefit" and "specificity" was premised exclusively on its finding on entrustment or direction. Since it had reversed the Panel's finding on entrustment or direction, it found no basis to uphold the Panel's finding on benefit and "specificity". Consequently, the Appellate Body reversed the Panel's finding that the USDOC's benefit determination was inconsistent with Art. 1.1(b) and similarly reversed the Panel's finding that the USDOC's determination of specificity was inconsistent with Art. 2. The Appellate Body did not complete the analysis in either case.

1 *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*

2 Other issues addressed: ASCM Art. 15.2 (import volumes and price effects); Art. 15.4 (economic factors); Art. 15.5 (causation); Arts. 15.2 and 15.4 (domestic industry, subject imports, and non-subject imports); Art. 15.5 (non-attribution); Art. 12.6 (verification meetings); DSU Art. 19.1 (panel recommendations).

EC – COUNTERVAILING MEASURES ON DRAM CHIPS[1] (DS299)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*ASCM Arts. 1, 2, 12, 14 and 15*	Establishment of Panel	*23 January 2004*
			Circulation of Panel Report	*17 July 2005*
Respondent	*European Communities*		Circulation of AB Report	*NA*
			Adoption	*3 August 2005*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** EC definitive countervailing duties.
- **Product at issue:** Dynamic Random Access Memory (DRAM) Chips from Hynix of Korea.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ASCM Art. 1.1(a)(1)(iv) (definition of a subsidy – financial contribution):** The Panel held that the European Communities' "financial contribution" finding with respect to one of Korea's five alleged subsidy programmes[3] was inconsistent with Art. 1.1(a)(1)(iv), as it considered that the evidence before the EC investigating authority (i.e. government official's presence at Hynix's Creditor Council meeting) was insufficient for it to reasonably conclude that the Korean government entrusted or directed the private banks to purchase Hynix convertible bonds. The Panel held that the European Communities' finding on the other four programmes was consistent with Art. 1.1(a).
- **ASCM Arts. 1.1(b) and 14 (definition of a subsidy – benefit):** The Panel found that the European Communities failed to establish the "existence" of a "benefit" from the financial contribution provided under one of the programmes (i.e. Syndicated Loan) within the meaning of Art 1.1(b), as it had ignored the loans provided by some of the banks relevant to the programme. It held that the European Communities' findings with respect to the other programmes were consistent with Art. 1.1(b). The Panel also found that the calculation of the "amount" of "benefit" conferred was inconsistent with Arts. 1.1(b) and 14 because the European Communities' grant methodology treated loans, loan guarantees, and debt-to-equity swap similarly to grants even though they could not reasonably have conferred the same benefit.
- **ASCM Arts. 1.2 and 2.1(c) (definition of a subsidy – specificity):** The Panel found that the European Communities did not act inconsistently with Arts. 1.2 and 2.1(c) in its specificity determinations for both (i) the KDB debenture programme, as it had reasons to conclude that the subsidy was *de facto* specific in the sense of Art. 2.1(c) (e.g. predominant use by certain enterprises) and (ii) the May and October 2001 Restructuring Programmes, as these restructuring programmes were specifically undertaken for Hynix.
- **ASCM Art. 12.7 (evidence – facts available):** The Panel found that the European Communities did not act inconsistently with Art. 12.7 in relying on "facts available", including secondary sources such as press reports, as part of its subsidy determination, since it was not unreasonable under the circumstances for the European Communities to conclude that necessary information had been requested but not provided by Korea.
- **ASCM Art. 15.4 (injury determination – relevant economic factors):** The Panel found that the European Communities acted inconsistently with Art. 15.4 by not evaluating the "wages" factor in its evaluation of all relevant economic factors.
- **ASCM Art. 15.1 and 15.5 (injury determination – causation):** The Panel found that the European Communities acted inconsistently with its obligation to not attribute to subsidized imports injuries caused by the "economic downturn in the market", "overcapacity", and "other (non-subsidized) imports", as it failed to provide a satisfactory explanation of the nature and extent of the injurious effects of these other factors causing injury. However, it rejected non-attribution and causation claims related to the "inventory burn" factor.

1 *EC – Countervailing Measures on DRAM Chips*
2 Other issues addressed: ASCM Art. 15.1 (general); ASCM Arts. 15.1 and 15.2 (imports volume; price effects).
3 European Communities' finding on the "May 2001 Restructuring Programme" was found inconsistent. The other four programmes at issue were "Syndicated Loan", "KEIC Guarantee", "KDB Debenture Programme" and "October 2001 Restructuring Programme".

EC – COMMERCIAL VESSELS[1]
(DS301)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*GATT Arts. III:4, I:1 and III:8(b)* *DSU Art. 23.1* *ASCM Art. 32*	Establishment of Panel	*19 March 2004*
			Circulation of Panel Report	*22 April 2005*
Respondent	*European Communities*		Circulation of AB Report	*NA*
			Adoption	*20 June 2005*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The European Communities' Temporary Defensive Mechanism for Shipbuilding (the "TDM Regulation") of 2002, under which contract-related operating aid provided by EC member States for the building of certain ships were considered compatible with the common market.

- **Product at issue:** Container ships, product and chemical tankers as well as LNG carriers.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Arts. III:4 (national treatment – domestic laws and regulations) and III:8(b) (national treatment – subsidies exception):** The Panel concluded that the state aid subject to the TDM Regulation was covered by GATT Art. III:8(b) because it provided for "the payment of subsidies exclusively to domestic producers", and therefore the TDM Regulation, the national TDM schemes (in this case, Denmark, France, Germany, the Netherlands and Spain) and the EC decisions authorizing the schemes were not inconsistent with GATT Art. III:4.

- **GATT Arts. I:1 (most-favoured-nation treatment) and III:8(b) (national treatment – subsidies exception):** Based on its conclusion that the TDM Regulation was covered by GATT Art. III:8(b) and that, as a result, the subsidies under the TDM Regulation were not covered by the expression "matters referred to in paras. 2 and 4 of Article III" in Art. I:1, the Panel concluded that the TDM Regulation and the national TDM schemes were not inconsistent with GATT Art. I:1.

- **ASCM, Art. 32.1 (specific action against a subsidy):** The Panel found that the TDM Regulation was a specific action because it had a strong correlation and inextricable link with the constituent elements of a subsidy but it was not taken against a subsidy of another member (Korea in this case) within the meaning of Art. 32.1. The Panel concluded that, in addition to the measure's (TDB Regulation in this case) impact on the conditions of competition, there must be some additional element for the measure to be considered an action "against" a subsidy: an element inherent in the "design and structure" of the measure that serves to dissuade, or encourage the termination of, the practice of subsidization. Therefore, the Regulation and the national TDM schemes mentioned above were found not to be in violation of Art. 32.1.

3. OTHER ISSUES[2]

- **Prohibition on unilateral determinations (DSU Art. 23.1):** The Panel concluded that since "it is undisputed that the European Communities adopted the TDM Regulation without having recourse to the DSU," the European Communities acted inconsistently with DSU Art. 23.1. As a consequence, the national TDM schemes were also inconsistent with DSU Art. 23.1.

1 *European Communities – Measures Affecting Trade in Commercial Vessels*

2 Other issues addressed: DSU Art. 19.1 (panel recommendation for expired measures); consideration of new measures by acceding EC member States; status of EC member States as respondents.

DOMINICAN REPUBLIC – IMPORT AND SALE OF CIGARETTES[1] (DS302)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Honduras*	*GATT Arts. II, III:2, III:4, X:1, X:3(a), XI:1 and XX(d)* *DSU Art. 19.1*	Establishment of Panel	*9 January 2004*
			Circulation of Panel Report	*26 November 2004*
Respondent	*Dominican Republic*		Circulation of AB Report	*25 April 2005*
			Adoption	*19 May 2005*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Dominican Republic's general measures relating to import charges and fees and other measures specific to import and sale of cigarettes.

- **Product at issue:** Cigarettes imported from Honduras as well as all imported products in the case of transitional surcharge measure and the foreign exchange fee.

2. SUMMARY OF KEY PANEL/AB FINDINGS

Stamp requirement

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that the stamp requirement, which required tax stamps to be affixed to cigarette packets in the Dominican Republic, "accords less favourable treatment to imported cigarettes than that accorded to the like domestic products, contrary to GATT Art. III:4". The Appellate Body upheld the Panel's finding that this requirement was not necessary within the meaning of Art. XX(d) as, *inter alia,* there were "reasonably available" alternative WTO-consistent measures and, thus, the measure was not justified under Art. XX(d).

Bond requirement

- **GATT Arts. XI:1 (prohibition on quantitative restrictions) and III:4 (national treatment – domestic laws and regulations):** The Panel found that Honduras failed to establish that the bond requirement, under which cigarette importers had to post a bond to ensure payment of taxes, operated as an import restriction contrary to Art. XI:1. The Appellate Body upheld the Panel's rejection of Honduras's claim under Art. III:4, and agreed with the Panel that a detrimental effect of a measure on a given imported product does not necessarily imply that the measure accords less favourable treatment to imports if the effect is explained by factors unrelated to the foreign origin of the product, such as the market share of the importer.

Transitional surcharge and foreign exchange fee

- **GATT Art. II:1(b) (schedules of concessions – other duties or charges):** The Panel found that the transitional surcharge imposing certain surcharges on all imports was a border measure that was neither an ordinary customs duty, nor a charge or duty that fell under Art. II:2, and therefore was an "other duty or charge" that was inconsistent with Art. II:1(b). Also, having concluded that the foreign exchange fee was not an ordinary customs duty, but imposed on imported products only, the Panel found that the fee was a border measure in the nature of an other duty or charge inconsistent with Art. II:1(b). The Panel also found that the fee was not an exchange measure justified by Art. XV:9(a).

Selective consumption tax (SCT)

- **GATT Art. III:2 (national treatment – taxes and charges), first sentence (like products), and Art. X (publication and administration of trade regulations):** While the Panel had found that the SCT, for which the value of imported cigarettes was determined, was inconsistent with Art. III:2, first sentence, Art. X:3(a) and Art. X:1, the Panel did not recommend that the measure be brought into conformity as the measure at issue was "no longer in force".

3. OTHER ISSUES[2]

- **GATT Art. XX(d) (exceptions – necessary to secure compliance with laws):** The Appellate Body upheld the Panel's finding that the tax stamp requirement was not "necessary" within the meaning of Art. XX(d) and therefore it was not justified under this provision.

1 *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes*

2 Other issues addressed: DSU Art. 11 (objective assessment); Appellate Body's recommendation in respect of the measure that has been already modified (DSU Art. 19.1); request of information from IMF; scope of products (panel request, DSU Art. 6.2); terms of reference (subsequent amendments to the measures after panel establishment); Honduras's claim against the timing of SCT payments in conjunction with the bond requirement (DSU Art. 6.2).

MEXICO – TAXES ON SOFT DRINKS[1]
(DS308)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. III and XX(d)*	Establishment of Panel	*6 July 2004*
			Circulation of Panel Report	*7 October 2005*
Respondent	*Mexico*		Circulation of AB Report	*6 March 2006*
			Adoption	*24 March 2006*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Mexico's tax measures under which soft drinks using non-cane sugar sweeteners were subject to 20 per cent taxes on (i) their transfer and importation; and (ii) specific services provided for the purpose of transferring soft drinks and bookkeeping requirements.

- **Product at issue:** Non-cane sugar sweeteners such as High Fructose Corn Syrup (HFCS) and beet sugar and soft drinks sweetened with such sweeteners.

2. SUMMARY OF KEY PANEL/AB FINDINGS

National treatment

- **GATT Arts. III:2 (national treatment – taxes and charges), first sentence (like products)**: As for soft drinks sweetened with HFCS, the Panel found that the tax measures were inconsistent with Art. III:2, first sentence, as these drinks were subject to internal taxes (20 per cent transfer and services taxes) in excess of taxes imposed on like domestic products – i.e. soft drinks sweetened with cane sugar (exemption from those taxes).

- **GATT Art. III:2 (national treatment – taxes and charges), second sentence (directly competitive or substitutable products):** As for non-cane sugar sweeteners such as HFCS, the Panel found that the tax measures were inconsistent with Art. III:2, second sentence as "the dissimilar taxation (i.e. 20 per cent transfer and services taxes)" imposed on "directly competitive or substitutable imports (HFCS) and domestic products (cane sugar)" was applied in a way that afforded protection to domestic production.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel concluded that Mexico acted inconsistently with Art. III:4 in respect of non-cane sugar sweeteners, such as HFCS, by according them less favourable treatment (through tax measures as well as bookkeeping requirements) than that accorded to like domestic products (cane sugar).

Exceptions clause

- **GATT Art. XX(d) (exceptions – necessary to secure compliance with laws):** The Appellate Body upheld the Panel's finding that Mexico's measures, which sought to secure compliance by the United States with its obligations under the NAFTA, did not constitute measures "to secure compliance with laws or regulations" within the meaning of Art. XX(d). The Appellate Body stated that the terms "laws or regulations" under Art. XX(d) refer to the rules that form part of the domestic legal order (including domestic legislative acts intended to implement international obligations) of the WTO Member invoking Art. XX(d) and do not cover obligations of *another* WTO Member. The Appellate Body also held that a measure can be said to be designed "to secure compliance" even if there is no guarantee that the measure will achieve its intended result with absolute certainty, and that the use of coercion is not a necessary component of a measure designed "to secure compliance".

3. OTHER ISSUES[2]

- **Panel's jurisdiction**: The Appellate Body upheld the Panel's decision that under the DSU, it had no discretion to decline to exercise its jurisdiction in a case that had been properly brought before it.

1 *Mexico – Tax Measures on Soft Drinks and Other Beverages*

2 Other issues addressed: DSU Art. 11 (panel's findings on Art. XX(d)); *amicus curiae* submission; preliminary ruling; burden of proof; terms of reference; Mexico's request for Panel's recommendations (DSU Art. 19.1).

KOREA – CERTAIN PAPER[1]
(DS312)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*ADA Arts. 2, 3, 6, 9 and 12; Annex II*	Establishment of Panel	*27 September 2004*
			Circulation of Panel Report	*28 October 2005*
Respondent	*Korea*		Circulation of AB Report	*NA*
			Adoption	*28 November 2005*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping duties imposed by Korea on certain imports.
- **Product at issue:** "Business information paper and wood-free printing paper" from Indonesia.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Arts. 2,2, 6.8 and Annex II(3) (dumping determination – facts availabe):** The Panel found that the Korean investigating authority (i.e. KTC) did not act inconsistently with Art. 6.8 and Annex II(3) when it resorted to facts available for the calculation of normal value for two Indonesian exporters because the information requested (financial statements and accounting records) had not been submitted "within a reasonable period of time". In addition, the data submitted to the KTC after the deadline were not verifiable within the meaning of Annex II(3) in light of the fact that the exporters refused to submit corroborating information during the verification. The Panel also found that the KTC complied with its obligation under Annex II(6) to inform the exporters of its decision to use facts available. The Panel also found that the KTC did not act inconsistently with Art. 2.2 in basing its normal value determination on constructed value under Art. 2.2, as the data (on domestic sales) submitted by the exporters were not verifiable.
- **ADA Art. 6.8 and Annex II(7) (evidence – facts available):** The Panel found that the KTC acted inconsistently with Art. 6.8 and Annex II(7) in respect of its dumping margin determination for one of the exporters by failing to compare information on normal value obtained from secondary sources (i.e. information in the application by the petitioners) against other independent sources.
- **ADA Arts. 6.10 and 9.3 (treatment of certain exporters and a single exporter):** Having found that Art. 6.10, when read in context with Art. 9.3, does not necessarily preclude treating distinct legal entities as a single exporter for dumping determinations as long as it is shown that the structural and commercial relationship between the subject companies is sufficiently close to be considered as a single exporter, the Panel found that the KTC did not act inconsistently with Arts. 6.10 or 9.3 because one parent company had a considerable controlling power over the operations of the three subject Indonesian companies as its subsidiaries.
- **ADA Art. 6.7 (evidence – disclosure obligation):** The Panel found that the KTC's disclosure of the verification results (which was confined to its decision to resort to facts available) *vis-à-vis* the subject exporters fell short of meeting the disclosure standard under Art. 6.7 because it failed to inform them of the verification results (i.e. adequate information regarding all aspects of the verification) in a manner that would have allowed them to properly prepare their case for the rest of the investigation.

1 *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia*

2 Other issues addressed: ADA Art. 3.4 (impact of dumped imports); Art. 6.5 (confidential treatment); Art. 2.4 (price comparability); Art. 2.6 (like products); Arts. 3.1, 3.2 and 3.4 (price analysis); Arts. 3.4 and 3.5 (Korean industry's imports); Arts. 6.2, 6.4, 6.9, 12.2 and 12.2.2 (disclosure obligations); terms of reference; confidentiality.

KOREA – CERTAIN PAPER (ARTICLE 21.5 – INDONESIA)[1]
(DS312)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*ADA Arts. 1, 2 and 6; Annex II GATT Art. VI*	Referred to the Original Panel	*23 January 2007*
			Circulation of Panel Report	*28 September 2007*
Respondent	*Korea*		Circulation of AB Report	*NA*
			Adoption	*22 October 2007*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The re-determination by the Korean Trade Commission (KTC) in the anti-dumping investigation on "business information paper and wood-free printing paper" from Indonesia, carried out for to implement DSB rulings and recommendations following the original dispute settlement proceedings.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 6.8 and Annex II (7) (evidence – facts available):** The Panel found that the KTC acted inconsistently with its obligations under Art. 6.8 of Annex II (7) in the calculation of interest expenses for two of the Indonesian companies subject to the implementation proceedings at issue. It found that the KTC failed to apply special circumspection in its determination whether using a manufacturing company's interest expenses for a trading company would be proper, and in the corroboration of such interest expense with the interest expenses of some other companies.

- **ADA Art. 6.2 (evidence – opportunity for interested parties):** The Panel found that the KTC acted inconsistently with the obligation set forth under Art. 6.2 by failing to allow Indonesian exporters to comment on the KTC's injury re-determination.

3. OTHER ISSUES

- **Prima facie case**: The Panel found that Indonesia failed to make a prima facie case in connection with its claims under ADA Arts. 6.4, 6.5 and 6.9 regarding alleged disclosure violations, and its claim regarding the alleged acceptance of new information from the Korean industry.

- **Judicial economy**: The Panel applied judicial economy to a number of Indonesia's claims regarding the use of best information available, and those regarding alleged procedural violations in the implementation proceedings at issue.

- **Request for an implementation suggestion**: The Panel rejected Indonesia's request that the Panel suggest that Korea implement the Panel's findings in these proceedings by basing the calculation of interest expenses of the two Indonesian companies at issue on the data pertaining to a certain trading company.

1 *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia – Recourse to Article 21.5 of the DSU by Indonesia*

EC – SELECTED CUSTOMS MATTERS[1]
(DS315)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. X:3(a) and X:3(b)* *DSU Arts. 6, 12 and 13*	Establishment of Panel	*21 March 2005*
			Circulation of Panel Report	*16 June 2006*
Respondent	*European Communities*		Circulation of AB Report	*13 November 2006*
			Adoption by the DSB	*11 December 2006*

1. MEASURE AT ISSUE

- **Measure at issue:** The European Communities' administration of various customs laws and regulations, and the omission of the European Communities to provide for the prompt review and correction of administrative actions relating to customs matters.

2. SUMMARY OF KEY PANEL/APPELLATE BODY FINDINGS[2]

Panel's terms of reference

- **Measure at issue (Art. X:3(a)):** The Appellate Body reversed the Panel's finding that when a violation of GATT Art. X:3(a) is being claimed, the "measure at issue" must be the "manner of administration" of a legal instrument; a WTO Member is not precluded from setting out in a panel request any act or omission attributable to another WTO Member as the measure at issue.

- **The European Communities' system as a whole**: The Panel rejected the United States' Art. X:3(a) challenge of the European Communities' customs administration *overall*, on the grounds, *inter alia*, that the words "including, but not limited to" in its panel request did not have the legal effect of incorporating into the Panel's terms of reference *all* areas of the European Communities' customs administration. The Appellate Body reversed the Panel, finding instead that the type of customs instruments included in the panel request, as well as its wording and intent, demonstrated the United States' intention to make an *as a whole or overall* challenge.

- **As such challenge**: The Panel concluded that the United States was precluded from making an as such challenge with respect to the "design and structure" of the European Communities' system of customs administration as its panel request made no explicit reference to the terms as such or *per se* and indicated only a concern with administration and actions by member State customs authorities. The Appellate Body did not agree that the United States was making an as such claim since the challenge was not to the substantive content of the relevant European Communities customs legislation in panel request, but to the overall system of customs administration. Further, the United States' arguments regarding "design and structure" were made in support of its *as a whole* challenge, which the Appellate Body had already found to be sufficiently disclosed in the panel request.

GATT Art. X:3(a)

- **GATT Art. X:3(a) (trade regulations – uniform, impartial and reasonable administration):** Regarding the requirement of "uniform administration" in Art. X:3(a), the Appellate Body found that a distinction must be made between the legal instrument being administered and a legal instrument that regulates the application or implementation of that instrument. The Appellate Body reversed the Panel's finding that, without exception, Art. X:3(a) relates to the application of laws and regulations, but not to laws and regulations as such. Instead, the Appellate Body found that legal instruments that regulate the application or implementation of laws, regulations, decisions, and administrative rulings of the kind described in GATT Art. X:1 can be challenged under Art. X:3(a).

GATT Art. X:3(b)

- **GATT Art. X:3(b) (trade regulations – prompt review of administrative action on customs matters):** The Appellate Body upheld the Panel's finding that Art. X:3(b) does not require that first instance review decisions must govern the practice of *all* the agencies entrusted with administrative enforcement *throughout the territory* of a particular WTO Member.

1 *European Communities – Selected Customs Matters*
2 Other issues addressed: GATT Art. XXIV:12; DSU Arts. 6.2, 12 and 13; temporal limitations of a panel's terms of reference.

EC AND CERTAIN MEMBER STATES – LARGE CIVIL AIRCRAFT[1] (DS316)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ASCM Arts. 1, 2, 3.1(a), 5(a), 5(c) and 6.3*	Establishment of Panel	*20 July 2005*
			Circulation of Panel Report	*30 June 2010*
Respondents	*European Communities, France, Germany, Spain, United Kingdom*		Circulation of AB Report	*18 May 2011*
			Adoption	*1 June 2011*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Subsidies allegedly granted by the European Communities and certain EC member States to Airbus large civil aircraft, including (i) "Launch Aid"/"Member State Financing" (LA/MSF) contracts; (ii) European Investment Bank loans; (iii) infrastructure-related measures; (iv) corporate restructuring measures (debt forgiveness, equity infusions and grants); and (v) research and development funding.

- **Product at issue:** Large civil aircraft developed, produced and sold by Airbus.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies):** The Appellate Body found that a subsidy is *de facto* export contingent within the meaning of Art. 3.1(a) and footnote 4 if the granting of the subsidy "is geared to induce the promotion of future export performance by the recipient". This standard cannot be met simply by showing that anticipated exportation is the reason for granting the subsidy. Rather, the satisfaction of the standard must be assessed by examining the measure granting the subsidy and the facts surrounding the granting of the subsidy, including the design, structure, and modalities of operation of the measure. The Appellate Body, having reversed the Panel's legal standard, was unable to complete the analysis as to whether the challenged LA/MSF measures were *de facto* export contingent.

- **ASCM Arts. 5(c) and 6.3 (adverse effects – serious prejudice (displacement and lost sales):** The Appellate Body upheld, although narrower in scope, the Panel's finding that the LA/MSF measures and certain non-LA/MSF measures, found to constitute specific subsidies caused serious prejudice to the interests of the United States within the meaning of Art. 5(c). In reaching this conclusion, the Appellate Body clarified that a panel was not permitted to simply rely on the complaining Member's identification of a product, but was required under Art. 6.3 to make an independent product market determination to ascertain the specific products that compete in the same market.

- **ASCM Art. 5(a) (injury/threat of injury):** The Panel found that the United States had failed to demonstrate material injury or threat of material injury to the United States LCA industry, and therefore rejected a claim under Art. 5(a).

- **ACSM Art. 7.8 (remedies – "to remove adverse effects or withdraw the subsidy"):** The Appellate Body stated that to the extent it upheld the Panel's findings with respect to actionable subsidies that caused adverse effects or such findings were not been appealed, the Panel's recommendation pursuant to Art. 7.8 stands. Art. 7.8 provides in relevant part that "the Member granting each subsidy found to have resulted in such adverse effects, 'take appropriate steps to remove the adverse effects or … withdraw the subsidy'".

3. OTHER ISSUES[2]

- **Additional procedures to protect confidential information**: At the joint request of the parties, the Appellate Body, for the first time in an appellate proceeding, adopted additional procedures to protect the business confidential information and highly sensitive business information submitted in the proceedings. In submitting the request, the parties argued that disclosure of such information could be "severely prejudicial" to the originators of the information, that is, to the LCA manufacturers at the heart of the dispute and possibly to the manufacturers' customers and suppliers.

1 *European Communities and Certain member States – Measures Affecting Trade in Large Civil Aircraft*

2 Other issues addressed: temporal scope of the ASCM; extinguishment of past subsidies through partial privatizations and other transactions; withdrawal of past subsidies through cash extractions; pass-through of past subsidies to current producer; information-gathering procedure and adverse inferences (ASCM Annex V); existence of a financial contribution (ASCM Art. 1.1(a)(1)); existence of a benefit (ASCM Art. 1.1(b)); specificity of subsidies (ASCM Art. 2); enhanced third party rights (DSU Art. 10); open Panel meetings and Appellate Body hearings; measures allegedly not subject to consultations; measure not yet in existence at time of panel establishment; failure to identify measures in the panel request (DSU Art. 6.2); non-retroactivity of treaties (VCLT Art. 28); relevance of other rules of international law to the interpretation and application of the WTO Agreement (VCLT Art. 31(3)(c)); status of EC member States as respondents; appeals on issues involving application of the law to the facts; Member's freedom to formulate its complaint; objective assessment of the matter (DSU Art. 11).

EC AND CERTAIN MEMBER STATES – LARGE CIVIL AIRCRAFT (ARTICLE 21.5 – US)[1]

(DS316)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ASCM Arts. 1, 2, 3.1, 3.2, 5, 6.3, 6.4 and 7.8* *GATT Arts. III:4, XVI:1 and XXIII:1*	Referred to the Original Panel	*13 April 2012*
			Circulation of Panel Report	*22 September 2016*
Respondent	*European Union, France, Germany, Spain, United Kingdom*		Circulation of AB Report	*15 May 2018*
			Adoption	*28 May 2018*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The measures from the original proceedings found to have caused adverse effects (Launch Aid/Member State Financing (LA/MSF) for Airbus A300, A310, A320, A330/A340, and A380; French and German governments' capital contributions in connection with the corporate restructuring of Aérospatiale and Deutsche Airbus; and German and Spanish authorities' infrastructure-related measures), as well as LA/MSF for Airbus A350XWB.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Arts. 1 and 2 (financial contribution, benefit, specificity):** The Appellate Body upheld the Panel's findings that Airbus paid a lower interest rate for the A350XWB LA/MSF than would have been available to it on the market and, consequently, a benefit was thereby conferred within the meaning of Art. 1.1(b). Consequently, the Appellate Body also upheld the Panel's findings that the A350XWB LA/MSF measures were specific subsidies within the meaning of Arts. 1 and 2.

- **ASCM Art. 3.1(a) and (b) (prohibited subsidies):** The Panel rejected the United States' claims that the A380 and A350XWB LA/MSF measures were *de facto contingent* upon export performance, and that the A350XWB LA/MSF measures were prohibited import substitution subsidies. The Appellate Body agreed with the Panel that the fact that a subsidy *results* in the use of domestic over imported goods cannot by itself demonstrate that that subsidy is contingent upon the use of domestic over imported goods, whether in law or in fact.

- **ASCM Art. 7.8 (remove adverse effects or withdraw the subsidy):** The Appellate Body reversed the Panel's interpretation of Art. 7.8 that an implementing Member would be required to "withdraw" or "take appropriate steps to remove the adverse effects" of past subsidies irrespective of whether such subsidies have expired prior to the end of the implementation period. Instead, the Appellate Body found that this obligation concerns subsidies that are granted or maintained by the implementing Member at the end of the implementation period. Consequently, the Appellate Body found that the European Union had no compliance obligation with respect to subsidies that had expired before 1 December 2011.

- **ASCM Arts. 5(c) and 6.3 (adverse effects, serious prejudice):** The Appellate Body upheld the Panel's finding that the United States appropriately defined product markets for LCA, namely, the global markets for single-aisle LCA, twin-aisle LCA, and very large aircraft (VLA). With regard to subsidies existing in the post-implementation period, the Appellate Body found that (i) in the twin-aisle and VLA LCA markets, the Panel's findings support the conclusion that the identified sales represent "significant lost sales" to the US LCA industry which were the effect of the existing LA/MSF subsidies; and (ii) the "product effects" of the existing LA/MSF subsidies are a genuine and substantial cause of impedance of US LCA in the VLA markets in the European Union, Australia, China, Korea, Singapore, and the United Arab Emirates.

1 *European Communities and Certain member States – Measures Affecting Trade in Large Civil Aircraft – Recourse to Article 21.5 of the DSU by the United States*

2 Other issues addressed: DSU Art. 21.5 (the existence of "disagreement" to resolve).

US – CONTINUED SUSPENSION
CANADA – CONTINUED SUSPENSION[1]
(DS320, 321)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*DSU Arts. 22.8, 23.1, 23.2(a), 21.5 and 3.7* *SPS Arts. 5.1 and 5.7*	Establishment of Panel	*27 February 2005*
			Circulation of Panel Report	*31 March 2008*
Respondents	*United States* *Canada*		Circulation of AB Report	*16 October 2008*
			Adoption	*14 November 2008*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The continued suspension of WTO concessions by the United States and Canada resulting from the *EC – Hormones* disputes.[2]

- **Product at issue:** A number of products affected by the suspension of concessions by the United States and Canada.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **DSU Arts. 23.1 (prohibition on unilateral determinations) and 3.7 read together with Art. 22.8 (duration of suspension):** The Appellate Body upheld the Panels' finding that the European Communities had not established a violation of DSU Arts. 23.1 and 3.7 as a result of a breach of Art. 22.8, because it was not established that the measure found to be inconsistent with the SPS Agreement in the *EC – Hormones* dispute had been removed.

- **DSU Arts. 23.1 and 23.2(a) (prohibition on unilateral determinations – maintaining suspension of concessions):** The Appellate Body reversed the Panels' finding that Canada and the United States had breached DSU Art. 23.1 by maintaining the suspension of concessions after the notification of Directive 2003/74/EC. It also reversed the Panels' finding that Canada and the United States had breached Art. 23.2(a) by making a unilateral determination that Directive 2003/74/EC is WTO-inconsistent.

- **DSU Art. 21.5 (review of implementation of DSB rulings):** The Appellate Body found that when the parties disagree whether the implementing measure achieves compliance, both parties have a duty to engage in WTO dispute settlement procedures, and that the proper procedure for this purpose is compliance proceedings under Art. 21.5.

3. OTHER ISSUES[3]

- **Risk assessment and provisional measure (SPS Arts. 5.1 and 5.7):** The Appellate Body reversed the Panels' findings that the import ban relating to oestradiol-17ß was not based on a risk assessment as required by Art. 5.1, and that the provisional import ban relating to the other five hormones did not meet the requirements of Art. 5.7. However, the Appellate Body was unable to complete the analysis and therefore made no findings as to the consistency or inconsistency of the definitive and provisional import bans with Arts 5.1 and 5.7.

- **Standard of review (DSU Art. 11):** The Appellate Body found that the Panels failed to comply with Art. 11 in the consultations with certain scientific experts.

1 *United States – Continued Suspension of Obligations in the EC – Hormones Dispute; Canada – Continued Suspension of Obligations in the EC – Hormones Dispute*

2 In particular, the European Communities challenged the continued suspension of concessions after notification to the DSB of Directive 2003/74/EC, amending Council Directive 96/22/EC concerning the prohibition on the use in stock-farming of certain substances having a hormonal or thyrostatic action and of beta-agonists.

3 Other issues addressed: DSU Art. 11 (standard of review); DSU Art. 21.5 (jurisdiction and burden of proof); DSU Art. 22.8 (removal of the inconsistent measure); SPS Art. 5.1 (misuse or abuse; specificity; quantification; and standard of review); SPS Art. 5.7 (sufficiency of the evidence; relationship with level of protection; and existence of international standard).

US – ZEROING (JAPAN)[1]
(DS322)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*ADA Arts. 2, 9 and 11* *GATT Art. VI* *DSU Art. 11*	Establishment of Panel	*28 February 2005*
			Circulation of Panel Report	*20 September 2006*
Respondent	*United States*		Circulation of AB Report	*9 January 2007*
			Adoption by the DSB	*23 January 2007*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The United States' "zeroing" procedures in the context of original investigations, periodic reviews, new shipper and changed circumstances reviews, and sunset reviews; and the application of "zeroing" in an original investigation, periodic reviews, and sunset review determinations.

- **Product at issue:** Various carbon steel and bearing products from Japan.

2. SUMMARY OF KEY PANEL/AB FINDINGS

As such claims

- **ADA Arts. 2.1, 2.4 and 2.4.2 and GATT Arts. VI:1 and VI:2 (zeroing in transaction-to-transaction comparisons in original investigations):** The Appellate Body reversed the Panel's finding that the United States did not act inconsistently with Arts. 2.1, 2.4, and 2.4.2 by maintaining zeroing procedures in original investigations when calculating margins of dumping on the basis of transaction-to-transaction comparisons. The Appellate Body noted that because dumping and margins of dumping can only be found to exist in relation to the product under investigation, and not at the level of an individual transaction, all of the comparisons of normal value and export price must be considered. By disregarding certain comparison results, the United States acted inconsistently with Art. 2.4.2, with the "fair comparison" requirement of Art. 2.4, given that zeroing artificially inflates the magnitude of dumping.

- **ADA Arts. 2.1, 2.4, 9.1, 9.3 and 9.5 and GATT Arts VI:1 and VI:2 (zeroing in periodic reviews and new shipper reviews):** The Appellate Body reversed the Panel's finding that zeroing in periodic and new shipper reviews was not inconsistent with the ADA and relevant articles of the GATT. The Appellate Body found, instead, that the United States had acted inconsistently with ADA Arts. 9.3 and 9.5 and GATT Art. VI:2, and with the "fair comparison" requirement of ADA Art. 2.4, as explained above.

As applied claims

- **ADA Arts. 2, 9.1, 9.3, 9.5 and 11 and GATT Arts. VI:1 and VI:2 (zeroing in specific periodic reviews and sunset reviews):** The Appellate Body reversed the Panel's finding regarding zeroing used in 11 periodic review determinations and 2 sunset reviews, and found that the United States had acted inconsistently with ADA Arts. 2.4 and 9.3, GATT Art. VI:2, and ADA Art. 11.3.

3. OTHER ISSUES[2]

- **Measure**: The Appellate Body upheld the Panel's finding that the United States' zeroing procedures constituted a measure that could be challenged as such in WTO dispute settlement proceedings, and rejected the United States' claim under DSU Art. 11 that the Panel did not assess objectively whether a single rule or norm exists by virtue of which the USDOC applies zeroing, regardless of the basis upon which export price and normal value are compared, and regardless of the type of proceeding in which margins of dumping are calculated.

1 *United States – Measures Relating to Zeroing and Sunset Reviews*

2 Other issues addressed: standard zeroing line (measure); ADA Art. 2.4.2 (zeroing in weighted average-to-weighted average comparisons in original investigations): prima facie case; ADA Arts. 2 and 11 (zeroing in new shipper, changed circumstances, and sunset reviews); judicial economy.

US – ZEROING (JAPAN) (ARTICLE 21.5 – JAPAN)[1]
(DS322)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*ADA Arts. 2.4, 2.4.2, 9.3, 9.5 and 11.3* *GATT Arts. II and VI:2* *DSU Arts. 6.2 and 21.5*	Referred to the Original Panel	*18 April 2008*
			Circulation of Panel Report	*24 April 2009*
Respondent	*United States*		Circulation of AB Report	*18 August 2009*
			Adoption	*31 August 2009*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The maintenance of zeroing procedures in the context of transaction-to-transaction comparisons in original investigations and under any comparison methodology in periodic and new shipper reviews; the liquidation of duties based on importer-specific assessment rates determined in five periodic reviews found to be WTO-inconsistent in the original proceedings; certain liquidation instructions and notices; the use of zeroing in four other periodic reviews; and one sunset review determination.

2. SUMMARY OF KEY PANEL /AB FINDINGS

- **Terms of reference (DSU Art. 21.5 panels):** The Appellate Body upheld the Panel's finding that a periodic review that had been initiated before the matter was referred to the Panel and was completed during the Art. 21.5 proceedings was properly within the scope of the Panel's terms of reference.

- **As such findings**: The Panel found that the United States failed to comply with the recommendations and rulings of the DSB regarding the maintenance of zeroing procedures challenged as such in the original proceedings. In particular, the Panel found that the United States failed to implement the DSB's recommendations and rulings in the context of transaction-to-transaction comparisons in original investigations and under any comparison methodology in periodic and new shipper reviews. Consequently, the United States remained in violation of ADA Arts. 2.4, 2.4.2, 9.3 and 9.5 and GATT Art. VI:2.

- **ADA Arts. 2.4 and 9.3 and GATT Art. VI:2 (scope of compliance obligations):** As regards the WTO-consistency of the liquidation of the entries subject to the nine periodic reviews at issue, the Appellate Body explained that WTO-inconsistent conduct must cease by the end of the reasonable period of time. The obligation to comply with the DSB's recommendations and rulings covered actions or omissions subsequent to the reasonable period of time, even if they related to imports that entered the territory of the United States at an earlier date. Moreover, the fact that the periodic reviews had been challenged in domestic judicial proceedings did not excuse the United States from complying with the DSB's recommendations and rulings by the end of the reasonable period of time. The Appellate Body therefore upheld the Panel's finding that the United States failed to comply with the DSB's recommendations and rulings regarding the importer-specific assessment rates determined in the five periodic reviews challenged in the original proceedings and thus remained in violation of ADA Arts. 2.4 and 9.3 and GATT Art. VI:2. The Appellate Body also upheld the Panel's finding that the United States acted inconsistently with ADA Arts. 2.4 and 9.3 and GATT Art. VI:2 by applying zeroing in the context of the four subsequent periodic reviews.

- **GATT Arts. II:1(a) and II:1(b) (schedules of concessions):** The Appellate Body upheld the Panel's consequential finding that certain liquidation actions taken by the United States after the end of the reasonable period of time in connection with certain periodic reviews violated Arts. II:1(a) and II:1(b).

- **ADA Art. 11.3 (review of anti-dumping duties):** The Panel found that the United States' omission to take any action to implement the recommendations and rulings of the DSB with respect to one sunset review determination found to be WTO-inconsistent in the original proceedings meant that the United States had failed to comply with the DSB's recommendations and rulings, and that the violation of ADA Art. 11.3 continued.

1 *United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of the DSU by Japan*

MEXICO – STEEL PIPES AND TUBES[1]
(DS331)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Guatemala*	*ADA Arts. 1, 2.1, 2.2, 2.4, 2.6, 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 4.1, 5.2, 5.3, 5.4, 5.8, 5.10, 6.2, 6.4, 6.5, 6.7, 6.8, 6.9, 6.13, 9.1, 9.3, 12.1, 12.2 and 18.1; Annex II* *GATT Art. VI*	Establishment of Panel	*17 March 2006*
			Circulation of Panel Report	*8 June 2007*
Respondent	*Mexico*		Circulation of AB Report	*NA*
			Adoption	*24 July 2007*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The definitive anti-dumping duties imposed by Mexico on imports of steel pipes and tubes from Guatemala and the investigation leading thereto.

- **Product at issue:** Various steel pipes and tubes.

2. SUMMARY OF KEY PANEL FINDINGS

A. The Panel found that the Investigating Authority "IA" acted inconsistently with Mexico's obligations under:

- **ADA Arts. 5.3 and 5.8 (initiation and subsequent investigation):** in its assessment of the sufficiency of evidence of dumping and injury to justify the initiation of the investigation and, consequently, its failure to reject the application in the absence of sufficient evidence to justify proceeding with the investigation.

- **ADA Arts. 3.1, 3.2, 3.4 and 3.5 (injury determination):** (i) in relying, without sufficient justification, on injury data limited to three six-month periods over three consecutive years in its determination of injury and causation; (ii) by failing to adequately analyse and properly attribute injury to the domestic industry caused by a decrease in exports; and (iii) to conduct an objective examination on the basis of positive evidence of injury to the domestic industry (as defined in Art. 4.1) by failing to gather and analyse representative and consistent data pertaining to the domestic industry as a whole, in particular, data concerning the financial indicators.

- **ADA Arts. 3.1 and 3.2 (injury determination):** to conduct an objective examination of positive evidence by using a methodology premised on a limited sample and unsubstantiated assumptions in estimating the volume of imports form sources other than Guatemala.

- **ADA Art. 6.8 and Annex II (evidence – facts available), in particular, (i) Art. 6.8 and paras. 3 and 5 of Annex II** in deciding to reject the entirety of the data that the exporter had submitted and relying instead on facts available; **(ii): Art. 6.8 and para. 6 of Annex II** by failing to inform the exporter that its data were being rejected and the reasons therefore, and by failing to provide the exporter with an opportunity to submit further explanations; and **(iii) para. 7 of Annex II** because in applying as facts available the normal value evidence provided by the applicant and used for the initiation of the investigation, the IA failed to use "special circumspection".

B. The Panel found that Guatemala failed to establish that the IA acted inconsistently with Mexico's obligations under:

- **ADA Arts. 3.1, 3.2, 3.4 or 3.5 (injury determination):** (i) by relying on data from a period that terminated eight months prior to the initiation and two years prior to the imposition of the definitive measures; (ii) in its consideration of costs for the injury and causation analysis;

- **ADA Arts. 3.1, 3.2, 3.4, 3.5 or 5.4 (injury determination)** concerning the data used for its injury analysis in light of the changes of the product definition to include 4"-6" product and certain structural tubing;

- **ADA Art. 6.5 or para. 6.5.1 (evidence – confidential information):** in its treatment of confidential information in this case. It also found that Guatemala failed to make a prima facie case of inconsistency with Arts. 3.1 and 3.2 concerning the price effects of imports from Guatemala.

3. OTHER ISSUES

- The Panel applied judicial economy with regard to some of Guatemala's claims.

- The Panel suggested that Mexico revoke the anti-dumping measures.

1 *Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala*

BRAZIL – RETREADED TYRES[1]
(DS332)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*GATT Arts. I:1, III:4, XI:1, XIII:1, XX(b), XX(d) and XXIV*	Establishment of Panel	*28 November 2005*
			Circulation of Panel Report	*12 June 2007*
Respondent	*Brazil*		Circulation of AB Report	*3 December 2007*
			Adoption	*17 December 2007*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Brazil's import prohibition on retreaded tyres (Import Ban); (ii) fines on importing, marketing, transportation, storage, keeping or warehousing of retreaded tyres; (iii) Brazilian state law restrictions on the marketing of imported retreaded tyres; (iv) exemptions of retreaded tyres imported from Mercosur countries from the Import Ban and fines (MERCOSUR exemption).

- **Product at issue:** Retreaded tyres.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **GATT Art. XI (prohibition on quantitative restrictions):** The Panel concluded that Brazil's import prohibition on retreaded tyres and the fines imposed by Brazil on importation, marketing, transportation, storage, keeping or warehousing of retreaded tyres were inconsistent with Art. XI:1.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that the measure maintained by the Brazilian State of Rio Grande do Sul in respect of retreaded tyres, Law 12.114, as amended by Law 12.381, was inconsistent with Art. III:4.

- **GATT Art. XX(b) (general exceptions – necessary to protect human life or health):** The Appellate Body upheld the Panel's finding that the Import Ban was provisionally justified as "necessary" within the meaning of Art. XX(b). The Panel "weighed and balanced" the contribution of the Import Ban to its stated objective against its trade restrictiveness, taking into account the importance of the underlying interests or values. The Panel correctly held that none of the less trade-restrictive alternatives suggested by the European Communities constituted "reasonably available" alternatives to the Import Ban.

- **The "chapeau" of GATT Art. XX (general exceptions):** The Appellate Body reversed the Panel's findings that the MERCOSUR exemption and imports of used tyres through court injunctions (i) would not result in the Import Ban being applied in a manner that constituted "arbitrary discrimination", and (ii) would lead to "unjustifiable discrimination" and a "disguised restriction on international trade" only to the extent that they result in import volumes that would significantly undermine the achievement of the objective of the Import Ban. The Appellate Body determined that the assessment of whether discrimination is arbitrary or unjustifiable should be made in the light of the objective of the measure, and found that the MERCOSUR exemption, as well as the imports of used tyres under court injunctions, had resulted in the Import Ban being applied in a manner that constituted arbitrary or unjustifiable discrimination and a disguised restriction on international trade within the meaning of the chapeau of Art. XX. The Appellate Body thus upheld, albeit for different reasons, the Panel's findings that the Import Ban was not justified under Art. XX.

- **GATT Art. XX(d) (exceptions – necessary to secure compliance with laws):** Having found that the Import Ban could not be justified by Art. XX(b), the Panel also found that the fines could not be justified under Art. XX(d) since they did not fall within the scope of measures that were designed to secure compliance with "laws or regulations that are *not themselves inconsistent* with" some provision of the GATT.

1 *Brazil – Measures Affecting Imports of Retreaded Tyres*
2 *Other issues addressed: panel's discretion as trier of the facts (DSU Art. 11); judicial economy.*

TURKEY – RICE[1]
(DS334)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. III:4, X:1, X:2 and XI:1* *AA Art. 4.2* *Licensing Ag Arts. 1.4(a), 1.4(b), 1.6, 3.5(a), 3.5(e), 3.5(f), 3.5(h), 5.1, 5.2(a), 5.2(b), 5.2(c), 5.2(d), 5.2(e), 5.2(g), 5.2(h) and 5.41* *TRIMs Art. 2.1; Annex, para. 1(a)*	Establishment of Panel	*17 March 2006*
			Circulation of Panel Report	*21 September 2007*
Respondent	*Turkey*		Circulation of AB Report	*NA*
			Adoption	*22 October 2007*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Turkey's restrictions on the importation of rice, in particular: (i) the decision, during specific periods of time commencing September 2003 to deny or fail to grant Certificates of Control to import rice at the most-favoured-nation tariff rates; (ii) the domestic purchase requirement incorporated in Turkey's TRQ regime (until July 2006), in order to import rice at lower tariff rates; (iii) the discouragement of the full utilization of tariff rate quotas through their administration; (iv) the combined effect of measures (i) and (iii); and (v) Turkey's administration of its import regime for rice, more generally.

- **Product at issue:** Rice, including paddy, husked and white rice, imported by Turkey.

2. SUMMARY OF KEY PANEL FINDINGS

- **AA Art. 4.2 (quantitative restrictions):** The Panel found that Turkey had denied or failed to grant licences to import rice at the most-favoured-nation tariff rates, i.e. outside the tariff rate quotas. This was found by the Panel to be a quantitative import restriction and discretionary import licensing, within the meaning of footnote 1 to Art. 4.2.[2]

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that Turkey's requirement that importers purchase domestic rice in order to be allowed to import rice under the tariff rate quotas, was inconsistent with Art. III:4, because it offered less favourable treatment to imported rice than to like domestic rice. [The Panel did not make a recommendation in regard to this measure, considering that it was no longer in force and that Turkey had declared its intention not to reintroduce the measure.]

1 *Turkey – Measures Affecting the Importation of Rice*

2 In making this finding, the Panel did not consider it necessary to assess whether the relevant Turkish documents constituted import licences as argued by the United States.

US – SHRIMP (ECUADOR)[1]
(DS335)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Ecuador*	*ADA Art. 2.4.2*	Establishment of Panel	*19 June 2006*
			Circulation of Panel Report	*30 January 2007*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*20 February 2007*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** United States' final anti-dumping measures including margins of dumping calculated using "zeroing" under the weighted-average-to weighted-average methodology.
- **Product at issue:** Certain frozen warmwater shrimp from Ecuador.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4.2 (dumping determination – zeroing):** The Panel found that the United States Department of Commerce "USDOC" acted inconsistently with the first sentence of Art. 2.4.2 by using "zeroing" in calculating margins of dumping under the weighted-average-to-weighted-average methodology in the context of an original investigation.

3. OTHER ISSUES

- **Uncontested claims**: The Panel considered that, although the respondent did not contest any of the complainant's claims, its responsibilities remained as set forth under DSU Art. 11, i.e. to make "an objective assessment of the matter before it". With respect to the burden of proof, the Panel considered that merely because the respondent did not object to the claims did not absolve the claimant from having to make a prima facie case of violation.
- **Status of Appellate Body reports**: The Panel followed the reasoning of the Appellate Body in *US – Softwood Lumber V*, a dispute involving a similar claim against a similar measure. The Panel noted that while it was not, strictly speaking, bound by the reasoning of adopted Appellate Body reports, such reports create legitimate expectations among WTO Members.

1 *United States – Anti-Dumping Measure on Shrimp from Ecuador*

JAPAN – DRAMS (KOREA)[1]
(DS336)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*ASCM Arts. 1, 12, 14, 15 and 19* *DSU Art. 11*	Establishment of Panel	*19 June 2006*
			Circulation of Panel Report	*13 July 2007*
Respondent	*Japan*		Circulation of AB Report	*28 November 2007*
			Adoption by the DSB	*17 December 2007*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Japanese investigation of and final countervailing duty order on imports from Korea.
- **Product at issue:** Dynamic random access memories (DRAMs) manufactured Hynix of Korea.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Art. 1.1(a)(1)(iv) (definition of a subsidy – entrustment or direction):** Having rejected one of the intermediary findings relied on by the Japanese investigating authorities (JIA) for finding "entrustment and direction" by the Korean government (namely, the commercial reasonableness of some Hynix creditors participating in certain restructuring transactions in December 2002), the panel found that the JIA's overall determination was thereby flawed. The Appellate Body found that the Panel had failed to comply with the required standard of review under DSU Art. 11 because it did not examine, as did the JIA, whether the evidence, in its totality, could reasonably support a finding of "entrustment or direction".
- **ASCM Arts. 1.1(b) and 14 (definition of a subsidy – benefit benchmark and methods for calculating benefit):** Regarding the benchmark for determining whether a "benefit" to Hynix had been conferred by debt-restructuring programmes in October 2001 and December 2002, the Panel considered that the JIA had identified an "insider investor" standard but nonetheless applied an "outsider investor" standard. The Panel also found that, in assigning a zero value to shares exchanged by Hynix in "debt-to-equity" swaps with its creditors, the JIA considered the issue from the perspective of Hynix's creditors, rather than from that of the recipient, Hynix, as required under Arts. 1.1(b) and 14, and thereby overstated the amount of benefit to Hynix. The Appellate Body did not consider that there were different standards applicable to inside investors and outside investors; instead the Appellate Body found that there is but one standard: the market standard. Nonetheless, the Appellate Body upheld, albeit for different reasons, the Panel's finding on the benefit determination.
- **ASCM Arts. 12. 7 and 12. 9 (interested parties):** The Panel rejected Korea's claim that only entities that "have an interest in the outcome of a countervailing duty proceeding" can be interested parties within the meaning of Arts. 12.7 and 12.9. In upholding the Panel, the Appellate Body explained that, although not unfettered, investigating authorities have some discretion which entities to designate as interested parties for purposes of carrying out an investigation. In the circumstances of the present case, the JIA did not overstep these bounds.
- **ASCM Arts. 15.5 and 19.1 (injury determination – causation):** The Appellate Body agreed with the Panel that Arts. 15.5 and 19.1 did not impose an additional requirement on an investigating authority to examine the "effects of the subsidies" as distinguished from the "effects of the subsidized imports", in addition to the requirement not to attribute injury caused by other factors to subsidized imports.

1 *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea*

2 Other issues addressed: ASCM Art. 1.1(a)(1)(i) (direct transfer of funds); ASCM Arts. 1.1(b) and 14 (benefit; methods used); ASCM Art. 2 (specificity); ASCM Art. 19.4 (allocation of benefit and levying of countervailing duty); ASCM Art. 12.7 (facts available); Panel's treatment of business confidential information; DSU Art. 11.

EC – SALMON (NORWAY)[1]
(DS337)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Norway*	*GATT Art. VI:2* *ADA Arts. 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 2.2.2(iii), 2.6, 3.1, 3.2, 3.4, 3.5, 3.6, 4.1, 5.4, 6.2, 6.4, 6.8, 6.9, 6.10, 9.1, 9.2, 9.3, 9.4(i), 9.4(ii), 12.2 and 12.2.2; Annex II paras. 1, 3 and 6*	Establishment of Panel	*22 June 2006*
Respondent	*European Communities*		Circulation of Panel Report	*16 November 2007*
			Circulation of AB Report	*NA*
			Adoption	*15 January 2008*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** EC definitive anti-dumping measures on imports of farmed salmon from Norway.
- **Product at issue:** Farmed salmon.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Arts. 2.1, 2.6 and 4.1 (dumping determination – product and domestic industry):** The Panel concluded that Arts 2.1 and 2.6 did not require the European Communities to have defined the product under consideration to include only products that are all "like", and do not establish an obligation on investigating authorities to ensure that where the product under consideration is made up of categories of products, all such categories of products are individually "like" each other, thereby constituting a single "product". The Panel found that the exclusion of certain categories of economic operators from the definition of the domestic industry resulted in an investigation concerning a domestic industry that did not comport with the definition set forth in Art. 4.1 and found consequential violations of Arts 5.4, 3.1, 3.2 and 3.5. The Panel concluded that sampling is not prohibited in injury analysis.
- **ADA Arts. 2.1, 2.2, 2.2.1.1, 2.2.2, 2.2.2(iii), 6.8, 6.10 and 9.4(i) (dumping determination – evidence, and imposition of anti-dumping duties):** The Panel considered 27 separate claims concerning technical issues. The Panel upheld 14 of Norway's claims under Arts. 2.2, 2.2.1.1, 2.2.2, 2.2.2(iii), 6.8 and paras. 1 and 3 of Annex II, 6.10, and 9.4(i). The Panel rejected eight of Norway's claims under Arts. 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 6.8, 9.4(i) and para. 1 of Annex II, 6.10. No findings were made in respect of five additional claims. The Panel's rulings clarified, *inter alia*, the investigating authority's (IA) power to limit its investigation to a sample, rules governing determination of constructed normal value including various cost adjustments, rules governing determination of the amounts for SG&A costs and profits, reliance on "facts available", and the basis for determining the margins of dumping for non-investigated co-operating companies.
- **ADA Arts. 3.1, 3.2, 3.4 and 3.5 (injury determination – causation):** The Panel considered claims and found violations under Arts. 3.1, 3.2, 3.4 and 3.5 despite having concluded that that the determinations were necessarily flawed as a result of the violations already found. Its rulings clarified, *inter alia*, the treatment of certain imports as dumped for purposes of injury analysis, the obligation on the IA to consider arguments presented, and the requirement to address other causes of injury.
- **ADA Arts. 9.1, 9.2, 9.3, 9.4(ii) and GATT Art. VI:2 (imposition of anti-dumping duties):** The Panel found that the European Communities had erred in its calculation of the amounts of minimum import prices imposed, thus failing to ensure that anti-dumping duties were collected in the "appropriate amounts", in violation of Arts 9.2 and 9.4(ii). The Panel rejected additional claims under ADA Arts 9.1, 9.2 and 9.3 and GATT Art. VI:2.
- **ADA Arts. 6.2, 6.4, 6.9, 12.2 and 12.2.2 (evidence – notification):** The Panel upheld Norway's claim that the IA had acted inconsistently with Art. 6.4 by failing to provide timely opportunities for interested parties to see certain information before the IA, and rejected claims alleging a right to see confidential information under Art 6.4, disclosure of essential facts under Arts 6.2 and 6.9 and the contents of public notices under Arts 12.2 and 12.2.2. The Panel made no finding on additional claims under Arts 6.2, 12.2 and 12.2.2.

1 *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*

CHINA – AUTO PARTS[1]
(DS339, 340, 342)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*United States, European Communities, Canada*	*GATT Arts. II, III:2, III:4 and XX(d)* *China's Accession Working Party Report*	Establishment of Panel	*26 October 2006*
			Circulation of Panel Report	*18 July 2008*
Respondent	*China*		Circulation of AB Report	*15 December 2008*
			Adoption	*12 January 2009*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Three legal instruments enacted by China[2] which impose a 25 per cent "charge"[3] on imported auto parts "characterized as complete motor vehicles" based on specified criteria and prescribe administrative procedures associated with the imposition of that charge.

- **Product at issue:** Imported auto parts (including CKD (completely knocked down) and SKD (semi-knocked down) kits).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **"Ordinary customs duty" vs "internal charge"**: As a preliminary "threshold" issue, the Appellate Body upheld the Panel's characterization of the charge as an "internal charge" (Art. III:2), rather than as an "ordinary customs duty" (first sentence, Art. II:1(b)), because, after considering the characteristics of the measure, the Panel had properly ascribed legal significance to, *inter alia*, the fact, that the obligation to pay the charge accrues *internally,* after auto parts enter China.

- **GATT Arts. III:2 (national treatment – taxes and charges) and III:4 (national treatment – domestic laws and regulations):** The Appellate Body upheld the Panel's findings that the measures violated: (i) Arts. III:2 because they imposed an internal charge on imported auto parts that was not imposed on like domestic auto parts; and (ii) Art. III:4 because they accorded imported parts less favourable treatment than like domestic auto parts by, *inter alia*, subjecting only imported parts to additional administrative procedures.

- **GATT Arts. II:1(a) and (b) (schedules of concessions – ordinary customs duty):** Alternatively, the Panel found that, even if the "charge" were an ordinary customs duty, it was still inconsistent with Art. II:1(a) and (b) because it corresponded to the tariff rate for motor vehicles (25 per cent), in excess of the applicable tariff rate for auto parts (10 per cent) under China's Schedule. The Panel rejected China's argument that a rule under the HS would allow auto parts imported in "multiple shipments", which are subsequently assembled into a complete vehicle, to be classified as complete motor vehicles. The Appellate Body found it unnecessary to review these alternative findings given that, the Panel had made them, *inter alia,* on the assumption that it had erred in its resolution of the threshold issue, which the Appellate Body held it had not.

- **GATT Art. II:1(b) (schedules of concessions – CKD and SKD kits):** The Panel rejected the complainants' claim that China violated Art. II:1(b) by classifying CKD and SKD kits as motor vehicles because the term "motor vehicles" in China's Schedule could be interpreted to include CKD and SKD kits.

- **GATT Arts. XX(d) (exceptions – necessary to secure compliance with laws):** The Panel rejected China's defence of its measures under Art. XX(d) because China had not proven that the measures were "necessary to secure compliance" with its Schedule.

- **Para. 93 of China's Accession Working Party Report**: The Appellate Body reversed the Panel's finding that the measures were inconsistent with China's commitment not to apply a tariff rate exceeding 10 per cent if it created separate tariff lines for CKD and SKD kits. The Appellate Body held that the Panel had erred in construing the measures as imposing an ordinary customs duty, when in the Panel's earlier analysis of the complainants' claims with respect to GATT Art. III, it treated the charge as an internal charge.[4]

1 *China – Measures Affecting Imports of Automobile Parts*
2 Policy Order 8, Decree 125 and Announcement 4.
3 The amount of the charge is equivalent to the average tariff rate applicable to complete motor vehicles under China's Schedule and is higher than the average 10% tariff rate applicable to auto parts.
4 In the light of these findings, the Appellate Body did not find it necessary to rule on China's other preliminary claim that the United States and Canada had not made out a *prima facie* case of inconsistency; nor on the substance of China's appeal of the Panel's findings under para. 93.

MEXICO – OLIVE OIL[1]
(DS341)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Arts. 1, 11, 12, 13, 14 and 16* *AA Art. 13*	Establishment of Panel	*23 January 2007*
			Circulation of Panel Report	*4 September 2008*
Respondent	*Mexico*		Circulation of AB Report	*NA*
			Adoption	*21 October 2008*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Countervailing duties on olive oil from the European Communities.
- **Product at issue:** Olive oil from the European Communities.

2. SUMMARY OF KEY PANEL FINDINGS

- **ASCM Art. 11.11 (duration of investigation):** Economía (the investigating authority) acted inconsistently with Art. 11.11, because the investigation exceeded the 18-month maximum time-limit set forth therein.
- **ASCM Art. 12.4 (evidence – disclosure of information):** Economía failed to comply with the requirement in Art. 12.4.1 to require interested parties to submit non-confidential summaries of confidential information, or in exceptional circumstances, to explain why summarization is impossible. Blanket statements are insufficient for such explanations.
- **ASCM Art. 12.8 (evidence – disclosure of essential facts):** The European Communities did not establish that Economía failed to disclose the essential facts as required by Art. 12.8. The European Communities did not identify any essential facts (i.e., those on which the determinations of injury, subsidization, or causation were based) that were not disclosed in sufficient time for interested parties to defend their interests.
- **ASCM Art. 13.1 (consultations – invitation prior to initiation of investigation):** The European Communities did not establish that Mexico infringed the requirement in Art. 13.1 to invite the exporting Members for consultations prior to initiation. Economía issued the invitation prior to initiation, and the obligation is to *invite* the Member prior to initiation, not to hold consultations, and not to issue the invitation in sufficient time to allow consultations to be held prior to initiation.
- **ASCM Arts. 1 (definition of a subsidy) and 14 (calculation of amount of subsidy):** Arts. 1 or 14 do not contain the requirement to conduct a "pass-through" analysis when a subsidized product is an input to the investigated product and the producers of the respective products are unrelated European Communities. Even if there were such a requirement in these provisions, Economía's conclusion was reasonable that under the facts of the investigation, no pass-through analysis was required.
- **ASCM Art. 16.1 (definition of domestic industry):** The definition of "domestic industry" set forth in Art. 16.1 does not require that the applicant be producing at or near the date of filing its application or during the period of investigation for subsidization due restraint and Economía's conclusion that the applicant was the "domestic industry" was reasonable. The European Communities thus did not establish that the initiation and the injury determination were flawed because there was no domestic industry.
- **AA Art. 13(b): (i) (due restraint):** Art. 13 does not prohibit initiation or imposition of countervailing measures premised on "material retardation", and even if such a prohibition existed, in fact this was not the basis of the initiation or the injury determination. The European Communities also failed to establish that Economía did not exercise due restraint in initiating the investigation.

3. OTHER ISSUES

- Consistent with prior panels *(Mexico – Pipe and Tubes, Mexico – Anti-dumping Measures on Rice),* the Panel found that Mexico's use of three consecutive nine-month periods for the injury analysis was inconsistent with the obligation in ASCM Art. 15.1 to make an objective examination based on positive evidence.
- The Panel also found that Economía had provided reasoned and adequate explanations as to why it concluded that there were no domestic producers other than the applicant and no factors other than the subsidized imports which could be causing injury.

1 *Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities*

US – SHRIMP (THAILAND), US – CUSTOMS BOND DIRECTIVE[1] (DS343, 345)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Thailand, India*	*ADA Art. 18.1* *GATT Ad Art. VI paras. 2 & 3 and Art. XX(d)*	Establishment of Panel	*26 October 2006 (Thailand)* *21 November 2006 (India)*
			Circulation of Panel Report	*29 February 2008*
Respondent	*United States*		Circulation of AB Report	*16 July 2008*
			Adoption	*1 August 2008*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The enhanced continuous bond requirement (EBR).
- **Product at issue:** Frozen warmwater shrimp from India and Thailand.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 18.1 and GATT Ad Art. VI, paras. 2 and 3**:

  ("Specific action against dumping"): The Panel found that the EBR, as applied, constituted "specific action against dumping". The Appellate Body did not express a view on this finding as it was not appealed.

  ("Temporal scope"): The Appellate Body followed the Panel's approach in considering first whether the EBR had been taken "in accordance with the provisions of the GATT 1994", in particular, GATT Ad Art. VI, paras. 2 and 3. The Appellate Body preliminarily determined the temporal scope of the Ad Note, and agreed with the Panel that the phrase "pending final determination of the facts in any case of suspected dumping" authorizes the taking of reasonable security after the imposition of an anti-dumping duty order, pending the determination of the final liability for the payment of the anti-dumping duty.

  ("Reasonable security"): The Appellate Body developed a two-step test for determining the reasonableness of security. First, there should be a rational determination, based on sufficient evidence, that the margins of dumping of exporters are likely to increase, so that there is significant additional liability to be secured. Next, there must be a determination of whether the security is commensurate with the magnitude of the non-payment risk. In this case, the Appellate Body upheld the Panel's conclusion that the EBR was not reasonable because the evidence was insufficient to demonstrate that there was a likelihood of an increase in margins of dumping for subject shrimp.

- **GATT Art. XX(d) (exceptions – necessary to secure compliance with laws):** The Appellate Body upheld the Panel's finding that the EBR was not "necessary" to secure compliance with certain United States "laws and regulations" governing the final collection of anti-dumping duties since the United States had not demonstrated that the margins of dumping were likely to increase resulting in significant additional unsecured liability. Consequently, the Appellate Body did not find it necessary to express a view whether a defence under Art. XX(d) was available in respect of a measure that had been found to be inconsistent with ADA Art. 18.1 and GATT Ad Art. VI, paras. 2 and 3.

3. OTHER ISSUES[2]

- **Terms of reference**: The Appellate Body upheld the Panel's decision not to include in its terms of reference two United States' provisions mentioned in India's panel request, but not in its request for consultations, because their inclusion would have "expanded the scope of the dispute".
- **Standard of review (DSU Art. 11):** The Appellate Body found that the Panel did not breach Art. 11 when, in considering the United States' defence under GATT Art XX(d), it included among the "laws and regulations" with which the EBR was designed to secure compliance, not only laws and regulations cited by the United States, but also those cited by Thailand and India.

1 *United States – Measures Relating to Shrimp from Thailand, and United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*

2 Other issues addressed: ADA Arts. 1, 9, 18.1 and 18.4 and ASCM Arts. 10, 19, 32.1 and 32.5; burden of proof (uncontested claim (DS343)).

US – STAINLESS STEEL (MEXICO)[1]
(DS344)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Mexico*	*ADA Art. 9.3* *GATT Art. VI:2* *DSU Art. 11*	Establishment of Panel	*26 October 2006*
			Circulation of Panel Report	*20 December 2007*
Respondent	*United States*		Circulation of AB Report	*30 April 2008*
			Adoption	*20 May 2008*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US application of the so-called "zeroing methodology" in anti-dumping proceedings as well as the zeroing methodology as such.

- **Product at issue:** Stainless steel sheet and strip in coils.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 9.3 and GATT Art. VI:2 (imposition and collection of anti-dumping duties):** Reversing the Panel, the Appellate Body found that zeroing in administrative reviews is, as such, inconsistent with GATT Art. VI:2 and ADA Art. 9.3 because it results in the levying of anti-dumping duties that exceed the exporter's or foreign producer's margin of dumping – which operates as a ceiling for the amount of anti-dumping duties that can be levied in respect of the sales made by an exporter. The Appellate Body saw no basis in GATT Arts. VI:1 and VI:2 or in ADA Arts. 2 and 9.3 for disregarding the results of comparisons where the export price exceeds the normal value when calculating the margin of dumping for an exporter or foreign producer. Based on the same reasoning, the Appellate Body also found that the United States acted inconsistently with its obligations under GATT Art. VI:2 and ADA Art. 9.3 by using simple zeroing in five specific administrative reviews.

- **Status of Appellate Body reports:** The Appellate Body recalled that Appellate Body reports are not binding except with respect to resolving the particular dispute between the parties. The Appellate Body emphasized, however, that this does not mean that subsequent panels are free to disregard the legal interpretations and reasoning contained in previous Appellate Body reports that have been adopted by the DSB. The legal interpretations embodied in adopted panel and Appellate Body reports become part and parcel of the *acquis* of the WTO dispute settlement system. The Appellate Body added that ensuring "predictability" in the dispute settlement system, as contemplated in DSU Art. 3.2, implies that, absent cogent reasons, an adjudicatory body will resolve the same legal question in the same way in a subsequent case. The Appellate Body underscored that the Panel's failure to follow previously adopted Appellate Body Reports addressing the same issues undermines the development of a coherent and predictable body of jurisprudence clarifying Members' rights and obligations under the covered agreements as contemplated under the DSU. Although the Appellate Body said it was deeply concerned about the Panel's decision to depart from well-established Appellate Body jurisprudence clarifying the interpretation of the same legal issues, nevertheless, having reversed all of the Panel's findings that had been appealed, the Appellate Body did not make an additional finding that the panel also failed to discharge its duties under DSU Art. 11.

1 *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*

US – CONTINUED ZEROING[1]
(DS350)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*DSU Arts. 6.2 and 11* *ADA Arts. 2.4.2, 9.3, 11.3 and 17.6(ii)* *GATT Art. VI:2*	Establishment of Panel	*4 June 2007*
			Circulation of Panel Report	*1 October 2008*
Respondent	*United States*		Circulation of AB Report	*4 February 2009*
			Adoption	*19 February 2009*

1. MEASURE AT ISSUE

- **Measure at issue:** The European Communities challenged as a measure the ongoing application by the United States of anti-dumping duties resulting from anti-dumping orders in 18 specific cases, as calculated with the use of zeroing. The European Communities also challenged 52 separate determinations made by the United States Department of Commerce, including 37 determinations made in the context of periodic reviews, 11 made in the context of sunset reviews, and four in the context of original investigations.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ADA Art. 9.3, GATT Art. VI:2 and ADA Art. 11.3 (ongoing application of anti-dumping duties calculated with zeroing):** The Appellate Body reversed the Panel's finding that the European Communities failed in its request for panel establishment to identify the measure in 18 anti-dumping cases. The Appellate Body found that the panel request identified the specific measures at issue as the continued application of anti-dumping duties calculated with the use of the zeroing methodology in each of the 18 cases listed in the annex to the panel request. The Appellate Body considered these measures to be neither rules nor norms of general application, nor specific instances of application of the zeroing methodology. Rather, they constituted ongoing conduct, which the European Communities was not precluded from challenging in WTO dispute settlement. With respect to four of the 18 cases, the Appellate Body completed the analysis and found that the continued application of anti-dumping duties was inconsistent with ADA Art. 9.3 and GATT Art. VI:2 to the extent that duties are maintained at a level calculated with the use of zeroing, and inconsistent with ADA Art. 11.3 to the extent that sunset review determinations rely upon a margin of dumping calculated with zeroing.

- **ADA Art. 9.3, GATT Art. VI:2 (imposition and collection of anti-dumping duties):** The Panel found that the United States acted inconsistently with ADA Art. 9.3 and GATT Art. VI:2 by applying simple zeroing in 29 specific periodic reviews. The Appellate Body upheld the Panel's findings on appeal.

- **ADA Art. 17.6(ii) (standard of review):** The Appellate Body examined ADA Art. 17.6(ii), which addresses the question of "permissible interpretations" under the ADA. The Appellate Body explained that, where the application of the customary rules of interpretation gives rise to an interpretative range under the first sentence of Art. 17.6(ii), the function of the second sentence is to give effect to the interpretative range, rather than to require the interpreter to pursue further the interpretative exercise to the point where only one interpretation within that range may prevail.

- **DSU Art. 11 (standard of review):** The Appellate Body held that the Panel acted inconsistently with Art. 11 in finding that the European Communities had failed to demonstrate that simple zeroing was used in seven of the specific periodic reviews at issue. Consequently, the Appellate Body reversed the Panel's finding and, with respect to five of these seven reviews, completed the analysis and found that the United States had acted inconsistently with ADA Art. 9.3 and GATT Art. VI:2 by applying simple zeroing in these reviews.

- **ADA Art. 11.3 (review of anti-dumping duties):** The Appellate Body upheld the Panel's finding that the United States acted inconsistently with ADA Art. 11.3 in eight particular sunset reviews by relying on margins of dumping calculated in previous proceedings with the use of zeroing.

1 *India – Additional and Extra-Additional Duties on Imports from the United States*
2 Other issues addressed: ADA Arts. 1, 9, 18.1, 18.4 and ASCM Arts. 10, 19, 32.1 and 32.5; burden of proof uncontested claim (DS343).

US – LARGE CIVIL AIRCRAFT (2ND COMPLAINT)[1]
(DS353)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Communities*	*ASCM Arts. 1, 2, 3.1(a), 4.7, 5(c) and 6.3; Annex V* *DSU Arts. 6.2 and 11*	Establishment of Panel	*17 February 2006*
			Circulation of Panel Report	*31 March 2011*
Respondent	*United States*		Circulation of AB Report	*12 March 2012*
			Adoption	*23 March 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Subsidies allegedly granted by US federal, state and local governments to Boeing large civil aircraft, including among others (i) payments, access to government facilities, equipment and employees, allocation of intellectual property rights, and reimbursement of independent research and development (R&D) costs under R&D contracts and agreements between Boeing and the National Aeronautics and Space Administration (NASA), the United States Department of Defence (USDOD) and the Department of Commerce; (ii) various federal, state and local tax measures; and (iii) infrastructure-related measures.

- **Product at issue:** Large civil aircraft developed, produced and sold by Boeing.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies):** The Panel upheld the EC claim that FSC-related subsidies provided to Boeing were inconsistent with Art. 3.1(a), but rejected the EC claim that certain Washington State tax measures were contingent upon export performance. These findings were not appealed.

- **ASCM Arts. 5(c) and 6.3 (serious prejudice – displacement, lost sales and price suppression):** The Appellate Body agreed with the Panel, although for different reasons, that the NASA and USDOD measures enabled Boeing to launch its technologically advanced 787 in 2004, thereby causing significant lost sales in sales campaigns in Australia, Iceland, Kenya and Ethiopia; threat of displacement and impedance in Australia; and significant price suppression. With respect to the tied tax subsidies, the Appellate Body reversed the Panel's findings of serious prejudice and completed the analysis to make a more limited finding that these measures caused significant lost sales to Airbus in two sales campaigns in the 100-200 seat LCA market. The Appellate Body further conducted a collective assessment of two groups of subsidies namely, the "remaining subsidies" and tied tax subsidies. The Appellate Body found that the price effects of the industrial revenue bonds issued by the City of Wichita (one of the remaining subsides) complemented and supplemented the price effects of the tied tax subsidies, thereby causing serious prejudice within the meaning of Art. 6.3(c) in the 100-200 seat LCA market.

- **ACSM Arts. 4.7 (recommendation to withdraw a prohibited subsidy) and 7.8 (remedies – to remove adverse effects or withdraw the subsidy):** Having found that the recommendations in prior related cases (see *US – Tax Treatment for "Foreign Sales Corporations"*) remained operative, the Panel refrained from making any new recommendation under Art. 4.7 in respect of the FSC-related subsidies provided to Boeing. The Appellate Body took note of this, and stated that to the extent it upheld the Panel's findings with respect to actionable subsidies that caused adverse effects or such findings had not been appealed, the Panel's recommendation pursuant to Art. 7.8 stands. Art. 7.8 provides in relevant part that "the Member granting each subsidy found to have resulted in such adverse effects, 'take appropriate steps to remove the adverse effects or … withdraw the subsidy'".

3. OTHER ISSUES[2]

- **The initiation of procedures under ASCM Annex V:** The Appellate Body interpreted para. 2 of Annex V to mean that the DSB's initiation of the information-gathering process in a serious prejudice dispute occurs automatically when there is a request for its initiation and the DSB establishes a panel; there is no requirement of positive consensus to initiate such a procedure.

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

2 Other issues addressed: existence of a financial contribution (ASCM Art. 1.1(a)(1)); existence of a benefit (ASCM Art. 1.1(b)); specificity of subsidies (ASCM Art. 2); enhanced third party rights (DSU Art. 10); failure to identify measures in the panel request (DSU Art. 6.2); open Panel meetings and Appellate Body hearings; additional procedures to protect confidential information at the panel and appellate stage; Working Procedures for Appellate Review (sufficiency of Notice of Other Appeal, time-frame for submissions, written questions to participants and withdrawal of Point of Appeal); DSU Art. 17.5 (timing and circulation of Report); Panel's use of an arguendo assumption; duty of a panel to seek further information in certain circumstances (DSU Art. 13); appeals on issues involving application of the law to the facts; objective assessment of the matter (DSU Art. 11).

US – LARGE CIVIL AIRCRAFT (2ND COMPLAINT) (ARTICLE 21.5 – EU)[1] (DS353)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*ASCM Agreement Arts. 1.1(a)(1), 1.1(b), 2.1(c), 2.2, 5, 6.3 and 7.8* *DSU Art. 11*	Referred to the Original Panel	*23 October 2012*
			Circulation of Panel Report	*9 June 2017*
Respondent	*United States*		Circulation of AB Report	*28 March 2019*
			Adoption	*11 April 2019*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- US federal, state and local governments' alleged subsidies to its large civil aircraft industry through, *inter alia*: (i) NASA aeronautics research and development (R&D) measures (ii) Foreign sales corporation/extraterritorial income (FSC/ETI) tax concessions; (iii) measures applied by the State of Washington and its municipalities; (iv) measures applied by the State of South Carolina and its municipalities; and (v) City of Wichita's industrial revenue bonds (IRBs).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 1.1(a)(1) (definition of a subsidy – financial contribution)**: The Appellate Body found that the Panel acted inconsistently with DSU Art. 11 and reversed its finding that, assuming *arguendo* the payments and access to USDOD facilities, equipment, and employees provided to Boeing through the USDOD procurement contracts were to involve financial contributions, the European Union had not established that they conferred a benefit on Boeing.

- **ASCM Art. 1.1(a)(1)(ii) (revenue foregone – FSC/ETI tax concessions)**: The Appellate Body found that the Panel erred in its assessment of revenue forgone since its determination focused on the use of tax concessions by eligible taxpayers rather than on whether the government relinquished an entitlement to raise revenue. It completed the legal analysis to conclude that, to the extent Boeing remained entitled to tax concessions in the postimplementation period, the US had not withdrawn the FSC/ETI subsidies for Boeing.

- **ASCM Art. 2.1(c) (specificity – City of Wichita IRBs)**: The Appellate Body found that the Panel erred in finding that no disparity existed between the expected and actual distribution of the subsidy and reversed the Panel's finding that the European Union had failed to establish that the tax abatements provided through IRBs involved specific subsidies.

- **ASCM Art. 2.1(c), second sentence (specificity – South Carolina economic development bonds(EDBs))**: The Appellate Body found that the Panel: (i) did not implicitly interpret the term "limited number" as "one" or "fewer than three", but rather considered that the European Union had not met its burden of proof as to whether the EDBs had been used by only a "limited number" of certain enterprises; erred by taking into account three specific entities in its analysis without having established that they constitute "certain enterprises"; (ii) and (iii) erred by excluding evidence potentially relevant to the assessment of the existence of "predominant use" on the basis that it was more relevant to the assessment of another factor under Art. 2.1(c), second sentence.

- **ASCM Art. 2.2 (specificity – South Carolina multi-country industrial park (MCIP) job tax credits)**: The Appellate Body concluded that the availability of the subsidy only to enterprises located within an MCIP constituted a limitation on access to subsidies within the meaning of ASCM Art. 2.2, irrespective of whether enterprises not currently located in an MCIP may become part of it in the future and qualify for the subsidy. Therefore, it reversed the Panel's finding and completed the analysis to find that the subsidy provided was "specific".

- **ASCM Arts. 5, 6.3, 7.8 (continuing adverse effects)**: The Appellate Body clarified that the time period for assessing the removal of adverse effects may include developments subsequent to the time of order, including through the point of delivery and consequently reversed the Panel on this point. Despite reversing the Panel's interpretation of ASCM Art. 7.8, it upheld the Panel's finding that the European Union had failed to establish that the original adverse effects of the pre-2007 aeronautics R&D subsidies continued into the post-implementation period as present serious prejudice.

- **ASCM Arts. 5, 6.3, 7.8 (adverse effects through technology effects)**: The Appellate Body reversed the Panel's rejection of the European Union's claim on ASCM Arts. 5, 6.3 and 7.8, but was unable to complete the legal analysis as to whether there remain acceleration effects of the pre-2007 aeronautics R&D subsidies in the postimplementation period.

- **ASCM Arts. 5, 6.3, 7.8 (price effects of Washington "tied tax" subsidies)**: According to the Appellate Body, the Panel did not err in its calculation of tied tax subsidies or by failing to establish that the peraircraft amount of the subsidies exceeds the differentials in the net prices offered by Airbus and Boeing in five particularly price-sensitive sales campaigns in the single-aisle LCA market.. Therefore, the Appellate Body upheld the Panel's finding that the tied tax subsidies caused significant lost sales and a threat of impedance with respect to the aforesaid campaigns in the single-aisle LCA market, as well as its rejection of any such effects in sales campaigns that were not particularly price-sensitive in the single-aisle and twin-aisle LCA markets.

- **ASCM Arts. 5, 6.3, 7.8 (Price effects of "untied" cash flow subsidies)**: The Appellate Body reversed the Panel's finding that the European Union was required to demonstrate that the untied subsidies actually led to price reductions of Boeing LCA sales in order to establish the adverse effects of these subsidies through the lowering of Boeing LCA prices. It clarified that the legal standard for causation does not require this. However, the Appellate Body was unable to complete the legal analysis to find that these subsidies complemented and supplemented the effects of the tied tax subsidies by contributing to such adverse effects in the singleaisle LCA market.

1 *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint) – Recourse to Article 21.5 of the DSU by the European Union*

INDIA – ADDITIONAL IMPORT DUTIES[1]
(DS360)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. II:1(b) and II:2(a)*	Establishment of Panel	*20 June 2007*
			Circulation of Panel Report	*9 June 2008*
Respondent	*India*		Circulation of AB Report	*30 October 2008*
			Adoption	*17 November 2008*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Two border charges, consisting of the "Additional Duty" imposed by India on imports of alcoholic beverages (beer, wine, and distilled spirits); and the "Extra-Additional Duty" imposed by India on imports of a wider range of products, including certain agricultural and industrial products, as well as alcoholic beverages.

- **Product at issue:** Alcoholic beverages (beer, wine, and distilled spirits) and other products, including certain agricultural and industrial products, from the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Arts. II:1(b) and II:2(a) (schedules of concessions):** The Appellate Body reversed the Panel's finding that the United States had failed to establish that the Additional Duty and the Extra-Additional Duty were inconsistent with Arts. II:1(b) and II:2(a). The Appellate Body explained that it did not see a textual or other basis for the Panel's conclusion that "inherent discrimination" is a relevant or necessary feature of charges covered by Art. II:1(b). The Appellate Body further found that the Panel erred in its interpretation of the two elements of Art. II:2(a), that is "equivalence" and "consistency with Art. III:2". In particular, the Appellate Body disagreed with the Panel's conclusion that the term "equivalent" does not require any quantitative comparison of the charge and internal tax. Instead, the Appellate Body considered that the term "equivalent" calls for a comparative assessment that is both qualitative and quantitative in nature. Moreover, the Appellate Body clarified that the element of "consistency with Art. III:2" must be read together with, and imparts meaning to, the requirement that a charge and a tax be "equivalent".

  The Appellate Body considered that the Additional Duty and Extra-Additional Duty would be inconsistent with Art. II:1(b) to the extent that they result in the imposition of duties in excess of those set forth in India's Schedule of Concessions.

3. OTHER ISSUES[2]

- **Burden of proof**: The Appellate Body found that, in the circumstances of this dispute, where the potential for application of Art. II:2(a) was clear from the face of the challenged measures, the United States was required to present arguments and evidence that the Additional Duty and the Extra-Additional Duty were not justified under Art. II:2(a). The Appellate Body added that India, in asserting that the challenged measures were justified under Art. II:2(a), was required to adduce arguments and evidence in support of its assertion.

1 *India – Additional and Extra-Additional Duties on Imports from the United States*
2 Other issues addressed: DSU Art. 11 (scope of complainant's challenge; objective assessment); DSU Art. 19 (concluding remarks).

CHINA – INTELLECTUAL PROPERTY RIGHTS[1] (DS362)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*TRIPS Arts. 9, 41, 46, 59 and 61 Berne Convention*	Establishment of Panel	*25 September 2007*
			Circulation of Panel Report	*13 November 2008*
Respondent	*China*		Circulation of AB Report	*NA*
			Adoption	*20 March 2009*

1. MEASURE AND INTELLECTUAL PROPERTY RIGHTS AT ISSUE

- **Measure at issue:**

(i) China's Criminal Law and related Supreme People's Court Interpretations which establish thresholds for criminal procedures and penalties for infringements of intellectual property rights;

(ii) China's Regulations for Customs Protection of Intellectual Property Rights and related Implementing Measures that govern the disposal of infringing goods confiscated by customs authorities; and

(iii) Art. 4 of China's Copyright Law which denies protection and enforcement to works that have not been authorized for publication or distribution within China.

- **Intellectual property at issue**: Copyright and trademarks.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **TRIPS Art. 61 (border measures – remedies):** The Panel found that while China's criminal measures exclude some copyright and trademark infringements from criminal liability where the infringement falls below numerical thresholds fixed in terms of the amount of turnover, profit, sales or copies of infringing goods, this fact alone was not enough to find a violation because Art. 61 does not require Members to criminalize all copyright and trademark infringement. The Panel found that the term "commercial scale" in Art. 61 meant "the magnitude or extent of typical or usual commercial activity with respect to a given product in a given market". The Panel did not endorse China's thresholds but concluded that the factual evidence presented by the United States was inadequate to show whether or not the cases excluded from criminal liability met the TRIPS standard of "commercial scale" when that standard is applied to China's marketplace.

- **TRIPS Art. 59 (remedies):** The Panel found that the customs measures were not subject to Trips Agreement Arts. 51 to 60 to the extent that they apply to exports. With respect to imports, although auctioning of goods is not prohibited by Art. 59, the Panel concluded that the way in which China's customs auctions these goods was inconsistent with Art. 59, because it permits the sale of goods after the simple removal of the trademark in more than just exceptional cases.

- **TRIPS Art. 9.1 (Berne Convention – Arts. 5(1) and 17) and TRIPS Art. 41.1 (enforcement – general obligations):** The Panel found that while China has the right to prohibit the circulation and exhibition of works, as acknowledged in Art. 17 of the Berne Convention, this does not justify the denial of all copyright protection in any work. China's failure to protect copyright in prohibited works (i.e. that are banned because of their illegal content) is therefore inconsistent with Art. 5(1) of the Berne Convention as incorporated in Art. 9.1, as well as with Art. 41.1, as the copyright in such prohibited works cannot be enforced.

1 *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*
2 Other issues addressed: prima facie case; Panel's terms of reference; exhaustiveness of TRIPS Art. 59; information from WIPO.

CHINA – PUBLICATIONS AND AUDIOVISUAL PRODUCTS[1] (DS363)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. III:4 and XX(a)* *GATS Arts. XVI and XVII*	Establishment of Panel	*27 November 2007*
			Circulation of Panel Report	*12 August 2009*
Respondent	*China*	*China's Accession Protocol and Working Party Report*	Circulation of AB Report	*21 December 2009*
			Adoption	*19 January 2010*

1. MEASURE AND PRODUCT/SERVICE AT ISSUE

- **Measure at issue:** A series of Chinese measures regulating activities relating to the importation and distribution of certain publications and audiovisual entertainment products.

- **Product and service at issue**: Trading and distribution of reading materials (e.g. books, newspapers, periodicals, electronic publications), audiovisual home entertainment (AVHE) products (e.g. videocassettes, video compact discs, digital video discs), sound recordings (e.g. recorded audio tapes), and films for theatrical release.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **China's Accession Protocol (China's trading rights commitments):** The Panel found that provisions in China's measures that either limit to wholly State-owned enterprises importation rights regarding, or prohibit foreign-invested enterprises in China from importing, reading materials, AVHE products, sound recordings, and films, were inconsistent with China's obligation, under paras. 1.2 and 5.1 of China's Accession Protocol and paras. 83(d) and 84(a) of China's Accession Working Party Report, to grant the right to trade. The Panel also concluded that several provisions of the Chinese measures at issue breached China's obligation, under para. 1.2 of China's Accession Protocol and para. 84(b) of China's Accession Working Party Report, to grant in a non-discretionary manner the right to trade. Certain of these findings, relating to films for theatrical release and unfinished audiovisual products, were appealed. The Appellate Body upheld the Panel's findings that the relevant provisions of the measures were subject to, and inconsistent with, China's trading rights commitments under its Accession Protocol and Working Party Report.

- **GATT Art. XX(a) (exceptions – necessary to protect public morals):** The Appellate Body found that, by virtue of the introductory clause of para. 5.1 of China's Accession Protocol, China could, in this dispute, invoke Art. XX(a) to justify provisions found to be inconsistent with China's trading rights commitments under its Accession Protocol and Working Party Report. Apart from a finding that the Panel erred in making an intermediate finding that a requirement in one of China's measures can be characterized as "necessary" to protect public morals, within the meaning of Art. XX(a), the Appellate Body found that the Panel did not err in respect of the other challenged elements of its analysis under Art. XX(a). The Appellate Body accordingly upheld the Panel's conclusion that China had not demonstrated that the relevant provisions were "necessary" to protect public morals, and that, as a result, China had not established that these provisions were justified under Art. XX(a).

- **GATS Arts. XVI (market access) and XVII (national treatment):** The Panel concluded that China's measures regarding distribution services for reading materials and AVHE products, as well as electronic sound recordings, were inconsistent with China's market access or national treatment commitments in respect of Arts. XVI and XVII, respectively. The Appellate Body found that the Panel had not erred in interpreting the entry "Sound recording distribution services" in sector 2.D of China's GATS Schedule as extending to the distribution of sound recordings in electronic form, and thus upheld the Panel's finding that China's measures prohibiting foreign-invested entities from engaging in the distribution of sound recordings in electronic form were inconsistent with the national treatment obligation in Art. XVII. The findings of the Panel that certain of China's measures relating to the distribution of reading materials and AVHE products were inconsistent with Arts. XVI and XVII were not appealed.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that certain Chinese measures affecting the distribution of imported reading materials were inconsistent with Art. III:4. These findings were not appealed.

1 *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*

COLOMBIA – PORTS OF ENTRY[1]
(DS366)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Panama*	*GATT Arts. XI:1, XIII:1, V:2 V:6 and I:1 CVA Arts. 1, 2, 3, 5, 6 and 7*	Establishment of Panel	*22 October 2007*
			Circulation of Panel Report	*27 April 2009*
Respondent	*Colombia*		Circulation of AB Report	*NA*
			Adoption	*20 May 2009*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Colombian customs regulations establishing the use of indicative prices and restrictions on ports of entry.
- **Product at issue:** Certain textiles, apparel and footwear classifiable under HS Chapters 50-64 of Colombia's Tariff Schedule, which were re-exported and re exported from the Colon Free Zone (CFZ) and Panama to Colombia.

2. SUMMARY OF KEY PANEL FINDINGS

- **CVA Arts. 1, 2, 3, 5, 6 and 7.2(b) and (f) (sequential use of valuation methods):** The Panel found that Colombia's use of indicative prices constituted customs valuation and that the measures establishing indicative prices, by mandating their use for customs valuation purposes, were inconsistent as such with the obligation established in the CVA to apply, in a sequential manner, the methods of valuation provided in Arts. 1, 2, 3, 5 and 6 of the Agreement. The Panel further found that, by mandating the use of the higher of two values, or a minimum price as the customs value of subject goods, the measures were inconsistent as such with Art. 7.2(b) and (f).
- **GATT Art. XI:1 (prohibition on quantitative restrictions):** The Panel found that Colombia's prohibition of the importation of textiles, footwear and apparel from Panama or the CFZ except at the ports of Bogota and Barranquilla, was a prohibited restriction on importation within the meaning of Art. XI:1.
- **GATT Art. I:1 (most-favoured-nation treatment):** The Panel found that, by subjecting textile, apparel and footwear imports arriving from Panama and the CFZ to an advance import declaration requirement, which thereby requires payment of customs duties and sales tax in advance and prevents importers from inspecting goods on site upon arrival in order to verify the accuracy of the declaration, Colombia confered advantages to like products from all other WTO Members that were not extended immediately and unconditionally to textile, apparel and footwear imports from Panama and the CFZ in violation of Art. I:1.
- **GATT Art. V:2 (freedom of transit):** By requiring that goods undergo trans-shipment in order to proceed in international transit, the Panel found that Colombia failed to extend freedom of transit via the most convenient routes to goods arriving from Panama in international transit within the meaning of Art. V:2, first sentence, as informed by Art. V:1. The Panel also found that Colombia made distinctions based on the place of origin or departure of textiles, apparel and footwear arriving from Panama or the CFZ, in violation of Art. V:2, second sentence.
- **GATT Art. XX(d) (exceptions – necessary to secure compliance with laws):** The Panel found that Colombia failed to establish that the ports of entry measure was necessary to ensure compliance with Colombian customs laws and regulations under Art. XX(d).

1 *Colombia – Indicative Prices and Restrictions on Ports of Entry*

AUSTRALIA – APPLES[1]
(DS367)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*New Zealand*	*SPS Arts. 2.2, 2.3, 5.1, 5.2, 5.5, 5.6 and 8; Annexes A(1) and C(1)(a)* *DSU Art. 11*	Establishment of Panel	*21 January 2008*
			Circulation of Panel Report	*9 August 2010*
Respondent	*Australia*		Circulation of AB Report	*29 November 2010*
			Adoption	*17 December 2010*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Certain Australian measures restricting the importation of New Zealand apples based on concerns about the risk of entry, establishment and spread of the fire blight bacterium (*Erwinia amylovora*), the fungus European canker (*Neonectria galligena*), and apple leafcurling midge (ALCM) (*Dasineura mali*).

- **Product at issue:** Apples from New Zealand.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **SPS Annex A(1) (SPS measures):** The Appellate Body upheld the Panel's finding that the 16 measures at issue, both as a whole and individually, constituted SPS measures within the meaning of Annex A(1) to the SPS Agreement.

- **SPS Arts. 2.2, 5.1 and 5.2 (risk assessment):** The Panel found that specific measures regarding each of the three pests at issue, as well as the "general" measures relating to these three pests, were inconsistent with Arts. 5.1 and 5.2, and that, by implication, these measures were also inconsistent with Art. 2.2 of the SPS Agreement. Australia appealed these findings only in regard to two of the three pests (fire blight and ALCM). The Appellate Body upheld the Panel's above findings regarding the two pests and the general measures relating to these two pests.

- **SPS Arts. 5.5 and 2.3 (prohibition on discrimination and disguised restriction on international trade):** The Panel found that New Zealand failed to demonstrate that the measures at issue were inconsistent with Art. 5.5 and, consequently, also failed to demonstrate inconsistency with Art. 2.3 of the SPS Agreement.

- **SPS Art. 5.6 (appropriate level of protection – alternative measures):** The Panel found that Australia's measures relating specifically to the three pests at issue were inconsistent with Art. 5.6, and that New Zealand failed to demonstrate that the three "general" measures were inconsistent with Art. 5.6. Australia appealed these findings only in regard to two of the three pests (fire blight and ALCM). The Appellate Body reversed the Panel's findings of inconsistency in regard to the measures relating to these two pests, but was unable to complete the legal analysis of New Zealand's claim.

- **SPS Art. 8 and Annex C(1): (a) (control, inspection and approval procedures):** The Appellate Body reversed the Panel's finding that New Zealand's claim under Annex C(1)(a) and its consequential claim under Art. 8 fell outside of the Panel's terms of reference. In completing the analysis, the Appellate Body found that New Zealand had not established a violation of Annex C(1)(a) and Art. 8.

- **DSU Art. 11 (standard of review):** The Appellate Body found that Australia had not established that the Panel acted inconsistently with Art. 11 in its treatment of the expert testimony or of Australia's risk assessment methodology.

1 *Australia – Measures Affecting the Importation of Apples from New Zealand*
2 Other issues addressed: requirements of panel request (DSU Art. 6.2); circulation of preliminary ruling; third party involvement in process leading to preliminary ruling; *amicus curiae* brief; open hearing, including for the Panel's meeting with the scientific experts; and due process in the selection and consultation of experts (SPS Art. 11.2 and DSU Art. 13.1), including the determination of questions posed to experts.

THAILAND – CIGARETTES (PHILIPPINES)[1]
(DS371)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Philippines*	*CVA Arts. 1 and 16* *GATT Arts. III:2, III:4 and X*	Establishment of Panel	*17 November 2008*
			Circulation of Panel Report	*15 November 2010*
Respondent	*Thailand*		Circulation of AB Report	*17 June 2011*
			Adoption	*15 July 2011*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Thailand's customs and tax measures.
- **Product at issue:** Cigarettes imported from the Philippines.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **CVA Art. 1.1 and 1.2(a) (valuation in a related-party transaction):** In determining the acceptability of the transaction value declared by the importer in a related-party transaction, customs authorities must (i) examine the circumstances of the sale in the light of the information provided by the importer or otherwise; (ii) communicate to the importer the grounds for preliminarily considering that the relationship influenced the price; and (iii) give the importer a reasonable opportunity to respond so that the importer can submit further information. The Panel found that Thai Customs acted inconsistently with Arts. 1.1 and 1.2(a) in rejecting the transaction value of the imported cigarettes because it failed to properly examine the circumstances of the transaction between the importer and the seller.
- **CVA Art. 16 (customs' explanation of valuation decision):** Under Art. 16, when requested, the customs authority must provide a written explanation that is sufficient to make clear and give details of how the customs value of the importer's goods was determined. The Panel concluded that the basis for rejecting the transaction value as provided in Thai Customs' letter to the importer (i.e. "it cannot be proven whether the relationship has an influence on the determination of customs values or not") was inadequate to explain the reason for rejecting the transaction value within the meaning of Art. 16.
- **GATT Art. III:2 (national treatment – taxes and charges):** Thailand's measure subjected resellers of imported cigarettes to VAT when they do not satisfy conditions for obtaining input tax credits necessary to achieve zero VAT liability; resellers of like domestic cigarettes are never subject to VAT liability by reason of a complete exemption from VAT. The fact that resellers of imported cigarettes may take action to achieve zero VAT liability under Thailand's measure does not preclude a finding of inconsistency. The Appellate Body upheld the Panel's finding that Thailand acted inconsistently with Art. III:2, first sentence.
- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The analysis must be grounded in close scrutiny of the "fundamental thrust and effect of the measure itself". Such examination normally requires an identification of the implications of the measure for the conditions of competition between imported and like domestic products in the marketplace; this may be discerned from the design, structure, and expected operation of the measure and need not be based on empirical evidence as to the actual effects. When imported and like domestic products are subject to a single regulatory regime with the only difference being that imported products must comply with additional requirements, this would provide a significant indication that imported products are treated less favourably. The Appellate Body upheld the Panel's finding that Thailand treats imported cigarettes less favourably than like domestic cigarettes by imposing additional administrative requirements only on resellers of imported cigarettes.
- **GATT Art. X:3(b) (trade regulations – prompt review of administrative action on customs matters (guarantee decisions):** "Prompt review and correction" under Art. X:3(b) requires review and correction performed in a quick and effective manner and without delay. The nature of the specific administrative action at issue also informs the meaning of "prompt". For review of a customs guarantee to be timely and effective, it must be possible to challenge the guarantee during the time it serves as a security. Thai law delays review of guarantee decisions because they can only be challenged once a notice of assessment of final duty liability is issued. The Appellate Body found that this system does not ensure prompt review of administrative action and upheld the Panel's finding that Thailand acted inconsistently with Art. X:3(b).

1 *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*
2 Other issues addressed: CVA Arts 7.1, 7.3, 10, 16; GATT Arts X:1, X:3(a), XX(d); DSU Art. 11; standard of review; late submission of evidence; terms of reference; recommendations on completed acts.

EC – IT PRODUCTS[1]
(DS375, 376, 377)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*United States, Japan, Chinese Taipei*	*GATT Arts. II:1(a), II:1(b), X:1 and X:2*	Establishment of Panel	*23 September 2008*
			Circulation of Panel Report	*16 August 2010*
Respondent	*European Communities*		Circulation of AB Report	*NA*
			Adoption	*21 September 2010*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Various EC measures pertaining to the tariff classification, and consequent tariff treatment, of certain information technology products (IT products).

- **Product at issue:** Flat panel display devices (FDPs), including those with digital DVI connectors that are capable of connecting to computers and other equipment; set-top boxes which have a communication function (STBCs), including those that access the Internet and have recording capabilities; and multifunctional digital machines (MFMs), capable of printing, scanning, copying and/or faxing.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **The Ministerial Declaration on Trade in Information Technology Products (ITA):** The European Communities had committed in its WTO Schedule to provide duty-free treatment to certain IT products pursuant to the ITA. The products receiving duty-free treatment were indicated in the ITA in two ways: as HS1996 headings and in "narrative description" form.

- **GATT Arts. II:1(a) and II:1(b) (schedules of concessions – FPDs):** The Panel found that the measures at issue were inconsistent with Arts. II:1(a) and II:1(b) because they required EC member States to classify some FPDs under dutiable headings although such products fell within the scope of the "narrative description" and/or within the scope of the CN code 8471 60 90 (which pertains to "input or output units" of "automatic data-processing machines" (ADP)), both of which were duty-free in the EC Schedule pursuant to the European Communities' implementation of the ITA.[3]

- **GATT Arts. II:1(a) and II:1(b) (schedules of concessions – STBCs):** The Panel found that the measures at issue were inconsistent with Arts. II:1(a) and II:1(b) because they required EC member States to classify under dutiable headings some STBCs although such products fell within the scope of the duty-free commitment in the "narrative description" included in the EC Schedule pursuant to the European Communities' implementation of the ITA.[4]

- **GATT Arts. II:1(a) and II:1(b) (schedules of concessions – MFMs):** The Panel found that the measures at issue were inconsistent with Arts. II:1(a) and II:1(b) because they required EC member States to classify under dutiable headings certain MFMs that work with ADP machines and certain MFMs that do not work with ADP machines, although such products fell, respectively, within HS1996 subheadings 8471 60 (for "input or output units" of ADP machines) and 8517 21 (for "facsimiles"), both of which are duty-free in the EC Schedule pursuant to the European Communities' implementation of the ITA. The Panel found that the type of technology MFMs use to make "copies" is not "photocopying" and, as such, the products could never fall within the dutiable heading under which the European Communities was classifying these products (HS1996 subheadings 9009 12).

- **GATT Art. X (publication and administration of trade regulations):** The Panel found that the European Communities failed to publish promptly the explanatory notes related to the classification of certain STBCs, so as to enable governments and traders to become acquainted with them, inconsistently with Art. X:1. The Panel also found that the European Communities had acted inconsistently with Art. X:2 by enforcing the explanatory notes before its official publication.

1 *European Communities and its member States – Tariff Treatment of Certain Information Technology Products*

2 Other issues addressed: co-complainants as third parties; acceptance of requests to be a third party after the panel composition; status of EC member States as respondents.

3 However, the Panel found that the measures were not inconsistent with Art. II:1(b) in light of a duty suspension in place for certain LCD display devices. However, for those products falling within the scope of the two concessions that are not covered by the duty suspension, the Panel found that the duty suspension did not eliminate the inconsistency with Art. II:1(b) and, therefore, this dutiable treatment that was extended to those products was considered inconsistent with Art. II:1(b).

4 In particular, this includes set top boxes incorporating a device performing a recording or reproducing function but retaining the essential character of a set top box, and set top boxes utilizing ISDN, WLAN or Ethernet technology. The Panel found that the United States did not establish a prima facie case for its claim that the products at issue fell within the scope of concessions pursuant to certain tariff lines (8517 50 90, 8517 80 90, 8525 20 99 and 8528 12 91) listed in the EC Schedule.

US – ANTI-DUMPING AND COUNTERVAILING DUTIES (CHINA)[1] (DS379)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*ASCM Arts. 1.1, 2.1, 2.2, 10, 12, 14, 19.3, 19.4 and 32* *GATT Arts. I and VI:3*	Establishment of Panel	*20 January 2009*
			Circulation of Panel Report	*22 October 2010*
Respondent	*United States*		Circulation of AB Report	*11 March 2011*
			Adoption	*25 March 2011*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Countervailing and anti-dumping measures imposed concurrently by the United States against the same products from China, following parallel anti-dumping (AD) and countervailing duty (CVD) investigations by the United States Department of Commerce (USDOC).

- **Product at issue:** Circular welded carbon quality steel pipe (CWP); light-walled rectangular pipe and tube (LWR); laminated woven sacks (LWS); certain new pneumatic off-the-road tyres (OTR).

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Art. 1.1(a)(1) (definition of a subsidy – public body):** The Appellate Body reversed the Panel's interpretation of the term "public body" in ASCM Art. 1.1(a)(1) and found that a public body is an entity that possesses, exercises, or is vested with, governmental authority. The Appellate Body completed the analysis and found that the United States had acted inconsistently with ASCM Arts. 1.1(a)(1), 10, and 32.1 in finding that certain State-owned enterprises (SOEs) constituted public bodies. It also found that China did not establish that the USDOC had acted inconsistently with Art. 1.1(a) in determining that certain State-owned commercial banks (SOCBs) constituted public bodies.

- **ASCM Art. 2 (specificity):** The Appellate Body upheld the Panel's finding that China did not establish that the USDOC acted inconsistently with Art. 2.1(a) by determining in the OTR investigation that SOCB lending was *de jure* specific to the OTR industry. The Appellate Body upheld the Panel's interpretation of Art. 2.2 with respect to the USDOC's determination of regional specificity in the LWS investigation.

- **ASCM Art. 14 (calculation of the amount of subsidy – benchmark):** The Appellate Body upheld the Panel's findings that the USDOC did not act inconsistently with Art. 14(d) by rejecting Chinese in-country private prices as benchmarks to determine the benefit conferred by subsidies in the form of the provision of inputs in certain of the investigations at issue. The Appellate Body upheld the Panel's interpretation of Art. 14(b) and upheld the Panel's finding that the USDOC's decision not to rely on interest rates in China as benchmarks for RMB-denominated loans was not inconsistent with this provision. The Appellate Body, however, reversed the Panel's finding that the proxy benchmark used by the USDOC to calculate the benefit from such loans in the CWP, LWS, and OTR investigations was not inconsistent with Art. 14(b).

- **ASCM Arts. 14 (calculation of the amount of subsidy – "offsets"):** The Panel found that China did not establish that the USDOC acted inconsistently with, *inter alia*, Art. 14(d) by not "offsetting" positive benefit amounts with "negative" benefit amounts, either across different kinds of rubber or across different months of the period of investigation, in the OTR investigation. This finding was not appealed.

- **ASCM Arts. 19.3 and 19.4 ("double remedy"):** The Appellate Body agreed with the Panel that double remedies are likely to arise from the simultaneous application, on the same imported products, of anti-dumping duties calculated pursuant to an NME methodology and of countervailing duties. The Appellate Body reversed the Panel's finding that such offsetting of the same subsidization twice is not prohibited under the ASCM. The Appellate Body found, instead, that the imposition of a double remedy is inconsistent with Art. 19.3. On this basis, the Appellate Body found that the United States had acted inconsistently with Art. 19.3 in the four sets of parallel AD and CVD investigations at issue.

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

2 Other issues addressed: "entrustment or direction"; use of yearly, as opposed to daily, interest rates, in calculating the benefit conferred by loans from SOCBs; "pass-through" of benefits, and methodology to determine the existence and amount of benefit in situations in which SOE-produced inputs are sold through trading companies; use of "facts available; requirement to provide interested parties at least 30 days to respond to supplemental questionnaires and questionnaires concerning new subsidy allegations; requirement to provide notice of the information which the authorities require and to inform interested Members and parties of the "essential facts under consideration"; MFN treatment in the avoidance of a double remedy with respect to the same situation of subsidization; duty of a panel under DSU Art. 11; terms of reference (correspondence between the request for consultations and panel request, identification of claims in the panel request).

US – TUNA II (MEXICO)[1]
(DS381)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Mexico*	*TBT Annex 1.1, Arts. 2.1, 2.2 and 2.4* *DSU Art. 11* *GATT Arts. I:1 and III:4*	Establishment of Panel	*20 April 2009*
			Circulation of Panel Report	*15 September 2011*
Respondent	*United States*		Circulation of AB Report	*16 May 2012*
			Adoption	*13 June 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (1) United States Code, Title 16, Section 1385 – "Dolphin Protection Consumer Information Act" (DPCIA); (2) Code of Federal Regulations, Title 50, Section 216.91 "Dolphin-safe labelling standards" and Section 216.92 "Dolphin-safe requirements for tuna harvested in the ETP [Eastern Tropical Pacific Ocean] by large purse seine vessels"; (3) the ruling by a US federal appeals court in *Earth Island Institute v. Hogarth*, 494 F.3d 757 (9th Cir. 2007). Together, these measures set out the conditions under which tuna products sold in the United States may be labelled as "dolphin-safe".

- **Product at issue:** Tuna and tuna products.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **TBT Annex 1.1 (definition of technical regulation):** The Appellate Body found that "the US measure establishes a single and legally mandated set of requirements for making any statement with respect to the broad subject of 'dolphin-safety' of tuna products in the United States". Thus, it upheld the Panel's ruling characterizing the measure at issue as a "technical regulation" within the meaning of TBT Annex 1.

- **TBT Art. 2.1 (national treatment – technical regulations):** According to the Appellate Body, the measure at issue modified the competitive conditions in the US market to the detriment of Mexican tuna products and the United States did not demonstrate that this stemmed solely from "legitimate regulatory distinctions". The Appellate Body, therefore found that the US "'dolphin-safe" labelling measure was inconsistent with Art. 2.1 and reversed the Panel's contrary finding.

- **TBT Art. 2.2 (not more trade-restrictive than necessary):** The Appellate Body disagreed with the Panel's ruling that the measure at issue was more trade-restrictive than necessary to fulfil US legitimate objectives, and found instead that "the alternative measure proposed by Mexico [AIDCP 'dolphin safe' labelling combined with the existing US standard] would contribute to both the consumer information objective and the dolphin protection objective to a lesser degree than the measure at issue". The Appellate Body thus reversed the Panel's finding that the measure was inconsistent with Art. 2.2.

- **TBT Art. 2.4 (international standard):** The Appellate Body modified the Panel's conclusion and ruled that the AIDCP "dolphin-safe" definition and certification did not constitute a "relevant international standard" within the meaning of Art. 2.4, since "the AIDCP is not open to the relevant bodies of at least all Members and thus not an 'international standardizing body' for purposes of the TBT Agreement". It nonetheless upheld the Panel's ultimate finding that the measure did not violate Art. 2.4.

- **DSU Art. 11 and GATT Arts. I:1, III:4 (exercise of judicial economy by the Panel):** The Appellate Body found that the Panel's assumption that the obligations under TBT Art. 2.1 and GATT Arts. I:1 and III:4 were substantially the same was incorrect. Therefore, the Appellate Body concluded that the Panel engaged in "false judicial economy" and acted inconsistently with DSU Art. 11 in declining to address Mexico's claims under GATT Arts. I:1 and III:4. Mexico did not seek completion of the analysis under GATT Arts I:1 and III:4 in the event that the Appellate Body were to find a violation of TBT Art. 2.1.

3. OTHER ISSUES[2]

- **Standard of review (DSU Art. 11):** The Appellate Body concluded, that "the Panel acted consistently with its duties under Article 11 of the DSU in its analysis of the arguments and evidence before it", and rejected the United States' claims in this respect.

1 *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*
2 Other issues addressed: scope of interim review (DSU Art. 15.2).

US – TUNA II (ARTICLE 21.5 – MEXICO)[1]
(DS381)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Mexico*	*TBT Art. 2.1* *GATT Arts. I:1, III:4 and XX(g)*	Referred to the Original Panel	*22 January 2014*
			Circulation of Panel Report	*14 April 2015*
Respondent	*United States*		Circulation of AB Report	*20 November 2015*
			Adoption	*3 December 2015*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The United States' amended tuna measure.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **TBT Art. 2.1 (holistic analysis of measure at issue):** The Appellate Body criticized the panel for analysing the measure in what it called a "segmented" fashion. According to the Appellate Body, analysing a measure in a segmented manner may raise concerns when the constituent parts of the measure are interrelated and operate in an integrated way. The Appellate Body explained that while it is not necessarily inappropriate for a panel, in analysing the conformity of a measure with obligations under the WTO covered agreements, to proceed by assessing different elements of the measure in a sequential manner, a segmented approach may raise concerns when a panel fails to make an overall assessment that synthesizes its reasoning or intermediate conclusions concerning related elements of a measure at issue so as to reach a proper finding of consistency or inconsistency in respect of that measure.

- **TBT Art. 2.1 (treatment less favourable – whether detrimental impact stems exclusively from a legitimate regulatory distinction):** In reversing the panel's analysis of whether the measure's detrimental impact stemmed exclusively from a legitimate regulatory distinction, the Appellate Body stated that a panel does not err by assessing whether the detrimental impact can be reconciled with, or is rationally related to, the policy pursued by the measure at issue, so long as, in doing so, it does not preclude consideration of other factors that may also be relevant to the analysis. In the present case, however, the Appellate Body found that the panel had erred by failing to consider whether the regulatory distinctions embedded in the measure were "calibrated with", "tailored to", or "commensurate with" the different risks to dolphins from different fishing methods in different areas of the ocean.

- **GATT Art. XX:** The Appellate Body confirmed that, so long as the similarities and differences between Art. 2.1 of the TBT Agreement and Art. XX of the GATT 1994 are taken into account, it may be permissible for a panel to rely on reasoning developed in the context of one agreement for purposes of conducting an analysis under the other. The Appellate Body also considered that, by not identifying the different risks to dolphins from different fishing methods in different areas of the ocean, the panel failed to properly assess whether the regulatory distinctions under the amended tuna measure were calibrated to such risks.

3. OTHER ISSUES

- **Burden of proof:** The Appellate Body clarified that, under TBT Art. 2.1, a complainant must show that, under the technical regulation at issue, the treatment accorded to imported products is less favourable than that accorded to like domestic products or like products originating in any other country. Provided that it has shown detrimental impact, a complainant may, therefore, make a *prima facie* showing of less favourable treatment by, for example, adducing evidence and arguments showing that the measure is not even-handed, which would suggest that the measure is inconsistent with Art. 2.1. If, however, the respondent shows that the detrimental impact on imported products stems exclusively from a legitimate regulatory distinction, it follows that the challenged measure is not inconsistent with Art. 2.1.

- **Scope of proceedings (DSU Art. 21.5):** With respect to the question whether an unchanged aspect of an original measure can be challenged for the first time in Art. 21.5 compliance proceedings, the Appellate Body stated that the possibility to challenge an element of the measure at issue for the first time in compliance proceedings, even if that element may not have changed, hinges on the "critical question" of whether such an element forms "an integral part of the measure taken to comply". However, the Appellate Body also reiterated that compliance proceedings cannot be used to re-open issues decided in substance in the original proceedings, or to reargue claims against aspects of a measure which were not decided on the merits in the original proceedings, and are therefore not covered by DSB's recommendations and rulings. Additionally, the Appellate Body emphasized the importance of compliance panels taking due account in their findings of the relevant reasoning from the original dispute that led to the original measure being found to be WTO-inconsistent.

1 *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products – Recourse to Article 21.5 of the DSU by the United States*

US – TUNA II (MEXICO) (ARTICLE 21.5 – UNITED STATES)/ US – TUNA II (MEXICO) (ARTICLE 21.5 – MEXICO II)[1]

(DS381)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States, Mexico*	*TBT Art. 2.1* *GATT Arts. I:1, III:4 and XX(g)*	Referred to the Original Panels	*9 May 2016 (United States)* *22 June 2016 (Mexico)*
			Circulation of Panel Report	*26 October 2017*
Respondent	*Mexico, United States*		Circulation of AB Report	*14 December 2018*
			Adoption	*11 January 2019*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The United States' measure regulating the conditions for tuna products sold in the United States to be labelled "dolphin-safe" or to make similar claims on their labels (2016 Tuna Measure).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **TBT Art. 2.1 (treatment less favourable – whether detrimental impact stems exclusively from a legitimate regulatory distinction):** The Panels assessed the even-handedness of the 2016 Tuna Measure through the lens of calibration – that is, whether the measure's relevant regulatory distinctions were calibrated to the risks to dolphins arising from the use of different fishing methods in different areas of the ocean. The Panels proceeded to establish the risk profiles of the relevant fishing methods and extensively reviewed the evidence pertaining to such risks. On the basis of detailed factual findings, the Panels concluded that the different elements of the measure, that is (a) the eligibility criteria, (b) the certification requirements, (c) the tracking and verification requirements, and (d) the determination provisions, were calibrated to the differences in the overall risks to dolphins. Consequently, the Panels found that the treatment accorded to Mexican tuna products was based on legitimate regulatory distinctions and consistent with TBT Art. 2.1. On appeal, the Appellate Body upheld the Panels' reasoning and conclusions.

- **TBT Art. 2.1 (holistic analysis of measure at issue):** The Panels emphasized that by first looking at whether each of the elements of the 2016 Tuna Measure was calibrated to differences in the overall risks to dolphins, they were not undertaking an isolated consideration of each element. Hence, the Panels proceeded to consider how these elements interrelate with each other. On the basis of the correlation among the four elements, the Panels concluded that the 2016 Tuna Measure, as a whole, was calibrated. The Appellate Body upheld the Panels' findings in this regard.

- **GATT Art. XX (general exceptions – chapeau):** The Panels agreed with the parties that the 2016 Tuna Measure violated both GATT Arts. I:1 and III:4 and was provisionally justified under subparagraph (g) of Art. XX. In a finding upheld by the Appellate Body, the Panels concluded that since the measure is calibrated to different levels of risks posed to dolphins by different fishing methods in different areas of the ocean, it is not applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination.

3. OTHER ISSUES[2]

- **Burden and standard of proof:** The United States and Mexico were both complainants and respondents in the Panel proceedings. Further, the Panels observed that their submissions did not distinguish between claims and arguments made in respect of the two proceedings. In these circumstances, the Panels decided that it was appropriate to apply the principles on burden of proof in a cumulative or holistic fashion and find in favour of the party that overall presented a more convincing case in terms of arguments and evidence. However, the Panels noted that they would continue to be guided by the principle that the party asserting a fact is responsible for providing proof thereof.

1 *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products – Recourse to Article 21.5 of the DSU by the United States; and United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products – Second Recourse to Article 21.5 of the DSU by Mexico*

2 Other issues addressed: harmonised panels, failure to request consultations, partially open panel meetings, business confidential information, description of the measures at issue, consultation with experts, recommendations under DSU Art. 19.1, sufficiency of notice of appeal.

US – ORANGE JUICE (BRAZIL)[1]
(DS382)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*ADA Art. 2.4*	Establishment of Panel	*25 September 2009*
			Circulation of Panel Report	*25 March 2011*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*17 June 2011*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** United States Department of Commerce's (USDOC) (i) use of zeroing in two administrative reviews and (ii) "continued use" of zeroing in successive anti-dumping proceedings.

- **Product at issue:** Certain orange juice imports from Brazil.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4 (dumping determination – fair comparison):** The Panel concluded that the use of zeroing to determine margins of dumping and importer-specific assessment rates was inconsistent with Art. 2.4 because it involves a comparison between export price and normal value that will invariably result in a higher margin of dumping than would otherwise be the case. In reaching this conclusion, the Panel clarified that, for systemic reasons, it followed the Appellate Body's previous findings on the United States' use of zeroing in anti-dumping proceedings. The Panel found that the United States had used "zeroing" to calculate the margins of dumping and the importer-specific rates of the two Brazilian respondents investigation in the First and Second Administrative Review and thus acted inconsistently with Art. 2.4.

- **ADA Art. 2.4 (dumping determination – continued use of zeroing):** Brazil challenged the alleged continued use by the United States of zeroing in successive anti-dumping proceedings under the orange juice anti-dumping duty order by characterizing such continued use as "ongoing conduct". In light of the Appellate Body's finding on a similar matter in *US – Continued Zeroing* and the scope of "measure" as clarified in previous disputes, the Panel concluded that the continued use of zeroing as "ongoing conduct" is a measure susceptible to WTO dispute settlement. The Panel concluded that Brazil established the existence of the alleged continued zeroing measure because the computer programme used by the USDOC to calculate the relevant margins of dumping contained the zeroing instruction. Although the zeroing instruction was not applied in the relevant proceedings at issue in this dispute because of the particular fact pattern of the original investigation, the Panel did not find this to invalidate Brazil's claim as the subject of Brazil's complaint was the very existence of the zeroing instruction in the computer programme, independent of its application. As the USDOC's use of "zeroing" in the First and Second Administrative Reviews was inconsistent with Art. 2.4, it necessarily followed, found the Panel, that the USDOC's "continued use" of zeroing under the orange juice anti-dumping duty order was inconsistent with Art. 2.4.

3. OTHER ISSUES[2]

- **Terms of reference (DSU Arts. 4 and 6):** The United States asserted through a request for a preliminary ruling that the final results in the Second Administrative Review, one of the measures identified in Brazil's panel request, was outside of the Panel's terms of reference because it had not been identified in Brazil's consultations request. The Panel rejected the United States' request because it considered that Brazil's reference to the final results of the Second Administrative Review in its panel request did not expand the scope of the complaint presented in Brazil's request for consultations beyond the contours of what the United States could have reasonably understood the dispute to be about.

1 *US – Anti-Dumping Administrative Reviews and Other Measures Related to Imports of Certain Orange Juice from Brazil*
2 Other issues addressed: status of adopted panel and Appellate Body reports; continued zeroing as a measure.

US – ANTI-DUMPING MEASURES ON PET BAGS[1]
(DS383)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Thailand*	*ADA Art. 2.4.2* *DSU Art. 19.1*	Establishment of Panel	*20 March 2009*
			Circulation of Panel Report	*22 January 2010*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*18 February 2010*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping order imposed by the United States on polyethylene retail carrier bags from Thailand, and Final Determination by the United States Department of Commerce (USDOC), as amended, leading to that order.
- **Product at issue:** Polyethylene retail carrier bags from Thailand.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4.2 (dumping determination – zeroing):** The Panel upheld Thailand's claim that the use of zeroing by the USDOC in the calculation of the margins of dumping in respect of the measures at issue was inconsistent with the United States' obligations under because the USDOC did not calculate these dumping margins on the basis of the "product as a whole", taking into account all comparable export transactions in calculating the margins of dumping.
- **DSU Art. 19.1 (Panel and Appellate Body recommendations – suggestion on implementation):** Consistent with the first sentence of Art. 19.1, the Panel recommended that the Dispute Settlement Body request the United States to bring its measures into conformity with its obligations under the ADA. Regarding the second sentence of Art. 19.1, the Panel did not make any suggestions on how the United States might implement this recommendation.

3. OTHER ISSUES

- Since this case was focused on the issue of zeroing, which had already been subject to numerous WTO dispute settlement rulings, the parties entered into a joint procedural agreement to expedite the panel proceedings (as in *US – Shrimp (Ecuador)* (DS335)).[2] That agreement provided, *inter alia*, that the parties should ask the Panel to accept only one written submission per party, that the parties should ask the Panel to forego meetings with the parties, that the United States would not contest Thailand's claim, that Thailand should not ask the Panel to suggest ways in which the United States might implement the Panel's recommendations pursuant to the second sentence of DSU Art. 19.1, and that the United States should implement the Panel's recommendations using specified provisions of US law.
- Consistent with this joint procedural agreement, and after consulting third parties, the Panel decided not to hold any substantive meeting with the parties or third parties in this case. This is the first time that any WTO dispute settlement panel has done this (the Panel in *US – Shrimp (Ecuador)* held one substantive meeting with the parties and third parties).

1 *United States – Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand*
2 WT/DS383/4.

US – COOL[1]
(DS384, 386)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Canada, Mexico*	*TBT Arts. 2.1, 2.2, 2.4, 12.1 and 12.3 GATT Arts. III:4, X:3(a) and XXIII:1(b)*	Establishment of Panel	*19 November 2009*
			Circulation of Panel Report	*18 November 2011*
Respondent	*United States*		Circulation of AB Report	*29 June 2012*
			Adoption	*23 July 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** United States' country of origin labelling (COOL) requirements for beef and pork contained in the Agricultural Marketing Act of 1946, as amended by the Farm Bills 2002 and 2008, and implemented by the USDA through its 2009 Final Rule on Mandatory Country of Origin Labelling (instruments comprising "the COOL measure"); and the letter to "Industry Representative" from the United States Secretary of Agriculture, Thomas J. Vilsack (Vilsack letter).

- **Product at issue:** Imported cattle and hogs used in the production of beef and pork in the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **TBT Art. 2.1 (national treatment – technical regulations):** The Appellate Body upheld, albeit for modified reasons, the Panel's finding that the COOL measure was inconsistent with Art. 2.1 because it accorded less favourable treatment to imported livestock than to like domestic livestock. The Appellate Body concluded that the least costly way of complying with the COOL measure was to rely exclusively on domestic livestock, creating an incentive for US producers to use exclusively domestic livestock and thus causing a detrimental impact on the competitive opportunities of imported livestock. The Appellate Body found further that the recordkeeping and verification requirements imposed a disproportionate burden on upstream producers and processors compared to origin information conveyed to consumers. This regulatory distinction drawn by the COOL measure was therefore *not* legitimate within the meaning of Art. 2.1.

- **TBT Art. 2.2 (not more trade-restrictive than necessary):** The Appellate Body reversed the Panel's finding that the COOL measure violated Art. 2.2 because it did not fulfil the objective of providing consumer information on origin. The Appellate Body found that Art. 2.2 does not impose a minimum threshold level at which the measure must fulfil its legitimate objective; rather, it is the degree of the fulfilment that needs to be assessed against any reasonably available less trade-restrictive alternative measures. The Appellate Body was however unable to complete the Panel's analysis in order to determine whether the COOL measure was more trade restrictive than necessary to fulfil its legitimate objective.

- **TBT Art. 2.4 (international standards):** The Panel found that Mexico failed to establish that the COOL measure violated Art. 2.4. The Panel concluded that CODEX-STAN 1-1985 was an inappropriate means for the fulfilment of the pursued objective because the exact information that the United States wanted to provide to consumers, i.e. the countries in which an animal was born, raised and slaughtered, could not be conveyed through this standard.

- **GATT Art. X:3(a) (trade regulations – uniform, impartial and reasonable administration):** The Panel found that the United States failed to administer the COOL measure in a "reasonable" manner by sending the Vilsack letter, which contained additional voluntary suggestions, to the industry. The act of sending the Vilsack letter was thus found inconsistent with Art. X:3(a).

1 *United States – Certain Country of Origin Labelling (COOL) Requirements*

2 Other issues addressed: TBT Annex 1.1 (definition of technical regulation) and Arts 12.1 and 12.3 (special and differential treatment of developing country Members) (only Mexico); and GATT Arts III:4 (national treatment) and XXIII:1(b) (non-violation nullification or impairment).

US – COOL (ARTICLE 21.5 – CANADA AND MEXICO)[1]
(DS384, 386)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada, Mexico*	*TBT Arts. 2.1 and 2.2* *GATT Arts. III:4, IX, XX and XXIII:1(b)*	Referred to the Original Panel	*25 September 2013*
			Circulation of Panel Report	*20 October 2014*
Respondent	*United States*		Circulation of AB Report	*18 May 2015*
			Adoption	*29 May 2015*

1. MEASURES TAKEN TO COMPLY WITH DSB RECOMMENDATIONS AND RULINGS

- The amended COOL measure consisted of (a) the "COOL statute" (7 U.S.C. § 1638), which remained unchanged from the original dispute; and (b) the "2013 Final Rule" (78 Fed. Reg. 31367) amending certain provisions of the 2009 Final Rule (74 Fed. Reg. 2658) following the original dispute. Canada and Mexico challenged the treatment accorded to imported Canadian cattle and hogs, and imported Mexican cattle, under the United States' amended COOL measure.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **TBT Art. 2.1 (less favourable treatment and detrimental impact):** The Appellate Body found that the Panel did not err in its consideration of (a) the increased recordkeeping burden entailed by the amended COOL measure; and (b) the potential for label inaccuracy under the amended COOL measure, as being within its analysis of whether the detrimental impact of that measure on imported livestock stemmed exclusively from legitimate regulatory distinctions. The Panel considered that the exemptions prescribed by the amended COOL measure supported a conclusion that the detrimental impact of that measure on imported livestock did not stem exclusively from legitimate regulatory distinctions. The Appellate Body upheld this finding. As regards, the cross appeals of Canada and Mexico, the Appellate Body found that the Panel did not err by considering the amended COOL measure's prohibition of a trace-back system as not relevant for the analysis of whether the detrimental impact of that measure on imported livestock stemmed exclusively from legitimate regulatory distinctions.

- **TBT Art. 2.2 (not more trade-restrictive than necessary):** The Appellate Body found that Canada and Mexico did not demonstrate that, in the particular circumstances of this case, the sequence and order of analysis chosen by the Panel was outside the bounds of its latitude to tailor, to the case before it, its approach to the overall weighing and balancing required under Art. 2.2. The Appellate Body, however, found that the Panel erred in concluding that it was unable to ascertain the gravity of the consequences of non-fulfilment of the amended COOL measure's objective, and in finding that it could therefore not determine whether the first and second proposed alternative measures would make a degree of contribution to the objective pursued that was equivalent to that of the amended COOL measure. Accordingly, the Appellate Body reversed the Panel's finding that Canada and Mexico did not make a *prima facie* case that the amended COOL measure violates Art. 2.2. However, the Appellate Body could not complete the analysis as to whether the amended COOL measure was inconsistent with Art. 2.2.

- **GATT Arts. III:4, IX, and XX:** The Appellate Body concluded that the Panel did not err by not attributing contextual relevance to Art. IX in its interpretation of Art. III:4, and in finding that the amended COOL measure was inconsistent with Art. III:4. The Appellate Body also found that the Panel did not err in the way it addressed, at the interim review stage, the United States' request relating to the availability of Art. XX as an exception to Art. III:4 with respect to the amended COOL measure

- **GATT Art. XXIII:1(b) (non-violation claim):** Though the Panel exercised judicial economy with respect to the non-violation claim, nonetheless it made conditional factual findings in the event the Appellate Body were to disagree with its findings of violation or with its exercise of judicial economy. However, since the conditions upon which the appeal and cross appeals under Art. XXIII:1(b) were premised were not fulfilled, the Appellate Body made no findings in this regard.

1 *United States – Certain Country of Origin Labelling (COOL) Requirements – Recourse to Article 21.5 of the DSU by Canada and Mexico*
2 Other issues addressed: TBT Art. 2.2 (burden of proof with respect to reasonably available alternative measures).

US – POULTRY (CHINA)[1]
(DS392)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*SPS Arts. 2.1, 2.2, 2.3, 3.1, 3.3, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7 and 8* *AA Art. 4.2* *GATT Arts. I:1 and XI:1*	Establishment of Panel	*31 July 2009*
			Circulation of Panel Report	*29 September 2010*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*25 October 2010*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Section 727 of the Agriculture Appropriations Act of 2009 which prohibited the use of funds to establish or implement a rule allowing poultry products from China to be imported into the United States.
- **Product at issue:** Poultry products from China.

2. SUMMARY OF KEY PANEL FINDINGS

- **SPS Arts. 1, 5.1, 5.2 and 2.2 (scope of SPS measures, risk assessment, sufficient scientific evidence):** The Panel found that Section 727 satisfied the two conditions in Art. 1 for a measure to be considered an SPS measure under the SPS Agreement. The Panel concluded that Section 727 was inconsistent with Arts. 5.1 and 5.2 because it was not based on a risk assessment that took into account the factors set forth in Art. 5.2. It was also found inconsistent with Art. 2.2 because it was maintained without sufficient scientific evidence.
- **SPS Arts. 5.5, 2.3 (prohibition on discrimination) and 8 (control, inspection and approval procedures):** The Panel found that Section 727 was inconsistent with Art. 5.5 because the distinction in the appropriate levels of protection for poultry products from China and for poultry products from other WTO Members was arbitrary or unjustifiable and that such a distinction resulted in discrimination against China. The inconsistency of Section 727 with Art. 5.5 necessarily implied its inconsistency with Art. 2.3. The Panel concluded that Section 727 was inconsistent with Art. 8 because it had caused an undue delay in the Food Safety and Inspection Service approval procedures.
- **GATT Arts. I:1 (most-favoured-nation treatment), XI:1 (prohibition on quantitative restrictions) and XX(b) (exceptions – necessary to protect human life or health):** The Panel found that Section 727 was inconsistent with Art. I:1 because the United States treated the like products from China in a less favourable manner than those from the other Members; and with Art. XI:1, because Section 727 imposed a prohibition on the importation of poultry products from China. The Panel found that Section 727 was not justified under Art. XX(b) because it was found inconsistent with Arts. 2.2, 2.3, 5.1, 5.2 and 5.5 of the SPS Agreement.

3. OTHER ISSUES

- **Terms of reference (DSU Arts. 6.2 and 7):** The Panel found that, contrary to the United States' preliminary objection, China had requested consultations pursuant to SPS Agreement Art. 11 and its SPS claims were within the Panel's terms of reference.
- **Expired measure and panel recommendation**: Although the Panel found several violations, it did not recommend the United States to bring Section 727 into conformity with its obligations as under the SPS Agreement and the GATT, because Section 727 had already expired.

1 *United States – Certain Measures Affecting Imports of Poultry from China*

CHINA – RAW MATERIALS[1]
(DS394, 395, 398)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*European Union, Mexico, United States*	*DSU Art. 6.2* *GATT Arts. VIII:1(a), X:1, X:3(a), XI:1, XI:2(a), XX(b) and XX(g)* *China's Accession Protocol and Working Party Report*	Establishment of Panel	*21 December 2009*
			Circulation of Panel Report	*5 July 2011*
Respondent	*China*		Circulation of AB Report	*30 January 2012*
			Adoption	*22 February 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Export restraints imposed on the different raw materials: (i) export duties; (ii) export quotas; (iii) export quotas management (iv) minimum export price requirements; (v) export licensing requirements; and (vi) administration and publication of trade regulations. The complainants identified 40 specific Chinese measures in connection with their claims.

- **Product at issue:** Certain forms of bauxite, coke, fluorspar, magnesium, manganese, silicon carbide, silicon metal, yellow phosphorous, and zinc.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **DSU Art. 6.2 (requirements of panel request):** The Appellate Body found that the section of the respondents' panel requests that related to "additional restrictions imposed on exportation" did not comply with the requirements of Art. 6.2 to "identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly". Based on these procedural grounds, the Appellate Body declared a number of the Panel's findings with respect to the additional restrictions "moot and of no legal effect": findings with respect to paras. 1.2, 5.1 of China's Accession Protocol, read in combination with paras. 83(a), 83(b), 83(d), 84(a), 84(b) of China's Working Party Report (trading rights); para. 5.2 of China's Accession Protocol (national treatment for foreign enterprises); GATT Arts. VIII (export fees); X:1 (trade regulations – prompt publication (minimum export prices)), X:3(a) (trade regulations – uniform, impartial and reasonable administration) and XI:1 (prohibition on quantitative restrictions – minimum export prices).

- **China's Accession Protocol, para. 11.3 (elimination of export taxes and charges):** The Appellate Body upheld the Panel's recommendation that China bring its export duty and export quota measures into conformity with its WTO obligations such that the "series of measures" did not operate to bring about a WTO-inconsistent result.

- **GATT Art. XX (general exceptions):** The Appellate Body upheld the Panel's finding that there is no basis in China's Accession Protocol to allow the application of Art. XX to China's obligations under para.11.3 of the Protocol. The Panel had concluded that China's export restraints were not justified pursuant to Arts. XX(b) and (g). These findings were not appealed. In this context China only appealed the Panel's interpretation of the phrase "made effective in conjunction with" in Art. XX(g). The Appellate Body concluded that the Panel erred and stated that these terms mean that the export restrictions and the restrictions on domestic consumption or production "must "work together".

- **GATT Art. XI:2(a) (prohibition on quantitative restrictions – authorization of temporary export restrictions):** The Appellate Body upheld the Panel's conclusion that China had not demonstrated that its export quota on refractory-grade bauxite was "temporarily applied" to either prevent or relieve a "critical shortage", within the meaning of Art. XI:2(a).

- **GATT Art. X:1 (trade regulations – prompt publication):** The Panel concluded that the failure by China to publish promptly the decision not to authorize an export quota for zinc was inconsistent with Art. X:1. This conclusion was not appealed.

1 *China – Measures Related to the Exportation of Various Raw Materials*
2 Other issues addressed: panel's terms of reference (DSU Art. 7.1); objective assessment of the matter before a panel (DSU Art. 11); DSU Art. 19.1 and GATT Art. XX(i).

PHILIPPINES – DISTILLED SPIRITS[1]
(DS396, 403)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*European Union, United States*	*GATT Art. III:2, first and second sentences*	Establishment of Panel	*19 January 2010 (European Union) 20 April 2010 (United States)*
			Circulation of Panel Report	*15 August 2011*
Respondent	*Philippines*		Circulation of AB Report	*21 December 2011*
			Adoption	*20 January 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Philippines excise tax on distilled spirits, which imposed different tax rates depending on the raw material used to make the spirit.

- **Product at issue:** Domestic and imported distilled spirits, including specific types of spirits, such as gin, brandy, rum, vodka, whisky, and tequila or tequila-flavoured spirits.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. III:2 (national treatment – taxes and charges), first sentence (like products):** The Appellate Body upheld the Panel's finding that each type of imported distilled spirit at issue in this dispute – gin, brandy, vodka, whisky, and tequila – made from non-designated raw materials was "like" the same type of domestic distilled spirit made from designated raw materials, within the meaning of Art. III:2, first sentence. Accordingly, the Appellate Body upheld the Panel's finding that, through its excise tax, the Philippines subjected specific types of imported distilled spirits to internal taxes in excess of those applied to like domestic spirits of the same type made from designated raw materials in violation of Art. III:2, first sentence.

  The Appellate Body, however, reversed the Panel's additional finding that all distilled spirits at issue in the dispute, irrespective of their raw material base and their origin or type (brandy, whisky, rum, gin, vodka, tequila, and tequila-flavoured spirits), were "like products" within the meaning of Art. III:2, first sentence.

- **GATT Art. III:2 (national treatment – taxes and charges), second sentence (directly competitive or substitutable products):** The Appellate Body upheld the Panel's finding that that, through its excise tax, the Philippines applied dissimilar internal taxes on domestic and imported distilled spirits ; domestic distilled spirits made from designated raw materials and imported distilled spirits made from other raw materials were found to constitute directly competitive or substitutable products. The Philippines was thus found to have applied dissimilar internal taxes in a manner so as to afford protection to the Philippine domestic production of distilled spirits in violation of Art. III:2, second sentence.

3. OTHER ISSUES

- **Alternative vs independent claim:** The Appellate Body reversed the Panel's finding that the European Union's claim under GATT Art. III:2, second sentence, had only been made in the alternative; the Appellate Body reviewed the EU panel request and the EU responses to the Panel's questions and concluded that the EU claim under Art. III:2, second sentence "could not have been properly understood as having been made in the 'alternative,' that is, to be addressed only if the Panel were to reject the European Union's claim under the first sentence of that provision." The Appellate Body thus found that, by failing to examine this separate and independent claim, the Panel acted inconsistently with its duties under DSU Art. 11 and completed the legal analysis in relation to the European Union's claim under GATT Art. III:2, second sentence.

1 *Philippines – Taxes on Distilled Spirits*

EC – FASTENERS (CHINA)[1]
(DS397)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*ADA Arts. 2.4, 4.1, 6.2, 6.4, 6.5, 6.10 and 9.2* *China's Accession Protocol*	Establishment of Panel	*23 October 2009*
			Circulation of Panel Report	*3 December 2010*
Respondent	*European Union*		Circulation of AB Report	*15 July 2011*
			Adoption	*28 July 2011*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) Art. 9(5) of the European Union's basic anti-dumping regulation (Basic AD Regulation), concerning individual treatment of exporters from certain non-market economies (NMEs) in anti-dumping investigations; and (ii) the imposition by the European Union of definitive anti-dumping duties on certain iron or steel fasteners from China.

- **Product at issue:** Iron or steel fasteners.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Arts. 6.10 (evidence – individual dumping margins) and 9.2 (imposition of anti-dumping duties – individual exporters or producers):** The Appellate Body upheld, although for different reasons, the Panel's findings that Art. 9(5) of the Basic AD Regulation was inconsistent as such and as applied in the fasteners investigation with Arts. 6.10 and 9.2 because it conditioned the granting of individual treatment to exporters or producers from NMEs in the determination and imposition of anti-dumping duties on the fulfilment of the individual treatment test. The Appellate Body found that Arts. 6.10 and 9.2 require investigating authorities to determine and impose individual anti-dumping duties on exporters or producers unless specific exceptions are provided for in the covered agreements. It further found that no specific exceptions are provided for in the covered agreements that would allow investigating authorities to determine and impose country-wide anti-dumping duties on exporters originating in NMEs. Neither does China's Accession Protocol provide a legal basis for flexibility in respect of export prices or for justifying an exception to the requirement to determine individual dumping margins in Art. 6.10

- **ADA Art. 4.1 (definition of domestic industry):** The Appellate Body found that the European Union acted inconsistently with Art. 4.1 in defining the domestic industry in the fasteners investigation as comprising producers accounting for 27 per cent of total estimated EU production of fasteners. The domestic industry defined on this basis did not consist of those producers "whose collective output of the products constitutes a major proportion of the total domestic production" within the meaning of Art. 4.1.

- **ADA Arts. 6.4 and 6.2 (evidence – access):** The Appellate Body agreed with the Panel that, by failing to disclose information regarding the product types used for the basis of price comparisons in the dumping determination, the European Union violated Art. 6.4 and thereby Art. 6.2.

- **ADA Art. 2.4 (dumping determination – fair comparison):** The Appellate Body agreed with the Panel that the European Union did not violate Art. 2.4 by not making adjustments for certain physical and quality differences alleged by China. It however reversed the Panel's finding on the last sentence of Art. 2.4 and held that the European Union had failed to indicate the information necessary to ensure a fair comparison as required by that provision.

3. OTHER ISSUES[2]

- **ADA Art. 6.5 (disclosure of confidential information – "good cause"):** The Appellate Body found that an investigating authority must ensure that where producers request confidential treatment of information provided during an investigation, such request is supported by "good cause", and is accompanied by a non-confidential summary.

1 *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*
2 Other issues addressed: scope of appellate review (DSU Art. 17.6); Appellate Body Working Procedures (sufficiency of Notice of Other Appeal); requirements of panel request (DSU Art. 6.2).

EC – FASTENERS (CHINA) (ARTICLE 21.5 – CHINA)[1] (DS397)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*ADA Arts. 2.4, 2.4.2, 3.1, 4.1, 6.1.2, 6.2, 6.4 and 6.5* *DSU Art. 21.5*	Referred to the Original Panel	*18 December 2013*
			Circulation of Panel Report	*7 August 2015*
Respondent	*European Union*		Circulation of AB Report	*18 January 2016*
			Adoption	*12 February 2016*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- The European Commission's review investigation.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 2.4 (dumping determination – fair comparison):** The Appellate Body agreed with the Panel that the European Union had acted inconsistently with Art. 2.4, by failing to provide Chinese producers with information relating to the characteristics of products used for purposes of constructing normal value. The Appellate Body explained that, under certain circumstances, an investigating authority might have to disclose information needed to make a request for adjustments that would ensure a fair comparison of export price and normal value. The Appellate Body also agreed with the Panel that for purposes of calculating the dumping margin, the European Union had failed to take account of "all comparable export transactions" by excluding from the comparison between normal value and export price certain models, for which it could not find matching models, sold by an analogue country producer. However, the Appellate Body reversed the Panel's finding that in the process of determining normal value the European Union did not have to consider making adjustments accounting for differences in taxation and other cost factors, such as efficiency, productivity and access to raw materials.

- **ADA Art. 6.1.2 (evidence – access):** Unlike the Panel, the Appellate Body found that, under certain circumstances, an analogue country producer involved in an investigation could be regarded as an interested party despite the absence of an explicit decision granting such a status. This could be the case, in particular, if the record of an investigation showed that the investigating authority in fact treated such a producer as an interested party. Having found on the facts that the European Commission had treated the analogue country producer as an interested party, the Appellate Body reversed the Panel's finding that that producer was not an interested party and that therefore Art. 6.1.2 did not apply to evidence provided by that producer. The Appellate Body found, instead, that the European Union violated Article 6.1.2 by not making that evidence available to Chinese producers.

- **ADA Arts. 6.4 and 6.2 (evidence – access):** The Appellate Body agreed with the Panel that the information concerning the list and characteristics of products, provided by the analogue country producer, was relevant to the presentation of the Chinese producers' cases, was not confidential, and was used by the Commission. Therefore by not giving the Chinese producers an opportunity to see that information, the European Union had violated Art. 6.4 and consequently Art. 6.2.

3. OTHER ISSUES[2]

- **DSU Art. 21.5 (terms of reference – scope of compliance proceedings):** The Appellate Body agreed with the Panel that China's claims relating to confidential treatment of product list and characteristics provided by the analogue country producer were different from the claims raised during the original proceedings and, therefore, could been raised during the compliance proceedings. The Appellate Body noted in that regard that during the review investigation, the European Commission had released further details of such product characteristics. Hence, China's claims relating to such additional information and its confidential treatment could not have been raised at the original stage of the proceedings.

1 *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China.*
2 Other issues addressed: injury determination – definition of domestic industry (ADA Arts. 3.1 and 4.1), disclosure of confidential information – "good cause" (ADA Art. 6.5).

US – TYRES (CHINA)[1]
(DS399)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*China's Accession Protocol*	Establishment of Panel	*19 January 2010*
			Circulation of Panel Report	*13 December 2010*
Respondent	*United States*		Circulation of AB Report	*5 September 2011*
			Adoption	*5 October 2011*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** US transitional product-specific safeguard measure applied under para. 16 of China's Accession Protocol pursuant to Section 421 of the US Trade Act of 1974.
- **Product at issue:** Certain passenger vehicle and light truck tyres from China.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **China's Accession Protocol, para. 16.4 (imports "increasing rapidly"):** The Appellate Body upheld the Panel's finding that the United States International Trade Commission (USITC) properly established that imports of subject tyres from China met the "increasingly rapidly" threshold provided in para. 16.4. The Appellate Body reasoned that such increases in imports must be occurring over a short and recent period of time, and must be of a sufficient magnitude in relative or absolute terms so as to be a significant cause of material injury to the domestic industry.
- **China's Accession Protocol, para. 16.4 (causation):** The Appellate Body upheld the Panel's finding that the USITC properly demonstrated that subject imports were a "significant cause" of material injury. The Appellate Body found that the causal link expressed by the term "a significant cause" in para. 16.4 requires that rapidly increasing imports make an "important" or "notable" contribution in bringing about material injury to the domestic industry. An investigating authority can find imports to be a significant cause of material injury only if it ensures that the effects of other known causes are not improperly attributed to subject imports.

  The Appellate Body further upheld the Panel's finding that the USITC's reliance on an overall correlation between an upward movement in subject imports and a downward movement in injury factors reasonably supported the USITC's finding that rapidly increasing subject imports were a significant cause of material injury to the domestic injury within the meaning of para. 16.4.

  The Appellate Body also upheld the Panel's finding that China failed to establish that the USITC improperly attributed injury caused by other factors to subject imports from China. The Appellate Body found that the collective injurious effects of other causes (e.g. US industry's business strategy, the reasons for US plant closures, changes in demand, and the effects of imports from third countries) did not suggest that subject imports were not "a significant cause" of material injury to the US domestic industry.
- **China's Accession Protocol, paras. 16.3 and 16.6 (remedy and duration):** The Panel found that China failed to establish that (i) the measure exceeded the extent necessary to prevent or remedy the market disruption caused by rapidly increasing subject imports contrary to para. 16.3; and (ii) the measure exceeded the period of time necessary to prevent or remedy the market disruption under para. 16.6.
- **DSU Art. 19.1 (Panel and Appellate Body's recommendations – suggestion on implementation):** The Appellate Body did not find that the United States acted inconsistently with its WTO obligations in imposing a product-specific safeguard measure on subject tyres from China. Hence, the Appellate Body made no recommendation under Art. 19.1.

1 *United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China*
2 Other issues addressed: GATT Arts. I:1 and II:1.

EC – SEAL PRODUCTS[1]
(DS400, 401)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Canada, Norway*	*TBT Arts. 2.1, 2.2, 5.1.2 and 5.2.1* *GATT Arts. I:1, III:4, XI:I, XX(a), XX(b) and XXIII:1(b)* *AA Art. 4.2*	Establishment of Panel	*25 March 2011 (DS400)* *21 April 2011 (DS401)*
			Circulation of Panel Report	*25 November 2013*
Respondent	*European Communities*		Circulation of AB Report	*22 May 2014*
			Adoption	*18 June 2014*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue**: Regulations of the European Union (EU Seal Regime) generally prohibiting the importation and placing on the market of seal products, with certain exceptions, including for seal products derived from hunts conducted by Inuit or indigenous communities (IC exception) and hunts conducted for marine resource management purposes (MRM exception).

- **Product at issue**: Products, either processed or unprocessed, deriving or obtained from seals.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **TBT Annex 1.1 (technical regulation):** The Appellate Body reversed the Panel's intermediate finding that the EU Seal Regime lays down "product characteristics", and consequently reversed the Panel's finding that the EU Seal Regime was a "technical regulation" within the meaning of TBT Annex 1.1. The Appellate Body was unable to complete the legal analysis and thus did not rule on whether the EU Seal Regime lays down "related processes and production methods" within the meaning of TBT Annex 1.1. The Appellate Body therefore declared moot and of no legal effect the Panel's conclusions under TBT Arts. 2.1, 2.2, 5.1.2, and 5.2.1.

- **GATT Art. I:1 (most-favoured-nation treatment):** The Appellate Body upheld the Panel's finding that the legal standard for the non-discrimination obligations under TBT Art. 2.1 does not apply equally to claims under GATT Art. I:1. The Appellate Body therefore upheld the Panel's finding that the EU Seal Regime was inconsistent with GATT Art. I:1 in respect of the IC exception, as it did not "immediately and unconditionally" extend the same market access advantage to Canadian and Norwegian seal products that it accorded to seal products from Greenland.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Appellate Body upheld the Panel's finding that the legal standard for the non-discrimination obligations under TBT Art. 2.1 does not apply equally to claims under GATT Art. III:4. The European Union did not appeal the Panel's finding that the EU Seal Regime was inconsistent with GATT Art. III:4 in respect of the MRM exception, as it accorded less favourable treatment to imported Canadian and Norwegian seal products than that accorded to like domestic products.

- **GATT Art. XX(a) (general exceptions – necessary to protect public morals):** The Appellate Body upheld the Panel's finding that the EU Seal Regime was "necessary to protect public morals" within the meaning of GATT Art. XX(a).

- **The "chapeau" of GATT Art. XX (general exceptions):** The Appellate Body found that the Panel erred in applying the same legal test to the chapeau of GATT Art. XX as it applied to TBT Art. 2.1, instead of conducting an independent analysis of the consistency of the EU Seal Regime with the specific terms and requirements of the chapeau. The Appellate Body therefore reversed the Panel's findings under the chapeau. However, the Appellate Body completed the analysis and found, as did the Panel, that the European Union had not demonstrated that the EU Seal Regime, in particular with respect to the IC exception, met the requirements of the chapeau of GATT Art. XX. Therefore, the Appellate Body found that the European Union had not justified the EU Seal Regime under GATT Art. XX(a).

1 *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*

2 Other issues addressed: GATT Art. XI:1 and AA Art. 4.2 (quantitative restrictions); GATT Arts. XX(b) (general exceptions – necessary to protect human, animal or plant life or health) and XXIII:1(b) (non-violation nullification or impairment); DSU Art. 11 (objective assessment of the matter before a panel).

US – ZEROING (KOREA)[1]
(DS402)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*ADA Art. 2.4.2*	Establishment of Panel	*18 May 2010*
			Circulation of Panel Report	*18 January 2011*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*24 February 2011*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Certain United States final determinations and anti-dumping duty orders that included margins of dumping calculated using "zeroing" in the context of the "weighted-average to weighted-average" methodology in original investigations.
- **Product at issue:** Stainless steel plate in coils from Korea; stainless steel sheet and strip in coils from Korea; and diamond sawblades and parts thereof from Korea.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4.2 (dumping determination – fair comparison):** The Panel found that the United States acted inconsistently with the first sentence of Art. 2.4.2 by using the zeroing methodology in calculating certain margins of dumping in the context of the three original investigations at issue.

3. OTHER ISSUES

- **Uncontested claims:** Although the respondent did not contest Korea's claim, the Panel considered that DSU Art. 11 set forth its responsibilities. Further, with respect to the burden of proof, the Panel held that even though the respondent did not contest the claim, Korea was nevertheless required to make a prima facie case of violation.
- **Status of Appellate Body reports:** The Panel noted the consistent line of panel and Appellate Body reports regarding the use of zeroing in the context of the "weighted-average to weighted-average" methodology in original investigations. Although there is no system of precedent within the WTO dispute settlement system, the Panel held that adopted Appellate Body reports create legitimate expectations among WTO Members.

1 *United States – Use of Zeroing in Anti-Dumping Measures Involving Products from Korea*

US – SHRIMP (VIET NAM)[1]
(DS404)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Viet Nam*	*ADA Arts. 2.1, 2.4, 2.4.2, 6.10, 6.10.2, 9.3, 9.4, 11.1, 11.3 and 17.6(i)* *GATT Art. VI:2*	Establishment of Panel	*18 May 2010*
			Circulation of Panel Report	*11 July 2011*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*2 September 2011*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Second and third administrative review determinations in anti-dumping proceedings against imports from Viet Nam; "continued use", by the United States Department of Commerce (USDOC), of certain practices in the same anti-dumping proceedings.
- **Product at issue:** Certain frozen warmwater shrimp from, *inter alia*, Viet Nam.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4 (dumping determination – zeroing, as applied):** The Panel found that the USDOC's use of zeroing in the calculation of dumping margins was inconsistent with Art. 2.4.
- **ADA Art. 9.3 and GATT Art. VI:2 (imposition of anti-dumping duties – zeroing, as such):** The Panel found that Viet Nam had established the existence of the "zeroing methodology" as a rule or norm of general and prospective application maintained by the USDOC. Relying on prior Appellate Body rulings, the Panel concluded that simple zeroing in administrative reviews is, as such, inconsistent with Art. 9.3 and Art. VI:2.
- **ADA Arts. 6.10, 6.10.2, 9.3, 11.1 and 11.3 (limitation of the number of selected respondents):** The Panel rejected Viet Nam's claims that the USDOC had limited the number of respondents for which it calculated an individual margin of dumping in a manner that deprived Vietnamese respondents of rights under Arts. 6.10, first sentence, and 9.3, 11.1 and 11.3. In addition, the Panel rejected a claim by Viet Nam that the USDOC violated Art. 6.10.2, first sentence, by not determining individual margins of dumping for non-selected respondents that submitted a voluntary response. The Panel rejected a claim by Viet Nam that the USDOC had acted inconsistently with Art. 6.10.2, second sentence, by discouraging voluntary responses.
- **ADA Art. 9.4 (imposition of anti-dumping duties -"all others" rate):** The Panel found that the "all others" rate applied in the administrative reviews at issue was inconsistent with Art. 9.4 as it was based on dumping margins calculated with zeroing.
- **ADA Arts. 9.4, 6.8 (imposition of anti-dumping duties – rate assigned to the Viet Nam-wide entity):** The Panel upheld a claim by Viet Nam that the USDOC acted inconsistently with Art. 9.4 by failing to apply the "all others" rate to the Viet Nam-wide entity composed of respondents who could not establish independence from the government. The Panel reasoned that the USDOC could not make the application of the "all others" rate conditional on the fulfilment of additional requirements not provided for under Art. 9.4. The Panel also found that the application of a "facts available" rate to the Viet Nam-wide entity in the second administrative review and of a rate that was in substance a "facts available" rate in the third administrative review was inconsistent with Art. 6.8.

3. OTHER ISSUES

- **Requirements of panel request (DSU Art. 6.2):** The Panel found that Viet Nam's panel request did not identify the "continued use of challenged practices" measure as a measure at issue in the dispute; that Viet Nam had failed to include claims under ADA Art. 17.6(i) in its panel request; and that certain other claims by Viet Nam's claims were outside the Panel's terms of reference.

1 *United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam*

EU – FOOTWEAR (CHINA)[1]
(DS405)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*ADA Arts. 2.2, 6.5, 6.10, 9.2 and 18.4* *GATT Art. I* *China's Accession Protocol* *WTO Agreement Art. XVI:4*	Establishment of Panel	*18 May 2010*
			Circulation of Panel Report	*28 October 2011*
Respondent	*European Union*		Circulation of AB Report	*NA*
			Adoption	*22 February 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (1) Art. 9.5 of the European Union's basic anti-dumping regulation (Basic AD Regulation), regulating dumped imports from non-market economies (NMEs); (2) the European Union "Definitive Regulation" imposing definitive anti-dumping duties on the products at issue; and (3) the European Union's "Review Regulation" maintaining definitive anti-dumping duties on the products at issue following expiry review.

- **Product at issue:** Certain footwear with leather uppers originating in China.

2. SUMMARY OF KEY PANEL FINDINGS

Claims related to the treatment of NMEs

- **ADA Arts. 6.10, 9.2, 18.4 and WTO Agreement Art. XVI:4 (individual treatment in imposing anti-dumping duties):** ADA Arts. 6.10 and 9.2 support the same basic principle that individual exporters and producers in anti-dumping investigations should be treated individually in the determination and imposition of anti-dumping duties, except where it would be impracticable to do so. The Panel thus found that Art. 9.5 of the Basic AD Regulation was as such and as applied inconsistent with both of these provisions because, for NMEs, it imposed duties for producers/exporters on a country-wide basis and conditioned the calculation of individual duties on the satisfaction of individual treatment conditions. The Panel then concluded that Art. 9.5 of the Basic AD Regulation also violated WTO Agreement Art. XVI: 4 and ADA Art. 18.4.

- **GATT Art. I:1 (most-favoured-nation treatment – treatment of NMEs):** The Panel found Art. 9.5 of the Basic AD Regulation as such in violation of the most-favoured-nation principle codified in Art. I:1 on the basis that (i) the automatic grant of individual treatment to imports from market economies is an "advantage" within the meaning of this provision; and (ii) the advantage of automatic individual treatment is conditioned on the origin of the products.

Claims related to determinations made by the European Commission in the original investigation and expiry reviews

- **ADA Art. 2.2.2(iii) (dumping determination – a cap on profit):** The Panel found that failure by the European Commission to calculate the cap on profit before determining the amounts for administrative, selling and general costs and profit for one Chinese producer, as called for in Art. 2.2.2(iii) and the failure to attempt to make such a determination constituted a violation of that provision.

- **ADA Arts. 6.5 and 6.5.1 (treatment of confidential information):** The Panel found that the European Union acted inconsistently with Art. 6.5.1 by failing to ensure that producers submitting confidential data submitted a non-confidential summary thereof, or an explanation as to why such summarization was not possible with respect to certain categories of data in the original investigation and the expiry review. The Panel further concluded that the European Union acted inconsistently with Art. 6.5 by treating as confidential certain categories of information without evidence showing good cause for such treatment and/or evidence that submitters ever asserted that the information met the criteria defining information that may be considered by its nature confidential

Other Claims Under the ADA and China's Accession Protocol

- The Panel dismissed all other claims of inconsistency submitted by China in respect of certain aspects of the measures at issue.[2]

1 *European Union – Anti-Dumping Measures on Certain Footwear from China*

2 China had brought claims against the European Union under the following provisions: ADA Arts. 1, 2.1, 2.4, 2.6, 3.1, 3.2, 3.3, 3.4, 3.54.1, 6.1.1, 6.1.2, 6.2, 6.4, 6.5, 6.5.1, 6.5.2, 6.8, 6.9, 6.10, 6.10.2, 9.1, 9.2, 9.3, 6.4, 11.3, 12.2.2, and 18.1; Paras. 151(e) and (f) of China's Accession Working Party Report; Para. 15(a) of China's Accession Protocol; GATT Arts. VI:I and X(3)(a).

US – CLOVE CIGARETTES[1]
(DS406)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*TBT Arts. 2.1 and 2.12* *Doha Ministerial Decision on Implementation-Related Issues and Concerns, para. 5.2* *DSU Art. 11*	Establishment of Panel	*20 July 2010*
			Circulation of Panel Report	*2 September 2011*
Respondent	*United States*		Circulation of AB Report	*4 April 2012*
			Adoption	*24 April 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Section 907(a)(1)(A) of the Federal Food, Drug, and Cosmetic Act (Section 907(a)(1)(A)), a tobacco control measure adopted by the United States.

- **Product at issue:** Clove cigarettes from Indonesia.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **TBT Art. 2.1 (no less favourable treatment):** The Appellate Body upheld, although for different reasons, the Panel's finding that clove cigarettes imported from Indonesia and menthol cigarettes produced in the United States were "like products" within the meaning of Art. 2.1. The Appellate Body disagreed with the Panel that the concept of "like products" in Art. 2.1 should be interpreted based on the regulatory purpose of the technical regulation at issue. Instead, the Appellate Body considered that the determination of whether products are "like" within the meaning of Art. 2.1 is a determination about the competitive relationship between the products, based on an analysis of the traditional "likeness" criteria of physical characteristics, end use, consumer tastes and habits, and tariff classification.

  The Appellate Body upheld, although for different reasons, the Panel's finding that, by banning clove cigarettes while exempting menthol cigarettes from the ban, Section 907(a)(1)(A) accorded less favourable treatment to imported clove cigarettes than it accorded to "like" domestic menthol cigarettes. The Appellate Body interpreted "treatment no less favourable" in Art. 2.1 as not prohibiting a detrimental impact on imports when such impact stems exclusively from a legitimate regulatory distinction. The Appellate Body found that the design, architecture, revealing structure, operation and application of Section 907(a)(1)(A) strongly suggested that the detrimental impact on competitive opportunities for clove cigarettes reflected discrimination against the group of like products imported from Indonesia.

- **TBT Art. 2.12, and Doha Ministerial Decision on Implementation-Related Issues and Concerns, para. 5.2 (reasonable interval between publication of technical regulations and their entry into force):** The Appellate Body upheld, although for different reasons, the Panel's finding that, by failing to allow an interval of not less than six months between the publication and the entry into force of Section 907(a)(1)(A), the United States acted inconsistently with Art. 2.12. The Appellate Body upheld the Panel's finding that para. 5.2 constitutes a "subsequent agreement between the parties" within the meaning of Art. 31(3)(a) of the VCLT, on the interpretation of the term "reasonable interval" in Art. 2.12. Moreover, the Appellate Body found that "reasonable interval" should normally be interpreted to mean at least six months.

3. OTHER ISSUES

- **Requirements of panel request – identification of like products (DSU Art. 6.2):** The Panel found that, when the complainant has specified the products in its panel request and the claim at issue pertains to a WTO obligation that requires a comparison of particular products, such identification becomes an integral part of the panel's terms of reference, and cannot be "cured" through argumentation.

1 *United States – Measures Affecting the Production and Sale of Clove Cigarettes*

2 Other issues addressed: (i) TBT Art. 2.2 (more trade-restrictive than necessary); (ii) TBT Art. 2.5 (request for explanation of justification); (iii) TBT Art. 2.8 (technical regulations to be specified in terms of performance where appropriate); (iv) TBT Arts. 2.9.2, 2.9.3, and 2.10 (notification requirements); and (v) TBT Art. 12.3 (unnecessary barrier to exports from a developing country). These Panel findings were not appealed.

CANADA – RENEWABLE ENERGY/ CANADA – FEED-IN TARIFF PROGRAM[1]

(DS412, 426)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Japan, European Union*	*ASCM Art. 1.1* *GATT Arts. III:4 and III:8(a)* *TRIMs Art. 2.1*	Establishment of Panel	*6 October 2011 (Japan)* *23 January 2012 (European Union)*
			Circulation of Panel Report	*19 December 2012*
Respondent	*Canada*		Circulation of AB Report	*6 May 2013*
			Adoption	*24 May 2013*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Feed-in Tariff (FIT) Program of the Province of Ontario (the FIT Programme), and all individual FIT and microFIT Contracts implementing the FIT Programme

- **Products at issue:** Certain electricity generation equipment in the renewable energy sector, and the electricity generated by such equipment

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **Relationship between the TRIMs Agreement and GATT:** In the dispute between Canada and the European Union, the Appellate Body upheld the Panel's finding that para. 1(a) of the Illustrative List in the Annex to the TRIMs Agreement did not obviate the need for the Panel to undertake an analysis of whether the challenged measures are outside of the scope of application of GATT Art. III:4 by virtue of the operation of GATT Art. III:8(a).

- **GATT Art. III:8(a) (national treatment – derogation):** Both the Panel and the Appellate Body found, albeit for different reasons, that the measures at issue did not fall within the scope of the derogation under Art. III:8(a). The Appellate Body found that, to qualify for this derogation, the product of foreign origin allegedly being discriminated against must be in a competitive relationship with the product purchased by the government. In these disputes, the product being procured by the Government of Ontario was electricity, whereas the foreign product suffering from discrimination due to the Minimum Required Domestic Content Levels under the measures at issue was electricity generation equipment. These two products were not in a competitive relationship. Thus, the Appellate Body found that the discrimination relating to foreign generation equipment was not covered by the derogation. The Appellate Body reversed the Panel's intermediate finding that the measures at issue were laws, regulations, or requirements governing the procurement by governmental agencies of electricity within the meaning of GATT Art. III:8(a), and declared moot and of no legal effect the Panel's other intermediate findings.

- **TRIMs Agreement Art. 2.1(local content requirement) and GATT Art. III:4 (national treatment – domestic laws and regulations):** The Appellate Body upheld the Panel's conclusion that the Minimum Required Domestic Content Levels prescribed under measures at issue were inconsistent with TRIMS Agreement Art. 2.1 and GATT Art. III:4.

- **ASCM Art. 1.1(a) (subsidy definition – financial contribution):** In the dispute between Canada and Japan, the Appellate Body upheld the Panel's finding that the measures at issue constituted financial contributions in the form of government purchases of goods within the meaning of Art. 1.1(a)(1)(iii).

- **ASCM Art. 1.1(b) (subsidy definition – benefit):** The Appellate Body reversed the Panel majority's finding that the European Union and Japan failed to establish that the challenged measures conferred a benefit. The Appellate Body found that the Panel was mistaken in using the market for electricity generated from all sources of energy as the relevant market for comparison in determining benefit. The Appellate Body considered that, in defining the relevant market, the Panel should have undertaken an analysis of demand-side and supply-side factors. Such an analysis would have shown that producers of wind- and solar PV-generated electricity did not compete with other electricity producers, because of differences in cost structures and operating costs. This would have led the Panel to conclude that the relevant market for the benefit comparison was the market for wind- and solar PV-generated electricity. The Appellate Body, however, was unable to determine whether the challenged measures conferred a benefit within the meaning of Art. 1.1(b), due to the lack of a sufficient factual basis to complete the analysis. As a result, there was no finding as to whether the measures at issue were prohibited subsidies under ASCM Arts. 3.1(b) and 3.2.

1 *Canada – Certain Measures Affecting the Renewable Energy Generation Sector/Canada – Measures Relating to the Feed in Tariff Program*

CHINA – ELECTRONIC PAYMENT SERVICES[1]
(DS413)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATS Arts. XVI and XVII*	Establishment of Panel	*25 March 2011*
			Circulation of Panel Report	*16 July 2012*
Respondent	*China*		Circulation of AB Report	*NA*
			Adoption	*31 August 2012*

1. MEASURES AND SERVICES AT ISSUE

- **Measures at issue:** A series of requirements imposed by China and alleged by the United States to constitute impermissible market access restrictions or national treatment limitations on foreign suppliers of the services at issue.

- **Services at issue:** Electronic payment services (EPS) for all types of renminbi (RMB) payment card transactions involving bank cards issued and/or used in China.

2. SUMMARY OF KEY PANEL FINDINGS

- **Classification of the services at issue:** The Panel found that electronic payment services for payment card transactions are classifiable under Subsector 7.B(d) of China's Services Schedule, which reads "[a]ll payment and money transmission services, including credit, charge, and debit cards, travellers cheques and bankers drafts (including import and export settlement)". It observed that the use of the term "all" manifests an intention to cover the entire spectrum of the "payment and money transmission services" encompassed under Subsector (d).

- **Scope of China's GATS commitments:** The Panel rejected the United States' view that China's Schedule includes a cross-border (mode 1) market access commitment to allow the supply of EPS into China by foreign EPS suppliers. The Panel found, however, that China's Schedule includes a market access commitment that allows foreign EPS suppliers to supply their services through commercial presence (mode 3) in China, so long as a supplier meets certain qualifications requirements related to local currency business. The Panel further found that China's Schedule contains a full national treatment commitment for the cross-border supply of EPS (mode 1) as well as a commitment under mode 3 (commercial presence) that is subject to certain qualifications requirements related to local currency business.

- **GATS Art. XVI (market access obligation):** The Panel rejected on the basis of lack of evidence that China maintains China UnionPay (CUP) – a Chinese EPS supplier – as an across-the-board monopoly supplier for the processing of all domestic RMB payment card transactions, in breach of its obligations under Art. XVI. The Panel found, however, that China acted inconsistently with GATS Art. XVI:2(a) in view of its mode 3 market access commitment by granting CUP a monopoly for the clearing of certain RMB payment card transactions, because only CUP may clear RMB-denominated transactions involving RMB payment cards issued in China and used in Hong Kong or Macao, or RMB cards issued in Hong Kong or Macao used in China.

- **GATS Art. XVII of the GATS (national treatment obligation):** The Panel found that some of the relevant requirements, namely the requirements that all bank cards issued in China must bear the *Yin Lian*/UnionPay logo (i.e., the logo of CUP's network) and be interoperable with that network, that all terminal equipment in China must be capable of accepting *Yin Lian*/UnionPay logo cards, and that acquirers of transactions for payment card companies post the *Yin Lian*/UnionPay logo and be capable of accepting payment cards bearing that logo, are each inconsistent with China's national treatment obligations under Art. XVII. This is because, contrary to China's mode 1 and mode 3 national treatment commitments, these requirements modified the conditions of competition between EPS suppliers of other Members and China's own like services and service supplier CUP to the detriment of those other EPS suppliers.

3. OTHER ISSUES

- **Preliminary ruling:** The Panel rejected China's claim that the United States' request for the establishment of a panel failed to meet the requirement in DSU Art. 6.2 to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

1 *China – Certain Measures Affecting Electronic Payment Services*

CHINA – GOES[1]
(DS414)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Art. VI:2* *ADA Arts. 1, 3.1, 3.2, 3.5, 6.5.1, 6.8, 6.9, 12.2 and 12.2.2; Annex II* *ASCM Arts. 10, 11.2, 11.3, 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.5, 22.3 and 22.5*	Establishment of Panel	*25 March 2011*
Respondent	*China*		Circulation of Panel Report	*15 June 2012*
			Circulation of AB Report	*18 October 2012*
			Adoption	*12 November 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** China's imposition of anti-dumping and countervailing duties on grain oriented flat-rolled electrical steel from the United States, pursuant to China's Ministry of Commerce (MOFCOM) Final Determination [2010] No. 21 (10 April 2010).

- **Product at issue:** Grain oriented flat-rolled electrical steel (GOES).

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Arts. 11.2 and 11.3 (initiation of investigation – application):** The Panel concluded that the obligation upon Members in relation to the assessment of the sufficiency of evidence in an application finds expression in Art. 11.3 and must be read together with Art. 11.2, which sets forth the requirements for sufficient evidence. The Panel found that MOFCOM initiated countervailing duty investigations into 11 programmes without sufficient evidence to justify it, contrary to Art. 11.3.

- **ADA Art. 6.8 and Annex II para. 1/ASCM Art. 12.7 (evidence – facts available):** The Panel found that MOFCOM improperly resorted to facts available to calculate the "all others" dumping margin and subsidies rate for unknown exporters and improperly used a 100% utilization rate when applying facts available to calculate the subsidy rates for the two known respondents under certain procurement programmes, contrary to ADA Art. 6.8 and Annex II and ASCM Art. 12.7.

- **ADA Art. 3.1/ASCM Art. 15.1 (injury determination – positive evidence and objective examination) and ADA Art. 3.2/ASCM Art. 15.2 (injury determination – evidence on price effects and volumes):** The Appellate Body interpreted ADA Art. 3.2 and ASCM Art. 15.2 as requiring an investigating authority to consider the relationship between subject imports and prices of like domestic products, so as to understand whether subject imports provide explanatory force for the occurrence of significant price depression or suppression. The Appellate Body upheld the Panel's finding that MOFCOM wrongly relied on the "low price" of subject imports relative to domestic prices in reaching its price effects finding, as the evidence available could not have allowed an objective and impartial investigating authority to determine that subject imports were priced lower than domestic products.

- **ADA Art. 3.1/ASCM Art. 15.1 (injury determination – positive evidence and objective examination) and ADA Art. 3.5/ASCM Art. 15.5 (injury determination – causation):** The Panel found that MOFCOM failed properly to examine whether the rapid increase in the capacity of the domestic GOES, was at the same time injuring the domestic industry, contrary to ADA Arts. 3.1 and 3.5 and ASCM Arts. 15.1 and 15.5.

- **ADA Art. 6.9/ASCM Art. 12.8 (evidence – essential facts):** The Panel found deficiencies in MOFCOM's essential facts disclosure in connection with the resort of facts available, the price effects analysis and the causation analysis with respect to non-subject imports, contrary to ADA Art. 6.9 and ASCM Art. 12.8. The Appellate Body upheld the finding with respect to price effects.

- **ADA Arts. 12.2 and 12.2.2/ASCM Arts. 22.3 and 22.5 (notification requirements):** The Panel found deficiencies in MOFCOM's public notice and explanations in connection with the resort of facts available, the price effects analysis and the causation analysis with respect to non-subject imports, contrary to ADA Arts. 12.2 and 12.2.2 and ASCM Arts. 22.3 and 22.5. The Appellate Body upheld the finding with respect to price effects. The Panel rejected the United States' claims with respect to public notice of the calculations used to determine the dumping margins and the findings and conclusions leading to the benefit determination under the government procurement statutes.

- **ADA Art. 6.5.1/ASCM Art. 12.4.1 (evidence – confidential information):** The Panel found that MOFCOM failed to require the applicants to furnish non-confidential summaries in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, contrary to ADA Art. 6.5.1 and ASCM Art. 12.4.1.

1 *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States*
2 Other issues addressed: ADA Art. 1, ASCM Art. 10.

CHINA – GOES (ARTICLE 21.5 – US)[1]
(DS414)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ADA Arts. 3.1, 3.2, 3.4, 3.5, 6.9, 12.2 and 12.2.2*	Referred to the Original Panel	*26 February 2014*
			Circulation of Panel Report	*31 July 2015*
Respondent	*China*	*ASCM Arts. 15.1, 15.2, 15.4, 15.5, 12.8, 22.3 and 22.5*	Circulation of AB Report	*N/A*
			Adoption	*31 August 2015*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Measures taken by China to implement the DSB recommendations and rulings in *China – GOES*, as set forth in MOFCOM's Redetermination issued on 31 July 2013.

2. SUMMARY OF KEY PANEL

- **ADA Art. 3.1/ASCM Art. 15.1 (injury determination – positive evidence and objective examination) and ADA Art. 3.4/ ASCM Art. 15.4 (injury determination – adverse impact):** The Panel found this claim was not properly before it as it pertained to a matter that could have been raised in the original proceedings but was not, and it could not now be raised in compliance proceedings.

- **ADA Art. 3.1/ASCM Art. 15.1 (injury determination – positive evidence and objective examination) and ADA Art. 3.2/ ASCM Art. 15.2 (injury determination – evidence on price effects):** The Panel found several deficiencies in MOFCOM's price depression and price suppression analyses. In particular, noting that MOFCOM's analyses were based on the effects of the increased volume of subject imports on the domestic like product prices, it found that some aspects of these analyses were based on assumptions rather than evidence. According In particular, the found Panel found that certain relevant evidence on record, such as evidence pertaining to the volume and market share of non-subject imports, and that regarding differences in prices among subject imports, non-subject imports and domestic like products, were not properly considered by MOFCOM.

- **ADA Art. 3.1/ASCM Art. 15.1 (injury determination – positive evidence and objective examination) and ADA Art. 3.5/ ASCM Art. 15.5 (causation determination):** The Panel found several aspects of MOFCOM's causation determination to be inconsistent with these provisions. The Panel concluded that because MOFCOM's causation determination relied, in part, on its price effects analysis, which the Panel had already found to be inconsistent with the relevant provisions of the ADA and SCM, its causation determination was also erroneous. In addition, the Panel found that MOFCOM had failed to adequately explain why the injury suffered by the domestic industry could not be attributed to certain factors other than dumped imports, including non-subject imports.

- **ADA Art. 6.9/ASCM Art. 12.8 (evidence – essential facts):** The Panel upheld some claims raised by the United States while rejecting others. In rejecting these claims, the Panel noted that these claims pertained to matters on which it had already concluded that MOFCOM's redetermination was substantively inadequate. However, the Panel found that MOFCOM did disclose the essential facts which formed the basis of this substantially inadequate determination, and therefore did not violate these provisions.

- **ADA Arts. 12.2 and 12.2.2/ASCM Arts. 22.3 and 22.5 (notification requirements):** The Panel found that the claims regarding inadequate public notice related to aspects of MOFCOM's Redetermination on which the Panel had already found a substantive violation. Thus, the Panel exercised judicial economy on these claims.

1 *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-rolled Electrical Steel from the United States*

DOMINICAN REPUBLIC – SAFEGUARD MEASURES[1]
(DS415, 416, 417, 418)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*Costa Rica, El Salvador, Guatemala, Honduras*	*GATT Arts. I:1, II:1(b), XIX:1(a), XIX:2 and XIX*	Establishment of Panel	*7 February 2011*
			Circulation of Panel Report	*31 January 2012*
Respondent	*Dominican Republic*	*SA Arts. 2.1, 2.2, 3.1, 4.1(a), 4.1(c), 4.2(a), 4.2(c), 4.2, 6, 9.1 and 11.1(a)*	Circulation of AB Report	*NA*
			Adoption	*22 February 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The provisional and final safeguard measures imposed by the Dominican Republic on imports, and the investigation that led to the imposition of those measures.

- **Product at issue:** Polypropylene bags and tubular fabric.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Arts. I:1 (most-favoured-nation treatment) and II:1(b) (schedules of concessions – other duties or charges):** The Panel concluded that the measures at issue had the effect of suspending the Dominican Republic's most-favoured-nation treatment obligation in Art. I:1, as well as the prohibition on other duties or charges in connection with importation within the meaning of Art. II:1(b).

- **GATT Art. XIX:1(a) (applicability of emergency action on imports of particular products):** As a consequence, the Panel concluded that the measures suspended the Dominican Republic's obligations under GATT within the meaning of Art. XIX:1(a) and that the provisions of GATT Art. XIX and the SA were applicable.

- **GATT Art. XIX:1(a) (conditions for safeguard measures – unforeseen developments, definition of the domestic industry" and serious injury):** The Panel concluded that the Dominican Republic acted inconsistently with Art. XIX:1(a) with respect to the existence of unforeseen developments and the effect of GATT obligations; with SA Arts. 4.1(c) and 2.1 and GATT Art. XIX:1(a) with respect to the definition of the domestic industry; with SA Arts. 4.1(a), 4.2(a) and 2.1 and GATT Art. XIX:1(a) with respect to the determination of serious injury. As a consequence, the Dominican Republic also acted inconsistently with SA Arts. 3.1, last sentence, 4.2(c) and 11.1(a) with respect to the obligation of setting forth in its published report its findings and reasoned conclusions reached on all pertinent issues of fact and law, accompanying its published report with a demonstration of the relevance of the factors examined, and only taking safeguard measures in conformity with GATT Art. XIX and the SA.

- **GATT Art XIX:1(a) and SA Art. 2.1 (conditions for safeguard measures – increased imports):** The Panel rejected the claim that the Dominican Republic acted inconsistently with SA Art. 2.1 and GATT Art. XIX:1(a) with respect to the determination of an absolute increase in imports; consequently, the Panel also rejected the related claims under SA Arts. 3.1, last sentence, 4.2(a) and 4.2(c). The Panel exercised judicial economy on claims with respect to the determination of a relative increase in imports.

- **GATT Art. XIX:1(a) and SA Arts. 2.1 and 4.2(a) (conditions for safeguard measures – causal link between the increase in imports and the serious injury):** In light of its determinations on serious injury, the Panel abstained from making findings on the existence of a causal link between the increase in imports and a serious injury.

- **SA Arts. 2.1, 2.2, 3.1, 4.2, 6 and 9.1 (parallelism):** The Panel rejected the claim that the Dominican Republic had acted inconsistently with Arts. 2.1, 2.2, 3.1, 4.2, 6 and 9.1 in respect of parallelism, by not conducting a new analysis to determine the increase in imports, injury and causation, without taking into account imports from certain developing country Members that were excluded from the application of the measures.

- **SA Art. 9.1 (developing country exception):** The Panel concluded that the Dominican Republic acted inconsistently with Art. 9.1 by failing to take all reasonable steps to exclude from the application of the measures a developing country that exported less than the *de minimis* levels indicated in that provision.

- **GATT Art. XIX:2 and SA Art. 12.1(c) (notification):** The Panel rejected the claim that the Dominican Republic acted inconsistently with GATT Art. XIX:2 and SA Art. 12.1(c) in notifying its definitive measure. As a consequence, the Panel also rejected the claim that the Dominican Republic failed to give complainants an opportunity to hold consultations and to obtain an adequate means of trade compensation as required by GATT Art. XIX:2 and SA Arts. 8.1 and 12.13.

1 *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric*

US – SHRIMP AND SAWBLADES (CHINA)[1] (DS422)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*ADA Art. 2.4.2*	Establishment of Panel	*25 October 2011*
			Circulation of Panel Report	*8 June 2012*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*23 July 2012*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** United States anti-dumping measures covering two products from China.
- **Product at issue:** (i) certain frozen warmwater shrimp; and (ii) diamond sawblades and parts thereof.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4.2 (dumping determination – zeroing):** The Panel upheld China's claim that the use of zeroing in calculating the margins of dumping in the anti-dumping investigations at issue was inconsistent with Art. 2.4.2, and therefore concluded that the United States had acted inconsistently with its obligations under this provision.

  ADA Art. 2.4.2 (dumping determination – separate rate calculation): The Panel rejected China's claim concerning the separate rate in the shrimp investigation. As the investigation concerned imports from a non-market economy, the United States Department of Commerce (USDOC) assigned a "separate rate" to exporters that were able to demonstrate the absence of government control, both *de jure* and *de facto*, over their export activities; other exporters were assigned the rate for the People's Republic of China-entity. In calculating the separate rate, the USDOC had averaged the dumping margins of the investigated companies, which were calculated with zeroing. China argued that the separate rate was also inconsistent with ADA Art. 2.4.2. The Panel considered that China "has not … satisfactorily explained how Article 2.4.2 could provide the legal basis for a finding of inconsistency with respect to the separate rate" and said that "[t]he fact that margins of dumping are inconsistent with Article 2.4.2 does not necessarily mean that a separate rate calculated on the basis of such margins is also, itself, inconsistent with that same provision". The Panel however agreed with the statement of the panel in *US – Shrimp (Ecuador)* that the calculation of the separate rate on the basis of individual margins calculated with zeroing "necessarily incorporates the WTO-inconsistent zeroing methodology".

3. OTHER ISSUES

- **Uncontested claims:** Although the respondent did not contest China's claims, the Panel considered that its responsibilities remained as set forth under DSU Art. 11, i.e. to make "an objective assessment of the matter before it". Further, with respect to the burden of proof, the Panel held that even though the respondent did not contest the claims, China was nevertheless required to make a prima facie case of violation.

1 *United States – Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China*

CHINA – X-RAY EQUIPMENT[1]
(DS425)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*ADA Arts. 3.1, 3.2, 3.4, 3.5, 6.5.1, 6.9 and 12.2.2*	Establishment of Panel	*20 January 2012*
			Circulation of Panel Report	*26 February 2013*
Respondent	*China*		Circulation of AB Report	*NA*
			Adoption	*24 April 2013*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping duties imposed by China's Ministry of Commerce (MOFCOM) by Notice No. 1 (2011), including its Annex, on x-ray equipment from the European Union.

- **Product at issue:** X-ray security inspection equipment (x-ray equipment) from the European Union.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Arts. 3.1 (injury determination) and 3.2 (injury determination – volume of imports):** The Panel held that MOFCOM's price undercutting and price suppression analyses were inconsistent with Arts. 3.1 and 3.2. The Panel found that the price effects analysis were not based on an objective examination of positive evidence, as MOFCOM had failed to ensure that the prices it was comparing as part of its price effects analysis were comparable.

- **ADA Arts. 3.1 (injury determination) and 3.4 ((injury determination – injury factors):** The Panel found MOFCOM acted inconsistently with Arts. 3.1 and 3.4 because of its failure to consider all relevant economic factors, in particular, the "magnitude of the margin of dumping" when making a determination on the state of the domestic industry. Moreover, MOFCOM's examination was found to lack objectivity, and not to be reasoned and adequate. The Panel rejected the European Union's claim that MOFCOM did not rely upon positive evidence in making its determination.

- **ADA Arts. 3.1 (injury determination) and 3.5 (injury determination – causation):** The Panel concluded that MOFCOM acted inconsistently with Arts. 3.1 and 3.5 because (i) it failed to take into consideration the differences in the products under consideration in the price effects analysis; and (ii) it failed to provide an adequate explanation regarding how the prices of the dumped imports caused price suppression in the domestic industry, particularly in 2008. Moreover, it found that MOFCOM failed to consider certain "known factors", and failed to consider evidence relating to other factors that it did explicitly consider, in its non-attribution analysis.

- **ADA Art. 6.5.1 (evidence – confidential information):** The Panel upheld the majority of the European Union's claims that the non-confidential summaries provided by the Chinese producer that had filed the request for the imposition of the anti-dumping measures, were contrary to the first sentence of Art. 6.5.1 as they were inadequate to permit a reasonable understanding of the substance of the information submitted in confidence. The European Union's claim that MOFCOM had improperly invoked the Art. 6.5.1 exceptional circumstances mechanism by failing to require the Chinese producer to provide a statement of reasons why the relevant confidential information could not be summarized was also upheld.

- **ADA Art. 6.9 (evidence – essential facts)**: The Panel largely upheld the European Union's claim under Art. 6.9 that MOFCOM had failed to disclose certain essential facts to interested parties.

- **ADA Art. 12.2.2 (notification):** The Panel found that MOFCOM's failure to include in its public notice relevant information regarding its price effects analysis and the factual basis for the determination of the residual rate was contrary to the first sentence of Art. 12.2.2. Moreover, MOFCOM's public notice violated the second sentence of Art. 12.2.2 as it failed to explain why it had rejected certain arguments regarding the treatment of domestic sales to affiliated distributors. Other aspects of the European Union's claim under Art. 12.2.2 were not upheld by the Panel.

1 *China – Definitive Anti-Dumping Duties on X-Ray Equipment from the European Union*

2 The Panel exercised judicial economy on whether MOFCOM had acted inconsistently with Art. 3.4 by failing to take into account the differences between high-energy and low-energy scanners, with respect to its analysis of the effect of the volume of subject imports, in respect of the European Union's dependent claims under Arts. 6.2 and 6.4 and in respect of one aspect of the European Union's Art. 6.9 claim.

CHINA – BROILER PRODUCTS[1]
(DS427)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ADA Arts. 2.2.1.1, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 6.2, 6.5.1, 6.8, 6.9, 12.2 and 12.2.2*	Establishment of Panel	*20 January 2012*
			Circulation of Panel Report	*2 August 2013*
Respondent	*China*	*ASCM Arts. 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.4, 15.5, 16.1, 19.4, 22.3 and 22.5* *GATT Art. VI:3*	Circulation of AB Report	*NA*
			Adoption	*25 September 2013*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Imposition of anti-dumping and countervailing measures by China.
- **Product at issue:** Broiler chicken products from the United States.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Art. 6.2 (defence of parties' interests):** The Panel found that China's Ministry of Commerce (MOFCOM) had failed to provide an opportunity for interested parties with adverse interests to meet and present their views, in violation of Art. 6.2.
- **ADA Art. 6.5.1 and ASCM Art. 12.4.1 (provision of non-confidential summaries):** The Panel found that the non-confidential summaries of the information redacted from the confidential version of the Petition did not provide a reasonable understanding of the information submitted in confidence.
- **ADA Art. 6.9 and ASCM Art. 12.8 (disclosure of essential facts):** The Panel found that MOFCOM had failed to disclose certain essential facts. With respect to calculations of dumping margins, the Panel determined that the actual calculations performed need not be disclosed, however the investigating authority must disclose the formula it used to perform the calculations.
- **ADA Art. 2.2.1.1 (dumping determination – costs calculation):** The Panel found that MOFCOM had improperly rejected the cost allocations in the normal books and records of two of the respondents as it did not explain its reasons for doing so. For one respondent, the Panel concluded that MOFCOM had provided a sufficient explanation of its reasons for rejecting the cost allocations contained in the respondent's normal books and records. The Panel also found that MOFCOM improperly allocated certain costs that were not actually associated with the production and sale of the relevant products.
- **ADA Art. 6.8 and ASCM Art. 12.7 (dumping determination – facts available):** The Panel concluded that MOFCOM's publication of a notice on the internet requesting registration and certain information, and informing of the consequences of not doing so, fulfilled the requirements for resorting to "facts available". However, the Panel concluded that the United States made a prima facie case that the rates applied were in contravention of Arts. 6.8 and 12.7.
- **ASCM Art. 19.4 and GATT Art. VI:3 (calculation of the amount of subsidization):** The Panel found that MOFCOM improperly calculated the amount of per unit subsidization as it did not explain how it ensured that it only countervailed subsidies conferred on the production of subject products.
- **ADA Art. 4.1/ASCM Art. 16.1 and ADA Art. 3.1/ASCM Art. 15.1 (definition of domestic industry):** The Panel found that there is no obligation to first attempt to define the "domestic industry" as the domestic producers as a whole before defining it as producers representing a "major proportion" of total domestic production. The Panel also concluded that the United States had not adduced evidence that MOFCOM's process for defining the domestic industry involved a self-selection process that introduced a material risk of distortion into the injury analysis.
- **ADA Art. 3.1/ASCM Art. 15.1 and ADA Art. 3.2/ASCM Art. 15.2 (injury determination – price effects analysis):** The Panel determined that MOFCOM acted inconsistently with ADA Arts. 3.1/15.1 and 3.2/15.2 when it compared domestic and import prices with a different product mix in its price effects analysis. However, the Panel found that the United States had not demonstrated that MOFCOM had compared prices for transactions at different levels of trade.
- **ADA Arts. 12.2 and 12.2.2 and ASCM Arts. 22.3 and 22.5 (notification requirements):** The Panel found that MOFCOM had failed to disclose "in sufficient detail the findings and conclusions reached on all issues of fact and law considered material" or "all relevant information on matters of fact" in its determinations with respect to the "all others" rate; and failed to explain in its final determinations its reasons for rejecting certain arguments made by US interested parties before MOFCOM.

1 *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*
2 Other issues addressed: judicial economy; consequential claims; DSU Art. 6.2 (panel's terms of reference).

CHINA – BROILER PRODUCTS (ARTICLE 21.5 – US)[1]
(DS427)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ADA Arts. 1, 2.2.1.1, 3.1, 3.2, 3.4, 3.5, 6.1, 6.4, 6.5, 6.8, 6.9, 9.4, 12.2 and 12.2.2; Annex II*	Referred to the Original Panel	*22 June 2016*
			Circulation of Panel Report	*18 January 2018*
Respondent	*China*	*ASCM Arts. 10, 12.1, 12.3, 12.4, 12.8, 15.1, 15.2, 15.4, 15.5, 22.3 and 22.5* *GATT Art. VI*	Circulation of AB Report	*NA*
			Adoption	*28 February 2018*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Continued imposition of anti-dumping and countervailing measures by China's Ministry of Commerce (MOFCOM).

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ADA Art. 2.2.1.1 (dumping determination – costs calculation):** The Panel found that MOFCOM's redetermination was inconsistent with Art. 2.2.1.1 because it failed to (a) explain why it relied upon a weight-based cost allocation which excluded non-consumable parts of a live broiler (which were intrinsic to its production) and rejected an exporter's alternative weight-based cost allocation which accounted for these non-consumable parts and (b) address the panel's original findings relating to another exporter.

- **ADA Art. 3.2/ASCM Art. 15.2 (injury determination – price effects analysis):** The Panel found that MOFCOM's redetermination was inconsistent with these provisions because it failed to (a) explain or control for differences between baskets of products for the purposes of price comparison; and (b) explain whether the sample of four companies chosen for price comparison was representative. The Panel also held that MOFCOM's consideration of price suppression rested on its consideration of price undercutting, such that its price suppression analysis was undermined by a flawed analysis of price undercutting.

- **ADA Art. 3.4/ASCM Art. 15.4 (injury determination – injury factors):** The Panel found that MOFCOM's redetermination was inconsistent with these provisions because it (a) simply compared capacity utilization rates without explaining or controlling for the increase in total domestic capacity and (b) relied on an irrelevant factor, the prospective impact of future imports, in its examination of present injury caused by subject imports.

- **ADA Art. 3.5/ASCM Art. 15.5 (injury determination – causation):** In respect of MOFCOM's causation analysis, the Panel found that China acted inconsistently with ADA Arts. 3.1 and 3.5 and ASCM Arts 15.1 and 15.5. In its demonstration of a causal link between the subject imports and injury to the domestic industry, MOFCOM relied on a defective consideration of price effects.

- **ADA Art. 6.1/ASCM Art. 12.1 and ADA 6.4/ASCM Art. 12.3 (evidence – notification):** The Panel found that MOFCOM acted inconsistently with these provisions in its reinvestigation by not giving sufficient notice to US interested parties, and not providing timely opportunities to see the questions or requests for information.

- **ADA Art. 6.8 and Annex II(3) (evidence – facts available):** The Panel found that MOFCOM's redetermination was inconsistent with these provisions because it failed to sufficiently explain why it rejected all of one exporter's submitted data and relied on facts available.

- **ADA Art. 6.9 (evidence – essential facts):** The United States failed to establish that MOFCOM's redetermination was inconsistent with these provisions because it did not disclose data from the original investigation and/or the reinvestigation underlying the dumping margins for certain exporters.

- **ADA Art. 9.4(i) (imposition of anti-dumping duties – "all others" rate):** The United States failed to establish that MOFCOM was precluded from determining a "residual" duty rate based on facts available to be applied to "unknown" exporters.

1 *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*

2 Other issues addressed: ADA Art. 1, ASCM Art. 10, GATT Art. VI; ADA Art. 3.1/ASCM Art 15.1; ADA Art. 12.2/12.2.2 and ASCM Art. 22.3/22.5 (judicial economy exercised over these claims); ASCM Art. 12.8 (judicial economy exercised over this claim); ADA Art. 6.5/ASCM Art. 12.4 (outside terms of reference); consequential claims; additional procedures for BCI; terms of reference (DSU Art. 6.2); judicial economy in the original dispute and effect on Article 21.5 proceedings.

US – SHRIMP II (VIET NAM)[1]
(DS429)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Viet Nam*	*GATT Art. VI:2* *ADA Arts. 1, 6, 9, 11 and 18.1; Annex II* *DSU Arts. 4, 6, 7 and 11*	Establishment of Panel	*27 February 2013*
			Circulation of Panel Report	*17 November 2015*
Respondent	*United States*		Circulation of AB Report	*7 April 2015*
			Adoption	*22 April 2015*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Certain United States' laws, methodologies and practices with respect to the imposition, assessment and collection of anti-dumping duties as well as certain United States' determinations in the United States' anti-dumping proceedings on frozen warmwater shrimp from Viet Nam.

- **Product at issue:** Frozen warmwater shrimp from Viet Nam.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 9.3 and GATT Art. VI: 2 (imposition and collection of anti-dumping duties):** Although the Panel found that Viet Nam had failed to establish that the simple zeroing methodology used in United States' administrative reviews is a measure of general and prospective application that can be challenged as such, the Panel found that the United States acted inconsistently with ADA Art. 9.3 and GATT Art. VI:2 by applying the simple zeroing methodology to calculate the dumping margins of the respondents in the fourth, fifth, and sixth administrative reviews under the shrimp anti-dumping order.

- **ADA Arts. 6.10, 9.2 and 9.4 (application of NME-wide entity rates):** The Panel found that the practice or policy whereby the United States Department of Commerce presumes that all producers/exporters in a non-market economy (NME) country belong to a single, NME-wide entity and assigns a single rate to that entity is inconsistent as such with Arts. 6.10 and 9.2. Accordingly, the Panel found that the United States acted inconsistently with Arts. 6.10 and 9.2 by applying, in the fourth, fifth, and sixth administrative reviews under the shrimp anti-dumping order, a rebuttable presumption that all companies in Viet Nam belong to a single, Viet Nam-wide entity, and by assigning a single rate to that entity. Likewise, the Panel found that the United States acted inconsistently with Art. 9.4 by applying, to the Viet Nam-wide entity, a duty rate exceeding the ceiling applicable under that provision in the fourth, fifth, and sixth administrative reviews under the shrimp anti-dumping order.

- **DSU Art. 11 and ADA Arts. 1, 9.2, 9.3, 11.1, and 18.1 (Section 129(c)(1) of the US Uruguay Round Agreements Act):** The Appellate Body rejected Viet Nam's claim that the Panel had acted inconsistently with DSU Art. 11, and upheld the Panel's finding the Viet Nam had failed to establish that Section 129(c)(1) precludes implementation of recommendations and rulings of the DSB with respect to prior unliquidated entries. Therefore, the Appellate Body upheld the Panel's finding that Viet Nam had not established that Section 129(c)(1) is inconsistent "as such" with ADA Arts. 1, 9.2, 9.3, 11.1, and 18.1.

- **ADA Arts. 11.2, and 11.3 (review of anti-dumping duties):** The Panel found that the United States acted inconsistently with Art. 11.3 by relying on WTO-inconsistent margins of dumping or rates in its likelihood-of-dumping determination in the first sunset review under the shrimp anti-dumping order. The Panel also found that the United States acted inconsistently with Art. 11.2 by relying on WTO-inconsistent margins of dumping in its determination, in the fourth and fifth administrative reviews, not to revoke the shrimp anti-dumping order, with respect to certain Vietnamese producers/exporters.

3. OTHER ISSUES

- **Terms of reference (DSU Arts. 4 and 6):** The Panel rejected the United States' request for a preliminary ruling that certain measures fell outside the Panel's terms of reference because they were not listed in Viet Nam's request for consultations. The Panel found that a measure may fall within a Panel's terms of reference even if it is adopted or issued after the request for consultations.

1 *United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam*

INDIA – AGRICULTURAL PRODUCTS[1]
(DS430)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*SPS Arts. 2.2, 2.3, 3.1, 3.2, 5.1, 5.2, 5.6, 6.1, 6.2 and 7; Annexes B(2) and B(5)(a),(b),(d) GATT Art. XI:1*	Establishment of Panel	*25 June 2012*
			Circulation of Panel Report	*14 October 2014*
Respondent	*India*		Circulation of AB Report	*4 June 2015*
			Adoption	*19 June 2015*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Import prohibitions imposed on imports of certain agricultural products due to concerns relating to avian influenza (India's AI measures).
- Certain agricultural products (mostly of avian origin) from countries reporting LPNAI.[2]

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **SPS Arts. 3.1 and 3.2 (harmonization with international standards)**: The Appellate Body upheld the Panel's findings that India's AI measures were inconsistent with Art. 3.1 because they were not based on an international standard (Chapter 10.4 of OIE[3] Terrestrial Code), and that India was not entitled to benefit from the presumption of consistency of its AI measures with the SPS Agreement and the GATT 1994 (Art. 3.2). The Appellate Body also found that the Panel did not act inconsistently with SPS Article 11.2 or DSU Art. 13.2 in consulting with the OIE regarding the meaning of the Terrestrial Code.
- **SPS Arts. 5.1, 5.2 (risk assessment) and 2.2 (sufficient scientific evidence):** The Appellate Body upheld the Panel's finding that India's AI measures were inconsistent with Arts. 5.1 and 5.2 because they were not based on a risk assessment. The Appellate Body partly reversed the Panel's findings of inconsistency with Art. 2.2 insofar as those findings concerned India's AI measures on eggs and poultry meat.
- **SPS Art. 2.3 (discrimination):** The Appellate Body upheld the Panel's finding that India's AI measures were inconsistent with Art. 2.3 because they arbitrarily and unjustifiably discriminated between Members where identical or similar conditions prevailed and were applied in a manner which constituted a disguised restriction on international trade.
- **SPS Art. 5.6 (appropriate level of protection – alternative measures):** The Appellate Body upheld the Panel's finding that India's AI measures were inconsistent with Art. 5.6 because they were significantly more trade-restrictive than required to achieve India's appropriate level of protection (ALOP).
- **SPS Arts. 6.2 and 6.1 (adaptation to regional conditions):** Although not endorsing all aspects of the Panel's reasoning, the Appellate Body upheld the Panel's findings that India's AI measures were inconsistent with Arts. 6.2 and 6.1 because they did not recognize the concept of disease-free areas and areas of low disease prevalence and they were not adapted to the SPS characteristics of these areas.

3. OTHER ISSUES[4]

- This was the first dispute where a respondent argued that its SPS measures "conform[ed] to" an international standard pursuant to SPS Art. 3.2; and where a panel interpreted the provisions on adaptation to regional conditions under SPS Art 6.

1 *India – Measures Concerning the Importation of Certain Agricultural Products*
2 Low pathogenicity avian influenza.
3 World Organisation for Animal Health.
4 Other issues addressed: GATT Art. XI, DSU Art. 11 (standard of review) and SPS Art. 7, Annex B(2), B(5)(a),(b),(d) (publication, notification and transparency requirements).

CHINA – RARE EARTHS[1]
(DS431, 432, 433)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*United States, European Union, Japan*	*China's Accession Protocol and Working Party Report* *Marrakesh Agreement* *GATT Arts. XI and XX*	Establishment of Panel	*23 July 2012*
			Circulation of Panel Report	*26 March 2014*
Respondent	*China*		Circulation of AB Report	*7 August 2014*
			Adoption	*29 August 2014*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Export restrictions on a number of rare earths, tungsten, and molybdenum. The export restrictions comprised export duties, export quotas, and certain limitations on the enterprises permitted to export the products.
- **Products at issue:** Various forms of rare earths, tungsten, and molybdenum

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **Accession Protocol (export duties)/Marrakesh Agreement/GATT Art. XX (general exceptions):** The Panel found that China's export duties on rare earths, tungsten, and molybdenum were inconsistent with its Accession Protocol. In its examination of this issue and China's defence under Art. XX, the Panel was mindful of the Appellate Body ruling that absent "cogent reasons an adjudicatory body will resolve the same legal question in the same way in a subsequent case". The Panel concluded that none of China's arguments constituted cogent reasons for departing from the Appellate Body's finding in *China – Raw Materials* that the obligation in para. 11.3 of China's Accession Protocol is not subject to the general exceptions in Art. XX of the GATT 1994. China appealed an intermediate finding made by the panel in reaching its conclusion that Art. XX of the GATT 1994 was not available to justify a breach of para. 11.3 of its Accession Protocol regarding export duties. In upholding the panel's finding, the Appellate Body found that the Marrakesh Agreement, the Multilateral Trade Agreements, and China's Accession Protocol form a single package of rights and obligations that must be read together. However, the questions whether there is an objective link between an individual provision in China's Accession Protocol and existing obligations under the Marrakesh Agreement and the Multilateral Trade Agreements, and whether China may rely on an exception provided for in those agreements to justify a breach of its Accession Protocol, must be answered through a thorough analysis of the relevant provisions on the basis of the customary rules of treaty interpretation and in light of the circumstances of the dispute.
- **GATT Art. XI (quantitative restrictions)/GATT Art. XX(g) (general exceptions – exhaustible natural resources):** The Panel found that China's export quotas on rare earths, tungsten, and molybdenum were inconsistent with GATT Art. XI. The Panel also concluded that the export quotas were not justified under the exception in GATT Art. XX(g), which allows WTO Members to implement GATT-inconsistent measures "relating to the conservation of exhaustible natural resources". China did not appeal the panel's overall finding, but appealed limited aspects of the panel's interpretation and application of Art. XX(g), in connection with its findings that the export quotas at issue were not measures "relating to" the conservation of exhaustible natural resources, and were not "made effective in conjunction with" restrictions on domestic production or consumption. The Appellate Body found that the panel rightly considered that it should focus on the measures' design and structure rather than on their effects in the marketplace, although it was not precluded from considering market effects. The Appellate Body further concluded that the burden of conservation did not have to be evenly distributed, for example, between foreign consumers, on the one hand, and domestic producers or consumers, on the other hand.
- **Working Party Report (trading rights):** The Panel found that China maintained restrictions (minimum registered capital, prior export experience and export performance) on the trading rights of enterprises exporting rare earths and molybdenum contrary to paras. 83 and 84 of China's Working Party Report. The Panel found that China was entitled to seek to justify these breaches pursuant to Art. XX(g). However, China failed to make a prima facie case that such requirements were justified pursuant to Art. XX(g). In this respect, the Panel considered that China's trading rights obligations were distinct obligations and that breaches of these obligations had to be justified separately from the justifications that China had advanced for the imposition of export quotas in violation of Art. XI of the GATT 1994.

1 *China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*

AUSTRALIA – TOBACCO PLAIN PACKAGING[1] (DS435, 441, 458, 467)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Honduras, the Dominican Republic, Cuba, Indonesia*	*TBT Art. 2.2* *TRIPS Art. 2.1 (in conjunction with Arts. 6quinquies and 10bis, paras. 1, 3(1) and 3(3) of the Paris Convention), 15.4, 16.1, 16.3, 20, 22.2(b) and 24.3* *GATT Art. IX:4* *DSU Art. 11*	Establishment of Panels	*25 September 2013 (DS435)* *25 April 2014 (DS441)* *25 April 2014 (DS458)* *26 March 2014 (DS467)*
			Circulation of Panel Reports	*28 June 2018*
Respondent	*Australia*		Circulation of AB Reports	*9 June 2020*
			Adoption	*DS458 and DS467 adopted on 27 August 2018; DS435 and DS441 adopted on 29 June 2020*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Tobacco plain packaging (TPP) measures requiring tobacco products and their retail packaging to appear in a uniform manner.
- **Product at issue:** Tobacco products and their retail packaging.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **TBT Art. 2.2 (technical barriers to trade)**: The Appellate Body upheld the Panel's finding that the TPP measures were apt to make a meaningful contribution to Australia's objective of improving public health by reducing the use of, and exposure to, tobacco products and the complainants had not demonstrated that they were more trade-restrictive than necessary to fulfil a legitimate objective, within the meaning of Art. 2.2, taking into account the nature and gravity of the risks that would arise from the non-fulfilment of Australia's objective, and the fact that none of the alternatives proposed by the complainants were less trade restrictive than the TPP measures. The Appellate Body found that the Panel erred in its application of Art. 2.2 in concluding that the proposed alternatives would not make an equivalent contribution to Australia's objective as that of the TPP measures, given the Panel's findings that both the TPP measures and each of the proposed alternatives can make a meaningful contribution to Australia's objective. However, this finding of error was not consequential, as the Appellate Body agreed with the Panel that the proposed alternatives were not less trade restrictive than the TPP measures.
- **Paris Convention Art. 6*quinquies* (registration of trademarks)**: The Panel found that Honduras and Cuba had not demonstrated that the TPP measures were inconsistent with Australia's obligation to accept for filing and protect "as is" every trademark duly registered in the country of origin.
- **TRIPS Art. 15.4 (an obstacle to registration of a trademark)**: The Panel found that Honduras, the Dominican Republic and Cuba had not demonstrated that the nature of the goods to which the TPP measures apply (tobacco products) formed an obstacle to the registration of trademarks contrary to Art. 15.4.
- **TRIPS Art. 16.1 (rights conferred to an owner of a registered trademark)**: The Appellate Body upheld the Panel's finding that the complainants had not demonstrated that the TPP measures were inconsistent with Australia's obligation to allow the owner of a registered trademark to prevent unauthorized use of identical or similar trademarks on identical or similar products, where such use would result in a likelihood of confusion. The Appellate Body agreed with the Panel that neither Art. 16.1, any of the other provisions of the TRIPS Agreement, nor the provisions of the Paris Convention (1967) that are incorporated by reference into the TRIPS Agreement, confer upon a trademark owner a positive right to use its trademark or a right to protect the distinctiveness of that trademark through use.
- **TRIPS Art. 16.3 (well-known trademarks)**: The Panel found that Cuba and Indonesia had not demonstrated that the TPP measures were inconsistent with Australia's obligation to protect well-known trademarks under Art. 16.3.
- **TRIPS Art. 20 (other requirements)**: The Appellate Body upheld the Panel's finding that the complainants had not demonstrated that the TPP measures unjustifiably encumbered the use of trademarks in violation of Art. 20. The Appellate Body considered that the Panel did not err by not including an examination of alternative measures as a requisite consideration for determining whether the use of a trademark has been "unjustifiably" encumbered by special requirements. The Appellate Body also found that the Dominican Republic had failed to demonstrate on appeal that the Panel acted inconsistently with DSU Arts. 7.1 and 11 by not addressing its claim that the TPP measures' requirements for individual cigarette sticks were inconsistent with TRIPS Art. 20.
- **Paris Convention Art. 10*bis* (unfair competition)**: The Panel found that Cuba and Indonesia had not demonstrated that the TPP measures compelled market actors to engage in acts of unfair competition of such a nature as to create confusion within the meaning of **para. 3(1)** or to engage in acts amounting to misleading indications or allegations within the meaning of **para. 3(3)**; Honduras, the Dominican Republic and Cuba had not demonstrated that the TPP measures required market actors to engage in such acts of unfair competition against which Australia was bound to assure effective protection pursuant to **para. 1**.
- **TRIPS Art. 22.2(b) (use of geographical indications (GIs) constituting unfair competition)**: The Panel found that the complainants had not demonstrated that the TPP measures compelled market actors to engage in acts of unfair competition that would amount to misleading indications or allegations about product characteristics within the meaning of Paris Convention Art. 10*bis*(3)(3) in respect of GIs.
- **TRIPS Art. 24.3 (pre-existing domestic protection of GIs)**: The Panel found that the complainants had not demonstrated that the protection that GIs enjoyed under Australian law immediately prior to the date of entry into force of the WTO Agreement had been diminished as a result of the TPP measures or that the TPP measures were inconsistent with Art. 24.3.
- **GATT Art. IX:4 (marking of imported products)**: The Panel found that Cuba had not demonstrated that the TPP measures constituted "laws and regulations relating to the marking of imported products" within the meaning of Art. IX:4 or that the restrictions imposed by the TPP measures would lead to a material reduction in the value of the Habanos sign and the Cuban Government Warranty Seal within the meaning of Art. IX:4.
- **Art. 11 of the DSU**: The Appellate Body addressed and rejected most of the claims on appeal by Honduras and the Dominican Republic that the Panel failed to make an objective assessment of the facts of the case, as required under Art. 11, in its assessment of the claims before it under Art. 2.2 of the TBT Agreement. The Appellate Body also found that, although the Panel erred by disregarding certain arguments and evidence adduced by the Dominican Republic, and acted inconsistently with Art. 11 by compromising the complainants' due process rights with respect to the Panel's reliance on multicollinearity and non-stationarity when reviewing the parties' econometric evidence, such errors were not sufficiently material to vitiate the Panel's findings regarding the contribution of the TPP measures to Australia's objective, namely improving public health by reducing the use of, and exposure to, tobacco products.

1 *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*

US – CARBON STEEL (INDIA)[1]
(DS436)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*India*	*ASCM Arts. 1.1(a)(1), 2.1, 12.7, 14(d) and 15*	Establishment of Panel	*31 August 2012*
			Circulation of Panel Report	*14 July 2014*
Respondent	*United States*		Circulation of AB Report	*8 December 2014*
			Adoption	*19 December 2014*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Imposition by the United States of countervailing duties on imports of certain hot-rolled carbon steel flat products from India.

- **Product at issue:** Hot-rolled carbon steel flat products from India

2. SUMMARY OF KEY PANEL/AB FINDINGS2

- **ASCM Art. 1.1(a)(1) (definition of "public body"):** The Appellate Body reversed the Panel's finding rejecting India's claim that the United States Department of Commerce (USDOC) determination that the National Mineral Development Corporation (NMDC) was a public body was inconsistent with ASCM Art. 1.1(a)(1). The Appellate Body considered that the Panel had correctly articulated the appropriate standard but had erred in its substantive interpretation of ASCM Art. 1.1(a)(1) by construing the term "public body" to mean any entity that is "meaningfully controlled" by a government. Consequently, the Panel had erred in its application of ASCM Art. 1.1(a)(1) to the USDOC's public body determination, in effect treating the Government of India's (GOI) ability to control the NMDC as determinative for purposes of establishing whether the NMDC constituted a public body. The Panel had also failed properly to consider whether the USDOC had adequately explained and supported, in its written determination, the basis for its finding that the NMDC is a public body. The Appellate Body completed the analysis and found that the USDOC had not provided a reasoned and adequate explanation of the basis for its finding that the NMDC is a public body, and, for that reason, the USDOC's determination that the NMDC was a public body was inconsistent with ASCM Art. 1.1(a)(1).

- **ASCM Art. 14(d) (benefit – calculation of amount of subsidy):** The Appellate Body upheld the Panel's finding rejecting India's claim that the US benchmarking mechanism was inconsistent with ASCM Art. 14(d) because it failed to require investigating authorities to assess the adequacy of remuneration from the perspective of the government provider before assessing whether a benefit has been conferred on the recipient. The Appellate Body considered that the Panel's finding rejecting India's claim that the US benchmarking mechanism was inconsistent "as such" with ASCM Art. 14(d) because it excluded the use of government prices as benchmarks was in error to the extent that it could be read as suggesting that ASCM Art. 14(d) does not require investigating authorities to consider any in-country government-related prices in determining a benchmark for assessing benefit under ASCM Art. 14(d). The Appellate Body upheld the Panel's finding for different reasons. The Appellate Body also upheld the Panel's finding rejecting India's claim that the use of "world market prices" as Tier II benchmarks was inconsistent "as such" with ASCM Art. 14(d), but reversed the Panel's finding rejecting India's claim that the USDOC's explanation of the exclusion of the NMDC's export prices was inconsistent with the requirements of the chapeau of ASCM Art. 14. The Appellate Body upheld the Panel's findings rejecting India's claim that the USDOC's construction of government prices for iron ore and coal is inconsistent with ASCM Arts. 1.1(b) and 14(d), but reversed the Panel's finding rejecting India's claim as it related to the USDOC's determination that loans provided under the SDF conferred a benefit within the meaning of ASCM Arts. Articles 1.1(b) and 14(b).

- **ASCM Art. 2.1 (specificity):** The Appellate Body upheld the Panel's findings (i) that there was no obligation on the USDOC to establish that only a "limited number" within the set of "certain enterprises" actually used the subsidy programme; (ii) rejecting India's argument that specificity must be established on the basis of discrimination in favour of "certain enterprises" against a broader category of other, similarly situated entities; (iii) rejecting India's argument that, if the inherent characteristics of the subsidized good limit the possible use of the subsidy to a certain industry, the subsidy will not be specific unless access to this subsidy is further limited to a subset of this industry.

- **ASCM Art. 12.7 (evidence – facts available):** The Appellate Body found that ASCM Art. 12.7 requires an investigating authority to use "facts available" that reasonably replace the missing "necessary information", with a view to arriving at an accurate determination, which calls for a process of evaluation of available evidence, the extent and nature of which depends on the particular circumstances of a given case, and modified the Panel's finding on this point. The Appellate Body reversed the Panel's finding that India failed to establish a *prima facie* case that Section 1677e(b) of the US Statute and Section 351.308(a)-(c) of the US Regulations were inconsistent "as such" with ASCM Art. 12.7. It completed the analysis and found that India had not established that Section 1677e(b) of the US Statute and Section 351.308(a)-(c) of the US Regulations are "as such" inconsistent with ASCM Art. 12.7.

1 *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India.*
2 Other issues addressed: DSU Art. 11 (objective assessment); ASCM Art. 1.1(a) (subsidy definition – financial contribution); ASCM Art. 15 (injury determination).

US – COUNTERVAILING MEASURES (CHINA)[1]
(DS437)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*GATT Art. VI* *ASCM Arts. 1.1, 1.1(a)(1), 1.1(b), 2, 10, 11, 12.7, 14(d), 30 and 32.1* *DSU Arts. 6.2 and 11*	Establishment of Panel	*28 September 2012*
Respondent	*United States*		Circulation of Panel Report	*14 July 2014*
			Circulation of AB Report	*18 December 2014*
			Adoption	*16 January 2015*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Countervailing measures imposed by the United States.
- **Products at issue:** Thermal paper, pressure pipe, line pipe, citric acid, lawn groomers, kitchen shelving, oil country tubular goods, wire strand, magnesia bricks, seamless pipe, print graphics, drill pipe, aluminium extrusions, steel cylinders, solar panels, wind towers, and steel sinks from China.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 1.1(a)(1) (definition of "public body"):** The Panel found that the United States Department of Commerce (USDOC) acted inconsistently with Art. 1.1(a)(1), because it determined that certain Chinese state-owned enterprises were "public bodies" based solely on the grounds that they were majority owned, or otherwise controlled, by the Government of China. The Panel also found USDOC's "rebuttable presumption" to determine whether a state-owned enterprise is a "public body" to be inconsistent as such with Art. 1.1(a)(1).
- **ASCM Arts. 1.1(b) and 14(d) (benefit benchmark):** The Panel found that the USDOC did not act inconsistently with Arts. 14(d) or 1.1(b) by rejecting in-country private prices in China as benchmarks in its benefit analysis. Noting that the selection of a benchmark under Art. 14(d) could not, at the outset, exclude consideration of in-country prices from any particular source, including government-related prices, the Appellate Body reversed the Panel's finding, and found that the USDOC acted inconsistently with Arts. 14(d) and 1.1(b) by rejecting prices in China as benchmarks in its benefit analyses.
- **ASCM Art. 2.1 (specificity):** The Panel found that the USDOC did not act inconsistently with Art. 2.1 by analysing specificity exclusively under Art. 2.1(c). The Appellate Body upheld the Panel's finding, noting that the application of the principles laid down in paras (a) and (b) of Art. 2.1 did not necessarily constitute a condition that must be met in order to consider the factors listed under para (c) of Art. 2.1. The Panel also found that the fact that the USDOC identified subsidy programmes that are not set out in a written document did not, in and of itself, render the USDOC's specificity determinations inconsistent with Art. 2.1(c), because the evidence of "systematic activity" or "series of activities" provided an objective basis for the USDOC to sufficiently identify subsidy programmes for the purposes of the first of the "other factors" under Art. 2.1(c). The Appellate Body found, however, that the Panel erred in its application of Art. 2.1(c) because it failed to provide any case-specific discussion or references to the particular USDOC determinations of specificity challenged by China. The Appellate Body therefore reversed the Panel's finding but was unable to complete the analysis. The Panel also found that the USDOC did not act inconsistently with Art. 2.1 by failing to identify a "granting authority" and *ergo* the relevant jurisdiction. Noting that the Panel had conducted an extremely cursory analysis, the Appellate Body reversed the Panel's finding but did not complete the analysis regarding whether the USDOC had sufficiently identified the jurisdiction of the granting authority.
- **ASCM Art. 12.7 (use of "facts available"):** The Panel found that USDOC did not act inconsistently with Art. 12.7 by not relying on facts available on the record. The Appellate Body reversed the Panel's finding, observing that the Panel had acted inconsistently with DSU Art. 11 because it, inter alia, had not undertaken a critical and in-depth examination of the USDOC's statements. The Appellate Body was unable to complete the legal analysis.
- **ASCM Art. 11.3 (export restraints):** The Panel found that the USDOC acted inconsistently with Art. 11.3 by initiating two investigations based on applications predicated solely on the existence of export restraints and their price-suppression effect.

1 *United States – Countervailing Duty Measures on Certain Products from China*

US – COUNTERVAILING MEASURES (CHINA) (ARTICLE 21.5 – CHINA)[1] (DS437)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*ASCM Arts. 1.1(a)(1), 1.1(b), 2.1(c) and 14(d)*	Referred to the Original Panel	*21 July 2016*
			Circulation of Panel Report	*21 March 2018*
Respondent	*United States*		Circulation of AB Report	*16 July 2019*
			Adoption	*15 August 2019*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- (1) USDOC preliminary and final determinations to comply with recommendations and rulings of the DSB in the original proceeding; (2) the "Public Bodies Memorandum"; (3) the original USDOC final countervailing duty determination in the Solar Panels investigation; (4) subsequent periodic and sunset reviews of the countervailing duty orders identified in China's panel request, as well as determinations subsequent to those identified; and (5) "instructions and notices" by which the U.S. imposes, assesses, and/or collects countervailing duties in the proceedings at issue, and its ongoing conduct.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ASCM Art. 1.1(a)(1) (public bodies):** The Appellate Body held that a public body determination depends on an entity's core characteristics and its relationship with government. Its conduct may constitute relevant evidence but an investigating authority need not focus on every instance of conduct in which that entity might engage, or whether each instance is connected to a specific "government function". On this basis, the Appellate Body upheld the Panel's finding that Art. 1.1(a)(1) does not require a connection of a particular degree or nature between an identified government function and the financial contribution at issue. The Appellate Body also upheld the Panel's conclusion rejecting China's claim that the USDOC's public body determinations or the Public Bodies Memorandum "as such" were based on an improper legal standard.

- **ASCM Arts. 1.1(b) and 14(d) (benefit):** The Appellate Body considered that a central inquiry in choosing an appropriate benefit benchmark is the question of whether incountry prices are distorted as a result of government intervention. The Appellate Body found that different types of government interventions could result in price distortion, such that recourse to out-of-country prices is warranted, beyond the situation in which the government effectively determines the price at which the good is sold. The Appellate Body therefore upheld the Panel's finding that Art. 14(d) does not limit the possibility of resorting to out-of-country prices if the government effectively determines the price of the good sold. In assessing price distortion, evidence of both direct and indirect impact of government intervention on prices may be relevant but the latter may require more detailed analysis and explanation to establish a nexus between such indirect impact and price distortion. Irrespective of the method chosen by the investigating authority, the Appellate Body found that the authority's determination of how prices are distorted by government intervention must be based on positive evidence. The Appellate Body upheld the Panel's finding that the USDOC had failed to explain how government intervention in the market resulted in domestic prices deviating from a market-determined price and that the USDOC failed to consider price data on the record.

- **ASCM Art. 2.1(c) (specificity):** The Appellate Body agreed with the Panel that the mere fact that financial contributions have been provided to certain enterprises is not sufficient to demonstrate that such contributions were granted pursuant to a plan or scheme for purposes of Art. 2.1(c). According to the Appellate Body, the Panel rightly contrasted the USDOC's failure to explain systematic activity regarding the existence of an unwritten subsidy programme with information before the USDOC merely indicating repeated transactions. Thus, the Appellate Body upheld the Panel's articulation of the legal standard under Art. 2.1(c) and its finding that the US acted inconsistently with ASCM Art. 2.1(c).

3. OTHER ISSUES[2]

- **Separate Opinion:** The Appellate Body report contains a separate opinion by one member of the Division addressing the majority's public body, benefit and specificity analyses and findings. In his separate opinion, the Division Member considered, inter alia, that the continuing lack of clarity as to what is a "public body" represents an instance of undue emphasis on "precedent", adding that the text of ASCM Art. 1.1(a)(1) does not elaborate on the meaning of the term "public body" and does not call for a single abstract definition for the concept of "public body".

1 *United States – Countervailing Duty Measures on Certain Products from China – Recourse to Article 21.5 of the DSU by China*

2 Other issues addressed: DSU Art. 21.5 (Panel's terms of reference), measures in existence at the time of the original proceedings, Appellate Body member serving after expiration of term, role of separate opinions.

ARGENTINA – IMPORT MEASURES[1]
(DS438, 444, 445)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*European Union, United States, Japan*	*GATT Arts. III:4 and XI:1*	Establishment of Panel	*28 January 2013*
			Circulation of Panel Report	*22 August 2014*
Respondent	*Argentina*		Circulation of AB Report	*15 January 2015*
			Adoption	*26 January 2015*

1. MEASURES AND PRODUCTS AT ISSUE

- **Measures at issue:** (1) The imposition by Argentine authorities on economic operators of one or more of the following trade-related requirements (TRRs), as a condition to import into Argentina or to obtain certain benefits: (a) to offset the value of imports with, at least, an equivalent value of exports; (b) to limit imports, either in volume or in value; (c) to reach a certain level of local content in domestic production; (d) to make investments in Argentina; and, (e) to refrain from repatriating profits; and (2) the procedures concerning an Advance Sworn Import Declaration (*Declaración Jurada Anticipada de Importación*, DJAI), required for most imports of goods into Argentina.

- **Product at issue:** Imports into Argentina.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- The Appellate Body upheld the Panel's finding that the Argentine authorities' imposition on economic operators of one or more five trade-related requirements (TRRs), as a condition to import or to obtain certain benefits, operated as a single measure attributable to Argentina (a TRRs measure).

- **DSU Art. 6.2 (requirements of panel request):** The Appellate Body reversed the Panel's finding that 23 specific instances of application of the TRRs were not properly identified in the European Union's panel request as measures at issue and were not within the Panel's terms of reference. However, the Appellate Body found it unnecessary to complete the analysis with respect to those 23 specific instances of application of the TRRs, because the conditions on which the European Union based its appeal were not met.

- **GATT Art. XI (prohibition on quantitative restrictions):** The Appellate Body upheld the Panel's finding that the TRRs measure was a restriction on the importation of goods, inconsistent with Art. XI:1.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Appellate Body upheld the Panel's finding that, with respect to the local content requirement, the TRRs measure was inconsistent with Art. III:4 because it modified the conditions of competition in the Argentine market so that imported products were granted less favourable treatment than like domestic products.

- **DSU Art. 11 (standard of review):** The Appellate Body found that the Panel had not acted inconsistently with Art. 11 in finding that the TRRs measure as such was inconsistent with Arts. XI:1 and III:4 of the GATT 1994.

- **GATT Art. XI:1**: The Appellate Body upheld the Panel's finding that the DJAI procedure, irrespective of whether it was an import licence, constituted an import restriction that was inconsistent with Art. XI:1.

3. OTHER ISSUES

- One of the two measures challenged by the complainants (the TRRs measure) was unwritten. At the request of Japan, the Panel made findings, not only about the application of the trade-related requirements, but also about the TRRs measure as such.

- The Appellate Body endorsed the Panel's statement that nothing in the Panel's rulings called into question the ability of WTO Members to pursue their development policies, such as those identified by Argentina, in a manner consistent with the overall objectives stated in the preamble of the WTO Agreement and their commitments under the WTO agreements.

- In a decision that was not appealed, the Panel refrained from making additional findings with respect to the DJAI procedure under GATT Arts. X:1 and X:3(a) and Arts. 1.3, 1.4(a), 1.6, 3.2, 3.3, 3.5(f), 5.1, 5.2, 5.3, and 5.4 of the Licensing Ag.

1 *Argentina – Measures Affecting the Importation of Goods*

CHINA – AUTOS (US)[1]
(DS440)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Art. VI* *ADA Arts. 1, 3.1, 3.2, 3.4, 3.5, 4.1, 5.3, 5.4, 6.2, 6.5.1, 6.8 and 6.9; Annex II* *ASCM Arts. 10, 11.3, 11.4, 12.4.1, 12.7, 12.8, 15.1, 15.2, 15.4, 15.5, 16.1, 22.3 and 22.5*	Establishment of Panel	*23 October 2012*
			Circulation of Panel Report	*23 May 2014*
Respondent	*China*		Circulation of AB Report	*N/A*
			Adoption	*18 June 2014*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping and countervailing duties imposed by China on certain automobiles from the United States.
- **Product at issue:** Certain automobiles from the United States with engine displacements equal to or greater than 2500 cubic centimetres (cc).

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Art. 6.5.1/ASCM Art. 12.4.1 (evidence – confidential information):** The Panel found a violation of these two provisions on the ground that MOFCOM had failed to require the petitioner to furnish adequate non-confidential summaries of confidential information presented in the petition.
- **ADA Art. 6.9 (evidence – essential facts):** The Panel found a violation of this provision on the ground that MOFCOM had failed to disclose essential facts to US company respondents, specifically the data and calculations underlying their respective dumping margins.
- **ADA Art. 6.8 and Annex II para. 1/ASCM Art. 12.7 (evidence – facts available), ADA Art. 6.9/ASCM Art. 12.8 (evidence – essential facts) and ADA Arts. 12.2, 12.2.2/ASCM Arts. 22.3 and 22.5 (evidence – findings and conclusions on material issues of fact and law):** The Panel found a violation of ADA Art. 6.8 and Annex II para. 1/ASCM Art. 12.7 because MOFCOM had resorted to facts available in the calculation of residual duty rates without notifying unknown exporters subject to such duty rates of the information required of them and of the fact that if they failed to submit the required information the residual duty rates would be calculated on the basis of facts available. However, the Panel rejected the United States' claims, under ADA Art. 6.9 and ASCM Art. 12.8, that MOFCOM had failed to disclose to interested parties the essential facts under consideration that formed the basis for its calculation of the residual AD/CV duty rates, and its claims, under ADA Art. 12.2./12.2.2 and ASCM Art. 22.3/22.5, that MOFCOM had failed to give public notice of the findings and conclusions reached on all issues of fact and law considered material by MOFCOM, or all relevant information on matters of fact and law and reasons which had led to the imposition of final measures.
- **ADA Art. 3.1/ASCM Art. 15.1 (injury determination – positive evidence and objective examination) and ADA Art. 4.1/ASCM Art. 16.1 (definition of domestic industry):** The Panel considered that the United States failed to establish that MOFCOM had violated these provisions in defining the domestic industry.
- **ADA Art. 3.1/ASCM Art. 15.1 (injury determination – positive evidence and objective examination), ADA Art. 3.2/ASCM Art. 15.2 (injury determination – price effects), ADA Art. 3.5/ASCM Art. 15.5 (injury determination – causation):** The Panel found that MOFCOM had failed to base its price effects and causation analyses on an objective examination based on positive evidence, inconsistently with these provisions.

1 *China – Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States*
2 Other issues addressed: ADA Art. 1, ASCM Art. 10.

EU – FATTY ALCOHOLS (INDONESIA)[1]
(DS442)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*ADA Arts. 1, 2.3, 2.4, 2.6, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 5.8, 6.7, 6.9, 9.2, 9.4 and 18* *GATT Arts. VI and X:3(a)* *DSU Arts. 3, 10.1, 11, 12.1, 12.7, 12.12, 17.4 and 19.1*	Establishment of Panel	*25 June 2013*
			Circulation of Panel Report	*16 December 2016*
Respondent	*European Union*		Circulation of AB Report	*5 September 2017*
			Adoption	*29 September 2017*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping duties imposed by the European Union on imports of fatty alcohols from Indonesia, and aspects of the underlying anti-dumping investigation.
- **Products at issue:** Certain fatty alcohols and their blends originating in Indonesia.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 2.4 (fair comparison):** The EU authorities made a downward adjustment to the export price of an Indonesian producer (PT Musim Mas) for payment made by PT Musim Mas to a related trading company based in Singapore (ICOF-S). Indonesia claimed that PT Musim Mas and ICOF-S formed a "single economic entity" and therefore, the payment (mark-up) was not a difference affecting price comparability within the meaning of Art. 2.4. The Appellate Body observed that the focus of Art. 2.4 is not merely on a comparison between the normal value and the export price, but predominantly on the means to ensure the fairness of that comparison. Pursuant to Art. 2.4, investigating authorities are required to make due allowance for differences affecting price comparability. There are no differences affecting price comparability that are precluded, as such, from being the object of an allowance. Instead, the need to make due allowances must be assessed in light of the specific circumstances of each case. The Appellate Body considered that the Panel did not err in rejecting Indonesia's argument that the existence of what Indonesia denoted as a "single economic entity" is dispositive of whether a given mark-up qualifies as a difference which affects price comparability under Art. 2.4. Consequently, the Appellate Body upheld the Panel's finding that Indonesia had not demonstrated that the EU authorities acted inconsistently with Art. 2.4 by treating the mark-up paid by PT Musim Mas to ICOF-S as a difference affecting price comparability.
- **ADA Art. 6.7 (results of on-the-spot investigations):** The Panel found that the European Union acted inconsistently with Art. 6.7 by not disclosing the results of on-the-spot investigations conducted by the EU authorities at the premises of PT Musim Mas in Indonesia and at its related companies. On appeal, the European Union claimed that the Panel erred in its explanation of the scope of on-the-spot investigations and the results that must be communicated to investigated firms. The Appellate Body noted that the scope of on-the-spot investigations and the ensuing results to be communicated to investigated firms vary from case to case and are informed by the integral parts of the process of the on-the-spot investigations. The Appellate Body explained that, pursuant to Art. 6.7, the disclosure of the "results" of the on-the-spot investigation must enable the firms to which they are communicated to discern the information that the authorities considered to have been successfully verified, as well as the information that could not be verified, and to be informed of the results in sufficient detail and in a timely manner so as to be in a position to defend effectively their interests in the remaining stages of the anti-dumping investigation. Consequently, the Appellate Body upheld the Panel's finding that the EU authorities acted inconsistently with Art. 6.7 by failing to disclose the results of the on-the-spot investigations to PT Musim Mas.

3. OTHER ISSUES[2]

- **Expiration of the measure at issue (DSU Art. 3):** About a month before the Panel Report was circulated to all WTO Members, the measures at issue expired. The European Union requested the Appellate Body to dismiss Indonesia's appeal in its entirety as inconsistent with Art. 3 because it related to an expired measure. The Appellate Body noted that DSU Art. 17.4 does not impose limitations on the rights of the parties to a dispute to appeal a panel report. The Appellate Body considered that the expiry of the measure at issue did not, without more, render it unnecessary for the Appellate Body to rule on Indonesia's appeal. Ultimately, the Appellate Body found that, in appealing the Panel Report notwithstanding the expiry of the measure at issue, Indonesia had not acted inconsistently with Art. 3.
- **Suspension of the work of the panel (DSU Art 12.12):** The European Union alleged that, following the establishment but prior to the composition of the panel, Indonesia sent a "request" to the WTO Secretariat on 11 July 2013 with a view to suspending the work of the panel in the sense of the first sentence of Art. 12.12. The European Union requested the Panel to issue a preliminary ruling that its jurisdiction to decide this case had lapsed, pursuant to Art. 12.12, following the alleged suspension of panel proceedings for more than 12 months. Given the ambiguity concerning the meaning and intention of Indonesia's communication, the Panel found that the European Union had not demonstrated that Indonesia made a "request" in the sense of the first sentence of Art. 12.12. The Panel found that, in the absence of such a request, that its work had not been suspended in the sense of Art. 12.12 and that, therefore, the Panel's authority had not lapsed. The Appellate Body considered that a panel's work can be suspended pursuant to Art. 12.12 only after the panel has been composed. Thus, the Appellate Body found that any request contained in the communication from Indonesia to the Secretariat could not have triggered the beginning of the 12-month period provided for under Art. 12.12 because no panel had been composed that could have taken a decision on a request for suspension. Therefore, for different reasons, the Appellate Body upheld the Panel's findings that the Panel's work had not been suspended and that its authority had not lapsed.

1 *European Union - Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia*
2 Other issues addressed: ADA Arts. 3.1 and 3.5 (determination of injury); DSU Art. 19.1 (the panel issuing a recommendation when a measure has expired); DSU Arts. 10.1, 11, 12.1, and 12.7 (the panel's treatment of certain information as BCI).

US – ANIMALS[1]
(DS447)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Argentina*	*SPS Arts. 1.1, 2.2, 2.3, 3.1, 3.3, 5.1, 5.4, 5.6, 5.7, 6.1, 6.2, 8 and 10.1; Annex C(1)(a) and (b)*	Establishment of Panel	*28 January 2013*
			Circulation of Panel Report	*24 July 2015*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*31 August 2015*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) the import prohibition of fresh (chilled or frozen) beef from Argentina; (ii) the failure to recognize certain areas of Argentina's territory as free of foot-and-mouth disease (FMD); and (iii) alleged undue delays in recognizing the animal health status of a region or in granting approval to export animals or animal products from that region.
- **Product at issue:** Animals susceptible to FMD and meat and other animal products from such animals originating from Argentina.

2. SUMMARY OF KEY PANEL FINDINGS

- **SPS Art. 3.1 (harmonization with international standards):** The Panel agreed with the United States that "based on" did not require wholesale adoption of the international standard into the measure by the importing Member. However, the Panel held that a Member's measure could not contradict the international standard, and nevertheless be considered based on it within the meaning of Art. 3.1. As the United States' measures contradicted certain key elements of the OIE[2] Terrestrial Animal Health Code, the relevant international standard, the Panel found that the United States' measures were inconsistent with Art. 3.1.
- **SPS Art. 8 (control, inspection and approval procedures):** The Panel found that the United States did not undertake and complete the evaluation of Argentina's requests without undue delay as required by Art. 8 and Annex C(1)(a). Furthermore, the Panel found that the United States' measures were inconsistent with Art. 8 and Annex C(1)(b) because the United States failed to inform Argentina, upon request, of the stage of its review procedures or to explain the delays incurred.
- **SPS Art. 5 (risk assessment):** The Panel held that the United States' measures did not fall within the scope of the exemption in Art. 5.7 of the SPS Agreement because the United States did not seek to obtain additional information or review the measures within a reasonable period of time. Furthermore, the Panel held that although the initial adoption of the measures was based on a risk assessment, the United States' measures were not maintained based on a risk assessment and thus were also inconsistent with Arts. 5.1 and 2.2 of the SPS Agreement.
- **SPS Art. 5.4 (objective of minimizing negative trade effects when determining the appropriate level of protection):** The Panel concluded that Art. 5.4 does not contain a positive obligation because the wording of the provision referred to "consideration of a goal without needing to arrive at a particular result".
- **SPS Art. 5.6 (trade restrictiveness):** The Panel found that the United States' measures were inconsistent with Art. 5.6 because alternative measures existed. The alternative measures were already applied by APHIS – the relevant United States agency – to its imports of beef from Uruguay. The Panel found that these measures achieved the United States' appropriate level of protection and were significantly less trade restrictive, and technically and economically feasible.
- **SPS Art. 2.3 (discrimination):** The Panel held that the United States' measures were inconsistent with Art. 2.3 because they arbitrarily and unjustifiably discriminated between Members where identical or similar conditions prevailed (Northern Argentina and Uruguay on the one hand and Patagonia and Santa Catarina (Brazil) on the other) and were applied in a manner which constituted a disguised restriction on international trade.
- **SPS Art. 6.1 (adaptation to regional conditions):** The Panel found that Argentina had demonstrated that Patagonia was FMD-free and was likely to remain so in the future. It therefore concluded that the United States' prohibition on imports of FMD-susceptible animals and animal products as applied to Patagonia was inconsistent with Art. 6.1 because the United States had not adapted its measure to the SPS characteristics of the Patagonia region.
- **SPS Art. 10.1 (special and differential treatment)**: The Panel held that Argentina had not made a *prima facie* case that the United States' measures were inconsistent with Art. 10.1, which required that the United States take account of Argentina's special needs as a developing country member.

OTHER ISSUES[3]

- **Consultation with scientific experts (SPS Art. 11.2 and DSU Art. 13):** As in nearly all disputes brought under the SPS Agreement, the Panel consulted with scientific experts to assist it in evaluating the scientific evidence. In particular, experts were engaged in the areas of risk assessment techniques, veterinary practices, and surveillance in the context of foot-and-mouth disease. The Panel also consulted with the OIE concerning the operation and interpretation of its Terrestrial Animal Health Code.

1 *United States – Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina*
2 World Organisation for Animal Health.
3 Other issues addressed: SPS Arts 1 and 3.3 (consequential violation) The Panel exercised judicial economy with respect to Argentina's claims under the GATT 1994 (GATT 1994 Arts. I:1 (most-favoured-nation) and XI:1 (quantitative restrictions) as well as the United States' defence under Art. XX(b) (necessary to protect animal life or health).

US – COUNTERVAILING AND ANTI-DUMPING MEASURES (CHINA)[1] (DS449)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*GATT Arts. X:1, X:2 and X:3(b)* *ASCM Arts. 10, 19.3 and 32.1* *DSU Art. 6.2*	Establishment of Panel	*17 December 2012*
			Circulation of Panel Report	*27 March 2014*
Respondent	*United States*		Circulation of AB Report	*7 July 2014*
			Adoption	*22 July 2014*

1. MEASURES AT ISSUE

- **Measures at issue:** (1) Section 1 of US Public Law (PL) 112-99[2], enacted on 13 March 2012, which provides for the application of the countervailing duty provisions of the US Tariff Act of 1930 to non-market economy countries and to all countervailing duties initiated by the United States on or after 20 November 2006 as well as to all pending court proceedings relating to such countervailing duty proceedings; and (2) the United States' failure to investigate and avoid double remedies potentially arising from the concurrent imposition of anti-dumping and countervailing duties on the same imported products from China in the 26 countervailing duty investigations and reviews at issue in this dispute.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. X:1 (trade regulations – prompt publication):** In a finding not appealed, the Panel found that Section 1 of PL112-99 was published promptly after it had been made effective because it was published on the same date that it was made effective, and thus the United States did not act inconsistently with Art. X:1 in respect of Section 1.

- **GATT Art. X:2 (trade regulations – no enforcement before publication):** The Appellate Body reversed the Panel's finding that, although Section 1 of PL 112-99 is a measure of general application that has been "enforced" prior to its official publication, it fell outside the scope of Art. X:2 because it neither effects an "advance" in a rate of duty on imports under an established or uniform practice, nor imposes a "new" or "more burdensome" requirement or restriction on imports. The Appellate Body considered that, to determine whether a measure of general application increases a rate of duty or imposes a new or more burdensome requirement, the baseline of comparison is not the practice of the administrative agency as such, but rather the prior published measure of general application as interpreted and applied by the relevant domestic authorities. Having reversed the Panel's interpretation of Art. X:2, the Appellate Body was not able to complete its analysis whether Section 1 effected an "advance" in a rate of duty or imposed a "new or more burdensome" requirement or restriction on imports.

- **GATT Art. X:3(b) (trade regulations – implementation of court decision by agencies):** In a finding not appealed, the Panel found that the United States did not act inconsistently with Art. X:3(b) in respect of Section 1 of PL 112-99, as that provision did not prohibit a Member from taking legislative action such as Section 1 that applies to cases pending before its domestic courts at the time such legislation enters into force and does not reopen already-decided court decisions.

- **ASCM Arts. 19.3, 10, and 32.1 (double remedy):** In a finding not appealed, the Panel found that, in 25 of the 26 countervailing duty investigations or reviews, the United States acted inconsistently with Arts. 19.3, 10 and 32.1 because it failed to investigate and avoid double remedies potentially arising from the concurrent imposition of anti-dumping and countervailing duties on the same imported products from China.

3. OTHER ISSUES

- **DSU Art. 6.2 (requirements of panel request):** The Appellate Body upheld the Panel's finding that the references in China's panel request to ASCM Arts. 10, 19, and 32, read in the context of the narrative explanation in the panel request, allowed for the identification of the relevant claims – Arts. 10, 19.3, and 32.1 – relating to the measure at issue in this dispute. The Appellate Body further found that the mention of "double remedies" in the panel request plainly connected the measure at issue (the failure of the US authorities to investigate and avoid double remedies) and the legal claims (ASCM Arts. 10, 19.3, and 32.1), in a manner that presented the problem clearly.

1 *United States – Countervailing and Anti-Dumping Measures on Certain Products from China*
2 "An act to apply the countervailing duty provisions of the US Tariff Act of 1930 to non-market economy countries, and for other purposes".

ARGENTINA – FINANCIAL SERVICES[1]
(DS453)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Panama*	*GATS Arts. II:1, XVI and XVII* *GATT Arts. I:1, III:2, III:4 and XI:1*	Establishment of Panel	*25 June 2013*
			Circulation of Panel Report	*30 September 2015*
Respondent	*Argentina*		Circulation of AB Report	*14 April 2016*
			Adoption	*9 May 2016*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Withholding tax on payments of interest or remuneration (measure 1); presumption of unjustified increase in wealth (measure 2); transaction valuation based on transfer prices (measure 3); payment received rule for the allocation of expenditure (measure 4); requirements relating to reinsurance services (measure 5); requirements for access to the Argentine capital market (measure 6); requirements for the registration of branches (measure 7); and a foreign exchange authorization requirement (measure 8).

- **Products and services at issue:** Services and service suppliers from countries that Argentina qualified as countries not cooperating for tax transparency purposes.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATS Arts. II:1 and XVII:1 (likeness):** The Appellate Body considered that, in the absence of a finding that measures 1-8 provided for a distinction based exclusively on origin, and by failing to conduct an analysis of "likeness" on the basis of the arguments and evidence presented by Panama, the Panel had erred in finding "likeness" "by reason of origin". On this basis, the Appellate Body reversed the Panel's finding of likeness of the services and service suppliers at issue under Arts. II:1 and XVII:1.[2]

- **GATS Arts. II:1 and XVII:1 (less favourable treatment):** The Appellate Body found that, under Arts. II:1 and XVII, a measure fails to confer "treatment no less favourable" if it modifies the conditions of competition to the detriment of services or service suppliers of another Member. The Appellate Body held that the Panel adopted an erroneous legal standard whereby an analysis of the "regulatory aspects" could potentially render a measure consistent with Arts. II:1 and XVII, even if the measure modified the conditions of competition. Where a measure was inconsistent with the non-discrimination provisions of the GATS, regulatory aspects were more appropriately addressed in the context of the relevant exceptions. Consequently, the Appellate Body reversed the Panel's conclusions under Art II:1 and Art XVII.

- **GATS Art. XIV(c) (measures necessary to secure compliance):** The Appellate Body concluded that Panama had not demonstrated that the Panel erred in its application of Art. XIV(c) to measures 1, 2, 3, 4, 7, and 8: (1) by failing to focus its analysis on relevant aspects of the measures that gave rise to the findings of inconsistency with Art. II:1 thereof, or (2) by finding that these measures are designed and necessary to secure compliance with the relevant Argentine laws or regulations under Art. XIV(c).

- **Paragraph 2(a) of the GATS Annex on Financial Services (prudential exception):** The Appellate Body concluded that the Panel had not erred in finding that para. 2(a) of the Annex on Financial Services covers all types of measures affecting the supply of financial services within the meaning of para. 1(a) of the Annex.

1 *Argentina – Measures Relating to Trade in Goods and Services*

2 The Panel's finding of likeness under GATS Art. XVII was based on its finding of likeness under GATS Art. II:1 of the GATS. In reversing the Panel's findings of "likeness", the Appellate Body rendered moot the Panel's findings on "treatment no less favourable", as well as the Panel's analysis of Argentina's defences under Art. XIV(c) and para. 2(a) of the GATS Annex on Financial Services. Nonetheless, recognizing that Panama's appeal concerned "issues of law covered in the panel report and legal interpretations developed by the panel", and that it had implications for the interpretation of Arts. II:1 and XIV(c) of the GATS and paragraph 2(a) of the GATS Annex on Financial Services, the Appellate Body addressed the issues raised in Panama's appeal.

CHINA – HP-SSST (JAPAN/EUROPEAN UNION)[1]
(DS454, DS460)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union, Japan*	*ADA Arts. 1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 2.4, 2.4.2, 3.1, 3.2, 3.4, 3.5, 6.5, 6.5.1, 6.7, 6.8, 6.9, 7.4, 12.2, 12.2.2, 17.7 and 18.2; Annexes I and II* *GATT Art. VI* *DSU Arts. 6.2, 11, 12.7 and 18.2*	Establishment of Panel	*24 May 2013*
			Circulation of Panel Report	*14 February 2015*
Respondent	*China*		Circulation of AB Report	*14 October 2015*
			Adoption	*28 October 2015*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping duties on certain high-performance stainless steel seamless tubes (HP-SSST) from Japan and the European Union.
- **Product at issue:** Certain high-performance stainless steel seamless tubes (HP-SSST).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Arts. 2.2.1 and 2.2.2 (dumping determination – costs calculation):** The Appellate Body upheld the Panel's finding, in the European Union panel report, that China had acted inconsistently with Art. 2.2.2 by failing to determine an amount of administrative, selling, and general costs on the basis of actual data pertaining to production and sales on the ordinary course of trade of the like product.
- **ADA Arts. 3.1 and 3.2 (injury determination – price undercutting):** The Appellate Body disagreed with the Panel's finding that, in its consideration of whether there has been a significant price undercutting, an investigating authority may simply consider whether dumped imports sell at lower prices than comparable domestic products. The Appellate Body completed the legal analysis and found that China acted inconsistently with ADA Arts. 3.1 and 3.2.
- **ADA Arts. 3.1 and 3.4 (injury determination – impact of dumped imports):** The Appellate Body found that the Panel erred in its interpretation of ADA Arts. 3.1 and 3.4 by finding that the results of the inquiries under Art. 3.2 were not relevant to the impact analysis under Art. 3.4. Consequently, the Appellate Body reversed the Panel's findings rejecting the complainants' claims under Arts. 3.1 and 3.4.
- **ADA Arts. 3.1 and 3.5 (injury determination – causation):** The Appellate Body upheld the Panel's findings that China acted inconsistently with Arts. 3.1 and 3.5 by improperly relying on the market share of dumped imports, in determining a causal link between dumped imports and material injury to the domestic industry. The Appellate Body also upheld the Panel's finding that China acted inconsistently with Arts. 3.1 and 3.5 by failing to ensure that the injury caused by other known factors was not attributed to the dumped imports.
- **ADA Art. 6.5 (good cause):** The Appellate Body upheld the Panel's findings that China acted inconsistently with ADA Art. 6.5 by permitting the full text of certain reports to remain confidential without objectively assessing the petitioners' showing of good cause.
- **ADA Art. 6.9 (essential facts):** The Appellate Body found that the Panel erred in its interpretation and application of Art. 6.9 in the European Union panel report. Having reversed the Panel's findings under Art. 6.9, the Appellate Body completed the legal analysis and found that China acted inconsistently with Art. 6.9 by failing to disclose adequately the essential facts underlying MOFCOM's dumping determination.
- The Panel also made findings of inconsistency with ADA Arts. 1, 2.4, 7.4, 12.2, 12.2.2, 6.8 and Paragraph 1 of Annex II that were not appealed.

3. OTHER ISSUES[2]

- The Appellate Body elaborated on the confidentiality obligations under the ADA, the confidentiality obligations under the DSU, and the additional layer of protection of sensitive business information provided for the purposes of a particular dispute.

1 *China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan/European Union*
2 Other issues addressed DSU Arts. 6.2 and 11.

INDIA – SOLAR CELLS[1]
(DS456)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. III:4, III:8(a), XX(d) and XX(j) TRIMs Art. 2.1*	Establishment of Panel	*23 May 2014*
			Circulation of Panel Report	*24 February 2016*
Respondent	*India*		Circulation of AB Report	*16 September 2016*
			Adoption	*14 October 2016*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Domestic content requirements (DCR measures) imposed by India in the initial phases of India's Jawaharlal Nehru National Solar Mission (NSM), on solar power developers selling electricity to the government.

- **Product at issue:** Solar cells and/or modules used to generate solar power.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. III:4 and TRIMS Art 2.1 (national treatment):** The Appellate Body upheld the Panel's finding that India's DCR measures were inconsistent with WTO non-discrimination obligations under Art. III:4 and Art. 2.1.

- **GATT Art. III:8(a) (government procurement derogation):** The Appellate Body concluded that the Panel was properly guided by its report in *Canada – Renewable Energy* in finding that the measures were not covered by the derogation under Art. III:8(a) because the product being procured (electricity) was not in a "competitive relationship" with the product discriminated against (solar cells and modules). The Appellate Body rejected India's claim that the Panel acted inconsistently with DSU Art. 11 in assessing India's arguments regarding the scope of Art. III:8(a).

- **GATT Art. XX(d) (general exceptions – necessary to secure compliance with laws):** The Appellate Body agreed with the Panel's finding that India had not demonstrated that its measures were justified under Art. XX(d). In the context of this provision, India neither demonstrated that the domestic instruments being challenged set out a rule to ensure ecologically sustainable growth, nor did it prove that the international instruments identified fell within the scope of Art. XX(d). According to the Appellate Body, identifying a "rule" that falls within the scope of "laws or regulations" under Art. XX(d) may involve considering factors such as the degree of normativity of the domestic or international instrument and the extent to which it operates to set out a rule of conduct or course of action that is to be observed within the domestic legal system of a Member.

- **GATT Art. XX(j) (general exceptions – essential to acquisition or distribution of products in general or local short supply):** The Appellate Body upheld the Panel's finding that solar cells and modules were not "products in general or local short supply" within the meaning of Art. XX(j), and that the DCR measures were not justified under this provision. According to the Appellate Body, an assessment of whether products are in short supply should give consideration to all relevant factors, including the quantity of the product made available through domestic and international sources, potential price fluctuations in the relevant market, and the purchasing power of foreign and domestic consumers.

1 *India – Certain Measures Relating to Solar Cells and Solar Modules*

PERU – AGRICULTURAL PRODUCTS[1]
(DS457)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Guatemala*	*AA Art. 4.2* *GATT Art. II:1(b)*	Establishment of Panel	*23 July 2013*
			Circulation of Panel Report	*27 November 2014*
Respondent	*Peru*		Circulation of AB Report	*20 July 2015*
			Adoption	*31 July 2015*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Peru's Price Range System (PRS), which resulted in the imposition of an additional duty, when the reference price for an affected product was lower than its floor price, or a tariff reduction, when the reference price exceeded the ceiling price (in practice, tariff reductions were rare, because Peru's applied tariff for most of the relevant products was zero per cent).
- **Products at issue:** Rice, maize, milk, and sugar.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **AA Art. 4.2, footnote 1 (market access):** The Appellate Body upheld the Panel's finding that the additional duties resulting from the PRS constituted variable import levies, or at least a border measure similar to variable import levies, within the meaning of footnote 1 of the AA, and that, by maintaining such a measure, Peru had acted inconsistently with Art. 4.2.
- **GATT Art. II:1(b) (schedules of concessions):** The Appellate Body upheld the Panel's finding that the additional duties resulting from the PRS constituted other duties or charges imposed on or in connection with the importation, within the meaning of the second sentence of Art. II:1(b), and that, by applying such a measure without having recorded it in its schedule of concessions, Peru had acted inconsistently with the second sentence of Art. II:1(b).
- **AA footnote 1 (minimum import prices):** The Appellate Body reversed the Panel's finding that the measure at issue did not constitute a minimum import price, or a border measure similar to a minimum import price, within the meaning of AA footnote 1. The Appellate Body, however, was unable to complete the legal analysis to determine whether the measure constituted a minimum import price or a border measure similar to a minimum import price within the meaning of footnote 1.

3. OTHER ISSUES

- **Good faith (DSU Arts. 3.7 and 3.10):** The Appellate Body upheld the Panel's finding that there was no reason for the Panel to refrain from assessing the claims put forward by Guatemala, since there was no evidence that Guatemala had brought the proceedings in a manner contrary to good faith.
- **Standard of review (DSU Art. 11):** The Appellate Body found that the Panel had not acted inconsistently with Art. 11 in its examination of Guatemala's claims under AA Art 4.2 and GATT Art. II:1(b).
- **VCLT and International Law Commission:** The Appellate Body also found that the Panel had not committed a legal error by not taking into account, in accordance with Art. 31(3) of the VCLT, a free trade agreement between Peru and Guatemala and Arts. 20 and 45 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, when interpreting AA Art. 4.2 and GATT Art. II:1(b).
- **Trade regulations: GATT Arts. X:1 (prompt publication) and X:3(a) (uniform, impartial and reasonable administration):** In a decision that was not appealed, the Panel refrained from making additional findings under Arts. X:1 and X:3(a).
- **Panel and Appellate Body recommendations (DSU Art. 19.1):** Pursuant to Art. 19.1, the Panel recommended that Peru bring the challenged measure into conformity with its obligations under the AA and the GATT 1994. The Panel did not consider it appropriate to suggest, as requested by Guatemala, that the proper way of implementing its recommendation was the elimination of the PRS.

1 *Peru – Additional Duty on Imports of Certain Agricultural Products*

COLOMBIA – TEXTILES[1]
(DS461)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Panama*	*GATT Arts. II:1, II:1(b), VIII:1 and X:3(a)*	Establishment of Panel	*25 September 2013*
			Circulation of Panel Report	*27 November 2015*
Respondent	*Colombia*		Circulation of AB Report	*7 June 2016*
			Adoption	*22 June 2016*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** A compound tariff imposed by Colombia through Presidential Decree No. 074/2013, on imports of textiles, apparel and footwear, consisting of (i) a 10 per cent ad-valorem component; and (ii) a specific component, which varied according to the import value and customs classification of the merchandise.

- **Product at issue:** Textiles, apparel and footwear.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT Art. II:1 (schedules of concessions):** The Appellate Body reversed the Panel's finding that it was unnecessary for the Panel to rule on whether Art. II:1 applies to "illicit trade". The Appellate Body considered that the basis upon which the Panel had refrained from interpreting Art. II:1 was flawed. According to the Appellate Body, the Panel's statement implied that the measure at issue applied, or could apply, to some transactions considered by Colombia to be illicit trade, and thus the Panel was required to address the interpretative issue before it. The Appellate Body therefore found that the Panel acted inconsistently with the obligation in DSU Art. 11 to make an objective assessment of the matter, including an objective assessment of the applicability of the relevant covered agreements. In completing the legal analysis, the Appellate Body ruled that the scope of Art. II:1(a) and (b) did not exclude what Colombia classified as "illicit trade" from the requirements to respect tariff bindings. The Appellate Body saw no grounds to disturb the Panel's findings that the compound tariff necessarily exceeded Colombia's bound tariff rates in the instances set out in the Panel Report, and upheld the Panel's findings that the compound tariff was inconsistent with GATT Art. II:1(a) and (b).

- **GATT Art. XX(a) (general exceptions – necessary to protect public morals):** The Appellate Body reversed the Panel's finding that Colombia had failed to demonstrate that the compound tariff was "designed" to combat money laundering and protect public morals. In completing the legal analysis, the Appellate Body concluded that the measure at issue was "designed" to protect public morals. The Appellate Body found, however, that Colombia failed to demonstrate that the compound tariff was "necessary" for the protection of public morals within the meaning of Art. XX(a).

- **GATT Art. XX(d) (general exceptions – necessary to secure compliance with laws):** The Appellate Body reversed the Panel's finding and concluded that the compound tariff was "designed" to secure compliance with Article 323 of Colombia's Criminal Code. The Appellate Body found, however, that Colombia failed to demonstrate that the compound tariff was "necessary" to secure compliance with Article 323, within the meaning of Art. XX(d).

- **The chapeau of GATT Art. XX (general exceptions):** Given its finding that Colombia had failed to demonstrate that its measure was provisionally justified under Art. XX(a) or Art. XX(d), the Appellate Body considered it unnecessary to examine the Panel's reasoning and findings regarding the chapeau of Art. XX.

1 *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*

US – WASHING MACHINES[1]
(DS464)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*ADA Arts. 2.4.2, 2.4 and 9.3* *GATT Arts. VI:2 and VI:3* *ASCM Arts. 2.2 and 19.4*	Establishment of Panel	*22 January 2014*
			Circulation of Panel Report	*11 March 2016*
Respondent	*United States*		Circulation of AB Report	*7 September 2016*
			Adoption	*26 September 2016*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping and countervailing duties applied by the US Department of Commerce (USDOC).
- **Product at issue:** Imports of large residential washers from Korea.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 2.4.2, second sentence (pattern):** The Appellate Body considered that a "pattern" comprises all export prices to a purchaser (or region or time period) which differ significantly from the export prices to other purchasers (or regions or time periods) because they are significantly lower than those other prices. The Appellate Body also found that the requirement to identify prices which differ *significantly* means that the authority is required to assess the price differences in a quantitative and qualitative manner. The Appellate Body thus reversed the Panel's findings to the extent it found that a pattern of export prices which differ significantly can be established "on the basis of purely quantitative criteria". The Appellate Body held that an investigating authority must also explain why both the weighted average-to-weighted average (W-W) and the transaction-to-transaction methodologies (T-T) cannot take into account appropriately the identified differences in export prices before having recourse to the weighted average-to-transaction (W-T) methodology. It thus reversed the Panel's findings that the United States did not act inconsistently with Art. 2.4.2 by providing an explanation only in respect of the W-W methodology.

- **ADA Art. 2.4.2 (systemic disregarding):** The Appellate Body found that Art. 2.4.2 allows an investigating authority to establish margins of dumping by applying the W-T methodology only to transactions that constitute the pattern and by dividing the resulting amount by all export sales. Art. 2.4.2, however, does not allow systemic disregarding, whereby an authority conducts separate comparisons for transactions within the pattern under the W-T methodology, and for transactions outside the pattern under the W-W or T-T methodology, and disregards the latter when they yield an overall negative result. The Appellate Body found that the exclusion of non-pattern transactions in establishing margins of dumping under the W-T methodology was consistent with the fair comparison requirement in ADA Art. 2.4. The Appellate Body declared moot the Panel's finding that Korea failed to establish that the United States' use of the systemic disregarding at issue was, as such, inconsistent with Art. 2.4.

- **ADA Arts. 2.4.2, 2.4, and 9.3 and GATT Art. VI:2 (zeroing under the W-T methodology):** The Appellate Body upheld the Panel's findings that the United States' use of zeroing when applying the W-T methodology was inconsistent as such with these provisions.

- **ASCM Art. 2.2 (regional specificity):** The Appellate Body upheld the Panel's finding that certain subsidy programmes adopted by Korea were limited to certain enteprises located in a designated region within the Korean territory, and that, therefore, Korea had failed to establish that the USDOC's determination of regional specificity was inconsistent with Art. 2.2.

- **ASCM Art. 19.4 and GATT Art. VI:3 (attribution of subsidies to certain products):** The Appellate Body considered that the USDOC improperly attributed certain Korean subsidies to all of Samsung's products, as opposed to tying those subsidies to Samsung's digital appliances only. The Appellate Body further considered that the USDOC incorrectly attributed certain Korean subsidies to Samsung's production in Korea only, as opposed to Samsung's production worldwide. According to the Appellate Body, this resulted in countervailing duties in excess of the subsidization margin. The Appellate Body thus reversed the Panel's finding that the USDOC's determination was not inconsistent with ASCM Art. 19.4 and GATT Art. VI:3 and found, instead, that the USDOC's determination was inconsistent with these provisions.

3. OTHER ISSUES

- **Separate opinion by one AB Member:** The dissenting Member considered that allowing an investigating authority to conduct zeroing within the pattern under the second sentence of ADA Art. 2.4.2 is a permissible and more defensible interpretation under Art. 17.6(ii) thereof.

1 *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*

UKRAINE – PASSENGER CARS[1]
(DS468)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*SA Arts. 2.1, 3.1, 4.1(a), 4.1(b), 4.2(a), 4.2(b), 4.2(c), 5.1, 7.1, 7.4, 8.1, 11.1(a), 12.1, 12.2 and 12.3* *GATT Arts. II:1(b) and XIX:1*	Establishment of Panel	*26 March 2014*
Respondent	*Ukraine*		Circulation of Panel Report	*26 June 2015*
			Circulation of AB Report	*NA*
			Adoption	*20 July 2015*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The definitive safeguard measure imposed by Ukraine in April 2013 for three years on products at issue from all sources, and the investigation that led to the imposition of this measure.
- **Products at issue**: Certain passenger cars (no more than eight passenger sitting places).

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. XIX:1(a)(unforeseen developments and the effect of GATT obligations):** The Panel found that Ukraine acted inconsistently with this provision because the Ukrainian competent authorities did not provide in their published report a demonstration of the circumstances – unforeseen developments and the effect of GATT obligations – that must be satisfied before a safeguard measure can be imposed.
- **SA Art. 2.1 (conditions for safeguard measures – increased imports):** The Panel found that Ukraine did not adequately analyse and explain the intervening trends and failed to demonstrate that the increase in imports was recent, sudden, sharp and significant enough, thus acting inconsistently with this provision.
- **SA Art. 4.2(a) (conditions for safeguard measures – threat of serious injury):** The Panel found that Ukraine failed in its injury determination to evaluate all relevant factors affecting the situation of the domestic industry, in particular because it did not properly assess the likely development of the injury factors in the very near future and their likely effects on the situation of the domestic industry. According to the Panel, Ukraine therefore failed to make a proper determination regarding threat of serious injury to the domestic industry under Art. 4.2(a).
- **SA Art. 4.2(b) (conditions for safeguard measures – causation):** The Panel found that Ukraine acted inconsistently with this provision by failing to demonstrate the existence of a causal link and to conduct a proper non-attribution analysis.
- **SA Art. 8.1 (level of concessions and other obligations):** The Panel found that Ukraine acted inconsistently with this provision by failing to endeavour to maintain a substantially equivalent level of concessions and other obligations between it and affected exporting Members.
- **SA Arts. 4.2(c), 12.1, 12.2 and 12.3 (publication and notification requirements):** The Panel found that Ukraine acted inconsistently with its obligations to (i) publish promptly a detailed analysis of the case under investigation and a demonstration of the relevance of the factors examined (Art. 4.2(c)); (ii) notify the WTO Committee on Safeguards immediately after initiating a safeguard investigation (Art. 12.1(a)) and immediately after making a finding of threat of serious injury caused by increased imports (Art. 12.1(b)); (iii) provide "all pertinent information" in one of its notifications to the Committee (Art. 12.2); and (iv) provide Japan with adequate opportunity for prior consultations with a view to reviewing all pertinent information (Art. 12.3).
- **SA Arts. 3.1, second sentence (reasonable public notice and public hearings); 3.1, last sentence (publication of the investigation report); 3.1 and 4.2(c) (timetable for progressive liberalization); 5.1, 7.1 and 7.4, first sentence (application, duration, and liberalization of the safeguard measure); and 12.1(c) (notification requirement):** The Panel rejected Japan's claims that Ukraine acted inconsistently with these provisions.

1 *Ukraine – Definitive Safeguard Measures on Certain Passenger Cars*

US – ANTI-DUMPING METHODOLOGIES (CHINA)[1]
(DS471)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*China*	*ADA Arts. 2.4.2, 6.1, 6.8, 6.10, 9.2, 9.3 and 9.4; Annex II* *GATT Art. VI:2*	Establishment of Panel	*26 February 2014*
			Circulation of Panel Report	*19 October 2016*
Respondent	*United States*		Circulation of AB Report	*11 May 2017*
			Adoption	*22 May 2017*

1. MEASURE AT ISSUE

- **Measure at issue:** Measures relating to certain United States' anti-dumping investigations against imports from China: (i) the use of the W-T methodology in dumping margin calculations; (ii) the treatment of multiple companies as a NME-wide entity; and (iii) the manner in which the USDOC determined anti-dumping duty rates for such an entity as well as the level of duty rates.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 2.4.2 (W-T methodology):** The Panel found that the United States acted inconsistently in two of the three anti-dumping investigations by disregarding non-target prices that were lower than the alleged target price under the price gap test, and by failing to consider evidence on *all* non-target prices making up the weighted average non-target price gap. The Panel also found that the United States acted inconsistently in the three investigations by applying the W-T methodology to all export transactions, and using zeroing in the dumping margin calculations, as well as by premising the explanations under Art. 2.4.2, second sentence on the use of the W-T methodology with zeroing, and failing to provide an explanation as to why the T-T methodology could not be used. On appeal, the Appellate Body upheld the Panel's findings that: (i) China had not established that the United States acted inconsistently with Art. 2.4.2, insofar as this finding relates to the first and third alleged quantitative flaws with the Nails test; (ii) the USDOC was not required to consider the reasons for the differences in export prices forming the relevant pattern in order to determine whether those differences were qualitatively significant within the meaning of the pattern clause; and (iii) China had not established that the United States acted inconsistently with Art. 2.4.2 by determining the existence of a "pattern" on the basis of average prices, instead of individual export transaction prices. The Appellate Body further declared moot the Panel's statements premised on the understanding that Art. 2.4.2 permits the combining of comparison methodologies (e.g. W-T to pattern transactions and W-W to non-pattern transactions) to establish dumping margins.

- **ADA Arts. 6.10 and 9.2 ("Single Rate Presumption"):** The Panel found that the Single Rate Presumption is a norm of general and prospective application inconsistent "as such" with Arts. 6.10 and 9.2, insofar as it subjects NME exporters to a single dumping margin and duty rate, unless the exporter rebuts the presumption of governmental control over its export operations. For the same reasons, the Panel found that the application of the Single Rate Presumption in the 38 challenged determinations was inconsistent "as applied".

- **ADA Art. 6.8 and para. 7 of Annex II ("AFA Norm"):** The Panel rejected China's assertion that the alleged Adverse Facts Available (AFA) Norm has a prospective application because the evidence was insufficient to show the degree of security and predictability typically associated with rules or norms. The Appellate Body considered that, by requiring "certainty" of future application, the Panel's examination of the prospective nature of the alleged AFA Norm was not consistent with the legal standard for establishing the prospective application of a rule or norm. In completing the analysis, the Appellate Body found that the alleged AFA Norm is a rule or norm of general and prospective application that can be challenged "as such", because it covers any economic operator that may be included with an NME-wide entity subject to the AFA Norm, and reflects a policy, provides administrative guidance for future action, and generates expectations among economic operators. However, given the absence of Panel findings and sufficient undisputed facts on the record, as well as the arguments made by the participants on appeal, the Appellate Body was unable to evaluate the process that the USDOC undertakes for its selection of which "facts available" reasonably replace the missing "necessary information" with a view to arriving at an accurate determination. For these reasons, the Appellate Body could not complete the legal analysis.

1 *United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China*

BRAZIL – TAXATION[1]
(DS472, 497)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union, Japan*	*GATT Arts. I, II, III and XX* *ASCM Arts. 3 and 4.7* *TRIMs Art. 2*	Establishment of Panel	*17 December 2014*
			Circulation of Panel Report	*13 August 2017*
Respondent	*Brazil*		Circulation of AB Report	*13 December 2018*
			Adoption	*11 January 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Certain tax measures adopted by Brazil through various programmes aimed at the information and communication technology (ICT) and automotive sectors as well as purchase of goods by predominantly exporting companies.[2]

- **Products at issue:** Certain final and intermediate ICT products; motor vehicles; raw materials; machinery; and tools.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **GATT 1994 Art. III:8(b) (national treatment - subsidies exemption):** The Appellate Body reversed the Panel's "overly broad and unqualified" findings that subsidies provided exclusively to domestic producers pursuant to Art. III:8(b) were not *per se* exempt from Art. III. The Appellate Body concluded that while Art. III:8(b) can in principle justify these type of subsidies, none of the measures at issue were justifiable under Art. III:8(b) as they involved exemption and reduction of internal taxes and thus could not constitute "payment of subsidies" under that provision.

- **ASCM Art. 3.1(a) (prohibition of export subsidies):** The Appellate Body reversed the Panel's finding that the tax suspensions for companies under the PEC and RECAP programmes constituted prohibited subsidies contingent upon export performance within the meaning of Art. 3.1(a).

- **ASCM Art. 3.1(b) (prohibition on subsidies):** The Appellate Body reversed the Panel's findings on each of the measures at issue, except findings concerning: (i) tax treatment of intermediate products and inputs under the ICT programmes; and (ii) basic productive process (PPBs) that contain nested PPBs in the Informatics and PATVD programmes.

- **GATT 1994 Arts. III:2 and III:4 (national treatment - internal tax):** The Appellate Body upheld the Panel's findings that imported finished and intermediate products were taxed in excess of the like domestic ICT Products inconsistency with Art. III:2, first sentence. Likewise, the accreditation and production-step requirements as well as the lower administrative burden under the ICT programmes and the accreditation requirements under the INVOVAR-AUTO programme accorded less favourable treatment to imported products than that accorded to the like domestic products inconsistently with Art. III:4.

- **GATT 1994 Art. I:1 and Enabling Clause (most favoured nation treatment):** The Appellate Body upheld the Panel's findings that (i) there was no burden on the complainants to identify relevant portions of the Enabling Clause in their Panel Request; (ii) the tax reductions under the INVOAR-AUTO programme to imported products from Argentina, Mexico, and Uruguay, and found to be inconsistent with Art. I:1 were not justified under paras. 2(b) and 2(c) of the Enabling Clause.

3. OTHER ISSUES

- The Appellate Body reversed the Panel's finding that Brazil withdraw the prohibited subsidies found to exist within 90 days pursuant to Art. 4.7 of the ASCM because the Panel did not provide a basic rationale or explanation in recommending this period. The Panel's findings that WTO-inconsistent aspects of the PATVD and the INOVAR-AUTO programmes were not justified under Arts. XX(a), (b), and (g) of the GATT 1994 were not appealed.

1 *Brazil – Certain Measures Concerning Taxation and Charges*
2 The claims brought by the European Union and Japan concern certain tax treatment under the following programmes: the Informatics program, the PATVD programme, the PADIS programme, the Digital Inclusion programme, the INOVAR-AUTO programme, the PEC programme and the RECAP Programme.

EU – BIODIESEL (ARGENTINA)[1]
(DS473)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Argentina*	*ADA Arts. 2.1, 2.2, 2.2.1.1, 2.2.2 (iii), 2.4, 3.1, 3.4, 3.5, 9.3 and 18.4* *GATT Arts. VI:1, VI:1(b)(ii) and VI:2* *WTO Agreement Art. XVI:4* *DSU Art. 11*	Establishment of Panel	*25 April 2014*
			Circulation of Panel Report	*29 March 2016*
Respondent	*European Union*		Circulation of AB Report	*6 October 2016*
			Adoption	*26 October 2016*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Art. 2(5) of the European Union's basic anti-dumpigng regulation (Basic AD Regulation) and anti-dumping measures imposed by the European Union on biodiesel from Argentina.
- **Product at issue:** Biodiesel from Argentina.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Arts. 2.2.1.1 and 2.2 / GATT Art. VI:1(b)(ii) / DSU Art. 11 (as such claims):** The Appellate Body upheld the Panel's finding that Argentina had not established that the second subparagraph of Art. 2(5) of the Basic Regulation was inconsistent as such with Arts. 2.2.1.1, 2.2 and VI:1(b)(ii).
- **ADA Art. 2.2.1.1 (dumping determination – cost of production on the basis of records kept):** The Appellate Body considered that the second condition in the first sentence of Art. 2.2.1.1 concerns whether the records kept by the investigated exporter/producer suitably and sufficiently correspond to or reproduce those costs incurred by the exporter/producer that have a genuine relationship with the production and sale of the product under consideration. Consequently, it upheld the Panel's finding that the European Union acted inconsistently with this provision by failing to calculate the cost of production of the product under investigation on the basis of the records kept by the producers.
- **ADA Art. 2.2 / GATT Art. VI:1(b)(ii) (dumping determiantion – cost of production in the country of origin):** The Appellate Body upheld the Panel's finding that the European Union acted inconsistently with these provisions by not using the cost of production in Argentina when constructing the normal value of biodiesel.
- **ADA Arts. 2.2 and 2.2.2(iii) (dumping determination – profits):** In a finding that was not appealed, the Panel rejected Argentina's claim that the amount for profits component of the constructed normal value was inconsistent with Arts. 2.2 and 2.2.2(iii).
- **ADA Art. 2.4 (dumping determination – fair comparison):** The Panel rejected Argentina's claim that the European Union had failed to make a "fair comparison" between the normal value and the export price. The Appellate Body did not rule on Argentina's appeal of this finding.
- **ADA Art. 9.3 / GATT Art. VI:2 (imposition of anti-dumping duties):** The Appellate Body upheld the Panel's finding that the European Union acted inconsistently with these provisions by imposing anti-dumping duties in excess of the margin of dumping that should have been established under Art. 2 and Art. VI:1.
- **ADA Arts. 3.1 and 3.4 (injury determination – positive evidence and objective examination):** The Panel found that the European Union authorities' examination of the impact of the dumped imports on the domestic industry with respect to production capacity and utilization of capacity was not based on an "objective examination" of "positive evidence". This finding was not appealed.
- **ADA Arts. 3.1 and 3.5 (injury determination – non-attribution analysis):** The Panel rejected Argentina's claims that the European Union authorities' non-attribution analysis was inconsistent with Arts. 3.1 and 3.5. The Appellate Body upheld the one aspect of the Panel's findings that was appealed by Argentina, concerning overcapacity.

1 *European Union – Anti-Dumping Measures on Biodiesel from Argentina*

RUSSIA – PIGS (EU)[1]
(DS475)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*SPS Arts. 1, 2.2, 2.3, 3.1, 3.2, 5.1, 5.2, 5.3, 5.6, 5.7, 6.1, 6.2, 6.3 and 8*	Establishment of Panel	*22 July 2014*
			Circulation of Panel Report	*19 August 2016*
Respondent	*Russian Federation*		Circulation of AB Report	*23 February 2017*
			Adoption	*21 March 2017*

1. MEASURE AND PRODUCT AT ISSUE

- Alleged import restrictions on live pigs and their genetic material, pork and certain other pig products from the European Union as a whole (EU-wide ban), as well from four EU member States: Estonia, Latvia, Lithuania and Poland (EU member State bans), based on concerns related to African swine fever (ASF).

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **SPS Art. 3 (harmonization):** The Panel found that the EU member State bans violated Art. 3.2 because they did not conform to the relevant OIE international standards. It found that the EU-wide ban and EU member State bans, except that in respect of Latvia, were inconsistent with Art. 3.1 because they were not based on the same standards.

- **SPS Arts. 5.1, 5.2, 5.3 and 2.2 (risk assessment):** The Panel found that (i) the measures were not provisional measures under Art. 5.7, (ii) they violated Arts. 5.1 and 5.2 because they were not based on a risk assessment within the meaning of the Agreement, and (iii) without such a risk assessment, Russia could not have taken into account "relevant economic factors" as required by Art. 5.3. It found that Russia failed to rebut the presumption of inconsistency with Art. 2.2 raised by the violation of Arts. 5.1, 5.2 and 5.3.

- **SPS Art. 6 (adaptation to regional conditions):** The Appellate Body upheld the Panel's conclusion that the ban on imports from Latvia violated Art. 6.1 because it was not adapted to the SPS characteristics of areas in Russia, while modifying the Panel's finding that the ban was not adapted to the SPS characteristics of areas in Latvia. The Panel also found the EU-wide ban and other member State bans violated Art. 6.1 because Russia (i) did not adapt them to the SPS characteristics of the areas of the products' origin or to ASF-related characteristics in Russia, and (ii) did not perform a risk assessment to underpin its evaluation of the SPS characteristics of the products' areas of origin. The Appellate Body reversed the Panel's finding that the measures were not inconsistent with Art. 6.2, but was not in a position to complete the legal analysis. The Appellate Body upheld the Panel's finding that (i) the European Union complied with Art. 6.3 by providing necessary evidence to objectively demonstrate that there were areas within the European Union territory outside Estonia, Latvia, Lithuania, and Poland, and areas within Estonia, Latvia, Lithuania, and Poland that were free of ASF and (except for Latvia) likely to remain so, and that (ii) Art. 6.3 does not require consideration of evidence relied upon by the importing Member (also see the findings on Art. 8 and Annex C(1) regarding unnecessary information requirements).

- **SPS Arts. 5.6 and 2.3 (appropriate level of protection, prohibition on discrimination and disguised restriction on international trade):** The Panel found the measures inconsistent with Art. 5.6 because there was a significantly less-restrictive alternative measure available to Russia that met its appropriate level of protection. The Panel also found them inconsistent with Art. 2.3 because they allowed domestic trade of the products at issue from ASF-free areas within Russia but not from the European Union, and did not recognize certain ASF-free areas, pursuant to the relevant international standard.

1 *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union*

2 Other issues addressed: attribution of the EU-wide ban to Russia; Russia's terms of accession to the WTO; terms of reference (DSU Art 6.2); temporal framework for the Panel's assessment; Art. 1 and Annex A(1) of the SPS Agreement; order of analysis (SPS Agreement); judicial economy; requests for simultaneous English-to-Russian and Russian-to-English interpretation; consultation with experts and the OIE; scope of the Interim Review and submission of new evidence (DSU Art. 15.2); extension of deadline for circulation of the Appellate Body Report (DSU Art. 17.5); and industry representatives in a Member's delegation.

INDONESIA – IMPORT LICENSING REGIMES[1]
(DS477, 478)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*New Zealand* *United States*	*GATT Arts. XI and XX* *AA Art. 4.2*	Establishment of Panel	*20 May 2015*
			Circulation of Panel Report	*22 December 2016*
Respondent	*Indonesia*		Circulation of AB Report	*9 November 2017*
			Adoption	*22 November 2017*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** These two disputes concerned 18 measures imposed by Indonesia on the importation of horticultural products, animals and animal products. Most of these measures (17) concerned Indonesia's import licensing regimes for horticultural products and animals and animal products. In addition, the co-complainants challenged Indonesia's conditioning of importation of these products on the sufficiency of domestic production to fulfil domestic demand.

- **Product at issue:** Horticultural products, animals and animal products.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **Order of analysis: AA Art. 4.2 (market access)/GATT Art. XI:1 (quantitative restrictions):** The Appellate Body held that Art. 4.2 does not apply to the exclusion of Art. XI:1. Rather, both provisions contain the same substantive obligations in relation to the claims at issue and therefore apply cumulatively. The Appellate Body also found that there is no mandatory sequence of analysis between these two provisions and therefore upheld the Panel's decision to begin with Art. XI:1.

- **Burden of proof: GATT Art. XX (general exceptions)/AA Art. 4.2 footnote 1:** The Appellate Body upheld the Panel's finding that Art. 4.2 and its footnote do not contain any express indication that Art. XX is no longer an affirmative defence when it is applied through the reference in the second part of footnote 1. Furthermore, the Appellate Body held that nor does Art. 4.2 or its footnote provide that a complainant bringing a claim under this provision must establish that the challenged measure is not maintained under Art. XX or under any of the other provisions referred to in the second part of footnote 1. The Appellate Body noted that while the phrase "but not" in the second part of footnote 1 makes clear that measures prohibited under Art. 4.2 do not include measures maintained under one of the provisions mentioned in the second part of footnote 1, this phrase is neutral as to the allocation of the burden of proof under these provisions, including under Art. XX.

- **GATT Art. XI:2(c)/AA Art. 4.2:** The Appellate Body agreed with Indonesia that that the term "quantitative import restrictions" in the first part of footnote 1 to Art. 4.2 should be interpreted in light of prohibition of quantitative restrictions under Art. XI:1. However, with respect to the relationship between Art. 4.2 and Art. XI:2(c), the Appellate Body observed that there is no express language in Art. XI that suggests that the derogations under Art. XI:2(c) are relevant not only to the prohibition under Art. XI:1 but also to the prohibition under Art. 4.2. The Appellate Body noted that measures prohibited under Art. 4.2 did not include those maintained under general, non-agriculture-specific provisions of GATT 1994 and that Art. XI:2(c) "does not qualify as a 'general, non-agriculture-specific provision' because it is "agriculture-specific" as its application is limited to *agricultural* or fisheries products by its express terms. The Appellate Body held that although Art. XI:2(c) carves out quantitative restrictions from the *prohibition* contained in Art. XI:1, they are still quantitative restrictions within the meaning of Art. 4.2. Therefore, Members cannot maintain quantitative import restrictions on agricultural products that satisfy the requirements of Art XI:2(c) without violating Art 4.2. This is because the prohibition on quantitative import restrictions under Art 4.2 does not allow for the kind of derogations recognized under "agriculture-specific" provisions such as Art. XI:2(c).

3. OTHER ISSUES[2]

- **Sequence of analysis GATT Art. XX:** The Appellate Body recalled that it had set out the sequence of analysis in previous reports. However, the Appellate Body accepted that a panel that deviates from the sequence of analysis might not, for that reason alone, commit a legal error. But the Appellate Body stressed the importance of following the normal Art. XX sequence of analysis.

1 *Indonesia – Importation of Horticultural Products, Animals and Animal Products*
2 AA Art. 21.1 conflict, GATT Art. XX(a), preliminary ruling request, enhanced third-party rights.

RUSSIA – COMMERCIAL VEHICLES[1] (DS479)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*ADA Arts. 1, 3.1, 3.2, 3.4, 3.5, 4.1, 6.5, 6.5.1, 6.9 and 18.4* *GATT Art. VI*	Establishment of Panel	*20 October 2014*
			Circulation of Panel Report	*27 January 2017*
Respondent	*Russian Federation*		Circulation of AB Report	*22 March 2018*
			Adoption	*9 April 2018*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The Russian Federation's imposition of anti-dumping duties on certain light commercial vehicles from Germany and Italy pursuant to a Decision of the Board of the Eurasian Economic Commission (EEC), including related notices and reports of the Department for Internal Market Defence of the EEC (DIMD)

- **Product at issue:** Certain light commercial vehicles (LCVs)

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ADA Arts. 3.1 and 4.1 (definition of domestic industry):** The Appellate Body upheld the Panel's finding that the DIMD acted inconsistently with Arts. 3.1 and 4.1 by not including GAZ, a domestic producer of the like product, in its definition of "domestic industry" solely on the basis that it had furnished allegedly deficient data.

- **ADA Arts. 3.1 and 3.2 (price suppression):** The Appellate Body upheld the Panel's finding that the DIMD acted inconsistently with Arts. 3.1 and 3.2 by failing to take into account the impact of the financial crisis in determining the rate of return used to construct the target domestic price for its price suppression analysis. However, the Appellate Body reversed the Panel's finding that the evidence on the investigation record did not require the DIMD to examine whether the market could absorb further price increases.

- **DSU Art. 11 and ADA Art. 17.6 (confidential report):** The Appellate Body reversed the Panel's findings concerning three injury factors under ADA Art. 3.4, as the Panel acted inconsistently with DSU Art. 11 and ADA Art. 17.6 by relying on the confidential investigation report without assuring itself of whether the relevant parts of it formed part of the investigation record at the time the determination to impose the anti-dumping measure was made.

- **ADA Arts. 3.1 and 3.4 (related dealer):** The Appellate Body noted that evidence concerning a related dealer that does not produce the like product and is thus not included in the "domestic industry" may be pertinent to the evaluation of the state of the domestic industry. The Appellate Body upheld the Panel's finding that the European Union had not established that the DIMD acted inconsistently with Arts. 3.1 and 3.4 by not considering the inventories data of Turin Auto in the investigation report.

- **ADA Arts. 3.1 and 3.5 (causation):** The Panel found that DIMD acted inconsistently with Arts. 3.1 and 3.5 by failing to examine the allegedly overly ambitious business plan of Sollers as an "other factor" in its non-attribution analysis.

- **ADA Arts. 6.5 and 6.9 (essential facts):** The Panel found that DIMD acted inconsistently with Art. 6.5 by treating certain information as confidential in the absence of any showing of good cause. The Appellate Body reversed the Panel's findings that the DIMD acted inconsistently with Art. 6.9, as the Panel erroneously made this conclusion solely on the basis that the DIMD acted inconsistently with Art. 6.5. The Appellate Body reversed the Panel's finding that methodologies and sources of information cannot constitute essential facts, as this assessment must be made on a case-by-case basis. The Appellate Body completed the analysis to find that the DIMD acted inconsistently with Art. 6.9 by failing to disclose certain essential facts, but did not complete the analysis with respect to DIMD's failure to disclose the source of information concerning import volumes and values.

1 *Russia – Anti-Dumping Measures on Light Commercial Vehicles from Germany and Italy*

2 Other issues addressed: DSU 11 (Panel findings concerning the explanatory force of the dumped imports for price suppression); ADA Arts. 3.1, 3.2, 3.4 and 3.5 (injury determination – period for the injury investigation); ADA Art. 1, Art. 18.4 and GATT Art. VI (consequential claims); Art. 6.5.1 (exercise of judicial economy by Panel); additional procedures for BCI; terms of reference (DSU Art. 6.2).

EU – BIODIESEL (INDONESIA)[1]
(DS480)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*ADA Arts. 1, 2, 2.1, 2.2, 2.2.1.1, 2.2.2, 2.3, 2.4, 3.1, 3.2, 3.4, 3.5, 6.5, 6.5.1, 7.1, 7.2, 9.2, 9.3, 15 and 18.4* *WTO Agreement Art. XVI:4* *GATT Arts. VI, VI:1 and VI:2*	Establishment of Panel	*31 August 2015*
			Circulation of Panel Report	*25 January 2018*
Respondent	*European Union*		Circulation of AB Report	*NA*
			Adoption	*28 February 2018*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping measures imposed by the European Union on imports of biodiesel from Indonesia.
- **Product at issue:** Biodiesel imported from Indonesia.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Arts. 2.2 and 2.2.1.1/GATT Art. VI:1(b)(ii) (cost of production):** The Panel upheld Indonesia's claim that the European Union acted inconsistently with Art. 2.2.1.1 by failing to calculate the cost of production of the producers under investigation on the basis of the records kept by the producers. In addition, the Panel upheld Indonesia's separate claims that the European Union acted inconsistently with Art. 2.2 of the and Art. VI:1(b)(ii) by using a "cost" that was not the cost prevailing "in the country of origin" in the construction of the normal value. The Panel did not make findings on certain additional consequential claims under Art. 2.2 and Art. VI:1(b)(ii).
- **ADA Arts. 2.2 and 2.2.2(iii) (profit cap/"reasonable method"):** The Panel found that the European Union acted inconsistently with Arts. 2.2.2(iii) and 2.2 by failing to determine "the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin". The Panel rejected Indonesia's claim that the European Union additionally acted inconsistently with Art. 2.2.2(iii) because the European Union failed to determine the amount for profit based on a "reasonable method" within the meaning of Art. 2.2.2(iii).
- **ADA Arts. 2.3 (construction of export price):** The Panel found that the European Union acted inconsistently with Art. 2.3 by failing to construct the export price of one Indonesian exporting producer, P.T. Musim Mas, on the basis of the price at which the imported biodiesel produced by that producer was first resold to independent buyers in the European Union.
- **ADA Arts. 3.1 and 3.2 (price effects):** The Panel upheld in part Indonesia's claim that the EU authorities acted inconsistently with Arts. 3.1 and 3.2 by failing to establish the existence of significant price undercutting. The Panel found that the EU authorities failed to take into account differences between imported and domestic biodiesel in its determination of the existence of significant price undercutting, while rejecting an additional argument by Indonesia that the EU authorities failed to ensure price comparability through the calculation of a price adjustment for Indonesian imports.
- **ADA Art. 9.3/GATT Art. VI:2 (duties in excess of dumping margins):** The Panel found that the European Union acted inconsistently with Art. 9.3 and Art. VI:2 by imposing anti-dumping duties in excess of the margins of dumping that should have been established under ADA Art. 2 and GATT Art. VI:1, respectively.
- **ADA Arts. 7 and 9 (application and definitive collection of provisional duties):** The Panel concluded that Indonesia failed to establish a basis for its claims under Arts. 7.2 and 7.1(ii) regarding the definitive collection of provisional anti-dumping duties on imports from P.T. Musim Mas. The Panel further rejected Indonesia's claims that the European Union acted inconsistently with Art. 9.2 or the chapeau of Art. 9.3.

3. OTHER ISSUES[2]

- **Scheduling of panel proceedings:** Indonesia requested to postpone the proceedings pending the possible appeal of the Panel report in *EU – Biodiesel (Argentina)*. The European Union did not object to Indonesia's request. The Panel decided to grant Indonesia's request and delay the proceedings until the Appellate Body Report in *EU – Biodiesel (Argentina)* had been circulated.

1 *European Union – Anti-Dumping Measures on Biodiesel from Indonesia*
2 Other issues addressed: Additional Working Procedures to protect Business Confidential information; Enhanced Third Party Rights (DSU Art. 12.1).

CANADA – WELDED PIPE[1]
(DS482)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Chinese Taipei*	*GATT Art. VI* *ADA Arts. 1, 3.1, 3.2, 3.4, 3.5, 3.7, 5.8, 6.8, 6.10, 7.1, 7.5, 9.2 and 18; Annex II*	Establishment of Panel	*10 March 2015*
			Circulation of Panel Report	*21 December 2016*
Respondent	*Canada*		Circulation of AB Report	*NA*
			Adoption	*21 January 2017*

1. MEASURE AND PRODUCT AT ISSUE

- Anti-dumping measures imposed by Canada on carbon steel welded pipe from Chinese Taipei, as well as certain provisions of Canada's underlying legislation and regulations.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Arts. 5.8 and 9.2 (termination of investigation and imposition of anti-dumping duties)(treatment of *de minimis* exporters):** The Panel found that (i) Canada's failure to immediately terminate the investigation of exporters with final *de minimis* dumping margins, and (ii) the underlying legislation, "as such", which did not provide discretion to immediately terminate such investigations, violated the second sentence of Art. 5.8 because immediate termination is triggered by individual producers/exporters' dumping margins, rather than country-wide margins. The Panel hence also considered that the same exporters should not have been treated as "sources found to be dumped", and found the imposition of definitive anti-dumping measures on them, as well as the provisions of the underlying legislation "as such", inconsistent with Art. 9.2.

- **ADA Arts. 7.1(ii) and 7.5 (provisional measures – preliminary affirmative determination, and imposition of anti-dumping duties) (treatment of *de minimis* exporters):** In respect of the treatment of exporters with preliminary *de minimis* margins of dumping, the Panel found neither the measure "as applied" nor the provisions of the underlying legislation "as such" were inconsistent with Art. 7.1(ii) because it found no scope in Art. 7.1(ii) for any notion of *de minimis* dumping. The Panel hence also considered that, at the stage of its preliminary determination, Canada was entitled to treat exporters with preliminary *de minimis* margins of dumping as "sources found to be dumped", and found that neither the imposition of provisional measures in respect of imports from this exporter, nor the provisions of the underlying legislation "as such", were inconsistent with Art. 7.5.

- **ADA Arts. 6.10, 6.8, 9.3 and Annex II (evidence – individual dumping margins and facts available):** The Panel concluded that Canada violated Art. 6.8 and Annex II because (i) the Canadian authority had not conducted any comparative evaluation or assessment of all available facts but rather established the dumping margin and duty rate for "all other exporters" on the basis of the highest amount by which the normal value exceeded the export price on an individual transaction for a cooperative producer from any country subject to the investigation, and (ii) the authority had used facts available to determine the amount of anti-dumping duty imposed on imports of new product models/types from investigated and cooperative exporters. The Panel found Canada violated the chapeau of Art. 9.3 by imposing anti-dumping duties on new product models/types from investigated and cooperative exporters that exceeded their margins of dumping as established under Article 2.

- **ADA Arts. 3.1, 3.2, 3.4, 3.5 and 3.7 (injury determination – causation and non-attribution analysis):** The Panel found that (i) Canada's inclusion of imports from exporters with final *de minimis* margins of dumping as "dumped imports" in its analysis and final determination of injury and causation, and (ii) the provisions of its underlying legislation "as such", violated Arts. 3.1, 3.2, 3.4, 3.5 and 3.7 because the immediate termination requirement in Art. 5.8 meant that there was no legally cognizable dumping. The Panel also found that Canada had not acted inconsistently with Art. 3.5 in (i) not distinguishing the effects of subsidization and dumping regarding imports from India, because the provision focuses on the effect of the dumped imports, rather than on the effects of the dumping *per se*; and (ii) not undertaking a non-attribution analysis regarding overcapacity in the domestic industry, because Chinese Taipei did not establish that the Canadian authority knew this factor as causing injury to the domestic industry.

1 *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu*

2 Other issues addressed: GATT Art. VI:2, ADA Arts. 1 and 18.4, WTO Agreement Art. XVI:4, Business Confidential Information (BCI).

CHINA – CELLULOSE PULP[1]
(DS483)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ADA Arts. 3.1, 3.2, 3.4 and 3.5*	Establishment of Panel	*10 March 2015*
			Circulation of Panel Report	*25 April 2017*
Respondent	*China*		Circulation of AB Report	*NA*
			Adoption	*22 May 2017*

1. MEASURE AND PRODUCT AT ISSUE

- Anti-dumping measure imposed by China on imports of cellulose pulp originating from Canada, particularly the determination of injury by China's Ministry of Commerce (MOFCOM) in the anti-dumping investigation at issue.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ADA Arts. 3.1 and 3.2 (injury determination – volume of dumped imports):** The Panel found that China did not act inconsistently with Arts. 3.1 and 3.2 in not assessing the significance of an absolute increase in dumped imports in light of the factual circumstances in the market such as domestic demand, volume of domestic like product and non-dumped imports. The Panel highlighted the separate nature of the inquiries set out in Art. 3.2 and considered that while the principle in Art. 3.1 that an injury determination must be based on an objective examination of positive evidence applies generally to the consideration

  of increased imports under Art. 3.2, it does not inform the substance of that consideration. The Panel also found China's consideration of the price effects was inconsistent with Arts. 3.1 and 3.2 of the Anti-Dumping Agreement because MOFCOM (i) failed to explain the role of those parallel price trends between dumped import and domestic like product prices in the decline of domestic like product prices and how changes in the prices and volume of the dumped imports affected the domestic like product prices, and (ii) failed to provide an adequate explanation of its consideration of price depression in light of the fact that the prices of the dumped imports were higher than those of the domestic like product during the latter part of the period of investigation. It however found that Canada had failed to demonstrate that MOFCOM acted inconsistently with Arts. 3.1 and 3.2 in (i) considering changes in the market share of dumped imports in its consideration of price effects, and (ii) taking into account pricing documents and meeting minutes in its consideration of the price effects.

- **ADA Arts. 3.1 and 3.4 (injury determination – injury factors):** The Panel found that China did not act inconsistently with Arts. 3.1 and 3.4 in its examination of the domestic industry's market share because (i) it considered that MOFCOM had evaluated the trends and developments of the market share over the period of investigation, and (ii) given that the demand for cellulose pulp had grown considerably over the period, it was not unreasonable to characterize the domestic market share as having remained low. The Panel also found that China's analysis and interpretation of data showing an improvement in the state of the domestic industry did not violate Arts. 3.1 and 3.4 because it considered that MOFCOM provided a plausible and reasonable explanation of the positive trends in several factors – particularly that they were driven by the expansion of the market for cellulose pulp in China and the domestic industry's expansion.

- **ADA Arts. 3.1 and 3.5 (injury determination – causation):** The Panel found China's demonstration of a causal relationship between the dumped imports and injury to the domestic industry inconsistent with Arts. 3.1 and 3.5 because MOFCOM (i) to an extent, merely relied on its consideration of price effects under Art. 3.2 in demonstrating causation, and (ii) specifically acknowledged that the price of the dumped imports was higher than the price of the domestic like product, but, despite this, did not explain how the dumped imports depressed domestic like product prices to contribute to causing material injury to the domestic industry. The Panel also found that MOFCOM failed to objectively examine "other factors" causing injury to the domestic industry simultaneously with the dumped imports, i.e. (a) changes in cotton and viscose staple fibre prices, (b) domestic industry overexpansion, overproduction and inventory build-up, and (c) non-dumped imports (but rejected Canada's claim regarding the shortage of cotton linter).

1 *China – Anti-Dumping Measures on Imports of Cellulose Pulp from Canada*
2 Other issues addressed: scope of "positive evidence, Business Confidential Information, admission of an unsolicited letter from a party, brief summary of the legal basis of a complaint (DSU Art. 6.2), consequential claims under ADA Art. 1 and GATT Art. VI.

INDONESIA – CHICKEN[1]
(DS484)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*GATT Arts. XI, III:4 and XX* *AA Art. 4.2*	Establishment of Panel	*3 December 2015*
			Circulation of Panel Report	*17 October 2017*
Respondent	*Indonesia*		Circulation of AB Report	*N/A*
			Adoption	*22 November 2017*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) alleged (unwritten) general prohibition resulting from the combined operation of several different trade-restrictive measures; and (ii) six specific restrictions; four of these were also constitutive elements of the alleged general prohibition. Indonesia made some amendments during the proceedings and claimed that, as a result, certain measures had expired.
- **Product at issue:** Chicken meat and chicken products.

2. SUMMARY OF KEY PANEL FINDINGS

General prohibition

- While the Panel established that the measure was properly identified and therefore within its terms of reference, it found that Brazil had not demonstrated the existence of alleged (unwritten) general prohibition.

Measure 1: Positive list requirement

- The Panel found that the positive list requirement in its version at panel establishment resulted in a ban that was inconsistent with **GATT Art. XI**. It further found that the ban was not justified under **GATT Art. XX** as it did not meet the necessity requirement under **Art. XX(d)**.
- The Panel found that subsequent amendments had not resulted in the expiry of the measure and, that, therefore, the violation remained.

Measure 2: Intended use requirement:

- The Panel found that the intended use requirement in its version at panel establishment was inconsistent with **GATT Art. XI** and was not justified either under **GATT Art. XX(b)** or under **GATT Art. XX(d)**.
- The Panel held that subsequent amendments had not led to the expiry of the measure. In examining new features of the amended measure, the Panel found that in respect of its cold storage requirement, the measure did not breach **GATT Art. III:4**; however, the Panel concluded that in respect of its enforcement aspects the measure did result in less favourable treatment of imported chicken and that Indonesia had not justified this breach under **GATT Art. XX(b) or (d)**.

MEASURE 3: LICENSING REGIME

- In respect of the licensing requirements the Panel found that the single measure consisting of the application windows and the validity periods was inconsistent with **GATT Art. XI:1** because importers were unable to import products during at least four weeks of each import period, thus restricting the market access of the products at issue into Indonesia. The Panel also found that the fixed licence terms aspect of the licensing regime was inconsistent with **GATT Art. XI:1** and not justified under **GATT Art. XX**.
- In respect of subsequent amendments, the Panel found that the single measure consisting of the application windows and the validity periods had expired and, therefore refrained from issuing a recommendation in its regard. As regards the fixed licence term requirement, the Panel found that it had not expired and continued to violate **GATT Art. XI**.

Measures 4-6

- **SPS Art. 8 and Annex C(1)(a):** The Panel found that Indonesia had caused undue delay as it had not begun the approval procedure for Brazil's proposed veterinary health certificate and because it required Brazil to complete a non-SPS questionnaire.
- **GATT Art. III:4:** The Panel found that Indonesia did not discriminate against imported chicken in enforcing its halal labelling requirements.
- **GATT XI:1/AA Art. 4.2:** The Panel held that (i) the relevant measure permitted transhipment, including transit and that (ii) Brazil had not adduced evidence that demonstrated that the drafting of the relevant measure was so unclear that it had a trade-restrictive effect.

3. OTHER ISSUES[2]

- **Third parties (Art. 6.2):** The Panel accepted Oman's and Qatar's requests to join the dispute as third parties more than three months after the Panel's establishment.

1 *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products*

2 Terms of reference, replacement measures, expiry of a measure; separate opinion by one panelist; AA Art. 4.2 vs GATT III:4, GATT XI vs GATT III:4, judicial economy.

RUSSIA – TARIFF TREATMENT[1]
(DS485)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*GATT Arts. II:1(a) and II:1(b)*	Establishment of Panel	*25 March 2015*
			Circulation of Panel Report	*12 August 2016*
Respondent	*Russia*		Circulation of AB Report	*NA*
			Adoption	*26 September 2016*

1. MEASURES AND PRODUCTS AT ISSUE

- **Measures at issue:** The European Union challenged 12 measures. The first 11 challenged measures concerned the tariff treatment that Russia's customs authority was required to apply in respect of individual tariff lines pursuant to the Common Customs Tariff of the Eurasian Economic Union (CCT). The twelfth measure, which was referred to by the European Union as the "Systematic Duty Variation", allegedly consisted of a general practice of systematically according to a significant number of tariff lines in the CCT certain types of tariff treatment that led to the application of duties in excess of Russia's scheduled bound rates.

- **Products at issue include:** Paper and paperboard, palm oil and its fractions, refrigerators and combined refrigerator-freezers.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. II:1(b) (schedules of concessions):** The Panel found that a measure can be found to be inconsistent with Art. II:1(b), first sentence, on the basis of its design and structure, and that it is not necessary to provide evidence of actual transactions or adverse trade effects. The Panel also found that Art. II:1(b), first sentence, prohibits Members from exceeding their tariff bindings by even *de minimis* amounts. Finally, the Panel confirmed that Members cannot balance less favourable tariff treatment of some imports against more favourable treatment of others. Thus, a Member may not impose customs duties in excess of bound rates for some imports even if it imposes customs duties below bound rates for others.

  The Panel found that the first to sixth measures at issue were inconsistent with Art. II:1(b), first sentence, because they resulted in the imposition of customs duties in excess of Russia's bound rates. The Panel also found that the seventh to eleventh measures were inconsistent with Art. II:1(b), first sentence, because they resulted in the imposition of customs duties in excess of Russia's bound rates whenever the customs value of an import fell below a certain break-even value.

- **GATT Art. II:1(a) (independent claim):** The Panel rejected the European Union's claim that the sixth measure at issue was independently inconsistent with Art. II:1(a) because it provided for a temporary duty reduction to be followed, at a future date, by the imposition ordinary customs duties in excess of those provided in Russia's Schedule. In particular, the Panel found that the European Union had failed to establish its assertion that the sixth measure resulted in a lack of foreseeability for traders and hence in less favourable treatment than that provided for in Russia's Schedule

- **"Systematic Duty Variation":** The Panel found that the European Union failed to establish its claims of inconsistency with Art. II:1(a) and (b) because the European Union had not proven the existence of the twelfth measure. In particular, the Panel found that the European Union did not submit evidence sufficient to establish either that the alleged measure was applied "systematically" or that it constituted a "general" practice.

3. OTHER ISSUES[2]

- **Claims against measures not yet applied**: The Panel in examining the sixth measure reaffirmed that a mandatory measure that has entered into force, but must be applied only at a pre-determined future date (compared to the date of establishment of a panel), may in principle be found to be inconsistent with WTO rules even before it is applied.

1 *Russia – Tariff Treatment of Agricultural and Manufacturing Products*

2 Other issues addressed: measures modified or ceasing to exist during the proceedings; types of measures susceptible to challenge in dispute settlement proceedings; preliminary ruling request pursuant to Art. 6.2: relationship between consultations and panel requests; requirement to identify the specific measures at issue; requirement to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly; and judicial economy.

EU – PET (PAKISTAN)[1]
(DS486)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Pakistan*	*ASCM Arts. 1.1(a)(1)(ii), 1.1(b), 3.1(a), 10, 12.6, 12.8, 14, 14(b), 15.5, 19, 19.1 and 32; Annexes I, II III and VI GATT Art. VI*	Establishment of Panel	*25 March 2015*
			Circulation of Panel Report	*6 July 2017*
Respondent	*European Union*		Circulation of AB Report	*16 May 2018*
			Adoption	*28 May 2018*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure and product at issue:** Countervailing measures imposed by the European Union on imports of Polyethylene Terephthalate (PET) from Pakistan.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **DSU Arts. 3 and 11 (expiry of the measure at issue):** The Appellate Body found that the Panel made an objective assessment that "the matter" before it still required to be examined because the parties were still in disagreement as to the "applicability of and conformity with the relevant covered agreements" in respect of the European Commission's (the Commission) findings underpinning the expired measure at issue. Accordingly, The Appellate Body found that the European Union did not demonstrate that the Panel failed to comply with Art. 11 of the DSU when it decided to make findings on Pakistan's claims in this dispute, notwithstanding the expiry of the measure at issue.

- **ASCM Art. 1.1(a)(1)(ii), footnote 1, and Art. 3.1(a) (government revenue foregone):** The Appellate Body considered that a harmonious reading of Art. 1.1(a)(1)(ii), footnote 1, and Annexes I(i), II, and III to the ASCM and the *Ad* Note to Art. XVI of the GATT 1994 confirms that duty drawback schemes can constitute an export subsidy that can be countervailed only if they result in a remission or drawback of import charges "in excess" of those actually levied on the imported inputs consumed in the production of the exported product. Consequently, the Appellate Body upheld the Panel's finding that the Commission erred under Art. 1.1(a)(1)(ii) by failing to provide a reasoned and adequate explanation for why the entire amount of remitted duties was "in excess of those which have accrued" within the meaning of footnote 1 of the ASCM Agreement. The Appellate Body also upheld the Panel's finding that the Commission acted inconsistently with Art. 3.1(a) by improperly finding the existence of a "subsidy" that was contingent upon export performance.

- **ASCM Art. 14(b) (benefit):** The Panel found that the Commission acted inconsistently with Art. 14(b) by failing to properly identify what Novatex would have paid on a "comparable commercial loan" in calculating the benefit conferred. As a consequence, the Panel found that the Commission acted inconsistently with Art. 1.1(b). The Panel further concluded that the Commission acted inconsistently with the chapeau of Art. 14 by failing to transparently and adequately explain how it identified a "comparable commercial loan".

- **ASCM Art. 15.5 (causation analysis):** The Appellate Body found that the Panel did not err in its interpretation or application of Art. 15.5 in rejecting Pakistan's claim that the Commission's use of the "break the causal link" approach precluded the Commission from satisfying the non-attribution requirements of Art. 15.5 in this case. Consequently, the Appellate Body upheld the Panel's finding that Pakistan had failed to establish that the Commission's approach to examining causation in this case was inconsistent with Art. 15.5.

1 *European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan*

2 Other issues addressed: Additional procedures to protect confidential information; Panel's terms of reference (DSU Art. 6.2); separate opinion of one Appellate Body Member.

US – TAX INCENTIVES[1]
(DS487)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*ASCM Arts. 1.1(a)(1)(ii), 1.1(b), 3.1(b) and 3.2*	Establishment of Panel	*23 February 2015*
			Circulation of Panel Report	*28 November 2016*
Respondent	*United States*		Circulation of AB Report	*4 September 2017*
			Adoption	*22 September 2017*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Legislation enacted in the state of Washington in the United States that amended and extended tax incentives for the aerospace industry.
- **Product at issue:** Large civil commercial aircraft and their components.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Art. 1 (definition of a subsidy):** The Panel found that the tax rate, credit or exemption at issue for each of the challenged measures constituted a financial contribution under Art. 1.1(a)(1)(ii) because (i) government revenue that is otherwise due is foregone or not collected, and (ii) a benefit within the meaning of Art. 1.1(b) is thereby conferred. It thus concluded that each of the measures constituted a subsidy under Art. 1.
- **ASCM Art. 3 (prohibited subsidies – import substitution subsidies):** The Appellate Body upheld the Panel's finding that the siting provisions challenged by the European Union, considered either individually or together, did not violate Art. 3.1 because the European Union did not demonstrate that these measures, on their own, and based on their express terms, made the challenged aerospace tax measures *de jure* contingent upon the use of domestic over imported goods. The Appellate Body reversed the Panel's finding that one of the challenged measures (the reduced business and occupation tax rate for the manufacturing or sale of certain commercial airplanes) was made *de facto* contingent upon the use of domestic over imported goods within the meaning of Art. 3.1(b) and that it was hence inconsistent with Art. 3.2. The Appellate Body therefore reversed the Panel's recommendation that the United States withdraw this prohibited subsidy and hence made no recommendation in this dispute.

1 *United States – Conditional Tax Incentives for Large Civil Aircraft*
2 Other issues addressed: protection of business confidential information; public observation of opening statements at hearing; interpretation of certain terms in ASCM Art. 3.1(b).

US – OCTG (KOREA)[1]
(DS488)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*ADA Arts. 1, 2.2, 2.2.1.1, 2.2.2, 2.3, 2.4, 6.2, 6.4, 6.9, 6.10, 6.10.1, 6.10.2, 9.3, 12.2.2 and 18.4* *GATT Arts. I, VI and X:3* *WTO Agreement Art. XVI:4*	Establishment of Panel	*25 March 2015*
			Circulation of Panel Report	*14 November 2017*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*12 January 2018*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** The laws, regulations, administrative procedures and other measures through which the United States maintained a "viability test" in anti-dumping investigations, administrative reviews, and other segments of anti-dumping proceedings, both "as such" and "as applied" in the Oil Country Tubular Goods (OCTG) investigation. Korea also challenged certain aspects of the final anti-dumping measure imposed following the 2014 Final Determination of dumping in the OCTG investigation, as well as certain USDOC conduct during the underlying investigation. In addition, Korea challenged the USDOC's remand determination in this dispute.

- **Product at issue:** Oil Country Tubular Goods from Korea.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.2 (dumping determination – "viability test" for use of third-country export sales):** The Panel concluded that Art. 2.2 does not impose any limitation on the criteria that a Member may establish to decide which of the alternative methods contained therein to use. Consequently, the United States' viability test is not "as such" inconsistent with Art. 2.2. The Panel also stated that Art. 2.2 does not impose any obligation on a Member to examine whether a respondent's third-country export prices are representative if it has opted to use constructed normal value to determine normal value. Therefore, the UDSOC in applying that test and concluding on the basis of that application that it would not use third-country sales for determining normal value, did not act inconsistently with Art. 2.2.

- **ADA Art. 2.2.2 and 2.4 (dumping determination – profit rates):** The Panel concluded that the United States acted inconsistently with the *chapeau* of Art. 2.2.2 because the USDOC did not determine the constructed value (CV) profit of the Korean respondents based on actual data pertaining to their sales of the like product in the home market. The United States acted inconsistently with Art. 2.2.2(i) and (iii) because the USDOC relied on an impermissibly narrow definition of the "same general category of products" in concluding it could not determine CV profit under Art. 2.2.2(i) and in concluding it could not calculate the profit cap required by Art. 2.2.2(iii). By failing to calculate and apply a profit cap, the United States also acted inconsistently with Art. 2.2.2(iii), and, as a consequence, with Art. 2.2 of the ADA by failing to use a reasonable amount of profits. The Panel exercised judicial economy with regards to Korea's Art. 2.4 claim.

- **ADA Art. 2.3 (decision to construct export price):** The Panel found that the USDOC's conclusions, regarding the association between the concerned entities, were supported by evidence and satisfied the requirement under Art. 2.3. Further, the Panel considered that Korea did not demonstrate that the USDOC erred in not considering evidence allegedly showing the reliability of NEXTEEL's export price, notwithstanding the association between the concerned entities. The Panel thus concluded that Korea did not demonstrate that the USDOC had acted inconsistently with Art. 2.3 in respect of the underlying investigation.

- **ADA Arts. 6.2, 6.4, and 6.9 (placement on record – disclosure of certain facts):** The Panel found that Korea failed to prove that the USDOC's failure to inform the Korean respondents that it had accepted the Tenaris financial statements until its final determination prevented those respondents from presenting adequate arguments and thus, failed to establish the inconsistency of the USDOC's conduct with Art. 6.2. Further, the Panel found that the USDOC did not act inconsistently with Article 6.4 because it was not required under that provision to inform interested parties of its acceptance of the Tenaris financial statements. Finally, the Panel concluded that Korea failed to establish that the USDOC's acceptance of the Tenaris financial statements constituted an "essential fact" within the meaning of Article 6.9.

1 *United States – Anti-Dumping Measures on Certain Oil Country Tubular Goods from Korea*

INDONESIA – IRON OR STEEL PRODUCTS[1]
(DS490, 496)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Chinese Taipei, Viet Nam*	*GATT Arts. I:1, XIX:1 and XIX:2* *SA Arts. 2.1, 3.1, 4.1, 4.2(a), 4.2(b), 4.2(c), 12.2 and 12.3*	Establishment of Panels	*28 September 2015 (DS490)* *28 October 2015 (DS496)*
			Circulation of Panel Report	*18 August 2017*
Respondent	*Indonesia*		Circulation of AB Report	*15 August 2018*
			Adoption	*27 August 2018*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** A specific duty applied by Indonesia on imports of galvalume
- **Product at issue:** Galvalume from Chinese Taipei and Viet Nam

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **SA and GATT Art. XIX (the specific duty as a safeguard measure):** Although both sides maintained that the measure at issue was a safeguard measure, the Panel found that, in discharging its duty to undertake "an objective assessment of the matter", it should examine the issue itself. The Panel observed that Indonesia did not have a tariff binding on galvalume, and concluded that the measure was not a safeguard within the meaning of SA Art. 1, insofar as it did not suspend, withdraw or modify a relevant GATT obligation or concession for purposes of remedying or preventing serious injury. The Appellate Body upheld the Panel's decision to independently assess the legal characterization of the measure irrespective of the parties' views on the matter. The Appellate Body held that, to constitute a safeguard: (i) a measure must suspend in whole or in part a GATT obligation or withdraw or modify a tariff concession; and (ii) the suspension, withdrawal, or modification in question must be designed to prevent or remedy serious injury to a Member's domestic industry caused or threatened by an increase in imports of the subject product. The Appellate Body agreed with the Panel that the measure at issue did not present these features, and that it was therefore not subject to the disciplines of the SA.
- **GATT Art. I:1 (the specific duty as a stand-alone measure):** The Panel found that, by excluding 120 countries from the specific duty imposed on galvalume, Indonesia violated its MFN-treatment obligation under Art. I:1. On appeal, Indonesia claimed that the Panel exceeded its terms of reference by finding a violation of Art. I:1 in respect of the measure at issue "as a stand-alone measure", i.e. not as a safeguard measure. The Appellate Body considered that the description of the specific duty in the complainants' panel requests clearly identified it as a measure alleged to be causing the violation of an obligation contained in a covered agreement, and plainly connected this measure with the MFN treatment obligation under Art. I:1. Accordingly, the Appellate Body found that the Panel did not err in concluding that the complainants properly raised a claim under GATT Art. I:1 against the specific duty as a stand-alone measure, and upheld the Panel's finding that the specific duty was inconsistent with the Art. I:1 MFN treatment obligation because it exempted galvalume originating in certain WTO Members from the scope of application of the specific duty while not exempting others.

1 *Indonesia – Safeguard on Certain Iron or Steel Product*
2 Other issues addressed: DSU Art. 11 (objective assessment); Working Procedures for Appellate Review, Rules 20 and 21 (sufficiency of the Notice of Appeal).

US – COATED PAPER (INDONESIA)[1]
(DS491)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*ADA Arts. 3.5, 3.7 and 3.8* *ASCM Arts. 2.1(c), 12.7, 14(d), 15.5, 15.7 and 15.8*	Establishment of Panel	*28 September 2015*
			Circulation of Panel Report	*6 December 2017*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*22 January 2018*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (1) The US International Trade Commission's (USITC) and the Department of Commerce's (UDSOC) imposition of anti-dumping and countervailing duties on certain coated paper from Indonesia; and (2) Section 771(11)(B) of the 1930 US Tariff Act which deems a tie vote on threat of injury to be an affirmative threat of injury determination.
- **Product at issue:** Certain coated paper.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ASCM Art. 14(d) (rejection of in-country prices as benchmarks):** The Panel rejected Indonesia's argument that the USDOC improperly concluded that Indonesian prices for standing timber and logs were unusable as benchmarks. The UDSOC did not based its decision solely on the majority public ownership of land for timber. Prices of timber harvested from private land could be disregarded because the provided data was not representative. The USDOC was not required to seek further data from other sources, e.g. private companies. No log prices were unaffected by the export ban on logs and therefore usable as benchmarks.
- **ASCM Art. 12.7 (evidence – facts available):** The Panel rejected Indonesia's argument that the USDOC improperly adversely inferred from Indonesia's failure to provide certain evidence that it had provided debt forgiveness by selling the relevant company's (APP/SMG) debt to an alleged affiliate, Orleans.
- **ASCM Art. 2.1 (specificity):** The Panel rejected Indonesia's arguments that (i) USDOC was required to *explicitly* identify the existence of subsidy programmes in connection with each of the subsidies at issue either on the face of the relevant instruments or through a systematic series of actions, as it was sufficient to describe the legal framework pursuant to which the financial contribution was provided, and (ii) USDOC failed to identify the "jurisdiction of the granting authority" because it did not identify the individual or individuals that, on behalf of the government of Indonesia, forgave debt in favour of APP/SMG.
- **ADA Art. 3.5/ASCM Art. 15.5 (injury determination – causation):** The Panel rejected Indonesia's argument that the USITC's non-attribution analysis was flawed. The fact that other factors had rendered domestic industry vulnerable did not preclude a finding of threat of injury. The USITC's determination that declining demand would not render insignificant the likely injurious effects of the subject imports, as well as its decision to disregard a tax credit provided to a by-product for one year of the POI, were both reasonable.
- **ADA Art. 3.7/ASCM Art. 15.7 (injury determination – threat of material injury):** The Panel rejected Indonesia's arguments that the USITC's findings regarding market share, increased production capacity in China, and price effects were based on conjecture and speculation.
- **ADA Art. 3.8/ASCM Art. 15.8 (injury determination – special care):** The Panel rejected Indonesia's arguments that the deficiencies it had identified in the context of its other claims against the USITC's threat of injury determination also rendered this determination inconsistent with the "special care" requirement.
- **ADA Art. 3.8/ASCM Art. 15.8 (injury determination – special care):** The Panel rejected Indonesia's challenge of the "tie vote" provision, as the "special care" requirement conditioned the *substantive*, not the *procedural* obligations of investigating authorities, and the ADA/ASCM generally did not discipline Members' voting or decision-making procedures.

1 *United States – Anti Dumping and Countervailing Measures on Certain Coated Paper from Indonesia*

2 Other issues addressed: enhanced third party rights; additional procedures for BCI; terms of reference (DSU Art. 6.2): Indonesia had not sufficiently identified a claim under ASCM Art. 1.1(a), but had effectively advanced arguments challenging USDOC's determination of a "financial contribution" through other provisions. These arguments were consequently disregarded. Indonesia's argument that the APP/SMG sale was not a company-specific subsidy also fell outside the Panel's terms of reference, although the Panel briefly addressed this issue.

EU – POULTRY MEAT (CHINA)[1]
(DS492)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*GATT Arts. I:1, II:1, XIII:1, XIII:2, XIII:4, XXVIII:1 and XXVIII:2*	Establishment of Panel	*20 July 2015*
			Circulation of Panel Report	*28 March 2017*
Respondent	*European Union*		Circulation of AB Report	*NA*
			Adoption	*19 April 2017*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** The modification by the European Union of tariff concessions on certain poultry products pursuant to negotiations held under GATT Art. XXVIII, and certain instruments implementing such modifications and tariff rate quotas (TRQs).

- **Product at issue:** Poultry products falling under ten different tariff lines.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. XXVIII (modification of schedules):** The Panel found that the European Union had not acted inconsistently with Art. XXVIII:1 by not recognizing China as a Member holding a principal or substantial supplying interest in the concessions at issue because (i) it was not obliged to take into account the SPS measures that restricted Chinese poultry imports over the relevant reference periods since they were not "discriminatory quantitative restrictions"; and (ii) it was not obliged to re-determine which Members held a substantial supplying interest based on changes in import shares after the initiation of the negotiations. The Panel found that the European Union had not acted inconsistently with Art. XXVIII:2 regarding the total amount of the TRQs, because (i) it was not obliged to calculate such amount based either on an estimate of import levels in the absence of the SPS measures, or of import levels over the three years preceding the conclusion of the negotiations; and (ii) Art. XXVIII:2 and para. 6 of the Understanding on the Interpretation of Art. XXVIII do not apply to the allocation of TRQ shares among supplying countries.

- **GATT Art. XIII (non-discriminatory administration of quantitative restrictions):** The Panel found that the European Union's failure to take into account the increased imports from China following the relaxation of the SPS measures was (i) inconsistent with Art. XIII:2(d) because it failed to recognize China's "substantial interest in supplying the product[s]" under the tariff lines concerned; and (ii) inconsistent with the chapeau of Art. XIII:2, because it failed to allocate a greater TRQ share to the "all others" category for those tariff lines. The Panel rejected China's claims relating to TRQ allocation under Art. XIII:1 (general principles) and under Art. I:1 (MFN). It found that Art. XIII:4 imposes an obligation on the importing Member to reallocate TRQ shares among supplying countries to reflect an updated reference period or special factors, but does not require the reallocation to occur within any particular time-frame.

- **GATT Art. II:1 (schedules of concessions):** The Panel found that the European Union had not acted inconsistently with Art. II:1 by giving effect to the results of the Art. XXVIII negotiations prior to the certification of its revised Schedule.

3. OTHER ISSUES[2]

- **Decisions, procedures or customary practices (WTO Agreement Art. XVI:1):** The Panel agreed with the parties that the Procedures for Negotiations under Art. XXVIII and the Procedures for Modification and Rectification of Schedules qualify as decisions, procedures or customary practices within the meaning of Art. XVI:1.

1 *European Union – Measures Affecting Tariff Concessions on Certain Poultry Meat Products*
2 Other issues addressed: enhanced third-party rights (DSU Arts. 10, 12.1); requirements of panel request (DSU Art. 6.2).

UKRAINE – AMMONIUM NITRATE[1]
(DS493)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Russian Federation*	*ADA Arts. 1, 2.1, 2.2, 2.2.1, 2.2.1.1, 2.4, 3.1, 3.2, 3.4, 3.5, 5.8, 6.1, 6.2, 6.4, 6.5.1, 6.8, 6.9, 11.1, 11.2, 11.3, 12.2, 12.2.2 and 18.1; Annex II* *GATT Art. VI* *DSU Arts. 6.2, 7.1 and 11*	Establishment of Panel	*22 April 2016*
			Circulation of Panel Report	*20 July 2018*
Respondent	*Ukraine*		Circulation of AB Report	*12 September 2019*
			Adoption	*30 September 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Certain measures regarding the imposition of anti-dumping duties on imports of ammonium nitrate from Russia
- **Product at issue:** Ammonium nitrate originating from Russia

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **DSU Art. 6.2 (identification of measures)**: In a finding upheld by the Appellate Body, the Panel found that the references in Russia's panel request to the decisions in the original investigation phase (the 2008 amended decision and 2010 amendment) were "sufficiently precise" to identify the specific measures at issue and fell within its terms of reference.
- **DSU Arts. 7.1, 11 (mandate, objective assessment):** Accordingly, the Appellate Body concluded that the Panel did not err under DSU Arts. 7.1 and 11 by ruling on Russia's ADA Art. 5.8 claim as it relates to the 2008 amended decision the 2010 amendment, and the 2014 decision extending the anti-dumping measures. The Appellate Body found that the Panel did not act inconsistently with DSU Art. 11, in concluding that the combined effect of certain Ukrainian court judgments and their implementation was that the dumping margin for the investigated producer (EuroChem) in the original investigation phase was *de minimis*.

Termination of the investigation against EuroChem

- **ADA Art. 5.8:** The Panel found that the Ukrainian authorities violated Art. 5.8 by failing to exclude EuroChem from the scope of the original measures, imposing a 0 per cent anti-dumping duty in 2010, including Eurochem within the scope of the review determinations, and imposing an anti-dumping duty of 36.03 per cent in 2014. The Appellate Body upheld this finding.

Dumping and likelihood-of-dumping determinations in the interim and expiry reviews

- **ADA Art. 2.2.1.1 (dumping determination – rejection of reported costs):** The Appellate Body rejected Ukraine's appeal challenging the interpretation and application of the second condition in the first sentence of Art. 2.2.1.1. The Appellate Body upheld the Panel's finding that the investigating authority (MEDT) did not provide an adequate basis for replacing the gas cost reported by the investigated Russian producers with a surrogate price of gas.
- **ADA Art. 2.2.1 (dumping determination – ordinary course of trade):** Having upheld the Panel's finding under Art. 2.2.1.1, the Appellate Body upheld the Panel's finding that Ukraine violated Art. 2.2.1, because, in conducting its ordinary-course-of-trade test, the MEDT relied on costs calculated inconsistently with Art. 2.2.1.1.
- **ADA Art. 2.2 (dumping determination):** The Panel concluded that the export price of gas was not properly adapted to reflect the cost "in the country of origin", finding no explanation as to why the adjustments for transportation expenses were adequate to adapt the export price from Russia at the German border to reflect the cost of production in Russia. The Appellate Body upheld the Panel's finding that, when constructing normal value, MEDT failed to calculate the cost of production in Russia, and thus, Ukraine violated Art. 2.2.
- **ADA Arts. 11.2 and 11.3 (review of anti-dumping duties):** In a finding not appealed, the Panel found that Ukrainian authorities acted inconsistently with Arts. 11.2 and 11.3 in relying on dumping margins calculated inconsistently with Arts. 2.2, 2.2.1 and 2.2.1.1 to make their likelihood-of-dumping determinations.
- **ADA Art. 6.9 (evidence – essential facts):** In a finding not appealed, the Panel found that Ukraine violated Art. 6.9 by failing to (i) disclose the essential facts underlying its price effects analysis and dumping determinations; and (ii) give interested parties sufficient time to comment on its disclosure in the interim and expiry reviews.

3. OTHER ISSUES[2]

- **Relationship between panel request and consultations request:** The Panel agreed with Ukraine that Russia's claims under Art. 12 fell outside of its terms of reference, as they were not specified in the consultations request and did not evolve from other claims.

1 *Ukraine – Anti-Dumping Measures on Ammonium Nitrate*

2 ADA Art. 2.1; 2.4; Arts. 11.1, 11.2, 11.3; Art. 3; Art. 5.8; 6.8 and Annex II (facts available); Arts. 6.2 and 6.9 (disclosure of essential facts); ADA Arts. 1, 18.1 and GATT Art. VI (consequential claims); judicial economy; additional working procedures for the protection of business confidential information (BCI).

KOREA – RADIONUCLIDES[1]
(DS495)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*SPS Arts. 2.3, 5.6, 5.7, 7 and 8; Annexes B(1), B(3) and C(1)(a)*	Establishment of Panel	*28 September 2015*
			Circulation of Panel Report	*22 February 2018*
Respondent	*Republic of Korea*		Circulation of AB Report	*11 April 2019*
			Adoption	*26 April 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Product-specific import bans; "blanket import bans" on all fishery products from certain areas of Japan; and additional testing and certification requirements for possible presence of radionuclides in imports from Japan.
- **Product at issue:** Various fishery and food products.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **SPS Art. 5.6 (appropriate level of protection):** The Panel identified Korea's ALOP as consisting of both qualitative aspects and a quantitative element of radiation dose limit. The Appellate Body reversed the Panel's findings of inconsistency with Art. 5.6 based on the Panel's failure to then consider all elements of the identified ALOP. The Appellate Body found that the Panel erred by focusing on the quantitative element as a decisive indicator of whether Japan's proposed alternative measure would achieve Korea's ALOP, contrary to its articulation of the ALOP as containing multiple elements.
- **SPS Art. 2.3 (discrimination):** The Appellate Body reversed the Panel's findings of inconsistency under Art. 2.3 due to the Panel's error in finding that "similar conditions" prevail between Japan and other Members. According to the Appellate Body, the Panel did not consider all relevant conditions, including territorial conditions with potential to affect products that have not manifested in products but "are relevant in light of the regulatory objective and specific SPS risk at issue". Consequently, the Panel erred by focusing on product test data to the exclusion of territorial conditions that could differently affect the potential for contamination.
- **SPS Art. 5.7 (provisional measures):** The Appellate Body found that the Panel exceeded its mandate, contrary to DSU Arts. 7.1 and 11, in making findings as to the consistency of Korea's measures with SPS Art. 5.7. The Appellate Body considered that Japan had not made a claim under SPS Art. 5.7, and Korea did not invoke it as an exception, but relied on the provisional nature of the measures as context as part of its rebuttal arguments under certain other provisions. The Appellate Body declared the Panel's findings that Korea's measures did not fall within the scope of SPS Art. 5.7 as moot and of no legal effect.
- **SPS Art. 7 and Annex B(1) (publication, notification and transparency requirements):** The Appellate Body agreed with the Panel that the publication of the measure must contain sufficient content that the importing Member would know the conditions that apply to its goods. However, it modified the Panel's finding to the extent that Annex B(1) requires, in all cases, publication to include the "specific principles and methods" applicable to the products, considering instead that this requires a case-by-case determination. The Appellate Body upheld the Panel's findings that Korea acted inconsistently with Annex B(1) and Art. 7 by (i) not publishing the full product scope of the blanket import ban; (ii) not publishing sufficient information to enable Japan to become acquainted with the requirements of the additional testing requirements; and (iii) not showing that interested Members would have known to look to the websites indicated by Korea for information of the SPS measures at issue.
- **SPS Annex B(3) (enquiry point):** While agreeing with the Panel that the Annex B(3) is not a mere formality of establishing an enquiry point, the Appellate Body disagreed that a single failure of an enquiry point to respond to a request would result in an inconsistency with Annex B(3) and reversed the Panel's finding, which was based on two instances.
- **SPS Article 8 and Annex C(1)(a) (presumption of likeness):** The Appellate Body considered that the distinction of applying Korea's additional testing requirements only to Japan was not based solely on origin as it could not be separated from the public health concerns underpinning the measures. The Appellate Body upheld the Panel's finding that, in this case, the Japanese and Korean products could not be presumed to be "like", but expressed no general conclusion on whether likeness may be presumed under Annex C(1)(a).

1 *Korea – Import Bans, and Testing and Certification Requirements for Radionuclides*
2 Other issues addressed: consultation with experts and the Codex, IAEA, and ICRP (SPS Art. 11.2 and DSU Art. 11).

RUSSIA – RAILWAY EQUIPMENT[1]
(DS499)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Ukraine*	*GATT Arts. I:1, III:4, X:3(a), XI:1 and XIII:1* *TBT Agreement Arts. 2.1, 2.2, 2.5, 5.1.1, 5.2.2, 5.2.3, 5.2.5 and 5.2.6*	Establishment of Panel	*16 December 2017*
Respondent	*Russian Federation*		Circulation of Panel Report	*30 July 2018*
			Circulation of AB Report	*4 February 2020*
			Adoption	*5 March 2020*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Certain measures allegedly taken by Russia concerning conformity assessment procedures for railway products as they relate to suppliers from Ukraine
- **Products at issue:** Railway rolling stock, railroad switches, other railroad equipment and parts thereof

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **TBT Art. 5.1.1 (conformity assessment procedures – comparable situation):** The Panel found that, in respect of the instructions suspending certificates and the decisions rejecting applications for certificates, Ukraine failed to establish that Russia had acted inconsistently with Art. 5.1.1. The Appellate Body considered that, in examining factors relevant for establishing the existence of a "comparable situation", the Panel did not focus sufficiently on aspects specific to the suppliers who were claimed to have been granted access under less favourable conditions or to their location. The Appellate Body therefore found that the Panel erred in finding that Ukrainian suppliers of railway products were denied no less favourable access in a situation that was not comparable to the situation in which Russia granted access to suppliers of Russian railway products and suppliers of railway products from other countries.
- **TBT Art. 5.1.2 (conformity assessment procedures – reasonably available alternatives):** The Panel found that, in respect of the instructions suspending certificates, Ukraine failed to establish that Russia had acted inconsistently with Art. 5.1.2, but established, in respect of one decision rejecting applications for new certificates, that Russia had acted inconsistently with that obligation. The Appellate Body considered that Ukraine was not required to demonstrate, for the purpose of showing that one of the proposed alternative measures (conduct of off-site inspections) was *prima facie* reasonably available, whether the measure described in Russia's laws could have applied in the specific instances related to the suspensions of certificates. The Appellate Body thus found that the Panel failed to make an objective assessment of the matter before it under DSU Art. 11 in allocating the burden of proof in its analysis of this alternative measure.
- **TBT Art. 5.2.2 (conformity assessment procedures – procedural obligations):** The Panel found that Ukraine established, in respect of 13 out of 14 instructions suspending certificates, that Russia had acted inconsistently with Art. 5.2.2, third obligation, but failed to establish, in respect of the decisions rejecting applications for new certificates, that Russia had acted inconsistently with Art. 5.2.2, second obligation.
- **Alleged systematic import prevention:** The Appellate Body found that Panel properly considered whether the individual components of the alleged unwritten measure formed part of a common plan to prevent imports of Ukrainian products into Russia. The Panel also did not err in taking into consideration the rationale underlying these individual suspensions and rejections. The Appellate Body thus found that Ukraine had not established that the Panel failed to make an objective assessment of the matter in finding that Ukraine failed to demonstrate that Russia systematically prevented the importation of Ukrainian railway products.

3. OTHER ISSUES

- **DSU Art. 6.2 (requirements of panel request):** The Appellate Body upheld the Panel's finding that Russia failed to establish that Ukraine's panel request was inconsistent with DSU Art. 6.2.
- **Existence of the measure:** The Appellate Body found that Russia had not established that the Panel acted inconsistently with DSU Art. 11 in finding that the third measure was of a "general" character, or that Ukraine failed to meet its *prima facie* burden to establish the existence of the third measure as a single measure.

1 *Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof*

KOREA – PNEUMATIC VALVES (JAPAN)[1]
(DS504)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*ADA Arts. 1, 3.1, 3.2, 3.4, 3.5, 4.1, 6.5, 6.5.1, 6.9, 12.2 and 12.2.2* *GATT Art. VI*	Establishment of Panel	*4 July 2016*
			Circulation of Panel Report	*12 April 2018*
Respondent	*Republic of Korea*		Circulation of AB Report	*10 September 2019*
			Adoption	*30 September 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping duties imposed by Korea on imports of pneumatic valves originating from Japan.
- **Product at issue:** Valves for pneumatic transmissions (pneumatic valves) from Japan.

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Arts. 3.1 and 3.4 (injury determination – magnitude of the margin of dumping):** The Appellate Body agreed with the Panel that Art. 3.4 does not require that any of the factors listed in Art. 3.4 be evaluated "in a particular manner" or given "a particular relevance or weight", and upheld the Panel's finding that the Korean investigating authorities' evaluation of the magnitude of the margin of dumping was not inconsistent with Arts. 3.1 and 3.4.
- **ADA Arts. 3.1 and 3.5 (injury determination – causation):** First, the Panel found that the Korean investigating authorities did not violate Arts. 3.1 and 3.5 with respect to their conclusion that dumped imports, through the effects of dumping, were causing injury to the domestic industry. The Appellate Body upheld the Panel's finding, insofar as Japan's argument regarding insufficient correlation between dumped imports and trends in domestic-industry profits was concerned. Second, in a finding that was not appealed, the Panel found that the Korean investigating authorities' examination of other known factors that were injuring the domestic industry at the same time did not violate Arts. 3.1 and 3.5. Third, the Panel found that the Korean investigating authorities' causation determination was undermined by flaws in the price effects, volume and impact analyses, "independent" of findings under Arts. 3.2 and 3.4. In this regard, the Appellate Body found that the Panel erred by effectively incorporating the requirements of Arts. 3.2 and 3.4 in its evaluation under Art. 3.5 and reversed the Panel's finding. Relying on the Panel's analysis under this claim, the Appellate Body was able to make partial findings as to the consistency of the Korean investigating authorities' consideration of price effects under Arts. 3.1 and 3.2. First, Korean investigating authorities violated Arts. 3.1 and 3.2, as they (i) found price suppression and depression based on price comparisons without ensuring price comparability; (ii) did not provide any explanation and analysis of how and to what extent the prices of the domestic like product were affected. Second, Korea did not violate Arts. 3.1 and 3.2 in considering diverging price trends.
- **ADA Arts. 6.5 and 6.5.1 (evidence – confidential treatment of information):** The Appellate Body agreed with the Panel's articulation of the legal standard under Art. 6.5 and its finding that the Korean investigating authorities treated information as confidential without considering whether the submitters had shown "good cause". The Appellate Body further upheld the Panel's finding that the Korean investigating authorities violated Art. 6.5.1 by failing to require that the submitting parties provide a sufficient non-confidential summary of the information for which confidential treatment was sought.

3. OTHER ISSUES[2]

- **DSU Art. 6.2 (sufficiency of panel request):** The Panel found that several claims in Japan's panel request failed to provide a "brief summary of the legal basis … sufficient to present the problem clearly". The Appellate Body held that the sufficiency of a panel request entails the consideration of "whether it plainly connects the measure with the provision of the covered agreements claimed to have been infringed". On this basis, the Appellate Body reversed the Panel with respect to certain claims, although it could not complete the analysis.

1 *Korea – Anti-Dumping Duties on Pneumatic Valves from Japan.*
2 Additional working procedures for the protection of business confidential information (BCI); Arts. 3.1 and 4.1 (definition of domestic industry); ADA Art. 3 (determination of injury): Art. 3.1 and 3.4 (impact of the dumped imports; ability to raise capital and investments); DSU Art. 11 (objective assessment), DSU Art. 11 and ADA Art. 17.6(i) (standard of review); Art. 1 (consequential claim); Art. 6.9 (essential facts).

US – SUPERCALENDERED PAPER[1] (DS505)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ASCM Arts. 1.1(a)(1)(iv), 1.1(b), 14(d), 10, 11.3, 12.7, 12.8, 19.1, 19.3-19.4 and 32.1* *GATT Art. VI:3*	Establishment of Panel	*21 July 2016*
			Circulation of Panel Report	*5 July 2018*
Respondent	*United States*		Circulation of AB Report	*6 February 2020*
			Adoption	*5 March 2020*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Certain countervailing measures with respect to supercalendered paper from Canada; and the United States' alleged "ongoing conduct" of applying adverse facts available (AFA) to find countervailable subsidies in respect of other forms of assistance (OFA) discovered during the course of an investigation (OFA-AFA measure).
- **Product at issue:** Supercalendered paper from Canada (SC Paper).

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

USDOC's determination with respect to Port Hawkesbury Paper LP (PHP)

- **ASCM Art. 1.1(a)(1)(iv) (definition of a subsidy – financial contribution):** The Panel concluded that the USDOC acted inconsistently with Art. 1.1(a)(1)(iv), by finding a financial contribution in the form of entrustment or direction with respect to the provision of electricity by Nova Scotia Power Incorporated (NSPI).
- **ASCM Art. 1.1(b) and 14(d) (definition of a subsidy – benefit):** The Panel found that the USDOC's determination that the provision of electricity by NSPI conferred a benefit to PHP was inconsistent with Arts. 1.1(b) and 14(d).
- **ASCM Art. 12.8 (evidence – essential facts):** The Panel found that the USDOC acted inconsistently with Art. 12.8, by failing to disclose to interested parties the essential fact that, in its view, the public service obligation in Section 52 of the Public Utilities Act entrusted or directed NSPI to provide electricity to all customers in the province, including PHP.
- **ASCM Art. 1.1(b) (definition of a subsidy – benefit):** The Panel found that the USDOC acted inconsistently with Art. 1.1(b), by finding that the hot idle funding and the second Forestry Infrastructure Fund amount conferred a benefit on PWCC/PHP.
- **ASCM Art. 11.3 (initiation of an investigation – evidence):** The Panel found that the USDOC acted inconsistently with ASCM Art. 11.3, by failing to evaluate the accuracy and adequacy of the evidence in the application with respect to the existence of a benefit in the provision of stumpage and biomass by the Government of Nova Scotia to PHP.

USDOC's determination with respect to Resolute FP Canada Inc. (Resolute)

- **ASCM Art. 12.7 (evidence – facts available):** The Panel found that the USDOC failed to establish that the information discovered during the investigation was necessary to complete a determination on subsidization, and wrongly resorted to the use of facts available, contrary to Art. 12.7.
- **ASCM Art. 1.1(b) (definition of a subsidy – benefit):** The Panel concluded that the USDOC acted inconsistently with Art. 1.1(b), by finding on the basis of an alleged lack of relevant evidence, when such evidence was presented, that the benefit conferred on Fibrek through a federal programme was not extinguished when Fibrek was acquired by Resolute.
- **GATT Art. VI:3 and ASCM Arts. 10, 19.1, 19.3, and 19.4 (attribution of subsidies to certain products):** The Panel found that the USDOC acted inconsistently with ASCM Arts. 10, 19.1, 19.3, and 19.4, and GATT Article VI:3, by attributing to the production of SC Paper the full subsidies provided to Resolute and Fibrek under three funding programmes.

USDOC's determinations with respect to Irving Paper Ltd. and Catalyst Paper Corporation

- **GATT Art. VI:3 and ASCM Arts. 10, 19.1, 19.3, 19.4, and 32.1 (non-investigated exporters):** The Panel concluded that, by constructing the "all-others rate" relying on a rate mainly calculated using AFA, the USDOC acted contrary to ASCM Arts. 19.3 and 19.4, and GATT Art. VI:3, and, consequently, contrary to ASCM Arts. 10, 19.1 and 32.1. The Panel rejected Canada's claims concerning the USDOC's failure to adjust the all-others rate in respect of subsidies that were not available to non-investigated exporters. The Panel also found that the USDOC acted inconsistently with ASCM Art. 19.3, by including new subsidy allegations in the context of the expedited reviews undertaken for Catalyst and Irving.

OFA-AFA measure

- **The OFA-AFA measure as "ongoing conduct" that can be challenged under the DSU; DSU Arts. 3.3, 4.2, 7.1, and 19.1 (measure at issue):** The Appellate Body upheld the Panel's finding that Canada had adduced sufficient evidence of the precise content, repeated application, and likelihood of continued application of the alleged OFA-AFA measure, to establish its existence as "ongoing conduct".
- **ASCM Art. 12.7 (evidence – facts available):** The Appellate Body agreed with the Panel that the OFA-AFA measure was inconsistent with ASCM Art. 12.7, given the USDOC's mechanical response to the discovery of unreported assistance during verification.

1 *United States – Countervailing Measures on Supercalendered Paper from Canada.*

2 Other issues addressed: Additional working procedures for the protection of business confidential information (BCI); open Panel meetings and Appellate Body hearings; scope of appellate review (DSU Art. 17.6); separate opinion of one Appellate Body Member; "basic rationale" for the Panel's findings and recommendations (DSU Art. 12.7).

CHINA – AGRICULTURAL PRODUCERS[1]
(DS511)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*AA Arts. 3.2, 6.3 and 7.2*	Establishment of Panel	*25 January 2017*
			Circulation of Panel Report	*28 February 2019*
Respondent	*China*		Circulation of AB Report	*NA*
			Adoption	*26 April 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** China's provision for domestic support, in the form of market price support, in excess of its product specific *de minimis* level, provided to agricultural producers of various products in 2012, 2013, 2014, and 2015.
- **Product at issue:** Various agricultural products specified in Section I of Part IV of China's Schedule CLII.[2]

2. SUMMARY OF KEY PANEL FINDINGS

- **AA Arts. 3.2 and 6.3 (domestic support commitments):** The Panel found that China provided domestic support, in terms of its Current Total Aggregate Measurement(s) of Support (AMS), in the form of market price support to the producers of certain agricultural products in excess of its commitment level of "nil", set forth in Section I of Part IV of China's Schedule of Concessions on Goods CLII, in violation of Arts. 3.2 and 6.3.
- **AA Art. 7.2(b) (prohibition of domestic support to agricultural producers in excess of the relevant *de minimis* level):** Having found that China had acted inconsistently with Arts. 3.2 and 6.3 of the AA, the Panel did not find it necessary to conduct an assessment of the alternative claim under Art. 7.2(b).

3. OTHER ISSUES

- Following the United States' request for a partially open hearing pursuant to Art 18.2 of the DSU, the Panel declined to exercise its discretion to deviate from the standard working procedures to hold partially open meetings in this dispute.
- The Panel concluded that the reform to China's corn policy removed an essential element (the Applied Administrative Price) of the challenged corn measure, thus marking the expiry of this measure in years 2012 through 2015. As such, despite this corn measure being within the Panel's terms of reference, the Panel did not find any reason to make a ruling on this measure.

1 *China – Domestic Support for Agricultural Producers*
2 The products at issue are wheat, Indica rice, Japonica rice and corn.

RUSSIA – TRAFFIC IN TRANSIT[1]
(DS512)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Ukraine*	*GATT Art. XXI(b)* *Russia's Protocol of Accession*	Establishment of Panel	*21 March 2017*
			Circulation of Panel Report	*5 April 2019*
Respondent	*Russian Federation*		Circulation of AB Report	*NA*
			Adoption	*26 April 2019*

1. MEASURE AND PRODUCT AT ISSUE

- The imposition, publication and administration of measures by the Russian Federation restricting international transit cargo by road and rail from Ukraine which is destined for the Republic of Kazakhstan or the Kyrgyz Republic, and banning such transit cargo for certain categories of goods.[2]

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT 1994 Art. XXI(b)(iii) (national security exception not totally self-judging – measures taken in an emergency in international relations):** The Panel interpreted Art. XXI(b) as vesting in panels the power to review whether the requirements of the enumerated subparagraphs were met, rather than leaving it to the unfettered discretion of the invoking Member. Accordingly, the Panel rejected the Russian Federation's argument that the Panel lacked jurisdiction to review the Russian Federation's invocation of Art. XXI(b)(iii). The Panel considered that an "emergency in international relations" referred generally to a situation of armed conflict, or of latent armed conflict, or of heightened tension or crisis, or of general instability engulfing and surrounding a state. Both the existence of an "emergency in international relations" and whether the action was "taken in time of" such emergency, within the meaning of subparagraph (iii) of Art. XXI(b), were subject to objective determination. The Panel found that as of 2014, there existed a situation in the Russian Federation's relations with Ukraine that constitutes an emergency in international relations and that each of the measures at issue was "taken in time of" an emergency of international relations.

- **GATT 1994 chapeau of Art. XXI(b) (action which the invoking Member considers necessary for the protection of its essential security interests):** As for the level of review that the Panel would apply to the determination under the chapeau of Art. XXI(b), i.e. whether the invoking Member considered its action necessary for the protection of its essential security interests, the Panel said that, in general, while it is for every Member to define for itself what it considers to be its essential security interests, such essential security interests must be sufficiently articulated to demonstrate their veracity. Moreover, the obligation of good faith also required that the measures at issue meet a minimum requirement of plausibility in relation to the proffered essential security interests, i.e. that they are not implausible as measures protective of those interests. The Panel concluded that, taking into account the character of the emergency in international relations, as being very close to the "hard core" of war or armed conflict, the Russian Federation's articulation of its essential security interests cannot be considered obscure or indeterminate. In addition, the measures cannot be regarded as being so remote from or unrelated to the 2014 emergency in international relations that it is implausible that the Russian Federation implemented the measures for the protection of its essential security interests arising out of that emergency. That being so, and following logically from the adjectival clause "which it considers" in the chapeau of Art. XXI(b), it was for the Russian Federation to determine the "necessity" of the measures for the protection of its essential security interests. The Panel therefore found that the Russian Federation had met the requirements for invoking Art. XXI(b)(iii) in relation to the measures at issue.

1 *Russia – Measures Concerning Traffic in Transit*
2 The identified transit restrictions: 2016 Belarus Transit Requirements; the 2016 Transit Bans on Non-Zero Duty and Resolution No. 778 Goods; and the 2014 Belarus-Russia Bans on Transit of Resolution No. 778 Goods.

MOROCCO – HOT-ROLLED STEEL (TURKEY)[1]
(DS513)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Turkey*	*ADA Arts. 3.1, 3.4, 5.10, 6.8 and 6.9*	Establishment of Panel	*20 February 2017*
			Circulation of Panel Report	*31 October 2018*
Respondent	*Morocco*		Circulation of AB Report	*10 December 2019*
			Adoption	*8 January 2020*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping measures imposed by Morocco on imports from, among others, Turkey.
- **Product at issue:** Certain hot-rolled steel products (hot-rolled steel).

2. SUMMARY OF KEY PANEL/AB FINDINGS

- **ADA Art. 5.10 (time-limit for conclusion of investigation):** The Panel found that Morocco had acted inconsistently with Art. 5.10 by failing to conclude the investigation within the 18-month maximum time limit set out in that provision.
- **ADA Art. 3.1 (injury determination – establishment of domestic industry):** The Panel found that Morocco had acted inconsistently with Art. 3.1 in determining that the domestic industry was "unestablished".
- **ADA Arts. 3.1 and 3.4 (injury determination):** The Panel found that Morocco had acted inconsistently with Arts. 3.1 and 3.4 by improperly conducting the injury analysis in the form of "material retardation of the establishment of the domestic industry". The Panel found that the investigating authority had (i) failed to evaluate five of the 15 injury factors listed in Art 3.4; (ii) disregarded the captive market in the injury analysis; and (iii) relied in the injury analysis on a particular report without properly investigating the significance of inaccuracies in that report.
- **ADA Art. 6.8 (evidence – facts available):** The Panel found that Morocco had acted inconsistently with Art. 6.8 by rejecting the reported information and establishing the margins of dumping for the two investigated Turkish producers based on facts available. The Panel did not find it necessary to address Turkey's additional claims in this regard under paras. 1, 3, 5, 6, and 7 of Annex II.
- **ADA Art. 6.9 (evidence – essential facts):** The Panel found that Morocco had acted inconsistently with Art. 6.9 by failing to inform all interested parties of certain "essential facts". With respect to other sets of "essential facts", the Panel declined to make findings for procedural reasons or found that Turkey had not established its claim.
- **Withdrawal of the appeal:** After Morocco had withdrawn its appeal, the Appellate Body issued a brief report noting the withdrawal.

3. OTHER ISSUES

- Sufficiency of the panel request (DSU Art. 6.2).
- Sufficiency of the request for consultations (DSU Art. 4.4) and "evolution" of claims in the panel request from the request for consultations.
- On procedural grounds, the Panel declined to rule on a claim that Turkey had asserted only in response to the Panel's written questions after the first substantive meeting.
- The Panel declined Turkey's request that the Panel exercise its discretion under the second sentence of DSU Art. 19.1 and suggest that Morocco revoke the measures at issue.

1 *Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey*

CHINA – TRQS[1]
(DS517)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*GATT Arts. X:3(a), XI:1 and XIII:3(b) Part I, para. 1.2 Protocol of Accession (para. 116 China's Accession Working Party Report)*	Establishment of Panel	*22 September 2017*
			Circulation of Panel Report	*18 April 2019*
Respondent	*China*		Circulation of AB Report	*NA*
			Adoption	*28 May 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Administration of tariff rate quotas (TRQs) for wheat, short- and medium- grain rice, long grain rice, and corn.
- **Product at issue:** Certain agricultural products, in particular, wheat, rice, and corn.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **Para. 116 of China's Working Party Report (through para. 1.2 of China's Accession Protocol):** This was the first dispute to address para. 116. Considering the requirements set forth in para. 116, as applicable to China's administration of its TRQs, the Panel found that:

  (i) the basic eligibility criteria (considering also the practice of assessment using Credit China's blacklist of entities) were inconsistent with the obligations to administer TRQs on a transparent, predictable, and fair basis, and using clearly specified requirements;

  (ii) the allocation principles were inconsistent with the obligations to administer TRQs on a transparent, predictable, and fair basis, and using clearly specified administrative procedures; the reallocation procedures were inconsistent with the obligation to administer TRQs using clearly specified administrative procedures;

  (iii) the public comment process (which provides for no verification or rebuttal of comments) was inconsistent with China's obligations to administer TRQs on a transparent, predictable, and fair basis, and to use clearly specified administrative procedures;

  (iv) the administration of state-trading-enterprises (STE) and non-STE portions of TRQs (considering also the practice to allocate all STE portions to one STE) was inconsistent with the obligations to administer TRQs on a transparent, predictable, and fair basis, using clearly specified administrative procedures, and in a manner that would not inhibit the filling of each TRQ;

  (v) the extent of the public notice provided in connection with the allocation, return, and reallocations of China's TRQs was not inconsistent with China's obligations under para. 116.

  (vi) the usage requirements for wheat and corn were inconsistent with the obligations to administer TRQs on a predictable basis, using clearly specified administrative procedures, and in a manner that would not inhibit the filling of each TRQ; the usage requirements for rice were not inconsistent with China's obligations under para. 116.

  The Panel concluded that China's administration of TRQs for wheat, rice, and corn was, as a whole, inconsistent with the obligations to administer TRQs on a transparent, predictable, and fair basis, using clearly specified requirements and administrative procedures, and in a manner that would not inhibit the filling of each TRQ.

- **GATT Art. XIII:3(b)(non-discriminatory administration of quantitative restrictions):** This is the first time that GATT Art. XIII:3(b) was addressed in WTO dispute settlement. The Panel found that Art. XIII:3(b) requires a public notice of the total TRQs amounts available for allocation to all participants and, thus, to changes thereto. The Panel rejected the United States' argument that, by not providing public notice of the total TRQ amounts actually allocated and the changes to that amount, China's administration of its wheat, rice, and corn TRQs was inconsistent with this provision.

- **GATT Arts. X:3(a) and XI:1 (trade regulations – uniform, impartial and reasonable administration/prohibition on quantitative restrictions):** The Panel considered it was not necessary for them to make findings under these provisions to secure a positive solution to the dispute, given that findings of inconsistency under para. 116 of China's Working Party Report had been made. The Panel pointed at the factual findings that could assist the Appellate Body, should the Panel Report have been appealed.

1 *China – Tariff Rate Quotas for Certain Agricultural Products*
2 Other issues include: China's Schedule of Concessions and Commitments on Goods (Schedule CLII).

COSTA RICA – AVOCADOS (MEXICO)[1]
(DS524)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Mexico*	*SPS Arts. 1.1, 2.1, 2.2, 2.3, 3.1, 3.3, 5.1, 5.2, 5.3, 5.5, 5.6 and 6.1* *GATT Arts. III:4, XI:1 and XX*	Establishment of Panel	*18 December 2018*
Respondent	*Costa Rica*		Circulation of Panel Report	*13 April 2022*
			Circulation of AB Report	*N/A*
			Adoption	*31 May 2022*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue**: Measures on the importation of fresh avocados from Mexico, related to Avocado sunblotch viroid (ASBVd): (i) two resolutions issued by the State Phytosanitary Service (SFE) of Costa Rica, containing phytosanitary requirements; (ii) two Pest Risk Analysis (PRA) Reports prepared by the PRA Unit of the SFE, containing risk assessments; and (iii) a manual by the PRA Unit, used for preparing the PRA Reports.

- **Product at issue:** Fresh avocados for consumption from Mexico

2. SUMMARY OF KEY PANEL FINDINGS

- **SPS Arts. 5.1, 5.2, and 5.3 (risk assessment), and Art. 2.2 (scientific principles and sufficient scientific evidence):** The Panel analysed the risk assessment in Costa Rica's PRA reports, including Costa Rica's determination of freedom from ASBVd, the methodology in the manual, the cross-cutting themes of diversion from intended use and spontaneous germination, and the SFE's analysis of factors that led it to conclude that there was a high risk of entry, establishment, and spread of ASBVd. The Panel found that Costa Rica violated: (i) **Arts. 5.1, 5.2, and 5.3**, by failing to ensure that its phytosanitary measures were based on an assessment, as appropriate to the circumstances, of the risks to plant life or health, and to take into account available scientific evidence, the prevalence of specific diseases or pests, and the relevant economic factors; (ii) **Art. 5.3**, by failing to take into account the relevant economic factors when determining its phytosanitary measures; and (iii) **Art. 2.2**, by failing to ensure that its phytosanitary measures were based on scientific principles and were not maintained without sufficient scientific evidence.

- **SPS Arts. 5.5 and 2.3 (prohibition on discrimination and disguised restriction on international trade):** The Panel found that Costa Rica violated Arts. 5.5 and 2.3, by discriminating between fresh avocados imported for consumption from countries where ASBVd is present and domestic Costa Rican avocados. It considered, inter alia, that Costa Rica's determination of freedom from ASBVd was not legitimately scientific, so the distinction between the two situations could not be considered scientifically justified. The Panel rejected Mexico's claims involving discrimination between (i) fresh avocados from Mexico and avocados from certificate-issuing countries where ASBVd is present; and (ii) fresh avocados for consumption in which ASBVd is present and avocado plants for planting.

- **SPS Art. 5.6 (trade restrictiveness):** Mexico proposed as alternative measures: (i) a domestic regulation that prevents diversion from intended use of fresh avocados, and (ii) ASBVd symptom-free certification of shipments. The Panel found that Mexico failed to demonstrate that these measures could achieve Costa Rica's appropriate level of protection, which the Panel had accepted as a "maximum level of phytosanitary protection".

- **SPS Art. 6.1 (adaptation to regional conditions):** The Panel rejected Mexico's claim that Costa Rica failed to adapt its measures to Costa Rica's phytosanitary characteristics.

3. OTHER ISSUES[2]

- **SPS measures:** The Panel found that the two resolutions were SPS measures subject to the SPS Agreement. In contrast, the Panel found that Mexico failed to demonstrate that (i) the two PRA reports and the manual individually constituted phytosanitary measures subject to the SPS Agreement, and (ii) the five measures constituted, jointly, a single measure subject to the SPS Agreement.

- **The Panel's right to seek information (DSU Art. 13):** The parties presented arguments and evidence on the ASBVd surveillance system in Costa Rica. The Panel consulted with experts on this topic and sent the parties a request for additional information on the ASBVd surveillance system in Costa Rica.

1 *Costa Rica – Measures Concerning the Importation of Fresh Avocados from Mexico*

2 Panel's terms of reference (with respect to Mexico's claim under SPS Art. 6.1); DSU Art. 13 and SPS Art. 11.2 (consultation with scientific and technical experts and the Secretariat of the International Plant Protection Convention; virtual meetings due to the COVID-19 pandemic; parties' notification of the Multi-Party Interim Appeal Arbitration Agreement and of agreed procedures for arbitration under DSU Art. 25; and SPS Arts. 1.1 and 2.1 (general conformity with the SPS Agreement).

AUSTRALIA – ANTI-DUMPING MEASURES ON PAPER[1] (DS529)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*ADA Arts. 2.2, 2.2.1.1 and 9.3*	Establishment of Panel	*27 April 2018*
			Circulation of Panel Report	*4 December 2019*
Respondent	*Australia*		Circulation of AB Report	*NA*
			Adoption	*27 January 2020*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping measure imposed on imports from Indonesia following an anti-dumping investigation by the Australian Anti-Dumping Commission (ADC).
- **Product at issue:** A4 Copy Paper

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.2: (dumping determination – particular market situation):** Prior to this Panel, no panel or AB report had interpreted the phrase "particular market situation" as it appears in Art. 2.2, which provides for the discarding of domestic sales as the basis for normal value when "because of a particular market situation … such sales do not permit a proper comparison".[2] The Panel found that a "particular market situation" is only relevant insofar as it has the effect of rendering domestic sales unfit to permit a proper comparison, and further found that the phrase does not lend itself to a definition that foresees all the varied situations that an investigating authority may encounter that would fail to permit a "proper comparison". The Panel found that a fact-specific and case-by-case analysis was necessarily called for. On this basis, the Panel did not accept Indonesia's position that the phrase necessarily excludes: (i) situations where input costs of the product are allegedly distorted; (ii) situations that affect both domestic market sales and export sales of the product; and (iii) situations arising from government action. The Panel concluded that Indonesia did not demonstrate that Australia had acted inconsistently with Art. 2.2 when the ADC found that a "particular market situation" existed.

- Interpreting the phrase "permit a proper comparison", the Panel found that, when a particular market situation affects domestic market sales prices solely as a result of a decreased cost for an input used identically to produce merchandise for the domestic and export markets, the investigating authority must assess the effect of the particular market situation on the domestic price in relation to the effect on the export price. The Panel concluded that Australia had acted inconsistently with this obligation because the ADC disregarded domestic sales of A4 copy paper without properly determining that such sales did "not permit a proper comparison".

- **ADA Art. 2.2.1.1 (dumping determination – costs calculation):** The Panel further considered whether the ADC disregarded exporters' recorded costs in violation of Art. 2.2.1.1. Prompted by Australia's reliance on the term "normally" in Art. 2.2.1.1, the Panel elaborated in detail upon the meaning of this term. The Panel found that an investigating authority may rely on the term "normally" after it had found that the two conditions in the first sentence of Art. 2.2.1.1 are satisfied. That is because the obligation to "normally" use the records kept by the exporter, becomes operative only when both explicit conditions are satisfied. As the ADC had not established that the two express conditions were fulfilled, the Panel concluded that Australia was not permitted to reject the recorded pulp costs on the basis of the term "normally". The Panel therefore did not need to define specifically what circumstances would justify rejection of the recorded costs on that basis.

- **ADA Art. 2.2 (dumping determination – cost of production in country of origin):** The Panel found a number of inconsistencies with Art. 2.2 in how the ADC calculated substitute pulp costs in order to arrive at the cost of production of A4 copy paper in Indonesia. The Panel considered that the ADC acted inconsistently with this provision because it did not explain why the substitute pulp cost for an integrated paper producer included profit despite the fact that that it manufactured its own pulp and transferred it to its paper production facility without gaining any profit. In relation to another producer, Indonesia did not establish a similar claim.

- Assuming *arguendo* that replacement of distorted costs is permitted when constructing normal value, the Panel observed that the ADC had found the source of distortion in the timber market and not in pulp or paper markets, and that the record had information on the cost of woodchips for one Indonesian producer. However, the ADC replaced the cost of pulp (which is produced from woodchips) with a value derived from out-of-country information. Because the ADC did not consider using a replacement cost for woodchips in combination with the producer's other actual costs associated with producing pulp (not affected by the distortion), the Panel found an inconsistency with Art. 2.2, which requires arriving at the "cost of production in the country of origin".

1 *Australia – Anti-Dumping Measures on A4 Copy Paper*
2 A GATT panel had interpreted the phrase in a dispute regarding Art. 2:4 of the Tokyo Round Anti-Dumping Code in the case *EEC – Cotton Yarn*, adopted 30 October 1995.

UNITED STATES – SAFEGUARD MEASURE ON IMPORTS OF LARGE RESIDENTIAL WASHERS[1]

(DS546)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Korea, Republic of*	*SA Arts. 1, 3.1, 2.1, 4.1(c), 4.2, 4.1, 4.2(a), 4.2(b), 4.2(c), 5.1, 7.1, 8.1, 11.1(a), 12.1, 12.2 and 12.3* *GATT Arts. XIX:1 and II:1*	Establishment of Panel	*26 September 2018*
			Circulation of Panel Report	*8 February 2022*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*28 April 2023*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** The dispute concerns the definitive safeguard measure imposed by the United States on imports of large residential washers (LRWs), as well as certain parts of such LRWs. The United States imposed this measure pursuant to Proclamation 9694 issued by the US President on 23 January 2018. The measure was imposed following a determination made by the United States International Trade Commission (USITC) pursuant to its investigation.

- **Product at issue:** Large residential washers.

2. SUMMARY OF KEY PANEL FINDING

Korea raised several claims under the Safeguards Agreement and the GATT 1994 challenging (a) different aspects of the USITC's determination, (b) the nature and level of the safeguard measure imposed by the United States based on that determination, and specifically whether it went beyond what was necessary to remedy the serious injury to the domestic industry and (c)the United States' alleged violation of obligations undertaken in connection with the conduct of a safeguard investigation. Key Findings are as follows:

- **SA Arts 4.1 and 3.1 (definition of the domestic industry):** The Panel upheld Korea's claim challenging the USITC's finding that domestically produced LRW parts were like imported LRW parts even though these parts did not compete with each other, and the USITC's application of its product line approach. But the Panel rejected Korea's claims challenging the USITC's decision to exclude a particular type of washer (belt-driven washers) from the scope of the product under consideration (i.e., the imported product subject to the investigation) but include US producers of belt-driven washers in the domestic industry.

- **SA Arts 2.1 and 3.1 (determination on increased imports):** The Panel found that Korea had made a *prima facie* case of violation with respect to certain aspects of the USITC's determination, which the United States had failed to rebut. Thus, the Panel found that the USITC acted inconsistently with Arts. 2.1 and 3.1 by failing to provide a reasoned and adequate explanation in support of its finding of increased imports.

- **SA Arts 4.2(a) and 3.1 (serious injury analysis):** The Panel rejected, or found unnecessary to address, several aspects of Korea's claims, but upheld Korea's claim challenging the USITC's failure to provide a reasoned and adequate explanation for excluding financial data pertaining to a domestic producer that formed part of the domestic industry.

- **SA Arts. 4.2(b) and 3.1 (causation analysis):** The Panel upheld Korea's claims challenging the USITC's price effect analysis and its findings on coincidence in trends but rejected other claims raised by Korea, including its claims challenging the USITC's alleged failure to conduct a proper non-attribution analysis with respect to certain other factors allegedly affecting the domestic industry.

- **GATT Art. XIX(a) and SA Art. 3.1 (unforeseen developments and "effect of GATT obligations"):** The Panel's legal interpretation led it to agree with Korea, and previous DSB reports, that the competent authority's report should set out the requisite findings and conclusions on unforeseen developments and the "effect of GATT obligations". Next, the Panel examined whether the USITC's report contained such findings and conclusions, and found that it did not. The Panel upheld Korea's claims on this basis.

- **SA Arts. 8.1 and 12.3 (endeavour to maintain substantially equivalent level of concessions and adequate opportunity for prior consultations):** The Panel examined the time Korea had between (a) the date on which it got access to the information it needed to have a meaningful exchange with the United States and (b) the date when the safeguard measure went into effect. The Panel considered that the time was not sufficient to allow for the possibility, through consultations, for a meaningful exchange based on this information. Thus, the Panel found that the United States acted inconsistently with Art. 12.3 as well as Art. 8.1.

1 *United States – Safeguard Measure on Washers.*

US – RIPE OLIVES FROM SPAIN[1]
(DS577)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*ASCM Arts. 1.2, 2.1(a), 2.1(b), 2.4, 10, 12.1, 12.8, 15.1, 15.2, 15.4, 15.5, 19.1, 19.3, 19.4 and 32.1* *ADA Arts. 3.1, 3.2, 3.4 and 3.5* *GATT Art. VI:3*	Establishment of Panel	*24 June 2019*
			Circulation of Panel Report	*19 November 2019*
Respondent	*United States*		Circulation of AB Report	*NA*
			Adoption	*20 December 2021*

1. MEASURES AND PRODUCT AT ISSUE

- **Measures at issue:** CVD and AD duty orders issued by the US Department of Commerce (USDOC) and final determinations by the USDOC and by the US International Trade Commission (USITC) concerning dumped and subsidized ripe olives from Spain; Section 771B of the Tariff Act of 1930 governing the attribution of subsidies in countervailing duty investigations involving agricultural products processed from a raw agricultural input.

- **Product at issue:** imports of ripe olives from Spain.

2. SUMMARY OF KEY PANEL FINDINGS

- **Specificity:** The Panel upheld several claims raised by the European Union concerning the United States' findings of *de jure* specificity in the countervailing duty investigation. The USDOC had determined that the eligibility criteria for subsidies conferred to raw olive growers under the current EU Common Agricultural Policy was legally tied to the subsidy amounts provided exclusively to raw olive growers under predecessor programmes, and therefore that it retained and continued the inherent de jure specificity of those earlier, expired programmes. The Panel found that the USDOC had erred in its assessment of how the current programme operated because it did not properly examine the rules governing the allocation of subsidies under current and past programmes.

- **Benefit pass-through:** The Panel upheld the European Union's claim that Section 771B of the Tariff Act of 1930 was inconsistent with Art. VI:3 of the GATT and Art. 10 of the ASCM because it required the USDOC to attribute the full amount of benefit arising from a subsidy granted to a raw agricultural product that is used as an input for a processed product, without allowing for consideration of all facts and circumstances that may be relevant to a "pass-through" analysis. The Panel additionally found that USDOC's application of Section 771B in the ripe olives countervailing duty investigation was also inconsistent based on the same reasoning.

- **Injury:** The Panel rejected the entirety of the European Union's claims against the USITC's affirmative final injury determination concerning both dumped and subsidized ripe olive imports from Spain. The Panel disagreed with the European Union that the USITC improperly conducted a "segmented" analysis of customer groups in the ripe olive market in its analysis, or otherwise erred in analysing volume, price effects, impact and causation as required under the ADA and ASCM.

- **Subsidy margin calculation and duty rate:** The Panel upheld claims that the USDOC failed to accurately determine the final subsidy margin and countervailing duty rate for one of the investigated ripe olive processors. The Panel additionally found that the USDOC failed to properly notify the respondents of information that they were required to provide in the investigation and did not properly inform respondents of certain essential facts under consideration.

3. OTHER ISSUES

- **Requests for postponement:** Following the issuance of the Interim Report, the parties twice asked the Panel to postpone issuance of the Final Report while the parties engaged in informal discussions with respect to the resolution of this dispute.

1 *United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain*

US – RIPE OLIVES FROM SPAIN (ARTICLE 21.5 – EU)[1] (DS577)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*ASCM Art. 10* *GATT Art. VI:3*	Referred to the Original Panel	*28 July 2023*
			Circulation of Panel Report	*20 February 2024*
Respondent	*United States*		Adoption	*19 March 2024*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- 20 December 2022 Final Determination, issued by the US Department of Commerce (USDOC), under Section 129 of the Uruguay Round Agreements Act (URAA) regarding the countervailing duty investigation of ripe olives from Spain; 23 September 2022 Preliminary Determination regarding the countervailing duty investigation of ripe olives from Spain; Section 771B of the Tariff Act of 1930 governing the attribution of subsidies in countervailing duty investigations involving agricultural products processed from a raw agricultural input; and 1 August 2018 countervailing duty order issued by the USDOC concerning dumped and subsidized ripe olives from Spain.

2. SUMMARY OF KEY PANEL FINDINGS

GATT 1994 Art. VI:3 and ASCM Art. 10

- **Benefit "pass-through":** The European Union's claims in this dispute were directed at actions taken by the United States to comply with the DSB's recommendations and rulings in relation to Section 771B of the US Tariff Act of 1930, the provision of US law used to determine the existence and extent of indirect subsidization in countervailing duty investigations involving an agricultural product processed from a raw agricultural product. The original panel found that Section 771B was inconsistent with Art. VI:3 and Art. 10 because it improperly required the USDOC to attribute the full amount of benefit arising from a subsidy granted to a raw agricultural product used as an input for a processed product, based on the satisfaction of two conditions, without allowing for consideration of all the facts and circumstances that might be relevant to that determination (i.e. the determination of the extent to which the subsidy to the raw agricultural product had passed through to the processed product.

- **"As such" violation:** The Panel upheld the European Union's claim that the United States has failed to bring Section 771B of the US Tariff Act of 1930 into conformity with the adopted findings from the original proceeding. The Panel rejected the United States' assertions that the USDOC's allegedly revised interpretation of Section 771B demonstrated that it had flexibility under Section 771B to ensure that all relevant information would form part of the analytical basis for a determination of passthrough such that it would be consistent with US obligations under Art. VI:3 and Art. 10.

- **"As applied" violation:** The Panel further upheld the European Union's claim that the United States' continued application of Section 771B in the ripe olives investigation was inconsistent with Art. VI:3 and Art. 10.

3. OTHER ISSUES

- **Authorization to suspend concessions (DSU Art. 22.6):** Following the adoption of the panel report in this proceeding, the European Union requested authorization to suspend concessions or other obligations pursuant to Art. 22.6. The United States requested the matter to be referred to arbitration in accordance with Art. 22.6.

1 *United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain – Recourse to Article 21.5 by the European Union*

TURKEY – PHARMACEUTICAL PRODUCTS (EU)[1] (DS583)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*GATT Arts. III:4, III:8(a), XX(b) and XX(d)* *TRIMS Art. 2.1*	Establishment of Panel	*30 September 2019*
			Recourse to Arbitration (DSU Art. 25 – appeal)	*22 April 2022*
Respondent	*Turkey*		DSU Art. 25 Arbitration award circulated	*21 July 2022*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) A "localisation requirement"; (ii) an import ban on localised products; and (iii) a "prioritization measure".
- **Product at issue:** Pharmaceutical products.

2. SUMMARY OF KEY PANEL/ARBITRATOR FINDINGS

- **GATT Art. III:8(a) (national treatment – derogation):** The Arbitrator found that Art. III:8(a) does not require a *purchase* by a governmental agency, so long as the products are *procured by* a governmental agency and procurement is of products purchased for governmental purposes.
- **GATT Art. III:4 (national treatment – domestic laws and regulations):** In findings that were not appealed, the Panel found that the localisation measure and the prioritization measure were inconsistent with Art. III:4 because they granted a competitive advantage to domestic products over like imported products.
- **GATT Art. XX(b) (exceptions – necessary to protect human life or health):** The Panel found that Turkey had failed to demonstrate that the localisation requirement was taken to protect human life or health and was therefore justified under Art. XX(b). The Arbitrator upheld the Panel's finding.
- **GATT Art. XX(d) (exceptions – necessary to secure compliance with laws):** The Panel found that Turkey had failed to demonstrate that the localisation requirement was taken to secure compliance with laws requiring Turkey to ensure accessible, effective, and financially sustainable healthcare and was therefore justified under Art. XX(d). The Arbitrator upheld the Panel's finding.

3. OTHER ISSUES[2]

- **Measure:** The Panel found that the European Union had established the existence of the localisation requirement as a single measure.
- **Judicial economy:** The Panel did not rule of the European Union's "conditional" claim under ASCM Art. 3.1(b). The Panel exercised judicial economy on the European Union's claims that the localisation requirement and/or import ban were inconsistent with TRIMS Art. 2.1 and GATT Arts. X:1 and XI:1.

1 *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products.*
2 Other issues addressed: terms of reference; standard of review.

COLOMBIA – FROZEN FRIES[1]
(DS591)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*ADA Arts. 2.4, 3.1, 3.2, 3.4, 3.5, 5.3, 6.5, 6.5.1 and 6.8*	Establishment of Panel	*29 June 2020*
Respondent	*Colombia*		Recourse to Arbitration (DSU Art. 25 – appeal)	*6 October 2022*
			DSU Art. 25 Arbitration award circulated	*21 December 2022*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping duties imposed by Colombia.
- **Product at issue:** Potatoes, prepared or preserved (otherwise than by vinegar or acetic acid), frozen, classified under tariff subheading 2004.10.00.00 originating in Belgium, Germany, and the Netherlands.

2. SUMMARY OF KEY PANEL/ARBITRATOR FINDINGS

- **ADA Art. 5.3 (initiation of investigation):** The Arbitrator reversed the Panel's finding that Colombia acted inconsistently with Art. 5.3 by failing to examine the appropriateness of the use of third-country sales prices, rather than domestic sales prices, as the basis for normal value in the application for the underlying investigation, concluding instead that Colombia satisfied its obligation to determine the sufficiency of evidence to justify the initiation of the investigation. In findings that were not appealed, the Panel found that the European Union failed to demonstrate any inconsistency with Art. 5.3 in the initiation of the investigation due to allegedly insufficient evidence with respect to the product under investigation, the applicant's representativeness of the domestic producers, and the injury and causal link.
- **ADA Arts. 6.5 and 6.5.1 (evidence – confidential information):** The Arbitrator upheld the Panel's finding that Colombia acted inconsistently with Art. 6.5 by granting confidential treatment to certain information without a showing of good cause by the applicant. In findings that were not appealed, the Panel concluded that the confidential treatment of certain other information was *not* inconsistent with Art. 6.5 (because the European Union failed to demonstrate that the applicant did not show good cause or that Colombia failed to assess the merits of that good cause), but such treatment *was* inconsistent with Art. 6.5.1 (because Colombia did not require non-confidential summaries of the confidential information or a statement of reasons why summarization was not possible).
- **ADA Art. 6.8 (evidence – facts available):** The Panel found that Colombia acted inconsistently with Art. 6.8 in its dumping determination by disregarding the export prices provided by exporters in questionnaire responses and using export prices extracted from a database.
- **ADA Art. 2.4 (dumping determination – fair comparison):** The Panel found that Colombia acted inconsistently with its obligation to make a fair comparison by denying certain requested product-mix and cost-related adjustments.
- **ADA Arts. 3.1, 3.2, 3.4 and 3.5 (injury and causation determinations):** The Arbitrator upheld the Panel's finding that Colombia acted inconsistently with these provisions by including in the final injury and causation determinations imports from exporters that were determined to have final *de minimis* margins of dumping. The Panel also concluded, in findings that were not appealed, that Colombia acted inconsistently with these provisions by including in the final injury and causation determinations imports from exporters with final negative margins of dumping.

3. OTHER ISSUES

- **Judicial economy:** The Panel did not consider it necessary to make findings on the European Union's claims under ADA Arts. 2.1, 5.8, and Annex II. The Panel also exercised judicial economy on certain specific claims under ADA Art. 6.5.1 and the last sentence of Art. 2.4.
- **Terms of reference:** The Arbitrator upheld the Panel's finding that a claim under ADA Art. 2.4 fell within the Panel's terms of reference.

1 *Colombia – Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands*

COLOMBIA – FROZEN FRIES (ARTICLE 21.5 – EU)[1]
(DS591)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*ADA Arts. 2.1, 2.4, 2.4.2 and 9.3*	Referred to the Original Panel	*25 November 2024*
			Circulation of Panel Report	*23 October 2025*
Respondent	*Colombia*		Adoption	*24 November 2025*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- (i) Ministry of Trade, Industry and Tourism Resolution 065; (ii) Ministerial Resolution 286; and (iii) Ministry of Trade, Industry and Tourism Technical Report, Public Version, of the Administrative Review to Comply with the Report Issued by the World Trade Organization – WTO Panel and the Final Arbitration Ruling Handed Down in Case DS 591, as sent to the European Commission on 18 October 2023 for interested parties to comment on and as placed on the public file on or after 23 November 2023.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4.2 (dumping determination – simple averaging):** The Panel found that the investigating authority erred by comparing normal values calculated using simple averaging to weighted average export prices. For the Panel, Art. 2.4.2 requires Members to take volume differences into account when determining normal value on the basis of domestic transactions, when using the W-W comparison method.

- **ADA Arts. 2.4 and 2.1 (dumping determination – fair comparison and article-to-article comparison):** The Panel concluded that the investigating authority did not act inconsistently with Arts. 2.1 and 2.4 by comparing normal value and export price in respect of the three specific article-pairs at issue. The Panel considered that the investigating authority's establishment of the relevant facts was proper, and its evaluation of those facts was unbiased and objective. The Panel also saw no basis to conclude that the investigating authority erred by failing to inform the affected company about its assumptions or by failing to provide that company with an opportunity to comment.

- **ADA Art. 9.3 (imposition and collection of anti-dumping duties):** The Panel concluded that the investigating authority acted inconsistently with Art. 9.3, because the anti-dumping duties were imposed at a rate that was higher than the margin of dumping that would have been established had it acted consistently with Art. 2.4.2.

3. OTHER ISSUES

- **Judicial economy:** The Panel did not consider it necessary, to provide a positive resolution to the dispute, to make findings with respect to claims under ADA Art. 1 or GATT Art. VI.

1 *Colombia – Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands – Recourse to Article 21.5 of the DSU by the European Union*

EU – PALM OIL (INDONESIA)[1]
(DS593)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*TBT Arts. 2.1, 2.2, 2.4, 2.5, 2.8, 2.9.2, 2.9.4, 5.1.1, 5.1.2, 5.2.1, 5.6.1, 5.6.2, 5.6.4, 5.8, 12.1 and 12.3* *GATT Arts. I:1, III:2, III:4, X:3(a), XI:1, XX(b) and XX(g)* *SCM Arts. 3.1, 3.2, 5(c) and 6.3*	Establishment of Panel	*29 July 2020*
Respondent	*European Union*		Circulation of Panel Report	*10 January 2025*
			Adoption	*24 February 2025*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Several EU measures designed to disincentivize the use of palm-oil based biofuel for reasons relating to indirect land-use change (ILUC) concerns, including the so-called "7% maximum share", "high ILUC-risk cap and phase-out", "low ILUC-risk certification", and a related French tax measure.
- **Products at issue:** Palm oil and palm oil-based biofuel.

2. SUMMARY OF KEY PANEL FINDINGS

- **TBT Annex 1.1 (definition of technical regulation):** The Panel found that the measures were technical regulations within the meaning of Annex 1.1.
- **TBT Art. 2.4 (international standards):** The Panel found that Indonesia failed to establish that the 7% maximum share and the high ILUC-risk cap and phase-out were inconsistent with the obligation in Art. 2.4 to use relevant international standards as a basis for technical regulations.
- **TBT Art. 2.2 (necessity):** The Panel found that Indonesia failed to establish that the 7% maximum share and the high ILUC-risk cap and phase-out were inconsistent with the obligation in Art. 2.2 to ensure that technical regulations are not more trade restrictive than necessary to fulfil a legitimate objective.
- **TBT Art. 2.1 (discrimination):** The Panel found that the detrimental impact on imported goods stemmed from a legitimate regulatory distinction, but that the European Union had administered the high ILUC-risk cap and phase-out inconsistently with Art. 2.1 by failing to conduct a timely review of the data used to determine which biofuels were high ILUC risk, and because there were deficiencies in the design and implementation of the low ILUC-risk criteria (with similar findings under GATT Arts. I and III with respect to the high ILUC-risk cap and phase-out and the French tax measure).
- **GATT Art. XX (general exceptions):** The Panel found the high ILUC-risk cap and phase-out and the French tax measure were justified under both Arts. XX(g) and XX(b) but considered that the requirements of the chapeau had not been met for the same reasons as identified under TBT Art. 2.1.
- **ASCM Art. 1 (definition of subsidy):** The Panel found that Indonesia failed to establish that the French tax measure provided a specific subsidy.

3. OTHER ISSUES[2]

- Dissenting opinion largely agreeing with the complainant that the singling out of palm oil based on GHG emissions was discriminatory in and of itself.

1 *European Union – Certain Measures concerning Palm Oil and Oil Palm Crop-Based Biofuels*
2 Single substantive meeting to ensure timing coherence with separate proceedings (DS600).

EU – SAFEGUARD MEASURES ON STEEL (TURKEY)[1] (DS595)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainant	*Turkey*	*SA Arts. 2.2, 3.1, 4.1 and 4.2* *GATT Art. XIX(a)*	Establishment of Panel	*28 August 2020*
			Circulation of Panel Report	*29 April 2022*
Respondent	*European Union*		Circulation of AB Report	*NA*
			Adoption	*31 May 2022*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Provisional and definitive safeguards on imports of certain steel products, taking the form of tariff-rate quotas and an out-of-quota tariff rate of 25%. The provisional safeguard had been replaced by the definitive safeguard, and the Panel chose to make findings only on the definitive safeguard.
- **Product at issue:** Certain steel products (interchangeably referred to as "products" or "product categories")

2. SUMMARY OF KEY PANEL FINDINGS

- **Approach to product scope – alleged mismatch (GATT Art. XIX:1(a) and SA Arts. 2.1, 4.1(c), 4.2(a) and 4.2(b)):** The European Commission (the Commission) had applied a single safeguard on 26 products taken together, and had ascertained the existence of the circumstances and conditions necessary to apply a safeguard at least for those 26 products taken together. Therefore Turkey had not demonstrated that the Commission had applied 26 distinct safeguards on 26 products without verifying that the circumstances and conditions for imposing a safeguard existed for each of those products.

- **Approach to product scope – alleged internal inconsistency (GATT Art. XIX:1(a) and SA Arts. 2.1, 3.1, 4.1(c), 4.2(a), 4.2(b) and 4.2(c)):** Turkey had not demonstrated that (i) the fact that in some instances the Commission had conducted a more disaggregated analysis in addition to examining the 26 products together, or (ii) the fact that the Commission had excluded from both the measure and from its analysis two products whose imports had not increased, gave rise to an inconsistency with GATT Art. XIX:1(a) and SA Arts. 2.1, 3.1, 4.1(c), 4.2(a), 4.2(b) and 4.2(c).

- **Unforeseen developments (GATT Art. XIX:1(a)):** Turkey had not demonstrated that the Commission had not identified unforeseen developments or that it had erred in finding that they were unforeseen. However, the Commission had acted inconsistently with GATT Art. XIX:1(a) because it had only asserted that the increased imports had occurred "as a result of" the identified unforeseen developments (i.e. increase in global steel overcapacity, increase in trade restrictive and trade defence measures, and the US Section 232 measures on steel), without identifying any evidence of the connection between the increased imports and the unforeseen developments or, in the case of the US Section 232 measures, without identifying sufficient evidence of that connection.

- **The effect of the obligations (GATT Art. XIX:1(a)):** The Commission had acted inconsistently with GATT Art. XIX:1(a) by not identifying in its published determinations the obligations as a result of whose effect the injurious increase in imports had occurred.

- **Increase in imports (GATT Art. XIX:1(a) and SA Arts. 2.1 and 4.2(a)):** Turkey's argument that the volume of imports of certain product categories had peaked before the end of the period of investigation did not establish an inconsistency with Art. XIX:1(a) or SA Arts. 2.1 and 4.2(a). Turkey's argument that the increase in imports had not been sharp, significant, sudden and recent "enough" failed because Turkey had not explained why that was the case.

- **Threat of serious injury (GATT Art. XIX:1(a) and SA Arts. 2.1, 4.1(a), 4.1(b) and 4.2(a)):** The Commission had found that the domestic industry was threatened with serious injury, notwithstanding that it had experienced a recovery during the last part of the period of investigation, because (i) the recovery was temporary and reversible as it was principally due to the application of anti-dumping and countervailing (AD/CV) measures , and (ii) the industry remained vulnerable to increased imports from sources not covered by AD/CV measures. According to the Panel, this determination was not "based on facts" as required by SA Art. 4.1(b), because, in particular: (i) the Commission's analysis relied on, but did not provide basic information about, the application of AD/CV measures; (ii) the analysis did not account for the fact that the domestic industry had been experiencing a recovery for product categories for which no AD/CV measures had been recently imposed; and (iii) the Commission's assumption that increased imports from sources not subject to AD/CV measures threatened to reverse the recovery did not account for the fact that the period during which imports from other sources had replaced those subject to AD/CV measures coincided with the domestic industry's recovery.

3. OTHER ISSUES[2]

- The Panel granted several requests from the parties to extend the timetable.

- The Panel's Working Procedures envisaged a single substantive meeting, with the possibility of holding a second substantive meeting if a party so requested. At the respondent's request, a second substantive meeting was held.

- The Panel report was scheduled to be circulated on 21 December 2021. The previous day, Turkey requested the Panel to suspend its work, and later the parties transmitted to the Panel "Agreed Procedures for Arbitration under Article 25 of the DSU". The Panel adopted Additional Working Procedures to give effect to certain requests of the parties made through the Agreed Procedures (Panel Report, Annex A-4). As neither party initiated arbitration under the Agreed Procedures, the Panel circulated its report.

1 *European Union – Safeguard Measures on Certain Steel Products.*
2 The Panel also examined claims under SA Arts. 5.1, 5.2(a), 7.1, and 7.4, and GATT Arts. XIII:2 and XIII:2(d), and found that Turkey had not established an inconsistency with these provisions.

EU AND CERTAIN MEMBER STATES – PALM OIL (MALAYSIA)[1] (DS600)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Malaysia*	*TBT Arts. 2.1, 2.2, 2.4, 2.5, 2.8, 2.9.2, 2.9.4, 5.1.1, 5.1.2, 5.2.1, 5.6.1, 5.8, 12.1 and 12.3* *GATT Arts. I:1, III:2, III:4, X:3(a), XI:1, XX(b) and XX(g)* *SCM Arts. 5(c) and 6.3*	Establishment of Panel	*28 May 2021*
Respondents	*European Union; France; Lithuania*		Circulation of Panel Report	*5 March 2024*
			Adoption	*26 April 2024*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Several EU measures designed to disincentivise the use of palm-oil based biofuel for reasons relating to indirect land-use change (ILUC) concerns, including the so-called "7% maximum share", "high ILUC-risk cap and phase-out", "low ILUC-risk certification", and a related French tax measure.
- **Products at issue:** Palm oil and palm oil-based biofuel.

2. SUMMARY OF KEY PANEL FINDINGS

- **TBT Annex 1.1 (definition of technical regulation):** The Panel found that measures were technical regulations within the meaning of Annex 1.1.
- **TBT Art. 2.4 (international standards):** The Panel found that Malaysia failed to establish that the 7% maximum share and the high ILUC-risk cap and phase-out were inconsistent with the obligation in Art. 2.4 to use relevant international standards as a basis for technical regulations.
- **TBT Art. 2.2 (necessity):** The Panel found that Malaysia failed to establish that the 7% maximum share and the high ILUC-risk cap and phase-out were inconsistent with the obligation in Art. 2.2 to ensure that technical regulations are not more trade restrictive than necessary to fulfil a legitimate objective.
- **TBT Art. 2.1 (discrimination):** The Panel found that the detrimental impact on imported goods stemmed from a legitimate regulatory distinction, but that the European Union had administered the high ILUC-risk cap and phase-out inconsistently with Art. 2.1 by failing to conduct a timely review of the data used to determine which biofuels are high ILUC risk, and because there were deficiencies in the design and implementation of the low ILUC-risk criteria (with similar findings under GATT Arts. I:1 and III:4 with respect to the high ILUC-risk cap and phase-out and the French tax measure).
- **GATT Art. XX (general exceptions):** The Panel found the high ILUC-risk cap and phase-out and the French tax measure were justified under both Art. XX(g) and Art. XX(b) but considered that the requirements of the chapeau have not been met for the same reasons as identified under TBT Art. 2.1.
- **ASCM Art. 1 (definition of subsidy):** The Panel found that Malaysia failed to establish that the French tax measure provided a specific subsidy.

3. OTHER ISSUES[2]

- Dissenting opinion largely agreeing with the complainant that the singling out of palm oil based on GHG emissions was discriminatory in and of itself.

1 *European Union and Certain Member States – Certain Measures concerning Palm Oil and Oil Palm Crop-Based Biofuels*
2 Single substantive meeting to ensure timing coherence with separate proceedings (DS593).

CHINA – AD ON STAINLESS STEEL PRODUCTS FROM JAPAN[1] (DS601)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*ADA Arts. 4.1, 3.1, 2.2, 3.3, 3.4, 3.5, 6.5, 6.9 and 12.2*	Establishment of Panel	*30 August 2021*
			Circulation of Panel Report	*19 June 2023*
Respondent	*China*		Adoption	*28 July 2023*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** China's measures imposing anti-dumping duties on stainless steel products from Japan, as set forth in the Ministry of Commerce of China (MOFCOM) Announcement No. 9 of 2019 and Announcement No. 31 of 2019, including any and all annexes and amendments thereto.
- **Product at issue:** Stainless steel products.

2. SUMMARY OF KEY PANEL FINDINGS

Japan made claims challenging in the context of the underlying investigation, MOFCOM's definition of the domestic industry, its decision to cumulate imports of Japan along with those from other sources, its determination on injury, its confidential treatment of certain information, its alleged failure to disclose certain essential facts, and the adequacy of its public notice in light of the obligations under the Anti-Dumping Agreement.

- **ADA Art. 4.1 (definition of domestic industry):** The Panel found that MOFCOM acted inconsistently with this provision because it did not provide a reasoned and adequate explanation of its finding that the production of the firms included in the domestic industry represented a "major proportion" of the total production of all Chinese producers but rejected several other bases for Japan's claim.
- **ADA Art. 3.3 (injury determination):** The Panel rejected Japan's claim on cumulation, and in doing so also rejected its interpretation on Art. 3.3 on which some aspects of its arguments were based.
- **ADA Arts. 3.1 and 3.2 (injury determination):** The Panel upheld several aspects of Japan's claims concerning MOFCOM's consideration on price effects, basing its finding in large part on Japan's arguments concerning price comparability between subject imports and domestic like products.
- **ADA Arts. 3.1 and 3.4 (injury determination):** The Panel upheld some aspects of Japan's claims concerning the state of the domestic industry while rejecting others.
- **ADA Arts. 3.1 and 3.5 (injury determination – causation):** The Panel upheld some aspects of Japan's claims concerning the state of the domestic industry while rejecting others.
- **ADA Arts. 6.5 (disclosure of confidential information – "good cause") and 6.5.1 (evidence – confidential information):** The Panel rejected Japan's claims pertaining to the alleged lack of good cause presented by the applicant in redacting certain company names, and in MOFCOM not requiring a non-confidential summary of confidential information.
- **ADA Art. 6.9 (evidence – essential facts):** The Panel upheld some aspects of Japan's claim regarding the lack of disclosure of essential facts under consideration which formed the basis for MOFCOM's decision to apply definitive measures, while rejecting others.
- **ADA Arts. 12.2 and 12.2.2 (public notice):** The Panel rejected some aspects of Japan's claims concerning the adequacy of the public notice published by MOFCOM while declining to make findings on others in light of the Panel's finding on substantive related issues.

1 *China – Anti-Dumping Measures on Stainless Steel Products from Japan*

AUSTRALIA – AD/CVD ON CERTAIN PRODUCTS (CHINA)[1] (DS603)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*ADA Arts. 2.2 and 2.2.1.1* *ASCM Arts. 1.1, 2.1, 11 and 14* *GATT Arts. VI:1 and VI:2*	Establishment of Panel	*28 February 2022*
Respondent	*Australia*		Circulation of Panel Report	*26 March 2024*
			Adoption	*26 April 2024*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures and products at issue:** Anti-dumping measures on wind towers, stainless steel sinks, and railway wheels; and countervailing measures on stainless steel sinks.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Arts. 2.2.1.1 and 2.2 (dumping determination): Wind towers –** The Panel found violations of Arts. 2.2.1.1 and 2.2 because the Australian investigating authority: (i) improperly rejected using certain of the examined exporter's record costs in constructing normal value and "uplifted" such costs when constructing normal value; and (ii) determined that domestic sales of wind towers did not permit a proper comparison with export sales on the basis of a "relevance" test that has no basis in Art. 2.2.

- **ADA Arts. 2.2 and 2.4 (dumping determination): Stainless steel sinks –** The Panel found a violation of Art. 2.2 because the investigating authority selected costs for the ordinary course of trade test that were not shown to be costs of production in China. The Panel also found violations of Art. 2.4 arising from the investigating authority: (i) comparing export models to export models for purposes of performing a fair comparison; (ii) adjusting for taxation using improperly established underlying costs; and (iii) improper adjustments relating to accessories.

- **ADA Arts. 2.2.1.1 and 2.2 (dumping determination): Railway wheels –** The Panel found violations of Arts. 2.2.1.1 and 2.2 because the investigating authority improperly rejected using certain of the examined exporter's record costs in constructing normal value and used improperly determined costs in constructing normal value. ADA Art. 2.2.2 – The Panel found a violation of Art. 2.2.2(i) because the investigating authority failed to calculate profit on the basis of the actual amounts realized by the examined exporter in respect of "sales in the domestic market of the country of origin".

3. OTHER ISSUES

- With respect to railway wheels, the investigating authority had only completed an original investigation. However, for wind towers, the investigating authority had completed an original investigation and a sunset review. For stainless steel sinks, the investigating authority had completed an original investigation, multiple interim reviews, and a sunset review. For each of the latter two products, with limited exceptions, China brought claims against all segments (investigations, interim reviews, and sunset reviews). For those two products, the Panel considered it generally sufficient to make findings with respect to the expiry reviews only.

- The Panel found that certain claims under the ADA, and all claims made under the ASCM, related to aspects of the measures that had expired before the establishment of the Panel. On that basis, the Panel declined to issue findings or recommendations with respect to those claims.

- The Panel found it unnecessary to address Australia's challenges under DSU Art. 6.2.

1 *Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China*

CHINA – IPRs ENFORCEMENT (EU)[1]
(DS611)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*TRIPS Arts. 1.1, 28.1, 28.2, 41.1, 44.1, 63.1 and 63.3* *China's Accession Protocol Section 2(A)(2)*	Establishment of Panel	*27 January 2023*
Respondent	*China*		Recourse to Arbitration (Art. 25 DSU – appeal)	*22 April 2025*
			Art. 25 DSU Arbitration award circulated	*21 July 2025*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** (i) an anti-suit injunction (ASI) policy empowering Chinese courts to impose a range of possible prohibitions at the request of standard essential patent (SEP) implementers in the context of litigation over royalty rates for SEPs; (ii) decisions by Chinese courts to grant ASIs in five specific instances; and (iii) China's failure to publish four of the five ASI decisions.
- **Intellectual property at issue:** 4G technology patents for mobile phones.

2. SUMMARY OF KEY PANEL/ARBITRATOR FINDINGS

- **TRIPS Art. 1.1 (non-frustration):** The Arbitrator reversed the Panel's interpretation and concluded that a key corollary of the obligation in Art. 1.1, first sentence to "give effect" to the provisions of that Agreement in a WTO Member's territory is that Members are not allowed to frustrate the protection and enforcement of the trade-related IP rights granted by other Members in their respective territories pursuant to their implementation of the Agreement.
- **TRIPS Art. 28.1, read in conjunction with Art. 1.1 (patent owners' rights):** Because the Arbitrator had reversed the Panel's interpretation under Art. 1.1, it also reversed the Panel's finding under Art. 28.1, read in conjunction with Art. 1.1. In completing the analysis, the Arbitrator found the ASI policy was inconsistent with these provisions because it established a course of action that frustrated patent owners' exercise of their exclusive right to prevent the use of the subject of the patent without their consent as conferred upon them by another WTO Member.
- **TRIPS Art. 28.2, read in conjunction with Art. 1.1 (right to licence a patent):** The Arbitrator reversed the Panel's interpretation and found that the conclusion of a licensing contract is not enough to demonstrate compliance with Art. 28.2 if the terms of that contract do not reflect the meaningful exercise of a patent owner's "right" due to the impact of a Member's measure. Completing the analysis, the Arbitrator concluded that the ASI policy was inconsistent with these provisions because the availability of ASIs to SEP implementers under the ASI policy fundamentally altered the negotiating position of SEP holders, undermining their right to licence the patent.
- **TRIPS Art. 44.1, read in conjunction with Art. 1.1 (injunctions):** The Arbitrator upheld the Panel's conclusion that the European Union failed to show that the ASI policy or an ASI issued therefrom affected the authority of a judicial authority of another Member. The Arbitrator, therefore, found that the European Union had not demonstrated an inconsistency irrespective of whether Art. 44.1 was read in conjunction with Art. 1.1.
- **TRIPS Art. 41.1 (enforcement procedures):** The Arbitrator agreed with the Panel that enforcement procedures as specified in Part III are aimed at preventing the rights of the right holder from being infringed.[2] The Arbitrator upheld the Panel's ultimate conclusion that the European Union did not demonstrate that the ASI policy qualified as an "enforcement procedure" under the first sentence of Art. 41.1.
- **TRIPS Art. 63.1 (publication):** The Arbitrator upheld the Panel's conclusion that, because the decision issuing an ASI in Xiaomi v. InterDigital, read together with the reconsideration decision in the same case, constituted a judicial decision of general application within the meaning of Art. 63.1, China's failure to publish that decision was inconsistent with Art. 63.1.
- **TRIPS Art. 63.3 (requests for information):** The Panel concluded that China's unwillingness to respond to a request for information concerning Chinese regulations was inconsistent with Art. 63.3, first sentence. The Panel found that a separate claim under Art. 63.3, second sentence fell outside its terms of reference. These findings were not appealed.
- **Accession Protocol Section 2(A)(2):** The Panel concluded that the European Union failed to demonstrate that Chinese courts applied China's laws, regulations or other measures in a non-uniform, partial, or unreasonable manner. These findings were not appealed.

3. OTHER ISSUES[3]

- **Existence of a challenged measure:** The Arbitrator upheld the Panel's finding that the type of analysis to establish the existence of the measure at issue is determined by the manner in which the complainant challenges the measure. The Arbitrator also upheld the Panel's conclusion that the European Union provided sufficient evidence and argumentation to demonstrate the existence of the ASI policy as a rule or norm of general and prospective application.
- **Findings on expired measures:** The Panel declined to make findings on the five individual ASIs because they were expired *and* doing so would be duplicative of findings made under the ASI policy of which they formed an integral part. The Arbitrator reached a similar conclusion and declined to complete the analysis under Arts. 28.1 and 28.2, read in conjunction with the first sentence of Art. 1.1, with respect to the five ASIs. The Panel made findings on the five ASIs with respect to China's Accession Protocol because the legal reasoning behind the measures had not been retracted or overruled and could still have effects on the operation of the covered agreements. The Panel also concluded that to systematically decline to exercise jurisdiction on expired measures could provide a tool for shielding measures from Panel scrutiny. This finding was not appealed.

1 *China – Enforcement of Intellectual Property Rights*
2 The Arbitrator expressed some concern that the analysis of whether a particular procedure fell within the ambit of the first sentence of Art. 41.1 should be focused on the *nature* of the procedure and not on who instigated it.
3 Terms of reference, judicial economy.

Panel reports subject to pending appeals

EC AND CERTAIN MEMBER STATES – LARGE CIVIL AIRCRAFT (ARTICLE 21.5 – EU)[1]

(DS316)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ASCM Arts. 1, 2, 5, 6.3 and 7.8*	Referred to the Original Panel	*27 August 2018*
			Circulation of Panel Report	*2 December 2019*
Respondent	*European Union, France, Germany, Spain, United Kingdom*		Notification of appeal	*6 December 2019*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Launch Aid/Member State Financing (LA/MSF) provided by France, German, Spain and the United Kingdom for the Airbus A350XWB and A380 LCA models that was found to have caused adverse effects in the original and first compliance proceedings.

2. SUMMARY OF KEY PANEL FINDINGS

ASCM Art. 7.8 (remove adverse effects or withdraw the subsidy):

- **A380 LA/MSF:** The Panel rejected the European Union's argument that amendments to the French, German, Spanish and UK A380 LA/MSF agreements achieved the withdrawal of the subsidy for purposes of Art. 7.8. The Panel concluded that the European Union failed to demonstrate that a commercial lender, faced with the likely termination of the A380 programme, would have entered into the A380 LA/MSF amendments on the terms agreed between Airbus and the relevant member State governments. The Panel also rejected that the Spanish A380 LA/MSF subsidy had been withdrawn as a result of the alleged amortization of the pre-existing subsidy, or that Airbus' announcement to terminate the A380 programme by 2021 achieved the withdrawal of the A380 LA/MSF subsidies.

- **A350 LA/MSF:** The Panel rejected the European Union's argument that modifications to the German A350XWB LA/MSF agreement meant that the pre-existing subsidy had been replaced by a new and different loan to have resulted in the withdrawal of the subsidy by aligning its terms with a market benchmark. The Panel also rejected that Airbus' repayment of all outstanding principal and interest accrued under the UK A350XWB LA/MSF contract on subsidized terms, withdrew the subsidy for purposes of Art. 7.8.

- **Removal of adverse effects:** The Panel rejected the European Union's argument that the European Union and certain member States had taken appropriate steps to remove the adverse effects for the purpose of Art. 7.8, finding that the A380 and A350XWB LA/MSF subsidies continue to cause present serious prejudice to the United States' interests. The Panel also rejected that Airbus' decision to terminate the A380 programme by 2021 removed present day adverse effects of the A380 LA/MSF subsidies.

3. OTHER ISSUES

- **Preliminary ruling:** The Panel ruled that the United States' claims against certain research and technological development grants provided to Airbus were not within the Panel's terms of reference and were therefore excluded from the scope of the compliance proceeding.

1 *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft – Recourse to Article 21.5 of the DSU by the European Union and Certain Member States.* Panel Report subject to pending appeal.

THAILAND – CIGARETTES (PHILIPPINES) (ARTICLE 21.5 – PHILIPPINES)[1] (DS371)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Philippines*	*CVA Arts. 1, 2, 3, 5, 10, 11 and 16* *GATT Arts. III:4, X:1 and X:3(a)*	Referred to the Original Panel	*21 July 2016*
			Circulation of Panel Report	*12 November 2018*
Respondent	*Thailand*		Notification of appeal	*9 January 2019*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Three sets of measures, including: (i) a Board of Appeals (BoA) ruling issued in 2012, regarding the customs valuation of 210 shipments of cigarettes imported in 2002–2003, rejecting the importer's declared transaction values and determined a higher revised customs value for these entries; (ii) a set of criminal charges filed in 2016 accusing the importer of under-declaring the customs values for 272 entries of cigarettes imported between 2003-2006; and (iii) the administration of the value-added tax (VAT) regime for cigarettes.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **CVA Art. 1.1 and 1.2(a) (valuation in a related-party transaction):** The BoA ruling and the Charges violated Arts. 1.1 and 1.2(a) of the CVA by rejecting the importer's declared transaction values without a valid basis.
- **CVA Art. 5 (valuation based on deductive method):** The BoA ruling violated Arts. 5.1(a)(i), (ii) and (iv) of the CVA by failing to deduct appropriate amounts in respect of P&GE, transport costs and provincial taxes payable.
- **CVA Art. 11 (sufficient reasons):** The BoA violated Art. 11.3 of the CVA by failing to provide sufficient reasons for its decision in the Ruling.
- **CVA Art. 16 (customs' explanation of valuation decision):** The BoA acted inconsistently with Art. 16 of the CVA by failing to provide a timely explanation of how the customs value was determined, following the importer's request for an explanation.
- **CVA Art. 2 and 3 (valuation based on identical or similar goods):** The Charges violated Art. 2.1(a), or in the alternative, Art. 3.1 of the CVA, because they improperly treated the purchase prices of a duty-free operator as transaction values for identical or similar goods.
- **CVA Art. 10 (confidentiality):** The Philippines did not demonstrate that Thai officials were responsible for disclosing the importers prices to the media.
- **GATT Art. XX (general exceptions):** The general exceptions in Art. XX of the GATT 1994 are not applicable to the obligations in the CVA.

1 *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines – Recourse to Article 21.5 of the DSU by the Philippines.* Panel report subject to pending appeal.

2 Other issues addressed: Scope of Art. 21.5 proceedings; lawyer-client privilege; ripeness of dispute; applicability of CVA to criminal charges; claims under GATT Art. III:4, X:1, and X:3(a).

THAILAND – CIGARETTES (PHILIPPINES) (ARTICLE 21.5 – PHILIPPINES II)[1] (DS371)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Philippines*	*CVA Arts. 1, 6 and 7*	Referred to the Original Panel	*27 March 2018*
			Circulation of Panel Report	*12 July 2019*
Respondent	*Thailand*		Notification of appeal	*9 September 2019*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Two sets of measures, including: (i) a set of criminal charges filed in 2017 accusing the importer of under-declaring the customs values for 780 entries of cigarettes between 2002-2003; and (ii) 1,052 revised Notices of Assessment that the importer received in November 2017 from Thailand's Customs Department, rejecting PMTL's declared transaction values, and determining revised customs values, for 1,052 entries of cigarettes imported over the period 2001-2003**.**

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **CVA Art. 1.1 and 1.2(a) (valuation in a related-party transaction)**: The Charges violated Art. 1.1 and/or the substantive obligation in Art. 1.2(a), second sentence, of the CVA by rejecting the importer's declared transaction values without conducting a proper examination of the circumstances surrounding the sale, and/or a proper determination of the price actually paid or payable.
- **CVA Art. 6 and 7 (valuation based on computed value / reasonable means):** The Charges violated Art. 6.1 and/or Art. 7.1 of the CVA by improperly relied on pricing and cost information reported by the manufacturer in certain tax forms to determine the revised customs value of the imported goods.
- **CVA Arts. 2-7 (sequential use of valuation methods):** The Public Prosecutor violated the obligation to sequentially apply the customs valuation methods in Arts. 2 through 7 of the CVA when it determined the revised customs values of the imported goods.
- **GATT Art. XX (general exceptions):** The general exceptions in Art. XX of the GATT 1994 are not applicable to the obligations in the CVA.

1 *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines – Second Recourse to Article 21.5 of the DSU by the Philippines.* Panel report subject to pending appeal.

2 Other issues addressed: third-party access to confidential Final Report; party request for information pursuant to Art. 13 of the DSU; terms of reference / respondent's objection to new claims; allegation of illegal acts; Philippines' standing to challenge measures affecting imported cigarettes from Indonesia; termination/withdrawal of challenged measures.

US – CARBON STEEL (INDIA) (ARTICLE 21.5 – INDIA)[1] (DS436)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*India*	*ASCM Arts. 1.1(a)(1), 2.1, 12.1, 12.8, 14(d), 15 and 19.3*	Referred to the Original Panel	*27 April 2018*
			Circulation of Panel Report	*15 November 2019*
Respondent	*United States*		Notification of appeal	*18 December 2019*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Imposition by the United States of countervailing duties on imports of certain hot-rolled carbon steel flat products from India; Rules governing injury determinations in countervailing duty investigations.

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ASCM Art. 1.1(a)(1) (definition of "public body"):** The Panel rejected India's claim that the USDOC acted inconsistently with ASCM Art. 1.1(a)(1) in finding that the National Mineral Development Corporation – a mining company 98 per cent owned by the Government of India – constituted a "public body".

- **ASCM Art. 14(d) (benefit):** The Panel rejected India's claim that the USDOC acted inconsistently with ASCM Art. 14(d) in rejecting certain domestic pricing information (which it considered to be "estimated" or "provisional" prices) in favour of out-of-country benchmarks to determine the conferral and amount of "benefit" conferred by the provision of certain goods.

- **ASCM Art. 2.1 (specificity):** For some subsidy programmes, the Panel rejected India's claims that the USDOC had failed to take into account the length of time that the programme had been operating and the extent of diversification of the Indian economy as part of the specificity analysis under ASCM Art. 2.1(c). For other subsidy programmes, the Panel found that the USDOC had erred in its de facto specificity analysis.

- **ASCM Art. 15.1 – 15.5 (cross-cumulation)**: In the original proceedings, the Appellate Body found that a measure mandating in certain circumstances the "cross-cumulation" of subsidized and dumped, non-subsidized imports for the purposes of determining injury was "as such" inconsistent with ASCM Arts. 15.1 – 15.5. The compliance panel found that the United States did not bring its measure into conformity with its obligations under the ASCM.

- **ASCM Arts. 15.1 and 15.5 (non-attribution):** The Panel found that the US International Trade Commission had acted inconsistently with ASCM Arts. 15.1 and 15.5 because it had failed to acknowledge the existence of dumped imports as a factor, distinct from other non-subsidized imports more generally, causing injury to the domestic industry.

1 *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India – Recourse to Article 21.5 of the DSU by the United States.* Panel report subject to pending appeal.

2 Other issues addressed: DSU Art. 21.5 (terms of reference – scope of compliance proceedings); ASCM Art. 12.1 (evidence – soliciting and accepting new evidence in the reinvestigation); ASCM Art. 12.8 (disclosure of essential facts); Art. 15.1 (injury determination – positive evidence and objective examination); ASCM Art. 15.2 (injury determination – price effects analysis); ASCM Art. 15.4 (injury determination – injury factors); ASCM Art. 19.3 (appropriate amounts of countervailing duties).

COLOMBIA – TEXTILES (ARTICLE 21.5 – COLOMBIA) / COLOMBIA – TEXTILES (ARTICLE 21.5 – PANAMA)[1]

(DS461)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Panama* *Colombia*	*GATT Arts. II:1(a), II:1(b), X:3(a) and XI:1* *CVA Arts. 1, 2, 3, 5, 6, 7.2(f) and 13*	Referred to the Original Panel	*6 March 2017 (Panama)* *19 June 2017 (Colombia)*
			Circulation of Panel Report	*5 October 2018*
Respondent	*Colombia* *Panama*		Notification of appeal	*20 November 2018*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Measures adopted by Colombia subsequent to the adoption of the DSB recommendations and rulings in *Colombia – Textiles*.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. XI:1 (prohibition on quantitative restrictions):** The Panel rejected Panama's claims that the specific bond provided for in Art. 7 of Decree No. 2218/2017 (i) was costly or burdensome to the point of constituting a limiting condition on imports; (ii) created uncertainty to the point of constituting a limiting condition on imports; or (iii) was arbitrary to the point of constituting a limiting condition on imports. The Panel thus found that the specific bond was not inconsistent with GATT Art. XI. The Panel concluded that Panama had failed to demonstrate that the special import regime provided for in Arts. 4 to 10 of Decree No. 2218/2017 had limiting effects on imports in a manner inconsistent with GATT Art. XI:1.

- **GATT Art. X:3(a) (trade regulations – uniform, impartial and reasonable administration):** The Panel considered that Panama had discharged the initial burden of identifying legal instruments of the kind described in GATT Art. X:1. However, the Panel considered that Panama had failed to demonstrate that the specific bond in Decree No. 2218/2017 and the special import regime were administered in a non-uniform, non-impartial or unreasonable manner, inconsistently with GATT Art. X:3(a).

- **CVA Arts. 1, 2, 3, 5, 6 and 7.2(f) (sequential use of valuation methods):** The Panel concluded that Panama had failed to demonstrate that the thresholds established in Decree No. 2218/2017 represented the "value of goods" by virtue of which Colombia's customs authorities collected customs duties, or that the use of the thresholds corresponded to a customs valuation operation or that the special import regime operated as an incentive to raise the prices of goods artificially. The Panel therefore concluded that the special import regime provided for in Arts. 4 to 10 of Decree No. 2218/2017 did not fall within the scope of CVA Arts. 1, 2, 3, 5, 6 and 7.2(f) in the manner described by Panama.

3. OTHER ISSUES[2]

- **DSU Art. 21.5 (terms of reference – measures taken to comply):** Both parties initiated compliance proceedings and disagreed on the "measures taken to comply". Colombia argued that the only measure taken to comply was the replacement of the inconsistent compound tariff by an *ad valorem* one. Panama argued that, in addition, the specific bond and the special import regime with the characteristics described in Decree No. 1745/2016 were also measures taken to comply. The Panel examined the timing, nature and effects of the measures, as well as the factual and legal background that formed the basis for the adoption of the measure which Colombia had declared to constitute the "measure taken to comply". It concluded that the specific bond and the special import regime with the characteristics described in Decree No. 1745/2016 were "inextricably linked" and "clearly connected" to the measure declared by Colombia as having been taken to comply. The Panel then concluded that the specific bond and the special import regime with the characteristics provided for in Decree No. 2218/2017 which replaced Decree No. 1745/2016 fell within the Panel's terms of reference, because the language of Panama's panel request was sufficiently broad and the essence of the original measures has not changed as a result of their being replaced.

1 *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear – Recourse to Article 21.5 of the DSU by Colombia / Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear – Recourse to Article 21.5 of the DSU by Panama*. Panel report subject to pending appeal.

2 Other issues addressed: repealed and replaced measures; GATT Arts. II:1(a) and II:1(b) (schedules of concessions); CVA Art. 13 (sufficient guarantee).

EU – ENERGY PACKAGE[1]
(DS476)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Russian Federation*	*GATS Arts. II:1, VI:1, VI:5(a), XVI and XVII GATT Arts. I:1, III:4, XI:1 and X:3(a)*	Establishment of Panel	*20 July 2016*
			Circulation of Panel Report	*10 August 2018*
Respondent	*European Union*		Notification of appeal	*21 September 2018*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure and product at issue:** Measures that regulate the natural gas sector and the development of natural gas infrastructure within the European Union, namely (i) unbundling measure; (ii) public body measure; (iii) LNG measure; (iv) infrastructure exemption measure; (v) upstream pipeline networks measure; (vi) third-country certification measure; and (viii) TEN-E measure

2. SUMMARY OF KEY PANEL FINDINGS[2]

Unbundling measure

- **GATS Art. II:1 and GATT Art. I:1 (most-favoured-nation treatment):** The Panel found that the unbundling measure in the EU Directive (i) did not accord less favourable treatment to Russian pipeline transport services and service suppliers in comparison with that accorded to pipeline transport services and service suppliers of any other non-EU country; and (ii) did not confer an advantage, favour, privilege or immunity to imported natural gas from other non-EU countries, which was not accorded immediately and unconditionally to imported Russian natural gas.
- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that the unbundling measure in the EU Directive did not accord less favourable treatment to imported Russian natural gas than that accorded to domestic EU natural gas.
- **GATS Art. XVI:2 (market access commitments):** The Panel found that the unbundling measure in the national implementing laws of some member States was not inconsistent with GATS Arts. XVI:2(a), (e) or (f).

Public body measure

- **GATS Art. XVII (national treatment):** The Panel considered that Russia had failed to show that the public body measure was an "exemption" from the requirement to unbundle, and that it applied only to domestic service suppliers, excluding like service suppliers of other Members.

LNG measure and Upstream pipeline networks measure

- **GATT Arts. I:1 (most-favoured-nation treatment) and III:4 (national treatment – domestic laws and regulations):** With respect to the LNG measure, the Panel found that Russia had not demonstrated that natural gas imported from Russia and LNG imported from other countries are like products. With respect to the upstream pipeline networks measure, the Panel noted the parties' agreement that processed natural gas transported via upstream pipelines and natural gas transported via transmission pipelines are like products, but found that Russia had not established that the measure granted an advantage to natural gas of any particular origin.

Infrastructure exemption measure

- **GATT Art. XI:1 (prohibition on quantitative restrictions):** The Panel found that two of the conditions included in the challenged measure restricted market access for EU imports of natural gas from Russia and limited competitive opportunities for the importation of Russian natural gas into the European Union.

Third-country certification measure

- **GATS Art. II:1 (most-favoured-nation treatment):** The Panel found that the third-country certification measure in the Directive did not accord less favourable treatment to Russian pipeline transport services and service suppliers in comparison with that accorded to pipeline transport services and service suppliers of any other non-EU country.
- **GATS Art. XVII (national treatment):** The Panel found that the third-country certification measure in the national implementing laws of certain member states was inconsistent with GATS Art. XVII.
- **GATS Art. XIV(a) (general exceptions – necessary to protect public order):** The Panel found that the third-country certification measure was necessary to address the threat posed by foreign control over TSOs, but that it did not fulfil the requirements of the *chapeau* of GATS Art. XIV.

TEN-E measure

- **GATT Arts. III:4 and I:1 (national treatment and most-favoured-nation treatment):** The Panel found that the TEN-E measure (i) provided more favourable conditions for the transportation of natural gas of any origin other than Russian and (ii) granted an advantage to imported natural gas of any origin other than Russia that was not "immediately" and "unconditionally" extended to imported natural gas of Russian origin.
- **GATT Art. XX(j) (general exceptions – essential to acquisition or distribution of products in general or local short supply):** The Panel rejected the European Union's defence under GATT Art. XX(j) because the European Union failed to demonstrate that natural gas is a product "in short supply" in the European Union.
- **GATS Art. II:1 (most-favoured-nation treatment):** The Panel rejected Russia's claim that the TEN-E measure was inconsistent with GATS Art. II:1.

1 *European Union and its Member States – Certain Measures Relating to the Energy Sector.* Panel report subject to pending appeal.
2 Other issues addressed: relationship between consultations and panel requests; DSU Art. 6.2 (panel's terms of reference); level for assessing the WTO consistency of a measure (EU-wide or EU member State-specific); GATT Art. X:3 (administration of trade regulations); GATS Arts. VI and VI:5(a).

INDONESIA – CHICKEN (ARTICLE 21.5 – BRAZIL)[1] (DS484)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil*	*SPS Art. 8; Annex C(1)(a)* *GATT Arts. III:4 and XI:1* *AA Art. 4.2*	Referred to the Original Panel	*24 June 2019*
			Circulation of Panel Report	*10 November 2020*
Respondent	*Indonesia*		Notification of appeal	*17 December 2020*

1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Measures taken by Indonesia to comply with the DSB recommendations and rulings in *Indonesia – Chicken*, enacted through legal instruments issued by the Ministry of Agriculture or the Ministry of Trade.

2. SUMMARY OF KEY PANEL FINDINGS

- **SPS Art. 8 and Annex C(1)(a) (control, inspection and approval procedures):** Indonesia did not contest the existence of the three delays alleged by Brazil, but argued that two of them were excluded from the Panel's review, and the third delay, incurred by Indonesia in processing Brazil's updated questionnaire, was not undue. After describing its understanding of what the desk review entailed and how the process played out in the specific circumstances, the Panel saw two issues with the way Indonesia had handled the process: (i) the lack of resources coupled with issues of the design/set-up of the process itself; and (ii) the lack of priority given to Brazil's request. The Panel found that the delay in processing Brazil's updated questionnaire was unjustifiable and, therefore, undue. The Panel did not consider it necessary to decide whether there was also undue delay in the other instances that Brazil had identified.

- **AA Art. 4.2 (quantitative import restrictions) and GATT Art. XI:1 (prohibitions or restrictions on imports):** The Panel found that Brazil had not demonstrated that the requirement for products to be listed in the appendices to the regulations as a condition for being eligible for an Import Recommendation and an Import Approval (positive list requirement), in its most recent version, amounted to a prohibition or a restriction on the importation of chicken products contrary to GATT Art. XI:1, nor to a quantitative import restriction on agricultural products prohibited under AA Art. 4.2. The Panel concluded that the version of the positive list requirement that existed at panel establishment was a prohibition inconsistent with GATT Art. XI:1, insofar as other prepared or preserved chicken meat, chicken offal or blood were not included in the list.

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that limiting the uses of imported chicken meat and chicken products in the Indonesian market to specific intended uses as identified in the relevant regulations (intended use requirement), was inconsistent with GATT Art. III:4, because there was less favourable treatment of imported frozen and chilled chicken meat and chicken products in respect of sanctions applying to a breach of the cold storage requirement on sales in the market.

- **GATT Art. XI:1 (prohibitions or restrictions on imports):** The Panel found that Brazil had not demonstrated that the conditions applying to modifying Import Recommendations and Import Approvals after their issuance (fixed licence terms), prevented or severely limited the importers' ability to modify the port of entry or the quantity of imported products in the normal course of business, inconsistent with GATT Art. XI:1.

3. OTHER ISSUES[2]

- **Replaced and amended measures:** After the establishment of the Panel, Indonesia either replaced or amended the relevant regulations embodying the measures at issue. The Panel decided to review both versions of the positive list requirement, intended use requirement and fixed licence terms, first addressing the amended measures (i.e. the current version of the measures), and then providing an assessment of their earlier versions (i.e. the versions in place at panel establishment). The Panel decided to assess Brazil's undue delay claim under SPS Art. 8 on the basis of events up to panel establishment.

1 *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products – Recourse to Article 21.5 of the DSU by Brazil.* Panel report subject to pending appeal.
2 Other issues addressed: judicial economy; dissenting opinion.

EU – COST ADJUSTMENT METHODOLOGIES II (RUSSIA)[1] (DS494)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Russian Federation*	*ADA Arts. 1, 2.1, 2.2, 2.2.1.1, 2.2.1, 2.4, 2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 5.3, 6.1.2, 5.4, 9.1, 11.3 and 18.1*	Establishment of Panel	*16 December 2016*
Respondent	*European Union*		Circulation of Panel Report	*25 July 2020*
			Notification of appeal	*28 August 2020*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** (i) the methodology applied by the European Commission in anti-dumping investigations and reviews, when determining the costs of production in the country of origin for investigated companies (Cost Adjustment Methodology); (ii) certain provisions of the European Union's Basic AD Regulation (as such); (iii) two expiry reviews of anti-dumping duties imposed by the European Union on certain imports from Russia

- **Product at issue:** Certain welded tubes and pipes of iron or non-alloy steel originating in Russia and ammonium nitrate originating in Russia

2. SUMMARY OF KEY PANEL FINDINGS[2]

Cost Adjustment Methodology

- **Existence of a challengeable measure of general and prospective application:** The Panel found that Russia had established the existence and the precise content of the (unwritten) Cost Adjustment Methodology as a measure of general and prospective application attributable to the European Union.

- **ADA Art. 2.2.1.1 (dumping determination – rejection of recorded costs):** The Panel found that the Cost Adjustment Methodology provided for the rejection of the costs reflected in the records of the producer or exporter under investigation when domestic input prices are significantly low when compared to other markets, regulated by the government of the country of origin, or affected by other government measures, in a manner inconsistent with the second condition of the first sentence of ADA Art. 2.2.1.1.

- **ADA Art. 2.2 (dumping determination – cost of production in the country of origin):** The Panel found that the Cost Adjustment Methodology, by providing for the use of out-of-country input price information, without establishing whether or explaining how such information is adequate to reflect or represent the cost of production in the country of origin, contravened ADA Art. 2.2.

Basic AD Regulation

- **ADA Art. 2.2 (dumping determination – particular market situation):** The Panel found that Russia's asserted interpretation that "the particular market situation" in ADA Art. 2.2 refers exclusively to the situation specified in the second Ad Note to GATT Art. VI:1 could not form a valid basis for a claim that the second subparagraph of Art. 2(3) of the Basic AD Regulation was inconsistent with ADA Art. 2.2.

Anti-dumping measures imposed by the European Union on certain imports from Russia

- **ADA Art. 2.2.1.1(dumping determination – rejection of recorded costs):** The Panel found that the European Commission had rejected the costs reflected in the records of the producer under investigation in a manner inconsistent with the second condition of the first sentence of ADA Art. 2.2.1.1.

- **ADA Art. 18.3 (pre-WTO determinations):** The Panel found Russia was precluded from challenging aspects of investigations or reviews which were initiated prior to its WTO accession.

1 *European Union – Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia (Second complaint).* Panel report subject to pending appeal.

2 Other issues addressed: content of the challenged measures; terms of reference (DSU Art. 6.2); ADA Art. 2.2.1.1 (dumping determination – costs calculation); ADA Art. 11.3 (review of anti-dumping duties); ADA Art. 3 (injury determination – price undercutting); ADA Art. 6.5 (confidential treatment): ADA Art. 6.8 and Annex II (evidence – facts available); ADA Art. 12.2 (disclosure obligations).

US – RENEWABLE ENERGY (INDIA)[1]
(DS510)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*India*	*GATT Art. III:4* *TRIMs Arts. 2.1 and 2.2* *ASCM Arts. 3.1(b) and 3.2*	Establishment of Panel	*21 March 2017*
			Circulation of Panel Report	*27 June 2019*
Respondent	*United States*		Notification of appeal	*15 August 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Financial incentives granted under various renewable energy programs in several States (Washington, California, Montana, Connecticut, Michigan, Delaware and Minnesota) for the purchase, installation, and use of "made-in-state" renewable energy systems and related products.

- **Products at issue:** Renewable energy systems, installation, and resources

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that the measures at issue (i) distinguished solely on the basis of origin; (ii) fell within the scope of the phrase "laws, regulations and requirements"; (iii) affected the internal sale, offering for sale, purchase, transportation, distribution or use of the relevant products; and (iv) modified the conditions of competition to the detriment of imported products, thus according less favourable treatment to such products. Specifically, the Panel found that offering financial incentives for the use of domestic products, but not for the use of imported products, modified the conditions of competition to the detriment of imported products and was therefore inconsistent with Art. III:4. The Panel concluded that India had established, and the United States had not rebutted, that each measure at issue was inconsistent with Art. III:4 of the GATT 1994.

3. OTHER ISSUES[2]

- **Judicial economy:** The Panel did not find it necessary to address India's claims under the TRIMs Agreement in order to provide a positive solution to the dispute and exercised judicial economy with regard to these claims. The Panel also found that the United States bringing its measures at issue into conformity with its obligations pursuant to Art. III:4 of the GATT 1994 would remove any inconsistency of those measures with Arts. 3.1(b) and 3.2 of the ASCM. For this reason, the Panel exercised judicial economy and refrained from addressing India's claims under the ASCM.

1 *United States – Certain Measures Relating to the Renewable Energy Sector.* Panel report subject to pending appeal.
2 Other issues addressed: terms of reference; measures amended or repealed following the establishment of the panel; Art. XXIII:1(a) of the GATT 1994.

INDIA – IRON AND STEEL PRODUCTS[1]
(DS518)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*SA Arts. 2.1, 3.1, 4.1(a), 4.1(b), 4.2(a), 4.2(b), 4.2(c), 5.1, 7.1, 11.1(a), 12.1, 12.2, 12.3 and 12.4*	Establishment of Panel	*3 April 2017*
			Circulation of Panel Report	*6 November 2018*
Respondent	*India*	*GATT Arts. I:1, II:1(b) and XIX:1(a)*	Notification of appeal	*14 December 2018*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Safeguard measure imposed by India following a safeguard investigation
- **Product at issue:** Hot-rolled flat products of non-alloy and other alloy steel in coils of a width of 600 mm or more

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. XIX and SA Art 1:** the Panel found that the measure at issue was a safeguard measure despite the fact that the total duties imposed on the importation of the products concerned did not exceed India's 40% bound rate of ordinary customs duties.
- **GATT Art. XIX:1(a) (unforeseen developments):** The Panel considered that it was reasonable for the competent authority to find that the excess production capacity of steel, combined with the increased demand in India, declined demand in several major markets, and currency depreciation in Ukraine and Russia were unforeseen developments. However, the Panel found that India failed to provide a reasoned explanation that the increase in imports of the product concerned into India occurred as a result of these unforeseen developments.
- **SA Arts. 2.1 and 4.2(a) (increase in imports)**: The Panel considered that the competent authority had failed to (i) evaluate the rate and amount of the increase in imports on the basis of objective data, when it analysed the increase in imports at least partly on annualized data; and to (ii) objectively examine trends in imports and to provide a reasoned explanation with regard to its conclusion that there was "a sudden, sharp and significant surge in imports" during the POI.
- **SA Arts. 2.1, 4.1(a), 4.1(b), and 4.2(a) (serious injury and threat thereof)**: The Panel found that the competent authority had failed to properly evaluate the domestic industry's prices and profitability and to provide a reasoned and adequate explanation of these factors in light of its overall conclusion on the situation of the domestic industry. The Panel also found that the existence of a threat of serious injury was not adequately addressed or analysed in the Final Findings.
- **SA Arts. 4.2(a) and 4.2(b) (causal link)**: The Panel found that the competent authority had failed to (i) properly examine the price competition between imported and domestic products, when it based its price comparison on the average unit price of imported products and the average unit price of the like or directly competitive domestic products; (ii) to demonstrate the existence of a causal link between the increased imports and serious injury suffered by the domestic industry; and to (iii) conduct a proper non-attribution analysis.

3. OTHER ISSUES[2]

- **Evolution of the measure:** The safeguard measure at issue expired during the panel proceedings and India declared that it had no intention to extend it. The Panel considered that the expiry of the measure after the Panel was established did not excuse the Panel from exercising its function under Art. 11 of the DSU to make findings with respect to the matter raised by Japan. The Panel found it appropriate to provide recommendations with regard to the measure at issue to the extent that there may continue to be effects with respect to imports occurred when the measure was in force.

1 *India – Certain Measures on Imports of Iron and Steel Products.* Panel report subject to pending appeal.
2 Other issues addressed: SA Arts. 2.1, 4.1(a), 4.1(b), 4.1(c), 4.2(a) and 4.2(b) and GATT Article XIX:1(a) (determination of the domestic industry); SA Arts. 5.1 and 7.1; SA Art. 12; GATT Arts. I:1 and II:1(b); DSU Art. 12.11.

US – PIPE AND TUBE PRODUCTS (TURKEY)[1]
(DS523)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Turkey*	*ASCM Arts. 1.1(a)(1), 1.1(b), 2.1(c), 2.4, 10, 14(d), 12.7, 15.3, 19.4 and 32.1* *GATT Art. VI:3*	Establishment of Panel	*19 June 2017*
			Circulation of Panel Report	*18 December 2018*
Respondent	*United States*		Circulation of AB Report	*NA*
			Notification of appeal	*25 January 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Countervailing duty measures imposed in connection with investigations of Turkish imports of certain products
- **Products at issue:** Oil country tubular goods, welded line pipe, heavy walled rectangular welded carbon steel pipes and tube

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ASCM Art. 1.1(a)(1) (definition of a subsidy – public body)**: The US competent authority (USDOC) had found that three entities were public bodies because the government exercised "meaningful control" over them, partly because of the government's "significant involvement" in a military pension fund, which held a controlling ownership stake in one of the entities. The Panel was not persuaded that the evidence on which the USDOC relied demonstrated that the pension fund was under the meaningful control of the government, and that the pension fund's control over the entities justifies attributing the actions of those entities to the government. The Panel thus found that the USDOC failed to apply the standard applicable to the public body enquiry in its assessment of "meaningful control", by failing to establish that the entities possess, exercise, or are vested with governmental authority to perform a government function.
- **ASCM Arts. 1.1(b) and 14(d) (benefit determination**): Turkey made an "as such" claim that the USDOC had "a practice, in assessing whether a good is provided for less than adequate remuneration thereby conferring a benefit, of rejecting in-country prices as a benchmark based solely on evidence that the government owns or controls the majority or a substantial portion of the market for the good, with no consideration of whether in-country prices are distorted". The Panel noted the high evidentiary threshold that a complainant must reach when an "as such" challenge concerns an unwritten measure. The Panel considered that the evidence before it did not demonstrate that the USDOC systematically bases its decision to rely on in-country, or out-of-country, prices exclusively on evidence as to whether the government owns or controls the majority or a substantial portion of the market. The Panel therefore found that Turkey had failed to demonstrate that the United States acted inconsistently "as such" with ASCM Art. 14(d).
- **ASCM Arts. 2.1(c) and 2.4 (specificity)**: The Panel found that, since the USDOC had failed to make proper "public body" determinations, it could not have properly determined that the entities concerned provided subsidies, much less that they did so pursuant to a "subsidy programme". The Panel also found that the USDOC had failed to (i) properly identify and substantiate the existence of a subsidy programme; and to (ii) properly evaluate the length of operation of the alleged "subsidy programme".
- **ASCM Art. 12.7 (evidence - facts available)**. Turkey raised claims with respect to the use of facts available in three countervailing proceedings. The Panel found that the USDOC had acted inconsistently with ASCM Art. 12.7 with respect of some of these instances.
- **ASCM Art. 15.3 (cumulative assessment of the effects of imports)**: The Panel found that ASCM Art. 15.3 does not permit the cumulative assessment of the effects of subsidized imports with the effects of dumped, non-subsidized imports in original countervailing investigations, and that the US authorities had cross-cumulated imports in some original investigations, but not in the sunset reviews.

1 *United States – Countervailing Measures on Certain Pipe and Tube Products from Turkey*. Panel report subject to pending appeal.
2 Other issues addressed: ASCM Art. 1.1(a)(1) (failure to consider relevant evidence on the record), DSU Arts. 4.4 and 6.2 (terms of reference)

US – SOFTWOOD LUMBER VII[1]
(DS533)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ASCM Arts. 1.1, 11, 14 and 19.4*	Establishment of Panel	*9 April 2018*
			Circulation of Panel Report	*24 August 2020*
Respondent	*United States*		Notification of appeal	*28 September 2020*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Countervailing measures imposed by the United States.
- **Products at issue:** Softwood lumber from Canada.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ASCM Art. 14(d) (calculation of amount of subsidy – rejection of benchmarks):** The Panel found that the US investigation authority (USDOC) improperly rejected as appropriate stumpage benchmarks: (i) certain private market prices in Ontario; (ii) the British Columbia Timber Sales (BCTS) auction prices; (iii) auction stumpage prices in Québec; (iv) log prices in Alberta. The Panel also found that the USDOC's use of benchmark prices from Nova Scotia was inconsistent with ASCM Art. 14(d), as the USDOC erroneously found that the Nova Scotia benchmark price reasonably reflected the prevailing market conditions in certain provinces where the good was provided. Further, the Panel found that the USDOC acted inconsistently with ASCM Art. 14(d) because it did not make necessary adjustments to the Nova Scotia benchmark price such that the benchmark price related to the prevailing market conditions in the market where the good was provided.
- **ASCM Arts. 14 and 19.4 and GATT Art. VI:3 (reliance on surveys):** The Panel found that an objective and unbiased investigating authority would not have relied on the Nova Scotia survey for determining the Nova Scotia benchmark price and that the USDOC had failed to satisfy the requirements of the *chapeau* of ASCM Art. 14.
- **ASCM Art. 14(d) (calculation of amount of subsidy – less than adequate remuneration):** The Panel found that the USDOC acted inconsistently with ASCM Art. 14(d) by failing to consider some payments as part of the remuneration for timber paid by tenure-holders in the other provinces.
- **ASCM Art. 14(d) (calculation of amount of subsidy – use of certain benchmarks):** The Panel rejected Canada's arguments that (i) the Washington log benchmark used by the USDOC was *per se* inconsistent with ASCM Art. 14(d) because of the differences in market conditions between Washington and British Columbia; and (ii) the USDOC acted inconsistently with ASCM Art. 14(d) by failing to make an adjustment for the higher cost incurred by the British Columbia respondents for transporting lumber to major lumber markets. The Panel found, however, that the USDOC had acted inconsistently with ASCM Art. 14(d) by failing to make adjustments for several factors to ensure that the Washington log benchmark was comparable with the financial contribution at issue.
- **ASCM Art. 14(d) (calculation of amount of subsidy)**: The Panel upheld Canada's claim under ASCM Art. 14(d), finding that in the context of the particular facts of this case, by setting the negative comparison results to zero, the USDOC failed to assess the adequacy of remuneration in relation to the prevailing market conditions of the Crown timber provided to the investigated producers by New Brunswick and British Columbia.
- **ASCM Art. 1.1(a)(1)(iv) (definition of a subsidy – "entrusts" or "directs")**: The Panel found that the USDOC acted inconsistently with ASCM Art. 1.1(a)(1) (iv) in determining that the Governments of Canada and British Columbia directed or entrusted log sellers to provide goods to Canadian producers.
- **ASCM Art. 1.1(a)(1)(i) (definition of a subsidy – financial contribution):** The Panel found that the USDOC had not provided a reasoned and adequate explanation for characterizing certain reimbursements as financial contributions in the form of grants under ASCM Art. 1.1(a)(1)(i).

1 *United States – Countervailing Measures on Softwood Lumber from Canada.* Panel report subject to pending appeal.
2 Other issues addressed: ASCM Arts. 1.1(b) and 14(d) (existence of benefit); ASCM Art. 2.1 (specificity); unwritten measures – measures as present and continued application, or ongoing conduct.

US – DIFFERENTIAL PRICING METHODOLOGY[1] (DS534)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Canada*	*ADA Arts. 1, 2.1 and 2.4.2*	Establishment of Panel	*9 April 2018*
			Circulation of Panel Report	*9 April 2019*
Respondent	*United States*		Notification of appeal	*4 June 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Anti-dumping measures imposed by the United States Department of Commerce (USDOC) following an investigation.
- **Product at issue:** Certain softwood lumber products from Canada.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Art. 2.4.2 (dumping – identification of pattern):** The USDOC found "a single pattern" of export prices "which differed significantly among different purchasers, regions and time periods". This pattern included export prices to purchasers, regions or time periods that differed significantly because they were significantly higher than export prices to other purchasers, regions or time periods. The parties disagreed on whether, as a matter of law, the pattern clause permits an investigating authority to find such a "pattern". The Panel found that (i) in applying the differential pricing methodology (DPM), and specifically under the ratio test, the USDOC had acted inconsistently with the second sentence of ADA Art. 2.4.2 because it had aggregated differences in export prices across unrelated categories, i.e. purchasers, regions and time periods to identify a single pattern of export prices which differed significantly among different purchasers, regions and time periods; but that (ii) Canada had not established that in applying the DPM the USDOC had acted inconsistently with the second sentence of ADA Art. 2.4.2 by including, in the pattern, export transactions to those purchasers, regions or time periods whose prices differed significantly because they were significantly higher relative to export prices to other purchasers, regions or time periods.
- **ADA Art. 2.4.2 (dumping – zeroing):** The parties disagreed on whether (i) zeroing is permissible under the second sentence of ADA Art. 2.4.2; and (ii) the dumping margin determined under the W-W methodology provided in the first sentence of Art. 2.4.2, and that determined pursuant to the second sentence of Art. 2.4.2, will be mathematically equivalent in every case if zeroing is prohibited under the W-T methodology. The Panel found that, if the conditions set out in the second sentence of ADA Art. 2.4.2 are met, an investigating authority is permitted to apply the W-T methodology to the pattern transactions, but must apply the weighted average-to-weighted average (W-W) or transaction-to-transaction (T-T) methodology to the non-pattern transactions. According to the Panel, the first sentence of ADA Art. 2.4.2 does not cease to apply just because an investigating authority is permitted by the second sentence to apply the W-T methodology to the pattern transactions that cannot be taken into account appropriately under the W-W or T-T methodology. Instead, the W-W or the T-T methodology must be applied to the non-pattern transactions, which may be taken into account appropriately under these normal methodologies. The Panel concluded that Canada had failed to establish that the USDOC acted inconsistently with the second sentence of ADA Art. 2.4.2 by using zeroing under the W-T methodology.

1 *United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada*. Panel report subject to pending appeal.
2 Other issues addressed: Consequential claims under ADA Arts. 1 and 2.1 and GATT Arts. VI:1 and VI:2.

PAKISTAN – BOPP FILM (UAE)[1]
(DS538)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United Arab Emirates*	*ADA Arts. 1, 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 2.4, 3.1, 3.2, 3.4, 3.5, 5.2, 5.3, 5.8, 5.10, 6.2, 9.1, 9.3, 11.1, 11.3, 11.4, 12.1, 12.2, 12.3 and 18.1*	Establishment of Panel	*28 May 2018*
			Circulation of Panel Report	*18 January 2021*
			Notification of appeal	*22 February 2021*
Respondent	*Pakistan*	*GATT Arts. VI:1 and VI:2*		

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Pakistan's anti-dumping authority's, the National Tariff Commission (NTC), final determination and sunset review determination.
- **Product at issue:** Biaxially oriented polypropylene (BOPP) film from the United Arab Emirates (UAE).

2. SUMMARY OF KEY PANEL FINDINGS

Final determination

- **ADA Art. 5.3 (initiation of investigation – temporal scope of evidence):** The Panel considered that the "sufficient" evidence used pertain to current dumping, injury, and causation. The Panel found that Pakistan acted inconsistently with Art. 5.3 by failing to assure itself that there was sufficient evidence to justify initiation of an investigation.
- **ADA Art. 2.1 (determination of dumping– temporal scope of evidence):** The Panel noted the temporal gap between the period of investigation (POI) and the time of initiation and final determination, and that the NTC did not attempt to update the POI nor provided any discussion of this choice. The Panel found that in making its determination of dumping, the NTC failed to ascertain the existence of current dumping, as required by Art. 2.1.
- **ADA Art. 3.1 (determination of injury – temporal scope of evidence):** The Panel found that Pakistan failed to base its determination of injury on "positive evidence", i.e. evidence of current injury. The Panel thus found that the NTC acted inconsistently with Art. 3.1.
- **ADA Arts. 2.2, 2.2.1, 2.2.1.1, and 2.2.2 (choice of cost data):** The Panel rejected the UAE's claim that Pakistan acted inconsistently with Arts. 2.2, 2.2.1, 2.2.1.1, and 2.2.2 because, to determine whether sales were made in the ordinary course of trade, the NTC relied on a set of cost data submitted by the investigated exporter (Taghleef) that the UAE considered more general than another data set on cost of production and sale.
- **ADA Art. 2.4 (level of trade adjustment):** The Panel concluded that the Pakistan had not acted inconsistently with Art. 2.4 in denying Taghleef's request for an adjustment for differences in the level of trade on the basis that it was not substantiated with evidence.
- **ADA Arts. 3.1 and 3.2 (determination of injury – volume and effect of dumped imports):** The Panel found that the NTC acted inconsistently with Arts. 3.1 and 3.2, as it failed to make an objective examination in considering: (i) whether there had been a significant increase in imports in absolute terms and relative to domestic production; and (ii) whether the effect of the dumped imports on prices were significant price undercutting and significant price depression.
- **ADA Arts. 3.1 and 3.4 (determination of injury – examination of the impact of the dumped imports on the domestic industry):** The Panel found that the NTC acted inconsistently with Arts. 3.1 and 3.4, by failing to (i) evaluate the magnitude of the margin of dumping, thus failing to evaluate all injury factors listed in Art. 3.4; (ii) carry out an objective examination of seven of these factors and provide a reasoned and adequate explanation for its conclusions; and (iii) explain how it took into account the positive trends in its evaluation of the overall impact of the dumped imports on the domestic industry.
- **ADA Arts. 3.1 and 3.5 (determination of injury – causation):** The Panel concluded that, as the findings underlying the NTC's causation analysis were inconsistent with Arts. 3.1, 3.2 and 3.4, the causation analysis was inconsistent with Arts. 3.1 and 3.5
- **ADA Art. 5.10 (duration of the original investigation):** The Panel rejected the UAE's claim that Pakistan acted inconsistently with Art. 5.10 by exceeding the 18-month time-limit applying to original investigations.

Sunset review determination

- **ADA Arts. 11.3 (duration and review of anti-dumping duties – likelihood of dumping and injury):** The Panel found that the NTC's determination that dumping was likely to continue or recur was inconsistent with Art. 11.3, because the NTC: (i) relied upon a dumping margin calculated using a normal value constructed inconsistently with Art. 2; (ii) did not explain how its finding that major export destinations of the investigated countries remained the same/similar related to its determination; and (iii) relied on a finding of exportable surplus not based on positive evidence, without explaining how the data supported its conclusion. The Panel also found that the NTC's likelihood of injury determination was inconsistent with Art. 11.3, because the NTC based its findings on a series of assumptions not grounded in positive evidence, without reasoned and adequate explanations of why the developments it foresaw were likely to occur, rather than merely possible.
- **ADA Art. 11.4, second sentence (sunset review):** The NTC concluded the sunset review in more than 12 months. The Panel found that, in the absence of abnormal circumstances, Pakistan acted inconsistently with Art. 11.4.

3. OTHER ISSUES[2]

- **DSU Art. 19.1** The Panel suggested that Pakistan withdraw the anti-dumping measures imposed on BOPP film from the UAE, but declined to suggest that Pakistan refund the anti-dumping duties already paid.

1 *Pakistan – Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates.* Panel Report subject to pending appeal.
2 Additional working procedures on business confidential information (BCI); written procedure in lieu of second substantive meeting; panel's duties under DSU Art. 12.11 (S&D consideration) (developing country Members); judicial economy; ADA Art. 6.2 (defence of interested parties' interests).

US – ANTI-DUMPING AND COUNTERVAILING DUTIES (KOREA)[1] (DS539)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Korea*	*ADA Art. 6.8*	Establishment of Panel	*28 May 2018*
			Circulation of Panel Report	*21 January 2021*
Respondent	*United States*		Notification of appeal	*19 March 2021*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping and countervailing duty measures imposed by the US Department of Commerce (USDOC) in several investigations and administrative reviews (as applied); domestic law provisions and an alleged unwritten measure relating to the use of facts available and the drawing of adverse inferences (as such)
- **Product at issue:** Certain Corrosion-Resistant Steel Products, certain Cold-Rolled Steel Flat Products, certain Hot-Rolled Steel Flat Products, and Large Power Transformers from Korea

2. SUMMARY OF KEY PANEL FINDINGS

Anti-dumping measures imposed on Corrosion-Resistant Steel Products

- **ADA Art. 6.8 (evidence – facts available):** The USDOC used facts available on the basis that necessary information was not on the record. The Panel found that the USDOC had acted inconsistently with Art. 6.8 and Annex II by not taking all reasonable steps that would be expected from an objective and unbiased authority to specify in detail the information requested and the manner in which that information should be structured.

Anti-dumping measures imposed on certain Cold-Rolled Steel Flat Products

- **ADA Art. 6.8 (evidence – facts available):** The USDOC used facts available due to an alleged failure by a company to demonstrate the arm's-length nature of certain services provided by an affiliate. The Panel found that the USDOC had acted inconsistently with Art. 6.8 and Annex II by not taking into account the information concerning affiliated party transactions that was submitted. The USDOC also used facts available due to an alleged misreporting of some products under the relevant control numbers for certain home-market and US sales. The Panel found that the USDOC had acted inconsistently with Art. 6.8 for some home market sales, but not for others. For the latter, the Panel found that the USDOC had selected the replacement facts inconsistently with Art. 6.8, by failing to take into account all the information that was properly before it.

Anti-dumping measures imposed on Certain Hot-Rolled Steel Flat Products

- **ADA Art. 6.8 (evidence – facts available):** The USDOC used facts available due to an alleged failure by a company to demonstrate the arm's-length nature of certain services provided by an affiliate. The Panel found that the USDOC had acted inconsistently with Art. 6.8 and Annex II by not specifying in detail the information concerning the affiliates' contracts with unaffiliated customers as soon as possible after the initiation.

Countervailing duty measures imposed on Certain Cold-Rolled Steel Flat Products

- **ASCM Art. 12.7 (evidence – facts available):** The USDOC used facts available due to an alleged failure by a company to report certain cross-owned affiliate input suppliers. The Panel found that the USDOC had not erred in finding that the company refused access to or otherwise did not provide necessary information. However, the USDOC had acted inconsistently with Art. 12.7 because in selecting the replacement facts it had not taken into account all the information that was properly before it and had made an assumption unsupported by positive evidence that the inputs supplied by the cross-owned affiliates discovered at verification were "primarily dedicated" to the production of the downstream product. The USDOC also used facts available due to an alleged failure by a company to report a facility located in a Free Economic Zone. The Panel found that the USDOC had acted inconsistently with Art. 12.7 because it had erroneously disregarded the Government of Korea's response on this issue. The USDOC also used facts available due to an alleged failure by an affiliated trading company to provide requested information about the use of certain loans. The Panel found that the USDOC had acted inconsistently with Art. 12.7 because it had not taken into account information that had been submitted.

Countervailing duty measures imposed on Certain Hot-Rolled Steel Flat Products

- **ASCM Art. 12.7 (evidence – facts available):** The USDOC used facts available due to (i) an alleged failure by a company to report certain cross-owned affiliate input suppliers. Same; (ii) an alleged failure by a company to report a facility located in a Free Economic Zone; and (iii) an alleged failure by an affiliated trading company to provide requested information about the use of certain loans. The Panel found that with respect to these three issues, the USDOC had acted inconsistently with Article 12.7.

Anti-dumping duties imposed on Large Power Transformers

- **ADA Art. 6.8 (evidence – facts available):** In several administrative reviews, the USDOC used facts available in respect of different issues concerning reporting by a company. The Panel found that the USDOC had acted inconsistently with Annex II and Art. 6.8 for different reasons.

1 *United States – Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available.* Panel Report subject to pending appeal.

INDIA – EXPORT RELATED MEASURES[1]
(DS541)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ASCM Arts. 1, 3.1(a) and 27; Annexes I(g), I(h) and I(i)*	Establishment of Panel	*28 May 2018*
			Circulation of Panel Report	*31 October 2019*
Respondent	*India*		Notification of appeal	*19 November 2019*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Exemptions from, or reductions of, customs duties or taxes, and granting by the government of India of freely transferable notes (scrips) to be used to satisfy certain liabilities vis-à-vis the government. The United States challenged five measures: (i) Export Oriented Units Scheme and Sector-Specific (EOU/EHTP/BTP) Schemes; (ii) Merchandise Exports from India Scheme (MEIS); (iii) Export Promotion Capital Goods (EPCG) Scheme; (iv) Special Economic Zones (SEZ) Scheme; and (v) Duty-Free Imports for Exporters Scheme (DFIS).

- **Products at issue:** All types of goods (for EOU/EHTP/BTP Schemes); capital goods (for the EPCG Scheme); specific selections of goods (for the DFIS and the MEIS).

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ASCM Art. 27.2(b) (special and differential treatment of developing countries):** The Panel rejected India's argument that following its graduation from Art. 27.2(a) and Annex VII(b), the prohibition in Art. 3.1(a) still did not apply to its subsidy schemes, as a result of Art. 27.2(b). India did not fall under Art. 27.2, because (i) it had graduated from Annex VII(b) and ASCM Art. 27.2(a); and (ii) Art. 27.2(b) had expired on 1 January 2003, also for Members graduating from Annex VII(b).

- **ASCM footnote 1 (measures not deemed to be a subsidy):** The Panel rejected India's argument that the customs duties and excise taxes under the EOU/EHTP/BTP Schemes and the EPCG Scheme, and the MEIS scrips had to be deemed not to be subsidies in application of footnote 1. The Panel found that these measures did not meet the conditions set out in footnote 1 read together with Annexes I(g), I(h), and I(i). Some of the exemptions under the DFIS met these conditions and were deemed not to be subsidies.

- **ASCM Art. 1.1(a)(1)(ii) (revenue foregone):** The Panel found that India had foregone revenue otherwise due within the meaning of Art. 1.1(a)(1)(ii), and therefore provided a financial contribution by (i) exempting from customs duties the importation of goods under the EOU/EHTP/BTP Schemes; (ii) exempting from customs duties the importation of capital goods under the EPCG Scheme; (iii) exempting from customs duties and certain taxes the importation or exportation of goods and allowing entrepreneurs to deduct profits and gains from exports from the taxable income, under the SEZ Scheme; (iv) exempting from customs duties the importation of goods under certain conditions of the DFIS.

- **ASCM Art. 1.1(a)(1)(i) (direct transfer of funds):** The Panel concluded that India provided a direct transfer of funds within the meaning of Art. 1.1(a)(1)(i), and therefore a financial contribution, by providing MEIS scrips that could either be used to offset certain liabilities *vis-à-vis* the government, or transferred to third parties for consideration.

- **ASCM Art. 1.1(b) (benefit):** The Panel found that the duty and tax exemptions and deductions under the EOU/EHTP/BTP Schemes, the EPCG Scheme, the SEZ Scheme and the DFIS, as well as the MEIS scrips conferred a benefit on their recipients, by making them better off than they would be, in the market, absent those exemptions, deductions or transfer of funds.

- **ASCM Art. 3.1(a) (prohibited subsidies – export subsidies):** The Panel found that each of the challenged subsidies was contingent in law upon export performance, and therefore prohibited by Art. 3.1(a).

1 *India – Export Related Measures*. Panel report subject to pending appeal.

2 Other issues addressed: single substantive meeting of the Panel with the parties; partially open meeting of the Panel with the parties; sufficiency of panel request (DSU Art. 6.2); whether ASCM Art. 4 applied to the challenged measures; sufficiency of statement of available evidence (ASCM Art. 4.2); panel's duties to indicate the form in which account has been taken of S&D considerations (DSU Art. 12.11); determination of time-period for withdrawal of the subsidies (ASCM Art. 4.7).

US – TARIFF MEASURES[1]
(DS543)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*GATT Arts. I:1, II:1 and XX* *DSU Art. 12.7*	Establishment of Panel	*28 January 2019*
			Circulation of Panel Report	*15 September 2020*
Respondent	*United States*		Notification of appeal	*26 October 2020*

1. MEASURE AND PRODUCT AT ISSUE

- **Measures at issue:** Additional *ad valorem* duties imposed by the United States on two lists (List 1 and List 2) of products imported from China

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. I:1 (most-favoured-nation treatment):** The Panel found that the additional duties applied only to products from China and thus failed to accord to products originating in China an advantage granted to the like product originating in all other WTO Members.

- **GATT Art. II:1 (schedules of concessions):** The Panel found that the additional duties were ordinary customs duties applied in excess of the rates to which the United States bound itself in its Schedule, and accorded imports from China "less favourable treatment" than that provided in the United States' Schedule.

- **GATT Art. XX(a) (exceptions – necessary to protect public morals):** The Panel considered that the "standards of right and wrong" invoked by the United States (including norms against theft, misappropriation and unfair competition) could, "at least at a conceptual level", be covered by the term "public morals" within the meaning of GATT Art. XX(a). The Panel focused its analysis on the contribution of the measures to the pursued public morals objective as invoked by the United States. The Panel found that the United States had not provided an explanation that demonstrated a genuine relationship of ends and means between the imposition of duties on the products and the public morals objective as invoked by the United States.

3. OTHER ISSUES[2]

- **DSU Art. 12.7 (settlement of the matter):** The Panel rejected the United States' argument that the parties had agreed to "settle the matter outside the WTO system", had thus found a settlement of the matter within the meaning of DSU Art. 12.7, and that, consequently, the Panel should reject China's request for legal findings on the measures at issue. The Panel considered that that the parties had not reached a mutually agreed solution that would deprive China of its right to adjudication and entitlement to recommendations and rulings by the Panel.

- **DSU Art. 6.2 (amended measures):** The United States argued that the increase of the rate of additional duties on List 2 products from 10% to 25% fell outside the Panel's terms of reference, because it did not exist when the Panel was established. The Panel found that the increase of the rate of additional duties was an amendment that did not change the essence of the measure identified in China's panel request, and that it was covered by the Panel's terms of reference.

1 *United States – Tariff Measures on Certain Goods from China*. Panel report subject to pending appeal.
2 Other issues addressed: request to reject exhibit as untimely filed.

US – STEEL AND ALUMINIUM (CHINA), US – STEEL AND ALUMINIUM (NORWAY), US – STEEL AND ALUMINIUM (SWITZERLAND), US – STEEL AND ALUMINIUM (TURKEY)[1]

(DS544, DS552, DS556, DS564)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainants	*China, Norway, Switzerland, Türkiye*	*GATT Arts. I:1, II:1, XI:1 and XXI(b)(iii)*	Establishment of Panels	*21 November 2018 (DS544; DS552; DS564)* *4 December 2018 (DS556)*
			Circulation of Panel Reports	*9 December 2022*
Respondent	*United States*		Notifications of appeal	*26 January 2023*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Duties and related measures imposed by the United States on steel and aluminium imports under Section 232 of the Trade Expansion Act of 1962, as amended.
- **Product at issue:** Steel and aluminium products.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. II:1 (schedules of concessions):** The Panels found that the duties on steel and aluminium were inconsistent with Art. II:1 as they exceeded the bound tariff rates in the United States' WTO Schedule of Concessions.
- **GATT Art. I:1 (most-favoured-nation treatment):** The Panels found that exemptions from the duties granted to steel and aluminium products from certain countries were inconsistent with the requirement of most-favoured-nation treatment under Art. I:1.
- **GATT Art. XI:1 (prohibition on quantitative restrictions):** The Panels found that quotas on steel and aluminium products from certain countries were inconsistent with the requirement to eliminate quantitative restrictions under Art. XI:1 (only in DS552; DS556; DS564).
- **GATT Art. XXI(b)(iii) (national security exception):** The Panels did not find based on the evidence and arguments submitted by the parties that the measures were "taken in time of war or other emergency in international relations". Accordingly, the Panels concluded that the inconsistencies of the measures at issue with certain provisions of the GATT were not justified under Art. XXI(b)(iii).

3. OTHER ISSUES

- Based on evidence of the design and application of the measures at issue, the Panels concluded that they were sought, taken, or maintained pursuant to Art. XXI of the GATT within the meaning of Art. 11.1(c) SA. The Panels therefore found that the SA did not apply to the measures at issue and did not make findings on the claims under the SA raised by the complainants.

1 *United States – Certain Measures on Steel and Aluminium Products.* Panel Reports subject to pending appeals.

KOREA – STAINLESS STEEL BARS[1] (DS553)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Japan*	*ADA Arts. 6.5, 6.8, 11.3 and 11.4*	Establishment of Panel	*29 October 2018*
			Circulation of Panel Report	*30 November 2020*
Respondent	*Korea*		Notification of appeal	*22 January 2021*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Third sunset review by the Korean investigating authority (KIA) of anti-dumping duties on certain stainless steel bars (SSB) from Japan.
- **Product at issue:** Certain stainless steel bars (SSB) from Japan

2. SUMMARY OF KEY PANEL/AB FINDINGS[2]

- **ADA Art. 11.3 (review of anti-dumping duties – likelihood of recurrence of injury – price and volume effects):** Japan argued the KIA's conclusion that "it is highly likely that once the anti-dumping measures are terminated, a drop in the price of the product under investigation and an increase in imports will again cause material injury to the domestic industry" rested on a defective analysis of the likely consequences of the Japanese price drop. The Panel considered that (i) the KIA had failed to engage in an unbiased and objective evaluation of the facts when concluding that domestic price competitiveness would be weakened by the Japanese pricing level resulting from the removal of the anti-dumping duty from the average Japanese resale price; and that (ii) by failing to address how the significantly higher-priced Japanese imports could increase in a price-sensitive market, the KIA's determination had failed to resolve a tension in its own findings, and accordingly, it did not reflect an unbiased and objective evaluation of the facts on this point. In view of the structure and flow of the KIA's findings that led to the likelihood-of-injury determination, the Panel considered that the KIA's failure to undertake an unbiased and objective evaluation of the facts on the consequences of the drop in Japanese prices invalidated this determination and gave rise to a violation of ADA Art. 11.3.
- **ADA Art. 11.3 (review of anti-dumping duties – likelihood of recurrence of injury – other potential injury factors):** Japan claimed that the KIA erred by finding that the expiry of the anti-dumping duties would likely lead to a recurrence of injury without referring to three other factors that could instead explain the likely recurrence of injury (impact of the large volume of low-priced imports from third countries; cost of raw materials; weak demand in the domestic and export markets). The Panel found that Japan had failed to demonstrate that the KIA acted inconsistently with ADA Art. 11.3 regarding the cost of raw materials and the weak demand in the domestic and export markets. The Panel considered that it did not need address Japan's claim insofar as it related to the impact of the third-country imports.
- **ADA Art. 11.3 (review of anti-dumping duties – likelihood of recurrence of injury – capacity utilization):** Japan claimed that the KIA's finding pertaining to capacity utilization was inconsistent with ADA Art. 11.3 because the direct evidence submitted by the Japanese exporters on their production capacity had been disregarded, without justification, in favour of the production capacity data of the International Stainless Steel Forum (ISSF). The Panel rejected Japan's argument to the extent that Japan sought to fault the KIA simply because the KIA relied on a broader product scope than the "product under investigation" when determining Japan's capacity utilization rate. However, the Panel found that the KIA's evaluation of the facts leading to its finding had not been unbiased and objective because the KIA had rejected the figures submitted by the Japanese exporters for failing to comply with certain parameters of which they had not been properly informed, and that this failure invalidated the KIA's overall likelihood-of-injury determination, giving rise to a violation of ADA Art. 11.3.
- **ADA Art. 6.8 (evidence – facts available):** The Panel found that, for the KIA, the production capacity of three participating Japanese exporters comprised necessary information under ADA Art. 6.8, and that the KIA had recourse to the "facts available" under ADA Art. 6.8 in respect of this necessary information. The Panel concluded that the KIA acted inconsistently with ADA Art. 6.8 by having recourse to the "facts available" in respect of Japan's production capacity, because, since the KIA had failed to adequately inform the Japanese exporters of its updated parameters for the "necessary information", the Japanese exporters could not be said to have not provided, or otherwise refused access to, necessary information.

1 *Korea – Sunset Review of Anti-Dumping Duties on Stainless Steel Bars.* Panel report subject to pending appeal.
2 Other issues addressed: terms of reference (DSU Art. 6.2 and ADA Art. 17.4); exhibits on the record in the underlying review; ADA Art. 6.5 (evidence – confidential information); judicial economy.

CHINA – ADDITIONAL DUTIES (US)[1]
(DS558)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*SA Arts. 8.2 and 11.1(c)* *GATT Arts. I:1, II:1(a), II:1(b) and XIX:3(a)*	Establishment of Panel	*21 November 2018*
			Circulation of Panel Report	*16 August 2023*
Respondent	*China*		Notification of appeal	*18 September 2023*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Additional duties imposed by China on certain products originating in the United States.
- **Products at issue:** (i) Fresh fruit, dried fruit, and nut products; (ii) Wine; (iii) Denatured ethyl alcohol; (iv) American ginseng; (v) Seamless steel tubes; (vi) Meat of swine and its products; and (vii) aluminium waste.

2. SUMMARY OF KEY PANEL FINDINGS

- **SA Art. 11.1(c) (applicability of the SA); SA Art. 8.2 and GATT Art. XIX:3(a) (right to rebalance):** The Panel considered that the applicability of SA Art. 8.2 and GATT Art. XIX:3(a) to China's additional duties measure depended on the characterization under the SA of the United States' measures in response to which it was adopted. Based on evidence of the design and application of the United States' measures, the Panel concluded that they were sought, taken, or maintained pursuant to a provision of the GATT other than GATT Art. XIX within the meaning of SA Art. 11.1(c), and thus did not fall within the scope of application of the SA. The Panel consequently found that SA Art. 8.2 and GATT Art. XIX:3(a) did not apply to China's additional duties measure, as the rebalancing rights under those two provisions are unavailable in respect of measures to which the SA does not apply.
- **GATT Art. I:1 (most-favoured-nation treatment):** The Panel found that the additional duties measure was inconsistent with Art. I:1 because China failed to accord the advantage of lower tariff rates granted to products imported from other countries immediately and unconditionally to products originating in the United States.
- **GATT Arts. II:1(a) and II:1(b) (schedules of concessions):** The Panel found that the additional duties measure was inconsistent with Arts. II:1(a) and II:1(b) as it exceeded the bound tariff rates in China's WTO Schedule of Concessions.

3. OTHER ISSUES

- **DSU Art. 6.2 (brief summary of the legal basis of the complaint):** The Panel found that, contrary to what China had argued, the absence of references to GATT Art. XIX and the SA in the United States' panel request did not mean that the United States had failed to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. According to the Panel, Art. 6.2 does not additionally require the brief summary of the legal basis of the complaint in the panel request to include what the respondent considers to be the full or correct legal basis. The Panel held that while a failure to identify the full or correct legal basis of the complaint in the panel request may have consequences for the panel's assessment of the merits of a claim, it does not render the panel request defective in terms of Art. 6.2.

1 *China – Additional Duties on Certain Products from the United States.* Panel Report subject to pending appeal.

TURKEY – ADDITIONAL DUTIES (US)[1]
(DS561)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*SA Arts. 8.2 and 11.1(c)* *GATT Arts. I:1, II:1(a), II:1(b) and XIX:3(a)*	Establishment of Panel	*28 January 2019*
			Circulation of Panel Report	*19 December 2023*
Respondent	*Türkiye*		Notification of appeal	*26 January 2024*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Additional duties imposed by Türkiye on certain products originating in the United States.
- **Products at issue:** Various products.

2. SUMMARY OF KEY PANEL FINDINGS

- **SA Art. 11.1(c) (applicability of the SA); SA Art. 8.2 and GATT Art. XIX:3(a) (right to rebalance):** The Panel considered that the applicability of Art. 8.2 SA and Art. XIX:3(a) GATT to Türkiye's additional duties measure depended on the characterization under the SA of the United States' measures in response to which it was adopted. Based on evidence of the design and application of the United States' measures, the Panel concluded that they were sought, taken, or maintained pursuant to a provision of the GATT other than Art. XIX within the meaning of Art. 11.1(c) SA, and thus did not fall within the scope of application of the SA. The Panel consequently found that Art. 8.2 SA and Art. XIX:3(a) GATT did not apply to Türkiye's additional duties measure, as the rebalancing rights under those two provisions are unavailable in respect of measures to which the SA does not apply.
- **GATT Art. I:1 (most-favoured-nation treatment):** The Panel found that the additional duties measure was inconsistent with Art. I:1 because Türkiye failed to accord the advantage of lower tariff rates granted to products imported from other countries immediately and unconditionally to products originating in the United States.
- **GATT Arts. II:1(a) and II:1(b) (schedules of concessions):** The Panels found that the additional duties measure was inconsistent with Arts. II:1(a) and II:1(b) as it exceeded the bound tariff rates in Türkiye's WTO Schedule of Concessions.

1 *Turkey – Additional Duties on Certain Products from the United States.* Panel Report subject to pending appeal.

US – SAFEGUARD MEASURE ON PV PRODUCTS (CHINA)[1] (DS562)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*China*	*SA Arts. 2.1, 3.1, 3.2 and 4.2(b)* *GATT Art. XIX:1(a)*	Establishment of Panel	*15 August 2019*
			Circulation of Panel Report	*2 September 2021*
Respondent	*United States*		Notification of appeal	*16 September 2021*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Safeguard measure imposed by United States on imports of certain crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products (CSPV products)
- **Product at issue:** CSPV products

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. XIX:1(a) (unforeseen developments and the effect of obligations incurred):** Based on the final and supplemental reports of the US International Trade Commission (USITC), the Panel found that China did not establish that the safeguard measure failed to comply with the requirement in the GATT that imports increased "as a result of unforeseen developments and of the effect of the obligations incurred". The Panel rejected China's arguments that the USITC failed to appropriately demonstrate: (i) the existence of "unforeseen developments"; (ii) that imports of CSPV products increased as a result of those "unforeseen developments"; and (iii) that imports of CSPV products increased as a result "of the effect of the obligations incurred" by the United States.
- **SA Arts. 2.1, 3.1 and 4.2(b) (conditions for safeguard measures – causation):** The Panel found that China did not establish that the United States acted inconsistently with Arts. 2.1, 3.1, and 4.2(b) by failing to demonstrate the required "causal link" between the increased imports of CSPV products and the serious injury found to exist. The Panel rejected China's arguments that the USITC failed to (i) appropriately explain why the negative injury trends were linked to the increased imports CSPV products; and (ii) properly address the seemingly positive trends.
- **SA Arts. 2.1, 3.1 and 4.2(b) (conditions for safeguard measures – non-attribution):** The Panel found that China did not establish that the United States acted inconsistently with Arts. 2.1, 3.1, and 4.2(b) by failing to ensure that injury caused by "other" factors was not attributed to the increased imports CSPV products. The Panel rejected China's arguments that the USITC improperly dismissed (i) the alleged missteps by the domestic industry; and (ii) non-import factors that allegedly caused prices of CSPV products to decline.
- **SA Arts. 3.1 and 3.2 (treatment of confidential information):** The Panel found that China did not establish that the United States acted inconsistently with Arts. 3.1 and 3.2 as a result of the procedural and substantive treatment of confidential information during the safeguard investigation. The Panel considered, inter alia, that China's claims were based on an incorrect interpretation of Art. 3.

1 *United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products*. Panel Report subject to a pending appeal.

SAUDI ARABIA – PROTECTION OF IPRS[1]
(DS567)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Qatar*	*TRIPS Arts. 3.1, 4, 9, 14.3, 16.1, 41.1, 42 and 61*	Establishment of Panel	*18 December 2018*
			Circulation of Panel Report	*16 June 2020*
Respondent	*Kingdom of Saudi Arabia*		Notification of appeal	*28 July 2020*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Measures relating to the piracy by beoutQ, a broadcasting entity, of the proprietary content of beIN, a global sports and entertainment company headquartered in Qatar.

2. SUMMARY OF KEY PANEL FINDINGS

- **Panel's jurisdiction (DSU Arts. 3.4, 3.7 and 11):** The Panel found that it could not decline to exercise its jurisdiction over the claims of WTO-inconsistency that fell within its terms of reference and that the matter was justiciable.

- **TRIPS Arts. 41.1 (general obligations) and 42 (civil and administrative procedures and remedies):** The Panel found that Saudi Arabia had acted inconsistently with TRIPS Art. 42 by taking measures that, directly or indirectly, had had the result of preventing beIN from obtaining Saudi legal counsel to enforce its IP rights through civil enforcement procedures before Saudi courts and tribunals (i.e. anti-sympathy measures). The Panel also considered that this violation of TRIPS Art. 42 had given rise to a consequential violation by Saudi Arabia of the obligation under TRIPS Art. 41 to "ensure that enforcement procedures as specified in this Part are available under their law".

- **TRIPS Art. 61 (criminal procedures):** The Panel found that Saudi Arabia had acted inconsistently with the first sentence of TRIPS Art. 61 to "provide for criminal procedures and penalties to be applied" to the operations of beoutQ.

- **TRIPS Art. 73 (security exception):** The Panel concluded that the requirements for invoking TRIPS Art. 73(b)(iii) were met in relation to inconsistencies with TRIPS Arts. 41.1 and 42 of the "anti-sympathy measures" but not in relation to inconsistencies with TRIPS Art. 61 arising from Saudi Arabia's non-application of criminal procedures and penalties to beoutQ.

3. OTHER ISSUES

- **Respondent's refusal to interact with the complainant:** Throughout the proceeding, Saudi Arabia took the position that, consistent with its severance of all relations with Qatar (including diplomatic and consular relations), and the essential security interests that motivated it to take that action, it would not interact, or have any direct or indirect engagement, with Qatar in any way in the dispute. Regarding the organizational meeting, the Panel decided to consult with the parties exclusively through a written procedure. The Panel also modified the standard Working Procedures to reflect the special circumstances.

1 *Saudi Arabia – Measures concerning the Protection of Intellectual Property Rights*. Panel report subject to pending appeal.

MOROCCO – DEFINITIVE AD MEASURES ON EXERCISE BOOKS (TUNISIA)[1] (DS578)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Tunisia*	*ADA Arts. 2.1, 2.2, 2.2.2, 2.4, 3.1, 3.2, 3.4, 3.5, 5.3 and 12.2.2*	Establishment of Panel	*28 October 2019*
			Circulation of Panel Report	*27 July 2021*
Respondent	*Morocco*		Notification of appeal	*28 July 2021*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Definitive anti-dumping measure imposed by Morocco's Ministry of Industry, Investment, Trade and the Digital Economy (MIICEN) on imports of school exercise books from Tunisia.
- **Product at issue:** School exercise books from Tunisia.

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **ADA Arts. 2.2 and 2.2.2 (dumping determination – profits calculation):** Tunisia claimed that the MIICEN overestimated the amount for profits by including expenditure that was unrelated to profits. The Panel found that the amount used by MIICEN to construct the exercise books' normal value was not based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation and was not in conformity with Art. 2.2.2. The figure used to establish the profit margin was, therefore, not a "reasonable amount" for profits within the meaning of Art. 2.2.
- **ADA Arts. 2.2 and 2.2.2 (dumping determination – profits calculation):** MIICEN excluded from the determination of the reasonable amount for profits sales of some products on the grounds that they were subject to an export ban. The Panel found that by disregarding domestic sales of those products, MIICEN had not based the reasonable amount for profits on actual data pertaining to the production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation, violating Art. 2.2.2.
- **ADA Art. 2.2 (dumping determination – constructed normal value):** MIICEN included in the constructed normal value of certain products expenses related to the distribution cost (domestic transportation and port fees). The Panel found that these costs and fees where not part of normal value at ex-factory level, and that the amount used by MIICEN as normal value for those products was not a correct normal value within the meaning of Art. 2.2.
- **ADA Arts. 2.4 and 12.2.2 (dumping determination – fair comparison):** Tunisia claimed that the investigating authority had failed to take licences into account as a factor affecting price comparability. The Panel found that MIICEN had indicated to the relevant exporter what information was necessary to ensure a fair comparison, and that the exporter did not provide the information requested. The Panel noted that it was up to the party seeking an adjustment to demonstrate that there was a difference and that it affected price comparability. Consequently, the Panel found no violation of Art. 2.4. The Panel found that MIICEN had failed to explain clearly the reasons for the rejection of the exporter's argument to take licences into account as a factor that may affect price comparability, inconsistent with Art. 12.2.2.
- **ADA Art. 2.4 (dumping determination – fair comparison):** Tunisia contested the mathematical formula used by MIICEN to establish the margin of duping. The Panel found that the fair comparison principle applied to that mathematical formula, and that the formula was erroneous because it did not permit dumping to be expressed correctly and did not reflect the reality of the dumping attributable to each exporter, inconsistent with Art. 2.4.
- **ADA Art. 3.1 and 3.2 (injury determination):** The Panel found that MIICEN's analysis was inconsistent with Arts. 3.1 and 3.2, second sentence, because (i) it failed to reflect an objective examination of price undercutting; (ii) it failed to consider objectively whether price depression existed to a significant degree; and (iii) it ignored evidence that called into question the imports' explanatory force for price suppression.
- **ADA Arts. 3.1 and 3.4 (injury determination – domestic industry):** The Panel found that MIICEN had failed to conduct an objective examination of the developments in the domestic industry's sales, market share and production; and to examine in an objective manner whether the negative profitability of the domestic industry was due to the Tunisian imports.
- **ADA Arts. 3.1 and 3.5 (injury determination – causation):** The Panel found that the investigating authority's analysis of the causal relationship between the injury found and the Tunisian imports was inconsistent with Arts. 3.1 and 3.5, but that it had not acted inconsistently with these provisions with regard to the non-attribution examination of the injury caused by other known factors.
- **ADA Arts. 5.3 and 5.8 (initiation of investigation):** The Panel found that the investigating authority had failed to examine the accuracy and adequacy of the evidence of the export price, the normal value and the adjustment for transportation costs, inconsistent with Art. 5.3. The Panel considered that this did not automatically lead to a consequential violation of Art. 5.8.

1 *Morocco – Definitive Anti-Dumping Measures on School Exercise Books from Tunisia.* Panel Report subject to pending appeal.
2 Other issues addressed: terms of reference and requirements of panel request (DSU Art. 6.2, preliminary ruling); standard of review (ADA Art. 17.6); judicial economy; ADA Arts. 5.2 (application); ADA Art. 2.1 (dumping determination).

INDIA – SUGAR AND SUGARCANE[1]

(DS579, DS580, AND DS581)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Brazil, Australia, and Guatemala*	*AA Arts. 3.3, 7.2(b), 8, 9.1(a), 18.2 and 18.3*	Establishment of Panel	*15 August 2019*
			Circulation of Panel Report	*14 December 2021*
Respondent	*India*	*ASCM Arts. 3.1(a), 3.2, 25.1, 25.2 and 27.2(b).*	Notification of appeal	*24 December 2021*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** India's mandatory minimum prices for sugarcane and other payments or policies in favour of sugarcane producers; India's export subsidy schemes for sugar.
- **Product at issue:** Sugar and sugarcane.

2. SUMMARY OF KEY PANEL FINDINGS

- **AA Art. 7.2(b) (domestic support commitments):** The Panels found that India provided domestic support, in the form of market price support and non-exempt direct payments to sugarcane producers in excess of the applicable de minimis level, in violation of Art. 7.2(b).
- **AA Arts. 9.1(a), 3.3, 8 (export subsidies):** The Panels found that India maintains export subsidies within the meaning of Art. 9.1(a), which are inconsistent with Arts. 3.3 and 8.
- **AA Art. 18.2 (notifications) (DS580):** The Panel found that, by failing to notify to the Committee on Agriculture its domestic support to sugarcane producers, and its export subsidies for sugar, India has acted inconsistently with its obligation under Art. 18.2.
- **ASCM Arts. 3.1(a), 3.2 (prohibited subsidies-export subsidies) (DS580/DS581):** The Panels found that India has provided subsidies contingent upon export performance, inconsistently with Arts. 3.1(a) and 3.2.
- **ASCM Arts. 25.1 and 25.2 (notifications) (DS580):** The Panel found that, by failing to notify its export subsidies for sugar to the SCM Committee, India has acted inconsistently with its obligations under Arts. 25.1 and 25.2.
- **ASCM Art. 27.2(b) (special and differential treatment for developing countries) (DS580/DS581):** The Panels rejected India's argument that the "period of eight years" referred to in Art. 27.2(b) of the ASCM continued to exempt India from the application of the prohibition on export subsidies. The Panels pointed out that the eight-year transition period under Art. 27.2(b) starts from the date of entry into force of the WTO Agreement.

1 *India – Measures Concerning Sugar and Sugarcane.* Panel report subject to pending appeal.

INDIA – TARIFFS ON ICT GOODS[1]
(DS582, 584, 588)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union, Japan, Chinese Taipei*	*GATT Arts. II:1(a) and II:1(b)*	Establishment of Panel	*29 June 2020 (DS582)* *29 July 2020 (DS584)* *29 July 2020 (DS588)*
			Circulation of Panel Report	*17 April 2023*
Respondent	*India*		Notification of appeal[2]	*8 December 2023 (DS582)* *17 May 2023 (DS584)*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Duties applied by India to imports of certain information communication technology (ICT) products.
- **Product at issue:** Certain ICT products.

2. SUMMARY OF KEY PANEL FINDINGS

- **Ministerial Declaration on Trade in Information Technology Products (ITA):** The Panel considered that any undertakings made under the ITA are only operationalized within the WTO legal system through their incorporation into Members' schedules. The Panel also noted that the ITA is not a covered agreement within the meaning of the WTO agreements and the DSU. The Panel found that the source of India's legal obligations for assessing its compliance with GATT Arts. II:1(a) and (b) is not the ITA, but the tariff commitments set out in India's WTO Schedule. The Panel also held that the ITA cannot overwrite the tariff commitments set out in India's WTO Schedule, which the Panel found to not be "static" in nature.
- **VCLT Art. 48:** The Panel rejected India's invocation of error under Art. 48 as a ground for invalidating aspects of its WTO Schedule. The Panel accepted in good faith India's argument that at the time of the transposition, India had assumed that the scope of its WTO commitments was limited to the scope of its ITA undertakings and that the scope of those tariff commitments would not be expanded through the HS2007 transposition process. However, India failed to demonstrate that this assumption constituted an essential basis for its consent to be bound by its HS2007 Schedule. The Panel also found that, even assuming the existence of an error, during the transposition process India had been on notice of the possibility that the scope of its WTO tariff commitments could be expanded from the scope of its ITA undertaking. Consequently, India could not rely on Art. 48 to invalidate its WTO Schedule.
- **GATT Arts. II:1(a) and II:1(b):** For each tariff item, the Panel: (i) identified, as a legal matter, India's WTO tariff commitments; (ii) assessed, as a factual matter, the parties' assertions regarding the tariff treatment accorded by India to certain products; (iii) compared the challenged tariff treatment to India's WTO tariff commitments; and (iv) on the basis of that comparison, formed a conclusion as to whether India was acting inconsistently with Arts. II:1(a) and (b). The Panel found that India's tariff treatment was inconsistent with Arts. II:1(a) and II:1(b) because (i) certain products were subject to ordinary customs duties in excess of those set forth in India's WTO Schedule; and (ii) certain products were subject to ordinary customs duties in excess of those set forth in India's WTO Schedule unless they satisfied certain conditions that were not set forth in that WTO Schedule. In two of the three disputes (DS582 and DS588), the Panel found that India had brought the tariff treatment of certain products into conformity with its obligations under Arts. II:1(a) and II:1(b) as of 1 February 2022.

3. OTHER ISSUES[3]

- **Multiple complaints (DSU Art. 9.3):** The same panelists were appointed in the three disputes. The Panel held separate substantive meetings with the parties on consecutive dates in the three disputes, and a joint third-party session. The deadlines for submissions were harmonized.
- **GATT Decision of 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions (1980 Decision):** The Panel found that its terms of reference did not permit it to assess India's claims that (i) the complainants had violated the 1980 Decision by objecting to India's proposed rectification of its Schedule; and that (ii) their actions were an impediment to India's rights to make a formal rectification to its WTO Schedule under the 1980 Decision.

1 *India – Tariff Treatment on Certain Goods in the Information and Communications Technology Sector (DS582 and DS588); India – Tariff Treatment on Certain Goods (DS584).* Panel Reports subject to pending appeals.

2 With regard to DS588, in response to joint requests from Chinese Taipei and India, the DSB extended the deadline for the adoption or appeal of the panel report on several occasions. Further to the most recent joint request dated 14 October 2025, the DSB extended this deadline to 21 April 2026.

3 Other issues addressed: enhanced third party rights (DSU Art. 10); panel composition (DSU Arts. 8.6 and 8.7); preliminary ruling request (DSU Art. 6.2); preferential rules of origin and unconditional duty-free treatment under GATT Arts. II:1(a) and (b).

INDONESIA – RAW MATERIALS[1]
(DS592)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*European Union*	*GATT Arts. XI, XI:2(a) and XX(d)*	Establishment of Panel	*22 February 2021*
			Circulation of Panel Report	*30 November 2022*
Respondent	*Indonesia*		Notification of appeal	*8 December 2022*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** A prohibition on the exportation of nickel ore (export ban) and a domestic processing requirement (DPR) whereby all nickel ore had to be processed (purified or refined) in Indonesia.

- **Product at issue:** Nickel ore.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Arts. XI:1 and XI:2(a) (quantitative restrictions):** The Panel first considered whether the challenged measures fell within the scope of Art. XI. The Panel found that the export ban was a prohibition on the export of nickel ore. With respect to the DPR, the Panel found that it was a restriction within the meaning of Art. XI:1 even though it applied to all domestic actors irrespective of the destination of their goods. The Panel reasoned that because Art. XI:1 also covers measures prohibiting or restricting "sale for export" it applied to domestic regulations that prevent or limit the ability to sell goods for export. The Panel found that because domestic processing transforms nickel ore into another product, by requiring domestic processing prior to export, the DPR by its nature restricted the sale for export of nickel ore. The Panel concluded, therefore, that both measures were covered by the obligation in Art. XI:1.

- **GATT Art. XI:2(a) (prohibition on quantitative restrictions – authorization of temporary export restrictions):** The Panel then considered whether the measures were covered by the exemption in Art. XI:2(a) by addressing each of its constituent elements. Essential product: Indonesia argued that nickel ore was an essential product because of its use in mining, stainless steel, and electric vehicle (EV) battery production. The Panel noted that although mining was a key industry for Indonesia, the measures were adopted not to provide nickel ore to the mining sector, but rather to direct the ore mined to downstream industries. In that regard, the Panel found that the downstream industries in Indonesia were not sufficiently established to justify concluding that an input product for them, e.g. nickel ore, was essential to Indonesia within the meaning of Art. XI:2(a). Indonesia acknowledged that as at the time of the Panel's establishment, EV battery production had not yet started in Indonesia and was only projected to become a source of employment and government revenue in the future. The Panel found, therefore, that Indonesia had not satisfied its burden to demonstrate that nickel ore was an essential product. Temporarily applied: The Panel found that the export ban had been in place, albeit with short breaks that allowed exportation of low-grade nickel ore, for seven years prior to the panel's establishment while the DPR had been in place for nine years uninterrupted. The Panel found that neither measure contained any indication of, or mechanism for determining, when it might be lifted. The Panel, therefore, found that neither the export ban nor the DPR had been temporarily applied. Critical shortage: The Panel found that Indonesia had not provided any basis to determine that there was a critical shortage of low-grade nickel ore as Indonesia maintained that it could not process low-grade ore and that it was essentially waste. With respect to high-grade nickel ore the Panel found that the imbalance between the current level of reserves and projected demand pointed to by Indonesia did not rise to the level of an imminent critical shortage. GATT Art. XI: Having found that the export ban and DPR were not exempt from Art. XI:1 by virtue of Art. XI:2(a), the Panel held that they were inconsistent with Art. XI:1.

- **GATT Art. XX(d) (general exceptions – necessary to secure compliance with laws or regulations):** The Panel found that only one of the three legal provisions Indonesia identified as the laws or regulations its measures were necessary to secure compliance with – Art. 96(c) of Law No. 4/2009 on Coal and Mining – qualified as a law or regulation within the meaning of Art. XX(d). Although the Panel found that protection of the environment was a value of high importance, the Panel also found that the export ban and DPR were highly trade-restrictive measures and neither was apt to make a "material contribution" to securing compliance with Art. 96(c). Moreover, the European Union had presented an alternative measure – an export authorization system – that was found to be less trade restrictive, achieved the same level of contribution as the challenged measures to securing compliance with Art. 96(c), and was reasonably available to Indonesia. The Panel, therefore, concluded that Indonesia had failed to demonstrate that its measures were necessary within the meaning of subparagraph (d) of Art. XX.

1 *Indonesia – Measures Relating to Raw Materials*. Panel Report subject to pending appeal.

US – ORIGIN MARKING (HONG KONG, CHINA)[1] (DS597)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Hong Kong, China*	*GATT Arts. I:1 and IX:1* *ROA Arts. 2(c) and 2(d)* *TBT Art. 2.1*	Establishment of Panel	*22 February 2021*
			Circulation of Panel Report	*21 December 2022*
Respondent	*United States*		Notification of appeal	*26 January 2023*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Requirement applied by the United States that imported goods produced in Hong Kong, China may no longer be marked to indicate "Hong Kong" as their origin, but must be marked to indicate "China" (origin marking requirement).
- **Products at issue:** Hong Kong, China products imported to the United States.

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT Art. XXI(b) (self-judging nature of Art. XXI(b)(iii)):** The Panel examined the ordinary meaning of Art. XXI(b), focusing on the grammatical structure of the provision in the three authentic languages, and found that the phrase "which it considers" in the chapeau of Article XXI(b) does not extend to the subparagraphs following the chapeau. The Panel tested this meaning against the context of Art. XXI(b) and the object and purpose of the covered agreements and confirmed that it made sense. It concluded that Art. XXI(b) was only partly self-judging in that the subparagraphs were not subject solely to the invoking Member's own determination, but were, instead, subject to review by a panel. The Panel thus rejected the United States' request to (only) find that the United States had invoked its essential security interests and to so report to the DSB. Instead, the Panel proceeded to examine whether the United States had breached its obligation under GATT Art. IX:1.
- **GATT Art. IX:1:** The Panel found that the measure was a "marking requirement" within the meaning of GATT Art. IX:1, and that it applied to products from Hong Kong, China that could be presumed to be "like" products from any third country. The United States accorded products that it had determined to originate in Hong Kong, China different treatment from that which it accorded to products that it had determined (on the basis of the same rules of origin) to originate in any third country or Member. This was because it required products of Hong Kong, China to be marked with a mark of origin indicating the name of another WTO Member (China), while requiring products of any third country to be marked with a name corresponding to their origin. This difference in treatment modified the conditions of competition to the detriment of products f Hong Kong, China, because they were denied the possibility to compete in the US market under their own name, and thus to influence, develop, or benefit from, any value that may be attached, currently or in the future, to their origin. The Panel thus found that the measure was inconsistent with Art. IX:1.
- **GATT Art. XXI(b)(iii) (measures taken in time of war or other emergency in international relations):** The Panel examined the ordinary meaning of the phrase "emergency in international relations" in the three authentic languages, in the context of the other relevant provisions in the GATT 1994 and elsewhere in the covered agreements, and in light of its object and purpose. The Panel concluded that the phrase "emergency in international relations" refers to a state of affairs, of the utmost gravity, in effect a situation representing a breakdown or near-breakdown in the relations between states or other participants in international relations. The Panel noted that the focus under Art. XXI(b)(iii) is not about the underlying circumstances from which such a state of affairs appears to result, but rather about the gravity of the impact that such state of affairs has on the relations between two or more countries, or Members. According to the Panel, a determination of whether a given situation constitutes an emergency in international relations is to be examined on a case-by-case basis, considering the circumstances and context in which Article XXI(b)(iii) is invoked. The Panel found that, although there was evidence of the United States and other Members being highly concerned about the human rights situation in Hong Kong, China, the situation had not escalated to the threshold of requisite gravity to constitute an emergency in international relations that would provide justification for taking actions that were inconsistent with obligations under the GATT 1994.

3. OTHER ISSUES[2]

- **Order of analysis (GATT Art. IX:1, GATT Art. I:1, TBT Art. 2.1 and ROA Art. 2(d)):** The dispute involved claims on non-discrimination (MFN) similarly set out in GATT Art. IX:1, GATT Art. I:1, TBT Art. 2.1 and ROA Art. 2(d). The Panel began its analysis with the GATT Art. IX:1 claim, because it considered that GATT Art. IX:1 applied more specifically to origin marking requirements and thus dealt in more detail with the measure at issue.

1 *United States – Origin Marking Requirement.* Panel Report subject to pending appeal.
2 Other issues addressed: judicial economy; order of analysis (GATT Art. IX:1 and GATT Art. XXI(b)); order of analysis under GATT Art. XXI(b).

PANAMA – IMPORT MEASURES (COSTA RICA)[1]
(DS599)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Costa Rica*	*SPS Arts. 1.1, 2.2, 2.3, 5.1, 5.2, 5.3, 5.6, 5.7, 7 and 8; Annexes B, C(1)(a) and C(1)(c)*	Establishment of Panel	*27 September 2021*
			Circulation of Panel Report	*5 December 2024*
Respondent	*Panama*		Notification of appeal	*24 January 2025*

1. MEASURE AND PRODUCT AT ISSUE

- Restriction on the importation of fresh strawberries (M1); restriction on the importation of dairy and meat products (M2); restriction on the importation of fresh pineapples (M3); and restriction on the importation of fresh bananas and plantains from Costa Rica (M4).

2. SUMMARY OF KEY PANEL FINDINGS

- **SPS Art. 1.1 (SPS measure):** The Panel found all measures to be SPS measures. Regarding M4, the Panel disagreed with Panama that the measure had been taken to protect its territory from the entry, establishment or spread of the pest *Fusarium oxysporum* f. sp. *cubense* tropical race 4 (Foc TR4) and found that it had been taken to review the phytosanitary requirements that govern the importation of bananas and plantains from Costa Rica.

- **SPS Art. 5.7 (provisional measure) and SPS Arts. 5.1, 5.2, 5.3 and 2.2 (scientific basis):** The Panel found that Panama had not demonstrated that M1, M3 and M4 were provisional measures, as they were not taken in a situation of relevant insufficient scientific evidence or based on available pertinent information, including information from relevant international organizations or from other Members. In the absence of a risk assessment, these measures were also found to not have the necessary scientific basis.

- **SPS Arts. 5.6 and 2.2 (trade restrictiveness):** The Panel found all measures to be more trade restrictive than necessary to achieve Panama's appropriate level of protection (ALOP) and to protect human or plant life or health.

- **SPS Art. 2.3 (arbitrary or unjustifiable discrimination):** The Panel found that M2 discriminated arbitrarily or unjustifiably against 16 establishments in Costa Rica as compared to those in Peru and New Zealand. The Panel made a similar finding with respect to the treatment that M3 granted to pineapple from Costa Rica compared to avocado from Colombia and concluded that this measure was applied in a manner which constitutes a disguised restriction on international trade.

- **SPS Art. 8 and Annex C(1)(a) and (c) (undue delays and requests for unnecessary information):** The Panel found that in the course of the procedures under M2 Panama incurred undue delays, beyond the justified delays during the COVID-19 pandemic and requested more information than necessary for completing the relevant procedures.

- **Art. 7 and Annex B (notification obligations):** The Panel found that Costa Rica failed to demonstrate an inconsistency of M1, M2 and M3 with Panama's notification obligations.

3. OTHER ISSUES[2]

- **Terms of reference:** The Panel found that Costa Rica's claims under Annex B(5)(b) and Annex B(6)(a) to the SPS Agreement were outside its terms of reference, as well as the alleged procedures related to M1, M3 and M4.

- **Applicability of SPS obligations to approval procedures:** The Panel concluded that, contrary to Panama's view, an approval procedure subject to Art. 8 and Annex C must be applied in a manner consistent with obligations in the SPS Agreement, such as the non-discrimination obligation (Arts. 2.3 and 5.5) or the obligation for an SPS measure not to be more trade restrictive than necessary (Arts. 5.6 and 2.2). On this basis, the Panel reached the findings on M2 described above. The Panel also found that the aspect of M2 that Costa Rica demonstrated to exist did not relate to claims pertaining to the scientific basis of the measure under Arts. 5 and 2.2.

- **Judicial economy:** The Panel exercised judicial economy with respect to claims under SPS Arts. 3.1 and 5.5, GATT Arts. I:1 and XI:1, and AA Art. 4.2.

- **Expert consultation:** This is among the few SPS disputes where the Panel decided not to consult experts.

1 *Panama – Measures Concerning the Importation of Certain Products from Costa Rica*. Panel Report subject to pending appeal.
2 The Panel exercised judicial economy with regard to GATT Arts. I:1 and XI:1, AA Art. 4.2.

DOMINICAN REPUBLIC – AD ON STEEL BARS (COSTA RICA)[1] (DS605)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Costa Rica*	*ADA Arts. 2.1, 2.2, 2.2.1, 2.4, 3.1, 3.2, 3.4, 3.5, 3.7, 5.1, 5.3, 5.8, 6.1, 6.1.3, 6.2, 6.4, 6.5, 6.5.1, 6.7, 6.9, 9.1, 9.3 and 12.1.1; Annex 1* *GATT Arts. VI and VI:2(a)*	Establishment of Panel	*20 December 2021*
			Circulation of Panel Report	*27 July 2023*
Respondent	*Dominican Republic*		Notification of appeal	*18 September 2023*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Anti-dumping order issued by the La Comisión Reguladora de Prácticas Desleales en el Comercio y sobre Medidas de Salvaguardias (CDC) of the Dominican Republic.
- **Product at issue:** Imports of corrugated or deformed steel bars or rods for the reinforcement of concrete originating in Costa Rica.

2. SUMMARY OF KEY PANEL FINDINGS

- **ADA Art. 2.4 (dumping determination – comparison of export price and normal value):** In the context of determining the existence of dumping, the CDC had calculated the export price on the basis of certain sales invoiced prior to the start of the period of investigation, while normal value was based on a weighted average of sales within the investigation period. The Panel found that the CDC's reliance on sales made by the Costa Rican steel bar producer in periods spanning different timeframes in its investigation did not comply with the requirement in the second sentence of Art. 2.4 to make the comparison between the export price and the normal value "on the basis of sales made on dates as close as possible".
- **ADA Art. 2.2.1 (dumping determination – sales below costs):** In the context of determining the existence of dumping, the CDC excluded a number of sales transactions from the calculation of normal value after determining that those sales were made below costs. The CDC determined that those sales were made below costs by comparing those sales transactions against an annual weighted average of the investigation period. The Panel found that the CDC acted inconsistently with Art. 2.2.1 by failing to act fairly and objectively in determining whether prices were below unit costs "at the time of sale".
- **ADA Arts. 3.1 and 3.2 (injury determination – threat of injury):** The Panel upheld various claims made by Costa Rica in relation to the CDC's determination that imports from Costa Rica were causing a threat of material injury to the Dominican Republic's domestic industry. The Panel found that the CDC's analysis of price depression was not objective, and thus inconsistent with Arts. 3.1 and 3.2.
- **ADA Arts. 3.1 and 3.4 (injury determination – domestic industry):** The Panel agreed with Costa Rica that the CDC's examination of the impact of imports on the domestic industry was inconsistent with Arts. 3.1 and 3.4.
- **ADA Arts. 3.1 and 3.7 (injury determination):** The Panel further upheld Costa Rica's claim that the CDC's analysis of threat of material injury was inconsistent with Arts. 3.1 and 3.7, after finding that the CDC's analysis of the factors mentioned in Art. 3.7 were based on unsupported projections.
- **ADA Arts. 3.1 and 3.5 (injury determination – causation):** The Panel additionally found that the CDC's analysis of causation was inconsistent with Arts. 3.1 and 3.5 by failing to assess the issue of whether future injury could be caused by the dumped Costa Rican imports.
- **ADA Art. 6.1.3 (initiation of the investigation):** The Panel rejected Costa Rica's claim that the CDC did not present sufficient evidence to initiate the anti-dumping investigation. The Panel, however, agreed with Costa Rica that the CDC had failed to provide the "complete" text of the petition for initiation "as soon" as the investigation was initiated, as required under Art. 6.1.3.

3. OTHER ISSUES

- **Spanish:** The working language of the proceedings was Spanish and the Panel issued its interim and final reports to the parties in Spanish.

1 *Dominican Republic – Anti-Dumping Measures on Corrugated Steel Bars.* Panel Report subject to pending appeal.

EU – CVD/AD ON SSCRFP (INDONESIA)[1] (DS616)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*SCM Arts. 1.1(a)(1), 1.2, 2.1, 2.4, 12.1, 12.7, 12.8, 12.9 and 22.3* *ADA Arts. 2.4 and 6.1* *GATT Art. VI:1*	Establishment of Panel	*30 May 2023*
			Circulation of Panel Report	*2 October 2025*
Respondent	*European Union*		Notification of appeal	*21 November 2025*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Countervailing and anti-dumping duties imposed on imports from Indonesia as well as the underlying investigation that led to the imposition of those duties.
- **Product at issue:** Stainless steel cold-rolled flat products (SSCRFP).

2. SUMMARY OF KEY PANEL FINDINGS[2]

- **SCM Art. 1.1(a)(1) (support to producers):** The Panel found that the investigating authority erred by: (i) relying on its finding of "inducement" to attribute to Indonesia certain financial contributions that Chinese grantors provided to an Indonesian exporting producer; and (ii) considering these financial contributions to be subsidies under SCM Art. 1.1(a)(1).
- **SCM Art. 1.1(a)(1) and 1.1(a)(1)(iv) (public body, entrustment/direction):** The Panel found that the investigating authority erred by concluding that all nickel ore mining companies in Indonesia are "public bodies" and by concluding that Indonesia had entrusted or directed nickel ore mining companies – as private bodies – to provide nickel ore to producers in Indonesia.
- **SCM Art. 1.1(a)(1)(ii) and footnote 1 (government revenue foregone):** The Panel found that the investigating authority erred by deeming import duty exemptions for raw materials imported into bonded zones to be financial contributions and subsidies without providing Indonesia an appropriate opportunity to undertake a "further examination" pursuant to SCM Annex II(II)(2).
- **SCM Arts. 1.2, 2.1 and 2.4 (specificity):** The Panel found that the investigating authority did not err in its specificity determination with respect to an income tax holiday.
- **SCM Arts. 1.2 and 2.1 (reasoned and adequate explanation):** The Panel found that the investigating authority erred by failing to provide a reasoned and adequate explanation to justify its determination that the income tax allowance facility is specific.
- **SCM Art. 12.1 (notice and fact-finding responsibility):** The Panel found that the investigating authority did not err by not directly notifying the nickel ore mining companies of the information that was required or because it transferred its fact-finding responsibilities to Indonesia.
- **SCM Art. 12.7 (facts available):** The Panel concluded that the investigating authority erred by applying facts available on the grounds that a company did not provide necessary information related to the origin of certain imported machinery. However, the Panel also concluded that Indonesia failed to establish that the investigating authority erred by applying facts available: (i) "with respect to" the nickel ore mining companies; (ii) by attributing those companies' non-cooperation to Indonesia; (iii) with respect to certain data submitted by Indonesia related to the domestic consumption of nickel ore; and, (iv) in concluding that Indonesia failed to provide information about nickel ore prices in Indonesia. The Panel also rejected claims that the authority's resort to facts available was inconsistent with Art. 12.7 because: (i) certain requests for information imposed "unreasonable burdens" on Indonesia; and, (ii) Indonesia "acted to the best of its abilities" to respond to these requests.
- **SCM Art. 12.8 (disclosure of essential facts):** The Panel found that the investigating authority did not err: (i) in establishing a period of 21 calendar days to comment on the disclosure of essential facts; (ii) in determining that it was unable to reconcile Indonesia's domestic consumption data with company data on nickel ore purchases; (iii) in disclosing that it considered that Indonesia had owned and provided land; or (iv) by not stating that the analysis of competitive conditions was conducted using product control numbers.
- **SCM Art. 12.9 (interested parties):** The Panel concluded that the investigating authority did not err by not designating nickel ore mining companies as "interested parties".
- **SCM Art. 22.3 (public notice):** The Panel concluded that the investigating authority did not err: (i) by failing to explain why it did not seek information directly from the concerned entity; or (ii) in its final determination with respect to the income tax holiday.
- **ADA Arts. 2.4 and 6.1 and GATT Art. VI:1 (fair comparison and due allowances):** The Panel concluded that the investigating authority did not err by: (i) failing to make comparisons at the same level of trade; (ii) rejecting adjustments to the normal value to reflect transport-related expenses between a party's warehouses; (iii) adjusting the export price down to account for the involvement of related traders in the export sales; (iv) not adjusting the normal value to account for the involvement of related traders in domestic sales; or (v) failing to indicate what information was necessary to ensure a fair comparison.

1 *European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia.* Panel Report subject to pending appeal.

2 Other issues addressed: exercising economy; enhanced third-party rights (DSU Art. 10); panel's duties under DSU Art. 12.11 (S&D considerations).

EU – CVDS ON BIODIESEL (INDONESIA)[1]
(DS618)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*Indonesia*	*ASCM Arts. 1, 2, 12, 14, 15, 18, 19, 21 and 32*	Establishment of Panel	*27 November 2023*
			Circulation of Panel Report	*22 August 2025*
Respondent	*European Union*	*GATT Arts. I, VI and XVI*	Notification of appeal	*26 September 2025*

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Countervailing duties imposed on imports from Indonesia as well as certain determinations in the underlying investigation that led to the imposition of those duties.
- **Product at issue:** Biodiesel.

2. SUMMARY OF KEY PANEL FINDINGS[2]

Regarding alleged grants to domestic producers provided by the Oil Palm Plantation Fund (OPPF):

- **ASCM Art. 1.1(a)(1) (financial contribution):** The Panel found that the investigating authority did not err in determining that Indonesia provided a countervailable subsidy to biodiesel producers or in determining that the relevant disbursements provided by the OPPF to biodiesel producers constituted a financial contribution by a government or public body in the form of grants.
- **ASCM Art. 1.1(b) (benefit):** The Panel found that the investigating authority did not err in determining that the OPPF disbursements conferred a benefit to Indonesian biodiesel producers.
- **ASCM Arts. 19.1, 19.4 and 21.1 and GATT Arts. VI:3 and XVI:1 (subsidy amount):** The Panel found that the investigating authority did not err in allocating the subsidy amounts or in determining the per unit subsidy amount, nor did the authority impose countervailing duties at a level exceeding that amount.
- **ASCM Arts. 1.1(a)(1)(ii), 14, 19.3, 19.4 and 32.1 and GATT Art. VI:3 (methodology):** The Panel found that the investigating authority did not err by failing to: (i) adjust the amount of the alleged subsidy; (ii) adequately explain its benefit calculation method or ascertain as accurately as possible the amount of subsidization; or (iii) levy countervailing duties in the appropriate amounts.
- **ASCM Arts. 1.2, 2.1 and 2.4 (specificity):** The Panel found that the investigating authority did not err in determining that the OPPF disbursements conferred a specific subsidy.

Regarding alleged intervention in the market for crude palm oil (CPO):

- **ASCM Art. 1.1(a)(1)(iv) (financial contribution):** The Panel found that the investigating authority erred by determining that the Indonesian government entrusted or directed private Indonesian suppliers to sell CPO to Indonesian biodiesel producers for less than adequate remuneration.
- **ASCM Arts. 1.1(a)(2) and 32.1 (income or price support):** The Panel found that the investigating authority erred by determining that Indonesian government intervention in the CPO market qualifies as income or price support to the Indonesian biodiesel industry.
- **ASCM Art. 12.7 (facts available):** The Panel found that the investigating authority did not err by: (i) resorting to facts available in respect of information concerning PT Perkebunan Nusantara (PTPN); or (ii) disregarding information submitted by independent suppliers when making findings concerning whether PTPN supplied CPO to Indonesian biodiesel producers at artificially low prices. However, the Panel found that the investigating authority did err by resorting to facts available in respect of independent suppliers on the ground that the Indonesian government purportedly failed to ensure submission of information concerning independent suppliers.

Regarding the investigating authority's determination of a threat of material injury:

- **ASCM Arts. 15.1 and 15.2 (injury determination – price effects):** The Panel found that the investigating authority did not err by failing to: (i) ensure price comparability when examining the effect of imports on domestic prices in its finding of significant price undercutting; or (ii) consider the existence of significant price undercutting for the product as a whole. However, the Panel found that the investigating authority did err by failing to make an objective examination, on the basis of positive evidence, of the effect of imports on domestic prices and improperly finding significant price depression.
- **ASCM Art. 15.2 (injury determination – significant increase in imports):** The Panel found that the investigating authority did not err in considering that there had been a significant increase in the volume of Indonesian imports.
- **ASCM Arts. 15.1 and 15.4 (injury determination – all relevant economic factors):** The Panel found that the investigating authority erred by failing to make an objective examination, on the basis of positive evidence, of the factors having a bearing on the state of the domestic industry.
- **ASCM Arts. 15.1 and 15.7 (threat of injury determination – totality of threat factors):** The Panel found that the investigating authority erred by concluding that the fragile state of the domestic industry was likely to be aggravated by subsidised imports, given that the totality of threat factors that the Commission examined did not support that conclusion.
- **ASCM Art. 15.7 (threat of injury determination – change in circumstances):** The Panel found that the investigating authority erred by failing to properly consider the existence of a change in circumstances in its threat of injury determination.

Regarding the rejection of a price undertaking offer in the investigation:

- **GATT Art. I:1 and ASCM Arts. 15.8 and 18.3 (price undertaking offer):** The Panel found that the investigating authority did not err by declining a price undertaking offer from an Indonesian exporter after it had accepted a price undertaking in respect of Argentine exporters.

1 *European Union – Countervailing Duties on Imports of Biodiesel from Indonesia.* Panel Report subject to pending appeal.
2 Other issues addressed: judicial economy; alleged non-disclosure of certain information (ASCM Arts. 12.1, 12.3, 12.4, 12.4.1, and 15.1).

Appendices

Appendix 1

WTO DISPUTE SETTLEMENT REPORTS AND ARBITRATION AWARDS

SHORT TITLE	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 – Financial Services	Appellate Body Report, *Argentina – Measures Relating to Trade in Goods and Services*, WT/DS453/AB/R and Add.1, adopted 9 May 2016, DSR 2016:II, p. 431
Argentina – Financial Services	Panel Report, *Argentina – Measures Relating to Trade in Goods and Services*, WT/DS453/R and Add.1, adopted 9 May 2016, as modified by Appellate Body Report WT/DS453/AB/R, DSR 2016:II, p. 599
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 the 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 the 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 – Import Measures	Appellate Body Reports, *Argentina – Measures Affecting the Importation of Goods*, WT/DS438/AB/R / WT/DS444/AB/R / WT/DS445/AB/R, adopted 26 January 2015, DSR 2015:II, p. 579
Argentina – Import Measures	Panel Reports, *Argentina – Measures Affecting the Importation of Goods*, WT/DS438/R and Add.1 / WT/DS444/R and Add.1 / WT/DS445/R and Add.1, adopted 26 January 2015, as modified (WT/DS438/R) and upheld (WT/DS444/R / WT/DS445/R) by Appellate Body Reports WT/DS438/AB/R / WT/DS444/AB/R / WT/DS445/AB/R, DSR 2015:II, p. 783
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
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SHORT TITLE	CITATION
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SHORT TITLE	CITATION
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SHORT TITLE	CITATION
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India – Additional Duties (US)	Panel Report, *India – Additional Duties on Certain Products from the United States*, WT/DS585/R, 8 August 2023, mutually agreed solution reported
India – Additional Import Duties	Appellate Body Report, *India – Additional and Extra-Additional Duties on Imports from the United States*, WT/DS360/AB/R, adopted 17 November 2008, DSR 2008:XX, p. 8223
India – Additional Import Duties	Panel Report, *India – Additional and Extra-Additional Duties on Imports from the United States*, WT/DS360/R, adopted 17 November 2008, as reversed by Appellate Body Report WT/DS360/AB/R, DSR 2008:XX, p. 8317
India – Agricultural Products	Appellate Body Report, *India – Measures Concerning the Importation of Certain Agricultural Products*, WT/DS430/AB/R, adopted 19 June 2015, DSR 2015:V, p. 2459
India – Agricultural Products	Panel Report, *India – Measures Concerning the Importation of Certain Agricultural Products*, WT/DS430/R and Add.1, adopted 19 June 2015, as modified by Appellate Body Report WT/DS430/AB/R, DSR 2015:V, p. 2663
India – Autos	Appellate Body Report, *India – Measures Affecting the Automotive Sector*, WT/DS146/AB/R, WT/DS175/AB/R, adopted 5 April 2002, DSR 2002:V, p. 1821
India – Autos	Panel Report, *India – Measures Affecting the Automotive Sector*, WT/DS146/R, WT/DS175/R, and Corr.1, adopted 5 April 2002, DSR 2002:V, p. 1827
India – Export Related Measures	Panel Report, *India – Export Related Measures*, WT/DS541/R and Add.1, 31 October 2019, mutually agreed solution reported
India – Iron and Steel Products	Panel Report, *India – Certain Measures on Imports of Iron and Steel Products*, WT/DS518/R and Add.1, circulated to WTO Members 6 November 2018, appealed 14 December 2018

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India – Patents (EC)	Panel Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products, Complaint by the European Communities and their member States*, WT/DS79/R, adopted 22 September 1998, DSR 1998:VI, p. 2661
India – Patents (US)	Appellate Body Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products*, WT/DS50/AB/R, adopted 16 January 1998, DSR 1998:I, p. 9
India – Patents (US)	Panel Report, *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products, Complaint by the United States*, WT/DS50/R, adopted 16 January 1998, as modified by Appellate Body Report WT/DS50/AB/R, DSR 1998:I, p. 41
India – Quantitative Restrictions	Appellate Body Report, *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS90/AB/R, adopted 22 September 1999, DSR 1999:IV, p. 1763
India – Quantitative Restrictions	Panel Report, *India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS90/R, adopted 22 September 1999, upheld by Appellate Body Report WT/DS90/AB/R, DSR 1999:V, p. 1799
India – Solar Cells	Appellate *Body Report, India – Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS456/AB/R and Add.1, adopted 14 October 2016, DSR 2016:IV, p. 1827
India – Solar Cells	Panel Report, *India – Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS456/R and Add.1, adopted 14 October 2016, as modified by Appellate Body Report WT/DS456/AB/R, DSR 2016:IV, p. 1941
India – Sugar and Sugarcane (Australia)	Panel Report, *India – Measures Concerning Sugar and Sugarcane,* WT/DS580/R and Add.1, circulated to WTO Members 14 December 2021, appealed 24 December 2021
India – Sugar and Sugarcane (Brazil)	Panel Report, *India – Measures Concerning Sugar and Sugarcane,* WT/DS579/R and Add.1, circulated to WTO Members 14 December 2021, appealed 24 December 2021
India – Sugar and Sugarcane (Guatemala)	Panel Report, *India – Measures Concerning Sugar and Sugarcane,* WT/DS581/R and Add.1, circulated to WTO Members 14 December 2021, appealed 24 December 2021
India – Sugar and Sugarcane	**For a general citation* for all three Panel Reports in *India – Sugar and Sugarcane* above, use:** Panel Reports, *India – Measures Concerning Sugar and Sugarcane*, WT/DS580/R and Add.1 *(Australia)* / WT/DS579/R and Add.1 *(Brazil)* / WT/DS581/R and Add.1 *(Guatemala)*, circulated to WTO Members 14 December 2021, appealed 24 December 2021
India – Tariffs on ICT Goods (EU)	Panel Report, *India – Tariff Treatment on Certain Goods in the Information and Communications Technology Sector*, WT/DS582/R and Add.1, circulated to WTO Members 17 April 2023, appealed 8 December 2023
India – Tariffs on ICT Goods (Japan)	Panel Report, *India – Tariff Treatment on Certain Goods*, WT/DS584/R and Add.1, circulated to WTO Members 17 April 2023, appealed 17 May 2023
India – Tariffs on ICT Goods (Chinese Taipei)	Panel Report, *India – Tariff Treatment on Certain Goods in the Information and Communications Technology Sector*, WT/DS588/R and Add.1, circulated to WTO Members 17 April 2023
India – Tariffs on ICT Goods	**For a general citation* for all three Panel Reports in *India – Tariffs on ICT Goods* above, use:** Panel Reports, *India – Tariff Treatment on Certain Goods in the Information and Communications Technology Sector*, WT/DS582/R and Add.1 *(EU)* / WT/DS584/R and Add.1 *(Japan)* / WT/DS588/R and Add.1 *(Chinese Taipei)*, circulated to WTO Members 17 April 2023
Indonesia – Autos	Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, Corr.1 and Corr.2, adopted 23 July 1998, and Corr.3 and Corr.4, DSR 1998:VI, p. 2201
Indonesia – Autos (Article 21.3(c))	Award of the Arbitrator, *Indonesia – Certain Measures Affecting the Automobile Industry – Arbitration under Article 21.3(c) of the DSU*, WT/DS54/15, WT/DS55/14, WT/DS59/13, WT/DS64/12, 7 December 1998, DSR 1998:IX, p. 4029
Indonesia – Chicken	Panel Report, *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products*, WT/DS484/R and Add.1, adopted 22 November 2017, DSR 2017:VIII, p. 3769
Indonesia – Chicken (Article 21.5 – Brazil)	Panel Report, *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products – Recourse to Article 21.5 of the DSU by Brazil,* WT/DS484/RW and Add.1, circulated to WTO Members 10 November 2020, appealed 17 December 2020
Indonesia – Import Licensing Regimes	Appellate Body Report, *Indonesia – Importation of Horticultural Products, Animals and Animal Products*, WT/DS477/AB/R, WT/DS478/AB/R, and Add.1, adopted 22 November 2017, DSR 2017:VII, p. 3037
Indonesia – Import Licensing Regimes	Panel Report, *Indonesia – Importation of Horticultural Products, Animals and Animal Products*, WT/DS477/R, WT/DS478/R, Add.1 and Corr.1, adopted 22 November 2017, as modified by Appellate Body Report WT/DS477/AB/R, WT/DS478/AB/R, DSR 2017:VII, p. 3131
Indonesia – Iron or Steel Products	Appellate Body Report, *Indonesia – Safeguard on Certain Iron or Steel Products*, WT/DS490/AB/R, WT/DS496/AB/R, and Add.1, adopted 27 August 2018, DSR 2018:VII, p. 3393
Indonesia – Iron or Steel Products	Panel Report, *Indonesia – Safeguard on Certain Iron or Steel Products*, WT/DS490/R, WT/DS496/R, and Add.1, adopted 27 August 2018, as modified by Appellate Body Report WT/DS490/AB/R, WT/DS496/AB/R, DSR 2018:VII, p. 3707

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Japan – Agricultural Products II	Appellate Body Report, *Japan – Measures Affecting Agricultural Products*, WT/DS76/AB/R, adopted 19 March 1999, DSR 1999:I, p. 277
Japan – Agricultural Products II	Panel Report, *Japan – Measures Affecting Agricultural Products*, WT/DS76/R, adopted 19 March 1999, as modified by Appellate Body Report WT/DS76/AB/R, DSR 1999:I, p. 315
Japan – Alcoholic Beverages II	Appellate Body Report, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, p. 97
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Japan – Alcoholic Beverages II (Article 21.3(c))	Award of the Arbitrator, *Japan – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS8/15, WT/DS10/15, WT/DS11/13, 14 February 1997, DSR 1997:I, p. 3
Japan – Apples	Appellate Body Report, *Japan – Measures Affecting the Importation of Apples*, WT/DS245/AB/R, adopted 10 December 2003, DSR 2003:IX, p. 4391
Japan – Apples	Panel Report, *Japan – Measures Affecting the Importation of Apples*, WT/DS245/R, adopted 10 December 2003, upheld by Appellate Body Report WT/DS245/AB/R, DSR 2003:IX, p. 4481
Japan – Apples (Article 21.5 – US)	Panel Report, *Japan – Measures Affecting the Importation of Apples – Recourse to Article 21.5 of the DSU by the United States*, WT/DS245/RW, adopted 20 July 2005, DSR 2005:XVI, p. 7911
Japan – DRAMs (Korea)	Appellate Body Report, *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea*, WT/DS336/AB/R and Corr.1, adopted 17 December 2007, DSR 2007:VII, p. 2703
Japan – DRAMs (Korea)	Panel Report, *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea*, WT/DS336/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS336/AB/R, DSR 2007:VII, p. 2805
Japan – DRAMs (Korea) (Article 21.3(c))	Award of the Arbitrator, *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea – Arbitration under Article 21.3(c) of the DSU*, WT/DS336/16, 5 May 2008, DSR 2008:XX, p. 8553
Japan – Film	Panel Report, *Japan – Measures Affecting Consumer Photographic Film and Paper*, WT/DS44/R, adopted 22 April 1998, DSR 1998:IV, p. 1179
Japan – Quotas on Laver	Panel Report, *Japan – Import Quotas on Dried Laver and Seasoned Laver*, WT/DS323/R, 1 February 2006, mutually agreed solution reported
Korea – Alcoholic Beverages	Appellate Body Report, *Korea – Taxes on Alcoholic Beverages*, WT/DS75/AB/R, WT/DS84/AB/R, adopted 17 February 1999, DSR 1999:I, p. 3
Korea – Alcoholic Beverages	Panel Report, *Korea – Taxes on Alcoholic Beverages*, WT/DS75/R, WT/DS84/R, adopted 17 February 1999, as modified by Appellate Body Report WT/DS75/AB/R, WT/DS84/AB/R, DSR 1999:I, p. 44
Korea – Alcoholic Beverages (Article 21.3(c))	Award of the Arbitrator, *Korea – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS75/16, WT/DS84/14, 4 June 1999, DSR 1999:II, p. 937
Korea – Bovine Meat (Canada)	Panel Report, *Korea – Measures Affecting the Importation of Bovine Meat and Meat Products from Canada*, WT/DS391/R, 3 July 2012, mutually agreed solution reported
Korea – Certain Paper	Panel Report, *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia*, WT/DS312/R, adopted 28 November 2005, DSR 2005:XXII, p. 10637
Korea – Certain Paper (Article 21.5 – Indonesia)	Panel Report, *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia – Recourse to Article 21.5 of the DSU by Indonesia*, WT/DS312/RW, adopted 22 October 2007, DSR 2007:VIII, p. 3369
Korea – Commercial Vessels	Panel Report, *Korea – Measures Affecting Trade in Commercial Vessels*, WT/DS273/R, adopted 11 April 2005, DSR 2005:VII, p. 2749
Korea – Dairy	Appellate Body Report, *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, p. 3
Korea – Dairy	Panel Report, *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/R and Corr.1, adopted 12 January 2000, as modified by Appellate Body Report WT/DS98/AB/R, DSR 2000:I, p. 49
Korea – Pneumatic Valves (Japan)	Appellate Body Report, *Korea – Anti-Dumping Duties on Pneumatic Valves from Japan*, WT/DS504/AB/R and Add.1, adopted 30 September 2019, DSR 2019:XI, p. 5637
Korea – Pneumatic Valves (Japan)	Panel Report, *Korea – Anti-Dumping Duties on Pneumatic Valves from Japan*, WT/DS504/R and Add.1, adopted 30 September 2019, as modified by Appellate Body Report WT/DS504/AB/R, DSR 2019:XI, p. 5935
Korea – Procurement	Panel Report, *Korea – Measures Affecting Government Procurement*, WT/DS163/R, adopted 19 June 2000, DSR 2000:VIII, p. 3541
Korea – Radionuclides	Appellate Body Report, *Korea – Import Bans, and Testing and Certification Requirements for Radionuclides*, WT/DS495/AB/R and Add.1, adopted 26 April 2019, DSR 2019:VII, p. 3653

SHORT TITLE	CITATION
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Korea – Stainless Steel Bars	Panel Report, *Korea – Sunset Review of Anti-Dumping Duties on Stainless Steel Bars*, WT/DS553/R and Add.1, circulated to WTO Members 30 November 2020, appealed 22 January 2021
Korea – Various Measures on Beef	Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, p. 5
Korea – Various Measures on Beef	Panel Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/R, WT/DS169/R, adopted 10 January 2001, as modified by Appellate Body Report WT/DS161/AB/R, WT/DS169/AB/R, DSR 2001:I, p. 59
Mexico – Additional Duties (US)	Panel Report, *Mexico – Additional Duties on Certain Products from the United States*, WT/DS560/R, 11 July 2019, mutually agreed solution reported
Mexico – Anti-Dumping Measures on Rice	Appellate Body Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/AB/R, adopted 20 December 2005, DSR 2005:XXII, p. 10853
Mexico – Anti-Dumping Measures on Rice	Panel Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*, WT/DS295/R, adopted 20 December 2005, as modified by Appellate Body Report WT/DS295/AB/R, DSR 2005:XXIII, p. 11007
Mexico – Corn Syrup	Panel Report, *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States*, WT/DS132/R, adopted 24 February 2000, and Corr.1, DSR 2000:III, p. 1345
Mexico – Corn Syrup (Article 21.5 – US)	Appellate Body Report, *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States*, WT/DS132/AB/RW, adopted 21 November 2001, DSR 2001:XIII, p. 6675
Mexico – Corn Syrup (Article 21.5 – US)	Panel Report, *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States*, WT/DS132/RW, adopted 21 November 2001, upheld by Appellate Body Report WT/DS132/AB/RW, DSR 2001:XIII, p. 6717
Mexico – Olive Oil	Panel Report, *Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities*, WT/DS341/R, adopted 21 October 2008, DSR 2008:IX, p. 3179
Mexico – Steel Pipes and Tubes	Panel Report, *Mexico – Anti-Dumping Duties on Steel Pipes and Tubes from Guatemala*, WT/DS331/R, adopted 24 July 2007, DSR 2007:IV, p. 1207
Mexico – Taxes on Soft Drinks	Appellate Body Report, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/AB/R, adopted 24 March 2006, DSR 2006:I, p. 3
Mexico – Taxes on Soft Drinks	Panel Report, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/R, adopted 24 March 2006, as modified by Appellate Body Report WT/DS308/AB/R, DSR 2006:I, p. 43
Mexico – Telecoms	Panel Report, *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R, adopted 1 June 2004, DSR 2004:IV, p. 1537
Morocco – Definitive AD Measures on Exercise Books (Tunisia)	Panel Report, *Morocco – Definitive Anti-Dumping Measures on School Exercise Books from Tunisia*, WT/DS578/R and Add.1, circulated to WTO Members 27 July 2021, appealed 28 July 2021
Morocco – Hot-Rolled Steel (Turkey)	Appellate Body Report, *Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey*, WT/DS513/AB/R and Add.1, adopted 8 January 2020, DSR 2020:I, p. 7
Morocco – Hot-Rolled Steel (Turkey)	Panel Report, *Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey*, WT/DS513/R and Add.1, adopted 8 January 2020; appeal withdrawn by Morocco as reflected in Appellate Body Report WT/DS513/AB/R, DSR 2020:I, p. 45
Pakistan – BOPP Film (UAE)	Panel Report, *Pakistan – Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates*, WT/DS538/R and Add.1, circulated to WTO Members 18 January 2021, appealed 22 February 2021
Panama – Import Measures (Costa Rica)	Panel Report, *Panama – Measures Concerning the Importation of Certain Products from Costa Rica*, WT/DS599/R and Add.1, circulated to WTO Members 5 December 2024, appealed 24 January 2025
Peru – Agricultural Products	Appellate Body Report, *Peru – Additional Duty on Imports of Certain Agricultural Products*, WT/DS457/AB/R and Add.1, adopted 31 July 2015, DSR 2015:VI, p. 3403
Peru – Agricultural Products	Panel Report, *Peru – Additional Duty on Imports of Certain Agricultural Products*, WT/DS457/R and Add.1, adopted 31 July 2015, as modified by Appellate Body Report WT/DS457/AB/R, DSR 2015:VII, p. 3567
Peru – Agricultural Products (Article 21.3(c))	Award of the Arbitrator, *Peru – Additional Duty on Imports of Certain Agricultural Products – Arbitration under Article 21.3(c) of the DSU*, WT/DS457/15, 16 December 2015, DSR 2015:XI, p. 5845
Philippines – Distilled Spirits	Appellate Body Reports, *Philippines – Taxes on Distilled Spirits*, WT/DS396/AB/R / WT/DS403/AB/R, adopted 20 January 2012, DSR 2012:VIII, p. 4163
Philippines – Distilled Spirits	Panel Reports, *Philippines – Taxes on Distilled Spirits*, WT/DS396/R / WT/DS403/R, adopted 20 January 2012, as modified by Appellate Body Reports WT/DS396/AB/R / WT/DS403/AB/R, DSR 2012:VIII, p. 4271
Russia – Commercial Vehicles	Appellate Body Report, *Russia – Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy*, WT/DS479/AB/R and Add.1, adopted 9 April 2018, DSR 2018:III, p. 1167

SHORT TITLE	CITATION
Russia – Commercial Vehicles	Panel Report, *Russia – Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy*, WT/DS479/R and Add.1, adopted 9 April 2018, as modified by Appellate Body Report WT/DS479/AB/R, DSR 2018:III, p. 1329
Russia – Pigs (EU)	Appellate Body Report, *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union*, WT/DS475/AB/R and Add.1, adopted 21 March 2017, DSR 2017:I, p. 207
Russia – Pigs (EU)	Panel Report, *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union*, WT/DS475/R and Add.1, adopted 21 March 2017, as modified by Appellate Body Report WT/DS475/AB/R, DSR 2017:II, p. 361
Russia – Railway Equipment	Appellate Body Report, *Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof*, WT/DS499/AB/R and Add.1, adopted 5 March 2020, DSR 2020:II, p. 521
Russia – Railway Equipment	Panel Report, *Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof*, WT/DS499/R and Add.1, adopted 5 March 2020, as modified by Appellate Body Report WT/DS499/AB/R, DSR 2020:II, p. 685
Russia – Tariff Treatment	Panel Report, *Russia – Tariff Treatment of Certain Agricultural and Manufacturing Products*, WT/DS485/R, Add.1, Corr.1, and Corr.2, adopted 26 September 2016, DSR 2016:IV, p. 1547
Russia – Traffic in Transit	Panel Report, *Russia – Measures Concerning Traffic in Transit*, WT/DS512/R and Add.1, adopted 26 April 2019, DSR 2019:VIII, p. 4301
Saudi Arabia – IPRs	Panel Report, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, WT/DS567/R and Add.1, circulated to WTO Members on 16 June 2020, dispute terminated while appeal pending
Thailand – Cigarettes (Philippines)	Appellate Body Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*, WT/DS371/AB/R, adopted 15 July 2011, DSR 2011:IV, p. 2203
Thailand – Cigarettes (Philippines)	Panel Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*, WT/DS371/R, adopted 15 July 2011, as modified by Appellate Body Report WT/DS371/AB/R, DSR 2011:IV, p. 2299
Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)	Panel Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines – Recourse to Article 21.5 of the DSU by the Philippines*, WT/DS371/RW and Add.1, circulated to WTO Members 12 November 2018, appealed 9 January 2019
Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)	Panel Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines – Second Recourse to Article 21.5 of the DSU by the Philippines*, WT/DS371/RW2 and Add.1, circulated to WTO Members 12 July 2019, appealed 9 September 2019
Thailand – H-Beams	Appellate Body Report, *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/AB/R, adopted 5 April 2001, DSR 2001:VII, p. 2701
Thailand – H-Beams	Panel Report, *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/R, adopted 5 April 2001, as modified by Appellate Body Report WT/DS122/AB/R, DSR 2001:VII, p. 2741
Turkey – Additional Duties (US)	Panel Report, *Turkey – Additional Duties on Certain Products from the United States*, WT/DS561/R and Add.1, circulated to WTO Members 19 December 2023, appealed 26 January 2024
Turkey – Pharmaceutical Products (EU)	Final Panel Report as issued to the parties in *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products*, attached to Türkiye's notice of recourse to arbitration (WT/DS583/12 and Add.1)
Turkey – Pharmaceutical Products (EU) (Article 25)	Award of the Arbitrators, *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products – Arbitration under Article 25 of the DSU*, WT/DS583/ARB25 and Add.1, 25 July 2022, DSR 2022:III, p. 1731
Turkey – Rice	Panel Report, *Turkey – Measures Affecting the Importation of Rice*, WT/DS334/R, adopted 22 October 2007, DSR 2007:VI, p. 2151
Turkey – Textiles	Appellate Body Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WT/DS34/AB/R, adopted 19 November 1999, DSR 1999:VI, p. 2345
Turkey – Textiles	Panel Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WT/DS34/R, adopted 19 November 1999, as modified by Appellate Body Report WT/DS34/AB/R, DSR 1999:VI, p. 2363
Ukraine – Ammonium Nitrate	Appellate Body Report, *Ukraine – Anti-Dumping Measures on Ammonium Nitrate*, WT/DS493/AB/R and Add.1, adopted 30 September 2019, DSR 2019:X, p. 5227
Ukraine – Ammonium Nitrate	Panel Report, *Ukraine – Anti-Dumping Measures on Ammonium Nitrate*, WT/DS493/R, Add.1 and Corr.1, adopted 30 September 2019, as upheld by Appellate Body Report WT/DS493/AB/R, DSR 2019:X, p. 5339
Ukraine – Ammonium Nitrate (Article 21.3(c))	Award of the Arbitrator, *Ukraine – Anti-Dumping Measures on Ammonium Nitrate – Arbitration under Article 21.3(c) of the DSU*, WT/DS493/RPT, 8 April 2020, DSR 2020:V, p. 2041
Ukraine – Passenger Cars	Panel Report, *Ukraine – Definitive Safeguard Measures on Certain Passenger Cars*, WT/DS468/R and Add.1, adopted 20 July 2015, DSR 2015:VI, p. 3117
US – 1916 Act	Appellate Body Report, *United States – Anti-Dumping Act of 1916*, WT/DS136/AB/R, WT/DS162/AB/R, adopted 26 September 2000, DSR 2000:X, p. 4793

SHORT TITLE	CITATION
US – 1916 Act (EC)	Panel Report, *United States – Anti-Dumping Act of 1916, Complaint by the European Communities*, WT/DS136/R and Corr.1, adopted 26 September 2000, upheld by Appellate Body Report WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:X, p. 4593
US – 1916 Act (Japan)	Panel Report, *United States – Anti-Dumping Act of 1916, Complaint by Japan*, WT/DS162/R and Add.1, adopted 26 September 2000, upheld by Appellate Body Report WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:X, p. 4831
US – 1916 Act	**For a general citation* for both Panel Reports in *US – 1916 Act* above, use:** Panel Reports, *United States – Anti-Dumping Act of 1916*, WT/DS136/R and Corr.1 *(EC)* / WT/DS162/R and Add.1 *(Japan)*, adopted 26 September 2000, upheld by Appellate Body Report WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:X, p. 4593 / DSR 2000:X, p. 4831
US – 1916 Act (Article 21.3(c))	Award of the Arbitrator, *United States – Anti-Dumping Act of 1916 – Arbitration under Article 21.3(c) of the DSU*, WT/DS136/11, WT/DS162/14, 28 February 2001, DSR 2001:V, p. 2017
US – 1916 Act (EC) (Article 22.6 – US)	Decision by the Arbitrator, *United States – Anti-Dumping Act of 1916, Original Complaint by the European Communities – Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS136/ARB, 24 February 2004, DSR 2004:IX, p. 4269
US – Animals	Panel Report, *United States – Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina*, WT/DS447/R and Add.1, adopted 31 August 2015, DSR 2015:VIII, p. 4085
US – Anti-Dumping and Countervailing Duties (China)	Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 25 March 2011, DSR 2011:V, p. 2869
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SHORT TITLE	CITATION
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SHORT TITLE	CITATION
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SHORT TITLE	CITATION
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SHORT TITLE	CITATION
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SHORT TITLE	CITATION
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US – Zeroing (Korea)	Panel Report, *United States – Use of Zeroing in Anti-Dumping Measures Involving Products from Korea*, WT/DS402/R, adopted 24 February 2011, DSR 2011:X, p. 5239

Appendix 2

INDEX OF DISPUTES BY WTO AGREEMENT

For page references, see Appendix 3, where disputes are listed by WTO member.

ACCESSION PROTOCOL

China – Auto Parts
China – IPRs Enforcement (EU)
China – Publications and Audiovisual Products
China – Rare Earths
China – Raw Materials
EC – Fasteners (China)
EU – Footwear (China)
US – Tyres (China)
Russia – Traffic in Transit

AGREEMENT ON AGRICULTURE

- **Footnote 1**
  Indonesia – Import Licensing Regimes
  Peru – Agricultural Products
- **Art. 3 (domestic support and export subsidy commitments)**
  Art. 3.2
  China – Agricultural Producers
  India – Sugar and Sugarcane
  Korea – Various Measures on Beef
  Art. 3.3
  Canada – Dairy
  Canada – Dairy Art. 21.5 (II)
  EC – Export Subsidies on Sugar
  India – Sugar and Sugarcane
  US – FSC
  US – FSC Art. 21.5 (I)
- **Art. 4 (market access)**
  Chile – Price Band System
  Chile – Price Band System Art. 21.5
  EC – Seal Products
  India – Quantitative Restriction
  Indonesia – Chicken
  Indonesia – Chicken Art. 21.5
  Indonesia – Import Licensing Regimes
  Korea – Various Measures on Beef
  Peru – Agricultural Products
  Turkey – Rice
- **Art. 5 (special safeguard mechanism)**
  EC – Poultry
- **Art. 6 (domestic support commitments)**
  China – Agricultural Producers
- **Art. 7 (disciplines on domestic support commitments)**
  China – Agricultural Producers
  India – Sugar and Sugarcane
- **Art. 8 (export competition)**
  Canada – Dairy

EC – Export Subsidies on Sugar
US – FSC
US – FSC Art. 21.5 (I)
US – Upland Cotton Art. 21.5

- **Art. 9 (export subsidy commitments)**
  - **Art. 9.1(a)**
    Canada – Dairy
    EC – Export Subsidies on Sugar
    US – Upland Cotton
  - **Art. 9.1(c)**
    Canada – Dairy
    Canada – Dairy Art. 21.5 (I)
    Canada – Dairy Art. 21.5 (II)
    EC – Export Subsidies on Sugar
    US – FSC
- **Art. 10 (circumvention)**
  - **Art. 10.1**
    Canada – Dairy
    US – FSC
    US – FSC Art. 21.5 (I)
    US – Upland Cotton
    US – Upland Cotton Art. 21.5
  - **Art. 10.3**
    Canada – Dairy
    Canada – Dairy Art. 21.5 (II)
    EC – Export Subsidies on Sugar
    US – FSC
- **Art. 13 (due restraint)**
  Brazil – Desiccated Coconut
  US – Upland Cotton
- **Art. 18 (review)**
  - **Art. 18.2**
    India – Sugar and Sugarcane

ANTI-DUMPING AGREEMENT

- **Art. 1 (principles)**
  EC – Tube or Pipe Fittings
  Korea – Pneumatic Valves (Japan)
  Ukraine – Ammonium Nitrate
  US – 1916 Act
  US – Differential Pricing Methodology
  US – Shrimp II (Viet Nam)
- **Art. 2 (determination of dumping)**
  - **Art. 2.1**
    China – HP-SSST (Japan/European Union)
    Colombia – Frozen Fries Art. 21.5
    Dominican Republic – AD on Steel Bars (Costa Rica)
    EC – Salmon (Norway)
    Pakistan – BOPP Film (UAE)
    Ukraine – Ammonium Nitrate
    US – Differential Pricing Methodology
    US – Hot Rolled Steel
    US – Shrimp (Viet Nam)
    US – Zeroing (Japan)
  - **Art. 2.2**
    Australia – AD/CVD on Certain Products (China)
    Australia – Anti-Dumping Measures on Paper

China – Broiler Products
China – HP-SSST (Japan/European Union)
China – Broiler Products Art. 21.5
EC – Bed Linen
EU – Cost Adjustment Methodologies II (Russia)
EC – Salmon (Norway)
EC – Tube or Pipe Fittings
EU – Biodiesel
EU – Biodiesel (Indonesia)
EU – Footwear (China)
Morocco – Definitive AD Measures on Exercise Books (Tunisia)
Pakistan – BOPP Film (UAE)
Korea – Certain Paper
Thailand – H-Beams
Ukraine – Ammonium Nitrate
US – OCTG (Korea)
US – DRAMS
US – Softwood Lumber V

Art. 2.3

US – OCTG (Korea)

Art. 2.4

Argentina – Ceramic Tiles
Argentina – Poultry Anti-Dumping Duties
Colombia – Frozen Fries
Colombia – Frozen Fries Art. 21.5
Dominican Republic – AD on Steel Bars (Costa Rica)
EC – Bed Linen
EU – CVD/AD on SSCRFP (Indonesia)
EC – Fasteners (China)
Egypt – Steel Rebar
EU – Biodiesel
EU – Fatty Alcohols (Indonesia)
Morocco – Definitive AD Measures on Exercise Books (Tunisia)
Pakistan – BOPP Film (UAE)
Ukraine – Ammonium Nitrate
US – Anti-Dumping Measures on PET Bags
US – Anti-Dumping Methodologies (China)
US – Continued Zeroing
US – Differential Pricing Methodology
US – OCTG (Korea)
US – Orange Juice (Brazil)
US – Shrimp
US – Shrimp (Viet Nam)
US – Shrimp and Sawblades (China)
US – Stainless Steel
US – Softwood Lumber V
US – Softwood Lumber V Art. 21.5
US – Washing Machines
US – Zeroing (EC)
US – Zeroing (Japan)
US – Zeroing (Korea)

Art. 2.6

US – Softwood Lumber V

- **Art. 3 (determination of injury)**

Argentina – Poultry Anti-Dumping Duties
Canada – Welded Pipe
China – AD on Stainless Steel Products from Japan
China – Broiler Products Art. 21.5
China – GOES
China – GOES Art. 21.5
Colombia – Frozen Fries
EC – Bed Linen Art. 21.5

Mexico – Anti Dumping Measures on Rice
Mexico – Corn Syrup
Mexico – Corn Syrup Art. 21.5
Mexico – Steel Pipes and Tubes
Ukraine – Ammonium Nitrate
Morocco – Definitive AD Measures on Exercise Books (Tunisia)
Pakistan – BOPP Film (UAE)
US – Differential Pricing Methodology
US – Softwood Lumber VI
US – Softwood Lumber VI Art. 21.5

Arts. 3.1 & 3.2

Canada – Welded Pipe
China – AD on Stainless Steel Products from Japan
China – Autos (US)
China – Broiler Products
China – Cellulose Pulp
China – X-Ray Equipment
Dominican Republic – AD on Steel Bars (Costa Rica)
EC – Bed Linen Art. 21.5
Egypt – Steel Rebar
Korea – Pneumatic Valves (Japan)
Morocco – Definitive AD Measures on Exercise Books (Tunisia)
Pakistan – BOPP Film (UAE)
Russia – Commercial Vehicles
Ukraine – Ammonium Nitrate

Arts. 3.1 & 3.4

China – AD on Stainless Steel Products from Japan
China – Autos (US)
China – Broiler Products
China – Cellulose Pulp
China – HP-SSST (Japan/European Union)
Dominican Republic – AD on Steel Bars (Costa Rica)
EC – Bed Linen
EC – Bed Linen Art. 21.5
EC – Salmon (Norway)
EU – Biodiesel (Argentina)
EU – Biodiesel (Indonesia)
Korea – Pneumatic Valves (Japan)
Morocco – Definitive AD Measures on Exercise Books (Tunisia)
Pakistan – BOPP Film (UAE)
Morocco – Hot-Rolled Steel (Turkey)
Russia – Commercial Vehicles
Thailand – H-Beams
US – Hot-Rolled Steel
US – Softwood Lumber VI

Arts. 3.1 & 3.5

Argentina – Poultry Anti-Dumping Duties
China – AD on Stainless Steel Products from Japan
China – Autos (US)
China – Cellulose Pulp
China – HP-SSST (Japan/European Union)
Dominican Republic – AD on Steel Bars (Costa Rica)
EC – Salmon (Norway)
Egypt – Steel Rebar
EU – Biodiesel (Argentina)
Korea – Pneumatic Valves (Japan)
Morocco – Definitive AD Measures on Exercise Books (Tunisia)
Pakistan – BOPP Film (UAE)
Russia – Commercial Vehicles

Arts. 3.1 & 3.7

Dominican Republic – AD on Steel Bars (Costa Rica)

Arts. 3.2 & 3.3

Canada – Welded Pipe
EC – Tube or Pipe Fittings
US – Anti Dumping Measures on Country Tubular Goods

Art. 3.4

China – Broiler Products Art. 21.5
China – X-Ray Equipment
EC – Bed Linen
Egypt – Steel Rebar
Guatemala – Cement II
Thailand – H-Beams
Ukraine – Ammonium Nitrate

Arts. 3.5

China – X-Ray Equipment
Ukraine – Ammonium Nitrate

Arts. 3.5 & 3.7

Canada – Welded Pipe
China – Broiler Products Art. 21.5
EC – Tube or Pipe Fittings
US – Coated Paper (Indonesia)
US – Hot-Rolled Steel
US – Softwood Lumber VI

Art. 3.7

Mexico – Corn Syrup Art. 21.5
US – Softwood Lumber VI

Art. 3.8

US – Coated Paper (Indonesia)

- **Arts. 4 & 5 (domestic industry)**

China – AD on Stainless Steel Products from Japan
China – Autos (US)
China – Broiler Products
EC – Fasteners (China)
Russia – Commercial Vehicles
US – 1916 Act

- **Art. 5 (initiation and subsequent investigation)**

Thailand – H-Beams

Art. 5.2

Mexico – Corn Syrup
Pakistan – BOPP Film (UAE)
US – 1916 Act
US – Softwood Lumber IV
US – Softwood Lumber V

Art. 5.3

Pakistan – BOPP Film (UAE)

Arts. 5.3 & 5.8

Argentina – Poultry Anti-Dumping Duties
Guatemala – Cement II
Mexico – Anti-Dumping measures on Rice
Mexico – Corn Syrup
Mexico – Steel Pipes and Tubes
Morocco – Definitive AD Measures on Exercise Books (Tunisia)
US – DRAMS
US – Softwood Lumber IV
US – Softwood Lumber V

Art. 5.4

US – Offset Act (Byrd Amendment)

Art. 5.5

US – 1916 Act

Art. 5.8

Argentina – Poultry Anti-Dumping Duties

Canada – Welded Pipe
Mexico – Anti-Dumping Measures on Rice
Ukraine – Ammonium Nitrate
US – DRAMS

Art. 5.10 (time-limit for conclusion of investigation)

Morocco – Hot-Rolled Steel (Turkey)

- **Art. 6 (evidence)**

China – Broiler Products
Dominican Republic – AD on Steel Bars (Costa Rica)
EC – Salmon (Norway)
Ukraine – Ammonium Nitrate
US – Oil Country Tubular Goods Sunset Reviews Art. 21.5

Arts. 6.1 & 6.2

US – Oil Country Tubular Goods Sunset Reviews
US – Oil Country Tubular Goods Sunset Reviews Art. 21.5

Arts. 6.1.2 & 6.4

Guatemala – Cement II

Arts. 6.1 & 12.1

Mexico – Anti-Dumping Measures on Rice

Arts. 6.2

China – Broiler Products

Arts. 6.2 & 6.4

EC – Fasteners (China)
EC – Tube or Pipe Fittings
Korea – Certain Paper
Korea – Certain Paper Art. 21.5
Mexico – Corn Syrup
US – OCTG (Korea)
US – Oil Country Tubular Goods Sunset Reviews Art. 21.5

Art. 6.5

China – AD on Stainless Steel Products from Japan
China – Autos (US)
China – Broiler Products
China – GOES
China – HP-SSST (Japan/European Union)
China – X-Ray Equipment
Colombia – Frozen Fries
EC – Fasteners (China)
EU – Footwear (China)
Guatemala – Cement II
Korea – Stainless Steel Bars
Korea – Pneumatic Valves (Japan)
Russia –Commercial Vehicles

Art. 6.6

US – DRAMS

Art. 6.7

Egypt – Steel Rebar
EU – Fatty Alcohols (Indonesia)
Korea – Certain Paper

Art. 6.8 & Annex II

Argentina – Ceramic Tiles
Argentina – Poultry Anti-Dumping Duties
Canada – Welded Pipe
China – Autos (US)
China – Broiler Products
China – Broiler Products Art. 21.5
China – GOES
Colombia – Frozen Fries
EC – Salmon (Norway)
Egypt – Steel Rebar
Guatemala – Cement II

Korea – Certain Paper
Korea – Certain Paper Art. 21.5
Korea – Stainless Steel Bars
Mexico – Anti Dumping Measures on Rice
Morocco – Hot-Rolled Steel (Turkey)
US – Anti-Dumping and Countervailing Duties (Korea)
US – Anti-Dumping Methodologies (China)
US – Hot-Rolled Steel
US – Shrimp (Viet Nam)

Art. 6.9

Argentina – Ceramic Tiles
China – Autos (US)
China – Broiler Products
China – Broiler Products Art. 21.5
China – GOES
China – GOES Art. 21.5
China – HP-SSST (Japan/European Union)
China – X-Ray Equipment
Guatemala – Cement II
Morocco – Hot-Rolled Steel (Turkey)
Russia – Commercial Vehicles
US – OCTG (Korea)

Art. 6.10

Argentina – Ceramic Tiles
Argentina – Poultry Anti-Dumping Duties
Canada – Welded Pipe
EC – Fasteners (China)
EC – Salmon (Norway)
EU – Footwear (China)
Korea – Certain Paper
US – Anti-Dumping Methodologies (China)
US – Shrimp (Viet Nam)
US – Shrimp II (Viet Nam)

- **Art. 7 (provisional measures)**

Canada – Welded Pipe
EU – Biodiesel (Indonesia)
Mexico – Corn Syrup

- **Art. 9 (imposition and collection of duties)**

Australia – Anti-Dumping Measures on Paper
Canada – Welded Pipe
China – Broiler Products Art. 21.5
Colombia – Frozen Fries Art. 21.5
EC – Fasteners (China)
EC – Salmon (Norway)
EU – Biodiesel (Argentina)
EU – Biodiesel (Indonesia)
EU – Footwear (China)
US – Anti-Dumping Methodologies (China)
US – Continued Zeroing
US – Hot-Rolled Steel
US – Shrimp (Viet Nam)
US – Shrimp II (Viet Nam)
US – Stainless Steel (Mexico)
US – Washing Machines
US – Zeroing (EC)
US – Zeroing (EC) Art. 21.5
US – Zeroing (Japan)

- **Art. 10 (retroactivity)**
  - **Art. 10.2**
    - *Mexico – Corn Syrup*
  - **Art. 10.4**
    - *Mexico – Corn Syrup*
- **Art. 11 (duration and review of anti-dumping duties)**
  - **Art. 11.1**
    - *Ukraine – Ammonium Nitrate*
    - *US – Shrimp (Viet Nam)*
    - *US – Shrimp II (Viet Nam)*
  - **Art. 11.2**
    - *Ukraine – Ammonium Nitrate*
    - *US – DRAMS*
    - *US – Shrimp II (Viet Nam)*
  - **Art. 11.3**
    - *Korea – Stainless Steel Bars*
    - *Pakistan – BOPP Film (UAE)*
    - *Ukraine – Ammonium Nitrate*
    - *US – Anti Dumping Measures on Oil Country Tubular Goods*
    - *US – Continued Zeroing*
    - *US – Corrosion Resistant Steel Sunset Review*
    - *US – Oil Country Tubular Goods Sunset Reviews*
    - *US – Oil Country Tubular Goods Sunset Reviews Art. 21.5*
    - *US – Shrimp (Viet Nam)*
    - *US – Shrimp II (Viet Nam)*
    - *US – Zeroing (EC) Art. 21.5*
- **Art. 12 (notification)**
  - *China – AD on Stainless Steel Products from Japan*
  - *China – Broiler Products*
  - *China – GOES Art. 21.5*
  - *China – X-Raw Equipment*
  - *EU – CVD/AD on SSCRFP (Indonesia)*
  - *EC – Salmon (Norway)*
  - *Mexico – Corn Syrup*
  - *Ukraine – Ammonium Nitrate*
  - *US – Anti-Dumping and Countervailing Duties (Korea)*
- **Art. 15 (special and differential treatment)**
  - *EC – Bed Linen*
  - *EC – Bed Linen Art. 21.5*
  - *US – Steel Plate*
- **Art. 17 (dispute settlement)**
  - **Art. 17.4**
    - *Guatemala – Cement I*
  - **Art. 17.6**
    - *Thailand – H-Beams*
    - *US – Continued Zeroing*
    - *US – Hot-Rolled Steel*
    - *US – Shrimp (Viet Nam)*
    - *US – Softwood Lumber VI*
- **Art. 18 (final provisions)**
  - **Art. 18.1**
    - *Ukraine – Ammonium Nitrate*
    - *US – 1916 Act*
    - *US – Customs Bond Directive*
    - *US – Offset Act (Byrd Amendment)*
    - *US – Shrimp (Thailand)*
    - *US – Shrimp II (Viet Nam)*
  - **Art. 18.3**
    - *EU – Cost Adjustment Methodologies II (Russia)*
  - **Art. 18.4**
    - *EU – Footwear (China)*

US – 1916 Act
US – Steel Plate

- **Annex II (best information available)**
  China – Autos (US)

AGREEMENT ON TEXTILES AND CLOTHING

- **Art. 2.4 (prohibition on new restrictions)**
  Turkey – Textiles
  US – Wool Shirts and Blouses
- **Art. 6 (transitional safeguard measures)**
  US – Underwear
  US – Wool Shirts and Blouses

  Art. 6.2
  US – Cotton Yarn
  US – Underwear

  Art. 6.4
  US – Cotton Yarn

  Art. 6.10
  US – Underwear

CUSTOMS VALUATION AGREEMENT

- **Sequential nature of valuation methods in Arts. 1-7**
  Colombia – Ports of Entry
  Thailand – Cigarettes (Philippines)
- **Art. 1 (transaction value)**
  Colombia – Textiles Art. 21.5 (Colombia, Panama)
  Thailand – Cigarettes (Philippines)
  Thailand – Cigarettes (Philippines) Art. 21.5
  Thailand – Cigarettes (Philippines) Art. 21.5 II
- **Art. 2 (value of identical goods sold to same country)**
  Colombia – Textiles Art. 21.5 (Colombia, Panama)
  Thailand – Cigarettes (Philippines) Art. 21.5
- **Art. 3 (value of similar goods to same country)**
  Colombia – Textiles Art. 21.5 (Colombia, Panama)
  Thailand – Cigarettes (Philippines) Art. 21.5
- **Art. 5 (price at which goods sold to unrelated persons**
  Colombia – Textiles Art. 21.5 (Colombia, Panama)
  Thailand – Cigarettes (Philippines) Art. 21.5
- **Art. 6 (computed value)**
  Colombia – Textiles Art. 21.5 (Colombia, Panama)
  Thailand – Cigarettes (Philippines) Art. 21.5 II
- **Art. 7 (valuation based on reasonable means)**
  Colombia – Textiles Art. 21.5 (Colombia, Panama)
  Thailand – Cigarettes (Philippines) Art. 21.5 II
- **Art. 10 (non-disclosure of confidential information)**
  Thailand – Cigarettes (Philippines) Art. 21.5
- **Art. 11 (right of appeal)**
  Thailand – Cigarettes (Philippines) Art. 21.5
- **Art. 13 (guarantee)**
  Colombia – Textiles Art. 21.5 (Colombia, Panama)
- **Art. 16 (explanation of valuation decision)**
  Thailand – Cigarettes (Philippines)
  Thailand – Cigarettes (Philippines) Art. 21.5

DISPUTE SETTLEMENT UNDERSTANDING

- **Art. 3 (general provisions)**
  - *Chile – Price Band*
  - *Canada – Continued Suspension*
  - *EU – Fatty Alcohols (Indonesia)*
  - *EU – PET (Pakistan)*
  - *Peru – Agricultural Products*
  - *US – Certain EC Products*
  - *US – Continued Suspension*
  - *US – Supercalendered Paper*
- **Art. 4 (consultations)**
  - *Brazil – Aircraft*
  - *US – Shrimp II (Viet Nam)*
  - *US – Supercalendered Paper*

  Art. 4.9
  - *Canada – Patent Term*
- **Art. 6 (establishment of panels)**
  - *Brazil – Aircraft*
  - *US – Shrimp II (Viet Nam)*

  Art. 6.2
  - *Argentina – Import Measures*
  - *China – Additional Duties (US)*
  - *China – Raw Materials*
  - *EC – Approval and Marketing of Biotech Products*
  - *EC – Bed Linen*
  - *EC and certain member States – Large Civil Aircraft*
  - *Guatemala – Cement I*
  - *Indonesia – Chicken*
  - *Japan – Film*
  - *Korea – Dairy*
  - *Korea – Pneumatic Valves (Japan)*
  - *Mexico – Corn Syrup Art. 21.5*
  - *Russia – Railway Equipment*
  - *Thailand – H-Beams*
  - *Ukraine – Ammonium Nitrate*
  - *US – Clove Cigarettes*
  - *US – Continued Zeroing*
  - *US – Countervailing and Anti-Dumping Measures (China)*
  - *US – FSC Art. 21.5 (II)*
  - *US – Large Civil Aircraft (2nd complaint)*
  - *US – Shrimp (Viet Nam)*
  - *US – Zeroing (Japan) Art. 21.5*
- **Art. 7 (terms of reference)**
  - *Ukraine – Ammonium Nitrate*
  - *US – Supercalendered Paper*
- **Art. 9 (multiple panels on same matter)**
  - *Australia – Automotive Leather II*
- **Art. 11 (standard of review)**
  - *Argentina – Import Measures*
  - *Australia – Apples*
  - *Canada – Autos*
  - *Canada – Wheat Exports and Grain Imports*
  - *Chile – Price Band System*
  - *EC and certain member States – Large Civil Aircraft*
  - *EC – Hormones*
  - *EU – PET (Pakistan)*
  - *Japan – Apples Art. 21.5*
  - *Japan – DRAMs (Korea)*
  - *Peru – Agricultural Products*
  - *Russia – Railway Equipment*
  - *Ukraine – Ammonium Nitrate*

US – Anti Dumping Measures on Oil Country Tubular Goods
US – Continued Zeroing
US – Cotton Yarn
US – Countervailing Duty Investigation on DRAMS
US – Large Civil Aircraft (2nd complaint) Art. 21.5
US – Lead and Bismuth II
US – Oil Country Tubular Goods Sunset Reviews
US – Shrimp II (Viet Nam)
US – Softwood Lumber VI
US – Softwood Lumber VI Art. 21.5
US – Stainless Steel (Mexico)
US – Tuna II (Mexico)
US – Underwear
US – Upland Cotton Art. 21.5
US – Wheat Gluten
US – Zeroing (EC) Art. 21.5
US – Zeroing (Japan)
US – Zeroing (Korea)

- **Art. 12 (panel procedures)**
  EU – Fatty Alcohols (Indonesia)
  Mexico – Corn Syrup Art. 21.5
  US – Tariff Measures
- **Arts. 12 & 13 (amicus curiae brief)**
  US – Shrimp
- **Art. 13 (right to seek information)**
  Argentina – Textiles and Apparel
  Turkey – Textiles
  US – Animals
- **Art. 17 (appellate review)**
  US – Gambling Art. 21.5
- **Art. 19 (Panel and Appellate Body recommendations)**
  Argentina – Poultry Anti-Dumping Duties
  EC – Bananas III Art. 21.5 (US)
  EC – Bananas III Art. 21.5 II (Ecuador)
  Guatemala – Cement II
  Pakistan – BOPP Film (UAE)
  Peru – Agricultural Products
  US – Anti-Dumping Measures on PET Bags
  US – Lead and Bismuth II
  US – Oil Country Tubular Goods Sunset Reviews Art. 21.5
  US – Supercalendered Paper
  US – Tyres
  US – Zeroing (EC) Art. 21.5
- **Art. 21.5 (review of implementation of DSB rulings)**
  Australia – Automotive Leather II Art. 21.5
  Australia – Salmon Art. 21.5
  Canada – Aircraft Art. 21.5
  Canada – Continued Suspension
  Chile – Price Band System Art. 21.5
  Colombia – Textiles Art. 21.5 (Colombia, Panama)
  EC – Bananas III Art. 21.5
  EC – Bananas III Art. 21.5
  EC – Bed Linen Art. 21.5
  US – Certain EC Products
  US – Continued Suspension
  US – Gambling Art. 21.5
  US – Large Civil Aircraft (Second Complaint) (Art. 21.5 – EU)
  US – Oil Country Tubular Goods Sunset Reviews Art. 21.5
  US – Shrimp Art. 21.5
  US – Softwood Lumber IV Art. 21.5

US – Softwood Lumber VI Art. 21.5
US – Upland Cotton Art. 21.5
US – Zeroing (EC) Art. 21.5
US – Zeroing (Japan) Art. 21.5

- **Art. 22 (compensation and the suspension of concessions)**
  US – Certain EC Products

  Art. 22.8
  Canada – Continued Suspension
  US – Continued Suspension

- **Art. 23 (exclusive jurisdiction)**

  Art. 23.1
  EC – Commercial Vessels
  Canada – Continued Suspension
  US – Certain EC Products
  US – Continued Suspension

  Art. 23.2(a)
  Canada – Continued Suspension
  US – Certain EC Products
  US – Continued Suspension
  US – Section 301 Trade Act

  Art. 23.2(c)
  US – Certain EC Products
  US – Section 301 Trade Act

ENABLING CLAUSE

- **Enabling Clause, paragraph 2(a)**
  EC – Tariff Preferences

GATS

- **Art. I (definition)**

  Art. I:1
  Canada – Autos

  Art. I:2(a)
  Mexico – Telecoms

- **Art. II (most-favoured-nation treatment)**
  Argentina – Financial Services
  Canada – Autos
  EC – Bananas III
  EC – Bananas III Art. 21.5
  EU – Energy Package

- **Art. XIV (general exceptions)**

  Chapeau
  US – Gambling Art. 21.5

  Art. XIV(a)
  US – Gambling

  Art. XIV(c)
  Argentina – Financial Services
  US – Gambling

- **Art. XVI (market access)**
  China – Electronic Payment Systems
  China – Publications and Audiovisual Products
  EC – Bananas III
  EU – Energy Package
  US – Gambling

- **Art. XVII (national treatment)**
  Argentina – Financial Services
  China – Electronic Payment Systems
  China – Publications and Audiovisual Products
  EC – Bananas III Art. 21.5
  EU – Energy Package

- **GATS Annex on Telecommunications, Paragraph 2(a)**
  Argentina – Financial Services
- **GATS Annex on Telecommunications, Section 5(a)**
  Mexico – Telecoms
- **GATS Annex on Telecommunications, Section 5(b)**
  Mexico – Telecoms
- **Mexico's Reference Paper, Sections 1, 2.1 & 2.2**
  Mexico – Telecoms

GATT 1994

- **Art. I (most-favoured-nation treatment)**
  Brazil – Taxation
  Canada – Autos
  China – Additional Duties (US)
  Colombia – Ports of Entry
  Dominican Republic – Safeguard Measures
  EC – Bananas III
  EC – Bananas III Art. 21.5
  EC – Bananas III Art. 21.5 II (Ecuador)
  EC – Bananas III Art. 21.5 (US)
  EC – Commercial Vessels
  EC – Tariff Preferences
  EC – Seal Products
  EU – Energy Package
  EU and Certain Member States – Palm Oil (Malaysia)
  EU – Footwear (China)
  EU – Palm Oil (Indonesia)
  Indonesia – Autos
  Indonesia – Iron or Steel Products
  Russia – Railway Equipment
  Turkey – Additional Duties (US)
  US – Anti-Dumping and Countervailing Duties (China)
  US – Certain EC Products
  US – Steel and Aluminium
  US – Tariff Measures
  US – Tuna II (Mexico)
  US – Tuna II (Mexico) Art. 21.5 / US – Tuna II Art. 21.5
- **Art. II (schedules of concessions)**
  Brazil – Taxation
  Argentina – Textiles and Apparel
  Canada – Dairy
  China – Additional Duties (US)
  Chile – Price Band System Art. 2.15
  China – Auto Parts
  Colombia – Textiles
  Colombia – Textiles Art. 21.5 (Colombia, Panama)
  Dominican Republic – Import and Sale of Cigarettes
  Dominican Republic – Safeguard Measures
  EC – Bananas III
  EC – Bananas III Art. 21.5

EC – Bananas III Art. 21.5 (Ecuador)
EC – Chicken Cuts
EC – Computer Equipment
EC – IT Products
EU – Poultry Meat (China)
India – Additional Import Duties
India – Tariffs on ICT Goods
Peru – Agricultural Products
Russia – Tariff Treatment
Turkey – Additional Duties
US – Certain EC Products
US – Steel and Aluminium
US – Tariff Measures
US – Zeroing (Japan) Art. 21.5

- **Art. III (national treatment)**

Art. III:1

Japan – Alcoholic Beverages II
US – Gasoline

Art. III:2 first sentence

Argentina – Hides and Leather
Canada – Periodicals
Dominican Republic – Import and Sale of Cigarettes
India – Autos
Indonesia – Autos
Japan – Alcoholic Beverages II
Mexico – Taxes on Soft Drinks
Philippines – Distilled Spirits
Thailand – Cigarettes (Philippines)

Art. III:2 second sentence

Canada – Periodicals
Chile – Alcoholic Beverages
China – Auto Parts
India – Autos
Indonesia – Autos
Japan – Alcoholic Beverages II
Korea – Alcoholic Beverages
Mexico – Taxes on Soft Drinks
Philippines – Distilled Spirits

Art. III:4

Argentina – Import Measures
Brazil – Retreaded Tyres
Canada – Autos
Canada – Periodicals
Canada – Renewable Energy/Canada – Feed-in Tariff Program
Canada – Wheat Exports and Grain Imports
China – Auto Parts
China – Publications and Audiovisual Products
Dominican Republic – Import and Sale of Cigarettes
EC – Asbestos
EC – Bananas III
EC – Commercial Vessels
EU – Energy Package
EC – Seal Products
India – Autos
India – Solar Cells
Indonesia – Chicken
Indonesia – Chicken Art. 21.5
Japan – Film
Korea – Various Measures on Beef
Mexico – Taxes on Soft Drinks
Russia – Railway Equipment

Thailand – Cigarettes (Philippines)
Thailand – Cigarettes (Philippines) Art. 21.5
Turkey – Pharmaceutical Products (EU)
Turkey – Rice
US – COOL
US – COOL Art. 21.5
US – FSC Art. 21.5 (I)
US – Gasoline
US – Renewable Energy (India)
US – Tuna II (Mexico)
US – Tuna II (Mexico) Art. 21.5 / US – Tuna II Art. 21.5

Art. III:8

Brazil – Taxation
Canada – Periodicals
Canada – Renewable Energy/Canada – Feed-in Tariff Program
EC – Commercial Vessels
India – Solar Cells
Turkey – Pharmaceutical Products (EU)

- **Art. V (freedom of transit)**

  Colombia – Ports of Entry

- **Art. VI (anti-dumping and countervailing duties)**

  Brazil – Desiccated Coconut
  China – Autos (US)
  China – Broiler Products
  EC – Salmon (Norway)
  EC – Tube or Pipe Fittings
  EU – Biodiesel (Argentina)
  EU – Biodiesel (Indonesia)
  EU – CVD/AD on SSCRFP (Indonesia)
  Ukraine – Ammonium Nitrate
  US – 1916 Act
  US – Anti-Dumping and Countervailing Duties (China)
  US – Continued Zeroing
  US – Customs Bond Directive
  US – Ripe Olives from Spain
  US – Ripe Olives from Spain Art. 21.5
  US – Shrimp (Thailand)
  US – Shrimp II (Viet Nam)
  US – Softwood Lumber IV
  US – Softwood Lumber IV Art. 21.5
  US – Supercalendered Paper
  US – Stainless Steel (Mexico)
  US – Washing Machines
  US – Zeroing (EC)
  US – Zeroing (EC) Art. 21.5
  US – Zeroing (Japan)
  US – Zeroing (Japan) Art. 21.5

- **Art. VII (valuation for customs purposes)**

  Korea – Various Measures on Beef

- **Art. VIII (fees and formalities)**

  Argentina – Textiles and Apparel
  China – Raw Materials

- **Art. IX (marks of origin)**

  Australia – Tobacco Plain Packaging
  US – COOL Art. 21.5
  US – Origin Marking (Hong Kong, China)

- **Art. X (measures of general application)**

  China – Raw Materials
  EC – Poultry
  EC – IT Products
  US – Underwear

Art. X:I

China – Raw Materials
Dominican Republic – Import and Sale of Cigarettes
EC – IT Products
India – Autos
Japan – Film
Peru – Agricultural Products
Thailand – Cigarettes (Philippines) Art. 21.5
US – Countervailing and Anti-Dumping Measures (China)

Art. X:2

EC – IT Products
US – Countervailing and Anti-Dumping Measures (China)

Art. X:3(a)

Argentina – Hides and Leather
China – TRQs
China – Raw Materials
Colombia – Textiles Art. 21.5 (Colombia, Panama)
Dominican Republic – Import and Sale of Cigarettes
EC – Bananas III
EU – Energy Package
EC – Selected Customs Matters
Peru – Agricultural Products
Russia – Railway Equipment
Thailand – Cigarettes (Philippines) Art. 21.5
US – COOL

Art. X:3(b)

EC – Selected Customs Matters
US – Countervailing and Anti-Dumping Measures (China)

- **Art. XI (quantitative restrictions)**

Argentina – Hides and Leather
Argentina – Import Measures
Brazil – Retreaded Tyres
Canada – Periodicals
China – Rare Earths
China – Raw Materials
China – TRQs
Colombia – Ports of Entry
Colombia – Textiles Art. 21.5 (Colombia, Panama)
Dominican Republic – Import and Sale of Cigarettes
EC – Seal Products
EU – Energy Package
India – Autos
India – Quantitative Restrictions
Indonesia – Chicken
Indonesia – Chicken Art. 21.5
Indonesia – Import Licensing Regimes
Indonesia – Raw Materials
Korea – Various Measures on Beef
Russia – Railway Equipment
Turkey – Textiles
US – Shrimp
US – Shrimp Art. 21.5

- **Art. XIII (non-discriminatory administration of quantitative restrictions)**

China – TRQs
Colombia – Ports of Entry
EC – Bananas III
EC – Bananas III Art. 21.5
EC – Bananas III Art. 21.5 II
EC – Poultry
EU – Poultry Meat (China)

Russia – Railway Equipment
Turkey – Textiles

- **Art. XVI (subsidies)**
  EC – Bananas III
- **Art. XVII (state trading enterprises)**
  Canada – Wheat Exports and Grain Imports
  EC – Bananas III Art. 21.5
  Korea – Various Measures on Beef
- **Art. XVIII (balance-of-payment measures)**
  India – Quantitative Restrictions
- **Art. XIX:1(a) (unforeseen developments)**
  Argentina – Footwear
  Argentina – Preserved Peaches
  Dominican Republic – Safeguard Measures
  EU – Safeguard Meaures on Steel (Turkey)
  Indonesia – Iron or Steel Products
  Korea – Dairy
  Ukraine – Passenger Cars
  US – Lamb
  US – Safeguard Measures on Washers
  US – Safeguard Measure on PV Products (China)
  US – Steel Safeguards
- **Art. XIX:3(a) right to rebalance**
  China – Additional Duties (US)
  Turkey – Additional Duties (US)
- **Art. XX (general exceptions)**
  Indonesia – Chicken
  Indonesia – Import Licensing Regimes
  Thailand – Cigarettes (Philippines) Art. 21.5
  US – COOL Art. 21.5

  Chapeau
  Brazil – Retreaded Tyres
  Colombia – Textiles

  Art. XX(a)
  Brazil – Taxation
  China – Publications and Audiovisual Products
  Colombia – Textiles
  EC – Seal Products
  US – Tariff Measures

  Art. XX(b)
  Brazil – Retreaded Tyres
  China – Raw Materials
  EC – Asbestos
  EC – Seal Products
  EU and Certain Member States – Palm Oil (Malaysia)
  EU – Palm Oil (Indonesia)
  Turkey – Pharmaceutical Products (EU)

  Art. XX(d)
  Argentina – Hides and Leather
  Brazil – Retreaded Tyres
  Canada – Periodicals
  Canada – Wheat Exports and Grain Imports
  China – Auto Parts
  Colombia – Textiles
  Dominican Republic – Import and Sale of Cigarettes
  India – Solar Cells
  Indonesia – Chicken
  Indonesia – Raw Materials

Korea – Various Measures on Beef
Mexico – Taxes on Soft Drinks
Turkey – Pharmaceutical Products (EU)
US – Customs Bond Directive
US – Shrimp (Thailand)

Art. XX(g)

China – Rare Earths
China – Raw Materials
EU and Certain Member States – Palm Oil (Malaysia)
EU – Palm Oil (Indonesia)
US – Gasoline
US – Shrimp
US – Shrimp Art. 21.5
US – Tuna II Art. 21.5

Art. XX (j)

India – Solar Cells

- **Art. XXI(b) (security exceptions)**

  Russia – Traffic in Transit
  US – Origin Marking (Hong Kong, China)
  US – Steel and Aluminium

- **Art. XXIII (nullification or impairment)**

  EC – Asbestos
  EC – Seal Products
  Japan – Film
  US – COOL
  US – COOL Art. 21.5

- **Art. XXIV (regional trade agreements)**

  Turkey – Textiles
  Indonesia – Chicken

- **Art. XXVIII (modification of schedules)**

  EU – Poultry Meat (China)

GOVERNMENT PROCUREMENT AGREEMENT

- **Art. I (scope)**

  Korea – Procurement

- **Art. XXII (consultations and dispute settlement)**

  Korea – Procurement

LICENSING AGREEMENT

- **Art. 1 (general provisions)**

  EC – Bananas III

RULES OF ORIGIN AGREEMENT

- **Disciplines during the transition period**

  Art. 2(b)

  US – Textiles Rules of Origin

  Art. 2(c)

  US – Textiles Rules of Origin

  Art. 2(d)

  US – Textiles Rules of Origin

- **Art. 1 (general provision)**
  - *Indonesia – Iron or Steel Products*
- **Art. 2 (conditions)**
  - **Arts. 2.1 & 3.1**
    - *EU – Safeguard Meaures on Steel (Turkey)*
    - *US – Safeguard Measures on Washers*
    - *US – Safeguard Measure on PV Products (China)*
    - *US – Steel Safeguards*
  - **Arts. 2.1 & 4.1(b)**
    - *Argentina – Preserved Peaches*
    - *Ukraine – Passenger Cars*
  - **Arts. 2.1 & 4.2(a)**
    - *Argentina – Footwear (EC)*
    - *Argentina – Preserved Peaches*
    - *Dominican Republic – Safeguard Measures*
    - *US – Wheat Gluten*
  - **Arts. 2.1 & 4.2(b)**
    - *Argentina – Footwear (EC)*
    - *Ukraine – Passenger Cars*
    - *US – Line Pipe*
    - *US – Steel Safeguards*
    - *US – Wheat Gluten*
- **Art. 3 (investigation)**
  - *Ukraine – Passenger Cars*
  - *US – Ripe Olives from Spain*
  - *US – Safeguard Measures on Washers*
  - *US – Safeguard Measure on PV Products (China)*
- **Art. 4 (serious injury)**
  - **Arts. 4.1 & 3.1 (definition of domestic industry)**
    - *US – Safeguard Measures on Washers*
  - **Arts. 4.1(b) & 2.1**
    - *Argentina – Preserved Peaches*
  - **Art. 4.1(c)**
    - *US – Lamb*
  - **Art. 4.2**
    - *Dominican Republic – Safeguard Measures*
  - **Art. 4.2(a)**
    - *Argentina – Footwear (EC)*
    - *EU – Safeguard Meaures on Steel (Turkey)*
    - *Korea – Dairy*
    - *US – Safeguard Measures on Washers*
    - *US – Lamb US – Wheat Gluten*
  - **Art. 4.2(b)**
    - *Argentina – Footwear (EC)*
    - *EU – Safeguard Meaures on Steel (Turkey)*
    - *US – Lamb*
    - *US – Line Pipe*
    - *US – Safeguard Measures on Washers*
    - *US – Safeguard Measure on PV Products (China)*
    - *US – Steel Safeguards*
    - *US – Wheat Gluten*
  - **Art. 4.2(c)**
    - *EU – Safeguard Meaures on Steel (Turkey)*
    - *Ukraine – Passenger Cars*
    - *US – Lamb*
- **Art. 5 (application of safeguard measures)**
  - *Korea – Dairy*
  - *US – Line Pipe*

- **Art. 6 (evidence)**
  Dominican Republic – Safeguard Measures
- **Art. 8 (level of concessions and other obligations)**
  China – Additional Duties (US)
  Turkey – Additional Duties (US)
  Ukraine – Passenger Cars
  US – Safeguard Measures on Washers
- **Art. 9 (developing country Members)**
  Dominican Republic – Safeguard Measures
  US – Line Pipe
- **Art. 11 (applicability)**
  China – Additional Duties (US)
  Turkey – Additional Duties (US)
- **Art. 12 (notification and consultation)**
  Dominican Republic – Safeguard Measures
  Ukraine – Passenger Cars
  US – Safeguard Measures on Washers
  US – Wheat Gluten

SCM AGREEMENT

- **Art. 1 (definition of a subsidy)**
  Canada – Aircraft Credits and Guarantees
  Canada – Renewable Energy/Canada – Feed-in Tariff Program
  EC and certain member States – Large Civil Aircraft
  EC and certain member States – Large Civil Aircraft Art. 21.5 – US
  EC and certain member States – Large Civil Aircraft Art. 21.5 – EU
  EU and Certain Member States – Palm Oil (Malaysia)
  EU – CVD/AD on SSCRFP (Indonesia)
  Mexico – Olive Oil
  India – Export Related Measures
  US – Large Civil Aircraft (2nd complaint)
  US – Large Civil Aircraft (2nd complaint) Art. 21.5
  US – Ripe Olives from Spain
  US – Softwood Lumber VII
  US – Tax Incentives

  Art. 1.1(a)
  Canada – Aircraft
  Brazil – Aircraft Art. 21.5 (II)
  EU – CVD/AD on SSCRFP (Indonesia)
  EU – PET (Pakistan)
  US – Anti-Dumping and Countervailing Duties (China)
  US – Carbon Steel (India)
  US – Carbon Steel (India) Art. 21.5
  US – Countervailing Measures (China)
  US – Countervailing Measures (China) Art. 21.5
  US – Export Restraints
  US – FSC
  US – Pipe and Tube Products (Turkey)
  US – Softwood Lumber III
  US – Softwood Lumber IV

  Art. 1.1(a)(1)(iv)
  EC – Countervailing Measures on DRAM Chips
  EU – CVD/AD on SSCRFP (Indonesia)
  Japan – DRAMs (Korea)
  US – Anti-Dumping and Countervailing Duties (China)
  US – Countervailing Duty Investigation on DRAMS
  US – Supercalendered Paper

  Arts. 1.1(b) & 14
  Canada – Aircraft Credits and Guarantees

EC and certain member States – Large Civil Aircraft Art. 21.5
EC – Countervailing Measures on DRAM Chips
Japan – DRAMs (Korea)
US – Countervailing Duty Investigation on DRAMS
US – Countervailing Measures (China)
US – Countervailing Measures (China) Art. 21.5
US – Countervailing Measures on Certain EC Products
US – Countervailing Measures on Certain EC Products Art. 21.5
US – Lead and Bismuth II
US – Pipe and Tube Products (Turkey)
US – Softwood Lumber III
US – Softwood Lumber IV

- **Art. 2 (specificity)**

EC and certain member States – Large Civil Aircraft
EC and certain member States – Large Civil Aircraft Art. 21.5
EU – CVD/AD on SSCRFP (Indonesia)
EC – Countervailing Measures on DRAM Chips
US – Carbon Steel (India)
US – Carbon Steel (India) Art. 21.5
US – Coated Paper (Indonesia)
US – Countervailing Duty Investigation on DRAMS
US – Countervailing Measures (China)
US – Countervailing Measures (China) Art. 21.5
US – Large Civil Aircraft (2nd complaint)
US – Large Civil Aircraft (2nd complaint) Art. 21.5
US – Pipe and Tube Products (Turkey)
US – Ripe Olives from Spain
US – Washing Machines

- **Art. 3 (prohibited subsidies)**

Art. 3.1(a)

Australia – Automotive Leather II
Brazil – Aircraft
Brazil – Aircraft Art. 21.5 (II)
Brazil – Taxation
Canada – Aircraft
Canada – Aircraft Art. 21.5
Canada – Aircraft Credits and Guarantees
Canada – Autos
EC and certain member States – Large Civil Aircraft
EC and certain member States – Large Civil Aircraft Art. 21.5
EU – Palm Oil (Indonesia)
EU – PET (Pakistan)
India – Export Related Measures
India – Sugar and Sugarcane
Korea – Commercial Vessels
US – FSC
US – FSC Art. 21.5 (I)
US – Large Civil Aircraft (2nd complaint)
US – Tax Incentives
US – Upland Cotton
US – Upland Cotton Art. 21.5

Art. 3.1(b) (prohibited subsides – import substitution subsidy)

Canada – Autos
EC and certain member States – Large Civil Aircraft Art. 21.5
US – Renewable Energy (India)
US – Upland Cotton

Art. 3.2 (export subsidies)

Korea – Commercial Vessels
India – Sugar and Sugarcane
US – Upland Cotton

- **Art. 4 (remedies)**
  - *Australia – Automotive Leather II*
  - *Australia – Automotive Leather II Art. 21.5*
  - *Brazil – Aircraft*
  - *Brazil – Aircraft Art. 21.5*
  - *Brazil – Taxation*
  - *Korea – Commercial Vessels*
  - *US – FSC*
  - *US – FSC Art. 21.5 (I) & (II)*
  - *US – Large Civil Aircraft (2nd complaint)*
  - *US – Upland Cotton*
- **Art. 5 (adverse effects)**
  - **Art. 5(a)**
    - *EC and certain member States – Large Civil Aircraft*
    - *US – Large Civil Aircraft (2nd complaint) Art. 21.5*
  - **Arts. 5(c) & 6.3(c)**
    - *EC and certain member States – Large Civil Aircraft Art. 21.5*
    - *Korea – Commercial Vessels*
    - *Indonesia – Autos*
    - *US – Large Civil Aircraft (2nd complaint) Art. 21.5*
    - *US – Upland Cotton*
    - *US – Upland Cotton Art. 21.5*
- **Art. 7 (remedies)**
  - *EC and certain member States – Large Civil Aircraft (2nd complaint) Art. 21.5*
  - *US – Large Civil Aircraft (2nd complaint) Art. 21.5*
  - *US – Upland Cotton*
- **Art. 10 (application of countervailing measures)**
  - *US – Countervailing and Anti-Dumping Measures (China)*
  - *US – Countervailing Measures on Certain EC Products Art. 21.5*
  - *US – Lead and Bismuth II*
  - *US – Ripe Olives from Spain*
  - *US – Ripe Olives from Spain Art. 21.5*
  - *US – Softwood Lumber IV*
  - *US – Softwood Lumber IV Art. 21.5*
  - *US – Supercalendered Paper*
- **Art. 11 (initiation and subsequent investigation)**
  - *China – GOES*
  - *Mexico – Olive Oil*
  - *US – Countervailing Measures (China)*
  - *US – Offset Act (Byrd Amendment)*
  - *US – Supercalendered Paper*
  - *US – Softwood Lumber VII*
- **Art. 12 (evidence)**
  - *China – Broiler Products*
  - *China – Broiler Products Art. 21.5*
  - *EU – CVD/AD on SSCRFP (Indonesia)*
  - *US – Ripe Olives from Spain*
  - **Art. 12.4**
    - *China – Autos (US)*
    - *China – GOES*
    - *Mexico – Olive Oil*
  - **Art. 12.7**
    - *China – GOES*
    - *EU – CVD/AD on SSCRFP (Indonesia)*
    - *EC – Countervailing Measures on DRAM Chips*
    - *Japan – DRAMs (Korea)*
    - *US – Carbon Steel (India)*
    - *US – Coated Paper (Indonesia)*
    - *US – Countervailing Measures (China)*
    - *US – Pipe and Tube Products (Turkey)*
    - *US – Supercalendered Paper*

Art. 12.8

China – Autos (US)
China – GOES
China – GOES Art. 21.5
EU – CVD/AD on SSCRFP (Indonesia)
Mexico – Olive Oil
US – Ripe Olives from Spain
US – Supercalendered Paper

Art. 12.9

EU – CVD/AD on SSCRFP (Indonesia)
Japan – DRAMs (Korea)

- **Art. 13 (consultations)**

  Mexico – Olive Oil

- **Art. 14 (calculation of amount of subsidy)**

  EU – PET (Pakistan)
  Mexico – Olive Oil
  US – Anti-Dumping and Countervailing Duties (China)
  US – Carbon Steel (India)
  US – Carbon Steel (India) Art. 21.5
  US – Coated Paper (Indonesia)
  US – Countervailing Measures (China) Art. 21.5
  US – Countervailing Measures on Certain EC Products
  US – Softwood Lumber III
  US – Softwood Lumber IV
  US – Countervailing Measures on Certain EC Products Art. 21.5
  US – Softwood Lumber VII

- **Art. 15 (determination of injury)**

  China – Autos (US)
  China – Broiler Products
  China – Broiler Products Art. 21.5
  China – GOES
  China – GOES Art. 21.5
  EC – Countervailing Measures on DRAM Chips
  EU – PET (Pakistan)
  US – Carbon Steel (India)
  US – Countervailing Duty Investigation on DRAMS
  US – Pipe and Tube Products (Turkey)
  US – Ripe Olives from Spain
  US – Softwood Lumber VI Art. 21.5

  Art. 15.4

  China – Broiler Products Art. 21.5
  China – GOES Art. 21.5
  EC – Countervailing Measures on DRAM Chips
  US – Ripe Olives from Spain
  US – Softwood Lumber VI

  Arts. 15.5 & 15.7

  China – GOES
  EC – Countervailing Measures on DRAM Chips
  Japan – DRAMs (Korea)
  US – Coated Paper (Indonesia)
  US – Countervailing Duty Investigation on DRAMS

  Art. 15.7

  US – Softwood Lumber VI

  Art. 15.8

  US – Coated Paper (Indonesia)

- **Art. 16 (definition of domestic industry)**

  China – Autos (US)
  China – Broiler Products
  Mexico – Olive Oil

- **Art. 17 (provisional measures)**
  - *US – Softwood Lumber III*
- **Art. 19 (imposition and collection of countervailing duties)**
  - **Art. 19.1**
    - *Japan – DRAMs (Korea)*
    - *US – Countervailing Measures on Certain EC Products*
    - *US – Countervailing Measures on Certain EC Products Art. 21.5*
    - *US – Ripe Olives from Spain*
    - *US – Supercalendered Paper*
  - **Arts. 19.3 & 19.4**
    - *China – Broiler Products*
    - *US – Anti-Dumping and Countervailing Duties (China)*
    - *US – Countervailing and Anti-Dumping Measures (China)*
    - *US – Ripe Olives from Spain*
    - *US – Supercalendered Paper*
    - *US – Washing Machines*
  - **Art. 19.4**
    - *US – Ripe Olives from Spain*
    - *US – Softwood Lumber VII*
- **Art. 20 (retroactivity)**
  - *US – Softwood Lumber III*
- **Art. 21 (duration and review)**
  - **Art. 21.2**
    - *US – Countervailing Measures on Certain EC Products*
    - *US – Countervailing Measures on Certain EC Products Art. 21.5*
    - *US – Lead and Bismuth II*
  - **Art. 21.3**
    - *US – Carbon Steel*
    - *US – Countervailing Measures on Certain EC Products*
    - *US – Countervailing Measures on Certain EC Products Art. 21.5*
- **Art. 22 (public notice and explanation of determination)**
  - *China – Autos (US)*
  - *China – Broiler Products*
  - *China – GOES*
  - *China – GOES Art. 21.5*
  - *EU – CVD/AD on SSCRFP (Indonesia)*
- **Art. 25 (notification)**
  - *India – Sugar and Sugarcane*
- **Art. 27 (special and differential treatment)**
  - *Brazil – Aircraft*
  - *India – Export Related Measures*
  - *India – Sugar and Sugarcane*
- **Art. 32.1 (specific action against subsidies)**
  - *EC – Commercial Vessels*
  - *US – Countervailing and Anti-Dumping Measures (China)*
  - *US – Offset Act (Byrd Amendment)*
  - *US – Ripe Olives from Spain*
  - *US – Softwood Lumber IV*
  - *US – Softwood Lumber IV Art. 21.5*
  - *US – Supercalendered Paper*
- **Annex I, Illustrative List of Export Subsidies**
  - **Item (e)**
    - **footnote 59 (double taxation exception)**
      - *US – FSC Art. 21.5*
      - *US – Wool Shirts and Blouses*
  - **Item (g)**
    - *India – Export Related Measures*

Item (h)

India – Export Related Measures

Item (i)

India – Export Related Measures

Item (j)

US – Upland Cotton Art. 21.5

Item (k)

Brazil – Aircraft
Brazil – Aircraft Art. 21.5 (I) & (II)
Canada – Aircraft Art. 21.5

- **Annex V, Procedures for Developing Information Concerning Serious Prejudice**

  US – Large Civil Aircraft (2nd complaint)

SPS AGREEMENT

- **Art. 1.1 (SPS measure)**

  Panama – Import Measures (Costa Rica)

- **Art. 2 (basic rights and obligations)**

  Art. 2.2

  Australia – Apples
  Costa Rica – Avocados (Mexico)
  EC – Approval and Marketing of Biotech Products
  India – Agricultural Products
  Japan – Agricultural Products II
  Japan – Apples
  Japan – Apples Art. 21.5
  Panama – Import Measures (Costa Rica)
  Russia – Pigs (EU)

  Art. 2.3

  Australia – Apples
  India – Agricultural Products
  Korea – Radionuclides
  Russia – Pigs (EU)
  US – Animals

- **Art. 3 (harmonization)**

  EC – Hormones
  India – Agricultural Products
  Russia – Pigs (EU)
  US – Animals

- **Art. 5 (risk assessment)**

  Australia – Salmon
  Australia – Salmon Art. 21.5
  Russia – Pigs (EU)
  US – Animals

  Art. 5.1

  Australia – Salmon
  Australia – Salmon Art. 21.5
  Canada – Continued Suspension
  Costa Rica – Avocados (Mexico)
  EC – Approval and Marketing of Biotech Products
  EC – Hormones
  India – Agricultural Products
  Japan – Agricultural Products II
  Japan – Apples
  Japan – Apples Art. 21.5
  Panama – Import Measures (Costa Rica)
  Russia – Pigs (EU)
  US – Continued Suspension

Arts. 5.2 & 5.3

Costa Rica – Avocados (Mexico)
Panama – Import Measures (Costa Rica)

Art. 5.4

US – Animals

Art. 5.5

Australia – Salmon
Australia – Salmon Art. 21.5
Costa Rica – Avocados (Mexico)
EC – Hormones

Art. 5.6

Australia – Salmon
Australia – Salmon Art. 21.5
Costa Rica – Avocados (Mexico)
Japan – Agricultural Products II
Japan – Apples Art. 21.5
India – Agricultural Products
Korea – Radionuclides
Panama – Import Measures (Costa Rica)
Russia – Pigs (EU)
US – Animals

Art. 5.7

Canada – Continued Suspension
Japan – Agricultural Products II
Japan – Apples
Korea – Radionuclides
Panama – Import Measures (Costa Rica)
US – Continued Suspension

- **Art. 6 (adaptation to regional conditions)**

  Costa Rica – Avocados (Mexico)
  India – Agricultural Products
  Indonesia – Chicken
  Panama – Import Measures (Costa Rica)
  Russia – Pigs (EU)
  US – Animals

- **Art. 7 (transparency)**

  Korea – Radionuclides
  Panama – Import Measures (Costa Rica)

- **Art. 8 (control, inspection and approval procedures)**

  EC – Approval and Marketing of Biotech Products
  Indonesia – Chicken Art. 21.5
  Korea – Radionuclides
  Panama – Import Measures (Costa Rica)
  US – Animals

- **Art. 10 (special and differential treatment)**

  Art. 10.1

  US – Animals

- **Annex B (transparency of SPS regulations)**

  Korea – Radionuclides
  Panama – Import Measures (Costa Rica)

- **Annex C (control, inspection and approval procedures)**

  EC – Approval and Marketing of Biotech Products
  Indonesia – Chicken
  Indonesia – Chicken Art. 21.5
  Korea – Radionuclides
  Panama – Import Measures (Costa Rica)

TBT AGREEMENT

- **Art. 1 (general provisions)**
  - *EC – Asbestos*
  - *EC – Sardines*
  - *EC – Trademarks and Geographical Indications*
  - *EU and Certain Member States – Palm Oil (Malaysia)*
  - *EU – Palm Oil (Indonesia)*
- **Art. 2.1 (national treatment – technical regulation)**
  - *EC – Seal Products*
  - *EU and Certain Member States – Palm Oil (Malaysia)*
  - *Russia – Railway Equipment*
  - *US – Clove Cigarettes*
  - *US – COOL*
  - *US – COOL Art. 21.5*
  - *US – Tuna II (Mexico)*
  - *US – Tuna II Art. 21.5*
  - *US – Tuna II (Mexico) Art. 21.5 / US – Tuna II Art. 21.5*
- **Art. 2.2 (not more trade-restrictive than necessary)**
  - *Australia – Tobacco Plain Packaging*
  - *EU and Certain Member States – Palm Oil (Malaysia)*
  - *EC – Seal Products*
  - *Russia – Railway Equipment*
  - *US – COOL*
  - *US – COOL Art. 21.5*
  - *US – Tuna II (Mexico)*
- **Art. 2.4 (international standard)**
  - *EC – Sardines*
  - *EU and Certain Member States – Palm Oil (Malaysia)*
  - *US – Tuna II (Mexico)*
  - *US – COOL*
- **Art. 2.12 (reasonable interval between publication of technical regulations and their entry into force)**
  - *US – Clove Cigarettes*
- **Art. 5 (conformity assessment procedures)**
  - *EU – Palm Oil (Indonesia)*
  - *Russia – Railway Equipment*
- **Annex 1.1 (definition of technical regulation)**
  - *EC – Seal Products*
  - *US – Tuna II (Mexico)*

TRIMs AGREEMENT

- **Art. 2 (national treatment and quantitative restrictions)**
  - *Brazil – Taxation*
  - *Canada – Renewable Energy/Canada – Feed-in Tariff Program*
  - *India – Solar Cells*
  - *Indonesia – Autos*
  - *Turkey – Pharmaceutical Products (EU)*
  - *US – Renewable Energy (India)*

TRIPS AGREEMENT

- **Art. 1.1 (non-frustration)**
  China – IPRs Enforcement (EU)
- **Art. 2 (international property conventions)**
  Art. 2.1
  US – Section 211 Appropriations Act
- **Art. 3 (national treatment)**
  EC – Trademarks and Geographical Indications
  US – Section 211 Appropriations Act
- **Art. 4 (most-favoured-nation treatment)**
  US – Section 211 Appropriations Act
- **Art. 9 (relation to the Berne Convention)**
  China – Intellectual Property Rights
- **Art. 13 (copyrights – limitations and exceptions)**
  US – Section 110(5) Copyright Act
- **Art. 15 (registration of a trademark)**
  Australia – Tobacco Plain Packaging
- **Arts. 16 & 17 (trademarks – exclusive rights of the owners and limited exceptions)**
  Australia – Tobacco Plain Packaging
  EC – Trademarks and Geographical Indications
  US – Section 211 Appropriations Act
- **Art. 20 (other requirements)**
  Australia – Tobacco Plain Packaging
- **Art. 22 (protection of geographical indications)**
  Australia – Tobacco Plain Packaging
- **Art. 24 (exceptions)**
  Australia – Tobacco Plain Packaging
- **Art. 27 (patentable subject matter)**
  Canada – Pharmaceutical Patents
- **Art. 28 (owner rights)**
  Canada – Pharmaceutical Patents
  China – IPRs Enforcement (EU)
- **Art. 30 (exceptions)**
  Canada – Pharmaceutical Patents
- **Art. 33 (terms of protection)**
  Canada – Patent Term
- **Art. 41 (enforcement)**
  China – Intellectual Property Rights
  China – IPRs Enforcement (EU)
  Saudi Arabia – Protection of IPRs
- **Art. 42 (civil and administrative procedures and remedies)**
  US – Section 211 Appropriations Act
- **Art. 44 (injunctions)**
  China – IPRs Enforcement (EU)
- **Art. 46 (enforcement)**
  China – Intellectual Property Rights
- **Art. 61 (criminal procedures)**
  China – Intellectual Property Rights
  Saudi Arabia – Protection of IPRs
- **Art. 63 (transparency)**
  China – IPRs Enforcement (EU)

- **Art. 70 (patents on pharmaceutical and agricultural chemical products)**
  - **Art. 70.1**
    - *Canada – Patent Term*
  - **Art. 70.2**
    - *Canada – Patent Term*
  - **Art. 70.8(a)**
    - *India – Patents (EC)*
    - *India – Patents (US)*
  - **Art. 70.9**
    - *India – Patents (US)*
    - *India – Patents (EC)*
  - **Art. 73 (security exception)**
    - *Saudi Arabia – Protection of IPRs*

WTO AGREEMENT

- **Art. XVI:1 (decisions, procedures or customary practices)**
  - *EU – Poultry Meat (China)*
- **Art. XVI:4 (WTO-conformity of laws, regulations and administrative procedures)**
  - *Chile – Price Band System Art. 21.5*
  - *EU – Footwear (China)*
  - *US – 1916 Act*
  - *US – Offset Act (Byrd Amendment)*

Appendix 3

INDEX OF DISPUTES BY WTO MEMBER

Argentina – Ceramic Tiles (DS189) 77
Argentina – Financial Services (DS453) 197
Argentina – Footwear (EC) (DS121) 50
Argentina – Hides and Leather (DS155) 64
Argentina – Import Measures (DS438, 444, 445) 192
Argentina – Poultry Anti-Dumping Duties (DS241) 96
Argentina – Preserved Peaches (DS238) 95
Argentina – Textiles and Apparel (DS56) 28
Australia – AD/CVD on Certain Products (China) (DS603) 242
Australia – Anti-Dumping Measures on Paper (DS529) 231
Australia – Apples (DS367) 154
Australia – Automotive Leather II (DS126) 52
Australia – Automotive Leather II (Article 21.5 – US) (DS126) 53
Australia – Salmon (DS18) 11
Australia – Salmon (Article 21.5 – Canada) (DS18) 12
Australia – Tobacco Plain Packaging (DS435, 441, 458, 467) 188
Brazil – Aircraft (DS46) 23
Brazil – Aircraft (Article 21.5 – Canada) (DS46) 24
Brazil – Aircraft (Article 21.5 – Canada II) (DS46) 25
Brazil – Desiccated Coconut (DS22) 13
Brazil – Retreaded Tyres (DS332) 138
Brazil – Taxation (DS472, 497) 205
Canada – Aircraft (DS70) 34
Canada – Aircraft (Article 21.5 – Brazil) (DS70) 35
Canada – Aircraft Credits and Guarantees (DS222) 92
Canada – Autos (DS139, 142) 59
Canada – Continued Suspension (DS320, 321) 134
Canada – Dairy (DS103, 113) 43
Canada – Dairy (Article 21.5 – New Zealand and US) (DS103, 113) 44
Canada – Dairy (Article 21.5 – New Zealand and US II) (DS103, 113) 45
Canada – Patent Term (DS170) 71
Canada – Periodicals (DS31) 19
Canada – Pharmaceutical Patents (DS114) 49
Canada – Renewable Energy/Canada – Feed-in Tariff Program (DS412, 426) 176
Canada – Welded Pipe (DS482) 211
Canada – Wheat Exports and Grain Imports (DS276) 114
Chile – Alcoholic Beverages (DS87, 110) 39
Chile – Price Band System (DS207) 83
Chile – Price Band System (Article 21.5 – Argentina) (DS207) 84
China – Additional Duties (US) (DS558) 265
China – AD on Stainless Steel Products from Japan (DS601) 241
China – Agricultural Producers (DS511) 226
China – Auto Parts (DS339, 340, 342) 143

China – Autos (US) (DS440) 193
China – Broiler Products (DS427) 183
China – Broiler Products (Article 21.5 – US) (DS427) 184
China – Cellulose Pulp (DS483) 212
China – Electronic Payment Services (DS413) 177
China – GOES (DS414) 178
China – GOES (Article 21.5 – US) (DS414) 179
China – HP-SSST (Japan/European Union) (DS454, 460) 198
China – Intellectual Property Rights (DS362) 151
China – IPRs Enforcement (EU) (DS611) 243
China – Publications and Audiovisual Products (DS363) 152
China – Rare Earths (DS431, 432, 433) 187
China – Raw Materials (DS394, 395, 398) 166
China – TRQs (DS517) 229
China – X-Ray Equipment (DS425) 182
Colombia – Frozen Fries (DS591) 236
Colombia – Frozen Fries (Article 21.5 – EU) (DS591) 237
Colombia – Ports of Entry (DS366) 153
Colombia – Textiles (DS461) 201
Colombia – Textiles (Article 21.5 – Colombia) / Colombia – Textiles (Article 21.5 – Panama) (DS461) 250
Costa Rica – Avocados (Mexico) (DS524) 230
Dominican Republic – AD on Steel Bars (Costa Rica) (DS605) 275
Dominican Republic – Import and Sale of Cigarettes (DS302) 127
Dominican Republic – Safeguard Measures (DS415, 416, 417, 418) 180
EC and certain member States – Large Civil Aircraft (DS316) 132
EC and certain member States – Large Civil Aircraft (Article 21.5 – EU) (DS316) 246
EC and certain member States – Large Civil Aircraft (Article 21.5 – US) (DS316) 133
EC – Approval and Marketing of Biotech Products (DS291, 292, 293) 120
EC – Asbestos (DS135) 56
EC – Bananas III (DS27) 16
EC – Bananas III (Article 21.5 – Ecuador) (DS27) 17
EC – Bananas III (Article 21.5 – Ecuador II) (DS27) 18
EC – Bananas III (Article 21.5 – US) (DS27) 18
EC – Bed Linen (DS141) 60
EC – Bed Linen (Article 21.5 – India) (DS141) 61
EC – Chicken Cuts (DS269, 286) 112
EC – Commercial Vessels (DS301) 126
EC – Computer Equipment (DS62, 67, 68) 32
EC – Countervailing Measures on DRAM Chips (DS299) 125
EC – Export Subsidies on Sugar (DS265, 266, 283) 107
EC – Fasteners (China) (DS397) 168
EC – Fasteners (China) (Article 21.5 – China) (DS397) 169
EC – Hormones (DS26, 48) 15
EC – IT Products (DS375, 376, 377) 156
EC – Poultry (DS69) 33
EC – Salmon (Norway) (DS337) 142
EC – Sardines (DS231) 93
EC – Seal Products (DS400, 401) 171
EC – Selected Customs Matters (DS315) 131

EC – Tariff Preferences (DS246) 101
EC – Trademarks and Geographical Indications (DS174, 290) 72
EC – Tube or Pipe Fittings (DS219) 90
Egypt – Steel Rebar (DS211) 85
EU – Biodiesel (Argentina) (DS473) 206
EU – Biodiesel (Indonesia) (DS480) 210
EU – Cost Adjustment Methodologies II (Russia) (DS494) 253
EU – CVD/AD on SSCRFP (Indonesia) (DS616) 276
EU – CVDs on Biodiesel (Indonesia) (DS618) 277
EU – Energy Package (DS476) 251
EU – Fatty Alcohols (Indonesia) (DS442) 194
EU – Footwear (China) (DS405) 174
EU – Palm Oil (Indonesia) (DS593) 238
EU – PET (Pakistan) (DS486) 215
EU – Poultry Meat (China) (DS492) 220
EU – Safeguard Measures on Steel (Turkey) (DS595) 239
EU and certain Member States – Palm Oil (Malaysia) (DS600) 240
Guatemala – Cement I (DS60) 31
Guatemala – Cement II (DS156) 65
India – Additional Import Duties (DS360) 150
India – Agricultural Products (DS430) 186
India – Autos (DS146, 175) 62
India – Export Related Measures (DS541) 261
India – Iron and Steel Products (DS518) 255
India – Patents (EC) (DS79) 38
India – Patents (US) (DS50) 26
India – Quantitative Restrictions (DS90) 40
India – Solar Cells (DS456) 199
India – Sugar and Sugarcane (DS579, 580, 581) 270
India – Tariffs on ICT Goods (DS582, 584, 588) 271
Indonesia – Autos (DS54, 55, 59, 64) 27
Indonesia – Chicken (DS484) 213
Indonesia – Chicken (Article 21.5 – Brazil) (DS484) 252
Indonesia – Import Licensing Regimes (DS477, 478) 208
Indonesia – Iron or Steel Products (DS490, 496) 218
Indonesia – Raw Materials (DS592) 272
Japan – Agricultural Products II (DS76) 37
Japan – Alcoholic Beverages II (DS8, 10, 11) 10
Japan – Apples (DS245) 99
Japan – Apples (Article 21.5 – US) (DS245) 100
Japan – DRAMs (Korea) (DS336) 141
Japan – Film (DS44) 22
Korea – Alcoholic Beverages (DS75, 84) 36
Korea – Certain Paper (DS312) 129
Korea – Certain Paper (Article 21.5 – Indonesia) (DS312) 130
Korea – Commercial Vessels (DS273) 113
Korea – Dairy (DS98) 41
Korea – Pneumatic Valves (Japan) (DS504) 224
Korea – Procurement (DS163) 68
Korea – Radionuclides (DS495) 222
Korea – Stainless Steel Bars (DS553) 264

Korea – Various Measures on Beef (DS161, 169) 67
Mexico – Anti-Dumping Measures on Rice (DS295) 123
Mexico – Corn Syrup (DS132) 54
Mexico – Corn Syrup (Article 21.5 – US) (DS132) 55
Mexico – Olive Oil (DS341) 144
Mexico – Steel Pipes and Tubes (DS331) 137
Mexico – Taxes on Soft Drinks (DS308) 128
Mexico – Telecoms (DS204) 81
Morocco– Definitive AD Measures on Exercise Books (Tunisia) (DS578) 269
Morocco – Hot-Rolled Steel (Turkey) (DS513) 228
Pakistan – BOPP Film (UAE) (DS58) 259
Panama – Import Measures (Costa Rica) (DS599) 274
Peru – Agricultural Products (DS457) 200
Philippines – Distilled Spirits (DS396, 403) 167
Russia – Commercial Vehicles (DS479) 209
Russia – Pigs (EU) (DS475) 207
Russia – Railway Equipment (DS499) 223
Russia – Tariff Treatment (DS485) 214
Russia – Traffic in Transit (DS512) 227
Saudi Arabia – Protection of IPRs (DS567) 268
Thailand – Cigarettes (Philippines) (DS371) 155
Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines) (DS371) 247
Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II) (DS371) 248
Thailand – H-Beams (DS122) 51
Turkey – Additional Duties (US) (DS561) 266
Turkey – Pharmaceutical Products (EU) (DS583) 235
Turkey – Rice (DS334) 139
Turkey – Textiles (DS34) 21
Ukraine – Ammonium Nitrate (DS493) 221
Ukraine – Passenger Cars (DS468) 203
US – 1916 Act (DS136, 162) 57
US – Animals (DS447) 195
US – Anti-Dumping and Countervailing Duties (China) (DS379) 157
US – Anti-Dumping and Countervailing Duties (Korea) (DS539) 260
US – Anti-Dumping Measures on Oil Country Tubular Goods (DS282) 117
US – Anti-Dumping Measures on PET Bags (DS383) 162
US – Anti-Dumping Methodologies (China) (DS471) 204
US – Carbon Steel (DS213) 88
US – Carbon Steel (India) (DS436) 189
US – Carbon Steel (India) (Article 21.5 – India) (DS436) 249
US – Certain EC Products (DS165) 69
US – Clove Cigarettes (DS406) 175
US – Coated Paper (Indonesia) (DS491) 219
US – Continued Suspension (DS320, 321) 134
US – Continued Zeroing (DS350) 147
US – COOL (DS384, 386) 163
US – COOL (Article 21.5 – Canada and Mexico) (DS384, 386) 164
US – Corrosion Resistant Steel Sunset Review (DS244) 98
US – Cotton Yarn (DS192) 78
US – Countervailing Measures (China) (DS437) 190
US – Countervailing Measures (Article 21.5 – China) (DS437) 191

US – Countervailing and Anti-Dumping Measures (China) (DS449) 196
US – Countervailing Duty Investigation on DRAMs (DS296) 124
US – Countervailing Measures on Certain EC Products (DS212) 86
US – Countervailing Measures on Certain EC Products (Article 21.5 – EC) (DS212) 87
US – Differential Pricing Methodology (DS534) 258
US – DRAMS (DS99) 42
US – Export Restraints (DS194) 79
US – FSC (DS108) 46
US – FSC (Article 21.5 – EC) (DS108) 47
US – FSC (Article 21.5 – EC II) (DS108) 48
US – Gambling (DS285) 118
US – Gambling (Article 21.5 – Antigua and Barbuda) (DS285) 119
US – Gasoline (DS2) 9
US – Hot-Rolled Steel (DS184) 76
US – Lamb (DS177, 178) 74
US – Large Civil Aircraft (2nd complaint) (DS353) 148
US – Large Civil Aircraft (2nd complaint) (Article 21.5 – EU) (DS353) 149
US – Lead and Bismuth II (DS138) 58
US – Line Pipe (DS202) 80
US – OCTG (Korea) (DS488) 217
US – Offset Act (Byrd Amendment) (DS217, 234) 89
US – Oil Country Tubular Goods Sunset Reviews (DS268) 110
US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina) (DS268) 111
US – Orange Juice (Brazil) (DS382) 161
US – Origin Marking (Hong Kong, China) (DS597) 273
US – Pipe and Tube Products (Turkey) (DS523) 256
US – Poultry (China) (DS392) 165
US – Renewable Energy (India) (DS510) 254
US – Ripe Olives from Spain (DS577) 233
US – Ripe Olives from Spain (Article 21.5 – EU) (DS577) 234
United States – Safeguard Measure on Imports of Large Residential Washers (DS546) 232
US – Safeguard Measure on PV Products (China) (DS562) 267
US – Section 110(5) Copyright Act (DS160) 66
US – Section 129(c)(1) URAA (DS221) 91
US – Section 211 Appropriations Act (DS176) 73
US – Section 301 Trade Act (DS152) 63
US – Shrimp (DS58) 29
US – Shrimp (Article 21.5 – Malaysia) (DS58) 30
US – Shrimp II (Viet Nam) (DS429) 185
US – Shrimp and Sawblades (China) (DS422) 181
US – Shrimp (Ecuador) (DS335) 140
US – Shrimp (Thailand), US – Customs Bond Directive (DS343, 345) 145
US – Shrimp (Viet Nam) (DS404) 173
US – Softwood Lumber III (DS236) 94
US – Softwood Lumber IV (DS257) 103
US – Softwood Lumber IV (Article 21.5 – Canada) (DS257) 104
US – Softwood Lumber V (DS264) 105
US – Softwood Lumber V (Article 21.5 – Canada) (DS264) 106
US – Softwood Lumber VI (DS277) 115
US – Softwood Lumber VI (Article 21.5 – Canada) (DS277) 116
US – Softwood Lumber VII (DS533) 257

US – Stainless Steel (DS179) 75
US – Stainless Steel (Mexico) (DS344) 146
US – Steel and Aluminium (China DS544), (Norway DS552), (Switzerland DS556), (Turkey DS564) 263
US – Steel Plate (DS206) 82
US – Steel Safeguards (DS248, 249, 251, 252, 253, 254, 258, 259) 102
US – Supercalendered Paper (DS505) 225
US – Tariff Measures (DS543) 262
US – Tax Incentives (DS487) 216
US – Textiles Rules of Origin (DS243) 97
US – Tuna II (Mexico) (DS381) 158
US – Tuna II (Article 21.5 – Mexico) (DS381) 159
US – Tuna II (Mexico) (Article 21.5 – United States)/US – Tuna II (Mexico) (Article 21.5 – Mexico II) (DS381) 160
US – Tyres (China) (DS399) 170
US – Underwear (DS24) 14
US – Upland Cotton (DS267) 108
US – Upland Cotton (Article 21.5 – Brazil) (DS267) 109
US – Washing Machines (DS464) 202
US – Wheat Gluten (DS166) 70
US – Wool Shirts and Blouses (DS33) 20
US – Zeroing (EC) (DS294) 121
US – Zeroing (EC) (Article 21.5 – EC) (DS294) 122
US – Zeroing (Japan) (DS322) 135
US – Zeroing (Japan) (Article 21.5 – Japan) (DS322) 136
US – Zeroing (Korea) (DS402) 172

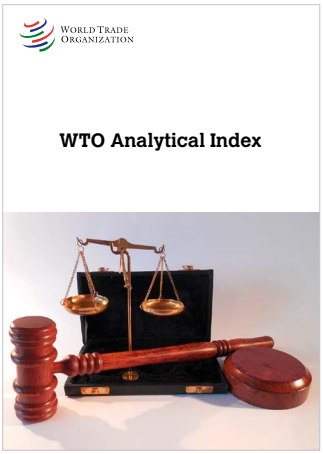
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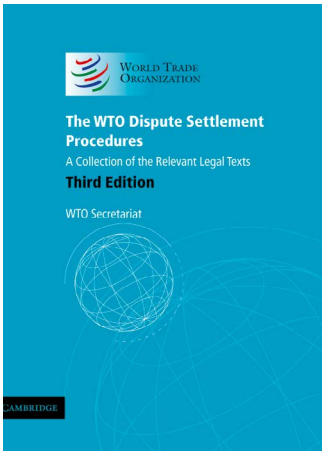
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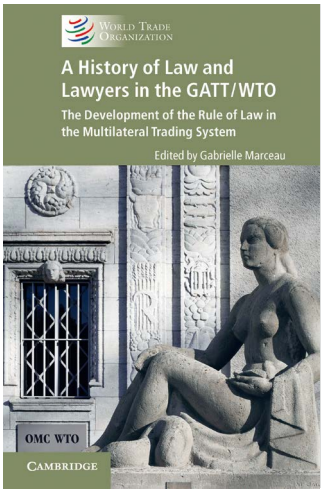
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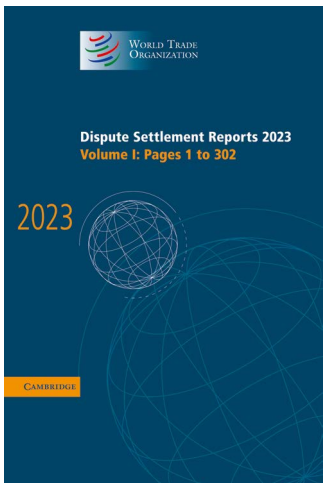
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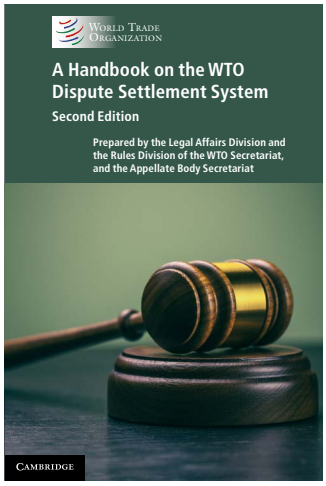
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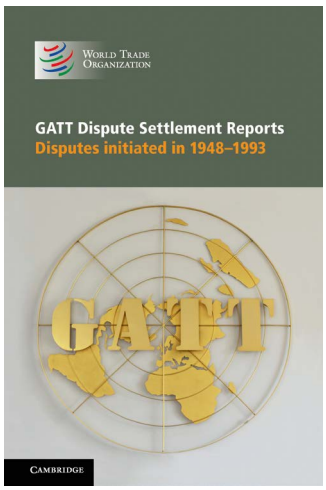
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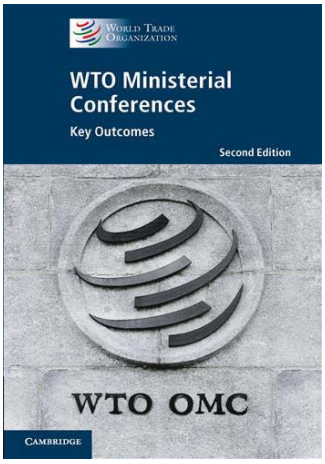
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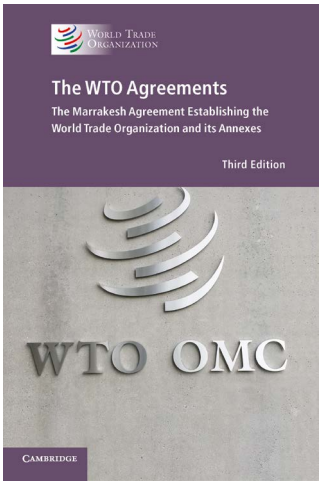
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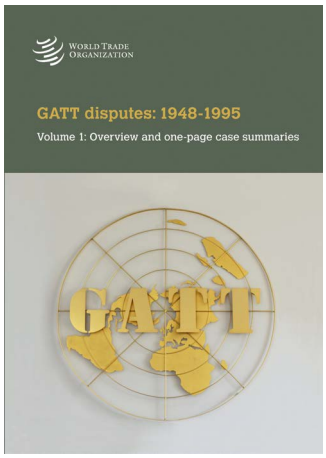
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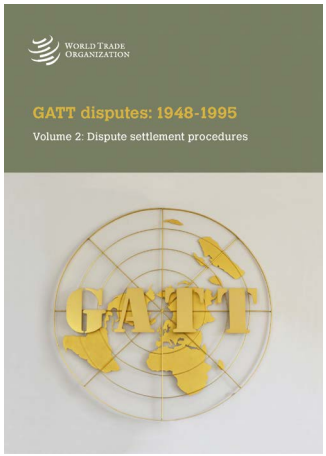


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http://www.wto.org

Photo front cover:
Pierre-Yves Dhinaut, 2014

WTO Publications
Email: publications@wto.org
WTO Online Bookshop
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ISBN print version: 978-92-870-9148-2
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