INDEX

anti-dumping 2, 4
Agreement on Implementation of Article VI of the GATT 1994 (AD Agreement) 2
deadlines (Art 5.10) 130
evidential rules (Art 6.8) 325
judicial review requirements 7–8, 9–10, 318
length of investigation process 307
sales below cost (Art 2) 80
standard of review (Art 17.6) 61–2, 65
standing (Art 11.6) 144
tribunals (Art 13) 150, 296, 311, 321–2, 357, 366–7, 375–6, 423
Argentina 129–52
amparo proceedings 137–9, 151
applicable law 140
procedural rules 147–9
requirements 147, 148
suspension of challenged acts 148–9, 151
anti-dumping and countervail 129–31, 141–2, 143, 144, 146
concluding remarks and suggestions for improvement 151–2
proposed administrative review agency 151–2
reasons for infrequent use of judicial review 151
history of trade remedies 129–31
judicial review of trade remedy determinations 136–9
jurisdiction and competent courts 136–7
types of judicial review proceedings 137–9
ordinary lawsuits 137–8, 151
appeals 146
grounds of challenge 145–6
procedural rules 145–7
suspension of challenged acts 148–9, 151
previous administrative review of trade remedy determinations 133–6, 145, 151
procedure 135–6
purpose 134, 135
procedure 139–50
applicable law 140–1
general procedure 139–40
procedural rules governing judicial review 145–9
reviewable determinations 141–3
scope of review 149–50
standing 143–5
WTO case law 140–1
remedies 150–1
safeguards 129–31, 142–3
structure and functioning of Argentina’s investigating authority 131–3
organization 131–2
procedure for trade remedy investigations 132–3
Australia 5, 379–98
conclusions 398
judicial review 381–2, 390–8
appeals 393, 394
correct understanding of the statute, decisions based on 394–7
merits review, and 379
nature and scope 379–80
Australia (cont.)
original jurisdiction of the High Court 380, 381–2, 390–1
procedural fairness requirement 397–8
procedure in the Federal Court 391, 392–3
reasonableness 395
remedies and relief 391–2
’satisfaction’ requirement 394–7
standing 391, 425
statutory conferrals of jurisdiction on the Federal Court 380–2
merits review 381, 387–90
judicial review 379
by Trade Measures Review Officer 382, 387–90, 398
safeguards 381
statutory scheme for anti-dumping and countervailing measures 381–7
decision-making and administration responsibility 383
discretion to publish dumping and countervailing duty notices 383–4, 387, 394–7
historically 382–3
investigation 385–6
recommendation by CEO 387
screening 385
standard process 384–7
undertakings, acceptance of 383, 384

concluding remarks and suggestions 125–8
enhancing effectiveness of judicial review of trade remedy decisions 127–8
weaknesses of judicial review system 125–6
DECOM/SECEX 108–9, 110, 111, 112, 114–15
issues and arguments submitted in judicial review 119–25
collection of anti-dumping duties at registration of import declaration 122–3
legal nature of anti-dumping duties 121–2
suspension of provisional anti-dumping duties 123–5
treatment of China as a non-market economy 119–21
violation of due process of law 121
judicial review of trade remedy determinations 113–25
legal and institutional framework 113–16
legal issues discussed 119–25
procedure and remedies 116–18
standard of review 118–19
legal and institutional framework of trade remedies system 107–13
administrative procedures 108–12, 114–15
history of trade remedies 107–8
measures to reinforce the trade remedies system 112–13

Canada 4–5, 11–34
administrative law 13–20
mechanisms for review 14–15
sources of administrative law and acting outside authority 14
standard of appeal or review 15–20
bi-national panel reviews - CUFTA and NAFTA 21, 31–3, 424
procedure 31–2
review by bi-national panels as alternative to judicial review 31
standard 32–3
standard, evolution of the 32–3
standard, implications of the 33
Canada Border Services Agency (CBSA) 11
judicial review of decisions 28–31
Canadian International Trade Tribunal (CITT) 11
judicial review of decisions 21–8
conclusions on judicial review and deference of reviewing courts 33–4
judicial review of CBSA decisions 28–31
procedure 28–9
standard 29–31
standard, evolution of the 29–30
standard, implications of the 30–1
judicial review of CITT decisions 21–8
chances of success 27–8
correctness on questions of jurisdiction only 24–5
errors that would not affect the outcome 25–7
implications 24–8
procedure/standing 21, 425
standard 21–8
standard, evolution of 21–4
standard of appeal or review 15–20
deference and statutory appeals: the ‘spectrum’ of standards 17–18, 22–3
harmonization: the pragmatic and functional analysis 18–19, 21, 23–4
patently unreasonable decisions 16–17
pragmatic and functional analysis 17, 21–2
privative clauses and questions of jurisdiction 15–16
revision: the standard of review analysis 19–20, 21, 23–4, 29–30, 33–4
trade remedy law regime 11–13
Canada-US Free Trade Agreement (CUFTA) 11, 31
bi-national panel review see under Canada; United States
China 11, 49, 89, 174, 313–36
appeals 331–3
judgment supervision schemes 332–3
Brazil, treatment of China as a non-market economy by 119–21
concluding thoughts 334–6
how the courts will exercise power 334–5
reasons for scarcity of judicial review 335–6
legal framework for judicial review of trade remedy determinations 315–16
guidance issued on operation of judicial review 316
major challenge establishing independent judicial review system 315–16
obligation to establish independent tribunals 313, 316, 318
Ministry of Commerce 315, 323–4
notifying decisions 319
participating in litigation 320–1
rejecting applications as performance of statutory duties 317–18, 333–4
parties eligible to bring a case 319–20
eligibility of foreign persons to initiate judicial review 319–20
government of the exporter 319
procedural issues in the judicial review 316–34
appeal, remand, petition, retrial, removal and protest 331–3
competent courts 321–4
defendants and third parties 320–1
parties eligible to bring a case 319–20
procedural rules 327–31
remedies 333–4
reviewable determinations 316–18
standard of review, burden of proof, evidentiary rules and applicable law 324–7
China (cont.)
procedural rules 327–31
administrative reconsideration 328
admissibility 328–9
evidence and information 329, 330–1
exhaustion of remedies 328
hearings 330–1
people’s assessor system 329–30
Protocol of Accession
obligation to establish judicial review mechanism 313, 316, 318
transitional safeguard 57, 120
regulatory and institutional framework for trade remedy measures 314–15
history of trade remedies legislation 314–15
Ministry of Commerce 315
remedies 333–4
suspension of administrative action 334
reviewable determinations 316–18
failure to respond 317–18, 333–4
nature of reviewable decisions 317, 318
standard of review, burden of proof, evidentiary rules and applicable law 324–7
applicable law 326–7
best information available rule 325–6
burden of proof 325
no de novo review 325
review of facts 324–6
review of law 326
review of legal and factual bases for administrative action 324
WTO agreements and jurisprudence, status of 327
Colombia 83–106, 427
Andean community and rules 85–6, 89
appeals 100, 101
competent courts 98–9
concluding remarks and suggestions for improvement 105–6
DGCE 84, 87–8, 89
history of trade remedies legislation 83–91
laws and regulations in force 85–91
legislative framework for judicial review 84, 88–9, 90, 91–2
time of determining motives or mobiles’ 92, 93, 96, 98
Mincomercio 84, 86, 89, 92
overall assessment of effectiveness of judicial review in Colombia 104–5
parties eligible to bring a case 98
procedural steps 99–101
admissibility 99–100
remedies 104
temporary suspension 100
reviewable determinations 96–8
final and procedural acts 97
general and particular administrative acts 96
nature and classification of acts in trade remedy investigations 97–8
provisional measures 97
standard of review 101–4
breach of the rules on which the act should be based 21–4
disregard of the right to a hearing and defence 102–3
false reasoning 103
irregular issuance 102
issuance by incompetent authority 102
misuse of power 103
trade remedies laws and regulations in force 85–91
anti-dumping 86–9
countervailing measures 89
safeguards 89–91
types of judicial review proceedings 92–6
action for annulment 92–4, 95, 96, 98, 99, 101, 104
<table>
<thead>
<tr>
<th>Index</th>
<th>437</th>
</tr>
</thead>
<tbody>
<tr>
<td>action for annulment and reinstatement of rights 92, 93, 94–6, 98, 99, 101, 104</td>
<td>discretion of EU administering authorities 191–2</td>
</tr>
<tr>
<td>conclusions 423–32</td>
<td>limitations 183</td>
</tr>
<tr>
<td>applicable law 426–7</td>
<td>scope of review 190–2, 195–6</td>
</tr>
<tr>
<td>deference to investigating authorities 430–2</td>
<td>which acts can be the subject of an action for annulment 183–5</td>
</tr>
<tr>
<td>duration of judicial review proceedings 432</td>
<td>who can lodge an application 185–9</td>
</tr>
<tr>
<td>intensity of judicial review activity 427–8</td>
<td>anti-dumping and countervail 174, 175–6, 177–8</td>
</tr>
<tr>
<td>patterns in judicial decisions 428–30 the way forward 429–30</td>
<td>concluding remarks and suggestions for improvement 195–6</td>
</tr>
<tr>
<td>procedure 428</td>
<td>Commission 173, 183–5, 191–2</td>
</tr>
<tr>
<td>scope of judicial review 425–6</td>
<td>decision-making process 174–7</td>
</tr>
<tr>
<td>standing 6, 424</td>
<td>Directorate-General Trade 177–8</td>
</tr>
<tr>
<td>tribunals 423–4</td>
<td>Council 173, 191–2</td>
</tr>
<tr>
<td>powers of 427</td>
<td>decision-making process 174–7</td>
</tr>
<tr>
<td>countervail 2, 4</td>
<td>anti-dumping and countervail 175–6</td>
</tr>
<tr>
<td>Subsidies and Countervailing Measures (SCM Agreement) 2 consultations 89</td>
<td>proposals for new regulation 174</td>
</tr>
<tr>
<td>deadlines (Art 11.11) 130 evidential rules (Art 12.7) 325 judicial review requirements 8–10, 318 standing (Art 12.9) 9–10, 424 tribunals (Art 23) 8–10, 366–7, 375–6, 423</td>
<td>safeguards 176</td>
</tr>
<tr>
<td>domestic judicial review of trade remedy determinations 5–6 numbers of applications 6 standing 6 supplementing WTO and regional dispute settlement 5 wide scope of requests and powers of tribunals 6</td>
<td>EU trade remedy measures applied EU-wide 173</td>
</tr>
</tbody>
</table>
European Union (cont.)
interim relief 180, 194
partial annulment 192–3
safeguards 174, 176, 178
transparency 178

General Agreement on Tariffs and Trade 2
binding the EU 180
deceptive practices, action against 217
safeguards 225

India 287–311
anti-dumping 289–90, 292, 293–4, 296
three-stage process of investigation 299–300
appeals to Supreme Court 296, 304–5
background 287
Central Excise and Service Tax Appellate Tribunal (CESTAT) 293–5
appeals against final determinations 293, 296–7, 302–3, 303–4
appeals from orders of CESTAT 296, 304–5
composition 293–4
objective examination, conducting 309
parties eligible to bring a case 302
standard of review 306
competent courts 302–3
concluding remarks and suggestions for improvement 309–11
advantage of having a tribunal focusing solely on trade remedies appeals 311
need for suitable institutional and administrative setup 310–11
publication of practices needed 309–10
Designated Authority 289–90, 293, 296–300, 309
duty to act judicially 302
procedural errors 300–2

Directorate General for Anti-Dumping and Allied Duties 289–90
Directorate General of Safeguards 289, 290–1
history of trade remedy legislation 284–5
legislative framework for judicial review 291, 292–5, 424, 425
double judicial review system 308
Central Excise and Service Tax Appellate Tribunal 293–5
supervisory/discretionary powers of the Supreme Court/High Courts 292–3
WTO agreements and jurisprudence, status of 294–5, 308
overall assessment of effectiveness of judicial review 307–9
effective nature of Indian judicial review system 308–9
system of double judicial review 308
parties eligible to bring a case 302
procedural steps 303–4
remedies 306–7
CESTAT 303, 306–7
High Courts 307
reviewable determinations 296–302
appeals against preliminary findings/provisional decisions 297–300
review on grounds of procedural error 300–2
safeguards 289, 290–1, 292, 294
standard of review 305–6
CESTAT 306
grounds of review 305
questions of fact and questions of law 305–6
types of judicial review proceedings 295–6
appeals from CESTAT orders 296, 304–5
representations to Finance Ministry 296
scope of judicial review expanded 295
<table>
<thead>
<tr>
<th>Index</th>
<th>439</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia 361–77</td>
<td>Commissioner of Trade Levies 222–5, 226–7, 228–9, 237–8</td>
</tr>
<tr>
<td>anti-dumping and countervail 362, 364, 368</td>
<td>concluding remarks and suggestions for improvement 244–6</td>
</tr>
<tr>
<td>concluding remarks and suggestions for improvement 375–7</td>
<td>legislative framework for judicial review since 2005 230–1</td>
</tr>
<tr>
<td>ineffectiveness of judicial review system 375–6</td>
<td>legislative framework for judicial review until 2005 227–30</td>
</tr>
<tr>
<td>proposal for a single court for trade remedy cases 376</td>
<td>appeals to district courts 229–30, 234–5, 237</td>
</tr>
<tr>
<td>history of trade remedy legislation 361–2, 363–4</td>
<td>Chairman of Advisory Committee hearing challenge 228–9, 232–4, 237</td>
</tr>
<tr>
<td>investigating authorities 362–3</td>
<td>residual original jurisdiction of Supreme Court 230</td>
</tr>
<tr>
<td>Indonesian Trade Safeguard Committee (KPPI) 363</td>
<td>parties eligible to bring a case 242</td>
</tr>
<tr>
<td>Komite Anti-Dumping Indonesia (KADI) 362, 364, 371–2</td>
<td>procedures and remedies 243</td>
</tr>
<tr>
<td>structure and composition 362–3</td>
<td>standard of review: comparison of the two models 232–8</td>
</tr>
<tr>
<td>legal framework for judicial review of trade remedy determinations 364–8, 424</td>
<td>comparison of standards of review before/after 2005 amendment 235–8</td>
</tr>
<tr>
<td>absence of independent tribunals reviewing determinations 365–7</td>
<td>de novo standard of review of Chairman of Advisory Committee 232–4</td>
</tr>
<tr>
<td>interested parties bringing judicial review 367</td>
<td>judicial review of final duties on appeal to district courts 234–5</td>
</tr>
<tr>
<td>safeguards 363, 368</td>
<td>proposal for duties of consultation 238</td>
</tr>
<tr>
<td>State Administrative Court, judicial review by 367, 368, 369–75</td>
<td>substantive law of review: national or international 238–9</td>
</tr>
<tr>
<td>appeals 373–4</td>
<td>trade remedies legislation and practice 221–7</td>
</tr>
<tr>
<td>injunctions 374–5</td>
<td>anti-dumping and countervail 222–5</td>
</tr>
<tr>
<td>reviewable determinations 369–71</td>
<td>liberalization 221–2</td>
</tr>
<tr>
<td>rigour of judicial review 372–3</td>
<td>protective measures/safeguards 225–6</td>
</tr>
<tr>
<td>standard of review 371–2</td>
<td>which decisions can be reviewed 239–41</td>
</tr>
<tr>
<td>Tax Court appeals 365, 367–8</td>
<td>Japan 399–405</td>
</tr>
<tr>
<td>types of judicial review proceedings 368–75</td>
<td>concluding remarks 404–5</td>
</tr>
<tr>
<td>judicial review by the State Administrative Court 367, 368, 369–75</td>
<td>history of trade remedy legislation 399–400</td>
</tr>
<tr>
<td>judicial review by the Supreme Court 367, 375</td>
<td>legal framework 400–2</td>
</tr>
<tr>
<td>Israel 221–46</td>
<td>administrative disposition 401–2</td>
</tr>
<tr>
<td>Advisory Committee on Trade Levies 222–5</td>
<td>standing 402</td>
</tr>
</tbody>
</table>
Japan (cont.)
procedures 402–3
remedies 404
standard of review 403
judicial review 2–3
countries with insufficient activity see Japan; Malaysia; New Zealand; Thailand
domestic level see domestic judicial review of trade remedy determinations
multilateral level 3–4
regional level 4–5
WTO members’ obligation to maintain judicial review system 7–10, 337–8
see also under individual countries
Korea 337–60
appeals 346
applicable law in judicial review proceedings 351–6
free trade agreements 339–40, 343, 354, 357
monist system 351–2, 357
municipal law WTO agreements, status of 352–4, 357
WTO precedents 355–6
conclusion 359–60
increasing attention to judicial review in Korea 342–3, 352–3, 357
composition and structure 340–2
decisions, review of 348–51
difficulty in adjusting practice to legislative changes 339–40
MOSF, and 350
legal framework for the judicial review of trade remedy determinations 343–56
applicable law in judicial review proceedings 351–6
court, the 343, 344–6
enforcement of court decisions 356
judges, the 346
parties eligible to bring a case 347–51
standard of review and deference for agency discretion 351
Ministry of Strategy and Finance (MOSF) 350
overall assessment and future tasks 356–8
overall assessment of the judicial review system 356–7
remaining tasks for the future 357–8
standing: parties eligible to bring a case 347–51
decisions not to initiate an investigation as agency disposition 348–9
decisions to commence a review not administrative dispositions 349–50
direct and concrete legal interest in an administrative disposition 347
exhaustion of administrative appeal proceedings 348
MOSF regulation eligible for review 350–1
use of trade remedies 338–42
current status of trade remedy measures 342
Korea’s investigating authority 340–2
legal basis for trade remedies 339–40
WTO agreements, status of 339
Malaysia 405–7
judicial review of trade remedy determinations 405–7, 425–6
trade remedy legislation 405
Mexico 55–81
administrative appeals 59–60
procedure 59–60
appeals before domestic courts 63–6
appeals on constitutional grounds 63–4
appeals on grounds other than constitutional grounds 64–6
appeals under the WTO dispute settlement mechanism 60, 61–2
standard of review of WTO panels 61–2, 65
application of trade remedy measures under Mexican law 55–8
historically 55–8
conclusions 81
Economia 4, 58, 59–60, 65
NAFTA panel review assessment 63, 70–81, 424
Apples (2009) 64, 80–1
Beef (2002) 78
Coated Flat Steels (1996) 74–5
High Fructose Corn Syrup (2001) 75–7, 78
Liquid Caustic Soda (2006) 79
Plate in Coils (1995) 70–3, 75, 79
Polystyrene (1996) 73–4, 78
Pork Legs (2008) 80
Urea (2002) 77–8
Welded Pipe (2008) 79–80, 81
NAFTA, quasi-judicial review by 60, 66–81
appeals 62, 68, 70
assessment of NAFTA panel review 63, 70–81
binding nature of panel decisions 68
general aspects of NAFTA panel review 55, 62, 66–9, 70, 71, 81
jurisdiction 68, 81
powers of NAFTA panels 69–70, 81
standard of review of NAFTA panels 62, 69, 70, 81
Tax Court
appeals 64, 68–9, 70
jurisdiction 60, 68, 81
powers 65–6, 69, 70, 81
standard of review 64, 69, 70, 81
New Zealand 407–14
comments and conclusions 413–14
judicial review 409, 424
applicable law 410
court structure 410
legal framework 409–10
legal significance of international obligations 410–11
procedure 411–12
remedies 413
trade remedies 407–9
history 407–8
implementation 408
procedures 408–9
North American Free Trade Agreement (NAFTA) 4–5, 11
general aspects of NAFTA panel review 66–9
bi-national panel review 66–7
mandate of NAFTA panels 67
powers of NAFTA panels 69
standard of review 67–8
see also under Canada; Mexico; United States
Pakistan 269–85
anti-dumping and countervail 273, 278–82
Appellate Tribunal 273–7
absence of a Tribunal causing applications to be made to court 277–8, 283–4, 285
appeals before final determinations 275, 284–5
appointment of first Tribunal for only six months 275–6, 283
clarifications of Appellate Tribunal’s decision/no appeal 274
composition 273–4, 275–6, 285
scope of work and powers 274–5, 284–5
standard of review 275
background to the promulgation of trade defence laws 269, 270–3
administration of new trade defence laws 271–3
liberalization programme 271
WTO agreements, status of 270
conclusions 283–5
absence of a Tribunal and applications to court 283–4, 285
Pakistan (cont.)
cases related to due process in
course of investigation 284–5
problems relating to resort to the
courts 285
intervention by superior courts in
trade remedy determinations:
constitution of the Commission
282–3
judicial review of Commission’s
actions 273–83, 424, 425
Appellate Tribunal 273–7
intervention by superior courts in
trade remedy determinations:
constitution of the Commission
282–3
role of the superior courts in trade
remedy determinations: review
of due process 277–82
National Tariff Commission 271–3
constitution of the Commission
and trade remedy
determinations 282–3, 285
expanded role 272–3
new authority to make
determinations in anti-
dumping/countervail cases 273
original mandate and role 271–2
stays of proceedings 278, 285
role of the superior courts in trade
remedy determinations: review
of due process 277–82
delay in pending court
proceedings 278, 285
DSB findings and decision of the
court 278, 285
exhaustion of remedies 277–8
functions and role of the superior
courts 277
petitions filed before or on
initiation of investigations
279–80
petitions filed between initiation of
investigation and
preliminary determination 280
petitions filed in course of
preliminary determinations
280–1
petitions relating to final
determinations 281–2
safeguards 273
Peru 153–72
anti-dumping and countervail 157, 159
appeals 169–71
cassations 170
competent courts 166–7
concluding remarks 171–2
deregulation of the economy 153–4
enforcement of court decisions 171
Indecopi 154, 155, 160–1, 166, 168,
171–2
Administrative Tribunal 157–8, 166
Anti-Dumping and
Countervailing Measures
Commission 156–7, 158–9
legislative framework for judicial
review of trade remedy
determinations 160–2
‘full jurisdiction’ principle 161–2,
163, 171
matters raised in judicial review
proceedings and the standard
of review 163–5
Multisectoral Committee 157, 159–60
overview of trade remedies
legislation and practices 155–60
legislation 155–6
trade remedy investigations
156–60
parties eligible to bring a case, and
defendants 165–6
procedural steps 167–9
admissibility 168
precautionary measures 169
reviewable determinations 162–3
safeguards 157, 159–60
rule of law 4, 5
safeguards 2, 4
Agreement on Safeguards (SG
Agreement) 2, 225
judicial review 7, 10
standing 145
South Africa 247–68
appeals 252, 257, 260–1
Constitutional Court 254, 255, 256
competent courts 257
concluding remarks and suggestions for improvement 267–51
Competition Tribunal as court for trade remedy determination cases 267–8
judicial economy 268
history of trade remedy legislation 247–50
International trade Administration Commission 249–52
organisation 250–2
role and functions 250
legislative framework for judicial review 252–4
procedure for review of Commission decisions 253, 256–7
WTO agreements and jurisprudence, status of 254
overall assessment of effectiveness of judicial review 264–7
incorrect decisions 265–6
parties eligible to bring a case 257, 425
procedural steps 258–60
disclosure 259
fees 260, 266
reviews lodged where Commission situated 253, 257
time for lodging 256–7, 258
remedies 264
reviewable determinations 255–7
review of preliminary/interim decisions 252–3, 255–6, 256–7
standard of review 262–4
challenges under the Promotion of Administrative Justice Act 252, 262–3
deference to investigating authority’s determinations 263, 264, 266, 267
types of judicial review proceedings 255
Subsidies and Countervailing Measures (SCM Agreement) see under countervail
Thailand 415–21
conclusion 421
judicial review of trade remedy determinations 416–19, 424
legal framework 416–17
procedure 417–19
remarks and suggestions for improving judicial review system 420–1
trade remedy legislation 415
Turkey 197–220
anti-dumping and countervail 198, 200
appeals 212–13
competent courts 208–9
concluding remarks and suggestions for improvement 219–20
need for specialized courts and training for judges 220
history of trade remedy legislation 198–200
investigating authorities 200–1, 218–19
legislative framework for judicial review 201–4
overall assessment of the effectiveness of judicial review 217–19
deference to investigating authority’s determinations 218–19
mechanistic legal analysis 217–18
parties eligible to bring a case 207–8, 425
procedural steps 209–11
admissibility 210
written submissions 209–10
remedies 215–16
compliance with annulment decision 215
Turkey (cont.)
stay of execution of disputed determinations 216, 217
reviewable determinations 205–7
actions must be final and executable 205–6
failure to respond 207
safeguards 198–9, 200–1
standard of review 213–15
specific grounds of annulment 213–14
trade liberalization 197–8
types of judicial review proceedings 204–5
WTO agreements, status of 199, 203–4
United States (US) 4–5, 35–54
anti-dumping and countervailing duty actions
judicially reviewable 5, 35, 426
applicable law 50–3
conforming US law to SCM and AD Agreements 50
DSB findings not automatically accepted as ‘the law of nations’ 52
effect of WTO Panel/Appellate Body reports 51–3
implementing adverse WTO reports in US domestic law 51–2
persuasive reasoning 53
WTO decisions not binding on US 51, 52–3
competent courts 42–3
conclusions 54
Constitution 35–6, 38, 42, 54
Court of International Trade 37–8, 322, 424
jurisdiction over trade remedy actions 39–40
parties eligible to bring a case 320
procedure 43–4
remedies 44, 53–4
reviewable determinations 48–9, 426
structure 42
CUFTA 33–4
Department of Commerce 35, 38–9, 48–9
eligible parties 41–2
intervention 42
Federal Circuit 37–8, 42–3
standard of review on appeals 47–8, 54
WTO decisions not binding on US 51, 52–3
framework for judicial review 38–40
establishing a ‘case or controversy’ 39
judicial review limited by doctrine of sovereign immunity 38–9
personal jurisdiction over the defendant 40
standing 39, 41, 425
history of trade remedy legislation/judicial review 36–8
implementation of GATT negotiating rounds agreements 37, 50
International Trade Commission 35, 38–9, 48–9
NAFTA and bi-national panel review 33–4, 424
effect of decisions 51
eligible parties 41
jurisdiction 38, 39, 50
procedure 44–6
remedies 45
reviewable determinations 49
standard of review 48
procedural steps 43–6
remedies 44, 53–4
reviewable determinations 48–50
safeguard actions
reviewable generally on procedural grounds only 35, 49, 426
standard of review 48
standard of review 46–8
applied de novo on appeals 47–8, 54
two-step process 47
INDEX

World Trade Organization (WTO) 1, 2, 3, 4, 37, 50

dispute settlement 3–4, 5, 6, 61–2, 266, 311

appellate review before Appellate Body (Art 17.6 DSU) 62

powers of WTO panels and Appellate Body (Art 19.1 DSU) 62, 68

standard of review of WTO panels (Art 11 DSU) 61–2, 65