WTO Analytical Index:

Supplement Covering New Developments in WTO Law and Practice

October 2011 ± June 201 5

I. NEW DISPUTE SETTLEMENT REPORTS, AWARDS, AND DECISIONS

A. TABLE OF CASES COVERED IN THIS *SUPPLEMENT*

1. The Third Edition of the *WTO Analytical Index: Guide to WTO Law and Practice* is updated to 30 September 2011. This *Supplement* contains summaries and selected extracts of key findings from 41 decisions circulated between 1 October 2011 and 4 June 2015, including 22 panel reports, 17 Appellate Body reports, and 2 arbitration awards:

Type	Short Title	DS No.	Circulated	

C. GATT 1994

1. Article I: General Most-Favoured Nation Treatment

(a) Article I:1 (general obligation)

4. In *EU ±Footwear (China)*, the Panel found, for the same reasons and as set out in more detail by the panel in *EC ±Fasteners (China)*, that Article 9(5) of the Basic AD Regulation was inconsistent with Articles 6.10 and 9.2 of the Anti-Dumping Agreement. This provision required that a country-

substitutable" within the meaning of Article III:2, second sentence. The Appellate Body also upheld the Panel's finding that dissimilar taxation of imported distilled spirits, and of directly competitive or substitutable domestic distilled spirits, was applied "so as to afford protection" to Philippine production of distilled spirits.

(c) Article III:4 (laws/regulations/requirements and like products)

13. In *US – Tuna II (Mexico)*, the Panel, having found no violation of Article 2.1 of the TBT Agreement, exercised judicial economy in respect of the complainant's claim under Article III:4 of the GATT 1994. The Appellate Body, having reversed the Panel's interpretation of Article 2.1, and having rejected the Panel's assumption that the obligations under Article 2.1 and Article III:4 are substantially the same, proceeded to find that the Panel erred in exercising judicial economy with respect to Mexico's claim under Article III:4.[17]

14. In *Canada – Renewable Energy / Feed-In Tariff Program*, the Panel concluded that compliance with the "Minimum Required Domestic Content Level" involved the "purchase or use" of products from a domestic source, within the meaning of Paragraph 1(a) of the Illustrative List, and that such compliance "is necessary" for electricity generators using solar PV and wind power technologies to participate in the FIT Programme, and thereby "obtain an advantage" within the meaning of Paragraph 1 of the Illustrative List. Having found that the challenged measures were TRIMs falling within the scope of Paragraph 1(a) of the Illustrative List, they were inconsistent with Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement.

15. In *EC – Seal Products*, the Panel found that the marine resource management exception to the EU ban on seal products was inconsistent with Article III:4 of the GATT.[18] Specifically, the Panel found that while

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doubts as to whether the data relied upon by MOFCOM pertained to all of their production, or only to their production of subject products.[30]

5. Article VIII: Fees and Formalities connected with Importation and Exportation

(a) Relationship to Article XI:1

24. In *Argentina – Import Measures*, the Appellate Body upheld the Panel's finding that the measures constituted a "restriction" on the importation of goods and were thus inconsistent with Article XI:1 of the GATT 1994.[31] In the course of its analysis, the Appellate Body considered several issues relating to the interpretation of discrete elements of Article XI:1 of the GATT 1994, including whether and under what circumstances measures that qualify as "formalities" or "requirements" under GATT Article VIII may constitute "restrictions" under Article XI:1.

6. Article X: Publication and Administration of Trade Regulations

(a) Article X:1 (prompt publication)

25. In *US – Countervailing and Anti-Dumping Measures (China)*, the Panel rejected China's claim that the measure at issue violated Article X:1 of the GATT.[32] At issue was PL 112-99, as US law enacted on 13 March 2012 that expressly provided for the applicability of US countervailing duty (CVD) law to imports from nonmarket economy (NME) countries to all US CVD investigations initiated on or after 20 November 2006. The United States had been applying US CVD law to imports from China since 2006. In 2012, a US court decided that US CVD law was not applicable to imports from China and other countries that the United States treated as NMEs under its trade remedy laws. PL 112-99 was enacted before that court decision became final. China claimed that PL 112-99 violated Article X:1 because it had not been "published promptly" in relation to the date that it was "made effective", as required by Article X:1. The Panel concluded that for the purposes of Article X:1, PL 112-99 was "made effective" on 13 March 2012, and not on 20 November 2006 as argued by China. Accordingly, the Panel found no violation of Article X:1.

(b) Article X:2 (enforcement prior to publication)

26. In *US – Countervailing and Anti-Dumping Measures (China)*, the Panel rejected China's claim that the measure at issue violated Article X:2 of the GATT.[33] At issue was PL 112-99, as US law enacted on 13 March 2012 that expressly provided for the applicability of US countervailing duty (CVD) law to imports from nonmarket economy (NME) countries to all US CVD investigations initiated on or after 20 November 2006. The United States Department of Commerce (USDOC) had been applying US CVD law to imports from China since 2006. In 2012, a US court decided that US CVD law was not applicable to imports from China and other countries that the United States treated as NMEs under its trade remedy laws. PL 112-99 was enacted before that court decision became final. The Panel concluded that PL 112-99 was not a measure "effecting an advance" or "imposing a new or more burdensome requirement" within the meaning of Article X:2, and therefore rejected China's claim. The Appellate Body reversed the Panel's interpretation of Article X:2, but was ultimately unable to complete the analysis of whether PL 112-99 was a measure "effecting an 5(pl)-4(e)9(t)-4(e)ETBTQ1>

7. Article XI: General Elimination of Quantitative Restrictions

(a) Article XI:1 (general obligation)

30. The Panel in *China – Rare Earths* found that the export quotas at issue were restrictions within the meaning of Article XI:1 of the GATT 1994.[38]

31. In *EC – Seal Products*, the Panel rejected a claim that each of the exceptions to the EU ban on seal products (as distinguished from the ban as such) individually imposed quantitative restrictions on imports of seal products inconsistently with Article XI:1 of the GATT.[39]

32. In *Argentina – Import Measures*, the Appellate Body upheld the Panel's finding that the measures constituted a "restriction" on the importation of goods and were thus inconsistent with Article XI:1 of the GATT 1994.[40] In the course of its analysis, the Appellate Body considered several

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E. TBT AGREEMENT

1. Article 2: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

(a) Article 2.1 (non-discrimination)

52. In *US ± Clove Cigarettes*, the Appellate Body upheld the Panel's finding that Section 907(a)(1)(A) was inconsistent with Article 2.1 of the TBT Agreement.[71] The Appellate Body began by interpreting the concept of "like products" in Article 2.1, disagreeing with the Panel that "like products" in Article 2.1 of the TBT Agreement should be interpreted based on the regulatory purpose of the technical regulation at issue. Rather, the Appellate Body considered that the determination of whether products are "like", within the meaning of Article 2.1 of the TBT Agreement, is a determination about the competitive relationship between the products, based on an analysis of the traditional "likeness" criteria considered under Article III:4 of the GATT 1994, namely, physical characteristics, end-uses, consumer tastes and habits, and tariff classification. However, based on this interpretation of the concept of "like products", the Appellate Body nonetheless agreed with the Panel that clove cigarettes and menthol cigarettes are "like products" within the meaning of Article 2.1 of the TBT Agreement. The Appellate Body found that the Panel did not err in its approach to the product scope, or the temporal scope, of its analysis of "less favourable treatment". The Appellate Body found that the design, architecture, revealing structure, operation, and application of Section

the information conveyed to consumers through the mandatory labelling requirements for meat sold at the retail level.

55. In *EC – Seal Products*, the Panel found that the indigenous communities (IC) and marine resource management (MRM) exceptions to the EU ban on seal products were inconsistent with Article 2.1 of the TBT Agreement.[74] The Panel found that the IC exception had a detrimental impact on seal products imported from Canada, as it allowed virtually all seal products from Greenland to enter the EU market, while excluding the vast majority of seal products from Canada; similarly, the Panel found that the MRM exception had a detrimental impact on seal products from Canada, in that all of the EU's domestic seal products were eligible under the MRM exception, while virtually all Canadian seal products were not. The Panel then examined whether the detrimental impact caused by the IC and MRM exceptions stemmed exclusively from "legitimate regulatory distinctions", by considering: (1)

necessary to fulfil the United States' legitimate objectives, and therefore inconsistent with Article 2.2.[79] The Appellate Body reasoned that the Panel had conducted a flawed analysis and comparison

appropriate to complete the analysis and resolve this question. The Appellate Body noted in this regard that drawing the line between processes and production methods that fall within the scope of the TBT Agreement, and those that do not, raises important systemic issues.

73. In *US ±COOL (Article 21.5 ±Canada and Mexico)*, the Panel saw no reason to disagree with the parties that the amended COOL measure was a "technical regulation" within the meaning of Annex 1.1 to the TBT Agreement.[100]

74. Likewise, in

F. SPS AGREEMENT

1. Article 2: Basic Rights and Obligations

(a) Article 2.2 (necessity and scientific principles)

77. In *India ±Agricultural Products*, the Panel found, in the light of its findings of inconsistency with Articles 5.1 and 5.2 of the SPS Agreement, that India's avian influenza measures were also inconsistent with Article 2.2 of the SPS Agreement because they are not based on scientific principles and are maintained without sufficient scientific evidence.[104] The Panel, having found that India's avian influenza measures are inconsistent with Article 5.6 of the SPS Agreement, found that those measures were also consequentially inconsistent with Article 2.2 of the SPS Agreement because they were applied beyond the extent necessary to protect human and animal life or health.[105] The Appellate Body found that by failing to consider whether the presumption of inconsistency with Article 2.2 that flowed from its finding that India's avian influenza measures were inconsistent with Articles 5.1 and 5.2 was rebutted by the arguments and evidence presented by India, the Panel erred in its application

3. Article 5:

H. ANTI-DUMPING AGREEMENT

(c) Article 2.4 (comparison between export price and normal value)

(i) General

96. In *EU ± Footwear (China)*, the Panel found that the European Union did not act inconsistently with Articles 2.1 and 2.4 of the Anti-Dumping Agreement with respect to the analogue country selection procedure, or in its selection of Brazil as the analogue country in the original investigation.[136] The Panel found that the European Union did not act inconsistently with Article 2.4 of the Anti-Dumping Agreement with respect to the PCN system used and the adjustment for leather quality made by the Commission in the original investigation.[137]

97. In *China ±HP-SSST (Japan)*, the Panel found that China acted inconsistently with Article 2.4 of the Anti-Dumping Agreement by failing to address a request for an adjustment to ensure a fair comparison between the export price and the normal value for certain products.[138]

98. Article 2.4.2 (comparison methods)

99. In *US ±Shrimp and Sawblades*, the Panel upheld China's claim concerning the USDOC's use of zeroing in the calculation of dumping margins for individually examined exporters/producers. The Panel found that the "zeroing" methodology used by the USDOC in calculating the margins of dumping in the anti-dumping investigations at issue was inconsistent with Article 2.4.2 of the Anti-Dumping Agreement.[139] The Panel examined USDOC's calculation of the "separate rate" that was applied on imports from exporters/produces not selected for individual examination, and found that USDOC had relied upon dumping margins, calculated with zeroing, in calculating the "separate rate". However, the Panel considered that Article 2.4.2 of the Anti-Dumping Agreement did not provide the proper legal basis for a finding of inconsistency with respect to the separate rate.[140]

(d) Article 2.6 (definition of like products)

100. In *EU ± Footwear (China)*, the Panel found that the European Union did not act inconsistently with Article 2.6 of the Anti-Dumping Agreement in its determination of the scope of the product under consideration.[141]

2. Article 3: Determination of Injury

(a) Article 3.1 (positive evidence / objective examination)

101. Panels have addressed claims under Article 3.1 of the Anti-Dumping Agreement in a number of disputes, mostly in conjunction with one or more other paragraphs of Article 3.

(b) Article 3.2 (obligation to consider volume and price effects of imports)

102. In *EU ±Footwear (China)*, the Panel rejected China's claim that the European Union acted inconsistently with Articles 3.1, 3.2, 9.1, and 9.2 of the Anti-Dumping Agreement as a result of establishing the level of "lesser duty" on imports from China at a rate higher than the rate of "lesser duty" established for imports from Viet Nam.[142]

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[136] Panel Report, *EU ±Footwear (China)*, paras. 7.253-7.266.
[137] Panel Report, *EU ±Footwear (China)*, paras. 7.276-7.287.
[138] Panel Report, *China ±HP-SSST (Japan)*, paras. 7.76-7.86.
[139] Panel Report, *US ±Shrimp and Sawblades*, paras. 7.12-7.32.
[140] Panel Report, *US ±Shrimp and Sawblades*, paras. 7.33-7.39.
[141] Panel Report, *EU ±Footwear (China)*, paras. 7.308-7.315.
[142] Panel Report, *EU ±Footwear (China)*, paras. 7.920-9-933.

103. In *China ±GOES*

improperly extended its findings of price undercutting in respect of other subject imports to the domestic like product as a whole, contrary to Articles 3.1 and 3.2 of the Anti-Dumping Agreement.[152]

(c) Article 3.3 (cumulative assessment of effects of imports)

108. In *EU ± Footwear (China)*, the Panel found that the European Union did not act inconsistently with Article 3.3 of the Anti-Dumping Agreement with respect to its determination to undertake a cumulative assessment in the original investigation.[153]

(d) Article 3.4 (relevant injury factors)

109. In *EU ± Footwear (China)*, the Panel found that China failed to demonstrate that the European Union violated Article 3.4 of the Anti-Dumping Agreement in its evaluation of all relevant economic factors and indices having a bearing on the state of the industry in the context of the original investigation the expiry review.[154]

110. In *China ±X-Ray Equipment*, the European Union presented a number of different arguments to support its claim that China acted inconsistently with Articles 3.1 and 3.4 of the Anti-Dumping Agreement. The Panel found that the European Union had not established that MOFCOM failed to rely upon positive evidence. However, the Panel concluded that China acted inconsistently with Articles 3.1 and 3.4 because MOFCOM failed to consider all relevant economic factors, in particular, the "magnitude of the margin of dumping". Furthermore, MOFCOM's examination of the state of the industry, including the trends in individual injury factors, lacked objectivity and was not always reasoned and adequate. Finally, the Panel exercised judicial economy regarding whether MOFCOM acted inconsistently with Article 3.4 by failing to take into account the differences between high-energy and low-energy scanners.[155]

111. In *China ±HP-SSST (Japan)*, the Panel rejected a claim that MOFCOM failed to undertake a segmented analysis, and failed to properly weigh the positive and negative injury factors, when assessing the impact of subject imports on the domestic industry, contrary to Articles 3.1 and 3.4 of the Anti-Dumping Agreement.[156] However, the Panel did find that MOFCOM failed to properly evaluate the magnitude of the margin of dumping in considering the impact of subject imports on the domestic industry, contrary to Articles 3.1 and 3.4 of the Anti-Dumping Agreement.[157]

(e) Article 3.5 (causation)

112. In *EU ± Footwear (China)*, the Panel found that the European Union did not act inconsistently with Article 3.5 of the Anti-Dumping Agreement with respect to the causation determination in the original investigation and the expiry review.[158]

113. In *China ±GOES*, the Panel found that China acted inconsistently with Article 3.5 of the Anti-Dumping Agreement with respect to MOFCOM's causation analysis.[159]

114. In *China ±X-Ray Equipment*, the Panel concluded that MOFCOM acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement due to a failure to take into consideration the differences in the products under consideration in the price effects analysis, and due to a failure to

[152] Panel Report, *China ±HP-SSST (Japan)*, paras. 7.136-7.143.
[153] Panel Report, *EU ±Footwear (China)*, paras. 7.400-7.405.
[154] Panel Report, *EU ±Footwear (China)*, paras. 7.412-7.463.
[155] Panel Report, *China ±X-Ray Equipment*, paras. 7.141-7.217.
[156] Panel Report, *China ±HP-SSST (Japan)*, paras. 7.152-7.155, 7.166-7.169.
[157] Panel Report, *China ±HP-SSST (Japan)*, paras. 7.159-7.163.
[158] Panel Report, *EU ±Footwear (China)*, paras. 7.481-7.541.
[159] Panel Report, *China ±GOES*, paras. 7.617-7.638.

rates in the automobiles investigation.[186] The Panel found that a request for information concerning the identity, volume and value of exporters of the product is not a sufficiently specific request for information to justify the determination of a dumping margin on the basis of facts available for unknown or non-existent exporters.

137. In *US – Shrimp II (Viet Nam)*, the Panel found that Viet Nam failed to establish that the rate applied to the Viet Nam-wide entity in certain administrative reviews was inconsistent with Article 6.8 and Annex II of the Anti-Dumping Agreement.[187]

138. In *China – HP-SSST (Japan)*, the Panel rejected a claim that China acted inconsistently with Article 6.8 and Annex II(3) and II(6) to the Anti-Dumping Agreement by applying facts available in

adjustment to export price was made; (ii) the calculations of Smiths' margin of dumping; and (iii) the facts forming the basis of the decision to apply facts available in relation to the residual duty rate.[195]

142. In *China ± Broiler Products*, the Panel upheld several claims by the United States under Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement.[196] The United States argued that MOFCOM was obligated to disclose the essential facts leading up to the calculation of normal value, export price, and the dumping margins. The United States contended that this requires an investigating authority to disclose the actual data used and the calculations performed. The Panel upheld the United States' claims, but did not accept the United States' argument that Article 6.9 required the disclosure of the actual data used and calculations performed (e.g. printouts of computer programmes used to calculate the dumping margins).

143. In *China ± Autos (US)*, the Panel found that China acted inconsistently with Article 6.9 of the Anti-Dumping Agreement because MOFCOM failed to disclose essential facts to US respondents prior to making its final determination in the AD investigation at issue.[197] However, the Panel rejected a separate US claim that MOFCOM acted inconsistently with the disclosure obligation under Article 6.9 of the Anti-Dumping Agreement and Article 12.8 of the SCM Agreement in connection with the determination of the residual AD/CVD duty rates at issue.[198]

144. In *China ± HP-SSST (Japan)*, the Panel addressed a series of claims, under Article 6.9 of the Anti-Dumping Agreement, that MOFCOM failed to disclose the "essential facts" in connection with the methodology used to calculate margins of dumping and the data underlying the determination of certain dumping margins; import prices, domestic prices, and price comparisons considered by MOFCOM in its injury determination; and certain essential facts regarding the "all others" rates.[199]

(h) Article 6.10 (individual margin)

145. In *EU ± Footwear (China)*, the Panel found, for the same reasons and as set out in more detail by the panel in *E;EMC /P <MCID 130>BDC BT/F2 11.04 4 141.62 10(/F5 11.04 Tf1 0 0 1 91.224 720.7 Tm( )]TJETBT*

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single, NME-wide entity, and assigns a single rate to these producers/exporters, is "as such" inconsistent with Articles 6.10 and 9.2 of the Anti-Dumping Agreement.[204] In addition, the Panel found that the United States acted inconsistently with Articles 6.10 and 9.2 as a result of the application by the USDOC, in certain administrative reviews under the *Shrimp* anti-dumping order, of a rebuttable presumption that all companies in Viet Nam belong to a single, Viet Nam-wide entity, and assignment of a single rate to that entity.[205]

5. Article 7: Provisional Measures

(a) Article 7.4 (not exceeding four months)

148. In *China ± HP-SSST (Japan)*, the Panel found that China's application of provisional measures for a period exceeding four months was inconsistent with Article 7.4 of the Anti-Dumping Agreement.[206]

6. Article 9: Imposition and Collection of Anti-Dumping Duties

(a) Article 9.1 (lesser duty principle)

149. In *EU ±Footwear (China)*, the Panel rejected China's claim that the European Union acted inconsistently with Articles 3.1, 3.2, 9.1, and 9.2 of the Anti-Dumping Agreement as a result of establishing the level of "lesser duty" on imports from China at a rate higher than the rate of "lesser duty" established for imports from Viet Nam.

153. In *US ±Shrimp II (Viet Nam)*, the Appellate Body upheld the Panel's finding that Viet Nam failed to establish that Section 129(c)(1) of the URAA precludes implementation, with respect to prior unliquidated entries, of DSB recommendations and rulings, and therefore that Viet Nam had not established that Section 129(c)(1) is "as such" inconsistent with Articles 1, 9.2, 9.3, 11.1 and 18.1 of the Anti-Dumping Agreement.[212]

(c) Article 9.3 (not to exceed margin established under Article 2)

154. In *EU ±Footwear (China)*, the Panel found, for the same reasons and as set out in more detail by the panel in *EC ±Fasteners (China)*, that Article 9(5) of the Basic AD Regulation, which requires that a country-wide duty be imposed on producers/exporters in investigations involving NMEs unless they satisfy the conditions for individual treatment in that provision, was inconsistent with Articles 6.10 and 9.2 of the Anti-Dumping Agreement[213] Like the panel in *EC ±Fasteners (China)*, the Panel then exercised judicial economy with respect to the related claims under Articles 9.3 and 9.4 of the Anti-Dumping Agreement.[214] In *US ±Shrimp II (Viet Nam)*, the Panel found that Viet Nam failed to establish that the simple zeroing methodology as used by the USDOC in administrative reviews is a measure of general and prospective application which can be challenged "as such", and therefore found that Viet Nam had not established that the USDOC's simple zeroing methodology in administrative reviews is inconsistent "as such" with Article 9.3 of the Anti-Dumping Agreement or Article VI:2 of the GATT 1994.[215] However, the Panel found that the United States acted inconsistently with Article 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT 1994 as a result of the USDOC's application of the simple zeroing methodology to calculate the dumping margins of mandatory respondents in certain administrative reviews under the *Shrimp* anti-dumping order.[216]

(d) Article 9.4 (rate applied to exporters not examined)

155. In *US ±Shrimp II (Viet Nam)*, the Panel found that Viet Nam failed to establish the existence of a measure with respect to the manner in which the USDOC determines the NME-wide entity rate, in particular concerning the use of facts available, and therefore found that Viet Nam had not established that the alleged measure is "as such" inconsistent with Articles 6.8 and 9.4, and Annex II, of the Anti-Dumping Agreement.[217] The Panel found that the United States acted inconsistently with Article 9.4 of the Anti-Dumping Agreement as a resul-

(b) Article 11.3 (expiry/sunset reviews)

157. In *EU ±Footwear (China)*, the Panel rejected China's claims under Article 11.3 of the Anti-

12.2.2 by failing to include in the public notice: (i) the calculations and underlying data for Smiths' margin of dumping; and (ii) the calculation of the residual duty rate.[228] The Panel also found that China acted inconsistently with the second sentence of Article 12.2.2 of the Anti-Dumping Agreement, on the basis that MOFCOM's public notice was deficient in failing to explain why MOFCOM rejected Smiths' arguments regarding the treatment of domestic sales to affiliated distributors. However, the Panel found that the European Union failed to establish that China acted inconsistently with the second sentence of Article 12.2.2 in connection with: (i) Smiths' arguments on the credibility of certain injury data; and (ii) additional arguments allegedly made by Smiths concerning MOFCOM's injury and causation analysis.[229]

162. In *China ±Broiler Products*, the Panel addressed a series of claims under Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement and Articles 22.3 and 22.5 of the SCM Agreement.[230]

163. In *China ±Autos (US9()-4( )-314(an)9(d)]TJETr5( )MC /0 1 484.54 619.54 Tml92 1 72.094(h)11(at)-3108(t*

I. SCM AGREEMENT

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source or ownership of the relevant funds (neither owned by nor sourced from the government), SDF loans were private transfers falling outside the scope of the SCM Agreement. The Panel rejected India's claim.[240] On appeal, the Appellate Body rejected India's claim that the USDOC's determination that the SDF Managing Committee provided direct transfers of funds was inconsistent with Article 1.1(a)(1)(i) of the SCM Agreement.[241]

(ii) "government revenue otherwise due is foregone" (Art 1.1(a)(1)(ii))

173. In *US ±Large Civil Aircraft (2nd complaint)*, the Appellate Body upheld the Panel'

(iv) "entrusts or directs a private body"

177. In *US ±Countervailing Measures e bo*

2. Article 2: Specificity

182. In *US ± Large Civil Aircraft (2nd complaint)*, the Appellate Body found that the allocation of patent rights under NASA/DOD contracts was not specific within the meaning of Article 2.1(a) of the SCM Agreement.[254] The Appellate Body began its analysis by setting forth its reservations about the Panel's use of an *arguendo* approach with respect to the existence of a subsidy under Article 1; it then upheld the Panel's finding that the allocation of patent rights under contracts and agreements between NASA/USDOD and Boeing was not explicitly limited to certain enterprises within the meaning of Article 2.1(a) of the SCM Agreement. Having found that the Panel erred by failing to separately examine the European Communities' argument that such allocation was de facto specific under Article 2.1(c) of the SCM Agreement, the Appellate Body proceeded to find that it was not. The Appellate Body also upheld the Panel's finding that a different subsidy, the Washington State B&O tax rate reduction, was specific within the meaning of Article 2.1(a) of the SCM Agreement.[255] The Appellate Body upheld, albeit for different reasons, the Panel's finding that the subsidies provided by the City of Wichita through the issuance of Industrial Revenue Bonds subsidies provided to Boeing and Spirit were specific within the meaning of Article 2.1(c) of the SCM Agreement.[256]

183. In *US ± Carbon Steel (India)*, the Appellate Body reviewed several findings by the Panel relating to de facto specificity under Article 2.1(c) of the SCM Agreement.[257] The Appellate Body upheld the Panel's finding 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. The Appellate Body rejected 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. The Appellate Body also rejected 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.

184. In *US ± Countervailing Measures (China)*, the Appellate Body reviewed several findings by the Panel relating to de facto specificity under Article 2.1(c) of the SCM Agreement.[258] The Appellate Body agreed with the Panel that it may be permissible for an investigating authority to proceed directly to a specificity analysis under Article 2.1(c), and that an application of the principles set out in subparagraphs (a) and (b) is not always required before an analysis can be conducted under subparagraph (c). The Appellate Body reversed the Panel's finding that China had not established that the USDOC acted inconsistently with Article 2.1 of the SCM Agreement by failing to identify a denes istentled

"price effects" of certain tax and other subsidies with respect to the 100-200 seat and 300-400 seat LCA markets.

found by MOFCOM not to confer countervailable subsidies in the calculation of the 'all others' subsidy rate.[271]

193. In *China ±Broiler Products*, the United States claimed that China acted inconsistently with Article 6.8 of the Anti-Dumping Agreement and 12.7 of the SCM Agreement when it used "facts available" to determine the anti of t t264

underlying MOFCOM's finding of "low" subject import prices was inconsistent with Article 12.8.[278] The Panel found that China acted inconsistently with Article 12.8 in failing to disclose the essential facts under consideration in relation to non-subject imports in its causation anaylsis.[279] On appeal, the Appellate Body upheld the Panel's finding that China acted inconsistently with Article 12.8.[280] The Appellate Body agreed with the Panel that MOFCOM failed to disclose in its preliminary determination and its final injury disclosure document all the "essential facts" relating to the "low price" of subject imports on which it relied for its price effects finding. The Appellate Body found that MOFCOM was required to disclose, under9.46 Tm 454.279.46.02icle 12.er9* Tm 8(he)9( )]3(P)13(aETi)-4(( )11(ef)-

determinations of benefit in the countervailing duty investigation concerning: (i) the provision of iron ore by the NMDC; and (ii) the provision of captive mining rights for iron ore and coal by the GOI. The Appellate Body found that USDOC's exclusion of the NMDC's export prices in determining a Tier II benchmark was inconsistent with Article 14(d) and the chapeau of Article 14 of the SCM Agreement; that the USDOC's construction of government prices for iron ore and coal was not inconsistent with Articles 1.1(b) and 14(d) of the SCM Agreement; and was unable to complete the analysis of whether USDOC erred in finding that loans provided under the SDF conferred a benefit within the meaning of Articles 1.1(b) and 14(b) of the SCM Agreement.

202. In *US ±Countervailing Measures (China)*, the Appellate Body addressed benefit benchmark issues under Articles 1.1(b) and 14(d) of the SCM Agreement.[285] The Appellate Body reversed the Panel's finding upholding the USDOC's rejection of private prices as potential benchmarks in the investigations at issue on the grounds that such prices were distorted. The Appellate Body reversed the Panel's finding that China had failed to establish that the USDOC acted inconsistently with Article 14(d) or Article 1.1(b) of the SCM Agreement by rejecting in-country prices in China as benefit benchmarks in the OCTG, Solar Panels, Pressure Pipe, and Line Pipe countervailing duty investigations at issue. The Appellate Body completed the legal analysis and found that the USDOC acted inconsistently with Article 14(d) and Article 1.1(b) of the SCM Agreement in the OCTG, Solar Panels, Pressure Pipe, and Line Pipe countervailing duty investigations and, consequently, with Article 10 and Article 32.1 of the SCM Agreement.

7. Article 15: Determination of Injury

(a) General

203. In *US ±Carbon Steel (India)*, the Panel examined a claim under Article 15.3 of the SCM Agreement with respect to a provision of US law requiring, in certain situations, a single injury assessment for both subsidized imports and dumped imports when there are simultaneous countervailing and anti-dumping investigations of the same product from different countries.[286] The Panel found that Article 15.3 of the SCM Agreement prohibits the "cross-cumulation" of the effects of subsidized imports with the effects of other unfairly traded imports, namely non-subsidized, dumped imports. The Panel further found that such cross-cumulation was inconsistent with Articles 15.1, 15.2, 15.4 and 15.5 of the SCM Agreement, all of which use the expression "subsidized imports".[287]

(b) Article 15.1 (positive evidence / objective examination)

204. Panels have addressed claims under Article 15.1 of the SCM Agreement in a number of disputes, mostly in conjunction with one or more other paragraphs of Article 15.

(c) Article 15.2 (obligation to consider volume and price effects of imports)

205. In *China ±GOES*, the Panel found that China acted inconsistently with Article 15.2 of the SCM Agreement in relation to MOFCOM's analysis of the price effects of subject imports.[288] In *China ±GOES*, the Appellate Body upheld the Panel's finding that MOFCOM's price effects finding was inconsistent with Article 15.2.[289] Like the Panel, the Appellate Body rejected China's interpretation that Article 15.2 merely requires an investigating authority to consider the existence of

imports and these price effects.[290] With regard to the Panel's application of the legal standard under Article 15.2, read together with Article 15.1, the Appellate Body found that the Panel was correct to conclude that MOFCOM's finding as to the "low price" of subject imports referred to the existence of price undercutting, and that MOFCOM relied on this factor to support its finding of significant price depression and suppression.[291]

206. In *China – Broiler Products*, the United States claimed that MOFCOM's price effects findings were inconsistent with Article 3.2 of the Anti-Dumping Agreement and Article 15.2 of the SCM Agreement because, when performing a comparison of domestic and import prices for purposes of determining injury, MOFCOM inflated the extent of price undercutting by: (i) comparing prices for transactions at different levels of trade; and (ii) comparing transactions with a different product mix

were evaluated by the USITC, even though a separate record of the evaluation of these factors had not been made.

(f) Article 15.5 (causation)

210. In *China ±GOES*, the Panel found that China acted inconsistently with Article 15.5 of the SCM Agreement with respect to MOFCOM's causation analysis.[298]

211. In *China ±Autos (US)*, the Panel found that China acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement and Articles 15.1 and 15.5 of the SCM Agreement as a result of MOFCOM's causation analysis in the two investigations at issue.[299]

8. Article 16: Definition of Domestic Industry

212. In *China ±Broiler Products*, the United States claimed that MOFCOM improperly defined the domestic industry for two reasons. First, because MOFCOM did not seek to define the domestic industry as the "domestic producers as a whole" before settling on those producers representing a "major proportion" of total domestic production. Second, because MOFCOM's process for defining the domestic industry involved a self-selection process whereby those companies that supported the Petition would be more likely to be included in the domestic industry definition, thus introducing a "material risk of distortion" into the injury analysis. The Panel concluded that there was no obligation in Article 4.1 of the Anti-Dumping Agreement or Article 16.1 of the SCM Agreement to first attempt to define the "domestic industry" as the domestic producers as a whole before an investigating authority can define the domestic industry as those 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. Therefore, the Panel found no inconsistency with these provisions.[300]

213. In *China ±Autos (US)*, the Panel rejected the US claim that MOFCOM's domestic industry definition was distorted, and failed to include producers accounting for a major proportion of total domestic production of the domestic Tm[(I)18(n)] TJET EMC /P <MCID 98>BDC BT/F2 11.04 Tf1 0 0 1 120en

11. Article 22: Public Notice and Explanation of Determinations

(a) Article 22.3 (of preliminary and final determinations)

219. In *China – GOES*, the Panel found no violation of Article 22.3 of the SCM Agreement in connection with regard to MOFCOM's explanation of the findings and conclusions supporting its determination that the bidding process under the United States Government procurement statutes at issue did not result in prices that reflected market conditions.[307] In *China – GOES*, the Panel also found that China acted inconsistently with Article 22.3 of the SCM Agreement in relation to the public notice and explanation of its determination of the "all others" subsidy rate.[308]

220. In *China – Autos (US)*, the Panel rejected a US claim that MOFCOM acted inconsistently with its obligations under Articles 12.2 and 12.2.2 of the Anti-Dumping Agreement and Articles 22.3 and 22.5 of the SCM Agreement in connection with the imposition of the residual AD/CVD duty rates

223.

J. SAFEGUARDS AGREEMENT

1. Article 2: Conditions

(a) Article 2.1 (conditions for safeguards)

225. In *Dominican Republic ± Safeguard Measures*, the Panel found the following violations of Article 2.1 of the Agreement on Safeguards: (i) the report published by the competent authorities failed to provide an explanation of the existence of "unforeseen developments", or of "the effect of the obligations incurred" under the GATT 1994[317]; (ii) the imposition of a safeguard measure on the basis of a definition of the "domestic industry" that is inconsistent with Article 4.1(c) of the Agreement on Safeguards[318]; (iii) the determination that the product was being imported "in such increased quantities, in absolute or relative terms", as to cause or threaten to cause serious injury to the domestic industry[319]; and (iv) the imposition of a safeguard measure on the basis of a determination of the existence of "serious injury" that is inconsistent with Article 4.1(a) of the Agreement on Safeguards.[320]

(b) Article 2.2 (to be applied irrespective of source)

226. In *Dominican Republic ± Safeguard Measures*, the Panel found that Article 9.1 of the

by the competent authorities failed to provide an explanation of the existence of "unforeseen developments", or of "the effect of the obligations incurred" under the GATT 1994.[330] The Panel rejected the complainants' claim that the Dominican Republic acted inconsistently with Article 4.2(c) of the Agreement on Safeguards in its determination that the product was being imported "in such increased quantities, in absolute or relative terms", as to cause or threaten to cause serious injury to the domestic industry.[331] Instead, the Panel found that the report of the competent authority contained a reasoned and adequate explanation of the way in which the relevant factors corroborate the determination of the existence of an absolute increase in imports of the products in question. In addition, the Panel found that the Dominican Republic acted inconsistently with Article 4.2(c) by failing to provide reasoned and adequate explanations with respect to the existence of "serious injury" to the domestic industry.[332]

4. Article 6: Provisional Safeguard Measures

233. In *Dominican Republic – Safeguard Measures*, the Panel considered it unnecessary to make

measures.[336] The Panel found that it was not enough for the Dominican Republic to assert without any further substantiation that imports from Thailand were de facto excluded from the measure's application.

7. Article 11: Prohibition and Elimination of Certain Measures

(a) Article 11.1(a) (requirement to conform to WTO obligations)

236. In *Dominican Republic ±Safeguard Measures*, the Panel found that the Dominican Republic acted inconsistently with Article 11.1(a) as a consequence of other violations of the Agreement Safeguards.[337]

(b) Article 11.1(b) (prohibition)

237. The Panel in *China ±GOES* observed that Article 11(1)(b) of the Safeguards Agreement prohibits the use of voluntary export restraints, to reinforce its conclusion that voluntary export

K. GATS

1. Article I: Scope and Definitions

(a) Article I:2 (modes of supply)

240. In *China ± Electronic Payment Services*, the Panel considered the concept of a "service", in the context of payment and money transmission services.[341] The Panel found that the measures at issue constituted an "integrated" service.[342] The Panel further found that in the absence of a specific Mode 3 limitation in China's Schedule that restricts the supply of EPS from within China into the territory of other WTO Members, China's commitment under Mode 3 covered not only the supply of EPS to clients within China, but also the supply of EPS to clients located in the territory of other WTO Members.[343]

2. Article XVI: Market Access

(a) Article XVI:1 (obligation to accord treatment provided for in Schedule)

241. In *China ± Electronic Payment Services*, the Panel considered that there was no need to offer additional findings under Article XVI:1 of the GATS, after having found a violation of Article XVI:2(a) of the GATS.[344]

(b) Article XVI:2 (prohibited measures where commitments are undertaken)

242. In *China ± Electronic Payment Services*, the Panel found that c

China's GATS Schedule and decided in the affirmative.[347] The Panel rejected the United States' view that China's Schedule includes a market access commitment concerning subsector 7.B(d) to allow the cross-border (Mode 1) supply of EPS into China by foreign EPS suppliers. However, the Panel found that China's Schedule includes a market access commitment that allows foreign EPS suppliers to

L. DSU

1. Article 2: Administration

(a) Article 2.4 (DSB decisions)

248. In *US – Large Civil Aircraft (2nd complaint)*, the Appellate Body found that the initiation of an Annex V procedure occurs automatically when there is a request for initiation of such a procedure and the DSB establishes a panel, even in the absence of DSB consensus.[351]

2. Article 3: General Provisions

(a) Article 3.2 (customary rules of interpretation of public international law)

(i) Article 31(3)(a) of the Vienna Convention ("subsequent agreement between the parties")

249. In *US – Clove Cigarettes*, the Appellate Body upheld the Panel's finding that by allowing only three months between the publication and the entry into force of Section 907(a)(1)(A), the United States acted inconsistently with Article 2.12 of the TBT Agreement. The Appellate Body found that Article 2.12, when interpreted in the context of Paragraph 5.2 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, normally requires a minimum of six months between the publication and the entry into force of a technical regulation.[352] In reaching this conclusion, the Appellate Body found that in the absence of evidence of the existence of a specific recommendation from the Council for Trade in Goods concerning the interpretation of Article 2.12 of the TBT Agreement, Paragraph 5.2 of the Doha Ministerial Decision does not constitute a multilateral interpretation adopted pursuant to Article IX:2 of the WTO Agreement. However, the Appellate Body

4. Article 7: Terms of Reference

(a) Terminated, expired, and amended measures

255. Over the period 1 October 2011 to 4 June 2015, there were several disputes in which a panel or the Appellate Body considered whether it was appropriate to make findings and/or recommendations in respect of measures that had been terminated, repealed, amended, or replaced prior to, or in the course of, the proceeding:

DS No.	Citation	Result
413	Panel Report, *China ±Electronic Payment Services*, paras. 7.221-7.229	No findings or recommendations
415, 416, 417, 418	Panel Report, *Dominican Republic ± Safeguard Measures*, para. 7.22	No findings or recommendations
394, 395, 398	Appellate Body Reports, *China ±Raw Materials*, paras. 236-269	The panel did not err in making a recommendation
384, 386	Panel Reports, *US ±COOL*, paras. 7.28-7.33	Taken into account to the extent relevant to the analysis of other measures
405	Panel Report, *EU ±Footwear (China)*, paras. 8.6-8.8	Findings, but no recommendations

(b) Measures/claims not subject to consultations

256. Over the period 1 October 2011 to 4 June 2015, there were rulings in several disputes on

436	Appellate Body Report, *US ±Carbon Steel (India)*, paras. 476-481, 4.436-4.456, 4.497-4.509	No / Yes
431, 432, 433	Appellate Body Reports, *China ±Rare Earths*, paras. 5.181-5.243	No
412, 426	Appellate Body Reports, *Canada ±Renewable Energy / Feed-In Tariff Program*, paras. 5.205-5.210	No
414	Appellate Body Report, *China ±GOES*, paras. 229-231	No
384, 386	Appellate Body Reports, *US ± COOL*, paras. 299-310, 314-326, 397-429	No
381	Appellate Body Report, *US ±Tuna II (Mexico)*, paras. 253-281.	No
406	Appellate Body Report, *US ± Clove Cigarettes*, paras. 146-155, 208-212, 227-232.	No
353	Appellate Body Report, *US ± Large Civil Aircraft (2nd complaint)*, paras. 711-723, 990-996, 1128-1145	Yes / No
394, 395, 398	Appellate Body Reports, *China ±Raw Materials*, paras. 338-344	No
396, 403	Appellate Body Reports, *Philippines ±Distilled Spirits*, paras. 134-141, 155-157, 162-165, 229-241	No

(ii) Timing of submission of evidence

259. Over the period 1 October 2011 to 4 June 2015, there were several disputes in which panels ruled on objections to admissibility relating to the timing of the submission of evidence:

DS No.	**Citation**	**Timing of submission**	**Whether new evidence admissible**
440	Panel Report, *China ±Autos (US)*, paras. 7.79-7.83	At the second meeting	Yes
431, 432, 433	Panel Reports, *China ±Rare Earths*, paras. 7.11-7.28	Comments on other party's response to final set of questions	No
400, 401	Panel Reports, *EC ±Seal Products*, paras. 6.53-6.55	Interim review	No

(b) "make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements

an Annex V procedure", which "deprived Members of the benefit of a 'a clear enunciation of the relevant WTO law' and failed to advance a key objective of WTO dispute settlement, namely, the resolution of disputes 'in a manner that preserves the rights and obligations of WTO Members and clarifies existing provisions of the covered agreements in accordance with the customary rules of interpretation of public international law'".[360]

262. In *US* ±

finding that the measure requires cross-cumulation "in certain situations" without specifying what those situations are.[368]

267. In *US ±Tuna II (Mexico) (Article 21.5 ±Mexico)*, the Panel found that all three aspects of the amended tuna measure challenged by Mexico were provisionally justified under paragraph (g) of Article XX, and was therefore of the view that it need not decide whether the amended tuna measure was justified under paragraph (b) of Article XX.[369]

7. Article 12: Panel Procedures

(a) Article 12.11 (special and differential treatment)

268. Over the period 1 October 2011 to 4 June 2015, several panels referenced Articles 12.10 and 12.11 of the DSU, including *Dominican Republic ± Safeguard Measures*[370], *Argentina ± Import Measures*[371], and *Peru ±Agricultural Products*.[372]

8. Article 13: Right to Seek Information

(a) General

269. In *EC ± Seal Products*, the Panel declined Norway's request that the Panel exercise its authority under Article 13 of the DSU to seek copies of two legal opinions of the Legal Service of the Council of the European Union. The Panel did not consider that requesting those opinions from the European Union was necessary for the Panel to make an objective assessment of the matter before it, or was compelled by the requirements of due process.[373]

(b) Nature of the information that may be sought

270. In *India ±Agricultural Products*, the Appellate Body rejected India's argument that Article 11.2 of the SPS Agreement and Article 13.2 of the DSU limit the permissible scope of a panel's consultation with an international organization to scientific and technical issues, and that the Panel erred in consulting with the OIE not only concerning the evidence submitted by the parties, but also regarding the interpretation of the OIE Code. The Appellate Body found that while the language of Article 11.2 indicates that experts should be consulted in disputes involving scientific or technical issues, neither Article 11.2 of the SPS Agreement nor Article 13.2 of the DSU mandate that the advice sought be confined to such issues.

(d) *Amicus curiae* briefs

272. Over the period 1 October 2011 to 4 June 2015, there were several disputes in which panels and/or the Appellate Body received unsolicited amicus curiae brief:

DS No.	**Citation**	**Number of submissions received**
400, 401	Appellate Body Reports, *EC ±Seal Products*, para. 1.15	3
400, 401	Panel Reports, *EC ±Seal Products*, paras. 1.17-1.19	5
412, 426	Appellate Body Reports, *Canada ±Renewable Energy / Feed-In*	

9. Article 14: Confidentiality

(a) Article 14.3 (individual opinions)

278. The following table provides information on individual opinions in panel reports and preliminary rulings over the period 1 October 2011 to 4 June 2015:

DS No.	Citation	Description	Issue
381	*US ±Tuna II (Mexico) (Article 21.5 ±Mexico)*, paras. 7.264-7.283, 7.606-7.607	"Separate opinion"	Whether the different certification requirements at issue were inconsistent with Article 2.1 of the TBT Agreement and/or the chapeau of Article XX of the GATT 1994
431, 432, 433	Panel Reports, *China ±Rare Earths*, paras. 7.118-7.138	"Dissenting opinion"	Whether the general exceptions in Article XX of the GATT 1994 are available to justify a breach of the obligation in Paragraph 11.3 of China's Accession Protocol
449	[redacted] Report, *US ± Countervailing and Anti-*		

(b) Article 17.5 (time-period for appellate proceeding)

281. The following table provides information on the length of time taken in appeals over the period 1 October 2011 to 4 June 2015:

DS No.	**Case**	**Days from Notice of Appeal to Circulation**
430	*India ±Agricultural Products*	129
384, 386	*US ±COOL (Article 21.5 ±Canada and Mexico)*	171
429	*US ±Shrimp II (Viet Nam)*	91

11. Article 18: Communications with the Panel or Appellate Body

(a) Article 18.2 (confidentiality)

(i) Additional procedures to protect business confidential information ±panels

283. Over the period 1 October 2011 to 4 June 2015, there were several disputes in which one or both parties requested that a panel adopt additional procedures for the protection of business confidential information (for appeals, see below under Rule 16(1) of the Working Procedures for Appellate Review):

DS No.	Citation	Additional BCI Procedures
454, 460	*China ±HP-SSST (Japan)*, paras. 1.10, 7.9-7.29	Yes
384, 386	*US ±COOL (Article 21.5 ±*	

12. Article 19: Panel and Appellate Body Recommendations

(a) "The Panel é may suggest ways in which the Member concerned could implement the recommendation"

285. Over the period 1 October 2011 to 4 June 2015, panels were requested to make suggestions on implementation in several disputes:Panel Reporen0cdg[( )] TJETQ E.46 5aEMCh92.87 Tm527.23 304.03 31.32 reV

DS No.	Citation	Suggestion Made
454, 460	*China ±HP-SSST (Japan)*, para. 8.11	No
430	*India ±Agricultural Products*, paras. 8.5-8.7	No
438, 444, 445	*Argentina ±Import Measures*, paras. 8.4-8.6	No
436	Panel Report, *US ±Carbon Steel (India)*, para. 8.6	No
415, 416, 417, 418	Panel Report, *Dominican Republic ±Safeguard Measures*, para. 6.22	

conducting a redetermination in a shorter period of time than China proposes would, in the circumstances of this dispute, infringe upon the due process rights of interested parties.[387]

(c) Article 21.5 (compliance proceeding)

(i) Scope of compliance proceedings under Article 21.5

289. In *US – COOL (Article 21.5 – Canada and Mexico)*, the Panel found that reviewing the "consistency" of a measure taken to comply under Article 21.5 of the DSU extends to non-violation claims under Article XXIII:1(b) of the GATT 1994 and Article 26.1 of the DSU, and that the complainants' claims under Article XXIII:1(b) of the GATT 1994 were properly before it and fell within the competence of this Article 21.5 compliance Panel.[388]

290. In *US – Tuna II (Mexico) (Article 21.5 – Mexico)*, the Panel agreed with the complainant that its task was not only to determine whether the "measure taken to comply" (in this case, the "2013 Final Rule") is in itself WTO-consistent, but rather, and more fundamentally, to assess whether, through or by way of the 2013 Final Rule, the United States had succeeded in bringing the tuna measure as a whole, as the measure found by the Appellate Body in the original proceedings to be WTO-inconsistent, into conformity with the WTO Agreement.[389]

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[387] Award of the Arbitrator, *China – GOES (Article 21.3(c))*, paras. 3.35-3.47.
[388] Panel Reports, *US – COOL (Article 21.5 – Canada and Mexico)*, paras. 7.647-7.663.
[389] Panel Report, *US – Tuna II (Mexico) (Article 21.5 – Mexico)*, paras. 7.9-7.43.

14. Working Procedures for Appellate Review

(a) Rule 16(1) (special or additional procedures)

(i) Special procedure to protect business confidential information

291. In *US ± Large Civil Aircraft (2nd complaint)*, the Appellate Body adopt

(c) Rule 18(1) (deadlines for submitting documents)

296. In *US – COOL*, the Appellate Body commented on the fact that certain filings were made outside of the deadlines prescribed in Rule 18(1).[393]

(d) Rules 20(2)(d) and 23(2) (notice of appeal / other appeal requirements)

297. In *US – Large Civil Aircraft (2nd complaint)*, the Appellate Body found that the US Notice of Other Appeal sufficiently identified an allegation of error and, consequently, rejected the EU argument that the claim at issue was not properly within the scope of this appeal.[394]

298. In *China – Rare Earths*, the Appellate Body declined China's request to reject the United States' Notice of Appeal due to its "conditional" nature. The Division considered that its jurisdiction to hear the United States' appeal was validly established given that the United States' Notice of Appeal conformed to the requirements of Rule 20 of the Working Procedures. Such jurisdiction was not, in the opinion of the Division, affected by the possibility that it might not need to rule on the issues raised by the United States in the event that the scenarios identified by the United States in its Notice of Appeal were to materialize.[395]

II. OTHER DEVELOPMENTS IN WTO LAW AND PRACTICE

A. MEMBERSHIP AND OBSERVER STATUS

1. WTO accessions

(a) New WTO Members

(i) Montenegro

304. On 17 December 2011, the 8th Ministerial Conference approved the text of the Protocol of Accession of Montenegro to the WTO Agreement[399], and adopted the decision on Montenegro's WTO accession[400] and the accession working party report.[401] On the same day, Montenegro signed the Protocol, subject to ratification.[402]

305. After depositing its instrument of acceptance, Montenegro became a WTO Member on 29 April 2012.[403]

(ii) Samoa

306. On 17 December 2011, the 8th Ministerial Conference approved the text of the Protocol of Accession of Samoa to the WTO Agreement[404], and adopted the decision on Samoa's WTO accession[405] and the accession working party report.[406] On the same day, Samoa signed the Protocol, subject to ratification.[407]

307. After depositing its instrument of acceptance, Samoa became a WTO Member on 10 May 2012.[408]

(iii) Russian Federation

308. On 16 December 2011, the 8th Ministerial Conference approved the text of the Protocol of Accession of the Russian Federation to the WTO Agreement[409], and adopted the decision on the

[399] The text of the Protocol as adopted by the Ministerial Conference is attached to the decision of the Ministerial Conference contained in WT/MIN(11)/28 and WT/L/841. The certified true copy of the Protocol was circulated in WT/Let/857 on 11 June 2012.

[400] WT/MIN(11)/28 and WT/L/841.

[401] WT/ACC/CGR/38, WT/MIN(11)/7, WT/ACC/CGR/38/Add.1, WT/MIN(11)/7/Add.1, WT/ACC/CGR/38/Add.2 and WT/MIN(11)/7/Add.2.

[402] WT/Let/842.

[403] WT/Let/857.

[404] The text of the Protocol as adopted by the Ministerial Conference is attached to the decision of the Ministerial Conference contained in WT/MIN(11)/27 and WT/L/840. The certified true copy of the Protocol was circulated in WT/Let/856 on 8 June 2012.

[405] WT/MIN(11)/27 and WT/L/840.

[406] WT/ACC/SAM/30, WT/MIN(11)/1, WT/ACC/SAM/30/Add.1, WT/MIN(11)/1/Add.1, WT/ACC/SAM/30/Add.2 and WT/MIN(11)/1/Add.2.

[407] WT/Let/841.

[408] WT/Let/856.

[409] The text of the Protocol as adopted by the Ministerial Conference is attached to the decision of the Ministerial Conference contained in WT/MIN(11)/24 and WT/L/839. The certified true copy of the Protocol was circulated in WT/Let/860 on 25 July 2012.

Lao People's Democratic Republic's WTO accession[426] and the accession working party report.[427] On the same day, the Lao People's Democratic Republic signed the Protocol, subject to ratification.[428]

316. Having deposited its instrument of acceptance on 3 January 2013, the LAO People's Democratic Republic became a WTO Member on 2 February 2013.[429]

(viii) Seychelles

322. On 10 December 2014, the General Council approved the text of the Protocol on the Accession of the Republic of Seychelles to the WTO Agreement[441], and adopted the decision on Seychelles' WTO accession[442] and the accession working party report.[443] On the same day, Seychelles signed the Protocol, subject to ratification.[444]

323. After depositing its instrument of acceptance, Seychelles became the 161st WTO Member on 26 April 2015.[445]

(b) Withdrawal of the United States' Article XIII invocation with respect to the Republic of Moldova

324. On 21 December 2012, the United States withdrew its invocation[446] of Article XIII of the WTO Agreement (Non-Application of Multilateral Trade Agreements between Particular Members) with respect to the Republic of Moldova[447], which had acceded to the WTO Agreement on 26 July 2001.[448]

(c) China ï Transitional review under Section 18.2 of the Protocol of Accession to the WTO Agreement

325. On 30 November 2011, the General Council conducted its final review of China's implementation of the WTO Agreement and the provisions of the Protocol of Accession. The General Council considered a communication from China that provided information required under Sections I and III of Annex 1A of the Protocol of Accession[449], as well as reports of the subsidiary bodies on their respective reviews[450].[451]

326. The General

"We reaffirm the LDC accession guidelines adopted in 2002. Taking note of the accession proposal made by the LDCs, we direct the Sub-Committee on LDCs to develop recommendations to further strengthen, streamline and operationalize the 2002 guidelines by, *inter alia*, including benchmarks, in particular in the area of goods, which take into account the level of commitments undertaken by existing LDC Members. Benchmarks in the area of services should also be explored.

We recognize that transparency in the accession negotiations should be enhanced, including by complementing bilateral market access negotiations with multilateral frameworks.

We reiterate that S&D provisions, as stipulated in the 2002 guidelines, shall be applicable to all acceding LDCs, and that requests for additional transition periods will be considered taking into account individual development needs of acceding LDCs.

(ii) South Sudan

330. On 20 April 2012, the Republic of South Sudan submitted a request for obtaining observer status in the General Council and its subsidiary bodies.[459] The request specified that the Government of the South Sudan intends to prepare and initiate negotiations for accession to the WTO Agreement in the near future, within a maximum period of five years.

331. South Sudan's observer request was not addressed by the General Council.

(b) Observer participation at the 8th Ministerial Conference

(i) International intergovernmental organizations (IGOs)

IGOs in general

332. On 30 November 2011, the General Council took note[460] of the following statement by the Chair concerning the attendance of observers from IGOs:

> "[I]n line with Members' discussion at the 26 October meeting, the General Council had agreed to revert to this matter at its next meeting. In October, he had proposed that the General Council follow past practice with respect to the attendance of Observers from IGOs. From the consultations he had undertaken on this matter, it appeared that there was no consensus on this approach."[461]

League of Arab States

333. On 30 November 2011, the Chair of the General Council made a statement on the request by the League of Arab States for observer status at the 8th Ministerial Conference:

> "The Chairman recalled that at the General Council meeting on 26 October, he had informed delegations that a request by the League of Arab States (LAS) for observer status at MC8 had been received. He had then proposed that unless any objection was received by the Secretariat from any [WTO] Member by 15 November 2011, the LAS would be granted observer status at MC8, he would inform the General Council at its next meeting of the status of this request, and delegations would have an opportunity at that meeting to engage in a discussion on this request. Since then, written communications had been received from two [WTO] Members stating that they were not in a position to agree to this request, as he had announced in a fax to all [WTO] Members on 16 November, and there was therefore no consensus to grant the request from the LAS at the present stage. In the interests of transparency of the process, he opened the floor."

> "[F]or all previous Ministerial Conferences, attendance of Non-Governmental Organizations (NGOs) had been governed by a procedure which had been agreed by the General Council in July 1996. This procedure was as follows: (i) a limited number of accredited NGO representatives were allowed to attend only the Plenary Sessions of the Conference, without the right to speak; (ii) applications from NGOs to be registered were accepted on the basis of Article V, paragraph 2 of the WTO Agreement, i.e. NGOs 'concerned with matters related to those of the WTO'; and (iii) a deadline was established for the registration of NGOs that wished to attend the Conference. He proposed that the General Council continue to follow the procedure he had just read out, with a deadline for registration fixed at 11 November. Once the registration procedure was finalized, the Secretariat would circulate the list of registered NGOs to all [WTO] Members. He trusted this was acceptable to delegations. He proposed that the General Council take note of his statement and agree to follow the procedure he had outlined."[464]

336. The General Council agreed to follow this practice with regard to NGO participation at the 8th Ministerial Conference.[465]

(iii) Palestine

337. On 30 November 2011, the General Council agreed[466] to Palestine's request for observer status at the 8th Ministerial Conference.[467]

(c) Observer participation at the 9th Ministerial Conference

(i) Governments

338. At its meeting of 4 June 2013, the General Council agreed that past practice be repeated regarding the attendance of observers from Governments, namely to invite the Governments with Observer Status at MC8 to attend MC9.[468] As the Chair explained, this concerned the governments with regular observer status in the General Council ï with the due adjustments related to the accessions since MC8 ï plus six Governments which had previously been granted observer status only at Ministerial Conferences: Cook Islands, Eritrea, Niue, San Marino, Timor-Leste and Tuvalu.[469]

(ii) International intergovernmental organizations (IGOs) and the League of Arab States

339. Regarding the issue of the participation of IGOs at MC9, and the related request of the League of Arab States to attend the Conference, at the General Council meeting of 24-25 July 2013, the Chair stated that the request from the League of Arab States was not agreeable to some Members at that time, and there was no clarity on whether past practice could be repeated with regard to IGO Observers. He proposed to continue his consultations after the summer break.[470]

(iii) Non-governmental organizations

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[464] WT/GC/M/133, para. 72.
[465] WT/GC/M/133, para. 73.
[466] WT/GC/M/134, para. 225.
[467] WT/L/822.
[468] WT/GC/M/145, para. 4.5.
[469] WT/GC/M/145, para. 4.4. See also WT/MIN(09)/INF/6/REV.1, Category II.
[470] WT/GC/M/146.

by the Committee to invite IICA as an *ad hoc* observer to participate in its regular meetings in 2013, 2014, and 2015 regular sessions.[480]

(iv) Committee on Sanitary and Phytosanitary Measures

345. At its July 2012 meeting

B. GOODS

1. Rectification of A

(e)

(a) Bananas

367. On 30 October 2012, the Director-General certified[517]

draft[530] containing rectifications and modifications to its Schedule, with a view to terminating the application of special treatment on rice and subjecting it to ordinary customs duties as of 1 January 2015 pursuant to paragraph 10 of Annex 5 to the Agreement on Agriculture. Certification of this draft is on-going, and reservations were raised.[531]

5. Notification requirements

(a) Notifications of quantitative restrictions

373. On 22 June

applications between points in national waters or waters of an exclusive economic zone. On 20 December 1994, the United States invoked the provisions of paragraph 3(a) with respect to specific legislation that met the requirements of that paragraph. Paragraph 3(b) calls for a review of this exemption five years after the date of entry into force of the WTO Agreement ï and thereafter every two years for as long as the exemption is in force ï in order to examine whether the conditions which created the need for the exemption still prevail.

376.

among Members in accordance with Article 12.2"[559], thus concluding the last outstanding item from the Committee's second review of the SPS Agreement. This procedure aims to help Members wishing to use the good offices of the Chairperson or another facilitator to resolve trade concerns.

389. At the same meeting, the Committee also considered the Sixteenth Annual Report under the Procedure to Monitor the Process of International Harmonization[560] and the annual report on the implementation of Article 6 of the SPS Agreement (*Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence*).[561]

9. Technical barriers to trade (TBT)

390. On 28 November 2012, the Committee on Technical Barriers to Trade concluded its Sixth Triennial Review of the operation and implementation of the on 0o t

bodies involved in the development of international standards, guides or recommendations to share their experiences with the use of these same principles.[570] The Committee agreed to give particular attention to how the "development dimension" was taken into consideration in discussions of the Six Principles.[571]

(c) Concerning *transparency in standard-setting*, the Committee agreed to exchange information on how relevant bodies involved in the development of standards ï whether at the national, regional or international level ï provided opportunity for public comment.[572]

394. Concerning **transparency** in relation to the TBT Agreement in general, the Committee reiterated the importance of the full implementation of existing decisions and recommendations, and agreed to:

encourage Members to notify draft technical regulations and conformity assessment procedures even in situations when it is difficult to establish if such measures may have a "significant effect on trade of other Members" in the context of Articles 2.9 and 5.6 of the TBT Agreement;
encourage Members to provide access, when notifying, to assessment documents (e.g. regulatory impact assessments) on the possible effects of draft measures;
encourage Members to establ

10. Trade Facilitation Agreement

396. In December 2013, WTO members concluded negotiations on a Trade Facilitation Agreement

Chile on 26 July 2013;

> "We invite the TRIPS Council to give full consideration to a duly motivated request from Least-Developed Country Members for an extension of their transition period under Article 66.1 of the TRIPS Agreement, and report thereon to the WTO Ninth Ministerial Conference."[618]

407. On 5 November 2012, least-developed WTO Members submitted a request for an extension of the transitional period that was due to end on 1 July 2013[619] for as long as the WTO Member in question remains a least-developed country.[620]

408. A decision taken by the TRIPS Council on 11 June 2013 further extended the transition period for least developed country Members until 1 July 2021, recognizing their right to seek further extensions:

> "1. Least developed country Members shall not be required to apply the provisions of the Agreement, other than Articles 3, 4 and 5, until 1 July 2021, or until such a date on which they cease to be a least developed country Member, whichever date is earlier.
>
> 2. Recognizing the progress that least developed country Members have already made towards implementing the TRIPS Agreement, including in accordance with paragraph 5 of IP/C/40, least developed country Members express their determination to preserve and continue the progress towards implementation of the TRIPS Agreement. Nothing in this decision shall prevent least developed country Members from making full use of the flexibilities provided by the Agreement to address their needs, including to create a sound and viable technological base and to overcome their capacity constraints supported by, among other steps, implementation of Article 66.2 by developed country Members.
>
> 3. This Decision is without prejudice to the Decision of the Council for TRIPS of 27 June 2002 on 'Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least Developed Country Members for Certain Obligations with respect to Pharmaceutical Products' (IP/C/25), and to the right of least developed country Members to seek further extensions of the period provided for in paragraph 1 of Article 66 of the Agreement."[621]

409. On 23 February 2015, least-developed WTO Members submitted a request for an extension of the transitional period with respect to pharmaceutical products that expires on 1 January 2016, and for waivers from the obligation under Articles 70.8 and 70.9 of the TRIPS Agreement, in both cases for as long as the WTO Member in question remains a least developed country.[622]

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[618] WT/L/845.
[619] IP/C/40. See also IP/C/25.
[620] IP/C/W/583.
[621] IP/C/64.
[622] IP/C/W/605.

E. DISPUTE SETTLEMENT

1. Appellate Body

(a) Appointment of Appellate Body members

410. At the DSB meeting of 24 May 2011, the Chair submitted a proposal regarding the procedures for selecting two new Appellate Body members. The proposal contained the following elements: (i) to launch as from 24 May 2011 the selection process for appointment of two new members of the Appellate Body; (ii) to set a deadline of 31 August 2011 for WTO Members' nominations of candidates for the two positions; (iii) to agree to establish a Selection Committee, based on the procedure set out in document WT/DSB/1, which would consist of the Director-General and the 2011 Chairpersons of the General Council, the Goods Council, the Services Council, the TRIPS Council and the DSB, which would be presided by the 2011 DSB Chairperson; (iv) to request the Selection Committee to conduct interviews with candidates and to hear views of WTO Members in September/October, and to make recommendations to the DSB by no later than 10 November 2011, so that the DSB could take a final decision on this matter at the latest at its regular meeting on 21 November 2011.[623]

414. On 26 March 2013, the DSB reappointed Mr. Ricardo Ramírez for a second four-year term of office, starting on 1 July 2013.[628]

415. On 24 May

11 December 2011 to 31 May 2012. In June 2012, the Members of the Appellate Body re-elected Mrs. Yuejiao Zhang to serve as Chair for the period 1 June 2012 to 31 December 2012.[635]

420. In February 2013, pursuant to Rule 5.1 of the *Working Procedures for Appellate Review*, the Members of the Appellate Body elected Mr Ricardo Ramírez Hernández to serve as Chair of the Appellate Body as of 1 January 2013.[636] In December 2013, the Members of the Appellate Body re-elected Mr Ricardo Ramírez Hernández to serve as Chair for the period 1 January 2013 to 31 December 2013.[637]

421. Pursuant to Rule 5.1 of the *Working Procedures for Appellate Review*, on 4 December 2014, the Members of the Appellate Body elected Mr. Peter Van den Bossche to serve as Chair for the period 1 January 2015 until 31 December 2015.[638]

2. Indicative list of governmental and non-governmental panelists

422. The DSB approved the additional names contained in documents WT/DSB/W/473[639], 478[640], 480[641], 483[642], 492[643], 495[644], 497[645], 500[646], 503[647], 505[648], 512[649], 514[650], 518[651], 522[652], 530[653], 533[654], 536[655], 543[656] and 545[657]

dispute: *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, contained in document WT/DS381/R, unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notified the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."[660]

425. In *EU – Footwear (China)*, "[t]he DSB agree[d] that, upon a request by China or the European Union, the DSB shall, no later than 22 February 2012, adopt the Report of the Panel in the dispute: *European Union – Anti-Dumping Measures on Certain Footwear from China*, contained in document WT/DS405/R, unless (i) the DSB decides by consensus not to do so or (ii) China or the European Union notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."[661]

426. In *US – COOL*, "[t]he DSB agree[d] that, upon a request by [Canada/Mexico] or the United States, the DSB shall, no later than 23 March 2012, adopt the Report of the Panel in the dispute: *United States – Certain Country of Origin Labelling (COOL) Requirements*, contained in document WT/DS384/R, unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."[662]

427. In *India – Agricultural Products*, "[t]he DSB agree[d] that, upon a request by India or the United States, the DSB shall no later than 26 January 2015 adopt the Report of the Panel in the dispute: *India – Measures Concerning the Importation of Certain Agricultural Products* contained in document WT/DS430/R and Add.1 unless (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."[663]

428. In *Peru – Agricultural Products*, "[t]he DSB decide[d] that it shall, no later than 25 March 2015, adopt the Panel Report in the dispute: *Peru – Additional Duty on Imports of Certain Agricultural Products* contained in document WT/DS457/R and Add.1 unless (i) the DSB decides by consensus not to do so or (ii) Guatemala or Peru notifies the DSB of its decision to appeal the Report pursuant to Article 16.4 of the DSU."[664]

429. In *China – HP-SSST (Japan)*, "[t]he DSB agree[d] that, upon a request by China or Japan, the DSB shall no later than 20 May 2015 adopt the Panel Report in the dispute: *China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan* contained in document WT/DS454/R, unless: (i) the DSB decides by consensus not to do so or (ii) either party to the dispute notifies the DSB of its decision to appeal pursuant to Article 16.4 of the DSU."[665]

4. Other issues raised by Members at the DSB

430. At the DSB meeting held on 17 December 2012, Australia raised the matter regarding a systemic issue relating to Articles 3.7 and 3.10 of the DSU. Australia recalled that Article 3.10 of the DSU expressly enjoined that complaints should not be linked, while Article 3.7 expressly required that a Member exercise its judgement as to whether dispute settlement action would be fruitful. Australia was concerned about the apparent increase in disputes that seemed to be initiated in response to another Member exercising its right to seek redress through the dispute settlement system. Australia urged Members to be judicious and reasonable in their use of the dispute settlement system, so as to ensure that the integrity of the system was maintained. Turkey also made a statement.[666]

[660] WT/DSB/M/306, paras. 6-7.
[661] WT/DSB/M/308, paras. 100-101.
[662] WT/DSB/M/310, paras. 9-12.
[663] WT/DSB/M/352, paras. 6.5-6.6.
[664] WT/DSB/M/353, paras. 6.6-6.7.
[665] WT/DSB/M/359, paras. 8.6-8.7.
[666] WT/DSB/M/327, paras. 11.1-11.2.

431. At the DSB meeting held on 28 January 2013, Brazil wished to express its concern about the lack of uniformity and transparency with which requests for preliminary rulings in panel proceedings had been dealt recently. According to Brazil, it was also of the utmost importance that third parties were granted access to any submission requesting preliminary ruling and afforded an opportunity to comment on such requests. In Brazil's view, requests for preliminary rulings should not be overused and must conform to the rules and principles of the WTO dispute settlement system. Canada, the European Union, the United States, Australia and China also made statements.[667]

432. At the DSB meeting on 22 January 2014, the European Union recalled that at the DSB meeting on 23 August 2013, when Indonesia had made its unilateral request under Article 22.2 of the DSU, the European Union had made a statement. The European Union had noted that there was disagreement between the United States and Indonesia with respect to compliance and recalled that such disagreement must be decided through recourse to Article 21.5 of the DSU, before recourse to arbitration subsequent to a request under Article 22.2 of the DSU could be entertained. According to the European Union, that was the correct sequence, even if Indonesia strongly believed that the United States had failed to comply and even if that belief was reasonably held. The European Union had filed an application with the compliance/arbitration panel, seeking to ensure that it would have an opportunity to exercise its third-party rights, but the Arbitrator's decision had been designated as confidential and could not be circulated to all Members. Because of the systemic issues as to the interpretation of the DSU and several other important systemic issues of interest to the wider Membership at issue, the European Union considered this an egregious breach of its third-party rights, as provided for under Article 10 of the DSU, and the principle of due process. The European Union was of the firm view that Article 21.5 of the DSU was the proper procedure for settling compliance disputes, and that making an Article 22.2 of the DSU request in such a situation, whilst omitting to initiate and pursue compliance proceedings or to suspend the arbitration panel proceedings, was inconsistent with Articles 23.1 and 23.2(a) of the DSU. Mexico, China, Guatemala, Brazil, Canada, Japan, India, Indonesia and the United States also made statements.[668] At the DSB meeting held on 26 February 2014, the European Union raised this matter again as set out in its communication. The European Union, Mexico, Canada, Japan, Brazil, Chinese Taipei, Norway, India, Australia, China, Argentina, Ecuador, Indonesia, Honduras and the United States made statements.[669]

433. At the DSB meeting held on 26 September 2014, the Director-General made a presentation about the unprecedented high level of dispute settlement activity, and explained the actions he was taking in terms of budget and personnel allocations to address the situation. He also encouraged Members to give thought to actions they could take to respond to what he expected to be a continuing trend in WTO dispute settlement activities. The following delegations made statements: Korea, Canada, Norway, the United States, Mexico, China, Brazil, India, the European Union, Lesotho, South Africa, Ecuador, the Dominican Republic, Cuba, Japan, Argentina, Guatemala, Uganda and Hong Kong, China.[670]

434. At the DSB meeting held on 20 October 2014, the United States and Brazil made statements concerning a mutually agreed solution between them, in the form of a Memorandum of Understanding, in the dispute *United States – Subsidies on Upland Cotton*.[671]

435. At the DSB meetings on 17 December 2012 and 26 March 2014, the Chairman, at the request of several delegations, invited the Director of the Legal Affairs Division to make a report to Members on progress in the Digital DS Registry Initiative.[672] Progress was reported with respect to all three

[667] WT/DSB/M/328, paras. 7.2-7.9.
[668] WT/DSB/M/341, paras. 8.1-8.20.
[669] WT/DSB/M/342, paras. 5.1-5.22.
[670] WT/DSB/M/350, paras. 1.2-1.28.
[671] WT/DSB/M/351, paras. 7.1-7.3; WT/DS267/46.
[672] WT/DSB/M/327, WT/DSB/M/343.

elements of the project, namely: (i) development of a cent(ec)8( )oy2(nt)i( )ctronic sto(ec)8(g)9(e)-44(f)7(ac)-2(i)6(2(

dispute sett2(nt)ement information, and (iii) c(ec)8eation of a secu(ec)8e elt(ec)8onic (ec)8egist(ec)8y fo(ec)8 filing a dispute sett2(nt)ement documents line.A the DSB meeting on 17 Dember 2012, p(ec)8og(ec)8ea-5(2(nt)so)9( )] TJET e setlement reco(ec)8ds that w2(nt)l be up2(nt)oaded into the sto(ec)8(g)9(e a)8(nd r)csea(ec)8ch facility.[673]

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F. TRADE POLICY REVIEW

1. Trade Policy Reviews

436. From October 2011 to May 2015, 57 Trade Policy Reviews (TPRs) were undertaken. All of these TPRs provided the WTO membership with a better understanding of trade and economic developments in each of the Members reviewed. These TPRs were all characterized by a full and candid discussion among delegations at the Trade Policy Review Body (TPRB) meetings and the constructive and insightful participation of discussants.

TRADE POLICY REVIEWS UNDERTAKEN
BETWEEN OCTOBER 2011 AND MAY 2015

Member(s)

Member(s)	Dates of TPRB meetings	Document numbers of the minutes of the meetings (WT/TPR/M/)
Peru (4)	13 & 15 November 2013	289
The Former Yugoslav Republic of Macedonia (1)	27 & 29 November 2013	290
Tonga (1)	11&13 February 2014	291
Malaysia (6)	3 &5 March 2014	292
Myanmar (1)	11 & 13 March 2014	293
Bahrain (3), Oman (2), and Qatar (2)	22 & 24 April 2014	294, 295, 296
Ghana (4)	26 & 28 May 2014	298
OECS[c] (3)	17 & 19 June 2014	299
China (5)	1 & 3 July 2014	300
Panama (2)	23 & 25 July 2014	301

RTA name/parties	Notification date	Entry into force	Notified under
Russian Federation - Belarus - Kazakhstan	21 Dec 2012	3 Dec 1997	GATT Art. XXIV
Russian Federation - Kazakhstan	13 Sep 2012	7 Jun 1993	GATT Art. XXIV
Russian Federation - Republic of Moldova	13 Sep 2012	30 Mar 1993	GATT Art. XXIV
Russian Federation - Serbia	21 Dec 2012	3 Jun 2006	GATT Art. XXIV
Russian Federation -			

3. Activities of the Committee on Trade and Development relating to RTAs

449.

470. At the General Council meetings of 25 February and 4 June 2013, the Chair read out reports of the Chair of the Dedicated Session of the Committee for Trade and Development on work under the Work Programme on Small Economies.[720]

471. At the 9th Ministerial Conference, Ministers adopted a decision on the Work Programme on Small Economies.[721] As part of the work to implement the decision, Members agreed in November 2014 to an outline of research and analysis concerning the challenges and opportunities experienced by small economies when linking into global value chains in trade in goods and services, as mandated in the 2013 decision.[722]

472. Statements concerning progress on the Work Programme on Small Economies were made at the General Council meetings held on 14 March, 12 May, 24 July, 21 October, 10 December 2014 and 20 February and 5 May 2015.[723]

10. Working Group on Trade and Transfer of technology

473. The Working Group on Trade and Transfer of Technology, established at the 4th Ministerial Conference in Doha in November 2001, is to consider and finalize any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.

474. In June 2014, the Working Group organized a Workshop on Technology Transfer in which a cross-section of experts from the public and private sectors, from IGOs and academia discussed the nexus between trade and transfer of technology.

475. The Working Group's last annual report to the General Council was made in November 2014.[724]

11. Electronic commerce

476. On 17 December 2011, the 8th Ministerial Conference recalled the "Work Programme on Electronic Commerce" adopted in September 1998[725], and the mandate assigned by Members at the 7th Ministerial Conference to intensively reinvigorate that work with a view to the adoption of decisions on that subject at its next session, to be held in 2011.[726] Accordingly, the 8th Ministerial Conference adopted the following decision on the Work Programme on Electronic Commerce:

> "To continue the reinvigoration of the Work Programme on Electronic Commerce, based on its existing mandate and guidelines and on the basis of proposals submitted by Members, including the development-related issues under the Work Programme and the discussions on the trade treatment, *inter alia*, of electronically delivered software, and to adhere to the basic principles of the WTO, including non-discrimination, predictability and transparency, in order to enhance internet connectivity and access to all information and telecommunications technologies and public internet sites, for the growth of electronic commerce, with special consideration in developing countries, and particularly in least-developed country

[720] WT/GC/M/143, item 2 and WT/GC/M/145, item 2.
[721] WT/MIN(13)/33, WT/L/908.
[722] WT/COMTD/SE/W/30/Rev.1.
[723] WT/GC/M/150, WT/GC/M/151, WT/GC/M/152, WT/GC/M/153, WT/GC/M/155 and WT/GC/M/156.
[724] WT/WGTTT/16.
[725] WT/L/274.
[726] WT/L/782.

Members. The Work Programme shall also examine access to electronic commerce by micro, small and medium sized enterprises, including small producers and suppliers,

To instruct the General Council to emphasize and reinvigorate the development dimension in the Work Programme particularly through the CTD to examine and monitor development-related issues such as technical assistance, capacity building,

> At the 11 December General Council, Deputy Director-General Singh, reported on work under the Work Programme since the Council's last review of progress in this area. He reported on activities in the Council for Trade in Services, the Council for Trade in Goods and the Committee on Trade and Development. He also reported on an informal meeting of the Dedicated Discussion on E-Commerce Cross-Cutting Issues under the auspices of the General Council, held on 30 November 2012. There had been no activity under the Work Programme in the Council for TRIPS.
>
> Deputy Director-General Singh also read out a report on behalf of the Chairman of the CTD. The report focused on a proposal by Cuba and Ecuador (WT/COMTD/W/189) to organize a workshop on 'E-commerce, Development and SMEs'. At the 86th Session of the CTD held on 19 November 2012, it had been agreed that the workshop would be held on 8 and 9 April 2013.
>
> The Chair drew attention to the reports of the Chairs of the Council for Trade in Services and of the Goods Council in documents S/C/40 and G/C/50, respectively.
>
> [é] The General Council took note of the reports by the Deputy Director-General and by the Chairs of the subsidiary bodies, and of the statements."[728]

478. On 24 July 2013, the General Council took note of a report by DDG Singh concerning a number of developments on E-commerce in the Committee on Trade and Development, the Council for Trade in Services[729] and the Council for Trade in Goods.[730]

479. The Bali Ministerial Decision on the Work Programme on Electronic Commerce[731] was discussed at a meeting of the Committee on Trade and Development in April 2014. Members were asked how to take forward the work on e-commerce in the Committee on Trade and Development, including whether future work could build on the Workshop on Electronic Commerce, Development and Small and Medium-Sized Enterprises (SMEs) that was held on 8-9 April 2013.

12. Director-General Selection Process

480. In keeping with the Procedures for the Appointment of Directors-General adopted in December 2002[732], the process for the appointment of the next Director-General started in October 2012 when delegations were provided with information on the nomination phase of the process. At a special meeting on 14 May 2013, the General Council approved the appointment of Ambassador Roberto Carvalho de Azevêdo (Brazil) as the next Director-General of the WTO, with his term of office to begin on 1 September 2013.[733]

13. Derestriction of some GATT 1947 historical bilateral negotiating documentation

481. At its meeting of 25 July 2013, the General Council decided to derestrict, as of 1 August 2013, the historical bilateral negotiating documentation regarding the Dillon Round and some negotiating material of the four earlier GATT Rounds listed in the annex to document

[728] WT/GC/151, paras. 25-32.
[729] The General Council took note of the report in S/C/41.
[730] The General Council took note of the report in G/C/53. The General Council also heard an oral report by the CTD Chair on the CTD's workshop on E-Commerce, Development and SMEs held in April 2013 for which a Secretariat background document had been prepared titled, "E-commerce in Developing Countries ï Opportunities and Challenges for Small and Medium-sized Enterprises". WT/COMTD/W/193. A summary report of the workshop is available in WT/COMTD/W/193.
[731] WT/L/907.
[732] WT/L/509.
[733] WT/GC/M/144, para. 1.10.

I. PLURILATERAL TRADE AGREEMENTS

1. Agreement on Government Procurement

(a) Entry into force of the Protocol Amending the Agreement on Government Procurement

482. On 15 December 2011, the Committee on Government Procurement adopted a decision at the Ministerial level on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement.[737]

483. In line with this decision, on 30 March 2012 the Committee on Government Procurement adopted[738] the Protocol Amending the Agreement on Government Procurement, as contained in document GPA/W/316.[739]

484. The

modifications to pages 1/3 and 2/3 of Annex 1 and to pages 1/5 to 5/5 of Annex 3 to Appendix I of Japan pursuant to Article XXIV:6(a) of the 1994 GPA, effective 18 January 2013, certified on 29 January 2013[778];

modifications to pages 1/4 and 2/4 of Annex 1 to Appendix I of Korea pursuant to Article XXIV:6(a) of the 1994 GPA, effective 22 September 2013, certified on 21 October 2013[779];

modifications to pages 2/5 and 3/5 of Annex 1 to Appendix I of the United States pursuant to Article XXIV:6(a) of the 1994 GPA, effective 8 January 2014, certified on 16 January 2014[780];

modifications to pages 1/3 and 2/3 of Annex 1 to Appendix I of Japan pursuant to Article XXIV:6(a) of the 1994 GPA, effective 16 March 2014, certified on 21 March 2014[781];

Modifications to pages 1/2 and 2/2 of Annex 1 to Appendix I of Hong Kong, China pursuant to Article XXIV:6(a) of the 1994 GPA, effective 23 March 2014, certified on 27 March 2014[782];

Modifications to page 1/2 of Annex 1 to Appendix I of Israel pursuant to Article XXIV:6(a) of the 1994 GPA, effective 11 May 2014, certified on 14 May 2014[783];

modifications to Annexes 1 to 7 of Appendix I of Hong Kong, China pursuant to Article XIX:1 of the revised GPA, effective 26 May 2014, certified on 18 June 2014[784];

modifications to Annexes 1 to 7 of Appendix I, including its note, of Israel pursuant to Article XIX:1 of the revised GPA, effective 26 May 2014, certified on 18 June 2014[785];

modifications to Annexes 1 to 7 of Appendix I of Liechtenstein pursuant to Article XIX:1 of the revised GPA, effective 26 May 2014, certified on 18 June 2014[786];

modifications to Annexes 1 to 7 of Appendix I of the United States pursuant to Article XIX:1 of the revised GPA, effective 7 June 2014, certified on 20 June 2014[787];

modifications to Annexes 1 to 7 of Appendix I of Singapore pursuant to Article XIX:1 of the revised GPA, effective 9 June 2014, certified on 20 June 2014[788];

modifications to Annexes 1 to 7 of Appendix I of the Japan pursuant to Article XIX:1 of the revised GPA, effective 12 June 2014, certified on 20 June 2014[789];

modifications to Annexes 1 to 7 of Appendix I of Canada pursuant to Article XIX:1 of the revised GPA, effective 23 June 2014, certified on 30 June 2014[790];

modifications to pages 3/5 and 5/5 of Annex 3 to Appendix I of Japan pursuant to Article XXIV:6(a) of the 1994 GPA, effective 25 June 2014, certified on 11 July 2014[791];

modifications to Annexes 1 to 7 of Appendix I of the European Union pursuant to Article XIX:1 of the revised GPA, effective 7 July 2014, certified on 18 July 2014[792];

modifications to Annexes 1 to 7 of Appendix I of Chinese Taipei pursuant to Article XIX:1 of the revised GPA, effective 10 July 2014, certified on 18 July 2014[793];

modifications to pages 2/4 and 3/4 of Annex 3 to Appendix I of Japan pursuant to Article XIX:1 of the revised GPA, effective 4 August 2014, certified on 1 September 2014[794];

modifications to Annexes 1 to 7 of Appendix I of the Kingdom of the Netherlands with respect to Aruba pursuant to Article XIX:1 of the revised GPA, effective 21 August 2014, certified on 2 September 2014[795];

modifications to Annexes 1 to 7 of Appendix I of Iceland pursuant to Article XIX:1 of the revised GPA, effective 28 August 2014, certified on 5 September 2014[796];

modifications to

on Trade in Civil Aircraft, without exemptions or transitional periods, from the date of accession to the WTO."[801]

494. Following deposit of an instrument of accession, on 10 November 2012 Montenegro acceded to the Agreement on Trade in Civil Aircraft, done at Geneva on 12 April 1979, as subsequently modified, rectified or amended. At the same time, Montenegro also explicitly accepted Protocol Amending the Annex to the Agreement on Trade in Civil Aircraft, done at Geneva on 6 June 2001.[802]

[801] WT/ACC/CGR/38 and WT/MIN(11)/7, para. 193.
[802] WT/Let/865.