

Index by Subject

AB procedures (DSU 17.9 and ABWP) <ul style="list-style-type: none">additional procedures (ABWP 16(1)): <i>see</i> special or additional procedures (AB) (ABWP 16(1))adoption, AB authority DSU 885appellant's submission (ABWP 21)<ul style="list-style-type: none">grounds for allegation of specific errors (ABWP 21:2) DSU 1432–3materials attached to as integral part DSU 1431appointment of members (DSU 17.2) DSU 837<ul style="list-style-type: none">table of appointments as at 30 September 2011 DSU 838collegiality (ABWP 4) (AB communication of 7 February 1996) DSU 1369competence: <i>see</i> standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)compliance obligation DSU 1365–6composition of delegation: <i>see</i> composition of delegationdivisions (ABWP 6) DSU 1371documents (ABWP 18), failure to file by deadline (ABWP 18(1)) DSU 1397–402due process and DSU 1366establishment (DSU 17.1) DSU 836failure to appear (AB 29) DSU 1467multiple appeals (ABWP 23): <i>see</i> multiple appeals (notice of other appeal (ABWP 23)); multiple appeals (special procedure for consolidation (ABWP 16(1)))notice of appeal: <i>see</i> notice of appeal, requirements (ABWP 20(2)(d))oral hearings (ABWP 27)<ul style="list-style-type: none"><i>see also</i> public observation of oral hearing/ “passive participation” (ABWP 27(3))AB authority to organize and conduct DSU 1449consultation on date DSU 1454multiple sessions/hearings DSU 1455–6replacement of member (ABWP 13)<ul style="list-style-type: none">in case of death DSU 1373Presiding Member DSU 1374for serious personal reasons (ABWP 12) DSU 1375–6special procedure (ABWP 16(1)) DSU 1385reports<ul style="list-style-type: none"><i>see also</i> legal status of adopted AB reports (DSU 17.14), precedent as clarification of parties' arguments GATT 239 n. 347time taken from date of circulation to date of adoption (table) DSU 904Rules of Conduct, incorporation into ABWP<ul style="list-style-type: none"><i>see also</i> Rules of Conduct (RoC)separate opinions (DSU 17.11) DSU 889submission, correction of clerical error (ABWP 18(5)) DSU 1403–7<ul style="list-style-type: none">amendment (2005) DSU 1403–4requests for DSU 1405–7term of office (Chair) (ABWP 5(2)) DSU 1370text (ABWP) DSU 1364 (Section XXXII)time taken to complete proceedings (DSU 17.5) (table) DSU 840timetable (ABWP 26)<ul style="list-style-type: none">modification in exceptional circumstances (ABWP 16(2)) DSU 1386–92modification of date of oral hearing (ABWP 16(2)) DSU 1393–6	<ul style="list-style-type: none">transition (ABWP 15) DSU 1377–8transmittal of records (ABWP 25)<ul style="list-style-type: none">inclusion of correspondence not in the record of the panel proceedings DSU 1446request to delay DSU 1445withdrawal of appeal (ABWP 30): <i>see</i> withdrawal of appeal (ABWP 30) <p>abuse of rights/<i>abus de droit</i>, <i>pacta sunt servanda</i>/performance in good faith (VCLT 26) and TRIPS 77, DSU 1501</p> <p>accelerated/expedited procedures<ul style="list-style-type: none">AB procedures in prohibited subsidies cases (ABWP 31) DSU 1475consultations (SCM 4.1–4), statement of evidence (SCM 4.2) and SCM 188–90, 192–4, 197</p> <p>access to dispute settlement process, limitation to WTO Members, 17.516: <i>see also</i> <i>amicus curiae</i> briefs</p> <p>accession protocols<ul style="list-style-type: none"><i>see also</i> transitional safeguard measures (SG) (China) (Accession Protocol 16)as balance of rights and obligations WTO 253“date of agreement” (GATT II:6(a)) and GATT 157General Exceptions (GATT XX) and GATT 951–5inclusion of commitments on<ul style="list-style-type: none">determination of dumping (NMEs) GATT 458–9, AD 166, 715restrictions on trading rights (GATT XI:1) GATT 619as integral part of WTO Agreement (WTO II:2) WTO 253jurisprudence relating to AD 1012as “legal instruments” (GATT 1994 1(b)) GATT 3, 6special exchange arrangements (GATT XV:6) and GATT 706</p> <p>accession (WTO XII)<ul style="list-style-type: none"><i>see also</i> original membership (WTO XI:1)accessions at 30 September 2011 WTO 239, Table XX Cadopted decisions (Ministerial Conference/General Council acting for) (WTO XII:2) WTO 62, 248–9compliance with, burden of proof SG 314least developed countries: <i>see also</i> under least-developed countries (LDCs), accession to membershipobserver status WTO 250Plurilateral Trade Agreements (WTO XII:3) WTO 255–8procedures (WTO XII:2)<ul style="list-style-type: none">Decision-Making Procedures Under Articles IX and XII of the WTO Agreement, General Council decision (1995) WTO 197, 203Secretariat Note on (1995) WTO 242, 274standard of review (DSU 11) SG 313working parties on accession<ul style="list-style-type: none">completed processes WTO 244–5continuation of GATT 1947 working parties WTO 243, 245, 247establishment, terms of reference and customary procedures WTO 66, 241ongoing processes WTO 246–7</p> <p>Accountancy Sector, Disciplines on Domestic Regulation (1998)<ul style="list-style-type: none">GATS XVI and XVII obligations and GATS 60–1transparency (GATS III) and GATS 44</p> <p>Accountancy Sector, Guidelines for Mutual Recognition Agreements or Arrangements (GATS VII:4) GATS 65</p> <p>ACP–EC Partnership Agreement, Doha Declaration on WTO 56, 67</p>
---	--

- acquiescence:** *see* estoppel
- acquis:** 1947/WTO continuity, decisions, procedures and customary practices under GATT 1947 (WTO XVI:1)/provisions of legal instruments in force under GATT 1947 (GATT 1994 1(b)) (GATT *acquis*) *see* GATT
- activity function rules:** *see* MFN treatment (GATT I:1), “advantage”, allocation of tariff quotas
- additional procedures:** *see* special or additional procedures (AB) (ABWP 16(1)); special or additional procedures (panel) (DSU 12.1)
- ADP Committee:** *see* Anti-Dumping Practices Committee (ADP)
- adverse effects (SCM 5)**
see also nullification or impairment (DSU 3.8); “serious prejudice” (SCM 6)
countermeasures (SCM 7.9): *see* countermeasures in case of failure to take measures to remove adverse effects of or withdraw subsidy (SCM 7.9)
existence of “benefit”, need for SCM 263
continuing benefit SCM 256, 257
non-retroactivity (VCLT 28) and SCM 256
grounds for requesting consultations (SCM 7.1) as context SCM 262
injury to the domestic industry (SCM 5(a)) SCM 260
nullification or impairment of benefits (SCM 5(b)) SCM 261
presumption under DSU 3.8 distinguished SCM 261, DSU 95
systematic offset as SCM 264
obligation to remove adverse threats or withdraw subsidy (SCM 7.8) SCM 327–9
adverse effects arising subsequent to original proceedings, applicability to SCM 328, 329
affirmative action requirement SCM 329
special or additional rules and procedures (DSU 1.2 and Appendix 2) and DSU 21
“withdrawal of subsidy without delay” (SCM 4.7) compared SCM 208, 215, 328, 329
passing the benefit through (SCM 1.1(b)) and SCM 258
relevant period SCM 259
as required element for actionable subsidy SCM 255
“serious prejudice” (SCM 5(c)): *see* “serious prejudice” (SCM 5(c))
“use” of subsidy SCM 262, DSU 95
- adverse inferences from party’s refusal to provide information, panel’s right to draw (DSU 13)** DSU 558–63
burden of proof and DSU 558–63
sufficiency of burden of proof rules DSU 563
discretionary nature DSU 561–2
obligation to respond promptly to panel’s requests for information and (DSU 13.1), confidential information and DSU 561
- adverse inferences from party’s refusal to provide information, panel’s right to draw (SCM Annex V)** SCM 676–8
- Advisory Centre on WTO Law** DSU 1357 n. 2139
- affirmative obligations**
definition GPA 15
GPA tendering procedures (GPA VII) as GPA 21
- Aggregate Measurement of Support (AMS) (AG 1(a)/Annex 3)**
“constituent data and methodology” (AG 1(a)(ii)) AG 6–8, 200
beef, absence AG 7
external reference price, relevant period AG 8
“in accordance with” AG 7
“provisions of Annex 3”, priority AG 7, 8
“taking into account” AG 7
“market price support” (Annex 3, para. 8), “eligible” AG 203
“support” (Annex 3, para. 1) AG 9
calculation for purposes of AG 13(b)(ii) AG 144
GATT XVI:1 compared AG 9
total AMS (AG 1(h)), calculation AG 6 n. 9, 20
- Agreement on the Application of Sanitary and Phytosanitary Measures:** *see* SPS Agreement; SPS Committee (SPS)
- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994:** *see* Anti-Dumping Agreement (AD)
- Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade:** *see* Customs Valuation Agreement
- Agreement on Preshipment Inspection:** *see* PSI Agreement
- Agreement on Subsidies and Countervailing Measures:** *see* SCM Agreement
- Agreement on Trade in Civil Aircraft:** *see* Aircraft Agreement (AIR)
- Agreement on Trade-Related Investment Measures (TRIMs):** *see* TRIMs Agreement
- agricultural concessions and commitments (AG 3)**
see also Schedules of Concessions (GATT II)
domestic support (AG 3), limitation to commitment levels specified in Member’s Schedule (AG 3(2)), “subject to provisions of Art. 6” AG 29
export subsidies, prohibition (AG 3.3)
“budgetary outlay and quantity commitment levels”, obligation to include both types in Schedule AG 33
AG 9.2(b)(iii)/9.2(b)(iv) and AG 109
scheduled and unscheduled products distinguished AG 31
applicability of AG 9.1 to both AG 31–2
as integral part of GATT 1994 (AG 3.1) AG 26
Schedules of Commitments and AG 3, interrelationship AG 27–8
- “agricultural products” (AG 2/Annex 1)**
applicability AG 21–2
applicability of jurisprudence relating to non-agricultural products AG 24
“commodity” (AG 13(b)(ii)), as context for AG 23
Harmonized System, applicability to Annex 1 AG 25
scheduled and unscheduled products distinguished AG 23
- agricultural reform commitments (Uruguay Round), review of implementation (AG 18)**
3.171–81: *see also* notification requirements (AG 18.2)
annual consultations (AG 18.5) AG 179
counter notifications (AG 18.7) AG 181
opportunity to raise matter relevant to implementation commitments (AG 18.6) AG 180
Organization of Work and Working Procedures AG 172, 179, 180, 181
procedure AG 172
- agricultural reform process, obligation to continue (AG 20)**
Doha Round AG 185–7
Hong Kong Ministerial Conference AG 188–9
launch of new round of negotiations (2000) AG 184
Singapore Ministerial Conference AG 183
- Agriculture Agreement (AG)**
see also Aggregate Measurement of Support (AMS) (AG 1(a)/Annex 3); agricultural concessions and commitments (AG 3); domestic support commitments (AG 6); due restraint (AG 13) (“peace clause”); export subsidy commitments (AG 9); export subsidy commitments, prevention of circumvention (AG 10); export subsidy, prohibited (SCM, Part II); market access, concessions and commitments (AG 4.1); market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1); NFIDC, implementation (AG 16); notification requirements (AG 18.2); payments on export of agricultural product financed by virtue of governmental action (AG 9.1 (c)); Schedules of Concessions (GATT II); special safeguards (AG 5)
object and purpose (preamble)
AG 9.1(c) and AG 3
developing countries’ needs and conditions (including Mid-Term Review Agreement (AG 6.2)) AG 4, 77
fair and market-oriented agricultural trading system AG 2–5

market access (AG 4) AG 34, 55	Technical Sub-Committee, establishment and terms of reference AIR 28
on-going reform AG 1–2, 190	Trade in Civil Aircraft Sub-Committee AIR 29
relationship with other WTO agreements (AG 21.1) <i>see also</i> relationships within and between agreements	ALOPs (SPS 5.4–5.6 and Annex A(5))
conflict, priority in case of AG 191	consistency in application (SPS 5.5)
GATT XI (non-tariff measures/QRs) GATT 597, 644	arbitrary or unjustifiable inconsistencies, exclusion: <i>see</i> arbitrary or unjustifiable distinctions resulting in discrimination or disguised restriction on international trade (SPS 5.5)
GATT XIII (non-discrimination) GATT 656, 689, AG 1, 190	comparability of in different situations SPS 224–5
market access commitments (AG 4.1) and GATT 168–9, AG 1, 36, 190	comparable situations SPS 226–9
GATT XVI (subsidies) GATT 715, 717	cumulative nature of obligations SPS 63–4, 212–14
SCM Agreement	discrimination or disguised restriction of trade resulting from inconsistency SPS 50, 212–14
3.192–4, 13.181–7: <i>see also</i> relationships within and between agreements	elements required for SPS 211
AG 6.3/SCM 3.1(b) AG 79, 193–4, SCM 186–7	Guidelines to Further the Practical Implementation of Article 5.5 (2000) SPS 244–8
Agriculture Committee (AG 17)	“implementation measure” for purposes of SPS 5.5 SPS 215–16
establishment WTO 93	legal obligation, whether SPS 218
Organization of Work and Working Procedures AG 172, 179, 180, 181	recommendations of relevant international organizations and SPS 87
report on	“specific” SPS 220–3
implementation of AG 10.2 AG 118–23	SPS 2.2 and SPS 51, 282–4
NFIDC (AG 16), 3.118, 3.120: <i>see also</i> NFIDC, implementation (AG 16)	measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6)
role and activities, review of Uruguay Round implementation activities (AG 18): <i>see</i> agricultural reform commitments (Uruguay Round), review of implementation (AG 18)	alternative measure “significantly less restrictive to trade” SPS 275–7
rules of procedure (1996) WTO 94, AG 170	compliance with Member’s ALOP SPS 273–4
terms of reference AG 169	experts’ role SPS 261
reports AG 171	“is reasonably available” SPS 263
Air Transport Services (GATS Annex), review (Annex para. 5)	sufficient scientific evidence (SPS 2.2) and SPS 282–4
GATS 238–9	“taking into account technical and economic feasibility” SPS 264
Aircraft Agreement (AIR)	“appropriate level”, determination
acceptance and entry into force (AIR 9.1) WTO 258, 269, AIR 32–4	“acceptable level of risk” test (SPS 5.1/Annex A(4)) and SPS 266, 279, 530, 532–3
acceptances as at 30 September 2011 AIR 6, 32–3	Member’s explicit statement, right of Panel/AB to challenge SPS 271
alignment with WTO institutional and dispute procedures, ongoing efforts AIR 3, 5	Member’s obligation to determine [in accordance with SPS obligations] SPS 207–8, 210, 220, 270–2, 285
amendments (AIR 9.5) WTO 219, 222, VAL 35–6	Member’s prerogative SPS 253, 267–9, 529
Protocol Amending (1986) AIR 35	as preliminary to/distinction from decision on measure SPS 265, 532–3
Protocol Amending (2001) AIR 16–18, 36	burden of proof SPS 259–60
authentic texts (Spanish) AIR 37	scientific evidence requirement SPS 260
DSU applicability AIR 3, 30–1	cumulative elements (SPS 5.6 footnote 3) SPS 257–8
covered agreement status and AIR 31	legal characterization of measure as matter for panel DSU 767
plurilateral agreement status and AIR 31	order of analysis SPS 262
end-use systems (AIR 2.2) AIR 12	SPS measures, limitation to SPS 256
entry into force (1980)/annexation to WTO Agreement (AIR Preamble) AIR 3	minimization of negative trade effects obligation (SPS 5.4) and SPS 206–8
Protocol amending (1988) AIR 4	amicus curiae briefs
negotiations to broaden and improve scope (AIR 8.3) AIR 26–7	AB and
Trade in Civil Aircraft Sub-Committee and AIR 29	right to accept (DSU 17.9) DSU 740–2
product coverage/definitions (AIR 1)	discretionary nature/case-by-case approach DSU 743
notifications of domestic operating entities and domestic definitions AIR 8–9	special procedure (ABWP 16(1)) DSU 1382
updating AIR 9	confidential information obligations (DSU 18.2) DSU 126, 914, 917
product coverage/definitions (AIR 1), Annex AIR 13–19	due process and DSU 744
adoption as consolidated Annex (1983) AIR 14	notification of intention to participate (DSU 10.2), relevance DSU 474
Aircraft Ground Maintenance Simulators Decision (2001) AIR 18	panel’s authority/discretion to accept or reject DSU 474, 516, 685, 697, 738–44
Harmonized System, alignment with AIR 2, 15–16, 19	rejection as error of law DSU 739
procedures for modification and rectification (1982) AIR 13	private individuals’ right to submit DSU 741–2
reservations (AIR 9.2.1) WTO 301	prompt and satisfactory settlement of dispute (DSU 3.3) and, prompt and satisfactory settlement (DSU 3.3) DSU 743
SCM and AIR 22–4	special procedures DSU 1382
signatories as at 30 September 2011 WTO 269, AIR 6	table of accepted briefs DSU 745
technical barriers to trade (AIR 3), Air Committee discussion of AIR 20	
Aircraft Committee	
annual reports (WTO IV.8) WTO 160, AIR 25	
observer status AIR 34	
role and activities AIR 1–2, 4	

- (*cont.*)
third party rights distinguished DSU 516
anti-dumping action on behalf of a third country (AD 14) AD 849–51
GATT practice GATT 486, AD 851
anti-dumping actions, Members’ reporting obligations (AD 16.4), form and content AD 866–8
Anti-Dumping Agreement (AD)
see also anti-dumping action on behalf of a third country (AD 14); anti-dumping actions, Members’ reporting obligations (AD 16.4), form and content; anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement; anti-dumping duties, imposition and collection (AD 9); confidential information (AD 6.5); conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4); consultation and dispute settlement (AD 17); data collection period (AD 2 and AD 3); data collection period (AD 5.8) (determination of negligible import volumes); determination of dumping (AD 2); determination of injury (AD 3); developing countries (AD 15); “domestic industry” (AD 4); due process (anti-dumping measures) (AD 6); “dumping” / “margin of dumping” (AD 2.1); evidence (dumping investigation) (AD 6); investigation of dumping (AD 5)/subsidy (SCM 11); judicial review (AD 13); provisional measures (AD 7); public notice and explanation of determinations (AD 12); public notice of initiation of investigation (AD 12.1); public notice of preliminary or final determination (AD 12.2); retroactivity (provisional measures and anti-dumping duties) (AD 10); sampling (AD 6.10); specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement; standard/powers of review (panel) (AD 17.6); sunset review (AD 11.3) (including “likelihood” test); transparency (AD 3 and 5)
annual review of implementation and operation of Agreement, guidelines for improvement AD 975–6
applicability (AD 18.3)
pre-/post-WTO reviews AD 966–7
“reviews of existing measures” AD 965
object and purpose, absence of specific provision/preamble AD 1–4
preparatory work (VCLT 32)
AD 1 AD 5
AD 3.4 AD 247, 249
AD 6 AD 623–4
Annex II AD 533
principles (AD 1)
“anti-dumping measure” AD 5
“initiated and conducted in accordance with the provisions of this Agreement” AD 6
developments during period of investigation, relevance AD 7
violation of other AD provisions as evidence of breach of AD 1, 8.6, 8.986: *see also* relationships within and between agreements
anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement
see also countervailing duties (SCM Part V)
AD 1 as link AD 1002–6
AD 2.1/GATT VI:1(a) and AD 2.2/GATT VI:1(b) distinguished GATT 481
AD 18.1: *see* specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement
AD Agreement as context (VCLT 31(2)) AD 1000–2
AD Agreement and GATT 1994 as integral part of WTO Agreement AD 723, 1000–1
anti-dumping measure other than duty, applicability to GATT 447–50
AD 1 and GATT 448
AD 18.1 and, 2.449: *see also* specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement
“may levy” and (GATT VI:2) GATT 460–2, AD 723
GATT practice/preparatory work (VCLT 32) SPS 462
anti-dumping vs countailing duties/exclusion of double remedy (GATT VI:5/SCM 19) GATT 480–1, 481, SCM 466, DSU 1617
calculation of subsidies (GATT VI:3/SCM 19.4) GATT 471
“pass-through” analysis (GATT 6:3/SCM 10 and 32) GATT 472
countervailable subsidy, permissible responses (GATT VI:3/SCM) GATT 469
countervailing duties, compliance with both GATT VI:3 and SCM GATT 451, 468
determination of dumping (AD 2/GATT VI:2)
GATT practice GATT 467
method, right to choose GATT 463
refund of duties or taxes (AD 2.4.2/GATT VI:4) GATT 478–9
GATT practice GATT 479
sale “destined for consumption in exporting country” (AD 2.1/ GATT VI:2) GATT 481
determination of dumping (NMEs) (Note 2 *Ad* Article VI:1) GATT 455–9, AD 155–6, 166–7, 715
dumping, constituent elements/definition (AD 2/GATT VI:1)
consistency of definition throughout AD and GATT GATT 452–3
GATT practice and preparatory work (VCLT 32) GATT 486
“margin of dumping” (GATT VI:2)/ “margins of dumping” (AD 2.1), equivalence GATT 453
material injury to domestic industry or threat of (GATT VI:6(a)) GATT 454, 482–5
GATT practice GATT 485
SCM 16.1 and GATT 483
material injury to industry in third party country (GATT VI:6(b) and (c)) GATT 486–7
AD 14 and GATT 486, AD 849–51
specific reference in legislation, relevance GATT 450
sufficiency of evidence for initiation of investigation (AD 5) and AD 356, 364 n. 489, 424
non-retroactivity of treaties (VCLT 28) and GATT 451
QRs (GATT XI) and GATT 648
separability of AD and GATT VI GATT 493, AD 1000
violation of GATT VI, sufficiency for finding of violation of AD 2.1 and 2.2 GATT 451, 492, AD 161
“zeroing” (AD 9.3/GATT VI:2): *see* “zeroing” (AD 9.3/GATT VI:2)
anti-dumping duties, duration and review (AD 11)
see also sunset review (AD 11.3)
AD 11.1 as general principle underlying AD 11.2 and 3 AD 735, 740
“injury” (AD 3 footnote 9) AD 747, 751
“likely to lead to continuation or recurrence” (AD 11.2)
“not likely” test AD 739, 748
probability, need for AD 749
sunset review (AD 11.3) and AD 749
“necessary to offset dumping” (AD 11.2) AD 739, 741–6
necessity (AD 11.1) and AD 739, 741
standard of proof AD 745, SCM 494
sunset review (AD 11.3) and AD 742–3
necessity (AD 11.1) AD 735–7
“no-dumping” finding (AD 11.2), timing of revocation of anti-dumping duty AD 743
review mechanism, AD 11.2 as AD 752
special rules and procedures (DSU 1.2), whether DSU 12

<p>“warranted” (AD 11.2) AD 750–2</p> <p>anti-dumping duties, imposition and collection (AD 9)</p> <p>assessment (AD 9.3)</p> <p>conditions (AD 9.3.2, AD 11.2 and SCM 21.2) AD 676–7, SCM 486–7</p> <p><i>de minimis</i> test, AD 5.8 distinguished AD 402, 671–3</p> <p>finality of duty AD 678</p> <p>“product as a whole” (AD 2.1) and GATT 120, AD 18–19, 679–85</p> <p>retrospective assessment (AD 9.3.1) AD 675, 679–80</p> <p>zeroing and GATT 464–7, AD 680, 686, 686–7</p> <p>variable duties, possibility of AD 674–5</p> <p>calculation of “all other” anti-dumping duty rate (AD 9.4)</p> <p>avoidance of prejudice to non-investigated exporters AD 698–9, 708</p> <p>comparison of <i>all</i> comparable transactions (AD 2.4), need for AD 700</p> <p>determination of injury (AD 3), relevance to AD 202</p> <p>“margins” AD 701–2</p> <p>margins established under circumstances referred to in AD 6.8, exclusion AD 701–2, 706–7</p> <p>consistency with AD 2 8, 711</p> <p>“established” AD 708</p> <p>lacuna situation AD 708–10, 711–16</p> <p>“legislation as such” and AD 877</p> <p>method, absence of provision AD 701</p> <p>non-cooperating companies and AD 705</p> <p>prospective normal value ceiling (AD 9.4(ii)) AD 721–2</p> <p>single exporter or producer (AD 9.4(i)), sufficiency AD 703</p> <p>zero/<i>de minimis</i> margins, exclusion AD 791–2</p> <p>“duties” (AD 9/SCM 19), bonds distinguished AD 656, SCM 459</p> <p>expedited review (AD 9.5), requirements AD 724</p> <p>lesser duty, possibility of (AD 9.1) AD 658, 861</p> <p>“such mandatory duty shall be collected . . .” (AD 9.2)</p> <p>“all sources” AD 667–8</p> <p>AD 9.2 and SCM 18 distinguished AD 668</p> <p>“appropriate” amounts AD 663–6</p> <p>sampling (AD 6.10) and AD 664, 666</p> <p>mandatory nature AD 660–2</p> <p>NMEs and AD 660</p> <p>“shall name” AD 669–70</p> <p>exception in case of impracticability AD 670</p> <p>Anti-Dumping Practices Committee (ADP)</p> <p>annual review of implementation and operation of Anti-Dumping Agreement, guidelines for improvement and AD 975–6</p> <p>establishment WTO 93</p> <p>Informal Group on Anti-Circumvention, ADP Committee</p> <p>Decision on (April 1997) AD 1017–18</p> <p>notification to government (AD 5.5), recommendation on timing AD 387</p> <p>Periods of Data Collection for Anti-Dumping Investigations, Recommendation Concerning: <i>see</i> data collection period (AD 2 and AD 3), Anti-Dumping Practices Committee, Recommendation (2000)</p> <p>recommendations, status AD 175</p> <p>review of AD 15 (developing countries) AD 852, 853</p> <p>rules of procedure (1996) WTO 94, AD 864–5</p> <p>“arbitrary or unjustifiable discrimination”</p> <p>“discrimination” in SPS 5.5 and TRIPs 3 and 4 compared SPS 243</p> <p>ordinary meaning SPS 231</p> <p>use in GATT XX, SPS 2.3 and SPS 5.5 compared SPS 232–3, 240–2</p> <p>arbitrary or unjustifiable discrimination, exclusion (SPS 2.3) SPS 1, 58–64</p> <p>ALOPs and (SPS 5.4–6) SPS 210</p> <p>ALOPs (SPS 5.5) and SPS 50, 61–4, 240–2</p> <p>discrimination between different products SPS 59</p> <p>elements of violation SPS 58</p>	<p>arbitrary or unjustifiable discrimination, GATT XX measure as (GATT XX chapeau)</p> <p>ambiguity GATT 862</p> <p>“between countries where the same conditions prevail” GATT 859–61</p> <p>between importing and exporting countries GATT 859–61</p> <p>capricious or unpredictable reasons and GATT 870, 872</p> <p>cause vs effects test GATT 870</p> <p>constituent elements GATT 859, 862, 864</p> <p>discrimination in substantive GATT obligations distinguished GATT 858, 864</p> <p>“disguised restriction on international trade”</p> <p>failure to consider costs as GATT 863</p> <p>interrelationship GATT 874</p> <p>measures amounting to arbitrary or unjustifiable discrimination as GATT 862–3</p> <p>significant effect on achievement of objective and GATT 876, 877</p> <p>failure to consider appropriateness of regulatory programme and GATT 865–7</p> <p>link with legitimate objective, need for GATT 870, 873</p> <p>objective criteria, need for GATT 869</p> <p>arbitrary or unjustifiable distinctions resulting in discrimination or disguised restriction on international trade (SPS 5.5)</p> <p>arbitrary or unjustifiable distinctions SPS 50, 61–4, 230–4</p> <p>comparison of ALOPs as basis for panel review SPS 230</p> <p>disguised restriction on international trade/warning signals SPS 235–9</p> <p>arbitration (DSU 22.6)</p> <p><i>see also</i> suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)</p> <p>burden of proof</p> <p>SCM 4.11 arbitrations DSU 585–6</p> <p>SCM 7.10 arbitrations SCM 337</p> <p>“by the original panel” DSU 1211</p> <p>due process and DSU 1183, 1210</p> <p>multiple complainants DSU 1282</p> <p>scope of review/arbitrators’ mandate/task (DSU 22.7)</p> <p>ad hoc procedural agreements for implementation of DSB recommendations and rulings DSU 1176</p> <p>agreement/sector for which authorization is sought (DSU 22.3), limitation to DSU 1186</p> <p>determination of “appropriateness/appropriate” countermeasure (SCM 4.11) SCM 233, 244–5, DSU 1260, 1283, 1292–3</p> <p>determination of “appropriateness/appropriate” countermeasure (SCM 7.10) SCM 336</p> <p>determination of “equivalence” (DSU 22.3)</p> <p>17.1217, 17.1246–59: <i>see also</i> suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), level equivalent to nullification or impairment (DSU 22.4)</p> <p>methodology paper, request for DSU 1244</p> <p>“nature of concession”, exclusion (DSU 22.7) DSU 1187, 1247, 1256</p> <p>WTO-consistency as prior consideration DSU 1253–4</p> <p>DSU 22.6 and DSU 22.7 compared DSU 1216</p> <p>rejection of proposed level of suspension and DSU 1257–9</p> <p>suspension of concessions or “other obligations”, limitations on role DSU 1219–22</p> <p>scope of review/arbitrators’ mandate/task (SCM 4.11), burden of proof, allocation SCM 248</p> <p>scope of review/arbitrators’ mandate/task (SCM 7.10), burden of proof, allocation SCM 337</p> <p>“specific”</p> <p>agreement and sectors (DSU 22.3) DSU 1184, 1186, 1187, 1198</p> <p>arbitrators’ margin of discretion DSU 1203</p> <p>DSU 3 provisions and DSU 1209</p>
--	--

<p>(<i>cont.</i>)</p> <p>DSU 6.2 requirements, applicability DSU 1183, 1210</p> <p>product list DSU 1187–8</p> <p>specific level of suspension (DSU 22.4) DSU 1184, 1185, 1187, 1247</p> <p>tables</p> <p>ad hoc agreements DSU 1156</p> <p>decisions DSU 1213</p> <p>time taken DSU 1214</p> <p>third party rights DSU 507–10</p> <p>timing in relation to Article 21.5 arbitrations: <i>see</i> “sequencing” (interrelationship between Article 21.5 and Article 22.6 arbitration, ad hoc procedural agreements)</p> <p>working procedures</p> <p>late submission of evidence DSU 729</p> <p>opportunity to comment, need for DSU 729</p> <p>new argumentation, cut-off date DSU 730</p> <p>typical text DSU 1212</p> <p>arbitration (DSU 25)</p> <p>advantages DSU 1330</p> <p>as alternative to panel procedure DSU 1329, 1337, 1338–9, 1340</p> <p>applicable law</p> <p>AB practice DSU 1335</p> <p>burden of proof (DSU 22.6) DSU 1328</p> <p>DSU 22.6 DSU 1328, 1331</p> <p>confidentiality of proceedings</p> <p><i>see also</i> confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3)</p> <p>applicability of AB practice DSU 1335</p> <p>Decision on improvements to the GATT dispute settlement procedures (1989) and DSU 1341 n. 2128</p> <p>jurisdiction/arbitrators’ mandate</p> <p>agreement of parties (DSU 25.1 and 25.2) as basis DSU 1330, 1340</p> <p>determination of level of nullification or impairment (DSU 22.4) DSU 1327, 1329–30</p> <p>determination of WTO-consistency of measure DSU 1336</p> <p>prompt and satisfactory resolution of disputes, Members’ right to (DSU 3) and DSU 1330, 1343</p> <p>procedural requirements</p> <p>Article 22.6 proceedings distinguished DSU 1333, 1342</p> <p>consistency with WTO rules and principles, responsibility for ensuring DSU 1326</p> <p>notification of arbitration to DSB, limitation to DSU 1326, 1338</p> <p>arbitration (SCM 8.5) SCM 347</p> <p>Argentina, ATC safeguard measures (ATC 6), TMB discussion ATC 33, 39, 53, 72, 82</p> <p>arguendo assumptions</p> <p>Article 21.5 proceedings and DSU 355 n. 575, 657, 1152</p> <p>estoppel and DSU 663</p> <p>“even assuming” DSU 111, 135, 313, 658–9, 1573, 1706</p> <p>guidelines on the use of DSU 664</p> <p>judicial economy and GATT 1041, DSU 646, 660</p> <p>“objective assessment” (DSU 11) and DSU 657–64</p> <p>security and predictability (DSU 11) and DSU 49–50</p> <p>“to enhance simplicity” DSU 49, 661, 664</p> <p>ASEAN Free Trade Area, Common Effective Preferential Tariffs (CEPT) scheme, Enabling Clause and GATT 66</p> <p>Assets, Liabilities, Records, Staff and Functions from GATT to the WTO, Agreement on (1994), Director-General’s depositary functions WTO 195, 267</p> <p>ATC (Agreement on Textiles and Clothing): <i>see</i> Textiles and Clothing Agreement (ATC)</p> <p>Australia</p> <p>Enabling Clause notifications, special treatment of least-developed countries GATT 79</p>	<p>Schedules of Concessions (GATT II), commitments not to impose export duties GATT 135–6</p> <p>balance of payments difficulties, developing countries’ right to take import measures (GATT XVIII:B)</p> <p>adequacy to forestall the threat of or stop a serious decline in monetary reserves (GATT XVIII:9(a)) GATT 764–5</p> <p>GATT practice GATT 767</p> <p>IMF information as evidence of GATT 763</p> <p>quantitative vs price-based measures GATT 766</p> <p>burden of proof GATT 760–1</p> <p><i>prima facie</i> case GATT 761</p> <p>change in development policy, exclusion of requirement for (GATT XVIII:9)</p> <p>burden of proof GATT 760</p> <p>macroeconomic policy instruments and structural measures distinguished GATT 775</p> <p>competence of panel to examine justification GATT 755–9, 776</p> <p>DSU, applicability to disputes relating to DSU 10</p> <p>GATT XVIII:2 GATT 754</p> <p>GATT practice GATT 794</p> <p>GATT XVIII:C, examples of invocation GATT 778</p> <p>justification (GATT XVIII:9)</p> <p>Ad Note GATT XVIII:11 and GATT 770–4</p> <p>critical date for evaluation by panel GATT 763</p> <p>phase-out, right to in absence of balance of payments difficulties (GATT XVIII:12(c)) GATT 759, 777, 782</p> <p>price-based measures for balance of payments purposes as exception under GATT II:1(b) (Understanding on GATT BoP provisions) GATT 172, 791</p> <p>progressive relaxation obligation (GATT XVIII:11), General Council/BOB Committee role (GATT XVIII:12(c)) GATT 758–9</p> <p>progressive relaxation obligation (GATT XVIII:11), Ad Note (removal of restrictions and recurrence of one of GATT XVIII:9 conditions) GATT 770–4</p> <p>burden of proof GATT 768–9</p> <p>causal relationship (“would produce”) GATT 773</p> <p>“gradual relaxation” GATT 771</p> <p>temporal sequence (“thereupon produce”) GATT 773–4</p> <p><i>threat</i> of return, sufficiency GATT 771</p> <p>right (GATT XVIII:2) GATT 754</p> <p>special or additional rules and procedures (DSU 1.2 and Appendix 2) and DSU 10</p> <p>Balance of Payments Restrictions Committee (WTO IV:7) (BOPs Committee)</p> <p>adoption of notification format (BOP Understanding, para. 9) GATT 785</p> <p>annual reports WTO 125</p> <p>consultations, coordination with TPRM reviews (TPRM E) TPRM 26</p> <p>establishment WTO 99, 123, GATT 783</p> <p>GATT 1947 activities WTO 126</p> <p>observer status GATT 786</p> <p>reporting procedures GATT 790</p> <p>rules of procedure (1995) WTO 74, 124, GATT 785</p> <p>terms of reference WTO 123, GATT 784</p> <p>balance of payments restrictions (GATT XII)</p> <p>developing countries’ right to take measures (GATT XVIII) distinguished GATT 653, 754</p> <p>as exception to GATT obligations GATT 649</p> <p>GATT practice GATT 654</p> <p>government assistance (GATT XVII) distinguished 2754 n. 1029</p> <p>“restrictions made effective through state-trading organizations” (<i>Ad</i> Articles XI, XI, XIII, XIV and XVIII) GATT 650</p> <p>State trading enterprises (STEs) (GATT XVII) and GATT 650</p>
---	---

<p>balance of payments, safeguard restrictions (GATS XII) competence, Ministerial Conference (GATS XII:5(b) and XII:6) WTO 64 notification format (GATS XII:4) GATS 71</p> <p>Balance of Payments Understanding (BOP) DSU, applicability (BOB Understanding footnote 1) GATT 755–9 invocation/disinvocation of GATT XII and XVIII:B GATT 780 notification format (para. 9) GATT 787 preparatory work, absence of GATT 755 price-based measures for balance of payments purposes as exception under GATT II:1(b) GATT 172, 791 QRs, elimination (GATT XI) and GATT 597 QRs, non-discriminatory administration (GATT XIII:2(b)) and GATT 669 status in relation to GATT XII and XVIII:B GATT 493, 779, DSU 10 time-schedule (paras. 1 and 13) GATT 759, 782, 788–9</p> <p>Bananas, Decision on Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of (Doha) WTO 56, 67</p> <p>benefit: see subsidy, definition (SCM 1.1(b)) (conferral of benefit)</p> <p>Berne Convention/TRIPS applicability to WTO members (TRIPS 9) TRIPS 85–6 broadcasting (Berne 11<i>bis</i>) compulsory licence, right to substitute (Berne 11<i>bis</i>(2)) TRIPS 98 TRIPS 13 distinguished TRIPS 111 Members' obligations and rights holders' exercise/exploitation of rights distinguished TRIPS 97 nature and scope of protection TRIPS 96 as specific application of Berne 11 rule TRIPS 95 control of circulation, presentation or exhibition (Berne 17) TRIPS 103–4 special agreements (Berne 20)/TRIPS 2.2, possibility of inconsistency with TRIPS 105 enforcement of intellectual property rights (TRIPS Part III), applicability in absence of Berne protection TRIPS 221 English and French texts compared TRIPS 103 n. 105, 103 n. 106, 103 n. 107 interpretation, role of WIPO International Bureau TRIPS 103 n. 104 minor exceptions doctrine agreement on as "agreement . . . made in connection with the conclusion of the treaty" (VCLT 31(2)(a)) TRIPS 101 Berne Convention <i>acquis</i>/context for interpreting (VCLT 31(2)) TRIPS 100–1, DSU 1560–1 incorporation into TRIPS TRIPS 101 <i>lex specialis</i>/presumption against treaty conflicts and TRIPS 88 order of analysis TRIPS 100–1 public performance (Berne 11) TRIPS 92–5 general nature of Berne 11 TRIPS 95 Members' obligations and rights holders' exercise/exploitation of rights distinguished TRIPS 94 scope TRIPS 92 types of communication TRIPS 93 relationship (TRIPS 9) incorporation, effect TRIPS 85–6, 201 text of incorporated provisions TRIPS 320 (Section LXX following) <i>lex specialis</i>/presumption against treaty conflicts TRIPS 85–9 limitations and exceptions (TRIPS 13), applicability to Berne 11/11<i>bis</i> TRIPS 110–12 successive treaties relating to the same subject matter (VCLT 30) and TRIPS 101 rights guaranteed/protected "works" (Berne 5(1)) TRIPS 90–1 synchronization of Berne/TRIPS renewable periods (Berne Appendix I(2)) TRIPS 106</p>	<p>BFA Committee: see Budget, Finance and Administration Committee (WTO IV:7) (BFA Committee)</p> <p>bilateral agreements, status DSU 419 EC–Korea Agreed Minutes DSU 7 Oilseeds Agreement (EC–Brazil) WTO 276, GATT 10, 671, DSU 6</p> <p>border measures, special measures related to enforcement of (TRIPS Part III Section 4) <i>see also</i> market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1); national treatment, general principle (GATT III:1), applicability, measures imposed at the time or point of importation ("internal measures") (Ad Article) border measures, special measures related to enforcement of (TRIPS Part III Section 4), destruction or disposal of infringing goods (TRIPS 59), "principles set out in Article 46", "principles" TRIPS 247 destruction or disposal of infringing goods (TRIPS 59) TRIPS 236–62 destruction or disposal of infringing goods (TRIPS 59), "infringing goods" TRIPS 236–8 "disposal", ambiguity TRIPS 245 English, French and Spanish texts compared TRIPS 245 "exceptional circumstances" TRIPS 262 initiation of procedures as responsibility of rights holder TRIPS 244 "other infringing goods" (TRIPS 51) TRIPS 237–8 "principles set out in Article 46" TRIPS 246–62 alternative disposal methods as such preventing compliance with principles TRIPS 252 as alternative to duplicating text of TRIPS 46 TRIPS 247 alternatives to destruction TRIPS 253 "avoid harm" TRIPS 251 common objective TRIPS 248 disposal by auction, whether mandatory TRIPS 253–5, 257 link to "authority" TRIPS 246 list of TRIPS 248 "outside the channels of commerce" TRIPS 250 "principles" TRIPS 247 responsibility for disposal by non-government bodies TRIPS 250 result vs purpose TRIPS 250 risks of reinfringement TRIPS 259–60, 262 "simple" TRIPS 258, 260–1 simple removal of trademark TRIPS 256–62 TRIPS 46 as <i>lex specialis</i> TRIPS 249 "shall have the authority" TRIPS 239–44 conditional, whether TRIPS 243 discretionary nature TRIPS 241, 244, 257 duration of authority TRIPS 239 risk of WTO-inconsistent measures TRIPS 242 to order remedies other than TRIPS 59 measures TRIPS 241–2 TRIPS 46 compared GATS 241 suspension of release (TRIPS 51) TRIPS 234–5 "other infringing goods" TRIPS 237–8 "provisions set out below" TRIPS 234 scope TRIPS 235</p> <p>Border Tax Adjustment Working Party Report, "like product" (GATT III:2 and III:4), criteria GATT 241, 260, 343</p> <p>Brazil, ATC safeguard measures (ATC 6), TMB discussion ATC 81</p> <p>broadcasting (copyright): see Berne Convention/TRIPS, broadcasting (Berne 11<i>bis</i>)</p> <p>budget and contributions (WTO VII) <i>see also</i> Budget, Finance and Administration Committee (WTO IV:7) (BFA Committee) annual budget estimate WTO 181 annual budgetary and financial reports WTO 180</p>
--	---

- (*cont.*)
- BFA recommendations WTO 181
 - contributions, measures in respect of members in arrears WTO 187
 - “inactive members” WTO 187
 - contributions, methodology for calculating
 - 1947 WTO 183
 - 1995 WTO 184
 - 2000 WTO 185–6
 - Financial Regulations (WTO) WTO 182, 189
 - regular review WTO 182
 - Financial Rules (WTO) WTO 182, 189
 - Global Trust Fund (Doha Development Agenda) WTO 188
 - Voluntary Contributions, Gifts, or Donations from Non-Governmental Donors, Guidelines (2000) WTO 190
- Budget, Finance and Administration Committee (WTO IV:7) (BFA Committee)**
- see also* budget and contributions (WTO VII)
 - annual reports WTO 129
 - establishment WTO 99, 127
 - rules of procedure (1995) WTO 128
 - technical assistance, instruction to develop plan for long-term funding (Doha) WTO 111
 - terms of reference WTO 127
- burden of proof (general rules)**
- For specific applications *see also under* individual subject headings
 - adverse inferences (DSU 13) and DSU 558–63
 - sufficiency of burden of proof rules DSU 563
 - allocation
 - requirement to indicate DSU 553
 - responding party SPS 33
 - allocation (general rule/exception relationship)
 - characterization of SPS 5.7 as autonomous right, effect SPS 324–5, 335
 - SPS 2.2 and 5.7 (including consolidation) SPS 36, 326, 327
 - TBT 2.4 TBT 52
 - arbitration (DSU 25) DSU 1328
 - Article 21.5 compliance proceedings DSU 582
 - Article 22.6 arbitrations DSU 583–4
 - allocation by arbitrator SCM 248, 337
 - Article 22.6 arbitrations under SCM 4.11 DSU 585–6
 - compliance with SG 4.2 DSU 549
 - cooperation of parties and DSU 573, 586
 - defences and exceptions
 - GATT XV:9(a) GATT 707
 - GATT XXIV (RTAs) GATT 1035
 - difficulty in collecting information and DSU 570–2
 - disclosure obligation and DSU 573
 - on domestic law DSU 578
 - exception/affirmative defence and GATT 707, 853, SCM 656, SG 65, DSU 540
 - good faith presumptions, relevance DSU 1276
 - impossible burden SG 71, DSU 564–9
 - proving a negative DSU 566–9
 - non-violation claims (GPA XXII:2) GPA 33
 - onus probandi actori incumbit* GATT 768, 853, 967–8, SPS 32–3, TBT 52–3, AD 51, SCM 248, 337, 653, SG 71, 314, 317, 333, DSU 539–43, 585, 1690, 1691
 - order of analysis DSU 554
 - panel’s right to seek information and advice (DSU 13/SPS 11.2), relevance DSU 556, 738
 - post-suspension cases (DSU 22.8/SPS 5.7) DSU 1274–6
 - prima facie* case requirement GATT 598, 853, SPS 76, AD 96, 121–3, 163, 172, 189, 196–7, 211, 216, 217, 610, SCM 248
 - establishment of party’s case by panel, exclusion SPS 278, 421, 548, DSU 556–7, 766
 - evidence necessary to establish, case-by-case approach SPS 35, DSU 548
 - evidence other than that submitted by parties, panel’s right to consider DSU 549–50
 - explicit finding, relevance DSU 546, 551–2
 - failure to present sufficient evidence GATT 761, GATS 102, DSU 547
 - inconclusive outcome/ “equipoise” DSU 545
 - “more likely than not” test DSU 555
 - presumption of no relevant studies or report/proving a negative SPS 34
 - “*prima facie*” DSU 546–7
 - procedural fairness and DSU 572
 - reversal SG 15, DSU 544
 - sovereignty issues DSU 1741
 - suspension of concessions (DSU 22.4) DSU 583–4
 - written record of analysis, relevance AD 267
 - on WTO law GATT 82–3, DSU 574–7
- business confidential information (BCI)**
- additional procedures
 - AB (ABWP 16(1)) DSU 919–21, 1379–81
 - panel (DSU 12.1) DSU 687–8, 919, 1381
 - table showing use of DSU 921
 - ex parte* communications with panel or AB (DSU 18.1) and DSU 905–7
 - obligation to return or destroy
 - parallel confidential/non-confidential reports DSU 709, 922–3
- business confidential information (PSI 2.9–2.13) PSI 8–9**
- business practices (GATS IX) GATS 68**
- electronic commerce GATS 68
- Canada**
- Enabling Clause notifications
 - GSP schemes GATT 63
 - special treatment of least-developed countries GATT 79
- Cancún Ministerial Conference (2003)**
- Doha Round stocktaking WTO 58
 - Ministerial Statement WTO 58
- causation analysis (SG 4.2(b)) (determination of serious injury or threat of)**
- 14.173–219: *see also* determination of injury (AD 3), causal relationship, manner of evaluating (AD 3.5); transitional safeguard measures (SG) (China) (Accession Protocol 16) Accession Protocol (China) and SG 325–32
 - analysis* of conditions of competition SG 190–5
 - like product determination compared SG 191
 - price analysis and SG 190, 192, 194
 - relevant factors SG 193–5, 325, 330
 - coincidence of trends in imports and in injury factors SG 182–9
 - “demonstrates” SG 77, 173–81, 187–8, 193, 208, 217
 - “on the basis of objective data” SG 174, 179, 181, 191
 - general approach to SG 173–215
 - order of analysis SG 202–5
 - quantification, relevance SG 211–13
 - reasoned and adequate explanation (SG 4.2(a)) GATT 801, SG 70–2, 181, 209–10, 330
 - relevance in absence of serious injury SG 74 n. 128, 175, 217–18
 - “serious injury” (SG 5.1) distinguished SG 226
- China**
- see also* transitional safeguard measures (SG) (China) (Accession Protocol 16)
 - ATC safeguard measures (ATC 6), TMB discussion ATC 13
 - General Exceptions (GATT) and GATT 951–5
- Chinese Taipei**, accession protocol, Special Exchange Agreement GATT 706
- cinematograph film (GATT IV)**, GATT practice GATT 431
- circumvention of quotas: see** textile quotas, circumvention (ATC 5)

- Civil Aircraft Agreement:** *see* Aircraft Agreement (AIR)
- claims and arguments:** *see* legal basis of claim; notice of appeal, requirements (ABWP 20(2)); notice of appeal, requirements (ABWP 20(2)(d)), claims and arguments distinguished; standing/right to bring claim (DSU 3.7); third party rights
- Codex Alimentarius Commission, cooperation with**
definitions, relevance to SPS measures (Annex A(1)) SPS 479
Equivalence Decision (SPS 4) SPS 115–16
food safety standards and SPS 70
panel’s decision not to seek information from (DSU 13.1) DSU 754
provision of information to SPS Committee SPS 2
- coherence in global economic policy-making:** *see* IMF/WTO
relationship (WTO III:5), Declaration on Coherence in Global Economic Policymaking (1994)
- collegiality (DSB/AB)** DSU 1148 n. 1802, 1369
- Colombia, ATC safeguard measures (ATC 6), TMB discussion** ATC 32, 49, 69
- Commercial Interest Reference Rate (CIRR), relevance to determination of “material advantage” (Illustrative List of Export Subsidies (SCM Annex I))** SCM 632–5, 650
- Committee on Specific Commitments**
activities GATS 173–5
establishment GATS 215
terms of reference GATS 215
- compensation for non-compliance with covered agreement or DSB recommendations and rulings (DSU 22):** *see* suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
- competence of panels and AB (DSU 3.2/DSU 11/DSU 17)**
see also standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6); standard/powers of review (panel) (AD 17.6); standard/powers of review (panel) (DSU 11); terms of reference of panels (DSU 7)
“clarification of existing provisions” DSU 49, 51, 52–3, 57, 299, 386, 529, 630, 639, 661, 703
compétence de la compétence/obligation to address jurisdictional issues [on own motion] DSU 77, 364–6, 367, 369, 438, 800, 1126, 1327, 1419–20
as general rule of international arbitration DSU 366, 1327, 1702
competence of panel and AB compared AD 925–6, DSU 605, 846
determination of establishment/termination of panel DSU 182
ex aequo et bono jurisdiction, exclusion DSU 1708
finding on issue not raised by parties DSU 438
“make such other findings”, judicial economy and, 17.637–56:
see also judicial economy
“may uphold, modify or reverse” legal findings (DSU 17.13)
“legal findings and conclusions”: *see* standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), legal findings or developed interpretations, limitation to (DSU 17.13)
legal status, “moot” / “of no legal effect” finding DSU 893–5
unappealed findings WTO 281, GATT 1041, DSU 822, 892
not to add to or diminish rights and obligations (DSU 3.2/19.2) SPS 503, DSU 60–1, 155, 988–9, 1147 n. 1795, 1551, 1708
right to “seek redress” (DSU 23.1) and DSU 1303
obligation to exercise jurisdiction/*should* make an objective assessment GATT 1044, DSU 518, 535–6
preservation of rights and obligations of Members under covered agreements GATT 562
right to develop own legal reasoning including arguments not adduced by parties (*jura novit curia*) DSU 324, 326, 328, 416, 574–5, 1710
“shall address the relevant provisions/each issue” (DSU 7.2/DSU 17.12), judicial economy and DSU 422, 890–1
- competition policy:** *see* trade and competition policy, interaction between (Doha 23–5)
- compliance with covered agreement obligations, obligation**
breach by other Members, relevance AD 386, 509
as preferred solution (DSU 22.1) DSU 1330
- composition of delegation**
legal representation/private counsel DSU 722–7
Member’s right to determine DSU 722, 723, 915, 1732
panel working procedures DSU 722, 727, 1212
preliminary ruling on DSU 914
- composition of panel (DSU 8)**
see also panellists
citizens of parties (DSU 8.3) DSU 439
TMB distinguished DSU 433
determination by Director-General (DSU 8.7)
challenge to DSU 437–40
Deputy Director-General in place of DSU 441
discretionary nature DSU 440
determination by panel DSU 438 n. 721, 1494
“diverse background” (DSU 8.2) DSU 431, 1356
eligibility (DSU 8.) DSU 430
five-member panel (DSU 8.5) DSU 436
indicative list (DSU 8.4) DSU 435
preliminary ruling on DSU 437, 1494
replacement of panellist DSU 442
- confidential information (AD 6.5)**
access to information provided by another interested party (AD 6.1.1/AD 6.1.2) and AD 452
access to parties’ own confidential information AD 491
“by nature confidential” / “provided on a confidential basis”, distinguishability AD 496–500
disclosure “without specific permission” AD 508
“good cause shown” AD 452, 496, 502–4
“by nature confidential” / “provided on a confidential basis” distinction, relevance AD 496–500
as responsibility of party submitting information AD 496
“shown” AD 505–7
justification for request, relevance AD 518
non-confidential summaries (AD 6.5.1)
access to confidential information, relevance AD 516–17
as balance between protection of confidentiality and need to ensure opportunity to defend interests AD 512, 514, 598, 606
obligation to provide/evaluation of sufficiency AD 513
purpose AD 511
statement of reasons why information “not susceptible of summary” AD 452, 509–15
“parties to an investigation” AD 501
public notice of determinations (AD 12) and AD 599, 646
publicly available information AD 499
right to rely on AD 598–600, 845
unwarranted request for confidentiality, right to disregard information (AD 6.5.2) AD 598 n. 830
- confidential information (SCM 12.4)**
non-confidential summaries (SCM 12.4.1)
access to confidential information, relevance SCM 383
statement of reasons why information “not susceptible of summary” SCM 384–6
“in exceptional circumstances” SCM 385–6
“sufficient detail to permit a reasonable understanding” SCM 382–3
- confidential information (SG 3.2)** SG 110–11
non-confidential summaries SG 111
panel’s right to seek information or technical advice (DSU 13/SPS 11.2), relevance SG 113–15
publication of findings and reasoned conclusions (SG 3.1) and SG 112
- confidential information (VAL 10)** VAL 47
- confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27)**

- (*cont.*)
- see also* business confidential information (BCI); confidential information (AD 6.5); confidential information (SG 3.2); consultations (DSU 4), confidentiality (DSU 4.6); WTO documents, General Council Decisions on circulation and derestriction
 - adverse inferences from party's refusal to provide information, panel's right to draw (DSU 13) and SG 115, DSU 561
 - alleged breach DSU 913–18
 - amicus curiae* briefs and DSU 126, 914, 917
 - arbitration (DSU 25.3), acceptance of information or technical advice (DSU 13) and DSU 764, 1334
 - Article 22.6 proceedings DSU 927
 - "deliberations" (DSU 14.1) DSU 769–70
 - international tribunal practice DSU 770 n. 1233
 - evidence of breach DSU 914
 - interim review reports DSU 813–16, 913, 918
 - non-confidential summary of information (DSU 18.2) DSU 912, 915 n. 1441, 1335
 - non-derogable elements DSU 888
 - obligation to respect/ensure respect for DSU 725–6, 914, 919, 928
 - panel's right to seek information or technical advice (DSU 13.1/SPS 11.2), relevance SG 113–15, DSU 764, 1334
 - preliminary rulings on DSU 917
 - private counsel/advisers not part of delegation and DSU 914–18, 1488–90
 - joint representation DSU 928, 1490
 - "proceedings" (DSU 17.10) DSU 886
 - public hearings: *see* public hearings
 - "submissions" and statements of own position distinguished DSU 734, 887, 910
 - third party obligations DSU 517
 - third party rights (ABWP 27) DSU 888
 - time limits for non-disclosure DSU 911
 - confidentiality of proceedings (RoC VII:1)** DSU 1486–7
 - public hearings and DSU 1483
 - "shall in no way modify the rights and obligations" requirement (RoC II) and DSU 1483–4
 - conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4)**
 - classification as law, regulation or administrative procedure
 - applicability of WTO law AD 970 n. 1324
 - normative value as determining factor DSU 264, 281–3
 - dispute settlement procedures (AD 17) and AD 876, 970
 - finding of non-conformity under any AD provision WTO 290, 291, AD 978–9
 - legislation "as such" and AD 878, 969
 - zeroing procedures and AD 143–5
 - maintenance of inconsistent legislation AD 968
 - notification of laws and regulations (AD 18.5) AD 972–4
 - absence of legislation AD 972
 - notification of changes AD 972
 - notifications AD 973
 - observer government obligations and AD 972
 - to relevant laws and regulations AD 972
 - US Customs Bond Directive AD 974
 - conformity of laws, regulations and administrative procedures with LIC Agreement (LIC 8.2(a)), obligation to inform LIC Committee of changes (LIC 8.2(b)), procedures LIC 52**
 - conformity of laws, regulations and administrative procedures with SCM obligations, obligation to ensure (SCM 32.5)** SCM 596–8
 - notification of changes to laws and regulations (SCM 32.6) SCM 599
 - conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4)** 1.286–95: *see also* legislation as such, right to challenge (WTO XVI:4)
 - characterization of transaction under domestic law, relevance DSU 528, 1625
 - "existing legislation" exceptions, exclusion SPS 588
 - judicial decisions WTO 288
 - non-performance of obligations under covered agreements, exclusion of domestic law as justification (VCLT 27) GATS 140, TRIPS 5, DSU 1516–20, 1679
 - Schedule of concessions and WTO 287
 - suspension of concessions (DSU 22) and WTO 289
 - technical regulations (TBT 2.4) and TBT 50
 - consolidated tariff databases**
 - Consolidated Tariff Schedules (CTS) Data Base WTO 135, GATT 182–3
 - dissemination and access GATT 187–9
 - Integrated Data Base (IDB) WTO 135, GATT 185–6
 - loose-leaf schedules GATT 181
 - format for inclusion of agricultural commitments GATT 184
 - Market Access Committee decisions relating to WTO 135, GATT 181–9
 - consultation and dispute settlement (AD 17)**
 - GATT XXII and XXIII compared AD 873–4, 888, 944–5
 - identification of specific measures (DSU 6.2)
 - see also* identification of specific measures (DSU 6.2)
 - legal basis for consultation/claim (AD 17.3/AD 17.4)
 - legislation as such: *see* legislation as such, right to challenge (WTO XVI:4), AD 17.3/AD 17.4
 - "measure" (AD 17.4)
 - continued zeroing AD 145, 896–7
 - provisional measures AD 894–5
 - "matter", referral to DSB (AD 17.4)
 - identification of measure at issue requirement (DSU 6.2), identification as anti-dumping duty, acceptance of price undertaking or provisional measure, need for AD 890, 891
 - identification of measure at issue requirement (DSU 6.2), sufficiency AD 899
 - "if final action has been taken" AD 889–97
 - "matter" AD 898, 951, DSU 370
 - specificity AD 899
 - request for establishment of panel, requirements (AD 17.5), DSU 6.2 and AD 903, 948
 - review (AD 17.6) AD 910
 - special or additional rule and procedure (DSU 1.2 and Appendix 2), whether AD 870–2, 888, 954, DSU 13–14, 15
 - standard/powers of review: *see* standard/powers of review (panel) (AD 17.6)
 - consultation and dispute settlement (RO 7 and 8)** RO 25
 - consultation and dispute settlement (TBT 14)**
 - technical expert group, panel's right to establish (TBT 14.2) TBT 147–8, DSU 25
 - DSU 13.2 compared TBT 147, DSU 25
 - individual advice, right to seek TBT 147
 - special or additional rules and procedures (DSU 1.2 and Appendix 2) and DSU 25
 - consultation and dispute settlement (VAL 19)**
 - standard of review of claims under (DSU 11) VAL 4–7
 - applicability of DSU 11 VAL 4
 - VAL 1.1 and 1.2(a) claims VAL 5
 - VAL 7.1 claims VAL 6–7
 - consultation (PSI 7)** PSI 27
 - consultations (ATC 6.7)**
 - due process and ATC 76
 - obligatory nature ATC 79
 - retroactivity (trade measures) (ATC 6.10) and ATC 76
 - specific and factual information as up to date as possible
 - presentation of information ATC 69
 - TMB review and ATC 27, 32, 69–73
 - consultations (DSU 4)**

- acceleration (DSU 4.9), panel’s workload and DSU 174
- addendum to original request DSU 150
- adequacy of consultations (DSU 4.5), Panel responsibilities in relation to DSU 160–1, 161, 163, 170
- conditional request DSU 146, 148
- confidentiality (DSU 4.6)
 - determining adequacy of consultations and DSU 163
 - disclosure of information obtained in different proceedings DSU 167
 - disclosure of information obtained in same proceedings DSU 164–6
 - information in the public domain DSU 162
 - offers of settlement during consultations and DSU 168
 - third party participation and DSU 169
- consultations (SCM 4.1–4) compared DSU 140, 142
- continuance of identified measures after consultations (DSU 4.4), effect DSU 149
- developing countries and (DSU 4.10), extension of periods agreed under DSU 4.7 and 4.8 (DSU 12.10) DSU 713
- disclosure obligation DSU 138, 303, 675
- evidence obtained during, admissibility in panel proceedings DSU 630
- GATT practice DSU 151
- good faith and (DSU 4.3) DSU 105, 128, 132, 154–5
 - confidential information as evidence of bad faith DSU 154, 165
- identity of specific measures in the consultations and the request for establishment of a panel, relevance DSU 142–5, 417
 - preliminary ruling on DSU 417, 427
 - “scope” as basis for comparison DSU 147
- joinder of third parties having “substantial trade interest” (DSU 4.11) DSU 175–6, 468
- legal status of offers made in course of unsuccessful consultations ATC 26, DSU 168
- measure at issue (DSU 4.4)
 - “affecting” DSU 152
 - discretion in identifying (DSU 4.2), desirability DSU 152, 200 n. 267
 - expired measures (DSU 4.2) DSU 152
 - measure subsequent to request for consultations, extension of existing measure distinguished DSU 149
- mutually agreed solution (DSU 3.6) and DSU 136, 170
- notification of request for (DSU 4.4)
 - identification of measure at issue DSU 157
 - “identification of specific measure” (DSU 6.2) distinguished DSU 157
 - legal basis of the complaint, DSU 6.2 compared DSU 158–9
 - procedure DSU 156
 - statement of available evidence (SCM 4.2), relevance DSU 171
- obligation to disclose information DSU 136, 138–9
- as prerequisite to establishment of panel/requirement to indicate whether held (DSU 6.2) DSU 141, 145, 153, 171
- exceptions
 - agreement within 60 day period that consultations have failed to settle dispute (DSU 4.7) DSU 172
 - parties’ agreement to forego consultations DSU 153, 172–3, 207
 - TMB review proceedings (ATC 8.10) ATC 91
 - omission of indication, effect DSU 208
 - panel’s obligation to examine absence DSU 205–6
 - request for Article 21.5 arbitration and DSU 208
 - requirement to indicate whether held (DSU 6.2) distinguished DSU 153, 207
- purpose/importance DSU 136, 138–9
 - definition and clarification of dispute DSU 144–5, 152
- as unconditional obligation (DSU 4.2) DSU 137
- “without prejudice” nature of obligation (DSU 4.6) DSU 137
 - offers made during consultations and DSU 168
 - written request (DSU 4.4) as basis DSU 146
- consultations (DSU 21.5), ad hoc procedural agreement** DSU 1168–9
- consultations (SCM 4.1–4)**
 - see also* request for establishment of panel, requirements (SCM 4.4)
 - accelerated/expedited procedures (SCM 4.3), statement of evidence (SCM 4.2) and SCM 188–90, 192–4
 - consultations (DSU 4) compared DSU 140, 142
 - object and purpose
 - clarification and development of the facts of the situation/ mutually agreed solution (SCM 4.3) SCM 194, 198–9, 202, DSU 142
 - withdrawal of measure SCM 234
 - as special or additional rules and procedures (DSU 1.2 and Appendix 2), 13.197, 17.17–21:
 - see also* special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as “statement of available evidence” (SCM 4.2) SCM 197
 - accelerated proceedings and SCM 188–90, 192–4, 197
 - all facts distinguished SCM 192
 - “available” SCM 198–9
 - disclosure of arguments distinguished SCM 192
 - DSU 4.4 distinguished SCM 197
 - DSU 4.7 compared DSU 171
 - evidence of nature as subsidy, need for SCM 197
 - explicit reference, relevance SCM 195
 - failure to submit, effect SCM 196
 - new evidence, right to submit, objective assessment (DSU 11) and SCM 193
 - ordinary meaning SCM 192, 195
 - request for establishment of panel (SCM 4.4) distinguished SCM 191, DSU 138
 - role and purpose SCM 198–9
 - time–limits, new evidence and allegations SCM 188–90, DSU 624
- consultations (SCM 13)**
 - “initiation of investigation” (SCM 13.1)
 - “in any event before” SCM 402
 - “initiated” (SCM 10 footnote 37) and SCM 356
 - invitation to consult and consultations distinguished SCM 401
- consumption of inputs in the production process (SCM, Annex II footnote 61)**, difficulty of resolving issues related to SCM 666–8
- copyright and related rights (TRIPS Part II Section 1)**
 - see also* Berne Convention/TRIPS; Paris Convention (PC)/TRIPS
 - geographical indications: *see* geographical indications (TRIPS Part II Section 3) (GIs)
 - limitations and exceptions (TRIPS 13) TRIPS 114–16
 - “certain special cases” TRIPS 114–16
 - cumulative nature TRIPS 109
 - legitimacy/legitimate public policy and TRIPS 114–16
 - new TRIPS rights, whether limited to TRIPS 107, 110
 - public performance (Berne 11)/broadcasting (Berne 11bis), applicability to TRIPS 110–12
 - “which do not conflict with a normal exploitation of the work” application to individual exclusive rights, need for TRIPS 119
 - criteria/test TRIPS 120–1
 - “exploit” TRIPS 117
 - “normal” TRIPS 118
 - “which do not unreasonably prejudice the legitimate interests of the right holder” equitable remuneration and TRIPS 118 n. 123
 - “interests” TRIPS 122–3
 - “legitimate” TRIPS 123
 - ordinary meaning TRIPS 123
 - “prejudice”, criteria/test TRIPS 124–6
 - “unreasonably” TRIPS 124
- patents: *see* patents (TRIPS part II Section 5)

- (*cont.*)
trademarks, *see also* trademarks (TRIPS Part II Section 2)
costs of marketing exports (AG 9.1(d)): *see* export subsidy
commitments (AG 9); costs of marketing exports (AG 9.1(d))
Council for Trade in Goods (WTO IV:5)
functions WTO 81–3
meetings AD 865
reporting procedures WTO 83
role and responsibility in relation to, extension of transition periods (TRIMs 5.3) **TRIMs** 32–5
rules of procedure (1995) WTO 84
subsidiary bodies (WTO IV:6)
committees as at 31 December 2004 WTO 93
working groups and parties as at 31 December 2011 WTO 92
Council for Trade in Services (WTO IV:5)
functions WTO 85
observer status
government GATS 218
international organizations GATS 218
subsidiary Council bodies GATS 218
World Health Organization GATS 219
World Tourism Organization GATS 219
reporting procedures WTO 86
rules of procedure (1995) WTO 87, 182, GATS 217
subsidiary bodies: *see* rules of procedure
subsidiary bodies established at 31 December 2004 (WTO IV:6) WTO 97
countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10)
see also suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
“appropriate” SCM 224–30, DSU 1288–9
arbitration (DSU 22.6) and (SCM 4.11) SCM 233, 244–5, DSU 1260, 1283, 1292–3
footnote 10 and SCM 236
nullification or impairment distinguished, *see also* nullification or impairment (DSU 3.8), suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
proportionality (footnote 9) SCM 226, 227, 228–30, 236, DSU 1290–1, 1698
SCM 4.10/4.11, identity of meaning SCM 231
arbitration (DSU 22.6) and (SCM 4.11)
burden of proof DSU 585–6
as special or additional rules and procedures SCM 246–7, DSU 22–4, 1241–2, 1279–80, 1282–3
calculation of countermeasure, possible bases/relevant factors
adverse trade effects SCM 233, 237–9
amount of subsidy SCM 233
products not in competition SCM 240
suspension of concessions (DSU 22.4) distinguished SCM 221 n. 343, 225, 233, 234–9, 238, 253–4, DSU 1241, 1260, 1283
“countermeasure” SCM 221–3, DSU 1286–7, 1694
as retaliatory act SCM 222, 223, 232, 331, 335, DSU 1287, 1693
temporary nature SCM 223, 331, DSU 1287
inducement of compliance as objective SCM 221, 224, 225, DSU 1179, 1286, 1288
State responsibility and SCM 221, 223, 227, 331, DSU 1286, 1674 n. 2617, 1694, 1696–7
countermeasures in case of failure to take measures to remove adverse effects of or withdraw subsidy (SCM 7.9) SCM 331–40
“adverse effects determined to exist” SCM 334
arbitrators’ mandate/task (SCM 7.10) SCM 336
“commensurate” SCM 332
“countermeasures”
as retaliatory act SCM 331, 335
SCM 4.10 and 4.11 compared SCM 223, 237, 331, 339–40
“degree and nature” SCM 333
inducement of compliance as objective SCM 232, 335
SCM 4.10 and DSU 22.4 compared SCM 335
special or additional rules and procedures (DSU 1.2 and Appendix 2) and SCM 338, DSU 24
countermeasures (general principles)
definition SCM 221, 221–2, DSU 1286, 1286–91, 1694
proportionality SCM 226, 228–30, 236, 253, DSU 1290–1, 1695–8
as retaliatory act SCM 222, 223, 232, 331, 335, DSU 1287, 1693
temporary nature SCM 331, DSU 1287
countervailing duties (AG 13 footnote 4) AG 138
countervailing duties (SCM Part V)
see also anti-dumping and countervailing duties (GATT VI)
calculation of countervailing duty/ “not in excess” (SCM 19.4)
“found to exist” SCM 469–70
GATT VI:3 and GATT 471
nexus, need for SCM 467
ordinary meaning SCM 467
compliance with GATT VI:3 and SCM Agreement (SCM 10)
GATT 451, SCM 353–9, 691–2
calculation of subsidies GATT 471–2
“initiated” (SCM 10 footnote 37) SCM 356
domestic law as determining factor SCM 356
other SCM articles as context SCM 356
measures to which GATT VI not applicable SCM 481
permissible responses to subsidization GATT 469
continuing collection of duties imposed prior to entry into force of WTO Agreement, SCM 32.3 and SCM 595
“countervailing duty” (SCM 10 footnote 36)
“any subsidy bestowed directly or indirectly” SCM 354
“offsetting” requirement SCM 353–4
double remedies and (GATT VI:5/SCM 19) GATT 455, 480–1, SCM 466, DSU 1617
duration (SCM 21.1) SCM 478–9
expedited review, right to (SCM 19.3), 13.464–6: *see also* expedited review, right to (SCM 19.3)
preconditions (SCM 19.1), standard of proof (SCM 22.1) SCM 503
public notice and explanation of determinations (SCM 22)
AD 12.2.2, SCM 22.4 and SCM 22.5, close similarity SCM 504
standard of proof (SCM 22.1) SCM 503
as remedy to offset benefits of subsidies SCM 4
review of need for continued imposition (SCM 21.2) SCM 481–7
in absence of request SCM 483
administrative review SCM 482
burden/standard of proof SCM 484–5
conditions: *see* anti-dumping duties, imposition and collection (AD 9), assessment (AD 9.3), conditions (AD 9.3.2, AD 11.2 and SCM 21.2)
“through the effects of subsidy” (SCM 19.1)
retroactive effect of withdrawal of subsidy (SMC 4.7) and SCM 208, 462
“through the effects of the subsidies” (SCM 15.5), identity of meaning SCM 461
criminal procedures (TRIPS 61)
absolute nature of obligation TRIPS 267
conformity with relative standard, benchmark TRIPS 274
evidence and procedure TRIPS 266
limitations on obligation TRIPS 268–9
minimum international standard requirement TRIPS 265
obligation to make remedies available (TRIPS 41.1) TRIPS 264
“on a commercial scale” TRIPS 269, 271–4
burden of proof TRIPS 273
de minimis (TRIPS 60) compared TRIPS 274
“trademark counterfeiting or copyright piracy” TRIPS 270–4

<p>cross-referencing, role AD 790, 797, SCM 369–70, 489–90, 498, 499</p> <p>customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2)</p> <p>1.8, 2.314, 3.26, 17.1306: <i>see also</i> international law/ “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>in absence of specific provision SCM 694–5</p> <p>AD 17.6(ii) AD 927, 928–34</p> <p>customary international law other than customary rules of interpretation DSU 57–9, 1597, GPA 32 n. 45</p> <p>DSU 3.2 GATT 80, SPS 8, AD 249 n. 349, 927, 931</p> <p>error (VCLT) DSU 1670</p> <p>GATT XXIII:1(b)/GPA GATT 991</p> <p>general rule of interpretation (VCLT 31) as DSU 54–5, 1499, 1535, 1537–8</p> <p>international law concepts not relevant to DSU dispute settlement DSU 1320</p> <p>multiple authentic languages (VCLT 33) and. DSU 1665 n. 2604</p> <p>non-retroactivity (VCLT 28) DSU 59, 1521, 1526, 1601</p> <p>persistent objector rule DSU 1595 n. 2468, 1740 n. 2732</p> <p>Schedules of Concessions (GATT II) AG 26</p> <p>Schedules of Specific Commitments (GATS XX) GATS 177, 199</p> <p>SG 5.1 SG 227</p> <p>supplementary means of interpretation (VCLT 32) as DSU 55, 1629</p> <p>treaty application and treaty interpretation distinguished DSU 1580</p> <p>customs duties</p> <p>conversion of measures to: <i>see</i> market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1)</p> <p>“ordinary customs duties” (GATT II(1)(b)/AG 4.2) GATT 143–5, 174, AG 42–5, DSU 1660</p> <p>customs duties and other charges (AIR 2)</p> <p>binding of duties on repairs (AIR 2.1.3) AIR 11</p> <p>elimination of customs duties and other charges on repairs (AIR 2.1.2), interpretative note AIR 10</p> <p>customs unions (GATT XXIV:5(a))</p> <p><i>see also</i> RTAs (GATT XXIV:5)</p> <p>as defence or exception (“shall not prevent”) GATT 1003–4</p> <p>burden of proof GATT 1035</p> <p>dependence on existence of customs union GATT 1004</p> <p>on formation of customs union (GATT XXIV:5 chapeau) GATT 1003–4</p> <p>extension of WTO right prior to formation to other constituent members GATT 1008</p> <p>“would be prevented unless” requirement GATT 1004, 1052, SG 64–5</p> <p>trade-restrictiveness test GATT 1011–13</p> <p>definition (GATT XXIV:8(a))</p> <p>internal trade arrangements (“substantially all trade”) (GATT XXIV:8(a)(i)) GATT 1030–3</p> <p>GATT practice GATT 1033</p> <p>jurisdiction (panel) to determine compatibility with GATT XXIV requirements GATT 1041</p> <p>trade with third countries (“substantially the same”) (GATT XXIV:8(a)(ii)) GATT 1034–7</p> <p>GATT practice GATT 1037</p> <p>GATT practice GATT 996, 1006, 1014</p> <p>GATT XXIV:5 chapeau, relationship with GATT 1003–5</p> <p>“general incidence” of duties and GATT 1009</p> <p>legislation as such, right to challenge (WTO XVI:4) DSU 246</p> <p>ordinary meaning (SG 2.1 footnote) SG 64</p> <p>“other regulations of commerce”, GATT 1994 Understanding on Article XXIV GATT 1010</p>	<p>safeguard measures (SG 2.1 footnote 1) GATT 1055–6</p> <p>right to exclude members of customs union from SG 67</p> <p>territorial scope of treaties (VCLT 29) and DSU 1529</p> <p>Customs Valuation Agreement (VAL)</p> <p>compliance obligation (SGS) PSI 14–15</p> <p>developing countries, delayed application and reservations WTO 262</p> <p>dispute settlement: <i>see</i> consultation and dispute settlement (VAL 19)</p> <p>disputes under VAL 65</p> <p>GATT practice GATT 498, VAL 78</p> <p>implementation proposals VAL 11</p> <p>reservations (VAL 21/Protocol) WTO 297–9, VAL 73</p> <p>Customs Valuation Committee</p> <p>adoption of practice of Tokyo Round Committee on Information on Technical Assistance VAL 67</p> <p>adoption of Tokyo Round Committee decisions (12 May 1995) VAL 10, 22</p> <p>correction of French text of <i>Ad</i> note to VAL 2 and 3 VAL 22</p> <p>interpretations of VAL 8.1(b)(iv) VAL 44, 45</p> <p>annual reports VAL 76</p> <p>establishment WTO 93</p> <p>observer status VAL 62</p> <p>PSI Agreement monitoring VAL 64, PSI 3, 29</p> <p>rules of procedure (1995) WTO 94, VAL 63</p> <p>customs value determination (VAL)</p> <p>additions to price actually paid/payable (VAL 8)</p> <p>“development” (VAL 8.1(b)(iv)) VAL 46</p> <p>interest charges (VAL 8.1) VAL 44</p> <p>“undertaken” (VAL 8.1(b)(iv)) VAL 45</p> <p>carrier media bearing software for data processing equipment (VAL 1) VAL 13</p> <p>confidential information (VAL 10) VAL 47</p> <p>“customs valuation”</p> <p>customs control distinguished VAL 1</p> <p>ordinary/dictionary meaning VAL 1–2</p> <p>deductible items (VAL 5.1(a)) VAL 34–8</p> <p>documented link to GAQ sale VAL 35</p> <p>provincial taxes VAL 37</p> <p>sales allowances VAL 36</p> <p>transportation costs VAL 38</p> <p>deductive valuation method (VAL 7.1/VAL 5.1) VAL 30–8</p> <p>consultation requirement VAL 32–3</p> <p>explanation of how customs value determined (VAL 16)</p> <p><i>ex post facto</i> explanations VAL 7</p> <p>form and timing VAL 55–7</p> <p>obligation to explain grounds (VAL 1.2(a)) distinguished VAL 58</p> <p>scope VAL 52–4</p> <p>GAQ, definition VAL 35</p> <p>national legislation (VAL 22)</p> <p>Checklist of Issues VAL 75</p> <p>notification procedures VAL 74</p> <p>“reasonable means” (VAL 7) VAL 28–43</p> <p>“cannot be determined” (VAL 7.1) VAL 29</p> <p>minimum customs values, exclusion (VAL 7(2))</p> <p>developing countries’ right to suspend (Annex III, para.2) VAL 41</p> <p>indicative prices VAL 42</p> <p>higher of two alternative values, exclusion (VAL 7.2(b)) VAL 40</p> <p>obligation to inform importer of determined customs value and method used (VAL 7.3) VAL 43</p> <p>prohibited customs valuation methods (VAL 7.2) VAL 39</p> <p>sequencing nature of VAL 1–7 valuation methods VAL 8–9</p> <p>“reasonable means” (VAL 7.1), exclusion as basis of independent sequencing claim VAL 9, 28</p>
--	--

- (*cont.*)
- special and differential treatment (VAL 20/VAL Annex III), continued application of 1979 Agreement: *see* special and differential treatment (VAL 20/VAL Annex III)
 - surety for ultimate payment (VAL 13) VAL 48
 - payment vs guarantee VAL 2–3
 - transaction value
 - conditions (VAL 1.2(a)) VAL 14
 - examination of circumstances of sale in related-party transaction (VAL 1.2(a)) VAL 15–19
 - balance of importer/customs authorities’ responsibilities VAL 17–18
 - “examine” (ordinary meaning/context) VAL 17–18
 - procedural obligations (including Interpretative Note to VAL 1.3) VAL 15–16
 - responsibility for providing information VAL 17–18
 - SG 3.1 investigation compared VAL 18
 - substantive obligations VAL 17–18
 - obligation to communicate grounds for rejecting transaction value VAL 20–1
 - as primary basis (VAL 1) VAL 12
 - “transaction value” (VAL 1.1) VAL 14
 - truth or accuracy of customs declaration (VAL 17)
 - Customs Committee decision relating to (1995) VAL 59
 - Customs Valuation Committee mandate VAL 61
 - Doha decision relating to VAL 60
 - unit price at which goods are sold in country of importation (VAL 5), Members’ right to choose method for determining VAL 25
- data collection period (AD 2 and AD 3)**
- absence of provision AD 171, 179, 191, 222
 - Anti-Dumping Practices Committee Recommendation (2000) AD 13, 222
 - legal status AD 175, 222 n. 309
 - causal link, need for AD 179–80, 189–91, 197
 - frequency of analysis for AD 3.2 purposes AD 221
 - length of period for AD 3.2 purposes AD 222
 - “positive evidence” / “objective examination” requirement (AD 3.1) and AD 172–3, 180, 189–90, 196–7
 - public notice of determination (AD 12.2), inclusion of reasons for AD 13, 830
 - use of different periods
 - dumping/injury determinations AD 173, 197
 - injury factors AD 172
- data collection period (AD 5.8) (determination of negligible import volumes)** 8407–8
- data collection period (AD 10.6)** AD 733
- data collection period (AD 11.3) (review of anti-dumping duties),** specification, relevance AD 788
- data collection period (SCM 15.1/15.2)** SCM 423, 438
- Decision on implementation-related concerns (2000)**
- AD 7 AD 338, 975–6
 - adoption (Doha 12) WTO 56, 67
 - AG 15 (special and differential treatment) AG 150
 - Customs Valuation Agreement (VAL) (para. 8) VAL 69
 - least-developed countries and: *see* least-developed countries (LDCs); Decision on implementation-related concerns (2000) and
 - as “relevant document” WTO 56
 - SCM 3.1(a), exemption of least-developed countries SCM 530
 - SCM Committee, instructions to SCM 351–2
 - SPS Agreement (para. 3): *see* Equivalence, Decision on Implementation of SPS 4 (26 October 2001)
 - two-track approach WTO 116
- decision-making procedures (WTO IX)** WTO 196–212
- authoritative interpretation (WTO IX:2): *see* interpretation of covered agreements, responsibility for authoritative (WTO IX:2)
 - consensus (WTO IX:1) WTO 196, 273
 - Decision-Making Procedures Under Articles IX and XII of the WTO Agreement, General Council decision (1995) WTO 196
- decisions, procedures and customary practices under GATT 1947 (WTO XVI:1):** *see* GATT 1947/WTO continuity; decisions, procedures and customary practices under GATT 1947 (WTO XVI:1)/provisions of legal instruments in force under GATT 1947 (GATT 1994 1(b)) (GATT *acquis*)
- delegations:** *see* composition of delegation
- determination of dumping (AD 2)**
- calculation of dumping margins (AD 2.4)
 - averaging periods AD 130–1
 - calculation of “all other” anti-dumping duty rate (AD 9.4), applicability to AD 701–2
 - comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2) AD 116–17, 701–2
 - “comparable” AD 118–23, 356, 357–9
 - imposition and collection of anti-dumping duties (AD 9), relevance AD 142 n. 204
 - multiple averaging (AD 2.4.2) AD 128–9
 - non-comparable types AD 124–5
 - objective assessment for purposes of initiation of anti-dumping investigation (AD 5.3) and AD 369–70
 - refund of duties or taxes (AD 2.4.2/GATT VI:4) GATT 478–9
 - sampling of domestic transactions AD 126–7
 - targeted dumping AD 142
 - zeroing and AD 112–15, 119–23, 688–9
 - downstream sales AD 26
 - “margins” of dumping (AD 2.4.2) AD 113–15
 - “margin of dumping” (GATT VI:2), equivalence GATT 453
 - method, right to choose, GATT VI:2 and GATT 463
 - “zeroing” (AD 9.3/GATT VI:2): *see* “zeroing” (AD 9.3/GATT VI:2)
- calculation of normal value, factors to be taken into account (AD 2.1)
- AD 3.6 and AD 40
 - affiliated party transactions AD 25
 - comparability of price AD 24–5
 - “like product” AD 24
 - sale “destined for consumption in exporting country” AD 24–5
 - GATT VI:1(a) compared GATT 481
 - sales “in ordinary course of trade” AD 24, 27–9
- calculation of SG&A costs (AD 2.2.2)
- actual books and records as basis AD 48, 66
 - actual data “pertaining to” AD 56
 - low-volume sales data AD 57–60
 - non-verifiable data AD 59
 - “any other reasonable method” (AD 2.2.2(iii)) AD 76
 - freedom to choose method AD 63
 - reasonability test, relevance AD 73–5
 - reasonable reflection of costs *associated with* the production and sale of article AD 48
 - sales not in the normal course of trade, exclusion AD 69–70
 - “same general category of products” (AD 2.2.2(i)) AD 65–7
 - AD 2.2.2 and AD 66
 - AD 3.6 and AD 67
 - “weighted average” (AD 2.2.2(ii))
 - of “actual amounts incurred and realized” AD 69–70
 - by value or volume AD 71–2
 - single exporter or producer, sufficiency AD 68, 703
 - constituent elements, intention and (AD 2/GATT VI:1) GATT 454
 - cost data (AD 2.2.1.1)

- allocation of costs, need for explanation AD 55
- burden of proof AD 51
- “in accordance with generally accepting accounting principles” AD 47
- “negative” nature of obligations (“what is not prohibited. . .”) AD 49
- non-recurring costs (NRCs) AD 52–5
- “reasonable period of time” AD 46
- “reasonably reflect costs” requirement AD 47, 48
- “shall consider all available evidence” AD 50
- data collection period: *see* data collection period (AD 2 and AD 3)
- definitions, “dumping” and “margin of dumping”, identity of meaning throughout AD Agreement AD 16, 404
- export price, construction in absence of [reliable] actual export price AD 24
- fair comparison (AD 2.4) distinguished AD 72
- fair comparison of export price and normal value (AD 2.4)
- affiliated party transactions AD 25
- construction of normal value (AD 2.2) distinguished AD 72
- determination of individual margins (AD 6.10) distinguished AD 625 n. 858, 643
- “due allowance”
 - “costs . . . incurred between importation and resale” AD 102
 - differences in “terms and conditions of sale” AD 98–100
 - “differences which affect price comparability” AD 91–7
 - “in each case, on its merits” AD 88–90
 - legal effect/ “should also be made” AD 101
 - risk of bankruptcy, relevance AD 98–100
 - for unforeseeable costs AD 102
- exchange rates and (AD 2.4.1) AD 107
- determination of relevant currency AD 109
- general “fair comparison” requirement and AD 110–11
- when “required” AD 108–9
- “fair comparison” AD 80–5
- burden of proof AD 80, 89
- as independent obligation AD 81
- responsibility for AD 103
- “shall indicate . . . what information is necessary” AD 105–6
- zeroing (AD 9.3) and AD 82–5
- NMEs and (Note 2 *Ad* Article VI:1) GATT 455–9, AD 155–6
- accession protocols, inclusion in GATT 458–9, AD 166–7
- as exceptional method GATT 455, 481
- preparatory work (VCLT 32) GATT 459
- object and purpose AD 80, 102
- “sales made at as nearly as possible the same time” AD 87
- investigating authorities’ right to request information AD 36
- “like product” (AD 2.1) AD 20–2
- “like product” (AD 2.6) AD 78, 151–4
- “normal value . . . in the ordinary course of trade” (AD 2.1)
- fair exercise of discretion AD 29
- prices above or below ordinary course of trade price AD 31–3
- sales *not* in normal course of trade, exclusion AD 30
- scrutiny rules AD 34
- period of investigation (POI)
- changes during, relevance AD 14–15
- developments during period of investigation, relevance AD 14–15
- extension in course of investigation (AD, Annex II, para. 1) AD 540
- records kept by the exporter or producer under investigation, limitation to AD 47
- relationship between
 - AD 2 and AD 5 AD 349–54, 356
 - AD 2.1, 2.3 and 2.4 AD 37
- sales not “in the ordinary course of trade” (AD 2.2) AD 2.1/GATT VI:1(a) distinguished GATT 481
- affiliated party transactions AD 35
- alternative methods, possibility of AD 28, 42
- low-volume sales and AD 61–2
- sales below cost, method for determining whether (AD 2.2.1) AD 42–5
- weighted average (AD 2.2.2(ii)) and AD 69–70
- sampling (AD 6.10): *see* sampling (AD 6.10)
- determination of injury (AD 3)**
- causal relationship, manner of evaluating (AD 3.5) AD 3.2/AD 3.4 and AD 170, 257
- non-attribution to dumped imports of injury caused by other factors (AD 3.5) AD 275, 276, 283–6
- “positive evidence” / “objective examination” requirement (AD 3.1) and AD 216
- SG 4.2(b) compared AD 285, 323, 1010
- country by country analysis/cumulative assessment of volume and prices (AD 3.3) AD 235–40
- sunset review (AD 11.3), applicability to AD 796
- cumulative assessment (AD 3.3)
- applicability to volume and prices analysis (AD 3.2) AD 236, 237
- “conditions of competition” (AD 3.3(b)) and AD 239–40
- conditions for AD 237–40
- rationale AD 238
- data collection period: *see* data collection period (AD 2 and AD 3)
- as detailed version of GATT VI GATT 494, AD 321
- domestic production of like product, assessment of effect on (AD 3.6)
- determination of dumping (AD 2.1) and AD 40
- sectoral analysis, right to AD 288–90
- “dumping” / “margin of dumping”: *see* “dumping”/ “margin of dumping” (AD 2.1)
- evaluation of injury factors (AD 3.4)
- adequacy of evaluation AD 264
- all* relevant economic factors and indices having a bearing on AD 243
- checklist approach AD 265–6
- eventual relevance of factor, relevance AD 248, 251
- “factors affecting domestic prices” AD 270–1
- factors not involving material injury, right to consider AD 298
- factors not listed in AD 3.4, right/obligation to consider AD 253–6
- grammatical structure, relevance AD 247, 250
- “growth” AD 272
- “having a bearing on” AD 257, 269
- “including” AD 247, 249
- “or” AD 247, 250
- “profits” AD 269
- SG 4.2(a) factors and AD 247 n. 343, 251
- “shall include” (mandatory/illustrative nature of list) AD 247–52
- consideration of each factor to be “apparent” in final determination AD 248, 261–3
- consideration as a whole AD 252
- “domestic industry”
 - companies outside domestic industry, relevance AD 245–6, 328
 - domestic producers outside selected example, relevance AD 244, 328
 - selective and inconsistent approach to AD 215
- “evaluation” AD 258–60
- examination of other known factors (AD 3.5) AD 248
- illustrative nature of list AD 282
- “known” to investigating authority AD 278
- “objective examination” requirement (AD 3.1) and AD 194, 208–9, 243
- opportunity for defence of interests (AD 6.2) and AD 464
- sectoral analysis, right to AD 194–5, 243
- written record of analysis, need for AD 267–8

- (*cont.*)
- “injury” (AG 3 footnote 9), domestic industry (AD 4) and AD 176, 325, 336
 - merged companies and SCM 432
 - methodology, right to choose AD 183, 219, 231
 - “positive evidence” / “objective examination” requirement (AD 3.1) AD 181–209, 210–13
 - AD 17.6 (standard of review) distinguished AD 187
 - admissibility of undisclosed evidence AD 185–7, 917–18
 - domestic industry, use of information relating to AD 215
 - “dumped imports” and AD 200–7, 241, 277
 - margin of dumping not greater than *de minimis* AD 206
 - “effect of the dumped imports on prices” (AD 3.2) AD 226
 - evaluation of injury factors (AD 3.4) AD 194, 243, 270–1
 - exclusion of “like” product as breach AD 217, 225
 - “facts, not merely allegation, conjecture or remote possibility” requirement (AD 3.7) and AD 186
 - non-attribution obligation and AD 216
 - “objective examination” AD 193
 - “consequent impact” (AD 3.1(b)) AD 209
 - industry as a whole, need to examine AD 187
 - “positive evidence” AD 182–4
 - price analysis and AD 205
 - sampling (AD 6.10) and AD 198–9, 203–4
 - significant increase in dumped imports analysis (AD 3.2) AD 210–13, 232–3
 - sunset review (AD 11.3), applicability to AD 768
 - use of different periods for data collection and AD 172–3, 180
 - volume and price effects (AD 3.2) AD 210–13
 - significant increase in dumped imports (AD 3.2)
 - cumulative analysis (AD 3.3), applicability AD 236
 - effect at regional level, sufficiency AD 227
 - “effect of the dumped imports on prices”, objective assessment AD 226
 - frequency of analysis AD 221
 - imports from other suppliers, relevance AD 217, 225
 - margin of dumping greater than *de minimis*, limitation to AD 206
 - merged companies and SCM 432
 - “positive evidence” / “objective examination” requirement (AD 3.1) AD 210–13, 232–3
 - price undercutting/suppression analysis AD 205 n. 277, 220, 230–3
 - “shall consider” AD 224
 - “significant”, alternative formulations AD 224, 256 n. 360
 - threat of material injury (AD 3.7)
 - AD 3.2 and SCM 15.2 factors and AD 301
 - AD 3.4 factors and AD 298–301
 - AD 5.3 and AD 363–6
 - “facts, not merely allegation, conjecture or remote possibility” AD 186
 - a “clearly foreseen and imminent” change of circumstances, need for AD 291–2, 302
 - “consideration” of facts AD 293–5
 - “likelihood of substantially increased importation” (AD 3.7(i)) AD 296
 - positive evidence requirement (AD 3.1) AD 186
 - “material injury would occur” / “consequent impact” AD 297–301
 - as responsibility of authorities AD 302, 320
 - “special care” requirement (AD 3.8/SCM 15.8) AD 305–6, SCM 451–2
 - underlying principles (AD 3.1) AD 169–70, 177–8, 181
 - determination of injury (SCM 15)**
 - “all relevant economic factors” (SCM 15.4) SCM 439–42
 - domestic industry definition (SCM 16), relevance SCM 442
 - causal relationship between subsidized imports and injury to domestic injury (SCM 15.5 and footnote 47)
 - non-attribution of other factors SCM 444, 445–50
 - identity of AD 3.5 provisions/applicability of jurisprudence relating to SCM 445–6
 - “subsidization” and injury caused by “subsidized imports” distinguished SCM 372, 443–4
 - “through the effects of the subsidy” SCM 443–50
 - “through the effects of the subsidy” (SCM 19.1), identity of meaning SCM 461
 - data collection period (SCM 15.1/15.2) SCM 423, 438
 - identity of AD 3 provisions/applicability of jurisprudence relating to SCM 421, 445–6
 - “injury” (SCM 15 footnote 45) SCM 372
 - “positive evidence” / “objective examination” requirement (SCM 15.1)
 - see also* determination of injury (AD 3), “positive evidence” / “objective examination” requirement (AD 3.1)
 - “objective examination” SCM 421–2
 - as underlying principle SCM 421
 - price effect determination (SCM 15.2) SCM 433–7
 - non-attribution of factors other than subject imports SCM 434
 - obligation to examine other factors, whether SCM 437
 - price undercutting SCM 433, 435–6
 - existence vs cause of SCM 435
 - methodology for determining SCM 436
 - significant increase in subsidized imports (SCM 15.2) SCM 429–31
 - threat of injury (SCM 15.8), “special care” requirement (AD 3.8/SCM 15.8) SCM 451
 - underlying principles (SCM 15.1) and SCM 422
 - determination of serious injury or threat of, definitions (SG 4.1)**
 - see also* “like or directly competitive product” (SG 2.1/SG 4.1(c))
 - “serious injury” (SG 4.1(a))
 - current serious injury SG 122
 - “material injury” (AD 3, SCM 15.7 and GATT VI) distinguished GATT 483, SG 3, 117
 - quota modulation and (SG 5.2(b)) SG 234
 - as “significant overall impairment” / “very high standard of injury” SG 116–21, 180
 - “serious injury” (SG 4.1(a))/ “threat of serious injury” (SG 4.1(b))
 - “clearly imminent” SG 123–5, 156
 - “serious injury” SG 124
 - simultaneous determinations SG 128
 - “threat of serious injury” (SG 4.1(b)) SG 123–9
 - actual increase in imports, need for SG 126–7
 - data from recent past/throughout investigation period, relative importance SG 125, 157–8
 - determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a))** AD 914 n. 1246, SG 118–21, 140–71
 - all factors listed in SG 4.2(a) SG 143–6
 - “as a whole” SG 121
 - consistency of interpretation between SG 4.2(a) and SG 4.2(b) SG 142
 - evaluation of injury factors (AD 3.4) and AD 247 n. 343, 251
 - factors not listed in SG 4.2(a), right/obligation to examine SG 164–5
 - “factors other than increased imports” (SG 4.2(b)) SG 58, 74, 77, 173–8, 176
 - imports from excluded sources as SG 74, 77–8
 - non-attribution requirement, 14.197–214, 14.331–2: *see also* determination of injury (AD 3), evaluation of injury factors (AD 3.4)
 - order of analysis, relevance SG 214
 - factors relating to imports and domestic industry SG 141–2, 207

- obligation of competent authorities to seek information additional to that supplied by interested parties/ “investigate” AD 914 n. 1246, SG 92–4, 165, 309
- “productivity” SG 163
- segmented domestic industry and SG 166–9
 - reasoned and adequate explanation requirement and SG 168
- determination of serious injury or threat of (SG 4), requirements**
 - see also* “like or directly competitive product” (SG 2.1/SG 4.1(c)); MFN treatment (GATS II), determination of violation, requirements; national treatment, services and service suppliers (GATS XVII), determination of violation, requirements; national treatment, tax discrimination (GATT III:2), determination of violation, elements (GATT III:2, first sentence)
- customs unions and free trade areas (GATT XXIV) exception and GATT 1057
- “such increased quantities”
 - “rate and amount of the increase . . . in absolute and relative terms” (SG 4.2(a)) SG 25–8
 - trends SG 26–30, 42–5, 159–61, 170
- developing countries: *see also under in addition to immediately following headings***balance of payments difficulties, developing countries’ right to take import measures (GATT XVIII:B); developing countries (AD 15); developing countries’ economic development purposes/financial and trade needs (LIC 1.2); dispute settlement, special provisions relating to developing countries; Enabling Clause (EC), special treatment of least-developed countries (EC 2(d)); special and differential treatment for developing countries (Doha); special and differential treatment (VAL 20/VAL, Annex III); technical cooperation and capacity building (Doha); Trade, Debt and Finance Working Group (Doha); Trade and Environment Committee (WTO IV:7); trade and environment (Doha 31–3)
- developing countries (AD 15)**
 - “anti-dumping duties” AD 862
 - provisional duty or security (AD 10.3) distinguished AD 862
 - “constructive remedy”
 - decision not to impose anti-dumping duties AD 857
 - lesser duty or price undertaking AD 858, 861
 - “shall be explored” AD 859–61
 - whether “material” for purpose of AD 12.2 AD 846
 - obligations (first sentence) AD 854–5
 - Tokyo Round Anti-Dumping Code (Art. 13) compared AD 854 n. 1152
 - review
 - Anti-Dumping Practices Committee Recommendation (2002) AD 853
 - Doha Declaration AD 852
 - “special regard” AD 856
- developing countries (AG preamble/AG 6.2)** AG 4, 77
- developing countries (DSU 21.2) (implementation of DSB recommendations and rulings)** DSU 1007–13
 - “reasonable period” (DSU 21.3(c)) DSU 1007–13, 1064–5, 1067–71
- developing countries’ economic development purposes/financial and trade needs (LIC 1.2)**
 - automatic import licensing, delay in application (LIC 2) LIC 17–18
 - invocations LIC 17
 - legal significance LIC 7–10
 - trade-restrictive or trade-distortive effects (LIC 3.2) and LIC 3, 9
- developing countries (GATS IV)**
 - electronic commerce and GATS 49
 - enquiry/contact points (GATS IV:2) GATS 47, 50–1
 - telecommunications, right to place reasonable conditions on GATS 256
- developing countries (GPA V)** GPA 20
- developing countries (SCM 27)**
 - actionable subsidies (SCM 27.9), nullification or impairment claims, limitation to SCM 569
 - de minimis* subsidization threshold (SCM 27.10 and 27.11) SCM 570
 - exemption from SCM 3.1(a) (transitional period) (SCM 27.3) as authorization of prohibited subsidies (GATT III:2) SCM 535
 - termination SCM 536
 - Illustrative List of Export Subsidies (SCM Annex I item (k)) and SCM 526
 - phase out/standstill obligation (SCM 27.4)
 - applicability (Annex VII)
 - graduation methodology SCM 681–4
 - Honduras, addition SCM 680
 - as non-actionable subsidy (para. 10.2) SCM 342
 - re-inclusion SCM 685
 - benchmark period (SCM 27.4 footnote 55) SCM 546
 - burden of proof SCM 154–6, 553–4
 - constant or nominal values as determining factor SCM 545
 - export competitiveness (SCM 27.6)
 - exemption from export subsidies (SCM 3.1(a)) and SCM 530
 - request for calculation by Secretariat SCM 563
 - extension of transition period, Decision on Procedures (Doha) WTO 56, SCM 530, 555–8
 - adoption WTO 56, 67
 - relative competitiveness and SCM 530
 - “grant” (SCM 27.4 footnote 55) SCM 174–7, 542–3
 - actual expenditure, limitation to SCM 547–8
 - “inconsistent with its development needs”, responsibility for determining SCM 550–2
 - inflation, relevance SCM 545
 - “prohibited” subsidy status (SCM 3.1(a)) and SCM 154–6, 527
 - SCM 25, relevance SCM 524, 530
 - SCM 27.2(b) and SCM 154, 527–8, 532
 - SCM 27.5 and SCM 563–6
 - “shall phase out” SCM 539–41
 - serious prejudice (SCM 27.8) SCM 568
 - subsidies, importance to economic development programmes (SCM 27.1) WTO 4
- developing countries (SG 9)**
 - exclusion of developing country exporting less than *de minimis* levels (SG 9.1) SG 246–7
 - as exception to general SG rules SG 68 n. 114
 - expected effect of measure, relevance SG 247
 - list of excluded countries, need for SG 246
- developing countries (SPS 4), equivalence** SPS 118
- developing countries (SPS 7), procedure to “Enhance Transparency of Special and Differential Treatment in Favour of developing countries” (SPS 10)** SPS 364
- developing countries (TRIMs 4)**
 - extension of transition periods (TRIMs 5.3) TRIMs 32–5
 - General Council direction to give positive consideration to TRIMs 32
 - special and differential treatment, implementation issues TRIMs 41–2
 - TRIMs 2.1 and TRIMs 22
- developing countries (TRIPS)**
 - exclusive marketing rights (TRIPS 70.9), right to delay application (TRIPS 65.2) TRIPS 293
 - pharmaceutical and agricultural chemical products, patent protection (TRIPS 70.8), right to delay (TRIPS 65.2) TRIPS 293
 - right to delay application (TRIPS 65) TRIPS 186, 288–9, 292
- developing countries (WTO Preamble) (positive efforts to secure a share in growth of international trade)** WTO 4–7
 - “commensurate with” WTO 7
 - “positive efforts” WTO 4–6
- directly competitive or substitutable products (GATT III:2)**

- (*cont.*)
- 2.286–305: *see also* determination of serious injury or threat of (SG 4), requirements, “like product” (GATT III:2 and III:4), national treatment, tax discrimination (GATT III:2), transitional safeguards (ATC 6), serious damage or actual threat of (ATC 6.2), “domestic industry producing like and/or directly competitive products”
- competition and trade law distinguished GATT 206
- “directly” GATT 297, ATC 40, 45
- as dynamic relationship (including possibility of latent demand) GATT 291–7, 335
- GATT practice GATT 304
- “like products” distinguished/as sub-category GATT 234, 252–6, 328–30
- “like products” as subset GATT 303
- methodology of comparison, “grouping” approach GATT 299–302
- nullification or impairment, evidence of DSU 90
- object and purpose GATT 290, 292–4
- ordinary meaning GATT 291–2
- relevant factors GATT 298–300
- distribution channels GATT 299
- end-uses GATT 298
- interchangeability ATC 45
- market situation in other countries GATT 289
- nature of product GATT 298
- physical properties GATT 298–9
- potential to compete as determining factor GATT 234, ATC 45
- tariff classifications GATT 298
- Director-General (WTO)**
- appointment as WTO 171
- rules and procedures WTO 172
- Director-General GATT 1947 as WTO 284–5
- holders of office WTO 171
- role and responsibilities
- chair of Trade Negotiations Committee WTO 155
- consultation with respect to technical cooperation and capacity building WTO 111
- depositary functions WTO 267
- as head of WTO WTO 168
- disclosure of confidential information (GATS II*bis*)** GATS 48
- discrimination:** *see* arbitrary or unjustifiable discrimination, GATT XX measure as (GATT XX chapeau); arbitrary or unjustifiable distinctions resulting in discrimination or disguised restriction on international trade (SPS 5.5); Enabling Clause; MFN treatment (GATS II); MFN treatment (GATT I); MFN treatment (TRIPS 4); national treatment, regulatory discrimination (GATT III:4); national treatment, tax discrimination (GATT III:2); non-discriminatory administration of QRs (GATT XIII); SPS Agreement, basic rights and obligations (SPS 2)
- dispute settlement (AIR)** AIR 30–1
- dispute settlement and enforcement (GATS XXIII)**
- Decision on Certain Dispute Settlement Procedures for GATS (1994) GATS 206
- roster of panellists, decision not to appoint GATS 207
- nullification and impairment (DSU 3.8) distinguished GATS 203–4, DSU 99–100
- dispute settlement (GATT XXIV, Understanding 12)** GATT 1041–4
- dispute settlement (PSI 8)** PSI 28
- dispute settlement (SCM 30)**
- see also* consultations (SCM 4.1–4); request for establishment of panel, requirements (SCM 4.4)
- special or additional rules or procedures, whether SCM 578
- standard/powers of review (panel) (AD 17.6), applicability SCM 578
- dispute settlement (SG 14)** SG 304–10
- China and: *see* transitional safeguard measures (SG) (China) (Accession Protocol 16)
- DSU 11, applicability GATT 800, SG 109, 147–53, 305–10, 313
- standard of review (DSU 11)
- evidence, alleged disregard or distortion by panel, obligation to examine and evaluate *all* the evidence available to it SG 147, 306
- “objective assessment of the facts”
- de novo* review, exclusion VAL 19 n. 34, SG 147, 305, 308
- reasoned and adequate explanation (SG 4.2(a)) and GATT 801, VAL 19 n. 34, SG 148–51, 307–9
- dispute settlement, special provisions relating to developing countries**
- extension of periods established under DSU 4.7 and 8 (DSU 12.10) DSU 713–15
- requirement for specific indication of form in which account has been taken of special needs (DSU 12.11) DSU 716–19
- dispute settlement (TRIPS 64)**
- DSU, applicability (DSU 1.1) DSU 4, 1551
- non-application of non-violation complaints (TRIPS 64.3)
- procedure
- Council for TRIPS Agreement, role WTO 65
- Ministerial Conference, role WTO 65
- non-violation and situation complaints, moratorium TRIPS 282–6, DSU 1551
- dispute settlement/enforcement of specific obligations, exclusion (TRMS A(i))** TPRM 3, 5–6
- dissemination of information**, Integrated Data Base (IDB) and Consolidated Tariff Schedules (CTS) database WTO 135, GATT 185–6
- documents:** *see* WTO documents, General Council Decisions on circulation and derestriction
- Doha Development Agenda**
- Cancún stocktaking WTO 58
- Global Trust Fund WTO 188
- Doha Round decisions**
- ACP–EC Partnership Agreement WTO 56, 67
- Implementation-Related Issues and Concerns: *see* Decision on implementation-related concerns (2000)
- Procedures for Extensions under Article 27.4 for certain developing country Members: *see* developing countries (SCM 27), phase out/standstill obligation (SCM 27.4)
- summary WTO 38–9
- Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas WTO 56, 67
- Doha Round/Work Programme (Doha 17–52)**
- Decision on Measures in Favour of Least-Developed Countries (Doha) and WTO 311
- July package (2004) WTO 39, 58
- residual responsibility for implementation issues WTO 156
- structure as established by TNC WTO 156
- Ministerial Conference guidance/discussion, Hong Kong WTO 59
- negotiations, organization and management (paras. 45–52)
- see also* market access for non-agricultural products (Doha 16), Negotiating Group on Market Access, Negotiating Group on Rules, progressive liberalization negotiations (GATS XIX:3 and Doha 15), Trade Negotiations Committee (TNC)
- “domestic industry” (AD 4)**
- see also* sampling (AD 6.10)
- “a major proportion of the total domestic production” (AD 4.1) AD 329–35
- AD 5.4 and AD 380
- “domestic producers” (AD 4.1) AD 327–8
- authorities’ discretion in choosing AD 335
- exclusion of producers not making themselves known before deadline AD 334

- single domestic producer, applicability to AD 327
- “injury” (AG 3 footnote 9) and AD 176, 325
- interpretation in accordance with AD 4.1, obligation AD 337
- “domestic injury” (SCM 16)**
 - determination of injury (SCM 15) and SCM 422
 - “domestic industry” (SG 4.1(c)) distinguished SCM 453
 - material injury to domestic industry or threat of (GATT VI:6(a)) and GATT 483
 - ordinary meaning SCM 453–4
 - “producers” (SCM 16.1) SCM 453–4
- domestic law**
 - see also* conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4); legislation as such, right to challenge (WTO XVI:4)
 - burden of proof DSU 578
 - characterization of transactions, appropriateness as applicable law DSU 528, 1625
 - as determinant of date of “initiation” SCM 356
 - as evidence of
 - compliance with international obligations DSU 526–7, 532, 847
 - Certain German Interests in Polish Upper Silesia* DSU 526
 - determination as legal issue DSU 847
 - interpretation of legislation distinguished DSU 526–7, 529 n. 861
 - state practice DSU 526
 - as fact for purposes of international adjudication AD 602 n. 836, DSU 526–33
 - decisions of domestic courts, applicability DSU 529
 - unfinished proceedings, relevance DSU 529
 - legislative history, relevance DSU 530
 - interpretation of covered agreements, relevance to DSU 1623–8
 - as supplementary means (VCLT 32) DSU 1655 n. 2588, 1655 n. 2589
 - as justification for failure to fulfil international obligations, exclusion (VCLT 27) SCM 241, GATS 140, TRIPS 5, DSU 1516–20
- domestic regulation (GATS VI)**
 - accountancy services and GATS 45, 60–1
 - electronic commerce and GATS 58
- domestic support (AG 3): *see* agricultural concessions and commitments (AG 3)**
- domestic support commitments (AG 6)**
 - “considered to be in compliance” (AG 6.3) AG 79
 - SMC 3.1(b) and AG 79, 193–4
 - Mid-Term Review Agreement (developing countries) (preamble/AG 6.2) AG 77
- double remedies**
 - anti-dumping vs countailing duties/exclusion of double remedy (GATT VI:5) GATT 480–1, SCM 466, DSU 1617
 - notification to all interested parties of essential facts (SCM 12.8) and SCM 395
- double taxation measures, justification (Illustrative List, SCM Annex I (item (e)) footnote 59)**
 - applicable law/Member’s right to determine applicable rules SCM 605–6, 608
 - international tax law principles SCM 610
 - burden of proof SCM 613
 - “foreign-source income” SCM 159–60, 604, 606, 608–9
 - design, structure and architecture of measures, relevance SCM 607
 - international tax law principles and SCM 610
 - nexus between income and activities in foreign State, need for SCM 611–12
- drafting history: *see* preparatory work (VCLT 32)**
- DSB**
 - access to, limitation to WTO Members DSU 516
 - appointment of officers WTO 77
 - collegiate/collective entity DSU 1148 n. 1802
 - communications to DSB Chairman, procedure DSU 36
 - decisions
 - consensus requirement (DSU 2.4) DSU 33
 - initiation of SCM Annex V procedure, whether DSU 33
 - functions (DSU 2.1)
 - “*accordingly* the DSB shall have authority” (DSU 2.1) DSU 32
 - adoption of Panel and AB reports WTO 76
 - authorization of suspension of concessions and other obligations under the covered agreements WTO 76
 - establishment of panels WTO 76
 - surveillance of implementation of rulings and recommendations WTO 76
 - GATT *acquis*, commitment to adhere to (DSU 3.1) DSU 40, 278
 - General Council as WTO 76
 - proper parties DSU 516
 - Rules of Conduct: *see* Rules of Conduct (RoC)
 - rules of procedure (1995)
 - adoption WTO 77, DSU 34
 - text DSU 35
 - Special Session for the negotiation of improvements to and clarifications of the DSU
 - establishment WTO 78, 156
 - responsibility for negotiations WTO 156
 - “single undertaking” principle, as exception to WTO 78
 - statements by Members at DSB meetings, legal effect DSU 26–31
 - authorized statements for the record DSU 26
 - “mutually agreed solution” (DSU 3.6), whether DSU 27
 - as prohibited unilateral action (DSU 23.1) DSU 29, 1313, 1689
 - “taking note” of, legal effect DSU 30–1
 - time-periods, computation
 - “date of circulation” DSU 37
 - expiring on a weekend or holiday DSU 38
- DSU, applicability**
 - bilateral agreements DSU 419–21
 - EC – Korea Agreed Minutes DSU 7
 - EC–US Agreement (1992) DSU 420
 - Oilseeds Agreement (EC–Brazil) DSU 6
 - covered agreements (DSU 1.1/DSU 7.2) DSU 1–8
 - AD Agreement DSU 2–3
 - AIR Agreement AIR 3, 30–1
 - DSU (as covered agreement) DSU 4–5
 - TRIPS Agreement DSU 4, 1551
 - international agreements other than covered agreements DSU 421
- DSU dispute settlement**
 - compulsory (panel proceedings) vs consensual (consultations, mediation, good offices and arbitration) DSU 1339
 - “contentious act” distinguished (DSU 3.10) DSU 102
 - expeditious arbitration as alternative means (DSU 25.1) DSU 1329, 1337, 1338–9
 - good faith engagement in: *see* good faith engagement in dispute settlement procedures (DSU 3.10)
 - hierarchical structure DSU 835
 - obligation to have recourse to (DSU 23.1)
 - see also* unilateral action by Member, prohibition (DSU 23.1)
 - as “exclusive jurisdiction” clause DSU 1306, 1310
 - prohibition of suspensions prior to completion of DSU 22 procedures DSU 1317
 - “recourse to, and abide by” DSU 1306, 1310–11
 - referral to the WCO DSU 1311
 - “seeking redress of WTO violation” DSU 1305–9
 - suspension of concessions (DSU 22) as DSU 1308–9
 - temporary nature of suspension of concessions (DSU 22) and DSU 1319
 - waiver of rights, possibility of DSU 1304
 - “positive solution to a dispute” as aim (DSU 3.7) DSU 78, 438

- (*cont.*)
table showing disputes by covered agreement DSU 1746
time-frame (DSU 12.8, 12.9, 17.5 and 20)
 indicative nature DSU 710, 995
 DSU 21.5 distinguished DSU 711
time-frame (DSU 20)
 separate panel reports (DSU 9.2) and DSU 994
 table DSU 443, 834, 996
due diligence requirement: *see* transitional safeguards (ATC 6),
 serious damage or actual threat of (ATC 6.2), due diligence
due process (anti-dumping measures) (AD 6)
 balance of interests considerations AD 438, 443–4, 512, 514, 583,
 598, 604, 606, 639
 opportunity for defence of interests (AD 6.2) AD 461
 time limits and AD 438
 as underlying principle AD 80, 186, 425–6
due process (application of trade measures)
 see also public notice and explanation of determinations (AD 12), as
 due process requirement
 objective criteria, need for GATT 869
due process (countervailing duty investigation) (SCM 12.7)
 SCM 390
due process (dispute settlement proceedings)
 see also margin of discretion [in accordance with due process]
 (panel) (DSU 12.1 and Appendix 3); third party rights
 amicus curiae briefs and DSU 744
 arbitration (DSU 22.6) and DSU 1183, 1210
 Article 21.5 proceedings DSU 1143–4
 clear presentation of the problem (DSU 6.2)/ability to defend itself
 and: *see* request for establishment of panel, requirements
 (DSU 6.2), due process/ability to defend itself
 considerations
 consultations (ATC 6.10) ATC 76
 disclosure obligation DSU 573
 expert evidence and SPS 423–4, DSU 601, 613, 1478
 good faith obligation (DSU 3.10) DSU 122, 345
 late submission of evidence DSU 729
 new argumentation, cut-off date DSU 327, 730
 notice of appeal (ABWP 20(2)(d)) and DSU 368, 1408–9
 notification of nature of case DSU 187
 objective assessment obligations (DSU 11) and DSU 613,
 618–21, 680
 opportunity to respond to evidence/presentations of other parties
 SCM 188, 190, DSU 327, 343, 360, 618, 623–4, 676,
 679–80, 694
 good faith (DSU 3.10) and DSU 122
 timing of submission of evidence (DS 12) and DSU 622–8
 panel reports, rationale/reasons (DSU 12.7) and DSU 703–4
 panel working procedures, need for DSU 236, 346, 670–3
 panel’s discretion on matters of procedure (DSU 12.1 and
 Appendix 3) DSU 490–1
 prejudice to party, relevance DSU 29, 94, 187, 194, 200 n. 269, 202,
 203, 220, 236, 266, 311, 314, 320, 325, 327, 329, 344, 346,
 377, 417, 449, 467, 472, 488, 508 n. 828, 665, 670, 674,
 734, 749
due restraint (AG 13) (“peace clause”)
 domestic support measures conforming with AG 6 (AG 13(b))
 AG 133
 calculation of AMS (AG 1(a)/Annex 3) AG 144
 countervailing duties (AG 13 footnote 4) AG 138
 “due restraint” (AG 13(b)(i)) AG 137
 elements/order of analysis AG 135
 “exempt from actions” (AG 13(b)(ii)) AG 139
 “grant” (AG 13(b)(ii)) AG 140
 “injury or threat of” (AG 13(b)(i)) AG 136
 “measures . . . not grant[ing] support to a specific commodity”
 (AG 13(b)(ii)) AG 141–3
 “that decided during the 1992 marketing year” AG 145–7
 export subsidies conforming with AG Part V (AG 13(c)) AG 149
 green box measures (AG Annex 2) (AG 13(a)) AG 133
 Annex 2, para. 6(b) and 6(e) distinguished AG 198
 Annex 2, para. 11 and AG 199
 Decision on implementation-related concerns (2000) AG 150
 exemption from GATT XVI and SCM Part III AG 134
 measures not qualifying as (Annex 2, para. 6(b)) AG 196–7
 special or additional rules and procedures (DSU 1.2 and Appendix
 2) and DSU 11
 structure AG 133
“dumping” / “margin of dumping” (AD 2.1)
 see also determination of dumping (AD 2); determination of injury
 (AD 3)
 as exporter-specific concepts GATT 453, AD 690–4
 AD 9.3 and AD 690–4
 “for purposes of this agreement” /identity of meaning throughout
 AD Agreement AD 16–19, 242, 404
 product specific requirement AD 17–19
 sampling technique and AD 200–2
“dumping” (AD 2.1), ambiguity/alternatives AD 934–5
e-commerce (in chronological order of developments)
 Global E-Commerce Declaration (Geneva 20 May 1998) WTO 32,
 54, 67
 General Council Decision on E-Commerce Work Programme and
 moratorium on customs duties (25 September 1998)
 WTO 33
 E-Commerce Work Programme (Doha 34) (14 November 2001)
 WTO 34
 developing countries and (GATS IV) GATS 49
 General Council Decision post-Cancún (1 August 2004) WTO 35
 Hong Kong Ministerial Declaration (HK 46) (18 December 2005)
 WTO 36
 Ministerial Decision on E-Commerce Work Programme and
 moratorium on customs duties (Geneva 2 December 2009)
 WTO 37, 60
 GATS and GATS 8, 44, 58, 63, 66, 68, 76, 96, 126
economic integration (GATS V)
 Labour Markets Integration Agreement (GATS V *bis*), notification
 format GATS 57
 notification format (GATS V:7) GATS 53
 reporting obligations (GATS V:7) GATS 56
 RTAs, notification GATT 1016
 national treatment (GATS V:1(b))/MFN treatment (GATS II),
 applicability GATS 52
 RTAs, reports on GATS 53
 “substantially all discrimination” (GATS V:1(b)) GATS 52
electronic commerce: *see* e-commerce (in chronological order of
 developments)
electronic transmission of information, technical regulations (TBT
 2.9) TBT 87
emergency action (GATT XIX)
 “as a result of unforeseen developments” (GATT XIX:1(a)) GATT
 803–4, 838 n. 1136
 “as a result . . . of the effect of obligations incurred by Member”
 GATT 826–30
 “as a result of” GATT 804 n. 1087, 818–20
 condition (SG 2.1) and circumstance distinguished GATT 815
 confluence of developments as basis GATT 817
 critical date GATT 821–3
 “demonstration”, need for GATT 805–17
 “as a pertinent issue of fact and law” /finding (SG 3.1) GATT
 806–7, SG 103
 prior to application of measure GATT 810
 in respect of each measure GATT 812–13

- increased *imports*, “unforeseen” requirement GATT 820
 objective/subjective nature of legal standard GATT 816
 omission from SG 2.1, relevance GATT 803, 805, 840–1, DSU 1555 n. 2388
 publication of findings and reasoned conclusions (SG 3.1) and SG 95, 99
 reasoned and adequate explanation requirement (SG 3.1) GATT 800–2, 811, 814
 standard of review GATT 800–2
 as extraordinary/emergency remedy GATT 796–9
 free trade agreements/customs unions and (SG 2.1 footnote 1) GATT 1055–6
 GATT practice GATT 837
- emergency safeguard measures (GATS X)** GATS 69
 GATT practice GATT 59
 multilateral negotiations GATS 69
 Working Party on GATS Rules and GATS 69, 214
- Enabling Clause (EC)**
 adoption (1979) WTO 118, GATT 58, 998
 burden of proof and GATT 82–3, DSU 574
 conformity with GSP (generalized, non-reciprocal and non-discriminatory treatment) (EC 2(a)) GATT 85–9
 “developing countries” (EC 2(a)) GATT 90
 “discriminate” / “non-discriminatory”, absence of clear qualifying criteria or standards GATT 88
 “generalized” (EC 2(a) footnote 3) GATT 84
 “in accordance” GATT 81
 as exception to GATT I:1 GATT 80
 “notwithstanding” (EC 1) GATT 80
 least developed countries (EC 2(d)), EC 2(a) and GATT 91
 notifications (EC 4(a)) GATT 60–3
 GSP schemes GATT 63
 Trade and Development Committee’s role GATT 60, 64
 as “other decision” (GATT 1994(1)(b)(iv)) GATT 12
 as “positive effort” (WTO Preamble) WTO 5–6
 preparatory work (VCLT 32) GATT 84
 1971 Waiver Decision GATT 84
 PTAs Transparency Mechanism (2010) WTO 121
 regional or global arrangements amongst less-developed countries (EC 2(c))
 notification procedures GATT 64
 notifications GATT 1016
 RTAs and: *see* RTAs (GATT XXIV:5), notifications (Enabling Clause)
 special treatment of least-developed countries (EC 2(d))
 notification procedures, Waiver on Preferential Tariff Treatment (1999) GATT 103
 notifications GATT 79
 text GATT 58
 transparency (EC 4): *see* transparency mechanism (PTAs) (2010)
 treatment designed and . . . modified to respond to needs of developing countries (EC 3(c)) GATT 89, 90, 94–5
 development, financial and trade needs, limitation to GATT 89
 differential treatment, scope for GATT 94–5
 objective standard, need for GATT 89
 “positive” response GATT 89, 94–5
 “treatment designed to facilitate and promote the trade of developing countries . . .” (EC 3(a)) GATT 92–3
 identity of tariff preferences, relevance GATT 88, 92
 undue burden GATT 93
- end-use systems (AIR 2.2)** AIR 12
- enquiry/contact points**
 GATS III:4/GATS IV:2 GATS 47, 50, 50–1
 accountancy services GATS 51
 SPS Annex B(3) SPS 545
 TBT 10.1 and 10.3 TBT 121–3
 TRIPS 69 TRIPS 306
- environment**
see also Trade and Environment Committee (WTO IV:7); trade and environment (Doha 31–3)
 GATS XIV (general exceptions) and, Decision on Trade in Services and the Environment GATS 77
 protection as legitimate goal of national and international policy WTO 1, 2
 SPS measures (Annex A(1)) and SPS 462–4
 WTO Preamble
 Members’ right to determine own policies WTO 1
 trade policies and, obligation to coordinate WTO 1
- Equivalence, Decision on Implementation of SPS 4 (26 October 2001)** SPS 104–21
 determination of equivalence
 comparison of level of protection SPS 112–13
 Guidelines to Further the Practical Implementation of SPS 5.5 as aid SPS 112
 resolution of differences SPS 113
 developing countries and SPS 118
 “equivalence” SPS 106
 explanation of SPS measures, required elements SPS 107
 international cooperation outside the WTO SPS 115–16
 interruption or suspension of imports and SPS 110–11
 Members’ obligation to determine ALOP SPS 103
 notification of the conclusion of equivalence agreements SPS 363
 notification of experience relating to implementation of SPS 4 SPS 117
 recognition procedure
 accelerated/expedited procedure SPS 109
 notification procedure and format (2002) SPS 104
 summary of requirements SPS 108
 revisions/clarifications SPS 104
 status as non-binding instrument SPS 105
 technical assistance to facilitate implementation of SPS 4 SPS 114
 timetable and agenda for discussion (2002) SPS 118
- erga omnes obligations** DSU 1699–700
- error as to fact or situation, effect on validity of treaty (VCLT 48(1))**
 GPA 32, 34–6
- estoppel**
 acquiescence distinguished DSU 1703
 AD 5.5 violations and AD 391, 456
arguendo assumptions and DSU 663
 definition AD 391
 as general principle of international law DSU 112, 1703–7
 good faith (DSU 3.10) and DSU 110–12, 195, 1705–7
 panel competence, related proceedings in another forum and DSU 1704
- European Union**
 Enabling Clause notifications
 GSP schemes GATT 63
 special treatment of least-developed countries GATT 79
 “separate customs territory” (TRIPS 1.3 footnote 1), whether TRIPS 17
- European Union, Working Party on Enlargement**, establishment GATT 1020
- evidence, acceptability as for “objective assessment” (DSU 11)**
purposes
 circumstantial evidence DSU 633–5
 evidence obtained during consultations DSU 630
 factual findings in previous disputes DSU 631
 practice in application of laws DSU 336
 public statements by company executives/government officials DSU 636
 timing of acts of administration (GATT X:3(a)), relevance GATT 561, DSU 630
- evidence (countervailing duty investigation) (SCM 12)**
see also evidence (dumping investigation) (AD 6)

- (*cont.*)
- confidential information: *see* confidential information (SCM 12.4)
 - “information which the authorities require” (SCM 12.1) SCM 378–9
 - “due notice” / “ample opportunity” (SCM 12.1) SCM 379
 - “interested parties” (SCM 12.9) SCM 396–400
 - “allowing” SCM 398–9
 - non-exhaustive nature of SCM 12.9 examples SCM 396–7
 - resort to “facts available” (SCM 12.7) and SCM 391, 400
 - Members’ discretion to define own procedure SCM 377, 507
 - notification to all interested parties of essential facts under consideration (SCM 12.8)
 - double remedies and SCM 395
 - “essential facts” SCM 393–4
 - notification of “essential facts” and evidence required to establish claim distinguished SCM 395
 - on-the-spot verification (SCM 12.6 and Annex VI) SCM 387, 679
 - questionnaires (SCM 12.1.1)
 - supplementary questionnaires, status SCM 380
 - time limits for reply SCM 380–1
 - resort to “facts available” (SCM 12.7) SCM 388–92
 - AD 6.8 compared/distinguished AD 547, SCM 390
 - authorities’ failure to give notice of required information (SCM 12.1) and SCM 392
 - designation of “interested party” (SCM 12.9) and SCM 391
 - due process considerations SCM 390
 - limitation to facts which might reasonably have been made available SCM 390
 - obligation of panel to consider all information provided SCM 390
 - purpose of provision SCM 390, 400
 - secondary source information SCM 389, 390
 - standard of review (investigating authority) SCM 579–81
 - evidence (dumping investigation) (AD 6)**
 - see also* evidence (countervailing duty investigation) (SCM 12)
 - access to information provided by another interested party (AD 6.1.1/AD 6.1.2) AD 492–5
 - access to file distinguished AD 449
 - confidential information AD 452
 - AD 6.5 and AD 452, 459
 - “interested parties *participating in the investigation*” AD 451
 - “promptly” AD 449–50
 - accuracy of information, authorities’ obligation to satisfy themselves (AD 6.6)
 - as responsibility of authorities AD 522
 - “satisfy themselves” AD 520
 - substantive relevance distinguished AD 521
 - “ample opportunity to present in writing all evidence” (AD 6.1) extension “upon cause shown . . . whenever practicable” AD 563
 - obligation to take *all* submitted information into account SCM 390
 - communication of full text of application (AD 6.1.3)
 - “as soon as an investigation has been initiated” AD 453
 - “to provide” AD 454–5
 - confidential information (AD 6.5): *see* confidential information (AD 6.5)
 - difficulties in supplying information, due account/assistance in case of (AD 6.13) AD 583, 604
 - balance of interests of investigating authorities and exporters and AD 639
 - due process as underlying principle AD 80, 186, 425–6
 - balance of interests considerations AD 438, 443–4, 512, 514, 583, 598, 604, 606, 639
 - “known exporters” (AD 6.10) AD 632
 - “known exporters” (AD 6.1)/ “interested parties known” (AD 12.1) AD 436
 - “notice of the information . . .” (AD 6.1)
 - change of legal basis, obligation to inform interested parties, whether AD 433–4, 618
 - clear request for information, need for AD 427, 458, 543, 605
 - “information” (AD 6.1) and “legal determinations” (AD 6.9) distinguished AD 434, 618
 - notification to all interested parties of essential facts under consideration (AD 6.9) AD 460
 - before* final determination AD 613
 - change of legal basis, relevance AD 433, 617, 618–19
 - disclosure obligations AD 527–8
 - as documentary exercise AD 525 n. 710
 - “essential facts” AD 611–14, 614, 615–16, 619
 - essential facts forming basis of preliminary determination, sufficiency for subsequent proceedings AD 617
 - “facts” vs “reasoning” AD 612, 614
 - “further information . . . to be provided” (Annex I, para. 7) information verifiable on the spot AD 526
 - right to verify AD 526, 985
 - “information” (AD 6.1) and “legal determinations” (AD 6.9) distinguished AD 434, 618
 - on-the-spot request for further details (Annex I para. 7) AD 523
 - as option AD 524–5, 983
 - participation of non-governmental experts (Annex I, para. 2)
 - conflict of interest and AD 529, 984
 - non-cooperation (AD 6.8), as justification for AD 529, 582
 - notification of participation, burden of proof AD 530
 - notification of reasons for AD 531
 - timely disclosure of relevant information (AD 6.4) distinguished AD 616
 - obligation of exporting country to make exporters/producers aware of investigation (AD 6.1.1 footnote 15) AD 448
 - on-the-spot verification (AD 6.7), AD Annex I and AD 523
 - opportunity for defence of interests (AD 6.2) AD 185, 461–9
 - change of legal basis, obligation to inform interested parties (AD 12.2) AD 433–4, 462, 618
 - due process rights AD 461
 - interrelationship between AD 6.2, first and second sentences AD 461
 - late provision of information and AD 465–6, 487, 494
 - “opportunity” AD 463
 - re-determination of injury factors (AD 3.4) and AD 464
 - relationship with other AD 6 paragraphs AD 457–69
 - questionnaires (AD 6.1.1)
 - failure to send, relevance AD 441
 - request for substantial amount of information as essential feature AD 439–40
 - right of all interested parties to receive AD 446
 - supplementary questionnaires, obligation/practice AD 435
 - supplementary requests for information distinguished AD 437
 - time limits for reply AD 422, 438–40
 - resort to “facts available” (AD 6.8/Annex II)
 - AD 6.8/Annex II relationship AD 535
 - AD 6.8/SCM 12.7 relationship AD 547, SCM 390
 - additional information, right to request (Annex II para. 1) AD 542
 - adverse facts AD 591
 - Annex II
 - applicability to AD 6.8 as a whole AD 536, 987
 - mandatory nature AD 536, 537
 - obligations under AD 538–9
 - preparatory work (VCLT 32) AD 533
 - reliability of facts, role in ensuring AD 533
 - balance between rights of investigating authorities and legitimate interests of parties, obligation to cooperate (Annex II para. 7) AD 583, 604, 639
 - in case of exporter not notified of required information AD 553
 - in case of verifiable information AD 556

- “verifiable” (Annex II(3)) AD 557–8
- conditions for (Annex II) AD 544–8, 549–55
- ex post* justification, relevance AD 601
- extension of period of investigation and (Annex II para. 1) AD 540
- failure to cooperate (AD Annex VII para. 7)
- cooperation “to the best of its ability” AD 574–80
- “less favourable result” as possible consequence AD 573, 708
- participation of non-governmental experts in on-the-spot verification as justification AD 529, 582
- failure to submit necessary information “in timely fashion” (Annex II para. 3) and AD 563
- interpretation in light of AD 6.1.1, 6.8/Annex II para. 1 AD 563, 567, 605
- as “reasonable period” / “reasonable time” AD 563, 568–71
- good faith cooperation, relevance AD 559, 574
- “information appropriately submitted so that it can be used . . . without undue difficulties” (Annex II(3)) AD 560–2
- information in medium or computer language required (Annex II para. 1) AD 572
- information provided within reasonable period, investigating authorities’ obligation to use AD 549–55
- invocation separately from AD 6.8 AD 997
- “necessary information” AD 564–6
- objective decision-making based on facts and AD 532
- obligation to submit information “as soon as possible” (Annex II para. 1) AD 540–2
- reasons for disregarding information, need for AD 592–6
- right to submit further information AD 597
- secondary source information . . . with special circumspection (Annex II para. 7) AD 584–90
- “shall” AD 536, 537
- specification “in detail” (Annex II para. 1) AD 541, 543
- time limits, right to set (AD 6.1.1) AD 442–6
- sunset reviews and AD 443
- unjustified resort to available facts AD 554–5
- sampling (AD 6.10): *see* sampling (AD 6.10)
- sunset review procedures compared AD 792
- sunset review (SCM 21.3), absence of cross-reference from SCM 369–70, 489–90, 498, 499
- time limits, right to set (AD 6.1.1) AD 428, 438–40
- AD 12 distinguished AD 429
- “ample opportunity” (chapeau) and AD 428–30
- due process and AD 438
- extension “upon cause shown . . . whenever practicable” AD 442
- ADP Committee Recommendation (2001) AD 447
- failure to provide information on AD 431
- “facts available” (AD 6.8) and AD 442, 567
- reply to questionnaires AD 438–40, 442
- date of receipt as trigger AD 446
- sunset reviews AD 443–5
- timely disclosure to interested parties of information relevant for presentation of case (AD 6.4) AD 470–95
- accidental omission of part of information AD 482–3
- “harmless error” distinguished AD 483
- analysis of constituent elements AD 449, 480, 486
- information already available to parties distinguished AD 478–9
- “information used by the authorities” AD 472–3, 475, 484
- price comparison (AD 2.4) and AD 476–7
- NMEs and AD 477
- opportunity for defence (AD 6.2) and AD 465–6, 487, 494
- parties’ own confidential information AD 491
- payment of fee, relevance AD 481
- “relevant” AD 470–9
- interested parties’ perspective as determinant AD 470, 474
- panel’s obligation to assure itself of validity of “information” AD 915
- request, need for AD 488–90
- sunset reviews and AD 484–5
- pressure of time, relevance AD 485
- “timely” AD 473
- evidence, evaluation**
- good faith and SCM 250
- private parties/subjects of international law distinguished SCM 250
- evidence (investigation of dumping) (AD 6)**, notification to all interested parties of essential facts under consideration (AD 6.9), choice of means AD 609–10
- evidence (panel) (DSU 12)**
- domestic law procedure distinguished DSU 632
- evidence (panel) (DSU 12), time limits for submission, panel’s right to admit “late” /new evidence DSU 729
- time limits for submission
- absence of provision (Working Procedures (Appendix 3)) SCM 188–90, DSU 622
- typical ad hoc provision for DSU 728
- accelerated procedures (SCM 4.3) and SCM 188–90, 191–4, 197
- affirmative defence (SCM 3.1) DSU 731
- panel’s right to admit “late” /new evidence SCM 188, DSU 622–8, 728–9
- absence of objection by other party DSU 622
- evidence submitted during interim review (DSU 15) DSU 789–95
- information in the public domain DSU 625
- opportunity to comment, need for DSU 627, 729
- relevance/significance of evidence and DSU 625
- time limit for rebuttal DSU 622–3
- panel’s right to admit “late” /new evidence (DSU 15), evidence submitted during interim review (DSU 15) DSU 626
- “rebuttal submissions” DSU 628
- SCM 4 and SCM 188–90
- as two-stage process DSU 622
- presentation of case including facts DSU 622
- rebuttal of arguments and evidence DSU 622
- ex aequo et bono jurisdiction*** DSU 1708
- ex parte communications with panel or AB (DSU 18.1)***
- see also* confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27)
- BCI (DSU 18.2) and DSU 905–7
- party’s attempt to place limitation on handling of confidential communications DSU 906–9
- party’s refusal to accept BCI procedures allegedly contravening rule, effect DSU 905
- ex proprio motu obligations of panel/AB: see*** competence of panels and AB (DSU 3.2/DSU 11/DSU 17), *compétence de la compétence*/obligation to address jurisdictional issues [on own motion]
- exchange arrangements (IMF/WTO) (GATT XV)**
- consultations (GATT XV:2) GATT 695–7
- dispute settlement and GATT 698–705, DSU 753
- IMF findings, status GATT 704–5
- cooperation (GATT XV:1) GATT 694
- “exchange controls or exchange restrictions” (GATT XV:9(a))
- burden of proof (as exception/affirmative defence) GATT 707
- criteria for determining GATT 708
- GATT practice GATT 713
- IMF obligation to inform WTO of decisions relating to GATT 709–12
- measures other than exchange restrictions, applicability to GATT 712
- special exchange arrangements (GATT XV:6), accession protocol (Chinese Taipei) GATT 706
- exchange rates (AD 2.4.1): see** determination of dumping (AD 2); fair comparison of export price and normal value (AD 2.4); exchange rates and (AD 2.4.1)

- (*cont.*)
- exclusive marketing rights** (TRIPS 70.9): *see* intellectual property rights availability scope and use (TRIPS Part II) exclusive marketing rights obligations (TRIPS 70.9)
- executive summaries (panel working procedures)** DSU 732–5
length/structure DSU 735
non-summarized material, inclusion in panel report DSU 733
panel’s request for DSU 733–5
typical clause DSU 732
- exhaustible resources:** *see* General Exceptions (GATT XX(g))
measures relating to the conservation of exhaustible natural resources
- expedited review, right to** (SCM 19.3) SCM 464–6
aggregated investigations SCM 465
double remedies and GATT 480–1, SCM 466, DSU 1617
entitled SCM 464
- expert evidence** (DSU 13.2/SPS 11.2)
17.765–8: *see also* consultation and dispute settlement (TBT 14), technical expert group, panel’s right to establish (TBT 14.2), information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2)
ad hoc rules DSU 765
applicability of SPS 11(2) SPS 394
Article 21.5 proceedings DSU 1172
disclosure requirement SPS 409–10
due process and
case-by-case approach SPS 423
framing of questions SPS 424
establishment of *prima facie* case and SPS 40
expert evidence/Member’s scientific evidence, primacy SPS 41, DSU 609
group of experts, panel’s right to establish DSU 765
independence and impartiality
affiliations raising doubts SPS 414–16, DSU 619–20, 1478–81
panel’s obligation to ensure SPS 411–13, DSU 620, 1480–1
Rules of Conduct (RoC I and III:2) SPS 418, DSU 1477–81, 1486
self-disclosure (RoC VI) SPS 410, DSU 1491–2
independent assessment by panel DSU 538
international organizations and SPS 406–7
legal characterisation of measure as matter for panel DSU 767
multiple complainants and (DSU 9.3) DSU 488–90
need for experts, determination by panel against the wishes/with the agreement of the parties SPS 397–8
number of experts SPS 405
panel’s role, limitations on SPS 39
SCM 4.2 (statement of available evidence) and SCM 194
selection process
consultation with parties SPS 401–2, 427
importance SPS 399–400
significant investigative authority SPS 419–22
consideration of issues outside terms of reference, exclusion SPS 22
establishment of party’s case by panel, exclusion SPS 278, 421, 548, DSU 556–7, 766
panel’s “broad discretion” SPS 419–20, 428
table showing use of DSU 768
Working Procedures applicable to SPS 417
- expert review groups, rules and procedures** (DSU Appendix 4)
non-resort to DSU 1362
text DSU 1361 (Section XXXI)
- explanatory notes** (“country”, “countries” and “national”), interpretation and application WTO 305–6
- export competition commitments** (AG 8)
compliance with AG and scheduled commitments AG 191
waiver AG 82
- export credit guarantees:** *see* export subsidy commitments
prevention of circumvention (AG 10), export credit guarantees (AG 10.2); Illustrative List of Export Subsidies (SCM Annex I); export credit guarantee or insurance (item (j)); NFIDC, implementation (AG 16)
- export subsidy commitments** (AG 9)
see also export subsidy definition (AG 1(e))
costs of marketing exports (AG 9.1(d))
general business costs distinguished AG 108
income tax, whether AG 108
“direct subsidies, including payments-in-kind” (AG 9.1(a))
“contingent on export performance” AG 86
“governments or their agencies” AG 85
payment-in-kind as direct subsidy AG 84
- export subsidy commitments, prevention of circumvention** (AG 10)
AG 3.3 prohibition on export subsidies and AG 116–17
burden of proof (AG 10.3)
reversal AG 126
scheduled products, limitation to AG 127–8
export competition commitments (AG 8) and AG 117
export credit guarantees (AG 10.2)
“development” AG 124–5
exclusion from AG 10.1, whether AG 124–5
“export subsidies” (AG 9.1) and AG 125
implementation
Agriculture Committee’s work programme AG 118–23
Doha recommendations AG 119
Hong Kong Declaration AG 122
Modalities for Agriculture AG 121, 123
“export subsidies . . . applied in a manner which results in, or which threatens to lead to, circumvention . . .” (AG 10.1)
“circumvention”
scheduled and unscheduled products distinguished AG 116, 116–17
threat of circumvention, obligation to take action AG 113
threat of circumvention, sufficiency AG 112
“export subsidy commitments” AG 110
tax exemption, discretionary nature/legal right AG 114–15
“export subsidy” (AG 1(3)/SCM 1.1 and 3.1) AG 16–18, SCM 181–4
Informal Group on Anti-Circumvention, ADP Decision on (April 1997)
GATT II and AD 1018
role and membership AD 1017
international food aid (AG 10.4) AG 129–31
relationship with AG 10.1 AG 129
- export subsidy, definition** (AG 1(e)) AG 11–13
“contingent upon export performance” AG 14–19
SCM 3.1(a) compared AG 14, 17–19
- export subsidy, prohibited** (SCM, Part II)
see also payments on export of agricultural product financed by virtue of governmental action (AG 9.1(c))
“contingent . . . upon the use of domestic over imported goods” (SCM 3.1(b)), *de facto* contingency SCM 165, 166–7
“contingent in fact . . .” (SCM 3.1(a)) SCM 132–47
“anticipated” (SCM 3.1(a) footnote 4) SCM 136, 139
“but for” test SCM 134
case-by-case approach SCM 141–4
close connection, need for SCM 132
de facto contingency SCM 132–40
examination of all relevant facts, need for (SCM 3.1(a) footnote 4) SCM 141
facts at time of establishment of conditions for grant, limitation to SCM 142
“grant or maintain” (SCM 3.1 footnote 4) SCM 136
knowledge or expectation, sufficiency SCM 133–4
objective test SCM 140
size of domestic market, relevance SCM 147
“tied to” (SCM 3.1(a) footnote 4) SCM 132–3, 136–40

- “contingent in law . . .” (SCM 3.1(a)) SCM 127–31
“contingent” (SCM 3.1) SCM 126, 132–9, 165
“contingent upon export performance” (SCM 3.1(a)) (general) AG 14–15, SCM 125–6
“contingent” SCM 126
“export performance” SCM 148–9
GATT XVI:4 distinguished SCM 100
OECD Arrangement, compliance with, relevance SCM 79
subsidy available to property produced either within or outside subsidizing State SCM 150–2
“except as provided in the Agreement on Agriculture” (SCM 3.1 chapeau) SCM 124
“grant or maintain” (SCM 3.2) SCM 174–7
Illustrative List of Export Subsidies (SCM Annex I): *see* Illustrative List of Export Subsidies (SCM Annex I)
national treatment exceptions (GATT III:8(b)) and GATT 390, 419–22
national treatment (GATT III) and GATT 420–1
external debt: *see* Trade Debt and Finance Working Group (Doha 36)
- fair and equitable procedures (TRIPS 42)**
see also intellectual property rights enforcement (TRIPS Part III)
international minimum standard (TRIPS 1.3) and TRIPS 223
as procedural requirement TRIPS 223–4
requirement (TRIPS 41.2) TRIPS 218
“right holders” TRIPS 218, 222
- fees and formalities connected with importation and exportation**
“limited . . . to the approximate cost of services rendered” (GATT VIII:1(a))
ad valorem charge GATT 499–500, 506
bidding/auctioning and GATT 502–3
bonding requirements GATT 501
fiscal charge GATT 500
GATT practice GATT 505
IMF obligations and GATT 507
Schedules of Concessions (GATT II), recording of changes (GATT II:1(b)) and GATT 506
Working Party Reports on Accession, inclusion of commitment regarding conformity GATT 500, 504
- film (GATT IV):** *see* cinematograph film (GATT IV)
- final meeting (9 December 2004)** GATT 89
- Financial Services, Committee on Trade in**
establishment WTO 97, GATS 208
responsibilities GATS 208
- financial services (GATS)** GATS 41, 167–8
Annex, limitations as aid to interpretation of another GATS annex GATS 240
SCM Agreement GATS 241
- Food Aid Convention (1999)**
see also economic integration (GATS V); international food aid (AG 10.4); NFIDC, implementation (AG 16)
extension and renegotiation AG 131, 154 n. 222, 216
legal status AG 131
as replacement for 1986 Convention AG 131
- “forum for negotiations” (WTO III:2)** WTO 31–9
“built-in agenda” (Singapore) WTO 31
Doha Ministerial Conference (WTO IV:1) WTO 38–9
Geneva Ministerial Conference recommendations WTO 32
- freedom of transit (GATT V)**
“date of this Agreement” (GATT XXVI:1) and GATT 444
GATT V:5 and V:6 compared GATT 439
GATT practice GATT 446
“no distinction shall be made” (GATT V:2) GATT 436–8
preparatory work (VCLT 32) GATT 432–3
“products which have been in transit” (GATT V:6) GATT 440–3
ordinary meaning GATT 440
“there shall be freedom of transit” (GATT V:2) GATT 434–5
ordinary meaning GATT 434
“traffic in transit” (GATT V:1) GATT 432–3
Barcelona Convention and Statute on Freedom Transit (1921) as basis GATT 433
transshipment and GATT 434–5
- GATS Agreement** *see also* Accountancy Sector, Disciplines on Domestic Regulation (1998); balance of payments, safeguard restrictions (GATS XII); business practices (GATS IX); developing countries (GATS IV); disclosure of confidential information (GATS IIIbis); dispute settlement and enforcement (GATS XXIII); domestic regulation (GATS VI); e-commerce (in chronological order of developments); economic integration (GATS V); emergency safeguard measures (GATS X); financial services (GATS); General Exceptions (GATS XIV) (general); General Exceptions (GATS XIV(a)), measures necessary to protect public morals or maintain public order; market access (GATS XVI); MFN treatment (GATS II); monopolies and exclusive service providers (GATS VIII); national treatment, services and service suppliers (GATS XVII); progressive liberalization (GATS XIX); progressive liberalization (GATS XIX), decisions and agreements relating to; progressive liberalization negotiations (GATS XIX:3 and Doha 15); recognition of qualifications (GATS VII); Schedules of Specific Commitments (GATS XX); telecommunications (GATS); telecommunications, GATS Annex on Basic Telecommunications; telecommunications, GATS XVIII Reference Paper on Basic Telecommunications; “trade in services” (GATS 1:2); transparency (GATS preamble/III); Working Party on GATS Rules
commercial presence (GATS 1:2(c)) GATS 22, 148
“commercial presence” (GATS XXVIII(d)) GATS 227
disclosure of confidential information (GATS IIIbis) GATS 48
Electronic Commerce Work Programme (Doha 34) and GATS 44
GATT 1994 overlap GATT 419, 427–8, **TRIMs** 8 n. 12, GATS 24–9
Institutional Arrangements, Marrakesh Ministerial Decision GATS 220
object and purpose (preamble)
balance of rights and obligations GATS 3
progressive liberalization, technological developments and GATS 3–5
security and predictability GATS 1–2
transparency GATS 1–2
“sector” (GATS XXVIII(e)) GATS 228–9
“supply of a service” (GATS XXVIII(b)) GATS 225–6
- GATT 1947/WTO continuity**
allocation of functions (GATT 1994 2(b)) GATT 14–15
Assets, Liabilities, Records, Staff and Functions from GATT to the WTO, Agreement on (1994) WTO 195, 267
authentic texts (GATT 1994 2(b)), difficulties in preparation GATT 16–18
decisions, procedures and customary practices under GATT 1947 (WTO XVI:1)/provisions of legal instruments in force under GATT 1947 (GATT 1994 1(b)) (GATT *acquis*) 1.273–83, 2.407: *see also* under GATT practice under individual headings
accession process (Secretariat Technical Note) WTO 274
decision-making by consensus (GATT IX:1) and WTO 273
dispute settlement, commitment to adhere to (DSU 3.1) DSU 40, 278
joint decisions, limitation to WTO 276

- (*cont.*)
- as means of ensuring continuity WTO 275
 - WTO XVI:1 and GATT 1994 1(b) distinguished WTO 282
 - “decisions” (WTO XVI:1/GATT 1(b)(iv)), classification as
 - see also* legal status of panel reports bilateral agreements WTO 276
 - Enabling Clause (EC) GATT 12
 - GATT 1947 Council decisions WTO 278
 - GATT Council Understanding on tax legislation (1981) SCM 99–100
 - panel reports GATT 169
 - panel reports (adopted) WTO 275, 279, GATT 9, 169 n. 240, 608 n. 868, SCM 100, DSU 820–1
 - panel reports (unadopted) WTO 279, GATT 608 n. 868, SCM 99–100, DSU 1148 n. 1802
 - panel reports (unappealed) WTO 281, GATT 1041, DSU 822, 892
 - SCM Code WTO 277
 - GATT 1994 as distinct agreement (WTO II:4) WTO 27
 - “legal instruments” (GATT 1994 1(b)) SCM 99–100
 - accession protocols (GATT 1994 1(b)(ii)) GATT 3, 6
 - decisions on GATT 1947 waivers WTO 206–8, GATT 7–8
 - Understanding in Respect of Waivers of Obligations WTO 207, GATT 8
 - as integral part of WTO Agreement WTO 20, GATT 1–13
 - “protocols and certifications relating to tariff concessions” (GATT 1994 1(b)(i) and 1(d)) GATT 4–5
 - procedural and institutional duplication, avoidance WTO 261
 - transitional arrangements WTO 261–3
 - GATT practice WTO 263
 - Preparatory Committee decisions concerning WTO 261
 - withdrawal or termination of agreements associated with GATT 1947 WTO 262
 - WTO preamble WTO 3
 - GATT
 - acceptance, entry into force and registration (GATT XXVI), GATT practice GATT 1069
 - accession (GATT XXXIII), GATT practice GATT 1092
 - amendments (GATT XXX), GATT practice GATT 1089
 - annexes as integral part of agreement (GATT XXXIV) GATT 1093
 - authentic texts (GATT XXVI:3)
 - GATT 1994 2(b) GATT 16–18
 - GATT practice GATT 1067
 - commitments (GATT XXXVII), GATT practice GATT 1112
 - contracting parties (GATT XXXII), GATT practice GATT 1091
 - “date of this agreement” (GATT XXVI:1) GATT 1063–6
 - GATT II:1(b), II:1(c) and II:6(a) (Marrakesh Protocol) and GATT 153–7
 - GATT V and GATT 444
 - GATT practice GATT 1066
 - GATT practice GATT 1069–70
 - provisional application GATT 1070
 - non-applicability (GATT XXXV), GATT practice WTO 259, GATT 1094
 - object and purpose (GATT I:1)
 - expansion of trade in goods and services GATT 21
 - non-discrimination GATT 24–6, 50
 - raising standards of living GATT 20
 - principles and objectives (GATT XXXVI), GATT practice GATT 1110
 - responsibility of Member for compliance by regional and local governments and authorities (GATT XXIV:12), *see also* RTAs (GATT XXIV:5)
 - withdrawal (GATT XXXI), GATT practice GATT 1090
 - GATT exceptions, applicability (TRIMs 3) TRIMs 20–1**
 - GATT Subsidies Code**, limited nature of provisions SCM 702
 - General Council (WTO IV:2)**
 - as DSB: *see* DSB
 - functions
 - budget WTO 71
 - cooperation agreements with intergovernmental organizations WTO 71
 - cooperation agreements with non-governmental organizations WTO 71
 - financial regulations WTO 71
 - guidance of councils established under WTO IV:5 WTO 91
 - requests for extension of transition periods (TRIMs 5.3) and TRIMs 32–5
 - interpretation of WTO Agreement WTO 197–202
 - staff regulations WTO 71
 - guidelines for the appointment of officers to WTO bodies (1995/2002) WTO 73
 - as highest-level decision-making body WTO 70
 - membership WTO 70
 - Ministerial Conference, authority to act of behalf of WTO 70
 - observer status (applicants for accession) SG 300
 - observer status (intergovernmental organizations)
 - ad hoc status WTO 163
 - Observer Status for International Intergovernmental Organizations in the WTO Guidelines WTO 164
 - permanent status WTO 163–4
 - observer status (NGOs) WTO 167
 - reporting procedures
 - action by General Council and sectoral councils WTO 75
 - Ministerial Conference overview WTO 75
 - Plurilateral Trade Agreements Committees WTO 75
 - sectoral councils and subsidiary bodies WTO 75
 - rules of procedure
 - adoption WTO 72
 - amendment WTO 72
 - General Exceptions (GATS XIV) (general)**
 - arbitrary or unjustifiable discrimination, exclusion (GATS XIV chapeau) GATS 78
 - determination by reference to context GATS 80
 - Decision on Trade in Services and the Environment GATS 77
 - electronic commerce and GATS 76
 - GATT XX jurisprudence, relevance GATS 74
 - order of analysis/freedom to choose issues to address GATS 79
 - two-step analysis (justification under paras. (a)–(d)/compliance with chapeau) GATS 75
 - General Exceptions (GATS XIV(a)), measures necessary to protect public morals or maintain public order**
 - “a genuine and sufficiently serious threat . . . to one of the fundamental interests of society” (GATS XIV footnote 5) GATS 82, 84–5
 - balance between restrictive effect on international trade and “necessity” GATS 88
 - either/or nature of requirement GATS 81
 - Member’s right to determine level of desired protection GATS 83–4
 - “necessary” GATS 81, 86–90
 - burden of proof GATS 91–2
 - public morals exception (GATT XX(a)) compared GATS 74, 83
 - “reasonably available” alternative WTO-consistent measure GATT 928–32
 - General Exceptions (GATT XX) (general)**
 - applicability to GATT as a whole (chapeau) GATT 844, 860
 - burden of proof GATT 852–4, 888, 912
 - chapeau and paras. a–j distinguished GATT 852–3
 - SPS distinguished GATT 854
 - “countries” GATT 860 n. 1180
 - evaluation of scientific evidence GATT 900–3
 - divergence of expert views GATT 901
 - SPS 2.2 requirements distinguished GATT 854

obligation to comply with domestic legislation, relevance GATT 845–7	burden of proof GATT 912
limited and conditional nature of exceptions GATT 856	GATT III:4 (regulatory discrimination) and GATT 386, 912
protocols of accession and GATT 951–5	“relating to” (GATT XX(g)) distinguished GATT 914 n. 1286
two-step analysis (justification under paras. (a)-(j)/compliance with chapeau) GATT 848, 856	“reasonably available” alternative WTO-consistent measure GATT 914–17, 928–32
General Exceptions (GATT XX), preamble/chapeau	balancing of factors GATT 930–1
applicability of GATT XX to GATT as a whole GATT 844, 860	“to secure compliance” GATT 927
arbitrary or unjustifiable discrimination, GATT XX measure as: <i>see</i> arbitrary or unjustifiable discrimination GATT XX measure as (GATT XX chapeau)	General Exceptions (GATT XX(g)), measures relating to the conservation of exhaustible natural resources
GATT practice GATT 878	“exhaustible natural resources”
good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) and GATT 857, DSU 1501	as evolutionary concept/intertemporal law WTO 2, GATT 935, GATS 5 n. 7, DSU 1596, 1618
preparatory work (VCLT 32) GATT 856	GATT practice GATT 936
purpose	GATT XI:2(a) distinguished GATT 635
balance between competing rights GATT 846, 856–7	living natural resources, whether WTO 2, GATT 935
prevention of abuses of exceptions GATT 855–6	sustainable development as objective WTO 2, 3
General Exceptions (GATT XX(a)), measures necessary to protect public morals	“full use of the resources of the world” distinguished WTO 3
accession protocol (China), applicability GATT 951–5	WTO Preamble as aid to interpretation WTO 2, 3
balance between restrictive effect on international trade and “necessity” GATT 886–7	GATT III:4 (regulatory discrimination) and GATT 384, 862–4
“necessary”	jurisdictional limitation, whether GATT 934
analysis as multi-step process GATT 882–4	“made effective in conjunction with”, as balance between conservation and domestic production/consumption GATT 944–8
burden of proof GATT 881	GATT practice GATT 948
“public morals” GATT 879–81	“relating to” GATT 851, 894, 914, 937–43, 939
General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health	GATT practice GATT 943
<i>see also</i> SPS Agreement	“necessary” (GATT XX(d)) distinguished GATT 914 n. 1286, 939
balance between restrictive effect on international trade and “necessity” GATT 909	“primarily aimed at” distinguished GATT 894, 921, 938–42
burden of proof GATT 853, 888	Geneva Ministerial Conference (Seventh)/closing summary (2009)
GATT III:4 (regulatory discrimination) and GATT 385	Doha Round/Work Programme, guidance WTO 60
GATT practice GATT 911	E-Commerce Work Programme WTO 37, 60
justification	Non-violation and Situation Complaints, Decision on WTO 60
compliance with GATT XX chapeau, need for GATT 910	WTO contribution to recovery, growth and development WTO 60
evidence of health risks, relevance GATT 385	Geneva Ministerial Conference (eighth) (2011) WTO 61
objective criteria, need for GATT 869	Geneva Ministerial Conference/Declaration (1998) WTO 54, 67
policy objective GATT 892–3	DSB: <i>see</i> DSB; Special Session for the negotiation of improvements to and clarifications of the DSU
“necessary” GATT 894–910	“forum for negotiations” (WTO III:2), recommendations relating to WTO 32
for achievement of legitimate objective GATT 895–9	Global E-Commerce Declaration (Geneva 20 May 1998) WTO 32, 54, 67
Member’s right to determine level of desired protection GATT 903	TPRM: <i>see</i> Trade Policy Review Mechanism (TPRM)
necessity of policy goal vs necessity of measure to achieve it GATT 894	geographical indications (TRIPS Part II Section 3) (GIs)
scientific data/risk assessment and GATT 900–3	<i>see also</i> trademarks (Paris Convention (PC)); wines and spirits
“preponderant” evidence GATT 901	additional protection for GIs (TRIPS 23)
“reasonably available” alternative WTO-consistent measure GATT 904–6	burden/standard of proof TRIPS 154
complimentary measures distinguished GATT 908	generic terms, exclusion TRIPS 152
“reasonably available” GATT 928	conflicts with later trademarks (TRIPS 22.3/23.2) TRIPS 158
SPS provisions distinguished SPS 5	“date of entry into force of the WTO Agreement” (TRIPS 24(3)) TRIPS 173
three-tier test GATT 888–91	“geographical indications” (TRIPS 22.1) TRIPS 151–2
constituent elements GATT 888	“in implementing this section” (TRIPS 24.3) TRIPS 171
General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements	“in respect of” (TRIPS 22.1) TRIPS 150
balance between restrictive effect on international trade and “necessity” GATT 22	“interested parties” (TRIPS 22.2) TRIPS 4, 155–6
burden of proof GATT 912	national treatment (TRIPS 1.3) and TRIPS 4, 155
GATT practice GATT 933	international negotiations: exceptions (TRIPS 24), Checklist of Questions TRIPS 170
intention to secure compliance with GATT GATT 912	“legal means” (TRIPS 22.2), freedom to choose method of implementation (TRIPS 1.1 and) TRIPS 9–10
“laws or regulations” GATT 922–6	“Members” (TRIPS 22.2) TRIPS 153–4
international rules, exclusion GATT 922–3	protected rights (TRIPS 16), potential for conflict TRIPS 159
“necessary” to secure compliance	“protection of GIs that existed in that Member” (TRIPS 24.3) TRIPS 172
balancing of factors GATT 914–20	registration of trademark (eligibility/validity)/right to use (TRIPS 24.5)
	as exception to GI protection TRIPS 174

- (*cont.*)
- “in this section” TRIPS 175
 - relationship TRIPS 174
 - right to object to registration of GI TRIPS 157
- Global Trust Fund (Doha Development Agenda) WTO 188**
- good faith engagement in dispute settlement procedures (DSU 3.10)**
- burden of proof and DSU 1276
 - complaints and counter-complaints as separate issues DSU 134–5
 - confidentiality and DSU 127
 - consultations and (DSU 4.3) DSU 105, 128, 132, 154–5
 - continuity of obligation throughout dispute settlement process DSU 130–2
 - correction of factual errors and DSU 124–5
 - development of arguments at earliest possible stage DSU 118–23
 - due process obligations and DSU 122, 345
 - establishment of new panel during preparation of preliminary rulings DSU 129
 - estoppel and DSU 110–12, 1705–7
 - implementation of DSB recommendation and rulings and DSU 105, 1276
 - interim review (DSU 15) and DSU 799
 - as limitation on right to bring action under DSU DSU 106–9
 - objective assessment obligation (DSU 11) SCM 696
 - presumption of DSU 103–5, 833
 - prompt challenge to deficient procedures SCM 196, DSU 113–14, 126
 - prompt presentation of clear claim DSU 123
 - prompt request for clarification of information DSU 119–20, 120, 306
 - prompt settlement of disputes (DSU 3) and DSU 115, 123
 - provision of information on request (DXU 13.1) and DSU 116–17
 - tactics and manoeuvres to avoid, exclusion DSU 113–15
- good faith (including *pacta sunt servanda* principle (VCLT 26))**
- abuse of rights/*abus de droit* and GATT 857, TRIPS 77, DSU 1501
 - balance of rights and obligations as objective (TRIPS 7) TRIPS 77
 - burden of proof/presumption of GATT 570 n. 805, DSU 387, 393, 1502, 1506, 1507
 - definition DSU 1501
 - evidence submitted by government SCM 250
 - “facts available”, right of resort to (AD 6.8/Annex II) and AD 559, 574
 - as fundamental rule of treaty interpretation/performance GATT 989–91, DSU 113, 1501, 1501–15, 1597, GPA 31–3
 - GATT XX and GATT 857, DSU 1501
 - as general principle of international law GATT 857, AD 575, SCM 196, DSU 387, 1594, 1597
 - as general principle of law GATT 857, AD 575, SCM 196, DSU 1594
 - seriousness of claim/need for diligence in presentation DSU 279
 - “shall be explored” (AD 15) AD 859
- good faith interpretation of treaty (VCLT 31(1)) DSU 1542–8**
- avoidance of legislation threatening prohibited conduct DSU 1544
 - as fundamental principle of GATT 989–91, DSU 113, 1501, 1501–15, 1545, GPA 31–3, 32
 - legitimate expectations, relevance DSU 1542
 - ordinary meaning of the text and DSU 1543
 - presumption of good faith and DSU 1546
- good offices, conciliation and mediation (DSU 5)**
- compulsory adjudication distinguished DSU 178
 - encouragement to use (WTO Director-General’s communication of 13 July 2001) DSU 179
 - mediation, request for in absence of dispute DSU 180–1
- government assistance to economic development (GATT XVIII)**
- balance of payments (GATT XII) and GATT 653, 754
 - BOP restrictions (GATT XII) distinguished GATT 754 n. 1029
 - dispute settlement (GATT XXIII), applicability to GATT 755–7
- government entity: see** Government Procurement Agreement (GPA), definitionsState responsibility as rule/general principle of international law (ILC Articles); responsibility for act or omission of
- Government Procurement Agreement**
- Schedules of Concessions (GPA)
 - as integral part of GPA (GPA XXIV:12) GPA 54
 - interpretation and clarification, VCLT as applicable law GPA 54
 - special or additional rules and procedures (GPA XXII:2) GPA 28
- Government Procurement Agreement (GPA)**
- see also* Government Procurement Committee
 - acceptance and entry into force (GPA XXIV:1) WTO 268
 - accession (GPA XXIV:2) WTO 255–6, GPA 37–8
 - amendments (GPA XXIV:9) WTO 219, 221
 - annual review (GPA XXIV:7(a)) GPA 48
 - consultations and dispute settlement (GPA XXII), non-violation claims (GPA XXII:2): GPA 29–36
 - definitions
 - “central government entities” (GPA: Appendix 1) GPA 6–13
 - “government procurement” (GPA I:1) GPA 5
 - “participate” (GPA VIII(c)) GPA 22
 - “purchases of services” (GPA I:1) GPA 4
 - elimination of discriminatory measures and practices (GPA XXIV:7 (c)) GPA 53
 - elimination of discriminatory measures and practices (GPA XXIV:7 (c)) GPA 53
 - entities not included in Appendix 1 (GPA I:3) GPA 17
 - error as to fact or situation, effect on validity of treaty (VCLT 48(1)) GPA 32, 34–6
 - “further negotiations with a view to improving the Agreement” (GPA XXIV:7(b)) GPA 49–52
 - provisionally agreed revised Agreement (2010) GPA 50–2
 - good faith (including *pacta sunt servanda* principle (VCLT 26)) and GATT 989–91, GPA 31–3
 - notifications by parties (GPA XXIV:5) GPA 16, 18–19, 25, 40–1
 - rectifications and modifications (GPA XXIV:6) GPA 42–7
 - “control” (GPA XXIV:6(b)) GPA 47
 - extension to new EU Members GPA 43, 46
 - Israel’s offset regime GPA 44–5
 - procedure GPA 42
 - reporting obligations (GPA XXIV:7) GPA 48
 - reservations (GPA XXIV:4) WTO 297, 300
 - rules of origin (GPA IV), statistical reporting (GPA XIX:5) and GPA 23
 - scope GPA 3
 - service contracts, expansion to cover (preamble) GPA 1–2
 - exclusion of purchases of services from SCM GPA 2
 - special and differential treatment for developing countries (GPA V) GPA 20
 - Tokyo Round Agreement on Government Procurement and (GPA XXIV:3) GPA 39
 - transitional arrangements (GPA XXIV:3) GPA 39
 - updating appendices and circulation (GPA I:1) GPA 14–15
 - withdrawal of entity following elimination of government control/privatization GPA 47
- government procurement (AIR 4), Air Committee discussion of AIR 21**
- Government Procurement Committee**
- see also* Government Procurement Agreement (GPA)
 - adoption of product classification system (GPA XIX:5) GPA 24
 - adoption of services classification system (GPA XIX:5) GPA 24
 - Circulation and Derestriction of Documents of Government Procurement Committee, Decision GPA 27
 - observer status (GPA XXI:1) GPA 26
 - reports WTO 158
- government procurement (GATS XIII)**
- “subsidy” (SCM 1) distinguished SCM 27, GATS 72

- Working Party on GATS Rules and GATS 73, 214
- government procurement, transparency (Doha 26)**, Working Group on Transparency in Government Procurement (Doha), establishment (Singapore Ministerial Conference) WTO 53, 66
- government purchases of R&D equipment, exclusion from SCM Agreement** SCM 343
- “green box” support**: *see* due restraint (AG 13) (“peace clause”)
- Gulf Cooperation Council (GCC) Customs Union, notification as RTA** GATT 78
- harmless error principle** AD 390–3, 456, 483, 827, DSU 311 n. 495, 1709
- harmonization of non-preferential rules of origin (RO 9)**: *see* rules of origin disciplines (RO 2) (transition period)
- harmonization of SPS measures (SPS 3)**
- measures based on international standards (SPS 3.1)
 - “based on” SPS 71–2
 - Codex Alimentarius and SPS 70
 - validity of OIE standards SPS 75
 - “where they exist” SPS 73–5
 - availability for some but not all diseases SPS 74
 - standard/powers of review (panel) SPS 73
 - measures which conform to international standards (SPS 3.2)
 - burden of proof SPS 82–4
 - “conform to” SPS 80–1, 92
 - incorporation into domestic law SPS 78
 - presumption of consistency with SPS/GATT (burden of proof) (SPS 3.2) SPS 32, 76, 78, 79
 - measures which result in a higher level of protection (SPS 3.3)
 - as autonomous right SPS 8, 77–8, 89, 94
 - limitations on SPS 90
 - “or as a consequence . . .” SPS 95
 - precautionary principle and SPS 91
 - presumption of consistency with SPS/GATT (burden of proof) (SPS 3.2) and SPS 79, 84, 88, 95, 300–2, 338
 - rational relationship between measure and available information SPS 96
 - risk assessment obligation (SPS 5) and SPS 95, 100, 178–80, 530
 - risk assessment, need for (SPS 5.1–5.3 and Annex A(4)): *see* risk assessment, need for (SPS 5.1–5.3); risk assessment (SPS Annex A(4)(4))
 - “scientific justification” (SPS 3.3) and SPS 141
 - as SPS object and purpose (SPS 3.1/preamble) SPS 3–5, 68–9, 71
- Harmonized System of Customs Classification (HS)**
- AIR and AIR 2, 15–16, 19
 - amendments to GATT 190–2
 - “as presented” GATT 123
 - as basis for AG Annex 1 AG 25
 - Explanatory and Chapter Notes, status GATT 126
 - implementation of HS changes GATT 190–2
 - interpretation of covered agreements (VCLT) and
 - as context for purposes of/ “rule of international law” (VCLT 31 (3)(c)) GATT 123, 124, 125–9, 128, 128–9, DSU 1593
 - “instrument in connection . . . with the conclusion of the treaty” (VCLT 31(2)(b)), whether DSU 1566, 1638
 - as supplementary means (VCLT 32) DSU 1638
 - modifications to Schedules and GATT 178
 - obligation to ensure conformity GATT 190–1
 - updating obligation GATT 171
- Havana Charter (GATT XXIX)**, GATT practice GATT 1088
- Headquarters Agreement (WTO–Switzerland) (1995)** WTO 193
- MOU (WTO–Switzerland) on WTO long-term housing needs (2008) WTO 194
- historical preferences (GATT I:2 and I:3)**
- Secretarial Note reviewing status at 18 December 1992 GATT 56
 - waiver in respect of GATT I:4 for South Africa and Zimbabwe GATT 57
- Honduras**, as developing country Member for purposes of SCM 27(2) (a) SCM 680
- Hong Kong**, ATC safeguard measures (ATC 6), TMB discussion ATC 30
- Hong Kong Ministerial Conference/Declaration (2005)**
- Decision on duty-free and quota-free market access for LDCs (DFQF) GATT 105–6
 - Doha Round/Work Programme, guidance WTO 59
 - e-Commerce (HK 46) WTO 36
 - facilitation and acceleration of LDC accession negotiations (HK 59) WTO 252
 - LDC temporary measures (TRIMs 5.1) **TRIMs** 28–9
- Hong Kong SAR**, as WTO member WTO 232
- Iceland**, Enabling Clause notifications, special treatment of least-developed countries GATT 79
- identification of specific measures (DSU 6.2) **TRIMs** 23**, AD 898, DSU 94, 209–301
- availability of public information regarding measure, relevance DSU 234
 - case-by-case approach DSU 209, 211, 220, 240
 - discretion in identifying, desirability DSU 200
 - establishment of existence of measures distinguished DSU 188
 - exclusion of measure included in request for establishment DSU 374
 - identification of each challenged measure DSU 189
 - identification of industry, need for DSU 233
 - identification of “measures” (DSU 4.4) distinguished DSU 157
 - identification of product, need for DSU 226–32
 - identification within narrative of request requirement DSU 222
 - “identify”, sufficiency of
 - “among others” DSU 224
 - expedited sunset review, treatment as subsidiary of closely related measure DSU 217
 - numbers of measures and places of promulgation DSU 216
 - reference to an EC Regulation or to the “EC regime” DSU 218, 237–8
 - reference to general measure DSU 211, 222, 223
 - reference to instruments implementing challenged measures DSU 214, 215
- identity with specific measure the subject of consultations, relevance SCM 202–3, DSU 142–5, 206
- “scope” of consultations and DSU 147
- inclusion of measure, sufficiency for inclusion in terms of reference (DSU 7) DSU 374
- inclusion of reference to WTO obligation DSU 185, 219
- jurisdictional issues distinguished DSU 200
- legal basis of claim distinguished DSU 220
- omission of measure
 - exclusion from terms of reference (DSU 7) DSU 375
 - good faith assumption that it was not being challenged DSU 213, 222
- ordinary meaning DSU 211, 237
- recommendations of panel/DSB (DSU 19.2), effect AD 954–5, DSU 353, 394
- “specific” DSU 235–40
- “attendant circumstances”, relevance DSU 240
 - preliminary ruling on DSU 236–7, 239–40, 344, 345
 - provided information in conjunction with introductory paragraph DSU 239
 - security and predictability of WTO obligations (DSU 3.2) and DSU 224
- substance of WTO obligation being violated, relevance DSU 185, 219

(*cont.*)

IF Trust Fund: *see* Integrated Framework for Trade-Related Technical Assistance to least-developed countries (IF)

ILC Articles, status as “rule” of international law, 17.1588, 17.1599–600: *see also* international law/ “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2))

Illustrative List of Export Subsidies (SCM Annex I)

export credit guarantee or insurance (item (j))

assessment of adequacy to cover SCM 623–6

as contextual guidance SCM 615–17

“export credit guarantee . . . programmes” SCM 618

“inadequate to cover” SCM 620

“long-term” SCM 620

“operating costs and losses” SCM 622

“premiums” SCM 619

export credits at rates below actual cost of funds so employed (item (k)) SCM 627–65

as affirmative defence under SCM 3.1(a) SCM 636, 647, 653

“benefit” (SCM 1.1(b)) and SCM 94–5

burden of proof SCM 627, 653–5, 656, 661

Commercial Interest Reference Rate (CIRR), relevance SCM 632–5

“export credit” SCM 628

“in the field of export credit terms” SCM 638

legislation as such SCM 662–4

“used to secure a material advantage” SCM 627, 630, 631

“material” SCM 631

offset of advantage, sufficiency to prohibit measure (items (e)–(i)) SCM 603

“provision . . . through government-mandated schemes . . . on terms *more favourable* . . .” (item (d)) SCM 602

relationship with SCM 3.1(a), determination by footnote 5 SCM 632

remission or deferral of direct taxes (item (e))

deferral not amounting to export subsidy (footnote 59) SCM 158

third and fourth sentences as remedies SCM 160

“safe haven” (international undertaking (item (k), second paragraph))

as affirmative defence under SCM 3.1(a) SCM 656

Canadian Policy Guideline SCM 652

“export credit practice” SCM 644–7

“in conformity” SCM 650–2

“interest rates provisions” SCM 648–9

legislation as such (mandatory/discretionary distinction) SCM 662–4

matching derogation, permissibility SCM 657–61

OECD Arrangement SCM 639–41, 642–3

qualification for inclusion under, requirements SCM 637

“successor undertaking” SCM 640–1

social welfare charges (item (e)) footnote 59, relevance SCM 97–8, 158–60

Illustrative List (TRIMs 2.2)

analysis of TRIMs status of measure (TRIMs 1) and **TRIMs 4**

local content requirements (Item 1) **TRIMs 4**

national treatment (GATT III:4) and: *see* national treatment

regulatory discrimination (GATT III:4) *see also under* TRIMs and Illustrative List

QRs (GATT XI:1) and GATT 409 n. 596, 425, 627–9, 646, **TRIMs 15–16**

tax and customs duty benefits (para. 1(a)) **TRIMs 10–11**

IMF/WTO relationship (WTO III:5)

see also World Bank/WTO relationship (WTO III:5)

Agreement (1996)

conclusion WTO 42–4, 162

as fulfilment of WTO mandate to cooperate as appropriate with IMF WTO 46

Members’ rights and obligations under IMF and WTO

Agreements, effect on WTO 46

conflict or inconsistency between, resolution WTO 46

observer status WTO 45

annual reports WTO 51

consultations and exchange of information, WTO panels and WTO 47

Declaration on Coherence in Global Economic Policymaking (1994)

adoption WTO 42

informal meetings on coherence issues at request of delegations or Director-General WTO 49

joint report on Coherence WTO 48

legal effect WTO 46, 307

exceptions to non-discriminatory administration of QRs (GATT XIV) and GATT 692

panel’s right to seek information from (DSU 13.1) DSU 753

implementation of DSB recommendations and rulings, surveillance (DSU 21)

see also “reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations); review of implementation of DSB rulings (DSU 21.5)

ad hoc procedural agreements, appointment of panellist DSU 1171

Article 22.6 panel’s right of review DSU 1176

as precedent DSU 1016

choice of means at authorities’ discretion (DSU 21.3), 17.972, 17.983–4:

see also “reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations), arbitrator’s limited mandate

good faith obligation, whether DSU 105

prompt compliance (DSU 21.1)

adoption of report, obligation to begin implementation following DSU 1004–5

“compliance” DSU 997–1000

flexibility DSU 1001–3

judicial economy and DSU 653

modification of underlying economic or social conditions distinguished DSU 997–1000

“recommendations and rulings” DSU 1006, 1148

review: *see* review of implementation of DSB rulings (DSU 21.5)

surveillance mechanisms DSU 985

suspension of WTO-inconsistent measure during “reasonable period of time”, need for DSU 1095–6

tables, Article 21.3(b) agreements DSU 1017

implementation of panel or AB recommendations (DSU 19.1)

see also implementation of DSB recommendations and rulings, surveillance (DSU 21); “reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)

“bring the measure into conformity with”, “measure” for purposes of DSU 966

choice of means at authorities’ discretion (DSU 21.3) DSU 1108–9

identification of specific measures (DSU 6.2), (DSU 6.2) and AD 954–5, DSU 353, 394

measure terminated in course of proceedings/no longer in existence DSU 931–40

recommendation to implement measure inconsistent with agreement, exclusion DSU 930, 931–2

mechanisms, absence DSU 985

panel’s decision not to make suggestions DSU 967–82

panel’s discretionary suggestions DSU 948–66, 986

legal effect DSU 986–7

subsequent proceedings/continuance of recommendations DSU 943–7, 1147

Import Licensing Committee

annual reports (LIC 7.4) **LIC 35, 47**

- establishment WTO 93
- procedural and institutional duplication, decision on avoidance of (2 May 1995) **LIC** 48
- rules of procedure (1995) WTO 94, **LIC** 34–5
- Understanding on Procedures for the Review of Notifications (1996) **LIC** 36
- import licensing procedures**
- see also* developing countries' economic development purposes/ financial and trade needs (**LIC** 1.2); notification obligations (**LIC** 1.4 and 5)
- conformity with GATT principles and obligations requirement (**LIC** Preamble and 1.2) **LIC** 1, 3
- continuity of terminology between 1979 and 1994 **LIC** **LIC** 7
- single undertaking principle, effect **LIC** 7
- export performance, relevance (**LIC** 3.5(j)) **LIC** 12–13, 30–1
- national treatment, regulatory discrimination (GATT III:4) and GATT 359, **TRIMs** 6
- neutrality in application and administration in a fair and equitable manner (**LIC** 1.3) **LIC** 12–13
- administration in a uniform, impartial and reasonable manner (GATT X:3(a)), equivalence GATT 594, **LIC** 12
- non-automatic import licensing (**LIC** 3)
- GATT II(1)(b) and **LIC** 32
- newcomer provision (**LIC** 3.5(j)) **LIC** 29
- small quantities, allocation in respect of (**LIC** 3.5(i)) **LIC** 29
- transparency and predictability requirement (**LIC** 3.5(a)) **LIC** 23–4
- over-quota trade, applicability to **LIC** 1, 3
- rules and procedures distinguished **LIC** 4–6, 13
- speculation in licences (**LIC** 3.5(h) and (j)) **LIC** 27
- tariff quota procedures, applicability to **LIC** 2
- use of “restriction” in **LIC** 3.2 and 3.3, relevance **LIC** 2
- trade-restrictive or trade-distortive effects, avoidance (**LIC** 1.2 and 3.2) **LIC** 3, 9
- transparency and predictability requirement (**LIC** Preamble) **LIC** 1, 15
- frequent changes to rules and **LIC** 15
- non-automatic import licensing (**LIC** 3) and **LIC** 23–4
- Import Licensing Procedures Agreement (LIC)**
- relationship with 1979 Agreement **LIC** 48
- reservations (**LIC** 8.1) WTO 297, **LIC** 50–1
- review of implementation and operation (**LIC** 7)
- annual questionnaire (**LIC** 7.3), replies to **LIC** 42–6
- biennial reviews (**LIC** 7.1 and 7.2) **LIC** 41
- procedures for **LIC** 42
- termination **LIC** 49
- income tax**, marketing cost, whether AG 108
- Independent Entity (IE) (PSI 4)**
- annual reports **PSI** 19
- constitution (IFIA/ICC) (PSI 4(a)) **PSI** 17
- cost of proceedings **PSI** 20, 21
- exporters' reluctance to use **PSI** 20
- immunities **PSI** 18
- independent review procedures
- 2005 (Alcatel – SGS) **PSI** 21
- 2006 (Alcatel – SGS) **PSI** 14–15, 21
- list of experts (PSI 4(b)) **PSI** 19
- rules of procedure WTO 95, **PSI** 18
- status including structure and functions (General Council Decision of 13 and 15 December 1995) **PSI** 18
- Informal Group on Anti-Circumvention, ADP Committee Decision on (April 1997)** AD 1017–18
- information or technical advice, panel's right to seek (DSU 13.1/SPS 11.2)**
- see also* adverse inferences from party's refusal to provide information, panel's right to draw (DSU 13); expert evidence (DSU 13.2/SPS 11.2)
- burden of proof and DSU 556
- comprehensive nature of panel's authority DSU 736–7, 738, 766
- confidentiality considerations SG 113–15, DSU 764, 1334
- discretion not to seek DSU 607, 736, 754, 756–60
- discretion to accept or reject requested information or advice DSU 736, 1334
- discretion to accept or reject unrequested information or advice DSU 738–42
- “from any individual or body” DSU 736–60
- good faith obligation (DSU 3.10) and DSU 116–17
- IGOs DSU 753–5
- table showing exercise of right DSU 755
- non-parties DSU 752
- parties DSU 632, 746–51
- frequency of exercise DSU 746
- panel's right to evaluate source of information or advice DSU 736
- panel's rights, to assess facts SPS 39
- prompt and full response requirement DSU 761–3
- role/value SPS 395–6
- Information Technology Agreement (Singapore)** GATT 193–9
- “instrument . . . in connection with the conclusion of the threat” (VCLT 31(2)(b)), whether DSU 1567
- “products” /product coverage GATT 199
- information technology products**
- Committee of Participants on the Expansion of Trade in Information Technology Products
- establishment GATT 197
- Non-Tariff Measures Work Programme GATT 198
- observer status GATT 197 n. 289
- rules of procedure (1997) GATT 197
- Declaration on Trade in Information Technology Products (Singapore) WTO 53, 67, GATT 193–9
- Information Technology Products, Committee of Participants on the Expansion of Trade in** WTO 93
- Infrastructure Contract (WTO–Switzerland) (1995)** WTO 193
- injury: see** determination of injury (AD 3); determination of injury (SCM 15); safeguard measures, conditions (SG 2); transitional safeguards (ATC 6); serious damage or actual threat of (ATC 6.2)
- Institute for Training and Technical Cooperation**
- DSU 1357
- Integrated Data Base (IDB)** WTO 135, GATT 185–6
- Integrated Framework for Trade-Related Technical Assistance to least-developed countries (IF)** GATT 1102–6
- Aid for Trade GATT 1106
- endorsement as viable model WTO 109
- Enhanced IF
- role GATT 1105
- Task Force (2005–6) GATT 1104
- establishment GATT 1102
- mandate GATT 1102
- objectives GATT 1103
- Pilot Scheme WTO 110
- review of Integrated Framework WTO 110, GATT 1103
- Working Group work programme (2004) WTO 113
- integration process (ATC 2): see** quantitative restrictions (ATC 2) (integration process)
- intellectual property conventions (TRIPS 2)**
- assimilation to nationals “of the Union” (PC 3) TRIPS 24
- continuing obligations under (TRIPS 2.2) TRIPS 33
- intellectual property rights, availability, scope and use (TRIPS Part II): *see* trademarks (TRIPS Part II Section 2)
- national treatment (PC 2(1))/TRIPS 3.1 TRIPS 20–2
- trademark registration (PC): *see* trademarks (Paris Convention (PC))
- intellectual property rights, acquisition and maintenance including inter partes procedures**

- (*cont.*)
- inter partes* proceedings (TRIPS Part IV) and enforcement (TRIPS Part III) distinguished TRIPS 219, 278
- unwarranted curtailment, prohibition (TRIPS 62.2), term of protection (TRIPS 33) as distinct and cumulative provision TRIPS 8, 276
- intellectual property rights, availability, scope and use (TRIPS Part II)**
- acquisition and maintenance (TRIPS 62), unwarranted curtailment, prohibition (TRIPS 62.2), freedom to choose method of implementation (TRIPS 1.1) and TRIPS 8
- exclusive marketing rights obligations (TRIPS 70.9) TRIPS 314–15
- developing countries’ right to delay application (TRIPS 65.2) TRIPS 293
- least-developed countries, waiver TRIPS 316
- exhaustion (TRIPS 6), Declaration on the TRIPS Agreement and Public Health (2001) and TRIPS 76
- existing subject matter, applicability to (TRIPS 70)
- “acts which occurred before date” (TRIPS 70.1) and “existing at the date” (TRIPS 70.2) distinguished TRIPS 307, 311, DSU 1524
- “acts” (TRIPS 70.1) TRIPS 308–10, DSU 1524
- freedom to choose method of implementation (TRIPS 1.1) and TRIPS 8
- obligation to provide means for filing applications relating to delayed application of TRIPS 27 (TRIPS 70.8) TRIPS 312–13
- patent protection (TRIPS 27) and TRIPS 186
- “subject matter” (TRIPS 70.2) TRIPS 311
- term of protection (TRIPS 33) and TRIPS 317
- transitional arrangements (TRIPS 66) and TRIPS 292–3
- “intellectual property” (TRIPS 1.2) TRIPS 12–14, 216
- categories covered TRIPS 12
- as private rights (preamble) TRIPS 4
- MFN treatment (TRIPS 4), “less favourable treatment”, applicability to all trademark owners requirement TRIPS 65–6
- national treatment (TRIPS 3): *see* national treatment (TRIPS 3)
- intellectual property rights, enforcement (TRIPS Part III)**
- “acts of infringement” (TRIPS 41.1) TRIPS 217
- criminal procedures: *see* criminal procedures (TRIPS 61)
- due process: *see* fair and equitable procedures (TRIPS 42)
- “intellectual property rights” (TRIPS 41/TRIPS 1.2) TRIPS 216
- inter partes* proceedings (TRIPS Part IV) distinguished TRIPS 219, 278
- “other remedies” (TRIPS 46)
- 16.229–31: *see also* border measures special measures related to enforcement of (TRIPS Part III Section 4), destruction or disposal of infringing goods (TRIPS 59), “principles set out in Article 46”
- exhaustiveness of TRIPS 46 list TRIPS 231
- preparatory work in case of ambiguity (VCLT 32(a)) TRIPS 229
- proportionality requirement TRIPS 230
- “such request”, ambiguity TRIPS 229
- rights not protected by Berne Convention and TRIPS 221
- “shall have the authority” (TRIPS 43–8) TRIPS 226
- Inter-Agency Panel on Short-Term Difficulties in Financing Normal Levels of Commercial Import of Basic Foodstuffs**
- see also* NFIDC implementation (AG 16)
- establishment AG 157–8, 167, 219
- recommendations (2002) AG 221
- report (2002) AG 221
- terms of reference AG 157–8, 220
- intergovernmental organizations (IGOS)**, panel’s right to seek information from (DSU 13.1) DSU 753–5
- interim review (DSU 15)**
- additional comments following relevant AB report DSU 817
- additional meeting DSU 806–7
- changes to report in absence of request DSU 804–5
- correction of non-substantive error DSU 805
- confidentiality of reports DSU 813–16, 913, 918
- contested factual issues DSU 776–7
- failure to inform panel of errors DSU 786–8
- good faith (DSU 3.10) and DSU 799
- inclusion of discussion of arguments (DSU 15.3) DSU 808
- multiple complainants/separate reports DSU 809–11
- on a particular issue DSU 812
- new arguments DSU 802–3
- new evidence DSU 626, 789–95
- “precise aspects of the interim report”, limitation to (DSU 15.2) DSU 778–81
- reargument of case, exclusion DSU 782–5
- reconsideration of evidence, arguments and findings DSU 796–8
- termination of measures following, effect DSU 384 n. 623
- third party rights DSU 480, 774–5
- timeliness of objections to terms of reference DSU 367, 799–801
- timing of comments DSU 772–3
- translation issues DSU 818–19
- International Bovine Meat Agreement**
- acceptance provisions (IBM VI) WTO 270
- amendments (IBM VI:4) WTO 220
- reservations (IBM VI:1(b)) WTO 302
- termination/deletion from WTO Annex IV (Plurilateral Agreements) (IBM VI) WTO 161, 218, 257, 270
- International Dairy Agreement (IDA)**
- acceptance provisions (IDA VIII) WTO 270
- amendments (ID VIII:4) WTO 220
- reservations (IDA VIII:1(b)) WTO 302
- International Dairy Council**, termination WTO 161
- international food aid (AG 10.4)**
- 3.129–31: *see also* NFIDC implementation (AG 16)
- Food Aid Convention (1999) AG 131
- relationship with AG 10.1 AG 129
- international law/ “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2))**
- 17.1587–605: *see also* customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2)
- burden of proof: *see* burden of proof (general rules)
- compétence de la compétence* DSU 366, 1327, 1702
- consistency in jurisprudence DSU 53, 823, 835, 903, 1701
- constituent elements (“rules” / “relevant” / “applicable between the parties”) DSU 1598, 1604
- countermeasures: *see* countermeasures (general principles)
- customary international law as DSU 1598
- determination of “ordinary meaning” (VCLT 31(1)) and DSU 1594–6
- erga omnes* obligations DSU 1699–700
- estoppel/acquiescence, 17.112, 17.1703–7: *see also* estoppel
- ex aequo et bono* jurisdiction DSU 1708
- general principles of law/international law as DSU 1594
- good faith as GATT 857, AD 575, SCM 196, DSU 387, 1594, 1597
- harmless error principle AD 390–3, 456, 483, 827, DSU 311 n. 495, 1709
- Harmonized System as DSU 1593
- ILC Articles on State Responsibility, whether, 17.1588, 17.1599–600: *see also* State responsibility as rule/general principle of international law (ILC Articles)
- in dubio mitius* principle DSU 1713 n. 2689, 1734–5
- jura novit curia* DSU 324, 326, 328, 416, 574–5, 1710
- legislation as such and DSU 339

- lex specialis*: see *lex specialis*/presumption against treaty conflicts
non-retroactivity of treaties (VCLT 28) and DSU 1601–4
precautionary principle as SPS 6–7, DSU 1594, 1730–1
relevance when unsupported by the text DSU 1320, 1674
rules applicable between WTO Members as “parties” DSU 1595, 1602–4, 1602 n. 2483, 1740
 rule applicable only to some WTO Members, whether DSU 1590–1, 1595, 1740
“sources of international law” (ICJ Statute 38(1)) as DSU 1598
sovereignty DSU 1605, 1733–43
State responsibility: see State responsibility as rule/general principle of international law (ILC Articles)
as supplementary means/ “taken into account” DSU 1587, 1596, 1600, 1604
terms in Schedules as DSU 1592
treaties concluded by other parties as DSU 1596, 1602 n. 2483
treaties concluded by parties as DSU 1589
treaties concluded prior to treaty being interpreted DSU 1601–4
treaty interpretation and treaty application distinguished DSU 1590
- International Meat Council**, termination WTO 161
- international minimum standard** (TRIPS 1.3), procedural rights (TRIPS 42) and TRIPS 223
- International Plant Protection Convention Secretariat**, provision of information to SPS Committee SPS 2
- “international standards . . . as a basis for technical regulation”** (TBT 2.4/Annex 1)
 see also technical regulations, standards and conformity assessment procedures, information and assistance (TBT 10–12); technical regulations and standards, conformity with (TBT 5–9); technical regulations (TBT 2/Annex 1.1)
 applicability to pre-existing measures TBT 5, 49–51
 participation in preparation of international standards (TBT 2.6) and TBT 74
 unilateral measures under MFA (TBT 2.5) TBT 72
burden of proof, effectiveness of standard TBT 53
burden of proof (general rules), *onus probandi actori incumbit* TBT 52–3
explanation of justification on request (TBT 2.5)
 “applying” TBT 72–3
 as mandatory obligation TBT 73
 “upon the request” TBT 71
“fulfilment of legitimate objective” (TBT 2.2)
 “ineffective or inappropriate means” (including distinction between) TBT 67–9
 “legitimate objective”, qualification as (including TBT 2.2 provisions) TBT 70
“international standard”
 consensus, relevance TBT 56–8, 152–3
 elements TBT 54
 ISO/IEC Guide 2 TBT 54–5, 154
 “standard” (Annex 1.2) distinguished TBT 54–5, 167
ISO/IEC Guide/Annex 1, relationship TBT 152–4
obligation to participate in preparation of (TBT 2.6) TBT 74–5
 TBT Committee decision on principles relating to TBT 75
practice of international standard-setting bodies distinguished TBT 58
“relevant” TBT 59–60
“relevant parts of them” TBT 65
TBT objectives (TBT preamble) and TBT 5
technical regulations distinguished TBT 6
use “as a basis for” GATT 48, 53, 66
- “international standards . . . as a basis for technical regulation”** (TBT 2.4/Annex)
 “as a basis for” TBT 62–6
 “shall use them” TBT 61
- International Telecommunications Union (ITU)**
 WTO Cooperation Agreement GATS 221
 WTO, Cooperation Agreement with WTO 162
- interpretation of covered agreements, ordinary meaning**: see ordinary meaning of terms used in covered agreements
- interpretation of covered agreements, responsibility for authoritative** (WTO IX:2)
 “authoritative” interpretation DSU 1586
 interpretation in dispute settlement distinguished WTO 200
 “subsequent practice” (VCLT 31(3)(b)) and DSU 1586
General Council (WTO IV:2)/Ministerial Conference (DSU 3.9) WTO 197–202, DSU 639
 request to (1999) WTO 62, 197–202, 198
role of dispute settlement system to “clarify the existing provisions” (DSU 3.2) and DSU 49, 51, 52–3, 57, 299, 386, 529, 630, 639, 661, 703
Secretariat role WTO 201
- interpretation of covered agreements, rules relating to including VCLT provisions**
 see also Schedules of Concessions (GATT II); interpretation and clarification
AD 6.8/DSU 21.3(c) DSU 1035
AG 9.1(c)/SCM Illustrative List items (c), (d) and (k) SCM 601
“any subsequent agreement . . . regarding its interpretation or application” (VCLT 31(3)(a)) DSU 1575–80
definition (ILC Articles on the Law of Treaties) DSU 1578–9
Doha Declaration, whether DSU 1580
multilateral interpretation (WTO IX:2) as WTO 202, DSU 1578
NAFTA DSU 1576
Report of Working Party on DRC Accession GATT 500
SCM Code (Tokyo Round) WTO 277, DSU 1575
waiver as WTO 211
“any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)) AG 40, DSU 1581–6
ADP recommendations as evidence of AD 222 n. 309
“authoritative” interpretation (WTO IX:2) and DSU 1586
“common practice” DSU 1584–5
discernible pattern requirements GATS 182, DSU 1582
failure to protest a customs classification practice, effect GATT 130
GATT decisions including adoption of panel reports WTO 279–80, SCM 100, DSU 1581
panel report (adopted) WTO 197, DSU 821, 1581
Scheduling Guidelines (1993) GATS 182
Scheduling Guidelines (2001) GATS 183
scheduling practice AG 42
SCM Code (Tokyo Round) WTO 277
balance between flexibility/certainty of the law DSU 42
“circumstances of conclusion” (VCLT 32) GATT 131
classification as exception, relevance GATT 81
classification for purpose of allocating burden of proof, relevance GATT 80
consistency with article/agreement as a whole GATT 342, 345, AD 530 n. 719
context (VCLT 31(2))
 see also under as a whole/holistic/harmonious exercise below
 “any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)) GATS 181, 186–7, TRIPS 101, DSU 1556–65
 minor exceptions doctrine TBT 100–1, DSU 1560–1
 “any instrument . . . made by one or more of the parties in connection with the conclusion of the treaty” (VCLT 31(2)(b)) DSU 1566–7
Harmonized System as DSU 1566

- (cont.)
- Information Technology Agreement, whether “instrument” DSU 1567
 - Document W/120 GATS 185
 - Harmonized System as GATT 124, 125–9, DSU 1645–6
 - jurisprudence, relevance DSU 821
 - other articles in same agreement AG 23, SCM 356
 - DSU 23.1 as context for DSU 23.2 DSU 1299, 1307
 - SG 3.1 as context for SG 4.2(a) SG 92
 - VAL 1 (“primary basis”) as context for “examine” (VAL 1.2 (a)) VAL 17–18
 - prior practice, need for consistency DSU 1646
 - Scheduling Guidelines (1993) GATS 181
 - Scheduling Guidelines (2001) GATS 184
 - title GATT 441, AG 31
 - customary international law: *see* customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2)
 - customary international trade usage as applicable law AG 69
 - dictionaries GATT 32, 52, 84, 124, 356, 357, 774, 803, 819, AG 41, 57, 85, 87, 108, 137, SPS 231, AD 102, 224, 259, 305, 388, 530 n. 719, 550, 557, 573, 580, 857, VAL 1–2, **RO** 12, SCM 27, 136, 221–2, 226, 227, 356, 451, 622, SG 100, 261 n. 423, GATS 109, DSU 248 n. 357, 886, 1029, 1114, 1286–7, 1289, 1305, 1660, 1694
 - cautious approach to SCM 43, 223, 224, 227, 331, DSU 1288, 1552
 - different language in same agreement SPS 81, SCM 237, 339–40, 631
 - GATT III:2, first and second sentences GATT 306–7
 - SCM 4.10 and 4.11/SCM 7.9 SCM 251–2
 - SCM 5(c) and 6.3(c)/SCM 15.2 and 15.5 SCM 303
 - effectiveness principle (*ut res magis valeat quam pereat/effet utile*) GATT 805, AG 71, AD 101, 742–3, 878, 931, **LIC** 7, SCM 221 n. 343, DSU 1611–17
 - meaning to be attributed to every word and phrase WTO 19, GATT 218, 226, 862, SPS 29, 493, AD 598, 1000, SCM 246, 309, 646, SG 1, 7, GATS 25, DSU 1279, 1282, 1611–13
 - meaning to be attributed to omissions DSU 1614–17
 - multiple authentic languages (VCLT 33) and DSU 1659 n. 2594
 - presumption of meaning SCM 237
 - evolutionary approach/intertemporal law WTO 2, GATT 935, GATS 3–5, DSU 42, 1596, 1618
 - footnotes to treaty as aid/integral part of treaty GATT 470, AG 38, 66, SPS 95, 470, AD 961, SCM 228–30, 236, 372, TRIPS 17, 57–8, DSU 1290–1, 1698
 - good faith interpretation: *see* good faith (including *pacta sunt servanda* principle (VCLT 26)); good faith interpretation of treaty (VCLT 31(1))
 - grammar, respect for AG 37
 - “or” AD 247, 250
 - semi-colons AD 247, 250
 - use of plural form, relevance AD 327, 625 n. 859, 703
 - hierarchical relationship between elements in VC 31, whether DSU 1599
 - ILC draft articles SCM 221, DSU 1286
 - in dubio mitius* principle, as supplementary means of interpretation DSU 1713 n. 2689, 1734–5
 - international tax law principles SCM 610
 - interpretative notes (*Ad Articles*) GATT 236, 282, 307
 - legitimate expectations (including GATT II:5 provisions) WTO 279, GATT 121–3, 132, 162, DSU 1542
 - panel reports and GATT 169, 169 n. 240, DSU 820
 - multiple authentic languages (VCLT 33): *see* multiple authentic languages interpretation (VCLT 33)
 - multiple permissible interpretations AD 928–34
 - compliance with one permissible interpretation, sufficiency AD 928, 935–6
 - narrow/broad interpretation GATT 241, 260, AD 66
 - object and purpose GATT 50, 119, 237, 290, 389, 672, 797, SPS 134
 - AD 2.4 AD 80, 102
 - AD as a whole AD 735
 - AG AG 1–5
 - ATC ATC 1
 - caution in use of DSU 1568–73
 - GATT I:1 GATT 50
 - GATT III:2 GATT 290, 292–4
 - GATT XX(g) GATT 940
 - GATT XIII:2 GATT 655, 659
 - preamble as evidence of GATT 86, AG 3, TBT 1–7, SCM 4, SG 1, TRIPS 1–3
 - SCM 1.1(a)(1) SCM 5–6, 8, 44
 - SG SG 266
 - SG/GATT XIX GATT 798–9, SG 227
 - TBT 2.8 TBT 80
 - TRIPS TRIPS 1, 77, 310
 - “ordinary meaning . . . in their context . . . in light of object and purpose” (VCLT 31(1)) GATT 851, AG 37–9, 70
 - other treaties
 - MFA (omission of provision from ATC) ATC 77–8
 - Treaty of Rome (1958) GATT 206
 - parties’ common intentions (VCLT 31(1)) GATT 119, 121, GATS 177, DSU 1536, 1542, 1573, 1604
 - ordinary meaning as aid in establishing AD 934
 - party’s intention in respect of own schedule, government document as evidence of GATS 190
 - preamble as reflection of GATT 858, AD 533
 - preamble of agreement under consideration as aid GATT 86, 858, AG 3, TBT 1–7, AD 533, **LIC** 1, SCM 4, SG 1, TRIPS 1–3
 - same or closely related phrases in different agreements
 - see also* countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10), “appropriate”; order of analysis; relationships within and between agreements
 - AD 3.4/SG 4.2 AD 251
 - AD 3.5/SG 4.2(b) SG 210
 - AD 3.5/SG 4.2(c) SG 107, DSU 424, 519
 - AD 6.8/SCM 12.7 AD 547, SCM 390
 - AD 12.2.2/SCM 22.4 and 22.5 SCM 504
 - AD 17.6(ii)/DSU 3.2 AD 927, 931
 - AD/SCM: *see* determination of injury (SCM 15), identity of AD 3 provisions/applicability of jurisprudence relating to
 - AG 1(e)/SCM 3.1(a) AG 14, 17–19
 - AG 9.1/AG 9.2(b)(iii)/AG 9.2(b)(iv) AG 109
 - AG 9.1(a)/SCM 1.1 AG 84
 - AG Annex 3, para. 1/GATT XVI:1 AG 9
 - ATC 6.4/SG 4.2(a) SG 144
 - caution in use of SCM 40
 - cross-referencing, role AD 790, 797, SCM 369–70, 489–90, 498, 499
 - Enabling Clause (EC 3(c)), SCM 27.4 and TBT 12.2 and 12.3 TBT 139
 - GATS XIV/GATT XX(b) GATS 74, 83
 - GATS XVII/GATT III:4 (“less favourable treatment”) GATS 131
 - GATS Financial Services Annex/SCM Agreement GATS 241
 - GATS XX/GATT II GATS 177
 - GATT III:1/SPS Annex A(1)(a) SPS 469
 - GATT III:2/ATC 6.2 ATC 43
 - GATT III/SCM 15 footnote 46 SCM 424
 - GATT X:2/ATC 6.10 ATC 74, 80, 87
 - GATT X:3(a)/LIC 1.3 GATT 594
 - GATT XVI:1/SCM 5(c)/6.3(c) GATT 714, SCM 267
 - GATT XIX:1(a)/SG 2.1 SG 6, 48

- GATT XIX:1(a)/SG 11.1(a) GATT 797
GATT XX (chapeau) GATT 860 n. 1180
GATT XXVI:5/TRIPS 1.3 footnote 1 (“separate customs territory”) TRIPS 17
GATT XXXIII/TRIPS 1.3 footnote 1 (“separate customs territory”) TRIPS 17
GATT XVII:1(b)/GPA VIII(c) GPA 22
omission of term (TBT Annex 1) TBT 58, 153
SCM 1/GATS XIII:2 and XV GATS 72
SCM 21.2/AD and SPS Agreements SCM 494
SG 3.1/VAL 1.2(a) VAL 18
SPS 5.5/TRIPS 3 and 4 SPS 243
TRIPS 13, 17 and 26.2/Berne 9(2) (“special purpose”) TRIPS 115 n. 118, 201
- same or closely related phrases in same agreement
AD 3.4/AD 17.6(i) AD 259
AD 11.2/AD 11.3 AD 783
AG 4.2/AG 5 AG 39
AG 9.1(a) and (b)/AG 9.1(c) AG 92
AG 9.1(a)/AG 9.1(c) AG 87–90
AG Annex 2, para. 6(b)/para. 11 AG 199
DSU 2.1/DSU 11 (“accordingly”) DSU 32
DSU 4.4/DSU 4.6 (“measures” / “specific measures”) DSU 157
DSU 4.4/DSU 6.2 (“legal basis of the complaint”) DSU 158–9
GATS Financial Services Annex/other GATS annexes GATS 240
GATT VII:2(b)/GATT X:3(a) GATT 591
GATT XX chapeau/SPS 2.3/SPS 5.5 (“arbitrary or unjustifiable”) SPS 232–3
- identity of meaning throughout agreement AD 16
SCM 3.2/SCM 27.4 SCM 174
SCM 6.3(a)–(d) SCM 279
SCM 6.3(a)/SCM 6.4 SCM 308
SCM 15.5/SCM 19.1 SCM 461
SG 4.2/SG 5.1 SG 226
SPS 3.1 (“based on”)/SPS 3.2 (“conform to”) SPS 81, 92
SPS 3.1/SPS 5.1 (“based on”) SPS 135
SPS 3.1(a)/SPS 3.1(b) SCM 166–7
TRIPS 1.3/3.1 (“nationals of other Members”) TRIPS 35
TRIPS 17/TRIPS 30 (“exception”) TRIPS 136
TRIPS 41–3/TRIPS 61 TRIPS 266
TRIPS 41/TRIPS 59 (“shall have the authority”) TRIPS 241
TRIPS 60/TRIPS 61 TRIPS 275
VCLT 31(2)(a)/31(2)(c)/66 (“parties”) DSU 1595
- SCM 21.3 SCM 373
“shall be taken into account” (VCLT 31(3)) DSU 1574
“special meaning” (VCLT 31(4)) DSU 1606–10
State practice SCM 221, DSU 1286
supplementary means (VCLT 32)
see also preparatory work (VCLT 32)
in case of ambiguity DSU 82
“circumstances of its conclusion” DSU 1644–52
attitudes of parties DSU 1647 n. 2568
date of conclusion distinguished DSU 1649
objective test DSU 1648
official publication of act or instrument DSU 1650
prevailing international situation DSU 1652
unilateral classification practice DSU 1645–6, 1649 n. 2574
- as confirmation DSU 1656
as customary international law rule DSU 55, 1629
domestic law DSU 1655 n. 2588, 1655 n. 2589
non-exhaustive nature of VCLT 32 list DSU 1636–8
direct link with treaty, relevance DSU 1647–8
Oilseeds Agreement as DSU 1635
other agreements between parties DSU 1635
“recourse may be had” SCM 257, DSU 1630–4
“teachings of the most highly qualified publicists” (ICJ Statute 38(1) (d)) TRIPS 115
- text/plain language (VCLT 31(2)) GATT 79 n. 105, AG 37, 69–70, SPS 130, **TRIMs** 18, AD 73–4, 99, 107 n. 143, 220, 431, 708, SCM 135, 236–7, 392, 433, 475, TRIPS 3, DSU 82, 1549–52
- transitional decisions taken by signatories of Tokyo SCM Code SCM 591
- as a whole/holistic/harmonious exercise WTO 19, 22, GATT 159, 330, AD 931, SCM 260, 475, SG 112, TRIPS 64, 88, 118, 159, 276, 308, DSU 16, 158, 1216, 1539–40, 1553, 1554–5, 1604–5, 1667, 1743
- WTO Agreement as single undertaking and WTO 23–4
- investigation of conditions for safeguard measures, requirements (SG 3.1/SG 4.2(c))**
see also confidential information (SG 3.2); “like or directly competitive product” (SG 2.1/SG 4.1(c))
data of an objective and quantifiable nature SG 154–8
methodology, absence of provision SG 138, 154, 157, 171
representativeness SG 135–8, 154–5
- interested parties
notification to SG 92
obligation to consult SG 96
opportunity to respond to presentations of other parties SG 92
opportunity to submit evidence and views SG 92
- internal decision-making process, relevance SG 98
- ordinary meaning of terms used in covered agreements, “examine” (VAL 1.2(a)) VAL 17
- published report: see publication of findings and reasoned conclusions (SG 3.1)
- reasoned and adequate explanation (SG 4.2(a)) GATT 811, SG 95, 99, 209–10
- VAL examination (VAL 1.2(a)) compared VAL 18
- investigation of dumping (AD 5)/subsidy (SCM 11)**
anti-dumping and countervailing duties (GATT VI) including
interrelationship with AD Agreement, dumping, constituent elements/definition (AD 2/GATT VI:1), sufficiency of evidence for initiation of investigation (AD 5) and AD 364 n. 489
- evidentiary rules: see evidence (dumping investigation) (AD 6)
- methodology, authorities’ discretion AD 334
- notification to government of exporting Member (AD 5.5)
“before proceeding to initiate”, date of initiation AD 384–6
“before proceeding to legislate”, national legislative provisions, relevance AD 385
- breach by other party, relevance AD 386
- content AD 389
- failure to comply
harmless error and AD 390–3, 456, 827
timely objection, relevance AD 391, 456
- form of notification AD 388
- “initiated” (AD footnote 1) AD 384
- public notice and explanation of determinations (AD 12)
distinguished AD 421
timing, ADP recommendation AD 387
- object and purpose (SCM Part V) SCM 467–8
- preparatory work (VCLT 32) SCM 371
Secretariat Note for the Uruguay Round Negotiating Group on Subsidies and Countervailing Measures (1987), relevance SCM 371
- procedural nature of provisions SCM 366, 368
- rejection of application (AD 5.8) AD 396–9
applicability prior to initiation of investigation AD 397–9
“cases”, anti-dumping duty assessment (AD 9.3), relevance AD 401–2
- de minimis* test
anti-dumping duty assessment (AD 9.3) distinguished AD 402, 671–3
function/obligation to use AD 402
immediate termination and AD 400

- (*cont.*)
- sunset review (AD 11.3), applicability to AD 793–5, 797
 - exporters for whom a zero or *de minimis* margin is established
 - exclusion from subsequent administrative and changed circumstances reviews AD 405–6, SCM 374–5
 - immediate termination and AD 400
 - “margin of dumping”, identity of meaning with AD 2.4.2 AD 404
 - procedural nature AD 396
 - request for initiation of investigation within 12 months of negative finding on same product (Doha) AD 338
 - self-initiation (AD 5.6), sunset review (AD 11.3), applicability of rules to AD 789–90
 - simultaneous consideration of evidence of dumping and injury (AD 5.7), initiation of investigation in absence of sufficient evidence (AD 5.3) and AD 376, 394–5
 - sufficiency of evidence (AD 5.3)
 - AD 2 and AD 340
 - determination of sufficiency AD 186
 - AD 2.4 compared AD 358–9
 - determination of sufficiency as satisfaction of AD 5.2 requirements AD 348
 - “examine” AD 371–4
 - “injury”, threat of, AD 3.7 requirements, relevance AD 363–6
 - standard of review (DSU 17.6) AD 367–70
 - elements (AD 2) and AD 356, 364 n. 489
 - evidence of causal link (AD 5.2(iv)) AD 344–6
 - “information” and analysis distinguished AD 345–6
 - evidence of dumping AD 356–62
 - AD 2 and AD 342, 356
 - evidence of injury AD 363–6
 - AD 2 and AD 343
 - raw numerical detail AD 347
 - interrelationship with AD 5.2 AD 340, 343, 349–55
 - “simple assertion, unsubstantiated by relevant evidence” (AD 5.2) AD 186, 347
 - “such evidence is reasonably available to the applicant” (AD 5.2) AD 341
 - sufficiency to initiate (AD 5.2) and for final determination (AD 2) distinguished AD 344, 349–54, 356 n. 474
 - “sufficient evidence of” (SCM 11.2), causal link SCM 361
 - sufficient evidence requirement in case of initiation of investigation in absence of application (SCM 11.6) SCM 365
 - support for (AD 5.4/SCM 11.4)
 - “a major proportion” (AD 4.1) distinguished AD 382
 - authorities’ need to determine level AD 379–82
 - “by or on behalf of the domestic industry”
 - determination based exclusively on information in application SCM 363
 - quantitative test SCM 362
 - determination of standing and AD 381
 - identity of provisions AD 379, 383, SCM 362, 364
 - major proportion of the domestic industry AD 380
 - motivation for support, relevance AD 379, SCM 362
 - termination (SCM 11.9)
 - de minimis* standard, applicability SCM 366–73
 - developing countries (SCM 27.10) SCM 570
 - limitation of SCM 11.9 to investigation phase SCM 366
 - time limits for conclusion of investigation (SCM 11.11), 18 month limit SCM 376
 - investigations and reviews of existing [SCM] measures initiated . . .**
 - on or after date of entry into force of WTO Agreement (SCM 32.3)** GATT 451, SCM 590–1
 - “existing measures” SCM 595
 - procedural aspects of investigations, limitation to SCM 594
 - retroactivity GATT 451, SCM 590–1
 - “this agreement” SCM 592–3
 - transitional decisions of Tokyo Round Subsidies and Countervailing Measures Committee, relevance SCM 591
 - “investment measures” (TRIMs 1) TRIMs 1–2**
 - analysis of TRIMs status, relevance of Illustrative List (TRIMs 2.2) **TRIMs 4**
 - legislative measures, relevance **TRIMs 2**
 - “related to trade” **TRIMs 3**
 - Israel**, GPA offset regime, modification (GPA XXIV:6) GPA 44–5
 - issues of law and legal interpretations:** *see* standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)
 - ITU:** *see* International Telecommunications Union (ITU)
 - Japan**
 - Enabling Clause notifications
 - GSP schemes GATT 63
 - special treatment of least-developed countries GATT 79
 - Japan – Alcoholic Beverages I (GATT Panel)**, national treatment, tax discrimination (GATT III:2), “in excess of those applied” (GATT III:2, first sentence), methodology of comparison GATT 266
 - JITAP:** *see* Joint Integrated Technical Assistance Programme (JITAP)
 - identification of ways of enhancing and rationalizing (Doha)
 - joint action (GATT XXV)**, GATT practice GATT 1062
 - joint action (GATT XXXVIII)**, GATT practice GATT 1114
 - Joint Integrated Technical Assistance Programme (JITAP), identification of ways of enhancing and rationalizing (Doha)** WTO 111
 - core agencies’ joint communiqué reaffirming support (13 July 2003) WTO 112
 - judicial and administrative assistance, non-applicability of GATS II (MFN) provisions** GATS 6
 - judicial decisions**, conformity with WTO obligations, obligation to ensure (WTO XVI:4) WTO 288
 - judicial economy**
 - see also* order of analysis; relationships within and between agreements
 - arguendo* assumptions and GATT 1041, DSU 646, 660
 - avoidance of *de novo* review and AD 330
 - definition DSU 641–3, 655
 - discretionary nature SG 174, DSU 641, 644–7
 - reasons for not exercising SG 129, 181
 - explicit reference to, relevance DSU 649–50
 - GATT practice DSU 639
 - irrelevant considerations DSU 656
 - limitation of concept to panel’s handling of claims DSU 643
 - limitation of consideration to claims essential to resolution of dispute (DSU 3.2) GATT 423, **TRIMs 11**, AD 307, 348, 647, DSU 52, 386, 638–9, 891
 - “make such other findings as will assist . . .” (DSU 11) and DSU 637–43, 649
 - order of analysis and DSU 648
 - “positive solution to dispute” requirement (DSU 3.7)/false judicial economy and DSU 638, 649, 651–5
 - precise recommendations and rulings by DSB and DSU 653
 - prior decision on another point rendering discussion otiose GATT 399, 400, 404, 405, 745, 749, 824–5, AG 64, SPS 494, 592–3, TBT 23, **TRIMs 6**, 11, 12–13, 16, AD 84, 321, 620, 749, 831, 838–40, **LIC 29**, 32–3, SCM 180, 218, 326, SG 84, 89, 175, 216, 229–31, 233, 242, 243, 245, 252, GATS 70, TRIPS 215
 - finding of non-compliance in first situation, need for SCM 504, DSU 642
 - prompt compliance (DSU 21.1) and DSU 653
 - security and predictability of WTO obligations (DSU 3.2) and DSU 52
 - “shall address the relevant provisions/each issue” (DSU 7.2/DSU 17.12) DSU 422, 890–1

- judicial review (AD 13)**
Members' descriptions of their systems AD 848
special or additional rules and procedures (DSU 1.2 and Appendix 2) and DSU 16
- judicial review (SCM 23)**, Members' discretion to define own procedure SCM 377, 507
- July package:** *see also* under Doha Round/Work Programme (Doha 17–52), July package (2004)
- jura novit curia** DSU 324, 326, 328, 416, 574–5, 1710
- jurisdiction:** *see* competence of panels and AB (DSU 3.2/DSU 11/DSU 17); request for establishment of panel, requirements (DSU 6.2); standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6); standard/powers of review (panel) (AD 17.6); standard/powers of review (panel) (DSU 11); terms of reference of panels (DSU 7)
- Korea**, Enabling Clause notifications, special treatment of least-developed countries GATT 79
- Labour Markets Integration Agreement (GATS V bis)**, notification format GATS 57
- language, parties' submissions** DSU 1387
- least-developed countries (LDCs)**
see also developing countries; developing countries (SG 9); Enabling Clause; Enabling Clause (EC); special treatment of least-developed countries (EC 2(d)); Integrated Framework for Trade-Related Technical Assistance to least-developed countries (IF); NFIDC, implementation (AG 16); special and differential treatment for developing countries (Doha); special procedures involving LDCs (DSU 24); technical cooperation and capacity building (Doha); technical and financial assistance and training; Trade, Debt and Finance, Working Group on (Doha 36) trade and environment (Doha 31–3); transparency mechanism (PTAs) (2010); least-developed countries' products
- accession to membership, facilitation and acceleration of process WTO 251–2
- Guidelines for Facilitation and Acceleration of Negotiations (2002) WTO 251–2
- High-Level Meeting on Integrated Initiatives WTO 251
- work programme (Doha 42) WTO 251
- Comprehensive and Integrated WTO Plan of Action for the least-developed countries (1996) WTO 108, 110
- positive measures taken by Members WTO 114
- cooperation between WTO and other multilateral agencies, High Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development (1977) WTO 109
- Decision on duty-free and quota-free market access for LDCs (2005) (DFQF): *see* MFN treatment (GATT I:1); Decision on duty-free and quota-free market access for LDCs (2005) (DFQF)
- Decision on implementation-related concerns (2000) and SCM 3.1(a), exemption SCM 530
- SCM 27.4 (extension of transition period): *see* developing countries (SCM 27); phase out/standstill obligation (SCM 27.4)
- SCM 27.5 and 27.6 (phase-out of export subsidies) SCM 530
- Decision on Measures in Favour of Least-Developed Countries (Doha), Doha Round negotiations related to WTO 311
- favourable and preferential treatment WTO 114–21, GATT 1107
- High-Level Meeting on Integrated Initiatives for the Least-Developed Countries' Trade Development WTO 109, 114, 251, GATT 1102
- Joint Integrated Technical Assistance (JITAP), identification of ways of enhancing and rationalizing (Doha) WTO 111
- market access
- duty and quota-free access as objective (Doha 42–3) WTO 115
- integration into multilateral trading system and
- original membership, special arrangements (WTO XI:2) including Ministerial Decision on Measures in Favour of LDCs WTO 234–7
- “serious prejudice” (SCM 5(c)) DSU 1321–3
- small economies (Doha 35) GATT 1108–9
- technical assistance (SPS 9) SPS 377–8
- technical assistance (TBT 12), 6.132–41: *see also* special and differential treatment (TBT 12)
- TPRM reviews TPRM 17
- Waiver on Preferential Tariff Treatment for LDCs (1999): *see* MFN treatment (GATT I:1); Waiver on Preferential Tariff Treatment for LDCs (1999)
- WTO Work Programme for the Least-Developed Countries GATT 1097
- least-developed countries (LDCs) (TRIPS 66)**
enhanced technical cooperation (TRIPS Council decision of 29 November 2005) TRIPS 305
- exclusive marketing rights, waiver of obligations (TRIPS 70.9) TRIPS 316
- extension of transition period (TRIPS 66.1) TRIPS 294–6, 305
- reports by developed country Members (TRIPS 66.2) TRIPS 298
- Least-Developed Countries Sub-Committee**
establishment WTO 105
- notifications, market access measures under Waiver on Preferential Treatment for LDCs GATT 103
- observer status WTO 103
- rules of procedure WTO 106
- terms of reference WTO 105
- work programme WTO 107, 117, GATT 1097–101
- Least-Developed and Net Food-Importing Countries, Decision on Measures concerning the Possible Negative Effects of the Reform Programme, implementation (AG 16) (NFIDC):** *see* NFIDC implementation (AG 16)
- legal basis of claim/ “claim” / “matter referred” (DSU 6.2/7.1)**
see also notice of appeal requirements (ABWP 20(2)(d)); claims and arguments distinguished
- arguments distinguished DSU 120, 303, 305, 309, 314, 323–34, 411–12, 624
- clarification of claim during proceedings DSU 114, 120, 152, 270, 306, 309, 325, 327, 328, 329 n. 529, 334, 342, 345, 348, 349, 415
- evidence to support claim distinguished DSU 328, 410
- identification of specific measure distinguished AD 898, DSU 196–9, 220, 370
- identification of treaty provisions DSU 307–19, 1146
- clauses/subclauses, relevance DSU 316
- complementary or alternative claims and DSU 318
- “especially, but not exclusively” DSU 313
- “including but not necessarily limited to” DSU 310
- linked multiple obligations DSU 315
- listing of articles without explanation, sufficiency DSU 309, 311, 312
- obligation of panel to address cited provisions (DSU 7.2) DSU 423
- reference to mutually exclusive articles DSU 317
- right of panel to address provisions other than those cited (DSU 7.2) DSU 424
- limitation of jurisdiction to cited provisions (DSU 7.2) DSU 313, 352, 424, 519, 520
- developing countries, special and differential provisions and (DSU 12.1) DSU 717
- rectification at subsequent stages, arguments in written or other submission or statement DSU 323
- reliance on issues raised in underlying anti-dumping dispute DSU 322

(cont.)

request for consultations (DSU 4.4) compared DSU 158–9
summary “sufficient to present the problem clearly” DSU 186–91,
193–4, 196, 302–3, 306, 332, 340–5, 376–8, 415
which measures violate which provisions requirement DSU 320–1

legal status of adopted AB reports (DSU 17.14)
as final resolution of dispute DSU 826, 899, 901, 1137
as precedent DSU 53, 68, 835, 899–903, 903

legal status of panel reports
adopted reports (DSU 16) DSU 820–1
“distinguishing” previous cases and DSU 825
as final resolution of dispute DSU 826, 901, 1130, 1138
“moot” / “of no legal effect” finding DSU 892–5
“other decisions of the Contracting Parties to GATT 1947” (GATT
1994 1(b)(iv)), whether WTO 275, GATT 169 n. 240, DSU
820–1, 899
reports reversed by AB AD 368 n. 495, DSU 824
reports on same subject-matter in parallel proceedings DSU 823
unadopted reports WTO 280, AD 878, DSU 1148
unappealed findings WTO 281, GATT 1041, DSU 822, 826, 892,
901, 1115, 1130, 1138–9

legislation as such, right to challenge (WTO XVI:4) WTO 286–7,
291–3, 295, DSU 278–301
AD 17.3/AD 17.4 AD 873–7, 891–3
AD 18.4 and AD 143–5, 878
analysis of legislation for purposes of DSU 280
claims “as such” vs claims “as applied”, relevance of distinction
DSU 277, 336–8
conformity of laws with WTO obligations, obligation to
ensure, *see also* consultation and dispute settlement (AD 17)
future application distinguished SCM 483
GATT II:1 and GATT 120
GATT XXIII:1(a) and
legislation adopted by customs union DSU 246
mandatory/discretionary legislation, distinguishability AD 878–80,
880 n. 1188, 969, SCM 71, 81, DSU 278, 289–301
affirmative defence (SCM Illustrative List item (k)) and SCM
662–4
assessment of mandatory nature AD 879, DSU 291–5
burden of proof and DSU 336
DSU 23 and WTO 286, DSU 296
GATT practice AD 882, DSU 40, 278, 289–90
order of analysis DSU 294–5
rejection/non-endorsement of doctrine DSU 296–301
relevance AD 881–2, DSU 296–301
resort to facts available (AD 6.8/Annex II) and AD 602
normative value as determining factor DSU 264, 281–8
security and predictability of WTO obligations (DSU 3.2) and DSU
45, 281
seriousness of claim/need for diligence in presentation DSU 279
State responsibility and DSU 339
subsidy programmes: *see* subsidy definition (SCM 1.1(b)) (conferral
of benefit); subsidy programmes as such, right to challenge
(mandatory/discretionary distinction)
Tokyo Round Anti-Dumping Code AD 878
unilateral action (DSU 23) and DSU 339, 1312
unwritten instrument and DSU 288
US Customs Bond Directive AD 964

legitimate expectations: *see* GATT 1947/WTO continuity, decisions,
procedures and customary practices under GATT 1947
(WTO XVI:1); good faith interpretation of treaty (VCLT 31
(1)), legitimate expectations, relevance; interpretation of
covered agreements, rules relating to including VCLT
provisions, legitimate expectations (including GATT II:5
provisions); non-violation claims (GATT XXIII:1(b)),
“benefit” /legitimate expectation of improved market
access as

legitimate interests

Berne 9.1 TRIPS 145
TRIPS 13 TRIPS 109, 118 n. 123, 122–6, 145
TRIPS 17 TRIPS 139–43, 145
TRIPS 26.2 TRIPS 145
TRIPS 30 TRIPS 189, 198–203

less favourable treatment: *see* MFN treatment (GATS II); national
treatment, regulatory discrimination (GATT III:4); “less
favourable treatment”; national treatment (TRIPS 3) *see also*
under “treatment no less favourable” (TRIPS 3.1)

lex specialis/presumption against treaty conflicts
2.404, 2.666 n. 937, 7.8, 8.83, 8.934, 13.527, 13.694–5, 16.249,
17.1713: *see also* order of analysis, relationships within and
between agreements, special or additional rules and
procedures (DSU 1.2 and Appendix 2)
“conflict” DSU 1717, 1719–20
General Interpretative Note (WTO Annex 1A) WTO 25, GATT
495–6, TRIMs 5, SCM 583–4, DSU 1714–29
possibilities of conflict considered by panel/AB
AD 18.1/GATT VI DSU 1726
AD/DSU provisions AD 870–2
AG/GATT AG 191, DSU 1725
GATT VI/SCM Part V DSU 1723
GATT X:3(a)/LIC 1.3 DSU 1718, 1726
GATT XIX/SG 2.1 DSU 1720
GATT XX(b)/SCM DSU 1727
GATT X:3/VAL 11.1 DSU 1728
GATT/LIC and TRIMs 2 TRIMs 41–2, DSU 1717–18
GATT/SPS DSU 1719
GATT/TBT DSU 1729
GATT/TRIMs DSU 1722
ILC Articles on State Responsibility SCM 331 n. 557
SCM/TRIMs TRIMs 7–9, SCM 694–5, DSU 1712
TRIPS/Berne Convention TRIPS 85–9
TRIPS/WIPO Copyright Agreement (1966) TRIPS 89
precedence/hierarchy in case of conflict AD 870–2, SCM 690–2,
DSU 1720, 1724, 1726

**LIC Committee Decision on Avoidance of Procedural and
Institutional Duplication LIC 48**

licensing requirement
as QR (GATT XI:1) GATT 606, 612–14
progressive elimination (GATT XIII:2(b)) GATT 669

“like or directly competitive product” (SG 2.1/SG 4.1(c))
causation analysis (SG 4.2(b)) compared SG 191
“domestic industry” (SG 4.1(c)) and SG 130–4
“collective output . . . constitutes a major proportion”,
representative data and SG 135–8
integration of production processes, relevance SG 134
object and purpose (preamble) as aid to definition SG 2
“producers as a whole” SG 132–3
as sole determinant ATC 40 n. 50, SG 131
finding of inconsistency with, effect SG 129
specific product, need for SG 132

“like product” (GATT I) GATT 39–44
“any product originating in or destined for another country” GATT
45
GATT practice GATT 44
“like product” analysis
explicit discrimination and GATT 40
nationality of producer or origin of product (“hypothetical” like
products) GATT 41, 43
“like product” (GATT III:2 and III:4) compared GATT 39
relevant factors: *see* “like product” (GATT III:2 and III:4); relevant
factors

“like product” (GATT III:2 and III:4)
burden of proof GATT 240
determination of “likeness”

- in case of conflicting evidence GATT 336
- as legal issue DSU 841, 859
- narrow interpretation GATT 241, 242, 260
- need to take account of all the evidence GATT 331, 336
- as a relative concept (“accordion”)/case-by-case approach GATT 241–2, 248, 260, 342–4, SCM 424, DSU 841, 859
- directly competitive or substitutable products distinguished GATT 234, 254–6, 328–30
 - GATT practice GATT 253
- GATT I compared GATT 39
- GATT III:1 compared/as context GATT 227, 328, 342
- GATT III:2 and III:4 interrelationship GATT 257–9, 328–30, 342–7
 - consistency of interpretation GATT 342, 345
 - “less favourable treatment” requirement and GATT 345–7
- GATT practice GATT 253
- relevant factors
 - 2.241–53, 2.331–40: *see also* directly competitive or substitutable products (GATT III:2)
 - Border Tax Adjustment Working Party Report GATT 241, 260, 343
 - competitive relationship GATT 324, 332–5, 342, 343
 - evidence of health risks, relevance GATT 334
 - consumer preferences GATT 42, 241, 242, 248, 331, 333–6, 343
 - health risks and GATT 334
 - cross-price elasticity GATT 286–9
 - differences between sellers GATT 252
 - end-uses GATT 42, 241, 242, 248, 333, 337, 343
 - GATT practice GATT 349
 - nationality of producer or origin of product (“hypothetical” like products) GATT 41, 43, 248–51, 338–40, DSU 598 n. 955
 - nature of product GATT 332, 343
 - physical properties GATT 42, 241, 242, 248, 332, 334, 337
 - situation of parties dealing in [subject products] GATT 337
 - tariff bindings GATT 246–7
 - tariff classifications GATT 42, 245–6, 343
- “like product” (SCM 15 footnote 46)
 - “characteristics closely resembling” SCM 424–8
 - physical characteristics SCM 426
 - price SCM 426–7
 - unassembled/assembled products SCM 428
- “like service and service supplier” (GATS II:1), wholesale transactions GATS 36–7, 128
- loan guarantees
 - as benefit (SCM 14(c)) SCM 93, 414–15
 - as direct transfer of funds (SCM 1.1(a)(1)) SCM 30–1
- Lomé waiver WTO 209, GATT 114, 682–3, DSU 534
 - right of Panel to consider DSU 534
- Macau, China, as WTO member WTO 232
- margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3) DSU 449, 490–1, 622, 665–8
 - establishment of working procedures DSU 409, 667, 673 n. 1103, 683–6
 - evaluation of evidence (DSU 11) and DSU 609, 610 n. 991, 612
 - expert evidence (DSU 13.2) and DSU 601, 613
 - limitations DSU 409, 667
 - separate panel reports DSU 449, 452
 - unregulated situations and DSU 471, 472, 508 n. 828
- maritime services
 - MFN treatment (GATS II), exemption GATS 42
 - progressive liberalization (GATS XIX) and GATS 169
- Maritime Services, Negotiating Group on, establishment GATS 216
- Market Access Committee (WTO IV:7)
 - annual/periodic reports WTO 133
 - establishment WTO 93, 99, 131
 - GATT 1947 activities WTO 134
 - non-tariff measures, decisions relating to GATT 636–8
 - rules of procedure WTO 94, 132
 - terms of reference WTO 131
- market access, concessions and commitments (AG 4.1)
 - consistency with GATT XIII requirement GATT 168, 689, AG 1, 36, 190, DSU 875
 - reform process, as essential part of AG 1, 190
- market access (GATS XVI)
 - electronic commerce and GATS 96
 - excluded measures (GATS XVI:2)
 - applicability of mode 1 to all mode 1 means of delivery GATS 101
 - applicability to sector as a whole including subsectors (“sector” (GATS XXVIII(e))) GATS 100, 228
 - exhaustive nature of list GATS 97, 99
 - limitations on the number of suppliers *in the form of* (GATS XVI:2(a)) GATS 108–18
 - dictionary meaning GATS 109
 - preparatory work (Scheduling Guidelines) GATS 115, 121
 - temporal qualifications GATS 103–4
 - time-frame, need for (GATS XX:1(d)) GATS 104
 - zero quotas (GATS XVI:2(a)) GATS 105–6, 109, 114–17
 - zero quotas (GATS XVI:2(a), (b) and (c)) GATS 105–6
 - zero quotas (GATS XVI:2(c)) GATS 120–4
 - failure to make *prima facie* case GATS 102, DSU 547
 - relationship between GATS XVI:1 and VI:2 GATS 97–9
- market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1)
 - border measures
 - distorting effect AG 63
 - “similar border measures” (footnote 1)
 - “similar” AG 57–60
 - tariff caps and AG 61–2
 - “converted” AG 41
 - developing countries (preamble) and AG 4
 - “discretionary import licensing” (footnote 1) AG 55–6
 - elimination of quantitative restrictions (GATT XI) and AG 48
 - exceptions to GATT obligations, exclusion (footnote 1) GATT 649
 - exemptions (AG Annex 5) AG 204–7
 - price gap methodology AG 208–9
 - failure to convert by due date, effect AG 37
 - GATT II:1(b) and: *see* Schedules of Concessions (GATT II);
 - ordinary customs duties in excess of those provided for in Schedule (GATT II:1(b))
 - “have been required to be converted” AG 37, 39
 - “have been converted” (AG 5) distinguished AG 39
 - “have been required to be converted” (AG 4.2) AG 37
 - interpretation, subsequent practice (VCLT 32(3)(b)) AG 40, DSU 1582
 - interpretation, rules governing AG 37–40
 - measure and result of measure distinguished AG 46
 - measure similar to measure identified in footnote 1, sufficiency for finding of inconsistency with AD 42 AG 64
 - measures excepted from requirement (footnote 1) AG 65
 - “minimum import price” (footnote 1) AG 54
 - object and purpose (preamble) and AG 4
 - “ordinary customs duties” (AG 4.2)/ GATT II:1(b) GATT 143–5, 174, AG 42–5, DSU 1660
 - “quantitative import restrictions” (footnote 1) AG 50
 - special safeguards (AG 5.1) and AG 39
 - STEs (GATT XVII) GATT 753
 - timing of obligation AG 37, 47
 - “variable import levies” (footnote 1) AG 51–2
- market access for non-agricultural products (Doha 16)
 - see also* Market Access Committee
 - Negotiating Group on Market Access

- (*cont.*)
 establishment WTO 156
 role WTO 156
marketing costs: *see* export subsidy commitments (AG 9); costs of marketing exports (AG 9.1(d))
marks of origin, absence from TBT Agreement TBT 11, 166
marks of origin (GATT IX)
 GATT practice GATT 509
 TBT 2.1 (MFN treatment) and TBT 11, 166
material injury: *see* determination of injury (AD 3); determination of injury (SCM 15); transitional safeguards (ATC 6)
“measure” (GATS XXVIII(a)) GATS 223
“measures affecting trade in services” (GATS I:1) GATS 9–13
 “affecting” (GATS I:1) GATS 10–13
 GATT III:4 compared GATT 362
 wholesale trade service suppliers in their capacity as service suppliers, need to examine GATS 12, 33
“measures at issue” (DSU 6.2): *see* identification of specific measures (DSU 6.2)
“measures at issue” (DSU 6.2)
 17.241–301: *see also* identification of specific measures (DSU 6.2)
 administrative guidance DSU 248
 amended measures
 amendment after establishment of panel DSU 258–60, 380–1
 amendment before establishment of panel DSU 395
 amendment during AB proceedings DSU 402
 amendment following establishment of panel DSU 396–403, 677
 any act or omission attributable to a Member DSU 242–5, 253, 271
 application of tariffs as DSU 273
 continued zeroing AD 145, 896–7
 “cumulatively claim” /system as a whole DSU 265, 335
 de facto vs *de jure* measures DSU 272
 “effects” of measure and measure distinguished DSU 254
 expired measure with continuing effects DSU 255, 380
 independent operational status test AD 883, 885, DSU 266, 267–8
 legal instrument as DSU 263
 legislation as such: *see* legislation as such right to challenge (WTO XVI:4)
 legislative instruments, classification by reference to WTO law DSU 264
 measure actually applied DSU 228
 measure in existence at time of establishment of panel, limitation to DSU 255–7, 378, 379–83
 dispute as to existence of measure DSU 406
 evidence of measure and measure distinguished DSU 256
 measures not in existence as evidence DSU 404–5
 measure as source of impairment DSU 253–4
 “measure taken by another Member” (DSU 3.3) DSU 241
 “measures taken to comply” (DSU 21.5) and DSU 1123–7, 1146, 1151–2
 “practice” as AD 883–5, DSU 267–71, 273
 “general” practice AD 884, DSU 268 n. 407, 409 n. 680
 practice “as a whole” DSU 271
 prompt settlement of the dispute considerations DSU 404
 prospective measure DSU 261–2
 “of the same essence” DSU 383
 “same effect” DSU 401
 “subsequent closely related measures” DSU 262 n. 395, 382 n. 618
 several instruments as single measure DSU 275–6
 terminated measures
 continuing relevance DSU 388–9
 GATT practice DSU 384, 392
 good faith obligation not to reintroduce DSU 387, 393
 termination before agreement on terms of reference DSU 385–90
 termination following agreement on terms of reference DSU 384 n. 623, 391–4
 termination following interim review DSU 384 n. 623
 total prohibition as DSU 254
“measures by Members” (GATS I:3), “services” (GATS I:3(b)), allocation to specific sector/subsector GATS 23
mediation, request for in absence of dispute (DSU 5) DSU 180–1
MERCOSUR
 Enabling Clause (EC) and GATT 66–8
 Working Party on, terms of reference GATT 67, 1018
MERCOSUR Ad Hoc Arbitral Tribunal
 proceedings before as impediment (estoppel) to DSU proceedings DSU 1704
 relevance of decisions in DSU proceedings DSU 1590
MFA (Multi-fibre Agreement) measures, relevance ATC 77–8, TBT 72
MFN treatment (GATS II) GATS 30–43
 determination of violation, requirements
 aims and effects test GATT 217, GATS 38
 analysis of evidence GATS 33
 Exemptions, Annex on
 Procedures for the Certification of Terminations, Reductions and Rectifications GATS 202
 review (Annex para. 3) GATS 231
 review (Annex para. 4) GATS 232–4
 termination of exemption period (Annex para. 7), notification format GATS 236
 financial services, exemption (GATS: Fifth Protocol) GATS 41
 judicial and administrative assistance, exclusion GATS 6, 30
 “like service and service supplier” (GATS II:1), wholesale transactions GATS 36–7
 maritime transport services, exemption
 Decision on Maritime Transport Services (1996) GATS 42
 negotiations GATS 42
 national treatment (GATS XVII) distinguished GATS 34
 relationships within and between agreements, GATS I:1/GATS II GATS 11, 32
 telecommunications, exemption GATS 43
 “treatment no less favourable” (GATS II:1), *de facto* discrimination GATT 25, GATS 34
 vertical integration/exclusive distribution arrangements, effect GATS 35
MFN treatment (GATT I:1)
 “accorded immediately and unconditionally to the like product” GATT 46–55
 affiliation with designated local manufacturer/importer requirement and GATT 47–8
 conditional advantage and “advantage accorded unconditionally” distinguished GATT 49
 differential treatment on the basis of origin of product and GATT 46, 51, 53–4
 GATT practice GATT 55
 local content requirement, relevance GATT 46
 order of analysis GATT 27
 private action and GATT 46
 “unconditionally” GATT 52
 ordinary meaning GATT 49
 “advantage”
 access to certification procedures GATT 37
 allocation of tariff quotas GATT 35
 “any advantage . . . granted . . . to any product” GATT 34
 creation of more favourable import duties GATT 33
 flexible import procedures GATT 36
 GATT practice GATT 38
 “all matters referred to GATT III:2 and III:4” GATT 31–2

<p>“all other contracting parties”, RTAs (GATT XXIV:5) and GATT 50</p> <p>“all other contracting parties”, RTAs (GATT XXIV:5) and GATT 50, 99</p> <p>“all other contracting parties”, RTAs (GATT XXIV:5) and GATT 115</p> <p>“all other contracting parties”, RTAs (GATT XXIV:5) and GATT 115</p> <p>“all rules and formalities” GATT 28–30</p> <p>“in connection with importation” GATT 30</p> <p>anti-dumping and countervailing duties (GATT VI) and GATT 96–8, 488</p> <p>GATT practice GATT 98</p> <p>“any advantage, favour, privilege or immunity granted by any Member” GATT 33–8</p> <p>customs duties and tax benefits as (GATT III:2) GATT 117</p> <p><i>de facto</i> discrimination GATT 25–6</p> <p>Decision on duty-free and quota-free market access for LDCs (2005) (DFQF) GATT 105–6</p> <p>review of implementation (2006) GATT 106</p> <p>text GATT 105</p> <p>findings under GATT III:4 and XX, relevance GATT 61</p> <p>GATT practice GATT 109</p> <p>frontier traffic, customs unions and free trade areas (GATT XXIV) and GATT 99–100</p> <p>GATT practice GATT 100</p> <p>historical preferences (GATT I:2 and I:3)</p> <p>Secretarial Note reviewing status at 18 December 1992 GATT 56</p> <p>waiver in respect of GATT I:4 for South Africa and Zimbabwe GATT 57</p> <p>“like product”: <i>see</i> “like product”(GATT I)</p> <p>as non-violation claim “benefit” (GATT XXIII:1(b)) GATT 974 n. 1381</p> <p>Waiver on Preferential Tariff Treatment for LDCs (1999)</p> <p>adoption WTO 118, GATT 101</p> <p>extension to 30 June 2019 GATT 102</p> <p>notification of market access measures GATT 103</p> <p>notification procedure GATT 103</p> <p>text GATT 101</p> <p>transparency mechanism (PDAs) and GATT 103–4</p> <p>waivers (WTO IX:3 and IX:4): <i>see</i> waivers (WTO IX:3 and IX:4)</p> <p>MFN treatment (RO Parts I-IV) and preferential trade regimes (RO Part V) distinguished RO 1</p> <p>MFN treatment (TBT 2.1) TBT 15–17</p> <p>marks of origin and TBT 11, 166</p> <p>“not more trade-restrictive than necessary” (TBT 2.2) distinguished TBT 32</p> <p>MFN treatment (TRIPS 4)</p> <p>“any advantage, favour, privilege or immunity” (chapeau) TRIPS 69</p> <p>applicability to intellectual property rights addressed in TRIPS (TRIPS 3.1 footnote 3) TRIPS 68</p> <p>“immediately and unconditionally” (chapeau) TRIPS 70–1</p> <p>“less favourable treatment”, offset, applicability to all trademark owners requirement TRIPS 65–6</p> <p>“nationals of any other country” (chapeau), burden/standard of proof TRIPS 72</p> <p>notification requirements TRIPS 73</p> <p>“protection of intellectual property” (chapeau), trade names, applicability of findings on trademarks TRIPS 67</p> <p>Millennium Round, failure to agree on WTO 55</p> <p>“minimum import price” (AG 4.2 and footnote 1) AG 54</p> <p>Ministerial Conference powers</p> <p>GATS XII:5(b) and XII:6 (balance of payments of payments procedures) WTO 64</p> <p>GATT 1994, para. 2(b) (exercise of powers of Contracting Parties acting jointly) WTO 63, 82</p>	<p>TRIPS 64.3 (extension of non-applicability of non-violation complaints) WTO 65</p> <p>WTO IV:3 (overview of WTO activities) WTO 76</p> <p>WTO IX:2 (authoritative interpretation of WTO/Multilateral Trade Agreements) WTO 62, 197–202</p> <p>WTO IX:3 and IX:4 (waivers) WTO 62, 203</p> <p>WTO VI:2 (appointment of Director-General) WTO 62, 171</p> <p>WTO X:1 (adoption of amendments to WTO Agreement) WTO 62</p> <p>WTO XII:2 (accession decisions) WTO 62, 248–9</p> <p>Ministerial Conference (WTO IV:1)</p> <p><i>see also</i> Cancún Ministerial Conference (2003); Doha Round decisions; Geneva Ministerial Conference (Seventh)/closing summary (2009); Geneva Ministerial Conference (eighth) (2011); Geneva Ministerial Conference/Declaration (1998); Hong Kong Ministerial Conference/Declaration (2005); Seattle Ministerial Conference (1999); Singapore Ministerial Conference/Declaration (1996)</p> <p>decisions as of 31 December 2004 WTO 67</p> <p>frequency of meetings WTO 53–61</p> <p>General Council’s authority to act on behalf of WTO 70</p> <p>rules of procedure, adoption WTO 69</p> <p>minor exceptions doctrine: <i>see</i> Berne Convention/TRIPS; minor exceptions doctrine</p> <p>modification of Schedules (GATT XXVIII)</p> <p>applicability of GATT I and XIII GATT 116, 139, 687, 1073–4</p> <p>applicability of GATT XI and GATT 598</p> <p>compensatory withdrawals (GATT XXVIII:3) (including application under GATT XXIV:6) GATT 1083</p> <p>GATT practice GATT 1085</p> <p>“general level of concessions . . . not less favourable to trade” (GATT XVIII:2) GATT 1075</p> <p>Harmonized System of Customs Classification (HS) changes and GATT 178</p> <p>notifications (GATT XXIV:5) GATT 1084</p> <p>periodic updates GATT 180</p> <p>procedures for (GATT 1947 council decision of 26 March 1980) GATT 179</p> <p>renegotiations</p> <p>GATT 1947 GATT 1077–8</p> <p>GATT 1994 GATT 1080–2</p> <p>Understanding on the Interpretation of, review (paragraph 1) GATT 1076</p> <p>waivers (GATT II) and GATT 171, 176–80</p> <p>monopolies and exclusive service providers (GATS VIII)</p> <p>electronic commerce GATS 66</p> <p>notification format GATS 67</p> <p>Movement of Natural Persons, Negotiating Group on</p> <p>establishment GATS 216</p> <p>“natural person of another Member” (GATS XXVIII(k)(ii)) GATS 230</p> <p>Movement of Natural Persons Supplying Services under the Agreement (GATS, Annex), measures relating to the entry and stay of natural persons GATS 237</p> <p>multilateral treaties, modification by some of the parties (VCLT 41) DSU 1668</p> <p>multiple appeals (notice of other appeal (ABWP 23)) DSU 1435–8</p> <p>AB explanations of</p> <p>choice of “identification” over “description” DSU 1437 n. 2239</p> <p>decision to require (April and October 2004) DSU 1436–7</p> <p>procedure (7 February 1996) DSU 1435</p> <p>“statement of the nature of the other appeal” (ABWP 23(2)(c)(ii)), as equivalent of ABWP 20(2)(d) DSU 1438</p> <p>third party rights DSU 515 n. 843</p> <p>multiple appeals (special procedure for consolidation (ABWP 16 (1))) DSU 1365, 1383</p>
--	---

(cont.)

multiple authentic languages, interpretation (VCLT 33)

- “and” / “comme” GATT 406–7
- customary international law rules of interpretation, applicability DSU 1665 n. 2604
- effectiveness principle (*ut res magis valeat quam pereat/effet utile*) and DSU 1659 n. 2594
- English, French and Spanish texts compared GATT 406–7, TBT 101, SCM 43, TRIPS 17, 245, DSU 1657–67
- ILC Commentary on DSU 1665 n. 2604
- English and French texts compared TRIPS 103 n. 105, 103 n. 106, 103 n. 107
- meaning which best reconciles texts (VCLT 33(4)) AG 42, DSU 1660
- “ordinary meaning” (VCLT 31(1)) and SCM 43, DSU 1660, 1664–7
- presumption of identity of meaning (VCLT 33(3)) SPS 454, SCM 43, DSU 1661–7
- “unduly strict requirements” (RO 2(c)) RO 12 n. 20

multiple complainants (DSU 9)

- Article 22.6 arbitration and DSU 1282
- harmonization of panels and timetables (DSU 9.3), joint meeting with experts DSU 488
- prompt and satisfactory resolution of disputes, Members’ right to (DSU 3) and, joint meeting with experts DSU 488
- separate AB reports DSU 458–60
- separate interim review reports (DSU 9.2) DSU 809–11
 - on a particular issue DSU 812
- separate panel reports (DSU 9.2) DSU 446–60
 - in absence of objection DSU 447
 - effect on timeframe (DSU 20) DSU 994
 - panel’s discretion DSU 449
 - structure DSU 451–7
 - timeliness of request DSU 448–50, 809–11
- single panel “whenever feasible” (DSU 9.1) DSU 444
 - ordinary meaning DSU 444
 - table DSU 445
 - third party rights DSU 515
- third party participation in panel proceedings initiated by another complainant DSU 488–94

multiple panels/different parties/measure in common DSU 183

multiple panels/same parties/same dispute (DSU 9.3) DSU 182, 461–4

- harmonization of timetables DSU 463–5
- panel’s discretion DSU 465
- separate panel reports DSU 453
- table DSU 461

municipal law: see domestic law

mutually agreed/acceptable solution to matters raised formally (DSU 3.6)

- Article 21.5 compliance proceedings and DSU 80–1
- characterization as such by parties, need for DSU 522
- consultations (DSU 4) and DSU 136, 170
- interpretation, parties’ statements as supplementary means in case of ambiguity (VCLT 32) DSU 82
- notifications as at 31 September 2011 DSU 74
- “solution” DSU 80
- statements made at DSB meetings, whether DSU 27
- suspension of concessions (DSU 22.8) and DSU 81
- “would be fruitful” (DSU 3.7) DSU 79, 84–5, 87, 108–9, 111, 1706

national treatment, extension to permanent residents of Member (GATS xxviii(k)(ii)) GATS 230

national treatment, general principle (GATT III:1)

- applicability
 - measures imposed at the time or point of importation (“internal measures”) (*Ad Article*)

- GATT practice GATT 212
- imposition on like domestic product requirement GATT 208–9, 407
- QRs (GATT XI) distinguished GATT 406–10
- STEs (GATT XVII) and GATT 211
- products not subject of tariff concession under GATT II GATT 205
- competition law compared GATT 206
- as context for interpretation of GATT III:2–5 GATT 225–9, 328
- GATT practice GATT 224, 229, SCM 207
- interpretation of GATT III as a whole and consistency of interpretation GATT 342
- effectiveness principle GATT 218, 226
- GATT III:1 as context GATT 226
- interpretation of WTO Agreement as a whole as a whole and GATT 413
- “no less favourable manner” (SPS Annex C(1)(a)) SPS 575–6
- publication and administration of regulations (GATT X) and GATT 590
- “so as to afford protection”
 - 2.201–4: *see also* national treatment, regulatory discrimination (GATT III:4), “so as to afford protection”, national treatment, tax discrimination (GATT III:2), “so as to afford protection”
 - equality of competitive conditions GATT 203, 204
 - GATT practice GATT 222
 - protection of competitive *relationship* GATT 220–2
 - GATS II and XVII distinguished GATS 34
 - omission from GATT III:2, first sentence, relevance GATT 237
- national treatment, payment of subsidies exclusively to domestic producers as exception (GATT III:8(b))**
 - GATT 389–93
 - expenditure of revenue by government, limitation to GATT 389
 - formal recipient and ultimate beneficiary, distinguishability GATT 392
 - GATT practice GATT 393
 - object and purpose GATT 389
 - SCM Agreement and GATT 390, 419–22
 - targeted aid scheme, applicability to GATT 391–2
- national treatment, regulatory discrimination (GATT III:4)**
 - “affecting” GATT 359–68
 - actual impact, relevance GATT 360
 - GATS 1:1 compared GATT 362
 - GATT practice GATT 368
 - hurricane licences GATT 378
 - licensing procedures GATT 359
 - nature of advantage, relevance GATT 361
 - ordinary meaning GATT 360, 362
 - purpose of measure, relevance GATT 359
 - ratio requirement (net sales value of locally-produced product/locally sold product) GATT 364
 - anti-dumping (GATT VI) and GATT 400–4
 - applicability to direct taxes [on individual] GATT 420
 - burden of proof GATT 325–6
 - determination of violation, elements/test GATT 322–4
 - General Exceptions (GATT XX) and GATT 384–6, 862–4
 - general principle (GATT III:1) and GATT 225, 227, 323, 359
 - “in excess of those applied” (GATT III:2, first sentence), methodology of comparison, individual transactions basis GATT 310
 - “laws, regulations or requirements”
 - domestic purchase GATT 324
 - English, French, Spanish versions of *Ad Article* III compared GATT 406–7
 - GATT practice GATT 358
 - identity of measure, relevance GATT 407
 - “measures” (GATT XXIII:1(b)) distinguished GATT 350

- non-mandatory measures GATT 351–4
- private action and GATT 46 n. 45, 355
- “requirements” GATT 356–7
- “less favourable treatment”
 - discriminatory system for allocation of import licences GATT 165, 214, 398
- equality of competitive conditions as test GATT 369–72
 - GATT XXIII:1(b) compared GATT 387
- “equally overall” argument GATT 381
- formal differences in treatment, relevance GATT 376–9
- formal equality GATT 373
- GATT practice GATT 388
- grouping approach GATT 301–2, 372
- market effect as test GATT 379
- methodology of comparison GATT 375–82
- “overall equality” GATT 382
- as requirement for violation finding GATT 345–7
- standard of proof GATS 131
- “treatment accorded to similarly situated domestic parties”, relevance GATT 380
- “like product”: *see* “like product” (GATT III:2 and III:4)
- “restrictions made effective through state-trading organizations” (*Ad* Articles XI, XI, XIII, XIV and XVIII) GATT 406
- “so as to afford protection” (GATT III:1), relevance GATT 323
- TRIMs and GATT 409 n. 596, 423–6, **TRIMs** 6, 9–17, 19
- Illustrative List GATT 423, **TRIMs** 3, 10–11
- national treatment, services and service suppliers (GATS XVII)**
 - “commercial presence” (GATS XXVIII(d)) and GATS 227
 - conditions and qualifications (GATS XVII:1) GATS 127
 - determination of violation, requirements
 - aims and effects test GATT 217, GATS 38, 132
 - GATT practice GATT 219
 - electronic commerce GATS 126
 - elements of claim GATS 125
 - foreign character of services (SG XVII footnote 10), relevance GATS 133
 - “like service and service supplier” (GATS XVII:1), wholesale transactions GATS 128–9
 - MFN treatment (GATT II) distinguished GATS 34
 - “treatment no less favourable” (GATS XVII:2) GATS 130–1
 - burden of proof GATS 131
- national treatment, tax discrimination (GATT III:2)**
 - see also* directly competitive or substitutable products (GATT III:2); “like product” (GATT III:2 and III:4)
 - applicability, indirect taxes [taxes on products] GATT 420
 - “charge of *any* kind” GATT 261–4
 - GATT practice GATT 264
 - customary rules of interpretation of public international law and WTO 8, GATT 314
 - determination of violation, elements, discrimination between resellers of imported and domestic product GATT 270
 - determination of violation, elements (GATT III:2, first sentence)
 - aims and effects test/policy purpose GATT 206, 213–19
 - GATT practice GATT 219
 - directly competitive or substitutable product: *see* directly competitive or substitutable products (GATT III:2)
 - economic impact GATT 204
 - “like product” and “in excess of” GATT 237–9
 - determination of violation, elements (GATT III:2, second sentence)
 - burden of proof GATT 284–5
 - GATT III:2, first sentence test distinguished GATT 283
 - as separate elements GATT 183
 - “directly or indirectly” (GATT III:2, first sentence) GATT 277–81
 - GATT practice GATT 81, 281
 - discrimination or disguised restriction of trade resulting from inconsistency of SPS measure (SPS 5.5) distinguished SPS 240–2
 - first and second sentences distinguished GATT 204, 230–4, 283, 329–30, DSU 416 n. 698
 - general principle (GATT III:1) and GATT 206, 218, 226, 237–9
 - “in excess of those applied” (GATT III:2, first sentence) GATT 265–76
 - actual* tax burden GATT 266
 - balancing of tax burden, exclusion GATT 267
 - burden of proof GATT 240
 - duration of tax differential, relevance GATT 272
 - GATT practice GATT 273
 - “in excess of” GATT 238
 - methodology of comparison
 - individual transactions basis GATT 266–71
 - timing/point of collection, relevance GATT 269
 - “not similarly taxed” distinguished GATT 306–7
 - regulatory objectives, relevance GATT 274–6
 - Interpretative Note *Ad* Article III:2, legal status/relevance GATT 236, 282, 291–2, 329 n. 476
 - “not similarly taxed” (*Ad* Article III) GATT 270, 283, 306–10
 - threshold/*de minimis* differential GATT 306–7, 313
 - “so as to afford protection” (GATT III:2, second sentence)
 - as application of general principle (GATT III:1) GATT 239
 - design and structure of measure as evidence of protective application GATT 250, 312, 317, 319, **RO** 5
 - GATT practice GATT 321
 - intention of legislators/regulators, relevance GATT 316–21, **RO** 5
 - necessity of tax, relevance GATT 319
 - “not similarly taxed” (*Ad* Article III, para. 2) distinguished GATT 311
 - tariff roles as evidence of GATT 315
 - tax differentials as evidence of protective application GATT 313
 - as strict standard GATT 265
- national treatment (TRIPS 3)**
 - applicability to intellectual property rights addressed in TRIPS (TRIPS 3.1 footnote 3) TRIPS 57–8
 - “each member” /delegation of responsibility (TRIPS 3.1) TRIPS 34
 - “interested parties” (TRIPS 22.2) and TRIPS 4
 - “nationals of other members” (TRIPS 1.3/3.1) TRIPS 35
 - “own nationals” (TRIPS 3.1), determination in accordance with international law TRIPS 52–3
 - as reflection of pre-existing conventions and GATT 1994 TRIPS 2
 - “treatment no less favourable” (TRIPS 3.1) TRIPS 36–51
 - difference of treatment between EU and non-EU members TRIPS 44–51, 54
 - “enjoy the advantages” (PC 2(1)) distinguished TRIPS 20–1
 - GATT III:4 compared GATT 416–17, TRIPS 39, 50, 61–4
 - GATT practice TRIPS 61
 - offset TRIPS 39–43, 66
 - applicability to all trademark owners requirement TRIPS 40–1
 - discretionary administrative procedure as TRIPS 42–3
 - TRIPS 20 (special requirements) and TRIPS 57, 147
 - “nationals”, **determination in accordance with international law** TRIPS 15, 52–3
 - “natural person of another Member” (GATS XXVIII(k)(ii)) GATS 230
- Negotiating Group on Basic Communications**, establishment GATS 216
- Negotiating Group on Basic Telecommunications**, establishment GATS 170, 216
- Negotiating Group on Maritime Services**, establishment GATS 216
- Negotiating Group on Market Access**: *see* market access for non-agricultural products (Doha 16), Negotiating Group on Market Access
- Negotiating Group on Natural Persons**, establishment GATS 216
- Negotiating Group on Rules**
 - establishment WTO 155, 156

- (*cont.*)
responsibilities WTO 156
RTAs (GATT XXIV:5) WTO 150
negotiations concerning multilateral trade relations, WTO as forum for (WTO III:2): *see* “forum for negotiations” (WTO III:2)
“New Strategy for WTO Technical Cooperation for Capacity Building, Growth and Integration”, endorsement (Doha) WTO 111
New Zealand
Enabling Clause notifications
GSP schemes GATT 63
special treatment of least-developed countries GATT 79
NFIDC, implementation (AG 16)
see also Food Aid Convention (1999); Inter-Agency Panel on Short-Term Difficulties in Financing Normal Levels of Commercial Import of Basic Foodstuffs; international food aid (AG 10.4)
Agriculture Committee and AG 118, 120
consultation opportunities (AG 16.2) AG 165
differential treatment within agreement on agricultural export credits AG 218
Doha recommendations AG 155–8, 215
effectiveness, recommendations for improvement AG 166–8
Inter-Agency Panel: *see* Inter-Agency Panel on Short-Term Difficulties in Financing Normal Levels of Commercial Import of Basic Foodstuffs
list of net food-importing countries AG 159–60
countries included as at 30 September 2011 AG 161
criteria AG 160
effect of inclusion AG 160
monitoring (AG 16.2) AG 163–8
notifications AG 173–7
report on implementation (15 October 2010) AG 213
Singapore Ministerial Conference recommendations AG 154
Special Session of Agriculture Committee
establishment WTO 156
responsibility for negotiations WTO 156
NGOs (non-governmental organizations)
General Council relations with (WTO V:2) WTO 166
observer status WTO 167
non-actionable subsidies (SCM 8)
arbitration procedures (SCM 8.5) SCM 347
assistance for research activities (SCM 8.2(a)), government purchases of R&D services and SCM 343
Decision on implementation-related concerns (2000) and SCM 342
notifications (SCM 8.3)
Format for Notification Updates (997) SCM 346
Format for Notifications (1995) SCM 345
legal requirements (SCM 8.2) and SCM 344
Format for Updates of Notifications (1997) SCM 346
non-discriminatory administration of QRs (GATT XIII)
see also quantitative restrictions, elimination (GATT XI)
adjustment of quota allocation (GATT XIII:4), new Member rights and GATT 676
administrative distinctions, relevance GATT 655, 658–9
allocation of quotas (GATT XIII:2(d))
GATT I:1 (“advantage”) and GATT 35
GATT XIII:1/GATT XIII:2 chapeau and GATT 672
GATT XIII:4 and GATT 672, 676
GATT practice GATT 675
inclusion of non-Member imports GATT 666, 674
“may seek agreement” GATT 670–1
to Members not having a substantial interest GATT 660, 666 n. 937, 672–3
“representative period” GATT 672 n. 945
compensation negotiations (GATT XVIII) and GATT 687, 1074
concessions on agricultural products and (AG 4.1 and 21.1) GATT 656, 689, AG 1, 190
distribution of trade as close as possible to expected shares in absence of restrictions (GATT XIII:2 chapeau) GATT 662–7
as general rule (*Ad* Article XIII:2) GATT 662–4
historical trade patterns, relevance GATT 663–4
inclusion of non-Member imports in calculation of tariff quota shares GATT 666
elimination of QRs (GATT XI) and GATT 399
exceptions (GATT XIV)
GATT practice GATT 693
IMF/WTO cooperation agreement and GATT 692
State trading organizations and: *see* State trading enterprises (STEs) (GATT XVII), “quantitative restrictions made effective through state-trading organizations” (*Ad* Articles XI, XI, XIII, XIV and XVIII)
finding as factual matter DSU 842
GATT practice GATT 661, 675, 688
import licensing schemes (GATT XIII:2(b)) GATT 669
“importation . . . is similarly restricted” (GATT XIII:1) GATT 658–60
inclusion of inconsistent allocations in Schedule of Concessions, relevance GATT 169
market access (AG 4.1) and: *see* market access, concessions and commitments (AG 4.1), consistency with GATT XIII
object and purpose (GATT XIII:2) GATT 655, 659, 672
publication and administration of trade regulations (GATT X:3(a)) GATT 562–79
“reasonable” (risk of disclosure of confidential information) GATT 573
“quotas representing the total amount . . . shall be fixed” (GATT XIII:2(a)) GATT 668
safeguard measures (SG 5) and: *see* safeguard measures, application (SG 5), non-discrimination (GATT XIII) and
tariff quotas
applicability of
GATT XIII:2(a) GATT 668
GATT XIII:5 GATT 678–9
tariff measures distinguished GATT 690 n. 968
non-market economies (NMEs)
Accession Protocol (China) and GATT 459, AD 166
Accession Working Party (Vietnam) GATT 458, AD 715
collection of mandatory duties (AD 9.2) AD 660
disclosure (AD 6.10) and AD 477, 624
Note 2 *Ad* Article VI:1 and GATT 455–9, 458, AD 155–6, 166–7, 715
sampling (AD 6.10) and AD 624
separate legal entities, treatment of AD 627–31
non-retroactivity of treaties (VCLT 28)
2.451, 17.1521–8: *see also* retroactivity, retroactivity (provisional measures and anti-dumping duties) (AD 10), retroactivity (trade measures) (ATC 6.10)
in absence of different intention DSU 1522–4
“any relevant rules of international law . . .” (VCLT 31(3)(c)) and DSU 1601
continuing measures SCM 256, DSU 1523–4, 1526–8
as general principle of international law DSU 59, 1521, 1526, 1601
pre-existing rights
anti-dumping and countervailing duties (GATT VI) GATT 451
countervailing duties (SCM 32.3) GATT 451, SCM 590–1

<p>non-tariff measures: <i>see</i> quantitative restrictions, elimination (GATT XI)</p> <p>non-violation claims (GATT XXIII:1(b))</p> <p>“any measure” GATT 959</p> <p>government measures, limitation to GATT 972</p> <p>measure currently in force, limitation to GATT 973</p> <p>non-binding action GATT 971</p> <p>non-commercial measure GATT 964</p> <p>“benefit” /legitimate expectation of improved market access as GATT 978–84, DSU 1551</p> <p>customary international law and GATT 991, GPA 30</p> <p>MFN treatment as alternative GATT 974 n. 1381</p> <p>non-commercial measure and GATT 964</p> <p>reasonable anticipation and GATT 978–83, 986, 988</p> <p>resulting from negotiations GATT 974–7, GPA 30–1</p> <p>burden of proof GATT 967–70, DSU 1349–51</p> <p>constituent elements GATT 965–6</p> <p>as exceptional remedy GATT 960–1, DSU 1349</p> <p>GATT XXIII:1(a) distinguished GATT 959</p> <p>GATT practice GATT 995</p> <p>GPA claims distinguished GATT 989–91, GPA 30</p> <p>“measure”</p> <p>affecting the competitive relationship, GATT III:4 compared GATT 374</p> <p>government action, limitation to DSU 247–52</p> <p>“law, regulations or requirements” (GATT III:4) compared GATT 350</p> <p>nullification or impairment, need for GATT 986–91</p> <p>causality and GATT 986–7</p> <p>competitive relationship as key factor GATT 986</p> <p>government assistance to economic development (GATT XVIII) and GATT 755–7</p> <p>measures in force, limitation to GATT 973</p> <p>object and purpose GATT 962</p> <p>non-violation claims (GATT XXIII:1(b)) (DSU 26.1) DSU 1347–54</p> <p>burden of proof/ “detailed justification” (DSU 26.1(a)) DSU 1349–51</p> <p>remedies (DSU 26.1(b)) DSU 1352–4</p> <p>table of complaints DSU 1348</p> <p>non-violation claims (GATT XXIII:1(c)) (DSU 26.2), GATT practice distinguished GATT 992, DSU 1355</p> <p>non-violation claims (GPA XXII:2) GPA 29–36</p> <p>burden of proof GPA 33</p> <p>Norway</p> <p>Enabling Clause notifications</p> <p>GSP schemes GATT 63</p> <p>special treatment of least-developed countries GATT 79</p> <p>notice of appeal, requirements (ABWP 20(2)(d))</p> <p>amendment (WBWP 23 <i>bis</i>)/clarification DSU 1421–3, 1439–41</p> <p>AB explanations (April and October 2004) DSU 1439–40</p> <p>authorization of requested amendment DSU 1441</p> <p>continuing relevance of rule DSU 1410</p> <p>demonstration of need for DSU 1439, 1474</p> <p>amendments to ABWP 20(2)(d) (2005/2010)</p> <p>amendment to notice of appeal (WBWP 23 <i>bis</i>)</p> <p>continuing relevance DSU 1410</p> <p>introduction DSU 1422</p> <p>due process and DSU 1409</p> <p>explanations DSU 1409, 1410</p> <p>justification for retaining requirement for a notice of appeal DSU 1409, 1410</p> <p>timing changes DSU 1410</p> <p>claims and arguments distinguished</p> <p>17.1411–14, 17.1429 n. 2228: <i>see also</i> legal basis of claim/ “claim” / “matter referred” (DSU 6.2/7.1), arguments distinguished</p> <p>DSU 6.2 compared DSU 1412</p>	<p>clear allegation of panel’s failure to make objective assessment (DSU 11) DSU 1428–30</p> <p>due process and DSU 368, 1408–9</p> <p>amendment (2005) and DSU 1409</p> <p>failure to meet</p> <p>consequences DSU 1415–18, 1426</p> <p>omission of claim of error relating to jurisdiction as special case DSU 1419–20</p> <p>formal deficiencies/absence of prejudice DSU 1424</p> <p>preliminary ruling on DSU 1421, 1423</p> <p>notification of challenge to the jurisdiction DSU 368, 1415</p> <p>statement of allegation of error on issues of law/legal interpretations (ABWP 20(2)(d)) DSU 1423</p> <p>“for example”, sufficiency DSU 1426</p> <p>generic statement, sufficiency DSU 1414, 1427</p> <p>identification of facts requiring panel to draw inferences DSU 1411</p> <p>indication of appropriate factual or legal inferences DSU 1411</p> <p>legal argument in support of claim distinguished DSU 1411</p> <p>paragraph numbers/extracts from panel report, sufficiency DSU 1423, 1425</p> <p>statement of grounds (ABWP 21:2) DSU 1432–4</p> <p>as trigger for appeal process (ABWP 20(1)) DSU 1408</p> <p>notification and consultation (SG 12) SG 257–98</p> <p>“adequate opportunity for prior consultations” (SG 12.3) SG 285–8</p> <p>level of concessions (SG 8.1) and SG 239–40</p> <p>as “sufficient time for meaningful exchange” SG 240</p> <p>“all pertinent information” (SG 12.2) SG 280–2</p> <p>injury factors (SG 4.2(a)) and SG 280–2, 290</p> <p>objective test SG 280–1</p> <p>precise description of proposed measure sufficient for prior consultation under SG 12.3 SG 287, 289–90</p> <p>content of SG 1(a) notification SG 276, 278–9</p> <p>elimination of pre-existing GATT measures (SG 10/SG 12.7) SG 249–50, 296–7</p> <p>calculation of deadline (SG 12.7) (“date of this agreement” (WTO XVI:2)) SG 254, 296</p> <p>signatories entitled to become original Members of WTO and SG 297</p> <p>formats SG 257–9, 276–9, 292, 293, 297</p> <p>non-binding nature SG 279</p> <p>termination of measure SG 277</p> <p>“immediately”</p> <p>SG 12.1 SG 261–4</p> <p>SG 12.1(a) SG 265–7</p> <p>SG 12.1(b) SG 268–70</p> <p>SG 12.1(c) SG 271–5</p> <p>translation delays SG 261, 264</p> <p>“initiation of investigation and reasons for it” (SG 12.1(a)), limitation to SG 278–9</p> <p>AD 5 and SCM 11 distinguished SG 279</p> <p>SG 3.1 and 4.2 distinguished SG 279</p> <p>laws, regulations and administrative procedures (SG 12.6)</p> <p>accession protocols and SG 298</p> <p>compliance record SG 295</p> <p>format SG 293</p> <p>notifications SG 303</p> <p>review procedures SG 294</p> <p>modifications reducing restrictiveness of measure (SG 7.4), limitation to SG 237, 291</p> <p>notifications, availability SG 260</p> <p>object and purpose SG 281</p> <p>right to request additional information (SG 13.1(f)), relevance SG 282, 289</p> <p>Technical Cooperation Handbook on Notification Requirements, relevance SG 257</p> <p>timeliness (SG 12.1, 12.2 and 12.3) SG 283</p>
--	---

- (*cont.*)
- notification of enquiry/contact points**
GATS III:4/GATS IV:2 GATS 47, 50
TRIPS 69 TRIPS 306
- notification of implementing laws and regulations (PSI 5) PSI 22**
- notification obligations (LIC 1.4 and 5) LIC 14**
duplication or overlapping of notifications LIC 37
reversal of notifications (LIC 5.5) LIC 39
notifications as at 30 September 2011 LIC 38
procedures, agreement on (1995) LIC 16, 52
reverse/counter notifications (LIC 5.5) AG 139
- notification obligations and procedures**
GPA Agreement GPA 16, 18–19, 25, 40
SPS Agreement, *see also* transparency of SPS regulations (SPS 7 and Annex B)
Technical Cooperation Handbook on Notification Requirements, relevance SG 257
- notification obligations and procedures (TRIMs 2.1), notification formats (TRIMs 5.5) TRIMs 36**
- notification obligations and procedures (TRIPS)**
enquiry/contact points (TRIPS 69) TRIPS 306
laws and regulations, final judicial decisions and administrative rulings of general application (TRIPS 63.2) TRIPS 59, 73, 279–80
notification formats TRIPS 59, 73
- Notification Obligations and Procedures Working Group WTO 92**
- notification obligations (SCM 25)**
13.514–24: *see also* non-actionable subsidies (SCM 8), notifications (SCM 8.3)
effect of notification (SCM 25.7) SCM 517
frequency of submission and review SCM 515
nil notifications (SCM 25.11 and 25.12) SCM 523
“nil” notifications SCM 524
notification formats SCM 345, 514, 571, 573
“report . . . all preliminary or final actions” (SCM 25.11)
minimum information SCM 519–20
semi-annual reports SCM 521–2
transparency and SCM 518
written procedure SCM 516
- notification procedures (TBT 2.9)**
comments on notified regulations
procedures for handling TBT 94–5
time limits TBT 92–3
documentation
processing of requests for TBT 91
streamlining of follow-up notifications, amendments etc. TBT 98–9
translation (TBT 10.5) TBT 90, 124
electronic availability of notified draft regulation TBT 96
electronic transmission TBT 87
labelling requirements TBT 88
listing of notifications TBT 97
notification of agreement on technical regulations, standards or conformity assessment procedures which may have a significant effect on trade (TBT 2.10) TBT 125–6
notification format and guidelines TBT 86–7
notification of proposed regulations (TBT 2.9.2)
French and Spanish texts compared TBT 101
as inherent obligation TBT 101
provision *on request* of copy of proposed regulation (TBT 2.9.3) distinguished TBT 101
provision *on request of proposed regulation*, timing (TBT 2.9.3) TBT 102
publication requirement TBT 84–5
“significant effect on trade of other members” (TBT 2.9 and 5.6) TBT 83, 100
TBT Committee recommendations and decisions relating to TBT 81–99
timing TBT 89, 101
“urgent problems . . . arise or threaten to arise” (TBT 22.10) and TBT 103
- notification requirements (AG 18.2) AG 173–8**
developing countries AG 177–8
information systems AG 175–6
notification formats AG 173
report on Members’ compliance with notification obligations AG 174
- notification requirements (ATC 2) ATC 5–7**
mandatory 60 day period (ATC 2.1) ATC 8
unnotified measures ATC 7, 11
- notification requirements (ATC 3) ATC 6**
- notification requirements (ATC 6), provisional application of restraint measures authorized under ATC 10 (ATC 11) and ATC 81**
- notification requirements (STEs) (GATT XVII:4/Understanding on the Interpretation of GATT XVII) GATT 736–43**
frequency GATT 742
GATT practice GATT 738
questionnaire GATT 737, 740
time limits GATT 736
- notification of rules of origin, judicial decisions and administrative rulings (RO 5)**
in language other than WTO working language RO 21
notifications as of 31 December 2010 RO 23
procedure for dealing with queries in respect of national legislation RO 22
- notification and transitional arrangements (TRIMs 5)**
elimination of TRIMs notified under TRIMs 5.1 (TRIMs 5.2) developed and developing countries TRIMs 30
LDCs TRIMs 31
format TRIMs 25
notification of LDC temporary measures (Hong Kong) TRIMs 28–9
notifications by original Members (TRIMs 5.1) TRIMs 26
notifications under TRIMs 5.1 TRIMs 27
- nullification or impairment (DSU 3.8)**
adverse impact/prejudice, relevance AD 392–3, 456, DSU 90–8
direct or indirect benefits (DSU 3.3) DSU 1223
GATS XXIII (dispute settlement and enforcement), distinguished GATS 203–4, DSU 99–100
inconsistency with covered agreement as *prima facie* evidence of, rebuttal SCM 225
legal interest requirement (DSU 3.7) distinguished DSU 87
lost opportunities, relevance DSU 1223
nature and purpose of countermeasures (DSU 22) DSU 1177–82
presumption in case of inconsistency with covered agreement AD 390, DSU 90–8, 1223, 1225
adverse effects (SCM 5) distinguished SCM 261, DSU 95
evidence of level of nullification or impairment distinguished DSU 98, 1231
SCM 3 and 4 (prohibited subsidies) distinguished SCM 225, DSU 1281–3
SCM 5 (adverse effects) SCM 225, 234–5
SCM 7.9 and 10 (commensurate with degree and nature of adverse effects) distinguished SCM 235
- nullification or impairment (DSU 22.4): *see* suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), level equivalent to nullification or impairment (DSU 22.4)**
- nullification or impairment (GATT XXIII): *see* non-violation claims (GATT XXIII:1(b)), nullification or impairment, need for**
- observer status (applicants for accession) WTO 250**

observer status (governments) (Ministerial Conference/General Council Guidelines) WTO 224–8, Table XX B	“appropriate” (SCM 4.10) SCM 224, 226, 277, DSU 1289
Air Committee AIR 34	“arbitrary or unjustifiable” SPS 231
purpose WTO 226	“as a result of unforeseen developments” GATT 803, SG 6
Rules of Origin Committee RO 16	“avoid” (TRIPS 46) TRIPS 251
statistics WTO 227	“based on” SPS 71–2, 81, 134
observer status (international organizations)	“benefit” (SCM 1.1(b)) SCM 59
BOPs Committee GATT 786	“central government entity” (GPA Appendix 1) GPA 7
Council for Trade in Services GATS 218–19	“characteristics closely resembling” (SCM footnote 46) SCM 424
Council for Trips TRIPS 303	“c.i.f. import price” (AG 5.1(b)) AG 70
Customs Valuation Committee VAL 62	“competitive” (ATC 6.2) ATC 44
FAO WTO 163	“concessions” GATT 138, AG 42
Government Procurement Committee (GAP XXI:1) GPA 26	“ordinary customs duty” AG 42
IMF WTO 45, 163	“confer” (SCM 1.1(b)) SCM 59
ITC WTO 163	“conforms with the provisions” (SG 11.1(a)) GATT 839, SG 4, 5
Ministerial Conference/General Council Guidelines WTO 164	“contingent” (SCM 3.1) SCM 132, 135, 165
OECD WTO 163	“contingent upon the use of domestic over imported goods” (SCM 3.1(b)) SCM 167
SPS Committee SPS 437	“cost-oriented rates” (Reference Paper on Basic Telecommunications) GATS 153–5
UN WTO 163	“countermeasure” SCM 222, DSU 1287
UNCTAD WTO 163	“countermeasure” (SCM 4.10) SCM 222
WIPO WTO 163	“credits” (SCM Illustrative List item (k)) SCM 628
World Bank WTO 45, 163	“customs valuation” (VAL) VAL 1–2
observer status (NGOs) WTO 167	“determination” (DSU 23.2) DSU 1313
OECD Development Assistance Committee WTO 111	“directly competitive or substitutable” (GATT III:2) GATT 291–2
Office International des Epizooties (OIE): <i>see</i> World Organization for Animal Health (previously Office International des Epizooties (OIE))	“discriminate” (TRIPS 27) TRIPS 177
officers (WTO), appointment, guidelines WTO 73	“discriminate” (TRIPS 27.1) TRIPS 177–8
Oilseeds Agreement (EC–Brazil), status as covered agreement	“displace” (SCM 6.3(a)) SCM 307
WTO 276, GATT 10, 671, DSU 6	“disposal” (TRIPS 59) TRIPS 245
Schedule LXXX and DSU 1671	domestic law concepts, relevance DSU 1623–8, 1655 n. 2588, 1655 n. 2589
as supplementary means for interpreting a covered agreement (VCLT 32) DSU 1635	“elaborate” (SPS preamble) SPS 596
order of analysis	“eligible” (AG Annex 3, para. 8) AG 203
<i>see also</i> <i>lex specialis</i> /presumption against treaty conflicts;	“equivalent” (DSU 22.4) DSU 1246
relationships within and between agreements	“establishment” AD 917
AD 13/SCM 3, 5 and 6/GATT XVI SCM 182, DSU 693	“evaluation” AD 259
AD-consistent measure/compliance with public notice (AD 12.2) requirements AD 838–9	“examine” (VAL 1.2(a)) VAL 17
“advantage”/discrimination (GATT I:1) GATT 27	“exclusive right” (TRIPS 16.1) TRIPS 131
ALOPs (SPS 5.6) SPS 262	“explicit” (SCM 2.1(a)) SCM 107–8
covered agreements/DSU DSU 16	“exploit” (TRIPS 13) TRIPS 117
GATT/SCM DSU 1724	“export credit” (Illustrative List of Export Subsidies (SCM Annex I), item (k)) SCM 628
GATT/TRIMs DSU 1722	“export credit practice” (SCM Illustrative List item (k)) SCM 644
judicial economy and DSU 648	“fact” (AD 6.9) AD 612
mandatory nature of legislation/consistency with WTO obligations AD 880	“fair comparison” AD 80
mandatory/discretionary nature of legislation/substance DSU 294–5	“field of export credit terms” (SCM Illustrative List item (k)) SCM 638
measures taken to comply (DSU 21.5) DSU 1120	“filing date” (TRIPS 33) TRIPS 211
non-discrimination (GATT I:1)/Enabling Clause GATT 81	“financing” (AG 9.1(c)) AG 104
specific/general provision GATT 81, 400–4, 418, 425–6, 594, SPS 189, 590–1, 595, AD 86, 432, 492	“freedom of transit” (GATT V:1) GATT 434
DSU 23.1/DSU 23.2 DSU 1300	“general infrastructure” (SCM 1.1(a)(1)(iii)) SCM 45
as general principle of international law AD 467 n. 622	“generalized” (EC 2(a) footnote 3) GATT 84
“substantive” agreements/DSU DSU 16	“goods” (SCM 1.1(a)(iii)) SCM 43
order of analysis (TBT 2.4) TBT 48, 155	“government practices” (SCM 1.1(a)(1)(i)) SCM 27
ordinary meaning of terms used in covered agreements	“have recourse to” / “seek redress” (DSU 23.1) DSU 1306
GATT 805, 840	“identify the specific measure at issue” (DSU 6.2) DSU 211, 237
“acts” (TRIPS 70.1) TRIPS 308–10, DSU 1524	“immediately”, SG 12.1 SG 261, 263–4
“advantage” (SCM Illustrative List item (k)) SCM 631	“impede” (SCM 6.3(a)) SCM 307
“affecting” (DSU 4.2) DSU 152	“in accordance with the provisions” (SCM 32.1) SCM 583
“affecting” (GATS I:1) GATT 362, GATS 10	“in accordance with” (AG 1(a)(ii)) AG 6–7, 80
“affecting” (GATT III:4) GATT 360–1	“inadequate to cover” (Illustrative List item (j)) SCM 620
“anti-dumping measure” AD 5	“inadequate to cover” (SCM footnote 9) SCM 620
“apply as single unit or on behalf of a member State” (SG 2.1 footnote 1) SG 64	“infringing goods” (TRIPS 59) TRIPS 236
	“initiate” (SCM Annex V) SCM 675
	“instrument” (VCLT 31(2)(b)) DSU 1567 n. 2413
	“interest rate support” (Illustrative List of Export Subsidies (SCM Annex I), item (k)) SCM 649

- (*cont.*)
- “interest rate support” (SCM Illustrative List item (K)) SCM 648
 - “interests” (TRIPS 13) TRIPS 123
 - “investigation” (SG 3.1) SG 92
 - “level of subsidies” (SCM 27.4/footnote 55) SCM 547
 - “likelihood” SPS 508
 - “long-term” (Illustrative List item (j)) SCM 620
 - “long-term” (SCM Illustrative list item (k)) SCM 621
 - “market” (SCM 6.3(c)) SCM 319 n. 531, 321
 - “matter” (AD 17) AD 898
 - “measure” (GATT XXIII:1(b)) DSU 248
 - “multiple authentic languages” (VCLT 33) and DSU 1660, 1664–7
 - “no less favourable treatment” (SG II:1 and XVII:1) GATS 34
 - “non-discriminatory” (EC 2(a) footnote 3) GATT 85–9
 - “normal” (TRIPS 13/TRIPS 30) TRIPS 118, 195
 - “on their importation” (GATT II:1(b)) GATT 145
 - “operating costs and losses” (SCM Illustrative List item (j)) SCM 622
 - “original panel” (DSU 10.4/DSU 21.5/DSU 22.6) DSU 475
 - “owner” (TRIPS 16.1) TRIPS 130
 - “payments” (AG 9.1(c)) AG 88–90
 - “potential” SPS 519
 - “premium” (SCM footnote 59) SCM 619
 - “price undercutting/suppression” (SCM 6.3(c)) SCM 316
 - “proceedings” (DSU 17.10) DSU 886
 - “producers” (SCM 16.1) SCM 453–4
 - “product characteristics” (TBT Annex 1.1) TBT 157
 - “products which have been in transit” (GATT V:6) GATT 440
 - “proper” AD 917
 - “proportion” (SCM 2.1(c)) SCM 113
 - “protocols and certifications relating to tariff concessions” (GATT 1994 1(b)(i) and 1(d)) GATT 4
 - “provides” (SCM 1.1(a)(1)(iii)) SCM 40, 42
 - “provisions of this agreement” (SCM 32.1) GATT 451
 - “related to” (AG Annex 2, para. 6(b)) AG 196
 - “relevant” (TBT 2.4) TBT 59
 - “requirements” (GATT III:4) DSU 250
 - “restriction” (GATT XI:1) GATT 600
 - “result” (GATT XIX:1(a)) GATT 819
 - “serious injury” (SG 4.1(a)) SG 116
 - “serious” (SCM 5(c)) SCM 265
 - “service” (GPA 1) GPA 4
 - “shall apply to all measures” (GATS Annex on Basic Telecommunications) GATS 242
 - “shall include” AD 247
 - “shall not prevent” (GATT XXIV) GATT 1003, 1007
 - “significant” (SCM 6.3(c)) SCM 310
 - “specific action against dumping” GATT 449, 451
 - “specific measures” (DSU 6.2) DSU 215
 - “statement of available evidence” (SCM 4.2) SCM 192, 195
 - “source” (SCM footnote 59) SCM 604
 - “subject to” GATT 140
 - “subject to compliance with the provisions” (SCM 27.2) SCM 527
 - “subject-matter” (TRIPS 70.2) TRIPS 311
 - “successor undertaking” (SCM Illustrative List item (k)) SCM 641
 - “sufficient” SPS 25
 - “suppress” (SCM 6.2(c)) SCM 281
 - “terms used in”
 - SPS Annex A(1)(b) SPS 476
 - TRIPS 24.5 TRIPS 174
 - TRIPS 33 TRIPS 211
 - “through the effects of subsidies” (SCM 15.1/footnote 47) SCM 443
 - “tied to” (SCM 3.1(a)) SCM 132, 133, 136
 - “unbiased and objective” AD 920
 - “unconditionally” (GATT I:1) GATT 49
 - “unreasonably prejudice” (TRIPS 13) TRIPS 123, 124
 - “variable import levies” (AG 4.2) AG 51
 - “whenever feasible” (DSU 9.1) DSU 444
 - “withdraw” (SCM 4.7) SCM 208
 - “world market share” (SCM 6(3)(d)) SCM 326
- original membership (WTO XI:1)**
- 1.229–33: *see also* accession (WTO XII)
 - acceptance of WTO Agreement
 - after 1 January 1995 WTO 233
 - before 1 January 1995 WTO 232
 - deadline (WTO XIV:1) WTO 230
 - retroactive extension WTO 265
 - qualification as WTO 229
 - special cases regarding acceptance and accession (1994–6) WTO 234–8
 - finalization of tariff concessions by 15 April 1994 requirement and WTO 234
 - GATT 1947 contracting parties by succession (GATT XXVI:5(c)) WTO 234
 - least-developed countries (WTO XI:2) including Ministerial Decision on Measures in Favour of LDCs WTO 234–7
 - Ministerial Decision on Acceptance of and Accession to the WTO Agreement WTO 235–6
 - simplified procedures (Finalization of Negotiations on Schedules on Goods and Services, General Council decision of 31 January 1995) WTO 238, 240
 - statistics WTO 231
- over-quota trade:** *see* import licensing procedures, over-quota trade, applicability to
- panel procedures (DSU 12 and Appendix 3 (WP))**
- see also* composition of delegation; evidence (panel) (DSU 12); executive summaries (panel working procedures); margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3); special or additional rules and procedures (DSU 1.2 and Appendix 2)
 - access to dispute settlement process (DSU 12.6) DSU 516, 697
 - applicable law
 - agreement of parties to alternative procedure DSU 622
 - panel’s right to determine DSU 622
 - confidentiality of proceedings: *see* confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3)
 - departure from after consultation with/agreement of parties (DSU 12.1) DSU 479
 - experts, applicability to SPS 417, DSU 1487
 - high quality reports/avoidance of delay, flexibility in achieving balance (DSU 12.2) DSU 678, 694
 - panel proceedings as two-stage process DSU 622
 - “rebuttal submissions” DSU 628, 698
 - separate opinion (DSU 14.3) GATT 626, DSU 771
 - submission, right of (DSU 12.6 and WP 4) DSU 516, 697
 - order of submission (DSU 12.6 and WP 12), arbitration (DSU 21.5), applicability to DSU 699
 - text (Appendix 3) DSU 1360 (Section XXX)
 - time limits for filing of written submissions (DSU 12.5 and WP), modification by agreement DSU 721
 - timetable (DSU 12.3)
 - flexibility DSU 696
 - preliminary ruling on DSU 696
- panel reports**
- see also* dispute settlement, special provisions relating to developing countries; legal status of panel reports; standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)
 - adoption of report/notice of appeal (DSU 16.4) DSU 827–34
 - circumvention of deadline DSU 833
 - extension of deadline DSU 827–32

- AB workload and DSU 832
- parties' procedural agreement on DSU 830–1
- high quality/flexibility of panel procedures balance (DSU 12.2)
 - DSU 465, 678, 681, 685, 694–5, 734
- rationale/reasons, need for (DSU 12.7)
 - Article 21.5 proceedings and DSU 704
 - in case of mutually agreed solution DSU 706–8
 - direct quotation from previous report, desirability DSU 703
 - security and predictability of WTO obligations (DSU 3.2) and GATT 314, DSU 51, 703
 - sufficiency SCM 310, DSU 700–8
 - reference to previous panel report (DSU 21.5) DSU 703
 - separate opinions GATT 626, DSU 771
 - table of appealed reports (DSU 4) DSU 839
- panel, request for establishment:** *see* request for establishment of panel, requirements (DSU 6.2)
- panellists**
 - see also* composition of panel (DSU 8)
 - independence and impartiality (RoC II and III:2) DSU 1482
 - Rules of Conduct (RoC), applicability to DSU 1482, 1487
- parallelism (safeguard measures):** *see* safeguard measures, conditions (SG 2), parallelism between investigation (SG 2.1/SG 4.1(c)) and application of measure (SG 2.2)
- Paris Convention (PC)/TRIPS**
 - see also* intellectual property conventions (TRIPS 2); trade names, obligation to comply with PC 8 as incorporated by TRIPS 2.1; trademarks (Paris Convention) (PC)
 - applicability of Paris Convention, obligation to argue/make *prima facie* case TRIPS 22
 - assimilation to nationals “of the Union” (PC 3) TRIPS 24
 - “criteria for eligibility for protection” TRIPS 16
 - incorporation (TRIPS 2.1) TRIPS 19–33, DSU 870
 - “interested party” (PC 10(2)) TRIPS 32
 - national treatment (PC 2(1)) TRIPS 20–2
 - “nationals of other Members” (TRIPS (1.3)), 16.15–16, 16.18:
 - see also* TRIPS Agreement, applicability to “nationals of other Members” (TRIPS 1.3)
 - trademark registration (PC 6): *see* trademarks (Paris Convention (PC))
- patents (TRIPS part II Section 5)**
 - see also* copyright and related rights (TRIPS Part II Section 1), limitations and exceptions (TRIPS 13)
 - exclusive rights (TRIPS 28) TRIPS 188
 - limited exceptions (TRIPS 30)
 - applicability of TRIPS 27.1 TRIPS 184–5
 - balance of agreement as a whole and TRIPS 191
 - compensatory adjustment TRIPS 203
 - conditions/criteria (“limited”)
 - Berne 9(2) as basis TRIPS 202
 - cumulative nature TRIPS 189
 - curtailment of owner’s rights TRIPS 192–4
 - economic impact TRIPS 193–4
 - “exploitation of patent” TRIPS 195–7
 - “legitimate interests” TRIPS 198–203
 - legal rights distinguished TRIPS 200
 - “normal exploitation” TRIPS 195–6
 - patentable subject matter (TRIPS 27)
 - as context for interpretation of TRIPS 70 (protection of existing subject matter) TRIPS 311
 - “discrimination” (TRIPS 27.1)
 - applicability to TRIPS 30 and 31 TRIPS 184–5
 - de facto* discrimination TRIPS 177–8
 - “fields of technology” TRIPS 180
 - non-discriminatory terminology in other GATT/WTO agreements distinguished TRIPS 177–8
 - exceptions (TRIPS 30), applicability TRIPS 184–5
 - policy considerations underlying TRIPS 185
 - review (TRIPS 27.3(b)), information-gathering TRIPS 181
 - work programme (Doha 19/Hong Kong Declaration) TRIPS 182–3
 - term of protection (TRIPS 33)
 - “available” TRIPS 212
 - “effectiveness”, relevance TRIPS 213
 - “existing subject matter” (TRIPS 70.2) and TRIPS 317
 - freedom to choose method of implementation (TRIPS 1.1) and, “filing date” TRIPS 211
 - unwarranted curtailment, prohibition (TRIPS 62.2) as distinct and cumulative provision TRIPS 8, 276
 - use without authorization (TRIPS 31)
 - compulsory licences (Declaration on the TRIPS Agreement and Public Health) TRIPS 205
 - pharmaceutical product, waiver of TRIPS 31(f) and (h) requirement (TRIPS 31 *bis*) TRIPS 206–10
- payments on export of agricultural product financed by virtue of governmental action (AG 9.1(c))**
 - see also* determination of dumping (AD 2), calculation of dumping margins (AD 2.4); export subsidy commitments (AG 9); export subsidy commitments (AG 9), “direct subsidies, including payments-in-kind” (AG 9.1(a)); export subsidy, prohibited (SCM, Part II), “contingent upon export performance” (SCM 3.1(a))
 - applicability to scheduled and unscheduled commitments (AG 3.3) AG 31–2
 - benchmark/standard (AG 9.1(c))
 - absence of express provision, relevance AG 92
 - domestic price fixed by government AG 93
 - factual and regulatory setting, relevance AG 92–3
 - industry-wide production costs AG 96
 - market intervention AG 3
 - market rate, relevance, world market price AG 94–5
 - objective standard, need for AG 94–5
 - “budgetary outlays” (AG 1(c)), “revenue foregone” AG 10
 - “by virtue of” AG 99, 100–1, 106
 - “but for” test AG 100
 - link, need for AG 100–7
 - “financed” AG 99
 - “whether or not a charge on the public account” AG 87, 99
 - “government action” AG 98
 - “payments”
 - cross-subsidization as/as cross-subsidization AG 91, 106
 - payment-in-kind as AG 87–90
 - transfer of economic resources, need for AG 87
 - payments by private parties as AG 102
- payments and transfers (GATS XI)**
 - absence of jurisprudence GATS 70
 - importance of provision GATS 70
- Permanent Group of Experts (PGE) (SCM 4.5)** SCM 197, 509–10
- permanent resident, equality of treatment with nationals** GATS 230
- pharmaceutical and agricultural chemical products, patent protection (TRIPS 70.8)**
 - see also* patents (TRIPS part II Section 5)
 - developing countries’ right to delay (TRIPS 65.2) TRIPS 186, 293
- Plurilateral Agreements**
 - see also* Aircraft Agreement (AIR); Government Procurement Agreement (GPA); International Bovine Meat Agreement; International Dairy Agreement (IDA)
 - accession to (WTO XX:3) WTO 255–8
 - additions and deletions (WTO X:9) WTO 217–18
 - amendments (WTO X:10) WTO 219–22
 - DSU applicability and AIR 31
 - reporting procedures WTO 75
 - reservations (WTO XVI:5) WTO 300–3
 - subsidiary bodies (WTO IV:8), reporting procedures WTO 75
 - withdrawal (WTO XV:2) WTO 272

- (*cont.*)
- Poland**, ATC safeguard measures (ATC 6), TMB discussion
ATC 34, 73
- practice prior to** ATC 2
- pre-shipment inspection:** *see* PSI Agreement, review/monitoring
(PSI 6); PSI obligations
- precautionary principle (SPS Agreement)**
consistency of measures with SPS Agreement requirement SPS 8,
DSU 1730
control, inspection and approval procedures (SPS 8 and Annex C)
and SPS 570
as customary international environmental law SPS 2, 6–7, DSU
1730–1
harmonization of measures (SPS 3.3/preamble) and SPS 91
measures which result in a higher level of protection than
international standards (SPS 3.3) SPS 8, DSU 1730
non-retroactivity of treaties (VCLT 28) and SPS 8, DSU 1730
as “rule of international law” (VCLT 31(3)(c)) DSU 1594, 1730–1
scientific basis of measures, panel assessment SPS 181
SPS preamble SPS 6–8, DSU 1730
sufficient scientific evidence (SPS 5.7) and SPS 8, 23, 37, 328–30
- precedent**
see also GATT 1947/WTO continuity, decisions, procedures and
customary practices under GATT 1947 (WTO XVI:1); legal
status of adopted AB reports
AB jurisprudence, importance of following DSU 53, 68, 835,
903, 1701
distinguishability of cases and AD 779, DSU 825
ECJ decisions GATT 206
GATT panel reports GATT 239 n. 348
security and predictability of WTO obligations (DSU 3.2) and DSU
53, 823, 835, 903, 1701
as source of rule of international law DSU 1590
- Preferential Trade Arrangements (2010)**, Transparency Mechanism
(2010) WTO 121
- preliminary rulings on**
adequacy of consultation (DSU 4) DSU 161
compliance with ABWP 20(2)(d) DSU 1421, 1423
composition of delegation/private counsel DSU 914
composition of panel (DSU 8.7) DSU 437, 1494
confidentiality issues DSU 917
establishment of new panel during preparation of, good faith (DSU
3.10) and DSU 129
executive summaries DSU 735
identity of measures specified in requests for consultations and
establishment of panel DSU 417, 427
multiple panels (DSU 9.3) DSU 462
panel composition DSU 1494
specificity of request for panel (DSU 6.2) DSU 236–7, 239–40, 344,
345, 373, 462
terms of reference DSU 418
third party rights DSU 471, 505
timetable for panel proceedings DSU 696
timing of submission of evidence DSU 623–8
- preliminary rulings (procedural aspects)**
absence of requirement/established practice DSU 348–9
circulation to DSB as WTO documents DSU 350
issue to parties/third parties DSU 351
regulation of request for DSU 346–7
reproduction in final report DSU 351
request for, typical requirements DSU 720
third parties’ rights relating to DSU 501–2
timing DSU 670
working procedures, need for DSU 346–7
- preparatory work (VCLT 32)** DSU 1639–43
AD 1 AD 5
AD 2.4.2 AD 128 n. 178
AD 3.4 AD 247, 249
AD 5/SCM 11 SCM 371
AD Annex II AD 533
AG 4.2 AG 37
ambiguity and (VCLT 32(1)) TRIPS 229
Berne 9(2) TRIPS 118 n. 121
BOP Understanding footnote 1 GATT 755, DSU 1640
Enabling Clause GATT 84
GATS XVI:2 GATS 115
GATT II:1(b) GATT 148
GATT III:2 GATT 297
GATT III:8 GATT 389, 390, 422, DSU 1639
GATT VI:1 *Ad Article* GATT 459
GATT VI:2 GATT 462
GATT VI:6(b) and (c) GATT 486
GATT XIX/SPS DSU 1641
GATT XX GATT 856
improper use of DSU 58
Oilseeds Agreement as DSU 1635
RO 2(c) RO 12 n. 22
Scheduling Guidelines as GATS 115, 121
1993 Guidelines GATS 179, 180
Document W/120 GATS 179, 185
SCM 1.1(a)(1) SCM 12, 14, 48
SCM 1.1(a)(1)(iii)/SCM 14(d) DSU 1643
SCM 4 SCM 236
SCM 11 SCM 371
SCM GATS 7, DSU 1642
SG SG 83
TRIPS 13 TRIPS 118 n. 123
TRIPS 46 TRIPS 229
- Preshipment Inspection Agreement:** *see* PSI Agreement
- price undertakings (AD 8)/undertakings (SCM 18)**
AD 8 and SCM 18 distinguished AD 655, SCM 458
practicality, relevance (AD 8.3/SCM 18.3) AD 654,
SCM 457
- prima facie case:** *see* burden of proof (general rules), *prima facie* case
requirement
- private action as justification for breach of obligation** GATT 46,
355, SCM 213, 241
- private counsel, inclusion in delegation**
appellate review DSU 722–7
confidentiality and: *see* confidentiality of proceedings (DSU 14/
DSU 17.10/DSU 18.2/WP 3/ABWP 27), private counsel/
advisers not part of delegation and
panel proceedings DSU 914–16
Rules of Conduct (RoC), non-applicability DSU 1488–90
- privileges and immunities (WTO VIII)**
see also Headquarters Agreement (WTO–Switzerland) (1995)
Convention on Privileges and Immunities of Specialized Agencies
(1947) as model (WTO VIII:4) WTO 192
Members’ obligation to respect international character of WTO
(WTO VI:4) and WTO 191
WTO staff and representatives of Members (WTO VIII:3)
functional nature WTO 191
obligation of Secretariat officials to observe host State laws
WTO 191
waiver by Director-General WTO 191
WTO (WTO VIII:2), functional nature WTO 191
- procedure**, *see also* AB procedures (DSU, 17.9 and ABWP); panel
procedures (DSU 12 and Appendix 3 (WP))
- progressive liberalization (GATS XIX), decisions and agreements
relating to**
see also government procurement (GATS XIII); judicial and
administrative assistance, non-applicability of GATS II
(MFN) provisions; market access (GATS XVI); “measure”
(GATS XXVIII(a)); “measures affecting trade in services”

(GATS I:1); “measures by Members” (GATS I:3); MFN treatment (GATS II); monopolies and exclusive service providers (GATS VIII); Movement of Natural Persons Supplying Services under the Agreement (GATS, Annex); national treatment, services and service suppliers (GATS XVII); payments and transfers (GATS XI); progressive liberalization (GATS XIX); decisions and agreements relating to; progressive liberalization negotiations (GATS XIX:3 and Doha 15); recognition of qualifications (GATS VII)	consolidation of SPS 2.2 and SPS 5.7 requirements SPS 327 limitation of Article 21.5 review to insufficiencies identified by Member adopting measure DSU 1278 n. 2005 SPS 5.7 as alternative defence, relevance SPS 326 SPS 5.7 as autonomous right, effect SPS 324–5, 335 cumulative requirements SPS 293–4 impossibility of reaching objective conclusion and SPS 292 “insufficient” SPS 295–9 international standard as evidence of sufficiency SPS 300–2 precautionary principle and SPS 328–30 provisional measure falling outwith scope of SPS 5.7 SPS 291 as qualified exemption/autonomous right SPS 36, 52–6, 287–90, 332–5 burden of proof and SPS 324–5, 335 rational and objective relationship between SPS measure and scientific evidence, need for SPS 309 review within “a reasonable period of time” SPS 293, 317–19 availability of objectively sufficient evidence and SPS 320 evolution of scientific evidence subsequent to adoption of provisional measure and SPS 321–3 relevance of Member’s ALOP SPS 320, 538 risk assessment (SPS 1) and SPS 308 scientific uncertainty/controversy, relevance SPS 296, 299 “seek to obtain additional information” for more objective assessment of risk SPS 310–16 SPS 5.1/Annex A(4) and SPS 311–12 standard of insufficiency SPS 303–5
Decision on Commitments in Basic Telecommunications (GATS, Fourth Protocol) GATS 170 financial services GATS: Second Protocol GATS 167 GATS: Fifth Protocol GATS 168 movement of natural persons (GATS: Third Protocol) GATS 166 obligation (GATTs XIX:1), information exchange (Singapore) GATS 161	provisional measures (AD 7) duration (AD 7.4) AD 648 claim relating to as claim relating to definitive anti-dumping duty (AD 10) AD 894–5 judicial economy in case of overlap with previous determination relating to definitive measure AD 647 as “measure” (AD 17.4) AD 894–5 “not in excess of” (AD 7.2) AD 649 preliminary affirmative determination (AD 7.1(ii)), retroactive measures (AD 10.7) and AD 729 specific action against dumping (Note <i>Ad Article VI:2–3</i>) AD 653
progressive liberalization negotiations (GATS XIX:3 and Doha 15) guidelines and procedures (GATS XIX:3/Doha 15) assessment of trade in services as on-going exercise GATS 165 Guidelines and Procedures for Negotiations (2001) GATS 164 obligation (GATTs XIX:1) GATS 161–3 Special Session of the Council for Trade in Services establishment WTO 156 responsibility for negotiations WTO 156	provisional measures (SCM 17) date of commencement (SCM 17.3) SCM 455 duration (SCM 17.4) SCM 456 retroactivity (SCM 20) and SCM 455, 466, 473–5, 477 provisional restraint measures: <i>see</i> transitional safeguards (ATC 6), provisional application of restraint measures authorized under ATC 10 (ATC 11) provisional safeguard measures (SG 6) , tariff measures (GATT XI) and GATT 597, SG 235
prompt and satisfactory settlement (DSU 3.3) DSU 63–8, 345 ABWP and SCM 196, DSU 120, 306, 1367 <i>amicus curiae</i> briefs and DSU 743 change of AB composition and SG 115, DSU 1385 arbitration (DSU 25) and DSU 1330, 1343 determination of “measures at issue” (DSU 6.2), and DSU 404 good faith (DSU 3.10) and DSU 115 impairment of benefits by measures taken by another Member (DSU 3.3) arbitration (DSU 21.5) and DSU 1136 “Member considers” DSU 69–70 “measure taken by another Member”, nexus DSU 241 multiple complainants (DSU 9) and joint meetings with experts DSU 488 separate panel reports DSU 65 multiple proceedings, avoidance of DSU 66–7 prompt compliance with DSB recommendations and rulings (DSU 21) and DSU 1029 “satisfactory settlement” (DSU 3.4 and 3.7) DSU 73 security and predictability of WTO obligations (DSU 3.2) as aid to DSU 68, 826 timeliness of request for separate panel reports (DSU 9.2) DSU 448	PSI Agreement scope of Agreement PSI 2 as transitional arrangement/alternatives to PSI 4–5 PSI Agreement, review/monitoring (PSI 6) <i>see also</i> Independent Entity (IE) (PSI 4); PSI Working Party Customs Valuation Committee and VAL 64, PSI 3, 29 first review (1996–1999) PSI 23–5 second review (2006) PSI 26 PSI companies government contracts with PSI 1 history and role PSI 1 PSI obligations business confidential information (PSI 2.9–2.13) PSI 8–9 consultation (PSI 7) PSI 27 dispute settlement (PSI 8) PSI 28 exporter Members (PSI 3), technical assistance activities (PSI 3.3) PSI 16 notification of implementing laws and regulations (PSI 5) PSI 22 user Members (PSI 2)
proper parties , 17.516: <i>see also amicus curiae</i> briefs proportionality attribution of damage (ATC 6.4) ATC 65 countermeasures ATC 63, SCM 226, 228–30, 236, 253, DSU 1290–1, 1674 n. 2617, 1695–8 “other remedies” (TRIPS 46) TRIPS 230 risk based on scientific evidence SPS 30 safeguard measures (ATC 6.4) and ATC 63 safeguard measures (SG 5.1) (“to the extent necessary”) and SG 13–15, 224–7 State responsibility and ATC 63, SCM 221, SG 227, DSU 1286, 1674 n. 2617, 1694, 1696–7 suspension of concessions (DSU 22.4) and ATC 63, SCM 228–30, 236–7, DSU 1290–1	
provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7) SPS 52–7 assessment period SPS 306–7 “available pertinent information” SPS 309 burden of proof	

- (*cont.*)
- conflicts of interest (PSI 14) **PSI 11**
 - delays (PSI 2.15–2.19) **PSI 10**
 - price verification (PSI 2.20) (PSI/VAL relationship)
 - independent review procedure (2006) **PSI 14–15**
 - PSI Working Party’s 1997 report **PSI 12**
 - PSI Working Party’s final report **PSI 13**
 - protection of confidential business information (PSI 2.9–2.13) **PSI 8–9**
 - price databases and **PSI 9**
 - transparency (PSI 5 and 6), PSI Working Party report (1997) **PSI 7**
 - uniform application (PSI 2.2), model contract **PSI 6**
- PSI Working Party**
- establishment WTO 66, **PSI 23**
 - extension of mandate **PSI 25**
 - reports **PSI 24–5**
 - final report (1999) **PSI 25**
- “public body” (SCM 1.1(a)(1))** SCM 8, 16–17, DSU 1683
- “private body”, attempt to distinguish (SCM 1.1(a)(1)(iv)) SCM 17 n. 28
- public health:** *see* TRIPS Agreement, Declaration on Public Health (2001)
- public hearings (panel)**
- special or additional procedures (DSU 12.1) DSU 689–90, 924–5
 - table DSU 925
- public international law:** *see* international law
- public notice and explanation of determinations (AD 12)**
- AD 3.4 factors, written record of analysis and AD 268
 - confidential information (AD 6.5) and AD 599, 646
 - as due process requirement AD 186, 268
 - judicial economy in case of substantive inconsistency with AD Agreement AD 831, 838–40
 - notification to government of exporting Member (AD 5.5) distinguished AD 421
 - as procedural requirement AD 268
- public notice and explanation of determinations (SCM 22),**
- standard of proof (SCM 22.1) SCM 503
- public notice of initiation of investigation (AD 12.1)**
- compliance with other obligations, dependence on AD 831
 - harmless error principle AD 827
 - “interested parties”, obligation to in absence of contact details AD 825
 - “known exporters” (AD 6.1)/ “interested parties known” (AD 12.1) AD 436, 451
 - non-compliance as “harmless error” AD 827
 - notification and public notice distinguished AD 824
 - separate report (AD 12.1.1)
 - need for reference to AD 826
 - notice of preliminary or final determination distinguished AD 829
 - summary of factors (AD 12.1.1(iv)) AD 828–9
 - time-limits for making views known (AD 12.1.1(vi)) AD 429
 - timing (AD 12.1)
 - initiation of investigation and AD 822–3
 - satisfaction as to sufficiency of evidence (AD 5.3), relevance AD 823
- public notice of preliminary or final determination (AD 12.2)**
- AD 12.2.2, SCM 22.4 and SCM 22.5, close similarity SCM 504
 - “all relevant information on the matters of fact and law and reasons” for measures (AD 12.2.2) AD 186, 248
 - change of legal basis, obligation to inform interested parties (AD 12.2) AD 433–4, 462, 618
 - compliance with other obligations, dependence on AD 838–40
 - data collection period, inclusion of reasons for (AD 12.2.2) AD 13, 830
 - explanations for initiation of investigations (AD 12.2.2), relevance/ sufficiency AD 833–7
- public observation of oral hearing/ “passive participation” (ABWP 27(3))** DSU 1442, 1443–4
- AB authority to agree to DSU 1442, 1449, 1450
 - amendment of ABWP 24 and 27(3) (2003) DSU 1443–4, 1449
 - confidentiality considerations (RoC VII:1) DSU 1483
 - as legal right DSU 743
 - methodology DSU 1451
 - reasons for allowing DSU 888
 - table showing DSU 1452
- publication and administration of trade regulations (GATT X)**
- AD Agreement and GATT 595–6
 - burden of proof GATT 516, 519
 - “confidential information” (GATT X:1) GATT 538
 - “date of this Agreement” (GATT X:3(c))/GATT practice GATT 587–8
 - “effecting an advance . . .” (GATT X:2) GATT 544–6
 - “effecting” GATT 544
 - enforcement prior to publication as violation of GATT X:2 GATT 547
 - “uniform practice” GATT 545
 - GATT practice (GATT X:1) GATT 539
 - GATT practice (GATT X:3(b)) GATT 579
 - independent tribunals (GATT X:3(b)) GATT 584–6
 - “laws, regulations, judicial decisions and administrative rulings” (GATT X:1) GATT 512–17
 - failure to fix quota as GATT 517
 - “made effective” GATT 526–8
 - “of general application” GATT 554
 - “pertaining to the classification” GATT 529
 - measure of general application (GATT X:2) GATT 543
 - measures of general application (GATT X:1)
 - absence of written rules and GATT 514, 516
 - due process and GATT 511
 - government involvement in price determination, need for GATT 515
 - “of general application” GATT 518–25
 - “prompt review and correction” (GATT X:3(b)) GATT 580–2
 - disproportionate delay and GATT 582
 - due process considerations GATT 580–1
 - independent review requirement GATT 582
 - relationship with other GATT provisions *see also under separate subject headings such as* national treatment (GATT X:1) *above*
 - retroactivity of trade measures (ATC 6.10) and GATT 541–2
 - “shall be published” (GATT X:1) GATT 530–2
 - “in such a manner as to enable . . .” GATT 535–7
 - “promptly” GATT 533–4
 - transparency and due process
 - GATT X:2 and GATT 540
 - GATT X:3 and GATT 548
 - uniform, impartial and reasonable administration (GATT X:3(a))
 - applicability to individual traders GATT 563
 - applicability to licensing regulations GATT 549
 - appointment to monopoly as application of customs laws GATT 559, 570
 - burden of proof GATT 557–8
 - consistency of administration with Member’s domestic law, relevance GATT 562
 - due process requirement GATT 552 n. 774
 - general impact on overall administration, need for GATT 521
 - “impartial” GATT 569–70
 - absence of guidelines or standards and GATT 571
 - conflict of interest and GATT 572
 - dual function officials GATT 559, 570

presence of private parties during customs process GATT 569, DSU 251	AD Agreement and GATT 597
“reasonable” GATT 573–8	AG Agreement and GATT 644
absence of guidelines or standards and GATT 577	burden of proof GATT 598
disproportionate delay GATT 576	customs unions (GATT XXIV:5(a)) as defence/exception GATT 1007–9
dual function officials and GATT 575, 578	due diligence requirement GATT 603 n. 855
relationship with other GATT provisions GATT 551–3, 589	“export prohibition or restriction” (GATT XI:2(a))
“shall administer” /applicability to substantive rule GATT 551–61, 565	burden of proof GATT 631
significant impact on overall administration of law requirement for violation GATT 564	“essential products” GATT 634
timing of acts of administration, relevance to admissibility as evidence GATT 561, DSU 630	GATT XX(g) distinguished GATT 635
transparency between WTO members and with respect to individual traders distinguished GATT 563	identity of meaning with GATT XI:1 GATT 632
“uniform” GATT 562, 566–7, 591	“prevent or relieve critical shortages” GATT 635
discrimination between Members and GATT 553, 591	“temporarily applied” GATT 633
“uniform”, “impartial” and “reasonable” as independent elements GATT 550	GATT II and GATT 641
publication of findings and reasoned conclusions (SG 3.1)	GATT III and GATT 405–10
2.806–7, 2.814, 14.95, 14.99: <i>see also</i> reasoned and adequate explanation requirement (SG)	GATT VI and GATT 641
absence of claim relating to, effect on possibility of SG 4 claims SG 91	GATT practice GATT 410, 599, 630, 643
application of safeguard measures (SG 5.1), Members’ right to choose method and SG 97–9	GATT preference for tariffs and GATT 597
application of safeguard measures (SG 5.1), parties’ right to choose method and SG 97–9	as importation measure GATT 408–9
“as a result of unforeseen developments” (GATT XIX:1(a)) SG 99, 109	GATT practice GATT 410
confidential information (SG 3.2) and, 14.110–11: <i>see also</i> confidential information (SG 3.2)	national treatment (GATT III) and GATT 166, 170, 405–10
format of report, relevance SG 104	notification obligations and procedures GATT 636–8
multiple findings SG 95	“ordinary customs duty” AG 42
non-compliance with SG 3.1 as violation of SG 2.1/SG 4 SG 99	“prohibition or restriction” (GATT XI:1) GATT 600–1
“pertinent issues”, unforeseen developments as SG 103	bonding requirements GATT 601, 626, 639
“publish” / “make publicly available”, equivalence SG 100	causal link, need for GATT 604
“reasoned conclusions”. SG 101–2	<i>de facto</i> restrictions GATT 602–4
timing of report, relevance SG 105	equality of competitive conditions as test GATT 604–5
publication of SPS measures: <i>see</i> transparency of SPS regulations (SPS 7 and Annex B)	import prohibition GATT 607–10
publication of technical regulations/entry into force (TBT 2.12), “reasonable interval” TBT 104–7	enforcement measures GATT 611
	licensing requirements GATT 606, 612–14
	“limiting condition” GATT 600–600bis
	minimum export price requirement GATT 617
	obligation to prevent breach by third party, whether GATT 603
	private action, relevance GATT 603
	prohibition or restriction on exportation or sale for export GATT 627–9
	Illustrative List (TRIMs 2.2) GATT 409 n. 596, 425, 627–9, 646, TRIMs 15–16
	“restriction” GATT 600–1, 604
	ordinary meaning GATT 600
	restrictions on imports by particular persons GATT 618
	“restrictions made effective through state-trading organizations” (<i>Ad Articles XI, XI, XIII, XIV and XVIII</i>) GATT 621–5, 792
	restrictions on ports of entry GATT 620
	restrictions on trading rights, inclusion in accession protocols GATT 619
	trade balancing condition GATT 616
	trade effects, relevance GATT 604–5
	RTAs (GATT XI) as defence/exception GATT 1004, 1007–9
	Safeguards Agreement and GATT 597
	SPS Agreement and GATT 647
	quota modulation (SG 5.2(b)) SG 82, 234
	“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)
	15-month guideline DSU 1038–41
	administrative measures as means of implementation, relevance DSU 1048–51
	arbitrator’s limited mandate DSU 1020–8, 1059
	determination of reasonable period DSU 1020–5
	limitation on Member’s choice of methods DSU 1026–8
	Article 21.3(b) agreements as precedent DSU 1016
	burden of proof DSU 579–81, 1085–9
	choice of methods, relevance DSU 1078
	complexity of implementation process DSU 1052–4
“quantitative import restrictions” (AG 4.2 footnote 1) AG 50	
quantitative restrictions (ATC 2) (integration process)	
agreed administrative arrangements (ATC 2.17), new restrictions (ATC 2.4) and ATC 11	
conformity with ATC provisions, need for (ATC 2.4) GATT 1058, ATC 10	
administrative arrangements (ATC 2.17) and ATC 11	
transitional safeguards (ATC 6) and ATC 84–5	
new restraints not requiring notification, possibility of ATC 7	
RTAs (GATT XXIV) as exception/defence GATT 1058	
quantitative restrictions (ATC 3)	
administration of restrictions (ATC 4)	
changes, requirements (ATC 4.2) ATC 14	
mutually acceptable solution (ATC 4.4) ATC 14	
elimination (ATC 2.1) GATT 597	
phase-out programme (ATC 3.2(b)) ATC 13	
“restrictions” (ATC 3.1) ATC 13	
restrictions not covered by ATC 2 (ATC 3.1) ATC 12	
quantitative restrictions, elimination (GATT XI)	
<i>see also</i> balance of payments difficulties, developing countries’ right to take import measures (GATT XVIII:B); non-discriminatory administration of QRs (GATT XIII)	

<i>(cont.)</i>	regional conditions, adaptation of SPS measures to (SPS 6), Guidelines to further practical implementation (2008) SPS 346–54
as legal criterion DSU 1059	regional specificity (SCM 2.2), definition problems SCM 115–17
conclusion following appointment of Arbitrator DSU 1018	regional standards (TBT 4) TBT 110
contentiousness/political sensitivity, relevance DSU 1056–61	registration (WTO XVI:6) WTO 304
continued application of WTO-inconsistent measures during reasonable period DSU 1095–6	relationship between and within agreements, SCM 4.11/SCM 7.9 SCM 251–2
coordination with other changes, relevance DSU 1080–2	relationships within and between agreements <i>see also</i> judicial economy, order of analysis
determination by WTO or parties jointly DSU 1314	AD 1, 9 and 18/GATT VI/AD 3, 5, 7, 12 and Annex I, para. 2 AD 9, 307, 411, 986
developing countries and (DSU 21.2) DSU 1007–13, 1065, 1067–71	AD 1/AD 6.13 AD 640
economic and social conditions, relevance DSU 998, 1064–6	AD 1/AD 7 AD 650
effect on society, relevance DSU 1055	AD 1/AD 12 AD 423
entry into force of legislative instrument, relevance DSU 1074–5	AD 1/AD 15 AD 862, 863
harm to economic operators, relevance DSU 1066	AD 1/GATT VI:1 GATT 448
institutional changes and DSU 1076	AD 2/AD 5 AD 349–54, 356
international obligations, relevance DSU 1059	AD 2/AD 6 AD 641
legislative process, government control of DSU 1084	AD 2.1, 2.3 and 2.4 AD 37
legislative schedule and DSU 1072–3	AD 2.1/AD 2.3/AD 6.10 AD 627
limitation to cases of impracticality DSU 1014–15	AD 2.1/AD 2.6 AD 21, 153, 158
multiple possibilities DSU 1093–4	AD 2.1/AD 3.6 AD 40
obligation to commence implementation in good time DSU 1044–7	AD 2.1/AD 9.3 AD 690–4, 696
participation of all original parties DSU 1092	AD 2.1/AD 9.4 AD 711
“particular circumstances” DSU 1042–84	AD 2.1/GATT VI:1 GATT 452–3
definition DSU 1042–3	AD 2.2 and AD 2.4/AD 6.8 AD 161
limited role of executive DSU 1077	AD 2.2/2.4 AD 70
pending decision of international organization and DSU 1083	AD 2.2/AD 2.4 AD 77
previous decisions, relevance DSU 1090	AD 2.2.2 as a whole AD 66
“reasonable” DSU 1035–7	AD 2.2.2/AD 2.6 AD 78
shortest period possible within Member’s normal legislative process DSU 1029–34	AD 2.2.2(i)/AD 3.6 AD 67
statutory enforcement periods DSU 1074–5	AD 2.2.2(i)/AD 9.4(i) AD 703–4
structural adjustment, relevance of need for DSU 1062–3	AD 2.4, sentences within AD 86
tables	AD 2.4 footnote 1/GATT XII GATT 649
reasonable period of time awarded in Article 21.3(c) arbitrations as at 30 September 2011 DSU 1019	AD 2.4/AD 6.10 AD 625 n. 858, 643
time taken DSU 1097	AD 2.4/AD 9.3 AD 82
time taken from establishment of panel to determination of reasonable period DSU 1098–9	AD 2.4/AD 9.4 AD 701–2
“time . . . shorter or longer, depending on the particular circumstances” (DSU 21.3(c)) DSU 1001–3, 1035	AD 2.4/AD 11.3 AD 764
time required for ratification of treaty DSU 1500	AD 2.4.1/AD 2.4 AD 110–11
time to conduct studies/risk assessment, exclusion DSU 1079	AD 2.4.1/GATT X:3(a) GATT 596
withdrawal of prohibited subsidies (SCM 4.7), applicability to DSU 1091	AD 2.4.2/AD 2.4 AD 119, 129
WTO-consistent measures, limitation to DSU 1129	AD 2.4.2/GATT VI:2 AD 164
reasoned and adequate explanation requirement (SG)	AD 3 footnote 9/Ad 11.2 AD 747, 751
“as a result of unforeseen developments” (GATT XIX:1(a)) GATT 800–2, 811, 814	AD 3/AD 6.10 AD 204
“demonstration”, need for GATT 805–17	AD 3/AD 9.4 AD 202
causation (SG 2.1/SG 4.2(b)) GATT 801, SG 70–2, 181, 209–10, 330	AD 3/AD 11.3 AD 765–8
panel’s obligation to confirm GATT 800–2, 811, 814, SG 95, 147–53	AD 3/AD 18 AD 322
parallelism and SG 45, 69–72, 74, 76–9	AD 3 as a whole AD 169–70
publication as authorities’ obligation GATT 814	AD 3/GATT VI GATT 494
segmented domestic industry and (SG 4.2(a)) SG 168–9	AD 3.1/AD 3.7 AD 186, 218
rebuttal submissions DSU 628, 698	AD 3.1/AD 4 AD 309
recognition of qualifications (GATS VII)	AD 3.1/AD 5.2 and 5.3 AD 186
Accountancy Sector, Guidelines for Mutual Recognition Agreements or Arrangements (GATS VII:4) GATS 65	AD 3.1/AD 6 AD 186, 644
electronic commerce and GATS 63	AD 3.1/AD 12 AD 186
notification format GATS 64	AD 3.2/AD 3.3 AD 236
Reference Paper on Basic Telecommunications: see	AD 3.3/AD 11.3 AD 796
telecommunications, GATS XVIII Reference Paper on Basic Telecommunications	AD 3.4 as a whole AD 257
	AD 3.4/AD 12.2 AD 268, 842
	AD 3.4/SG 4.2(a) AD 247 n. 343, 251
	AD 3.5/AD 11.2 AD 751
	AD 3.5/SG 4.2(b) SG 210
	AD 3.7/AD 5.2 AD 363–6
	AD 3.7/AD 11.3 AD 787
	AD 4.1/AD 5.4 AD 382
	AD 5/AD 9 AD 418
	AD 5/AD 18 AD 423

AD 5/GATT VI AD 424	AD 17.6(i)/AD 17.6(ii) TBT 938
AD 5.2/AD 5.3 AD 340, 343, 349–55	AD 17.6(i)/DSU 11 AD 911–12, 925–6
AD 5.3/17.6(i) AD 367–70, 940	AD 17.6(ii)/DSU 11 AD 911, 927–34
AD 5.3/AD 6.8 and Annex II AD 608	AD 18/SCM: <i>see</i> specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement
AD 5.3/AD 10.7 AD 419, 728	AD 18.1 and SCM 32.1/WTO XVI:4 WTO 295
AD 5.3/AD 12.1 AD 421, 823	AD 18.1/GATT VI: <i>see</i> specific action in accordance with GATT VI as interpreted by AD/SCM Agreement
AD 5.3/AD 17.6 AD 367–70, 940	AD 18.1/GATT XX(d) GATT 949
AD 5.5/AD 12.1 AD 421	AD 18.1/other <i>Ad</i> Articles AD 977–9
AD 5.6/AD 11.3 AD 789–90	AD 18.3/SCM 32.3 GATT 451 n. 647, AD 965, 1011
AD 5.8/AD 9.3 AD 401–2, 671–3	AD 18.4/SCM 32.5/WTO XVI:4 WTO 290–5, SCM 596–8
AD 5.8/AD 11.3 AD 793–5, 797–9	AD 18.5/SCM 32.6 AD 974, SCM 599
AD 6.1 and 6.2/AD 11.4 AD 443	AD/GATT VI: <i>see</i> anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement
AD 6.1, AD 6.2 and AD 6.9/AD 12.2 AD 433, 462, 618	AD/GATT XI GATT 648, AD 1007
AD 6.1, AD 6.2/AD 6.9 AD 434, 460	AG /GATT XIII AG 1, 190
AD 6.1/AD 12.2.1 AD 429	AG /Schedules of Commitments AG 27–8
AD 6.1.1/AD 5.10 AD 442	AG 1, 9 and 18/GATT VI/AD 3, 5, 7, 12 and Annex I, para. 2 AD 9, 307, 986
AD 6.1.1/AD 6.14 AD 442	AG 1(a)(ii)and annex 3/AG 7.2 AG 80
AD 6.1.1/AD 6.8 AD 458	AG 1(e)/AG 9.1/AG 10/2 AG 125
AD 6.1.1/AD Annex I AD 437	AG 2/AG 13(b)(ii) AG 23
AD 6.2/AD 6.4/AD 6.5 AD 494, 495	AG 3, 6 and 7 AG 29
AD 6.2/AD Annex II AD 998	AG 3/GATT VI:1 AD 321
AD 6.2/AD generally AD 467	AG 3.1/SCM SCM 124
AD 6.2/other AD 6 paragraphs AD 457–69	AG 3.3/AG 9.1 AG 31–2
AD 6.4/AD 6.9 AD 616, 621	AG 3.3/AG 10.1 AG 32, 117
AD 6.4/other AD 6 paragraphs AD 492–5	AG 4.1 and 21.1/GATT XIII GATT 689, DSU 875
AD 6.5/AD 6.6 AD 519	AG 4.2/AG 5 AG 75
AD 6.5/AD 12 AD 845	AG 4.2/GATT II:1(b) GATT 143–5, 174, AG 42–5, DSU 1660
AD 6.7/AD Annex I AD 523	AG 4.2/GATT II:2 GATT 143–5, 173–4, 174, AG 42–5, DSU 1660
AD 6.8/AD 3 AD 600	AG 4.2/GATT XI GATT 644, AG 48
AD 6.8/AD 9.3 AD 720	AG 4.2/GATT Annex 5 AG 45
AD 6.8/AD 9.4 AD 701–2, 706–7, 708, 720	AG 4.2/GATT XI GATT 753
AD 6.8/AD 12 AD 599, 646	AG 4.2/ <i>Guidelines for the Calculation of Tariff Equivalents</i> (Attachment to AG Annex 5) AG 46
AD 6.8/AD Annex II AD 534	AG 4.2/LIC LIC 33
AD 6.8/Annex II AD 535	AG 6.3/SCM 3.1(b) AG 79, 193–4, SCM 186–7
AD 6.8/other AD 6 paragraphs AD 457–60, 603–7	AG 9.1 and 10.1/SCM 1.1 and 3.1 SCM 181–2, 701
AD 6.9/other paragraphs of AD 6 AD 620–1	AG 9.1(c)/9.2 AG 92
AD 6.10/AD 9.2 AD 627–31, 664, 666	AG 9.1(c)/SCM Illustrative List items (c), (d) and (k) SCM 601
AD 6.10/AD 9.4 AD 204, 625	AG 10.1/AG 10.4 AG 129
AD 7/AD 10.7 AD 729	AG 13/DSU 1.2 DSU 11
AD 7/GATT VI AD 653	AG 13(a)/GATT XVI/SCM Part III AG 134
AD 7.4/AD 17.2 AD 652, 894–5	AG 21.1/SCM 3.1 as determinants of AG/SCM relationship SCM 183–5
AD 8/SCM 16: <i>see</i> price undertakings (AD 8)/undertakings (SCM 18)	AIR 6/SCM AIR 22–4
AD 9/other AD articles AD 717	ATC 6.10/ATC 6 as a whole ATC 76
AD 9.1/AD 15 AD 857, 861	ATC 6.10/ATC 6.11 ATC 79, 81–3
AD 9.2/AD 9.3 AD 663	ATC 6.10/GATT X:2 ATC 80, 87
AD 9.2/SCM 18 AD 668	ATC/GATT WTO 23
AD 9.4/AD 18.4 AD 877	Berne 11/Berne 11 <i>bis</i> TRIPS 95
AD 10.6/AD 10.7: <i>see</i> retroactivity (provisional measures and anti- dumping duties) (AD 10), “sufficient evidence” (AD 10.7)	Berne 13/Berne 20 and TRIPS 2.2 TRIPS 105
AD 11/DSU 1.2 DSU 12	DSU 3.3/DSU 7 DSU 397, 426
AD 11.1/AD 11.2 AD 739, 752	DSU 3.3/DSU 9.2 DSU 448
AD 11.2/AD 11.3 AD 742–3, 749	DSU 3.3/DSU 25 DSU 1343
AD 11.2/AD 11.3 footnote 22 AD 743	DSU 3.6/DSU 21.5 DSU 80–1
AD 11.2/GATT I and X GATT 595	DSU 3.6/DSU 22.8 DSU 81
AD 11.3/DSU 11 816, AD 804	DSU 3.7, 3.10 and 24.1 DSU 1324
AD 12/AD 15 AD 846	DSU 3.7/DSU 3.8 DSU 87
AD 17/AD 18 AD 876	DSU 3.7/DSU 22.6 and DSU 22.3(c) DSU 89, 1318
AD 17/DSU 19.1 AD 954–5, DSU 353	DSU 3.8/GATS XXIII:1 GATS 203, DSU 99–100
AD 17/GATT XXII and XXIII AD 873–4, 888, 944–5	DSU 3.8/SCM 3 and 4 SCM 234
AD 17.3/DSU 1.2: <i>see</i> special or additional rules and procedures (DSU 1.2 and Appendix 2)	DSU 4 and 6/SCM 4 DSU 140, 142
AD 17.4/AD 18.1 and AD 876, TPRM 4	DSU 4.7/SCM 4.2 and 4.4 DSU 171
AD 17.4/DSU 6.2 and 7 AD 898, 951, DSU 370	
AD 17.5/DSU 6.2 AD 903, 948, DSU 356	
AD 17.6/DSU 11 AD 911–12, 925, 935–7	
AD 17.6/SCM 30 SCM 578, 703	

<i>(cont.)</i>	
DSU 6.2/DSU 7.1	GATT 991 n. 1410, AD 898, 951, DSU 220–1, 352, 370–418
DSU 6.2/DSU 19.1	AD 954–5, DSU 353, 394, 991
DSU 6.2/DSU 21.5	DSU 354–5, 1123–7, 1146, 1151–2
DSU 11 and 13/SG 3.2	SG 113–14
DSU 11 and SG/GATT XIX:	<i>see</i> standard/powers of review (panel) (DSU 11), applicability to SG/GATT XIX
DSU 11/SCM 4	SCM 188–94
DSU 13.2/TBT 14.2	TBT 147, DSU 25
DSU 16.4, 19.1, 21.1, 21.3, 21.5 and 22.1	DSU 990, 1130
DSU 19.1/SCM 4.7 and 4.8	DSU 20, 992–3
DSU 21/SCM 4.7	SCM 218
DSU 22.3/SCM 7.9 and 7.10	DSU 24
DSU 22.3(b)/DSU 22.3(c)	DSU 1204
DSU 22.4/SCM 3 and 4	SCM 234, 253, DSU 1281–3
DSU 22.4/SCM 4.10:	<i>see</i> countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10), calculation of countermeasure, possible bases/relevant factors, suspension of concessions (DSU 22.4) distinguished
DSU 22.6/SCM 4.10 and 4.11	DSU 22, 23, 585–6
DSU 22.6/SCM 4.11	SCM 247
DSU 22.8/DSU 23	DSU 1319
DSU 23/WTO XVI:4	WTO 286
DSU 23.1/DSU 23.2	DSU 1298–304, 1307
DSU 23.1/SCM	SCM 700
DSU 23.1/VCLT 60	DSU 1320, 1672, 1674
GATT Enabling Clause 2(a) and 3(c)	GATT 89
GATS I:1/GATS II/XVII	GATS 11, 32
GATS II/GATT I:1	GATT 25
GATS VI/GATS XVI and XVII	GATS 62
GATS XVII/GATT III:4/SCM 3.1(a)	SCM 180
GATS/GATT	GATT 419, 427–9, TRIMs 8 n. 12, GATS 24–9
GATT I, III and X/LIC 1.2	LIC 7
GATT I and III/SPS	GATT 414–17
GATT I and XIII/GATT XXVIII	GATT 116, 687
GATT I/GATT III:4	GATT 359, 362, 395
GATT I/GATT III	GATT 108–9
GATT practice	GATT 109
GATT I/GATT VI	GATT 96–8, 110–12
GATT I/GATT X	GATT 590–1
GATT I/GATT XI	GATT 113
GATT I/GATT XIII	GATT 114, 138, 164, 682–3
GATT I/GATT XXIV	GATT 115
GATT I:1/Enabling Clause	GATT 80, 81
GATT I:1/GATT III:4 and XX	GATT 61
GATT I:1/GATT V:6	GATT 445
GATT I/GATT III:8(b)	GATT 396
GATT II/GATT XI	GATT 639
GATT II/GATT XIII	GATT 164, 168–9
GATT II:1(a) and XI/GATT III:4 and XVII	GATT 165, 405, 745
GATT II:1(a)/GATT II:1(b)	GATT 133
GATT II:1(b):BOP Understanding	GATT 791
GATT II:1(b)/GATT II:2(a)	GATT 158
GATT II:1(b)/GATT III:2	GATT 167
GATT II:1(b)/GATT VIII	GATT 506
GATT II:1(b)/GATT XII	GATT 652
GATT II:1(b)/LIC 3	GATT 175, LIC 32
GATT II/GATT III, GATT practice	GATT 397
GATT III/GATT X	GATT 590, 592
GATT III/GATT XI	GATT 405–10
GATT III/GATT XVII:1	GATT 223, 411, 745
GATT practice	GATT 412
GATT III/SCM Agreement	GATT 117, SCM 686–7
GATT III/WTO Agreement	GATT 413
GATT III:1/GATT III as a whole	GATT 218, 226
GATT practice	GATT 229
GATT III:1/GATT III:2	GATT 228
GATT III:1/SPS Annex A(1)	WTO 24
GATT III:2/ATC 6.2	ATC 42–3
GATT III:2/GATT III:4:	<i>see</i> “like product” (GATT III:2 and III:4), GATT III:2 and III:4 interrelationship
GATT III:2/SCM Agreement	GATT 420–1, SCM 535, 688
GATT III:2/SPS 5.5	SPS 240–2
GATT III:4/GATT II:1(a) and GATT XI	GATT 399
GATT III:4/GATT VI:	<i>see</i> national treatment, regulatory discrimination (GATT III:4), anti-dumping (GATT VI) and GATT III:4/GATT XI: <i>see</i> quantitative restrictions, elimination (GATT XI), national treatment (GATT III) and
GATT III:4/GATT XX	GATT 384–6, 912
GATT III:4/GATT XXIII:1(b)	GATT 350, 374, 387
GATT III:4/LIC 3.5(h)	LIC 33
GATT III:4/SCM 3.1(a)	SCM 180
GATT III:4/TBT	GATT 418
GATT III:4/TBT 2.1	TBT 18–20
GATT III:4/TRIMs 2	GATT 423–6, TRIMs 6, 9–17
GATT III:4/TRIMs 3	TRIMs 9, 19, 20–1
GATT III:4/TRIPS 3.1	GATT 416–17, TRIPS 39, 50, 61–4
GATT III:8(b)/SCM 1	GATT 390
GATT III/SPS	SPS 592
GATT V:5/GATT V:6	GATT 439, 441
GATT VI:3/SCM 10	SCM 88
GATT VI/GATT XI	GATT 490, 641, 648
GATT VI/SCM	GATT 451, 495–7, SCM 353–9, 583, 690–2
GATT IX/TBT	TBT 11
GATT X/GATT as a whole	GATT 551–2
GATT practice	GATT 593
GATT X:1/GATT X:3	GATT 549
GATT X:3(a)/LIC 1.3	GATT 594, DSU 1718, 1726
GATT XI:1/GATT I:1 and XIII:1	GATT 114
GATT XI:1/GATT XI:2	GATT 632
GATT XI:1/TRIMs 2/Illustrative List	GATT 409 n. 596, 425, 426, 627–9, 646, TRIMs 15–16, 18
GATT XI:2(a)/GATT XX(g)	GATT 635
GATT XI/GATT XIII	GATT 685
GATT XI/GATT XVII	GATT 166, 170
GATT XI/SPS 2.4	SPS 591
GATT XI/SPS	GATT 647, SPS 592–3
GATT XII and XVIII/BOP	GATT 493, 779, DSU 10
GATT XII/GATT XVIII:B	GATT 653, 754, 793
GATT XIII:2(d)/GATT XIII:1 and GATT XIII:2 chapeau	GATT 672
GATT XIII:2(d)/GATT XIII 4	GATT 672, 676
GATT XIII/SG 5	GATT 657, 690–2, SG 232
GATT XVI:3/AG 1(3), 3.3, 8, 9 and 10	GATT 715
GATT XVI:4/SCM 1.1(a) and 3.1(a)	GATT 716, SCM 100
GATT XVII:1(a)/GATT XVII:1(b)	GATT 729, 731, 734–5
GATT XVIII:9(a)/GATT XVIII:9(b)	GATT 764
GATT XIX/SG 3.1 and SG 4.2(c)	SG 108
GATT XIX:1/SG 2 and 4, 2.805, 2.824–5, 14.84, 14.89, 14.90:	<i>see also</i> safeguard measures (SG/GATT XIX) <i>see also</i> under relationship between Safeguards Agreement and GATT XIX
GATT XIX:1/SG 11.1	SG 8, 10, DSU 1555 n. 2388
GATT XIX:1(a)/SG 8	SG 243
GATT XIX/SG 1	SG 4–12
GATT XIX/SPS	WTO 19
GATT XX/GATT as a whole	GATT 384
GATT XX/TBT 2.1	TBT 21
GATT XX/TBT 2.2	TBT 37–8
GATT XX chapeau/GATT XX paras. (a)–(i) exceptions	GATT 849
GATT XX(b)/SPS	SPS 5, 590, 594–8
GATT XXII and XXIII/SPS	SPS 599

GATT XXIV/GATT I, XIII and XIX	GATT 686	SPS 2.2/SPS 5.1	SPS 44–7	
GATT XXIV:5(a)/GATT XI, GATT XIII and ATC 2.4	GATT 1053, 1058	SPS 2.2/SPS 5.6	SPS 282–4	
GATT XXIV as a whole	GATT 999–1001	SPS 2.2/SPS 5.7	SPS 52–6, 287, 289	
GATT XXIV/SPS 2.2	GATT 1057	SPS 2.3/SPS 5.5	SPS 61–4, 240	
GATT/LIC/TRIMs 2	TRIMs 5	SPS 3 as a whole	SPS 77–8, 97	
GATT/SCM	GATT 419–22	SPS 3/Annex A(1)(d)	SPS 205	
GATT/SPS	SPS 590–1	SPS 3.1 and 3.3/SPS 2.2 and 5.7	SPS 339–40	
GATT/TRIMs	TRIMs 7–9, SCM 694–5	SPS 3.1/SPS 3.3	SPS 54	
GPA preamble/SCM 1 (“purchases of services”)	GPA 2	SPS 3.2 and 3.3/Annex A(3)	SPS 501	
relationships within and between agreements, TRIPS 46/	TRIPS 59	TRIPS 241	SPS 3.2/SPS 5.6	SPS 87
SCM 1.1/SCM footnote 1 and footnote 59	SCM 97–8, 158–60	SPS 3.2/SPS 5.7	SPS 88, 300, 338	
SCM 1.1/WTO XVI	SCM 99–100	SPS 3.3/SPS 5.1	SPS 100	
SCM 1.1(a)(1)/ILC Articles on State Responsibility	DSU 1683	SPS 3.5/SPS 12.1 and	LIC 4	
SCM 1.1(b)/SCM 3.1(a)	SCM 73	SPS 4/SPS 9	SPS 114	
SCM 1.1(b)/SCM 14	SCM 59, 87, 92	SPS 4/SPS Annex C(1)	SPS 586	
SCM 1.1(b)/SCM 14(c)	SCM 93	SPS 4/SPS as a whole	SPS 105, 119–20	
SCM 1.1(b)/SCM Annex I item (k)	SCM 94–5	SPS 5.1 and 5.6/Annex A(4)	SPS 503	
SCM 1.1(b)/SCM Annex IV	SCM 96	SPS 5.1/Annex A(3)(c)	SPS 502	
SCM 2.3/SCM 3	SCM 118–23	SPS 5.1/Annex A(4)	SPS 527	
SCM 3.1/SCM 3.2	SCM 178	SPS 5.1/SPS 5.2	SPS 182	
SCM 3.1/SCM 4.7	SCM 153	SPS 5.1/SPS 5.5	SPS 184, 233	
SCM 3.1/SCM 27.2(b)	SCM 154, 527–8	SPS 5.1/SPS 5.6	SPS 279	
SCM 3.1/SCM 27.4	SCM 154–6, 527–8	SPS 5.1/SPS 5.7	SPS 132, 185, 308, 332–5	
SCM 3.1(a)/SCM Illustrative List, item (k)	SCM 627	SPS 5.2/Annex C	SPS 195, 376	
SCM 3.1(b)/TRIMs	TRIMs 7–9, SCM 694–5	SPS 5.3/Annex A(1)(d)	SPS 205, 490, 491	
SCM 3.2/SCM 27.4	SCM 174–7	SPS 5.5/Annex A(1)(a)	SPS 215–16	
SCM 4.9 and 10/SCM 7.9 and 10	SCM 235, 237, 251–2	SPS 5.5/SPS 12	SPS 433, 436, 438	
SCM 10 and 32.1/SCM 32.3	SCM 592	SPS 5.6 and footnote 3/TBT 2.2	TBT 39–40	
SCM 11.6/SCM 21.3	SCM 365	SPS 5.6/Annex A(1)(a)	SPS 256	
SCM 11.9/SCM 21.3	SCM 366–75	SPS 5.7/Annex A(4)	SPS 311–12	
SCM 17.3/SCM 20	SCM 455, 475	SPS 7/Annex B	SPS 550–1	
SCM 25/SCM 27.4	SCM 524	SPS 8/Annex C(1)	SPS 373–4, 375	
SCM 27.2(b)/SCM 27.3	SCM 532	SPS 10.1/TBT 12.3	SPS 389, TBT 137	
SCM 27.3/TRIMs 5	TRIMs 8	SPS 11/TBT 14	SPS 425	
SG I and II.1(a)/WTO II	GATT 838	SPS 11.2/SPS 13.2: see expert evidence (DSU 13.2/SPS 11.2)		
SG 2 and 4/SG 3	SG 99	SPS Annex A(1)(a) and A(1)(b)	SPS 486	
SG 2 and 4/SG 5	SG 229–30	SPS Annex A(4), relationships within	SPS 528	
SG 2 and 4/SG 12	SG 289–90	SPS/TBT 1.5	TBT 12–14	
SG 2/SG 4	SG 17–23	SPS/TBT	SPS 286	
SG 2.1 and 4/SG 6	SG 85	SPS/WTO XVI:4	SPS 588	
SG 2.1, 4.1(c) and 4.2(b)/SG 2.2, 3.1, 5.1, 8, 11 and 12	SG 84, 89, 216, 231, 242, 243	TBT 2.1/TBT 2.2	TBT 32	
SG 2.1/SG 4.1(c): see “like or directly competitive product” (SG 2.1/	SG 4.1(c)); safeguard measures, conditions (SG 2),	TBT 2.2/TBT 2.4	TBT 70	
parallelism between investigation (SG 2.1/SG 4.1(c)) and	application of measure (SG 2.2)	TBT 2.2/TBT 12.3	TBT 136	
SG 2.1/SG 4.2(a)	SG 19, 25–8	TBT 2.4/TBT 2.5	TBT 72–3	
SG 2.1/SG 4.2(b)	SG 19, 20, 23, 58, 178, 209	TBT 2.4/TBT 2.8	TBT 78 n. 115	
SG 3/SG 4.2(c)	DSU 424	TBT 2.4/WTO XVI:4	TBT 50	
SG 3.1/SG 3.2	SG 112	TBT 2.9/TBT 2.10	TBT 103	
SG 3.1/SG 4.2(a)	SG 92–4	TBT 12.2/TBT 12.3	TBT 135	
SG 3.1/SG 4.2(b)	DSU 424	TRIMS 1/Illustrative List (TRIMs 2.2)	TRIMs 4	
SG 3.1/SG 4.2(c)	SG 107, 220, DSU 424, 519	TRIMs 2.1/TRIMs 5	TRIMs 24	
SG 3.2/SG 4.2(c)	SG 222	TRIPS 3/TRIPS 20	TRIPS 57, 147	
SG 4.1(b)/SG 4.1(c)	SG 129	TRIPS 3/TRIPS 65.2	TRIPS 291	
SG 4.2(a)/SG 4.2(b)	SG 142, 207	TRIPS 16.1/TRIPS 22.2	TRIPS 159	
SPS 1.1/SPS 5.1 and 5.5	SPS 14	TRIPS 16.1/TRIPS 23.1	TRIPS 164	
SPS 2/SPS 3 and 5	SPS 65–6, 141	TRIPS 16.1/TRIPS 23.2	TRIPS 159	
SPS 2/SPS 5, 6, 7 and 8	SPS 67	TRIPS 20/TRIPS 65.5	TRIPS 148, 290	
SPS 2.2 and 2.3/SPS 5.4–5.6	SPS 50–1, 210, SG 285	TRIPS 27/TRIPS 70.8	TRIPS 186	
SPS 2.2/SPS 3.3, 5.1 and 5.7	SPS 27, 96	TRIPS 27.1/TRIPS 30 and 31	TRIPS 184–5	
SPS 8/Annex C(1)	SPS 587	TRIPS 31.3/TRIPS 22.2	TRIPS 4	
SPS 2.2/SPS 4	SPS 43, 121	TRIPS 33/TRIPS 70.2	TRIPS 317	
SPS 2.2/SPS 5.1 and 5.2	SPS 48–9, 189, 201	TRIPS 46/TRIPS 59	TRIPS 241	
SPS 2.2/SPS 5.1 and 5.7	SPS 57, 295	TRIPS 51/TRIPS 59	TRIPS 237–8	
		TRIPS 65/TRIPS 70.8	TRIPS 186, 292	
		TRIPS 65/TRIPS 70.9	TRIPS 293	
		TRIPS 70.1/70.2	TRIPS 307	
		TRIPS/Berne Convention: see Berne Convention/TRIPS		
		VAL 1.2(a)/Val 16	VAL 58	

- (*cont.*)
WTO Preamble/GATT XXIV WTO 14
WTO XVI:1/GATT 1994 1(b) WTO 282
- remedies as means of restoring balance of WTO rights and obligations**, 17.1306: *see also* countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10); countervailing duties (SCM Part V), as remedy to offset benefits of subsidies; developing countries (AD 15), “constructive remedy”; intellectual property rights, enforcement (TRIPS Part III); non-violation claims (GATT XXIII:1(b)), as exceptional remedy; “withdrawal of subsidy without delay” (SCM 4.7)
- reports**: *see* AB procedures (DSU 17.9 and ABWP), reports; General Council (WTO IV:2), reporting procedures; panel reports
- request for establishment of panel, requirements (DSU 6.2)**
see also consultations (DSU 4), as prerequisite to establishment of panel/requirement to indicate whether held (DSU 6.2); identification of specific measures (DSU 6.2); legal basis of claim/ “claim” / “matter referred” (DSU 6.2/7.1); “measures at issue” (DSU 6.2); terms of reference of panels (DSU 7)
AD 17.5 requirements and AD 903, 948
Article 21.5 proceedings, applicability to DSU 354–5
compliance, importance of
demonstration of on the “face of the request”, need for DSU 94, 187, 203
failure to comply, request for/establishment of second panel DSU 462
scrutiny by panel DSU 184–5, 186, 201, 240
subsequent cure of defect, exclusion DSU 187, 194, 202–4, 271, 323, 345, 411
consistency of request with, interpretation DSU 319
disclosure of all relevant information DSU 303
distinct elements reviewed AD 898, DSU 193–9, 370
due process/ability to defend itself considerations DSU 94, 194, 196, 200, 202, 209, 211–12, 239, 311 n. 495, 320 n. 513, 329, 340–5, 376–8
fruitfulness of action (DSU 3.7), determination by Member DSU 76–7, 84, 176, 177, 299
“legal interest”, relevance: *see* standing/right to bring claim (DSU 3.7), legal interest, relevance
nullification or impairment, indication of (AD 17.5(i)) AD 903–4
suspension of concessions (DSU 22.2), applicability to DSU 1183, 1210
as two-stage test
writing/text AD 898, DSU 201–4
- request for establishment of panel, requirements (SCM 4.4)**
accelerated/expedited procedures (ABWP 31), relevance SCM 191
failure to reach mutually agreed solution through consultations SCM 203, DSU 206
initiation of Annex V procedure (SCM 7.4)
“decision” (DSU 2.4), whether DSU 33
“taking note” of statements at DSB meeting, whether DSU 31
statement of available evidence, relevance SCM 191
- reservations (WTO XVI:5)**
Multilateral Trade Agreements WTO 296–9
permissibility of reservations unless otherwise specified rule (VCLT 19) distinguished WTO 296
Plurilateral Agreements WTO 300–3
- retaliatory measures, legality**
international law DSU 1693
WTO law DSU 1251 n. 1949, 1287, 1306–7, 1693
- retroactivity (provisional measures and anti-dumping duties) (AD 10)** AD 725
“after initiating an investigation” (AD 10.7) AD 727
conditions (AD 10.6)
AD 10.7 and AD 726
“sufficiency of evidence” (AD 5.3) and AD 730
definitive duty higher than provisional duty, payment/recalculation (AD 10.3) AD 862
preliminary affirmative determination (AD 7.1(ii)), relevance AD 729
“such measures” (AD 10.7), provisional measures distinguished AD 727
“sufficient evidence” (AD 10.7)
AD 5.3 and AD 419, 728
exporters’ knowledge of dumping (AD 10.6), relevance AD 731
“injury caused” (AD 10.6) and AD 732
“massive imports in a relatively short period of time” (AD 10.6), data collection period AD 733
- retroactivity (SCM 20)**, exceptions SCM 455, 473–5, 475
- retroactivity (trade measures) (ATC 6.10)** ATC 74–80
ATC 6.10 measure ATC 74, 80, 87
consultations, request for and notification to TMB (ATC 6.10) and ATC 76
MFA provision, omission from ATC ATC 77–8
prior publication (GATT X:2), relevance GATT 541–2
provisional application of restraint measures authorized under ATC 10 (ATC 11) ATC 79
- retroactivity of treaties**: *see* non-retroactivity of treaties (VCLT 28)
- retroactivity (TRIPS 70.1)** TRIPS 307, DSU 1524
- review of implementation of DSB rulings (DSU 21.5)**
ad hoc procedural agreements
compliance with deadlines DSU 1173
consultations DSU 1168
establishment of panel DSU 1170
experts DSU 1172
non-prejudice to parties’ other rights DSU 1174–5
panel’s scope of review DSU 1176
burden of proof DSU 1274–6
competence of DSU 21.5 (compliance) panel DSU 1100–5
determination of consistency of measure with WTO obligations DSU 1100, 1102, 1117
deviation from original panel report DSU 1105–6
limitations on DSU 1104
claims at time of referral to review panel DSU 1101
insufficiencies in scientific evidence identified by Member adopting measure DSU 1278
new recommendation, exclusion DSU 1149
own motion obligation to examine fundamental issues DSU 1126
panel performing functions similar to Article 21.5 panel DSU 1277
composition of panel, as close as possible to original panel DSU 1104
DSU 6.2 procedures, applicability 1151–2, DSU 354–5, 1123–7
arguendo presumptions in Article 21.5 proceedings DSU 355 n. 575, 657, 1152
“measures at issue” (DSU 6.2) and DSU 1123–7, 1146
procedures distinguished DSU 1104
similarity DSU 1107
time-limits distinguished DSU 1104
due process and DSU 1143–4
“matter” DSU 1107
“measures taken to comply” DSU 1108–30
considered in context DSU 1103
examination on basis of facts proved during panel proceedings and DSU 1141–4
fundamental nature DSU 1126
identification of DSU 1119
limitation to DSU 1128, 1131–6
measure found to be consistent in original proceedings DSU 1137
measure taken “to comply” /measure subject of original dispute distinguished DSU 1102, 1110–14

- measures close to measure taken to comply DSU 1118, 1120
- new measures DSU 1136, 1143–5
- parties’ assessment, relevance DSU 1121–2
- redeterminations DSU 1116
- relitigation of original dispute, exclusion DSU 1132–5
- unappealed finding and DSU 826, 1115, 1130, 1138–9
- prompt and satisfactory settlement (DSU 3.3) and DSU 1136
- standard of review, “objective assessment of matter before it” (DSU 11) DSU 1277
- surveillance of implementation of DSB recommendations and rulings (DSU 21) as context DSU 1147
- table, length of proceedings DSU 1135
- third party rights (DSU 10), right to receive submissions to first meeting of the panel, limitation to (DSU 10.3) DSU 503–6
- “through recourse to these dispute settlement procedures” DSU 1150–3
- timing
 - as ad hoc procedural agreement DSU 1153
 - parties’ submissions, applicability of DSU 12.6 DSU 699
 - in relation to Article 22.6 arbitration (“sequencing”): *see* “sequencing” (interrelationship between Article 21.5 and Article 22.6 arbitration, ad hoc procedural agreements)
 - suspension of concessions and other obligations (DSU 22) and DSU 1150
- waiver of right to DSU 1154
- risk assessment, need for (SPS 5.1–5.3)**
 - see also* “risk assessment” (SPS Annex A(4)(4))
 - arbitrary or unjustifiable inconsistencies, obligation to avoid (SPS 5.5) and SPS 184
 - ascertainable and theoretical risk distinguished (SPS 5.1)
 - quantitative threshold, relevance GATT 902, SPS 161–3
 - scientific prudence SPS 163
 - assessment prepared other than by Member concerned, acceptability (SPS 5.1 and Annex A(4)) SPS 151
 - balance of SPS interests and (SPS 5.1) SPS 141
 - delay in completing control, inspection and approval procedures (SPS 8 and Annex C) and SPS 574
 - explanation for measure allegedly in breach of SPS 5, burden of proof, relevance SPS 341
 - factors to be taken into account (economic) (SPS 5.3)
 - “other damage” (Annex A(1)(d)) and SPS 205, 490
 - unknown and uncertain elements and SPS 203
 - factors to be taken into account including “available scientific evidence” (SPS 2) SPS 143
 - compliance with SPS 5.1 requirement for risk assessment, basis for determining SPS 191
 - format of assessment SPS 149–50
 - official status of report, relevance SPS 149
 - non-scientific/non-quantifiable factors SPS 143, 193, 198, 530
 - open vs closed list SPS 192, 193, 195, 196–9
 - potential abuse of controlled substance SPS 196–9
 - risks arising from difficulties of control, inspection and approval/assessment (SPS 8 and Annex C) SPS 195, 376
 - unknown and uncertain elements SPS 142, 203
 - identification of diseases and potential biological and economic consequences to be protected against SPS 147
 - as key obligation (SPS 5.1) SPS 132
 - measures “appropriate to the circumstances” (SPS 5.1) SPS 133, 150, 152, 166–74
 - circumstances changing over time SPS 170
 - direct causality between substance and possible adverse health effects SPS 134, 173–4
 - discretion not to take measures and SPS 169, 512
 - duty to base measures on risk assessment and SPS 171–2
 - flexibility SPS 166–70
 - interdependence of level of protection and risk assessment SPS 95, 100, 178–80, 530
 - measures *based on*, need for (SPS 5.1) SPS 134–40
 - methodology (SPS 2 and 3) and requirement to base measures on (SPS 5.1) distinguished SPS 190–1, 202
 - rational relationship between measure and risk, need for SPS 137
 - case-by-case approach SPS 139–40
 - methodology
 - assessment for each substance, need for SPS 158
 - different product categories, interrelationship SPS 159
 - parties’ right to choose SPS 194, 520
 - as scientific process SPS 193–4
 - single assessment for different SPS measures SPS 160
 - object and purpose SPS 134
 - “scientific justification” (SPS 3.3) and SPS 95
 - standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of analysis SPS 165
 - standard/powers of review (panel), own assessment, exclusion SPS 38, 122–9, 217, 219
 - “sufficient scientific evidence” requirement (SPS 2.2) and SPS 26, 44–7, 137, 201
 - as complementary obligations SPS 44
 - divergence of expert views, relevance SPS 136, 404
 - precautionary principle and SPS 181
 - scientific uncertainty, relevance SPS 138
 - “taking into account risk assessment techniques” (SPS 5.1) SPS 134, 147, 175–7
 - failure to refer to scientific studies in domestic legislation/regulations, relevance SPS 134, 177
 - internationally developed techniques SPS 175
 - “whether” vs “how” SPS 176
 - timing of assessment SPS 152–5
 - publication of assessment, relevance SPS 154
 - zero risk, unacceptability of concept SPS 164
- risk assessment (SPS Annex A(4)(4))** SPS 503–28
 - ALOPs (SPS 5.4–5.6 and Annex A(5)) and SPS 266, 279, 530
 - elements/three-pronged nature of test SPS 133, 147–8
 - methodology SPS 519–20
 - two-step process, acceptability (Annex A(4)) SPS 519
 - provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7) and SPS 311–12
 - quantification, relevance (including SPS 5.2 requirements) SPS 193–4, 517–18
 - relationship with “available scientific evidence” (SPS 5.2) SPS 191
 - risk management distinguished (SPS 5.1 and Annex A(4)) SPS 130–1, 521–5
 - specificity of assessment, need for SPS 156–7, 507, 514, 520
 - types of risk (“likelihood” vs “potential”) SPS 145–6, 504–5
 - distinction/comparison SPS 515
 - “likelihood” SPS 147, 508
 - “according to SPS measures which might be applied” SPS 147–8, 511–13
 - failure to evaluate, effect SPS 510
 - “potential” SPS 517
 - “probable” SPS 148, 509, 516, 519
- RTAs Committee (CRTA) (WTO IV:7)** GATT 1022–6
 - establishment WTO 99, 141, GATT 997, 1022
 - examination of RTAs: *see* RTAs (GATT XXIV:5), examination (GATT XXIV:7 and Understanding 7)
 - as replacement for RTAs working parties WTO 93 n. 138, GATT 79, 1017
 - reporting arrangements GATS 54
 - annual reports WTO 143, GATS 56
 - biennial reports WTO 144
 - suspension on grounds of workload WTO 144
 - rules of procedure (1996) WTO 74, 142
 - terms of reference WTO 141, GATT 1022
 - for each RTA WTO 145

(cont.)

RTAs (GATT XXIV:5)

see also customs unions (GATT XXIV:5(a)); economic integration (GATS V); Enabling Clause (EC), regional or global arrangements amongst less-developed countries (EC 2(c))
as affirmative defence to violation of GATT provisions including non-discrimination requirement SG 65, 73 n. 122
cross-cutting issues, proposed work programme WTO 152
dispute settlement (Understanding 12) GATT 1041–4
EU enlargement (2004), effect GATT 1020
absence of recommendation, effect GATT 1028
GATT practice GATT 1029
EU, examination of treaties establishing (GATS 5:7)
failure to finalize any report WTO 153
procedure WTO 153–4
following introduction of Transparency Mechanism WTO 154
report following WTO 145
Standard Format for Information on RTAs WTO 153
examination (GATT XXIV:7 and Understanding 7)
applicability to RTAs notified under the Enabling Clause GATT 73
non-WTO member RTAs GATT 75, 1025
changes following adoption of Transparency Mechanism (December 2006) GATT 1021, 1026
examinations completed February 1996–December 2006 GATT 1023
GATT practice GATT 1027
as responsibility of RTAs Committee (CRTA) GATT 1018, 1022
as exception to SG provisions SG 73
necessity test GATT 1003–5
notification and reporting requirements (GATT XXIV:7 and Understanding 7) GATT 1015–16
delays WTO 151
guidelines (1998) GATT 70
notification of substantial changes (Understanding 9), approval of CRTA recommendations (1998) GATT 1039
schedules for submission of biennial reports GATT 1040
simplified format (2007) WTO 147, GATT 70
notification statistics WTO 146, GATT 1016
notifications of termination GATT 1024
notifications (Enabling Clause) WTO 119, GATT 64–77
GCC Customs Union GATT 74
MERCOSUR GATT 66–8
notifications as at 30 September 2011 GATT 65
procedure GATT 64, 69
status GATT 76
transparency mechanism (RTAs), applicability GATT 1045
object and purpose (GATT XXIV:4) GATT 1003
RTA Database GATT 77
Rules of Origin Agreement (RO) and RO 33
safeguard measures (SG)/emergency actions (GATT XIX) and SG 64–5
“irrespective of source” (SG 2.2) and SG 66–73
transparency mechanism (2006): see transparency mechanism (RTAs) (2006)
working parties WTO 92, GATT 1018–20
Enlargement of the European Union: Accession of Austria, Finland and Sweden to the European Union GATT 1020
terms of reference GATT 1018
WTO Preamble and WTO 14

Rules of Conduct (RoC)
adoption DSU 1476
confidentiality of proceedings: see confidentiality of proceedings (RoC VII:1)
incorporation into ABPW DSU 1485
incorporation into ABWP DSU 1372
independence and impartiality (RoC I and III:2)

experts SPS 418, DSU 1477–81, 1486, 1487
panellists DSU 1482
material violations (RoC VIII) DSU 437, 1494–7
periodic review (RoC IX) DSU 1498
review (RoC IX) DSU 1498
scope/persons covered (RoC IV) DSU 1485–90
AB members DSU 1486
AB Secretariat Staff DSU 1486
experts SPS 418, DSU 1477–81, 1486, 1487
panellists DSU 1482, 1487
self-disclosure (RoC VI) SPS 410, DSU 1491–2
text DSU 1475 (Section XXXIII)

Rules of Origin Agreement (RO)
see also rules of origin disciplines (RO 2) (transition period); rules of origin disciplines (RO 3) (after transition period); rules of origin (GPA IV)
“country”
absence of agreement RO 19
Drafting Group work on RO 19
MFN (RO Parts I–IV) and preferential trade regimes (RO Part V) distinguished, RTAs and RO 33

Rules of Origin Committee
annual reports RO 18
annual review of implementation and operation of RO (RO 6(1)) RO 24
closed sessions RO 16
establishment WTO 93
observer status RO 16
procedure for dealing with queries in respect of national legislation RO 22
rules of procedure (1995) WTO 94, RO 17

rules of origin disciplines (RO 2) (transition period)
design and application, Members’ discretion RO 2
documentation requirements RO 12 n. 21
“fulfilment of a certain condition not related to manufacturing or processing” (RO 2(c)) RO 13
harmonization of non-preferential rules of origin (RO 9) RO 26–31
“country”, absence of definition and RO 19
“negative” nature RO 2
non-discrimination (RO 2(d)), closely related goods RO 14
“shall not themselves create” (RO 2(c))
“create” RO 9
“effects on international trade” RO 11
individual “rules” and system distinguished RO 11 n. 18
“restrictive, distorting or disruptive effects” RO 10
“themselves” RO 8
trade objectives, exclusion as instrument of (RO 2(b)) RO 3–7
design and structure of measure as evidence of protective application RO 5
GATT III:2 obligations compared RO 5
incidental trade effect distinguished RO 7
intention, relevance RO 5
“trade objectives” RO 4, 6
“unduly strict requirements” (RO 2(c)) RO 12
French and Spanish versions RO 12 n. 20
preparatory work (VCLT 32) RO 12 n. 22
RO 2(a) as context RO 12
“strict” RO 12
“unduly” RO 12

rules of origin disciplines (RO 3) (after transition period), entry into effect RO 15

rules of origin (GPA IV), statistical reporting (GPA XIX:5) and GPA 23

Rules of Origin Technical Committee (RO 4.2)
periodic reports RO 32
Working Group to consider and make recommendations on Technical Committee interpretations and opinions RO 20

rules of procedure

- ADP WTO 94, AD 864–5
- Agriculture Committee (AG 17) WTO 94, AG 170
- BFA Committee WTO 128
- BOPs Committee WTO 74, 124, GATT 785
- Committee of Participants on the Expansion of Trade in Information Technology Products GATT 197
- Council for Trade in Goods WTO 84
- Council for Trade in Services WTO 87, 182, GATS 217
- Customs Valuation Committee WTO 94, VAL 63
- DSB WTO 77, DSU 34–5
- General Council (WTO IV:2) WTO 72
- Import Licensing Committee WTO 94, LIC 34–5
- Least-Developed countries Sub-Committee WTO 106
- Market Access Committee WTO 94, 132
- Ministerial Conference (WTO IV:1) WTO 69
- PSI Independent Entity WTO 95, PSI 18
- RTAs Committee WTO 74, 142
- Rules of Origin Committee WTO 94, RO 17
- Safeguards Committee WTO 94, SG 299
- SCM Committee WTO 94, SCM 509
- SPS Committee WTO 94, SPS 431
- STEs Working Party WTO 96
- TBT Committee WTO 94, TBT 142
- Trade and Development Committee WTO 74, 102
- Trade and Environment Committee WTO 138
- Trade Policy Review Body (TPRB) WTO 80, TPRM 8, 9–10, 18
- TRIMs Committee WTO 94, TRIMs 39
- TRIPs Council WTO 90, TRIPS 302

safeguard measures

- see also (in addition to the immediately following “safeguard measures” headings)* causation analysis (SG 4.2(b)) (determination of serious injury or threat of); confidential information (SG 3.2); determination of serious injury or threat of, definitions (SG 4.1); determination of serious injury or threat of (SG 4); requirements; developing countries (SG 9); dispute settlement (SG 14); “domestic injury” (SCM 16); investigation of conditions for safeguard measures, requirements (SG 3.1/SG 4.2(c)); “like or directly competitive product” (SG 2.1/SG 4.1(c)); notification and consultation (SG 12); provisional safeguard measures (SG 6); publication of findings and reasoned conclusions (SG 3.1); quota modulation (SG 5.2(b)); reasoned and adequate explanation requirement (SG); transitional safeguard measures (SG) (China) (Accession Protocol 16)
- Safeguards Agreement (SG) as integral part of WTO Agreement WTO 19

safeguard measures, application (SG 5)

- “demonstration” of compliance (SG 3.1), relevance SG 97–9
- determination of injury or threat of (SG 2.1) SG 82
- imports, limitation to SG 227
- Member’s right to choose method SG 97–9
- non-discrimination (GATT XIII) and GATT 686, 690–1, SG 232
- quota modulation (SG 5.2(b))
 - determination of injury or threat (SG 2.1), relevance to SG 82
 - as exception to general rule SG 82, 234
- “to the extent necessary” (proportionality) (SG 5.1) SG 13–15, 224–7
- Accession Protocol (China) and SG 317–18
- adjustment plans, relevance SG 228
- “clear justification” /requirement to explain SG 224–7
- tariff measures and SG 225 n. 375, 232 n. 289
- serious injury to increased imports, limitation to SG 226–7
- “serious injury” (SG 4.2(b)) distinguished SG 226

safeguard measures, conditions (SG 2)

- burden of proof DSU 549
- compliance with accession protocols SG 313
- determination of serious injury or threat (SG 4), violation as violation of SG 2 SG 17–23, 21
- free trade agreements/customs unions and (SG 2.1 footnote 1) SG 64
- parallelism between investigation (SG 2.1/SG 4.1(c)) and application of measure (SG 2.2) SG 66–79
 - Note:* The discussion turns on the parallelism between “product being imported into its territory” (SG 2.1)/ “within its territory” (SG 4.1(c)) and “being imported irrespective of source” (SG 2.2)
- burden of proof SG 71
- “factors other than increased imports” (SG 4.2(b)), imports from excluded sources as SG 74, 77–8
- “irrespective of source”, applicability to RTAs SG 66–73
- separate investigation into RTA member, relevance SG 69
- reasoned and adequate explanation requirement, 14.45, 14.69–72, 14.74, 14.76–9: *see also* reasoned and adequate explanation requirement (SG)
- right to apply measure and exercise of right distinguished SG 13–15
- RTAs/customs unions and (SG 2.1 footnote 1), right to exclude member of customs union from GATT 1055–6, SG 64–5
- “such increased quantities” (SG 2.1)
 - maintenance of level of concessions (SG 8.3) and SG 245
 - methodology, panel’s right to examine SG 35–7
 - qualitative test SG 38–9
 - quantity as determining factor SG 24
 - “rate and amount of the increase . . . in absolute and relative terms” (SG 4.2(a)) SG 25–8
 - absolute increase SG 50
 - “recent” SG 33–4, 320
 - as sudden and recent increase SG 30–45
 - trends SG 26–30, 42–5
- “sufficient to cause serious injury or threat” (SG 2.1) SG 31–2, 48
- quota modulation (SG 5.2(b)) and SG 82, 234
- separate determinations of threat and injury, need for SG 80–3
- GATT practice SG 83
- “serious injury” and “threat” as alternatives SG 80
- “threat” and “injury” as continuum SG 81
- threshold for threat and injury distinguished SG 81
- “under such conditions” SG 51–9, 178
- “factors other than increased imports” (SG 4.2(b)) and SG 58
- price analysis, relevance SG 57, 60–3

safeguard measures, duration and review (SG 7)

- burden of proof SG 333
- extension of measure (SG 7.1), whether distinct measure DSU 149
- format (SG 2 notifications) SG 236
- modifications reducing restrictiveness (SG 7.4) SG 237, 291

safeguard measures, maintenance of substantially equivalent level of concessions (SG 8)

- “absolute” increase SG 245
- “absolute” increase in imports (SG 8.3) SG 49–50, 245, 322
- “equivalent” SG 239
 - “adequate opportunity for prior consultations” (SG 12.3) and SG 239–40
- extension of time limits (SG 8.2)
 - GATT practice SG 244
 - invocations SG 244 (table)
 - notification of extensions SG 244

safeguard measures, object and purpose (SG preamble) SG 1–3

- balance between effective temporary protection and structural adjustment SG 2
- multilateral control over safeguards SG 1

safeguard measures, prohibition and elimination of certain measures (SG 11) GATT 597

- (*cont.*)
notification (SG 11.2)
 calculation of deadline (“date of this agreement” (WTO XVI:2)) SG 254
 eligible original Members and SG 255
 format SG 255
 notifications SG 253
 timetables SG 255
safeguard measures (SG), *see also* determination of serious injury or threat of (SG, 4), requirements; developing countries (SG 9); dispute settlement (SG 14); emergency action (GATT XIX); notification and consultation (SG 12); standard/powers of review (panel) (DSU 11)
safeguard measures (SG)/emergency action (GATT XIX), relationship between GATT 795, 838–43
 continuing applicability of GATT XIX GATT 839–42
 rules for application of GATT XIX (SG 1 and 11.1(a)) GATT 839–40, SG 4–10
Safeguards Committee (SG 13)
 establishment WTO 93
 Members’ reporting obligations (SG 13.1) SG 302
 observer status SG 300
 reports SG 301
 requests for assistance (SG 13.1) SG 303
 rules of procedure (1996) WTO 94, SG 299
sampling (AD 6.10)
 see also “domestic industry” (AD 4)
 “appropriate amount” (AD 9, 2) and AD 664, 666
 choice of sample AD 633–5
 as deviation from general rule AD 623–4
 “dumped imports” finding, applicability AD 200–7
 individual margin for *each* known exporter or producer AD 625–6
 exporter or producer not originally selected (AD 6.10.2) AD 625
 injury investigations (AD 3.2), use in AD 198–9, 207
 “known exporters” AD 632
 “largest percentage” AD 636–7
 NMEs and AD 624
 “objective examination” obligation (AD 3.1) and AD 198–9, 203–4, 204, 207, 210–13
 procedural nature AD 626
 separate legal entities, treatment of AD 627–31
 volume and price effects determination (AD 3.2) AD 210–13
 voluntary responses (AD 6.10.2) AD 638
Schedules of Concessions (GATT II)
 see also Schedules of Specific Commitments (GATS XX)
 anti-dumping duties applied consistently with GATT II:2(b), “safe harbour” GATT 161
 “charge equivalent to an internal tax” (GATT II:2(a)) GATT 159–60
 burden of proof GATT 160
 conformity of laws, regulations and administrative procedures, obligation to ensure (WTO XVI:4) WTO 287
 consistency of measure with GATT II:1(a) and (b) GATT 118–20
 legislation as such, right to challenge (WTO XVI:4) GATT 120
 test GATT 118
 “date of this agreement” (GATT XXVI:1)/Marrakesh Protocol GATT 153–7
 Understanding on Article II:1(b) GATT 155
 WTO accession protocols GATT 147
 diminishment of obligations, exclusion GATT 138–9, 164
 duties or charges (GATT II:1(b)), whether inherently discriminatory GATT 137
 exceptions to GATT II:1(b), price-based measures for balance of payments purposes GATT 172
 fees and formalities connected with importation and exportation (GATT VIII) and GATT 506
 inconsistency with GATT VI and GATT 489
 as integral part of GATT 1994
 AG 3.1 AG 26
 GATT II:7 GATT 163, AG 26
 interpretation and clarification
 “circumstances of conclusion” (VCLT 32) GATT 131
 context (VCLT 31(2)), other terms in Schedule as GATT 127
 customary international law rules of interpretation [as codified in the VCLT] as applicable law AG 26
 GATT II:1(a) and (b), interrelationship GATT 133
 Harmonized System of Customs Classification (HS), applicability: *see* Harmonized System of Customs Classification (HS)
 legitimate expectations (including GATT II:5 provisions) GATT 121, 132, 162, DSU 1542
 “treatment contemplated” (GATT II:5) and GATT 162
 Marrakesh Protocol and GATT 138–9, 154
 parties’ common intentions (VCLT 31(1)) GATT 119, 121
 subsequent practice (VCLT 31(3)(b)) GATT 130
 VCLT as applicable law GATT 119, 121, 169
 modification of schedules: *see* modification of schedules (GATT XXVIII)
 non-discrimination under GATT I and GATT 139
 non-discriminatory administration of QRs (GATT XIII) and GATT 139, 169
 ordinary customs duties (AG 4.2) and GATT 143, AG 42–5, 67
 ordinary customs duties in excess of those provided for in Schedule (GATT II:1(b))
 customs duties based on exogenous factors AG 43
 duty different in type GATT 146–7
 “in excess of” GATT 146–7
 internal duty distinguished GATT 167
 “on their importation” GATT 144
 “other duties or charges” (ODCs) (GATT II:1(b)) GATT 148–52
 definition GATT 148–9
 foreign exchange fees GATT 150, 151
 import surcharges GATT 150
 recording pursuant to Understanding on Article II:1(b) GATT 152
 “subject to the terms, conditions or qualifications in the schedule” (GATT II:1(b)) GATT 138–42
 additional concession GATT 140 n. 204
 description distinguished GATT 140
 inclusion in schedule, need for GATT 142
 price ceiling not included in Schedule GATT 141
 “subject to” GATT 140
 terms, conditions or qualifications added to import concessions, obligation to include in Schedule GATT 142
 tariff classification for purposes of GATT 122
 tariff database: *see* consolidated tariff databases
 treatment no less favourable than that provided in appropriate schedule (GATT II:1(a))
 bonding requirements
 elimination of quantitative restrictions (GATT XI) and GATT 626
 imposition of import duties distinguished GATT 626
 failure to include additional terms, conditions and qualifications to Schedule and GATT 142
 non-tariff concessions
 commitments not to impose export duties GATT 135–6
 members making such concessions GATT 134
 Secretariat Technical Note on the Accession Process GATT 134
 STEs (GATT VII) and, GATT practice GATT 746
 STEs (GATT XVII) and GATT 745
 Understanding on Article II:1(b), recording of “other duties and charges” GATT 152

- withdrawal of concessions: *see* withholding or withdrawal of concessions (GATT XXVII)
- Schedules of Concessions (GPA)**
as integral part of GPA (GPA XXIV:12) GPA 54
interpretation and clarification, VCLT as applicable law GPA 54
- Schedules of Specific Commitments (GATS XX)**
Committee on Specific Commitments GATS 173–5, 215
Guidelines (2001), corrections to French text GATS 174
inscription of measures inconsistent with GATS XVI and GATS XVII (GATS XX:2) GATS 196
as integral part of GATS (GATS XX:3) GATS 177, 197–8
interpretation and clarification
context (VCLT 31(2)), other Members’ schedules GATS 189
customary international law rules of interpretation [as codified in the VCLT] as applicable law GATS 177, 199
Document W/120, as “agreement made between all the parties in connection with the conclusion of the treaty” (VCLT 31(2) (a)) GATS 186–7
parties’ common intentions (VCLT 31(1)) GATS 177
Scheduling Guidelines (1993)
as “agreement made between all the parties in connection with the conclusion of the treaty” (VCLT 31(2)(a)) GATS 181
as subsequent practice establishing agreement of parties (VCLT 31(3)(b)) GATS 182
as supplementary means including preparatory work (VCLT 32) GATS 180
Scheduling Guidelines (2001), as subsequent practice establishing agreement of parties (VCLT 31(3)(b)) GATS 183
supplementary means of interpretation (VCLT 32) GATS 179–90
Document W/120 GATS 179, 185–7
Scheduling Guidelines (1993) GATS 180–2
Scheduling Guidelines (2001) GATS 184
summary of AB guidance on potentially relevant instruments GATS 179
UN CPC GATS 188
modification or rectification, procedures (GATS XXI:5) GATS 201–2
required information (GATS XX:1)
allocation to specific sector/subsector (“sector” (GATS XXVIII (3))) GATS 191, 229
time-frame for implementation (GATS XX:1(d)) GATS 104, 192–5
treaty status GATS 140
- scientific evidence, need for sufficient (SPS 2.2)**
see also expert evidence; harmonization of SPS measures (SPS 3); information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2); provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7); risk assessment, need for (SPS 5.1)
burden of proof SPS 32–6
GATT XX requirements distinguished GATT 854
SPS 5.6 and SPS 260
SPS 5.7 and SPS 36, 323, 324–7, DSU 1278 n. 2005
cumulative test SPS 31
equivalence (SPS 4), relevance SPS 43
as part of trade/protection of human life and health balance SPS 24
precautionary principle and SPS 8, 23, 328–30
rational and objective relationship between SPS measure and scientific evidence, need for SPS 22
case-by-case approach SPS 30–1, 137
provisional measures (SPS 5.7) and SPS 309
“scientific evidence” SPS 29
standard of review SPS 37–40
expert evidence (DSU 13.2) SPS 40
information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2) SPS 39
“objective assessment of matter before it” SPS 41
prudence/precautionary principle SPS 37
risk assessment, exclusion SPS 38, 122–9
“sufficient” SPS 25–6
context (SPS 3.3, 5.1 and 5.7) SPS 27
context (SPS 4) SPS 43, 121
ordinary meaning SPS 25
patent insufficiency SPS 28
as relational concept SPS 25–6, 30–1
- SCM Agreement:** *see also* adverse effects (SCM: 5); arbitration (SCM 8.5); confidential information (SCM 12.4); conformity of laws, regulations and administrative procedures with SCM obligations, obligation to ensure (SCM 32.5); consultations (SCM 4.1–4); consultations (SCM 13); consumption of inputs in the production process (SCM, Annex II footnote 61); countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10); countermeasures in case of failure to take measures to remove adverse effects of or withdraw subsidy (SCM 7.9); data collection period (SCM 15.1/15.2); determination of injury (SCM 15); dispute settlement (SCM 30); “domestic injury” (SCM 16); due process (countervailing duty investigation) (SCM 12.7); evidence (countervailing duty investigation) (SCM 12); expedited review, right to (SCM 19.3); export subsidy, prohibited (SCM, Part II); investigation of dumping (AD 5)/subsidy (SCM 11); investigations and reviews of existing [SCM] measures initiated . . . on or after date of entry into force of WTO Agreement (SCM 32.3); judicial review (SCM 23); “like product” (SCM 15 footnote 46); notification obligations (SCM 25); price undertakings (AD 8)/undertakings (SCM 18); provisional measures (SCM 17); “public body” (SCM 1.1(a)(1)); public notice and explanation of determinations (SCM 22); request for establishment of panel, requirements (SCM 4.4); retroactivity (SCM 20); “serious prejudice”, procedures for developing information concerning (SCM Annex 5); “serious prejudice” (SCM 5(c)); “serious prejudice” (SCM 6); “serious prejudice” (SCM 27.8); special and differential treatment (SCM 27/SCM 29); specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement; standing as claimant (SCM); subsidy, calculation in terms of benefit to recipient (SCM 14); subsidy, definition (SCM 1.1(a)(1)) (financial contribution); subsidy, definition (SCM 1.1(b)) (conferral of benefit); subsidy, specificity (SCM 2); sunset review (SCM 21.3); transitional arrangements (existing programmes) (SCM 28.1); “inconsistent with the provisions of this Agreement” (SCM 28.1); “withdrawal of subsidy without delay” (SCM 4.7)
Agriculture Agreement (AG), relationship with, 13.181–7: *see also* relationships within and between agreements
Decision on implementation-related concerns (2000) and: *see* Decision on implementation-related concerns (2000)
GATT VI, separability of provisions SCM 591
GATT Subsidies Code and SCM 702
object and purpose (SCM 1) SCM 1–8
balanced framework of rights and obligations relating to countervailing duties SCM 4, 8
interpretation and clarification of GATT VI SCM 7
multilateral disciplines on subsidies distorting international trade SCM 1–5, 548
strengthening and improvement of GATT disciplines on subsidies and countervailing measures SCM 8, 44, 493

- (*cont.*)
provisional application of Articles 6.1, 8 and 9 (SCM 31)
lapse of provisions SCM 582
review SCM 582
reservations (SCM 32.2) WTO 297
- SCM Code (Tokyo Round)**
subsequent agreement for purpose of interpretation of GATT VI,
whether
subsequent practice for purpose of interpretation of GATT VI,
whether WTO 277
- SCM Committee**
consumption of inputs in the production process (SCM Annex II
footnote 61), difficulty of resolving issues related to SCM
666–8
Decision on implementation-related concerns (2000) and SCM
351–2
establishment WTO 93
notification formats, role in relation to (SCM 25) SCM 345, 514,
571, 573
reports SCM 351–2, 600
rules of procedure (1996) WTO 94, SCM 509
- SCM institutions (SCM 24)**
see also SCM Committee; subsidy, definition (SCM 1)
Working Party on Subsidy Notifications SCM 513
- Seattle Ministerial Conference (1999)**, Declaration, failure to agree
on WTO 55
- Secretariat (DSU 27)** DSU 1356–8
Institute for Training and Technical Cooperation
DSU 1357
legal advice for developing countries (DSU 27.3) DSU 1357
Rules of Conduct (RoC), applicability to DSU 1486
training courses (DSU 27.3) DSU 1358
- Secretariat (WTO VI)**
see also Director-General (WTO)
duties and conditions of service (WTO VI:3) WTO 173–8
Staff Regulations and Rules WTO 173–4
Working Group on Conditions of Service applicable to the WTO
Secretariat Staff WTO 173–4
WTO Pension Plan (WTOPP) WTO 175–8
annual reports WTO 178
headquarters WTO 168
role
interpretation of covered agreements WTO 201
support for domestic efforts in relation to economic development
and strategies for poverty reduction WTO 111
- security exceptions (GATT XXI)**, GATT practice GATT 956
- security and predictability of WTO obligations (DSU 3.2)** DSU
41–51
arguendo assumptions and DSU 49–50, 661–2
balance between certainty of the law and procedural flexibility
GATT 314, DSU 42
certainty of the law DSU 24
“clarify the existing provisions” and DSU 49, 51, 52–3, 57, 299, 386,
529, 630, 639, 661, 703
determination of date of “initiation” by reference to domestic law
SCM 356
evolutionary approach/intertemporal law and GATT 314, GATS 5,
DSU 42, 1621
finality of adopted panel reports DSU 826
interpretation contradictory to object and purpose of agreement
and SCM 5, 6, 44
judicial economy and DSU 52
precedent/AB jurisprudence, need to follow DSU 53, 823, 835,
903, 1701
prompt and satisfactory settlement (DSU 3.3) and DSU 68, 826
reasons/rationale in panel report (DSU 12.7) and GATT 314, DSU
41, 51, 703
right to challenge legislation as such (WTO XVI:4) and DSU
45, 281
specificity in request for establishment of a panel DSU 224
suspension of concessions (DSU 22.4) and DSU 47–8
transparency and (GATS preamble) GATS 1–2
as WTO objective WTO 8–11, GATT 119, DSU 43–4, 281
- separability of treaty provisions (VCLT 44)** DSU 1669
- separate customs territory**, explanatory notes (“country”, “countries”
and “national”) and WTO 305–6
- separate opinions**
AB (DSU 17.11), table showing DSU 889
Article 22.6 arbitration, table showing DSU 1215
panel (DSU 14.3) GATT 626
table showing DSU 771
- “sequencing” (interrelationship between Article 21.5 and Article
22.6 arbitration, ad hoc procedural agreements)**
17.1150, 17.1176: *see also* customs value determination (VAL),
sequencing
agreement not to appeal Article 21.5 panel report DSU 1162
agreement not to object to Article 22.6 arbitration DSU 1165
arbitrators’ role in relation to DSU 1157
arbitrators’ scope of review DSU 1176
direct recourse to Article 22 DSU 1164
non-application of 30-day Article 22.6 deadline DSU 1166–7
recourse to Article 21.5 before Article 22 DSU 1158–60
recourse to Article 22.6 before completion of Article 21.5
proceedings as breach DSU 1176
simultaneous recourse to Article 21.5 and Article 22 DSU 1161
withdrawal of Article 22 arbitration request DSU 1163
- serious damage or actual threat (ATC):** *see* transitional safeguards
(ATC 6)
- “serious prejudice” (GATT XVI:1)**, “serious prejudice” (SMC 5(c)/
6.3(c)), identity of meaning GATT 714, SCM 267
- “serious prejudice”, procedures for developing information
concerning (SCM Annex 5)**
adverse inferences from non-cooperation SCM 676–8
initiation, requirements SCM 675
requests for SCM 673
use of information in prohibited subsidy claims SCM 674
- “serious prejudice” (SCM 5(c))**
aggregated analysis SCM 304–6
“but for” test SCM 281
genuine causal link requirement SCM 279
least-developed countries (LDCs) and DSU 1321–3
“of another Member” SCM 266
remedies (SCM 7.8): *see* adverse effects (SCM 5), obligation to
remove adverse threats or withdraw subsidy (SCM 7.8)
“significant price undercutting/suppression” (SCM 6.3(c)) as SCM
265, 267, 268
- “serious prejudice” (SCM 6)**
adverse effects on trade interests
as “serious prejudice” SCM 277
as test SCM 274
developing countries, exclusion (SCM 27.9) SCM 569
displacement or impediment to imports (SCM 6.3(a)) SCM 307–9
“displace” and “impede” distinguished SCM 309
genuine causal link requirement and SCM 309
market share data, relevance SCM 308
ordinary meaning SCM 307
“price depression” and “price suppression” (SCM 6.3(c))
compared SCM 309
SCM 4, relevance SCM 308
elements listed in SCM 6, sufficiency to establish SCM 273
“where one or several . . . apply” SCM 278
genuine causal link requirement SCM 289, 306
applicability to all SCM 6.3 elements SCM 279, 282
burden of proof SCM 283–4

displacement or impediment to imports (SCM 6.3(a)) and SCM 309	sources of international law: <i>see</i> international law/ “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2))
“injury” distinguished SCM 274	sovereignty
“may arise” (SCM 6.3 chapeau) SCM 275	burden of proof and DSU 1741
rebuttal of presumption (SCM 6.2) SCM 276	conclusion of treaty as exercise of inherent sovereign right DSU 1742–3
“significant price undercutting/suppression” (SCM 6.3(c))	impairment of other Members’ rights as breach DSU 1739
aggregated analysis SCM 304–6	<i>in dubio mitius</i> principle and DSU 1713 n. 2689, 1734–5
“but for” test SCM 280–2, 288, 295	interpretation of covered agreement by reference to rules not accepted by Member as breach DSU 1595, 1740
counterfactual analysis SCM 293–5	Members as sovereign entities DSU 583
“effect of the subsidy”	over non-WTO regulated matters DSU 1738
continuing effect SCM 299–300, 302	as a rule/fundamental principle of international law DSU 1605, 1733–43
expired subsidy programme SCM 298–302	sovereignty/treaty benefits balance DSU 1733
period of review SCM 301–2	“tax sovereignty” DSU 1736
relevant period of review, “serious prejudice” (SCM 6) SCM 301–2	unilateral environmental protection measures as breach DSU 1737
“in the same market” SCM 319, 321–5	unilateral statements and DSU 1685
“lost sales” SCM 319–20	special or additional procedures (AB) (ABWP 16(1)) DSU 1379–85
displacement or impediment (SMC 6.3(a) and (b)) compared SCM 319	<i>amicus curiae</i> briefs DSU 1382
two-step analysis SCM 320	BCI DSU 919–21, 1379–81
non-attribution of adverse effects caused by other factors SCM 282, 285–9	multiple appeals DSU 1383
“price suppression” SCM 278, 315–16	replacement of member of Division DSU 1385
“price depression” distinguished SCM 309, 317–18	special or additional procedures (panel) (DSU 12.1)
“price undercutting” SCM 267, 314	17.683–8, 17.687–8, 17.919, 17.1381: <i>see also</i> third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6
quantification, relevance SCM 297	expert evidence (DSU 13.2/SPS 11.2) DSU 765
“significant” SCM 310–13, 319	margin of discretion, 17.683–6: <i>see also</i> margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3)
“subsidized product” vs “effect of the subsidy” SCM 303	public hearing DSU 888
unitary vs two-step approach SCM 290–2	special or additional rules and procedures (DSU 1.2 and Appendix 2) DSU 9–16
standing to bring claim, nationality of producers, relevance SCM 267	arrangements considered for classification as
“serious prejudice” (SCM 27.8) SCM 568	AD 11 DSU 12
burden of proof SCM 568	AD 13 DSU 16
services, trade in: <i>see</i> business practices (GATS IX); developing countries (GATS IV); domestic regulation (GATS VI); GATS Agreement; GATS Agreement, Institutional Arrangements, Marrakesh Ministerial Decision; General Exceptions (GATS XIV); market access (GATS XVI); MFN treatment (GATS II); monopolies and exclusive service providers (GATS VIII); national treatment, services and service suppliers (GATS XVII); progressive liberalization (GATS XIX); progressive liberalization (GATS XIX); decisions and agreements relating to; progressive liberalization negotiations (GATS XIX:3 and Doha 15); recognition of qualifications (GATS VII); Schedules of Specific Commitments (GATS XX); telecommunications, GATS XVIII Reference Paper on Basic Telecommunications	AD 17 AD 870–2, 888, 954, DSU 12, 13–14, 15
“shall in no way modify the rights and obligations” (RoC II), confidentiality (RoC VII) and DSU 1483–4	AG 13 DSU 11
Singapore Ministerial Conference/Declaration (1996)	BOP DSU 10
adoption of main Declaration WTO 53, 67	SCM 4.2 (consultations) SCM 197, 211, DSU 17
agriculture reform process (AG 20) AG 183	SCM 4.2–4.12 DSU 18
“built-in agenda” WTO 31	SCM 4.4 DSU 17
Comprehensive and Integrated WTO Plan of Action for the least- developed countries (1996) WTO 108, 114	SCM 4.10 DSU 22, 23
Declaration on Trade in Information Technology Products WTO 53, 67, GATT 193–9	SCM 4.11 SCM 246–7, DSU 17, 22, 22–4, 23, 1241–2, 1279–80, 1282–3
“forum for negotiations” (WTO III:2), recommendations relating to WTO 31	SCM 7.2 DSU 17
information exchange (GATS XIX) GATS 161	SCM 7.4 DSU 17
Information Technology Agreement (Singapore) GATT 193–9	SCM 7.8 DSU 21
NFIDC (AG 16) AG 154	SCM 7.9 and 7.10 SCM 338, DSU 24
“Singapore issues” WTO 53	SCM 30 SCM 578
TMB, role and procedures ATC 88	precedence SCM 247
working groups established by (“Singapore issues”) WTO 53	“shall prevail” in case of a difference with DSU SCM 197, 328, DSU 9, 21–4, 25, 356
	text (Appendix 2) DSU 1359 (Section XXIX)
	special or additional rules and procedures (GPA XXII:2) GPA 28
	special and differential treatment (AG 15), Decision on implementation-related concerns (2000) AG 150
	special and differential treatment for developing countries (Doha) <i>see also</i> least-developed countries; special and differential treatment (SPS 10)
	non-mandatory provisions conversion (AD 15) AD 852
	review, need for AD 852
	terms of reference of panels (DSU 7) and DSU 717

(cont.)

special and differential treatment for developing countries

(GPA V), technical assistance activities GPA 20

special and differential treatment (SCM 27/SCM 29), 13.575–6: *see also* developing countries (SCM 27)

special and differential treatment (SPS 10)

obligation to “take account of” special needs of developing countries (SPS 10.1)

burden of proof SPS 388

“take account of” SPS 387, TBT 140–1

TBT 12.3 compared SPS 389, TBT 137

phased introduction of new measure (SPS 10(2) (Doha))

impossibility of SPS 391

longer time-frame for compliance SPS 390

technical and financial assistance and training (Doha) SPS 377–8

transparency enhancement Procedure (2003) SPS 379–80

transparency enhancement Procedure (2009) SPS 382–6

special and differential treatment (TBT 12)

“not more trade-restrictive than necessary to fulfil a legitimate objective” obligation (TBT 2.2) distinguished TBT 136

special account requirement

implementation of TBT (TBT 12.2) TBT 135

preparation of technical regulations, standards and conformity assessment procedures (TBT 12.3) TBT 135

SPS 10.1 compared SPS 389, TBT 137

SPS 10.1 compared SPS 389, TBT 137

“special development, financial and trade needs” (TBT 12.2 and 12.3), Enabling Clause (EC 3(c)) and SCM 27.46 compared TBT 139

TBT Committee recommendations and decisions related to, implementation of TBT 12 TBT 132

TBT Committee recommendations and decisions related to information exchange TBT 133–4

special and differential treatment (VAL 20/VAL Annex III)

continued application of 1979 VAL Agreement VAL 66

delayed application of VAL 1 and 6 (VAL 20.2) VAL 70

delayed application of VAL Agreement (VAL 20.1)

Decision on implementation-related concerns (2000) and VAL 69 requests for VAL 68

reservations relating to

application of VAL 5.2 (Annex III, para. 4) VAL 83

officially established minimum values (Annex III, para. 2)

VAL 80–1

reversal of sequential order of VAL 5 and 6 (VAL 4) VAL 24, 82

technical assistance programmes (VAL 20.3) VAL 71

transparency on technical assistance activities VAL 67

special procedures involving LDCs (DSU 24)

actions brought against LDCs DSU 1325

actions brought by LDCs DSU 1325

actions involving LDCs as third parties DSU 1325

due restraint obligation DSU 1324–5

“particular consideration shall be given” (DSU 24.1) DSU 1321–3

special safeguards (AG 5)

calculation method (AG 5.5), right to choose AG 69–70, 73

c.i.f. import price (AG 5(1)(b)) AG 68–72

customary international trade usage AG 69

effectiveness principle AG 71

possibility of alternative method (AG 5.5) AG 73

market access (AG 4) and AG 39

as exemption from AG 4.2 requirements AG 75

specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement

13.583: *see also* anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement

action under other relevant provisions of GATT 1994 distinguished (AD 18.1 footnote 24) GATT 449, 451, AD 956–8, 960–2

clarificatory nature of footnotes AD 961

“against” GATT 473, AD 957–8, SCM 587

calculation of amount of subsidy (SCM 14(d)) and SCM 589

“except in accordance with the provisions” AD 959, SCM 583–4

“legislation as such” AD 876

reasonable security/bonding (Note 1 *Ad Article VI*:2–3) GATT 473–7, AD 963–4

“final determination” GATT 474–5, AD 697

provisional measures (AD 7) and AD 653

“reasonable” GATT 477

“security” GATT 476

“specific” SCM 587

US Customs Bond Directive “as such” AD 964

SPS Agreement

see also ALOPs (SPS 5.4–5.6 and Annex A(5)); arbitrary or

unjustifiable discrimination, exclusion (SPS 2.3); developing

countries (SPS 4); developing countries (SPS 7);

Equivalence, Decision on Implementation of SPS 4;

harmonization of SPS measures (SPS 3); information or

technical advice, panel’s right to seek (DSU 13.1/SPS 11.2);

precautionary principle (SPS Agreement); provisional

adoption of SPS measures in case of insufficiency of

scientific evidence (SPS 5.7); regional conditions, adaptation

of SPS measures to (SPS 6); risk assessment, need for (SPS

5.1–5.3); risk assessment (SPS Annex A(4)(4)); scientific

evidence, need for sufficient (SPS 2.2); special and

differential treatment (SPS 10); SPS Committee (SPS 12);

SPS control, inspection and approval procedures (SPS 8 and

Annex C); technical assistance (SPS 9); transparency of SPS regulations (SPS 7 and Annex B)

administration (SPS 12): *see* SPS Committee

applicability (SPS 1.1)

GATT XX(b), relevance SPS 594

measures “developed and applied in accordance with [SPS] provisions”, purpose of measure and SPS 15

measures in existence before entry into force of SPS agreement (SPS 14) SPS 14, 448–9

measures taken by body other than central government (SPS 13) SPS 446

“measures which may directly or indirectly affect trade” SPS 11–13, 256

phytosanitary measure affecting international trade SPS 9, 594

private standards, SPS Committee Actions relating to (2011) SPS

16–18

as balance between promotion of international trade and protection

of human, animal or plant life or health (SPS 2.2)

4.24, 4.141: *see also* General Exceptions (GATT XX(b))

measures necessary to protect human animal or plant life or

health

“only to the extent necessary”, trade-restrictive measures, exclusion (SPS 5.4–5.6) and SPS 50

basic rights and obligations (SPS 2)

applicability to SPS as a whole SPS 20

SPS 2.2 requirements SPS 21

burden of proof, scientific evidence, sufficiency (SPS 5.7) SPS

36, 323

GATT XX(b) and, 2.950, 4.5: *see also* order of analysis

implementation (SPS 13)

measures taken by body other than central government SPS 446

review and monitoring (SPS 12.7), procedures SPS 441–5

interpretation, applicability to pre-existing situations and measures DSU 1523

object and purpose (preamble)

consistency of measures with SPS obligations SPS 1

harmonization of international standards SPS 3–5

international standards, guidelines and recommendations [as adopted by relevant international organizations] SPS 2

- precautionary principle and, 4.6–8: *see also* precautionary principle (SPS Agreement)
- prompt compliance with obligations SPS 558
- TBT Agreement, applicability to (TBT 1.5) TBT 12–14
- SPS Committee (SPS 12)**
 - see also* SPS Agreement
 - ad hoc consultations (SPS 12.2) SPS 434–6
 - cooperation with relevant international organizations (SPS 12.3) SPS 437–8
 - Decision on Implementation of SPS 4, *see also* Equivalence Decision on Implementation of SPS 4 (26 October 2001)
 - establishment WTO 93
 - monitoring of international standards (SPS 12.4) SPS 439–40
 - observer status SPS 437
 - review of implementation and monitoring of SPS Agreement (SPS 12.7) SPS 441–5
 - rules of procedure (1997) (SPS 12.1) WTO 94, SPS 431
- SPS control, inspection and approval procedures (SPS 8 and Annex C)**
 - “any procedure to check and ensure”, applicability (Annex C(1)(a)) SPS 552–6
 - comprehensive nature of provision SPS 553
 - development of SPS measures SPS 552
 - measures other than “procedures” SPS 555
 - measures prior to “procedures” SPS 556
 - title or characterization of measure, relevance SPS 554
 - “any procedure to check and ensure”, applicability (Annex C(1)(b)) SPS 577
 - “any procedure to check and ensure”, applicability (Annex C(1)(c)), substantive and control procedures distinguished SPS 584
 - failure to observe Annex C requirements as breach of SPS 8 SPS 373, 375, 587
 - individual specimens, requirements relating to (Annex C(1)(e)) SPS 585
 - information requirements (Annex C(1)(c)), procedures to check compliance with SPS measures, limitation to SPS 584
 - “no less favourable manner” (Annex C(1)(a)) SPS 575–6
 - obligations (Annex C(1)(c))
 - completeness of documentation SPS 580
 - explanation of delay SPS 583
 - processing of deficient applications SPS 582
 - publication or communication of processing period SPS 579
 - summary SPS 578
 - transmission of results SPS 581
 - risk assessment (SPS 5.2) and SPS 195, 376
 - “undertake and complete” (Annex C(1)(a)) SPS 559–60
 - “without undue delay” (Annex C(1)(a))
 - definition SPS 561–4
 - delay as means of avoiding risk assessment SPS 574
 - delay and refusal to take SPS action distinguished SPS 571–2
 - determination SPS 565–7
 - as good faith obligation SPS 557
 - legislative delays SPS 573
 - precautionary principle and SPS 570
 - prompt compliance with SPS obligations (SPS preamble) and SPS 558
 - prudence and precaution SPS 568–9
- SPS measure, definition/classification as (Annex A(1))**
 - “directly related to food safety” SPS 500
 - “diseases, disease carrying organisms or disease-causing organisms” SPS 475
 - environmental protection measures and SPS 462–4
 - travaux préparatoires* SPS 463–4
 - “labelling requirements”
 - applicability to matters other than food safety SPS 497
 - consistency of requirement with SPS as separate issue SPS 498
 - purpose SPS 499
 - “laws, decrees, regulations, requirements and procedures”
 - applicability to non-SPS measures SPS 465–7
 - English, Spanish and French versions compared SPS 454
 - “include all relevant” SPS 493
 - ordinary meaning SPS 453
 - “requirements and procedures” SPS 495–6
 - legal form, flexibility SPS 494
 - legal form and nature, relevance/distinguishability SPS 452–6
 - “measure so as to afford protection” (GATT III) compared SPS 469
 - measure to protect animal or plant life or health (Annex A(1)(a))
 - “entry, establishment or spread” SPS 472
 - genetically modified organisms and SPS 468
 - “risks arising from” SPS 471
 - “to protect animal or plant life or health”, repetition SPS 470
 - measure to protect from “other damage” (Annex A(1)(d)) SPS 490
 - measure to protect human or animal life (Annex A(1)(b)) SPS 10, 486
 - “additive”
 - Codex definition, relevance SPS 479
 - genes as SPS 478
 - allergens as toxins SPS 484–5
 - “contaminants” SPS 480
 - “foods, beverages or feedstuffs” SPS 477
 - ordinary meaning SPS 476
 - “toxins”
 - poisonous effect, relevance SPS 483
 - “unintentional addition to food” SPS 481
 - “measure to protect human life or health . . . from diseases carried by animals, plants or products of . . .” (Annex A(1)(c))
 - presence of allergens in the environment SPS 488
 - increased herbicide use associated with GMOs SPS 489
 - measure to protect a listed issue or prevent/limit specified damage SPS 450
 - “pests” SPS 473–4
 - “living organism”, relevance SPS 474
 - principal and ancillary measures, distinguishability SPS 458
 - purpose as test SPS 452, 457
 - objectivity SPS 460
 - relationship between Annex A(1)(a) and A(1)(b) SPS 486
 - substantive measures and procedural requirements distinguished SPS 459
 - trade effects, relevance SPS 451
- Staff Regulations and Staff Rules (WTO VI:3) WTO 173–4**
- standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)**
 - completion of the legal analysis, inadequacy of the record/*arguendo* assumptions DSU 658–9
 - completion of the legal analysis in case of DSU 858–83
 - agreement with panel DSU 863, 1323
 - consideration of hypothetical case, exclusion GATS 123
 - contentiousness/omission/insufficiency of facts DSU 863–83
 - disagreement with the panel DSU 866–7
 - insufficient argument of novel issue DSU 867
 - panel’s analysis going beyond the strictly necessary and DSU 873
 - panel’s failure to address correct issue SPS 276, 282, DSU 862
 - excess of jurisdiction
 - in absence of claim by party DSU 1419–20
 - consideration of treaty provisions other than those cited DSU 424
 - issues not identified during Panel proceedings DSU 851
 - issues not litigated before Panel SCM 160
 - jurisdictional issues: *see* competence of panels and AB (DSU 3.2/DSU 11/DSU 17) *see also* *under compétence de la compétence*/obligation to address jurisdictional issues [on own motion]
 - law vs fact DSU 841, 859

- (*cont.*)
- compliance/consistency with treaty obligations DSU 843
 - assessment of domestic law for purpose of determining DSU 847
 - “like products” (GATT II:2), determination as DSU 841, 859
 - mixed fact and law DSU 849
 - panel as trier of facts, 9.5, 17.562, 17.594, 17.601–12, 17.613, 17.845–6: *see also* standard/powers of review (panel) (DSU 11), “objective assessment of the facts” /alleged disregard or distortion of the evidence
 - panel’s classification of measure, relevance DSU 850
 - legal findings or developed interpretations, limitation to (DSU 17.13) SPS 345, DSU 841, 859, 896–8
 - new arguments DSU 855–7
 - new evidence DSU 852–4
 - non-applicability to covered agreements other than Anti-Dumping Agreement including the SCM and SPS Agreements SCM 703
 - non-discriminatory administration of QRs (GATT XIII), determination DSU 842
 - obiter* findings of panel DSU 270
 - reversal of panel findings, effect GATT 876
 - standard/powers of review (panel) (AD 17.6)**
 - assessment of the facts (AD 17.6(i))
 - AD 3.1 (determination of injury) distinguished AD 187
 - AD 5.3 (sufficiency of evidence), applicability to AD 367–70, 940
 - applicability to investigating authority AD 259, 302, 921
 - de novo* review, exclusion AD 605, 912, 914–15, VAL 19 n. 34
 - DSU 11 compared AD 925–6, DSU 605
 - “unbiased and objective” AD 919–20
 - “facts made available” (AD 17.5(ii))
 - disclosure/discernibility to interested parties by time of final determination, relevance AD 188, 917–18, 920
 - documents created for purposes of dispute AD 908
 - examination to be based on AD 905–8, 917
 - limitation to AD 914
 - undisclosed facts AD 906
 - interpretation of relevant provisions of AD (AD 17.6(ii))
 - in accordance with customary rules of interpretation of public international law AD 927
 - “admits of more than one permissible interpretation” AD 329 n. 442, 928–34, 935–7, 963
 - assessment of the facts (AD 17.6(i)) and, cumulative effect AD 938
 - DSU 11 compared AD 935–7
 - investigating authorities’ establishment of the facts (AD 17.6(i))
 - “establishment” AD 917
 - evaluation as at time of determination AD 923–4
 - “was proper” AD 302, 367–70, 917
 - scientific evidence, need for sufficient (SPS 2.2): *see scientific evidence need for sufficient* (SPS 2.2) *see also under* standard of review
 - standard/powers of review (panel) (DSU 11)**
 - see also* information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2); judicial economy; legislation as such, right to challenge (WTO XVI:4); notice of appeal, requirements (ABWP 20(2)); panel reports, rationale/reasons, need for (DSU 12.7); terms of reference of panels (DSU 7)
 - applicability to Customs Valuation Agreement claims VAL 4
 - applicability to SG/GATT XIX GATT 800, SG 109, 147–53, 305–10, 313
 - balance of payments measures (BOP Understanding footnote 1) GATT 755–9
 - DSU 11 (function of panel) claims and claims relating to substantive provisions distinguished DSU 1429–30
 - error of law
 - application of burden of proof rules DSU 617
 - equation of “based on” and “conform to” SPS 92, 134–5
 - error not rising to a breach of DSU 11 DSU 596–7
 - failure to apply proper standard of review SPS 124–6, DSU 613, 846, 848
 - failure to make objective assessment of facts distinguished DSU 595
 - incorrect interpretation of covered agreement SCM 326
 - rejection of *amicus curiae* brief DSU 739
 - “make such other findings” DSU 601
 - “objective assessment of the facts” /alleged disregard or distortion of the evidence DSU 605, 846
 - circumstantial evidence DSU 633–5
 - de novo* review, exclusion GATT 800, ATC 25, 99, 101, AD 206, 302, 330, 805, VAL 6, SG 109, 147, DSU 609
 - discretion in assessment of evidence GATT 900, SCM 296, DSU 601–12
 - discretion in selection of evidence to refer to explicitly DSU 598, 601, 606, 610
 - egregious error, need for DSU 608, 610, 613–17
 - evidence available to Member at time of ATC 6 determination, limitation to ATC 25, DSU 629
 - evidence other than that submitted by parties, right to consider DSU 549, 599
 - facts available at time of establishment of panel, limitation to DSU 1333
 - methodology for evaluating increase in imports (SG 2.1/GATT XIX:1(a)) SG 35–7
 - obligation to examine and evaluate *all* the evidence available to it SG 147, 306, DSU 598–600, 604
 - public statements by company executives/government officials DSU 636
 - “objective assessment of matter before it”
 - in absence of relevant jurisprudence (GATS XI) GATS 70
 - AD 17.6(ii) compared AD 935–7
 - adverse effects (SCM 5), doubt about relevant period and SCM 259
 - all* arguments DSU 520–2, 557, 643
 - all* legal claims (DSU 3.2)
 - 17.598 n. 955, 17.639: *see also* judicial economy
 - “positive solution” requirement (DSU 3.7) and GATS 79, DSU 78
 - arguendo* assumptions and, 17.49–50, 17.657–64: *see also arguendo* assumptions
 - Article 21.5-type proceedings and DSU 1277–8
 - due process and DSU 613, 618, 618–21, 680
 - events during proceedings, exclusion from panel’s considerations DSU 941–2
 - failure to make as abuse of discretion DSU 622
 - good faith obligation SCM 421
 - independent assessment DSU 519–34
 - in absence of contested claims DSU 522, 524
 - in absence of party’s counter-arguments DSU 521
 - determination of “subsidized product” DSU 525
 - evaluation of evidence DSU 602
 - international agreements other than the covered agreements DSU 534
 - panel’s right to choose position other than that articulated by parties DSU 520, 523
 - reference to treaty provisions not cited by parties DSU 519
 - independent assessment of domestic law DSU 526–32
 - independent assessment of expert evidence SPS 41, DSU 538, 609
 - non-disclosure of confidential information (GATS III *bis*) GATS 48
 - reasoned and adequate explanation (SG 4.2(a)) and GATT 800–2, 811, 814, SG 99, 148–51

- reasoned and adequate explanation (VAL 1) and VAL 5
 ex post facto explanation, sufficiency VAL 7
SCM 4.2 (statement of available evidence) and SCM 193
 ultra petita finding on provision not before it DSU 537, 618, 680
relevant factors
 evaluation of all relevant factors, need for AD 914 n. 1246
 position of Member at time of determination ATC 25, AD 914 n. 1246
risk assessment (SPS Agreement), exclusion SPS 38, 122–9, 217
serious damage or actual threat of (ATC 6.2)/SG 4, Member’s
 determination of, statement to TMB, admissibility ATC 23–4
summary of requirements DSU 594
standing as claimant (SCM)
 SCM 6.3(a) SCM 267
 serious prejudice requirement (SCM 7.2) SCM 267
standing/right to bring claim (DSU 3.7)
 see also mutually agreed/acceptable solution to matters raised
 formally (DSU 3.6), “would be fruitful” (DSU 3.7); request
 for establishment of panel requirements (DSU 6.2);
 fruitfulness of action (DSU 3.7)
 economic interest, relevance DSU 85, 177
 legal interest, relevance DSU 75, 83–9, 468–9, 1744–5
 nullification or impairment requirement (DSU 3.8) distinguished
 DSU 87
**State emblems, official hallmarks and emblems of
intergovernmental organizations (PC 6ter)** TRIPS 27–8
WIPO Copyright Agreement (1996) TRIPS 28
State entity: see Government Procurement Agreement (GPA);
 definitions; State responsibility as rule/general principle of
 international law (ILC Articles); responsibility for act or
 omission of
**State responsibility as rule/general principle of international law
(ILC Articles)**
 14.227, 17.1588, 17.1599–600: *see also* “measures at issue” (DSU
 6.2), any act or omission attributable to a Member,
 unilateral statements legal effect
 countermeasures SCM 221, 223, 227, 331, DSU 1286, 1674 n. 2617,
 1694, 1696–7
 legislation as such and DSU 339
 proportionality ATC 63, SG 227, DSU 1674 n. 2617, 1696–7
 responsibility for act or omission of
 agency with specific official responsibilities and powers/ “public
 body” DSU 1682–3
 “agent” / “organ” of State DSU 1676
 constituent part of federal State DSU 1679
 customs officials DSU 1681
 EU DSU 245
 executive DSU 241–3
 government official DSU 1680
 ILC Articles and SCM 1.1(a)(1) distinguished DSU 1683
 judicial authorities DSU 1684
 Member of customs union DSU 245, 1677–8
 private parties DSU 247–52
State trading enterprises (STEs) (GATT XVII)
 see also notification requirements (STEs) (GATT XVII:4/
 Understanding on the Interpretation of GATT XVII)
 balance of payments restrictions (GATT XII) and GATT
 621–2, 723
 circumvention of obligations, prevention GATT 721–2
 GATT XVII:1(a) and 1(b), interrelationship GATT 729, 731,
 734–5
 GATT practice GATT 728, 733, 737
 “illustrative list . . . for the purposes of Art. XVII” GATT 743
 market access, measures required to be converted into
 ordinary customs duties (AG 4.2 and footnote 1)
 GATT 753
 measures affecting imported products (internal measures) and
 measure affecting importation (border taxes), difficulty of
 distinguishing/relevance GATT 211, 720
 national treatment, regulatory discrimination (GATT III:4) and
 GATT 406
 non-discriminatory treatment (GATT I general principle) (GATT
 XVII:1(a)) and GATT 223–4, 724–8
 GATT practice GATT 224, 728
 “quantitative restrictions made effective through state-trading
 organizations” (*Ad Articles XI, XI, XIII, XIV and XVIII*)
 GATT 621–5, 648, 723, 792
 GATT practice GATT 752
 “shall be understood to require” (GATT XVII:1(b)) GATT 729–32
 “adequate opportunity” GATT 732
 “commercial considerations” GATT 731
 “participate in”, GPA VIII(c) compared GPA 22
 treatment no less favourable than that provided in appropriate
 schedule (GATT II:1(a)) and GATT 745
 GATT practice GATT 746
 Understanding on the Interpretation of Article XVII GATT
 739–43
State Trading Enterprises (STEs) Working Party
 annual reports to Council for Trade in Goods WTO 92 n. 136,
 GATT 742
 establishment WTO 92, GATT 741
 mandate GATT 741–3
 STE notifications GATT 742
statements of TMB: see Textiles Monitoring Body (TMB); statements
 relating to
subsidies (GATS XV) GATS 94–5
 Working Party on GATS Rules and GATS 95, 214
subsidies (GATT XVI)
 AG 3.3, 8, 9 and 10 and GATT 715
 GATT practice GATT 719
 export subsidies as defined in AG and SCM, limitation to (GATT
 XVI:3) GATT 715
 SCM 5(c)/6.3(c) and GATT 714
 “serious prejudice” (GATT XVI:2) GATT 714
subsidy, calculation in terms of benefit to recipient (SCM 14)
 “any” method (chapeau) SCM 403–5
 “adequately explained” SCM 403, 407
 national legislation/implementing regulations SCM 404, 406
 transparency requirement SCM 404, 407
 “benefit” (SCM 1.1(b)) and SCM 59, 87, 92
 loan guarantees (SCM 14(c)) SCM 93, 414–15
 loans (SCM 14(b))
 actual performance vs conditions at time loan made SCM 413
 benchmarks SCM 411–12
 unsecured loan SCM 413
 provision of goods or services (SCM 14(d))
 benchmarks SCM 412
 “prevailing market conditions” /benchmarks SCM 416–19
 prior subsidization in the relevant market SCM 420
 “usual investment practice” (SCM 14(a)) SCM 408–10
 inside/outside investor distinction SCM 410
subsidy, definition (SCM 1)
 see also payments on export of agricultural product financed by
 virtue of governmental action (AG 9.1(c)); subsidy
 definition (SCM 1) *see also under* export subsidy, prohibited
 (AG 3.3) *see also under* “financed”
 footnote 1 and footnote 59, relevance SCM 97–8
 level of subsidy, relevance SCM 372
subsidy, definition (SCM 1.1(a)(1)) (financial contribution)
 conferral of benefit (SCM 1.1(b)) as parallel requirement SCM 9–11
 cumulative nature of SCM 1.1(a)(1) requirements SCM 21, 87
 “direct transfer of funds” (SCM 1.1(a)(1))
 debt forgiveness/debt-for-equity swaps SCM 21–4, 26–7

- (*cont.*)
- medium of exchange, relevance SCM 21
 - share transfers SCM 25
 - foregoing of revenues otherwise due (SCM 1.1(a)(1)(ii))
 - 13.5, 13.32–8: *see also* export subsidy commitments, prevention of circumvention (AG 10) *see also under* “export subsidies . . . applied in a manner which results in, or which threatens to lead to, circumvention . . .” (AG 10.1)
 - national tax rules as normative benchmark SCM 32–3
 - “otherwise due” /basis of comparison (“but for” test) SCM 32–8
 - “government practice” (SCM 1.1(a)(1)(i)) SCM 19–20
 - ordinary meaning SCM 27
 - participation in, responsibility resulting from SCM 18
 - potential direct transfer of funds (SCM 1.1(a)(1)) SCM 28–31
 - loan guarantees as SCM 30–1
 - may* transfer funds, sufficiency SCM 31
 - timing of transfer, relevance SCM 29
 - preparatory work (VCLT 32) SCM 12, 14
 - “private body” (SCM 1.1(a)(1)(iv)), government entrustment or direction, effect SCM 8, 49–58
 - provision of goods or services (SCM 1.1(a)(1)(iii))
 - “general infrastructure” SCM 45–7
 - case-by-case approach SCM 46
 - limitations on access or use, relevance SCM 45–7
 - “goods” SCM 43–4
 - “provides” SCM 40–2
 - “provision” and “purchase” distinguished SCM 6, 39
 - “public body”, classification as
 - criteria, government authority SCM 17, DSU 1683
 - government control SCM 16
 - “private body” (SCM 1.1(a)(iv)), difficulty of distinguishing SCM 17 n. 28
 - relevance SCM 8, 58
 - “purchases of services” (GATS XIII), exclusion SCM 27, 48, GATS 72, 94
 - “purchases of services” (GPA preamble), exclusion GPA 2
 - transactions not qualifying as SCM 14
 - transactions qualifying as SCM 12–15
 - exhaustive nature of SCM 1.1(a)(1) SCM 15
 - transfer of economic resources from grantor to recipient for less than full consideration AG 84, SCM 12
- subsidy, definition (SCM 1.1(b)) (conferral of benefit)**
- “benefit” SCM 59–69
 - cost to government, relevance SCM 59
 - market test SCM 60–9
 - provision of services not available in the market, whether SCM 80
 - recipient, need for SCM 59, 87, 92
 - burden/standard of proof SCM 65, 67–9
 - rebuttal of *prima facie* case SCM 90–1
 - fiscal advantages, relevance SCM 78
 - “is conferred” SCM 70
 - OECD Arrangement, relevance of compliance with SCM 79
 - passing the benefit through
 - adverse effects (SCM 5) and SCM 258
 - benefit to recipient test SCM 87
 - changes in ownership/privatizations SCM 82–4
 - “countervailing duty” (SCM 10 footnote 36) and SCM 355, 358–9
 - sales to unrelated buyers SCM 88–9
 - subsidized inputs SCM 85–7
 - “recipient of a benefit” SCM 63–5
 - SCM 14 and SCM 92
 - SCM Annex IV and SCM 96
 - SCM Illustrative List, Item (k) and SCM 94–5
 - subsidy programmes as such, right to challenge (mandatory/discretionary distinction) SCM 71–7, 662–4
 - “as applied” SCM 71, 81, 172–3
 - burden of proof SCM 74–7
 - order of analysis SCM 72
 - SCM 3.1(a) as “substantive context” SCM 73
 - subsidy, specificity (SCM 2)**
 - “certain enterprises” (SCM 2 chapeau) SCM 102–4
 - de facto* specificity (SCM 2.1(c)) SCM 109–14
 - “account be taken of” SCM 112
 - de facto/de jure* distinction, relevance SCM 108
 - deliberate limitation SCM 109
 - “disproportionately large” SCM 113
 - “predominant use” SCM 114
 - relevant factors SCM 101, 110
 - “explicitly limits” (SCM 2.1(a)) SCM 107–8
 - individual payments under a generalized programme SCM 105–6
 - principles determining (SCM 2.1)
 - relevant factors other than those listed under SCM 2.1(a) and (b) (SCM 2.1(c)) SCM 111
 - structure of SCM 2.1/interrelationship between subparagraphs SCM 2.1(a)–(c) SCM 101
 - regional specificity (SCM 2.2), definition problems SCM 115–17
 - subsidy “contingent upon the use of domestic over imported goods” (SCM 2.3/SCM 3.1) SCM 118–21
- successive treaties relating to the same subject matter (VCLT 30)**
- DSU 1530–4
 - “minor exceptions” doctrine and TRIPS 101
 - Schedules DSU 1530–2
 - WIPO Copyright Agreement (1996) DSU 1533
- sunset review (AD 11.3) (including “likelihood” test)**
- company-specific determination, need for AD 783–5
 - cumulative assessment (AD 3.3), applicability AD 796, 811–15
 - de minimis* test (AD 5.8), applicability AD 793–5
 - determination of likelihood AD 776–82
 - causation, relevance AD 805–10
 - injury requirement AD 806–10
 - likely past dumping AD 777
 - volume analysis
 - adequacy of analysis AD 780–1
 - analysis from previous review as part “measure taken to comply” AD 778–9
 - determination of likelihood qualitative assessment AD 816–18
 - duration and review of anti-dumping duties (AD 11.2) and AD 749
 - investigatory role of authorities AD 758–9
 - mandatory rule/exception AD 755–6
 - methodology
 - absence of specific provision AD 762–71, 783, 786
 - dumping margins, relevance AD 763–4
 - “likelihood of injury” obligations (AD 3), applicability AD 765–8
 - objective assessment (DSU 11) AD 804, 816
 - investigating authorities’ obligation to seek out information AD 818
 - “other factors”, importance AD 817
 - original investigation distinguished AD 757
 - new factual basis AD 791–2, 819
 - overall/separate factor determination AD 801
 - “positive evidence”, need for AD 759, 760–1
 - presumptions, exclusion AD 772–6
 - self-initiation, applicability of AD 5.6 evidentiary standards AD 789–90
 - time-frame AD 786–7
 - a “clearly foreseen and imminent” change of circumstances (AD 3.7), relevance AD 787
 - new factual basis and AD 792
 - specification, relevance AD 788

<p>waiver of right to participate AD 784–5</p> <p>zeroing and AD 770–1</p> <p>sunset review (SCM 21.3)</p> <p>AD 11.2 standard, applicability SCM 494</p> <p>burden/standard of proof</p> <p>original investigation requirements (SCM 11 and 12)</p> <p>distinguished SCM 490–1</p> <p>SCM 11.6, relevance SCM 365</p> <p>SCM 11.6, relevance in absence of cross-reference to SCM 369–70, 489–90, 498, 499</p> <p><i>de minimis</i> standard</p> <p>termination of investigation provisions (SCM 11.9) distinguished SCM 366–73, 500–1</p> <p>as threshold test SCM 367, 372</p> <p>original investigation requirements distinguished SCM 490–1, 497–8</p> <p>likelihood test SCM 494–5</p> <p>preparatory work (VCLT 32) SCM 373</p> <p>self-initiation, right of SCM 488</p> <p>suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)</p> <p><i>see also</i> arbitration (DSU 22.6); arbitration (DSU 25); countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10)</p> <p>authorization, need for (DSU 3.7, 22.6 and 23.2(c))</p> <p>security and predictability of WTO obligations (DSU 2) and DSU 47–8</p> <p>suspension without authorization as breach of DSU 3.7 DSU 89, 1318</p> <p>burden of proof in post-suspension position (DSU 22.8/SPS 5.7) DSU 1274–6</p> <p>conformity of measure with WTO obligation, obligation to ensure (WTO XVI:4) WTO 289</p> <p>examples of agreement to DSU 1262–73</p> <p>inducement of compliance as objective DSU 47, 1181–2</p> <p>as last resort “solution” (DSU 3.7) DSU 89, 1306</p> <p>level equivalent to nullification or impairment (DSU 22.4) DSU 1184, 1205–6</p> <p>aggregate effects on suppliers as a whole DSU 1232</p> <p>“appropriate” (GATT 1947: XXIII:2) distinguished DSU 1255, 1260</p> <p>“appropriate” (SCM 4.10) distinguished SCM 233, 234–9, 253–4, DSU 1260, 1283</p> <p>Article 22.6 Arbitrator’s right to review DSU 1217</p> <p>Article 25.3 Arbitrator’s right to review DSU 1327, 1329–30</p> <p>benefits foregone by right holders and Member distinguished DSU 1332</p> <p>“carousel” type suspension DSU 1189</p> <p>changes in level after authorization DSU 1239–40</p> <p>comparability of bases, need for DSU 1243</p> <p>court judgments and DSU 1233, 1269</p> <p>critical date DSU 1333</p> <p>deterrent/ “chilling” effect DSU 1235</p> <p>disbursements operating as subsidies DSU 1238</p> <p>double-counting DSU 1237</p> <p>economic benefits as measure DSU 1331</p> <p>“equivalent”</p> <p>qualitative test DSU 1250–2, 1269</p> <p>quantitative test DSU 1246–9, 1256</p> <p>indirect benefits and DSU 975</p> <p>litigation costs and DSU 1236</p> <p>lost opportunities, relevance DSU 1223</p> <p>national treatment provisions (GATT III) distinguished DSU 1223</p> <p>nullification or impairment (DSU 3.8) distinguished DSU 1223</p> <p>proportionality and ATC 63</p> <p>reasoned estimates, need for DSU 1227–30</p>	<p>responsibility of Member to ensure DSU 1189</p> <p>SCM 3 and 4 (prohibited subsidies) distinguished SCM 234, 253, DSU 1281</p> <p>settlement agreements and DSU 1234, 1269</p> <p>trade effect and DSU 1226</p> <p>zero level, exclusion DSU 1224</p> <p>nature and purpose of countermeasures DSU 1177–82</p> <p>“or other obligations”, authorization to suspend (DSU 22.2) DSU 1190–5</p> <p>“specific” DSU 1184–5, 1196–7</p> <p>as retaliatory measure DSU 1251 n. 1949, 1306–7</p> <p>review of surveillance of implementation of DSB rulings (DSU 21.5) and DSU 1150</p> <p>as “seeking redress” (DSU 23.1) DSU 1308–9</p> <p>suspension in other sectors (DSU 22.3(b))/under other agreements (DSU 22.3(c)), relationship between DSU 1204</p> <p>suspension in same sector as violation as preferred option (DSU 22.3(a)) DSU 1200–1</p> <p>“if that party considers that it is not practical or effective” (DSU 22.3(b) and (c)) DSU 1202–3</p> <p>“sectors” DSU 1201</p> <p>as temporary measure (DSU 22.8) WTO 289, DSU 1177, 1179–80, 1306, 1319</p> <p>obligation to engage actively in dispute settlement proceedings DSU 1319</p> <p>termination as final solution DSU 28</p> <p>WTO authorization, need for (DSU 3.7, 22.6 and 23.2(c)) DSU 1315–17</p> <p>cumulative nature of DSU 23.2(c) obligations DSU 1316</p> <p>sustainable development (Doha 6), <i>see also</i> General Exceptions (GATT XX(g)) measures relating to the conservation of exhaustible natural resources</p> <p>Switzerland</p> <p>Enabling Clause notifications</p> <p>GSP schemes GATT 63</p> <p>special treatment of least-developed countries GATT 79</p> <p>tables showing</p> <p>AB appointments DSU 838</p> <p>ad hoc procedural “sequencing” agreements (DSU 21.5/DSU 22.6) DSU 1156</p> <p><i>amicus curiae</i> briefs DSU 745</p> <p>appealed reports (DSU 17.4) DSU 839</p> <p>Article 21.3(b) agreements DSU 1017</p> <p>Article 21.3(c) “reasonable period” awards DSU 1019</p> <p>Article 22.6 arbitration proceedings, time taken DSU 1214</p> <p>Article 22.6 proceedings, decisions DSU 1213</p> <p>BCI additional procedures DSU 921</p> <p>disputes by covered agreement DSU 1746</p> <p>expert evidence (DSU 13.2/SPS 11.2) DSU 768</p> <p>multiple panels (DSU 9.3) DSU 461</p> <p>non-violation complaints (GATT XXIII:1(b)) DSU 1348</p> <p>panel’s exercise of right to seek information from IGOs (DSU 13/SPS 11.2) DSU 755</p> <p>public hearings (panel) DSU 925</p> <p>public observation of oral hearing/ “passive participation” (ABWP 27(3)) DSU 1452</p> <p>separate opinions (AB) (DSU 17.11) DSU 889</p> <p>separate opinions (Article 22.6 decisions) DSU 1215</p> <p>single panels (DSU 9.2) DSU 445</p> <p>third party enhanced rights DSU 494</p> <p>time taken from circulation of AB report to date of adoption (DSU 17.14) DSU 904</p> <p>time taken from panel establishment to determination of reasonable period of time (DSU 21.4) DSU 1098–9</p> <p>time taken to complete</p>
---	---

- (*cont.*)
- AB proceedings (DSU 17.5) DSU 840
 - Article 21, 5 proceedings DSU 1155
 - Article 21.3(c) proceedings DSU 1097
 - dispute proceedings DSU 443, 834, 996
 - panel proceedings DSU 712
- tariff concessions:** *see* Schedules of Concessions (GATT II)
- tariff data bases:** *see* consolidated tariff databases
- tariff initiatives**
- Information Technology Agreement (Singapore) GATT 193–9
 - sectoral discussions and negotiations GATT 200
- tariff negotiations (GATT XXVIII *bis* and *Ad Article*)** GATT 1086–7
- GATT practice GATT 1087
- tax discrimination:** *see* national treatment tax discrimination (GATT III:2)
- TBT Agreement**
- see also* consultation and dispute settlement (TBT 14); “international standards . . . as a basis for technical regulation” (TBT 2.4/Annex 1); MFN treatment (TBT 2.1); notification procedures (TBT 2.9); TBT Committee; TBT standards, preparation, adoption and application (TBT 4 and Annex 3 (Code of Good Practice)); technical assistance (TBT 11); technical regulations, standards and conformity assessment procedures, information and assistance (TBT 10–12); technical regulations and standards, conformity with (TBT 5–9); technical regulations (TBT 2/Annex 1.1) *see also under* TBT standards, preparation, adoption and application (TBT 4 and Annex 3 (Code))
 - definitions (TBT 1.1 and Annex 1), international standards definitions and (TBT 1.1) TBT 8–9
 - GATT III:4 and GATT 418
 - object and purpose (preamble)
 - as aid to interpreting TBT Agreement TBT 1–7
 - avoidance of unnecessary obstacles to trade/regulatory autonomy TBT 4, 23
 - functional approach to requirements (TBT 2.8) and TBT 76
 - GATT objectives and TBT 1–3
 - reservations (TBT 15.1) WTO 297
 - review of implementation
 - annual reviews TBT 150
 - contents of Members’ statements (TBT 15.2) TBT 149
 - Triennial Reviews of Operation and Implementation (TBT 15.4) TBT 151
- TBT Code of Good Practice (TBT Annex 3)** TBT 170–7
- TBT Committee (TBT 13)**
- establishment WTO 93
 - implementation of TBT Agreement
 - annual reviews (TBT 15.3) TBT 150
 - consideration of specific trade concerns TBT 144–6
 - Triennial Reviews of Operation and Implementation (TBT 15.4) TBT 151
 - recommendations and decisions relating to
 - Code of Good Practice (TBT Annex 3) TBT 170–7
 - conformity assessment procedures (central government) (TBT 5) TBT 111–15
 - conformity assessment procedures (Local government) (TBT 7) TBT 118–19
 - information about technical regulations, standards and conformity assessment procedures (TBT 10) TBT 120–6
 - information exchange (central government assessment of conformity assessment) TBT 116–17
 - notification procedures (TBT 2.9) TBT 81–99
 - observer status TBT 143
 - preparation, adoption and application of standards (TBT 4) TBT 108–10
 - regional standards-related activities TBT 110
 - principles for the development of international standards TBT 75
 - review of implementation (TBT 15.2) TBT 149
 - special and differential treatment (TBT 12) TBT 132–4
 - technical assistance (TBT 11) TBT 127–31
 - rules of procedure (1995) WTO 94, TBT 142
 - Technical Working Group TBT 111
- TBT objectives (TBT preamble) and** TBT 5
- TBT standards, preparation, adoption and application (TBT 4 and Annex 3 (Code of Good Practice)),** TBT Committee decisions relating to TBT 108–9, 170–7
- technical assistance (SPS 9)**
- Equivalence Decision and SPS 114
 - special and differential treatment (SPS 10) (Doha) SPS 377–8
- technical assistance (TBT 11)**
- information exchange TBT 130–1
 - TBT recommendations and decisions relating to TBT 127–31
- technical barriers to trade (AIR 3)** AIR 20
- technical cooperation and capacity building (Doha)**
- Global Trust Fund WTO 188
 - Institute for Training and Technical Cooperation DSU 1357
 - Integrated Framework for Trade-Related Technical Assistance to least-developed countries and Joint Integrated Technical Assistance and Joint Integrated Technical Assistance Programme (JITAP), identification of ways of enhancing and rationalizing, 1.111: *see also* Integrated Framework for Trade-Related Technical Assistance to least-developed countries (IF)
 - priorities, accession to membership
 - WTO Guidelines (1996) WTO 108
- technical cooperation (TRIPS 67)**
- contact points for exchange of information between donors and recipients TRIPS 300
 - developed countries’ presentations of technical and financial cooperation programmes TRIPS 299
 - IGOs and TRIPS 299
 - WIPO Copyright Agreement (1996) WTO 162, TRIPS 301
- technical and financial assistance and training**
- agricultural productivity and food aid
 - Doha AG 156, 217
 - Singapore AG 154
 - SPS measures (Doha) SPS 377–8
- technical regulations, standards and conformity assessment procedures, information and assistance (TBT 10–12)**
- information about regulations, standards and conformity assessment procedures (TBT 10) TBT 120–6
 - translation (TBT 10.5) TBT 90, 124
 - notification of agreement on technical regulations, standards or conformity assessment procedures which may have a significant effect on trade (TBT 2.10) TBT 125–6
 - special and differential treatment (TBT 12): *see* special and differential treatment (TBT 12)
 - technical assistance (TBT 11) TBT 127–31
- technical regulations and standards, conformity with (TBT 5–9)**
- assessment procedures (central government bodies) (TBT 5), TBT decisions and recommendations relating to TBT 111–15
 - assessment procedures (local government), notification of proposed procedures (TBT 2.7), TBT decisions and recommendations relating to TBT 118–19
 - assessment procedures and technical regulation distinguished TBT 168
 - enquiry points (TBT 10.1 and 10.3) TBT 121–3
 - exchange of information in relation to central governments’ recognition of conformity assessment by central governments (TBT 6) TBT 116–17
 - Technical Working Group and TBT 111

<p>technical regulations (TBT 2/Annex 1.1) changing circumstances and (TBT 2.3) TBT 47 conformity assessment procedures distinguished TBT 168 functional approach to (TBT 2.8) TBT 76–80 interpretation in accordance with terms, context, object and purpose TBT 80 specificity, relevance TBT 80 test for determining compliance with TBT 79 “wherever appropriate” TBT 77–9 burden of proof TBT 78 measures not qualifying as/ SPS measures TBT 22, 24–5 MFN treatment (TBT 2.1) and TBT 15–17, 32, 168 “not more trade-restrictive than necessary to fulfil a legitimate objective” (TBT 2.2) TBT 26–7 availability of less trade-restrictive alternative TBT 26–7 burden of proof TBT 28–9 “for this purpose” /interrelationship between first and second sentences TBT 33–5 functional approach to (TBT 2.8) and TBT 76 “legitimate objective” multiple objectives TBT 42–3 qualification as TBT 26–7, 44–5 as starting point for analysis TBT 41 “necessary” GATT XX and TBT 37–8 SPS 5.6 footnote 3 and TBT 39, 39–40 special account of needs of developing countries (TBT 12) distinguished TBT 136 “taking account of risks” of non-fulfilment TBT 46 TBT 2.1 (MFN treatment) distinguished TBT 32 “trade-restrictive” TBT 36 two-step analysis TBT 30–1 publication of regulations/entry into force (TBT 2.12), “reasonable interval” TBT 104–7 “technical regulation” (Annex 1.1) TBT 155–66 “identifiable product or group of products” TBT 156 express identification, relevance TBT 156 mandatory compliance TBT 161–4 measure as a whole, need to consider TBT 165 “product characteristics” TBT 157–60 negative form TBT 159–60 ordinary meaning TBT 157 three-tier test/order of analysis (TBT 2.4) TBT 48, 155</p> <p>telecommunications (GATS) <i>see also</i> International Telecommunications Union (ITU); TBT standards preparation adoption and application of (TBT 4 and Annex 3 (Code)) cross-border trade, relevant factors (GATS I:2(a)) commercial presence, sufficiency (GATS I:2(c)) GATS 22, 148 degree of interaction between suppliers GATS 20 links to another operator GATS 21 ownership and control of infrastructure to supply service GATS 17–19 supplier’s place of operation or presence GATS 16 MFN treatment (GATS II), exemption GATS 43 Negotiating Group on Basic Telecommunications, establishment GATS 170, 216</p> <p>telecommunications, GATS Annex on Basic Telecommunications access and use (Section 5) “any service supplier of any other member . . . for a service included in its schedule” (Section 5(a)) GATS 243 by scheduled suppliers of <i>basic</i> telecommunications GATS 242–4 “conditions” (Section 5(e)) GATS 252 developing countries’ right to place reasonable conditions on (Section 5(g)) GATS 256</p>	<p>interrelationship between Section 5(a) and Section 5(b)-(f) GATS 245–6 “necessary” (Section 5(e)) GATS 253–4 “reasonable and non-discriminatory” terms and conditions (Section 5(a)) GATS 245 “reasonable” (Section 5(a)) GATS 248–9 “shall apply to all measures” (Section 2(a)) GATS 242 “subject to paragraphs (e) and (f)” GATS 250 “terms” (Section 5(a)) GATS 247 Reference Paper on Basic Telecommunications and GATS 257 “shall ensure” /obligation (Section 5(b)) GATS 251 unscheduled service, prevention (Section 5(e)(iii)) GATS 255</p> <p>telecommunications, GATS XVIII Reference Paper on Basic Telecommunications Annex on Basic Telecommunications and GATS 257 “anti-competitive practices” (Section 1.1) “anti-dumping practices” GATS 135–7 cross-subsidization GATS 138 horizontal price-fixing GATS 136–7 “major supplier” and GATS 136 practices not listed under Section 1.2 GATS 137, 138 practices required by domestic law, relevance GATS 138–41 proportionate return system GATS 143 setting of uniform price GATS 142 “appropriate measures” (Section 1.1) GATS 144 cross-border supply, applicability to GATS 145–9 “specific commitments undertaken” (Section 2.1) GATS 145 interconnection (Section 2) GATS 145–60 cost-oriented rates (Section 2.2(b)) GATS 153–60 “cost-oriented rates” (Section 2.2(b)) aggregate price for domestic use/price for international use comparison, validity GATS 158–9 incremental cost methodologies and GATS 155 international grey market rates, relevance GATS 160 ordinary meaning GATS 153–5 “reasonable” GATS 156 “major supplier” (Section 2.2) and GATS 150 “major supplier” (definitions) “ability to materially affect . . .” GATS 151 competitive safeguards (Section 1.1) and GATS 136 “control over essential facilities” GATS 152 interconnection (Section 2.2) and GATS 150 relevant market, relevance GATS 150 “use of its position in the market” GATS 152 text GATS 134 unilateral action by Member (DSU 23.1) and GATS 140 use of GATS 134</p> <p>termination of panel DSU 182 termination of treaty for breach (VCLT 60), rights created prior to and (VCLT 70) DSU 1176, 1218, 1673 terms of reference (Committees and Working Groups): <i>see individual Committees and Working Groups</i> terms of reference of panels (DSU 7) <i>see also</i> competence of panels and AB (DSU 3.2/DSU 11/DSU 17); identification of specific measures (DSU 6.2); “measures at issue” (DSU 6.2); relationships within and between agreements; request for establishment of panel, requirements (DSU 6.2); review of implementation of DSB rulings (DSU 21.5); competence of DSU 21.5 (compliance) panel; standard/powers of review (panel) (AD 17.6); standard/powers of review (panel) (DSU 11) <i>see also under</i> DSU, applicability, legal basis of claim/ “claim” / “matter referred” (DSU 6.2/7.1) abandoned claim, right to resurrect AD 902, DSU 413–14 as definition of jurisdiction/legal claims at issue SPS 345, DSU 360–3</p>
--	--

- (*cont.*)
- consideration of issues outside terms of reference, exclusion SPS 422, 548, DSU 408–10
 - elaboration/addition in first submission, relevance DSU 411–12, 446
 - elaboration/addition later than first submission DSU 446
 - failure to make specific mention of alleged inconsistency (DSU 23.2(a)) DSU 415
 - implied claims DSU 343, 416, 676
 - material used in defence distinguished DSU 410
 - “relevant provisions” DSU 424
 - “shall address the relevant provisions” (DSU 7.2) DSU 422–3
 - specific legal claim included in terms of reference, limitation to DSU 324, 408–10, 415–18
 - due process and DSU 360
 - failure of parties to produce evidence or arguments SG 18
 - “matter” (DSU 7.1/AD 17.4) AD 898, 951, DSU 370, 370–2, 429
 - preliminary ruling on DSU 418
 - request for establishment of panel as basis AD 900, DSU 143, 186–91, 192, 201–4, 411, 414
 - special terms of reference (DSU 7.3) DSU 425
 - timeliness of objections DSU 367–9, 799–801, 800
 - title of case, relevance DSU 192
 - unilateral amendment, exclusion DSU 386
- territorial application, customs territories and frontier traffic (GATT XXIV)**
- see also* customs unions (GATT XXIV:5(a)); RTAs (GATT XXIV:5)
 - as derogation from GATT provisions in general GATT 1052
 - GATT practice GATT 996
 - interpretation as a whole GATT 999–1001
 - object and purpose (GATT XXIV:4), “not to raise barriers to trade” GATT 999
 - obligation to ensure GATT compliance by regional and local governments (GATT XXIV:12) GATT 1038
- territorial scope of treaties (VCLT 29) DSU 1529**
- textile quotas, circumvention (ATC 5) ATC 15–19**
- “appropriate action, to the extent necessary . . .” (ATC 5.4) ATC 16
 - “other remedies in consultation” ATC 17–19
 - false declaration (ATC 5.6) ATC 20
 - introduction of new restraints, admissibility ATC 20
- Textiles and Clothing Agreement (ATC)**
- see also* consultations (ATC 6.7); notification requirements (ATC 2); notification requirements (ATC 3); notification requirements (ATC 6); quantitative restrictions (ATC 2) (integration process); quantitative restrictions (ATC 3); textile quotas, circumvention (ATC 5); transitional safeguards (ATC 6)
 - MFA (Multifibre Agreement), replacement for ATC 1
 - object and purpose ATC 3–4, 8, 9
 - termination (1 January 2005) (ATC 9) ATC 1, 105
 - transitional exceptions to GATT XI and XIII ATC 4
- Textiles Monitoring Body (TMB)**
- composition (ATC 8.1) ATC 92
 - ad personam* status of members ATC 93–4
 - DSU 8.3 distinguished DSU 433
 - recommendations
 - inability to conform (ATC 8.10) ATC 103
 - legal status (ATC 8.9) ATC 102
 - review of integration process (ATC 8.11), reports to Council for Trade in Goods ATC 104
 - review proceedings
 - information made available at time of request for consultations (ATC 6.7), limitation to SPS 2, ATC 27
 - inadequacy of information ATC 49–50, 69–73
 - right to request establishment of panel (DSU 4) following completion (ATC 8.10) SPS 2, ATC 19
 - statements during, admissibility in panel proceedings (DSU 11) ATC 23–4
- role (ATC 8)
- dispute settlement panels distinguished ATC 90
 - Singapore Declaration ATC 88
- standard/powers of review (ATC 8.3) ATC 99–101
- statements relating to
- agreed administrative arrangements (ATC 2.17) ATC 11
 - conformity with ATC provisions, need for (ATC 2.4) ATC 10
 - consultations (ATC 6.7) ATC 69–73
 - inability to conform with TMB recommendations (ATC 8.10) ATC 103
 - provisional application of restraint measures authorized under ATC 10 (ATC 6.11) ATC 81, 81–2
 - restrictions other than those covered by the MFA (ATC 3) ATC 13
 - review proceedings ATC 27
 - transitional safeguards (ATC 6.2), requirements ATC 29–30, 32, 33–4, 39, 49–50, 53
 - transparency requirement ATC 88
- Working Procedures (ATC 8.2)
- adoption ATC 95
 - “consensus” ATC 97–8
 - Rules of Procedure, adoption ATC 96
- third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6 DSU 476–94**
- abandoned claims and AD 902, DSU 413
 - agreement between the parties, relevance DSU 478, 491
 - extension to all parties DSU 482
 - GATT practice DSU 478
 - limited nature of DSU 476–7
 - multiple complainants (DSU 9) and DSU 488–94
 - opportunity to be heard at second substantive meeting DSU 479
 - opportunity to be heard (DSU 10.2) DSU 478, 516, 697
 - opportunity to comment on summary of own arguments DSU 485 n. 801
 - panel’s discretion and DSU 477–8, 684
 - participation in interim review process (DSU 15) DSU 480, 774–5
 - participation in proceedings initiated by another complainant (DSU 9) DSU 488–9
 - presence at second substantive meeting DSU 479, 684
 - right to receive submissions to first meeting of the panel, limitation to (DSU 10.3) DSU 503–6
 - as sole basis of rights DSU 476–7
 - submission of additional written material, exclusion DSU 479
 - “substantial interest” (DSU 10.2) DSU 468
 - “sufficient to present their views” (Appendix 3, para. 6) DSU 479
 - table DSU 494
 - written submissions (DSU 10.2) DSU 478
- third party participants (AB proceedings) (ABWP 24/ABWP 27) DSU 1449–51**
- “passive participation” (ABWP 27(3)): *see* public observation of oral hearing/ “passive participation” (ABWP 27(3))
 - role DSU 1442
 - time limits for filing of submissions (ABWP 26) DSU 1387
- third party rights (Article 21.5 proceedings) DSU 503–6**
- third party rights (Article 22.6 arbitrations) DSU 507–10**
- third party rights (confidentiality considerations) DSU 169, 169 n. 206, 517, 888, 1483**
- third party rights (consultations (DSU 4.11)) DSU 175–7, 468**
- confidentiality (DSU 4.6) and DSU 169, 517
- third party rights (DSU 10 and Appendix 3) 17.466–74: *see also* amicus curiae briefs**
- authority of Panel to direct third-party participation DSU 512
 - “essential party” concept DSU 513–14
 - notification of intention to participate in (DSU 10.2)
 - right to submit *amicus curiae* brief in absence of DSU 474

- timeliness DSU 470–3
Statement by GATT Council Chairman (June 1944) DSU 470
obligation of panels to take “fully” into account (DSU 10.1) DSU 466–7
panel’s right to draw on third party submissions DSU 495–500
participation in, preliminary proceedings DSU 501–2
preliminary ruling on DSU 471, 505
review of surveillance of implementation of DSB rulings (DSU 21) DSU 503–6
single panel proceedings (DSU 9.1) DSU 515
submission to original panel (DSU 10.4) DSU 475
- threat of injury:** *see* determination of injury (AD 3); safeguard measures, conditions (SG 2); transitional safeguards (ATC 6); serious damage or actual threat of (ATC 6.2)
- TMB:** *see* Textiles Monitoring Body (TMB)
- Tokyo Round Anti-Dumping Code** AD 533
developing countries (Tokyo 13) AD 854 n. 1152
legislation as such, right to challenge (WTO XVI:4) AD 878
- Tokyo Round Customs Valuation Committee:** *see* Customs Valuation Committee; adoption of Tokyo Round Committee decisions
- TPRM:** *see* Trade Policy Review Mechanism (TPRM)
- trade and competition policy, interaction between (Doha 23–5),** market definitions, distinguishability GATT 206
- Trade and Competition Policy, Working Group on Interaction between,** establishment (Singapore Ministerial Conference) WTO 53, 66
- Trade, Debt and Finance Working Group (Doha 36),** establishment WTO 66
- Trade and Development Committee (WTO IV:7)**
annual reports WTO 104
establishment WTO 99
GATT practice WTO 122
observer status WTO 103
role, Enabling Clause notifications GATT 60, 64
rules of procedure (1995) WTO 74, 102
Special Session (Doha Round)
establishment WTO 156
special and differential treatment, review: *see* special and differential treatment for developing countries (Doha)
terms of reference WTO 100–1
- Trade and Environment Committee (WTO IV:7)**
annual reports WTO 139
establishment WTO 99, 136
rules of procedure WTO 138
terms of reference WTO 136
work programme WTO 137
- trade and environment (Doha 31–3)**
July package (para. 1(f))
Special Session of the Trade and Environment, Committee on, responsibility for negotiations WTO 156
Trade and Environment Committee reports on WTO 137, 139
negotiations on relationship between WTO rules and MEAs (Doha) report on, Ministerial request to Trade and Environment, Committee on WTO 137, 139
Special Session of the Trade and Environment, Committee on, responsibility for negotiations WTO 156
Special Session of the Trade and Environment, Committee on, establishment WTO 156
- trade facilitation (Singapore Ministerial Conference)**
developing countries and WTO 53
working group, establishment WTO 53
- Trade and Investment, Working Group on Relationship between,** establishment (Singapore Ministerial Conference) WTO 53, 66
- trade names, obligation to comply with PC 8 as incorporated by** TRIPS 2.1 TRIPS 19, 30, DSU 870
- applicability of trademark findings TRIPS 55
MFN treatment (TRIPS 4), applicability of findings on trademarks TRIPS 67
ownership issues and TRIPS 31
- Trade Negotiations Committee (TNC)** WTO 155–6
appointment of Director-General as chair WTO 155
establishment WTO 155
mandate
establishment of appropriate negotiating mechanism WTO 155
responsibility for overall conduct of Doha round negotiations WTO 155
supervision of progress of negotiations WTO 155
- Trade Policy Review Mechanism (TPRM)**
dispute settlement/enforcement of specific obligations, exclusion (TRMS A(i)) TPRM 3, 5–6
minutes, unrestricted circulation (TPRM C(vi)) WTO 29 n. 35
mission (TPRM A) TPRM 1
GATT practice TPRM 2–4
reporting obligations (developments in international trading environment (TPRM G)) TPRM 29
reporting obligations (Members) (TPRM D) TPRM 24
GATT practice TPRM 23
timing of submission TPRM 25
reports (Secretariat), requirements TPRM 20
reports (TPRB) (TPRM C) TPRM 12
review of operation (TPRM F) TPRM 27–8
review procedures (TPRM C(ii))
grouped review of “entities having a common external policy” TPRM 15–16
timing and frequency TPRM 13–14
reviews of least-developed countries TPRM 17
reviews obligation (TPRM C(i)) WTO 79, TPRM 8
reviews (TPRM C(i)) TPRM 11
reviews (TPRM)/balance of payments consultations, coordination (TPRM E) TPRM 26
TPRB rules of procedure (1995) WTO 80, TPRM 8, 9–10, 18
transparency (TPRM B) TPRM 7
transparency (TPRM C)
derestriction of reports TRIPS 21, TPRM 21
dissemination of reviews (TPRM C(v)) TPRM 22
- “trade in services” (GATS 1:2)**
“commercial presence” (GATS 1:2(c)) GATS 22
commercial presence, sufficiency (GATS 1:2(c)) GATS 22, 148
cross-border trade (GATS 1:2(a)), relevant factors
degree of interaction between suppliers GATS 20
links to another operator GATS 21
means of delivery GATS 14–15
ownership and control of infrastructure to supply service GATS 17–19
supplier’s place of operation or presence GATS 16
“public long-distance voice telephone services” (UN 1991 Provisional Central Product Classification) GATS 18
- trademarks (Paris Convention (PC))**
protection in other countries of the Union (PC 6*quinquies*) TRIPS 25, 29
“as is” / “telle quelle” TRIPS 29
registration conditions (PC 6), Members’ discretion (PC 6(1)) TRIPS 25
State emblems, official hallmarks and emblems of intergovernmental organizations (PC 6*ter*) TRIPS 27–8
WIPO–WTO Agreement TRIPS 28
well-known trademarks, prohibition on use (PC 6 *bis*) TRIPS 26
- trademarks (TRIPS Part II Section 2)**
denial of protection on “other grounds” (TRIPS 15.2) TRIPS 128
“limited exceptions” (TRIPS 17) TRIPS 136–8, DSU 136–7
autonomy of provision/limited correlation with other TRIPS articles TRIPS 145

- (*cont.*)
- burden of proof TRIPS 144
 - “fair use of descriptive terms” TRIPS 138
 - “legitimate interests” TRIPS 139–43
 - legal rights distinguished TRIPS 139
 - “of third parties” TRIPS 142–3
 - “take account of” TRIPS 140–1
 - trademarks, limitation to TRIPS 136
 - national treatment (TRIPS 3): *see* national treatment (TRIPS 3),
 - “treatment no less favourable” (TRIPS 3.1)
 - “protectable subject-matter” (TRIPS 15) TRIPS 127–8
 - “distinctiveness” requirements, restrictions on legislative conditions and TRIPS 127
 - rights conferred (TRIPS 16)
 - “exclusive right”, as negative right TRIPS 131–3, 136–7
 - “likelihood of confusion” TRIPS 134
 - “making rights available on the basis of use” TRIPS 135
 - “the owner” (TRIPS 16.1) TRIPS 130
 - usage and registration as basis of ownership distinguished TRIPS 130
 - special requirements (TRIPS 20) TRIPS 147
 - national treatment (TRIPS 3) and TRIPS 147
 - transfer of technology, measures to encourage (Doha 37)**, Working Group on Trade and the Transfer of Technology, establishment WTO 66
 - transformation into a market economy (SCM 29)**, special and differential treatment (SCM 27) and SCM 575–6
 - transitional arrangements (existing programmes) (SCM 28.1)**, “inconsistent with the provisions of this Agreement” (SCM 28.1) SCM 574
 - transitional exceptions to GATT XI and XIII** ATC 4
 - transitional safeguard measures (SG) (China) (Accession Protocol 16)** SG 312–13
 - causation analysis (Protocol 16.4) SG 325–32, 330
 - cumulative impact SG 329
 - non-attribution requirement SG 331–2
 - “significant cause” SG 326–8
 - compliance
 - burden of proof SG 314
 - standard of review (DSU 11) SG 313
 - consultations (Protocol 16.1)
 - significance of consultations provision SG 315
 - determination of market disruption (Protocol 16.4) as context SG 315
 - duration of remedy (Protocol 16.6) SG 333
 - market disruption (Protocol 16.4) SG 319–32
 - “absolute” increase SG 322
 - as context for consultations (Protocol 16.1) SG 315
 - “increasing rapidly” SG 322–4
 - investigation period SG 321
 - “material injury” vs “serious injury” SG 320
 - rate of increase, relevance SG 324
 - relevant factors. SG 319
 - notification requirement SG 316
 - “to the extent necessary” (Protocol 16.3) SG 317–18
 - transitional safeguard measures (SG) (China) (Accession Protocol 16), market disruption (Protocol 16.4), “increasing rapidly” SG 322–4
 - transitional safeguard (SG) (China) (Accession Protocol 16), market disruption (Protocol 16.4), as context for consultations (Protocol 16.1) SG 315
 - transitional safeguards (ATC 6)**
 - attribution of damage from “sharp and substantial increase in imports” /criteria (ATC 6.4) ATC 21, 31, 57–61
 - comparative analysis ATC 61–6
 - methodology ATC 65–6
 - reasons for requiring ATC 62–4
 - “from Member or Members individually” ATC 58, 60
 - proportionality and ATC 65
 - “sharp and substantial increase in imports” ATC 59
 - as balance of rights and obligations ATC 28, 76
 - burden of proof ATC 28, 66
 - consultations: *see* consultations (ATC 6.7)
 - “highly unusual and critical circumstances” (ATC 6.11) ATC 79, 81–3
 - “more favourable treatment” for re-imports (ATC 6.6(d))
 - “in the application of” (ATC 6, chapeau) ATC 67
 - options for ATC 68
 - notification requirements (ATC 6.1) ATC 22
 - object and purpose (ATC 1.1) and ATC 3
 - provisional application of restraint measures authorized under ATC 10 (ATC 11)
 - “highly unusual and critical circumstances” ATC 81–2
 - notification requirements (ATC 6) and ATC 81
 - procedural and substantive elements distinguished ATC 89
 - retroactivity (ATC 6.10) and ATC 79
 - relevant factors (ATC 6.3) ATC 21, 31, 54–6
 - obligation to examine all ATC 54–5
 - retroactivity (ATC 6.10): *see* retroactivity (trade measures) (ATC 6.10)
 - serious damage or actual threat of (ATC 6.2) ATC 21
 - “a particular product is being imported” ATC 32
 - “demonstrably” ATC 51–2
 - “directly competitive”
 - GATT III:2, applicability, *see also* directly competitive or substitutable products (GATT III:2)
 - GATT III:2, applicability ATC 43
 - proximity of relationship, relevance ATC 44–5
 - “domestic industry producing like and/or directly competitive products”
 - “and/or” ATC 47–8
 - captive production ATC 46
 - “domestic industry”, absence of ATC definition ATC 49
 - “producing” ATC 41
 - product-oriented definition ATC 40
 - due diligence review (DSU 11), available evidence, limitation to ATC 25, DSU 629
 - “in such increased quantities” ATC 33–4
 - investigation period
 - length ATC 38
 - recent damage, need for ATC 39, 53
 - “not by other factors” ATC 52
 - “or actual threat of” ATC 35–6
 - “serious *damage*”, change of equipment, whether ATC 37
 - specific factual information ATC 29–30
 - translation**
 - delays caused by (SG 12) SG 261, 264
 - interim review reports (DSU 15) DSU 818–19
 - technical regulations documentation TBT 90, 124
 - transmittal of records (ABWP 25)**
 - inclusion of correspondence not in the record of the panel proceedings DSU 1446
 - request to delay DSU 1445
 - transparency (AD 3 and 5)**
 - see also* confidential information (AD 6.5); public notice and explanation of determinations (AD 12)
 - written record/notification and (AD Agreement) AD 267–8, 388
 - transparency (GATS preamble/III)**
 - accountancy services and GATS 45
 - electronic commerce and GATS 44
 - notification of enquiry/contact points (GATS III:4/GATS IV:2) GATS 47, 50
 - notification formats GATS 46
 - as object and purpose GATS 1–2

<p>transparency (government procurement): <i>see</i> government procurement transparency (Doha 26)</p> <p>transparency mechanism (PTAs) (2010)</p> <ul style="list-style-type: none">adoption WTO 121, GATT 61applicability GATT 78, 103–4least-developed countries’ products GATT 103–4<ul style="list-style-type: none">notifications as at 30 September 2011 GATT 104referral for advice GATT 103summary of provisions GATT 62 <p>transparency mechanism (RTAs) (2006) WTO 120, 148–50, GATT 1045–51</p> <ul style="list-style-type: none">applicability (including Enabling Clause notifications) WTO 149, GATT 71, 1045early announcement information GATT 1047notification of changes GATT 1048as provisional arrangement WTO 149, GATT 71, 1045reporting obligations GATT 1049review<ul style="list-style-type: none">examination of RTS, procedural changes following adoption WTO 154participants WTO 150postponement WTO 150scope WTO 150RTA database GATT 1050–1factual abstracts GATT 1051summary of provisions WTO 149, GATT 72 <p>transparency and predictability requirement (LIC Preamble)</p> <p>LIC 1, 15</p> <ul style="list-style-type: none">frequent changes to rules and LIC 15non-automatic import licensing (LIC 3) and LIC 23 <p>transparency (PSI 5–8) PSI 7</p> <p>transparency of SPS regulations (SPS 7 and Annex B)</p> <ul style="list-style-type: none">enquiry points (Annex B(3)), obligation to identify ALOP, whether SPS 545notification procedures (Annex B(5)–(10))<ul style="list-style-type: none">obligation to “notify changes” SPS 356–7, 357, 360–1, 547–8obligation to “provide information” SPS 359burden of proof SPS 548two-pronged test for establishing requirement SPS 357notification procedures (Annex B(5)–(10)), recommended procedures 1995–2008 SPS 362, 549notification of the conclusion of equivalence agreements SPS 36transparency enhancement Procedure (2009) (SPS 10) SPS 364, 382–6publication requirements (Annex (B)(1)–(2)) SPS 539–44<ul style="list-style-type: none">provision of information distinguished SPS 543“reasonable interval” (Annex B(2)) (Doha) SPS 544“SPS regulations” for purpose of SPS 355–6, 358, 539–42, 550–1<ul style="list-style-type: none">generally applicable measure concerning an SPS measure SPS 542non-mandatory measures SPS 541Recommended procedures for implementing the transparency<ul style="list-style-type: none">obligations of the SPS Agreement SPS 365–71relationship between SPS 7 and Annex B SPS 550–1“significant effect on trade of other Members” (Annex B), notification requirements SPS 357 n. 442, 547special and differential treatment (SPS 10) SPS 379–86transparency of SPS regulations (SPS 7 and Annex B), “SPS regulations” for purpose of, legal instruments as DSU 261 <p>transparency (TPRM B) TPRM 7</p> <p>transparency (TPRM C)</p> <ul style="list-style-type: none">derestriction of reports (TPRM C(v)) TPRM 22dissemination of reviews (TPRM C(v)) TPRM 22 <p>transparency (TRIMs 6), notifications of publications in which TRIMs may be found (TRIMs 6(2)) TRIMs 37–8</p> <p>transparency (WTO procedures), TMB ATC 88</p> <p>treaties</p>	<p><i>see also</i> domestic law; as justification for failure to fulfil international obligations exclusion (VCLT 27); non-retroactivity of treaties (VCLT 28)</p> <p>as aid to interpretation of treaty between other parties DSU 1596</p> <p>conclusion as exercise of inherent sovereign right DSU 1742–3</p> <p>conflict between, definition and general principles DSU 1712</p> <p>error (VCLT 48) DSU 1670<ul style="list-style-type: none">as customary international law DSU 1670</p> <p>modification of multilateral treaties by some of the parties (VCLT 41) DSU 1668</p> <p>options for opting out of treaty regime DSU 1595 n. 2468</p> <p>provisional application (VCLT 25) DSU 1500</p> <p>separability of provisions (VCLT 44) DSU 1669</p> <p>successive treaties relating to the same subject matter (VCLT 30):<ul style="list-style-type: none"><i>see</i> successive treaties relating to the same subject matter (VCLT 30)</p> <p>termination by subsequent treaty (VCLT 59) DSU 1671</p> <p>territorial scope (VCLT 29) DSU 1529</p> <p>“treaty” (VCLT 31(1)) DSU 1541</p> <p>treaty interpretation: <i>see</i> interpretation of covered agreements rules relating to including VCLT provisions</p> <p>TRIMs Agreement</p> <p><i>see also</i> developing countries (TRIMs 4); Illustrative List (TRIMs 2.2); “investment measures” (TRIMs 1); notification obligations and procedures (TRIMs 2.1); notification and transitional arrangements (TRIMs 5); transparency (TRIMs 6)</p> <p>as integral part of WTO Agreement TRIMs 8–9</p> <p>quantitative measures (GATT XI and) GATT 409 n. 596, 627–9, TRIMs 15–16</p> <p>review of operation (TRIMs 9) TRIMs 45–8</p> <p>TRIMs Committee WTO 93</p> <p>annual reports (TRIMs 7.3) TRIMs 43</p> <p>role (TRIMs 7.2)<ul style="list-style-type: none">implementation issues relating to special and differential treatment for developing countries TRIMs 41–2notifications (TRIMs 5.1 and 5.5) TRIMs 26–7, 40</p> <p>rules of procedure WTO 94, TRIMs 39</p> <p>TRIPS Agreement</p> <p><i>see also</i> Berne Convention/TRIPS; border measures special measures related to enforcement of (TRIPS Part III Section 4); copyright and related rights (TRIPS Part II Section 1); criminal procedures (TRIPS 61); developing countries (TRIPS); dispute settlement (TRIPS 64); fair and equitable procedures (TRIPS 42); geographical indications (TRIPS Part II Section 3); geographical indications (TRIPS Part II Section 3) (GIs); intellectual property conventions (TRIPS 2); intellectual property rights, acquisition and maintenance including <i>inter partes</i> procedures; intellectual property rights, availability, scope and use (TRIPS Part II); intellectual property rights, enforcement (TRIPS Part III); least-developed countries (LDCs) (TRIPS 66); MFN treatment (TRIPS 4); national treatment (TRIPS 3); notification obligations and procedures (TRIPS); Paris Convention (PC)/TRIPS; patents (TRIPS part II Section 5); pharmaceutical and agricultural chemical products, patent protection (TRIPS 70.8); technical cooperation (TRIPS 67); trade names, obligation to comply with PC 8 as incorporated by TRIPS 2.1; trademarks (TRIPS Part II Section 2); TRIPS Council; wines and spirits, additional protection for GIs (TRIPS 23)</p> <p>amendment, acceptance requirements (WTO X:3) TRIPS 210</p> <p>extension of period for acceptance WTO 215</p> <p>notification of acceptances/non-entry into force WTO 216</p> <p>amendment (WTO X:1) (Decision of 6 December 2005 and Protocol) WTO 213–14</p> <p>applicability to “nationals of other Members” (TRIPS 1.3)</p>
--	---

- (*cont.*)
- “domiciled” / “real and effective . . . establishment” (PC 3) TRIPS 18, 23
 - GIs (TRIPS 22.2) and TRIPS 4, 155
 - international law criteria TRIPS 15, 52–3
 - national treatment (TRIPS 3.1) TRIPS 35
 - PC criteria for eligibility TRIPS 15–16
 - “separate customs territory Member” (Footnote 1 to TRIPS 1.3) TRIPS 16
 - Berne Convention and (TRIPS 9): *see* Berne Convention/TRIPS
 - Declaration on Public Health (2001)
 - adoption (Doha 17) WTO 56, 67
 - compulsory licences (TRIPS 31) TRIPS 205
 - exhaustion (TRIPS 6) TRIPS 76
 - interpretation of TRIPS in light of object and purpose TRIPS 79, 83
 - enforcement: *see* intellectual property rights enforcement (TRIPS Part III)
 - exceptions: *see* copyright and related rights (TRIPS Part II Section 1), limitations and exceptions (TRIPS 13); patents (TRIPS part II Section 5), limited exceptions (TRIPS 30)
 - implementation obligation (TRIPS 1.1) TRIPS 5–11, 94 n. 95
 - domestic law, relevance TRIPS 5
 - freedom to choose method TRIPS 7–11, 153–4
 - good faith (including *pacta sunt servanda* principle (VCLT 26)) TRIPS 77
 - implmentation of more extensive protection, relevance TRIPS 6
 - more extensive protection option (TRIPS 1.1) TRIPS 6
 - Non-violation and Situation Complaints, Ministerial Conference Decision on (Geneva 2009) WTO 60
 - object and purpose (preamble/TRIPS 7) TRIPS 310
 - balance of rights and obligations TRIPS 77, 191
 - Declaration on Public Health (2001) and TRIPS 79, 83
 - Doha 19 and TRIPS 80
 - effective and adequate protection of intellectual property rights TRIPS 1, 3
 - interpretation of TRIPS and TRIPS 79
 - new rules and principles TRIPS 2
 - principles (TRIPS 8)
 - “anything not prohibited” /negative right approach TRIPS 81, 131–3
 - Doha 19 and TRIPS 84
 - “protection” (TRIPS 3 and 4), applicability to intellectual property rights addressed by TRIPS (TRIPs 3 footnote 3) TRIPS 58, 68, 74
 - reservations (TRIPS 72) WTO 297
 - retroactivity (TRIPS 70.1) TRIPS 307, DSU 1524
 - review (TRIPS 71.1)
 - Council work programme (Doha 19) TRIPS 320
 - TRIPS Council consideration of (March 2000) TRIPS 319
 - transitional arrangements (TRIPS 65)
 - developing countries and TRIPS 186, 288–9, 292
 - “lesser degree of consistency” (TRIPS 65.5) TRIPS 290
 - procedural nature TRIPS 287, 289
 - WIPO Copyright Agreement (1996) and: *see* WIPO Copyright Agreement (1996)
 - TRIPS Council (WTO IV:5)**
 - functions WTO 88
 - observer status TRIPS 303
 - reporting procedures WTO 89
 - role and responsibilities in relation to
 - cooperation with WIPO bodies (TRIPs 68) WTO 165
 - Decision on implementation-related concerns (2000) WTO 156
 - extension of non-applicability of non-violation complaints (TRIPS 64.3) WTO 65, 88
 - geographical indications negotiations WTO 88
 - monitoring of operation of Agreement and compliance with obligations WTO 88
 - rules of procedure (1995) WTO 90, TRIPS 302
 - Special Session
 - establishment WTO 156
 - wines and spirits, initiation of work on GI negotiations WTO 156, TRIPS 166–8
 - subsidiary bodies WTO 98
- Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU):** *see* DSU
- undertakings (SCM 18):** *see* price undertakings (AD 8)/undertakings (SCM 18)
- unforeseen developments:** *see* emergency action (GATT XIX); “as a result of unforeseen developments”(GATT XIX:1(a))
- unilateral action by Member, prohibition (DSU 23.1)**
13.700, 17.1294–7: *see also* DSU dispute settlement, obligation to have recourse to (DSU 23.1)
- balance of rights and obligations and DSU 1303–4, 1306
 - “chilling” effect DSU 29, 1313, 1689
 - “determination” DSU 1313
 - examples of excluded actions (DSU 23.2) DSU 1300–2, 1307
 - GATS XVIII Reference Paper on Basic Telecommunications and GATS 140
 - legislation [as such] in breach of unilateral undertaking DSU 339, 1312
 - relationship between DSU 23.1 and 23.2 DSU 1298–304
 - statements at DSB meetings as DSU 29, 1313, 1689
- unilateral statements, legal effect** DSU 1685–9
- United States**
ATC safeguard measures (ATC 6), TMB discussion ATC 7, 10, 11, 13, 22, 50
- Enabling Clause notifications
 - GSP schemes GATT 63
 - special treatment of least-developed countries GATT 79
- Uruguay Round**, quantitative restrictions, elimination (GATT XI) and GATT 521
- Vienna Convention on the Law of Treaties (VCLT) as applicable law:** *see* customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2); international law/ “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)); interpretation of covered agreements, rules relating to including VCLT provisions
- waivers (WTO IX:3 and IX:4)**
1.203–12, 2.107: *see also* GATT 1947/WTO continuity *see also* under “legal instruments” (GATT 1994 1(b)) *see also* under decisions on GATT 1947 waivers
- Decision-Making Procedures Under Articles IX and XII of the WTO Agreement, Council decision (1995) WTO 203
 - exceptional nature WTO 209, 210
 - GATT I/GATT XIII waivers, relationship GATT 682–3
 - GATT 1947 waivers WTO 206–8
 - GATT II (Schedules of Concessions) GATT 171, 176–80
 - limited duration WTO 212
 - Lomé waiver WTO 209, GATT 114, 682–3, DSU 534
 - modification or addition to obligations, exclusion WTO 210–11
 - Table of waivers WTO Table XX D
 - waiver decisions WTO 204–5
- wines and spirits, additional protection for GIs (TRIPS 23)**
see also geographical indications (TRIPS Part II Section 3) (GIs)
- GI negotiations TRIPS 166–8
 - protected rights (TRIPS 16), potential for conflict TRIPS 164

protected rights (TRIPS 16), resolution of conflict (TRIPS 23.2) TRIPS 165	annual reports WTO 51
work programme (Doha 18/Hong Kong Declaration) TRIPS 161	observer status WTO 45
WIPO Copyright Agreement (1996) WTO 162, TRIPS 301	World Customs Organization (WCO)
approval by TRIPS Council and adoption TRIPS 89, 304	communication on relationship between WCO instruments and GATT XVIII GATT 508
<i>lex specialis</i> /presumption against treaty conflicts TRIPS 89	right to refer dispute to (DSU 23.1) DSU 1311
State/IGO emblems (PC 6ter) TRIPS 28	World Organization for Animal Health (previously Office International des Epizooties (OIE))
successive treaties relating to the same subject matter (VCLT 30) and DSU 1533	Equivalence Decision (SPS 4) and SPS 115–16
withdrawal of appeal (ABWP 30)	provision of information to SPS Committee SPS 2
good faith (DSU 3.10) and DSU 107	WTO cooperation agreement with (1998) WTO 162
as means of amending an appeal (ABWP 23 <i>bis</i> changes) DSU 1473–4	World Tourism Organization , agreement with WTO on means to avoid confusion WTO 17
simple withdrawal DSU 1468	writing, need for: <i>see</i> transparency (AD 3 and 5); written record/ notification and (AD Agreement)
withdrawal of conditional appeal DSU 1469	WTO
withdrawal and re-filing of appeal, for scheduling reasons DSU 1470–2	accessions: <i>see</i> accession (WTO XII)
“withdrawal of subsidy without delay” (SCM 4.7)	Assets, Liabilities, Records, Staff and Functions from GATT to the WTO, Agreement on (1994) WTO 195, 267
agricultural subsidies, applicability to SCM 153	decision-making procedures: <i>see</i> decision-making procedures (WTO IX)
continuation of payments SCM 206–7, 241	establishment WTO 16
repayment of past subsidy/retroactive effect SCM 208–10, 210	functions
“bring into conformity” (DSU 19) distinguished SCM 216, DSU 20	“decisions on all matters under any of the Multilateral Trade Agreements”
countervailing duties (SCM 19.1) and SCM 208, 462	forum for negotiations: <i>see</i> “forum for negotiations” (WTO III:2)
special or additional rules and procedures (DSU 1.2 and Appendix 2), relevance DSU 20	IMF and: <i>see</i> IMF/WTO relationship (WTO III:5)
time limits, DSU 21.3 provisions, relevance DSU 1091	legal status (WTO VIII:1) WTO 191
withdrawal of subsidy as SCM 7.8 remedy compared SCM 208, 215, 328, 329	membership
“without delay” SCM 211–14	<i>see also</i> accession (WTO XII), original membership (WTO XI:1)
DSU 21.3 and SCM 211, 217	as at 30 September 2011 WTO Table XX A
obligation of panel to specify time-period SCM 214	statistics WTO 223
private action and SCM 213, 241	Ministerial Conference (WTO IV:1): <i>see</i> Ministerial Conference (WTO IV:1)
withholding or withdrawal of concessions (GATT XXVII)	name WTO 16
GATT practice GATT 1071	World Tourism Organization, agreement on means to avoid confusion WTO 17
Marrakesh Protocol provisions GATT 1071	officers, appointment, guidelines WTO 73
Working Party on Domestic Regulation (WPDR)	privileges and immunities: <i>see</i> privileges and immunities (WTO VIII)
annual reports GATS 213	structure (WTO IV), organization chart WTO 52
establishment WTO 97, GATS 211	WTO Agreement
responsibilities GATS 211	amendments (WTO X)
as successor to Working Party on Professional Services GATS 211	acceptance requirements (WTO X:3) WTO 215–16
Working Party on GATS Rules	adoption by Ministerial Conference (WTO X:1) WTO 62
emergency safeguard measures (GATS X) GATS 69, 214	Annex 1 Agreements (WTO X:1), TRIPs Agreement (Decision of 6 December 2005) WTO 213–14
establishment WTO 97, GATS 214	multilateral interpretation, effect WTO 202
government procurement (GATS XIII) GATS 73	applicability of preamble to
subsidies (GATS XV) GATS 95, 214	all covered agreements WTO 3
Working Party on Professional Services	GATT XX(g) WTO 2, 3
annual reports GATS 210	GATT XXIV WTO 14
establishment WTO 97, GATS 209	continuity with GATT 1947: <i>see</i> GATT 1947/WTO continuity
replacement by Working Party on Domestic Regulation (WPDR) GATS 211	cumulative nature of obligations SPS 63, SCM 687, SG 1, 6
Working Party on Subsidy Notifications SCM 513	entry into force (WTO XIV:1) WTO 264
Working Procedures , fair, prompt and effective settlement as	“unless the Ministers decide otherwise”, retroactive extension WTO 265
objective, 17.115, 17.123, 17.133, 17.345, 17.743, 17.1367, 17.1474: <i>see also</i> prompt and satisfactory settlement (DSU 3.3)	non-application in absence of consent (WTO XIII:1) WTO 259–60
Working Procedures (AB) (DSU 17.9 and ABWP): <i>see</i> AB procedures (DSU 17.9 and ABWP)	table of invocations WTO 260
Working Procedures (Article 22.6 arbitrations): <i>see</i> arbitration (DSU 22.6); working procedures	objectives
Working Procedures (DSU 12.1 and Appendix 3): <i>see</i> panel procedures (DSU 12 and Appendix 3 (WP))	“integrated multilateral trading system” WTO 12, SCM 690–2
World Bank/WTO relationship (WTO III:5)	“security and predictability”: <i>see</i> security and predictability of WTO obligations (DSU 3.2)
<i>see also</i> exchange arrangements (IMF/WTO) (GATT XV); IMF/ WTO relationship (WTO III:5)	“to protect and preserve the environment” WTO 1–3
Agreement (1997), conclusion and implementation WTO 42–4, 162, 308	registration (WTO XVI:6) WTO 304

<i>(cont.)</i> reservations (WTO XVI:5) WTO 296–303 as single undertaking (WTO II:2) WTO 18–26 coexistence WTO 25–6 common context WTO 23–4 withdrawal (WTO XV) WTO 271 WTO cooperation with other governmental organizations (WTO V:1) GATS XXVI WTO 165, GATS 221–2 International Plant Convention Secretariat SPS 2 ITU WTO 162, GATS 221 TRIPS 68 WTO 165 WIPO Copyright Agreement (1996): <i>see</i> WIPO Copyright Agreement (1996) World Bank : <i>see</i> exchange arrangements (IMF/WTO) (GATT XV); World Bank/WTO relationship (WTO III:5) World Organization for Animal Health (previously Office International des Epizooties (OIE)) WTO 162, SPS 2, 115–16 WTO documents, General Council Decisions on circulation and derestriction 18 July 1996, abrogation WTO 29 14 May 2002 WTO 29 1 June 2006 (Derestriction of Official GATT 1947 Documents) WTO 30	transmission to bodies established under the Plurilateral Trade Agreements for consideration and action, Circulation and Derestriction of Documents of Government Procurement Committee GPA 27 WTO Law Advisory Centre DSU 1357 n. 2139 “zeroing” (AD 9.3/GATT VI:2) as an allowance or adjustment (AD 2.4) GATT 464–7, AD 114, 116–17, 124, 146–7, 686–7 “comparable” AD 120–5 non-comparable types AD 124–5 transaction-to-transaction method AD 83, 112, 132–6, 688, 929 comparison of weighted average normal value with weighted average of <i>all</i> comparable export transactions (AD 2.4.2), mathematical equivalence AD 137–41 definition GATT 464 n. 661 “fair comparison” (AD 2.4) and AD 82–5 legislation “as such” (AD 18.4) and AD 143, 144, 145, DSU 285–8 margin of dumping as ceiling GATT 465, AD 686 as “measure” (AD 17.4) AD 896–7 “model zeroing” vs “simple zeroing” AD 112 prospective normal value system (AD 9.3.2) and AD 688–9 retrospective assessment (AD 9.3.1) and GATT 464–7, AD 680, 686, 686–7 sunset reviews (AD 13.3) and AD 770, 770–1
---	--

Index by Case

Argentina – Ceramic Tiles (Panel), WT/DS189/R	AD 2.4/AD 6.10 AD 625 n. 858, 643
Anti-Dumping Agreement (AD), preparatory work (VCLT 32), AD 6 AD 623	AD 6.1.1/AD 6.8 AD 458
anti-dumping duties, imposition and collection (AD 9), calculation of “all other” anti-dumping duty rate (AD 9.4), limitation of sample (AD 6.10) and	AD 6.5/AD 6.6 AD 519, 598
confidential information (AD 6.5)	AD 6.5/AD 12 AD 845
non-confidential summaries (AD 6.5.1)	AD 6.8/AD 3 AD 600
as balance between protection of confidentiality and need to ensure opportunity to defend interests AD 598, 606	AD 6.8/AD 12 AD 599, 646
purpose AD 511	AD 6.10/AD 9.4 AD 625
public notice of determinations (AD 12) and AD 599, 646	request for establishment of panel, requirements (DSU 6.2)
right to rely on AD 598–600, 845	clear presentation of the problem/ability to defend itself
unwarranted request for confidentiality, right to disregard information (AD 6.5.2) AD 598 n. 830	considerations DSU 94
determination of dumping (AD 2)	due process/ability to defend itself considerations DSU 311 n. 495
fair comparison of export price and normal value (AD 2.4)	sampling (AD 6.10)
determination of individual margins (AD 6.10) distinguished AD 625 n. 858, 643	as deviation from general rule AD 623
“due allowance”, “in each case, on its merits” AD 88	individual margin for each known exporter or producer AD 625
due process (dispute settlement proceedings), prejudice to party, relevance DSU 94	exporter or producer not originally selected (AD 6.10.2) AD 625
evidence (dumping investigation) (AD 6)	SPS measure, definition/classification as (Annex A(1)), measure to protect human or animal life (Annex A(1)(b)), “additive”, Codex definition, relevance SPS 479
accuracy of information, authorities’ obligation to satisfy themselves (AD 6.6), as responsibility of authorities AD 522	standard/powers of review (panel) (AD 17.6), investigating authorities’ establishment of the facts (AD 17.6(i)), evaluation as at time of determination AD 923
“facts available”, right of resort to (AD 6.8/Annex II)	Argentina – Footwear (EC) (AB), WT/DS121/AB/R
conditions for (Annex II) AD 544	Agreement on Safeguards, as integral part of WTO Agreement WTO 19
failure to submit necessary information “in timely fashion” (Annex II para. 3)	causation analysis (SG 4.2(b)) (determination of serious injury or threat of)
and, interpretation in light of AD 6.1.1, 6.8/Annex II para. 1 AD 605	<i>analysis</i> of conditions of competition, price analysis and SG 192
reasons for disregarding information, need for AD 592	coincidence of trends in imports and in injury factors SG 182–3
specification “in detail” (Annex II para. 1) AD 543	“demonstrates” SG 175
“notice of the information . . .” (AD 6.1), clear request for information, need for AD 427, 458, 543, 605	relevance in absence of serious injury SG 175, 218
notification to all interested parties of essential facts under consideration (AD 6.9), choice of means AD 609	customs unions (GATT XXIV:5(a))
on-the-spot verification (AD 6.7), as option AD 524, 983	as defence or exception, on formation of customs union, limitation to, “would be prevented unless” requirement SG 64
harmless error principle DSU 311 n. 495	definition (GATT XXIV:8(a)), internal trade arrangements (GATT XXIV:8(a)(i)) SG 64–5
identification of specific measures (DSU 6.2) DSU 94	safeguard measures (SG 2.1 footnote 1) GATT 1055
implementation of DSB recommendations and rulings (DSU 21), prompt compliance (DSU 21.1), judicial economy and DSU 653	right to exclude members of customs union from SG 67
interpretation of covered agreements, rules relating to including VCLT provisions, effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to every word and phrase AD 598	determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a)) SG 118
judicial economy, precise recommendations and rulings by DSB and DSU 653	all factors listed in SG 4.2(a) SG 145
nullification or impairment (DSU 3.8)	“factors other than increased imports” (SG 4.2(b)) SG 17
adverse impact/prejudice, relevance DSU 94	determination of serious injury or threat of (SG 4), requirements, “such increased quantities”, trends SG 27, 49, 159–60
presumption in case of inconsistency with covered agreement DSU 94	dispute settlement (SG 14), standard of review (DSU 11), evidence, alleged disregard or distortion by panel, obligation to examine and evaluate <i>all</i> the evidence available to it SG 147
public notice and explanation of determinations (AD 12), confidential information (AD 6.5) and AD 599, 646	emergency action (GATT XIX)
relationships within and between agreements	“as a result of unforeseen developments” (GATT XIX:1(a)) SG 6
	“as a result . . . of the effect of obligations incurred by Member” GATT 826–7
	condition (SG 2.1) and circumstance distinguished GATT 815
	critical date GATT 821
	“demonstration”, need for GATT 805

<i>(cont.)</i>	
omission from SG 2.1, relevance GATT 803, 805, 840, DSU 1555 n. 2388	continuing applicability of GATT XIX GATT 839–40
RTAs/customs unions and (SG 2.1 footnote 1) GATT 1055, SG 64–5	rules for application of GATT XIX (SG 1 and 11.1(a)) GATT 839–40, SG 4–5
evidence (panel) (DSU 12), time-limits for submission, panel’s right to admit “late” /new evidence DSU 729	standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)
GATT 1947/WTO continuity, GATT 1994 as distinct agreement (WTO II:4) WTO 27	completion of the legal analysis in case of, agreement with panel DSU 863
interpretation of covered agreements, rules relating to including VCLT provisions	excess of jurisdiction, consideration of treaty provisions other than those cited DSU 424
consistency with article/agreement as a whole DSU 1555 n. 2388	standard/powers of review (panel) (DSU 11)
dictionaries GATT 803	applicability to Safeguards Agreement SG 147
effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to every word and phrase WTO 19, DSU 1555 n. 2388	“objective assessment of the facts”
object and purpose GATT 798, DSU 1555 n. 2388	<i>de novo</i> review, exclusion SG 147, 305
SG/GATT XIX GATT 798	obligation to examine and evaluate <i>all</i> the evidence available to it SG 147
same or closely related phrases in different agreements	“objective assessment of matter before it”, independent assessment, reference to treaty provisions not cited by parties DSU 519
GATT XIX:1(A)/SG 2.1 SG 6	terms of reference of panels (DSU 7), as definition of jurisdiction/legal claims at issue, “relevant provisions” DSU 424
GATT XIX:1(a)/SG 11.1(a) GATT 797	WTO Agreement
judicial economy	cumulative nature of obligations SG 6
discretionary nature DSU 645	as single undertaking (WTO II:2) WTO 19
prior decision on another point rendering discussion otiose GATT 824, SG 175	Argentina – Footwear (EC) (Panel), WT/DS121/R SG 229
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)	causation analysis (SG 4.2(b)) (determination of serious injury or threat of)
identification of treaty provisions, right of panel to address provisions other than those cited (DSU 7.2) DSU 424	<i>analysis</i> of conditions of competition
limitation of jurisdiction to cited provisions (DSU 7.2) SG 220, DSU 424, 519	like product determination compared SG 191
<i>lex specialis</i> /presumption against treaty conflicts, General Interpretative Note (WTO Annex 1A) DSU 1721	price analysis and SG 190, 192
“measures at issue” (DSU 6.2), amended measures, amendment after establishment of panel DSU 259 n. 386	“demonstrates” SG 174
ordinary meaning of terms used in covered agreements	“on the basis of objective data” SG 174, 191
“apply as single unit or on behalf of a member State” (SG 2.1 footnote 1) SG 64	evaluation of all relevant factors of objective and quantifiable nature SG 174
“as a result of unforeseen developments” (GATT XIX(1)(a)) GATT 803, SG 6	customs unions (GATT XXIV:5(a))
“conforms with the provisions” (SG 11.1(a)) GATT 839, SG 5	as defence or exception, on formation of customs union, limitation to, “would be prevented unless” requirement SG 64–5
panel reports, rationale, need for (DSU 12.7), sufficiency DSU 702	definition (GATT XXIV:8(a)), internal trade arrangements (GATT XXIV:8(a)(i)) SG 64–5
relationships within and between agreements	safeguard measures (SG 2.1 footnote 1) GATT 1055
GATT XIX:1 GATT 797, 803	<i>analysis</i> of conditions of competition SG 190–2
GATT XIX:1/SG 2 and 4 GATT 805, 824	coincidence of trends in imports and in injury factors SG 182, 187
GATT XIX/SG 1 SG 5	determination of serious injury or threat of, definitions (SG 4.1)
SG 3/SG 4.2(c) SG 220, DSU 424	“serious injury” (SG 4.1(a))/ “threat of serious injury” (SG 4.1 (b)), simultaneous determinations SG 128
SG 3.1/SG 4.2(c) DSU 424	“threat of serious injury” (SG 4.1(b)), actual increase in imports, need for SG 126
RTAs (GATT XXIV:5)	determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a))
as affirmative defence SG 65	“factors other than increased imports” (SG 4.2(b)) SG 17
necessity test GATT 1005	non-attribution requirement SG 197–8
safeguard measures, conditions (SG 2)	emergency action (GATT XIX), RTAs/customs unions and (SG 2.1 footnote 1) GATT 1055, SG 64
as extraordinary/emergency remedy GATT 797–8	evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a))
parallelism between investigation (SG 2.1/SG 4.1(c)) and application of measure (SG 2.2) SG 66–7	all factors listed in SG 4.2(a) SG 144
“irrespective of source”, applicability to RTAs SG 66–7	segmented domestic industry and SG 167
regional agreements/customs unions and (SG 2.1 footnote 1) GATT 1055	identification of specific measures (DSU 6.2), “identify”, sufficiency of, numbers of measures and places of promulgation DSU 216
right to exclude member of customs union from SG 67	interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in different agreements, ATC 6.4/SG 4.2(a) SG 144
“such increased quantities” (SG 2.1)	<i>lex specialis</i> /presumption against treaty conflicts
“rate and amount of the increase . . . in absolute and relative terms” (SG 4.2(a)) SG 25	
as sudden and recent increase SG 30–1, 322	
“sufficient to cause serious injury or threat” (SG 2.1) SG 31	
safeguard measures (SG)/emergency action (GATT XIX), relationship between GATT 795	

General Interpretative Note (WTO Annex 1A) DSU 1720 possibilities of conflict considered by panel/AB, GATT XIX/SG 2.1 DSU 1720 “like or directly competitive product” (SG 2.1/SG 4.1(c)), causation analysis (SG 4.2(b)) compared SG 191 notification and consultation (SG 12) “all pertinent information” (SG 12.2), precise description of proposed measure SG 289 modifications reducing restrictiveness of measure, limitation to SG 237 right to request additional information (SG 13.1(f)), relevance SG 289 “objective assessment of matter before it”, reasoned and adequate explanation (SG 4.2(a)) and SG 147 ordinary meaning of terms used in covered agreements, “apply as single unit or on behalf of a member State” (SG 2.1 footnote 1) SG 64 relationships within and between agreements DSU 3.3/DSU 7 DSU 397, 426 GATT XIX/SPS WTO 19 SG 2 and 4/SG 5 SG 229 SG 2 and 4/SG 12 SG 289 SG 2/SG 4 SG 19 SG 2.1 and 4/SG 6 SG 85, 235 SG 2.1, 4.1(c) and 4.2(b)/SG 2.2, 3.1, 51.8, and 12 SG 85 SG 2.1/4.2(a) SG 25–8 SG 2.1/SG 4.2(a) SG 25–8 RTAs (GATT XXIV:5), safeguard measures (SG)/emergency actions (GATT XIX) and SG 64–5 safeguard measures, conditions (SG 2) customs unions and (SG 2.1 footnote 1) GATT 1055 determination of serious injury or threat (SG 4), violation as violation of SG 2 SG 119 <i>lex specialis</i> /presumption against treaty conflicts “conflict” DSU 1720 possibilities of conflict considered by panel/AB, precedence DSU 1720 RTAs (GATT XXIV:5), safeguard measures (SG)/emergency actions (GATT XIX) and SG 64–5 “such increased quantities” (SG 2.1) absolute increase SG 50 quantity as determining factor SG 24 “rate and amount of the increase . . . in absolute and relative terms” (SG 4.2(a)) SG 25–8 as sudden and recent increase SG 30–1 trends SG 26–30, 159, 170 “under such conditions” SG 51, 53–5 price analysis, relevance SG 60 safeguard measures, duration and review (SG 7), modifications reducing restrictiveness (SG 7.4) SG 237, 291 safeguard measures (SG/GATT XIX), customs unions and free trade areas (GATT XXIV) exception, applicability, free trade agreements/customs unions and (SG 2.1 footnote 1) SG 64 standard/powers of review (panel) (DSU 11), applicability to Safeguards Agreement SG 147 terms of reference of panels (DSU 7), “measures at issue” (DSU 6.2), amended measures, amendment following establishment of panel DSU 397–8 transitional safeguards (ATC 6), relevant factors (ATC 6.3), obligation to examine all SG 144	Argentina – Hides and Leather (Panel), WT/DS155/R and Corr.1, DSR 2001:II AB procedures (DSU 17.9 and ABWP), reports, as clarification GATT 239 burden of proof (general rules), difficulty in collecting information and DSU 570 directly competitive or substitutable products (GATT III:2), “like products” distinguished/as sub-category GATT 252 General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, “necessary” GATT 913 General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements, “necessary” to secure compliance GATT 913 Illustrative List (TRIMs 2.2), QRs (GATT XI:1) and GATT 628 interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in same agreement, GATT VII:2(b)/GATT X:3(a) GATT 591 “like product” (GATT III:2 and III:4) relevant factors GATT 243 differences between sellers GATT 252 nationality of producer or origin of product (“hypothetical” like products) GATT 250, 339 national treatment, general principle (GATT III:1) applicability, measures imposed at the time or point of importation (“internal measures”) (<i>Ad Article</i>), imposition on like domestic product requirement GATT 208–9 “so as to afford protection”, equality of competitive relationship GATT 204 national treatment, regulatory discrimination (GATT III:4), “less favourable treatment”, grouping approach GATT 302 national treatment, tax discrimination (GATT III:2) “charge of any kind” GATT 261 determination of violation, elements (GATT III:2, first sentence) <i>actual</i> tax burden GATT 266 aims and effects test/policy purpose GATT 214 balancing of tax burden, exclusion GATT 267 duration of tax differential, relevance GATT 272 economic impact GATT 204, 266 “directly or indirectly” (GATT III:2, first sentence) GATT 278 “in excess of those applied” (GATT III:2, first sentence) methodology of comparison, individual transactions basis GATT 266–7 regulatory objectives, relevance GATT 275 “so as to afford protection” as application of general principle (GATT III:1) GATT 239 design and structure of measure as evidence of protective application GATT 250 non-discriminatory administration of QRs (GATT XIII), publication and administration of trade regulations (GATT X:3(a)), “reasonable” (risk of disclosure of confidential information) GATT 573 publication and administration of trade regulations (GATT X) “laws, regulations, judicial decisions and administrative rulings” (GATT X:1), “of general application” GATT 554 measures of general application (GATT X:1) GATT 554 relationship with other GATT provisions GATT 589 uniform, impartial and reasonable administration (GATT X:3(a)) applicability to individual traders GATT 563 “impartial” (presence of private parties during customs process) GATT 569, 570, DSU 251 “reasonable” GATT 573
---	---

<p>(cont.)</p> <p>“shall administer” /applicability to substantive rule GATT 553, 554</p> <p>transparency between WTO members and with respect to individual traders distinguished GATT 563</p> <p>“uniform” GATT 553, 591</p> <p>discrimination between Members and GATT 553</p> <p>discrimination between Members, relevance GATT 591</p> <p>quantitative restrictions, elimination (GATT XI)</p> <p>due diligence requirement GATT 603 n. 855</p> <p>“prohibition or restriction” (GATT XI:1)</p> <p>causal link, need for GATT 604</p> <p><i>de facto</i> restrictions GATT 602–4</p> <p>equality of competitive conditions as test GATT 604</p> <p>private action, relevance GATT 603, DSU 251–2</p> <p>prohibition or restriction on exportation or sale for export GATT 628</p> <p>“restriction” GATT 604</p> <p>trade effects, relevance GATT 604</p> <p>relationships within and between agreements</p> <p>GATT I/GATT X GATT 591</p> <p>GATT III:1/GATT III:2 GATT 228</p> <p>GATT /GATT as a whole GATT 553</p> <p>GATT XI:1/TRIMs Illustrative List GATT 628</p> <p>State responsibility as rule/general principle of international law (ILC Articles)</p> <p>responsibility for act or omission of</p> <p>customs officials DSU 1681</p> <p>private parties GATT 603, DSU 251–2</p> <p>TRIMs Agreement, quantitative measures (GATT XI and) GATT 628</p> <p>Argentina – Hides and Leather (Article 21.3(c)), WT/DS155/10, DSR 2001:XII</p> <p>developing countries (DSU 21.2) (implementation of DSB recommendations and rulings), “reasonable period” (DSU 21.3(c)) DSU 1065</p> <p>implementation of DSB recommendations and rulings (DSU 21)</p> <p>impracticability of immediate compliance/reasonable period of time (DSU 21.3, chapeau), modification of underlying economic or social conditions distinguished DSU 998</p> <p>prompt compliance (DSU 21.1), modification of underlying economic or social conditions distinguished DSU 997–8</p> <p>implementation of DSB recommendations and rulings, surveillance (DSU 21), prompt compliance (DSU 21.1), “compliance” DSU 997–8</p> <p>“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)</p> <p>developing countries and (DSU 21.2) DSU 1065</p> <p>economic and social conditions, relevance DSU 998, 1031, 1065</p> <p>shortest period possible within Member’s normal legislative process DSU 1031</p> <p>structural adjustment, relevance of need for DSU 1065</p> <p>Argentina – Poultry Anti-Dumping Duties (Panel), WT/DS241/R, DSR 2003:V</p> <p>anti-dumping duties, imposition and collection (AD 9)</p> <p>“appropriate” amounts (AD 9.2) AD 663</p> <p>assessment (AD 9.3)</p> <p>retrospective assessment (AD 9.3.1) AD 675</p> <p>variable duties, possibility of AD 674–5</p> <p>applicable law, customary rules of interpretation of public international law [as codified in VCLT], treaty application and treaty interpretation distinguished DSU 1590</p> <p>burden of proof (general rules), <i>prima facie</i> case requirement AD 172</p> <p>confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/ WP 3)</p> <p>“submissions” and statements of own position distinguished DSU 910</p>	<p>time-limits for non-disclosure DSU 911</p> <p>data collection period (AD 2 and AD 3)</p> <p>“positive evidence” / “objective examination” requirement (AD 3.1) and AD 172–3</p> <p>use of different periods</p> <p>dumping/injury determinations AD 173</p> <p>injury factors AD 172</p> <p>determination of dumping (AD 2)</p> <p>calculation of dumping margins (AD 2.4), comparison of weighted average normal value with weighted average of all comparable export transactions (AD 2.4.2), sampling of domestic transactions AD 126–7</p> <p>“normal value . . . in the ordinary course of trade” (AD 2.1), calculation of dumping margins (AD 2.4), comparison of weighted average normal value with weighted average of all comparable export transactions (AD 2.4.2), “comparable” AD 357–9</p> <p>determination of injury (AD 3)</p> <p>evaluation of injury factors (AD 3.4), “objective examination” requirement (AD 3.1) and AD 209</p> <p>“positive evidence” / “objective examination” requirement (AD 3.1)</p> <p>“objective examination”, “consequent impact” (AD 3.1(b)) AD 209</p> <p>use of different periods for data collection and AD 172</p> <p>for dumping and injury investigations AD 173</p> <p>“domestic industry” (AD 4)</p> <p>“a major proportion of the total domestic production” (AD 4.1) AD 329</p> <p>interpretation in accordance with AD 4.1, obligation AD 337</p> <p>DSU, applicability, covered agreements (DSU 1.1/DSU 7.2), DSU 5</p> <p>“dumping” / “margin of dumping” (AD 2.1), product specific requirement, sampling technique and AD 200 n. 271</p> <p>estoppel, panel competence, related proceedings in another forum and DSU 1704</p> <p>evidence (dumping investigation) (AD 6)</p> <p>access to information provided by another interested party (AD 6.1.1/AD 6.1.2), “interested parties <i>participating in the investigation</i>” AD 451</p> <p>communication of full text of application (AD 6.1.3), “to provide” AD 454–5</p> <p>“facts available”, right of resort to (AD 6.8/Annex II), “information appropriately submitted so that it can be used . . . <i>without undue difficulties</i>” (Annex II(3)) AD 561</p> <p>notification to all interested parties of essential facts under consideration (AD 6.9)</p> <p>“essential facts” AD 611–12</p> <p>“facts” vs “reasoning” AD 612</p> <p>questionnaires (AD 6.1.1), failure to send, relevance AD 441</p> <p>good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), as fundamental rule of treaty interpretation DSU 1508</p> <p>implementation of panel or AB recommendations (DSU 19.1), panel’s discretionary suggestions DSU 961</p> <p>international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2))</p> <p>rules applicable between WTO Members as “parties”, rule applicable only to some WTO Members, whether DSU 1590–1</p> <p>treaty interpretation and treaty application distinguished DSU 1590</p> <p>investigation of dumping (AD 5)/subsidy (SCM 11)</p> <p>simultaneous consideration of evidence of dumping and injury (AD 5.7), initiation of investigation in absence of sufficient evidence (AD 5.3) and AD 395</p> <p>sufficiency of evidence (AD 5.2)</p>
---	---

determination of sufficiency (AD 5.3), AD 2.4 compared AD 358–9	(WTO XVI:1) (GATT <i>acquis</i>), panel reports (unadopted) WTO 280
evidence of dumping AD 358	IMF/WTO relationship (WTO III:5)
sufficiency to initiate (AD 5.2) and for final determination (AD 2) distinguished	Agreement (1997)
AD 356 n. 474	as fulfilment of WTO mandate to cooperate as appropriate with IMF WTO 46
MERCOSUR ad hoc Arbitral Tribunal, proceedings before as impediment (estoppel) to DSU proceedings DSU 1704	Members’ rights and obligations under IMF and WTO Agreements, effect on WTO 46
MERCOSUR ad hoc Arbitral Tribunal, relevance of decisions in DSU proceedings DSU 1590	consultations and exchange of information, WTO panels and WTO 47
ordinary meaning of terms used in covered agreements, “fact” (AD 6.9) AD 612	Declaration of Coherence in Global Economic Policymaking (1994), legal effect WTO 46, 307
precedent, as source of rule of international law DSU 1590	Declaration on the Relationship Between the IMF and WTO (1994) WTO 46, 308
public notice of initiation of investigation (AD 12.1)	GATT VIII obligations and WTO 46, 307, 308, GATT 507
“interested parties”, obligation to in absence of contact details AD 825	information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2)
“known exporters” (AD 6.1) / “interested parties known” (AD 12.1) AD 451	discretion not to seek DSU 607 n. 977, 754 n. 1216, 756, 757 n. 1220
notification and public notice distinguished AD 824	“information from any relevant source” (DSU 13.2) DSU 429
relationships within and between agreements, AD 9.2/AD 9.3 AD 663	interpretation of covered agreements, rules relating to including VCLT provisions, “any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)), panel reports (unadopted) WTO 280
sampling (AD 6.10), procedural nature AD 626	legal status of panel reports, unadopted reports WTO 280
standard/powers of review (panel) (AD 17.6)	margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3) DSU 622
interpretation of relevant provisions of AD (AD 17.6(ii)), “admits of more than one permissible interpretation” AD 329 n. 442	“measures at issue” (DSU 6.2), amended measures, amendment during AB proceedings DSU 402
investigating authorities’ establishment of the facts (AD 17.6(i)), evaluation as at time of determination AD 924	panel procedures (DSU 12 and Appendix 3 (WP))
third party rights (DSU 10 and Appendix 3), panel’s right to draw on third party submissions DSU 496	applicable law
Argentina – Preserved Peaches (Panel), WT/DS238/R, DSR 2003:II	agreement of parties to alternative procedure DSU 622
emergency action (GATT XIX)	panel’s right to determine DSU 622
“as a result of unforeseen developments” (GATT XIX:1(a))	panel proceedings as two-stage process DSU 622
GATT 804	relationships within and between agreements, GATT II:1(a)/GATT II:1(b) GATT 133
critical date GATT 823	Schedules of Concessions (GATT II)
“demonstration”, need for GATT 808–9	interpretation and clarification, GATT II:1(a) and (b), interrelationship GATT 133
“objective assessment of matter before it”, reasoned and adequate explanation requirement (SG 3.1), “as a result of unforeseen developments” (GATT XIX:1(a)), “demonstration”, need for GATT 808–9	ordinary customs duties in excess of those provided for in Schedule (GATT II:1(b)), “in excess of” GATT 146
relationships within and between agreements, GATT XIX/SG 1 SG 9	ordinary customs duties <i>in excess of</i> those provided for in Schedule (GATT II:1(b)), duty different in type GATT 146
safeguard measures, conditions (SG 2)	standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, failure to make as abuse of discretion DSU 622
“such increased quantities” (SG 2.1)	terms of reference of panels (DSU 7), “measures at issue” (DSU 6.2), amended measures, amendment during AB proceedings DSU 402
qualitative test SG 38–9	Argentina – Textiles and Apparel (Panel), WT/DS56/R, DSR 1998:III
as sudden and recent increase SG 38–9	burden of proof (general rules)
Argentina – Textiles and Apparel (AB), WT/DS56/AB/R, DSR 1998:III	cooperation of parties and DSU 573
due process (dispute settlement proceedings)	disclosure obligation and DSU 573
opportunity to respond to evidence/presentations of other parties, timing of submission of evidence (DS 12) and DSU 622	competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “clarification of existing provisions” DSU 386
panel working procedures, need for DSU 622 n. 1015, 672	disclosure obligation, burden of proof and DSU 573
evidence (panel) (DSU 12)	exchange arrangements (IMF/WTO) (GATT XV), consultations (GATT XV:2), dispute settlement and GATT 700
time–limits for submission	fees and formalities connected with importation and exportation “limited . . . to the approximate cost of services rendered” (GATT VIII:1(a))
absence of provision (Working Procedures (Appendix 3)) DSU 622	<i>ad valorem</i> charge GATT 499–500, 506
panel’s right to admit “late” /new evidence SCM 188, DSU 622	fiscal charge GATT 500
absence of objection by other party DSU 622	Schedules of Concessions (GATT II), recording of changes (GATT II:1(b)) and GATT 506
time limit for rebuttal DSU 622	good faith (including <i>pacta sunt servanda</i> principle (VCLT 26))
as two-stage process DSU 622	burden of proof/presumption of DSU 387, 393, 1502
presentation of case including facts DSU 622	
rebuttal of arguments and evidence DSU 622	
fees and formalities connected with importation and exportation	
“limited . . . to the approximate cost of services rendered” (GATT VIII:1(a)), IMF obligations and GATT 507	
GATT 1947/WTO, xGATT 1947/WTO continuity, decisions, procedures and customary practices under GATT 1947	

<i>(cont.)</i> as fundamental rule of treaty interpretation DSU 1502 as general principle of international law DSU 387, 393 IMF/WTO relationship (WTO III:5) Declaration on Coherence in Global Economic Policymaking (1994), legal effect WTO 307 GATT VIII obligations and WTO 307, GATT 700 interpretation of covered agreements, rules relating to including VCLT provisions, “any subsequent agreement . . . regarding its interpretation or application” (VCLT 31(3) (a)), Report of Working Party on DRC Accession GATT 500 judicial economy, limitation of consideration to claims essential to resolution of dispute (DSU 3.2) DSU 386 “measures at issue” (DSU 6.2) terminated measures continuing relevance DSU 388 good faith obligation not to reintroduce DSU 387, 393 termination before agreement on terms of reference DSU 386–8 relationships within and between agreements, GATT II:1(b)/GATT VIII GATT 506 Schedules of Concessions (GATT II) fees and formalities connected with importation and exportation (GATT VIII) and GATT 506 ordinary customs duties in excess of those provided for in Schedule (GATT II:1(b)), “in excess of” GATT 146 ordinary customs duties <i>in excess of</i> those provided for in Schedule (GATT II:1(b)), duty different in type GATT 146 terms of reference of panels (DSU 7), unilateral amendment, exclusion DSU 386 Australia – Ammonium Sulphate (Working Party Report), BISD 11/188 non-violation claims (GATT XXIII:1(b)) nullification or impairment, need for causality GATT 986 competitive relationship as key factor GATT 986 Australia – Apples (AB), WT/DS367/AB/R AB procedures (DSU 17.9 and ABWP), documents (ABWP 18), failure to file by deadline (ABWP 18(1)) DSU 1400, 11400 ALOPs (SPS 5.4–5.6 and Annex A(5)) measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6) alternative measure “significantly less restrictive to trade” compliance with Member’s ALOP SPS 273–4 experts’ role SPS 261 “appropriate level”, determination “acceptable level of risk” test (SPS 5.1/Annex A(4)) and SPS 266, 279 sufficient scientific evidence (SPS 2.2) and SPS 284 burden of proof, scientific evidence requirement SPS 260 legal characterization of measure as matter for panel DSU 767 confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3), third party rights (ABWP 27) DSU 888 confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27), third party obligations DSU 517 due process (dispute settlement proceedings), prejudice to party, relevance DSU 203 due process/ability to defend itself considerations, clear presentation of the problem/ability to defend itself and DSU 200 n. 269 expert evidence (DSU 13.2/SPS 11.2) legal characterisation of measure as matter for panel DSU 767 significant investigative authority, panel’s ‘broad discretion’ SPS 420	identification of specific measures (DSU 6.2) discretion in identifying, desirability DSU 200 jurisdictional issues distinguished DSU 200 interpretation of covered agreements, rules relating to including VCLT provisions, effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to every word and phrase SPS 493 legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), identification of specific measure distinguished DSU 198–9 order of analysis, ALOPs (SPS 5.6) SPS 262 public hearings, AB DSU 888 public observation of oral hearing / “passive participation” (ABWP 27(3)), reasons for allowing DSU 888 relationships within and between agreements GATT III:1/SPS Annex A(1) WTO 24 SPS 2.2/SPS 5.6 SPS 284 SPS 5.1/Annex A(3)(c) SPS 502 request for establishment of panel, requirements (DSU 6.2) compliance, importance of demonstration of on the “face of the request”, need for DSU 203 subsequent cure of defect, exclusion DSU 203 risk assessment, need for (SPS 5.1–5.3) “appropriate level of protection” (SPS 5.6) and SPS 266, 279 “available scientific evidence” (relevant factors) (SPS 5.2), compliance with SPS 5.1 requirement for risk assessment, basis for determining SPS 191 measures <i>based on</i> , need for (SPS 5.1), rational relationship between measure and risk, need for, case-by-case approach SPS 140 “sufficient scientific evidence” requirement (SPS 2.2) and, scientific uncertainty, relevance SPS 138 “taking into account risk assessment techniques” (SPS 5.1), internationally developed techniques SPS 175 risk assessment (SPS Annex A(4)(4)), relationship with “available scientific evidence” (SPS 5.2) SPS 191 scientific evidence, need for sufficient (SPS 2.2) burden of proof, SPS 5.6 and SPS 260 standard/powers of review (panel), own assessment, exclusion SPS 126–9 SPS control, inspection and approval procedures (SPS 8 and Annex C) “any procedure to check and ensure”, applicability (Annex C(1)(a)) measures other than “procedures” SPS 555 measures prior to “procedures” SPS 556 “without undue delay” (Annex C(1)(a)) definition SPS 564 determination SPS 567 SPS measure, definition/classification as (Annex A(1)) “measure so as to afford protection” (GATT III) compared SPS 469 as measure to protect, measure to protect a listed issue of prevent/limit specified damage SPS 450 principal and ancillary measures, distinguishability SPS 458 purpose as test applicability to both adoption and maintenance/application SPS 460 objectivity SPS 460 standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6) completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 881 law vs fact, alleged failure of panel to make objective assessment (DSU 11) SPS 126 terms of reference of panels (DSU 7)
--	--

<p>“matter referred to the DSB” (DSU 7.1), legal basis of claim distinguished DSU 198–9</p> <p>request for establishment of panel as basis DSU 203</p> <p>WTO Agreement, as single undertaking (WTO II:2), common context WTO 24</p> <p>Australia – Apples (Panel), WT/DS367/R</p> <p>ALOPs (SPS 5.4–5.6 and Annex A(5))</p> <p>consistency in application (SPS 5.5)</p> <p>comparable situations SPS 228</p> <p>cumulative nature of obligations SPS 212</p> <p>elements required for SPS 213–14</p> <p>“specific” SPS 220</p> <p>measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6)</p> <p>alternative measure “significantly less restrictive to trade”, experts’ role SPS 261</p> <p>“appropriate level”, determination, as preliminary to/ distinction from decision on measure SPS 533</p> <p>order of analysis SPS 262</p> <p>due process (dispute settlement proceedings)</p> <p>expert evidence and SPS 423–4, DSU 1481</p> <p>prejudice to party, relevance DSU 200 n. 269</p> <p>expert evidence (DSU 13.2/SPS 11.2)</p> <p>due process and</p> <p>case-by-case approach SPS 423</p> <p>framing of questions SPS 424</p> <p>independence and impartiality</p> <p>affiliations raising doubts SPS 416, DSU 1481</p> <p>panel’s obligation to ensure DSU 1481</p> <p>Rules of Conduct (RoC I and III:2) DSU 1481</p> <p>number of experts SPS 405</p> <p>identification of specific measures (DSU 6.2), “identify”, sufficiency of, measures cited in request, limitation to DSU 223</p> <p>legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), arguments distinguished DSU 334</p> <p>“measures at issue” (DSU 6.2), several instruments as single measure DSU 276</p> <p>multiple authentic languages, interpretation (VCLT 33), presumption of identity of meaning (VCLT 33(3)) SPS 454</p> <p>order of analysis, specific/general provision SPS 189</p> <p>relationships within and between agreements</p> <p>SPS 2.2/SPS 5.1 and 5.2 SPS 48, 189</p> <p>SPS 5.1/SPS 5.2 SPS 182</p> <p>SPS 5.1/SPS 5.6 SPS 279</p> <p>risk assessment, need for (SPS 5.1–5.3)</p> <p>methodology</p> <p>parties’ right to choose SPS 194</p> <p>as scientific process SPS 194</p> <p>risk assessment (SPS Annex A(4)(4)), quantification, relevance (including SPS 5.2 requirements) SPS 194</p> <p>SPS control, inspection and approval procedures (SPS 8 and Annex C)</p> <p>procedures to check and control (Annex C(1)(a)), development of SPS measures and SPS 552</p> <p>“undertake and complete” (Annex C(1)(a)) SPS 560</p> <p>SPS measure, definition/classification as (Annex A(1))</p> <p>“laws, decrees, regulations, requirements and procedures”, ordinary meaning SPS 453</p> <p>legal form and nature, relevance/distinguishability SPS 453–5</p> <p>principal and ancillary measures, distinguishability SPS 458</p> <p>terms of reference of panels (DSU 7)</p> <p>as definition of jurisdiction/legal claims at issue DSU 363</p> <p>consideration of issues outside terms of reference, exclusion SPS 422</p> <p>“matter referred to the DSB” (DSU 7.1/AD 17.4) DSU 372</p> <p>third party rights (DSU 10 and Appendix 3), panel’s right to draw on third party submissions DSU 495–500, 500</p>	<p>Australia – Automotive Leather II dispute (WT/DSR126, DSR 1999:III)</p> <p>“sequencing” (interrelationship between Article 21.5 and Article 22.6 arbitration, ad hoc procedural agreements)</p> <p>agreement not to appeal Article 21.5 panel report DSU 1162</p> <p>non-application of 30-day Article 22.6 deadline DSU 1167</p> <p>recourse to Article 21.5 before Article 22 DSU 1158</p> <p>Australia – Automotive Leather II (Panel), WT/DS126/R, DSR 1991:III</p> <p>accelerated/expedited procedures, consultations (SCM 4.1–4), statement of evidence (SCM 4.2) and SCM 192–4</p> <p>competence of panels and AB (DSU 3.2/11), determination of establishment/termination of panel DSU 182</p> <p>consultations (DSU 4), confidentiality (DSU 4.6), disclosure of information obtained in different proceedings DSU 167</p> <p>consultations (SCM 4.1–4)</p> <p>object and purpose, clarification and development of the facts of the situation (SCM 4.3) SCM 194</p> <p>“statement of available evidence” (SCM 4.2)</p> <p>accelerated proceedings and SCM 192–4</p> <p>all facts distinguished SCM 192</p> <p>disclosure of arguments distinguished SCM 192</p> <p>DSU 4.4 distinguished SCM 194</p> <p>new evidence, right to submit, objective assessment (DSU 11) and SCM 193</p> <p>request for establishment of panel (SCM 4.4) distinguished GATS 192</p> <p>evidence (panel) (DSU 12), time–limits for submission, accelerated procedures (SCM 4.3) and SCM 192–4</p> <p>expert evidence (DSU 13.2/SPS 11.2), SCM 4.2 (statement of available evidence) and SCM 194</p> <p>export subsidy, prohibited (SCM, Part II)</p> <p>“contingent in fact . . .” (SCM 3.1(a))</p> <p>case-by-case approach SCM 141–2</p> <p>close connection, need for SCM 132</p> <p>examination of all relevant facts, need for (SCM 3.1(a) footnote 4) SCM 141</p> <p>facts at time of establishment of conditions for grant, limitation to SCM 142</p> <p>knowledge or expectation, sufficiency SCM 145</p> <p>“tied to” (SCM 3.1(a) footnote 4) SCM 132</p> <p>information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), “from any individual or body”, parties, frequency of exercise DSU 746</p> <p>multiple panels/same parties/same dispute (DSU 9.3) DSU 182</p> <p>ordinary meaning of terms used in covered agreements</p> <p>“contingent” (SCM 3.1) SCM 132</p> <p>“statement of available evidence” (SCM 4.2) SCM 192</p> <p>“tied to” (SCM 3.1(a)) SCM 132</p> <p>relationships within and between agreements, DSU 19.1/SCM 4.7 DSU 992</p> <p>standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), law vs fact, panel as trier of facts DSU 604</p> <p>standard/powers of review (panel) (DSU 11)</p> <p>“objective assessment of the facts” /alleged disregard or distortion of the evidence</p> <p>evidence, alleged disregard or distortion by panel, obligation to examine and evaluate evidence DSU 604</p> <p>obligation to examine and evaluate all the evidence available to it DSU 604</p> <p>“objective assessment of matter before it”, SCM 4.2 (statement of available evidence) and SCM 193</p> <p>termination of panel DSU 182</p>
---	--

(cont.)

Australia – Automotive Leather II (Article 21.5 – US) (Panel), WT/DS126/RW and Corr.1, DSR 2000:III

adverse effects (SCM 5), obligation to remove adverse threats or withdraw subsidy (SCM 7.8), “withdrawal of subsidy without delay” (SCM 4.7) compared SCM 208, 215

countervailing duties (SCM Part V), “throughout the effects of subsidy” (SCM 19), retroactive effect of withdrawal of subsidy (SCM 4.7) and SCM 208, 462

evidence, acceptability as for “objective assessment” (DSU 11) purposes, public statements by company executives/ government officials DSU 636

identification of specific measures (DSU 6.2), inclusion of measure, sufficiency for inclusion in terms of reference (DSU 7) DSU 374

ordinary meaning of terms used in covered agreements, “withdraw” (SCM 4.7) SCM 208

preliminary rulings on, third party rights (DSU 10 and Appendix 3) DSU 503

relationships within and between agreements, DSU 19.1/SCM 4.7 and 4.8 DSU 20, 992

review of implementation of DSB recommendations and rulings (DSB 21.5)

third party rights (DSU 10)

access to second written submissions DSU 503

right to receive submissions to first meeting of the panel, limitation to (DSU 10.3) DSU 503

standard/powers of review (panel) (DSU 11)

“objective assessment of the facts” /alleged disregard or distortion of the evidence, public statements by company executives/government officials DSU 636

“objective assessment of matter before it”

all arguments DSU 520

independent assessment, panel’s right to choose position other than that articulated by parties DSU 520

third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6, right to receive submissions to first meeting of the panel, limitation to (DSU 10.3) DSU 503

third party rights (Article 21.5 proceedings) DSU 503

“withdrawal of subsidy without delay” (SCM 4.7)

repayment of past subsidy/retroactive effect SCM 208–9

“bring into conformity” (DSU 19) distinguished SCM 216, DSU 20

countervailing duties (SCM 19.1) and SCM 208, 462

special or additional rules and procedures (DSU 1.2 and Appendix 2), relevance DSU 20

withdrawal of subsidy as SCM 7.8 remedy compared SCM 208, 215

Australia – Salmon (AB), WT/DS18/AB/R, DSR 1998:VIII

ALOPs (SPS 5.4–5.6 and Annex A(5))

consistency in application (SPS 5.5)

alternative measure “significantly less restrictive to trade”, “taking into account technical and economic feasibility” SPS 282

comparable situations SPS 227–8

discrimination or disguised restriction of trade resulting from inconsistency, Member’s obligation SPS 220

measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6)

alternative measure “significantly less restrictive to trade” SPS 276

“appropriate level”, determination

Member’s explicit statement, right of Panel/AB to challenge SPS 271

Member’s obligation to determine [in accordance with SPS obligations] SPS 207, 220, 270

Member’s prerogative SPS 267, 529

as preliminary to decision on measure SPS 265

cumulative elements (SPS 5.6 footnote 3) SPS 257

arbitrary or unjustifiable discrimination, exclusion (SPS 2.3), ALOPs and (SPS 5.5) SPS 64

arbitrary or unjustifiable distinctions resulting in discrimination or disguised restriction on international trade (SPS 5.5), disguised restriction on international trade/warning signals SPS 237, 239

due process (dispute settlement proceedings), opportunity to respond to evidence/presentations of other parties DSU 679, 694

Equivalence, Decision on Implementation of SPS 4 (26 October 2001), Members’ obligation to determine ALOP SPS 103

identification of specific measures (DSU 6.2) DSU 228

identification of product, need for DSU 228

measure actually applied DSU 228

judicial economy, “positive solution to dispute” requirement (DSU 3.7)/false judicial economy and DSU 651

ordinary meaning of terms used in covered agreements, “likelihood” SPS 508

panel procedures (DSU 12 and Appendix 3 (WP)), high quality reports/avoidance of delay, flexibility in achieving balance (DSU 12.2) DSU 678, 694

panel reports, high quality/flexibility of panel procedures balance (DSU 12.2) DSU 678, 694

relationships within and between agreements

SPS 2.2/SPS 5.1 SPS 45, 142, 201

SPS 2.2/SPS 5.6 SPS 282

SPS 2.3/SPS 5.5 SPS 64

request for establishment of panel, requirements (DSU 6.2)

factors to be taken into account including “available scientific evidence” (SPS 2), unknown and uncertain elements, effect SPS 142, 203

standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of analysis SPS 165

risk assessment (SPS Annex A(4)(4))

elements/three-pronged nature of test SPS 147

types of risk (“likelihood” vs “potential”) SPS 504–5

“likelihood” SPS 147, 508

standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)

completion of the legal analysis in case of disagreement with the panel DSU 862

panel’s failure to address correct issue SPS 276, 282, DSU 862

legal findings or developed interpretations, limitation to (DSU 17.13) SPS 345

“objective assessment of the facts” /alleged disregard or distortion of the evidence, discretion in assessment of evidence DSU 844

standard/powers of review (panel) (DSU 11)

“objective assessment of the facts” /alleged disregard or distortion of the evidence

discretion in assessment of evidence DSU 602

egregious error, need for DSU 614

“objective assessment of matter before it”, independent assessment, evaluation of evidence DSU 602

terms of reference of panels (DSU 7), as definition of jurisdiction/ legal claims at issue SPS 345

Australia – Salmon (Panel), WT/DS18/R and Corr.1, DSR 1998: VIII

ALOPs (SPS 5.4–5.6 and Annex A(5))

consistency in application (SPS 5.5)

comparable situations SPS 229

cumulative nature of obligations SPS 63

recommendations of relevant international organizations and SPS 87

measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6)	standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis in case of, disagreement with panel finding SPS 165
alternative measure “significantly less restrictive to trade” SPS 275–6	standard/powers of review (panel) (DSU 11), risk assessment/ALOT (SPS Agreement), exclusion SPS 123, 217, 219
“taking into account technical and economic feasibility” SPS 282	transparency of SPS regulations (SPS 7 and Annex B), enquiry points (Annex B, para. 3), obligation to identify ALOP, whether SPS 545
“appropriate level”, determination	Australia – Salmon (Article 21.5 – Canada) (Panel), WT/DS18/RW, DSR 2000:IV
Member’s explicit statement, right of Panel/AB to challenge SPS 271	ALOPs (SPS 5.4–5.6 and Annex A(5))
Member’s obligation to determine [in accordance with SPS obligations] SPS 270–1	consistency in application (SPS 5.5)
arbitrary or unjustifiable distinctions resulting in discrimination or disguised restriction on international trade (SPS 5.5), disguised restriction on international trade/warning signals SPS 235–9	“appropriate level”, determination, as preliminary to/distinction from decision on measure SPS 532
harmonization of SPS measures (SPS 3)	“specific” SPS 222
measures based on international standards (SPS 3.1)	measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6), alternative measure “significantly less restrictive to trade”, “is reasonably available” SPS 263
validity of OIE standards SPS 75	arbitrary or unjustifiable discrimination, exclusion (SPS 2.3)
“where they exist”, availability for some but not all diseases SPS 74	discrimination between different products SPS 59
identification of specific measures (DSU 6.2), identification of product, need for DSU 228	elements of violation SPS 58
interim review (DSU 15), “precise aspects of the interim report”, limitation to (DSU 15.2) DSU 779	competence of panels and AB (DSU 3.2/DSU 11/DSU 17), not to add to or diminish rights and obligations (DSU 3.2/19.2) SPS 503
judicial economy, prior decision on another point rendering discussion otiose SPS 593	conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4), non-performance of obligations under covered agreements, exclusion of domestic law as justification (VCLT 27) DSU 1679
order of analysis, specific/general provision SPS 591, 595	information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), role/value SPS 396
quantitative restrictions, elimination (GATT XI), SPS Agreement and GATT 647	preliminary rulings on, third party rights (DSU 10 and Appendix 3) DSU 504
relationships within and between agreements	relationships within and between agreements
GATT III/GATT XI SPS 593	SPS 2/SPS 5 SPS 63
GATT XI/SPS 2.4 SPS 591	SPS 5.1 and 5.6/Annex A(4) SPS 503
GATT XI/SPS GATT 647, SPS 593	review of implementation of DSB rulings (DSU 21.5)
SPS 2/SPS 3 SPS 66	“measures taken to comply”, parties’ assessment, relevance DSU 1121
SPS 2/SPS 5 SPS 66	third party rights (DSU 10), right to receive submissions to first meeting of the panel, limitation to (DSU 10.3) DSU 504
SPS 2.2/SPS 5.1 and 5.2 SPS 201	risk assessment, need for (SPS 5.1–5.3)
SPS 2.2/SPS 5.1 SPS 44 n. 59	identification of diseases and potential biological and economic consequences to be protected against SPS 503
SPS 2.2/SPS 5.6 SPS 282	timing of assessment, publication of assessment, relevance SPS 154
SPS 2.3/SPS 5.5 SPS 63	risk assessment (SPS Annex A(4)(4)) SPS 503
SPS 3.2/SPS 5.6 SPS 87	elements/three-pronged nature of test SPS 147 n. 183
SPS 5.1/SPS 5.5 SPS 184	SPS Agreement
SPS 5.1/SPS 5.7 SPS 185	applicability (SPS 1.1), measures taken by body other than central government (SPS 13) SPS 446
SPS Annex A(1)(a) and A(1)(b) SPS 486	implementation (SPS 13), measures taken by body other than central government SPS 446
risk assessment, need for (SPS 5.1–5.3)	SPS control, inspection and approval procedures (SPS 8 and Annex C)
arbitrary or unjustifiable inconsistencies, obligation to avoid (SPS 5.5) and SPS 184	“any procedure to check and ensure”, applicability (Annex C(1)(c)), substantive and control procedures distinguished SPS 584
identification of specific measures (DSU 6.2), measure actually applied DSU 228	information requirements (Annex C(1)(c)), procedures to check compliance with SPS measures, limitation to SPS 584
measures “appropriate to the circumstances” (SPS 5.1) SPS 167, 171	State responsibility as rule/general principle of international law (ILC Articles), responsibility for act or omission of, constituent part of federal State DSU 1679
duty to base measures on risk assessment and SPS 171	third party rights (Article 21.5 proceedings) DSU 504
methodology	
different product categories, interrelationship SPS 159	
substantive obligation (SPS 5.1) distinguished SPS 190, 202	
relevance of, format of the assessment, official status of report, relevance SPS 149	
“sufficient scientific evidence” requirement (SPS 2.2) and SPS 201	
timing of assessment (SPS 5.1) SPS 153	
zero risk, unacceptability of concept SPS 164	
risk assessment (SPS Annex A(4)(4))	
specificity of assessment, need for SPS 507	
types of risk (“likelihood” vs “potential”) SPS 145–6, 505, 507	
distinction/comparison SPS 515	
scientific evidence, need for sufficient (SPS 2.2), standard/powers of review (panel), own assessment, exclusion SPS 123	
SPS Agreement, QRs (GATT XI) and GATT 647	
SPS measure, definition/classification as (Annex A(1)), relationship between Annex A(1)(a) and A(1)(b) SPS 486	
	Brazil – Aircraf dispute (WT/DS46)
	implementation of DSB recommendations and rulings (DSU 21), ad hoc procedural agreements, establishment of panel DSU 1170, 1176

- (*cont.*)
- relationships within and between agreements, AIR 6/SCM
AIR 23
 - SCM and AIR 23
 - Brazil – Aircraft (AB), WT/DS46/AB/R, DSR 1999:III**
 - business confidential information (BCI), additional procedures, AB
(ABWP 16(1)) DSU 919, 1379
 - confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3)
“proceedings” (DSU 17.10) DSU 886
 - “submissions” and statements of own position distinguished
DSU 887
 - consultations (DSU 4)
 - consultations (SCM 4.1–4) compared DSU 140, 142
 - identity of specific measures in the consultations and the request
for establishment of a panel, relevance DSU 142
 - consultations (SCM 4.1–4)
 - consultations (DSU 4) compared DSU 140, 142
 - object and purpose, clarification and development of the facts of
the situation/mutually agreed solution (SCM 4.3) SCM
202, DSU 142
 - developing countries (SCM 27)
 - phase out/standstill obligation (SCM 27.4)
 - burden of proof SCM 155–6, 553–4
 - “grant” (SCM 27.4 footnote 55) SCM 176, 543
 - inflation, relevance SCM 545
 - SCM 25, relevance SCM 524
 - identification of specific measures (DSU 6.2), identity with specific
measure the subject of consultations, relevance SCM 202,
DSU 142
 - Illustrative List of Export Subsidies (SCM Annex I)
 - export credits at rates below actual cost of funds so employed
(item (k))
 - “benefit” (SCM 1.1(b)) and SCM 95, 631
 - burden of proof SCM 627
 - Commercial Interest Reference Rate (CIRR), relevance SCM 632
 - international undertaking on official export credits (item (k),
second paragraph)
 (“safe haven”), “in the field of export credit terms”
SCM 638
 - “used to secure a material advantage” SCM 627, 630, 631
 - “material” SCM 631
 - interpretation of covered agreements, rules relating to including
VCLT provisions
 - dictionaries DSU 886
 - different language in same agreement SCM 631
 - “measures at issue” (DSU 6.2), amended measures, amendment
before establishment of panel DSU 395
 - notification obligations (SCM 25), transparency and SCM 518
 - ordinary meaning of terms used in covered agreements
“advantage” (SCM Illustrative List item (k)) SCM 631
 - “proceedings” (DSU 17.10) DSU 886
 - “reasonable period” for implementation of recommendations and
rulings (Article 21.3(c) arbitrations), withdrawal of
prohibited subsidies (SCM 4.7), applicability to DSU
1091
 - relationships within and between agreements
DSU 4 and 6/SCM 4 DSU 140, 142
 - SCM 1.1(b)/SCM Annex I item (k) SCM 95
 - SCM 3.1/SCM 27.4 SCM 155–6
 - SCM 3.2/SCM 27.4 SCM 176
 - SCM 25/SCM 27.4 SCM 524
 - special or additional rules and procedures (DSU 1.2 and
Appendix 2), arrangements considered for classification
as, SCM 4.2–4.12 DSU 18
 - subsidy, definition (SCM 1.1(a)(1)) (financial contribution),
conferral of benefit (SCM 1.1(b)) as parallel requirement
SCM 9
 - subsidy, definition (SCM 1.1(b)) (conferral of benefit), SCM
Illustrative List, Item (k) and SCM 95
 - “withdrawal of subsidy without delay” (SCM 4.7), time–limits, DSU
21.3 provisions, relevance DSU 875 n. 1390, 1091
 - Brazil – Aircraft (Panel), WT/DS46/R, DSR 1999:III**
 - business confidential information (BCI), additional procedures,
panel (DSU 12.1) DSU 687, 919
 - consultations (DSU 4)
 - as prerequisites DSU 206
 - panel’s obligation to examine absence DSU 206
 - consultations (SCM 4.1–4), object and purpose, clarification and
development of the facts of the situation/mutually agreed
solution (SCM 4.3) SCM 202, DSU 142
 - developing countries (SCM 27)
 - phase out/standstill obligation (SCM 27.4)
 - benchmark period (SCM 27.4 footnote 55) SCM 546
 - burden of proof SCM 154, 553–4
 - constant or nominal values as determining factor SCM 545
 - “grant” (SCM 27.4 footnote 55) SCM 542
 - actual expenditure, limitation to SCM 547–8
 - “inconsistent with its development needs”, responsibility for
determining SCM 550–2
 - “prohibited” subsidy status (SCM 3.1(a)) and SCM 154, 527
 - SCM 27.2(b) and SCM 154, 527–8, 532
 - “shall phase out” SCM 539–41
 - identification of specific measures (DSU 6.2), identity with specific
measure the subject of consultations, relevance SCM 202,
DSU 206
 - Illustrative List of Export Subsidies (SCM Annex I)
 - export credits at rates below actual cost of funds so employed
(item (k))
 - “benefit” (SCM 1.1(b)) and SCM 631
 - “used to secure a material advantage” SCM 630
 - offset of advantage, sufficiency to prohibit measure (items (e)-(i))
SCM 603
 - “provision . . . through government-mandated schemes . . . on
terms *more favourable* . . .” (item (d)) SCM 602
 - “safe haven” (international undertaking (item (k), second
paragraph)), “in the field of export credit terms” SCM 638
 - interpretation of covered agreements, rules relating to including
VCLT provisions
 - same or closely related phrases in same agreement, SCM 3.2/
SCM 27.4 SCM 174
 - as a whole/holistic/harmonious exercise SCM 527
 - lex specialis*/presumption against treaty conflicts SCM 527
 - ordinary meaning of terms used in covered agreements
“field of export credit terms” (SCM Illustrative List item (k))
SCM 638
 - “in the field of export credit terms” (Illustrative List of Export
Subsidies (SCM Annex I)) SCM 638
 - “level of subsidies” (SCM 27.4/footnote 55) SCM 547
 - “subject to compliance with the provisions” (SCM 27.2)
SCM 527
 - relationships within and between agreements
SCM 3.1/SCM 27.2(b) SCM 154, 527–8
 - SCM 3.1/SCM 27.4 SCM 154, 527–8
 - SCM 3.2/SCM 27.4 SCM 174
 - SCM 27.2(b)/SCM 27.3 SCM 532
 - request for establishment of panel, requirements (DSU 6.2),
compliance, importance of, scrutiny by panel
DSU 206
 - request for establishment of panel, requirements (SCM 4.4), failure
to reach mutually agreed solution through consultations
DSU 206
 - SCM Agreement, object and purpose (SCM 1), multilateral
disciplines on subsidies distorting international trade
SCM 1, 548

special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as, SCM 4.2 (consultations) SCM 211	private counsel/advisers not part of delegation and DSU 915–16
special and differential treatment (SCM 27/SCM 29) SCM 575	identification of specific measures (DSU 6.2), omission of measure, exclusion from terms of reference (DSU 7) DSU 375
subsidy, definition (SCM 1.1(a)(1)) (financial contribution)	Illustrative List of Export Subsidies (SCM Annex I)
potential direct transfer of funds (SCM 1.1(a)(1)) SCM 28–9	export credits at rates below actual cost of funds so employed (item (k))
timing of transfer, relevance SCM 29	as affirmative defence under SCM 3.1(a) SCM 636
transformation into a market economy (SCM 29), special and differential treatment (SCM 27) and SCM 575	burden of proof SCM 655, 656
“withdrawal of subsidy without delay” (SCM 4.7), “without delay”, DSU 21.3 and SCM 211, 217, DSU 875 n. 1390	Commercial Interest Reference Rate (CIRR), relevance SCM 634–5
Brazil – Aircraft (Article 21.5 – Canada) (AB), WT/DS46/AB/RW, DSR 2000:VIII and DSR 2000:IX	“export credit practice” SCM 644–5
burden of proof (general rules), <i>onus probandi actori incumbit</i> SCM 653	relationship with SCM 3.1(a), determination by footnote 5 SCM 632
competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “may uphold, modify or reverse” legal findings (DSU 17.13), “moot” / “of no legal effect” finding DSU 893	“safe haven” (international undertaking (item (k), second paragraph))
domestic law, as justification for failure to fulfil international obligations, exclusion (VCLT 27) DSU 1517	as affirmative defence under SCM 3.1(a) SCM 656
Illustrative List of Export Subsidies (SCM Annex I)	“interest rates provisions” SCM 648–9
export credits at rates below actual cost of funds so employed (item (k))	legislation as such (mandatory/discretionary distinction) SCM 662
as affirmative defence under SCM 3.1(a) SCM 653	matching derogation, permissibility SCM 660
burden of proof SCM 653	OECD Arrangement SCM 648–9
Commercial Interest Reference Rate (CIRR), relevance SCM 633	“successor undertaking” SCM 640–1
“used to secure a material advantage” SCM 627, 631	interpretation of covered agreements, rules relating to including VCLT provisions,
legal status of panel reports, “moot” / “of no legal effect” finding DSU 892	effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>) SCM 646
relationships within and between agreements, SCM 3.1(a)/SCM Illustrative List, item (k) SCM 627	legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability, affirmative defence (SCM Illustrative List item (k)) and SCM 662
transformation into a market economy (SCM 29), special and differential treatment (SCM 27) and SCM 576	ordinary meaning of terms used in covered agreements
“withdrawal of subsidy without delay” (SCM 4.7)	“interest rate support” (Illustrative List of Export Subsidies (SCM Annex I), item (k)) SCM 649
continuation of payments SCM 206–7, 241	“interest rate support” (SCM Illustrative List item (K)) SCM 648
“without delay”, private action and SCM 213, 241	“successor undertaking” (SCM Illustrative List item (k)) SCM 641
Brazil – Aircraft (Article 21.5 – Canada) (Panel), WT/DS46/RW, DSR 2000:VIII and DSR 2000:IX	relationships within and between agreements, SCM 3.2/SCM 27.4 SCM 177
composition of delegation, Member’s right to determine DSU 727, 915	subsidy, definition (SCM 1.1(b)) (conferral of benefit)
confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3), obligation to respect/ensure respect for DSU 915–16	burden of proof SCM 61
developing countries (WTO Preamble), “positive efforts” WTO 4	“recipient of a benefit” SCM 63–5
domestic law, as justification for failure to fulfil international obligations, exclusion (VCLT 27) DSU 1516	subsidy programmes as such, right to challenge (mandatory/discretionary distinction) SCM 662
Illustrative List of Export Subsidies (SCM Annex I), export credits at rates below actual cost of funds so employed (item (k)), “export credit” SCM 628	assessment of mandatory nature DSU 293 n. 466
implementation of DSB recommendations and rulings (DSU 21), surveillance mechanisms DSU 985	Brazil – Aircraft (Article 22.6 – Brazil), WT/DS46/ARB, DSR 2002:I
implementation of panel or AB recommendations (DSU 19.1), mechanisms, absence DSU 985	arbitration (DSU 22.6)
ordinary meaning of terms used in covered agreements	burden of proof, SCM 4.11 and DSU 585
“credits” (SCM Illustrative List item (k)) SCM 628	multiple complainants DSU 1282
“export credit” (Illustrative List of Export Subsidies (SCM Annex I), item (k)) SCM 628	scope of review/arbitrators’ mandate/task (DSU 22.7)
special and differential treatment (SCM 27/SCM 29) SCM 576	ad hoc procedural agreements for implementation of DSB recommendations and rulings DSU 1176
“withdrawal of subsidy without delay” (SCM 4.7), repayment of past subsidy/retroactive effect SCM 210	determination of appropriateness of countermeasure (SCM 4.11) SCM 244, DSU 1260, 1292
WTO Agreement, preamble WTO 4	determination of “equivalence” (DSU 22.3), methodology paper, request for DSU 1244
Brazil – Aircraft (Article 21.5 – Canada II) (Panel), WT/DS46/RW/2, DSR 2001:X	scope of review/arbitrators’ mandate/task (SCM 4.11), burden of proof, allocation SCM 248
confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27)	“specific”, specific level of suspension (DSU 22.4) DSU 1267
“deliberations” (DSU 14.1) DSU 769	third party rights DSU 509, 510 n. 833
	burden of proof (general rules)
	Article 22.6 arbitrations DSU 585
	allocation by arbitrator SCM 248
	Article 22.6 arbitrations under SCM 4.11 DSU 585
	<i>onus probandi actori incumbit</i> SCM 248, DSU 585
	<i>prima facie</i> case requirement SCM 248
	countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10)

- (cont.)
- “appropriate” SCM 176, 221, 225–6, DSU 1288
 - arbitration (DSU 22.6) and (SCM 4.11) SCM 244, DSU 1260, 1292
 - footnote 10 and SCM 236
 - proportionality (footnote 9) SCM 236
 - arbitration (DSU 22.6) and (SCM 4.11)
 - burden of proof DSU 585
 - as special or additional rules and procedures SCM 246–7, 253, DSU 22, 1241
 - task of arbitrator SCM 244, DSU 1260, 1292
 - burden of proof, obligation of other party to present evidence SCM 248
 - calculation of countermeasure, possible bases/relevant factors
 - adverse trade effects SCM 233
 - amount of subsidy SCM 233
 - burden of proof SCM 240, 248
 - products not in competition SCM 240
 - suspension of concessions (DSU 22.4) distinguished SCM 221 n. 343, 233, 234, 253
 - “countermeasure” SCM 221, DSU 1286, 1694
 - inducement of compliance as objective SCM 221, 224, 225, DSU 1286, 1288
 - State responsibility and SCM 221, DSU 1286, 1674 n. 2617, 1694
 - countermeasures (general principles)
 - definition SCM 221, DSU 1286, 1694
 - proportionality SCM 236
 - domestic law, as justification for failure to fulfil international obligations, exclusion (VCLT 27) SCM 241, DSU 1518
 - evidence, evaluation
 - good faith and SCM 250
 - private parties/subjects of international law distinguished SCM 250
 - good faith (including *pacta sunt servanda* principle (VCLT 26)), evidence submitted by government SCM 250
 - ILC Articles, status as “rule” of international law DSU 1588
 - implementation of DSB recommendations and rulings (DSU 21), Article 22.6 panel’s right of review DSU 1176
 - international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)) DSU 1588
 - interpretation of covered agreements, rules relating to including VCLT provisions
 - dictionaries SCM 221, DSU 1286, 1694
 - cautious approach to SCM 224
 - effectiveness principle (*ut res magis valeat quam pereat/effet utile*) SCM 221 n. 343
 - meaning to be attributed to every word and phrase SCM 246, DSU 1279, 1282
 - footnotes to treaty as aid/integral part of treaty SCM 237
 - ILC draft articles SCM 221, DSU 1286
 - State practice SCM 221
 - text/plain language (VCLT 31(2)) SCM 236
 - multiple complainants (DSU 9), Article 22.6 arbitration and DSU 1282
 - nullification or impairment (DSU 3.8)
 - inconsistency with covered agreement as *prima facie* evidence of, rebuttal SCM 225
 - SCM 3 and 4 (prohibited subsidies) distinguished SCM 225, 234, DSU 1281–3
 - SCM 5 (adverse effects) SCM 225, 234–5
 - SCM 7.9 and 10 (commensurate with degree and nature of adverse effects) distinguished SCM 235
 - ordinary meaning of terms used in covered agreements, “appropriate” (SCM 4.10) SCM 224
 - preparatory work (VCLT 32), SCM 4 SCM 236
 - relationships within and between agreements
 - DSU 3.8/SCM 3 and 4 SCM 234, DSU 1281–3
 - DSU 22.4/SCM 3 and 4 DSU 1281
 - SCM 4.9 and 10/SCM 7.9 and 10 SCM 235
 - review of implementation of DSB rulings (DSU 21.5), ad hoc procedural agreements, panel’s scope of review DSU 1176
 - “sequencing” (interrelationship between Article 21.5 and Article 22.6 arbitration, ad hoc procedural agreements) DSU 1176
 - arbitrators’ role in relation to DSU 1157
 - arbitrators’ scope of review DSU 1176
 - recourse to Article 22.6 before completion of Article 21.5 proceedings as breach DSU 1176
 - special or additional rules and procedures (DSU 1.2 and Appendix 2)
 - arrangements considered for classification as SCM 4.10 DSU 22
 - SCM 4.11 SCM 246–7, 253, DSU 22, 1241, 1279, 1282
 - “shall prevail” in case of a difference with DSU DSU 22
 - State responsibility as rule/general principle of international law (ILC Articles) DSU 1588
 - countermeasures SCM 221, DSU 1674 n. 2617, 1694
 - suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
 - agreement to DSU 1267
 - level equivalent to nullification or impairment (DSU 22.4)
 - “appropriate” (SCM 4.10) distinguished SCM 233, 234, 253, DSU 233, 1241, 1260
 - SCM 3 and 4 (prohibited subsidies) distinguished SCM 234, 253, DSU 1241, 1281
 - “or other obligations”, authorization to suspend (DSU 22.2) DSU 1191
 - termination of treaty for breach (VCLT 60), rights created prior to and (VCLT 70) DSU 1176, 1218, 1673
 - third party rights (Article 22.6 arbitrations) DSU 509, 510 n. 833
 - Brazil – Desiccated Coconut (AB), WT/DS22/AB/R, DSR 1999:IV**
 - anti-dumping and countervailing duties (GATT VI), non-retroactivity of treaties (VCLT 28) GATT 451
 - anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement
 - countervailing duties, compliance with both GATT VI:3 and SCM GATT 468
 - violation of GATT VI, sufficiency for finding of violation of AD 2.1 and 2.2 GATT 451
 - consultation and dispute settlement (AD 17), “matter”, referral to DSB (AD 17.4), “matter” AD 898
 - countervailing duties (SCM Part V), compliance with GATT VI:3 and SCM Agreement (SCM 10) GATT 451, 468, SCM 357, 691–2
 - DSU, as integral part of WTU Agreement WTO 18
 - DSU, applicability, covered agreements (DSU 1.1/DSU 7.2) DSU 1
 - due process (dispute settlement proceedings), opportunity to respond to evidence/presentations of other parties DSU 360
 - GATT 1947/WTO continuity, GATT 1994 as distinct agreement (WTO II:4) WTO 27
 - interpretation of covered agreements, rules relating to including VCLT provisions, transitional decisions taken by signatories of Tokyo SCM Code SCM 591
 - investigations and reviews of existing [SCM] measures initiated . . . on or after date of entry into force of WTO Agreement (SCM 32.3)
 - procedural aspects of investigations, limitation to SCM 594
 - retroactivity GATT 451, SCM 590–1
 - “this agreement” SCM 592–3
 - transitional decisions of Tokyo Round Subsidies and Countervailing Measures Committee, relevance SCM 591
 - lex specialis*/presumption against treaty conflicts SCM 690–2
 - MFN treatment (GATT I:1), anti-dumping and countervailing duties (GATT VI) and GATT 96, 488

non-retroactivity of treaties (VCLT 28) in absence of different intention DSU 1521 as general principle of international law DSU 1521 pre-existing rights, countervailing duties (SCM 32.3) GATT 451, SCM 590–1 non-retroactivity of treaties (VCLT 28) and GATT 451 ordinary meaning of terms used in covered agreements, “provisions of this agreement” (SCM 32.3) GATT 451 relationships within and between agreements AD 18.3/SCM 32.3 GATT 451 n. 647, AD 965 GATT I/GATT VI GATT 96, 110 GATT VI/SCM GATT 496–7, SCM 690–2 SCM 10 and 32.1/SCM 32.3 SCM 592 request for establishment of panel, requirements (DSU 6.2), compliance, importance of, subsequent cure of defect, exclusion DSU 1145 n. 1789 Schedules of Concessions (GATT II), inconsistency with GATT VI and GATT 489 SCM Code (Tokyo Round) subsequent agreement for purpose of interpretation of GATT VI, whether subsequent practice for purpose of interpretation of GATT VI, whether special or additional rules and procedures (DSU 1.2 and Appendix 2), “shall prevail” in case of a difference with DSU 22 n. 25 terms of reference of panels (DSU 7) as definition of jurisdiction/legal claims at issue DSU 360 due process and, opportunity to respond to evidence/ presentations of other parties DSU 360 “matter referred to the DSB” (DSU 7.1) DSU 371 WTO Agreement objectives, “integrated multilateral trading system” WTO 12, SCM 690–2 preamble WTO 2 as single undertaking (WTO II:2) WTO 18	“any subsequent agreement . . . regarding its interpretation or application” (VCLT 31(3)(a)) DSU 1575 “any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)) investigations and reviews of existing [SCM] measures initiated . . . on or after date of entry into force of WTO Agreement (SCM 32.3), “existing measures” SCM 595 <i>lex specialis</i> /presumption against treaty conflicts General Interpretative Note (WTO Annex 1A) GATT 495–6, SCM 583, DSU 1714–15 precedence/hierarchy in case of conflict SCM 690–2 MFN treatment (GATT I:1), anti-dumping and countervailing duties (GATT VI) and GATT 96, 488 ordinary meaning of terms used in covered agreements, “in accordance with the provisions” (SCM 32.1) SCM 583 relationships within and between agreements GATT I/GATT VI GATT 96, 110 GATT VI/SCM GATT 495, SCM 583, 690 Schedules of Concessions (GATT II), inconsistency with GATT VI and GATT 489 SCM Agreement, preparatory work (VCLT 32), SCM Code (Tokyo Round) WTO 277 specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement, “except in accordance with the provisions” SCM 583 terms of reference of panels (DSU 7), special terms of reference (DSU 7.3) DSU 425 WTO Agreement, objectives, integrated multilateral trading system SCM 690–2
Brazil – Desiccated Coconut (Panel), WT/DS22/R, DSR 1999:IV anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement, separability of AD and GATT VI GATT 493 consultations (DSU 4) as prerequisites DSU 205 panel’s obligation to examine absence DSU 205 as unconditional obligation (DSU 4.2) DSU 137 consultations (SCM 4.1–4), “without prejudice” nature of obligation (DSU 4.6) DSU 137 countervailing duties (AG 13 footnote 4) AG 138 countervailing duties (SCM Part V) compliance with GATT VI:3 and SCM Agreement (SCM 10) SCM 691–2 measures to which GATT VI not applicable SCM 481 continuing collection of duties imposed prior to entry into force of WTO Agreement, SCM 32.3 and SCM 595 review of need for continued imposition (SCM 21.2) SCM 481 due restraint (AG 13) (“peace clause”), domestic support measures conforming with AG 6 (AG 13(b)), countervailing duties (AG 13 footnote 4) AG 138 GATT 1947, continuing relevance under WTO, GATT 1947/WTO continuity, decisions, procedures and customary practices (WTO XVI:1) GATT 1947/WTO continuity decisions, procedures and customary practices under GATT 1947 (WTO XVI:1) “decisions” (WTO XVI:1/GATT I(b)(iv)), classification as, SCM Code WTO 277 interpretation of covered agreements, rules relating to including VCLT provisions	Brazil – Retreaded Tyres (AB), WT/DS332/AB/R arbitrary or unjustifiable discrimination, GATT XX measure as (GATT XX chapeau) capricious or unpredictable reasons and GATT 870, 872 cause vs effects test GATT 870 “disguised restriction on international trade”, significant effect on achievement of objective and GATT 876, 877 link with legitimate objective, need for GATT 870, 873 balance between restrictive effect on international trade and “necessity” GATT 909 General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health “necessary”, for achievement of legitimate objective GATT 897–9 “reasonably available” alternative WTO-consistent measure GATT 907–8 complimentary measures distinguished GATT 908 three-tier test GATT 891 judicial economy definition DSU 642 prior decision on another point rendering discussion otiose, finding of non-compliance in first situation, need for DSU 642 panel reports, adoption of report/notice of appeal (DSU 16.4), extension of deadline procedural agreement on DSU 831 standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), reversal of panel findings, effect GATT 876 Brazil – Retreaded Tyres (Panel), WT/DS332/R General Exceptions (GATT XX), two-step analysis (justification under paras. (a)–(j))/compliance with chapeau) GATT 850 General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health, justification, compliance with GATT XX chapeau, need for GATT 910 General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements, “laws or regulations” GATT 924

<p>(cont.)</p> <p>quantitative restrictions, elimination (GATT XI)</p> <p>“prohibition or restriction” (GATT XI:1)</p> <p>import prohibition GATT 609</p> <p>enforcement measures GATT 611</p> <p>Brazil – Retreaded Tyres (Article 21.3(c)), WT/DS332/R</p> <p>“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)</p> <p>administrative measures as means of implementation, relevance DSU 1050 n. 1634</p> <p>shortest period possible within Member’s normal legislative process DSU 1034</p> <p>time required for ratification of treaty DSU 1500</p> <p>treaty, provisional application (VCLT 25) DSU 1500</p> <p>Canada – Aircraft Credits and Guarantees (Panel), WT/DS139/R and Corr.1, DSR 2002:III</p> <p>developing countries (SCM 27), Illustrative List of Export Subsidies (SCM Annex I item (k)) and SCM 526</p> <p>export subsidy, prohibited (SCM, Part II)</p> <p>“contingent in fact . . .” (SCM 3.1(a)), size of domestic market, relevance SCM 147</p> <p>“contingent upon export performance” (SCM 3.1(a)) (general) SCM 125</p> <p>OECD Arrangement, compliance with, relevance SCM 79</p> <p>knowledge or expectation, sufficiency, knowledge or expectation, sufficiency SCM 138</p> <p>GATT Subsidies Code, limited nature of provisions SCM 702</p> <p>good faith engagement in dispute settlement procedures (DSU 3.10), obligation to provide information on request (DXU 13.1) and DSU 117</p> <p>Illustrative List of Export Subsidies (SCM Annex I)</p> <p>export credit guarantee or insurance (item (j)), as contextual guidance SCM 615</p> <p>export credits at rates below actual cost of funds so employed (item (k)), burden of proof SCM 661</p> <p>“safe haven” (international undertaking (item (k), second paragraph))</p> <p>legislation as such (mandatory/discretionary distinction) SCM 663</p> <p>matching derogation, permissibility SCM 658–9</p> <p>information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), “from any individual or body”, good faith obligation (DSU 3.10) and DSU 117</p> <p>legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability, affirmative defence (SCM Illustrative List item (k)) and SCM 663</p> <p>loan guarantees, as benefit (SCM 14(c)) SCM 93, 414–15</p> <p>relationships within and between agreements</p> <p>DSU 23.1/SCM SCM 700, DSU 1296</p> <p>SCM 1.1(b)/SCM 3.1(a) SCM 73</p> <p>SCM 1.1(b)/SCM 14(c) SCM 93</p> <p>SCM Agreement, GATT Subsidies Code and SCM 702</p> <p>subsidy, calculation in terms of benefit to recipient (SCM 14)</p> <p>“benefit”, provision of services not available in the market SCM 80</p> <p>burden of proof, rebuttal of <i>prima facie</i> case SCM 91</p> <p>loan guarantees (SCM 14(c)) SCM 93, 414–15</p> <p>OECD Arrangement, relevance of compliance with SCM 79</p> <p>“recipient of a benefit” SCM 65</p> <p>subsidy programmes as such, right to challenge (mandatory/discretionary distinction) SCM 71–5, 663</p> <p>“as applied” SCM 71, 172–3</p> <p>assessment of mandatory nature DSU 293 n. 466</p> <p>burden of proof SCM 74–5</p> <p>order of analysis SCM 72</p> <p>SCM 3.1(a) as “substantive context” SCM 73</p>	<p>subsidy, definition (SCM 1.1(b)) (conferral of benefit), fiscal advantages, relevance SCM 78</p> <p>unilateral action by Member, prohibition (DSU 23.1) SCM 700, DSU 1297</p> <p>“withdrawal of subsidy without delay” (SCM 4.7), “without delay”, obligation of panel to specify time-period SCM 214</p> <p>Canada – Aircraft Credits and Guarantees (Article 22.6 – Canada), DS222/RB, DSR 2003:III</p> <p>arbitration (DSU 22.6)</p> <p>burden of proof, SCM 4.11 arbitrations DSU 586</p> <p>scope of review/arbitrators’ mandate/task (DSU 22.7), rejection of proposed level of suspension and DSU 1259</p> <p>timing in relation to Article 21.5 arbitration DSU 1176</p> <p>working procedures DSU 1212</p> <p>late submission of evidence DSU 729</p> <p>opportunity to comment, need for DSU 729</p> <p>new argumentation, cut-off date DSU 730</p> <p>burden of proof (general rules)</p> <p>Article 22.6 arbitrations DSU 586</p> <p>Article 22.6 arbitrations under SCM 4.11 DSU 586</p> <p>cooperation of parties and DSU 586</p> <p><i>onus probandi actori incumbit</i> DSU 586</p> <p>business confidential information (DSU 18.2) (BCI), <i>ex parte</i> communications with panel or AB (DSU 18.1) and DSU 9907</p> <p>countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10)</p> <p>arbitration (DSU 22.6) and (SCM 4.11), burden of proof DSU 586</p> <p>inducement of compliance as objective DSU 1179</p> <p>due process (dispute settlement proceedings)</p> <p>late submission of evidence DSU 729</p> <p>new argumentation, cut-off date DSU 730</p> <p>prejudice to party, relevance DSU 342 n. 552</p> <p><i>ex parte</i> communications with panel or AB (DSU 18.1), BCI (DSU 18.2) and DSU 907</p> <p>nature and purpose of countermeasures DSU 1179</p> <p>“or other obligations”, authorization to suspend (DSU 22.2) DSU 1192</p> <p>relationships within and between agreements</p> <p>DSU 22.6/SCM 4.10 and 4.11 DSU 586</p> <p>level equivalent to nullification or impairment (DSU 22.4), reasoned estimates, need for DSU 1228</p> <p>“or other obligations”, authorization to suspend (DSU 22.2), obligations under LIC DSU 1192, 1270</p> <p>as temporary measure (DSU 22.8) DSU 1179</p> <p>suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), agreement to DSU 1192, 1270</p> <p>termination of treaty for breach (VCLT 60), rights created prior to, effect on (VCLT 70) DSU 1176, 1673</p> <p>Canada – Aircraft dispute (WT/DS70)</p> <p>relationships within and between agreements, AIR 6/SCM AIR 23</p> <p>review of implementation of DSB rulings (DSU 21.5), ad hoc procedural agreements, establishment of panels DSU 1170</p> <p>SCM and AIR 23</p> <p>Canada – Aircraft (AB), WT/DS70/AB/R, DSR 1999:IV</p> <p>adverse inferences from party’s refusal to provide information, panel’s right to draw (DSU 13) DSU 561</p> <p>burden of proof and DSU 559–60</p> <p>discretionary nature DSU 561</p> <p>as general principle of international tribunal practice DSU 561</p> <p>burden of proof (general rules)</p> <p>adverse inferences (DSU 13) and DSU 559–60</p> <p><i>prima facie</i> case requirement</p>
---	---

business confidential information (BCI), additional procedures, AB DSU 920	accelerated/expedited procedures (SCM 4.3), statement of evidence (SCM 4.2) and SCM 188–90, 191
confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3), obligation to respect/ensure respect for DSU 914, 919	object and purpose, clarification and development of the facts of the situation/mutually agreed solution (SCM 4.3) SCM 203
confidentiality of proceedings (DSU 14/WP 3), adverse inferences from party’s refusal to provide information, panel’s right to draw (DSU 13) and DSU 561	“statement of available evidence” (SCM 4.2), request for establishment of panel (SCM 4.4) distinguished SCM 191
evidence, acceptability as for “objective assessment” (DSU 11) purposes, circumstantial evidence DSU 633	time–limits new evidence SCM 188 new evidence and allegations DSU 624
export subsidy, prohibited (SCM, Part II) “contingent . . . upon the use of domestic over imported goods” (SCM 3.1(b)), <i>de facto</i> contingency SCM 165 “contingent in fact . . .” (SCM 3.1(a)) “anticipated” (SCM 3.1(a) footnote 4) SCM 136 “but for” test SCM 134 case-by-case approach SCM 143 “grant or maintain” (SCM 3.1 footnote 4) SCM 136 knowledge or expectation, sufficiency SCM 144 “tied to” (SCM 3.1(a) footnote 4) SCM 133, 144 “contingent upon export performance” (SCM 3.1(a)) (general), “contingent” SCM 126	due process (dispute settlement proceedings) opportunity to respond to evidence/presentations of other parties SCM 188, 190 timing of submission of evidence (DS 12) and DSU 624 prejudice to party, relevance DSU 377
good faith engagement in dispute settlement procedures (DSU 3.10), obligation to provide information on request (DXU 13.1) and DSU 116	evidence (panel) (DSU 12) time–limits for submission absence of provision (Working Procedures (Appendix 3)) SCM 188–90, 191 accelerated procedures (SCM 4.3) and SCM 188–90, 191 affirmative defence (SCM 3.1) DSU 731 panel’s right to admit “late” /new evidence DSU 623–8, 624
information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2) “from any individual or body” good faith obligation (DSU 3.10) and DSU 116 parties DSU 747 prompt and full response requirement DSU 761–2	export subsidy, prohibited (SCM, Part II) “contingent in fact . . .” (SCM 3.1(a)) case-by-case approach SCM 143 “tied to” (SCM 3.1(a) footnote 4) SCM 133, 143 “contingent in law . . .” (SCM 3.1(a)) SCM 129 “contingent upon export performance” (SCM 3.1(a)) (general), “export performance” SCM 149 knowledge or expectation, sufficiency, knowledge or expectation, sufficiency SCM 133, 137, 143, 146
interpretation of covered agreements, rules relating to including VCLT provisions dictionaries SCM 136 text/plain language (VCLT 31(2)) SCM 135	identification of specific measures (DSU 6.2) identification of industry, need for DSU 233 identity with specific measure the subject of consultations, relevance SCM 203
judicial economy, adverse inferences and DSU 561	Illustrative List of Export Subsidies (SCM Annex I), export credits at rates below actual cost of funds so employed (item (k)), “benefit” (SCM 1.1(b)) and SCM 94
loan guarantees, as benefit (SCM 14(c)) SCM 415	interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose, caution in use of DSU 1569
ordinary meaning of terms used in covered agreements “benefit” (SCM 1.1(b)) SCM 59 “confer” (SCM 1.1(b)) SCM 59 “contingent” (SCM 3.1) SCM 135, 165 “tied to” (SCM 3.1(a)) SCM 133, 136	legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1) arguments distinguished DSU 624 clarification of claim during proceedings DSU 348 summary “sufficient to present the problem clearly” DSU 377
relationships within and between agreements SCM 1.1(b)/SCM 14 SCM 59, 87, 92 SCM 1.1(b)/SCM Annex IV SCM 96	legislation as such, right to challenge (WTO XVI:4) mandatory/discretionary legislation, distinguishability SCM 81, DSU 293 assessment of mandatory nature DSU 293
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), new arguments DSU 855	notification obligations (SCM 25), notification, effect (SCM 25.7) SCM 517
standard/powers of review (panel) (DSU 11), “objective assessment of the facts” /alleged disregard or distortion of the evidence, circumstantial evidence DSU 633	ordinary meaning of terms used in covered agreements, “benefit” (SCM 1.1(b)) SCM 59
subsidy, calculation in terms of benefit to recipient (SCM 14) “benefit” (SCM 1.1(b)) and SCM 59, 87, 92 loan guarantees (SCM 14(c)) SCM 415	preliminary rulings on, timing of submission of evidence DSU 624
subsidy, definition (SCM 1.1(b)) (conferral of benefit) “benefit” cost to government, relevance SCM 59 market test SCM 61 SCM 14 and SCM 59, 87, 92 SCM Annex IV and SCM 96	preliminary rulings (procedural aspects) absence of requirement/established practice DSU 348–9 procedures, need for DSU 348–9 timing DSU 348
third party rights (DSU 10 and Appendix 3), single panel proceedings (DSU 9.1) DSU 515	relationships within and between agreements DSU 11/SCM 4 SCM 188–90, 188–91 SCM 1.1(b)/SCM 14 SCM 92 SCM 1.1(b)/SCM Annex I item (k) SCM 94
Canada – Aircraft (Panel), WT/DS70/R, DSR 1999:IV accelerated/expedited procedures, consultations (SCM 4.1–4), statement of evidence (SCM 4.2) and SCM 188–90, 191	request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 377
business confidential information (BCI), additional procedures, panel (DSU 12.1) DSU 687, 919	request for establishment of panel, requirements (SCM 4.4) accelerated/expedited procedures (ABWP 31), relevance SCM 191
consultations (SCM 4.1–4)	failure to reach mutually agreed solution through consultations SCM 203 statement of available evidence, relevance SCM 191

<i>(cont.)</i>	
SCM Agreement, object and purpose (SCM 1), multilateral disciplines on subsidies distorting international trade	effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to omissions
SCM 2	DSU 1615
standard/powers of review (panel) (DSU 11), “make such other findings” DSU 601	object and purpose, GATT I:1 GATT 50
subsidy, calculation in terms of benefit to recipient (SCM 14), “benefit” (SCM 1.1(b)) and SCM 92	same or closely related phrases in same agreement, SPS 3.1(a)/SPS 3.1(b) SCM 166–7
subsidy, definition (SCM 1.1(b)) (conferral of benefit) “benefit”	judicial economy
cost to government, relevance SCM 59	explicit reference to, relevance DSU 649
market test SCM 60	“positive solution to dispute” requirement (DSU 3.7)/false judicial economy and DSU 649
burden of proof, rebuttal of <i>prima facie</i> case SCM 90	“measures affecting trade in services” (GATS I:1)
SCM 14 and SCM 92	“affecting” GATS 11–12
SCM Illustrative List, Item (k) and SCM 94	wholesale trade service suppliers in their capacity as service suppliers, need to examine GATS 12
subsidy programmes as such, right to challenge (mandatory/discretionary distinction), “as applied” SCM 81	MFN treatment (GATS II), determination of violation, elements, analysis of evidence GATS 33
Trade Policy Review Mechanism (TPRM), dispute settlement/enforcement of specific obligations, exclusion (TRMS A (i)) TPRM 5	MFN treatment (GATT I:1)
Canada – Aircraft (Article 21.5 – Brazil) (AB), WT/DS70/AB/RW, DSR 2000:IX	“accorded immediately and unconditionally to the like product”, affiliation with designated local manufacturer/importer requirement and GATT 47–8
review of implementation of DSB rulings (DSU 21.5)	“advantage”, “any advantage . . . granted . . . to any product” GATT 34
competence of DSU 21.5 (compliance) panel, determination of consistency of measure with WTO obligations DSU 1100	“all other contracting parties”, RTAs (GATT XXIV:5) and GATT 115
“measures taken to comply”	<i>de facto</i> discrimination GATT 26
examination on basis of facts proved during panel proceedings and DSU 1141	ordinary meaning of terms used in covered agreements
measure subject of original dispute distinguished DSU 1110, 1148 n. 1801	“contingent” (SCM 3.1) SCM 165
measure taken “to comply” /measure subject of original dispute distinguished DSU 1110	“contingent upon the use of domestic over imported goods” (SCM 3.1(b)) SCM 167
new measures DSU 1143	relationships within and between agreements
Canada – Aircraft (Article 21.5 – Brazil) (Panel), WT/DS70/R, DSR 2000:IX	GATS I:1/GATS II/XVII GATS 11, 32, 11, 32
export subsidy, prohibited (SCM, Part II), “contingent upon export performance” (SCM 3.1(a)) (general), “export performance” SCM 148–9	GATS/GATT GATT 429
Illustrative List of Export Subsidies (SCM Annex I)	GATT I/GATT XXIV GATT 115
export credits at rates below actual cost of funds so employed (item (k))	standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 866
burden of proof SCM 654	subsidy, definition (SCM 1.1(a)(1)) (financial contribution)
Commercial Interest Reference Rate (CIRR), relevance SCM 650	exemption from or remission of internal taxes upon exportation (SCM 1.1(a)(1)(ii) footnote 1) SCM 36
“export credit practice” SCM 644–5	foregoing of revenues otherwise due (SCM 1.1(a)(1)(ii)), “otherwise due” /basis of comparison (“but for” test) SCM 35–6
international undertaking on official export credits (item (k), second paragraph) (“safe haven”)	Canada – Autos (Panel), WT/DS139/R, WT/DS142/R, DSR 2000:VI and DSR 2000:VII
Canadian Policy Guideline SCM 652	customs unions (GATT XXIV:5(a))
“in conformity” SCM 650–2	as defence or exception (“shall not prevent”), trade-restrictiveness test GATT 1013
matching derogation, permissibility SCM 657	definition (GATT XXIV:8(a)), internal trade arrangements (“substantially all trade”) (GATT XXIV:8(a)(i)) GATT 1032
OECD Arrangement SCM 639, 642, 650–2	due process (dispute settlement proceedings)
qualification for inclusion under, requirements SCM 637	new argumentation, cut-off date DSU 329
“safe haven” (international undertaking (item (k), second paragraph)), “interest rates provisions” SCM 649	opportunity to respond to evidence/presentations of other parties DSU 329
ordinary meaning of terms used in covered agreements, “export credit practice” (SCM Illustrative List item (k)) SCM 644	prejudice to party, relevance DSU 329
Canada – Autos (AB), WT/DS139/AB/R, WT/DS142/AB/R, DSR 2000:VI and DSR 2000:VII	economic integration (GATS V)
export subsidy, prohibited (SCM, Part II)	RTAs, notification, national treatment (GATS V:1(b))/MFN treatment (GATS II), applicability GATS 52
“contingent . . . upon the use of domestic over imported goods” (SCM 3.1(b)), <i>de facto</i> contingency SCM 165, 166–7	“substantially all discrimination” (GATS V:1(b)) GATS 52
“contingent in law . . .” (SCM 3.1(a)) SCM 127–8, 130	export subsidy, prohibited (SCM, Part II)
GATT, object and purpose (GATT I:1), non-discrimination GATT 24, 26	“contingent . . . upon the use of domestic over imported goods” (SCM 3.1(b)), <i>de facto</i> contingency SCM 166
interpretation of covered agreements, rules relating to including VCLT provisions	“contingent in fact . . .” (SCM 3.1(a)), <i>de facto</i> contingency SCM 166
	GATT 1994, object and purpose (GATT I:1), non-discrimination GATT 50

identification of specific measures (DSU 6.2), government action, limitation to DSU 250	recommendations and rulings (Article 21.3(c) arbitrations), coordination with other changes, relevance DSU 1080
interpretation of covered agreements, rules relating to including VCLT provisions	Canada – Continued Suspension (Panel), WT/DS321/R
object and purpose GATT 50	burden of proof (general rules), good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) GATT 570 n. 805
same or closely related phrases in same agreement, SPS 3.1(a)/SPS 3.1(b) SCM 166	conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4), suspension of concessions (DSU 22) and WTO 289
judicial economy, prior decision on another point rendering discussion otiose TRIMs 12–13, SCM 180	good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), burden of proof/presumption of GATT 570 n. 805
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), arguments distinguished DSU 329	suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
“like product” (GATT III:2 and III:4), relevant factors, nationality of producer or origin of product (“hypothetical” like products) GATT 340	conformity of measure with WTO obligation, obligation to ensure (WTO XVI:4) WTO 289
“measures affecting trade in services” (GATS I:1), “affecting” GATS 11	as temporary measure (DSU 22.8) WTO 289
MFN treatment (GATS II)	Canada – Dairy dispute (WT/DS103, WT/DS113)
“like service and service supplier” (GATS II:1), wholesale transactions GATS 37	review of implementation of DSB rulings (DSU 21.5), ad hoc procedural agreements, compliance with deadlines DSU 1173
vertical integration/exclusive distribution arrangements, effect GATS 35	“sequencing” (interrelationship between Article 21.5 and Article 22.6 arbitration, ad hoc procedural agreements), simultaneous recourse to Article 21.5 and Article 22 DSU 1161
MFN treatment (GATT I:1)	Canada – Dairy (AB), WT/DS103/AB/R and Corr.1, WT/DS113/AB/R and Corr.1, DSR 1999:V and DSR 1999:VI
“accorded immediately and unconditionally to the like product” conditional advantage and “advantage accorded unconditionally” distinguished GATT 49	export subsidy commitments (AG 9)
“unconditionally”, ordinary meaning GATT 49	“direct subsidies, including payments-in-kind” (AG 9.1(a))
“all other contracting parties”, RTAs (GATT XXIV:5) and GATT 50, 99, 115	“governments or their agencies” AG 85
frontier traffic, customs unions and free trade areas (GATT XXIV) and GATT 99	payment-in-kind as direct subsidy AG 84
national treatment, regulatory discrimination (GATT III:4)	export subsidy, definition (AG 1(e)) AG 11
“affecting” GATT 360	interpretation of covered agreements, rules relating to including VCLT provisions
actual impact, relevance GATT 360	dictionaries AG 85, 87
ordinary meaning GATT 360	effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to every word and phrase DSU 1613
“laws, regulations or requirements”	same or closely related phrases in different agreements, AG 9.1(a)/SCM 1.1 AG 84
non-mandatory measures GATT 351, 355	same or closely related phrases in same agreement, AG 9.1(a)/AG 9.1(c) AG 87–90
private action and GATT 355, DSU 250	supplementary means (VCLT 32)
ratio requirement (net sales value of locally-produced product/locally sold product), ratio requirement (net sales value of locally-produced product/locally sold product) GATT 364	“circumstances of its conclusion”, unilateral classification practice DSU 1649 n. 2574
TRIMs and GATT 424, TRIMs 12–14	“recourse may be had” DSU 1630
national treatment, services and service suppliers (GATS XVII), foreign character of services (SG XVII footnote 10), relevance GATS 133	ordinary meaning of terms used in covered agreements
ordinary meaning of terms used in covered agreements	“payments” AG 89–90
“affecting” (GATT III:4) GATT 360	“payments” (AG 9.1(c)) AG 88–90
“requirements” (GATT III:4) DSU 250	payments on export of agricultural product financed by virtue of governmental action (AG 9.1(c))
“unconditionally” (GATT I:1) GATT 49	“budgetary outlays” (AG 1(c)), “revenue foregone” AG 10
relationships within and between agreements	“financed”, “whether or not a charge on the public account” AG 87
GATS XVII/GATT III:4/SCM 3.1(a) SCM 180	“payments”
GATS XVII/SCM 3.1(a) SCM 180	payment-in-kind as AG 87–90
GATT I/GATT XXIV GATT 115	transfer of economic resources, need for AG 87
GATT III:4/SCM 3.1(a) SCM 180	Schedules of Concessions (GATT II)
GATT III:4/TRIMs 2 GATT 424	“subject to the terms, conditions or qualifications in the schedule” (GATT II:1(b))
request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 329	description distinguished GATT 140
State responsibility as rule/general principle of international law (ILC Articles), responsibility for act or omission of, private parties GATT 355, DSU 250	price ceiling not included in Schedule GATT 141
subsidy, specificity (SCM 2), subsidy “contingent upon the use of domestic over imported goods” (SCM 2.3/SCM 3.1) SCM 119	“subject to” GATT 140
TRIMs Agreement, as integral part of WTO Agreement TRIMs 12–14	subsidy, definition (SCM 1.1(a)(1)) (financial contribution), transfer of economic resources from grantor to recipient for less than full consideration AG 84
Canada – Autos (Article 21.3), WT/DS139/12, WT/DS142/12, DSR 2000:X , “reasonable period” for implementation of	

(cont.)

Canada – Dairy (Panel), WT/DS103/R, WT/DS113/R, DSR 1999:V and DSR 1999:VI

“agricultural products” (AG 2/Annex 1), applicability AG 21
Agriculture Agreement (AG)
 object and purpose (preamble)
 fair and market-oriented agricultural trading system AG 2
 on-going reform AG 2
export subsidy commitments (AG 9), “direct subsidies, including payments-in-kind” (AG 9.1(a)), payment-in-kind as direct subsidy AG 84
import licensing procedures, non-automatic import licensing (LIC 3), GATT II(1)(b) and LIC 32
judicial economy, prior decision on another point rendering discussion otiose LIC 32
relationships within and between agreements, GATT II:1(b)/LIC 3 GATT 175, LIC 32
Schedules of Concessions (GATT II)
 “subject to the terms, conditions or qualifications in the schedule” (GATT II:1(b))
 description distinguished GATT 140
 “subject to” GATT 140
State responsibility as rule/general principle of international law (ILC Articles), “agent” / “organ” of State DSU 1676

Canada – Dairy (Article 21.5 – New Zealand and US) (AB), WT/DS103/AB/RW, WT/DS113/AB/RW, DSR 2001:XIII

export subsidy commitments, prevention of circumvention (AG 10), export subsidy, prohibited (SCM 1.1 and 3.1) and SCM 181
interpretation of covered agreements, rules relating to including VCLT provisions
 AG 9.1(c)/SCM Illustrative List items (c), (d) and (k) SCM 601
 same or closely related phrases in same agreement, AG 9.1(a) and (b)/AG 9.1(c) AG 92
order of analysis, AD 13/SCM 3, 5 and 6/GATT XVI SCM 182
payments on export of agricultural product financed by virtue of governmental action (AG 9.1(c))
 benchmark/standard (AG 9.1(c))
 absence of express provision, relevance AG 92
 domestic price fixed by government AG 93
 factual and regulatory setting, relevance AG 92–3
 industry-wide production costs AG 96
 market rate, relevance, world market price AG 94–5
 objective standard, need for AG 94–5
 “by virtue of” AG 99, 101, 106
 link, need for AG 100–7
 “financed” AG 99
 “whether or not a charge on the public account” AG 99
 “government action” AG 98
 government mandate or direction, relevance, AG 9.1(e), SCM 1.1 and SCM Illustrative List of Export Subsidies distinguished SCM 601
 payments by private parties as AG 102
relationships within and between agreements
 AG 9.1 and 10.1/SCM 1.1 and SCM 3.1 SCM 181–2, 701
 AG 9.1(c)/9.2 AG 92
 AG 9.1(c)/SCM Illustrative List items (c), (d) and (k) SCM 601
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 869

Canada – Dairy (Article 21.5 – New Zealand and US) (Panel), WT/DS103/RW, WT/DS113/RW, DSR 2001:XIII

Agriculture Agreement (AG)
 object and purpose (preamble)
 AG 9.1(c) and AG 3
 fair and market-oriented agricultural trading system AG 3

interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose, preamble as evidence of AG 3
order of analysis, AD 13/SCM 3, 5 and 6/GATT XVI SCM 182 n. 283
payments on export of agricultural product financed by virtue of governmental action (AG 9.1(c))
 benchmark/standard (AG 9.1(c)), market intervention AG 3
 “by virtue of” AG 100
 “but for” test AG 100
preliminary rulings on, third party rights DSU 505
relationships within and between agreements
 GATT II:1(b)/LIC 3 LIC 32
 SCM 3.1/SCM 4.7 SCM 153
review of implementation of DSB rulings (DSU 21.5), third party rights (DSU 10), right to receive submissions to first meeting of the panel, limitation to (DSU 10.3) DSU 504–5, 505–6
third party rights (Article 21.5 proceedings) DSU 505
 preliminary ruling on DSU 505
 “withdrawal of subsidy without delay” (SCM 4.7), agricultural subsidies, applicability to SCM 153

Canada – Dairy (Article 21.5 – New Zealand and US II) (AB), WT/DS103/AB/RW2, WT/DS113/AB/RW2, DSR 2003:I

burden of proof, reversal DSU 544
export subsidy commitments, prevention of circumvention (AG 10), burden of proof (AG 10.3), reversal AG 126
ordinary meaning of terms used in covered agreements, “financing” (AG 9.1(c)) AG 104
payments on export of agricultural product financed by virtue of governmental action (AG 9.1(c))
 benchmark/standard (AG 9.1(c)), industry-wide production costs AG 97
 “by virtue of” AG 99, 104–7
 “financed” AG 104–7
 “whether or not a charge on the public account” AG 104
 “payments”, cross-subsidization as/as cross-subsidization AG 106

Canada – FIRA (GATT Panel), BISD 30S/140

national treatment, general principle (GATT III:1), applicability, measures imposed at the time or point of importation (“internal measures”) (*Ad Article*), QRs (GATT XI) distinguished GATT 408
national treatment, regulatory discrimination (GATT III:4), “requirements”, private action and GATT 46 n. 45, 355
quantitative restrictions, elimination (GATT XI)
 GATT III, and GATT 408
 as importation measure GATT 408
State responsibility as rule/general principle of international law (ILC Articles), responsibility for act or omission of, private parties DSU 250

Canada – Patent Term (AB), WT/DS170/AB/R, DSR 2000:X and DSR 2000:XI

AB procedures (DSU 17.9 and ABWP), written responses (ABWP 28), requests for additional memoranda/submissions DSU 1462
intellectual property rights, acquisition and maintenance including *inter partes* procedures
 relationship between TRIPS 33 and TRIPS 62.2 TRIPS 276
 unwarranted curtailment, prohibition (TRIPS 62.2), term of protection (TRIPS 33) as distinct and cumulative provision TRIPS 276
intellectual property rights, availability, scope and use (TRIPS Part II)
 existing subject matter, applicability to (TRIPS 70)
 “acts which occurred before date” (TRIPS 70.1) and “existing at the date” (TRIPS 70.2) distinguished TRIPS 307, 311, DSU 1524

<p>“acts” (TRIPS 70.1) TRIPS 308–10, DSU 1524</p> <p>“subject matter” (TRIPS 70.2) TRIPS 311</p> <p>term of protection (TRIPS 33) and TRIPS 317</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, as a whole/holistic/harmonious exercise TRIPS 276, 308</p> <p>non-retroactivity of treaties (VCLT 28)</p> <p>in absence of different intention DSU 1524</p> <p>continuing measures DSU 1524, 1527</p> <p>ordinary meaning of terms used in covered agreements</p> <p>“acts” (TRIPS 70.1) TRIPS 308–10, DSU 1524</p> <p>“filing date” (TRIPS 33) TRIPS 211</p> <p>“subject-matter” (TRIPS 70.2) TRIPS 311</p> <p>terms used in, TRIPS 33 TRIPS 211</p> <p>patents (TRIPS part II Section 5)</p> <p>patentable subject matter (TRIPS 27), as context for interpretation of TRIPS 70 (protection of existing subject matter) TRIPS 311</p> <p>term of protection (TRIPS 33)</p> <p>“available” TRIPS 212</p> <p>“effectiveness”, relevance TRIPS 213</p> <p>“existing subject matter” (TRIPS 70.2) and TRIPS 317</p> <p>freedom to choose method of implementation (TRIPS 1.1) and, “filing date” TRIPS 211</p> <p>unwarranted curtailment, prohibition (TRIPS 62.2) as distinct and cumulative provision TRIPS 276</p> <p>relationships within and between agreements</p> <p>TRIPS 33/TRIPS 70.2 TRIPS 317</p> <p>TRIPS 70.1/70.2 TRIPS 307</p> <p>retroactivity (TRIPS 70.1) TRIPS 307, DSU 1524</p> <p>TRIPS Agreement</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose (TRIPS 7) TRIPS 310</p> <p>transitional arrangements (TRIPS 65), procedural nature TRIPS 287</p> <p>Canada – Patent Term (Panel), WT/DS170/R, DSR 2000:X and DSR 2000:XI</p> <p>consultations (DSU 4), acceleration (DSU 4.9), panel’s workload and DSU 174</p> <p>fair and equitable procedures (TRIPS 42)</p> <p>requirement (TRIPS 41.2) TRIPS 218</p> <p>“right holders” TRIPS 218</p> <p>intellectual property rights, availability, scope and use (TRIPS Part II), <i>acquisition</i> and maintenance (TRIPS 62), unwarranted curtailment, prohibition (TRIPS 62.2), term of protection (TRIPS 33) as distinct and cumulative provision TRIPS 8</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, “any subsequent agreement . . . regarding its interpretation or application” (VCLT 31(3) (a)) DSU 1576</p> <p>judicial economy, prior decision on another point rendering discussion otiose TRIPS 215</p> <p>patents (TRIPS part II Section 5)</p> <p>patentable subject matter (TRIPS 27)</p> <p>“discrimination” (TRIPS 27.1), “fields of technology” TRIPS 180</p> <p>policy considerations underlying TRIPS 185</p> <p>term of protection (TRIPS 33)</p> <p>freedom to choose method of implementation (TRIPS 1.1) and TRIPS 8</p> <p>“filing date” TRIPS 211</p> <p>unwarranted curtailment, prohibition (TRIPS 62.2) as distinct and cumulative provision TRIPS 8</p> <p>TRIPS Agreement</p> <p>obligations (TRIPS 1), implementation obligation (TRIPS 1.1), freedom to choose method TRIPS 8</p>	<p>protection of existing subject matter (TRIPS 70), freedom to choose method of implementation (TRIPS 1.1) and TRIPS 8</p> <p>Canada – Patent Term (Article 21.3(c)), WT/DS170/10</p> <p>“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)</p> <p>contentiousness/political sensitivity, relevance DSU 1058</p> <p>legislative process, government control of DSU 1084</p> <p>Canada – Periodicals (AB), WT/DS31/AB/R, DSR 1997:I</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “may uphold, modify or reverse” panel findings (DSU 17.13), unappealed findings WTO 281, DSU 822, 892</p> <p>directly competitive or substitutable products (GATT III:2), as dynamic relationship (including possibility of latent demand) GATT 296</p> <p>GATS Agreement, GATT 1994 overlap GATT 427, GATS 27, 27–8</p> <p>GATT 1947/WTO continuity, decisions, procedures and customary practices under GATT 1947 (WTO XVI:1) (GATT <i>acquis</i>), panel reports (unappealed findings) WTO 281, DSU 822, 892</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose GATT 389</p> <p>legal status of panel reports, unappealed findings WTO 281, DSU 822, 892</p> <p>“like product” (GATT I), “like product” analysis, nationality of producer or origin of product (“hypothetical” like products) GATT 41</p> <p>“like product” (GATT III:2 and III:4)</p> <p>determination of “likeness”</p> <p>as legal issue DSU 841, 859</p> <p>as a relative concept (“accordion”)/case-by-case approach GATT 242, 248, DSU 841, 859</p> <p>narrow interpretation GATT 242</p> <p>relevant factors</p> <p>consumer preferences GATT 242, 248</p> <p>end-uses GATT 242, 248</p> <p>physical properties GATT 242, 248</p> <p>national treatment, general principle (GATT III:1)</p> <p>“so as to afford protection”</p> <p>equality of competitive conditions GATT 203</p> <p>protection of competitive <i>relationship</i> GATT 221</p> <p>national treatment, payment of subsidies exclusively to domestic producers as exception (GATT III:8(b))</p> <p>expenditure of revenue by government, limitation to GATT 389</p> <p>object and purpose GATT 389</p> <p>national treatment, tax discrimination (GATT III:2)</p> <p>determination of violation, elements (GATT III:2, second sentence), “not similarly taxed” (<i>Ad Article III</i>) GATT 268, 309</p> <p>“directly or indirectly” (GATT III:2, first sentence) GATT 277</p> <p>first and second sentences distinguished GATT 231–3, DSU 416 n. 698</p> <p>“in excess of those applied” (GATT III:2, first sentence)</p> <p>“like product” and “in excess of” GATT 238</p> <p>methodology of comparison, individual transactions basis GATT 268, 309</p> <p>“so as to afford protection”</p> <p>design and structure of measure as evidence of protective application GATT 317</p> <p>intention of legislators/regulators, relevance GATT 317</p> <p>preparatory work (VCLT 32), GATT III:8 GATT 389, DSU 1639</p> <p>relationships within and between agreements, GATS/GATT GATT 427</p> <p>standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)</p> <p>completion of the legal analysis in case of DSU 859</p>
---	---

(cont.)

law vs fact, “like products” (GATT II:2), determination as DSU 841, 859

legal findings or developed interpretations, limitation to (DSU 17.13) DSU 841, 859

TRIMs, relationship with other agreements, SCM Agreement **TRIMs 8**

Canada – Periodicals (Panel), WT/DS31/R and Corr.1, DSR 1997:I
GATS Agreement, GATT 1994 overlap WTO 25, GATT 427, **GATS 24–6**

interpretation of covered agreements, rules relating to including VCLT provisions, effectiveness principle (*ut res magis valeat quam pereat/effet utile*), meaning to be attributed to every word and phrase GATS 25

lex specialis/presumption against treaty conflicts, General Interpretative Note (WTO Annex 1A) WTO 25, DSU 1716

“like product” (GATT III:2 and III:4)
relevant factors
end-uses GATT 248
nationality of producer or origin of product (“hypothetical” like products) GATT 248, DSU 598 n. 955

national treatment, payment of subsidies exclusively to domestic producers as exception (GATT III:8(b)), expenditure of revenue by government, limitation to GATT 389

quantitative restrictions, elimination (GATT XI), “prohibition or restriction” (GATT XI:1), import prohibition GATT 607

WTO Agreement, as single undertaking (WTO II:2), coexistence WTO 25

Canada – Pharmaceutical Patents (Panel), WT/DS114/R, DSR 2000:V
Berne Convention/TRIPS, relationship (TRIPS 9), incorporation, effect TRIPS 201

burden of proof (general rules), impossible burden, proving a negative DSU 568

legitimate interests, TRIPS 30 TRIPS 189, 198–203

ordinary meaning of terms used in covered agreements
“discriminate” (TRIPS 27.1) **TRIPS 177–8**
“normal” (TRIPS 13/TRIPS 30) TRIPS 195

patents (TRIPS part II Section 5)
exclusive rights (TRIPS 28) TRIPS 188
limited exceptions (TRIPS 30)
applicability of TRIPS 27.1 **TRIPS 184–5**
balance of agreement as a whole and TRIPS 191
compensatory adjustment TRIPS 203
conditions/criteria (“limited”) TRIPS 189
curtailment of owner’s rights **TRIPS 192–4**
economic impact **TRIPS 193–4**
“exploitation of patent” **TRIPS 195–7**
“legitimate interests” **TRIPS 198–203**

legal rights distinguished TRIPS 200
“normal exploitation” **TRIPS 195–6**
cumulative nature **TRIPS 192–4**
“discrimination” (TRIPS 27.1), applicability **TRIPS 184–5**
“exception” TRIPS 136
patentable subject matter (TRIPS 27)
“discrimination” (TRIPS 27.1)
applicability to TRIPS 30 and 31 **TRIPS 184–5**
de facto discrimination **TRIPS 177–8**
exceptions (TRIPS 30), applicability **TRIPS 184–5**

relationships within and between agreements, TRIPS 27.1/TRIPS 30 and 31 **TRIPS 184–5**

trademarks (TRIPS Part II Section 2), “limited exceptions” (TRIPS 17), burden of proof TRIPS 144

TRIPS Agreement, object and purpose (preamble/TRIPS 7), balance of rights and obligations TRIPS 191

Canada – Pharmaceutical Patents (Article 21.3(c)), WT/DS114/13, DSR 2002:I
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)
15-month guideline DSU 1039
administrative measures as means of implementation, relevance DSU 1052
burden of proof DSU 1086
complexity of implementation process DSU 1052
contentiousness/political sensitivity, relevance DSU 1056
as legal determination DSU 1030
limitation to cases of impracticability DSU 1014
“particular circumstances” DSU 1043
shortest period possible within Member’s normal legislative process DSU 1030
structural adjustment, relevance of need for DSU 1063

Canada – Wheat Exports and Grain Imports (AB), WT/DS276/AB/R, DSR 2004:VI
judicial economy
definition DSU 641, 655
discretionary nature DSU 641
relationships within and between agreements, GATT XVII:1(a)/GATT XVII:1(b) GATT 729, 731, 734–5
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), law vs fact, panel as trier of facts DSU 610
standard/powers of review (panel) (DSU 11)
“objective assessment of the facts” /alleged disregard or distortion of the evidence
discretion in selection of evidence to refer to explicitly DSU 610
egregious error, need for DSU 610

State trading enterprises (STEs) (GATT XVII)
GATT XVII:1(a) and 1(b), interrelationship GATT 729, 731, 735
non-discriminatory treatment (GATT I general principle) (GATT XVII:1(a)) and GATT 724, 726–7
“shall be understood to require” (GATT XVII:1(b))
“adequate opportunity” GATT 732
“commercial considerations” GATT 731

Canada – Wheat Exports and Grain Imports (Panel), WT/DS276/R, DSR 2004:VI
consultations (DSU 4), confidentiality (DSU 4.6), information in the public domain DSU 162

General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health, “reasonably available” alternative WTO-consistent measure, “reasonably available” GATT 928

General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements
“necessary” to secure compliance
balancing of factors GATT 917
“reasonably available” alternative WTO-consistent measure GATT 917

good faith engagement in dispute settlement procedures (DSU 3.10), establishment of new panel during preparation of preliminary rulings DSU 129

Government Procurement Agreement (GPA), definitions, “participate” (GPA VIII(c)) GPA 22

identification of specific measures (DSU 6.2)
case-by-case approach DSU 211
“identify”, sufficiency of, reference to general measure DSU 211
ordinary meaning DSU 211

interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in different agreements, GATT XVII:1(b)/GPA VIII(c) GPA 22

legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), which measures violate which provisions requirement DSU 321	developing countries and (DSU 21.2) DSU 1007 “reasonable” DSU 1037
“like product” (GATT III:2 and III:4), relevant factors, nationality of producer or origin of product (“hypothetical” like products) GATT 339	Chile – Price Band System (AB), WT/DS207/AB/R, DSR 2002:VIII
multiple complainants (DSU 9), single panel, “whenever feasible” (DSU 9.1), separate panel reports (DSU 9.2), structure DSU 453	Agriculture Agreement (AG) object and purpose (preamble) developing countries’ needs and conditions AG 4 fair and market-oriented agricultural trading system AG 4 market access (AG 4) AG 34
multiple panels/same parties/same dispute, separate panel reports DSU 453	competence of panels and AB (DSU 3.2/DSU 11/DSU 17), right to develop own legal reasoning including arguments not adduced by parties (<i>jura novit curia</i>) DSU 326, 416
multiple panels/same parties/same dispute (DSU 9.3) DSU 462	customs duties, “ordinary customs duties” (GATT II(1)(b)/AG 4.2) GATT 174, AG 42–5 , DSU 1660
national treatment, regulatory discrimination (GATT III:4) “laws, regulations or requirements”, non-mandatory measures GATT 352	developing countries (AG preamble), needs and conditions AG 4 due process (dispute settlement proceedings) objective assessment obligations (DSU 11) and DSU 618, 680 opportunity to respond to evidence/presentations of other parties DSU 343, 618, 676
“requirements”, non-mandatory measures GATT 352	interpretation of covered agreements, rules relating to including VCLT provisions
TRIMs and TRIMs 17	“any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)) AG 40
ordinary meaning of terms used in covered agreements, “identify the specific measure at issue” (DSU 6.2) DSU 211	scheduling practice AG 42
preliminary rulings on claims outside terms of reference DSU 462	dictionaries AG 41, 57
establishment of new panel during preparation of, good faith (DSU 3.10) and DSU 129	footnotes to treaty as aid/integral part of treaty AG 36, 38, 66
specificity of request for panel (DSU 6.2) DSU 462	grammar, respect for AG 37
third party rights DSU 501	“ordinary meaning . . . in their context . . . in light of object and purpose” (VCLT 31(1)) AG 37–9
preliminary rulings (procedural aspects), third parties’ rights relating to DSU 501	same or closely related phrases in same agreement, AG 4.2/AG 5 AG 39
relationships within and between agreements, GATT III:4/TRIMs 2	text/plain language (VCLT 31(2)) AG 37
TRIMs 17	legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), arguments distinguished DSU 326
request for establishment of panel, requirements (DSU 6.2) compliance, importance of, failure to comply, request for/ establishment of second panel DSU 462	market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1)
due process/ability to defend itself considerations DSU 211	border measures
State trading enterprises (STEs) (GATT XVII)	distorting effect AG 63
circumvention of obligations, prevention GATT 721–2	“similar border measures” (footnote 1)
“shall be understood to require” (GATT XVII:1(b)), “participate in”, GPA VIII(c) compared GPA 22	“similar” AG 57–9
third party rights, preliminary proceedings, participation in DSU 935	tariff caps and AG 61–2
Chile – Alcoholic Beverages (AB), WT/DS87/AB/R, WT/DS110/ AB/R7DSR 2000:I	“converted” AG 41
competence of panels and AB (DSU 3.2/DSU 11/DSU 17), not to add to or diminish rights and obligations (DSU 3.2/19.2) DSU 60, 988	developing countries (preamble) and AG 4
national treatment, tax discrimination (GATT III:2) “so as to afford protection” design and structure of measure as evidence of protective application GATT 319, RO 5	failure to convert by due date, effect AG 37
intention of legislators/regulators, relevance GATT 319, RO 5	“have been required to be converted” AG 37, 39
necessity of tax, relevance GATT 319	“have been converted” (AG 5) distinguished AG 39
panel reports, rationale, need for (DSU 12.7), sufficiency DSU 701	interpretation, rules governing AG 37–40
rules of origin disciplines (RO 2) (transition period), trade objectives, exclusion as instrument of (RO 2(b)), intention, relevance RO 5	subsequent practice (VCLT 32(3)(b)) AG 40
security and predictability of WTO obligations (DSU 3.2), panel reports and DSU 988	measure and result of measure distinguished AG 46
Chile – Alcoholic Beverages (Article 21.3(c)), WT/DS87/15	“minimum import price” (AG 4.2 footnote 1) AG 54
developing countries (DSU 21.2) (implementation of DSB recommendations and rulings) DSU 1008	object and purpose (preamble) and AG 4
implementation of DSB recommendations and rulings, surveillance (DSU 21)	“ordinary customs duties” (AG 4.2)/ GATT II:1(b) GATT 174, AG 42–5 , DSU 1660
prompt compliance (DSU 21.1) adoption of report, obligation to begin implementation following DSU 1005	special safeguards (AG 5.1) and AG 39
flexibility DSU 1001	timing of obligation AG 37, 47
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)	“variable import levies” (footnote 1) AG 51
	“measures at issue” (DSU 6.2), amended measures, amendment after establishment of panel DSU 258, 380, 399–400
	“minimum import price” (AG 4.2 and footnote 1) AG 54
	multiple authentic languages, interpretation (VCLT 33), meaning which best reconciles texts (VCLT 33(4)) AG 42, DSU 1660
	notice of appeal, requirements (ABWP 20(2)(d)) claims and arguments distinguished DSU 1411, 1429 n. 2228 DSU 6.2 compared DSU 1412
	ordinary meaning of terms used in covered agreements “concessions” AG 42

<i>(cont.)</i>	exceptions to GATT obligations, exclusion (footnote 1) GATT 649
“ordinary customs duty” AG 42	“ordinary customs duties” (AG 4.2)/ GATT II:1(b) GATT 143–5
multiple authentic languages (VCLT 33) and DSU 1660	multiple authentic languages, interpretation (VCLT 33)
“variable import levies” (AG 4.2) AG 51	meaning which best reconciles texts (VCLT 33(4)) DSU 1660
preparatory work (VCLT 32), AG 4.2 AG 37	“ordinary meaning” (VCLT 31(1)) and DSU 1660
relationships within and between agreements	nullification or impairment (DSU 3.8), agreement to, indirect benefits and DSU 975
AG 4.2/GATT II:2 GATT 174	ordinary meaning of terms used in covered agreements, multiple authentic languages (VCLT 33) and DSU 1660
AG 4.2/GATT Annex 5 AG 45	publication of findings and reasoned conclusions on all pertinent issues of fact and law, authorities’ obligation (SG 3.1) GATT 807
AG 4.2/GATT II:1(b) GATT 174, AG 42–5, DSU 1660	“publish” / “make publicly available”, equivalence SG 100
AG 4.2/GATT II:2 AG 45	reasoned and adequate explanation requirement (SG 3.1), “as a result of unforeseen developments” (GATT XIX:1(a)), “demonstration”, need for GATT 807
AG 4.2/ <i>Guidelines for the Calculation of Tariff Equivalents</i> (Attachment to AG Annex 5) AG 46	relationships within and between agreements
request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 343	AD 2.4 footnote 1/GATT XII GATT 649
Schedules of Concessions (GATT II), ordinary customs duties <i>in excess of</i> those provided for in Schedule (GATT II:1(b)), customs duties based on exogenous factors AG 43	AG 4.2/GATT II:1(b) GATT 143–5
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)	safeguard measures, duration and review (SG 7), extension of measure (SG 7.1), whether distinct measure DSU 149
law vs fact, panel’s classification of measure, relevance DSU 850	Secretariat (WTO VI), role, interpretation of covered agreements WTO 201
“objective assessment of the facts” /alleged disregard or distortion of the evidence, discretion in assessment of evidence DSU 850	Trade Policy Review Mechanism (TPRM), dispute settlement/ enforcement of specific obligations, exclusion (TRMS A (i)) TPRM 6
standard/powers of review (panel) (DSU 11)	Chile – Price Band System (Article 21.3(c)), WT/DS207/13, DSR 2003:III
“objective assessment of matter before it”	developing countries (DSU 21.2) (implementation of DSB recommendations and rulings) DSU 1009
due process and DSU 618, 680	judicial economy, prior decision on another point rendering discussion otiose AG 64
<i>ultra petita</i> finding on provision not before it DSU 537, 618, 680	market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1)
terms of reference of panels (DSU 7)	border measures, “similar border measures” (footnote 1), “similar” AG 60
as definition of jurisdiction/legal claims at issue	“variable import levies” (footnote 1) AG 52
implied claims DSU 343, 416, 676	“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)
specific legal claim included in terms of reference, limitation to DSU 416	administrative measures as means of implementation, relevance DSU 1050 n. 1633
third party rights (DSU 10 and Appendix 3), panel’s right to draw on third party submissions DSU 495	arbitrator’s limited mandate, determination of reasonable period DSU 1022
Chile – Price Band System (Panel), WT/DS207/R, DSR 2002:VIII	effect on society, relevance DSU 1055
“agricultural products” (AG 2/Annex 1), applicability AG 22	obligation to commence implementation in good time DSU 1045
balance of payments restrictions (GATT XII), as exception to GATT obligations GATT 649	relationships within and between agreements, AG 4.2/AG 5 AG 75
composition of panel (DSU 8), eligibility (DSU 8.) DSU 430	special safeguards (AG 5), market access (AG 4) and, as exemption from AG 4.2 requirements AG 75
consultations (DSU 4)	Chile – Price Band System (Article 21.5 – Argentina) (AB), WT/DS207/AB/RW
continuance of identified measures after consultations (DSU 4.4), effect DSU 149	AB procedures (DSU 17.9 and ABWP), timetable (ABWP 26), modification in exceptional circumstances (ABWP 16(2)) DSU 1391
measure at issue (DSU 4.4), measure subsequent to request for consultations, extension of existing measure distinguished DSU 149	burden of proof (general rules), Article 21.5 compliance proceedings DSU 582
notification of request for (DSU 4.4), identification of measure at issue requirement DSU 149	interim review (DSU 15), failure to inform panel of errors DSU 787
customs duties, “ordinary customs duties” (GATT II(1)(b)/AG 4.2) GATT 143	standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), new evidence DSU 853
emergency action (GATT XIX)	China – Auto Parts (AB), WT/DS339/AB/R, WT/DS340/AB/R, WT/DS342/AB/R
“as a result of unforeseen developments” (GATT XIX:1(a))	AB procedures (DSU 17.9 and ABWP), timetable (ABWP 26), modification in exceptional circumstances (ABWP 16 (2)), modification of date of oral hearing (ABWP 16(2)) DSU 1396
“as a pertinent issue of fact and law” /publication (SG 3.1) GATT 807	domestic law, interpretation of covered agreements, relevance to DSU 1626
“demonstration”, need for GATT 807	
implementation of panel or AB recommendations (DSU 19.1)	
measure terminated in course of proceedings/no longer in existence, recommendation to implement measure inconsistent with agreement, exclusion DSU 930, 932	
panel’s decision not to make suggestions DSU 975	
interpretation of covered agreements, responsibility for authoritative (WTO IX:2), Secretariat role WTO 201	
interpretation of covered agreements, rules relating to including VCLT provisions, dictionaries AG 57 n. 91, SG 100, DSU 1660	
market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1)	

Harmonized System of Customs Classification (HS), as aid to interpretation of covered agreements/as context for purposes of GATT 127	national treatment, tax discrimination (GATT III:2), “charge of any kind” GATT 62, 262
interpretation of covered agreements, rules relating to including VCLT provisions	ordinary meaning of terms used in covered agreements, multiple authentic languages (VCLT 33) and DSU 1665
context (VCLT 31(2))	Schedules of Concessions (GATT II)
“any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)) DSU 1558	interpretation and clarification, other terms in Schedule as context GATT 127
Harmonized System of Customs Classification (HS) as GATT 127	ordinary customs duties in excess of those provided for in Schedule (GATT II:1(b)), internal duty distinguished GATT 167
multiple complainants (DSU 9), separate AB reports DSU 460	China – Intellectual Property Rights (Panel), WT/DS362/R
national treatment, tax discrimination (GATT III:2), “charge of any kind” GATT 62	Berne Convention/TRIPS
ordinary meaning of terms used in covered agreements	control of circulation, presentation or exhibition (Berne 17)
domestic law concepts, relevance DSU 1626	TRIPS 103–4
“on their importation” (GATT II:1(b)) GATT 145	enforcement of intellectual property rights (TRIPS Part III), applicability in absence of Berne protection TRIPS 221
relationships within and between agreements, GATT II:1(b)/GATT III:2 GATT 167	English and French texts compared TRIPS 103 n. 105, 103 n. 106, 103 n. 107
Schedules of Concessions (GATT II)	interpretation, role of WIPO International Bureau TRIPS 103 n. 104
Harmonized System of Customs Classification (HS), as aid to interpretation of covered agreements/as context for purposes of GATT 127	rights guaranteed/ protected “works” (Berne 5(1)) TRIPS 90–1
interpretation and clarification, context (VCLT 31(2)), other terms in Schedule GATT 127	border measures, special measures related to enforcement of (TRIPS Part III Section 4)
ordinary customs duties in excess of those provided for in Schedule (GATT II:1(b)), internal duty distinguished GATT 167	destruction or disposal of infringing goods (TRIPS 59) TRIPS 236–62
ordinary customs duties <i>in excess of</i> those provided for in Schedule (GATT II:1(b)), “on their importation” GATT 144	“disposal”, ambiguity TRIPS 245
China – Auto Parts (Panel), WT/DS339/R, WT/DS340/R, WT/DS342/R and Add.1 and Add.2 DSU 793	English, French and Spanish texts compared TRIPS 245
as aid to interpretation of covered agreements/as context for purposes of GATT 123, 127	“exceptional circumstances” TRIPS 262
“as presented” GATT 123	“infringing goods” TRIPS 236–8
evidence (panel) (DSU 12), time–limits for submission, panel’s right to admit “late” /new evidence, evidence submitted during interim review (DSU 15) DSU 793	initiation of procedures as responsibility of rights holder TRIPS 244
export subsidy commitments, prevention of circumvention (AG 10), Informal Group on Anti-Circumvention, ADP Committee Decision on (April 1997), GATT II and AD 1018	“other infringing goods” (TRIPS 51) TRIPS 237–8
General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements, “laws or regulations” GATT 925	“principles set out in Article 46”
good faith engagement in dispute settlement procedures (DSU 3.10), presumption of DSU 104	alternative disposal methods as such preventing compliance with principles TRIPS 252
Harmonized System of Customs Classification (HS)	as alternative to duplicating text of TRIPS 46 TRIPS 247
as aid to interpretation of covered agreements/as context for purposes of GATT 123, 127	alternatives to destruction TRIPS 253
“as presented” GATT 123	“avoid harm” TRIPS 251
Explanatory and Chapter Notes, status GATT 126	common objective TRIPS 248
interim review (DSU 15), new evidence DSU 793	disposal by auction, whether mandatory TRIPS 253–5
interpretation of covered agreements, rules relating to including VCLT provisions, context (VCLT 31(2)), Harmonized System of Customs Classification (HS) as GATT 127	link to “authority” TRIPS 246
“like product” (GATT III:2 and III:4)	list of TRIPS 248
hypothetical “like product” GATT 51	“outside the channels of commerce” TRIPS 250
relevant factors, nationality of producer or origin of product (“hypothetical” like products) GATT 251, 340	result vs purpose TRIPS 250
multiple authentic languages, interpretation (VCLT 33)	risks of reinfringement TRIPS 259–60, 262
“ordinary meaning” (VCLT 31(1)) and DSU 1665	“simple” TRIPS 258, 260–1
presumption of identity of meaning (VCLT 33(3)) DSU 1665	simple removal of trademark TRIPS 256–62
national treatment, regulatory discrimination (GATT III:4), “laws, regulations or requirements”, non-mandatory measures GATT 354	“shall have the authority” TRIPS 239–44
	conditional, whether TRIPS 243
	discretionary nature TRIPS 241, 244, 257
	duration of authority TRIPS 239
	risk of WTO-inconsistent measures TRIPS 242
	to order remedies other than TRIPS 59 measures TRIPS 241–2
	suspension of release (TRIPS 51) TRIPS 234–5
	“other infringing goods” TRIPS 237–8
	“provisions set out below” TRIPS 234
	scope TRIPS 235
	burden of proof (general rules), sovereignty issues DSU 1741
	criminal procedures (TRIPS 61)
	absolute nature of obligation TRIPS 267
	conformity with relative standard, benchmark TRIPS 274
	limitations on obligation TRIPS 268–9
	minimum international standard requirement TRIPS 265
	obligation to make remedies available (TRIPS 41.1) TRIPS 264
	“on a commercial scale” TRIPS 269, 271–4

<p>(cont.)</p> <p>burden of proof TRIPS 273</p> <p><i>de minimis</i> (TRIPS 60) compared TRIPS 274</p> <p>“trademark counterfeiting or copyright piracy” TRIPS 270–4</p> <p>domestic law, as justification for failure to fulfil international obligations, exclusion (VCLT 27) TRIPS 5</p> <p>intellectual property rights, enforcement (TRIPS Part III)</p> <p>“acts of infringement” (TRIPS 41.1) TRIPS 217</p> <p>“other remedies” (TRIPS 46)</p> <p>exhaustiveness of TRIPS 46 list TRIPS 231</p> <p>preparatory work in case of ambiguity (VCLT 32(a)) TRIPS 229</p> <p>proportionality requirement TRIPS 230</p> <p>rights not protected by Berne Convention and TRIPS 221</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>evolutionary approach/intertemporal law DSU 1619</p> <p>same or closely related phrases in same agreement</p> <p>TRIPS 41–3/TRIPS 61 TRIPS 266</p> <p>TRIPS 41/TRIPS 59 (“shall have the authority”) TRIPS 241</p> <p>TRIPS 60/TRIPS 61 TRIPS 275</p> <p>“special meaning” (VCLT 31(4)) DSU 1610</p> <p>supplementary means (VCLT 32), “recourse may be had” DSU 1633</p> <p><i>lex specialis</i>/presumption against treaty conflicts TRIPS 249</p> <p>multiple authentic languages, interpretation (VCLT 33)</p> <p>“ordinary meaning” (VCLT 31(1)) and DSU 1666</p> <p>presumption of identity of meaning (VCLT 33(3)) DSU 1667</p> <p>ordinary meaning of terms used in covered agreements</p> <p>“avoid” (TRIPS 46) TRIPS 251</p> <p>“disposal” (TRIPS 59) TRIPS 245</p> <p>“infringing goods” (TRIPS 59) TRIPS 236</p> <p>multiple authentic languages (VCLT 33) and DSU 1666</p> <p>preparatory work (VCLT 32)</p> <p>ambiguity and (VCLT 32(1)) TRIPS 229</p> <p>TRIPS 46 TRIPS 229</p> <p>procedures (TRIPS 61), evidence and procedure TRIPS 266</p> <p>proportionality, “other remedies” (TRIPS 46) TRIPS 230</p> <p>relationships within and between agreements, TRIPS 51/TRIPS 59 TRIPS 237–8</p> <p>request for establishment of panel, requirements (DSU 6.2), “sufficient to present the problem clearly” DSU 191</p> <p>sovereignty, burden of proof and DSU 1741</p> <p>terms of reference of panels (DSU 7), request for establishment of panel as basis DSU 191</p> <p>TRIPS Agreement</p> <p>implementation obligation (TRIPS 1.1)</p> <p>domestic law, relevance TRIPS 5</p> <p>freedom to choose method TRIPS 11</p> <p>China – Publications and Audiovisual Products (AB), WT/DS363/AB/R</p> <p><i>arguendo</i> assumptions</p> <p>guidelines on the use of DSU 661</p> <p>security and predictability (DSU 11) and DSU 49–50</p> <p>“to enhance simplicity” DSU 49, 661</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “clarification of existing provisions” DSU 49, 661</p> <p>GATS Agreement</p> <p>GATT 1994 overlap GATT 427–8, TRIMs 8 n. 12, GATS 29</p> <p>object and purpose (preamble), progressive liberalization, technological developments and GATS 4–5</p> <p>General Exceptions (GATT XX(a)), measures necessary to protect public morals</p> <p>accession protocol (China), applicability GATT 951–2</p> <p>balance between restrictive effect on international trade and “necessity” GATT 886–7</p> <p>“necessary”, impact on importers and GATT 885</p>	<p>international law / “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), <i>in dubio mitius</i> principle DSU 1735</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>dictionaries, cautious approach to DSU 1553</p> <p>evolutionary approach/intertemporal law GATS 4–5, DSU 1620</p> <p><i>in dubio mitius</i> principle, as supplementary means of interpretation DSU 1735</p> <p>supplementary means (VCLT 32), as confirmation DSU 1656</p> <p>as a whole/holistic/harmonious exercise DSU 1553</p> <p>national treatment, regulatory discrimination (GATT III:4), TRIMs and TRIMs 19</p> <p>relationships within and between agreements, GATT III:4/TRIMs 3 TRIMs 19, 21</p> <p>security and predictability of WTO obligations (DSU 3.2)</p> <p><i>arguendo</i> assumptions and DSU 49–50, 661–2</p> <p>evolutionary approach/intertemporal law and GATS 5, DSU 1621</p> <p>sovereignty, <i>in dubio mitius</i> principle and DSU 1735</p> <p>standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, <i>arguendo</i> assumptions and DSU 49–50</p> <p>China – Publications and Audiovisual Products (Panel), WT/DS363/R and Corr.1</p> <p>customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), Schedules of Specific Commitments (GATS XX) GATS 199</p> <p>GATS Agreement</p> <p>“commercial presence” (GATS XXVIII(d)) GATS 227</p> <p>GATT 1994 overlap GATS 29</p> <p>object and purpose (preamble)</p> <p>balance of rights and obligations GATS 3</p> <p>progressive liberalization, technological developments and GATS 3–4</p> <p>“sector” (GATS XXVIII(e)) GATS 229</p> <p>General Exceptions (GATT XX(a)), measures necessary to protect public morals</p> <p>accession protocol (China), applicability GATT 951–2</p> <p>balance between restrictive effect on international trade and “necessity” GATT 886</p> <p>“necessary”</p> <p>analysis as multi-step process GATT 882–4</p> <p>impact on importers and GATT 885</p> <p>“public morals” GATT 879–81</p> <p>identification of specific measures (DSU 6.2)</p> <p>identification of product, need for DSU 232 n. 324</p> <p>identification within narrative of request requirement DSU 222</p> <p>“identify”, sufficiency of, reference to general measure DSU 222</p> <p>omission of measure, good faith assumption that it was not being challenged DSU 222</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>evolutionary approach/intertemporal law GATS 3–4</p> <p>same or closely related phrases in different agreements, GATS XVII/GATT III:4 (“less favourable treatment”) GATS 131</p> <p>legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), arguments distinguished DSU 333</p> <p>“like product” (GATT III:2 and III:4), nationality of producer or origin of product (“hypothetical” like products) GATT 340</p> <p>market access (GATS XVI)</p> <p>excluded measures (GATS XVI:2) GATS 99</p> <p>relationship between GATS XVI:1 and VI:2 GATS 99</p> <p>“measures affecting trade in services” (GATS I:1), “affecting” (GATS I:1) GATS 13</p>
---	---

national treatment, regulatory discrimination (GATT III:4), “affecting” GATT 363, 367	failure to fix quota as GATT 517 “made effective” GATT 528
national treatment, services and service suppliers (GATS XVII) “commercial presence” (GATS XXVIII(d)) and GATS 227 conditions and qualifications (GATS XVII:1) GATS 127 elements of claim GATS 125 “like service and service supplier” (GATS XVII:1), wholesale transactions GATS 129 “treatment no less favourable” (GATS XVII:2) GATS 130–1 burden of proof GATS 131	measures of general application (GATT X:1) GATT 525 “shall be published” (GATT X:1), “in such a manner as to enable . . .” GATT 537
request for establishment of panel, requirements (DSU 6.2) distinct elements reviewed DSU 195 omission of measure, good faith assumption that it was not being challenged identification of specific measures (DSU 6.2) DSU 213	uniform, impartial and reasonable administration (GATT X:3(a)) “impartial” absence of guidelines or standards and GATT 571 conflict of interest and GATT 572 “reasonable”, absence of guidelines or standards and GATT 577 “uniform” GATT 567
Schedules of Specific Commitments (GATS XX) inscription of measures inconsistent with GATS XVI and GATS XVII (GATS XX:2) GATS 196 as integral part of GATS (GATS XX:3) GATS 199 interpretation and clarification, supplementary means of interpretation (VCLT 32), summary of AB guidance on potentially relevant instruments GATS 179	quantitative restrictions, elimination (GATT XI) “export prohibition or restriction” (GATT XI:2(a)) burden of proof GATT 631 “essential products” GATT 634 GATT XX(g) distinguished GATT 635 identity of meaning with GATT XI:1 GATT 632 “prevent or relieve critical shortages” GATT 635 “temporarily applied” GATT 633 “prohibition or restriction” (GATT XI:1) import prohibition, enforcement measures GATT 611 licensing requirements GATT 606, 614 minimum export price requirement GATT 617 prohibition or restriction on exportation or sale for export GATT 629
standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, independent assessment, panel’s right to choose position other than that articulated by parties DSU 523	relationships within and between agreements GATT XI:1/GATT XI:2 GATT 632 GATT XI:1/TRIMs Illustrative List GATT 629 GATT XI:2(a)/GATT XX(g) GATT 635
“trade in services” (GATS I:2), cross-border trade (GATS I:2(a)), relevant factors, means of delivery GATS 15	security and predictability of WTO obligations (DSU 3.2), specificity in request for establishment of a panel DSU 224
China – Raw Materials (Panel), WT/DS394/R and Corr.1, WT/ DS395/R and Corr.1, WT/DS398/R and Corr.1	sovereignty conclusion of treaty as exercise of inherent sovereign right DSU 1742–3 as a rule/fundamental principle of international law DSU 1605
accession protocols as balance of rights and obligations WTO 253 as integral part of WTO Agreement (WTO II:2) WTO 253	terms of reference of panels (DSU 7) abandoned claim, right to resurrect DSU 414 request for establishment of panel as basis DSU 414
fees and formalities connected with importation and exportation “limited . . . to the approximate cost of services rendered” (GATT VIII:1(a)), bidding/auctioning and GATT 502–3	third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6 DSU 487
General Exceptions (GATT XX(a)), measures necessary to protect public morals, accession protocol (China), applicability GATT 953–5	treaties, conclusion as exercise of inherent sovereign right DSU 1742–3
General Exceptions (GATT XX(g)), measures relating to the conservation of exhaustible natural resources, “exhaustible natural resources”, GATT XI:2(a) distinguished GATT 635	TRIMs Agreement, quantitative measures (GATT XI and) GATT 629
identification of specific measures (DSU 6.2) “identify”, sufficiency of, “among others” DSU 224 “specific”, security and predictability of WTO obligations (DSU 3.2) and DSU 224	Colombia – Ports of Entry (Panel), WT/DS366/R and Corr.1 burden of proof (general rules), implementation measures, reasonable period for (DSU 21.3(c)) DSU 581, 1089
Illustrative List (TRIMs 2.2), quantitative restrictions (GATT XI:1) and GATT 629	customs value determination (VAL) “customs valuation” customs control distinguished VAL 1 “customs value” (VAL 15.1(a)) as aid to interpretation VAL 1 ordinary/dictionary meaning VAL 1–2 “reasonable means” (VAL 7) “cannot be determined” (VAL 7.1), minimum customs values, exclusion (VAL 7(2)), developing countries’ right to suspend (Annex III, para. 2) VAL 41 higher of two alternative values, exclusion (VAL 7.2(b)) VAL 40 obligation to inform importer of determined customs value and method used (VAL 7.3) VAL 43 prohibited customs valuation methods (VAL 7.2) VAL 39 sequencing nature of VAL 1–7 valuation methods VAL 8–9 surety for ultimate payment (VAL 13), payment vs guarantee VAL 2–3
international law / “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), sovereignty DSU 1605	transaction value, as primary basis (VAL 1) VAL 12
interpretation of covered agreements, rules relating to including VCLT provisions context (VCLT 31(2)), “any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)) DSU 1565 as a whole/holistic/harmonious exercise DSU 1605, 1743	freedom of transit (GATT V) “date of this Agreement” (GATT XXVI:1) and GATT 444 GATT V:5 and V:6 compared GATT 439 “no distinction shall be made” (GATT V:2) GATT 436–8
licensing requirement, as QR (GATT XI:1) GATT 606, 614 “measures at issue” (DSU 6.2) amended measures, amendment after establishment of panel DSU 383 prospective measure, “of the same essence” DSU 383 publication and administration of trade regulations (GATT X) “laws, regulations, judicial decisions and administrative rulings” (GATT X:1)	

<p>(<i>cont.</i>)</p> <p>“products which have been in transit” (GATT V:6) GATT 440–3 ordinary meaning GATT 440</p> <p>“there shall be freedom of transit” (GATT V:2), ordinary meaning GATT 434</p> <p>“traffic in transit” (GATT V:1) Barcelona Convention and Statute on Freedom Transit (1921) as basis GATT 433</p> <p>preparatory work (VCLT 32) GATT 432–3</p> <p>transshipment and GATT 434–5</p> <p>GATT, “date of this agreement” (GATT XXVI:1), GATT V and GATT 444</p> <p>General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements, “necessary” to secure compliance, balancing of factors GATT 920</p> <p>Illustrative List (TRIMs 2.2), QRs (GATT XI:1) and GATT 646</p> <p>implementation of DSB recommendations and rulings (DSU 21), impracticability of immediate compliance/reasonable period of time (DSU 21.3, chapeau), burden of proof (general rules) DSU 581, 1089</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>context (VCLT 31(2)), title GATT 441</p> <p>dictionaries VAL 1–2</p> <p>text/plain language (VCLT 31(2)) TRIMs 18</p> <p>“like product” (GATT I)</p> <p>“like product” analysis</p> <p>explicit discrimination and GATT 40–1</p> <p>hypothetical imports GATT 41</p> <p>“measures at issue” (DSU 6.2), amended measures, amendment after establishment of panel DSU 259</p> <p>MFN treatment (GATT I:1)</p> <p>“accorded immediately and unconditionally to the like product”, differential treatment on the basis of origin of product and GATT 53</p> <p>“advantage”, flexible import procedures GATT 36</p> <p>“all rules and formalities” GATT 29</p> <p>ordinary meaning of terms used in covered agreements</p> <p>“customs valuation” (VAL) VAL 1–2</p> <p>“freedom of transit” (GATT V:1) GATT 434</p> <p>“products which have been in transit” (GATT V:6) GATT 440</p> <p>preliminary rulings (procedural aspects), working procedures, need for DSU 347</p> <p>quantitative restrictions, elimination (GATT XI) GATT XIII and GATT 685</p> <p>“prohibition or restriction” (GATT XI:1) equality of competitive conditions as test GATT 605</p> <p>restrictions on ports of entry GATT 620</p> <p>trade effects, relevance GATT 605</p> <p>relationships within and between agreements GATT I:1/GATT V:6 GATT 445</p> <p>GATT V:5/GATT V:6 GATT 439, 441</p> <p>GATT XI:1/TRIMs 2/Illustrative List TRIMs 18</p> <p>GATT XI/GATT XIII GATT 685</p> <p>request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 212</p> <p>Colombia – Ports of Entry (Article 21.3(c)), WT/DS366/13</p> <p>developing countries (DSU 21.2) (implementation of DSB recommendations and rulings), “reasonable period” (DSU 21.3(c)) DSU 1071</p> <p>implementation of DSB recommendations and rulings (DSU 21), prompt compliance (DSU 21.1), modification of underlying economic or social conditions distinguished DSU 1000</p>	<p>implementation of DSB recommendations and rulings, surveillance (DSU 21), prompt compliance (DSU 21.1), flexibility DSU 1003</p> <p>“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)</p> <p>arbitrator’s limited mandate, determination of reasonable period DSU 1025</p> <p>burden of proof DSU 1089</p> <p>coordination with other changes, relevance DSU 1082</p> <p>developing countries and (DSU 21.2) DSU 1071</p> <p>multiple possibilities DSU 1094</p> <p>obligation to commence implementation in good time DSU 1047</p> <p>Dominican Republic – Import and Sale of Cigarettes (AB), WT/DS302/AB/R</p> <p>General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements</p> <p>“necessary” to secure compliance, balancing of factors GATT 918</p> <p>“reasonably available” alternative WTO-consistent measure GATT 930–2</p> <p>balancing of factors GATT 930–1</p> <p>implementation of panel or AB recommendations (DSU 19.1), measure terminated in course of proceedings/no longer in existence DSU 933</p> <p>Dominican Republic – Import and Sale of Cigarettes (Panel), WT/DS302/R</p> <p>burden of proof (general rules)</p> <p>defences and exceptions, GATT XV:9(a) GATT 707</p> <p>exception/affirmative defence GATT 707</p> <p>exchange arrangements (IMF/WTO) (GATT XV)</p> <p>consultations (GATT XV:2)</p> <p>dispute settlement and GATT 703</p> <p>IMF findings, status GATT 705</p> <p>“exchange controls or exchange restrictions” (GATT XV:9(a)) burden of proof (as exception/affirmative defence) GATT 707</p> <p>criteria for determining GATT 708</p> <p>IMF obligation to inform WTO of decisions relating to, measures other than exchange restrictions, applicability to GATT 712</p> <p>national treatment, regulatory discrimination (GATT III:4), “less favourable treatment”, formal equality GATT 373</p> <p>preparatory work (VCLT 32), GATT II:1(b) GATT 148</p> <p>publication and administration of trade regulations (GATT X)</p> <p>“laws, regulations, judicial decisions and administrative rulings” (GATT X:1) GATT 512</p> <p>“shall be published” (GATT X:1) GATT 530</p> <p>uniform, impartial and reasonable administration (GATT X:3(a)) “reasonable” GATT 574</p> <p>“uniform”, “impartial” and “reasonable” as independent elements GATT 550</p> <p>Schedules of Concessions (GATT II)</p> <p>“other duties or charges” (ODCs) (GATT II:1(b)) definition GATT 148</p> <p>foreign exchange fees GATT 150, 151</p> <p>import surcharges GATT 150</p> <p>recording pursuant to Understanding on Article II:1(b) GATT 152</p> <p>Understanding on Article II:1(b), recording of “other duties and charges” GATT 152</p> <p>EC and certain member States – Large Civil Aircraft dispute</p> <p>relationships within and between agreements, AIR 6/SCM AIR 24 SCM and AIR 24</p> <p>EC and certain member States – Large Civil Aircraft (AB), WT/DS316/AB/R</p> <p>AB procedures (DSU 17.9 and ABWP)</p>
---	--

oral hearings (ABWP 27), multiple sessions/hearings DSU 1455–6

transmittal of records (ABWP 25), request to delay DSU 1445

written responses (ABWP 28), requests for additional memoranda/submissions DSU 1466

adverse effects (SCM 5)

existence of “benefit”, need for

continuing benefit SCM 256–7

non-retroactivity (VCLT 28) and SCM 256

passing the benefit through (SCM 1.1(b)) and SCM 258

business confidential information (BCI), additional procedures, AB (ABWP 16(1)) DSU 920, 1380

competence of panels and AB (DSU 3.2/DSU 11/DSU 17), *compétence de la compétence*/obligation to address jurisdictional issues [on own motion] DSU 365

export subsidy, prohibited (SCM, Part II)

“contingent in fact . . .” (SCM 3.1(a))

“anticipated” (SCM 3.1(a) footnote 4) SCM 139

objective test SCM 140

identification of specific measures (DSU 6.2), availability of public information regarding measure, relevance DSU 234

international law / “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2))

constituent elements (“rules” / “relevant” / “applicable between the parties”) DSU 1604

rules applicable between WTO Members as “parties” DSU 1604

as supplementary means / “taken into account” DSU 1604

treaties concluded prior to treaty being interpreted DSU 1604

as a whole/holistic/harmonious exercise SCM 260, DSU 1604

interpretation of covered agreements, rules relating to including VCLT provisions

effectiveness principle (*ut res magis valeat quam pereat/effet utile*), meaning to be attributed to every word and phrase SCM 309

parties’ common intentions (VCLT 31(1)) DSU 1604

same or closely related phrases in same agreement, SCM 6.3(a)-(d) SCM 279

“measures at issue” (DSU 6.2), any act or omission attributable to a Member DSU 271

non-retroactivity of treaties (VCLT 28)

continuing measures SCM 256–7, DSU 1526–8

as general principle of international law DSU 1527, 1601

notice of appeal, requirements (ABWP 20(2)(d)), amendment (WBWP 23 *bis*)/clarification, authorization of requested amendment DSU 1441

ordinary meaning of terms used in covered agreements, “provides” (SCM 1.1(a)(1)(iii)) SCM 42

public observation of oral hearing / “passive participation” (ABWP 27(3))

AB authority to agree to DSU 1450

methodology DSU 1451

request for establishment of panel, requirements (DSU 6.2), compliance, importance of, subsequent cure of defect, exclusion DSU 204, 271

Rules of Conduct (RoC)

material violations (RoC VIII) DSU 1496–7

“shall in no way modify the rights and obligations” (RoC II), confidentiality (RoC VII) and DSU 1484

“serious prejudice” (SCM 5(c))

aggregated analysis SCM 306

“significant price undercutting/suppression” (SCM 6.3(c)) as, genuine causal link requirement SCM 279

“serious prejudice” (SCM 6)

genuine causal link requirement, displacement or impediment to imports (SCM 6.3(a)) and SCM 309

genuine causal link requirement, applicability to all SCM 6.3

elements SCM 279, 282, 306

“significant price undercutting/suppression” (SCM 6.3(c))

aggregated analysis SCM 306

“but for” test SCM 282, 295

counterfactual analysis SCM 296

“effect of the subsidy”, period of review SCM 302

“in the same market” SCM 319, 325

“lost sales” SCM 319–20

displacement or impediment (SCM 6.3(a) and (b))

compared SCM 319

two-step analysis SCM 320

unitary vs two-step approach SCM 292

standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)

completion of the legal analysis in case of, contentiousness/ omission/insufficiency of facts DSU 883

law vs fact, panel as trier of facts DSU 594

standard/powers of review (panel) (DSU 11)

error of law

error not rising to a breach of DSU 11 DSU 597

failure to make objective assessment of facts distinguished DSU 595

“objective assessment of the facts” /alleged disregard or distortion of the evidence, discretion in assessment of evidence SCM 296

summary of requirements DSU 594

subsidy, calculation in terms of benefit to recipient (SCM 14)

loans (SCM 14(b))

actual performance vs conditions at time loan made SCM 413

unsecured loan SCM 413

“usual investment practice” (SCM 14(a)) SCM 409

subsidy, definition (SCM 1.1(a)(1)) (financial contribution), provision of goods or services (SCM 1.1(a)(1)(iii)), “provides” SCM 42

subsidy, definition (SCM 1.1(b)) (conferral of benefit)

passing the benefit through

adverse effects (SCM 5) and SCM 258

changes in ownership/privatizations SCM 84

subsidy, specificity (SCM 2)

“certain enterprises” (SCM 2 chapeau) SCM 104

“explicitly limits” (SCM 2.1(a)) SCM 107

terms of reference of panels (DSU 7), request for establishment of panel as basis DSU 204

transmittal of records (ABWP 25), request to delay DSU 1445

withdrawal of appeal (ABWP 30), withdrawal of conditional appeal DSU 1469

EC and certain member States – Large Civil Aircraft (Panel), WT/DS316/R

adverse effects (SCM 5), relevant period SCM 259

adverse inferences from party’s refusal to provide information, panel’s right to draw (SCM Annex V) SCM 677–8

arguendo assumptions, estoppel and DSU 663

bilateral agreements, status, EC–US Agreement (1992) DSU 8

competence of panels and AB (DSU 3.2/DSU 11/DSU 17), *compétence de la compétence*/obligation to address jurisdictional issues [on own motion] DSU 365

composition of panel (DSU 8), determination by Director-General (DSU 8.7), Deputy Director-General in place of DSU 441

consultations (DSU 4)

notification of request for (DSU 4.4)

identification of measure at issue DSU 157

“identification of specific measure” (DSU 6.2) distinguished DSU 157

customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), non-retroactivity (VCLT 28) as DSU 59

<i>(cont.)</i>	
DSU, applicability	adverse effects (SCM 5), doubt about relevant period and SCM 259
bilateral agreements, EC-US Agreement (1992) DSU 420-1	independent assessment, determination of "subsidized product" DSU 525
international agreements other than covered agreements DSU 421	subsidy, definition (SCM 1.1(a)(1)) (financial contribution)
DSU dispute settlement, obligation to have recourse to (DSU 23.1),	"direct transfer of funds" (SCM 1.1(a)(1))
waiver of rights, possibility of DSU 1304	debt forgiveness/debt-for-equity swaps SCM 26
estoppel	share transfers SCM 25
<i>arguendo</i> assumptions and DSU 663	potential direct transfer of funds (SCM 1.1(a)(1)), loan
as general principle of international law DSU 112	guarantees as SCM 30
good faith (DSU 3.10) and DSU 112, 1707	provision of goods or services (SCM 1.1(a)(1)(iii))
evidence, acceptability as for "objective assessment" (DSU 11)	"general infrastructure" SCM 45-7
purposes, public statements by company executives/	case-by-case approach SCM 46
government officials DSU 636	limitations on access or use, relevance SCM 45-6
good faith engagement in dispute settlement procedures (DSU	ordinary meaning SCM 45
3.10), estoppel and DSU 112, 1707	subsidy, specificity (SCM 2)
identification of specific measures (DSU 6.2)	<i>de facto</i> specificity (SCM 2.1(c))
case-by-case approach DSU 240	"account be taken of" SCM 112
identification of "measures" (DSU 4.4) distinguished DSU 157	"disproportionately large" SCM 113
"specific", "attendant circumstances", relevance DSU 240	"predominant use" SCM 114
interim review (DSU 15)	regional specificity (SCM 2.2), definition problems SCM 115
new evidence DSU 795	successive treaties relating to the same subject matter (VCLT 30)
reconsideration of evidence, arguments and findings DSU 797	DSU 1534
third party rights DSU 775	terms of reference of panels (DSU 7), as definition of jurisdiction/
international law / "relevant rules of international law" (VCLT 31	legal claims at issue DSU 362
(3)(c)) with particular reference to the interpretation of	third party enhanced rights/rights beyond those indicated in DSU
covered agreements (DSU 3(2)) DSU 1601-3	10.2, DSU 10.3 and Appendix 3, para. 6, participation in
non-retroactivity of treaties (VCLT 28) and DSU 1601-3	interim review process (DSU 15) DSU 775
rules applicable between WTO Members as "parties" DSU 1602-3	unilateral action by Member, prohibition (DSU 23.1), balance of
treaties concluded prior to treaty being interpreted DSU 1601-3	rights and obligations and DSU 1304
interpretation of covered agreements, rules relating to including	EC - Approval and Marketing of Biotech Products (Panel), WT/
VCLT provisions, same or closely related phrases in same	DS291/R, WT/DS292/R, WT/DS293/R, Add.1 to
agreement, DSU 4.4/DSU 4.6 ("measures" / "specific	Add.9, and Corr.1
measures") DSU 157	ALOPs (SPS 5.4-5.6 and Annex A(5))
loan guarantees, as direct transfer of funds (SCM 1.1(a)(1)) SCM 30	consistency in application (SPS 5.5), "implementation measure"
"measures at issue" (DSU 6.2)	for purposes of SPS 5.5 SPS 215-16, 256
measure in existence at time of establishment of panel, limitation	measures "not more trade restrictive than required to achieve their
to, dispute as to existence of measure DSU 406	appropriate level of . . . protection" (SPS 5.6), SPS
"practice" as, practice "as a whole" DSU 271	measures, limitation to SPS 256
non-retroactivity of treaties (VCLT 28)	burden of proof (general rules)
"any relevant rules of international law . . ." (VCLT 31(3)(c)) and	allocation (general rule/exception relationship)
DSU 1601	characterization of SPS 5.7 as autonomous right, effect SPS
as general principle of international law DSU 59	324, 335
ordinary meaning of terms used in covered agreements	SPS 2.2 and 5.7 SPS 36
"general infrastructure" (SCM 1.1(a)(1)(iii)) SCM 45	SPS 2.2 and 5.7 (including consolidation) SPS 36, 326, 327
"proportion" (SCM 2.1(c)) SCM 113	Codex Alimentarius Commission, cooperation with, definitions,
"predominant" (SCM 2.1(c)) SCM 114	relevance to SPS measures (SPS Annex A(1)) SPS 479
provision of goods or services (SCM 1.1(a)(1)(iii)), "general	consultation and dispute settlement (TBT 14), technical expert
infrastructure", limitations on access or use, relevance	group, panel's right to establish (TBT 14.2), individual
SCM 45-6	advice, right to seek TBT 148
regional specificity (SCM 2.2), definition problems SCM 115	customary international law rules of interpretation [as codified in
relationships within and between agreements, DSU 19.1/SCM 4.7	the VCLT] as applicable law (DSU 3.2), persistent
and 4.8 DSU 993	objector rule DSU 1595 n. 2468, 1740 n. 2732
request for establishment of panel, requirements (DSU 6.2),	environment, SPS measures (Annex A(1)) and SPS 462-4
compliance, importance of, scrutiny by panel DSU 240	expert evidence (DSU 13.2/SPS 11.2)
"serious prejudice", procedures for developing information	international organizations and SPS 406-7
concerning (SCM Annex 5), adverse inferences from	need for experts, determination by panel against the wishes SPS
non-cooperation SCM 677-8	397
"serious prejudice" (SCM 5(c)), aggregated analysis SCM 305	good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), as
"serious prejudice" (SCM 6)	general principle of international law DSU 1594
"significant price undercutting/suppression" (SCM 6.3(c))	identification of specific measures (DSU 6.2), "specific", provided
aggregated analysis SCM 305	information in conjunction with introductory paragraph
"significant" SCM 313, 319	DSU 239
standard/powers of review (panel) (DSU 11)	implementation of panel or AB recommendations (DSU 19.1),
"objective assessment of the facts" / alleged disregard or distortion	measure terminated in course of proceedings/no longer
of the evidence, public statements by company	in existence DSU 935, 940 n. 1479
executives/government officials DSU 636	interim review (DSU 15)
"objective assessment of matter before it"	

confidentiality of reports DSU 816	“seek to obtain additional information” for more objective assessment of risk, SPS 5.1/Annex A(4) and SPS 311–12
new evidence DSU 791	publication or communication of processing period (Annex C(1)(b)) SPS 579
international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2))	relationships within and between agreements
determination of “ordinary meaning” (VCLT 31(1)) and DSU 1594–6	GATT III/SPS GATT 414
general principles of law/international law as DSU 1594	SPS 2.2/SPS 5.1 SPS 46
good faith as DSU 1594	SPS 2.2/SPS 5.7 SPS 54–6
precautionary principle as SPS 7, DSU 1594	SPS 3/Annex A(1)(d) SPS 205
rules applicable between WTO Members as “parties” DSU 1595, 1602 n. 2483, 1740	SPS 3.1 and 3.3/SPS 2.2 and 5.7 SPS 339–40
rule applicable only to some WTO Members, whether DSU 1595, 1740	SPS 5.1/SPS 5.7 SPS 332–5
as supplementary means / “taken into account” DSU 1596	SPS 5.3/Annex A(1)(d) SPS 205, 490, 491
treaties concluded by other parties as DSU 1596, 1602 n. 2483	SPS 5.5/Annex A(1)(a) SPS 215–16
interpretation of covered agreements, rules relating to including VCLT provisions	SPS 5.6/Annex A(1)(a) SPS 256
footnotes to treaty as aid/integral part of treaty SPS 470	SPS 5.7/Annex A(4) SPS 311–12
same or closely related phrases in same agreement	SPS 7/Annex B SPS 550–1
SPS 3.1/SPS 5.1 (“based on”) SPS 135	SPS 8/Annex C(1) SPS 373, 375, 587
VCLT 31(2)(a)/31(2)(c)/66 (“parties”) DSU 1595	SPS 10.1/TBT 12.3 SPS 389, TBT 137
“shall be taken into account” (VCLT 31(3)) DSU 1574	SPS 11/TBT 14 SPS 425
“special meaning” (VCLT 31(4)) DSU 1609	SPS/TBT 1.5 TBT 13
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)	TBT 12.2/TBT 12.3 TBT 135
arguments distinguished DSU 331	request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 239, 320 n. 513
identification of treaty provisions DSU 316–17	risk assessment, need for (SPS 5.1–5.3)
reference to mutually exclusive articles DSU 317	delay in completing control, inspection and approval procedures (SPS 8 and Annex C) and SPS 574
identification of treaty provisions clauses/subclauses, relevance DSU 316	factors to be taken into account (economic) (SPS 5.3), “other damage” (Annex A(1)(d)) and SPS 205, 490
which measures violate which provisions requirement DSU 320	measures “appropriate to the circumstances” (SPS 5.1)
“like product” (GATT III:2 and III:4), GATT III:2 and III:4 interrelationship, “less favourable treatment” requirement and GATT 346–7, 415	circumstances changing over time SPS 170
“measures at issue” (DSU 6.2), any act or omission attributable to a Member DSU 245	duty to base measures on risk assessment and SPS 172
“measures at issue” <i>de facto</i> vs <i>de jure</i> measures DSU 272	methodology, single assessment for different SPS measures SPS 160
MFN treatment (TBT 2.1) TBT 15	“sufficient scientific evidence” requirement (SPS 2.2) and divergence of expert views, relevance SPS 136
multiple complainants (DSU 9), separate panel reports (DSU 9.2), structure DSU 455	precautionary principle and SPS 181
national treatment, general principle (GATT III:1), “no less favourable manner” (SPS Annex C(1)(a)) SPS 575–6	“taking into account risk assessment techniques” (SPS 5.1), “whether” vs “how” SPS 176
ordinary meaning of terms used in covered agreements, terms used in SPS Annex A(1)(b) SPS 476	timing of assessment SPS 155
precautionary principle (SPS Agreement)	risk assessment (SPS Annex A(4)(4))
control, inspection and approval procedures (SPS 8 and Annex C) and SPS 570	provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7) and SPS 311–12
as customary international environmental law DSU 1731	types of risk (“likelihood” vs “potential”) SPS 146
customary international law, whether SPS 7	“likelihood”, failure to evaluate, effect SPS 510
as “rule of international law” (VCLT 31(3)(c)) DSU 1594	scientific evidence, sufficiency (SPS 5.7), burden of proof SPS 36
scientific basis of measures, panel assessment SPS 181	sovereignty, interpretation of covered agreement by reference to rules not accepted by Member as breach DSU 1595, 1740
prejudice to party, relevance DSU 320	special and differential treatment (SPS 10)
provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7)	obligation to “take account of” special needs of developing countries (SPS 10.1)
assessment period SPS 306	burden of proof SPS 388
burden of proof, consolidation of SPS 2.2 and SPS 7 requirements SPS 327	“take account of” SPS 387
cumulative requirements SPS 294	TBT 12.3 compared SPS 389, TBT 137
“insufficient” SPS 297	special and differential treatment (TBT 12)
precautionary principle and SPS 329	special account requirement
provisional measure falling outwith scope of SPS 7 SPS 291	implementation of TBT (TBT 12.2) TBT 135
as qualified exemption/autonomous right SPS 36, 288–9, 332–5	preparation of technical regulations, standards and conformity assessment procedures (TBT 12.3) TBT 135
burden of proof and SPS 324–5, 335	SPS 10.1 compared SPS 389, TBT 137
review within “a reasonable period of time” SPS 317	SPS Agreement
availability of objectively sufficient evidence and SPS 320	applicability (SPS 1.1)
evolution of scientific evidence subsequent to adoption of provisional measure and SPS 321	measures “developed and applied in accordance with [SPS] provisions”, purpose of measure and SPS 15
	“measures which may directly or indirectly affect trade” SPS 12, 256

<i>(cont.)</i>	
basic rights and obligations (SPS 2), SPS 2.2 requirements SPS 21	presence of allergens in the environment SPS 488
object and purpose (preamble), prompt compliance with obligations SPS 558	increased herbicide use associated with GMOs SPS 489
TBT Agreement, applicability to (TBT 1.5) TBT 13	“pests” SPS 473–4
SPS control, inspection and approval procedures (SPS 8 and Annex C)	“living organism”, relevance SPS 474
“any procedure to check and ensure”, applicability (Annex C(1)(b)) SPS 577	purpose as test SPS 452
failure to observe Annex C requirements as breach of SPS 8 SPS 373, 375, 587	applicability to both adoption and maintenance/application SPS 461
individual specimens, requirements relating to (Annex C(1)(e)) SPS 585	TBT Agreement, definitions (TBT 1.1 and Annex 1), international standards definitions and (TBT 1.1) TBT 8
“no less favourable manner” (Annex C(1)(a)) SPS 575–6	technical regulations (TBT 2)
obligations (Annex C(1)(c))	MFN treatment (TBT 2.1) TBT 15
completeness of documentation SPS 580	“technical regulation” (Annex 1.1), measures not qualifying as SPS measures TBT 22, 25
explanation of delay SPS 583	transparency of SPS regulations (SPS 7 and Annex B)
processing of deficient applications SPS 582	notification procedures, obligation to “notify changes” SPS 356–7, 357, 361
publication or communication of processing period SPS 579	notification procedures (Annex B(5)-(10)), obligation to “provide information” SPS 359
summary SPS 578	publication of regulations (Annex (B)(1)-(2)), “SPS regulations” for purpose of SPS 358
transmission of results SPS 581	publication requirements (Annex (B)(1)-(2))
“undertake and complete” (Annex C(1)(a)) SPS 559	“SPS regulations” for purpose of SPS 550–1
“without undue delay” (Annex C(1)(a))	generally applicable measure concerning an SPS measure SPS 542
definition SPS 561–3	relationship between SPS 7 and Annex B SPS 550–1
delay as means of avoiding risk assessment SPS 574	treaties
delay and refusal to take SPS action distinguished SPS 571–2	as aid to interpretation of treaty between other parties DSU 1596
determination SPS 565–6	options for opting out of treaty regime DSU 1595 n. 2468
as good faith obligation SPS 557	EC – Asbestos (AB), WT/DS135/AB/R, DSR 2001:VII and DSR 2001:VIII
legislative delays SPS 573	burden of proof (general rules), <i>onus probandi actori incumbit</i> GATT 968–9
precautionary principle and SPS 570	directly competitive or substitutable products (GATT III:2), as dynamic relationship (including possibility of latent demand) GATT 335
prompt compliance with SPS obligations (SPS preamble) and SPS 558	General Exceptions (GATT XX) (general)
prudence and precaution SPS 568–9	evaluation of scientific evidence GATT 900–3
SPS measure, definition/classification as (Annex A(1))	divergence of expert views GATT 901
“directly related to food safety” SPS 500	General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health
“diseases, disease carrying organisms or disease-causing organisms” SPS 475	GATT III:4 (regulatory discrimination) and GATT 385
environmental protection measures and SPS 462–4	justification
<i>travaux préparatoires</i> SPS 463–4	evidence of health risks, relevance GATT 385
“labelling requirements”	good faith reliance on GATT 901
applicability to matters other than food safety SPS 497	“necessary”
consistency of requirement with SPS as separate issue SPS 498	Member’s right to determine level of desired protection GATT 903
purpose SPS 499	scientific data/risk assessment and GATT 900–3
“laws, decrees, regulations, requirements and procedures”	“preponderant” evidence GATT 901
applicability to non-SPS measures SPS 465–7	“reasonably available” alternative WTO-consistent measure GATT 904–6, 928
“include all relevant” SPS 494	General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements, alternative WTO-consistent measure, availability and GATT 905
“requirements and procedures” SPS 495–6	good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), scientific evidence, reliance on GATT 901
legal form, flexibility SPS 494	interpretation of covered agreements, rules relating to including VCLT provisions
legal form and nature, relevance/distinguishability SPS 452	consistency with article/agreement as a whole GATT 342, 345
measure to protect animal or plant life or health (Annex A(1)(a)) SPS 470	object and purpose, preamble as evidence of TBT 3
“entry, establishment or spread” SPS 472	as a whole/holistic/harmonious exercise GATT 330
genetically modified organisms and SPS 468	“like product” (GATT III:2 and III:4)
“risks arising from” SPS 471	determination of “likeness”
measure to protect from “other damage” (Annex A(1)(d)) SPS 490	in case of conflicting evidence GATT 336
measure to protect human or animal life (Annex A(1)(b))	need to take account of all the evidence GATT 331
“additive”, genes as SPS 478	
allergens as toxins SPS 484–5	
“contaminants” SPS 480	
“foods, beverages or feedstuffs” SPS 477	
ordinary meaning SPS 476	
“toxins”	
poisonous effect, relevance SPS 483	
“unintentional addition to food” SPS 481	
“measure to protect human life or health . . . from diseases carried by animals, plants or products of. . .” (Annex A(1)(c))	

as a relative concept (“accordion”)/case-by-case approach GATT 342–3	object and purpose (preamble) as aid to interpreting TBT Agreement TBT 3 GATT objectives and TBT 3
directly competitive or substitutable products distinguished GATT 328–30	technical regulations (TBT 2/Annex 1.1) “technical regulation” (Annex 1.1) “identifiable product or group of products” TBT 156 express identification, relevance TBT 156 mandatory compliance TBT 161 measure as a whole, need to consider TBT 165 “product characteristics” TBT 157 negative form TBT 159 ordinary meaning TBT 157
GATT III:1 compared/as context GATT 227, 257, 328–30	three-tier test/order of analysis (TBT 2.4) TBT 155
GATT III:2 and III:4 interrelationship GATT 342–3	EC – Asbestos (Panel), WT/DS135/R and Add.1, DSR 2001:VII and DSR 2001:VIII
consistency of interpretation GATT 342, 345	burden of proof (general rules) exception/affirmative defence GATT 853 non-violation claims (GATT XXIII:1(b)) DSU 1350 <i>onus probandi actori incumbit</i> GATT 853 <i>prima facie</i> case requirement GATT 853
“less favourable treatment” requirement and GATT 345	consultation and dispute settlement (TBT 14) technical expert group, panel’s right to establish (TBT 14.2) TBT 147, DSU 25
relevant factors Border Tax Adjustment, Working Party Report GATT 343	DSU 13.2 compared TBT 147, DSU 25 individual advice, right to seek TBT 147 special or additional rules and procedures (DSU 1.2 and Appendix 2) and DSU 25
competitive relationship GATT 332–5, 342, 343	GATT 1947/WTO continuity, decisions, procedures and customary practices under GATT 1947 (WTO XVI:1) (GATT <i>acquis</i>) GATT 407
evidence of health risks, relevance GATT 334	General Exceptions (GATT XX) burden of proof chapeau and paras. a–j distinguished GATT 853 SPS distinguished GATT 854
consumer preferences GATT 331, 333–6, 343	General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health
health risks and GATT 334	burden of proof GATT 853 justification, three-tier test GATT 889 “necessary”, scientific data/risk assessment and GATT 900
end-uses GATT 333, 343	good faith engagement in dispute settlement procedures (DSU 3.10), correction of factual errors and DSU 125
nature of product GATT 343	interim review (DSU 15), failure to inform panel of errors DSU 786
physical properties GATT 332, 334	interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose, preamble as evidence of TBT 1–2
tariff classifications GATT 343	multiple authentic languages, English, French and Spanish versions compared GATT 406–7
national treatment, general principle (GATT III:1)	multiple authentic languages, interpretation (VCLT 33) “and” / “comme” GATT 406–7, DSU 1659 effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>) and DSU 1659 n. 2594
as context for interpretation of GATT III:2–5 GATT 227, 328, 342	national treatment, general principle (GATT III:1) applicability measures imposed at the time or point of importation (“internal measures”) (<i>Ad Article</i>) imposition on like domestic product requirement GATT 407
interpretation of GATT III as a whole and, consistency of interpretation GATT 342	QRs (GATT XI) distinguished GATT 406–7
national treatment, regulatory discrimination (GATT III:4)	national treatment, regulatory discrimination (GATT III:4) “laws, regulations or requirements” English, French, Spanish versions of <i>Ad Article</i> III compared GATT 406–7
GATT XX and GATT 385	identity of measure, relevance GATT 407
“less favourable treatment” grouping approach GATT 372	“restrictions made effective through state-trading organizations” (<i>Ad Articles</i> XI, XI, XIII, XIV and XVIII) GATT 406
as requirement for violation finding GATT 345	non-violation claims (GATT XXIII:1(b)) “benefit” /legitimate expectation of improved market access as
national treatment, tax discrimination (GATT III:2)	
first and second sentences distinguished GATT 329–30	
general principle (GATT III:1) and GATT 218	
non-violation claims (GATT XXIII:1(b))	
“any measure” GATT 959	
non-commercial measure GATT 964	
“benefit” /legitimate expectation of improved market access as, non-commercial measure and GATT 964	
burden of proof GATT 968–70	
as exceptional remedy GATT 959, 960	
GATT XXIII:1(a) distinguished GATT 959	
GATT XXIII:1(b) distinguished GATT 959	
measure in “conflict” with GATT provisions, applicability to GATT 959	
concurrent application to measures falling under other provisions of GATT GATT 963	
non-violation claims (GATT XXIII:1(b)) (DSU 26.1), remedies (DSU 26.1(b)) DSU 1353	
ordinary meaning of terms used in covered agreements, “product characteristics” (TBT Annex 1.1) TBT 157	
prompt and satisfactory settlement (DSU 3.3) DSU 64	
relationships within and between agreements GATT III:1/GATT III as a whole GATT 218	
GATT III:4/GATT XX GATT 385	
risk assessment, need for (SPS 5.1–5.3), ascertainable and theoretical risk distinguished (SPS 5.1), quantitative threshold, relevance GATT 902	
special or additional procedures (AB) (ABWP 16(1)), <i>amicus curiae</i> briefs DSU 1382	
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)	
completion of the legal analysis in case of contentiousness/omission/insufficiency of facts DSU 867	
disagreement with the panel DSU 867	
insufficient argument of novel issue DSU 867	
standard/powers of review (panel) (DSU 11), “objective assessment of the facts” /alleged disregard or distortion of the evidence, discretion in assessment of evidence GATT 900	
TBT Agreement	

<i>(cont.)</i>	
reasonable anticipation and GATT 981–3, 988	neutrality in application and administration in a fair and equitable manner, need for (LA 1.3), administration in a uniform, impartial and reasonable manner (GATT X:3 (a)), equivalence GATT 594
resulting from negotiations GATT 977	rules and procedures distinguished LIC 4
burden of proof DSU 1350	tariff quota procedures, applicability to LIC 2, 13
constituent elements GATT 966	use of “restriction” in LIC 3.2 and 3.3, relevance LIC 2
as exceptional remedy DSU 1350	interpretation of covered agreements, rules relating to including VCLT provisions
GATT XXIII:1(a) distinguished GATT 959	object and purpose, GATT XIII:2 GATT 659
nullification or impairment, need for GATT 988	same or closely related phrases in different agreements, GATT X:3(a)/LIC 1.3 GATT 594
non-violation claims (GATT XXIII:1(b)) (DSU 26.1)	legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)
burden of proof / “detailed justification” (DSU 26.1(a)) DSU 1350–1	arguments distinguished DSU 323, 334, 345 n. 557, 411
remedies (DSU 26.1(b)) DSU 1353	clarification of claim during proceedings DSU 309, 329 n. 529, 334, 345 n. 557
quantitative restrictions, elimination (GATT XI)	rectification at subsequent stages, arguments in written or other submission or statement DSU 323
GATT III and GATT 406–7	<i>lex specialis</i> /presumption against treaty conflicts, possibilities of conflict considered by panel/AB, GATT X:3(a)/LIC 1.3 DSU 1718
national treatment (GATT III) and GATT 406–7	licensing procedures, national treatment, regulatory discrimination (GATT III:4) and GATT 359
relationships within and between agreements	“like product” (GATT I), “any product originating in or destined for another country”, administrative distinctions, relevance GATT 45
DSU 13.2/TBT 14.2 TBT 147, DSU 25	Lomé waiver WTO 209, GATT 114, DSU 534
GATT III/GATT XI GATT 406–7	market access, concessions and commitments (AG 4.1)
GATT III:4/GATT XI	consistency with GATT XIII GATT 689, DSU 875
scientific evidence, need for sufficient (SPS 2.2), burden of proof, GATT XX requirements distinguished GATT 854	reform process and AG 1, 190
special or additional rules and procedures (DSU 1.2 and Appendix 2), “shall prevail” in case of a difference with DSU DSU 25	MFN treatment (GATS II)
State trading enterprises (STEs) (GATT XVII), national treatment, regulatory discrimination (GATT III:4) and GATT 406	determination of violation, elements, aims and effects test GATT 217, GATS 38
TBT Agreement	national treatment (GATS XVII) distinguished GATS 34
object and purpose (preamble)	“treatment no less favourable” (GATS II:1), <i>de facto</i> discrimination GATT 25, GATS 34
as aid to interpreting TBT Agreement TBT 1–2	MFN treatment (GATT I:1)
GATT objectives and TBT 1–2	“advantage”, allocation of tariff quotas GATT 35
technical regulations (TBT 2/Annex 1.1), “technical regulation” (Annex 1.1), measure as a whole, need to consider TBT 165	<i>de facto</i> discrimination GATT 25
EC – Bananas III (AB), WT/DS27/AB/R, DSR 1997:II	modification of schedules (GATT XXVIII), applicability of GATT I and XIII GATT 116, 139
AB procedures (DSU 17.9 and ABWP)	national treatment, general principle (GATT III:1), “so as to afford protection”, GATS II and XVII distinguished GATS 34
appellant’s submission (ABWP 21), grounds for allegation of specific errors (ABWP 21:2) DSU 1432	national treatment, regulatory discrimination (GATT III:4) “affecting”
timetable (ABWP 26), modification in exceptional circumstances (ABWP 16(2)), modification of date of oral hearing (ABWP 16(2)) DSU 1393	hurricane licences GATT 378
Agriculture Agreement (AG)	purpose of measure, relevance GATT 359
non-discrimination (GATT XIII) and GATT 689, AG 1, 190	general principle (GATT III:1) and GATT 323
object and purpose (preamble), on-going reform AG 1, 190	“less favourable treatment”
relationship with other WTO agreements (AG 21.1), GATT XIII (non-discrimination), market access concessions and commitments (AG 4.1) GATT 168–9, AG 1, 36, 190	discriminatory system for allocation of import licences GATT 165, 210, 398
composition of delegation	formal differentiation in treatment, relevance GATT 378
legal representation/private counsel DSU 723–4	“so as to afford protection” (GATT III:1), relevance GATT 323
Member’s right to determine DSU 723, 1732	national treatment, services and service suppliers (GATS XVII), determination of violation, elements, aims and effects test GATT 217, GATS 132
consultations (DSU 4), joinder of third parties having “substantial trade interest” (DSU 4.11) DSU 175–6, 468	non-discriminatory administration of QRs (GATT XIII)
directly competitive or substitutable products (GATT III:2), nullification or impairment, evidence of DSU 90	administrative distinctions, relevance GATT 655, 659
dispute settlement and enforcement (GATS XXIII), nullification and impairment (DSU 3.8) distinguished GATS 203, DSU 99	AG 4.1 (market access) and GATT 689
due process (dispute settlement proceedings)	allocation of quotas (GATT XIII:2(d)), GATT I:1 (“advantage”) and GATT 35
panel working procedures, need for DSU 236, 346, 622 n. 1015, 670	allocation to Members not having a substantial interest (GATT XIII:1) GATT 660
prejudice to party, relevance DSU 236, 346, 670	distribution of trade as close as possible to expected shares in absence of restrictions (GATT XIII:2 chapeau) GATT 665
GATS Agreement, GATT 1994 overlap GATT 428, TRIMs 8 n. 12, GATS 28	finding as factual matter DSU 842
GATT 1994, object and purpose (GATT I:1), non-discrimination GATT 25	
identification of specific measures (DSU 6.2)	
“specific”, preliminary ruling on DSU 236	
specificity, preliminary ruling on DSU 236, 670	
import licensing procedures	

<p>“importation . . . is similarly restricted” (GATT XIII:1) GATT 659–60</p> <p>legal basis for distinction, relevance GATT 659</p> <p>object and purpose (GATT XIII:2) GATT 659</p> <p>non-retroactivity of treaties (VCLT 28), in absence of different intention DSU 1522</p> <p>notice of appeal, requirements (ABWP 20(2)(d))</p> <p>claims and arguments distinguished DSU 1429 n. 2228</p> <p>failure to meet, consequences DSU 1415</p> <p>statement of allegation of error on issues of law/legal interpretations (ABWP 20(2)(d)), statement of grounds (ABWP 21:2) DSU 1432</p> <p>nullification or impairment (DSU 3.8)</p> <p>adverse impact/prejudice, relevance DSU 90</p> <p>GATS XXIII, (dispute settlement and enforcement), distinguished GATS 203, DSU 99–100</p> <p>presumption in case of inconsistency with covered agreement DSU 90–1</p> <p>order of analysis, specific/general provision AD 467 n. 622</p> <p>ordinary meaning of terms used in covered agreements, “concessions” GATT 138</p> <p>preliminary rulings on, specificity of request for panel (DSU 6.2) DSU 236, 670</p> <p>preliminary rulings (procedural aspects)</p> <p>timing DSU 670</p> <p>working procedures, need for DSU 346</p> <p>publication and administration of trade regulations (GATT X)</p> <p>AG/GATT XIII AG 1, 190</p> <p>AG 4.1 and 21.1/GATT XIII GATT 689, DSU 875</p> <p>GATS II/GATT I:1 GATT 25</p> <p>GATS/GATT GATT 428, TRIMs 8 n. 12</p> <p>GATT I/GATT III:4 GATT 359, 362, 395</p> <p>GATT I/GATT XIII GATT 114, 138, 164</p> <p>GATT II:7/GATT XIII GATT 164, 168</p> <p>GATT III:4 and XVII/GATT II:1(a) and XI GATT 398</p> <p>GATT X:3(a)/LIC 1.3 GATT 594, DSU 1718, 1726</p> <p>relationship with other GATT provisions GATT 551, 589</p> <p>SCM 3.1(b)/TRIMs TRIMs 8</p> <p>specific/general provision GATT 418</p> <p>uniform, impartial and reasonable administration (GATT X:3(a)), “shall administer” /applicability to substantive rule GATT 551</p> <p>request for establishment of panel, requirements (DSU 6.2)</p> <p>compliance, importance of</p> <p>scrutiny by panel DSU 184, 186, 201, 206 n. 227</p> <p>subsequent cure of defect, exclusion DSU 323, 411, 1145 n. 1789</p> <p>fruitfulness of action (DSU 3.7), determination by Member DSU 76, 84, 176</p> <p>“sufficient to present the problem clearly” DSU 186</p> <p>Schedules of Concessions (GATT II)</p> <p>diminishment of obligations, exclusion GATT 138, 164</p> <p>interpretation and clarification, Marrakesh Protocol as aid GATT 139</p> <p>standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), non-discriminatory administration of QRs (GATT XIII), determination DSU 842</p> <p>standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, independent assessment, international agreements other than the covered agreements DSU 534</p> <p>standing/right to bring claim (DSU 3.7), legal interest, relevance DSU 75, 83–4, 468, 1744–5</p> <p>terms of reference of panels (DSU 7), request for establishment of panel as basis DSU 186, 201, 411</p>	<p>third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6, “substantial interest” (DSU 10.2) DSU 468</p> <p>third party rights (consultations (DSU 4.11)) DSU 175–6, 468</p> <p>TRIMs Agreement, as integral part of WTO Agreement TRIMs 8</p> <p>waivers (WTO IX:3 and IX:4), exceptional nature WTO 209</p> <p>EC – Bananas III (Panel), WT/DS27/R, DSR 1997:II</p> <p>Agriculture Agreement (AG)</p> <p>non-discrimination (GATT XIII) and GATT 689</p> <p>relationship with other WTO agreements (AG 21.1), GATT XIII (non-discrimination), market access commitments (AG 4.1) and AG 190</p> <p>consultations (DSU 4), adequacy of consultations (DSU 4.5), Panel responsibilities in relation to DSU 160</p> <p>developing countries’ economic development purposes/financial and trade needs (LIC 1.2), legal significance LIC 7–8</p> <p>disclosure of confidential information (GATS III <i>bis</i>) GATS 48</p> <p>GATS Agreement, disclosure of confidential information (GATS III <i>bis</i>) GATS 48</p> <p>identification of specific measures (DSU 6.2) TRIMs 23</p> <p>“identify”, sufficiency of, reference to instruments implementing challenged measures DSU 214</p> <p>import licensing procedures</p> <p>conformity with GATT principles and obligations requirement (LIC Preamble and 1.2), single undertaking principle, effect LIC 7</p> <p>national treatment (GATT III:4) and GATT 359, TRIMs 6</p> <p>interim review (DSU 15), third party rights DSU 480</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>) LIC 7</p> <p>object and purpose, GATT XIII:2 GATT 655</p> <p>judicial economy, prior decision on another point rendering discussion otiose TRIMs 6</p> <p>legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)</p> <p>identification of treaty provisions DSU 308–9</p> <p>listing of articles without explanation, sufficiency DSU 309</p> <p><i>lex specialis</i>/presumption against treaty conflicts GATT 666 n. 937</p> <p>“conflict” DSU 1717</p> <p>General Interpretative Note (WTO Annex 1A) TRIMs 5, DSU 1717</p> <p>possibilities of conflict considered by panel/AB</p> <p>GATT/LIC and TRIMs 2 TRIMs 41–2, DSU 1717</p> <p>LIC/TRIMs DSU 1717</p> <p>Lomé waiver GATT 114, DSU 534</p> <p>right of Panel to consider DSU 534</p> <p>“measures affecting trade in services” (GATS I:1) GATS 9–10</p> <p>“affecting” GATS 10</p> <p>“measures at issue” (DSU 6.2), prospective measure, “of the same essence” DSU 383 n. 620</p> <p>MFN treatment (GATS II), “like service and service supplier” (GATS II:1), wholesale transactions GATS 36</p> <p>MFN treatment (GATT I:1)</p> <p>“advantage”, creation of more favourable import duties GATT 33</p> <p>“all rules and formalities” GATT 28</p> <p>multiple complainants (DSU 9)</p> <p>separate panel reports (DSU 9.2) DSU 446</p> <p>structure DSU 451</p> <p>national treatment (GATS XVII), “like service and service supplier” (GATS XVII:1), wholesale transactions GATS 128</p> <p>national treatment, regulatory discrimination (GATT III:4)</p> <p>“affecting”, licensing procedures GATT 359</p> <p>“affecting their internal sale, offering for sale, purchase . . .”, purpose of measure, relevance GATT 359</p>
---	---

<i>(cont.)</i>	
general principle (GATT III:1) and GATT 359	panel's discretion and DSU 478
TRIMs and TRIMs 6	participation in interim review process (DSU 15) DSU 480, 774
non-discriminatory administration of QRs (GATT XIII)	presence at second substantive meeting DSU 479
adjustment of quota allocation (GATT XIII:4), new Member	submission of additional written material, exclusion DSU 479
rights and GATT 676	“sufficient to present their views” (Appendix 3, para. 6) DSU 479
administrative distinctions, relevance GATT 655, 658	written submissions (DSU 10.2) DSU 478
allocation of quotas (GATT XIII:2(d))	waivers (WTO IX:3 and IX:4)
GATT XIII:1/GATT XIII:2 chapeau and GATT 672	exceptional nature WTO 209
GATT XIII:4 and GATT 672, 676	GATT I/GATT XIII waivers, relationship GATT 682
“may seek agreement” GATT 670	EC – Bananas III (Article 21.5 – Ecuador) (Panel), WT/DS27/RW/
to Members having a substantial interest GATT 666 n. 637	ECU, DSR 1999:II
“importation . . . is similarly restricted” (GATT XIII:1) GATT	Agriculture Agreement (AG), non-discrimination (GATT XIII)
658	and GATT 656
legal basis for distinction, relevance GATT 658	non-discriminatory administration of QRs (GATT XIII)
inclusion of inconsistent allocations in Schedule of Concessions,	allocation of quotas (GATT XIII:2(d)), to Members not having a
relevance GATT 169	substantial interest GATT 673
object and purpose (GATT XIII:2) GATT 672	concessions on agricultural products and (AG 4.1 and 21.1)
ordinary meaning of terms used in covered agreements	GATT 656
“affecting” (GATS I:1) GATS 10, 73	distribution of trade as close as possible to expected shares in
“no less favourable treatment” (SG II:1 and XVII:1) GATS 34	absence of restrictions (GATT XIII:2 chapeau)
panel procedures (DSU 12 and Appendix 3 (WP)), departure from	GATT 667
after consultation with/agreement of parties (DSU 12.1)	tariff quotas, applicability of, GATT XIII:5 GATT 678
DSU 479	security and predictability of WTO obligations (DSU 3.2) WTO 11
publication and administration of trade regulations (GATT X),	EC – Bananas III (Article 21.3(c)), WT/DS27/15, DSR 1998:I
uniform, impartial and reasonable administration	“reasonable period” for implementation of recommendations and
(GATT X:3(a)), applicability to licensing regulations	rulings (Article 21.3(c) arbitrations)
GATT 549	15-month guideline DSU 1040
relationships within and between agreements	statutory enforcement periods DSU 1075
GATT I, III and X/LIC 1.2 LIC 7	EC – Bananas III (Article 21.5 – Ecuador) (Panel), WT/DS27/15,
GATT I/GATT XIII GATT 114	DSR 1998:I/EC – Bananas III (Article 21.5 - US), WT/
GATT III:4/TRIMs 2 TRIMs 6	DS27/AB/RW/USA and Corr.1 (AB)
GATT X:1/GATT X:3 GATT 549	implementation of panel or AB recommendations (DSU 19.1),
GATT XIII:2(d)/GATT XIII:1 and GATT XIII:2 chapeau GATT	panel's discretionary suggestions DSU 953
672	non-discriminatory administration of QRs (GATT XIII), tariff
GATT XIII:2(d)/GATT XIII 4 GATT 672, 676	quotas, applicability of, GATT XIII:5 GATT 680
GATT/LIC/TRIMs 2 TRIMs 5	review of implementation of DSB rulings (DSU 21.5), waiver of
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1),	right to DSU 1154
arguments distinguished DSU 309, 411	EC – Bananas III (Article 21.5 - Ecuador II)/EC - Bananas III
specific provisions allegedly breached, reference to (DSU 6.2)	(Article 21.5 - US) (AB) (WT/DS27/AB/RW2/ECU
DSU 308	Corr.1/WT/DS27/AB/RW/USA and Corr.1)
request for establishment of panel, requirements (DSU 6.2),	DSB
compliance, importance of, subsequent cure of defect,	statements by Members at DSB meetings, legal effect
exclusion DSU 411	DSU 26–7, 28
Schedules of Concessions (GATT II), interpretation and	“mutually agreed solution” (DSU 3.6), whether DSU 27
clarification, VCLT as applicable law GATT 169	DSU dispute settlement, time-frame (DSU 12.8, 12.9, 17.5 and 20),
standard/powers of review (panel) (DSU 11)	indicative nature, DSU 21.5 distinguished DSU 711
“objective assessment of matter before it”	GATT, object and purpose (GATT I:1), expansion of trade in goods
independent assessment, international agreements other than	and services GATT 21
the covered agreements DSU 534	implementation of panel or AB recommendations (DSU 19.1),
non-disclosure of confidential information (GATS III <i>bis</i>)	panel's discretionary suggestions, legal effect DSU 987
GATS 48	interpretation of covered agreements, rules relating to including
standing/right to bring claim (DSU 3.7), legal interest, relevance	VCLT provisions
DSU 1744	“any subsequent agreement . . . regarding its interpretation or
terms of reference of panels (DSU 7)	application” (VCLT 31(3)(a)), waiver as WTO 211
as definition of jurisdiction/legal claims at issue	supplementary means (VCLT 32), in case of ambiguity DSU 82
elaboration/addition in first submission, relevance DSU 411,	text/plain language (VCLT 31(2)) DSU 82
446	multiple panels/same parties/same dispute (DSU 9.3)
elaboration/addition later than first submission DSU 446	harmonization of timetables DSU 464–5
third party enhanced rights/rights beyond those indicated in DSU	panel's discretion DSU 465
10.2, DSU 10.3 and Appendix 3, para. 6	mutually agreed/acceptable solution to matters raised formally
agreement between the parties, relevance DSU 478	(DSU 3.6)
GATT practice DSU 478	Article 21.5 compliance proceedings and DSU 80–1
opportunity to be heard at second substantive meeting DSU 479	interpretation, parties' statements as supplementary means in
opportunity to be heard (DSU 10.2) DSU 478	case of ambiguity (VCLT 32) DSU 82
opportunity to comment on summary of own arguments DSU	“solution” DSU 80
485 n. 801	statements made at DSB meetings, whether DSU 27
	“would be fruitful” (DSU 3.7) DSU 78

notice of appeal, requirements (ABWP 20(2)(d)) failure to meet consequences DSU 1417 formal deficiencies/absence of prejudice DSU 1424 order of analysis, measures taken to comply (DSU 21.5) DSU 1120 panel reports, high quality/flexibility of panel procedures balance (DSU 12.2) DSU 465 relationships within and between agreements, DSU 3.6/DSU 22.8 DSU 81 review of implementation of DSB rulings (DSU 21.5) “measures taken to comply” measures close to measure taken to comply DSU 1120 order of analysis DSU 1120 waiver of right to DSU 1154 security and predictability of WTO obligations (DSU 3.2), as WTO objective WTO 11 suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), termination as final solution DSU 28 third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6 DSU 481 waivers (WTO IX:3 and IX:4) limited duration WTO 212 modification or addition to obligations, exclusion WTO 210–11	relationships within and between agreements, DSU 3.7/DSU 3.8 DSU 87 standing/right to bring claim (DSU 3.7), nullification or impairment requirement (DSU 3.8) distinguished DSU 87
EC – Bananas III (Article 21.5 – Ecuador II) (AB), WT/DS27/15, DSR 1998:I/EC – Bananas III (Article 21.5 – US), WT/DS27/AB/RW/USA and Corr.1 (AB) implementation of DSB recommendations and rulings (DSU 21) impracticability of immediate compliance/reasonable period of time (DSU 21.3, chapeau) burden of proof DSU 579 multilateral interpretation (WTO IX:2) as WTO 202 interpretation of covered agreements, rules relating to including VCLT provisions, “any subsequent agreement . . . regarding its interpretation or application” (VCLT 31(3) (a)), waiver as DSU 1578–9 Lomé waiver GATT 114, 683 “measures at issue” (DSU 6.2), terminated measures, termination following agreement on terms of reference DSU 394 mutually agreed/acceptable solution to matters raised formally (DSU 3.6) suspension of concessions (DSU 22.8) and DSU 81 “would be fruitful” (DSU 3.7) DSU 79 non-discriminatory administration of QRs (GATT XIII), tariff quotas, applicability of, GATT XIII:5 GATT 681 “reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations) 15-month guideline (DSU 21.3(c)) DSU 1040 burden of proof DSU 579 entry into force of legislative instrument, relevance DSU 1075 relationships within and between agreements DSU 3.6/DSU 21.5 DSU 80–1 GATT I/GATT XIII GATT 682–3, 683 waivers (WTO IX:3 and IX:4) GATT I/GATT XIII waivers, relationship GATT 682–3, 683 Lomé waiver GATT 682–3 WTO Agreement, amendments (WTO X), multilateral interpretation, effect WTO 202	EC – Bananas III (Article 21.5 – US) (Panel), WT/DS27/RW/USA and Corr.1 burden of proof (general rules), good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) DSU 1509 DSB, statements by Members at DSB meetings, legal effect, “taking note” of, legal effect DSU 30 DSU dispute settlement, “contentious act” distinguished (DSU 3.10) DSU 102 evidence (panel) (DSU 12), time-limits for submission, panel’s right to admit “late” /new evidence, evidence submitted during interim review (DSU 15) DSU 792 good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), as fundamental rule of treaty interpretation DSU 1509 information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), “from any individual or body”, parties DSU 750 interim review (DSU 15), new evidence DSU 792 standing/right to bring claim (DSU 3.7), legal interest, relevance DSU 86
EC – Bananas III (Ecuador) (Article 22.6 – EC), WT/DS27/ARB, DSR 1999:II arbitration (DSU 22.6) due process and DSU 1183, 1210 scope of review/arbitrators’ mandate/task (DSU 22.7) agreement/sector for which authorization is sought (DSU 22.3), limitation to DSU 1186 determination of “equivalence” (DSU 22.3) DSU 1217 methodology paper, request for DSU 1245 rejection of proposed level of suspension and DSU 1258 “specific” agreement and sectors (DSU 22.3) DSU 1186 arbitrators’ margin of discretion DSU 1203 DSU 6.2 requirements, applicability DSU 1210, 1183 specific level of suspension (DSU 22.4) DSU 1265–6, 1185 countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10), inducement of compliance as objective DSU 1178 due process (dispute settlement proceedings), arbitration (DSU 22.6) and DSU 1183, 1210 intellectual property conventions (TRIPS 2), continuing obligations under (TRIPS 2.2) TRIPS 33 relationships within and between agreements, DSU 22.3(b)/DSU 22.3(c) DSU 1204 request for establishment of panel, requirements (DSU 6.2) due process/ability to defend itself considerations DSU 1183, 1210 suspension of concessions (DSU 22.2), applicability to DSU 1183, 1210 suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22) agreement to DSU 1265–6 level equivalent to nullification or impairment (DSU 22.4), Article 22.6 Arbitrator’s right to review DSU 1217 nature and purpose of countermeasures DSU 78 “or other obligations”, authorization to suspend (DSU 22.2) DSU 1190 “specific” DSU 1185–6 suspension in other sectors (DSU 22.3(b))/under other agreements (DSU 22.3(c)), relationship between DSU 1204 suspension in same sector as violation as preferred option (DSU 22.3(a)) DSU 1200 “if that party considers that it is not practical or effective” (DSU 22.3(b) and (c)) DSU 1202–3	EC – Bananas III (Ecuador) (Article 22.6 – EC), WT/DS27/ARB, DSR 1999:II arbitration (DSU 22.6) due process and DSU 1183, 1210 scope of review/arbitrators’ mandate/task (DSU 22.7) agreement/sector for which authorization is sought (DSU 22.3), limitation to DSU 1186 determination of “equivalence” (DSU 22.3) DSU 1217 methodology paper, request for DSU 1245 rejection of proposed level of suspension and DSU 1258 “specific” agreement and sectors (DSU 22.3) DSU 1186 arbitrators’ margin of discretion DSU 1203 DSU 6.2 requirements, applicability DSU 1210, 1183 specific level of suspension (DSU 22.4) DSU 1265–6, 1185 countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10), inducement of compliance as objective DSU 1178 due process (dispute settlement proceedings), arbitration (DSU 22.6) and DSU 1183, 1210 intellectual property conventions (TRIPS 2), continuing obligations under (TRIPS 2.2) TRIPS 33 relationships within and between agreements, DSU 22.3(b)/DSU 22.3(c) DSU 1204 request for establishment of panel, requirements (DSU 6.2) due process/ability to defend itself considerations DSU 1183, 1210 suspension of concessions (DSU 22.2), applicability to DSU 1183, 1210 suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22) agreement to DSU 1265–6 level equivalent to nullification or impairment (DSU 22.4), Article 22.6 Arbitrator’s right to review DSU 1217 nature and purpose of countermeasures DSU 78 “or other obligations”, authorization to suspend (DSU 22.2) DSU 1190 “specific” DSU 1185–6 suspension in other sectors (DSU 22.3(b))/under other agreements (DSU 22.3(c)), relationship between DSU 1204 suspension in same sector as violation as preferred option (DSU 22.3(a)) DSU 1200 “if that party considers that it is not practical or effective” (DSU 22.3(b) and (c)) DSU 1202–3

(cont.)

EC – Bananas III (US) (Article 22.6 – EC), WT/DS27/ARB, DSR 1999:II

- arbitration (DSU 22.6)
 - scope of review/arbitrators’ mandate/task (DSU 22.7)
 - determination of “equivalence” (DSU 22.3) DSU 1246, 1253–4
 - WTO-consistency as prior consideration DSU 1253–4
 - DSU 22.6 and DSU 22.7 compared DSU 1216
 - “specific”, agreement and sectors (DSU 22.3) DSU 1198
 - third party rights DSU 507, 510 n. 833
 - business confidential information (BCI)
 - additional procedures, refusal to accept on grounds of breach of confidentiality requirement DSU 905
 - ex parte* communications with panel or AB (DSU 18.1) and DSU 905
 - countermeasures in case of failure to take measures to remove adverse effects of or withdraw subsidy (SCM 7.9), inducement of compliance as objective SCM 232, 335, DSU 1181–2
 - countermeasures (general principles), proportionality and DSU 1695
 - ex parte* communications with panel or AB (DSU 18.1), party’s refusal to accept BCI procedures allegedly contravening rule, effect DSU 905
 - good faith engagement in dispute settlement procedures (DSU 3.10), continuity of obligation throughout dispute settlement process DSU 131
 - interpretation of covered agreements, rules relating to including VCLT provisions, as a whole/holistic/harmonious exercise DSU 1216
 - nullification or impairment (DSU 3.8)
 - agreement to DSU 1262
 - aggregate effects on suppliers as a whole DSU 1232
 - “appropriate” (GATT 1947: XXIII:2) distinguished DSU 1255, 1260
 - double-counting DSU 1237
 - “equivalent”, quantitative test DSU 1246, 1256
 - lost opportunities, relevance DSU 1223
 - national treatment provisions (GATT III) distinguished DSU 1223
 - nullification or impairment (DSU 3.8) distinguished DSU 1223
 - direct or indirect benefits (DSU 3.3) DSU 1223
 - lost opportunities, relevance DSU 1223
 - nature and purpose of countermeasures DSU 1177
 - presumption in case of inconsistency with covered agreement DSU 98 n. 115, 1223
 - evidence of level of nullification or impairment distinguished DSU 98, 1231
 - suspension in same sector as violation as preferred option (DSU 22.3(a)), “sectors” DSU 1201
 - as temporary measure (DSU 22.8) DSU 1177
 - ordinary meaning of terms used in covered agreements, “equivalent” (DSU 22.4) DSU 1246
 - suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
 - level equivalent to nullification or impairment (DSU 22.4), comparability of bases, need for DSU 1243
 - as temporary measure (DSU 22.8) DSU 1177
 - third party rights (Article 22.6 arbitrations) DSU 507, 510 n. 833
 - unilateral action by Member, prohibition (DSU 23.1) DSU 1295
- EC – Bed Linen dispute (WT/DS141)**
 - implementation of DSB recommendations and rulings (DSU 21), ad hoc procedural agreements DSU 1166
 - “sequencing” (interrelationship between Article 21.5 and Article 22.6 arbitration, ad hoc procedural agreements), non-application of 30-day Article 22.6 deadline DSU 1166

EC – Bed Linen (AB), WT/DS141/AB/R, DSR 2001:V

- AB procedures (DSU 17.9 and ABWP), timetable, modification in exceptional circumstances (ABWP 16(2)) DSU 1387, 1388
 - determination of dumping (AD 2)
 - calculation of SG&A costs (AD 2.2.2), sales not in the normal course of trade, exclusion AD 69–70
 - fair comparison of export price and normal value (AD 2.4), margins of dumping (AD 2.4.2) AD 113
 - “normal value . . . in the ordinary course of trade” (AD 2.1) calculation of dumping margins (AD 2.4)
 - comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2) AD 116
 - “comparable” AD 118–19
 - imposition and collection of anti-dumping duties (AD 9), relevance AD 142 n. 204
 - non-comparable types AD 124
 - targeted dumping AD 142
 - calculation of SG&A costs (AD 2.2.2)
 - “weighted average” (AD 2.2.2(ii))
 - of “actual amounts incurred and realized” AD 69–70
 - single exporter or producer, sufficiency AD 68, 704
 - sales transaction not “in the ordinary course of trade” (AD 2.2), weighted average (AD 2.2.2(ii)) and AD 69–70
 - “dumping” / “margin of dumping” (AD 2.1)
 - product specific requirement AD 17
 - sampling technique and AD 201
 - interpretation of covered agreements, rules relating to including VCLT provisions, multiple permissible interpretations AD 928 n. 1269
 - relationships within and between agreements
 - AD 2.2.2(i)/AD 9.4(i) AD 68, 704
 - AD 2.4.2/AD 2.4 AD 119
 - standard/powers of review (panel) (AD 17.6), interpretation of relevant provisions of AD (AD 17.6(ii)), “admits of more than one permissible interpretation” AD 928 n. 1269
 - “zeroing” (AD 9.3/GATT VI:2), comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2) AD 116, 124
- EC – Bed Linen (Panel), WT/DS141/R, DSR 2001:VI**
- anti-dumping duties, imposition and collection (AD 9)
 - calculation of “all other” anti-dumping duty rate (AD 9.4)
 - determination of injury (AD 3), relevance to AD 202
 - single exporter or producer (AD 9.4(i)), sufficiency AD 703
 - consultations (DSU 4)
 - confidentiality (DSU 4.6)
 - disclosure of information obtained in different proceedings DSU 165
 - disclosure of information obtained in same proceedings DSU 154, 165
 - good faith and (DSU 4.3), confidential information as evidence of bad faith DSU 154, 165
 - determination of dumping (AD 2)
 - “normal value . . . in the ordinary course of trade” (AD 2.1) calculation of dumping margins (AD 2.4), “margins” of dumping AD 113
 - calculation of SG&A costs (AD 2.2.2)
 - freedom to choose method AD 63
 - reasonability test, relevance AD 73
 - determination of injury (AD 3)
 - evaluation of injury factors (AD 3.4)
 - all* relevant economic factors and indices having a bearing on checklist approach AD 265
 - grammar, relevance AD 247
 - “including” AD 247
 - “or” AD 247

consideration of each factor to be “apparent” in final determination AD 261	export transactions (AD 2.4.2), non-comparable types AD 124
“domestic industry”	EC – Bed Linen (Article 21.5 – India) (AB), WT/DS141/AB/RW, DSR 2003:III and DSR 2003:IV
companies outside domestic industry, relevance AD 245, 328	anti-dumping duties, imposition and collection (AD 9), calculation of “all other” anti-dumping duty rate (AD 9.4), determination of injury (AD 3), relevance to AD 202
domestic producers outside selected example, relevance AD 244, 328	determination of injury (AD 3), “positive evidence” / “objective examination” requirement (AD 3.1), sampling (AD 6.10) and AD 203–4, 212
“positive evidence” / “objective examination” requirement (AD 3.1), “dumped imports” and AD 200–1, 241, 277	evidence (dumping investigation) (AD 6), timely disclosure to interested parties of information relevant for presentation of case (AD 6.4), “relevant”, panel’s obligation to assure itself of validity of “information” AD 915
developing countries (AD 15)	legal status of adopted AB reports (DSU 17.14), as final resolution of dispute DSU 901
“anti-dumping duties” AD 862	legal status of panel reports
provisional duty or security (AD 10.3) distinguished AD 862	as final resolution of dispute DSU 826, 901, 1130, 1138
“constructive remedy”	unappealed finding in adopted report DSU 826, 901, 1130, 1138–9
decision not to impose anti-dumping duties AD 857	“measures at issue” (DSU 6.2), “measures taken to comply” (DSU 21.5) and DSU 1127
lesser duty or price undertaking AD 858	multiple authentic languages, interpretation (VCLT 33)
“shall be explored” AD 859–60	“ordinary meaning” (VCLT 31(1)) and DSU 1661
“domestic industry” (AD 4), “domestic producers” (AD 4.1), single domestic producer, applicability to AD 327	presumption of identity of meaning (VCLT 33) DSU 1661
due process (dispute settlement proceedings), prejudice to party, relevance	precedent, distinguishability of cases and AD 779
“dumping” / “margin of dumping” (AD 2.1), product specific requirement, sampling technique and AD 201	prompt and satisfactory settlement (DSU 3.3), impairment of benefits by measures taken by another Member (DSU 3.3), arbitration (DSU 21.5) and DSU 1136
evidence (panel) (DSU 12), domestic law procedure distinguished DSU 632	relationships within and between agreements
good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), “constructive remedy”, “shall be explored” (AD 15) AD 859	AD 3/AD 6.10 AD 204
information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), “from any individual or body”, parties DSU 632	AD 3/AD 9.4 AD 202
interpretation of covered agreements, rules relating to including VCLT provisions	AD 6.10/AD 9.4 AD 204
dictionaries AD 857	DSU 6.2/DSU 21.5 DSU 1127
grammar, respect for	DSU 16.4, 19.1, 21.1, 21.3, 21.5 and 22.1 DSU 990
“or” AD 247	review of implementation of DSB rulings (DSU 21.5)
semi-colons AD 247	competence of DSU 21.5 (compliance) panel
use of plural form, relevance AD 327, 625 n. 859, 703	determination of consistency of measure with WTO obligations DSU 1102
ordinary meaning, “shall include” AD 247	deviation from original panel report DSU 1105 n. 1709
text/plain language (VCLT 31(2)) AD 73	DSU 6.2 procedures, applicability
investigation of dumping (AD 5)/subsidy (SCM 11), sufficiency of evidence (AD 5.2), determination of sufficiency (AD 5.3), “examine” AD 372	“measures at issue” (DSU 6.2) DSU 1127
preparatory work (VCLT 32), AD 3.4 AD 247	similarity DSU 1107
public notice of preliminary or final determination (AD 12.2)	“matter” DSU 1107
explanations for initiation of investigations (AD 12.2.2), relevance AD 435	“measures taken to comply” DSU 1111
explanations for initiation of investigations (AD 12.2.2), relevance/sufficiency AD 833–4, SCM 504	examination on basis of facts proved during panel proceedings, limitation to DSU 1144
relationships within and between agreements	limitation to DSU 1111, 1131
AD 1/AD 15 AD 862, 863	measure taken “to comply” DSU 1111–12
AD 2.2.2(i)/AD 9.4(i) AD 703	measure subject of original dispute distinguished DSU 1102, 1107, 1111–12
AD 3.4/AD 12.2 AD 842	measures that could have been raised in original proceedings DSU 1144–5
AD 9.1/AD 15 AD 857	new measures DSU 1142–3
request for establishment of panel, requirements (DSU 6.2), as two-stage test	parties’ assessment, relevance DSU 1122
retroactivity (provisional measures and anti-dumping duties) (AD 10), definitive duty higher than provisional duty, payment/recalculation (AD 10.3) AD 862	unappealed finding and DSU 826, 1115, 1130, 1138–9
standard/powers of review (panel) (AD 17.6)	prompt and satisfactory settlement (DSU 3.3) and DSU 1136
“facts made available” (AD 17.5(ii))	relitigation of original dispute, exclusion DSU 1133–5
documents created for purposes of dispute AD 908	sampling (AD 6.10), “objective examination” obligation (AD 3.1) and AD 203–4, 212
evidence before authority at time of determination, limitation to AD 916	standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), law vs fact, panel as trier of facts DSU 608
standard/powers of review (panel) (DSU 11), “objective assessment of the facts” /alleged disregard or distortion of the evidence, obligation to examine and evaluate <i>all</i> the evidence available to it DSU 632	standard/powers of review (panel) (AD 17.6), assessment of the facts (AD 17.6(i)), <i>de novo</i> review, exclusion AD 915
“zeroing” (AD 9.3/GATT VI:2), comparison of weighted average normal value with weighted average of <i>all</i> comparable	standard/powers of review (panel) (DSU 11)
	error of law, application of burden of proof rules DSU 617

<p>(<i>cont.</i>)</p> <p>“objective assessment of the facts” /alleged disregard or distortion of the evidence</p> <p>discretion in assessment of evidence DSU 608, 617</p> <p>egregious error, need for DSU 608, 617</p> <p>sunset review (AD 11.3) (including “likelihood” test), determination of likelihood, volume analysis, analysis from previous review as part “measure taken to comply” AD 779</p> <p>EC – Bed Linen (Article 21.5 – India) (Panel), WT/DS141/RW, DSR 2003:III and DSR 2003:IV</p> <p>determination of dumping (AD 2), “normal value . . . in the ordinary course of trade” (AD 2.1), calculation of administrative, selling and general costs and profits (AD 2.2.2), “weighted average” (AD 2.2.2(ii)), by value or volume AD 71–2</p> <p>determination of injury (AD 3)</p> <p>evaluation of injury factors (AD 3.4)</p> <p>adequacy of evaluation AD 264</p> <p><i>all</i> relevant economic factors and indices, need to examine, eventual relevance of factor, relevance AD 252</p> <p>consideration as a whole AD 252</p> <p>legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), arguments distinguished DSU 330</p> <p>relationships within and between agreements, AD 3/AD 9.4 AD 202</p> <p>review of implementation of DSB rulings (DSU 21.5)</p> <p>due process and DSU 1143</p> <p>“measures taken to comply”</p> <p>examination on basis of facts proved during panel proceedings, limitation to DSU 1143</p> <p>measures that could have been raised in original proceedings DSU 1143</p> <p>unappealed finding and DSU 1115</p> <p>EC – Chicken Cuts (AB), WT/DS269/AB/R, WT/DS286/AB/R and Corr.1, DSR 2005:XIX</p> <p>“agricultural products” (AG 2/Annex 1), Harmonized System, applicability to Annex 1 AG 25, DSU 1115</p> <p><i>arguendo</i> assumptions, “even assuming” DSU 1573</p> <p>domestic law, interpretation of covered agreements, relevance to, as supplementary means (VCLT 32) DSU 1655 n. 2588, 1655 n. 2589</p> <p>Harmonized System of Customs Classification (HS)</p> <p>as aid to interpretation of covered agreements/as context for purposes of GATT 124, 125–6</p> <p>as basis for AG Annex 1 AG 25</p> <p>Explanatory and Chapter Notes, status GATT 126</p> <p>identification of specific measures (DSU 6.2), “identify”, sufficiency of, “among others” DSU 227</p> <p>international law / “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)) DSU 1593</p> <p>Harmonized System as DSU 1593</p> <p>interpretation of covered agreements, responsibility for</p> <p>authoritative (WTO IX:2)</p> <p>“authoritative” interpretation DSU 1586</p> <p>“subsequent practice” (VCLT 31(3)(b)) and DSU 1586</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>“any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)) DSU 1583–6</p> <p>“authoritative” interpretation (WTO IX:2) and DSU 1586</p> <p>“common practice” DSU 1584–5</p> <p>failure to protest a customs classification practice, effect GATT 130</p> <p>“circumstances of conclusion” (VCLT 32) GATT 131</p> <p>context (VCLT 31(2))</p>	<p>“any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)) DSU 1563–4</p> <p>Harmonized System of Customs Classification (HS) as GATT 124, 125–6</p> <p>dictionaries GATT 124</p> <p>object and purpose, caution in use of DSU 1568–73, 1572–3</p> <p>supplementary means (VCLT 32)</p> <p>“circumstances of its conclusion” DSU 1647–52</p> <p>attitudes of parties DSU 1647 n. 2568</p> <p>date of conclusion distinguished DSU 1649</p> <p>objective test DSU 1648</p> <p>official publication of act or instrument DSU 1650</p> <p>prevailing international situation DSU 1652</p> <p>domestic law DSU 1655 n. 2588, 1655 n. 2589</p> <p>non-exhaustive nature of VCLT 32 list DSU 1636–7</p> <p>direct link with treaty, relevance DSU 1647–8</p> <p>“recourse may be had” DSU 1631</p> <p>as a whole/holistic/harmonious exercise DSU 1539</p> <p>“measures at issue” (DSU 6.2)</p> <p>amended measures, amendment after establishment of panel DSU 401</p> <p>measure in existence at time of establishment of panel, limitation to DSU 255, 257, 379–81</p> <p>prompt and satisfactory settlement (DSU 3.3), “satisfactory settlement” (DSU 3.4 and 3.7) DSU 73</p> <p>Schedules of Concessions (GATT II)</p> <p>interpretation and clarification</p> <p>“circumstances of conclusion” (VCLT 32) GATT 131</p> <p>ordinary meaning in context GATT 124</p> <p>subsequent practice (VCLT 31(3)(b)) GATT 130</p> <p>tariff classification for purposes of GATT 122</p> <p>EC – Chicken Cuts (Panel), WT/DS269/R</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17), obligation to exercise jurisdiction/<i>should</i> make an objective assessment DSU 536</p> <p>DSU dispute settlement</p> <p>obligation to have recourse to (DSU 23.1)</p> <p>“recourse to, and abide by” DSU 1311</p> <p>referral to the WCO DSU 1311</p> <p>Harmonized System of Customs Classification (HS), “instrument in connection . . . with the conclusion of the treaty” (VCLT 31(2)(b)), whether DSU 1566</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>context (VCLT 31(2))</p> <p>“any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)) DSU 1557</p> <p>“any instrument . . . made by one or more of the parties in connection with the conclusion of the treaty” (VCLT 31(2)(b)), Harmonized System, whether DSU 1566</p> <p>object and purpose GATT 119</p> <p>parties’ common intentions (VCLT 31(1)) GATT 119, DSU 1573</p> <p>“special meaning” (VCLT 31(4)) DSU 1608</p> <p>multiple complainants (DSU 9)</p> <p>separate panel reports (DSU 9.2)</p> <p>in absence of objection DSU 447</p> <p>structure DSU 454</p> <p>relationships within and between agreements, GATT II:1(a)/GATT II:1(b) GATT 133</p> <p>Schedules of Concessions (GATT II)</p> <p>consistency of measure with GATT II:1(a) and (b) GATT 118–19</p> <p>test GATT 118</p> <p>interpretation and clarification, GATT II:1(a) and (b), interrelationship GATT 133</p> <p>parties’ common intentions (VCLT 31(1)) GATT 119</p> <p>tariff classification for purposes of GATT 122</p>
--	---

security and predictability of WTO obligations (DSU 3.2) GATT 119	terms of reference of panels (DSU 7), preliminary ruling on DSU 418
World Customs Organization (WCO), right to refer dispute to (DSU 23.1) DSU 1311	unilateral action by Member, prohibition (DSU 23.1)
EC – Chicken Cuts (Article 21.3(c)), WT/DS269/13, WT/DS286/15	balance of rights and obligations and DSU 1306
developing countries (DSU 21.2) (implementation of DSB recommendations and rulings), “reasonable period” (DSU 21.3(c)) DSU 1070	examples of excluded actions (DSU 23.2) DSU 1307
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)	EC – Computer Equipment (AB), WT/DS62/AB/R, WT/DS67/AB/R WT/DS68/AB/R, DSR 1998:V
administrative measures as means of implementation, relevance DSU 1050	due process (dispute settlement proceedings), prejudice to party, relevance DSU 226, 377, 674
arbitrator’s limited mandate	identification of specific measures (DSU 6.2)
determination of reasonable period DSU 1023	identification of product, need for DSU 226, 229
limitation on Member’s choice of methods DSU 1027–8	“practice” as measure DSU 273
burden of proof DSU 1088	interpretation of covered agreements, preparatory work (VCLT 32), unilateral customs classification practice DSU 1646
developing countries and (DSU 21.2) DSU 1070	interpretation of covered agreements, rules relating to including VCLT provisions
obligation to commence implementation in good time DSU 1046	context (VCLT 31(2))
pending decision of international organization and DSU 1083	customs classification practice DSU 1645–6
EC – Citrus Products (Panel), L/5776	prior practice, need for consistency DSU 1646
MFN treatment (GATT I:1), as non-violation claim “benefit” (GATT XXIII:1(b)) GATT 974 n. 1381	legitimate expectations (including GATT II:5 provisions) GATT 132
non-violation claims (GATT XXIII:1(b)), “benefit”, MFN treatment GATT 974 n. 1381	tariff concessions in Member’s schedule and GATT 121–3, 162, DSU 1542
EC – Commercial Vessels (Panel), WT/DS301/R, DSR 2005:XV	parties’ common intentions (VCLT 31(1)) GATT 121, DSU 1356, 1542
bilateral agreements, status, EC–Korea Agreed Minutes DSU 7	supplementary means (VCLT 32)
customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2) DSU 1306	“circumstances of its conclusion” DSU 1644–6
international law concepts not relevant to DSU dispute settlement DSU 1320, 1675	unilateral classification practice DSU 1645–6, 1649 n. 2574
DSU, applicability, bilateral agreements, EC – Korea Agreed Minutes DSU 7	“measures at issue” (DSU 6.2), application of tariffs as DSU 273
DSU dispute settlement	non-violation claims (GATT XXIII:1(b)), “benefit” /legitimate expectation of improved market access as, reasonable anticipation and GATT 984
obligation to have recourse to (DSU 23.1)	preparatory work (VCLT 32) DSU 1644
as “exclusive jurisdiction” clause DSU 1306	request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 209, 377
“recourse to, and abide by” DSU 1306	Schedules of Concessions (GATT II)
in “seeking redress of WTO violation” DSU 1306–7	as integral part of GATT 1994 (GATT II:7) GATT 163
implementation of panel or AB recommendations (DSU 19.1), measure terminated in course of proceedings/no longer in existence DSU 934	interpretation and clarification
international law / “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), relevance when unsupported by the text DSU 1320, 1674, 1675	applicable rules, VCLT GATT 121
interpretation of covered agreements, rules relating to including VCLT provisions	legitimate expectations (including GATT II:5 provisions) GATT 121, 132, 162
context (VCLT 31(2)), other articles in same agreement, DSU 23.1 as context for DSU 23.2 DSU 1307	“treatment contemplated” (GATT II:5) and GATT 162, DSU 1542
dictionaries GATT 32	parties’ common intentions (VCLT 31(1)) GATT 121
MFN treatment (GATT I:1), “all matters referred to GATT III:2 and III:4” GATT 32	security and predictability of WTO obligations (DSU 3.2), as WTO objective WTO 9, DSU 43
national treatment, payment of subsidies exclusively to domestic producers as exception (GATT III:8(b)), targeted aid scheme, applicability to GATT 391–2	EC – Computer Equipment (Panel), WT/DS62/R, WT/DS67/R, WT/DS68/R, DSR 1998:V
ordinary meaning of terms used in covered agreements, “have recourse to” / “seek redress” (DSU 23.1) DSU 1306	good faith interpretation of treaty (VCLT 31(1)), legitimate expectations, relevance DSU 1542
preliminary rulings on, terms of reference DSU 418	interpretation of covered agreements, rules relating to including VCLT provisions
relationships within and between agreements	legitimate expectations (including GATT II:5 provisions) GATT 132
DSU 23.1/DSU 23.2 DSU 1307	supplementary means (VCLT 32), “circumstances of its conclusion”, unilateral classification practice DSU 1649 n. 2574
DSU 23.1/VCLT 60 DSU 1320, 1674	EC – Countervailing Measures on DRAM Chips (Panel), WT/DS299/R, DSR 2005:XVIII
GATT /GATT III:8(b) GATT 396	<i>arguendo</i> assumptions, judicial economy and DSU 646–7
remedies as means of restoring balance of WTO rights and obligations DSU 1306	composition of panel (DSU 8), replacement of panellist DSU 442
specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement	data collection period (SCM 15.1/15.2) SCM 438
“against” SCM 587	determination of injury (AD 3)
“specific” SCM 587	merged companies and SCM 432

<p>(<i>cont.</i>)</p> <p>significant increase in dumped imports (AD 3.2), merged companies and SCM 432</p> <p>determination of injury (SCM 15)</p> <p>“all relevant economic factors” (SCM 15.4) SCM 440–1</p> <p>causal relationship between subsidized imports and injury to domestic injury (SCM 15.5 and footnote 47), non-attribution of other factors SCM 447–8</p> <p>data collection period (SCM 15.1/15.2) SCM 438</p> <p>price effect determination (SCM 15.2)</p> <p>obligation to examine other factors, whether SCM 437</p> <p>price undercutting, methodology for determining SCM 436</p> <p>significant increase in subsidized imports (SCM 15.2) SCM 431</p> <p>evidence (countervailing duty investigation) (SCM 12)</p> <p>resort to “facts available” (SCM 12.7)</p> <p>purpose of provision SCM 400</p> <p>secondary source information SCM 389</p> <p>judicial economy, <i>arguendo</i> assumptions and DSU 646–7</p> <p>subsidy, calculation in terms of benefit to recipient (SCM 14), “usual investment practice” (SCM 14(a)) SCM 408</p> <p>subsidy, definition (SCM 1.1(a)(1)) (financial contribution), “direct transfer of funds” (SCM 1.1(a)(1)) debt forgiveness/debt-for-equity swaps SCM 27 n. 43</p> <p>subsidy, specificity (SCM 2), <i>de facto</i> specificity (SCM 2.1(c)), relevant factors SCM 110</p> <p>EC – Export Subsidies on Sugar dispute (WT/DS283/17), review of implementation of DSB rulings (DSU 21.5), ad hoc procedural agreements, non-prejudice to parties’ other rights DSU 1175</p> <p>EC – Export Subsidies on Sugar (AB), WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, DSR 2005:XIII</p> <p>agricultural concessions and commitments (AG 3)</p> <p>export subsidies, prohibition (AG 3.3)</p> <p>“budgetary outlay and quantity commitment levels”, obligation to include both types in Schedule AG 33</p> <p>AG 9.2(b)(iii)/9.2(b)(iv) and AG 109</p> <p>as integral part of GATT 1994 (AG 3.1) AG 26</p> <p>Schedules of Commitments and AG 3, interrelationship AG 27–8</p> <p>Agriculture Agreement (AG), relationship with other WTO agreements (AG 21.1), conflict, priority in case of AG 191</p> <p><i>arguendo</i> assumptions</p> <p>estoppel and DSU 663</p> <p>“even assuming” DSU 111, 1706</p> <p>customary international law rules of interpretation [as codified in the VCLT] as applicable law, Schedules of Commitments (AG) AG 26</p> <p>estoppel</p> <p><i>arguendo</i> assumptions and DSU 663</p> <p>good faith (DSU 3.10) and DSU 110–11, 1705–6</p> <p>export competition commitments (AG 8), compliance with AG and scheduled commitments AG 191</p> <p>good faith engagement in dispute settlement procedures (DSU 3.10)</p> <p>continuity of obligation throughout dispute settlement process DSU 130</p> <p>estoppel and DSU 110–11, 1705–6</p> <p>as limitation on right to bring action under DSU DSU 109</p> <p>identification of specific measures (DSU 6.2), “identify”, sufficiency of, reference to an EC Regulation or to the “EC regime” DSU 218</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>footnotes to treaty as aid/integral part of treaty AG 191</p> <p>same or closely related phrases in different agreements, AG 9.1/AG 9.2(b)(iii)/AG 9.2(b)(iv) AG 109</p> <p>judicial economy, “positive solution to dispute” requirement (DSU 3.7)/false judicial economy and DSU 654</p>	<p><i>lex specialis</i>/presumption against treaty conflicts, possibilities of conflict considered by panel/AB, AG/GATT AG 191, DSU 125, 1725</p> <p>mutually agreed/acceptable solution to matters raised formally (DSU 3.6), “would be fruitful” (DSU 3.7) DSU 1705</p> <p>nullification or impairment (DSU 3.8), presumption in case of inconsistency with covered agreement DSU 96</p> <p>panel reports, adoption of report/notice of appeal (DSU 16.4), extension of deadline procedural agreement on, parties’ procedural agreement on DSU 830</p> <p>payments on export of agricultural product financed by virtue of governmental action (AG 9.1(c)), “payments”, cross-subsidization as/as cross-subsidization AG 91</p> <p>relationships within and between agreements</p> <p>AG /Schedules of Commitments AG 27–8</p> <p>as integral part of GATT 1994, AG 3.1 AG 26</p> <p>Schedules of Concessions (GATT II), interpretation and clarification, customary international law rules of interpretation [as codified in the VCLT] as applicable law AG 26</p> <p>standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)</p> <p>completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 874–5</p> <p>new arguments DSU 857</p> <p>EC – Export Subsidies on Sugar (Australia) (Panel)</p> <p>margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3), unregulated situations and DSU 471, 472</p> <p>preliminary rulings on, third party rights DSU 471</p> <p>third party rights (DSU 10 and Appendix 3)</p> <p>notification of intention to participate in (DSU 10.2), timeliness DSU 471–4</p> <p>preliminary ruling on DSU 471</p> <p>EC – Export Subsidies on Sugar (Thailand/Australia/Brazil) (Panel), WT/DS265/R, WT/DS266/R, WT/DS283/R</p> <p><i>amicus curiae</i> briefs, confidential information obligations (DSU 18.2) DSU 917</p> <p>burden of proof, on WTO law DSU 576</p> <p>confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27), <i>amicus curiae</i> briefs and DSU 917</p> <p>good faith engagement in dispute settlement procedures (DSU 3.10), confidentiality and DSU 127</p> <p>implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 964</p> <p>preliminary rulings on, confidentiality issues DSU 917</p> <p>third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6 DSU 484</p> <p>EC – Export Subsidies on Sugar (Article 21.3(c)), WT/DS265/33, WT/DS266/33, WT/DS283/14, 28 October 2005, DSR 2005:XXIII</p> <p>developing countries (DSU 21.2) (implementation of DSB recommendations and rulings) DSU 1013</p> <p>“reasonable period” (DSU 21.3(c)) DSU 1069</p> <p>“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)</p> <p>arbitrator’s limited mandate, limitation on Member’s choice of methods DSU 1026</p> <p>contentiousness/political sensitivity, relevance DSU 1061</p> <p>developing countries and (DSU 21.2) DSU 1013</p> <p>previous decisions, relevance DSU 1090</p> <p>shortest period possible within Member’s normal legislative process DSU 1033</p> <p>EC – Fasteners (China) (AB), WT/DS397/AB/R</p> <p>Anti-Dumping Agreement (AD), preparatory work (VCLT 32), AD 6 AD 624</p>
---	---

anti-dumping duties, imposition and collection (AD 9) lesser duty, possibility of (AD 9.1) AD 658 “such mandatory duty shall be collected . . .” (AD 9.2) “all sources” AD 667 “appropriate” amounts AD 666 sampling (AD 6.10) and AD 666 mandatory nature AD 660–2 NMEs and AD 660 “shall name” AD 669–70 exception in case of impracticality AD 670 competence of panels and AB (DSU 3.2/DSU 11/DSU 17), <i>compétence de la compétence</i> /obligation to address jurisdictional issues [on own motion] DSU 369 confidential information (AD 6.5) “by nature confidential” / “provided on a confidential basis”, distinguishability AD 500 “good cause shown” AD 502–4 “by nature confidential” / “provided on a confidential basis” distinction, relevance AD 500 “shown” AD 506 non-confidential summaries (AD 6.5.1), as balance between protection of confidentiality and need to ensure opportunity to defend interests AD 514 “parties to an investigation” AD 501 determination of dumping (AD 2) fair comparison of export price and normal value (AD 2.4) “fair comparison”, “shall indicate . . . what information is necessary” AD 106 NMEs and (Note 2 <i>Ad Article VI</i> :1) GATT 456–7, AD 155–6, 166 non-market economies (NMEs) and (Note 2 <i>Ad Article VI</i> :1) AD 166 “like product” (AD 2.1) AD 22 “like product” (AD 2.6) AD 22, 153 determination of injury (AD 3), “positive evidence” / “objective examination” requirement (AD 3.1), sampling (AD 6.10) and AD 199 “domestic industry” (AD 4) “a major proportion of the total domestic production” (AD 4.1) AD 331–4 “domestic producers” (AD 4.1), exclusion of producers not making themselves known before deadline AD 334 due process (anti-dumping measures) (AD 6), balance of interests considerations AD 514 evidence (dumping investigation) (AD 6) due process as underlying principle, balance of interests considerations AD 514 opportunity for defence of interests (AD 6.2), late provision of information and AD 466, 487 questionnaires (AD 6.1.1) request for substantial amount of information as essential feature AD 439–40 time–limits for reply AD 439–40 time–limits, right to set (AD 6.1.1), reply to questionnaires AD 439–40 timely disclosure to interested parties of information relevant for presentation of case (AD 6.4) “information used by the authorities” AD 475 price comparison (AD 2.4) and AD 476–7 NMEs and AD 477, 624 “relevant” AD 475–7 interested parties’ perspective as determinant AD 474 investigation of dumping (AD 5)/subsidy (SCM 11) methodology, authorities’ discretion AD 334 support for (AD 5.4/SCM 11.4), “a major proportion” (AD 4.1) distinguished AD 382	judicial economy definition DSU 643 limitation of concept to panel’s handling of claims DSU 643 MFN treatment (GATT I:1), anti-dumping and countervailing duties (GATT VI) and GATT 97 multiple appeals (notice of other appeal (ABWP 23)), “statement of the nature of the other appeal” (ABWP 23(2)(c)(ii)) DSU 1438 non-market economies (NMEs) collection of mandatory duties (AD 9.2) AD 660 disclosure (AD 6.10) and AD 477, 624 Note 2 <i>Ad Article VI</i> :1 and GATT 456–7, AD 155–6, 166 sampling (AD 6.10) and AD 624 separate legal entities, treatment of AD 628–31 notice of appeal, requirements (ABWP 20(2)(d)), failure to meet, consequences DSU 1418 relationships within and between agreements AD 3.1/AD 4 AD 309 AD 4.1/AD 5.4 AD 382 AD 6.10/AD 9.2 AD 628–31, 666 GATT I/GATT VI GATT 97, 111–12 sampling (AD 6.10) “appropriate amount” (AD 9, 2) and AD 666 as deviation from general rule AD 624 injury investigations (AD 3.2), use in AD 198 NMEs and AD 624 “objective examination” obligation (AD 3.1) and AD 198 separate legal entities, treatment of AD 628–31 terms of reference of panels (DSU 7), timeliness of objections DSU 369 EC – Fasteners (China) (Panel), WT/DS397/R and Corr.1 anti-dumping duties, imposition and collection (AD 9), “such mandatory duty shall be collected . . .” (AD 9.2), “all sources”, AD 9.2 and SCM 18 distinguished AD 668 burden of proof, <i>prima facie</i> case requirement AD 96 confidential information (AD 6.5) “by nature confidential” / “provided on a confidential basis”, distinguishability AD 498–9 disclosure “without specific permission” AD 508 “good cause shown” “by nature confidential” / “provided on a confidential basis” distinction, relevance AD 499 “shown” AD 506–7 publicly available information AD 499 consultations (DSU 4), notification of request for (DSU 4.4), legal basis of the complaint, DSU 6.2 compared DSU 159 determination of dumping (AD 2) fair comparison of export price and normal value (AD 2.4) “due allowance”, “differences which affect price comparability” AD 96–7 “fair comparison”, “shall indicate . . . what information is necessary” AD 105 determination of injury (AD 3) “positive evidence” / “objective examination” requirement (AD 3.1) “dumped imports” and, margin of dumping not greater than <i>de minimis</i> AD 206 sampling (AD 6.10) and AD 199, 207 significant increase in dumped imports analysis (AD 3.2) AD 233 significant increase in dumped imports (AD 3.2) margin of dumping greater than <i>de minimis</i> , limitation to AD 206 “positive evidence” / “objective examination” requirement (AD 3.1) AD 233 price undercutting/suppression analysis AD 233 “domestic industry” (AD 4)
--	--

<p>(<i>cont.</i>)</p> <p>“a major proportion of the total domestic production” (AD 4.1) AD 335</p> <p>“domestic producers” (AD 4.1), authorities’ discretion in choosing AD 335</p> <p>evidence (dumping investigation) (AD 6)</p> <p>opportunity for defence of interests (AD 6.2), late provision of information and AD 465–6</p> <p>time–limits, right to set (AD 6.1.1), “ample opportunity” (chapeau) and AD 430</p> <p>timely disclosure to interested parties of information relevant for presentation of case (AD 6.4)</p> <p>analysis of constituent elements AD 486</p> <p>information already available to parties distinguished AD 479</p> <p>opportunity for defence (AD 6.2) and AD 465–6, 487</p> <p>request, need for AD 489–90</p> <p>good faith engagement in dispute settlement procedures (DSU 3.10)</p> <p>prompt presentation of clear claim DSU 123</p> <p>prompt settlement of disputes (DSU 3) and DSU 115</p> <p>tactics and manoeuvres to avoid, exclusion DSU 115</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in same agreement, DSU 4.4/DSU 6.2 (“legal basis of the complaint”) DSU 159</p> <p>investigation of dumping (AD 5)/subsidy (SCM 11), support for (AD 5.4/SCM 11.4), determination of standing and AD 381</p> <p>legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), request for consultations (DSU 4.4) compared DSU 159</p> <p>“measures at issue” (DSU 6.2), amended measures, amendment after establishment of panel DSU 260</p> <p>price undertakings (AD 8)/undertakings (SCM 18), AD 8 and SCM 18 distinguished AD 655, SCM 458</p> <p>prompt and satisfactory settlement (DSU 3.3), good faith (DSU 3.10) and DSU 115</p> <p>public notice of preliminary or final determination (AD 12.2), explanations for initiation of investigations (AD 12.2.2), relevance/sufficiency AD 837</p> <p>relationships within and between agreements</p> <p>AD 2.1/AD 2.6 AD 153</p> <p>AD 6.2/AD 6.4/AD 6.5 AD 495</p> <p>AD 9.2/SCM 18 AD 668</p> <p>sampling (AD 6.10), injury investigations (AD 3.2), use in AD 199, 207</p> <p>standard/powers of review (panel) (DSU 11), “objective assessment of the facts”, <i>de novo</i> review, exclusion AD 206</p> <p>Working Procedures, fair, prompt and effective settlement as objective DSU 113, 123</p> <p>EC – Hormones (AB), WT/DS26/AB/R, WT/DS48/AB/R, DSR 1998:I</p> <p>ALOPs (SPS 5.4–5.6 and Annex A(5))</p> <p>consistency in application (SPS 5.5)</p> <p>arbitrary or unjustifiable inconsistencies, exclusion SPS 230</p> <p>comparability of different situations SPS 224–5, 230</p> <p>cumulative nature of obligations SPS 212</p> <p>discrimination or disguised restriction of trade resulting from inconsistency SPS 212</p> <p>elements required for SPS 211–13</p> <p>legal obligation, whether SPS 218</p> <p>“arbitrary or unjustifiable discrimination”, use in GATT XX, SPS 2.3 and SPS 5.5 compared SPS 240–1</p> <p>arbitrary or unjustifiable discrimination, exclusion (SPS 2.3)</p> <p>ALOPs (SPS 5.5) and SPS 61–2, 240</p> <p>comparison of ALOPs as basis for panel review SPS 230</p> <p>arbitrary or unjustifiable distinctions resulting in discrimination or disguised restriction on international trade (SPS 5.5), disguised restriction on international trade/warning signals SPS 238</p>	<p>balance of payments difficulties, developing countries’ right to take import measures (GATT XVIII:B), P, burden of proof GATT 769</p> <p>burden of proof (general rules)</p> <p>allocation (general rule/exception relationship), SPS 3.1 and 3.3</p> <p><i>onus probandi actori incumbit</i> SPS 33, DSU 541</p> <p>order of analysis DSU 554</p> <p><i>prima facie</i> case requirement GATT 598, 769, SPS 76</p> <p>explicit finding, relevance DSU 546</p> <p>“prima facie” DSU 546</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17), right to develop own legal reasoning including arguments not adduced by parties (<i>jura novit curia</i>) DSU 324, 326, 416</p> <p>conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4), “existing legislation” exceptions, exclusion SPS 448–9, 588</p> <p>consistency in application (SPS 5.5), arbitrary or unjustifiable inconsistencies, exclusion SPS 230</p> <p>customary international law rules of interpretation [as codified in the VCLT] as applicable law, DSU 3.2 SPS 8</p> <p>domestic law, incorporation of international SPS standard SPS 78</p> <p>due process (dispute settlement proceedings)</p> <p>good faith evaluation of evidence and DSU 613</p> <p>panel’s discretion on matters of procedure (DSU 12.1 and Appendix 3) DSU 490–1, 684</p> <p>prejudice to party, relevance DSU 488, 508 n. 828, 665</p> <p>expert evidence, multiple complainants and (DSU 9.3) DSU 488–90</p> <p>expert evidence (DSU 13.2/SPS 11.2)</p> <p>ad hoc rules DSU 765</p> <p>“from any individual or body” SPS 403–4, 426, DSU 765</p> <p>group of experts, panel’s right to establish DSU 765</p> <p>selection process, consultation with parties SPS 427</p> <p>expert review groups, rules and procedures (DSU Appendix 4), panel’s right to establish ad hoc rules DSU 1363</p> <p>good faith engagement in dispute settlement procedures (DSU 3.10), objective assessment obligation (DSU 11) SCM 696</p> <p>harmonization of SPS measures (SPS 3)</p> <p>measures based on international standards (SPS 3.1)</p> <p>“based on”, “conform to” distinguished SPS 71–2, 92</p> <p>presumption of consistency with SPS/GATT (burden of proof) SPS 76, 78</p> <p>measures which conform to international standards (SPS 3.2)</p> <p>burden of proof SPS 82–3</p> <p>“conform to” SPS 80–1, 92</p> <p>incorporation into domestic law SPS 78</p> <p>presumption of consistency with SPS/GATT (burden of proof) (SPS 3.2) SPS 78</p> <p>measures which result in a higher level of protection (SPS 3.3)</p> <p>as autonomous right SPS 8, 77–8, 89–90, 97</p> <p>limitations on SPS 90</p> <p>“or as a consequence . . .” SPS 95</p> <p>precautionary principle and SPS 91</p> <p>risk assessment obligation (SPS 5) and SPS 95, 100</p> <p>precautionary principle and DSU 1730</p> <p>as SPS object and purpose (SPS 3.1/preamble) SPS 4, 68, 71</p> <p>information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), discretion not to seek DSU 754 n. 1216, 756, 757 n. 1220</p> <p>international law / “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), <i>in dubio mitius</i> principle DSU 1713 n. 2689, 1734</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>footnotes to treaty SPS 95</p> <p><i>in dubio mitius</i> principle, as supplementary means of interpretation DSU 1713 n. 2689, 1734</p>
---	---

- same or closely related phrases in same agreement, SPS 3.1
 ("based on")/SPS 3.2 ("conform to") SPS 81, 92
- text/plain language (VCLT 31(2)) GATT 79 n. 105, SPS 130–1, DSU 1550
- legal basis of claim / "claim" / "matter referred" (DSU 6.2/7.1), arguments distinguished DSU 324, 326
- margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3) DSU 490–1, 665–6
 - evaluation of evidence (DSU 11) and DSU 610 n. 991
 - expert evidence (DSU 13.2) and DSU 601, 613
 - unregulated situations and DSU 508 n. 828, 510
- multiple complainants (DSU 9)
 - harmonization of panels and timetables (DSU 9.3), joint meeting with experts DSU 488
 - prompt and satisfactory resolution of disputes, Members' right to (DSU 3) and, multiple complainants (DSU 9) and, joint meeting with experts DSU 488
 - third party participation in panel proceedings initiated by another complainant DSU 488–90, 684
- non-retroactivity of treaties (VCLT 28)
 - in absence of different intention DSU 1523
 - continuing measures DSU 1523
 - harmonization of measures (SPS 3.3) and SPS 91
 - precautionary principle (SPS Agreement) SPS 8, DSU 1730
 - SPS preamble SPS 8, DSU 1730
- ordinary meaning of terms used in covered agreements
 - "based on" SPS 71–2, 81, 134
 - "potential" SPS 519
- precautionary principle (SPS Agreement)
 - as customary international environmental law SPS 6, DSU 1730
 - non-retroactivity of treaties (VCLT 28) and SPS 8, DSU 1730
 - sufficient scientific evidence (SPS 5.7) and SPS 8, 23, 37, 328–9, DSU 1730
- prompt and satisfactory settlement (DSU 3.3), multiple complainants (DSU 9.3) and DSU 488
- provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7), precautionary principle and SPS 328–9
- relationships within and between agreements
 - SPS 1.1/SPS 5.1 and 5.5 SPS 14
 - SPS 2/SPS 3 and 5 SPS 65, 141
 - SPS 2.2/SPS 5.1 SPS 44
 - SPS 2.3/SPS 5.5 SPS 61–2
 - SPS 3 as a whole SPS 78
 - SPS 3.1/SPS 3.3 SPS 54
 - SPS 3.3/SPS 5.1 SPS 100
 - SPS 5.2/Annex C SPS 195, 376
 - SPS/WTO XVI:4 SPS 448–9, 588
- risk assessment, need for (SPS 5.1–5.3)
 - ascertainable and theoretical risk distinguished (SPS 5.1), quantitative threshold, relevance SPS 161
 - assessment prepared other than by Member concerned, acceptability (SPS 5.1 and Annex A(4)) SPS 151
 - balance of SPS interests and (SPS 5.1) SPS 141
 - explanation for measure allegedly in breach of SPS 5, burden of proof, relevance SPS 341
 - factors to be taken into account including "available scientific evidence" (SPS 2) SPS 143
 - non-scientific/non-quantifiable factors SPS 143, 193
 - open vs closed list SPS 192, 193, 195, 196–7
 - potential abuse SPS 196–7
 - potential abuse of controlled substance SPS 196–7
 - risks arising from difficulties of control, inspection and approval/assessment (SPS 8 and Annex C) SPS 195, 376
 - measures "appropriate to the circumstances" (SPS 5.1)
 - direct causality between substance and possible adverse health effects SPS 134
 - flexibility SPS 166
 - measures *based on*, need for (SPS 5.1) SPS 177
 - rational relationship between measure and risk, need for SPS 137
 - case-by-case approach SPS 139
 - methodology
 - assessment for each substance, need for SPS 158
 - as scientific process SPS 193
 - risk management distinguished (SPS 5.1 and Annex A(4)) SPS 131–2, 521
 - "scientific justification" (SPS 3.3) and SPS 95, 141
 - "sufficient scientific evidence" requirement (SPS 2.2) and SPS 137
 - as complementary obligations SPS 44
 - divergence of expert views, relevance SPS 137
 - "taking into account risk assessment techniques" (SPS 5.1) SPS 134
 - failure to refer to scientific studies in domestic legislation/regulations, relevance SPS 134, 177
- risk assessment (SPS Annex A(4)(4))
 - quantification, relevance (including SPS 5.2 requirements) SPS 193
 - specificity of assessment, need for SPS 156, 507, 514
 - types of risk ("likelihood" vs "potential")
 - "potential" SPS 519
 - "probable" SPS 148, 519
- scientific evidence, need for sufficient (SPS 2.2)
 - as part of trade/protection of human life and health balance SPS 24
 - precautionary principle and SPS 8, 23, 328–9, DSU 1730
 - rational and objective relationship between SPS measure and scientific evidence, need for SPS 137
 - ad hoc determination SPS 137
 - standard of review, prudence/precautionary principle SPS 37
- sovereignty, *in dubio mitius* principle and DSU 1713 n. 2689, 1734
- special or additional procedures (panel) (DSU 12.1)
 - expert evidence (DSU 13.2/SPS 11.2) DSU 765
 - margin of discretion DSU 684
- SPS Agreement
 - applicability (SPS 1.1), measures in existence before entry into force of SPS agreement (SPS 14) SPS 14, 448–9, TBT 50, DSU 1523
 - as balance between promotion of international trade and protection of human, animal or plant life or health SPS 24, 141
 - object and purpose (preamble), precautionary principle and SPS 8, DSU 1730
- SPS control, inspection and approval procedures (SPS 8 and Annex C), risk assessment (SPS 5.2) and SPS 195, 376
- SPS measures, international standards, guidelines and recommendations, possibility of non-compliance or non-existence (SPS 5.8), burden of proof SPS 78
- standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6)
 - applicability to covered agreements other than AD Agreement AD 1015
 - completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 860
 - issues of law/legal interpretations, alleged failure of panel to make objective assessment (DSU 11) DSU 613
- law vs fact
 - compliance/consistency with treaty obligations DSU 843
 - panel as trier of facts DSU 601, 846
- standard/powers of review (panel) (DSU 11)
 - completion of the legal analysis DSU 324
 - error of law, equation of "based on" and "conform to" SPS 92, 134
 - "objective assessment of the facts" /alleged disregard or distortion of the evidence
 - de novo* review, exclusion

<i>(cont.)</i>	
discretion in selection of evidence to refer to explicitly DSU 598, 601	methodology, assessment for each substance, need for SPS 158
egregious error, need for DSU 598, 613	“sufficient scientific evidence” requirement (SPS 2.2) and, divergence of expert views, relevance SPS 404
obligation to examine and evaluate <i>all</i> the evidence available to it DSU 598	“taking into account risk assessment techniques” (SPS 5.1), failure to refer to scientific studies in domestic legislation/regulations, relevance SPS 134
discretion in assessment of evidence DSU 601	timing of assessment (SPS 5.1) SPS 152
“objective assessment of matter before it”, good faith obligation SCM 421 n. 696	risk assessment (SPS Annex A(4)(4)), types of risk (“likelihood” vs “potential”), “probable” SPS 516, 519
terms of reference of panels (DSU 7)	SPS Agreement
as definition of jurisdiction/legal claims at issue, specific legal claim included in terms of reference, limitation of jurisdiction to DSU 324	applicability (SPS 1.1)
objections, requirements, opportunity to cure procedural defect and DSU 488	GATT XX(b), relevance SPS 594
third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6	measures in existence before entry into force of SPS agreement (SPS 14) SPS 448
multiple complainants (DSU 9) and DSU 684	“measures which may directly or indirectly affect trade” SPS 11
panel’s discretion and DSU 684	phytosanitary measure affecting international trade SPS 9, 594
participation in proceedings initiated by another complainant (DSU 9) DSU 488–90	as balance between promotion of international trade and protection of human, animal or plant life or health, “only to the extent necessary”, trade-restrictive measures, exclusion (SPS 5.4–6) and SPS 50
EC – Hormones (Panels) (Canada/US), WT/DS26/R, WT/DS48/R, DSR 1998:I	GATT XX(b), relationship SPS 5
ALOPs (SPS 5.4–5.6 and Annex A(5))	measure to protect human or animal life (Annex A(1)(b)) SPS 10
consistency in application (SPS 5.5)	TBT Agreement, applicability to (TBT 1.5) TBT 12
comparability of different situations SPS 225	SPS measures, international standards, guidelines and recommendations, possibility of non-compliance or non-existence (SPS 5.8), burden of proof SPS 341
comparable situations SPS 226	standard/powers of review (panel) (DSU 11), risk assessment (SPS Agreement), exclusion SPS 122
discrimination or disguised restriction of trade resulting from inconsistency SPS 212	third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6
minimization of negative trade effects obligation (SPS 5.4) and SPS 206	multiple complainants (DSU 9) and DSU 684
“arbitrary or unjustifiable discrimination”, use in GATT XX, SPS 2.3 and SPS 5.5 compared SPS 240	panel’s discretion and DSU 684
arbitrary or unjustifiable discrimination, exclusion (SPS 2.3), ALOPs and (SPS 5.4–6) SPS 210	presence at second substantive meeting DSU 684
arbitrary or unjustifiable distinctions resulting in discrimination or disguised restriction on international trade (SPS 5.5), arbitrary or unjustifiable distinctions SPS 50	EC – Hormones (Article 21.3(c)), WT/DS26/15, WT/DS48/13, DSR 1998:V
expert review groups, rules and procedures (DSU Appendix 4), appointment procedures DSU 1363	interpretation of covered agreements, rules relating to including VCLT provisions, dictionaries DSU 1029
General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health, SPS provisions distinguished SPS 5	prompt and satisfactory resolution of disputes, Members’ right to (DSU 3), prompt compliance with DSB recommendations and rulings (DSU 21) and DSU 1029
harmonization of SPS measures (SPS 3)	“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)
measures based on international standards (SPS 3.1)	15-month guideline DSU 1038
“based on” SPS 71	15-month guideline (DSU 21.3(c)) DSU 1029
“where they exist”, standard/powers of review (panel) SPS 73	arbitrator’s limited mandate, determination of reasonable period DSU 1020
as SPS object and purpose (SPS 3.1/preamble) SPS 5	burden of proof DSU 580, 1085
judicial economy, prior decision on another point rendering discussion otiose SPS 592	shortest period possible within Member’s normal legislative process DSU 1029
<i>lex specialis</i> /presumption against treaty conflicts	time to conduct studies/risk assessment, exclusion DSU 1079
“conflict” DSU 1719	EC – Hormones (Canada) (Article 22.6 – EC), WT/DS48/ARB, DSR 1999:III
General Interpretative Note (WTO Annex 1A) DSU 1719	arbitration (DSU 22.6)
possibilities of conflict considered by panel/AB, GATT/SPS DSU 1719	scope of review/arbitrators’ mandate/task (DSU 22.7)
precautionary principle (SPS Agreement), customary international law, whether SPS 6	determination of “equivalence” (DSU 22.3)
relationships within and between agreements	methodology paper, request for DSU 1244
GATT III/SPS GATT 414, SPS 592	“nature of concession”, exclusion (DSU 22.7) DSU 1187, 1247, 1256
GATT XX(b)/SPS SPS 5, 590	“specific”
relationships within and between agreements, GATT XI/SPS SPS 592	agreement and sectors (DSU 22.3) DSU 1187
SPS 2.2 and 2.3/SPS 5.4–5.6 SPS 50, 210, 285	product list DSU 1187
SPS 2.2/SPS 5.1 SPS 44	specific level of suspension (DSU 22.4) DSU 1247, 1187
SPS 3 as a whole SPS 77	third party rights DSU 508, 510 n. 833
SPS/TBT 1.5 TBT 12	burden of proof (general rules), suspension of concessions (DSU 22.4) DSU 583
risk assessment, need for (SPS 5.1–5.3)	due process (dispute settlement proceedings), prejudice to party, relevance DSU 508

<p>suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)</p> <p>level equivalent to nullification or impairment (DSU 22.4) DSU 1264</p> <p>burden of proof DSU 583</p> <p>“equivalent” (DSU 22.3), quantitative test DSU 1247–8, 1256</p> <p>reasoned estimates, need for DSU 1227</p> <p>third party rights (Article 22.6 arbitrations) DSU 508, 510 n. 833</p> <p>EC – Hormones (US) (Article 22.6 – EC), WT/DS26/ARB, DSR 1999:III</p> <p>arbitration (DSU 22.6)</p> <p>scope of review/arbitrators’ mandate/task (DSU 22.7)</p> <p>determination of “equivalence” (DSU 22.3)</p> <p>methodology paper, request for DSU 1244</p> <p>“nature of concession”, exclusion (DSU 22.7) DSU 1187, 1247, 1256</p> <p>rejection of proposed level of suspension and DSU 1257</p> <p>“specific”</p> <p>agreement and sectors (DSU 22.3) DSU 1184, 1187</p> <p>DSU 3 provisions and DSU 1209</p> <p>specific level of suspension (DSU 22.4) DSU 1247, 1184, 1187</p> <p>third party rights DSU 508</p> <p>bilateral agreements, status DSU 419</p> <p>burden of proof (general rules), suspension of concessions (DSU 22.4) DSU 583</p> <p>DSU, applicability, bilateral agreements DSU 419</p> <p>due process (dispute settlement proceedings), prejudice to party, relevance DSU 508</p> <p>sovereignty, Members as sovereign entities DSU 583</p> <p>successive treaties relating to the same subject matter (VCLT 30), Schedules DSU 1532</p> <p>suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)</p> <p>agreement to DSU 1263</p> <p>level equivalent to nullification or impairment (DSU 22.4) DSU 1184</p> <p>burden of proof DSU 583</p> <p>“carousel” type suspension DSU 1189</p> <p>“equivalent” (DSU 22.3), quantitative test DSU 1247</p> <p>responsibility of Member to ensure DSU 1189</p> <p>“or other obligations”, authorization to suspend (DSU 22.2), “specific” DSU 1184</p> <p>third party rights (Article 22.6 arbitrations) DSU 508</p> <p>EC – IT Products (Panel), WT/DS375/R, WT/DS376/R, WT/DS377/R</p> <p>conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4), Schedule of concessions and WTO 287</p> <p>“effecting an advance . . .” (GATT X:2), “effecting” GATT 544</p> <p>evidence (panel) (DSU 12), time-limits for submission, panel’s right to admit “late” /new evidence, evidence submitted during interim review (DSU 15) DSU 794</p> <p>Harmonized System of Customs Classification (HS), interpretation of covered agreements (VCLT) and, as supplementary means (VCLT 32) DSU 1638</p> <p>identification of specific measures (DSU 6.2), identification of product, need for DSU 231, 232 n. 324</p> <p>implementation of panel or AB recommendations (DSU 19.1), measure terminated in course of proceedings/no longer in existence DSU 936</p> <p>Information Technology Agreement (Singapore)</p> <p>“instrument . . . in connection with the conclusion of the threat” (VCLT 31(2)(b)), whether DSU 1567</p> <p>“products” /product coverage GATT 199</p> <p>interim review (DSU 15), new evidence DSU 794</p> <p>interpretation and clarification, GATT II:1(a) and (b), interrelationship GATT 133</p>	<p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>context (VCLT 31(2))</p> <p>“any instrument . . . made by one or more of the parties in connection with the conclusion of the treaty” (VCLT 31(2)(b)), Information Technology Agreement, whether DSU 1567</p> <p>Harmonized System of Customs Classification (HS) as GATT 127</p> <p>evolutionary approach/intertemporal law DSU 1621–2</p> <p>supplementary means (VCLT 32), non-exhaustive nature of VCLT 32 list DSU 1638</p> <p>legislation as such, right to challenge (WTO XVI:4)</p> <p>claims “as such” vs claims “as applied”, relevance of distinction DSU 338</p> <p>GATT II:1 and GATT 120</p> <p>normative value as determining factor DSU 284</p> <p>“measures at issue” (DSU 6.2)</p> <p>amended measures, amendment after establishment of panel DSU 381</p> <p>prospective measure DSU 262</p> <p>multiple complainants (DSU 9)</p> <p>separate panel reports (DSU 9.2), structure DSU 456</p> <p>single panel “whenever feasible” (DSU 9.1), third party rights DSU 515</p> <p>ordinary meaning of terms used in covered agreements, “instrument” (VCLT 31(2)(b)) DSU 1567 n. 2413</p> <p>publication and administration of trade regulations (GATT X)</p> <p>“effecting an advance . . .” (GATT X:2) GATT 544–6</p> <p>“effecting” GATT 545</p> <p>enforcement prior to publication as violation of GATT X:2 GATT 547</p> <p>“uniform practice” GATT 545</p> <p>“laws, regulations, judicial decisions and administrative rulings” (GATT X:1) GATT 513</p> <p>“made effective” GATT 526–7</p> <p>“pertaining to the classification” GATT 529</p> <p>measure of general application (GATT X:2) GATT 543</p> <p>measures of general application (GATT X:1) GATT 523</p> <p>“shall be published” (GATT X:1) GATT 531</p> <p>“in such a manner as to enable . . .” GATT 535</p> <p>“promptly” GATT 533–4</p> <p>relationships within and between agreements, GATT II:1(a)/GATT II:1(b) GATT 133</p> <p>Schedules of Concessions (GATT II)</p> <p>conformity of laws, regulations and administrative procedures, obligation to ensure (WTO XVI:4) WTO 287</p> <p>consistency of measure with GATT II:1(a) and (b), legislation as such, right to challenge (WTO XVI:4) GATT 120</p> <p>ordinary customs duties in excess of those provided for in Schedule (GATT II:1(b)), “in excess of” GATT 147</p> <p>terms of reference of panels (DSU 7), “measures at issue” (DSU 6.2), amended measures, amendment following establishment of panel DSU 403</p> <p>third party rights (DSU 10 and Appendix 3)</p> <p>notification of intention to participate in (DSU 10.2), timeliness DSU 473</p> <p>single panel proceedings (DSU 9.1) DSU 515</p> <p>treaties, “treaty” (VCLT 31(1)) DSU 1541</p> <p>EC – Poultry (AB), WT/DS69/AB/R, DSR 1998:V</p> <p>AB procedures (DSU 17.9 and ABWP), written reponses (ABWP 28) DSU 1460</p> <p>bilateral agreements, status, Oilseeds Agreement (EC–Brazil) DSU 6</p> <p>developing countries’ economic development purposes/financial and trade needs (LIC 1.2), legal significance LIC 9</p> <p>DSU, applicability, bilateral agreements, Oilseeds Agreement (EC–Brazil) DSU 6</p>
---	--

<i>(cont.)</i>	
GATT 1947/WTO continuity	special safeguards (AG 5)
decisions, procedures and customary practices under GATT	calculation method (AG 5.5), right to choose AG 69–70, 73
1947 (WTO XVI:1) (GATT <i>acquis</i>), joint decisions,	c.i.f. import price (AG 5(1)(b)) AG 68–72
limitation to WTO 276	customary international trade usage AG 69
“decisions” (WTO XVI:1/GATT 1(b)(iv)), classification as,	effectiveness principle AG 71
bilateral agreements WTO 276	possibility of alternative method (AG 5.5) AG 73
import licensing procedures	standard/powers of review (AB) (issues of law and legal
conformity with GATT principles and obligations requirement	interpretations) (DSU 17.6)
(LIC Preamble and 1.2) LIC 1	completion of the legal analysis in case of, disagreement with
non-automatic import licensing (LIC 3), transparency and	panel DSU 861
predictability requirement (LIC 3.5(a)) LIC 25	findings or developed legal interpretations, limitation to (DSU
over-quota trade, applicability LIC 1, 3	13) DSU 897
trade-restrictive or trade-distortive effects, avoidance (LIC 1.2	legal findings or developed interpretations, limitation to (DSU
and 3.2) LIC 3, 9	17.13) DSU 897
transparency and predictability requirement (LIC Preamble)	standard/powers of review (panel) (DSU 11), “objective assessment
LIC 1	of matter before it”, <i>all</i> arguments DSU 643
non-automatic import licensing (LIC 3) and LIC 25	successive treaties relating to the same subject matter (VCLT 30),
interpretation of covered agreements, phrases, “c.i.f. import price”	Schedules DSU 1531
(AG 5.1(b)) AG 68–72	treaties, termination by subsequent treaty (VCLT 59) DSU 1671
interpretation of covered agreements, rules relating to including	EC – Poultry (Panel), WT/DS69/R, DSR 1998:V
VCLT provisions	developing countries’ economic development purposes/financial
customary international trade usage as applicable law AG 69	and trade needs (LIC 1.2), legal significance LIC 9
effectiveness principle (<i>ut res magis valeat quam pereat/effet</i>	import licensing procedures
<i>utile</i>) AG 71	conformity with GATT principles and obligations requirement
“ordinary meaning . . . in their context . . . in light of object and	(LIC Preamble and 1.2) LIC 3
purpose” (VCLT 31(1)) AG 70	export performance, relevance (LIC 3.5(j)) AG 47, LIC 12–13,
preamble of agreement under consideration LIC 1	30–1
supplementary means (VCLT 32)	neutrality in application and administration in a fair and
Oilseeds Agreement as DSU 1635	equitable manner (LIC 1.3) LIC 12–13
other agreements between parties DSU 1635	non-automatic import licensing (LIC 3)
text/plain language (VCLT 31(2)) AG 69–70	newcomer provision (LIC 3.5(i)) LIC 29
modification of schedules (GATT XXVIII), applicability of GATT I	small quantities, allocation in respect of (LIC 3.5(i)) LIC 29
and XIII GATT 116, 139, 687	rules and procedures distinguished LIC 13
non-discriminatory administration of QRs (GATT XIII)	speculation in licences (LIC 3.5(h) and (j)) LIC 27
allocation of quotas (GATT XIII:2(d))	trade-restrictive or trade-distortive effects, avoidance (LIC 1.2
inclusion of non-Member imports GATT 666, 674	and 3.2) LIC 9
“may seek agreement” GATT 671	transparency and predictability requirement (LIC Preamble)
compensation negotiations (GATT XVIII) and GATT 687, 1074	frequent changes to rules and LIC 15
distribution of trade as close as possible to expected shares in	non-automatic import licensing (LIC 3) and LIC 23
absence of restrictions (GATT XIII:2 chapeau), inclusion	“measures at issue” (DSU 6.2)
of non-Member imports in calculation of tariff quota	terminated measures
shares GATT 666	termination before agreement on terms of reference DSU 247
Oilseeds Agreement (EC–Brazil), status as covered agreement	continuing relevance DSU 389
WTO 276, GATT 10, 671, DSU 6	modification of schedules (GATT XXVIII), applicability of GATT I
Schedule LXXX and DSU 1671	and XIII GATT 1073–4
as supplementary means for interpreting a covered agreement	non-discriminatory administration of QRs (GATT XIII)
(VCLT 32) DSU 1635	allocation of quotas (GATT XIII:2(d)), inclusion of non-Member
ordinary meaning of terms used in covered agreements, “c.i.f.	imports GATT 666, 674
import price” (AG 5.1(b)) AG 70	distribution of trade as close as possible to expected shares in
preparatory work (VCLT 32), Oilseeds Agreement as DSU 1635	absence of restrictions (GATT XIII:2 chapeau) GATT
publication and administration of trade regulations (GATT X)	666
administration in a uniform, impartial and reasonable manner	inclusion of non-Member imports in calculation of tariff quota
(GATT X:3(a)), equivalence, as procedural requirement	shares GATT 666
GATT 510	notification obligations (LIC 1.4) LIC 14
“laws, regulations, judicial decisions and administrative rulings”	notification obligations and procedures, LIC 1.4(a) LIC 14
(GATT X:1), “of general application” GATT 554	relationships within and between agreements, GATT I and XIII/
measures of general application (GATT X:1) GATT 510, 520	GATT XXVIII GATT 116, 687
quantitative restrictions, elimination (GATT XI), “prohibition or	EC – Salmon (Norway) (Panel), WT/DS337/R and Corr.1, DSR
restriction” (GATT XI:1), causal link, need for GATT 604	2008:I
n. 859	anti-dumping duties, imposition and collection (AD 9)
relationships within and between agreements, GATT I and XIII/	“appropriate” amounts (AD 9.2) AD 664–5
GATT XXVIII GATT 116, 687	sampling (AD 6.10) and AD 664
Schedules of Concessions (GATT II)	calculation of “all other” anti-dumping duty rate (AD 9.4)
interpretation and clarification, Marrakesh Protocol and GATT	avoidance of prejudice to non-investigated exporters AD 699
139	“margins” AD 702
non-discrimination under GATT I and GATT 116, 139	margins established under circumstances referred to in AD
	6.8, exclusion AD 702

non-cooperating companies and AD 705	judicial economy in case of substantive inconsistency with AD Agreement AD 831
prospective normal value ceiling (AD 9.4(ii)) AD 721–2	relationships within and between agreements
determination of dumping (AD 2)	AD 2.1/AD 2.6 AD 21, 158
allocation of costs, need for explanation, allocation of costs, need for explanation AD 55	AD 2.1/AD 3.6 AD 40
calculation of normal value, factors to be taken into account (AD 2.1), AD 3.6 and AD 40	AD 2.1/AD 9.3 AD 696
calculation of SG&A costs (AD 2.2.2)	AD 6.8/AD 9.4 AD 702
actual data “pertaining to”, low-volume sales data AD 60	AD 6.10/AD 9.2 AD 664
“any other reasonable method” (AD 2.2.2(iii)) AD 76	AD 17.6/DSU 11 AD 937
cost data (AD 2.2.1.1)	sampling (AD 6.10)
non-recurring costs (NRCs) AD 52–5	“appropriate amount” (AD 9, 2) and AD 664
“reasonable period of time” AD 46	“dumped imports” finding, applicability, choice of sample AD 633–4
“like product” (AD 2.1) TBT 22, AD 20–1	“largest percentage” AD 636–7
“like product” (AD 2.6) AD 21, 152	“objective examination” obligation (AD 3.1) and AD 212–13
sales not “in the ordinary course of trade” (AD 2.2)	volume and price effects determination AD 212–13
low-volume sales and AD 61–2	standard/powers of review (panel) (AD 17.6), interpretation of relevant provisions of AD (AD 17.6(ii)), DSU 11
sales below cost, method for determining whether (AD 2.2.1) AD 43–5	compared AD 937
determination of injury (AD 3)	standard/powers of review (panel) (DSU 11), “objective assessment of the facts”, <i>de novo</i> review, exclusion AD 330
country by country analysis/cumulative assessment of volume and prices (AD 3.3), “positive evidence” / “objective examination” requirement (AD 3.1) AD 212–13	EC – Sardines (AB), WT/DS231/AB/R, DSR 2002:VIII
evaluation of injury factors (AD 3.4), examination of other known factors (AD 3.5), “known” to investigating authority AD 281	abuse of rights/ <i>abus de droit</i> , withdrawal of notice of appeal (WP 30) as DSU 833
“positive evidence” / “objective examination” requirement (AD 3.1)	<i>amicus curiae</i> briefs
significant increase in dumped imports analysis (AD 3.2) AD 232	AB and
volume and price effects AD 212–13	right to accept (DSU 17.9) DSU 473
significant increase in dumped imports (AD 3.2)	discretionary nature/case-by-case approach DSU 743
“positive evidence” / “objective examination” requirement (AD 3.1) AD 232	prompt and satisfactory settlement of dispute (DSU 3.3)
price undercutting/suppression analysis AD 232	and, prompt and satisfactory settlement (DSU 3.3) DSU 743
“domestic industry” (AD 4)	burden of proof (general rules)
“a major proportion of the total domestic production” (AD 4.1) AD 330	allocation (general rule/exception relationship)
AD 5.4 and AD 380	SPS 3.1 and 3.3 TBT 52
“dumping” / “margin of dumping” (AD 2.1), “for purposes of this agreement” /identity of meaning throughout AD Agreement AD 242	TBT 2.4 TBT 52
evidence (dumping investigation) (AD 6)	difficulty in collecting information and DSU 571
notification to all interested parties of essential facts under consideration (AD 6.9), change of legal basis, relevance AD 619	<i>onus probandi actori incumbit</i> TBT 52–3
resort to “facts available” (AD 6.8/Annex II)	TBT 2.4
Annex II, obligations under AD 538–9	Codex Alimentarius Commission, cooperation with, panel’s decision not to seek information from (DSU 13.1) DSU 754
“information appropriately submitted . . .” (Annex II para. 3) AD 562	conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4), technical regulations (TBT 2.4) and TBT 50
unjustified resort to available facts AD 554–5	due process (dispute settlement proceedings), opportunity to respond to evidence/presentations of other parties, timing of submission of evidence (DS 12) and DSU 626
timely disclosure to interested parties of information relevant for presentation of case (AD 6.4)	evidence (panel) (DSU 12), time-limits for submission, panel’s right to admit “late” /new evidence, evidence submitted during interim review (DSU 15) DSU 626, 789, 793
“relevant” AD 472–3	good faith engagement in dispute settlement procedures (DSU 3.10) DSU 833
“timely” AD 473	as limitation on right to bring action under DSU, withdrawal of appeal DSU 107
investigation of dumping (AD 5)/subsidy (SCM 11), support for (AD 5.4/SCM 11.4), major proportion of the domestic industry AD 380	good faith (including <i>pacta sunt servanda</i> principle (VCLT 26))
judicial economy	burden of proof/presumption of DSU 1506
avoidance of <i>de novo</i> review and AD 330	as fundamental rule of treaty interpretation DSU 1506
prior decision on another point rendering discussion otiose AD 831	IGOs, panel’s right to seek information from DSU 754
legal status of panel reports, “distinguishing” previous cases and DSU 825	information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), discretion not to seek DSU 754, 757
precedent, “distinguishing” previous cases and DSU 825	interim review (DSU 15)
public notice of preliminary or final determination (AD 12.2)	new evidence DSU 626, 789, 793
change of legal basis, obligation to inform interested parties (AD 12.2) AD 619	“precise aspects of the interim report”, limitation to (DSU 15.2) DSU 626
	“international standards . . . as a basis for technical regulation” (TBT 2.4/Annex 1), ISO/IEC Guide/Annex 1, relationship TBT 152–3

<i>(cont.)</i> “international standards . . . as a basis for technical regulation” (TBT 2.4/Annex) applicability to pre-existing measures TBT 5, 49–51 “as a basis for” TBT 62–5 burden of proof, <i>onus probandi actori incumbit</i> TBT 52–3 explanation of justification on request (TBT 2.5) “applying” TBT 73 as mandatory obligation TBT 73 “fulfilment of legitimate objective” (TBT 2.2) “ineffective or inappropriate means” (including distinction between) TBT 67–8 “legitimate objective”, qualification as (including TBT 2.2 provisions) TBT 70 “international standard”, consensus, relevance TBT 56–8 practice of international standard-setting bodies distinguished TBT 58 “relevant” TBT 59–60 “relevant parts of them” TBT 65 “shall use them” TBT 61 TBT objectives (TBT preamble) and TBT 5 interpretation of covered agreements, rules relating to including VCLT provisions object and purpose, preamble as evidence of TBT 5 same or closely related phrases in different agreements, omission of term (TBT Annex 1) TBT 58, 153 “measures at issue” (DSU 6.2), measure in existence at time of establishment of panel, limitation to, evidence of measure and measure distinguished DSU 256 n. 378 non-retroactivity of treaties (VCLT 28) DSU 1525 notice of appeal, requirements (ABWP 20(2)(d)) amendment (WBWP 23 <i>bis</i>)/clarification, demonstration of need for DSU 1439, 1474 failure to meet, preliminary ruling on DSU 1421 ordinary meaning of terms used in covered agreements, “relevant” (TBT 2.4) TBT 59 panel reports, adoption of report/notice of appeal (DSU 16.4), circumvention of deadline DSU 833 preliminary rulings on, compliance with ABWP 20(2)(d) DSU 1421 prompt and satisfactory settlement (DSU 3.3) ABWP and DSU 1367 <i>amicus curiae</i> briefs and DSU 743 public observation of oral hearing / “passive participation” (ABWP 27(3)) DSU 743 relationships within and between agreements TBT 2.2/TBT 2.4 TBT 70 TBT 2.4/TBT 2.8 TBT 78 n. 115 TBT 2.4/WTO XVI:4 TBT 50 TBT Agreement, object and purpose (preamble), as aid to interpreting TBT Agreement TBT 5 technical regulations (TBT 2/Annex 1.1) functional approach to (TBT 2.8), “wherever appropriate”, burden of proof TBT 78 “technical regulation” (Annex 1.1) mandatory compliance TBT 162 “product characteristics” TBT 158 negative form TBT 160 third party participants (AB proceedings) (ABWP 24/ABWP 27), as legal right DSU 743 third party rights (DSU 10 and Appendix 3), notification of intention to participate in (DSU 10.2), right to submit <i>amicus curiae</i> in absence of DSU 474 withdrawal of appeal (ABWP 30) good faith (DSU 3.10) and DSU 107 as means of amending an appeal (ABWP 23 <i>bis</i> changes) DSU 1439, 1474	Working Procedures, fair, prompt and effective settlement as objective DSU 743, 1367, 1474 EC – Sardines (Panel), WT/DS231/R, DSR 2002:VIII implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 976 “international standards . . . as a basis for technical regulation” (TBT 2.4) applicability to pre-existing measures participation in preparation of international standards (TBT 2.6) and TBT 74 unilateral measures under MFA (TBT 2.5) and TBT 72 explanation of justification on request (TBT 2.5), “applying” TBT 73 obligation to participate in preparation of (TBT 2.6) TBT 74 interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose, preamble as evidence of TBT 4 ordinary meaning of terms used in covered agreements, “relevant” (TBT 2.4) TBT 59 relationships within and between agreements GATT III:4/TBT GATT 418 TBT 2.2/TBT 2.4 TBT 70 TBT 2.4/TBT 2.5 TBT 72 TBT Agreement GATT III:4 and GATT 418 object and purpose (preamble) as aid to interpreting TBT Agreement TBT 4 avoidance of unnecessary obstacles to trade/regulatory autonomy TBT 4, 23 technical regulations (TBT 2/Annex 1.1) changing circumstances and (TBT 2.3) TBT 47 “technical regulation” (Annex 1.1), mandatory compliance TBT 162 EC – Selected Customs Matters (AB), WT/DS315/AB/R, DSR 2006:IX consultations (DSU 4), evidence obtained during, admissibility in panel proceedings DSU 630 evidence, acceptability as for “objective assessment” (DSU 11) purposes, evidence obtained during consultations DSU 630 evidence (panel) (DSU 12), time-limits for submission, panel’s right to admit “late” /new evidence, evidence submitted during interim review (DSU 15) DSU 790 identification of specific measures (DSU 6.2) recommendations of panel/DSB (DSU 19.2), effect DSU 353 “specific” DSU 235 implementation of panel or AB recommendations (DSU 19.1), identification of specific measures (DSU 6.2), (DSU 6.2) and DSU 353 interim review (DSU 15), new evidence DSU 790, 793 legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1) arguments distinguished DSU 322 identification of specific measure distinguished DSU 196–7, 198 summary “sufficient to present the problem clearly” DSU 196, 332 “measures at issue” (DSU 6.2) amended measures, amendment after establishment of panel DSU 380–1 any act or omission attributable to a Member DSU 244 “cumulatively claim” /system as a whole DSU 265, 335 “cumulatively claim” /system as a whole DSU 335 measure in existence at time of establishment of panel, limitation to DSU 255–6 evidence of measure and measure distinguished DSU 256 publication and administration of trade regulations (GATT X), independent tribunals (GATT X:3(b)) GATT 585 relationships within and between agreements DSU 6.2/DSU 7.1 DSU 352
---	--

DSU 6.2/DSU 19.1 DSU 353, 991	developing countries (WTO Preamble)
request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself/ considerations DSU 196	“commensurate with” WTO 7
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), new evidence DSU 876	“positive efforts” WTO 6
standard/powers of review (panel) (DSU 11), standard/powers of review (panel) (DSU 11), “objective assessment of the facts” /alleged disregard or distortion of the evidence, evidence obtained during consultations, admissibility DSU 630	Enabling Clause (EC)
terms of reference of panels (DSU 7)	burden of proof and GATT 82–3, DSU 574–5
“matter referred to the DSB” (DSU 7.1) DSU 352	conformity with GSP (generalized, non-reciprocal and non-discriminatory treatment) (EC 2(a)) GATT 85–9
legal basis of claim distinguished DSU 197, 198, 210	“developing countries” GATT 90
EC – Selected Customs Matters (Panel), WT/DS315/R GATT 1038	“discriminate” / “non-discriminatory” GATT 85–9
evidence, acceptability as for “objective assessment” (DSU 11)	absence of clear qualifying criteria or standards GATT 88
purposes, timing of acts of administration (GATT X:3(a)), relevance GATT 561	“generalized” (EC 2(a) footnote 3) GATT 84
evidence (panel) (DSU 12), time-limits for submission, panel’s right to admit “late” /new evidence, evidence submitted during interim review (DSU 15) DSU 790	“in accordance” GATT 81
GATT, responsibility of Member for compliance by regional and local governments and authorities (GATT XXIV:12) GATT 1038	as exception to GATT I:1, “notwithstanding” (EC 1) GATT 80
identification of specific measures (DSU 6.2)	as integral part of GATT 1994 GATT 12
inclusion of reference to WTO obligation DSU 185, 219	least developed countries (EC 2(d)), EC 2(a) and GATT 91
substance of WTO obligation being violated, relevance DSU 185, 219	as “positive effort” (WTO Preamble) WTO 6
implementation of panel or AB recommendations (DSU 19.1), “bring the measure into conformity with”, “measure” for purposes of DSU 966	preparatory work (VCLT 32), 1971 Waiver Decision GATT 84
interim review (DSU 15), new evidence DSU 790	treatment designed and . . . modified to respond to needs of developing countries (EC 3(c)) GATT 89, 90, 94–5
publication and administration of trade regulations (GATT X) due process basis GATT 580	development, financial and trade needs, limitation to GATT 89
independent tribunals (GATT X:3(b)) GATT 584	differential treatment, scope for GATT 94–5
measures of general application (GATT X:1) GATT 522	objective standard, need for GATT 89
due process and GATT 511	“positive” response GATT 89, 94–5
“prompt review and correction” (GATT X:3(b)) GATT 580	“treatment designed to facilitate and promote the trade of developing countries . . .” (EC 3(a)) GATT 92–3
due process considerations GATT 580	identity of tariff preferences, relevance GATT 88, 92
uniform, impartial and reasonable administration (GATT X:3 (a))	undue burden GATT 93
burden of proof GATT 557	GATT 1994, constituent elements (GATT 1994, Art. 1), “other decisions of the Contracting Parties to GATT 1947” (Art. 1(b)(iv)), Enabling Clause, whether GATT 12
timing of acts of administration, relevance to admissibility as evidence GATT 561	GATT, object and purpose (GATT I:1), raising standards of living, 2.20a, GATT, object and purpose (GATT I:1), raising standards of living GATT 20
“uniform” GATT 566	good faith engagement in dispute settlement procedures (DSU 3.10), development of arguments at earliest possible stage DSU 121
request for establishment of panel, requirements (DSU 6.2), compliance, importance of, scrutiny by panel DSU 185	interpretation of covered agreements, rules relating to including VCLT provisions
terms of reference of panels (DSU 7)	classification as exception, relevance GATT 81
request for establishment of panel as basis DSU 192	classification for purpose of allocating burden of proof, relevance GATT 80
title of case, relevance DSU 192	dictionaries GATT 84
EC – Sugar Exports (Australia) (GATT Panel), L/4833, BISD 26S/290, “serious prejudice” (SCM 6), adverse effects on trade interests, as “serious prejudice” SCM 277	object and purpose, preamble as evidence of GATT 86
EC – Sugar Exports (Brazil) (GATT Panel), L/5011, BISD 27S/69, “serious prejudice” (SCM 6), adverse effects on trade interests, as “serious prejudice” SCM 277	preamble of agreement under consideration, as evidence of object and purpose GATT 86
EC – Tariff Preferences (AB), WT/DS246/AB/R, DSR 2004:III	multiple authentic languages, interpretation (VCLT 33), presumption of identity of meaning (VCLT 33(3)) DSU 1663
burden of proof (general rules)	order of analysis
allocation, classification for purposes of, relevance to interpretation of agreement GATT 80	non-discrimination (GATT I:1)/Enabling Clause GATT 81
defences and exceptions, Enabling Clause, inconsistency with GATT I:1, sufficiency as basis of complaint GATT 83	specific/general provision GATT 81
on WTO law GATT 82–3, DSU 574–5	ordinary meaning of terms used in covered agreements
competence of panels and AB (DSU 3.2/DSU 11/DSU 17), right to develop own legal reasoning including arguments not adduced by parties (<i>jura novit curia</i>) DSU 574, 1710–11	“generalized” (EC 2(a) footnote 3) GATT 84
customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), DSU 3.2 GATT 80	“non-discriminatory” (EC 2(a) footnote 3) GATT 85–9
	panel procedures (DSU 12 and Appendix 3 (WP)) DSU 409
	preparatory work (VCLT 32), Enabling Clause GATT 84
	relationships within and between agreements
	GATT I:1/Enabling Clause GATT 81
	SPS 3.1/SPS 3.3 SPS 54
	EC – Tariff Preferences (Panel), WT/DS246/R, DSR 2004:III
	arbitrary or unjustifiable discrimination, GATT XX measure as (GATT XX chapeau), objective criteria, need for GATT 869
	confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27)
	obligation to respect/ensure respect for DSU 928

<i>(cont.)</i>	
private counsel/advisers not part of delegation and, joint representation DSU 928, 1490	intellectual property rights, enforcement (TRIPS Part III)
third party rights and, joint representation DSU 928, 1490	“intellectual property rights” (TRIPS 41/TRIPS 1.2) TRIPS 216
due process (application of trade measures), objective criteria, need for GATT 869	<i>inter partes</i> proceedings (TRIPS Part IV) distinguished TRIPS 278
General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health	“international standards . . . as a basis for technical regulation” (TBT 2.4/Annex 1)
justification	object and purpose, preamble as evidence of TBT 6
objective criteria, need for GATT 869	technical regulations distinguished TBT 6
policy objective GATT 892–3	as a whole/holistic/harmonious exercise TRIPS 64
three-tier test GATT 890	interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in same agreement, TRIPS 17/TRIPS 30 (“exception”) TRIPS 136
“necessary”, for achievement of legitimate objective GATT 895–6	legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), identification of treaty provisions DSU 315
three-tier test GATT 890	legitimate interests, TRIPS 17 TRIPS 139–43
implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 978	marks of origin, absence from TBT Agreement TBT 11, 166
interpretation of covered agreements, rules relating to including VCLT provisions	marks of origin (GATT IX), TBT 2.1 (MFN treatment) and TBT 11, 166
context (VCLT 31(2)), “any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)) DSU 1562	MFN treatment (TBT 2.1), marks of origin and TBT 11, 166
dictionaries GATT 52	national treatment (TRIPS 3)
MFN treatment (GATT I:1), “accorded immediately and unconditionally to the like product”, “unconditionally” GATT 52	“treatment no less favourable” (TRIPS 3.1)
panel procedures (DSU 12 and Appendix 3 (WP)) DSU 668	difference of treatment between EU and non-EU members TRIPS 46–7, 49, 51
private counsel, inclusion in delegation, Rules of Conduct (RoC), non-applicability DSU 1489–90	GATT III:4 compared TRIPS 50, 62–4
relationships within and between agreements, GATT I:1/Enabling Clause GATT 80	relationships within and between agreements
third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6, extension to all parties DSU 482	GATT III:4/TBT 2.1 TBT 18
	GATT IX/TBT TBT 11
	TRIPS 16.1/TRIPS 22.2 TRIPS 159
EC – Tariff Preferences (Article 21.3(c)), WT/DS246/14, DSR 2004:IX	TBT Agreement, object and purpose (preamble), as aid to interpreting TBT Agreement TBT 6
developing countries (DSU 21.2) (implementation of DSB recommendations and rulings), developing countries (DSU 21.2) (implementation of DSB recommendations and rulings), “reasonable period” (DSU 21.3(c)) DSU 1011	technical regulations and standards, conformity with (TBT 5–9), assessment procedures and technical regulation distinguished TBT 168
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)	technical regulations (TBT 2/Annex 1.1)
burden of proof DSU 1087	conformity assessment procedures distinguished TBT 168
contentiousness/political sensitivity, relevance DSU 1060	measures not qualifying as SPS measures TBT 24
coordination with other changes, relevance DSU 1081	rights conferred (TRIPS 16)
developing countries and (DSU 21.2) DSU 1011	“exclusive right”, as negative right TRIPS 131–3, 136–7
institutional changes and DSU 1076	“likelihood of confusion” TRIPS 134
EC – Trademarks and Geographical Indications (Australia) (Panel), WT/DS290/R, DSR 2005:X	“technical regulation” (Annex 1.1)
geographical indications (TRIPS Part II Section 3) (GIs)	“fair use of descriptive terms” TRIPS 138
conflicts with later trademarks (TRIPS 22.3/23.2) TRIPS 158	mandatory compliance TBT 163
“date of entry into force of the WTO Agreement” (TRIPS 24(3)) TRIPS 173	trademarks, limitation to TRIPS 136
“geographical indications” (TRIPS 22.1) TRIPS 151–2	trademarks (TRIPS Part II Section 2)
generic terms, exclusion TRIPS 152	“limited exceptions” (TRIPS 17) DSU 136–7
“in implementing this section” (TRIPS 24.3) TRIPS 171	autonomy of provision/limited correlation with other TRIPS articles TRIPS 145
“in respect of” (TRIPS 22.1) TRIPS 150	burden of proof TRIPS 144
protected rights (TRIPS 16), potential for conflict TRIPS 159	“legitimate interests”
registration of trademark (eligibility/validity)/right to use (TRIPS 24.5)	legal rights distinguished TRIPS 139
as exception to GI protection TRIPS 174	“of third parties” TRIPS 142–3
“in this section” TRIPS 175	“take account of” TRIPS 140–1
relationship TRIPS 174	TRIPS Agreement, principles (TRIPS 8), “anything not prohibited” /negative right approach TRIPS 81, 131–3
intellectual property rights, acquisition and maintenance including <i>inter partes</i> procedures, <i>inter partes</i> proceedings (TRIPS Part IV) and enforcement (TRIPS Part III) distinguished TRIPS 278	wines and spirits, additional protection for GIs (TRIPS 23)
	protected rights (TRIPS 16), potential for conflict TRIPS 164
	protected rights (TRIPS 16), resolution of conflict (TRIPS 23.2) TRIPS 165
	WTO Agreement, as single undertaking (WTO II:2), coexistence WTO 26
	EC – Trademarks and Geographical Indications (US) (Panel), WT/DS174/R, DSR 2005:VIII
	European Union, “separate customs territory” (TRIPS 1.3 footnote 1), whether TRIPS 17
	explanatory notes (“country”, “countries” and “national”), interpretation and application WTO 306

General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements, “reasonably available” alternative WTO-consistent measure GATT 929	applicability to intellectual property rights addressed in TRIPS (TRIPS 3.1 footnote 3) TRIPS 68
geographical indications (TRIPS Part II Section 3) (GIs) burden/standard of proof TRIPS 154 conflicts with later trademarks (TRIPS 22.3/23.2) TRIPS 158 “date of entry into force of the WTO Agreement” (TRIPS 24(3)) TRIPS 173 “geographical indications” (TRIPS 22.1) TRIPS 151 “in implementing this section” (TRIPS 24.3) TRIPS 171 “interested parties” (TRIPS 22.2) TRIPS 4, 155–6 national treatment (TRIPS 1.3) and TRIPS 4, 155 “legal means” (TRIPS 22.2), freedom to choose method of implementation (TRIPS 1.1 and) TRIPS 9–10 “Members” (TRIPS 22.2) TRIPS 153–4 protected rights (TRIPS 16), potential for conflict TRIPS 159 “protection of GIs that existed in that Member” (TRIPS 24.3) TRIPS 172 registration of trademark (eligibility/validity)/right to use (TRIPS 24.5) as exception to GI protection TRIPS 174 “in this section” TRIPS 175 relationship TRIPS 174	“immediately and unconditionally” (chapeau) TRIPS 70–1 “nationals of any other country” (chapeau), burden/standard of proof TRIPS 72 multiple authentic languages, interpretation (VCLT 33), English, French and Spanish texts compared (TBT 2.9.2) TRIPS 17 national treatment (TRIPS 3) applicability to intellectual property rights addressed in TRIPS (TRIPS 3.1 footnote 3) TRIPS 58, 74 “each member” /delegation of responsibility (TRIPS 3.1) TRIPS 34 “interested parties” (TRIPS 22.2) and TRIPS 4, 155 “nationals of other members” (TRIPS 1.3/3.1) TRIPS 35 “own nationals” (TRIPS 3.1), determination in accordance with international law TRIPS 52–3 “treatment no less favourable” (TRIPS 3.1) difference of treatment between EU and non-EU members TRIPS 44–5, 47, 49, 51, 54 “enjoy the advantages” (PC 2(1)) distinguished TRIPS 21–2 GATT III:4 compared TRIPS 50 “nationals”, determination in accordance with international law TRIPS 15, 52–3
identification of specific measures (DSU 6.2) “identify”, sufficiency of, reference to an EC Regulation or to the “EC regime” DSU 237–8 ordinary meaning DSU 237 “specific”, preliminary ruling on DSU 237–8	ordinary meaning of terms used in covered agreements “identify the specific measure at issue” (DSU 6.2) DSU 237 terms used in, TRIPS 24.5 TRIPS 174
implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 965	Paris Convention (PC)/TRIPS assimilation to nationals “of the Union” (PC 3) TRIPS 24 “criteria for eligibility for protection” TRIPS 16 “interested party” (PC 10(2)) TRIPS 32 “nationals of other Members” (TRIPS 1.3) TRIPS 15–16, 18
intellectual property conventions (TRIPS 2), national treatment (PC 2(1))/TRIPS 3.1 TRIPS 21–2	relationships within and between agreements GATT III:4/TRIPS 3.1 GATT 417 TRIPS 16.1/TRIPS 22.2 TRIPS 159 TRIPS 31.3/TRIPS 22.2 TRIPS 4, 155
intellectual property rights, availability, scope and use (TRIPS Part II) “intellectual property” (TRIPS 1.2) TRIPS 13–14 as private rights (preamble) TRIPS 4	separate customs territory, explanatory notes (“country”, “countries” and “national”) and WTO 305–6
intellectual property rights, enforcement (TRIPS Part III), “intellectual property rights” (TRIPS 41/TRIPS 1.2) TRIPS 216	technical regulations (TBT 2/Annex 1.1), “technical regulation” (Annex 1.1), “fair use of descriptive terms” TRIPS 138
interpretation of covered agreements, rules relating to including VCLT provisions	third party rights (DSU 10 and Appendix 3), panel’s right to draw on third party submissions DSU 497
footnotes to treaty as aid/integral part of treaty TRIPS 17, 58, 68, 74	trademarks (TRIPS Part II Section 2) “limited exceptions” (TRIPS 17) DSU 136–7 autonomy of provision/limited correlation with other TRIPS articles TRIPS 145
object and purpose, preamble as evidence of TRIPS 1	burden of proof TRIPS 144
preamble of agreement under consideration as aid TRIPS 2–3	“legitimate interests” legal rights distinguished TRIPS 139 “of third parties” TRIPS 142–3 “take account of” TRIPS 140–1
same or closely related phrases in different agreements GATT XXVI:5/TRIPS 1.3 footnote 1 (“separate customs territory”) TRIPS 17 GATT XXXIII/TRIPS 1.3 footnote 1 (“separate customs territory”) TRIPS 17	trademarks, limitation to TRIPS 136
same or closely related phrases in same agreement, TRIPS 17/ TRIPS 30 (“exception”) TRIPS 136	rights conferred (TRIPS 16), “exclusive right”, as negative right TRIPS 131–2, 131–3, 136–7
text/plain language (VCLT 31(2)) TRIPS 3	TRIPS Agreement applicability to “nationals of other Members” (TRIPS 1.3) “domiciled” / “real and effective . . . establishment” (PC 3) TRIPS 18, 23
as a whole/holistic/harmonious exercise TRIPS 62, 64, 159	GIs (TRIPS 22.2) and TRIPS 4, 155
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), identification of treaty provisions, linked multiple obligations DSU 315	international law criteria TRIPS 15, 52–3 national treatment (TRIPS 3.1) TRIPS 35 PC criteria for eligibility TRIPS 15–16, 18 “separate customs territory Member” (Footnote 1 to TRIPS 1.3) TRIPS 16
“measures at issue” (DSU 6.2), measure in existence at time of establishment of panel, limitation to, measures not in existence as evidence DSU 405	English, French and Spanish texts compared TRIPS 17
MFN treatment (GATT I:1), “all matters referred to GATT III:2 and III:4” GATT 31	implementation obligation (TRIPS 1.1) freedom to choose method TRIPS 9–10, 153–4
MFN treatment (TRIPS 4) “any advantage, favour, privilege or immunity” (chapeau) TRIPS 69	

<i>(cont.)</i>	
implementation of more extensive protection, relevance TRIPS 6	standard/powers of review (panel) (AD 17.6), assessment of the facts (AD 17.6(i)), <i>de novo</i> review, exclusion AD 915
more extensive protection option (TRIPS 1.1) TRIPS 6	EC – Tube or Pipe Fittings (Panel), WT/DS219/R, DSR 2003:VI and DSR:VIII
object and purpose (preamble)	Anti-Dumping Agreement (AD), principles (AD 1), “initiated and conducted in accordance with the provisions of this Agreement”, developments during period of investigation, relevance AD 7
effective and adequate protection of intellectual property rights TRIPS 1, 3	anti-dumping duties, duration and review (AD 11)
new rules and principles TRIPS 2	AD 11.1 as general principle underlying AD 11.2 and 3 AD 740
principles (TRIPS 8), “anything not prohibited” /negative right approach TRIPS 81, 131–2	review mechanism, AD 11.2 as AD 752
“protection” (TRIPS 3 and 4), applicability to intellectual property rights addressed by TRIPS (TRIPS 3 footnote 3) TRIPS 68	“warranted” (AD 11.2) AD 752
unilateral statements, legal effect DSU 1687	<i>arguendo</i> assumptions, “even assuming” DSU 313
wines and spirits, additional protection for GIs (TRIPS 23), protected rights (TRIPS 16), potential for conflict TRIPS 164	confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3), “submissions” and statements of own position distinguished DSU 734
EC – Tube or Pipe Fittings (AB), WT/DS219/AB/R, DSR 2003:VI and DSR:VIII	determination of dumping (AD 2)
anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement, determination of dumping (AD 2/GATT VI:2), method, right to choose GATT 463	conditions for cumulation
anti-dumping duties, imposition and collection (AD 9), calculation of “all other” anti-dumping duty rate (AD 9.4), method, absence of provision AD 471	AD 3.3 conditions as sole requirement AD 237
determination of dumping (AD 2)	“conditions of competition” (AD 3.3(b)) and AD 239–40
calculation of SG&A costs (AD 2.2.2), actual data “pertaining to”, low-volume sales data AD 57–8	evaluation of injury factors (AD 3.4)
causal relationship, manner of evaluating (AD 3.5)	<i>all</i> relevant economic factors and indices, need to examine, “factors affecting domestic prices” AD 271
causal relationship, manner of evaluating (AD 3.5), non-attribution to dumped imports of injury caused by other factors (AD 3.5) AD 286	“domestic industry”, companies outside domestic industry, relevance AD 246
non-attribution to dumped imports of injury caused by other factors (AD 3.5) SCM 446	“evaluation” AD 260
cumulative assessment (AD 3.3)	fair comparison of export price and normal value (AD 2.4)
applicability to volume and prices analysis (AD 3.2) AD 236	“due allowance”, “in each case, on its merits” AD 90
conditions for cumulation, AD 3.3 conditions as sole requirement AD 237	exchange rates and (AD 2.4.1) AD 111
examination of other known factors (AD 3.5), “known” to investigating authority AD 280	general “fair comparison” requirement and AD 111
rationale AD 238	“normal value . . . in the ordinary course of trade” (AD 2.1), calculation of dumping margins (AD 2.4), comparison of weighted average normal value with weighted average of <i>all</i> comparable export transactions (AD 2.4.2), refund of duties or taxes (AD 2.4.2/GATT VI:4) GATT 478
“normal value . . . in the ordinary course of trade” (AD 2.1), calculation of dumping margins (AD 2.4), method, right to choose, GATT VI:2 and GATT 463	significant increase in dumped imports (AD 3.2), price undercutting/suppression analysis AD 205 n. 277, 231
period of investigation (POI)	determination of injury (AD 3), cumulative assessment (AD 3.3), conditions AD 237
changes during, relevance AD 14–15	developing countries (AD 15)
developments during period of investigation, relevance AD 14–15	“constructive remedy”
significant increase in dumped imports (AD 3.2), cumulative analysis (AD 3.3), applicability AD 236, 237	lesser duty or price undertaking AD 858 n. 1157
determination of injury (AD 3), evaluation of injury factors (AD 3.4), consideration of each factor, need to be “apparent” in final determination AD 263	whether “material” for purpose of AD 12.2 AD 846
evidence (dumping investigation) (AD 6)	obligations (first sentence) AD 855
opportunity for defence of interests (AD 6.2), late provision of information and AD 494	due process (dispute settlement proceedings)
timely disclosure to interested parties of information relevant for presentation of case (AD 6.4)	good faith obligation (DSU 3.10) DSU 345
opportunity for defence (AD 6.2) and AD 494	prejudice to party, relevance DSU 314, 734
“relevant”, interested parties’ perspective as determinant AD 470	evidence (dumping investigation) (AD 6)
relationships within and between agreements	on-the-spot verification (AD 6.7)
AD 2.4.2/GATT VI:2 AD 164	as documentary exercise AD 525 n. 710
AD 3.2/AD 3.3 AD 236	as option AD 525
AD 6.2/AD 6.4 AD 494	timely disclosure to interested parties of information relevant for presentation of case (AD 6.4), information already available to parties distinguished AD 478
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), issues not identified during Panel proceedings DSU 851	executive summaries (panel working procedures), panel’s request for DSU 734
	good faith engagement in dispute settlement procedures (DSU 3.10)
	clarity of claims, need for DSU 120
	due process obligations and DSU 345
	identification of specific measures (DSU 6.2) DSU 120
	implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 980
	legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)
	arguments distinguished DSU 120, 314, 345
	clarification of claim during proceedings DSU 120, 345
	identification of treaty provisions DSU 313–14
	“especially, but not exclusively” DSU 313

listing of articles without explanation, sufficiency DSU 313	EEC – Parts and Components (GATT Panel), BISD 37S/132
limitation of jurisdiction to cited provisions (DSU 7.2) DSU 313	national treatment, regulatory discrimination (GATT III:4), “laws, regulations or requirements”, private action and GATT 355
“especially, but not exclusively”, effect DSU 313	State responsibility as rule/general principle of international law (ILC Articles), responsibility for act or omission of, private parties DSU 250
“like product” (AD 2.6), constructed normal value (AD 2.2.2) and AD 78	Egypt – Steel Rebar (Panel), WT/DS211/R, DSR 2002:VII
preliminary rulings on	Anti-Dumping Agreement (AD), preparatory work (VCLT 32), Annex II
claims outside terms of reference DSU 313	burden of proof (general rules), written record of analysis, relevance AD 267
specificity of request for panel (DSU 6.2) DSU 345	causation analysis (SG 4.2(b)) (determination of serious injury or threat of), coincidence of trends in imports and in injury factors SG 189
prompt and satisfactory settlement (DSU 3.3) DSU 345	data collection period (AD 2 and AD 3), absence of provision AD 171
ABWP and DSU 120	determination of dumping (AD 2)
public notice of preliminary or final determination (AD 12.2), explanations for initiation of investigations (AD 12.2.2), relevance/sufficiency AD 836	cost data (AD 2.2.1.1), “reasonably reflect costs” requirement AD 48
relationships within and between agreements	export price, construction in absence of [reliable] actual export price, fair comparison (AD 2.4) distinguished AD 72
AD 2.2.2/AD 2.6 AD 78	fair comparison of export price and normal value (AD 2.4) construction of normal value (AD 2.2) distinguished AD 72
AD 2.4.1/AD 2.4 as a whole AD 111	“due allowance”, “in each case, on its merits” AD 89
AD 6.5/AD 12 AD 845	“fair comparison” AD 80
AD 11.1/AD 11.2 AD 752	burden of proof AD 80, 89
AD 12/AD 15 AD 846	object and purpose AD 80
request for establishment of panel, requirements (DSU 6.2), compliance, importance of, subsequent cure of defect, exclusion DSU 345	“normal value . . . in the ordinary course of trade” (AD 2.1) calculation of administrative, selling and general costs and profits (AD 2.2.2)
technical regulations (TBT 2/Annex 1.1), functional approach to (TBT 2.8), “wherever appropriate” TBT 77	actual books and records as basis AD 48
Working Procedures, fair, prompt and effective settlement as objective DSU 345	reasonable reflection of costs <i>associated with</i> the production and sale of article AD 48
EEC – Animal Feed Proteins (GATT Panel), BISD 25/S/49	determination of injury (AD 3)
interim review (DSU 15), termination of measures following, effect DSU 384 n. 623	causal relationship, manner of evaluating (AD 3.5), AD 3.2/AD 3.4 and AD 170, 257
“measures at issue” (DSU 6.2), terminated measures, termination following interim review DSU 384 n. 623	evaluation of injury factors (AD 3.4)
EEC – Apples I (Chile) (GATT Panel), BISD 27S/98	<i>all</i> relevant economic factors and indices, need to examine “factors affecting domestic prices” AD 270
non-discriminatory administration of QRs (GATT XIII), allocation of quotas (GATT XIII:2(d)), to Members not having a substantial interest, “representative period” GATT 672 n. 945	“growth” AD 272
non-violation claims (GATT XXIII:1(b)), nullification or impairment, need for, measures in force, limitation to GATT 973	“having a bearing on” AD 257, 269
EEC – Cotton Yarn (GATT Panel), BISD 42/17	“profits” AD 269
developing countries (AD 15)	“evaluation” AD 259
“constructive remedy”, “shall be explored” AD 859 n. 1158	written record of analysis, need for AD 267–8
obligations (first sentence), Tokyo Round Anti-Dumping Code (Art. 13) compared AD 854 n. 1152	“positive evidence” / “objective examination” requirement (AD 3.1)
good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), “shall be explored” (AD 15) AD 859 n. 1158	“objective examination”, evaluation of injury factors (AD 3.4) AD 270
EEC – Dessert Apples (GATT Panel), L/6491, BISD 36S/93, judicial economy DSU 637 n. 1040	“positive evidence” AD 184 n. 247
EEC – Imports from Hong Kong (GATT Panel), BISD30S/129, RTAs (GATT XXIV:5), examination (GATT XXIV:7 and Understanding 7), absence of recommendation, effect GATT 1028	significant increase in dumped imports (AD 3.2), price undercutting/suppression analysis AD 220, 230
EEC – Oilseed I (GATT Panel), BISD 37S/86	threat of material injury (AD 3.7), “facts, not merely allegation, conjecture or remote possibility”, a “clearly foreseen and imminent” change of circumstances, need for AD 291
adverse effects (SCM 5), nullification or impairment of benefits (SCM 5(b)), systematic offset as SCM 264	underlying principles (AD 3.1) and AD 170
non-violation claims (GATT XXIII:1(b))	due process (anti-dumping measures) (AD 6), as underlying principle AD 80
“benefit” /legitimate expectation of improved market access as, arising out of successive rounds of negotiation GATT 975	evidence (dumping investigation) (AD 6)
as exceptional remedy GATT 959, 961 n. 1359	due process, AD 6 as framework AD 80
measure in “conflict” with GATT provisions, applicability to, concurrent application to measures falling under other provisions of GATT GATT 963	“facts available”, right to use (AD 6.8/Annex II), failure to cooperate (AD Annex VII para. 7), cooperation “to the best of its ability” AD 576
nullification or impairment, need for, competitive relationship as key factor GATT 986	on-the-spot verification (AD 6.7)
nullification or impairment (GATT XXIII), measures in force, limitation to GATT 973	AD, Annex I and AD 523
	on-the-spot request for further details (Annex I para. 7) AD 523
	opportunity for defence of interests, right to (AD 6.2), “opportunity” AD 463

- (*cont.*)
- questionnaires (AD 6.1.1), supplementary requests for information distinguished AD 437
 - resort to “facts available” (AD 6.8/Annex II)
 - additional information, right to request (Annex II para. 1) AD 542
 - Annex II
 - applicability to AD 6.8 as a whole AD 536, 987
 - mandatory nature AD 536
 - preparatory work (VCLT 32) AD 533
 - reliability of facts, role in ensuring AD 533
 - conditions for (Annex II) AD 545–6
 - good faith (including *pacta sunt servanda* principle (VCLT 26)), cooperation, relevance AD 559
 - invocation separately from AD 6.8 AD 997
 - “necessary information” AD 564–5
 - obligation to submit information “as soon as possible” (Annex II para. 1) AD 541–2
 - “reasonable period” (Annex II para. 6) AD 993–4
 - reasons for disregarding information, need for AD 593
 - secondary source information . . . with special circumspection (Annex II para. 7) AD 584
 - “shall” AD 536
 - specification “in detail” (Annex II para. 1) AD 541
- good faith (including *pacta sunt servanda* principle (VCLT 26)), “facts available”, right of resort to (AD 6.8/Annex II) and AD 559
- interpretation of covered agreements, rules relating to including VCLT provisions
- dictionaries AD 259, 580
 - ordinary meaning
 - “evaluation” AD 259
 - “fair comparison” AD 80
 - parties’ common intentions (VCLT 31(1)), preamble as reflection of AD 533
 - text/plain language (VCLT 31(2)) AD 220
- precedent, distinguishability of cases and AD 265 n. 379
- preparatory work (VCLT 32), AD Annex II AD 533
- public notice and explanation of determinations (AD 12)
- AD 3.4 factors, written record of analysis and AD 268
 - due process and AD 268
 - as due process requirement AD 268
- “reasonable period”, AD Annex II para. 6 AD 993–4
- relationships within and between agreements
- AD 2.2/2.4 AD 70
 - AD 2.2/AD 2.4 AD 77
 - AD 3 as a whole AD 170
 - AD 3.4 as a whole AD 257
 - AD 3.4/AD 12.2 AD 268
 - AD 6.1.1/AD, Annex I AD 437
 - AD 6.2/AD Annex II AD 998
 - AD 6.7/AD Annex I AD 523
 - AD 6.8/AD Annex II AD 536
- standard/powers of review (panel) (AD 17.6), assessment of the facts (AD 17.6(i)), applicability to investigating authority AD 259
- transparency, written record/notification and AD 267–8
- Germany – Sardines (GATT Panel), BISD 15/53**
- non-violation claims (GATT XXIII:1(b))
 - nullification or impairment, need for causality GATT 986
 - competitive relationship as key factor GATT 986
- Guatemala – Cement I (AB), WT/DS60/AB/R/, DSR 1998:IX**
- AB procedures (DSU 17.9 and ABWP)
 - “appropriate procedure for the purpose of that appeal only” (ABWP 16(1)) DSU 1387
 - timetable (ABWP 26), modification in exceptional circumstances (ABWP 16(2)) DSU 1387
 - consultation and dispute settlement (AD 17)
 - GATT XXII and XXIII compared AD 888, 944
 - “matter”, referral to DSB (AD 17.4)
 - identification of measure at issue requirement (DSU 6.2), identification as anti-dumping duty, acceptance of price undertaking or provisional measure, need for AD 890, 891
 - “if final action has been taken” AD 889–90
 - “matter” AD 898, 951, DSU 370
 - request for establishment of panel, requirements (AD 17.5), DSU 6.2 and AD 948, DSU 356
 - special or additional rules and procedures (DSU 1.2 and Appendix 2), whether AD 870–2, 888, SCM 197, DSU 13
 - DSU, applicability, covered agreements (DSU 1.1/DSU 7.2), AD Agreement DSU 2
 - identification of specific measures (DSU 6.2), recommendations of panel/DSB (DSU 19.2), effect AD 955
 - implementation of panel or AB recommendations (DSU 19.1), identification of specific measures (DSU 6.2), (DSU 6.2) and AD 955
 - investigation of dumping (AD 5)/subsidy (SCM 11), sufficiency of evidence (AD 5.3), elements (AD 2) and AD 364 n. 489
 - language, parties’ submissions DSU 1387
 - legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), identification of specific measure distinguished AD 898, 951, DSU 198, 370
 - lex specialis*/presumption against treaty conflicts, precedence/hierarchy in case of conflict AD 870–2
 - ordinary meaning of terms used in covered agreements, “matter” (AD 17) AD 898
 - relationships within and between agreements
 - AD 17/DSU 19.1 AD 955
 - AD 17/GATT XXII and XXIII AD 888, 944–5
 - AD 17.4/DSU 6.2 and 7 AD 898, 951, DSU 370
 - AD 17.5/DSU 6.2 AD 948, DSU 356
 - request for establishment of panel, requirements (DSU 6.2)
 - AD 17.5 requirements and AD 948
 - distinct elements reviewed AD 898, DSU 198, 370
 - writing AD 898
 - special or additional rules and procedures (DSU 1.2 and Appendix 2)
 - arrangements considered for classification as, AD 17 AD 870–2, 888, DSU 13
 - “shall prevail” in case of a difference with DSU SCM 197, DSU 9, 22 n. 25, 356
 - terms of reference of panels (DSU 7)
 - “matter” (DSU 7.1/AD 17.4) AD 898, DSU 370, 429
 - “matter referred to the DSB” (DSU 7.1), “claim” DSU 304
 - third party participants (AB proceedings) (ABWP 24/ABWP 27), time-limits for filing of submissions (ABWP 26) DSU 1387
- Guatemala – Cement I (Panel), WT/DS60/R/, DSR 1998:IX**
- affirmative obligations
 - definition GPA 21
 - GPA tendering procedures (GPA VII) as GPA 21
 - consultation and dispute settlement (AD 17), special or additional rules and procedures (DSU 1.2 and Appendix 2), whether AD 954
 - evidence (dumping investigation) (AD 6), timely disclosure to interested parties of information relevant for presentation of case (AD 6.4), analysis of constituent elements AD 480
 - implementation of panel or AB recommendations (DSU 19.1)
 - measure not identified in request for establishment of panel, applicability to AD 954
 - panel’s discretionary suggestions DSU 955
 - investigation of dumping (AD 5)/subsidy (SCM 11)
 - notification to government of exporting Member (AD 5.5)

“before proceeding to initiate”, date of initiation AD 385	<i>all</i> relevant economic factors and indices, need to examine, eventual relevance of factor, relevance AD 251
failure to comply, harmless error and AD 393 n. 532	consideration of each factor, need to be “apparent” in final determination AD 262
sufficiency of evidence (AD 5.2)	examination of other known factors (AD 3.5), “known” to investigating authority AD 278
determination of sufficiency (AD 5.3), “examine” AD 371	SG 4.2 compared AD 251
evidence of dumping AD 342	investigating authorities’ right to request information AD 36
evidence of injury, AD 2 and AD 343	“normal value . . . in the ordinary course of trade” (AD 2.1)
sufficiency of evidence (AD 5.3), determination of sufficiency	calculation of dumping margins (AD 2.4)
standard of review (DSU 17.6) AD 367	comparison of weighted average normal value with weighted average of <i>all</i> comparable export transactions (AD 2.4.2)
legal status of panel reports, reports reversed by AB DSU 824	“comparable” AD 356
relationships within and between agreements	objective assessment for purposes of initiation of anti-dumping investigation (AD 5.3) and AD 369–70
AD 5.3/17.6(i) AD 367, 940	period of investigation (POI), extension in course of investigation (AD Annex II para. 1) AD 540
AD 5.3/AD 17.6 AD 367, 367–70, 940	“positive evidence” / “objective examination” requirement (AD 3.1)
AD 17/DSU 19.1 AD 954	exclusion of “like” product as breach AD 217, 225
AD 17.3/DSU 1.2 DSU 13	imports from other suppliers, relevance AD 217, 225
special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as, AD 17 AD 954, DSU 13	threat of material injury (AD 3.7), AD 5.3 and AD 363–4
standard/powers of review (panel) (AD 17.6)	determination of injury (AD 3), significant increase in dumped imports (AD 3.2), effect at regional level, sufficiency AD 227
assessment of the facts (AD 17.6(i)), AD 5.3 (sufficiency of evidence), applicability to AD 367, 940	estoppel
“facts made available” (AD 17.5(ii)), evidence before authority at time of determination, limitation to AD 916	acquiescence distinguished DSU 1703
investigating authorities’ establishment of the facts (AD 17.6(i)), “proper” AD 369–70	AD 5.5 violations and AD 391, 456
Guatemala – Cement II (Panel), WT/DS156/R, DSR 2000:XII	definition AD 391
Anti-Dumping Agreement (AD), principles (AD 1), “initiated and conducted in accordance with the provisions of this Agreement”, violation of other AD provisions as evidence of breach of AD 1 AD 9, 986	evidence (dumping investigation) (AD 6)
anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement, dumping, constituent elements (AD 2/GATT VI:1), sufficiency of evidence for initiation of investigation (AD 5) and AD 356, 364 n. 489, 424	access to information provided by another interested party AD 462
burden of proof (general rules)	access to information provided by another interested party (AD 6.1.1/AD 6.1.2)
impossible burden, proving a negative DSU 567	access to file distinguished AD 449
notification of participation of non-governmental experts in on-the-spot verification (AD, Annex 1(2)) AD 530	confidential information AD 452
<i>prima facie</i> case requirement AD 217, 394	AD 6.5 and 459, AD 452
compliance with covered agreement obligations, obligation, breach by other Members, relevance AD 386, 509	“promptly” AD 449–50
composition of panel (DSU 8)	accuracy of information, authorities’ obligation to satisfy themselves (AD 6.6), substantive relevance distinguished AD 521
determination by Director-General (DSU 8.7) DSU 437, 1494	communication of full text of application (AD 6.1.3), “as soon as an investigation has been initiated” AD 453
challenge to DSU 437, 1494	“facts available”, right to use (AD 6.8/Annex II), failure to cooperate (AD Annex VII para. 7), participation of non-governmental experts in on-the-spot verification as justification AD 529, 582
panel’s role DSU 1494	“notice of the information . . .” (AD 6.1)
preliminary ruling on DSU 437, 1494	“information” (AD 6.1) and “legal determinations” (AD 6.9) distinguished AD 434, 618
confidential information (AD 6.5)	time–limits, relevance (AD 6.1.1.), AD 12 distinguished AD 429
“by nature confidential” / “provided on a confidential basis”, distinguishability AD 496	notification to all interested parties of essential facts under consideration (AD 6.9) AD 460
“good cause shown” AD 452, 496	change of legal basis, relevance AD 617, 618
“by nature confidential” / “provided on a confidential basis” distinction, relevance AD 496	“essential facts” AD 615–16
information “by nature” confidential, applicability to AD 496	essential facts forming basis of preliminary determination, sufficiency for subsequent proceedings AD 617
as responsibility of party submitting information AD 496	“information” (AD 6.1) and “legal determinations” (AD 6.9) distinguished AD 434, 618
“shown” AD 505	timely disclosure of relevant information (AD 6.4) distinguished AD 616
justification for request, relevance AD 518	on-the-spot verification (AD 6.7)
non-confidential summaries (AD 6.5.1), statement of reasons why information “not susceptible of summary” AD 452, 509–10	“further information . . . to be provided” (Annex I, para. 7) information verifiable on the spot AD 526
data collection period (AD 2 and AD 3) AD 222	right to verify AD 526, 985
absence of provision AD 222	participation of non-governmental experts (Annex I, para. 2)
length of period for AD 3.2 purposes AD 222	
determination of dumping (AD 2)	
country by country analysis/cumulative assessment of volume and prices (AD 3.3), “effect of the dumped imports on prices”, objective assessment AD 226	
evaluation of injury factors (AD 3.4)	

<i>(cont.)</i>	determination of sufficiency standard of review (DSU 17.6) AD 369–70
conflict of interest and AD 529, 984	elements (AD 2) and AD 356, 364 n. 489
non-cooperation (AD 6.8), as justification for AD 529, 582	evidence of dumping, AD 2 and AD 356
notification of participation, burden of proof AD 530	interrelationship with AD 5.2 AD 356
notification of reasons for AD 531	“simple assertion, unsubstantiated by relevant evidence” (AD 5.2) AD 340, 374
opportunity for defence of interests (AD 6.2)	judicial economy
change of legal basis, obligation to inform interested parties (AD 12.2) AD 433–4, 462, 618	limitation of consideration to claims essential to resolution of dispute (DSU 3.2) AD 307, 348, 647
as due process provision AD 461	prior decision on another point rendering discussion otiose AD 620
interrelationship between AD 6.2, first and second sentences AD 461	legal status of panel reports, reports reversed by AB DSU 824
relationship with other AD 6 paragraphs AD 457–69	nullification or impairment (DSU 3.8)
resort to “facts available” (AD 6.8/Annex II)	adverse impact/prejudice, relevance AD 392–3, 456, DSU 93
in case of verifiable information AD 556	harmless error and AD 390, 827
<i>ex post</i> justification, relevance AD 601	presumption in case of inconsistency with covered agreement AD 390, DSU 93
extension of period of investigation and (Annex II para. 1) AD 540	order of analysis
time–limits, right to set (AD 6.1.1) AD 428	AD-consistent measure/compliance with public notice (AD 12.2) requirements AD 838
“ample opportunity” (chapeau) and AD 428–9	specific/general provision AD 432
extension “upon cause shown . . . whenever practicable”, failure to provide information on AD 431	preliminary rulings on
timely disclosure to interested parties of information relevant for presentation of case (AD 6.4) AD 480–3	composition of panel (DSU 8.7) DSU 437, 1494
accidental omission of part of information AD 482–3	panel composition DSU 1494
“harmless error” distinguished AD 483	provisional measures (AD 7), judicial economy in case of overlap with previous determination relating to definitive measure AD 647
analysis of constituent elements AD 449	public notice of initiation of investigation (AD 12.1)
payment of fee, relevance AD 481	non-compliance as “harmless error” AD 827
harmless error principle AD 390, 390–3, 456, 483, 827, DSU 1709	separate report (AD 12.1.1), need for reference to AD 826
implementation of panel or AB recommendations (DSU 19.1)	time–limits for making views known (AD 12.1.1(vi)) AD 429
panel’s decision not to make suggestions DSU 970	timing
panel’s discretionary suggestions DSU 958	initiation of investigation and AD 822–3
interpretation of covered agreements, rules relating to including VCLT provisions	satisfaction as to sufficiency of evidence (AD 5.3), relevance AD 823
“any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)), ADP recommendations as evidence of AD 222 n. 309	public notice of preliminary or final determination (AD 12.2)
consistency with article/agreement as a whole AD 530 n. 719	change of legal basis, obligation to inform interested parties (AD 12.2) AD 433–4, 462, 618
dictionaries AD 530 n. 719	compliance with other obligations, dependence on AD 838, 840
same or closely related phrases in different agreements, AD 3.4/ SG 4.2 AD 251	relationships within and between agreements
text/plain language (VCLT 31(2)) AD 431	AD 1, 9 and 18/GATT VI/AD 3, 5, 7, 12 and Annex I, para. 2 AD 307, 411, 986
investigation of dumping (AD 5)/subsidy (SCM 11)	AD 1/AD 6.13 AD 640
“initiated” (AD footnote 1) AD 384	AD 1/AD 7 AD 650
notification to government of exporting Member (AD 5.5)	AD 1/AD 12 AD 423
“before proceeding to initiate”, date of initiation AD 384	AD 2/AD 5 AD 343, 356
“before proceeding to legislate”, national legislative provisions, relevance AD 385	AD 3/AD 18 AD 322
breach by other party, relevance AD 386	AD 3.7/AD 5.2 AD 363–4
failure to comply	AD 5/AD 9 AD 418
harmless error and AD 390–3, 456, 827	AD 5/AD 18 AD 423
timely objection, relevance AD 391	AD 5/GATT VI AD 424
rejection of application (AD 5.8), applicability prior to initiation of investigation AD 397–8	AD 5.2/AD 5.3 AD 343, 349
simultaneous consideration of evidence of dumping and injury (AD 5.7), initiation of investigation in absence of sufficient evidence (AD 5.3) and AD 376, 394	AD 5.3/AD 12.1 AD 823
sufficiency of evidence (AD 5.2)	AD 5.3/AD 17.6 AD 367–70, 369–70
determination of sufficiency (AD 5.3), “injury”, threat of, AD 3.7 requirements, relevance AD 356	AD 6.1, AD 6.2 and AD 6.9/AD 12.2 AD 433, 462, 618
evidence of dumping AD 356	AD 6.1, AD 6.2/AD 6.9 AD 434, 460
sufficiency of evidence (AD 5.3)	AD 6.1/AD 12.2.1 AD 429
determination of sufficiency	AD 6.2/AD generally AD 467
AD 5.2 distinguished AD 350–1	AD 6.2/other AD 6 paragraphs AD 457–69
determination of sufficiency as satisfaction of AD 5.2 requirements AD 348	AD 6.4/AD 6.9 AD 616, 621
“examine” AD 374	AD 6.4/other AD 6 paragraphs AD 492–3
“injury”, threat of, AD 3.7 requirements, relevance AD 363–4	AD 6.8/other AD 6 paragraphs AD 457, 459–60, 603
	AD 6.8/other paragraphs of AD 6 AD 603
	AD 6.9/other paragraphs of AD 6 AD 620–1
	AD 7/GATT VI AD 420
	AD 9/other AD articles AD 717

AD 18.1/other <i>Ad Articles</i> AD 977	GATT/TRIMs DSU 1722
Rules of Conduct (RoC)	specific/general provision GATT 425–6
independence and impartiality (RoC I and III:2), panellists DSU 1482	preliminary rulings (procedural aspects), absence of requirement/established practice DSU 349
material violations (RoC VIII) DSU 437, 1494	quantitative restrictions, elimination (GATT XI)
standard/powers of review (panel) (AD 17.6)	GATT III and GATT 408–9, 408–9
assessment of the facts (AD 17.6(ii))	“prohibition or restriction” (GATT XI:1)
AD 5.3 (sufficiency of evidence), applicability to AD 369–70	“restriction” GATT 600–600 <i>bis</i>
<i>de novo</i> review, exclusion AD 914	trade balancing condition GATT 616
“facts made available” (AD 17.5(ii)), limitation to AD 914	relationships within and between agreements
India – Additional Import Duties (AB), WT/DS360/AB/R GATT 137	GATT III/GATT XI GATT 408–9
interpretation of covered agreements, rules relating to including VCLT provisions, as a whole/holistic/harmonious exercise GATT 159	GATT III:4/TRIMs 2 GATT 409 n. 596, 425–6, TRIMs 15–16
relationships within and between agreements, GATT II:1(b)/GATT II:2(a) GATT 158	GATT XI:1/TRIMs 2 GATT 426, TRIMs 15–16
Schedules of Concessions (GATT II)	GATT XI:1/TRIMs Illustrative List GATT 409 n. 596, 425, TRIMs 15–16
“charge equivalent to an internal tax” (GATT II:2(a)) GATT 159–60	standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, events during proceedings, exclusion from panel’s considerations DSU 941
burden of proof GATT 160	TRIMs Agreement, quantitative measures (GATT XI and) GATT 409 n. 596, 425, TRIMs 15–16
“other duties or charges” (ODCs) (GATT II:1(b)) GATT 149	India – Patents (EC) (Panel), WT/DS79/R, DSR 1998:VI
India – Additional Import Duties (Panel), WT/DS360/R GATT 137	competence of panels and AB (DSU 3.2/DSU 11/DSU 17)
India – Autos (AB), WT/DS146/AB/R, WT/DS175/AB/R, DSR 2002:V	“clarification of existing provisions” DSU 1708
judicial economy, order of analysis and DSU 648	<i>ex aequo et bono</i> jurisdiction, exclusion DSU 1708
order of analysis, judicial economy and DSU 648	not to add to or diminish rights and obligations (DSU 3.2/19.2) DSU 1708
withdrawal of appeal (ABWP 30), simple withdrawal DSU 1468	<i>ex aequo et bono</i> jurisdiction DSU 1708
India – Autos (Panel), WT/DS146/R and Corr.1, WT/DS175/R and Corr.1, DSR 2002:V	intellectual property rights, enforcement (TRIPS Part III), “shall have the authority” (TRIPS 43–8) TRIPS 226
balance of payments difficulties, developing countries’ right to take import measures (GATT XVIII:B), burden of proof, <i>prima facie</i> case GATT 761	international law / “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), <i>ex aequo et bono</i> jurisdiction DSU 1708
exchange arrangements (IMF/WTO) (GATT XV), consultations (GATT XV:2), dispute settlement and GATT 702	legal status of panel reports, reports on same subject-matter in parallel proceedings DSU 823
Illustrative List (TRIMs 2.2), quantitative restrictions (GATT XI:1) and GATT 409 n. 596, 425, TRIMs 15–16	multiple complainants (DSU 9)
implementation of panel or AB recommendations (DSU 19.1) DSU 929	single panel “whenever feasible” (DSU 9.1) DSU 444
interpretation of covered agreements, rules relating to including VCLT provisions, dictionaries GATT 356, 357	ordinary meaning DSU 444
judicial economy, prior decision on another point rendering discussion otiose TRIMs 16	ordinary meaning of terms used in covered agreements
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), clarification of claim during proceedings DSU 349	“original panel” (DSU 10.4/DSU 21.5/DSU 22.6) DSU 475
<i>lex specialis</i> /presumption against treaty conflicts	“whenever feasible” (DSU 9.1) DSU 444
General Interpretative Note (WTO Annex 1A) DSU 22	precedent, security and predictability of WTO obligations (DSU 3.2) and DSU 823
possibilities of conflict considered by panel/AB, GATT/TRIMs DSU 1722	security and predictability of WTO obligations (DSU 3.2), precedent/AB jurisprudence, need to follow DSU 823
“like product” (GATT III:2 and III:4), relevant factors, nationality of producer or origin of product (“hypothetical” like products) GATT 338	third party rights (DSU 10 and Appendix 3), submission to original panel (DSU 10.4) DSU 475
national treatment, general principle (GATT III:1), applicability, measures imposed at the time or point of importation (“internal measures”) (<i>Ad Article</i>), QRs (GATT XI) distinguished GATT 408	India – Patents (US) (AB), WT/DS50/AB/R, DSR 1998:I
national treatment, regulatory discrimination (GATT III:4)	AB procedures (DSU 17.9 and ABWP), due process and DSU 1366
“affecting” GATT 361	competence of panels and AB (DSU 3.2/DSU 11/DSU 17), not to add to or diminish rights and obligations (DSU 3.2/19.2) DSU 1551
nature of advantage, relevance GATT 361	consultations (DSU 4)
“laws, regulations or requirements”	disclosure obligation DSU 138, 303
non-mandatory measures GATT 353	obligation to disclose information DSU 138
“requirements” GATT 356–7	consultations (SCM 4.1–4), object and purpose, clarification and development of the facts of the situation/mutually agreed solution (SCM 4.3) SCM 194
“requirements” GATT 356–7	developing countries (TRIPS), right to delay application (TRIPS 65) TRIPS 186
TRIMs and GATT 409 n. 596, 425–6, TRIMs 15–16	disclosure obligation, consultations (DSU 4) DSU 138, 303, 675
order of analysis	dispute settlement (TRIPS 64)
	DSU, applicability (DSU 1.1) DSU 4
	non-violation and situation complaints, moratorium DSU 1551
	domestic law
	as evidence of

<i>(cont.)</i> compliance with international obligations DSU 526 <i>Certain German Interests in Polish Upper Silesia</i> DSU 526 interpretation of legislation distinguished DSU 526 state practice DSU 526 as fact for purposes of international adjudication DSU 526 DSU, applicability covered agreements (DSU 1.1/DSU 7.2) DSU DSU 4 DSU (as covered agreement) DSU 4 TRIPS Agreement DSU 4 due process (dispute settlement proceedings) panel working procedures, need for DSU 579, 622 n. 1015, 671 prejudice to party, relevance DSU 675 intellectual property rights, availability, scope and use (TRIPS Part II) exclusive marketing rights obligations (TRIPS 70.9) TRIPS 314–15 existing rights, applicability to (TRIPS 70.2), obligation to provide means for filing applications relating to delayed application of TRIPS 27 (TRIPS 70.8) TRIPS 312–13 interpretation of covered agreements, rules relating to including VCLT provisions effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to every word and phrase WTO 19 legitimate expectations (including GATT II:5 provisions) DSU 1551 object and purpose, TRIPS TRIPS 1 text/plain language (VCLT 31(2)) DSU 1551 judicial economy, discretionary nature DSU 640 legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1) arguments distinguished DSU 303, 327 clarification of claim during proceedings DSU 327 identification of treaty provisions DSU 310 “including but not necessarily limited to” DSU 310 summary “sufficient to present the problem clearly” DSU 303 margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3) establishment of working procedures DSU 409, 667, 673 n. 1103, 683 limitations DSU 409, 667 non-violation claims (GATT XXIII:1(b)), “benefit” /legitimate expectation of improved market access as DSU 1551 non-violation claims (GATT XXIII:1(b)) (DSU 26.1), remedies (DSU 26.1(b)) DSU 1352 patents (TRIPS part II Section 5), existing subject matter, applicability to (TRIPS 70), patent protection (TRIPS 27) and TRIPS 186 relationships within and between agreements, TRIPS 27/TRIPS 70.8 TRIPS 186 request for establishment of panel, requirements (DSU 6.2), disclosure of all relevant information DSU 303 special or additional procedures (panel) (DSU 12.1), margin of discretion DSU 683 standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, independent assessment of domestic law DSU 526 terms of reference of panels (DSU 7) consideration of issues outside terms of reference, exclusion DSU 408–9 as definition of jurisdiction/legal claims at issue, specific legal claim included in terms of reference, limitation of jurisdiction to DSU 408–9 TRIPS Agreement object and purpose, effective and adequate protection of intellectual property rights TRIPS 1 obligations (TRIPS 1), implementation obligation (TRIPS 1.1), freedom to choose method TRIPS 7	India – Patents (US) (Panel), WT/DS50/R, DSR 1998:I developing countries (TRIPS) exclusive marketing rights (TRIPS 70.9), right to delay application (TRIPS 65.2) TRIPS 293 national treatment (TRIPS 3), right to delay application (TRIPS 65.2) TRIPS 292 pharmaceutical and agricultural chemical products, patent protection (TRIPS 70.8), right to delay (TRIPS 65.2) TRIPS 293 right to delay application (TRIPS 65) TRIPS 288–9 dispute settlement (TRIPS 64), DSU, applicability (DSU 1.1) DSU 1551 IGOs, panel’s right to seek information from DSU 753 implementation of panel or AB recommendations (DSU 19.1) panel’s decision not to make suggestions DSU 967 panel’s discretionary suggestions DSU 954 intellectual property rights, availability, scope and use (TRIPS Part II) exclusive marketing rights obligations (TRIPS 70.9) TRIPS 315 developing countries, right to delay application (TRIPS 65.2) TRIPS 293 existing subject matter, applicability to (TRIPS 70), transitional arrangements (TRIPS 65) and TRIPS 292–3 interpretation of covered agreements, rules relating to including VCLT provisions object and purpose, preamble as evidence of TRIPS 1 preamble of agreement under consideration as aid TRIPS 1 relationships within and between agreements TRIPS 65/TRIPS 70.8 TRIPS 292 TRIPS 65/TRIPS 70.9 TRIPS 293 TRIPS Agreement, transitional arrangements (TRIPS 65), procedural nature TRIPS 289 India – Quantitative Restrictions (AB), WT/DS90/AB/R, DSR 1999:V balance of payments difficulties, developing countries’ right to take import measures (GATT XVIII:B) change in development policy, exclusion of requirement for (GATT XVIII:9), macroeconomic policy instruments and structural measures distinguished GATT 775 competence of panel to examine justification GATT 755–9, 776 progressive relaxation obligation (GATT XVIII:11), Ad Note (removal of restrictions and recurrence of one of GATT XVIII:9 conditions) burden of proof GATT 768 temporal sequence (“thereupon produce”) GATT 773–4 balance of payments restrictions, GATT XVIII:B, DSU, applicability to disputes relating to DSU 10 Balance of Payments Understanding (BOP) DSU, applicability (BOP Understanding footnote 1) GATT 755–9 preparatory work, absence of GATT 755 burden of proof (general rules) allocation, requirement to indicate DSU 553 <i>prima facie</i> case requirement, explicit finding, relevance expert evidence, independent assessment by panel DSU 538 government assistance to economic development (GATT XVIII), dispute settlement (GATT XXIII), applicability to GATT 755–7 non-violation claims (GATT XXIII:1(b)), nullification or impairment, need for, government assistance to economic development (GATT XVIII) and GATT 755–7 preparatory work (VCLT 32), BOP Understanding footnote 1 GATT 755, DSU 1640 special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as, BOP DSU 10 standard/powers of review (panel) (DSU 11) balance of payments measures (BOP Understanding footnote 1) GATT 755–9
---	--

“objective assessment of matter before it”, expert evidence, panel’s obligation to make independent assessment DSU 538	legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), evidence to support claim distinguished DSU 410
India – Quantitative Restrictions (Panel), WT/DS90/R, DSR 1999:V	licensing requirement, as quantitative restriction (GATT XI:1) GATT 612
anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement, separability of AD and GATT VI GATT 493	market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1), measures excepted from requirement (footnote 1) AG 65
balance of payments difficulties, developing countries’ right to take import measures (GATT XVIII:B) GATT 653, 754	modification of schedules (GATT XXVIII), applicability of GATT XI and GATT 598
adequacy to forestall the threat of or stop a serious decline in monetary reserves (GATT XVIII:9(a)) GATT 764–5	multiple authentic languages, interpretation (VCLT 33), meaning which best reconciles texts (VCLT 33(4)) DSU 1657
IMF information as evidence of GATT 763	non-violation claims (GATT XXIII:1(b)), nullification or impairment, need for, government assistance to economic development (GATT XVIII) and GATT 755–7
burden of proof GATT 760	ordinary meaning of terms used in covered agreements, “restriction” (GATT XI:1) GATT 600
change in development policy, exclusion of requirement for (GATT XVIII:9 and Ad Note), burden of proof GATT 760	quantitative restrictions, elimination (GATT XI) burden of proof GATT 598
justification (GATT XVIII:9)	GATT XIII and GATT 685 n. 960
Ad Note GATT XVIII:11 and GATT 770–4	“prohibition or restriction” (GATT XI:1) licensing requirements GATT 612
critical date for evaluation by panel GATT 763	“restriction” GATT 600–1, 600–600bis
phase out, right to in absence of balance of payments difficulties (GATT XVIII:12(c)) GATT 759, 777, 782	restriction, as “limiting condition” GATT 600–600bis
progressive relaxation obligation (GATT XVIII:11)	“restriction”, ordinary meaning GATT 600
General Council/BOB Committee role (GATT XVIII:12(c)) GATT 758–9	restrictions on imports by particular persons GATT 618
“gradual relaxation” GATT 771	“restrictions made effective through state-trading organizations” (<i>Ad</i> Articles XI, XI, XIII, XIV and XVIII) GATT 621, 648, 792
progressive relaxation obligation (GATT XVIII:11), Ad Note (removal of restrictions and recurrence of one of GATT XVIII:9 conditions) GATT 770–4	relationships within and between agreements GATT XI/GATT XIII GATT 685 n. 960
causal relationship (“would produce”) GATT 773	GATT XII and XVIII:B/BOP GATT 493, 779, DSU 10
threat of return, sufficiency GATT 771	GATT XII/GATT XVIII:B GATT 653, 754, 793
right (GATT XVIII:2) GATT 754	GATT XVIII:9(a)/GATT XVIII:9(b) GATT 764
balance of payments restrictions (GATT XII), developing countries’ right to take measures (GATT XVIII:B) distinguished GATT 650, 653, 754	State trading enterprises (STEs) (GATT XVII)
Balance of Payments Understanding (BOP)	quantitative restrictions (GATT XI:1) GATT 621
status in relation to GATT XII and XVIII:B GATT 493, 779, DSU 10	“quantitative restrictions made effective through state-trading organizations” (<i>Ad</i> Articles XI, XI, XIII, XIV and XVIII) GATT 621, 792
time-schedule (paras. 1 and 13) GATT 759, 782, 789	terms of reference of panels (DSU 7)
burden of proof (general rules)	consideration of issues outside terms of reference, exclusion DSU 410
<i>onus probandi actori incumbit</i> GATT 768	material used in defence distinguished DSU 410
<i>prima facie</i> case requirement GATT 598	WTO Agreement, preamble, developing countries and trade WTO 4–7
change in development policy, exclusion of requirement for (GATT XVIII:9 and Note Ad), burden of proof GATT 768–9	Indonesia – Autos (Panel), WT/DS54/R and Corr.1, 2, 3, 4, WT/DS55/R and Corr.1, 2, 3, 4, WT/DS64/R and Corr.1, 2, 3, 4, DSR 1998:VI
consultations (DSU 4), developing countries and (DSU 4.10), extension of periods agreed under DSU 4.7 and 4.8 (DSU 12.10) DSU 713	adverse effects (SCM 5), obligation to remove adverse threats or withdraw subsidy (SCM 7.8) SCM 327
developing countries (WTO Preamble), “positive efforts” WTO 5	burden of proof (general rules), SCM provisions, “serious prejudice” (SCM 27.8) SCM 568
dispute settlement, special provisions relating to developing countries, requirement for specific indication of form in which account has been taken of special needs (DSU 12.11) DSU 716	composition of delegation
Enabling Clause (EC), as “positive effort” (WTO Preamble) WTO 5	legal representation/private counsel DSU 725
exchange arrangements (IMF) (GATT XV), consultations (GATT XV:2), DSU 13.1 consultations and GATT 701, DSU 753	Member’s right to determine DSU 725
exchange arrangements (IMF/WTO) (GATT XV), consultations (GATT XV:2), dispute settlement and, IMF findings, status GATT 704	confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/ WP 3), obligation to respect/ensure respect for DSU 725
government assistance to economic development (GATT XVIII)	customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), in absence of specific provision SCM 694–5
balance of payments (GATT XVIII) and GATT 653, 754	developing countries (SCM 27)
dispute settlement (GATT XXIII), applicability to GATT 755–7	actionable subsidies (SCM 27.9). nullification or impairment claims, limitation to SCM 569
IMF/WTO relationship (WTO III:5), panel’s right to seek information from (DSU 13.1) DSU 753	exemption from SCM 3.1(a) (transitional period) (SCM 27.3), as authorization of prohibited subsidies (GATT III:2) SCM 535
implementation of panel or AB recommendations (DSU 19.1), panel’s discretionary suggestions DSU 956	serious prejudice (SCM 27.8) SCM 568
interpretation of covered agreements, rules relating to including VCLT provisions, “special meaning” (VCLT 31(4)) DSU 1606	

- (*cont.*)
- developing countries (TRIMs 4), TRIMs 2.1 and **TRIMs 22**
- export subsidy, prohibited (SCM, Part II)
- national treatment and (GATT III:8(b)) GATT 390, 422
- national treatment (GATT III) and GATT 420–1
- GATS Agreement, GATT 1994, effect on GATT 419
- identification of specific measures (DSU 6.2), measure not yet taken
 DSU 378
- Illustrative List (TRIMs 2.2)
- analysis of TRIMs status of measure (TRIMs 1) and **TRIMs 4**
- local content requirements (Item 1) **TRIMs 4**
- tax and customs duty benefits (para. 1(a)) **TRIMs 10–11**
- interpretation of covered agreements, rules relating to including
 VCLT provisions
- footnotes to treaty as aid/integral part of treaty TRIPS 57
- same or closely related phrases in different agreements, GATT
 III/SCM 15 footnote 46 SCM 424
- same or closely related phrases in same agreement
 GATT XVI:1/SCM 5(c)/6.3(c) SCM 267
- SCM 6.3(a)/SCM 6.4 SCM 308
- “investment measures” (TRIMs 1) **TRIMs 1–2**
- analysis of TRIMs status, relevance of Illustrative List (TRIMs
 2.2) **TRIMs 4**
- legislative measures, relevance **TRIMs 2**
- judicial economy
- limitation of consideration to claims essential to resolution of
 dispute (DSU 3.2) GATT 423, **TRIMs 11**
- prior decision on another point rendering discussion otiose
 TRIMs 11
- legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1),
 summary “sufficient to present the problem clearly” DSU
 378
- lex specialis*/presumption against treaty conflicts
- “conflict” DSU 1720 n. 2701
- possibilities of conflict considered by panel/AB, SCM/TRIMs
 TRIMs 7, SCM 694–5, DSU 1712
- SCM/TRIMs **TRIMs 8**
- “like product” (GATT I), “like product” (GATT III:2 and III:4)
 compared GATT 39
- “like product” (GATT III:2 and III:4)
 GATT I:1 and GATT 39
- relevant factors
- nationality of producer or origin of parts and components
 GATT 249
- nationality of producer or origin of product (“hypothetical”
 like products) GATT 249
- “like product” (SCM 15 footnote 46)
 “characteristics closely resembling” SCM 424–8
- physical characteristics SCM 426
- price SCM 426–7
- unassembled/assembled products SCM 428
- unassembled/assembled products, whether SCM 428
- MFN treatment (GATT I:1)
- “accorded immediately and unconditionally to the like product”
 differential treatment on the basis of origin of product and
 GATT 46
- local content requirement, relevance GATT 46
- private action and GATT 46
- “accorded immediately and unconditionally to the like product”,
 order of analysis GATT 27
- customs duties and tax benefits as (GATT III:2) GATT 117
- national treatment, general principle (GATT III:1), publication and
 administration of regulations (GATT X) and GATT 590
- national treatment, payment of subsidies exclusively to domestic
 producers as exception (GATT III:8(b)), SCM Agreement
 and GATT 390, 419–22
- national treatment, regulatory discrimination (GATT III:4)
- “all laws, regulations or requirements affecting” **TRIMs 10 n. 17**
- applicability to direct taxes [on individual] GATT 420
- TRIMs and GATT 423, **TRIMs 3**, 9–11
- national treatment, tax discrimination (GATT III:2), applicability,
 indirect taxes [taxes on products] GATT 420
- national treatment (TRIPS 3)
- applicability (TRIPS 3.1 footnote 3) TRIPS 57
- TRIPS 20 (special requirements) and TRIPS 57, 147
- order of analysis, “advantage” /discrimination (GATT I:1) GATT 27
- ordinary meaning of terms used in covered agreements
- “displacement” (SCM 6.3(a)) SCM 307
- “impede” (SCM 6.3(a)) SCM 307
- preliminary rulings on, specificity of request for panel (DSU 6.2)
 DSU 373
- preparatory work (VCLT 32), GATT III:8 GATT 390
- relationships within and between agreements
- GATT I/GATT X GATT 590, 590
- GATT III/GATT X GATT 590, 592
- GATT III/SCM Agreement GATT 117
- GATT III:2/SCM SCM 535, 688
- GATT III:2/SCM Agreement GATT 420–1
- GATT III:4/TRIMs 2 GATT 423, **TRIMs 9–11**
- GATT III:4/TRIMs 3 **TRIMs 9**, 20
- GATT III:8(b)/SCM 1 GATT 390, 422
- GATT III/SCM SCM 686–7
- GATT/SCM GATT 419
- SCM 2.3/SCM 3 SCM 118
- SCM 3.1(b)/TRIMs **TRIMs 7–9**, SCM 695
- SCM 27.3/TRIMs 5 **TRIMs 8**
- TRIMs 1/Illustrative List (TRIMs 2.2) **TRIMs 4**
- TRIMs 2.1/TRIMs 5 **TRIMs 24**
- TRIPS 3/TRIPS 20 TRIPS 57, 147
- TRIPS 3/TRIPS 65.2 TRIPS 291
- TRIPS 20/TRIPS 65.5 TRIPS 148, 290
- request for establishment of panel, requirements (DSU 6.2), due
 process/ability to defend itself considerations DSU 378
- SCM Agreement, transitional arrangements (existing programmes)
 (SCM 28.1), “inconsistent with the provisions of this
 Agreement” (SCM 28.1) SCM 574
- “serious prejudice” (GATT XVI:1), “serious prejudice” (SMC 5(c)/
 6.3(c)), identity of meaning SCM 267
- “serious prejudice” (SCM 5(c)), “significant price undercutting/
 suppression” (SCM 6.3(c)) as SCM 267
- “serious prejudice” (SCM 6)
- developing countries, exclusion (SCM 27.9) SCM 569
- displacement or impediment to imports (SCM 6.3(a))
 SCM 267
- “displacement” SCM 307
- “impediment” SCM 307
- market share data, relevance SCM 308
- SCM 4, relevance SCM 308
- nationality of producers, relevance SCM 267
- “significant price undercutting/suppression” (SCM 6.3(c))
 “effect of the subsidy”, expired subsidy programme SCM 298
- “price undercutting” SCM 267, 314
- “serious prejudice” (SCM 27.8) SCM 568
- standing as claimant (SCM)
- SCM 6.3(a) SCM 267
- serious prejudice requirement (SCM 7.2) SCM 267
- subsidy, specificity (SCM 2), subsidy “contingent upon the use of
 domestic over imported goods” (SCM 2.3/3.1(b)) SCM 118
- terms of reference of panels (DSU 7)
- “measures at issue” (DSU 6.2)
- amended measures, amendment following establishment of
 panel DSU 396
- terminated measures, termination following agreement on
 terms of reference DSU 392

trademarks (TRIPS Part II Section 2), special requirements (TRIPS 20), national treatment (TRIPS 3) and TRIPS 147	relationships within and between agreements SPS 2/SPS 5, 6, 7 and 8 SPS 67 SPS 2.2/SPS 3.3, 5.1 and 5.7 SPS 27, 96 SPS 2.2/SPS 5.7 SPS 53, 287
treaties, conflict between, definition and general principles DSU 1712	risk assessment, need for (SPS 5.1–5.3), “scientific justification” (SPS 3.3) and SPS 96
TRIMs Agreement, as integral part of WTO Agreement TRIMs 8–9	risk assessment (SPS Annex A(4)(4)), elements/three-pronged test SPS 147 n. 183
TRIPS Agreement, transitional arrangements (TRIPS 65), “lesser degree of consistency” (TRIPS 65.5) TRIPS 290	scientific evidence, need for sufficient (SPS 2.2) burden of proof, presumption of no relevant studies or report/ proving a negative SPS 34
WTO Agreement, cumulative nature of obligations SCM 687	rational and objective relationship between SPS measure and scientific evidence, need for SPS 30, 96 ad hoc determination SPS 30
Indonesia – Autos (Article 21.3(c)), WT/DS54/15, WT/DS55/14, WT/DS59/13, WT/DS64/12, DSR 1998:IX	“sufficient” SPS 25 context (SPS 3.3, 5.1 and 5.7) SPS 27 patent insufficiency SPS 28 as relational concept SPS 53
developing countries (DSU 21.2) (implementation of DSB recommendations and rulings), “reasonable period” (DSU 21.3(c)) DSU 1064	SPS Agreement, burden of proof, scientific evidence, sufficiency (SPS 5.7) SPS 36
developing countries, implementation of DSB recommendations and rulings (DSU 21.2) DSU 1007	standard/powers of review (panel) (DSU 11), “objective assessment of the facts” /alleged disregard or distortion of the evidence, egregious error, need for DSU 616
<i>lex specialis</i> /presumption against treaty conflicts DSU 1712	transparency of SPS regulations (SPS 7 and Annex B) publication of regulations (Annex (B)(1)-(2)) SPS 355, 539 publication requirements (Annex (B)(1)-(2)), “SPS regulations” for purpose of, legal instruments as “measure” DSU 263
“measures at issue” (DSU 6.2)	Japan – Agricultural Products II (Panel), WT/DS76/R, DSR 1999:I
terminated measures GATT practice DSU 392	ALOPs (SPS 5.4–5.6 and Annex A(5)) measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6) alternative measure “significantly less restrictive to trade” SPS 277
termination following agreement on terms of reference DSU 392	“appropriate level”, determination Member’s prerogative SPS 268 Member’s right SPS 268 sufficient scientific evidence (SPS 2.2) and SPS 282–3
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)	arbitrary or unjustifiable discrimination, exclusion (SPS 2.3), elements of violation SPS 38
developing countries and (DSU 21.2) DSU 1007, 1064	burden of proof (general rules), <i>prima facie</i> case requirement, presumption of no relevant studies or report/proving a negative SPS 34
economic and social conditions, relevance DSU 1064	provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7) SPS 52 as qualified exemption/autonomous right SPS 52
structural adjustment, relevance of need for DSU 1062	relationships within and between agreements SPS 2/SPS 5, 6, 7 and 8 SPS 67 SPS 2.2/SPS 5.6 SPS 283 SPS 2.2/SPS 5.7 SPS 52, 283
Japan – Agricultural Products II (AB), WT/DS76/AB/R, DSR 1999:I	risk assessment, need for (SPS 5.1–5.3), standard/powers of review (panel) SPS 38
ALOPs (SPS 5.4–5.6 and Annex A(5))	SPS Agreement, burden of proof, scientific evidence, sufficiency (SPS 2.2) SPS 34
measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6)	standard/powers of review (panel) (DSU 11), risk assessment (SPS Agreement), exclusion SPS 38
burden of proof SPS 259	transparency of SPS regulations (SPS 7 and Annex B) publication requirements (Annex (B)(1)-(2)) failure to publish as breach of SPS 5.7 obligations SPS 355
cumulative elements (SPS 5.6 footnote 3) SPS 258	provision of information distinguished SPS 543 “SPS regulations” for purpose of SPS 540 non-mandatory measures SPS 541
burden of proof (general rules)	Japan – Alcoholic Beverages I (GATT Panel), L/6216, BISD 34S/83,
impossible burden, proving a negative DSU 566	directly competitive or substitutable products (GATT III:2), methodology of comparison, “grouping” approach GATT 301 n. 436
<i>onus probandi actori incumbit</i> SPS 32	
panel’s right to seek information and advice (DSU 13/SPS 11.2), relevance DSU 556	
<i>prima facie</i> case requirement, establishment of party’s case by panel, exclusion SPS 278, 421, DSU 556, 766	
scientific evidence, sufficiency (SPS 2.2) SPS 34	
harmonization of SPS measures (SPS 3), measures which result in a higher level of protection (SPS 3.3), rational relationship between measure and available information as SPS 96	
identification of specific measures (DSU 6.2), identification of product, need for DSU 229	
information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2)	
burden of proof and DSU 556	
comprehensive nature of panel’s authority DSU 737, 766	
limitations on panel’s role SPS 39, 121	
panel’s rights, right to assess facts SPS 39	
judicial economy, “positive solution to dispute” requirement (DSU 3.7)/false judicial economy and DSU 652	
“measures at issue” (DSU 6.2), legal instrument as DSU 263	
ordinary meaning of terms used in covered agreements, “sufficient” SPS 25	
proportionality, risk based on scientific evidence SPS 30	
provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7) SPS 53	
cumulative requirements SPS 293	
as qualified exemption/autonomous right SPS 36, 53, 287, 289	
review within “a reasonable period of time” SPS 293, 318	
“seek to obtain additional information” for more objective assessment of risk SPS 310	

- (*cont.*)
- Japan – Alcoholic Beverages II (AB), WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, DSR 1996:I**
- AB procedures (DSU 17.9 and ABWP), written reponses (ABWP 28) DSU 1458
 - customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2)
 - DSU 3.2 AD 249 n. 349
 - supplementary means of interpretation (VCLT 32) as DSU 55, 1629
 - directly competitive or substitutable products (GATT III:2)
 - “like products” distinguished/as sub-category GATT 254–5
 - methodology of comparison, “grouping” approach GATT 301 n. 436
 - object and purpose GATT 293–4
 - relevant factors GATT 298
 - end-uses GATT 298
 - nature of product GATT 298
 - physical properties GATT 298
 - tariff classifications GATT 298
 - GATT 1947/WTO continuity
 - decisions, procedures and customary practices under GATT 1947 (WTO XVI:1) (GATT *acquis*)
 - legal status of panel reports, as *acquis* (WTO Art. XVI:1) WTO 275, GATT 169 n. 240, DSU 820, 899
 - as means of ensuring continuity WTO 275
 - panel reports (adopted) WTO 275, 279, GATT 9, 169 n. 240, DSU 820
 - GATT 1994, constituent elements (GATT 1994 1), “other decisions of the Contracting Parties to GATT 1947” (GATT 1994 1 (b)(iv)), adopted panel reports, whether
 - General Council (WTO IV:2), functions, interpretation of WTO Agreement WTO 197
 - interpretation of covered agreements
 - responsibility for (WTO IX:2)
 - General Council (WTO IV:2) WTO 197
 - Ministerial Conference WTO 197
 - interpretation of covered agreements, applicable law, customary rules of interpretation of public international law [as codified in the VCLT] WTO 8, GATT 314
 - interpretation of covered agreements, rules relating to including VCLT provisions
 - “any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)), adopted panel report WTO 197, DSU 1581
 - certainty of the law/flexibility, balance GATT 314, DSU 42
 - different language in same agreement, GATT III:2, first and second sentences GATT 306–7
 - effectiveness principle (*ut res magis valeat quam pereat/effet utile*) GATT 218, 226
 - meaning to be attributed to every word and phrase WTO 19, GATT 226, DSU 1612
 - effectiveness principle (*ut res magis valeat quam pereat/effet utile*), meaning to be attributed to omissions DSU 1614
 - evolutionary approach/intertemporal law DSU 42
 - interpretative notes (*Ad Articles*) GATT 236
 - legitimate expectations (including GATT II:5 provisions) WTO 279
 - panel reports and GATT 169, 169 n. 240, DSU 820
 - narrow/broad interpretation GATT 241, 260
 - object and purpose GATT 237
 - supplementary means (VCLT 32)
 - as customary international law rule DSU 55, 1629
 - as rule of customary international law DSU 1629
 - text/plain language (VCLT 31(2)) DSU 1549
 - as a whole/holistic/harmonious exercise GATT 330
 - legal status of panel reports, “other decisions of the Contracting Parties to GATT 1947” (GATT 1994 1(b)(iv)), whether WTO 275, GATT 169 n. 240, DSU 820, 899
 - “like product” (GATT III:2 and III:4)
 - determination of “likeness”, as a relative concept (“accordion”)/case-by-case approach GATT 241, 260, 344
 - directly competitive or substitutable products distinguished GATT 254–5, 305
 - narrow/broad indeterminateness of “likeness” interpretation, narrow interpretation GATT 241, 260
 - relevant factors
 - Border Tax Adjustment, Working Party on GATT 241, 260
 - consumer preferences GATT 241
 - cross-price elasticity GATT 286
 - end-uses GATT 241
 - physical properties GATT 241
 - tariff bindings GATT 246
 - tariff classifications GATT 245–6, 343 n. 503
 - national treatment, general principle (GATT III:1)
 - applicability to products not subject of tariff concession under GATT II GATT 205
 - interpretation of GATT III as a whole and
 - effectiveness principle GATT 226
 - GATT III:1 as context GATT 226
 - interpretation of WTO Agreement as a whole and GATT 413
 - “so as to afford protection” GATT 201
 - equality of competitive conditions, protection of competitive relationship GATT 220
 - omission from GATT III:2, first sentence, relevance GATT 237
 - national treatment, tax discrimination (GATT III:2)
 - customary rules of interpretation of public international law and GATT 314
 - determination of violation, elements (GATT III:2, first sentence), aims and effects test/policy purpose GATT 213, 215–16, 274
 - determination of violation, elements (GATT III:2, second sentence)
 - GATT III:2, first sentence test distinguished GATT 283
 - “not similarly taxed” distinguished GATT 311
 - as separate elements GATT 283
 - determination of violation, elements (GATT III:2, first sentence), “like product” and “in excess of” GATT 237
 - first and second sentences distinguished GATT 230, 283
 - general principle (GATT III:1) and GATT 218, 226, 237
 - “in excess of those applied” (GATT III:2, first sentence)
 - “not similarly taxed” distinguished GATT 306–7
 - regulatory objectives, relevance GATT 274
 - Interpretative Note *Ad Article III:2*, status GATT 236, 282
 - “not similarly taxed” (*Ad Article III*) GATT 283
 - “so as to afford protection” distinguished GATT 311
 - threshold/*de minimis* differential GATT 306–7, 313
 - “so as to afford protection”
 - design and structure of measure as evidence of protective application GATT 312
 - intention of legislators/regulators, relevance GATT 316
 - tariff roles as evidence of GATT 315
 - tax differentials as evidence of protective application GATT 313
 - as strict standard GATT 265
 - precedent, GATT panel reports GATT 237
 - preparatory work (VCLT 32), AD 3.4 AD 249 n. 349
 - relationships within and between agreements
 - GATT III/WTO Agreement GATT 413
 - GATT III:1/GATT III as a whole GATT 218, 226
 - rules of origin disciplines (RO 2) (transition period), trade objectives, exclusion as instrument of (RO 2(b)), intention, relevance RO 5
 - security and predictability of WTO obligations (DSU 3.2), evolutionary approach/intertemporal law and GATT 314, DSU 42
 - sovereignty, sovereignty/treaty benefits balance DSU 1733
 - WTO Agreement, preamble, “secure and predictable” WTO 8

Japan – Alcoholic Beverages II (Panel), WT/DS8/R, WT/DS10/R, WT/DS11/R, DSR 1996:I
directly competitive or substitutable products (GATT III:2), as
dynamic relationship (including possibility of latent demand) GATT 294
interim review (DSU 15), “precise aspects of the interim report”,
limitation to (DSU 15.2) DSU 778
interpretation of covered agreements, rules relating to including
VCLT provisions, “any subsequent practice . . . which
establishes the agreement of the parties regarding its
interpretation” (VCLT 31(3)(b)), panel report (adopted)
WTO 279, DSU 1581
“like product” (GATT III:2 and III:4)
burden of proof GATT 240
GATT III:4 compared GATT 258
national treatment, general principle (GATT III:1), applicability to
products not subject of tariff concession under GATT II
GATT 205
national treatment, tax discrimination (GATT III:2)
determination of violation, elements (GATT III:2, second
sentence), burden of proof GATT 284
“in excess of those applied” (GATT III:2, first sentence), burden
of proof GATT 240
“so as to afford protection” GATT 315
Japan – Alcoholic Beverages II (Article 21.3(c)), WT/DS8/15, WT/DS10/15, WT/DS11/13, DSR 1997:I
“reasonable period” for implementation of recommendations and
rulings (Article 21.3(c) arbitrations)
participation of all original parties DSU 1092
“particular circumstances” DSU 1042
limited role of executive DSU 1077
structural adjustment, relevance of need for DSU 1062 n. 1647
Japan – Apples dispute (WT/DS245)
expert evidence, Article 21.5 proceedings DSU 1172
review of implementation of DSB rulings (DSU 21.5)
ad hoc procedural agreements
appointment of panellist DSU 1171
experts DSU 1172
“sequencing” (interrelationship between Article 21.5 and Article
22.6 arbitration, ad hoc procedural agreements),
agreement not to object to Article 22.6 arbitration DSU
1165
Japan – Apples (AB), WT/DS245/AB/R, DSR 2003:IX SPS 132
burden of proof (general rules)
burden of proof (general rules), panel’s rights, to assess facts
SPS 39
prima facie case requirement SPS 40
evidence necessary to establish, determination case-by-case
approach SPS 35
expert evidence (DSU 13.2)
establishment of *prima facie* case and SPS 40
expert evidence/Member’s scientific evidence, primacy SPS 41,
DSU 609
expert evidence (DSU 13.2/SPS 11.2), establishment of *prima facie*
case and SPS 40
margin of discretion [in accordance with due process] (panel) (DSU
12.1 and Appendix 3), evaluation of evidence (DSU 11)
and DSU 609, 613 n. 1002
notice of appeal, requirements (ABWP 20(2)), notification of
allegation of panel’s failure to make objective assessment
(DSU 11) DSU 1429
notice of appeal, requirements (ABWP 20(2)(d)), clear allegation of
panel’s failure to make objective assessment (DSU 11)
DSU 1429
provisional adoption of SPS measures in case of insufficiency of
scientific evidence (SPS 5.7)
“insufficient” SPS 295–6

scientific uncertainty/controversy, relevance SPS 296
relationships within and between agreements
SPS 2.2/SPS 5.7 SPS 41
SPS 5.1/SPS 5.7 SPS 132, 295
risk assessment, need for (SPS 5.1–5.3)
ascertainable and theoretical risk distinguished (SPS 5.1)
quantitative threshold, relevance SPS 163
scientific prudence SPS 163
methodology, parties’ right to choose SPS 520
specificity of assessment, need for (SPS 5.1 and 5.2) SPS 514, 520
“sufficient scientific evidence” requirement (SPS 2.2) and,
divergence of expert views, relevance SPS 40
types of risk (“likelihood” vs “potential”), “likelihood”,
“according to SPS measures which might be applied” SPS
511
risk assessment (SPS Annex A(4)(4)), specificity of assessment,
need for SPS 157, 514
scientific evidence, need for sufficient (SPS 2.2), standard of review,
“objective assessment of matter before it” SPS 41
standard/powers of review (AB) (issues of law and legal
interpretations) (DSU 17.6), law vs fact, panel as trier of
facts DSU 609
standard/powers of review (panel) (DSU 11)
DSU 11 (function of panel) claims and claims relating to
substantive provisions distinguished DSU 1429
“objective assessment of the facts” /alleged disregard or distortion
of the evidence, discretion in assessment of evidence DSU
609
“objective assessment of matter before it”, expert evidence,
panel’s obligation to make independent assessment SPS
41, DSU 609
Japan – Apples (Panel), WT/DS245/R, DSR 2003:IX
ALOPs (SPS 5.4–5.6 and Annex A(5))
measures “not more trade restrictive than required to achieve
their appropriate level of . . . protection” (SPS 5.6)
alternative measure “significantly less restrictive to trade”,
“taking into account technical and economic feasibility”
SPS 264
SPS 2.2 and SPS 51
burden of proof (general rules)
burden of proof (general rules), allocation, responding party SPS 33
onus probandi actori incumbit SPS 33, DSU 542
prima facie case requirement
establishment of party’s case by panel, exclusion SPS 548
evidence necessary to establish, determination case-by-case
approach SPS 35
scientific evidence, sufficiency (SPS 2.2) SPS 32–6
due process (dispute settlement proceedings), opportunity to
respond to evidence/presentations of other parties,
timing of submission of evidence (DS 12) and DSU 627
evidence (panel) (DSU 12), time–limits for submission, panel’s
right to admit “late” /new evidence, opportunity to
comment, need for DSU 627
expert evidence (DSU 13.2/SPS 11.2), need for experts,
determination by panel with the agreement of the parties
SPS 398
interpretation of covered agreements, rules relating to including
VCLT provisions, effectiveness principle (*ut res magis
valeat quam pereat/effet utile*), meaning to be attributed
to every word and phrase SPS 29
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1),
arguments distinguished DSU 412
“measures at issue” (DSU 6.2), several instruments as single
measure DSU 276
provisional adoption of SPS measures in case of insufficiency of
scientific evidence (SPS 5.7), burden of proof, SPS 5.7 as
alternative defence, relevance SPS 326

<i>(cont.)</i>	
relationships within and between agreements	countervailing duties (SCM Part V), calculation of countervailing duty / “not in excess” (SCM 19.4), “found to exist” SCM 470
SPS 2.2 and 2.3/SPS 5.4–5.6 SPS 51	
SPS 2.2/SPS 4 SPS 43, 121	determination of injury (SCM 15)
risk assessment, need for (SPS 5.1–5.3)	causal relationship between subsidized imports and injury to domestic injury (SCM 15.5 and footnote 47)
ascertainable and theoretical risk distinguished (SPS 5.1), scientific prudence SPS 163	non-attribution of other factors SCM 444
explanation for measure allegedly in breach of SPS 5, burden of proof, relevance SPS 341 n. 426	“through the effects of subsidies” SCM 444
types of risk (“likelihood” vs “potential”), “likelihood”, according to SPS measures which might be applied SPS 511	“subsidization” and injury caused by “subsidized imports” distinguished SCM 444
risk assessment (SPS Annex A(4)(4)), types of risk (“likelihood” vs “potential”), “potential”, “probable” distinguished SPS 509	evidence (countervailing duty investigation) (SCM 12)
scientific evidence, need for sufficient (SPS 2.2)	“interested parties” (SCM 12.9)
burden of proof SPS 32–6	“allowing” SCM 399
cumulative test SPS 31	non-exhaustive nature of SCM 12.9 examples SCM 397
equivalence (SPS 4), relevance SPS 43	resort to “facts available” (SCM 12.7) SCM 391
rational and objective relationship between SPS measure and scientific evidence, need for SPS 31	resort to “facts available” (SCM 12.7), designation of “interested party” (SCM 12.9) and SCM 391
“scientific evidence” SPS 29	investigation of dumping (AD 5)/subsidy (SCM 11), “sufficient evidence of” (SCM 11.2), causal link SCM 361
scientific evidence, sufficiency (SPS 2.2) SPS 35	notice of appeal, requirements (ABWP 20(2)(d)), statement of allegation of error on issues of law/legal interpretations (ABWP 20(2)(d)), statement of grounds (ABWP 21:2) DSU 1434
“sufficient”, context (SPS 4) SPS 43, 121	standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 877
SPS Agreement, burden of proof, scientific evidence, sufficiency (SPS 5.7) SPS 323	subsidy, calculation in terms of benefit to recipient (SCM 14)
SPS measure, definition/classification as (Annex A(1)), trade effects, relevance SPS 451	“any” method (chapeau) SCM 404
terms of reference of panels (DSU 7)	national legislation/implementing regulations SCM 404
as definition of jurisdiction/legal claims at issue	transparency requirement SCM 404
consideration of issues outside terms of reference, exclusion SPS 548	“usual investment practice” (SCM 14(a)), inside/outsider investor distinction SCM 410
elaboration in first written submission, relevance DSU 412	subsidy, definition (SCM 1.1(a)(1)) (financial contribution)
transparency of SPS regulations (SPS 7 and Annex B)	“direct transfer of funds” (SCM 1.1(a)(1)) debt forgiveness/debt-for-equity swaps SCM 24, 27 n. 44
notification procedures, obligation to “notify changes” SPS 356–7, 357, 360, 547–8	“private body” (SCM 1.1(a)(1)(iv)), government entrustment or direction, effect SCM 55
notification procedures (Annex B(5)-(10)), obligation to “provide information”, burden of proof SPS 548	Japan – DRAMS (Korea) (Panel), WT/DS336/R
publication of regulations (Annex (B)(1)-(2)), two-pronged test for establishing requirement SPS 357	business confidential information (BCI), parallel confidential/non-confidential reports DSU 923
Japan – Apples (Article 21.5 – US) (Panel), WT/DS245/RW, DSR 2005:XVI	countervailing duties (SCM Part V)
interim review (DSU 15)	calculation of countervailing duty / “not in excess” (SCM 19.4), “found to exist” SCM 469
“precise aspects of the interim report”, limitation to (DSU 15.2) DSU 780	duration (SCM 21.1) SCM 479
reargument of case, exclusion DSU 783	imposition and collection (SCM 19), “through the effects of the subsidies” (SCM 15.5), identity of meaning SCM 461
“measures at issue” (DSU 6.2)	determination of injury (SCM 15)
measure in existence at time of establishment of panel, limitation to, measures not in existence as evidence DSU 404	causal relationship between subsidized imports and injury to domestic injury (SCM 15.5 and footnote 47)
prompt settlement of the dispute considerations DSU 404	“subsidization” and injury caused by “subsidized imports” distinguished SCM 443
prompt and satisfactory settlement (DSU 3.3), determination of “measures at issue” (DSU 6.2), and DSU 404	“through the effects of subsidies” SCM 443
risk assessment, need for (SPS 5.1–5.3)	“through the effects of the subsidy” (SCM 19.1), identity of meaning SCM 461
factors to be taken into account including “available scientific evidence” (SPS 2), format of assessment SPS 150	due process (dispute settlement proceedings), prejudice to party, relevance DSU 202
measures “appropriate to the circumstances” (SPS 5.1), direct causality between substance and possible adverse health effects SPS 173	evidence (countervailing duty investigation) (SCM 12)
measures based on, need for (SPS 5.1), “appropriate to the circumstances” (SPS 5.1) SPS 150	“interested parties” (SCM 12.9)
“sufficient scientific evidence” requirement (SPS 2.2) and SPS 26	“allowing” SCM 398
Japan – DRAMS (Korea) (AB), WT/DS336/AB/R and Corr.1, DSR 2007:VII	non-exhaustive nature of SCM 12.9 examples SCM 396
AB procedures (DSU 17.9 and ABWP), appellant’s submission (ABWP 21), grounds for allegation of specific errors (ABWP 21:2) DSU 1433	resort to “facts available” (SCM 12.7) and SCM 391, 400
business confidential information (BCI), parallel confidential/non-confidential reports DSU 709, 923	resort to “facts available” (SCM 12.7), designation of “interested party” (SCM 12.9) and SCM 391, 400
	standard of review (investigating authority) SCM 581
	interim review (DSU 15), re-argument of case, exclusion DSU 784

ordinary meaning of terms used in covered agreements, “through the effects of subsidies” (SCM 15.1/footnote 47) SCM 443	“benefit”, legitimate expectation of improved market access as norm GATT 974–6
preparatory work (VCLT 32), SCM GATS 7	“benefit” /legitimate expectation of improved market access as arising out of successive rounds of negotiation GATT 974–7
request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 202	reasonable anticipation and GATT 979–80, 986
SCM Agreement, object and purpose (SCM 1), interpretation and clarification of GATT VI SCM 7	burden of proof GATT 967, DSU 1349
standard/powers of review (panel) (DSU 11), “objective assessment of the facts” /alleged disregard or distortion of the evidence, obligation to examine and evaluate <i>all</i> the evidence available to it DSU 600	constituent elements GATT 965
subsidy, calculation in terms of benefit to recipient (SCM 14) provision of goods or services (SCM 14(d)), prior subsidization in the relevant market SCM 420	as exceptional remedy GATT 961, DSU 1349
“usual investment practice” (SCM 14(a)), inside/outsider investor distinction SCM 410	“measure”
subsidy, definition (SCM 1.1(a)(1)) (financial contribution), “direct transfer of funds” (SCM 1.1(a)(1)), debt forgiveness/ debt-for-equity swaps SCM 22–3	affecting the competitive relationship, GATT III:4 compared GATT 374
subsidy, definition (SCM 1.1(b)) (conferral of benefit)	government action, limitation to DSU 247–9
“benefit”, market test SCM 67–9	“law, regulations or requirements” (GATT III:4) compared GATT 350
burden/standard of proof SCM 67–9	measure in “conflict” with GATT provisions, applicability to, concurrent application to measures falling under other provisions of GATT GATT 963
subsidy, specificity (SCM 2), individual payments under a generalized programme SCM 105–6	nullification or impairment, need for GATT 986–7
terms of reference of panels (DSU 7), request for establishment of panel as basis DSU 202	causality and GATT 986–7
Japan – DRAMs (Korea) (Article 21.3(c)), WT/DS336/16	competitive relationship as key factor GATT 986
implementation of DSB recommendations and rulings (DSU 21), prompt compliance (DSU 21.1), modification of underlying economic or social conditions distinguished DSU 999	object and purpose GATT 962
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations), administrative measures as means of implementation, relevance DSU 1051 n. 1635	non-violation claims (GATT XXIII:1(b)) (DSU 26.1), burden of proof / “detailed justification” (DSU 26.1(a)) DSU 1349
Japan – Film (Panel), WT/DS44/R, DSR 1998:IV	ordinary meaning of terms used in covered agreements
burden of proof (general rules), <i>onus probandi actori incumbit</i> GATT 967	“measure” (GATT XXIII:1(b)) DSU 248
GATT 1947/WTO continuity	“protocols and certifications relating to tariff concessions” (GATT 1994, 1(b)(i) and 1(d)) GATT 4
incorporation of GATT 1947 provisions into WTO Agreement GATT 4	“specific measures” (DSU 6.2) DSU 215
“legal instruments” (GATT 1994 1(b)), “protocols and certifications relating to tariff concessions” (GATT 1994, 1(b)(i) and 1(d)) GATT 4	publication and administration of trade regulations (GATT X)
identification of specific measures (DSU 6.2), government action, limitation to DSU 247–9	burden of proof GATT 519
interim review (DSU 15), termination of measures following, effect DSU 384 n. 623	measures of general application (GATT X:1) GATT 519
interpretation of covered agreements, rules relating to including VCLT provisions, dictionaries DSU 248 n. 357	quantitative restrictions, elimination (GATT XI)
“measures at issue” (DSU 6.2)	“prohibition or restriction” (GATT XI:1)
government action, limitation to, administrative guidance DSU 248	<i>de facto</i> restriction GATT 603
prospective measure, “of the same essence” DSU 383 n. 620	private action, relevance GATT 603
terminated measures, GATT practice DSU 384	relationships within and between agreements, GATT III:4/GATT XXIII:1(b) GATT 350, 374, 387
national treatment, regulatory discrimination (GATT III:4)	request for establishment of panel, requirements (DSU 6.2), “identify”, sufficiency of, identification of specific measures (DSU 6.2), “identify”, sufficiency of, reference to instruments implementing challenged measures DSU 215
burden of proof GATT 325	State responsibility as rule/general principle of international law (ILC Articles), responsibility for act or omission of, private parties GATT 603, DSU 247–9
“laws, regulations or requirements”, “measures” (GATT XXIII: 1(b)) distinguished GATT 350	successive treaties relating to the same subject matter (VCLT 30), Schedules DSU 1530
“less favourable treatment”	terms of reference of panels (DSU 7), terminated measures DSU 384
equality of competitive conditions as test GATT 370	Japan – Semi-conductors (GATT Panel)L/6309, BISD 35S/116,
GATT XXIII:1(b) compared GATT 374, 387	quantitative restrictions, elimination (GATT XI),
non-violation claims (GATT XXIII:1(b))	“prohibition or restriction” (GATT XI:1) GATT 600
“any measure”	
government measures, limitation to GATT 972	
measure currently in force, limitation to GATT 973	
non-binding action GATT 971	
	Korea – Alcoholic Beverages (AB), WT/DS75/AB/R, WT/DS84/ AB/R, DSR 1999:I
	consultations (DSU 4), evidence obtained during, admissibility in panel proceedings DSU 632 n. 1031
	directly competitive or substitutable products (GATT III:2)
	criteria, potential to compete as determining factor GATT 234
	as dynamic relationship (including possibility of latent demand) GATT 202, 291–5, 335
	“like products” distinguished/as sub-category GATT 234
	“like products” as subset GATT 303
	methodology of comparison, “grouping” approach GATT 299, 301
	object and purpose GATT 290, 292–3
	ordinary meaning GATT 291–2
	relevant factors

<i>(cont.)</i> cross-price elasticity GATT 287–8, 299 distribution channels GATT 299 end-uses GATT 299 market situation in other countries GATT 289 physical properties GATT 299 evidence, acceptability as, evidence obtained during consultations DSU 632 n. 1031 harmless error principle DSU 311 n. 495 interpretation of covered agreements, rules relating to including VCLT provisions object and purpose GATT 290 same or closely related phrases in different agreements, GATT III/SCM 15 footnote 46 SCM 424 “like product” (GATT III:2 and III:4) determination of “likeness”, as a relative concept (“accordion”)/ case-by-case approach SCM 424 directly competitive or substitutable products distinguished GATT 234 national treatment, general principle (GATT III:1), “so as to afford protection” GATT 202 national treatment, tax discrimination (GATT III:2) first and second sentences distinguished GATT 234 “so as to afford protection”, intention of legislators/regulators, relevance GATT 318 ordinary meaning of terms used in covered agreements “characteristics closely resembling” (SCM footnote 46) SCM 424 “directly competitive or substitutable” (GATT III:2) GATT 291–2 panel reports, rationale, need for (DSU 12.7), sufficiency DSU 700 standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), law vs fact, panel as trier of facts DSU 603, 845 standard/powers of review (panel) (DSU 11) “objective assessment of the facts” /alleged disregard or distortion of the evidence discretion in assessment of evidence DSU 603 egregious error, need for DSU 615 Korea – Alcoholic Beverages (Panel), WT/DS75/R, WT/DS84/R, DSR 1999:I composition of delegation legal representation/private counsel DSU 726 Member’s right to determine DSU 1488 confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3), obligation to respect/ensure respect for DSU 1488 confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27), private counsel/advisers not part of delegation and DSU 915 n. 1444 consultations (DSU 4) adequacy of consultations (DSU 4.5), Panel responsibilities in relation to DSU 161, 163 confidentiality (DSU 4.6) disclosure of information obtained in different proceedings DSU 164–5 disclosure of information obtained in same proceedings DSU 164 third party participation and DSU 169 n. 206 directly competitive or substitutable products (GATT III:2) competition and trade law distinguished GATT 206 “directly” GATT 297 methodology of comparison, “grouping” approach GATT 299, 301 relevant factors cross-price elasticity GATT 288, 299 distribution channels GATT 299 end-uses GATT 299 physical properties GATT 299 due process (dispute settlement proceedings), opportunity to respond to evidence/presentations of other parties, timing of submission of evidence (DS 12) and DSU 623 evidence (panel) (DSU 12), time-limits for submission, panel’s right to admit “late” /new evidence, time limit for rebuttal DSU 623 identification of specific measures (DSU 6.2) identification of product, need for DSU 229 specificity, preliminary ruling on DSU 229 interpretation of covered agreements, rules relating to including VCLT provisions, other treaties, Treaty of Rome (1958) GATT 206 national treatment, general principle (GATT III:1), competition law compared GATT 206 national treatment, tax discrimination (GATT III:2) determination of violation, elements (GATT III:2, first sentence), aims and effects test/policy purpose GATT 206 determination of violation, elements (GATT III:2, second sentence), burden of proof GATT 285 preliminary rulings on, specificity of request for panel (DSU 6.2) DSU 229 preparatory work (VCLT 32), GATT III:2 GATT 297 private counsel, inclusion in delegation, Rules of Conduct (RoC), non-applicability DSU 1488 third party rights (consultations (DSU 4.11)), confidentiality (DSU 4.6) and DSU 169 n. 206 trade and competition policy, interaction between (Doha 23–5), market definitions, distinguishability GATT 206 Korea – Alcoholic Beverages (Article 21.3), WT/DS75/16, WT/ DS84/14 “reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations) entry into force of legislative instrument, relevance DSU 1074 statutory enforcement periods DSU 1074 Korea – Certain Paper (Panel), WT/DS312/R, DSR 2005:XXII confidential information (AD 6.5) access to parties’ own confidential information AD 491 “by nature confidential” / “provided on a confidential basis”, distinguishability AD 497 “good cause shown”, “by nature confidential” / “provided on a confidential basis” distinction, relevance AD 497 determination of dumping (AD 2) calculation of SG&A costs (AD 2.2.2) actual data “pertaining to” low-volume sales data AD 58 non-verifiable data AD 59 fair comparison of export price and normal value (AD 2.4), “due allowance”, “differences which affect price comparability” AD 94 determination of injury (AD 3) country by country analysis/cumulative assessment of volume and prices (AD 3.3) AD 227–8 evaluation of injury factors (AD 3.4), <i>all</i> relevant economic factors and indices, need to examine, factors not listed in AD 3.4, right/obligation to consider AD 255–6 “positive evidence” / “objective examination” requirement (AD 3.1), price analysis and AD 205 evidence (dumping investigation) (AD 6) “facts available”, right of resort to (AD 6.8/Annex II) failure to submit necessary information “in timely fashion” (Annex II para. 3) and, as “reasonable period” / “reasonable time” AD 571 reasons for disregarding information, need for AD 594 on-the-spot verification (AD 6.7), disclosure obligations AD 527–8 resort to “facts available” (AD 6.8/Annex II) “necessary information” AD 566	
---	--

right to submit further information AD 597	adverse inferences from non-cooperation SCM 676
secondary source information . . . with special circumspection (Annex II para. 7) AD 585–6	use of information in prohibited subsidy claims SCM 674
timely disclosure to interested parties of information relevant for presentation of case (AD 6.4), Parties’ own confidential information AD 491	“serious prejudice” (SCM 6)
<i>ex parte</i> communications with panel or AB (DSU 18.1), party’s attempt to place limitation on handling of confidential communications DSU 908	adverse effects on trade interests
good faith engagement in dispute settlement procedures (DSU 3.10), presumption of DSU 103	as “serious prejudice” SCM 277
implementation of panel or AB recommendations (DSU 19.1)	as test SCM 274
panel’s decision not to make suggestions DSU 982	displacement or impediment to imports (SCM 6.3(a)) SCM 267
panel’s discretionary suggestions DSU 950	elements listed in SCM 6.3, sufficiency to establish SCM 273
interim review (DSU 15), new arguments DSU 802	genuine causal link requirement, burden of proof SCM 283
non-market economies (NMEs), separate legal entities, treatment of AD 627	“injury” distinguished SCM 274
relationships within and between agreements	“may arise” (SCM 6.3 chapeau) SCM 275
AD 2.1/AD 2.3/AD 6.10 AD 627	rebuttal of presumption (SCM 6.2) SCM 276
AD 5.3/AD 6.8 and Annex II AD 608	“significant price undercutting/suppression” (SCM 6.3(c)), “but for” test SCM 280
sampling (AD 6.10), separate legal entities, treatment of AD 627	“serious prejudice” (SCM 6), “significant price undercutting/suppression” (SCM 6.3(c)), counterfactual analysis SCM 295
Korea – Certain Paper (Article 21.5 – Indonesia) (Panel), WT/DS312/RW, DSR 2007:VIII	“serious prejudice” (SCM 6)
determination of injury (AD 3), evaluation of injury factors (AD 3.4), opportunity for defence of interests (AD 6.2) and AD 464	“significant price undercutting/suppression” (SCM 6.3(c))
evidence (dumping investigation) (AD 6)	“in the same market” SCM 323–4
notification to all interested parties of essential facts under consideration (AD 6.9)	non-attribution of adverse effects caused by other factors SCM 287
before final determination AD 613	“significant” SCM 312
“essential facts” AD 614	special or additional rules and procedures (DSU 1.2 and Appendix 2)
opportunity for defence of interests (AD 6.2), re-determination of injury factors (AD 3.4) and AD 464	arrangements considered for classification as
resort to “facts available” (AD 6.8/Annex II), secondary source information . . . with special circumspection (Annex II para. 7) AD 588–90	SCM 4.2 DSU 17
timely disclosure to interested parties of information relevant for presentation of case (AD 6.4), request, need for AD 488	SCM 4.4 DSU 17
(investigation of dumping) (AD 6), notification to all interested parties of essential facts under consideration (AD 6.9), “facts” vs “reasoning” AD 614	SCM 7.2 DSU 17
Korea – Commercial Vessels (Panel), WT/DS273/R, adopted 11 April 2005, DSR 2005:VII	SCM 7.4 DSU 17
adverse inferences from party’s refusal to provide information, panel’s right to draw (SCM Annex V) SCM 676	subsidy, definition (SCM 1.1(a)(1)) (financial contribution)
consultations (DSU 4)	cumulative nature of SCM 1.1(a)(1) requirements SCM 21
conditional request DSU 146	“direct transfer of funds” (SCM 1.1(a)(1))
identity of specific measures in the consultations and the request for establishment of a panel, relevance DSU 417	debt forgiveness/debt-for-equity swaps SCM 21
preliminary ruling on DSU 417, 427	medium of exchange, relevance SCM 21
due process (dispute settlement proceedings), prejudice to party, relevance DSU 318, 417	“government practice” (SCM 1.1(a)(1)(i)) SCM 19–20
financial services (GATS), Annex, limitations as aid to interpretation of SCM Agreement GATS 241	participation in, responsibility from SCM 18
interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in different agreements, GATS Financial Services Annex/SCM Agreement GATS 241	“public body”, criteria for classification as, government control SCM 16
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)	subsidy, definition (SCM 1.1(b)) (conferral of benefit)
identification of treaty provisions DSU 318	subsidy programmes as such, right to challenge (mandatory/discretionary distinction)
complementary or alternative claims and DSU 318	burden of proof SCM 76–7
preliminary rulings on, identity of measures specified in requests for consultations and establishment of panel DSU 417, 427	order of analysis SCM 72 n. 139
relationships within and between agreements, SCM 2.3/SCM 3 SCM 122	subsidy, specificity (SCM 2), subsidy “contingent upon the use of domestic over imported goods” (SCM 2.3/SCM 3.1) SCM 122
“serious prejudice”, procedures for developing information concerning (SCM Annex 5)	Korea – Dairy (AB), WT/DS98/AB/R, DSR 2000:I
	burden of proof (general rules)
	<i>prima facie</i> case requirement
	evidence other than that submitted by parties, panel’s right to consider DSU 549
	explicit finding, relevance DSU 552
	SG 4.2 DSU 549
	competence of panels and AB (DSU 3.2/DSU 11/DSU 17), right to develop own legal reasoning including arguments not adduced by parties (<i>jura novit curia</i>) SCM 225, DSU 328
	due process (dispute settlement proceedings), prejudice to party, relevance DSU 94, 311
	emergency action (GATT XIX)
	“as a result of unforeseen developments” (GATT XIX:1(a))
	critical date GATT 822
	objective/subjective nature of legal standard GATT 816
	omission from SG 2.1, relevance GATT 805
	as extraordinary/emergency remedy GATT 796
	harmless error principle DSU 311
	identification of specific measures (DSU 6.2) DSU 94

<i>(cont.)</i>	
interpretation of covered agreements, rules relating to including VCLT provisions	all factors listed in SG 4.2(a) SG 143
effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>) GATT 805	“factors other than increased imports” (SG 4.2(b)) SG 173
meaning to be attributed to every word and phrase WTO 19, SG 1, DSU 1554–5	segmented domestic industry and SG 166
preamble of agreement under consideration SG 1	dispute settlement (SG 14), standard of review (DSU 11), evidence, alleged disregard or distortion by panel, obligation to examine and evaluate <i>all</i> the evidence available to it SG 306
as a whole/holistic/harmonious exercise WTO 19, SG 112 n. 183, DSU 1554	interpretation of covered agreements, rules relating to including VCLT provisions, dictionaries SG 261 n. 423
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)	investigation of conditions for safeguard measures, requirements (SG 3.1/SG 4.2(c))
arguments distinguished SCM 225, DSU 305, 328	evaluation of all factors AD 914 n. 1246
clarification of claim during proceedings DSU 328	obligation of competent authorities to seek information additional to that supplied by interested parties AD 914 n. 1246
evidence to support claim distinguished DSU 328	published report, absence of claim relating to, effect on possibility of SG 4 claims SG 91
identification of treaty provisions DSU 94, 307, 311, 312, 1146	legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), identification of treaty provisions, listing of articles without explanation, sufficiency DSU 311, 312
summary “sufficient to present the problem clearly” DSU 193, 302	notification and consultation (SG 12)
notification and consultation (SG 12)	“adequate opportunity for prior consultations” (SG 12.3) SG 285
“all pertinent information” (SG 12.2) SG 280–2	successful outcome as evidence of SG 285
injury factors (SG 4.2(a)) and SG 280–2, 290	“all pertinent information” (SG 12.2) SG 280
objective test SG 280–1	content of SG 1(a) notification SG 278–9
object and purpose SG 281	formats, non-binding nature SG 279
right to request additional information, relevance SG 282	“immediately”
timeliness (SG 12.1, 12.2 and 12.3) SG 283	SG 12.1 SG 261–2
ordinary meaning of terms used in covered agreements GATT 805	SG 12.1(a) SG 265
“conforms with the provisions” (SG 11.1(a)) SG 4	SG 12.1(b) SG 268
procedure, international and domestic rules distinguished DSU 599	SG 12.1(c) SG 271–2
relationships within and between agreements	translation delays SG 261
GATT XIX:1/SG 2 and 4 GATT 805	“initiation of investigation and reasons for it” (SG 12.1(a)), limitation to SG 278–9
GATT XIX/SG 1 SG 4	AD 5 and SCM 11 distinguished SG 279
SG I and II.1(a)/WTO II GATT 838	SG 3.1 and 4.2 distinguished SG 279
SG 2 and 4/SG 12 SG 290	Technical Cooperation Handbook on Notification Requirements, relevance SG 257
request for establishment of panel, requirements (DSU 6.2)	notification obligations and procedures, Technical Cooperation Handbook on Notification Requirements, relevance SG 257
clear presentation of the problem/ability to defend itself and DSU 94 n. 107	nullification or impairment (DSU 3.8), adverse impact/prejudice, relevance DSU 94
as two-stage test	relationships within and between agreements
safeguard measures, application (SG 5), “to the extent necessary” (proportionality) (SG 5.1), “clear justification” / requirement to explain SG 224	GATT XIX/SPS WTO 19
safeguard measures, object and purpose (preamble), multilateral control over safeguards SG 1	SG 2/SG 4 SG 17–18
safeguard measures (SG)/emergency action (GATT XIX), relationship between GATT 795, 838, SG 1	safeguard measures, application (SG 5), “to the extent necessary” (proportionality) (SG 5.1), adjustment plans, relevance SG 228
safeguard measures (SG/GATT XIX), relationship between Safeguards Agreement and GATT XIX, rules for application of GATT XIX (SG 1 and 11.1(a)) SG 4	safeguard measures, conditions (SG 2)
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 864–5	determination of serious injury or threat (SG 4), violation as violation of SG 2 SG 17–18, 18
standard/powers of review (panel) (DSU 11)	“under such conditions” SG 51–2, 57
“objective assessment of the facts” /alleged disregard or distortion of the evidence	price analysis, relevance SG 57, 62 n. 104
evidence other than that submitted by parties, right to consider DSU 549, 599	standard/powers of review (panel) (DSU 11)
obligation to examine and evaluate <i>all</i> the evidence available to it DSU 599	relevant factors
WTO Agreement	evaluation of all relevant factors, need for AD 914 n. 1246
cumulative nature of obligations SG 1	position of Member at time of determination AD 914 n. 1246
as single undertaking (WTO II:2) WTO 19	standing/right to bring claim (DSU 3.7), economic interest, relevance DSU 85, 177
Korea – Dairy (Panel), WT/DS98/R and Corr.1, DSR 2000:I	terms of reference of panels (DSU 7), failure of parties to produce evidence or arguments SG 18
causation analysis (SG 4.2(b)) (determination of serious injury or threat of)	translation, delays caused by (SG 12) SG 261
“demonstrates” SG 173, 217	Korea – Procurement (Panel), WT/DS163/R, DSR 2000:VIII
relevance in absence of serious injury SG 217	a, Schedules of Concessions (GPA), as integral part of GPA (GPA XXIV:12) GPA 54
determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a))	

competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “clarification of existing provisions” DSU 57	General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements
customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2)	intention to secure compliance with GATT GATT 912
customary international law other than customary rules of interpretation DSU 57–8, GPA 32 n. 45	“necessary” to secure compliance GATT 912, 913–16
error (VCLT) DSU 1670	balancing of factors GATT 914–16
error as to fact or situation, effect on validity of treaty (VCLT 48(1)) GPA 32, 34–6	“reasonably available” alternative WTO-consistent measure GATT 914–16
good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), treaty interpretation/performance GATT 989–91, GPA 31–3, 32	“relating to” (GATT XX(g)) distinguished GATT 914 n. 1286
Government Procurement Agreement (GPA)	interpretation of covered agreements, rules relating to including VCLT provisions, “ordinary meaning . . . in their context . . . in light of object and purpose” (VCLT 31(1)) GATT 914
definitions, “central government entities” (GPA: Appendix 1) GPA 6–13	“less favourable treatment”
entities not included in Appendix 1 (GPA I:3) GPA 17	equality of competitive conditions as test GATT 371
error as to fact or situation, effect on validity of treaty (VCLT 48 (1)) GPA 32, 34–6	methodology of comparison, formal differences in treatment, relevance GATT 376
good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) and GATT 989–91, GPA 31–3	market access (AG 4), determination of violation, elements/test GATT 322
scope GPA 3	market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1)
service contracts, expansion to cover (preamble) GPA 1	elimination of QRs (GATT XI) and AG 48
withdrawal of entity following elimination of government control/privatization GPA 47	STEs (GATT XVII) and GATT 753
non-violation claims (GATT XXIII:1(b))	ordinary meaning of terms used in covered agreements
“benefit” /legitimate expectation of improved market access as customary international law and GATT 991, GPA 30	“eligible” (AG Annex 3, para. 8) AG 203
reasonable anticipation and GATT 984	“in accordance with” (AG 1(a)(ii)) AG 6–7, 80
resulting from negotiations GATT 989–91, GPA 29–30	relationships within and between agreements
GPA claims distinguished GATT 989–91, GPA 30	AG 1(a)(ii)and annex 3/AG 7.2 AG 80
non-violation claims (GPA XXII:2) GPA 29–36	AG 4.2/GATT XI GATT 753
ordinary meaning of terms used in covered agreements, “central government entity” (GPA Appendix 1) GPA 7	GATT III:4/GATT XX GATT 912
preparatory work (VCLT 32), improper use of DSU 58	State trading enterprises (STEs) (GATT XVII), market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1) GATT 753
Schedules of Concessions (GPA), interpretation and clarification, VCLT as applicable law GPA 54	Korea – Various Measures on Beef (Panel), WT/DS161/R, WT/ DS169/R
separability of provisions (VCLT 44) DSU 1669	Aggregate Measurement of Support (AMS) (AG 1(a)/Annex 3), “constituent data and methodology” (AG 1(a)(ii)), external reference price, relevant period AG 8
State responsibility as rule/general principle of international law (ILC Articles), responsibility for act or omission of, government official DSU 1680	Agriculture Agreement (AG), quantitative restrictions (GATT XI) and GATT 644
treaties	government assistance to economic development (GATT VII), QRs (GATT XI) and GATT 399
error (VCLT 48), as customary international law DSU 1670	import licensing procedures, rules and procedures distinguished LIC 5
separability of treaty provisions (VCLT 44) DSU 1669	judicial economy, prior decision on another point rendering discussion otiose GATT 399, 405, 745, 749
Korea – Various Measures on Beef (AB), WT/DS161/AB/R, WT/DS169/AB/R, DSR 2001:I	licensing requirement, as quantitative restriction (GATT XI:1) GATT 613
General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements, balance between restrictive effect on international trade and “necessity” GATT 22	market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1), “in accordance with” AG 6
Aggregate Measurement of Support (AMS) (AG 1(a)/Annex 3)	national treatment, general principle (GATT III:1), applicability, measures imposed at the time or point of importation (“internal measures”) (<i>Ad Article</i>), STEs (GATT XVII) and GATT 211
“constituent data and methodology” (AG 1(a)(ii)) AG 6–8, 200	national treatment, regulatory discrimination (GATT III:4), “less favourable treatment”, equality of competitive conditions as test GATT 371 n. 546
beef, absence AG 7	quantitative restrictions, elimination (GATT XI)
external reference price, relevant period AG 8	AG Agreement and GATT 644
“in accordance with” AG 7	“prohibition or restriction” (GATT XI:1)
“provisions of Annex 3”, priority AG 7, 8	licensing requirements GATT 613
“taking into account” AG 7	“restrictions made effective through state-trading organizations” (<i>Ad Articles</i> XI, XI, XIII, XIV and XVIII) GATT 622–4, 649
“market price support” (Annex 3, para. 8), “eligible” AG 203	relationships within and between agreements
total AMS (AG 1(h)), calculation AG 6 n. 9, 20	
agricultural concessions and commitments (AG 3), domestic support (AG 3), limitation to commitment levels specified in Member’s Schedule (AG 3(2)), “subject to provisions of Art. 6” AG 29	
General Exceptions (GATT XX), alternative WTO-consistent measure, availability, enforcement of WTO-consistent law and GATT 928	

<i>(cont.)</i>	
AG 3, 6 and 7 AG 29	
AG 4.2/GATT XI GATT 644, AG 48	
GATT II:1(a) and XI/GATT III:4 and XVII GATT 166, 745	
GATT III/GATT XVII:1 GATT 223, 411, 745	
GATT practice GATT 748	
GATT III:4 and XVII/GATT II:1(a) and XI GATT 399, 749–50	
GATT III:4 and XVII/GATT XI and II:1 GATT 166, 170	
GATT III:4/GATT II:1(a) and GATT XI GATT 399	
GATT XI and II:1/GATT III:4 and XVII GATT 166, 170, 405	
GATT XVII:1(a)/GATT XVII:1(b) GATT 734	
Schedules of Concessions (GATT II)	
“subject to the terms, conditions or qualifications in the schedule” (GATT II:1(b))	
inclusion in schedule, need for GATT 142	
terms, conditions or qualifications added to import concessions, obligation to include in Schedule GATT 142	
treatment no less favourable than that provided in appropriate schedule (GATT II:1(a))	
failure to include additional terms, conditions and qualifications to Schedule and GATT 142	
STEs (GATT XVII) and GATT 745	
State trading enterprises (STEs) (GATT XVII) GATT 622–5, 649	
GATT XVII:1(a) and 1(b), interrelationship GATT 734	
measures affecting imported products (internal measures) and measure affecting importation (border taxes), difficulty of distinguishing/relevance GATT 211, 720	
non-discriminatory treatment (GATT I general principle) (GATT XVII:1(a)) and GATT 223, 725	
quantitative restrictions (GATT XI:1) GATT 622–4, 649	
treatment no less favourable than that provided in appropriate schedule (GATT II:1(a)) and GATT 745	
Mexico – Anti-Dumping Measures on Rice (AB), WT/DS295/AB/R, DSR 2005:XXII	
AB procedures (DSU 17.9 and ABWP), timetable (ABWP 26), modification in exceptional circumstances (ABWP 16(2)) DSU 1389	
ADP recommendations, legal status AD 175	
anti-dumping duties, imposition and collection (AD 9)	
assessment (AD 9.3)	
conditions (AD 9.3.2, AD 11.2 and SCM 21.2) AD 676–7, SCM 486–7	
finality of duty AD 678	
expedited review (AD 9.5), requirements AD 724	
burden of proof (general rules), <i>prima facie</i> case requirement AD 189, 196–7	
consultations (DSU 4)	
identity of specific measures in the consultations and the request for establishment of a panel, relevance DSU 144	
purpose/importance, definition of dispute DSU 144	
data collection period (AD 2 and AD 3)	
causal link, need for AD 180, 189–90, 197	
“positive evidence” / “objective examination” requirement (AD 3.1) and AD 180, 189–90, 196–7	
use of different periods, dumping/injury determinations AD 97	
determination of dumping (AD 2), definitions, “dumping” and “margin of dumping”, identity of meaning throughout AD Agreement AD 404	
determination of injury (AD 3)	
methodology, right to choose AD 183	
“positive evidence” / “objective examination” requirement (AD 3.1), “positive evidence” AD 183–4	
due process (anti-dumping measures) (AD 6)	
as underlying principle	
balance of interests considerations AD 438	
time-limits and AD 438	
due process (countervailing duty investigation) (SCM 12.7) SCM 390	
“dumping” / “margin of dumping” (AD 2.1), “for purposes of this agreement” / identity of meaning throughout AD Agreement AD 404	
evidence (countervailing duty investigation) (SCM 12)	
questionnaires (SCM 12.1.1), supplementary questionnaires, status SCM 380	
resort to “facts available” (SCM 12.7)	
AD 6.8 compared/distinguished AD 547, SCM 390	
due process considerations SCM 390	
limitation to facts which might reasonably have been made available SCM 390	
obligation of panel to consider all information provided SCM 390	
purpose of provision SCM 390, 400	
secondary source information SCM 390	
evidence (dumping investigation) (AD 6)	
due process as underlying principle, balance of interests considerations AD 438	
“known exporters” (AD 6.10) AD 632	
“known exporters” (AD 6.1) / “interested parties known” (AD 12.1) AD 436	
obligation of exporting country to make exporters/producers aware of investigation (AD 6.1.1 footnote 15) AD 448	
questionnaires (AD 6.1.1)	
right of all interested parties to receive AD 446	
time-limits for reply AD 438	
resort to “facts available” (AD 6.8/Annex II)	
AD 6.8/SCM 12.7 relationship AD 547, SCM 390	
in case of exporter not notified of required information AD 553	
conditions for (Annex II) AD 544	
secondary source information . . . with special circumspection (Annex II para. 7) AD 587	
time-limits, right to set (AD 6.1.1)	
due process and AD 438	
reply to questionnaires AD 438	
date of receipt as trigger AD 446	
identification of specific measures (DSU 6.2), identity with specific measure the subject of consultations, relevance DSU 144	
investigation of dumping (AD 5)/subsidy (SCM 11)	
rejection of application (AD 5.8)	
<i>de minimis</i> test, exporters meeting requirement, immediate termination and AD 400	
exporters for whom a zero or <i>de minimis</i> margin is established, exclusion from subsequent administrative and changed circumstances reviews AD 405–6, SCM 374–5	
“margin of dumping”, identity of meaning with AD 2.4.2 AD 404	
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), identification of treaty provisions DSU 319	
public notice of initiation of investigation (AD 12.1), “known exporters” (AD 12.1) / “interested parties known” (AD 12.1) AD 436	
request for establishment of panel, requirements (DSU 6.2), consistency of request with, interpretation DSU 319	
sampling (AD 6.10), “known exporters” AD 632	
Mexico – Anti-Dumping Measures on Rice (Panel), WT/DS295/R	
ADP Recommendation (2000), legal status AD 175	
investigation of dumping (AD 5)/subsidy (SCM 11), rejection of application (AD 5.8), <i>de minimis</i> test, immediate termination and AD 400	
Mexico – Corn Syrup (Panel), WT/DS132/R and Corr.1, DSR 2000:III	
consultation and dispute settlement (AD 17)	
legal basis for consultation/claim (AD 17.3/AD 17.4), “measure” (AD 17.4), provisional measures AD 894–5	

“matter”, referral to DSB (AD 17.4)
identification of measure at issue requirement (DSU 6.2) AD 899
specificity AD 899
request for establishment of panel, DSU 6.2 requirements and AD 903
consultations (DSU 4), confidentiality (DSU 4.6), third party participation and DSU 169, 517
determination of injury (AD 3)
evaluation of injury factors (AD 3.4)
all relevant economic factors and indices having a bearing on eventual relevance of factor, relevance AD 248
factors not involving material injury, right to consider AD 298
factors not listed in AD 3.4, right/obligation to consider AD 253
consideration of each factor, need to be “apparent” in final determination AD 248
factors not listed AD 248
“injury” (AG 3 footnote 9), domestic industry (AD 4) and AD 176, 325
threat of material injury (AD 3.7)
AD 3.4 factors and AD 298–300
“facts, not merely allegation, conjecture or remote possibility”, “likelihood of substantially increased importation” (AD 3.7(i)) AD 296
“domestic industry” (AD 4), “injury” (AG 3 footnote 9) and AD 176, 325, 336
investigation of dumping (AD 5)/subsidy (SCM 11)
rejection of application (AD 5.8)
applicability prior to initiation of investigation AD 398
procedural nature AD 396
sufficiency of evidence (AD 5.2)
determination of sufficiency (AD 5.3), “examine” AD 373
evidence of causal link (AD 5.2(iv)), “information” and analysis distinguished AD 345
sufficiency of evidence (AD 5.3), determination of sufficiency standard of review (DSU 17.6) AD 368
sufficiency of evidence to initiate (AD 5.2), sufficiency to initiate (AD 5.2) and for final determination (AD 2)
distinguished AD 344
legal status of panel reports, reports reversed by AB AD 368 n. 495
provisional measures (AD 7)
duration (AD 7.4) AD 648
claim relating to as claim relating to definitive anti-dumping duty (AD 10) AD 894–5
as “measure” (AD 17.4) AD 894–5
public notice of initiation of investigation (AD 12.1)
separate report (AD 12.1.1)
notice of preliminary or final determination distinguished AD 829
summary of factors (AD 12.1.1(iv)) AD 828–9
public notice of preliminary or final determination (AD 12.2), “all relevant information on the matters of fact and law and reasons” for measures (AD 12.2.2) AD 248
relationships within and between agreements
AD 5.3/AD 17.6 AD 368
AD 7.4/AD 17.2 AD 652, 894–5
request for establishment of panel, requirements (DSU 6.2), nullification or impairment, indication of (AD 17.5(i)) AD 903–4
standard/powers of review (panel) (AD 17.6)
assessment of the facts (AD 17.6(i)), AD 5.3 (sufficiency of evidence), applicability to AD 368
investigating authorities’ establishment of the facts (AD 17.6(i)), “was proper” AD 367
third party rights (consultations (DSU 4.11)), confidentiality (DSU 4.6) and DSU 169, 517

Mexico – Corn Syrup (Article 21.5 – US) (AB), WT/DS132/AB/RW, DSR 2001:XIII
arguendo assumptions, Article 21.5 proceedings and DSU 355 n. 575, 657, 1152
competence of panels and AB (DSU 3.2/DSU 11/DSU 17)
“clarification of existing provisions” DSU 51, 703
compétence de la compétence/obligation to address jurisdictional issues [on own motion] DSU 77, 364
GATT practice DSU 151
mutually agreed solution (DSU 3.6) and DSU 136
obligation to disclose information DSU 136, 139
as prerequisite to establishment of panel/requirement to indicate whether held (DSU 6.2) DSU 153
exceptions, parties’ agreement to forego consultations DSU 153, 172–3, 207
omission of indication, effect DSU 208
requirement to indicate whether held (DSU 6.2) distinguished DSU 153, 207
purpose/importance DSU 136, 139
“shall address the relevant provisions/each issue” (DSU 7.2/DSU 17.12), judicial economy and DSU 890
consultations (DSU 4), as prerequisites, request for Article 21.5 arbitration and DSU 208
determination of injury (AD 3)
threat of material injury (AD 3.7)
“facts, not merely allegation, conjecture or remote possibility” AD 302
a “clearly foreseen and imminent” change of circumstances, need for AD 302
due process (dispute settlement proceedings), panel reports, rationale/reasons (DSU 12.7) and DSU 703–4
interpretation of covered agreements, rules relating to including VCLT provisions, dictionaries DSU 703
judicial economy, “shall address the relevant provisions/each issue” (DSU 7.2/DSU 17.12) DSU 422, 890
legal status of panel reports, unappealed finding DSU 826
mutually agreed/acceptable solution to matters raised formally (DSU 3.6), consultations (DSU 4) and DSU 136
panel reports
rationale/reasons, need for (DSU 12.7) DSU 703
Article 21.5 proceedings and DSU 704
direct quotation from previous report, desirability DSU 703
sufficiency DSU 703
reference to previous panel report (DSU 21.5) DSU 703
surety and predictability of WTO obligations (DSU 3.2) and DSU 51, 703
prompt and satisfactory settlement (DSU 3.3), security and predictability of WTO obligations (DSU 3.2) as aid to DSU 826
relationships within and between agreements, AD 17.6(i)/AD 17.6 (ii) AD 938
request for establishment of panel, requirements (DSU 6.2), fruitfulness of action (DSU 3.7), determination by Member DSU 77
review of implementation of DSB rulings (DSU 21.5)
competence of DSU 21.5 (compliance) panel, deviation from original panel report DSU 1105 n. 1709, 1105 n. 1711
DSU 6.2 procedures, applicability DSU 208, 1152
arguendo presumptions in Article 21.5 proceedings DSU 355 n. 575, 657, 1152
security and predictability of WTO obligations (DSU 3.2)
finality of adopted panel reports DSU 826
prompt and satisfactory settlement (DSU 3.3) and DSU 826
reasons/rationale in panel report (DSU 12.7) and DSU 51, 703
standard/powers of review (panel) (AD 17.6)
assessment of the facts (AD 17.6(i)), applicability to investigating authority AD 302, 320

<p>(cont.)</p> <p>interpretation of relevant provisions of AD (AD 17.6(ii)), assessment of the facts (AD 17.6(i)) and, cumulative effect AD 938</p> <p>investigating authorities' establishment of the facts (AD 17.6(i)), "proper" AD 302</p> <p>standard/powers of review (panel) (DSU 11), "objective assessment of the facts", <i>de novo</i> review, exclusion AD 302</p> <p>terms of reference of panels (DSU 7), as definition of jurisdiction/ legal claims at issue, "shall address" (DSU 7.2) DSU 422</p> <p>Mexico – Corn Syrup (Article 21.5 – US) (Panel), WT/DS132/RW, DSR 2001:XIII</p> <p>determination of injury (AD 3) threat of material injury (AD 3.7) "facts, not merely allegation, conjecture or remote possibility", "likelihood of substantially increased importation" (AD 3.7(i)) AD 296 "material injury would occur" / "consequent impact" AD 297–9 as responsibility of authorities AD 302, 320</p> <p>Mexico – Olive Oil (Panel), WT/DS341/R, DSR 2008:IX</p> <p>anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement</p> <p>dumping, constituent elements (AD 2/GATT VI:1) (GATT VI:6 (a)) GATT 483</p> <p>dumping, constituent elements/definition (AD 2/GATT VI:1), material injury to domestic industry or threat of (GATT VI:6(a)), SCM 16.1 and GATT 483</p> <p>confidential information (SCM 12.4) non-confidential summaries (SCM 12.4.1) access to confidential information, relevance SCM 383 statement of reasons why information "not susceptible of summary" SCM 384–6</p> <p>consultations (SCM 13) "initiation of investigation" (SCM 13.1) "in any event before" SCM 402 "initiated" (SCM 10 footnote 37) and SCM 356 invitation to consult and consultations distinguished SCM 401</p> <p>countervailing duties (SCM Part V) compliance with GATT VI:3 and SCM Agreement (SCM 10) "initiated" (SCM 10 footnote 37) SCM 356 domestic law as determining factor SCM 356</p> <p>data collection period (SCM 15.1/15.2) SCM 423</p> <p>determination of injury (SCM 15) causal relationship between subsidized imports and injury to domestic injury (SCM 15.5 and footnote 47), non- attribution of other factors SCM 450 data collection period (SCM 15.1/15.2) SCM 423</p> <p>determination of serious injury or threat of, definitions (SG 4.1), "serious injury" (SG 4.1(a)), "material injury" (AD 3, SCM 15.7 and GATT VI) distinguished GATT 483</p> <p>"domestic injury" (SCM 16) "domestic industry" (SG 4.1(c)) distinguished SCM 453 material injury to domestic industry or threat of (GATT VI:6(a)) and GATT 483 ordinary meaning SCM 453–4 domestic law, as determinant of date of "initiation" SCM 356</p> <p>due restraint (AG 13) ("peace clause") domestic support measures conforming with AG 6 (AG 13(b)) "due restraint" (AG 13(b)(i)) AG 137 elements/order of analysis AG 135 "injury or threat of" (AG 13(b)(i)) AG 136</p> <p>evidence (countervailing duty investigation) (SCM 12) notification to all interested parties of essential facts under consideration (SCM 12.8), "essential facts" SCM 393–4 procedure at Members' discretion SCM 377, 507 interpretation of covered agreements, rules relating to including VCLT provisions</p>	<p>context (VCLT 31(2)), other articles in same agreement SCM 356 dictionaries AG 137, SCM 356</p> <p>investigation of dumping (AD 5)/subsidy (SCM 11) support for (AD 5.4/SCM 11.4), "by or on behalf of the domestic industry", determination based exclusively on information in application SCM 363</p> <p>time–limits for conclusion of investigation (SCM 11.11), 18 month limit SCM 376</p> <p>judicial review (SCM 23), Members' discretion to define own procedure SCM 377, 507</p> <p>ordinary meaning of terms used in covered agreements, "producers" (SCM 16.1) SCM 453–4</p> <p>relationships within and between agreements, GATT VI:3/SCM 10 SCM 88</p> <p>security and predictability of WTO obligations (DSU 3.2), determination of date of "initiation" by reference to domestic law SCM 356</p> <p>subsidy, calculation in terms of benefit to recipient (SCM 14) "any" method (chapeau) SCM 405 "adequately explained" SCM 407 national legislation/implementing regulations SCM 406 transparency requirement SCM 407</p> <p>subsidy, definition (SCM 1.1(b)) (conferral of benefit), passing the benefit through, sales to unrelated buyers SCM 88–9</p> <p>Mexico – Steel Pipes and Tubes (Panel), WT/DS331/R, DSR 2007:IV</p> <p>burden of proof (general rules), <i>prima facie</i> case requirement AD 211, 216</p> <p>confidential information (AD 6.5) evidence (dumping investigation) (AD 6), due process as underlying principle, balance of interests considerations AD 512 non-confidential summaries (AD 6.5.1) access to confidential information, relevance AD 517 as balance between protection of confidentiality and need to ensure opportunity to defend interests AD 512 obligation to provide/evaluation of sufficiency AD 513</p> <p>confidential information (SCM 12.4) non-confidential summaries (SCM 12.4.1) statement of reasons why information "not susceptible of summary", "in exceptional circumstances" SCM 385–6 "sufficient detail to permit a reasonable understanding" SCM 382–3</p> <p>data collection period (AD 2 and AD 3) absence of provision AD 179, 191 causal link, need for AD 179–80, 191 "positive evidence" / "objective examination" requirement (AD 3.1) and AD 180</p> <p>determination of injury (AD 3) causal relationship, manner of evaluating (AD 3.5), non- attribution to dumped imports of injury caused by other factors (AD 3.5), "positive evidence" / "objective examination" requirement (AD 3.1) and AD 216 evaluation of injury factors (AD 3.4), "domestic industry", selective and inconsistent approach to AD 215 "positive evidence" / "objective examination" requirement (AD 3.1) domestic industry, use of information relating to AD 215 non-attribution obligation and AD 216 use of different periods for data collection and AD 180 volume and price effects (Ad 3.2) AD 210–11 significant increase in dumped imports (AD 3.2), "positive evidence" / "objective examination" requirement (AD 3.1) AD 210–11 threat of material injury (AD 3.7), AD 5.3 and AD 365–6 evidence (dumping investigation) (AD 6) "facts available", right of resort to (AD 6.8/Annex II), reasons for disregarding information, need for AD 595–6</p>
--	--

“facts available”, right to use (AD 6.8/Annex II), failure to cooperate (AD Annex VII para. 7), cooperation “to the best of its ability” AD 577–9, 581	agreements, exclusion of domestic law as justification (VCLT 27) GATS 140, DSU 1519
resort to “facts available” (AD 6.8/Annex II), in case of verifiable information, “verifiable” (Annex II para. 3) AD 558	developing countries (GATS IV), telecommunications, right to place reasonable conditions on GATS 256
implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 963	dispute settlement and enforcement (GATS XXIII), nullification and impairment (DSU 3.8) distinguished GATS 204, DSU 100
investigation of dumping (AD 5)/subsidy (SCM 11)	dispute settlement, special provisions relating to developing countries, requirement for specific indication of form in which account has been taken of special needs (DSU 12.11) DSU 718
sufficiency of evidence (AD 5.3)	domestic law, as justification for failure to fulfil international obligations, exclusion (VCLT 27) GATS 140, DSU 1519
determination of sufficiency, “injury”, threat of, AD 3.7	financial services (GATS), Annex, limitations as aid to interpretation of another GATS annex GATS 240
requirements, relevance AD 365–6	GATS Agreement
evidence of dumping AD 359–62	GATS Agreement, “public long-distance voice telephone services” (UN 1991 Provisional Central Product Classification) GATS 18
evidence of injury AD 365–6	relevant factors (GATS I:2(a)), supplier’s place of operation or presence GATS 16
sufficiency to initiate (AD 5.2) and for final determination (AD 2) distinguished AD 352–5, 365	interpretation of covered agreements, rules relating to including VCLT provisions
relationships within and between agreements, AD 3.7/AD 5.2 AD 365–6	same or closely related phrases in same agreement, GATS Financial Services Annex/other GATS annexes GATS 240
sampling (AD 6.10)	“special meaning” (VCLT 31(4)) DSU 1607
“objective examination” obligation (AD 3.1) and AD 210–11	market access (GATS XVI)
volume and price effects determination (AD 3.2) AD 210–11	excluded measures (GATS XVI:2)
Mexico – Taxes on Soft Drinks (AB), WT/DS308/AB/R, DSR 2006:I	temporal qualifications GATS 103–4
AB procedures (DSU 17.9 and ABWP), submission, correction of clerical error (ABWP 18(5)), requests for DSU 1406	time-frame, need for (GATS XX:1(d)) GATS 104
competence of panels and AB (DSU 3.2/DSU 11/DSU 17)	“where market access commitments are made” (GATS XVI:2 chapeau) GATS 107
not to add to or diminish rights and obligations (DSU 3.2/19.2) DSU 60–1, 989, 1551	zero quotas (GATS XVI:2(a)) GATS 105–6
right to “seek redress” (DSU 23.1) and DSU 1303	zero quotas (GATS XVI:2(a), (b) and (c)) GATS 105–6, 117–18
General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements	zero quotas (GATS XVI:2(c)) GATS 124
“laws or regulations”, international rules, exclusion GATT 922–3	nullification or impairment (DSU 3.8), GATS XXIII (dispute settlement and enforcement), distinguished GATS 204, DSU 100
“to secure compliance” GATT 927	ordinary meaning of terms used in covered agreements
unilateral action by Member, prohibition (DSU 23.1), balance of rights and obligations and DSU 1303	“cost-oriented rates” (Reference Paper on Basic Telecommunications) GATS 153–5
Mexico – Taxes on Soft Drinks (Panel), WT/DS308/R	“shall apply to all measures” (GATS Annex on Basic Telecommunications) GATS 242
<i>arguendo</i> assumptions, “even assuming” DSU 135	relationships within and between agreements, DSU 3.8/GATS XXIII:1 DSU 100
competence of panels and AB (DSU 3.2/DSU 11/DSU 17), obligation to exercise jurisdiction/ <i>should</i> make an objective assessment GATT 1044, DSU 518, 535	Schedules of Specific Commitments (GATS XX)
good faith engagement in dispute settlement procedures (DSU 3.10), complaints and counter-complaints as separate issues DSU 134–5	required information (GATS XX:1), time-frame for implementation (GATS XX:1(d)) GATS 104, 192–5
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), identification of treaty provisions, obligation of panel to address cited provisions (DSU 7.2) DSU 423	treaty status GATS 140
national treatment, regulatory discrimination (GATT III:4), “affecting” GATT 365–6	Secretariat (DSU 27), role DSU 1356
national treatment, tax discrimination (GATT III:2)	sovereignty, impairment of other Members’ rights as breach DSU 1739
“directly or indirectly” (GATT III:2, first sentence) GATT 279–80	technical regulations (TBT 2/Annex 1.1), functional approach to (TBT 2.8), “wherever appropriate” TBT 77
“so as to afford protection” (GATT III:2, second sentence), intention of legislators/regulators, relevance GATT 320	telecommunications, GATS Annex on Basic Telecommunications access and use (Section 5)
RTAs (GATT XXIV:5), dispute settlement (Understanding 12) GATT 1044	“any service supplier of any other member . . . for a service included in its schedule” (Section 5(a)) GATS 243
standard/powers of review (panel) (DSU 11)	by scheduled suppliers of <i>basic</i> telecommunications GATS 242–4
“objective assessment of matter before it”	“conditions” (Section 5(e)) GATS 252
<i>all</i> arguments DSU 521	developing countries’ right to place reasonable conditions on (Section 5(g)) GATS 256
independent assessment, in absence of party’s counter-arguments DSU 521	interrelationship between Section 5(a) and Section 5(b)–(f) GATS 245–6
terms of reference of panels (DSU 7), as definition of jurisdiction/ legal claims at issue, “shall address” (DSU 7.2) DSU 423	“necessary” (Section 5(e)) GATS 253–4
Mexico – Telecoms (Panel), WT/DS204/R, DSR 2004:IV	
composition of panel (DSU 8), “diverse background” (DSU 8.2) DSU 431, 1356	
conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4), non-performance of obligations under covered	

<p>(cont.)</p> <p>“reasonable and non-discriminatory” terms and conditions (Section 5(a)) GATS 245</p> <p>“reasonable” (Section 5(a)) GATS 248–9</p> <p>“shall apply to all measures” (Section 2(a)) GATS 242</p> <p>“subject to paragraphs (e) and (f)” GATS 250</p> <p>“terms” (Section 5(a)) GATS 247</p> <p>Reference Paper on Basic Telecommunications and GATS 257</p> <p>“shall ensure” /obligation (Section 5(b)) GATS 251</p> <p>unscheduled service, prevention (Section 5(e)(iii)) GATS 255</p> <p>telecommunications (GATS provisions)</p> <p> cross-border trade, relevant factors (GATS I:2(a))</p> <p> commercial presence, sufficiency (GATS I:2(c)) GATS 22, 148</p> <p> degree of interaction between suppliers GATS 20</p> <p> links to another operator GATS 21</p> <p> ownership and control of infrastructure to supply service GATS 17–19</p> <p> supplier’s place of operation or presence GATS 16</p> <p>telecommunications, GATS XVIII Reference Paper on Basic Telecommunications</p> <p>Annex on Basic Telecommunications and GATS 257</p> <p>“anti-competitive practices” (Section 1.1)</p> <p> “anti-dumping practices” GATS 135–7</p> <p> cross-subsidization GATS 138</p> <p> horizontal price-fixing GATS 136–7</p> <p> “major supplier” and GATS 136</p> <p> practices not listed under Section 1.2 GATS 137, 138</p> <p> practices required by domestic law, relevance GATS 138–41</p> <p> proportionate return system GATS 143</p> <p> setting of uniform price GATS 142</p> <p>“appropriate measures” (Section 1.1) GATS 144</p> <p> cross-border supply, applicability to GATS 145–9</p> <p> “specific commitments undertaken” (Section 2.1) GATS 145</p> <p>interconnection (Section 2)</p> <p> “cost-oriented rates” (Section 2.2(b)) GATS 153–60</p> <p> aggregate price for domestic use/price for international use comparison, validity GATS 158–9</p> <p> “having regard to economic feasibility” GATS 157</p> <p> incremental cost methodologies and GATS 155</p> <p> international grey market rates, relevance GATS 160</p> <p> ordinary meaning GATS 153–5</p> <p> “reasonable” GATS 156</p> <p> “major supplier” (Section 2.2) and GATS 150</p> <p> “major supplier” (definitions)</p> <p> “ability to materially affect . . .” GATS 151</p> <p> competitive safeguards (Section 1.1) and GATS 136</p> <p> “control over essential facilities” GATS 152</p> <p> interconnection (Section 2.2) and GATS 150</p> <p> relevant market, relevance GATS 150</p> <p> “use of its position in the market” GATS 152</p> <p> unilateral action by Member (DSU 23.1) and GATS 140</p> <p>“trade in services” (GATS I:2)</p> <p> commercial presence, sufficiency (GATS I:2(c)) GATS 22, 148</p> <p> cross-border trade (GATS I:2(a)), relevant factors</p> <p> degree of interaction between suppliers GATS 20</p> <p> links to another operator GATS 21</p> <p> relevant factors (GATS I:2(A)), ownership and control of infrastructure to supply service GATS 17–19</p> <p> unilateral action by Member, prohibition (DSU 23.1), GATS XVIII Reference Paper on Basic Telecommunications and GATS 140</p> <p>Norway - Trondheim Toll Ring (GATT Panel), GPR.DS2/R, BISD 40S/319, affirmative obligations, GPA tendering procedures (GPA VII) as GPA 21</p>	<p>Philippines - Distilled Spirits (Panel), WT/DS396/R, WT/DS403/R</p> <p>dispute settlement, special provisions relating to developing countries, extension of periods established under DSU 4.7 and 8 (DSU 12.10) DSU 715</p> <p>interim review (DSU 15), contested factual issues DSU 777</p> <p>multiple complainants (DSU 9), separate panel reports (DSU 9.2), structure DSU 457</p> <p>Thailand – Cigarettes (Philippines) (AB), WT/DS371/AB/R</p> <p>AB procedures (DSU 17.9 and ABWP), documents (ABWP 18), failure to file by deadline (ABWP 18(1)) DSU 1402</p> <p>business confidential information (BCI)</p> <p> AB (ABWP 16(1)) DSU 1381</p> <p> additional procedures, panel (DSU 12.1) DSU 1381</p> <p>domestic law, as fact for purposes of international adjudication DSU 533</p> <p>due process (dispute settlement proceedings)</p> <p> concept and purpose DSU 669</p> <p> objective assessment obligations (DSU 11) and DSU 621</p> <p> panel working procedures, need for DSU 673</p> <p>implementation of panel or AB recommendations (DSU 19.1), measure terminated in course of proceedings/no longer in existence DSU 938–9</p> <p>national treatment, tax discrimination (GATT III:2), determination of violation, elements, discrimination between resellers of imported and domestic product GATT 270</p> <p>panel reports, high quality/flexibility of panel procedures balance (DSU 12.2) DSU 681</p> <p>standard/powers of review (panel) (DSU 11)</p> <p> “objective assessment of matter before it”</p> <p> due process and DSU 621</p> <p> independent assessment of domestic law DSU 533</p> <p>Thailand – Cigarettes (Philippines) (Panel), WT/DS371/R</p> <p>burden of proof, good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) DSU 1513</p> <p>confidential information (VAL 10) VAL 47</p> <p>consultation and dispute settlement (VAL 19)</p> <p> standard of review of claims under (DSU 11) VAL 4–7</p> <p> applicability of DSU 11 VAL 4</p> <p> VAL 1.1 and 1.2(a) claims VAL 5</p> <p> VAL 7.1 claims VAL 6–7</p> <p>customs value determination (VAL)</p> <p> confidential information (VAL 10) VAL 47</p> <p> deductible items (VAL 5.1(a)) VAL 34–8</p> <p> documented link to GAQ sale VAL 35</p> <p> provincial taxes VAL 37</p> <p> sales allowances VAL 36</p> <p> transportation costs VAL 38</p> <p> deductive valuation method (VAL 7.1/VAL 5.1) VAL 30–8</p> <p> consultation requirement VAL 32–3</p> <p> explanation of how customs value determined (VAL 16)</p> <p> <i>ex post facto</i> explanations VAL 7</p> <p> form and timing VAL 55–7</p> <p> obligation to explain grounds (VAL 1.2(a)) distinguished VAL 58</p> <p> scope VAL 52–4</p> <p> “reasonable means” (VAL 7), “cannot be determined” (VAL 7.1) VAL 29</p> <p> sequencing nature of VAL 1–7 valuation methods, “reasonable means” (VAL 7.1), exclusion as basis of independent sequencing claim VAL 9, 28</p> <p>transaction value</p> <p> conditions (VAL 1.2(a)) VAL 14</p> <p> examination of circumstances of sale in related-party transaction (VAL 1.2(a)) VAL 15–19</p> <p> balance of importer/customs authorities’ responsibilities VAL 17–18</p>
---	---

- “examine” (ordinary meaning/context) VAL 17–18
- procedural obligations (including Interpretative Note to VAL 1.3) VAL 15–16
- responsibility for providing information VAL 17
- substantive obligations VAL 17–18
- obligation to communicate grounds for rejecting of transaction value VAL 20–1
- “transaction value” (VAL 1.1) VAL 14
- unit price at which goods are sold in country of importation (VAL 5), Members’ right to choose method for determining VAL 25
- dispute settlement (SG 14)
- standard of review (DSU 11)
 - “objective assessment of the facts”
 - de novo* review, exclusion VAL 19 n. 34
 - reasoned and adequate explanation (SG 4.2(a)) and VAL 19 n. 34
- General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements
 - “laws or regulations” GATT 926
 - “necessary”, GATT III:4 (regulatory discrimination) and GATT 386
- good faith (including *pacta sunt servanda* principle (VCLT 26)), as fundamental rule of treaty interpretation DSU 1513
- implementation of DSB recommendations and rulings, surveillance (DSU 21), “recommendations and rulings” DSU 1006
- implementation of panel or AB recommendations (DSU 19.1), measure terminated in course of proceedings/no longer in existence DSU 940
- interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in different agreements, SG 3.1/VAL 1.2(a) VAL 18
- legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability, assessment of mandatory nature DSU 294 n. 467
- lex specialis*/presumption against treaty conflicts DSU 1713
 - General Interpretative Note (WTO Annex 1A) DSU 1728
 - possibilities of conflict considered by panel/AB, GATT X:3/VAL 11.1 DSU 1728
- “like product” (GATT III:2 and III:4)
 - GATT III:4 compared GATT 259
 - nationality of producer or origin of product (“hypothetical” like products) GATT 340
 - relevant factors GATT 244
- national treatment, regulatory discrimination (GATT III:4), “less favourable treatment”, methodology of comparison GATT 375
- national treatment, tax discrimination (GATT III:2)
 - “charge of any kind” GATT 263
 - determination of violation, elements, timing/point of collection, relevance GATT 269
- publication and administration of trade regulations (GATT X)
 - “administrative action relating to customs matters” (GATT X:3(b)) GATT 583
 - burden of proof GATT 516
 - “confidential information” (GATT X:1) GATT 538
 - “laws, regulations, judicial decisions and administrative rulings” (GATT X:1) GATT 514–16
 - measures of general application (GATT X:1) GATT 514–16, 524
 - absence of written rules and GATT 514, 516
 - government involvement in price determination, need for GATT 515
 - “rule of general application” GATT 514
 - “prompt review and correction” (GATT X:3(b)) GATT 581–2
 - disproportionate delay and GATT 582
 - due process considerations GATT 581
 - independent review requirement GATT 582
 - “shall be published” (GATT X:1) GATT 532
 - “in such a manner as to enable . . .” GATT 536
- uniform, impartial and reasonable administration (GATT X:3(a))
 - appointment to monopoly as application of customs laws GATT 559, 570
 - burden of proof GATT 558
 - dual function officials and GATT 575
 - “impartial”, dual function officials GATT 559, 570
 - “reasonable”
 - disproportionate delay GATT 576
 - dual function officials and GATT 578
 - “shall administer” /applicability to substantive rule GATT 560
 - “uniform”, “impartial” and “reasonable” as independent elements GATT 550
- relationships within and between agreements
 - GATT III:4/GATT XX GATT 386
 - VAL 1.2(a)/Val 16 VAL 58
- standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), law vs fact, panel as trier of facts VAL 5
- standard/powers of review (panel) (AD 17.6), assessment of the facts (AD 17.6(i)), *de novo* review, exclusion VAL 19 n. 34
- standard/powers of review (panel) (DSU 11)
 - “objective assessment of the facts” /alleged disregard or distortion of the evidence, *de novo* review, exclusion VAL 6
 - “objective assessment of matter before it”
 - reasoned and adequate explanation (VAL 1) and VAL 5
 - ex post facto* explanation, sufficiency VAL 7
- Thailand – H-Beams (AB), WT/DS122/AB/R, DSR 2001:VII**
 - amicus curiae* briefs, confidential information obligations (DSU 18.2) DSU 914
 - burden of proof (general rules), *prima facie* case requirement, explicit finding, relevance DSU 551
 - confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3)
 - evidence of breach DSU 914
 - obligation to respect/ensure respect for DSU 914
 - confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27), *amicus curiae* briefs and DSU 914
 - determination of injury (AD 3)
 - “positive evidence” / “objective examination” requirement (AD 3.1) AD 17.6 (standard of review) distinguished AD 187
 - admissibility of undisclosed evidence AD 185–7, 917–18
 - “facts, not merely allegation, conjecture or remote possibility” requirement (AD 3.7) and AD 186
 - “objective examination”, industry as a whole, need to examine AD 187
 - threat of material injury (AD 3.7)
 - “facts, not merely allegation, conjecture or remote possibility” AD 186
 - positive evidence requirement (AD 3.1) AD 186
 - underlying principles (AD 3.1) and AD 169, 177
 - due process (anti-dumping measures) (AD 6), as underlying principle AD 186
 - due process (dispute settlement proceedings), prejudice to party, relevance DSU 342
 - evidence (dumping investigation) (AD 6)
 - due process, AD 6 as framework AD 186
 - opportunity for defence of interests, right to (AD 6.2) AD 186
 - good faith engagement in dispute settlement procedures (DSU 3.10) DSU 306
 - prompt request for clarification of information DSU 119, 306
 - identification of specific measures (DSU 6.2), specificity, preliminary ruling on DSU 342
 - information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), “from any individual or body”, parties DSU 748

- (*cont.*)
- investigation of dumping (AD 5)/subsidy (SCM 11), sufficiency of evidence (AD 5.3), determination of sufficiency AD 186
 - legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)
 - clarification of claim during proceedings DSU 306, 342
 - reliance on issues raised in underlying anti-dumping dispute DSU 322
 - summary “sufficient to present the problem clearly” DSU 306
 - ordinary meaning of terms used in covered agreements
 - “establishment” AD 917
 - “proper” AD 917
 - “unbiased and objective” AD 920
 - preliminary rulings on
 - amicus curiae* briefs DSU 914
 - specificity of request for panel (DSU 6.2) DSU 342
 - prompt and satisfactory settlement (DSU 3.3), ABWP and DSU 306
 - public notice and explanation of determinations (AD 12), as due process requirement AD 186, 268 n. 384
 - public notice of preliminary or final determination (AD 12.2)
 - “all relevant information on the matters of fact and law and reasons for” measures (AD 12.2.2) AD 186
 - “all relevant information on the matters of fact and law and reasons” for measures (AD 12.2.2) AD 186
 - relationships within and between agreements
 - AD 3 as a whole AD 169
 - AD 3.1/AD 3.7 AD 186, 218
 - request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 341–2
 - standard/powers of review (panel) (AD 17.6)
 - assessment of the facts (AD 17.6(i))
 - AD 3.1 (determination of injury) distinguished AD 187
 - “unbiased and objective” AD 920
 - “facts made available” (AD 17.5(ii))
 - disclosure/discernibility to interested parties by time of final determination, relevance AD 188, 917–18, 920
 - undisclosed facts AD 906
 - investigating authorities’ establishment of the facts (AD 17.6(i)), “proper” AD 917
 - Thailand – H-Beams (Panel), WT/DS122/R, DSR 2001:VII**
 - Anti-Dumping Agreement (AD), preparatory work (VCLT 32), AD 3.4 AD 249
 - customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), DSU 3.2 AD 249 n. 349
 - data collection period (AD 2 and AD 3), frequency of analysis for AD 3.2 purposes AD 221
 - determination of dumping (AD 2)
 - calculation of SG&A costs (AD 2.2.2)
 - AD 3.6 and AD 67
 - reasonability test, relevance AD 74–5
 - “same general category of products” (AD 2.2.2(i)) AD 65–7
 - AD 2.2.2 and AD 66
 - AD 3.6 and AD 67
 - “normal value . . . in the ordinary course of trade” (AD 2.1)
 - calculation of administrative, selling and general costs and profits (AD 2.2.2)
 - actual books and records as basis AD 66
 - reasonability test, relevance AD 74–5
 - determination of injury (AD 3)
 - “consider . . . a significant increase in dumped imports”, methods, authorities’ freedom of choice AD 219
 - evaluation of injury factors (AD 3.4)
 - all* relevant economic factors and indices having a bearing on
 - checklist approach AD 265 n. 379
 - grammatical structure, relevance AD 250
 - “including” AD 249
 - “or” AD 250
 - “evaluation” AD 258
 - examination of other known factors (AD 3.5)
 - illustrative nature of list AD 282
 - “known” to investigating authority AD 279
 - significant increase in dumped imports (AD 3.2)
 - frequency of analysis AD 221
 - “shall consider” AD 224
 - “significant”, alternative formulations AD 224, 256 n. 360
 - due process (dispute settlement proceedings), prejudice to party, relevance DSU 325
 - interpretation of covered agreements, rules relating to including VCLT provisions
 - dictionaries AD 224, 388
 - narrow/broad interpretation AD 66
 - text/plain language (VCLT 31(2)) AD 74
 - investigation of dumping (AD 5)/subsidy (SCM 11)
 - notification to government of exporting Member (AD 5.5)
 - content AD 389
 - form of notification AD 388
 - public notice and explanation of determinations (AD 12)
 - distinguished AD 421
 - sufficiency of evidence (AD 5.3)
 - evidence of causal link (AD 5.2(iv)), “information” and analysis distinguished AD 346
 - “simple assertion, unsubstantiated by relevant evidence” (AD 5.2), raw numerical detail AD 347
 - legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)
 - arguments distinguished DSU 325
 - clarification of claim during proceedings DSU 325
 - identification of treaty provisions DSU 325
 - public notice and explanation of determinations (AD 12), notification to government of exporting Member (AD 5.5) distinguished AD 421
 - relationships within and between agreements
 - AD 2.2.2 as a whole AD 66
 - AD 2.2.2(i)/AD 3.6 AD 67
 - AD 3.1/AD 6 AD 186, 644
 - AD 5.5/AD 12.1 AD 421
 - standard/powers of review (panel) (AD 17.6), “facts made available” (AD 17.5(ii)), evidence before authority at time of determination, limitation to AD 916
 - transparency, written record/notification and AD 388 - Turkey – Rice (Panel), WT/DS334/R, DSR 2007:VI**
 - Agriculture Agreement (AG)
 - object and purpose (AG 4 (market access)) AG 55
 - object and purpose (preamble), fair and market-oriented agricultural trading system AG 5
 - dispute settlement, special provisions relating to developing countries
 - extension of periods established under DSU 4.7 and 8 (DSU 12.10) DSU 714
 - requirement for specific indication of form in which account has been taken of special needs (DSU 12.11) DSU 719
 - due process (dispute settlement proceedings), prejudice to party, relevance DSU 472
 - ex parte* communications with panel or AB (DSU 18.1), party’s attempt to place limitation on handling of confidential communications DSU 909
 - interim review (DSU 15), changes to report in absence of request DSU 805
 - judicial economy LIC 33
 - prior decision on another point rendering discussion otiose LIC 29
 - “like product” (GATT III:2 and III:4). relevant factors. competitive relationship GATT 324
 - market access, measures required to be converted into ordinary customs duties (AG 4.2 and footnote 1)

<p>“discretionary import licensing” (footnote 1) AG 55–6</p> <p>“quantitative import restrictions” (footnote 1) AG 50</p> <p>“measures at issue” (DSU 6.2)</p> <p>terminated measures</p> <p>good faith obligation not to reintroduce DSU 393</p> <p>termination following agreement on terms of reference DSU 393</p> <p>national treatment, regulatory discrimination (GATT III:4), “requirements”, domestic purchase GATT 324</p> <p>“quantitative import restrictions” (AG 4.2 footnote 1) AG 50</p> <p>relationships within and between agreements</p> <p>AG 4.2/LIC LIC 33</p> <p>GATT III:4/LIC 3.5(h) LIC 33</p> <p>third party rights (DSU 10 and Appendix 3), notification of intention to participate in (DSU 10.2), timeliness DSU 472</p> <p>Turkey – Textiles (AB), WT/DS34/AB/R, DSR 1999:VI</p> <p><i>arguendo</i> assumptions, judicial economy and GATT 1041</p> <p>burden of proof (general rules), defences and exceptions, GATT XXIV (RTAs) GATT 1035</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “may uphold, modify or reverse” panel findings (DSU 17.13), unappealed findings GATT 1041</p> <p>customs unions (GATT XXIV:5(a))</p> <p>chapeau, relationship with GATT 1003–4</p> <p>as defence or exception (“shall not prevent”)</p> <p>burden of proof GATT 1035</p> <p>dependence on existence of customs union GATT 1004, 1052</p> <p>on formation of customs union (GATT XXIV:5 chapeau) GATT 1003–4</p> <p>on formation of customs union, limitation to GATT 1007–9</p> <p>GATT XI, GATT XIII and ATC 2.4 GATT 1053, 1058</p> <p>requirements GATT 1052</p> <p>trade-restrictiveness test GATT 1012</p> <p>“would be prevented unless” requirement GATT 1004, 1052, SG 65</p> <p>definition (GATT XXIV:8(a))</p> <p>internal trade arrangements (“substantially all trade”) (GATT XXIV:8(a)(i)) GATT 1030–1</p> <p>jurisdiction (panel) to determine compatibility with GATT XXIV requirements GATT 1041</p> <p>trade with third countries (“substantially the same”) (GATT XXIV:8(a)(ii)) GATT 1034–5</p> <p>“general incidence” of duties GATT 1009</p> <p>object and purpose (GATT XXIV:4) GATT 1003</p> <p>“regulations of commerce”, GATT 1994 Understanding on Article XXIV GATT 1010</p> <p>dispute settlement (GATT XXIV, Understanding 12) GATT 1041–2</p> <p>judicial economy, <i>arguendo</i> assumptions and GATT 1041</p> <p>ordinary meaning of terms used in covered agreements, “shall not prevent” (GATT XXIV) GATT 1003</p> <p>quantitative restrictions, elimination (GATT XI), RTAs (GATT XI) as defence/exception GATT 1004, 1007–9</p> <p>relationships within and between agreements</p> <p>GATT XXIV:5(a)/GATT XI, GATT XIII and ATC 2.4 GATT 1053</p> <p>GATT XXIV as a whole GATT 999, 1000–1</p> <p>RTAs (GATT XXIV:5)</p> <p>as affirmative defence SG 65</p> <p>dispute settlement (Understanding 12) GATT 1041–2</p> <p>necessity test GATT 1003–4</p> <p>safeguard measures (SG)/emergency actions (GATT XIX) and SG 65</p> <p>safeguard measures, conditions (SG 2), RTAs/customs unions and (SG 2.1 footnote 1) SG 65</p> <p>territorial application, customs territories and frontier traffic (GATT XXIV)</p>	<p>as derogation from GATT provisions in general GATT 1052</p> <p>object and purpose (GATT XXIV:4), “not to raise barriers to trade” GATT 999</p> <p>Turkey – Textiles (Panel), WT/DS34/R, DSR 1999:VI</p> <p>adverse inferences from party’s refusal to provide information, panel’s right to draw (DSU 13), burden of proof and DSU 558</p> <p>burden of proof (general rules)</p> <p>adverse inferences (DSU 13) and DSU 558</p> <p>exception/affirmative defence and SG 65, DSU 540</p> <p><i>onus probandi actori incumbit</i> DSU 540</p> <p>consultations (DSU 4)</p> <p>adequacy of consultations (DSU 4.5), Panel responsibilities in relation to DSU 170</p> <p>mutually agreed solution (DSU 3.6) and DSU 170</p> <p>customs unions (GATT XXIV:5(a))</p> <p>consistency with GATT and WTO WTO 14</p> <p>as defence or exception GATT 1007</p> <p>on formation of customs union, limitation to, extension of WTO right prior to formation to other constituent members GATT 1008</p> <p>GATT XI, GATT XIII and ATC 2.4 GATT 1053, 1058</p> <p>as defence or exception (“shall not prevent”), trade-restrictiveness test GATT 1011</p> <p>GATT 1994 Understanding on Article XXIV WTO 14</p> <p>legislation as such, right to challenge (WTO XVI:4) DSU 246</p> <p>territorial scope of treaties (VCLT 29) and DSU 1529</p> <p>due process (dispute settlement proceedings), opportunity to defend oneself DSU 376</p> <p>good faith engagement in dispute settlement procedures (DSU 3.10), consultations and (DSU 4.3) DSU 128</p> <p>information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), “from any individual or body”, non-parties DSU 752</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose, ATC ATC 4</p> <p>legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), summary “sufficient to present the problem clearly” DSU 376</p> <p>legislation as such, right to challenge (WTO XVI:4), legislation adopted by customs union DSU 246</p> <p>multilateral treaties, modification by some of the parties (VCLT 41) DSU 1668</p> <p>mutually agreed/acceptable solution to matters raised formally (DSU 3.6), consultations (DSU 4) and DSU 170</p> <p>notification requirements (ATC 2), mandatory 60 day period (ATC 2.1) ATC 8</p> <p>nullification or impairment (DSU 3.8)</p> <p>adverse impact/prejudice, relevance DSU 92</p> <p>presumption in case of inconsistency with covered agreement DSU 92</p> <p>quantitative restrictions (ATC 2) (integration process), conformity with ATC provisions, need for (ATC 2.4), “new” restriction ATC 9</p> <p>quantitative restrictions, elimination (GATT XI), GATT preference for tariffs and GATT 597</p> <p>relationships within and between agreements</p> <p>GATT XXIV:5(a)/GATT XI, GATT XIII and ATC 2.4 GATT 1053, 1058</p> <p>WTO Preamble/GATT XXIV WTO 14</p> <p>request for establishment of panel, requirements (DSU 6.2)</p> <p>due process/ability to defend itself considerations DSU 376</p> <p>examination (GATT XXIV:7 and Understanding 7), absence of recommendation, effect GATT 1028</p> <p>WTO Preamble and WTO 14</p> <p>RTAs (GATT XXIV:5), necessity test GATT 1003</p>
---	--

<i>(cont.)</i>	legislation as such, right to challenge (WTO XVI:4)
State responsibility for acts or omissions of, Member of customs union DSU 246, 1677–8	AD 17.3/AD 17.4 AD 873–6, 891–3
territorial application, customs territories and frontier traffic (GATT XXIV), object and purpose (GATT XXIV:4), “not to raise barriers to trade” GATT 999	GATT 1947, XXIII:1(a) and
territorial scope of treaties (VCLT 29) DSU 1529	mandatory/discretionary legislation, distinguishability AD 878, DSU 40, 278
Textiles and Clothing Agreement (ATC), transitional exceptions to GATT XI and XIII ATC 4	GATT practice AD 882, DSU 40, 278, 289–90
third party rights (DSU 10 and Appendix 3)	rejection/non-endorsement of doctrine DSU 297, 300
authority of Panel to direct third-party participation DSU 512	ordinary meaning of terms used in covered agreements
“essential party” concept DSU 513–14	“anti-dumping measure” AD 5
treaties	“specific action against dumping” GATT 449
modification of multilateral treaties by some of the parties (VCLT 41) DSU 1668	preliminary rulings on, timing of objections DSU 367, 800
territorial scope (VCLT 29) DSU 1529	preparatory work (VCLT 32), AD 1 AD 5
WTO Agreement, preamble, applicability, GATT XXIV WTO 14	relationships within and between agreements
	AD 1/GATT VI:1 GATT 448
	AD 9.4/GATT VI:2 AD 723
	AD 17/AD 18 AD 876
	AD 17/GATT XXII and XXIII AD 873–4
	AD 17.4/AD 18.1 and AD 876, TPRM 4
	specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement GATT 449, AD 956
US – 1916 Act (AB), WT/DS136/AB/R, WT/DS162/AB/R, DSR 2000:	action under other relevant provisions of GATT 1994
Anti-Dumping Agreement (AD), principles (AD 1), “anti-dumping measure” AD 5	distinguished (AD 18.1 footnote 24) GATT 449, AD 956
anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement	“except in accordance with the provisions” SCM 584
AD 1 as link AD 1003, 1006	“legislation as such” AD 876
anti-dumping measure other than duty, applicability to GATT 447–9	standard/powers of review (panel) (DSU 11), claims against legislation as such
AD 18.1 and GATT 449	terms of reference of panels (DSU 7), timeliness of objections DSU 367, 800
“may levy” and (GATT VI:2) GATT 460	third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6
dumping, constituent elements (AD 2/GATT VI:1)	limited nature of DSU 476
material injury to domestic industry or threat of (GATT VI:6 (a)) GATT 454, 482	multiple complainants (DSU 9) and DSU 492
specific reference in legislation, relevance GATT 450	as sole basis of rights DSU 476
“may levy” (GATT VI:2) as limitation to Member’s choice whether or not to impose anti-dumping duty (AD 9) GATT 460, AD 723	US – 1916 Act (EC) (Panel), WT/DS136/AB/R and Corr.1, DSR 2000:X
competence of panels and AB (DSU 3.2/DSU 11/DSU 17), <i>compétence de la compétence</i> /obligation to address jurisdictional issues [on own motion] DSU 367, 800, 1327, 1702	anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement
conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4)	AD 1 as link AD 1004
dispute settlement procedures (AD 17) and AD 876	AD Agreement as context AD 1000–2
legislation “as such” and AD 878, 969, DSU 278	AD Agreement and GATT 1994 as integral part of WTO Agreement AD 723, 1000–2
consultation and dispute settlement (AD 17)	separability of provisions AD 1000
GATT XXII and XXIII compared AD 873–4	violation of GATT VI, sufficiency for finding of violation of AD 2.1 and 2.2 GATT 451, 492, AD 163
“matter”, referral to DSB (AD 17.4), identification of measure at issue requirement (DSU 6.2), identification as anti-dumping duty, acceptance of price undertaking or provisional measure, need for AD 891	burden of proof (general rules), <i>prima facie</i> case requirement AD 163
determination of dumping (AD 2), constituent elements, intention and (AD 2/GATT VI:1) GATT 454	competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “clarification of existing provisions” DSU 529
DSB, GATT <i>acquis</i> , commitment to adhere to (DSU 3.1) DSU 40, 278	determination of injury (AD 3)
DSU, applicability, covered agreements (DSU 1.1/DSU 7.2), AD Agreement DSU 3	as detailed version of GATT VI GATT 494, AD 321
GATT 1947/WTO continuity	as evidence of AD 602 n. 836, DSU 528–30
decisions, procedures and customary practices under GATT 1947 (WTO XVI:1)	compliance with international obligations, interpretation of legislation distinguished DSU 529 n. 861
decisions, procedures and customary practices under GATT 1947 (WTO XVI:1)/provisions of legal instruments in force under GATT 1947 (GATT 1994 1(b)) (GATT <i>acquis</i>), dispute settlement, commitment to adhere to (DSU 3.1) DSU 40, 278	decisions of domestic courts, applicability DSU 529
interim review (DSU 15)	domestic law, as fact for purposes of international adjudication, legislative history, relevance DSU 530
jurisdictional challenge, timeliness DSU 367, 800	good faith engagement in dispute settlement procedures (DSU 3.10)
timeliness of objections to terms of reference DSU 800	development of arguments at earliest possible stage DSU 118
	interim review (DSU 15) and DSU 799
	interim review (DSU 15)
	good faith (DSU 3.10) and DSU 799
	reargument of case, exclusion DSU 782
	timeliness of objections to terms of reference DSU 799
	interpretation of covered agreements, rules relating to including VCLT provisions
	effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>) AD 878

interpretation of covered agreements, rules relating to including VCLT provisions, effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to every word and phrase AD 1000	GATT III:3/GATT VI GATT 403–4 GATT VI/GATT XI GATT 490, 641
judicial economy, prior decision on another point rendering discussion otiose GATT 400, 404, SPS 494, AD 321	specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement, action under other relevant provisions of GATT 1994 distinguished (AD 18.1 footnote 24) AD 960
legal status of panel reports, unadopted reports AD 878, DSU 1148	standard/powers of review (panel) (DSU 11), claims against legislation as such AD 891
legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability AD 878, 969	third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6
<i>lex specialis</i> /presumption against treaty conflicts GATT 404	agreement between the parties, relevance DSU 491
national treatment, regulatory discrimination (GATT III:4)	multiple complainants (DSU 9) and DSU 491
anti-dumping (GATT VI) and GATT 400–2	participation in proceedings initiated by another complainant (DSU 9) DSU 492
GATT VI and GATT 400	US – 1916 Act (Article 21.3(c)), WT/DS136/11 , implementation of DSB recommendations and rulings, surveillance (DSU 21), prompt compliance (DSU 21.1), flexibility DSU 1002
order of analysis, specific/general provision GATT 400–2	US – 1916 Act (EC) (Article 22.6 – US), WT/DS136/ARB, DSR 2004:IX
relationships within and between agreements	arbitration (DSU 22.6)
AD 3/GATT VI GATT 494	“by the original panel” DSU 1211
AG 3/GATT VI:1 AD 321	scope of review/arbitrators’ mandate/task (DSU 22.7), suspension of concessions or “other obligations”, limitations on role DSU 1219
GATT III:8/GATT VI GATT 400–2	burden of proof (general rules)
specific/general provision, as general principle of international law AD 467 n. 622	nature and purpose of countermeasures DSU 1180
specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement, “except in accordance with the provisions” AD 959	“or other obligations”, authorization to suspend (DSU 22.2) DSU 1193
standard/powers of review (panel) (DSU 11)	“specific” DSU 1196
claims against legislation as such AD 891	suspension of concessions, conformity with DSU 22.4 DSU 584
“objective assessment of matter before it”, independent assessment of domestic law DSU 528–30	changes in level after authorization DSU 1239
terms of reference of panels (DSU 7), timeliness of objections DSU 367, 799	court judgments and DSU 1233, 1269
third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6	deterrent / “chilling” effect DSU 1235
agreement between the parties, relevance DSU 491	litigation costs and DSU 1236
multiple complainants (DSU 9) and DSU 491	reasoned estimates, need for DSU 1229
unilateral statements, legal effect DSU 1686	settlement agreements and DSU 1234, 1269
US – 1916 Act (Japan) (Panel), WT/DS162/R and Add.1, DSR 2000:X	zero level, exclusion DSU 1224
AD 18.1/other <i>Ad</i> Articles AD 978–9	retaliatory measures, legality, WTO law DSU 1251 n. 1949
Anti-Dumping Agreement (AD), object and purpose, absence of specific provision/preamble AD 1	suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement	level equivalent to nullification or impairment (DSU 22.4), “equivalent”, qualitative test DSU 1250–2, 1269
AD 1 as link AD 1005	as retaliatory measure DSU 1251 n. 1949
quantitative restrictions (GATT XI) and AD 248	as temporary measure (DSU 22.8) DSU 1180
separability of AD and GATT VI GATT 493	US – Anti-Dumping and Countervailing Duties (China) (AB), WT/DS379/AB/R
separability of provisions GATT 493, AD 1000	AB procedures (DSU 17.9 and ABWP), documents (ABWP 18), failure to file by deadline (ABWP 18(1)) DSU 1401, 11401
conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4), finding of non-conformity under any AD provision WTO 290, AD 978–9	anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement
conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4) WTO 290	AD 2.1/GATt VI:1(a) and AD 2.2/GATT VI:1(b) distinguished GATT 481
good faith engagement in dispute settlement procedures (DSU 3.10), correction of factual errors and DSU 124	anti-dumping vs countervailing duties/exclusion of double remedy (GATT VI:5/SCM 19) GATT 480–1
<i>lex specialis</i> /presumption against treaty conflicts GATT 404	determination of dumping (AD 2/GATT VI:2), sale “destined for consumption in exporting country” (AD 2.1/GATT VI:2) GATT 481
national treatment, regulatory discrimination (GATT III:4), GATT VI and GATT 403–4	determination of dumping (AD 2)
order of analysis, specific/general provision GATT 403–4	calculation of normal value, eligible transactions, requirements (AD 2.1), sale “destined for consumption in exporting country”, GATT VI:1(a) compared GATT 481
quantitative restrictions, elimination (GATT XI), GATT VI and GATT 648	fair comparison of export price and normal value (AD 2.4)
relationships within and between agreements	non-market economies (NMEs) and (Note 2 <i>Ad</i> Article VI:1) GATT 455
AD 18.4/SCM 32.5/WTO XVI:4 WTO 290	as exceptional method GATT 455, 481
AD/GATT VI AD 1005	
AD/GATT XI GATT 648, AD 1007	

<i>(cont.)</i>	
sales transaction not “in the ordinary course of trade” (AD 2.2), AD 2.1/GATT VI:1(a) distinguished GATT 481	“public body”, classification as, relevance SCM 8, 58
domestic law, interpretation of covered agreements, relevance to DSU 1627	“public body”, criteria for classification as, government authority SCM 17, DSU 1683
expedited review, right to (SCM 19.3), double remedies and GATT 455, 480, SCM 466, 480–1	subsidy, specificity (SCM 2)
good faith interpretation of treaty (VCLT 31(1)), presumption of good faith and DSU 1546	“certain enterprises” (SCM 2 chapeau) SCM 103
ILC Articles, status as “rule” of international law DSU 1599–600	<i>de facto</i> specificity (SCM 2.1(c)), relevant factors SCM 101
international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)) DSU 1598–600	principles determining (SCM 2.1), structure of SCM 2.1/ interrelationship between subparagraphs SCM 2.1(a)-(c) SCM 101
constituent elements (“rules” / “relevant” / “applicable between the parties”) DSU 1598	US – Anti-Dumping and Countervailing Duties (China) (Panel), WT/DS379/R
customary international law as DSU 1598	anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement, anti-dumping vs countervailing duties/exclusion of double remedy (GATT VI:5/SCM 19) GATT 480–1
“sources of international law” (ICJ Statute 38(1)) as DSU 1598	domestic law, interpretation of covered agreements, relevance to DSU 1627
as supplementary means / “taken into account” DSU 1600	double remedies, notification to all interested parties of essential facts (SCM 12.8) and SCM 395, DSU 1617
interpretation of covered agreements, rules relating to including VCLT provisions	evidence (countervailing duty investigation) (SCM 12)
“any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)), panel report (adopted) DSU 821	notification to all interested parties of essential facts under consideration (SCM 12.8)
context (VCLT 31(2))	double remedies and SCM 395
“any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)) DSU 1559	notification of “essential facts” and evidence required to establish claim distinguished SCM 395
jurisprudence, relevance DSU 821	questionnaires (SCM 12.1.1), supplementary questionnaires, status SCM 381, 679
effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to omissions DSU 1617	resort to “facts available” (SCM 12.7), authorities’ failure to give notice of required information (SCM 12.1) and SCM 392
hierarchical relationship between elements in VC 31, whether DSU 1599	evidence (investigation of countervailing duties) (SCM 12)
object and purpose, SCM 1.1(a)(1) SCM 8	“information which the authorities require” (SCM 12.1) SCM 378–9
as a whole/holistic/harmonious exercise DSU 1555, 1667	“due notice” / “ample opportunity” (SCM 12.1) SCM 379
legal status of panel reports, adopted reports (DSU 16) DSU 821	interpretation of covered agreements, rules relating to including VCLT provisions
multiple authentic languages, interpretation (VCLT 33), “ordinary meaning” (VCLT 31(1)) and DSU 1667	effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to omissions DSU 1617
ordinary meaning of terms used in covered agreements	text/plain language (VCLT 31(2)) SCM 392
domestic law concepts, relevance DSU 1627	ordinary meaning of terms used in covered agreements, domestic law concepts, relevance DSU 1627
multiple authentic languages (VCLT 33) and DSU 1667	regional specificity (SCM 2.2), definition problems SCM 116–17
relationships within and between agreements, SCM 1.1(a)(1)/ILC Articles on State Responsibility DSU 1683	subsidy, calculation in terms of benefit to recipient (SCM 14), loans (SCM 14(b)), benchmarks SCM 411–12
SCM Agreement	subsidy, specificity (SCM 2), regional specificity (SCM 2.2), definition problems SCM 116–17
object and purpose (SCM 1)	US – Anti-Dumping Measures on Oil Country Tubular Goods (Panel)
balanced framework of rights and obligations relating to countervailing duties SCM 8	publication and administration of trade regulations (GATT X), retroactivity of trade measures (ATC 6.10) and GATT 542
strengthening and improvement of GATT disciplines on subsidies and countervailing measures SCM 8	retroactivity (trade measures) (ATC 6.10), prior publication (GATT X:2), relevance GATT 542
strengthening and improvement of GATT disciplines on subsidies and countervailing measures SCM 8	sunset review (AD 11.3) (including “likelihood” test), causation, relevance AD 805
standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6)	US – Anti-Dumping Measures on Oil Country Tubular Goods (AB), WT/DS282/AB/R, DSR 2005:XX
legal findings or developed interpretations, limitation to (DSU 17.13) DSU 898	judicial economy. “positive solution to dispute” requirement (DSU 3.7)/false judicial economy and. DSU 655
completion of the legal analysis in case of, contentiousness/ omission/insufficiency of facts DSU 882	sunset review (AD 11.3) (including “likelihood” test)
State responsibility as rule/general principle of international law (ILC Articles) DSU 1599–600	cumulative assessment (AD 3.3), applicability AD 811–15
responsibility for act or omission of, agency with specific official responsibilities and powers / “public body” DSU 1683	determination of likelihood
subsidy, calculation in terms of benefit to recipient (SCM 14)	causation, relevance AD 806–10
loans (SCM 14(b)), benchmarks SCM 411–12	injury requirement AD 806–10
provision of goods or services (SCM 14(d)), “prevailing market conditions” /benchmarks SCM 419	determination of likelihood qualitative assessment AD 816–18
subsidy, definition (SCM 1.1(a)(1)) (financial contribution)	objective assessment (DSU 11) AD 816
“private body” (SCM 1.1(a)(1)(iv)), government entrustment or direction, effect SCM 8, 56–7	

investigating authorities' obligation to seek out information AD 818 "other factors", importance AD 817	procedural nature of provisions SCM 366, 368 sufficient evidence requirement in case of initiation of investigation in absence of application (SCM 11.6) SCM 365 termination (SCM 11.9) <i>de minimis</i> standard, applicability SCM 366–73 developing countries (SCM 27.10) SCM 570 limitation of SCM 11.9 to investigation phase SCM 366
US – Anti-Dumping Measures on PET Bags (Panel), WT/DS383/R burden of proof (general rules), <i>prima facie</i> case requirement AD 122 "zeroing" (AD 9.3/GATT VI:2), comparison of weighted average normal value with weighted average of <i>all</i> comparable export transactions (AD 2.4.2), "comparable" AD 122	legal basis of claim / "claim" / "matter referred" (DSU 6.2/7.1), summary "sufficient to present the problem clearly" DSU 194
US – Canada Tuna (GATT Panel), BISD 295/91 interim review (DSU 15), termination of measures following, effect DSU 384 n. 623 "measures at issue" (DSU 6.2), terminated measures, termination following agreement on terms of reference DSU 384 n. 623	legislation as such, right to challenge (WTO XVI:4) claims "as such" vs claims "as applied", relevance of distinction DSU 336 mandatory/discretionary legislation, distinguishability burden of proof and DSU 336 rejection/non-endorsement of doctrine DSU 300
US – Carbon Steel (AB), WT/DS213/AB/R and Corr.1, DSR 2002:IX <i>amicus curiae</i> briefs, confidential information obligations (DSU 18.2) DSU 126 burden of proof (general rules), on domestic law DSU 578 competence of panels and AB (DSU 3.2/DSU 11/DSU 17), not to add to or diminish rights and obligations (DSU 3.2/19.2) SCM 501 countervailing duties (SCM Part V) balance between rights and obligations relating to, need for SCM 4 duration (SCM 21.1) SCM 478 preconditions (SCM 19.1), standard of proof (SCM 22.1) SCM 503 public notice and explanation of determinations (SCM 22), standard of proof (SCM 22.1) SCM 503 as remedy to offset benefits of subsidies SCM 4 determination of injury (SCM 15), "subsidization" and injury caused by "subsidized imports" distinguished SCM 372 developing countries (SCM 27) <i>de minimis</i> subsidization threshold (SCM 27.10 and 27.11) SCM 570 notification of nature of case DSU 187 due process (dispute settlement proceedings), prejudice to party, relevance DSU 187, 194 evidence, acceptability as for "objective assessment" (DSU 11) purposes, practice in application of laws DSU 336 evidence (dumping investigation) (AD 6), sunset review (SCM 21.3), absence of cross-reference from SCM 369–70, 489– 90, 498, 499 good faith engagement in dispute settlement procedures (DSU 3.10) as limitation on right to bring action under DSU DSU 108 prompt challenge to deficient procedures DSU 126 identification of specific measures (DSU 6.2) case-by-case approach DSU 209 "specific", "attendant circumstances", relevance DSU 240 information or technical advice, panel's right to seek (DSU 13.1/SPS 11.2), discretion not to seek DSU 607, 758 interpretation of covered agreements, rules relating to including VCLT provisions footnotes to treaty SCM 372 object and purpose, preamble as evidence of SCM 4 preamble of agreement under consideration, as evidence of object and purpose SCM 4 same or closely related phrases in different agreements, cross- referencing, role SCM 369–70, 489–90, 498, 499 supplementary means (VCLT 32), "recourse may be had" DSU 1634 text/plain language (VCLT 31(2)) DSU 1552 investigation of dumping (AD 5)/subsidy (SCM 11) preparatory work (VCLT 32) SCM 371 Secretariat Note for the Uruguay Round Negotiating Group on Subsidies and Countervailing Measures (1987), relevance SCM 371	preparatory work (VCLT 32) AD 5/SCM 11 SCM 371 SCM 11 SCM 371, DSU 1642 relationships within and between agreements SCM 11.6/SCM 21.3 SCM 365 SCM 11.9/SCM 21.3 SCM 366–73 request for establishment of panel, requirements (DSU 6.2) compliance, importance of demonstration of on the "face of the request", need for DSU 187, 194 scrutiny by panel DSU 187 subsequent cure of defect, exclusion DSU 187, 194 due process/ability to defend itself considerations DSU 187, 194 fruitfulness of action (DSU 3.7), determination by Member DSU 108 "sufficient to present the problem clearly" DSU 187 SCM Agreement, object and purpose (SCM 1), balanced framework of rights and obligations relating to countervailing duties SCM 4 standard/powers of review (panel) (DSU 11), "objective assessment of the facts" /alleged disregard or distortion of the evidence, discretion in selection of evidence to refer to explicitly DSU 606 subsidy, definition (SCM 1), level of subsidy, relevance SCM 372 sunset review (SCM 21.3) burden/standard of proof original investigation requirements (SCM 11 and 12) distinguished SCM 490–1 SCM 11.6, relevance SCM 365 SCM 11.6, relevance in absence of cross-reference to SCM 369–70, 489–90, 498, 499 <i>de minimis</i> standard absence of reference to, relevance SCM 500–1 termination of investigation provisions (SCM 11.9) distinguished SCM 366–73, 500–1 as threshold test SCM 367, 372 original investigation requirements distinguished SCM 490–1, 497–8 likelihood test SCM 494–5 preparatory work (VCLT 32) SCM 373 self-initiation, right of SCM 488 terms of reference of panels (DSU 7) as definition of jurisdiction/legal claims at issue DSU 361 request for establishment of panel as basis DSU 187
US – Carbon Steel (Panel), WT/DS213/R and Corr.1, DSR 2002:IX identification of specific measures (DSU 6.2), expedited sunset review, treatment as subsidiary of closely related measure DSU 217 interim review (DSU 15), timeliness of objections to terms of reference DSU 801	

<i>(cont.)</i>	
interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in different agreements, SCM 21.2/AD and SPS Agreements SCM 494	context (VCLT 31(2)), other articles in same agreement, DSU 23.1 as context for DSU 23.2 DSU 1299, 1307
relationships within and between agreements, SCM 11.6/SCM 21.3 SCM 365	dictionaries DSU 1305
sunset review (SCM 21.3)	“measures at issue” (DSU 6.2), “measures at issue” (DSU 6.2), terminated measures, termination before agreement on terms of reference DSU 390
AD 11.2 standard, applicability SCM 494	MFN treatment (GATT I:1), “accorded immediately and unconditionally to the like product”, differential treatment on the basis of origin of product and GATT 51
burden/standard of proof, SCM 11.6, relevance SCM 365	order of analysis, specific/general provision, DSU 23.1/DSU 23.2 DSU 1300
terms of reference of panels (DSU 7), timeliness of objections DSU 801	panel procedures (DSU 12 and Appendix 3 (WP)), separate opinion (DSU 14.3) GATT 626
US – Certain EC Products (AB), WT/DS165/AB/R, DSR 2001:I and DSR 2001:II	quantitative restrictions, elimination (GATT XI), “prohibition or restriction” (GATT XI:1), bonding requirements GATT 626, 639
burden of proof (general rules), <i>prima facie</i> case requirement, “ <i>prima facie</i> ” DSU 415	relationships within and between agreements
competence of panels and AB (DSU 3.2/DSU 11/DSU 17)	DSU 3.7/DSU 22.6 and DSU 22.3(c) DSU 89, 1318
“may uphold, modify or reverse” legal findings (DSU 17.13), “moot” / “of no legal effect” finding DSU 894	DSU 23.1/DSU 23.2 DSU 1299–300
right to develop own legal reasoning including arguments not adduced by parties (<i>jura novit curia</i>) DSU 416	DSU 23.1/VCLT 60 DSU 1672
identification of specific measures (DSU 6.2), “sufficient to present the problem clearly” DSU 415	GATT II/GATT XI GATT 639, 626
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)	remedies as means of restoring balance of WTO rights and obligations DSU 1306
arguments distinguished DSU 326, 415	retaliatory measures, legality
clarification of claim during proceedings DSU 415	international law DSU 1693
legal status of panel reports, “moot” / “of no legal effect” finding DSU 894	WTO law DSU 1306–7, 1693
“measures at issue” (DSU 6.2), terminated measures, termination before agreement on terms of reference DSU 390	suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
relationships within and between agreements	as last resort “solution” (DSU 3.7) DSU 89, 1306
DSU 23.1/DSU 23.2 DSU 1301	as retaliatory measure DSU 1306–7, 1693
GATT II/GATT XI GATT 626	as temporary measure (DSU 22.8) DSU 1177, 1306
Schedules of Concessions (GATT II), treatment no less favourable than that provided in appropriate schedule (GATT II:1 (a)), bonding requirements, imposition of import duties distinguished GATT 626	WTO authorization, need for (DSU 3.7, 22.6 and 23.2(c)) DSU 1317
suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), authorization, need for (DSU 3.7, 22.6 and 23.2(c)), suspension without authorization as breach of DSU 3.7 DSU 89, 1318	unilateral action by Member, prohibition (DSU 23.1) DSU 1299–300
terms of reference of panels (DSU 7)	examples of excluded actions (DSU 23.2) DSU 1300, 1302 n. 2061
as definition of jurisdiction/legal claims at issue	relationship between DSU 23.1 and 23.2 DSU 1299–300
failure to make specific mention of alleged inconsistency (DSU 23.2(a)) DSU 415	US – Clove Cigarettes (Panel), WT/DS406/R
specific legal claim included in terms of reference, limitation to DSU 415	competence of panels and AB (DSU 3.2/DSU 11/DSU 17), <i>compétence de la compétence</i> /obligation to address jurisdictional issues [on own motion] DSU 366
unilateral action by Member, prohibition (DSU 23.1)	identification of specific measures (DSU 6.2), identification of product, need for DSU 232
examples of excluded actions (DSU 23.2) DSU 1301	interim review (DSU 15), timing of comments on report DSU 773
relationship between DSU 23.1 and 23.2 DSU 1301	“international standards . . . as a basis for technical regulation” (TBT 2.4/Annex 1), explanation of justification on request (TBT 2.5), “upon the request” TBT 71
US – Certain EC Products (Panel), WT/DS165/R and Add.1, DSR 2001:I and DSR 2001:II	interpretation of covered agreements, rules relating to including VCLT provisions
customs value determination (VAL), surety for ultimate payment (VAL 13) VAL 48	“any subsequent agreement . . . regarding its interpretation or application” (VCLT 31(3)(a)) DSU 1580
DSU dispute settlement	Doha Declaration, whether DSU 1580
obligation to have recourse to (DSU 23.1)	context (VCLT 31(2)), “any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)), minor exceptions doctrine TBT 100–1
prohibition of suspensions prior to completion of DSU 22 procedures DSU 1317	object and purpose
in “seeking redress of WTO violation” DSU 1305	preamble as evidence of TBT 7
fees and formalities connected with importation and exportation	TBT 2.8 TBT 80
“limited . . . to the approximate cost of services rendered” (GATT VIII:1(a)), bonding requirements GATT 501	same or closely related phrases in different agreements, Enabling Clause (EC 3(c)), SCM 27.4 and TBT 12.2 and 12.3 TBT 139
implementation of panel or AB recommendations (DSU 19.1), measure terminated in course of proceedings/no longer in existence DSU 931, 940 n. 1479	judicial economy, prior decision on another point rendering discussion otiose TBT 23
interpretation of covered agreements, rules relating to including VCLT provisions	MFN treatment (TBT 2.1) TBT 16
	“not more trade-restrictive than necessary” (TBT 2.2) distinguished TBT 32

multiple authentic languages, interpretation (VCLT 33), english, French and Spanish texts compared (TBT 2.9.2) TBT 101	GATT XX and TBT 37
notification procedures (TBT 2.9)	SPS 5.6 footnote 3 and TBT 39
notification of proposed regulations (TBT 2.9.2)	special account of needs of developing countries (TBT 12)
French and Spanish texts compared TBT 101	distinguished TBT 136
as inherent obligation TBT 101	TBT 2.1 (MFN treatment) distinguished TBT 32
provision <i>on request</i> of copy of proposed regulation (TBT 2.9.3) distinguished TBT 101	two-step analysis TBT 30
provision on request of <i>proposed regulation</i> , timing (TBT 2.9.3) TBT 102	publication of regulations/entry into force (TBT 2.12), “reasonable interval” TBT 107
“significant effect on trade of other members” (TBT 2.9 and 5.6) TBT 100	US – Continued Suspension (Panel), WT/DS320/AB/R, DSR 2008:X
timing TBT 101	conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4), suspension of concessions (DSU 22) and WTO 289
“urgent problems . . . arise or threaten to arise” (TBT 22.10) and TBT 103	identification of specific measures (DSU 6.2), identification of each challenged measure DSU 189
publication of technical regulations/entry into force (TBT 2.12), “reasonable interval” TBT 107	sunset review (AD 11.3) (including “likelihood” test), zeroing and AD 771
relationships within and between agreements	suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
GATT III:4/TBT 2.1 TBT 19	conformity of measure with WTO obligation, obligation to ensure (WTO XVI:4) WTO 289
GATT XX/TBT 2.1 TBT 21	as temporary measure (DSU 22.8) WTO 289
GATT XX/TBT 2.2 TBT 37–8	“zeroing” (AD 9.3/GATT VI:2), sunset reviews (AD 13.3) and AD 771
SPS 5.6 and footnote 3/TBT 2.2 TBT 39	US – Continued Zeroing (AB), WT/DS350/AB/R
SPS 10.1/TBT 12.3 SPS 389, TBT 138	competence of panels and AB (DSU 3.2/DSU 11/DSU 17), <i>compétence de la compétence</i> /obligation to address jurisdictional issues [on own motion] DSU 1420
SPS/TBT 1.5 TBT 14	conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4), legislation “as such” and, zeroing procedures and AD 145
SPS/TBT SPS 286	consultation and dispute settlement (AD 17), legal basis for consultation/claim (AD 17.3/AD 17.4), “measure” (AD 17.4), continued zeroing AD 896
TBT 2.1/TBT 2.2 TBT 32	customary international law rules of interpretation [as codified in the VCLT] as applicable law, AD 17.6(ii) AD 931–3
TBT 2.2/TBT 12.3 TBT 136	evidence, acceptability as for “objective assessment” (DSU 11) purposes
TBT 2.9/TBT 2.10 TBT 103	circumstantial evidence DSU 635
special and differential treatment (SPS 10), obligation to “take account of” special needs of developing countries (SPS 10.1), “take account of” TBT 140–1	factual findings in previous disputes DSU 631
special and differential treatment (TBT 12)	identification of specific measures (DSU 6.2), establishment of existence of measures distinguished DSU 188
“not more trade-restrictive than necessary to fulfil a legitimate objective” obligation (TBT 2.2) distinguished TBT 136	information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), discretion not to seek DSU 759
“special development, financial and trade needs” (TBT 12.2 and 12.3), Enabling Clause (EC 3(c)) and SCM 27.4 compared TBT 139	interpretation of covered agreements, applicable law, customary rules of interpretation of public international law [as codified in VCLT] AD 931
SPS Agreement, TBT Agreement, applicability to (TBT 1.5) TBT 14	interpretation of covered agreements, rules relating to including VCLT provisions
TBT Agreement	effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>) AD 931
object and purpose (preamble)	multiple permissible interpretations AD 931–3
as aid to interpreting TBT Agreement TBT 7	as a whole/holistic/harmonious exercise AD 931, DSU 1540
avoidance of unnecessary obstacles to trade/regulatory autonomy, functional approach to requirements (TBT 2.8) and TBT 76	legislation as such, right to challenge (WTO XVI:4)
technical regulations (TBT 2/Annex 1.1)	claims “as such” vs claims “as applied”, relevance of distinction DSU 277
functional approach to (TBT 2.8) TBT 76–9	“measures at issue” (DSU 6.2), claims “as such” vs claims “as applied”, relevance of distinction DSU 277
interpretation in accordance with terms, context, object and purpose TBT 80	“measures at issue” (DSU 6.2)
specificity, relevance TBT 80	continued zeroing AD 145, 896–7
test for determining compliance with TBT 79	prospective measure DSU 261
“wherever appropriate” TBT 77–9	notice of appeal, requirements (ABWP 20(2)(d)), failure to meet, consequences, error relating to jurisdiction DSU 1420
burden of proof TBT 78	prompt and satisfactory settlement (DSU 3.3), impairment of benefits by measures taken by another Member (DSU 3.3), “Member considers” DSU 70
MFN treatment (TBT 2.1) TBT 16	
“not more trade-restrictive than necessary to fulfil a legitimate objective” (TBT 2.2)	
availability of less trade-restrictive alternative TBT 26	
burden of proof TBT 28	
“for this purpose” /interrelationship between first and second sentences TBT 33–4	
functional approach to (TBT 2.8) and TBT 76	
“legitimate objective”	
multiple objectives TBT 42	
qualification as TBT 26, 44	
as starting point for analysis TBT 41	
“necessary”	

<p>(cont.)</p> <p>public observation of oral hearing / “passive participation” (ABWP 27(3)), methodology DSU 1451</p> <p>request for establishment of panel, requirements (DSU 6.2), “sufficient to present the problem clearly” DSU 188–9</p> <p>standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)</p> <p>completion of the legal analysis in case of, contentiousness/ omission/insufficiency of facts DSU 879–80</p> <p>excess of jurisdiction, in absence of claim by party DSU 1420</p> <p>standard/powers of review (panel) (AD 17.6), interpretation of relevant provisions of AD (AD 17.6(ii)), “admits of more than one permissible interpretation” AD 9313</p> <p>standard/powers of review (panel) (DSU 11), “objective assessment of the facts” /alleged disregard or distortion of the evidence, circumstantial evidence DSU 635</p> <p>terms of reference of panels (DSU 7), request for establishment of panel as basis DSU 188</p> <p>“zeroing” (AD 9.3/GATT VI:2)</p> <p>administrative reviews and GATT 466</p> <p>legislation “as such” (AD 18.4) and AD 145</p> <p>as “measure” (AD 17.4) AD 145, 896</p> <p>US – Continued Zeroing (Panel), WT/DS350/R</p> <p>information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), “from any individual or body”, parties DSU 751</p> <p>“measures at issue” (DSU 6.2)</p> <p>claims “as such” vs claims “as applied”, relevance of distinction DSU 277</p> <p>prospective measure DSU 261</p> <p>US – Corrosion-Resistant Steel Sunset Review (AB), WT/DS244/AB/R and Corr.1, DSR 2004:I</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “clarification of existing provisions” DSU 298</p> <p>conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4)</p> <p>classification as law, regulation or administrative procedure, applicability of WTO law AD 970 n. 1324</p> <p>dispute settlement procedures (AD 17) and AD 970</p> <p>dispute settlement procedures, applicability to AD 970</p> <p>“laws, regulations and administrative procedures”, normative value as determining factor DSU 264, 281–3, 287</p> <p>consultation and dispute settlement (AD 17), special or additional rule and procedure (DSU 1.2 and Appendix 2), whether DSU 14</p> <p>domestic law, interpretation of covered agreements, relevance to DSU 1624</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in same agreement, AD 11.2/AD 11.3 AD 783</p> <p>legislation as such, right to challenge (WTO XVI:4)</p> <p>analysis of legislation for purposes of DSU 280</p> <p>mandatory/discretionary legislation, distinguishability rejection/non-endorsement of doctrine DSU 299–300</p> <p>relevance AD 881–2</p> <p>normative value as determining factor DSU 264, 281–2, 287</p> <p>security and predictability of WTO obligations (DSU 3.2) and DSU 45, 281</p> <p>“measures at issue” (DSU 6.2)</p> <p>any act or omission attributable to a Member DSU 242–3, 271</p> <p>“measure taken by another Member” (DSU 3.3) DSU 241</p> <p>national treatment, regulatory discrimination (GATT III:4), “requirements”, non-mandatory measures GATT 352 n. 511</p> <p>ordinary meaning of terms used in covered agreements</p> <p>domestic law concepts, relevance DSU 1624</p>	<p>impairment of benefits by measures taken by another Member (DSU 3.3), “measure taken by another Member” DSU 241</p> <p>prompt and satisfactory settlement (DSU 3.3), “measure taken by another Member”, nexus DSU 241</p> <p>relationships within and between agreements</p> <p>AD 2.4/AD 11.3 AD 764</p> <p>AD 18.4/SCM 32.5/WTO XVI:4 WTO 295</p> <p>security and predictability of WTO obligations (DSU 3.2) DSU 281</p> <p>right to challenge legislation as such (WTO XVI:4) and DSU 45, 281</p> <p>special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as, AD 17 DSU 14</p> <p>State responsibility as rule/general principle of international law (ILC Articles), responsibility for, act or omission of executive DSU 241–3</p> <p>sunset review (AD 11.3) (including “likelihood” test)</p> <p>company-specific determination, need for AD 783</p> <p>investigatory role of authorities AD 758–9</p> <p>mandatory rule/exception AD 755</p> <p>methodology</p> <p>absence of specific provision AD 763–4, 783</p> <p>AD 2.4 disciplines, applicability AD 764</p> <p>dumping margins, relevance AD 763–4</p> <p>original investigation distinguished AD 757</p> <p>“positive evidence”, need for, presumptions, exclusion AD 772–4</p> <p>US – Corrosion-Resistant Steel Sunset Review (Panel), WT/DS244/R, DSR 2004:I</p> <p>Anti-Dumping Agreement (AD), object and purpose, absence of specific provision/preamble AD 2</p> <p>evidence (dumping investigation) (AD 6)</p> <p>due process as underlying principle, balance of interests considerations AD 443</p> <p>“facts available”, right of resort to (AD 6.8/Annex II), time–limits, right to set (AD 6.1.1), sunset reviews and AD 443</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in different agreements, cross-referencing, role AD 790, 797</p> <p>investigation of dumping (AD 5)/subsidy (SCM 11)</p> <p>rejection of application (AD 5.8), <i>de minimis</i> test, sunset review (AD 11.3), applicability to AD 793–5</p> <p>self-initiation (AD 5.6), sunset review (AD 11.3), applicability of rules to AD 789–90</p> <p>legislation as such, right to challenge (WTO XVI:4), policy document, whether (US Sunset Policy Bulletin) GATT 555</p> <p>“measures at issue” (DSU 6.2), “practice” as DSU 270</p> <p>publication and administration of trade regulations (GATT X), uniform, impartial and reasonable administration (GATT X:3(a)), “shall administer” /applicability to substantive rule GATT 555, 565</p> <p>relationships within and between agreements</p> <p>AD 5.6/AD 11.3 AD 789–90</p> <p>AD 5.8/AD 11.3 AD 793–5, 798–9</p> <p>AD 6.1 and 6.2/AD 11.4 AD 443</p> <p>AD 17.6/SCM 30 SCM 704</p> <p>standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6)</p> <p>applicability to covered agreements other than AD Agreement AD 1014</p> <p><i>de minimis</i> test (AD 5.8), applicability AD 793–5, 797</p> <p>methodology, absence of specific provision AD 762</p> <p>non-applicability to covered agreements other than AD Agreement including the SCM and SPS Agreements SCM 704</p> <p>“positive evidence”, need for AD 759, 760</p>
--	--

<p>sunset review (AD 11.3) (including “likelihood” test), self-initiation, applicability of AD 5.6 evidentiary standards AD 789–90</p> <p>US – Cotton Yarn (AB), WT/DS192/AB/R, DSR 2001:XII ATC 101</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17)</p> <p>“may uphold, modify or reverse” legal findings (DSU 17.13), “moot” / “of no legal effect” finding DSU 895</p> <p>“may uphold, modify or reverse” panel findings (DSU 17.13) DSU 895</p> <p>directly competitive or substitutable products (GATT III:2) criteria</p> <p>interchangeability ATC 45</p> <p>potential to compete as determining factor ATC 45</p> <p>“directly” ATC 40, 45</p> <p>good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), as fundamental rule of treaty interpretation/performance DSU 1503 n. 2316, 1504</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in different agreements, GATT III:2/ATC 6.2 ATC 43</p> <p>legal status of panel reports, “moot” / “of no legal effect” finding DSU 895</p> <p>“measures at issue” (DSU 6.2), measure in existence at time of establishment of panel, limitation to, evidence of measure and measure distinguished DSU 256 n. 378</p> <p>“objective assessment of matter before it”, reasoned and adequate explanation (SG 4.2(a)) and SG 152</p> <p>ordinary meaning of terms used in covered agreements, “competitive” (ATC 6.2) ATC 44</p> <p>proportionality</p> <p>attribution of damage (ATC 6.4) ATC 65</p> <p>countermeasures ATC 63</p> <p>safeguard measures (ATC 6.4) and ATC 63</p> <p>State responsibility and ATC 63, DSU 1674 n. 2617, 1696</p> <p>relationships within and between agreements</p> <p>ATC 6.4, possible findings under ATC 60</p> <p>GATT III:2/ATC 6.2 ATC 42–3</p> <p>standard/powers of review (panel) (DSU 11)</p> <p>“objective assessment of the facts”, <i>de novo</i> review, exclusion ATC 25, 101, SG 152</p> <p>“objective assessment of the facts” /alleged disregard or distortion of the evidence, evidence available to Member at time of ATC determination, limitation to ATC 25, DSU 629</p> <p>relevant factors, position of Member at time of determination ATC 25</p> <p>State responsibility as rule/general principle of international law (ILC Articles), countermeasures DSU 1674 n. 2617</p> <p>suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), level equivalent to nullification or impairment (DSU 22.4), proportionality and ATC 63</p> <p>transitional safeguards (ATC 6)</p> <p>attribution of damage from “sharp and substantial increase in imports” /criteria (ATC 6.4) ATC 21, 31, 57–65, 65, DSU 1696</p> <p>comparative analysis ATC 61–5</p> <p>methodology ATC 65</p> <p>reasons for requiring ATC 62–4</p> <p>“from a Member or Members individually” ATC 58</p> <p>relevant factors (ATC 6.3) ATC 21, 31</p> <p>serious damage or actual threat of (ATC 6.2) ATC 21</p> <p>“directly competitive”</p> <p>GATT III:2, applicability ATC 43</p> <p>proximity of relationship, relevance ATC 44–5</p> <p>“domestic industry producing like and/or directly competitive products”</p> <p>“and/or” ATC 47–8</p> <p>captive production ATC 46</p>	<p>“producing” ATC 41</p> <p>product-oriented definition ATC 40</p> <p>due diligence review (DSU 11), available evidence, limitation to ATC 25, DSU 629</p> <p>US – Cotton Yarn (Panel), WT/DS192/R, DSR 2001:XII</p> <p>determination of injury (AD 3), domestic production of like product, assessment of effect on (AD 3.6), sectoral analysis, right to AD 289</p> <p>implementation of panel or AB recommendations (DSU 19.1), panel’s discretionary suggestions DSU 959</p> <p>panel reports, high quality/flexibility of panel procedures balance (DSU 12.2) DSU 695</p> <p>relationships within and between agreements, GATT/ATC WTO 23</p> <p>transitional safeguards (ATC 6)</p> <p>attribution of damage from “sharp and substantial increase in imports” (ATC 6.4) (ATC 6.4), “sharp and substantial increase in imports” ATC 59</p> <p>attribution of damage from “sharp and substantial increase in imports” (ATC 6.4)/criteria, “from a Member or Members individually” ATC 60</p> <p>serious damage or actual threat of (ATC 6.2)</p> <p>investigation period, length ATC 38</p> <p>“or actual threat of” ATC 36</p> <p>“serious damage”, change of equipment, whether ATC 37</p> <p>WTO Agreement, as single undertaking (WTO II:2), common context WTO 23</p> <p>US – Countervailing Duty Investigation on DRAMS (AB), WT/DS296/AB/R, DSR 2005:XVI</p> <p>consultations (DSU 4), addendum to original request DSU 150</p> <p>determination of injury (SCM 15), causal relationship between subsidized imports and injury to domestic injury (SCM 15.5 and footnote 47), non-attribution of other factors SCM 445</p> <p>evidence, acceptability as for “objective assessment” (DSU 11) purposes, circumstantial evidence DSU 634</p> <p>evidence (countervailing duty investigation) (SCM 12), standard of review (investigating authority) SCM 579–80</p> <p>notice of appeal, requirements (ABWP 20(2)(d))</p> <p>claims and arguments distinguished DSU 1413</p> <p>statement of allegation of error on issues of law/legal interpretations (ABWP 20(2)(d)), generic statement, sufficiency DSU 1414</p> <p>“public body” (SCM 1.1(a)(i)), “private body”, attempt to distinguish (SCM 1.1(a)(1)(iv)) SCM 17 n. 28</p> <p>SCM Agreement, object and purpose (SCM 1), balanced framework of rights and obligations relating to countervailing duties SCM 8</p> <p>standard/powers of review (panel) (DSU 11)</p> <p>“objective assessment of the facts” /alleged disregard or distortion of the evidence</p> <p>circumstantial evidence DSU 634</p> <p>reasoned and adequate explanation requirement and VAL 5</p> <p>subsidy, definition (SCM 1.1(a)(1)) (financial contribution), “private body” (SCM 1.1(a)(1)(iv)), government entrustment or direction, effect SCM 51–4</p> <p>US – Countervailing Duty Investigation on DRAMS (Panel), WT/DS296/R</p> <p>determination of injury (SCM 15)</p> <p>“all relevant economic factors” (SCM 15.4) SCM 439</p> <p>domestic industry definition (SCM 16), relevance SCM 442</p> <p>causal relationship between subsidized imports and injury to domestic injury (SCM 15.5 and footnote 47)</p> <p>non-attribution of other factors SCM 448, 449</p> <p>identity of AD 3.5 provisions/applicability of jurisprudence relating to SCM 445–6</p>
---	--

- (*cont.*)
- identity of AD 3 provisions/applicability of jurisprudence relating to SCM 421, 445
 - “positive evidence” / “objective examination” requirement (SCM 15.1)
 - “objective examination” SCM 421–2
 - as underlying principle SCM 421
 - price effect determination (SCM 15.2)
 - non-attribution of factors other than subject imports SCM 434
 - price undercutting SCM 433, 435–6
 - existence vs cause of SCM 435
 - significant increase in subsidized imports (SCM 15.2) SCM 429–30
 - underlying principles (SCM 15.1) and SCM 422
 - “domestic injury” (SCM 16), determination of injury (SCM 15) and SCM 422
 - evidence (countervailing duty investigation) (SCM 12), on-the-spot verification (SCM 12.6 and Annex VI) SCM 387, 679
 - interpretation of covered agreements, rules relating to including VCLT provisions, text/plain language (VCLT 31(2)) SCM 433
 - subsidy, definition (SCM 1.1(a)(1)) (financial contribution)
 - “private body” (SCM 1.1(a)(1)(iv)) SCM 17 n. 28
 - “public body”, classification as, “private body” (SCM 1.1(a)(iv)), difficulty of distinguishing SCM 17 n. 28
- US – Countervailing Measures on Certain EC Products (AB), WT/DS212/AB/R, DSR 2003:I**
- AB procedures (DSU 17.9 and ABWP)
 - appellant’s submission (ABWP 21), grounds for allegation of specific errors (ABWP 21:2) DSU 1433
 - “appropriate procedure for the purpose of that appeal only” (ABWP 16(1)) DSU 1423
 - anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement, calculation of subsidies (GATT VI:3/SCM 19.4) GATT 471
 - conformity of laws, regulations and administrative procedures with SCM Agreement (SCM 32.5) WTO 293, SCM 598
 - countervailing duties (SCM Part V), calculation of countervailing duty / “not in excess” (SCM 19.4), nexus, need for, GATT VI:3 and GATT 471
 - domestic law, interpretation of covered agreements, relevance to DSU 1623
 - due process (dispute settlement proceedings)
 - notice of appeal (ABWP 20(2)(d)) and DSU 1408
 - opportunity to defend oneself DSU 1408
 - implementation of panel or AB recommendations (DSU 19.1)
 - choice of means at authorities’ discretion (DSU 21.3) DSU 984
 - panel’s decision not to make suggestions DSU 981
 - legislation as such, right to challenge (WTO XVI:4)
 - mandatory/discretionary legislation, distinguishability rejection/non-endorsement of doctrine DSU 298, 300 n. 483
 - relevance WTO 293
 - notice of appeal, requirements (ABWP 20(2)(d))
 - amendment (WBWP 23 *bis*)/clarification DSU 1423
 - demonstration of need for DSU 1439
 - clear allegation of panel’s failure to make objective assessment (DSU 11) DSU 1428
 - due process and DSU 1408
 - failure to meet, preliminary ruling on DSU 1423
 - statement of allegation of error on issues of law/legal interpretations (ABWP 20(2)(d)) DSU 1423
 - paragraph numbers/extracts from panel report, sufficiency DSU 1423, 1425
 - statement of grounds (ABWP 21:2) DSU 1433
 - as trigger for appeal process (ABWP 20(1)) DSU 1408
 - ordinary meaning of terms used in covered agreements, domestic law concepts, relevance DSU 1623
 - preliminary rulings on, compliance with ABWP 20(2)(d) DSU 1423
 - relationships within and between agreements, AD 18.4/SCM 32.5/ WTO XVI:4 WTO 293, SCM 598
 - standard/powers of review (panel) (DSU 11), DSU 11 (function of panel) claims and claims relating to substantive provisions distinguished DSU 1429
- US – Countervailing Measures on Certain EC Products (Panel), WT/DS212/R, DSR 2003:I**
- conformity of laws, regulations and administrative procedures with SCM Agreement (SCM 32.5) WTO 292, SCM 597
 - countervailing duties (SCM Part V)
 - compliance with GATT VI:3 and SCM Agreement (SCM 10), calculation of subsidies GATT 471
 - “countervailing duty” (SCM 10 footnote 36), “offsetting” requirement SCM 354
 - domestic law, interpretation of covered agreements, relevance to DSU 1623
 - implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 977
 - legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), identification of treaty provisions DSU 1146
 - legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability, relevance WTO 292
 - ordinary meaning of terms used in covered agreements, domestic law concepts, relevance DSU 1623
 - relationships within and between agreements, AD 18.4/SCM 32.5/ WTO XVI:4 WTO 292, SCM 597
- US – Countervailing Measures on Certain EC Products (Article 21.5 – EC) (Panel), WT/DS212/RW, DSR 2005:XVII**
- competence of panels and AB (DSU 3.2/DSU 11/DSU 17), *compétence de la compétence*/obligation to address jurisdictional issues [on own motion] DSU 1126
 - “measures at issue” (DSU 6.2), “measures taken to comply” (DSU 21.5) and DSU 1126, 1146
 - relationships within and between agreements, DSU 6.2/DSU 21.5 DSU 1126, 1146
 - request for establishment of panel, requirements (DSU 6.2), compliance, importance of, subsequent cure of defect, exclusion DSU 1145
 - review of implementation of DSB rulings (DSU 21.5)
 - competence of DSU 21.5 (compliance) panel, own motion obligation to examine fundamental issues DSU 1126
 - DSU 6.2 procedures, applicability, “measures at issue” (DSU 6.2) DSU 1126, 1146
 - “measures taken to comply” fundamental nature DSU 1126
 - redeterminations DSU 1116
- US – Customs Bond Directive (Panel), WT/DS345/R, DSR 2008:VIII**
- anti-dumping duties, imposition and collection (AD 9), “duties” (AD 9/SCM 19), bonds distinguished AD 656, SCM 459
 - conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4), notification of laws and regulations (AD 18.5), US Customs Bond Directive AD 974, SCM 599
 - conformity of laws, regulations and administrative procedures with SCM obligations, obligation to ensure (SCM 32.5), notification of changes to laws and regulations (SCM 32.6) AD 974, SCM 599
 - provisional measures (AD 7), “not in excess of” (AD 7.2) AD 649
- US – Customs User Fee (GATT Panel), L/6264, BISD 35S/245, fees and formalities connected with importation and exportation (GATT VIII) GATT 499**
- US – DRAMS (Panel), WT/DS99/R, DSR 1999:II**
- Anti-Dumping Agreement (AD)

- applicability (AD 18.3)
 - pre-/post-WTO reviews AD 966
 - “reviews of existing measures” AD 965
 - anti-dumping duties, duration and review (AD 11)
 - AD 11.1 as general principle underlying AD 11.2 and 3 AD 735
 - “injury” (AD 3 footnote 9) AD 747, 751
 - “likely to lead to continuation or recurrence” (AD 11.2)
 - “not likely” test AD 739, 748
 - probability, need for AD 749
 - sunset review (AD 11.3) and AD 749
 - “necessary to offset dumping” (AD 11.2) AD 739, 741–6
 - necessity (AD 11.1) and AD 739, 741
 - standard of proof AD 745, SCM 494
 - sunset review (AD 11.3) and AD 742–3, 743
 - necessity (AD 11.1) AD 735–7
 - “no-dumping” finding (AD 11.2), timing of revocation of anti-dumping duty AD 743
 - “warranted” (AD 11.2) AD 750–1
 - anti-dumping duties, imposition and collection (AD 9), assessment (AD 9.3), *de minimis* test, AD 5.8 distinguished AD 402, 671–3
 - burden of proof (general rules), *onus probandi actori incumbit* AD 51
 - determination of dumping (AD 2)
 - cost data (AD 2.2.1.1)
 - burden of proof AD 51
 - “in accordance with generally accepting accounting principles” AD 47
 - “reasonably reflect costs” requirement AD 47
 - records kept by the exporter or producer under investigation, limitation to AD 47
 - evidence (dumping investigation) (AD 6), accuracy of information, authorities’ obligation to satisfy themselves (AD 6.6), “satisfy themselves” AD 520
 - implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 968
 - interpretation of covered agreements, rules relating to including VCLT provisions, effectiveness principle (*ut res magis valeat quam pereat/effet utile*) AD 742–3
 - investigation of dumping (AD 5)/subsidy (SCM 11)
 - rejection of application (AD 5.8)
 - “cases”, anti-dumping duty assessment (AD 9.3), relevance AD 401–2
 - de minimis* test
 - anti-dumping duty assessment (AD 9.3) distinguished AD 402, 671–3
 - function/obligation to use AD 402
 - judicial economy, prior decision on another point rendering discussion otiose AD 749
 - legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability, assessment of mandatory nature AD 879, DSU 292
 - “measures at issue” (DSU 6.2), any act or omission attributable to a Member DSU 243 n. 349
 - publication and administration of trade regulations (GATT X), Anti-Dumping Agreement and GATT 595
 - relationships within and between agreements
 - AD 3 footnote 9/AD 11.2 AD 747, 751
 - AD 3.5/AD 11.2 AD 751
 - AD 5.8/AD 9.3 AD 401–2, 671–3
 - AD 11.1/AD 11.2 AD 739
 - AD 11.2/AD 11.3 AD 742–3, 749
 - AD 11.2/AD 11.3 footnote 22 AD 743
 - AD 11.2/GATT I and X GATT 595
 - AD 18.3/SCM 32.3 GATT 451 n. 647, AD 965, 1011
 - State responsibility for acts or omissions of, executive DSU 240 n. 349
 - sunset review (AD 11.3) (including “likelihood” test), duration and review of anti-dumping duties (AD 11.2) and AD 749
- US – Export Restraints (Panel), WT/DS194/R and Corr.2, DSR 2001:XI**
- interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose, caution in use of DSU 1570
 - legislation as such, right to challenge (WTO XVI:4)
 - mandatory/discretionary legislation, distinguishability AD 880 n. 1188, SCM 71
 - assessment of mandatory nature DSU 294
 - “practice” AD 883
 - “measures at issue” (DSU 6.2)
 - independent operational status test AD 883, 885, DSU 266, 267
 - “practice” as DSU 267
 - order of analysis, mandatory/discretionary nature of legislation/substance DSU 294, 295
 - preparatory work (VCLT 32), SCM Agreement (SCM 1) SCM 12
 - SCM Agreement, object and purpose (SCM 1), multilateral disciplines on subsidies distorting international trade SCM 3
 - subsidy, definition (SCM 1.1(a)(1)) (financial contribution)
 - conferral of benefit (SCM 1.1(b)) as parallel requirement SCM 10
 - payments to a funding mechanism (SCM 1.1(a)(1)(iv)) SCM 12
 - preparatory work (VCLT 32), SCM 1.1(a)(1) SCM 12, 14
 - transactions not qualifying as SCM 14
 - transfer of economic resources from grantor to recipient for less than full consideration SCM 12
 - subsidy, definition (SCM 1.1(b)) (conferral of benefit), subsidy programmes as such, right to challenge (mandatory/discretionary distinction), order of analysis SCM 72 n. 140, 73 n. 141
- US – FSC dispute (WT/DS108)**
- “sequencing” (interrelationship between Article 21.5 and Article 22.6 arbitration, ad hoc procedural agreements)
 - direct recourse to Article 22 DSU 1164
 - withdrawal of Article 22 arbitration request DSU 1163
- US – FSC (AB), WT/DS108/AB/R, DSR 2000:III and DSR 2000:IV**
- AB procedures (DSU 17.9 and ABWP), timetable, modification in exceptional circumstances (ABWP 16(2)) DSU 1390
 - agricultural concessions and commitments (AG 3)
 - export subsidies, prohibition (AG 3.3)
 - scheduled and unscheduled products distinguished AG 31
 - applicability of AG 9.1 to both AG 31–2
 - consultations (SCM 4.1–4)
 - accelerated/expedited procedures (ABWP 31), effect SCM 197
 - “statement of available evidence” (SCM 4.2) SCM 197
 - DSU 4.4 distinguished SCM 197
 - evidence of nature as subsidy, need for SCM 197
 - failure to submit, effect SCM 196
 - double taxation measures, justification (Illustrative List, SCM Annex I (item (e)) footnote 59)
 - applicable law/Member’s right to determine applicable rules SCM 605, 608
 - “foreign-source income” SCM 159–60, 608
 - export subsidy commitments (AG 9)
 - costs of marketing exports (AG 9.1(d))
 - general business costs distinguished AG 108
 - income tax, whether AG 108
 - export subsidy commitments, prevention of circumvention (AG 10)
 - AG 3.3 prohibition on export subsidies and AG 32, 116
 - “export subsidies . . . applied in a manner which results in, or which threatens to lead to, circumvention . . .” (AG 10.1)
 - “circumvention”
 - scheduled and unscheduled products distinguished AG 116
 - threat of circumvention, sufficiency AG 112
 - “export subsidy commitments” AG 110

<i>(cont.)</i> tax exemption, discretionary nature/legal right AG 114 “export subsidy” (AG 1(3)/SCM 1.1 and 3.1) AG 16–17 export subsidy, definition (AG 1(e)) AG 12 “contingent upon export performance” AG 14–15 export subsidy, prohibited (SCM, Part II) “contingent upon export performance” (SCM 3.1(a)) (general) AG 14–15 GATT XVI:4 distinguished SCM 100 GATT 1947/WTO continuity “decisions” (WTO XVI:1/GATT 1(b)(iv)), classification as GATT 1947 Council decisions WTO 278 GATT Council Understanding on tax legislation (1981) SCM 99–100 panel reports (adopted) SCM 100 incorporation of GATT 1947 provisions into WTO Agreement WTO 20 “legal instruments” (GATT 1994 1(b)), “protocols and certifications relating to tariff concessions” (GATT 1994, 1(b)(i) and 1(d)) GATT 5 GATT 1994 constituent elements (GATT 1994, Art. 1) “other decisions of the Contracting Parties to GATT 1947” (Art. 1(b)(iv)) adopted panel reports, whether SCM 99–100 panel reports, GATT Council decision adopting GATT 11 GATT 1994, constituent elements (GATT 1994, Art. 1), “other decisions of the Contracting Parties to GATT 1947” (Art. 1(b)(iv)), adopted panel reports, whether SCM 99–100 good faith engagement in dispute settlement procedures (DSU 3.10) prompt challenge to deficient procedures SCM 196, DSU 113 tactics and manoeuvres to avoid, exclusion DSU 113 good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) as fundamental rule of treaty interpretation/performance DSU 113 as general principle of international law SCM 196 as general principle of law SCM 196 identification of specific measures (DSU 6.2), identification of product, need for DSU 230 Illustrative List of Export Subsidies (SCM Annex I) remission or deferral of direct taxes (item (e)) deferral not amounting to export subsidy (footnote 59) SCM 158 third and fourth sentences as remedies SCM 160 social welfare charges (item (e)) footnote 59, relevance SCM 97–8 income tax, marketing cost, whether AG 108 international law / “relevant rules of international law” (VCLT 31(3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), good faith as SCM 196 interpretation of covered agreements, responsibility for authoritative (WTO IX:2), “authoritative” interpretation and interpretation in dispute settlement distinguished WTO 200 interpretation of covered agreements, rules relating to including VCLT provisions “any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)), GATT decisions including adoption of panel reports WTO 278, SCM 100 context (VCLT 31(2)), title AG 31 dictionaries AG 108 same or closely related phrases in different agreements, AG 1(e)/SCM 3.1(a) AG 14 legal status of panel reports “other decisions of the Contracting Parties to GATT 1947” (GATT 1994 1(b)(iv)), GATT Council decision adopting GATT 11	“other decisions of the Contracting Parties to GATT 1947” (GATT 1994 1(b)(iv)), whether SCM 99–100 payments on export of agricultural product financed by virtue of governmental action (AG 9.1(c)), applicability to scheduled and unscheduled commitments (AG 3.3) AG 31–2 Permanent Group of Experts (PGE), panel’s right to establish (SCM 4.5) SCM 197 prompt and satisfactory settlement (DSU 3.3) DSU 345 Working Procedures (AB) and SCM 196 relationships within and between agreements AG 3.3/AG 9.1 AG 31–2 AG 3.3/AG 10.1 AG 32, 112 GATT XVI:4/SCM 1.1(a) and 3.1(a) GATT 716, SCM 100 SCM 1.1/SCM footnote 1 and footnote 59 SCM 97–8 SCM 1.1/WTO XVI SCM 99–100 special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as, SCM 4.2 (consultations) SCM 197, DSU 19 standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6) issues not litigated before Panel SCM 160 new arguments DSU 856, 856 subsidy, definition (SCM 1), footnote 1 and footnote 59, relevance SCM 97–8 subsidy, definition (SCM 1.1(a)(1)) (financial contribution) foregoing of revenues otherwise due (SCM 1.1(a)(1)(ii)) national tax rules as normative benchmark SCM 32 “otherwise due” /basis of comparison (“but for” test) SCM 32 withdrawal of appeal (ABWP 30), withdrawal and re-filing of appeal, for scheduling reasons DSU 1470 Working Procedures, fair, prompt and effective settlement as objective DSU 113 WTO Agreement, as single undertaking (WTO II:2) WTO 20 US – FSC (Panel), WT/DS108/R, DSR 2000:III and DSR 2000:IV consultations (DSU 4) notification of request for (DSU 4.4), statement of available evidence (SCM 4.2), relevance DSU 171 as prerequisite to establishment of panel/requirement to indicate whether held (DSU 6.2) DSU 171 consultations (SCM 4.1–4) “statement of available evidence” (SCM 4.2) SCM 197 explicit reference, relevance SCM 195 ordinary meaning SCM 195 export subsidy commitments (AG 9) costs of marketing exports (AG 9.1(d)) general business costs distinguished AG 108 income tax, whether AG 108 export subsidy commitments, prevention of circumvention (AG 10), burden of proof (AG 10.3), scheduled products, limitation to AG 127 GATT 1947/WTO continuity decisions, procedures and customary practices under GATT 1947 (WTO XVI:1) (GATT <i>acquis</i>), WTO XVI:1 and GATT 1994 1(b) distinguished WTO 282 “decisions” (WTO XVI:1/GATT 1(b)(iv)), classification as, GATT Council Understanding on tax legislation (1981) SCM 99–100 GATT 1994, constituent elements (GATT 1994, Art. 1) “other decisions of the Contracting Parties to GATT 1947” (Art. 1(b)(iv)) adopted panel reports, whether SCM 99–100 “legal instruments” (WTO Annex 1A, 1(b)) SCM 99–100 identification of specific measures (DSU 6.2), identification of product, need for DSU 230 interpretation of covered agreements, rules relating to including VCLT provisions, “any subsequent practice . . . which
--	--

establishes the agreement of the parties regarding its interpretation" (VCLT 31(3)(b)), GATT decisions including adoption of panel reports WTO 278, SCM 100	request for establishment of panel, requirements (DSU 6.2), Article 21.5 proceedings, applicability to DSU 354
legal status of panel reports, "other decisions of the Contracting Parties to GATT 1947" (GATT 1994 1(b)(iv)), whether SCM 99–100	review of implementation of DSB rulings (DSU 21.5) DSU 6.2 procedures, applicability DSU 354
ordinary meaning of terms used in covered agreements, "statement of available evidence" (SCM 4.2) SCM 195	"measures taken to comply" examination on basis of facts proved during panel proceedings, limitation to DSU 1142
relationships within and between agreements DSU 4.7/SCM 4.2 and 4.4 DSU 171	new measures DSU 1142
SCM 2.3/SCM 3 SCM 120	third party rights (DSU 10), right to receive submissions to first meeting of the panel, limitation to (DSU 10.3) DSU 506
WTO XVI:1/GATT 1994 1(b) WTO 282	subsidy, definition (SCM 1.1(a)(1)) (financial contribution), foregoing of revenues otherwise due (SCM 1.1(a)(1)(ii)), "otherwise due" /basis of comparison ("but for" test) SCM 34, 37–8
sovereignty, "tax sovereignty" DSU 1736	third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6
special or additional rules and procedures (DSU 1.2 and Appendix 2), "shall prevail" in case of a difference with DSU SCM 197	limited nature of DSU 477
subsidy, definition (SCM 1.1(a)(1)) (financial contribution) foregoing of revenues otherwise due (SCM 1.1(a)(1)(ii)) national tax rules as normative benchmark SCM 33	panel's discretion and DSU 477
"otherwise due" /basis of comparison ("but for" test) SCM 33	third party rights (Article 21.5 proceedings) DSU 506
US – FSC (Article 21.5 – EC) (AB), WT/DS108/AB/RW, DSR 2002:I	third party rights (DSU 10 and Appendix 3), obligation to take "fully" into account (DSU 10.1) DSU 466
AB procedures (DSU 17.9 and ABWP)	"withdrawal of subsidy without delay" (SCM 4.7), "without delay", private action and SCM 213
timetable (ABWP 26), modification in exceptional circumstances (ABWP 16(2)) DSU 1390	US – FSC (Article 21.5 – EC) (Panel), WT/DS108/RW, DSR 2002:I
written responses (ABWP 28), requests for additional memoranda/submissions DSU 1464	competence of panels and AB (DSU 3.2/DSU 11/DSU 17), not to add to or diminish rights and obligations (DSU 3.2/19.2) DSU 1147 n. 1795
double taxation measures, justification (Illustrative List, SCM Annex I (item (e)) footnote 59)	export subsidy commitments, prevention of circumvention (AG 10) AG 3.3 prohibition on export subsidies and AG 117
applicable law/Member's right to determine applicable rules SCM 607	AG 3.3 prohibition on subsidies and AG 117
international tax law principles SCM 610	export competition commitments (AG 8) and AG 117
burden of proof SCM 613	"export subsidies . . . applied in a manner which results in, or which threatens to lead to, circumvention . . ." (AG 10.1) AG 117
"foreign-source income" SCM 609	"circumvention", scheduled and unscheduled products distinguished AG 117
design, structure and architecture of measures, relevance SCM 604, 606, 607	tax exemption AG 117
international tax law principles and SCM 610	"export subsidy" (AG 1(3)/SCM 1.1 and 3.1) AG 16
nexus between income and activities in foreign State, need for SCM 611–12	export subsidy, definition (AG 1(e)), "contingent upon export performance" AG 16
export subsidy, definition (AG 1(e)), "contingent upon export performance" AG 16	interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose, SCM 1.1(a)(1) SCM 5
export subsidy, prohibited (SCM, Part II)	judicial economy, prior decision on another point rendering discussion otiose SCM 218
"contingent upon export performance" (SCM 3.1(a)) (general)	panel procedures (DSU 12 and Appendix 3 (WP)), submission, right of (DSU 12.6 and WP 4), order of submission (DSU 12.6 and WP 12), arbitration (DSU 21.5), applicability to DSU 699
"contingent" SCM 126	relationships within and between agreements AG 3.3/AG 10.1 AG 117
subsidy available to property produced either within or outside subsidizing State SCM 150–2	DSU 21/SCM 4.7 SCM 218
GATS Agreement, "affecting" (GATS I:1), GATT III:4 compared GATT 362	SCM 3.1/SCM 3.2 SCM 178
interpretation of covered agreements, rules relating to including VCLT provisions, international tax law principles SCM 610	review of implementation of DSB rulings (DSU 21.5)
national treatment, regulatory discrimination (GATT III:4)	third party rights (DSU 10)
"affecting" GATT 362	right to receive submissions to first meeting of the panel, limitation to (DSU 10.3) DSU 506
GATS 1:1 compared GATT 362	right to receive submissions to first meeting of the panel, limitation to (DSU 10.3) DSU 506
"less favourable treatment"	timing, parties' submissions, applicability of DSU 12.6 DSU 699
formal differentiation in treatment, relevance GATT 379	security and predictability of WTO obligations (DSU 3.2), interpretation contradictory to object and purpose of agreement and SCM 5
market effect as test GATT 379	subsidy, definition (SCM 1.1(a)(1)) (financial contribution), foregoing of revenues otherwise due (SCM 1.1(a)(1)(ii)) SCM 5
standard of proof GATS 131	
ordinary meaning of terms used in covered agreements "statement of available evidence" (SCM 4.2), "source" (SCM footnote 59) SCM 604	
preliminary rulings on, third party rights (DSU 10 and Appendix 3) DSU 506	
relationships within and between agreements DSU 6.2/DSU 21.5 DSU 354, 1151	
GATT I/GATT III:4 GATT 362	
GATT III:4/TRIPS 3.1 GATT 417, TRIPS 50	

(cont.)

US – FSC (Article 21.5 – EC II) (AB), WT/DS108/AB/RW2, DSR 2006:XI

- AB procedures (DSU 17.9 and ABWP), replacement of member (ABWP 13), for serious personal reasons (ABWP 12) DSU 1376
- due process (dispute settlement proceedings), prejudice to party, relevance DSU 220
- “measures at issue” (DSU 6.2), “measures taken to comply” (DSU 21.5) and DSU 1123–5
- relationships within and between agreements, DSU 6.2/DSU 21.5 DSU 355, 1123–5
- request for establishment of panel, requirements (DSU 6.2), Article 21.5 proceedings, applicability to DSU 355
- review of implementation of DSB rulings (DSU 21.5)
 - DSU 6.2 procedures, applicability DSU 354, 1151
 - “measures at issue” (DSU 6.2) DSU 1123–5

US – FSC (Article 21.5 – EC II) (Panel), WT/DS108/RW2

- DSB, collegiate/collective entity DSU 1148 n. 1802
- identification of specific measures (DSU 6.2), case-by-case approach DSU 220
- implementation of DSB recommendations and rulings, surveillance (DSU 21), “recommendations and rulings” DSU 1148
- implementation of panel or AB recommendations (DSU 19.1), subsequent proceedings/continuance of recommendations DSU 943, 1147
- legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), identification of specific measure distinguished DSU 220
- request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 220
- review of implementation of DSB rulings (DSU 21.5)
 - competence of DSU 21.5 (compliance) panel, new recommendation, exclusion DSU 1149
 - surveillance of implementation of DSB recommendations and rulings (DSU 21) as context DSU 1147
- terms of reference of panels (DSU 7), “matter referred to the DSB” (DSU 7.1) DSU 220

US – FSC (Article 22.6 – US), WT/DS180/ARB, DSR 2002:VI

- arbitration (DSU 22.6), scope of review/arbitrators’ mandate/task (DSU 22.7), determination of “appropriateness/appropriate” countermeasure (SCM 4.11) DSU 1293
- countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10)
 - “appropriate” SCM 228–30
 - proportionality (footnote 9) SCM 228–30, DSU 1290–1, 1698
- arbitration (DSU 22.6) and (SCM 4.11)
 - as special or additional rules and procedures DSU 23, 1242, 1280, 1283
 - task of arbitrator DSU 1293
- calculation of countermeasure, possible bases/relevant factors adverse trade effects SCM 233, 237–9
- amount of subsidy SCM 233
- suspension of concessions (DSU 22.4) distinguished SCM 233
- “countermeasure”
 - as retaliatory act SCM 222, DSU 1287
 - temporary nature DSU 1287
- countermeasures in case of failure to take measures to remove adverse effects of or withdraw subsidy (SCM 7.9), “countermeasures”, SCM 4.10 and 4.11 compared SCM 237, 251, 339, DSU 1283
- countermeasures (general principles), proportionality SCM 226, 228–30, 237, DSU 1290–1, 1698
- erga omnes* obligations DSU 1699–700
- international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), *erga omnes* obligations DSU 1699–700

interpretation of covered agreements, rules relating to including VCLT provisions

- dictionaries LIC 1289, SCM 222, 226, DSU 1287
 - different language in same agreement SCM 237, 339
 - SCM 4.10 and 4.11/SCM 7.9 SCM 251
 - effectiveness principle (*ut res magis valeat quam pereat/effet utile*), presumption of meaning SCM 237
 - footnotes to treaty SCM 228–30
 - footnotes to treaty as aid/integral part of treaty DSU 1290–1, 1698
 - same or closely related phrases in different agreements, DSU 22.4/SCM 4.10 and 4.11 SCM 233, DSU 1283
 - text/plain language (VCLT 31(2)) SCM 237
 - ordinary meaning of terms used in covered agreements
 - “appropriate” (SCM 4.10) SCM 226
 - “appropriate” (SCM 4.10) DSU 1289
 - “countermeasure” SCM 222, DSU 1287
 - “countermeasure” (SCM 4.10) SCM 222
 - proportionality
 - countermeasures SCM 226
 - suspension of concessions (DSU 22.4) and SCM 228–30, DSU 1290–1, 1698
 - relationships within and between agreements
 - DSU 22.4/SCM 4.10 SCM 233, 238, DSU 1283
 - DSU 22.6/SCM 4.10 and 4.11 DSU 23
 - DSU 22.6/SCM 4.11 SCM 247
 - SCM 4.11/SCM 7.9 SCM 251
 - SCM 4.9 and 10/SCM 7.9 and 10 SCM 237, 251
 - retaliatory measures, legality, WTO law DSU 1287
 - special or additional rules and procedures (DSU 1.2 and Appendix 2)
 - arrangements considered for classification as SCM 4.10 DSU 23
 - SCM 4.11 DSU 23, 1242, 1280, 1283
 - precedence SCM 247
 - “shall prevail” in case of a difference with DSU SCM 238, DSU 22
 - State responsibility as rule/general principle of international law (ILC Articles), countermeasures DSU 1674 n. 2618
 - suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)
 - agreement to DSU 1268
 - level equivalent to nullification or impairment (DSU 22.4)
 - “appropriate” (SCM 4.10) distinguished SCM 233, DSU 1242, 1283
 - “equivalent”, quantitative test DSU 1249
 - SCM 3 and 4 (prohibited subsidies) distinguished DSU 1242
- US – Fur Felt Hats (Working Party Report), GATT/CP/106,**
safeguard measures, conditions (SG 2), “sufficient to cause serious injury or threat” (SG 2.1), separate determinations of threat and injury, need for SG 83
- US – Gambling (AB), WT/DS285/AB/R, DSR 2005:XII, 5663 and Corr.1, DSR 2006:XII**
- burden of proof (general rules)
 - impossible burden SPS 71, DSU 565
 - prima facie* case requirement, failure to present sufficient evidence GATS 102, DSU 547
 - customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), Schedules of Specific Commitments (GATS XX) GATS 177
 - due process (dispute settlement proceedings), opportunity to respond to evidence/presentations of other parties DSU 122
 - GATS Agreement
 - object and purpose (preamble)
 - security and predictability GATS 2
 - transparency GATS 2
 - “supply of a service” (GATS XXVIII(b)) GATS 226

General Exceptions (GATS XIV) (general) arbitrary or unjustifiable discrimination, exclusion (GATS XIV chapeau) GATS 78 determination by reference to context GATS 80 GATT XX jurisprudence, relevance GATS 74 order of analysis/freedom to choose issues to address GATS 79 two-step analysis (justification under paras. (a)-(d)/compliance with chapeau) GATS 75	GATS XVI:2 GATS 115 Scheduling Guidelines as GATS 115, 121 Document W/120 GATS 185
General Exceptions (GATS XIV(a)), measures necessary to protect public morals or maintain public order “a genuine and sufficiently serious threat . . . to one of the fundamental interests of society” (GATS XIV footnote 5) GATS 82, 84–5 balance between restrictive effect on international trade and “necessity” GATS 88 Member’s right to determine level of desired protection GATS 84, 86–90 “necessary” GATS 81, 86–90 burden of proof GATS 91–2 public morals exception (GATT XX(a)) and GATS 74 good faith engagement in dispute settlement procedures (DSU 3.10), due process obligations and DSU 122 interpretation of covered agreements, rules relating to including VCLT provisions “any subsequent practice . . . which establishes the agreement of the parties regarding its interpretation” (VCLT 31(3)(b)) discernible pattern requirement GATS 182, DSU 1582 Scheduling Guidelines (1993) GATS 182 Scheduling Guidelines (2001) GATS 183 context (VCLT 31(2)) “any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)) GATS 181, 186–7, DSU 1556 Document W/120 GATS 186–7 Scheduling Guidelines (1993) GATS 181 Scheduling Guidelines (2001) GATS 184 dictionaries GATS 109 parties’ common intentions (VCLT 31(1)), party’s intention in respect of own schedule, government document as evidence of GATS 190 same or closely related phrases in different agreements GATS XIV/GATT XX(b) GATS 74 GATS XX/GATT II GATS 177 supplementary means (VCLT 32) “circumstances of its conclusion”, unilateral classification practice DSU 1649 n. 2574 “recourse may be had” DSU 1632	Schedules of Specific Commitments (GATS XX) allocation to specific sector/subsector (“sector” (GATS XXVIII (3))), allocation to specific sector/subsector GATS 191, 229 as integral part of GATS (GATS XX:3) GATS 177, 198 interpretation and clarification context (VCLT 31(2)), other Members’ schedules GATS 189 customary international law rules of interpretation [as codified in the VCLT] as applicable law GATS 177 parties’ common intentions (VCLT 31(1)) GATS 177 Scheduling Guidelines (1993) as “agreement made between all the parties in connection with the conclusion of the treaty” (VCLT 31(2)(a)) GATS 181 as subsequent practice establishing agreement of parties (VCLT 31(3)(b)) GATS 182 as supplementary means including preparatory work (VCLT 32) GATS 180 supplementary means of interpretation (VCLT 32) Document W/120 GATS 185 Scheduling Guidelines (1993) GATS 180–2 Scheduling Guidelines (2001) GATS 184 UN CPC GATS 188 security and predictability of WTO obligations (DSU 3.2), transparency and (GATS preamble) GATS 2 standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6) completion of the legal analysis in case of consideration of hypothetical case, exclusion GATS 123 panel’s analysis going beyond the strictly necessary and DSU 873 <i>obiter</i> findings of panel DSU 270 standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, <i>all</i> legal claims (DSU 3.2), “positive solution” requirement (DSU 3.7) and GATS 79 transparency (GATS preamble/III), as object and purpose GATS 2
market access (GATS XVI) excluded measures (GATS XVI:2) exhaustive nature of list GATS 97 limitations on the number of suppliers <i>in the form of</i> (GATS XVI:2(a)) GATS 108–16 preparatory work (Scheduling Guidelines) GATS 115, 121 quotas, exclusion (GATS XVI:2(a), (b) and (c)), zero quotas (GATS XVI:2(a)) GATS 109, 114–17 zero quotas (GATS XVI:2(c)) GATS 120–3 “measure” (GATS XXVIII(a)) GATS 223 “measures at issue” (DSU 6.2) any act or omission attributable to a Member DSU 253 measure as source of impairment DSU 253–4 “practice” as DSU 270 total prohibition as DSU 254 “effects” of measure and measure distinguished DSU 254 “measures by Members” (GATS I:3), “services” (GATS I:3(b)), allocation to specific sector/subsector GATS 23 preparatory work (VCLT 32)	US – Gambling (Panel), WT/DS285/R DSB, statements by Members at DSB meetings, legal effect, authorized statements for the record DSU 26 GATS Agreement object and purpose (preamble) security and predictability GATS 1 transparency GATS 1 “sector” (GATS XXVIII(e)) GATS 228 “supply of a service” (GATS XXVIII(b)) GATS 225 General Exceptions (GATS XIV(a)), measures necessary to protect public morals or maintain public order either/or nature of requirement GATS 81 Member’s right to determine level of desired protection GATS 83 public morals exception (GATT XX(a)) and GATS 83 General Exceptions (GATT XX(a)), measures necessary to protect public morals “necessary”, burden of proof GATT 881 “public morals” GATT 879 General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health, “reasonably available” alternative WTO-consistent measure GATT 907–8 international law / “relevant rules of international law . . .” (VCLT 31(3)(c)) DSU 1592 international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of

<i>(cont.)</i>	
covered agreements (DSU 3(2), terms in Schedules as DSU 1592	AB procedures (DSU 17.9 and ABWP)
interpretation of covered agreements, rules relating to including VCLT provisions, context (VCLT 31(2)), Scheduling Guidelines (2001) GATS 184	compliance obligation DSU 1365
judicial economy, prior decision on another point rendering discussion otiose GATS 70	written responses (ABWP 28) DSU 1457
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), clarification of claim during proceedings DSU 270	arbitrary or unjustifiable discrimination, GATT XX measure as (GATT XX chapeau)
market access (GATS XVI)	ambiguity GATT 862
excluded measures (GATS XVI:2)	between importing and exporting countries GATT 860
applicability of mode 1 restriction to all mode 1 means of delivery GATS 101	constituent elements GATT 862
applicability to sector as a whole including subsectors (“sector” (GATS XXVIII(e))) GATS 100, 228	“disguised restriction on international trade” GATT 862–3
“measures at issue” (DSU 6.2), “practice” as DSU 270	failure to consider costs as GATT 863
non-violation claims (GATT XXIII:1(b)) (DSU 26.1), remedies (DSU 26.1(b)) DSU 1354	measures amounting to arbitrary or unjustifiable discrimination as GATT 862–3
non-violation claims (GATT XXIII:1(c)) (DSU 26.2), GATT practice distinguished DSU 1355	“disguised restriction on international trade”, interrelationship GATT 874
payments and transfers (GATS XI)	burden of proof (general rules), defences and exceptions, GATT XX GATT 852
absence of jurisprudence GATS 70	customary international law rules of interpretation [as codified in the VCLT] as applicable law, “general rule of interpretation” (VCLT 31) as DSU 54, 1499, 1535
importance of provision GATS 70	environment
Schedules of Specific Commitments (GATS XX)	WTO Agreement
as integral part of GATS (GATS XX:3) GATS 197	preamble
interpretation and clarification, context (VCLT 31(2)), other Members’ schedules GATS 189	Members’ right to determine own policies WTO 1
security and predictability of WTO obligations (DSU 3.2), transparency and (GATS preamble) GATS 1	trade policies and, obligation to coordinate WTO 1, GATT 847
standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, in absence of relevant jurisprudence (GATS XI) GATS 70	General Exceptions (GATT XX) (general)
State responsibility as rule/general principle of international law (ILC Articles), responsibility for act or omission of, agency with specific official responsibilities and powers/public body DSU 1682	applicability to GATT as a whole (chapeau) GATT 844, 860
“trade in services” (GATS I:2), cross-border trade (GATS I:2(a)), relevant factors, means of delivery GATS 14–15	burden of proof, chapeau and paras. a–j distinguished GATT 852
transparency (GATS preamble/III), as object and purpose GATS 1	obligation to comply with domestic legislation, relevance GATT 847
unilateral statements, legal effect DSU 1688	two-step analysis (justification under paras. (a)–(j)/compliance with chapeau) GATT 848–50
US – Gambling (Article 21.3(c)), WT/DS285/13, DSR 2005:XXIII	General Exceptions (GATT XX), preamble/chapeau, prevention of abuses of exceptions as objective GATT 855
developing countries (DSU 21.2) (implementation of DSB recommendations and rulings) DSU 1012	General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health, “necessary”, necessity of policy goal vs necessity of measure to achieve it GATT 894
“reasonable period” (DSU 21.3(c)) DSU 1068	General Exceptions (GATT XX(g)), measures relating to the conservation of exhaustible natural resources
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)	GATT III:4 (regulatory discrimination) and GATT 384, 862–3
administrative measures as means of implementation, relevance DSU 1049	“made effective in conjunction with”, as balance between conservation and domestic production/consumption GATT 944–7
arbitrator’s limited mandate, determination of reasonable period DSU 1024	“relating to” GATT 851, 894, 914 n. 1286, 921, 937–43, 939
complexity of implementation process DSU 1053	“necessary” (GATT XX(d)) distinguished GATT 914 n. 1286
developing countries and (DSU 21.2) DSU 1012, 1068	“primarily aimed at” distinguished GATT 894, 921, 938, 940–1
multiple possibilities DSU 1093	interpretation of covered agreements, rules relating to including VCLT provisions
shortest period possible within Member’s normal legislative process DSU 1032	effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to every word and phrase WTO 19, GATT 862, DSU 1611
US – Gambling (Article 22.6 - US), WT/DS285/ARB, DSR 2007:X	object and purpose, GATT XX(g) GATT 940
arbitration (DSU 22.6), third party rights DSU 510	“ordinary meaning . . . in their context . . . in light of object and purpose” (VCLT 31(1)) GATT 851, 894, 921
margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3), unregulated situations and DSU 510	multiple appeals, consolidation (ABWP 23) DSU 1365
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations), legislative schedule and DSU 1073	national treatment, regulatory discrimination (GATT III:4), General Exceptions (GATT XX) and GATT 384, 862–4
third party rights (Article 22.6 arbitrations) DSU 510	relationships within and between agreements
US – Gasoline (AB), WT/DS2/AB/R, DSR 1996:I	GATT III:4/GATT XX GATT 384
	GATT XX/GATT as a whole GATT 384
	standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis DSU 858
	WTO Agreement, objectives, “to protect and preserve the environment” WTO 1

<p>US – Gasoline (Panel), WT/DS2/R, DSR 1996:I</p> <p>burden of proof (general rules), defences and exceptions, GATT XX GATT 888</p> <p>General Exceptions (GATT XX(b)), measures necessary to protect human, animal or plant life or health</p> <p>burden of proof GATT 888</p> <p>“necessary” GATT 921</p> <p>necessity of policy goal vs necessity of measure to achieve it GATT 894</p> <p>three-tier test GATT 888</p> <p>constituent elements GATT 888</p> <p>General Exceptions (GATT XX(g)), measures relating to the conservation of exhaustible natural resources</p> <p>“relating to” GATT 939</p> <p>“primarily aimed at” distinguished GATT 939</p> <p>judicial economy, prior decision on another point rendering discussion otiose DSU 385</p> <p>“like product” (GATT III:2 and III:4)</p> <p>relevant factors</p> <p>end-uses GATT 337</p> <p>physical properties GATT 337</p> <p>situation of parties dealing in [subject products] GATT 337</p> <p>tariff classification GATT 337</p> <p>“measures at issue” (DSU 6.2), terminated measures, termination before agreement on terms of reference DSU 385</p> <p>national treatment, regulatory discrimination (GATT III:4)</p> <p>general principle (GATT III:1) and GATT 225</p> <p>“less favourable treatment”</p> <p>equality of competitive conditions as test GATT 369</p> <p>“equally overall” argument GATT 381</p> <p>formal differences in treatment, relevance GATT 377</p> <p>“overall equality” GATT 382</p> <p>“treatment accorded to similarly situated domestic parties”, relevance GATT 380</p> <p>relationships within and between agreements</p> <p>GATT I/GATT III GATT 108</p> <p>GATT I/GATT III:4 GATT 395</p> <p>US – Hot-Rolled Steel dispute, consultations (DSU 21.5), ad hoc procedural agreement DSU 1169</p> <p>US – Hot-Rolled Steel (AB), WT/DS184/AB/R, DSR 2001:X DSU 1538</p> <p>anti-dumping duties, imposition and collection (AD 9)</p> <p>calculation of “all other” anti-dumping duty rate (AD 9.4)</p> <p>avoidance of prejudice to non-investigated exporters AD 698, 708</p> <p>comparison of all comparable transactions (AD 2.4), need for AD 700</p> <p>“margins” AD 701</p> <p>margins established under circumstances referred to in AD 6.8, exclusion AD 701, 706–7</p> <p>“established” AD 708</p> <p>lacuna situation AD 708–9</p> <p>“legislation as such” and WTO 291, AD 877</p> <p>method, absence of provision AD 471</p> <p>zero/<i>de minimis</i> margins, exclusion AD 701</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17)s, competence of panel and AB distinguished AD 925</p> <p>conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4)</p> <p>finding of non-conformity under any AD provision WTO 291</p> <p>maintenance of inconsistent legislation AD 968</p> <p>customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), AD 17.6(ii) AD 927, 928</p> <p>determination of dumping (AD 2)</p> <p>calculation of dumping margins (AD 2.4)</p>	<p>affiliated party transactions AD 25</p> <p>calculation of “all other” anti-dumping duty rate (AD 9.4), applicability to AD 701</p> <p>comparison of weighted average normal value with weighted average of <i>all</i> comparable export transactions AD 701</p> <p>downstream sales AD 26</p> <p>“like product” AD 24</p> <p>sale “destined for consumption in exporting country” AD 24</p> <p>sales “in ordinary course of trade” AD 24, 27–9</p> <p>calculation of normal value, eligible transactions, requirements (AD 2.1), comparability of price AD 24</p> <p>fair comparison (AD 2.4), affiliated party transactions AD 25</p> <p>fair comparison of export price and normal value (AD 2.4)</p> <p>“due allowance”, “differences which affect price comparability” AD 91</p> <p>“fair comparison”, responsibility for AD 103</p> <p>“normal value . . . in the ordinary course of trade” (AD 2.1)</p> <p>affiliated party transactions AD 35, 42</p> <p>fair exercise of discretion AD 29</p> <p>prices above or below ordinary course of trade price AD 31–3</p> <p>sales <i>not</i> in normal course of trade, exclusion AD 30</p> <p>scrutiny rules AD 34</p> <p>sales not “in the ordinary course of trade” (AD 2.2), sales below cost, method for determining whether (AD 2.2.1), alternative methods, possibility of AD 28, 42</p> <p>determination of injury (AD 3)</p> <p>causal relationship, manner of evaluating (AD 3.5)</p> <p>non-attribution to dumped imports of injury caused by other factors (AD 3.5) AD 275, 276, 283–5</p> <p>SG 4.2(b) compared AD 285, 323, 1010</p> <p>domestic production of like product, assessment of effect on (AD 3.6), sectoral analysis, right to AD 290</p> <p>evaluation of injury factors (AD 3.4)</p> <p><i>all</i> relevant economic factors and indices having a bearing on AD 243</p> <p>factors not listed in AD 3.4, right/obligation to consider AD 254</p> <p>“objective examination” requirement (AD 3.1) and AD 194–5, 208</p> <p>sectoral analysis, right to AD 194–5, 243</p> <p>“positive evidence” / “objective examination” requirement (AD 3.1)</p> <p>“objective examination” AD 193, SCM 421</p> <p>evaluation of injury factors (AD 3.4) AD 194, 208, 243</p> <p>“positive” AD 182</p> <p>as underlying principle AD 181, SCM 421</p> <p>underlying principles (AD 3.1) and AD 181, SCM 421</p> <p>evidence (dumping investigation) (AD 6)</p> <p>difficulties in supplying information, due account/assistance in case of (AD 6.13) AD 583, 604</p> <p>balance of interests of investigating authorities and exporters and AD 639</p> <p>“facts available”, right of resort to (AD 6.8/Annex II) AD 535</p> <p>adverse facts AD 591</p> <p>Annex II, mandatory nature AD 537 n. 734</p> <p>conditions for (Annex II) AD 549, 550 n. 750</p> <p>failure to submit necessary information “in timely fashion” (Annex II para. 3) and AD 563</p> <p>interpretation in light of AD 6.1.1, 6.8/Annex II para. 1 AD 563, 567</p> <p>as “reasonable period” / “reasonable time” AD 563, 568–70</p> <p>information provided within reasonable period, investigating authorities’ obligation to use AD 549, 550 n. 750, 550 n. 751</p> <p>“notice of the information . . .” (AD 6.1), extension “upon cause shown . . . whenever practicable” AD 442</p> <p>questionnaires (AD 6.1.1), time-limits for reply AD 422</p>
---	---

- (cont.)
- resort to “facts available” (AD 6.8/Annex II)
 - balance between rights of investigating authorities and legitimate interests of parties, obligation to cooperate (Annex II para. 7) AD 583, 604, 639
 - failure to cooperate (AD Annex VII para. 7)
 - cooperation “to the best of its ability” AD 574
 - “less favourable result” as possible consequence AD 573, 708
 - time-limits, right to set (AD 6.1.1) AD 442, 567
 - reply to questionnaires AD 442
 - good faith (including *pacta sunt servanda* principle (VCLT 26))
 - “facts available”, right of resort to (AD 6.8/Annex II) and AD 574
 - as fundamental rule of treaty interpretation/performance DSU 1503, 1507
 - as general principle of international law AD 575
 - as general principle of law AD 575
 - international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), good faith as AD 575
 - interpretation of covered agreements, applicable law, customary rules of interpretation of public international law [as codified in VCLT], DSU 3.2 AD 927
 - interpretation of covered agreements, rules relating to including VCLT provisions
 - dictionaries AD 573
 - multiple permissible interpretations AD 928, 935
 - compliance with one permissible interpretation, sufficiency AD 928
 - text/plain language (VCLT 31(2)) AD 708
 - publication and administration of trade regulations (GATT X), “laws, regulations, judicial decisions and administrative rulings” (GATT X:1), “of general application” GATT 556
 - relationships within and between agreements
 - AD 6.1.1/AD 6.8 AD 458
 - AD 6.8/AD 9.3 AD 720
 - AD 6.8/AD 9.4 AD 701, 706–7, 708, 720
 - AD 6.8/AD Annex II AD 534
 - AD 17.6/DSU 11 AD 911, 925, 936
 - AD 17.6(i)/DSU 11 AD 925, 926
 - AD 17.6(ii)/DSU 11 AD 911, 927–34
 - AD 18.4/SCM 32.5/WTO XVI:4 WTO 291
 - special or additional rules and procedures (DSU 1.2 and Appendix 2)
 - arrangements considered for classification as, AD 17 AD 888, 954, DSU 15
 - conflict with DSU provisions, precedence in case of (WTO Annex 1A) DSU 15
 - standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 868
 - standard/powers of review (panel) (AD 17.6)
 - assessment of the facts (AD 17.6(i))
 - applicability to investigating authority AD 921
 - DSU 11 compared AD 925
 - interpretation of relevant provisions of AD (AD 17.6(ii))
 - in accordance with customary rules of interpretation of public international law AD 927
 - “admits of more than one permissible interpretation” AD 928
 - DSU 11 compared AD 935
 - standard/powers of review (panel) (DSU 11)
 - “objective assessment of matter before it”
 - AD 17.6(i) compared AD 911, 925, 926
 - AD 17.6(ii) compared AD 935
 - good faith obligation SCM 421
 - subsidy, definition (SCM 1.1(b)) (conferral of benefit), subsidy programmes as such, right to challenge (mandatory/discretionary distinction) SCM 71 n. 135
 - US – Hot-Rolled Steel (Panel), WT/DS184/R, DSR 2001:X**
 - anti-dumping duties, imposition and collection (AD 9), calculation of “all other” anti-dumping duty rate (AD 9.4), margins established under circumstances referred to in AD 6.8, exclusion, “legislation as such” and AD 877
 - conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4), maintenance of inconsistent legislation AD 968
 - conformity of laws, regulations and administrative procedures, obligation to ensure (AD 18.4), finding of non-conformity under any AD provision WTO 291
 - data collection period (AD 10.6) AD 733
 - determination of injury (AD 3)
 - evaluation of injury factors (AD 3.4)
 - all relevant economic factors and indices having a bearing on AD 266
 - checklist approach AD 266
 - consideration of each factor, need to be “apparent” in final determination AD 266
 - evidence (dumping investigation) (AD 6), resort to “facts available” (AD 6.8/Annex II), objective decision-making based on facts and AD 532
 - implementation of DSB recommendations and rulings (DSU 21), choice of means at authorities’ discretion (DSU 21.3) DSU 972
 - implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 972
 - judicial economy, limitation of consideration to claims essential to resolution of dispute (DSU 3.2) DSU 386
 - legislation as such, right to challenge (WTO XVI:4), “practice” AD 884
 - “measures at issue” (DSU 6.2), “practice” as, “general” practice AD 884, DSU 268 n. 407, 409 n. 680
 - provisional measures (AD 7), preliminary affirmative determination (AD 7.1(ii)), retroactive measures (AD 10.7) and AD 729
 - publication and administration of trade regulations (GATT X)
 - measures of general application (GATT X:1) GATT 521
 - uniform, impartial and reasonable administration (GATT X:3(a))
 - general impact on overall administration, need for GATT 521
 - significant impact on overall administration of law requirement for violation GATT 564
 - relationships within and between agreements AD 905 n. 1233
 - AD 5.3/AD 10.6 AD 730
 - AD 5.3/AD 10.7 AD 419, 728
 - AD 6.8/AD 9.3 AD 720
 - AD 6.8/AD 9.4 AD 706
 - AD 7/AD 10.7 AD 729
 - AD 9.4/AD 18.4 AD 877
 - AD 18.4/SCM 32.5/WTO XVI:4 WTO 291
 - retroactivity (provisional measures and anti-dumping duties) (AD 10) AD 725
 - “after initiating an investigation” (AD 10.7) AD 727
 - conditions (AD 10.6)
 - AD 10.7 and AD 726
 - “sufficiency of evidence” (AD 5.3) and AD 730
 - preliminary affirmative determination (AD 7.1(ii)), relevance AD 729
 - “such measures” (AD 10.7), provisional measures distinguished AD 727
 - “sufficient evidence” (AD 10.7)
 - AD 5.3 and AD 419, 728
 - exporters’ knowledge of dumping (AD 10.6), relevance AD 731

<p>“massive imports in a relatively short period of time” (AD 10.6), data collection period AD 733</p> <p>standard/powers of review (panel) (AD 17.6), “facts made available” (AD 17.5(ii)) AD 905</p> <p>standard/powers of review (panel) (DSU 11), “objective assessment of the facts”, <i>de novo</i> review, exclusion AD 302 n. 430, 905</p> <p>“sufficient evidence” (AD 10.7), “injury caused” (AD 10.6) and, retroactivity (provisional measures and anti-dumping duties) (AD 10) AD 732</p> <p>terms of reference of panels (DSU 7)</p> <p>consideration of issues outside terms of reference, exclusion DSU 409 n. 680</p> <p>request for establishment of panel as basis AD 900</p> <p>US – Hot-Rolled Steel (Article 21.3(c)), WT/DS184/12, DSR 2002: IV</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, AD 6.8/DSU 21.3(c) DSU 1035</p> <p>“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)</p> <p>arbitrator’s limited mandate, determination of reasonable period DSU 1021</p> <p>Article 21.3(b) agreements as precedent DSU 1016</p> <p>complexity of implementing process DSU 1021</p> <p>“reasonable” DSU 1035</p> <p>“time . . . shorter or longer, depending on the particular circumstances” (DSU 21.3(c)) DSU 1035</p> <p>US – Lamb (AB), WT/DS177/AB/R, WT/DS178/AB/R, DSR 2001:IX</p> <p>causation analysis (SG 4.2(b)) (determination of serious injury or threat of)</p> <p>“demonstrates” SG 179</p> <p>“on the basis of objective data” SG 179, 181</p> <p>“factors other than increased imports” (SG 4.2(b)) SG 74 n. 128</p> <p>order of analysis SG 203–4</p> <p>reasoned and adequate explanation (SG 4.2(a)) GATT 801, SG 181</p> <p>relevance in absence of serious injury SG 74 n. 128</p> <p>determination of injury (AD 3), causal relationship, manner of evaluating (AD 3.5), non-attribution to dumped imports of injury caused by other factors (AD 3.5), SG 4.2(b) compared AD 251, 285, 323</p> <p>determination of serious injury or threat of, definitions (SG 4.1)</p> <p>“serious injury” (SG 4.1(a)), “material injury” (AD 3, SCM 15.7 and GATT VI) distinguished SG 3, 117, 320</p> <p>“serious injury” (SG 4.1(a))/ “threat of serious injury” (SG 4.1(b))</p> <p>“clearly imminent” SG 156</p> <p>as “significant overall impairment” / “very high standard of injury” (SG 4.1(a)) SG 116–17</p> <p>“threat of serious injury” (SG 4.1(b)), data from recent past/ throughout investigation period, relative importance SG 157–8</p> <p>determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a))</p> <p>“factors other than increased imports” (SG 4.2(b)), non-attribution requirement SG 203–6</p> <p>emergency action (GATT XIX)</p> <p>“as a result of unforeseen developments” (GATT XIX:1(a))</p> <p>“demonstration”, need for GATT 810</p> <p>“as a pertinent issue of fact and law” /finding (SG 3.1) GATT 806,</p> <p>SG 103</p> <p>omission from SG 2.1, relevance GATT 841</p> <p>investigation of conditions for safeguard measures, requirements (SG 3.1/SG 4.2(c))</p> <p>data of an objective and quantifiable nature</p> <p>methodology, absence of provision SG 154, 157</p> <p>representativeness SG 154–5</p>	<p>judicial economy, prior decision on another point rendering discussion otiose SG 233</p> <p>“like or directly competitive product” (SG 2.1/SG 4.1(c))</p> <p>“domestic industry” (SG 4.1(c)) and SG 2, 130–4</p> <p>“domestic industry” (SCM 16) distinguished SCM 453</p> <p>integration of production processes, relevance SG 134</p> <p>object and purpose (preamble) as aid to definition SG 2</p> <p>“producers as a whole” SG 132–3</p> <p>as sole determinant ATC 40 n. 50, SG 131</p> <p>SCM 16 distinguished SCM 453</p> <p>specific product, need for SG 132</p> <p>ordinary meaning of terms used in covered agreements, “serious injury” (SG 4.1(a)) SG 116</p> <p>publication of findings and reasoned conclusions (SG 3.1) GATT 806</p> <p>“pertinent issues”, unforeseen developments as SG 103</p> <p>reasoned and adequate explanation requirement (SG 3.1), causation (SG 4.2(b)) GATT 801, SG 181</p> <p>relationships within and between agreements</p> <p>GATT XIX:1/SG 11.1 SG 8</p> <p>GATT XIX/SG 1 SG 8</p> <p>SG 2/SG 4 SG 22–3</p> <p>SG 2.1/SG 4.1(c) SG 22</p> <p>SG 2.1/SG 4.2(b) SG 22, 23</p> <p>safeguard measures, conditions (SG 2), determination of serious injury or threat (SG 4), violation as violation of SG 2 SG 22, 23</p> <p>safeguard measures (SG/GATT XIX)</p> <p>relationship between Safeguards Agreement and GATT XIX SG 2</p> <p>continuing applicability of GATT XIX GATT 842</p> <p>rules for application of GATT XIX (SG 1 and 11.1(a)) SG 8</p> <p>safeguard measures (SG/GATT XIX), characteristics, exceptional nature of remedy.14.2</p> <p>standard/powers of review (panel) (DSU 11)</p> <p>DSU 11, applicability GATT 801</p> <p>“objective assessment of the facts”, <i>de novo</i> review, exclusion SG 308</p> <p>“objective assessment of matter before it”, reasoned and adequate explanation (SG 4.2(a)) and GATT 801, SG 148–51, 307–8</p> <p>US – Lamb (Panel), WT/DS177/R, WT/DS178/R, DSR 2001:IX</p> <p>consultations (DSU 4), confidentiality (DSU 4.6), disclosure of information obtained in different proceedings DSU 166</p> <p>determination of serious injury or threat of, definitions (SG 4.1)</p> <p>“serious injury” (SG 4.1(a))/ “threat of serious injury” (SG 4.1(b))</p> <p>“clearly imminent” SG 123, 125</p> <p>“serious injury” SG 124</p> <p>“threat of serious injury” (SG 4.1(b))</p> <p>actual increase in imports, need for SG 127</p> <p>data from recent past/throughout investigation period, relative importance SG 125</p> <p>determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a))</p> <p>“as a whole” SG 121</p> <p>segmented domestic industry and SG 168–9</p> <p>reasoned and adequate explanation requirement and SG 168–9</p> <p>emergency action (GATT XIX), “as a result of unforeseen developments” (GATT XIX:1(a)), omission from SG 2.1, relevance GATT 841, SG 7</p> <p>identification of specific measures (DSU 6.2), “specific”, “attendant circumstances”, relevance DSU 240 n. 349</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to every word and phrase SG 7</p>
---	---

<i>(cont.)</i>	changes to report in absence of request DSU 804
investigation of conditions for safeguard measures, requirements (SG 3.1/SG 4.2(c))	translation issues DSU 818–19
data of an objective and quantifiable nature	interpretation of covered agreements, rules relating to including VCLT provisions
methodology, absence of provision SG 138	effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>), meaning to be attributed to omissions DSU 1616
representativeness SG 136–8	same or closely related phrases in different agreements
judicial economy	caution in use of SCM 48
discretionary nature, reasons for not exercising SG 129	SCM 1/GATS XIII:2 and XV SCM 27, 48, GATS 72
prior decision on another point rendering discussion otiose SG 84, 89, 216, 231, 233, 242, 243, 245, 252	loan guarantees, as direct transfer of funds (SCM 1.1(a)(1)) SCM 31
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1)	non-actionable subsidies (SCM 8), assistance for research activities (SCM 8.2(a)), government purchases of R&D services and SCM 343
identification of treaty provisions DSU 312	ordinary meaning of terms used in covered agreements
listing of articles without explanation, sufficiency DSU 312	domestic law concepts, relevance DSU 1628
“like or directly competitive product” (SG 2.1/SG 4.1(c))	“explicit” (SCM 2.1(a)) SCM 107–8
“domestic industry” (SG 4.1(c)) and SG 2	“government practices” (SCM 1.1(a)(1)(i)) SCM 27
“domestic industry” (SCM 16) distinguished SCM 453	“initiate” (SCM Annex V) SCM 675
“collective output . . . constitutes a major proportion”, representative data and SG 136–8	“service” (GPA 1) GPA 4
finding of inconsistency with, effect SG 129	preparatory work (VCLT 32)
reasoned and adequate explanation requirement (SG 3.1), segmented domestic industry and (SG 4.2(a)) SG 168–9	SCM 1.1(a)(1) SCM 48
relationships within and between agreements	SCM 1.1(a)(1)(iii)/SCM 14(d) DSU 1643
GATT XIX:1/SG 2 and 4 SG 84, 89, 90	provision of goods or services (SCM 1.1(a)(1)(iii)), “general infrastructure”, limitations on access or use, relevance SCM 47
GATT XIX:1(a)/SG 8 SG 243	relationships within and between agreements
GATT XIX/SG 1 SG 7	AIR 6/SCM AIR 24
SG 2/SG 4 SG 21	GPA preamble/SCM 1 (“purchases of services”) GPA 2
SG 2.1, 4.1(c) and 4.2(b)/SG 2.2, 3.1, 5.1, 8, 11 and 12 SG 84, 89, 216, 231, 242, 243	SCM 2.3/SCM 3 SCM 123
SG 4.1(b)/SG 4.1(c) SG 129	request for establishment of panel, requirements (SCM 4.4)
safeguard measures, conditions (SG 2), determination of serious injury or threat (SG 4), violation as violation of SG 2 SG 21	initiation of Annex V procedure (SCM 7.4)
safeguard measures, object and purpose (preamble), balance between effective temporary protection and structural adjustment SG 2	“decision” (DSU 2.4), whether DSU 33
safeguard measures (SG/GATT XIX)	“taking note” of statements at DSB meeting, whether DSU 31
relationship between Safeguards Agreement and GATT XIX SG 2	SCM and AIR 24
continuing applicability of GATT XIX GATT 841	“serious prejudice”, procedures for developing information concerning (SCM Annex 5), initiation, requirements SCM 675
safeguard measures (SG/GATT XIX), characteristics, exceptional nature of remedy SG 2	subsidy, definition (SCM 1), “purchases of services” (GPA preamble), exclusion GPA 2
US – Large Civil Aircraft (2nd Complaint) (Panel), WT/DS353/R	subsidy, definition (SCM 1.1(a)(1)) (financial contribution)
adverse inferences from party’s refusal to provide information, panel’s right to draw (DSU 13)	foregoing of revenues otherwise due (SCM 1.1(a)(1)(ii)), “otherwise due” /basis of comparison (“but for” test) SCM 37–8
burden of proof and DSU 561	“government practice” (SCM 1.1(a)(1)(i)), ordinary meaning SCM 27
sufficiency of burden of proof rules DSU 563	potential direct transfer of funds (SCM 1.1(a)(1))
<i>arguendo</i> assumptions	loan guarantees as SCM 31
guidelines on the use of DSU 664	<i>may</i> transfer funds, sufficiency SCM 31
“to enhance simplicity” DSU 664	“purchases of services” (GATS XIII), exclusion SCM 27, 48, GATS 72, 94
burden of proof (general rules)	transactions qualifying as, exhaustive nature of SCM 1.1(a)(1) SCM 15
adverse inferences (DSU 13) and, sufficiency of burden of proof rules DSU 563	subsidy, definition (SCM 1.1(b)) (conferral of benefit), “benefit”, market test SCM 62
<i>onus probandi actori incumbit</i> DSU 543, 1691	subsidy, specificity (SCM 2)
composition of panel (DSU 8), determination by Director-General (DSU 8.7), Deputy Director-General in place of DSU 441	<i>de facto</i> specificity (SCM 2.1(c)), <i>de facto/de jure</i> distinction, relevance SCM 108
domestic law, interpretation of covered agreements, relevance to DSU 1628	“explicitly limits” (SCM 2.1(a)) SCM 108
DSB, statements by Members at DSB meetings, legal effect, “taking note” of, legal effect DSU 31	third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6 DSU 485
Government Procurement Agreement (GPA)	translation
definitions	implementation of panel or AB recommendations (DSU 19.1), subsequent proceedings/continuance of recommendations DSU 947
“government procurement” (GPA I:1) GPA 5	interim review reports (DSU 15) DSU 818–19
“purchases of services” (GPA I:1) GPA 4	US – Lead and Bismuth II (AB), WT/DS138/AB/R, DSR 2001:V and DSR 2001:VI
service contracts, expansion to cover (preamble) GPA 2	
government procurement (GATS XIII), “subsidy” (SCM 1)	
distinguished SCM 27, 48, GATS 72	
information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), discretion not to seek DSU 760	
interim review (DSU 15)	

AB procedures (DSU 17.9 and ABWP) adoption, AB authority DSU 885 replacement of member (ABWP 13), in case of death DSU 1373 <i>amicus curiae</i> briefs AB and, right to accept (DSU 17.9) DSU 697, 740–2 private individuals’ right to submit DSU 741–2 countervailing duties (SCM Part V), review of need for continued imposition (SCM 21.2), burden/standard of proof SCM 484–5 dispute settlement (SCM 30) special or additional rules or procedures, whether SCM 578 standard/powers of review (panel) (AD 17.6), applicability SCM 578 judicial economy, discretionary nature DSU 644 prompt and satisfactory settlement (DSU 3.3), change of AB composition and DSU 1385 public observation of oral hearing / “passive participation” (ABWP 27(3)) DSU 743 relationships within and between agreements, AD 17.6/SCM 30 SCM 578, 703 special or additional rules and procedures (DSU 1.2 and Appendix 2), SCM 30 as SCM 578 standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6) applicability to covered agreements other than AD Agreement AD 1013, 1016 non-applicability to covered agreements other than AD Agreement including the SCM and SPS Agreements SCM 703 subsidy, definition (SCM 1.1(b)) (conferral of benefit), “is conferred” SCM 70	reasoned and adequate explanation GATT 801, SG 70–2, 181, 209–10 “serious injury” (SG 5.1) distinguished SG 226 customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), SG 5.1 SG 227 determination of serious injury or threat of, definitions (SG 4.1), “serious injury” (SG 4.1(a)) / “threat of serious injury” (SG 4.1(b)) SG 234 determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a)) “factors other than increased imports” (SG 4.2(b)) SG 209 non-attribution requirement SG 210 determination of serious injury or threat of (SG 4), requirements, customs unions and free trade areas (GATT XXIV) exception and GATT 1057 developing countries (SG 9) exclusion of developing country exporting less than <i>de minimis</i> levels (SG 9.1) SG 246–7 expected effect of measure, relevance SG 247 list of excluded countries, need for SG 246 interpretation of covered agreements, rules relating to including VCLT provisions object and purpose, SG/GATT XIX GATT 799, SG 227 same or closely related phrases in different agreements, AD 3.5/ SG 4.2(b) SG 210, 219 same or closely related phrases in same agreement, SG 4.2/SG 5.1 SG 226 notification and consultation (SG 12) “adequate opportunity for prior consultations” (SG 12.3) SG 288 level of concessions (SG 8.1) and SG 240 as “sufficient time for meaningful exchange” SG 240 preparatory work (VCLT 32) GATT XIX/SPS DSU 1641 SG SG 83 proportionality countermeasures DSU 1697 safeguard measures (SG 5.1) (“to the extent necessary”) and SG 13–14, 224–7 publication of findings and reasoned conclusions (SG 3.1), application of safeguard measures (SG 5.1), Members’ right to choose method and SG 97 quota modulation (SG 5.2(b)) SG 82, 234 reasoned and adequate explanation requirement (SG 3.1), causation (SG 2.1/SG 4.2(b)) GATT 801, SG 209–10 relationships within and between agreements, AD 3.5/SG 4.2(b) SG 210 RTAs (GATT XXIV:5), as affirmative defence to violation of GATT provisions including non-discrimination requirement SG 65, 73 n. 122 safeguard measures, application (SG 5) “demonstration” of compliance (SG 3.1), relevance SG 97 imports, limitation to SG 227 quota modulation (SG 5.2(b)) determination of injury or threat of (SG 2.1), relevance to SG 82, 234 as exception to general rule SG 82, 234 “to the extent necessary” (proportionality) (SG 5.1) SG 13–14, 224–7 “clear justification” /requirement to explain SG 225 tariff measures and SG 225 n. 375, 232 n. 289 serious injury to increased imports, limitation to SG 226–7 “serious injury” (SG 4.2(b)) distinguished SG 226 safeguard measures, conditions (SG 2) as extraordinary/emergency remedy GATT 799 parallelism between investigation (SG 2.1/SG 4.1(c)) and application of measure (SG 2.2) GATT 1057, SG 70–3
--	---

(cont.)

burden of proof SG 71
“irrespective of source”, applicability to RTAs SG 70–3
reasoned and adequate explanation requirement SG 70–2
right to apply measure and exercise of right distinguished SG 13–14
“sufficient to cause serious injury or threat” (SG 2.1)
quota modulation and (SG 5.2(b)) and SG 82, 234
separate determinations of threat and injury, need for SG 80–3
“serious injury” and “threat” as alternatives SG 80
“threat” and “injury” as continuum SG 81
threshold for threat and injury distinguished SG 81
safeguard measures, maintenance of substantially equivalent level of
concessions (SG 8), “equivalent”, “adequate opportunity
for prior consultations” (SG 12.3) and SG 240
sovereignty, over non-WTO regulated matters DSU 1738
standard/powers of review (panel) (DSU 11), DSU 11, applicability
GATT 801
State responsibility as rule/general principle of international law
(ILC Articles)
countermeasures SG 227, DSU 1674 n. 2617
proportionality SG 227, DSU 1674 n. 2617, 1697
withdrawal of appeal (ABWP 30), withdrawal and re-filing of
appeal, for scheduling reasons DSU 1471
US – Line Pipe (Panel), WT/DS202/R, DSR 2002:IV
determination of serious injury or threat of (SG 4), requirements,
“such increased quantities”, trends SG 49, 161
executive summaries (panel working procedures)
non-summarized material, inclusion in panel report DSU 733
panel’s request for DSU 733
implementation of panel or AB recommendations (DSU 19.1),
panel’s decision not to make suggestions DSU 973
non-discriminatory administration of QRs (GATT XIII)
distribution of trade as close as possible to expected shares in
absence of restrictions (GATT XIII:2 chapeau) GATT
662–4
as general rule (*Ad Article XIII:2*) GATT 662–4
historical trade patterns, relevance GATT 663–4
“quotas representing the total amount . . . shall be fixed” (GATT
XIII:2(a)) GATT 668
tariff quotas
applicability of GATT XIII:2(a) GATT 663, 668
applicability of, GATT XIII:5 GATT 679
tariff measures distinguished GATT 690 n. 968
relationships within and between agreements
GATT XIII/SG 5 GATT 657, 690–1, SG 232
GATT XXIV/GATT I, XIII and XIX GATT 686
RTAs (GATT XXIV:5), as affirmative defence to violation of GATT
provisions including non-discrimination requirement SG
73 n. 122
safeguard measures, application of measures (SG 5), non-
discrimination (GATT XIII) and GATT 690–1, SG 232
safeguard measures, application (SG 5), non-discrimination (GATT
XIII) and GATT 686
safeguard measures, conditions (SG 2)
“such increased quantities”
methodology, panel’s right to examine SG 35–7
“recent” SG 33–4
standard/powers of review (panel) (DSU 11), “objective assessment
of the facts”, methodology for evaluating increase in
imports (SG 2.1/GATT XIX:1(a)) SG 35–7
**US – Norwegian Salmon AD (GATT Panel), ADP/87, BISD
41S/229**
consultation and dispute settlement (AD 17), “matter”, referral to
DSB (AD 17.4), “matter” AD 898
determination of injury (AD 3), evaluation of injury factors (AD
3.4), examination of other known factors (AD 3.5),
“known” to investigating authority, 8.279 n. 393

**US – Offset Act (Byrd Amendment) (AB), WT/DS217/AB/R, WT/
DS234/AB/R, DSR 2003:I and DSR 2003:II**
AB procedures (DSU 17.9 and ABWP), replacement of member
(ABWP 13), for serious personal reasons (ABWP 12)
(Presiding Member) DSU 1374
anti-dumping and countervailing duties (GATT VI), anti-dumping
measure other than duty, applicability to GATT 450
anti-dumping and countervailing duties (GATT VI) including
interrelationship with AD Agreement
anti-dumping measure other than duty, applicability to, “may
levy” and (GATT VI:2) GATT 461
countervailable subsidy, permissible responses (GATT VI:3/
SCM) GATT 469
competence of panels and AB (DSU 3.2/DSU 11/DSU 17),
compétence de la compétence/obligation to address
jurisdictional issues [on own motion] DSU 1419
conformity of laws, regulations and administrative procedures with
SCM Agreement (SCM 32.5) WTO 294, SCM 596
countervailing duties (SCM Part V), compliance with GATT VI:3
and SCM Agreement (SCM 10), permissible responses to
subsidization GATT 469
due process (dispute settlement proceedings), notice of appeal,
requirements (ABWP 20(2)) DSU 368, 1416
evidence (panel) (DSU 12)
time-limits for submission
panel’s right to admit “late” /new evidence DSU 625
information in the public domain DSU 625
relevance/significance of evidence and DSU 625
good faith (including *pacta sunt servanda* principle (VCLT 26))
burden of proof/presumption of GATT 570 n. 805, DSU 1507
as fundamental rule of treaty interpretation/performance DSU
1507
good faith interpretation of treaty (VCLT 31(1)), as fundamental
principle of DSU 1545
interim review (DSU 15), multiple complainants/separate reports
DSU 810
interpretation of covered agreements, rules relating to including
VCLT provisions, footnotes to treaty as aid/integral part
of treaty AD 961
investigation of dumping (AD 5)/subsidy (SCM 11)
support for (AD 5.4/SCM 11.4)
“by or on behalf of the domestic industry”, quantitative test
SCM 362
identity of provisions AD 379, 383, SCM 362
motivation for support, relevance AD 379, SCM 362
lex specialis/presumption against treaty conflicts, General
Interpretative Note (WTO Annex 1A) SCM 584
multiple complainants (DSU 9)
separate interim review reports (DSU 9.2) DSU 810
separate panel reports (DSU 9.2)
panel’s discretion DSU 449
timeliness of request DSU 448
prompt and satisfactory settlement (DSU 3.3) and DSU 448,
810
notice of appeal, requirements (ABWP 20(2)(d))
due process and DSU 368
failure to meet
consequences
error relating to jurisdiction DSU 1419
omission of claim of error from scope of appeal
DSU 1416
notification of challenge to the jurisdiction DSU 368, 1415
statement of allegation of error on issues of law/legal
interpretations (ABWP 20(2)(d)), generic statement,
sufficiency DSU 1427
ordinary meaning of terms used in covered agreements, “specific
action against dumping” GATT 451

<p>prompt and satisfactory settlement (DSU 3.3), multiple complainants (DSU 9) and, separate panel reports DSU 65</p> <p>relationships within and between agreements, AD 18.4/SCM 32.5/ WTO XVI:4 WTO 294, SCM 596</p> <p>specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement AD 957–8</p> <p>action under other relevant provisions of GATT 1994 distinguished (AD 18.1 footnote 24) GATT 451</p> <p>clarificatory nature of footnotes AD 961</p> <p>“against” AD 957–8</p> <p>“except in accordance with the provisions” SCM 584</p> <p>standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6)</p> <p>excess of jurisdiction, in absence of claim by party DSU 1419</p> <p>excess of jurisdiction, in absence of claim by party DSU 1419</p> <p>new evidence DSU 852</p> <p>terms of reference of panels (DSU 7), timeliness of objections DSU 368, 1415</p> <p>US – Offset Act (Byrd Amendment) (Panel), WT/DS217/R, WT/DS234/R, DSR 2003:I and DSR 2003:II</p> <p>adverse effects (SCM 5)</p> <p>existence of “benefit”, need for SCM 263</p> <p>grounds for requesting consultations (SCM 7.1) as context SCM 262</p> <p>nullification or impairment of benefits (SCM 5(b)) SCM 261</p> <p>presumption under DSU 3.8 distinguished SCM 261, DSU 95</p> <p>systematic offset as SCM 264</p> <p>as required element for actionable subsidy SCM 255</p> <p>“use” of subsidy SCM 262, DSU 95</p> <p>anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement, dumping, constituent elements (AD 2/GATT VI:1), specific reference in legislation, relevance GATT 450</p> <p>conformity of laws, regulations and administrative procedures with SCM Agreement (SCM 32.5) SCM 596</p> <p>dispute settlement, special provisions relating to developing countries, requirement for specific indication of form in which account has been taken of special needs (DSU 12.11) DSU 717</p> <p>due process (dispute settlement proceedings)</p> <p>opportunity to respond to evidence/presentations of other parties, timing of submission of evidence (DS 12) and DSU 625</p> <p>prejudice to party, relevance DSU 449</p> <p>implementation of panel or AB recommendations (DSU 19.1), panel’s discretionary suggestions DSU 960</p> <p>interim review (DSU 15), multiple complainants/separate reports DSU 809</p> <p>legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), limitation of jurisdiction to cited provisions (DSU 7.2), developing countries, special and differential provisions and (DSU 12.1) DSU 717</p> <p>margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3), separate panel reports DSU 449</p> <p>multiple complainants (DSU 9)</p> <p>separate interim review reports (DSU 9.2) DSU 809</p> <p>single panel, “whenever feasible” (DSU 9.1), separate panel reports (DSU 9.2), timeliness of request DSU 448</p> <p>nullification or impairment (DSU 3.8), presumption in case of inconsistency with covered agreement, adverse effects (SCM 5) distinguished SCM 261, DSU 95</p> <p>price undertakings (AD 8)/undertakings (SCM 18), practicality, relevance (AD 8.3/SCM 18.3) AD 654, SCM 457</p> <p>prompt and satisfactory settlement (DSU 3.3), timeliness of request for separate panel reports (DSU 9.2) DSU 448, 809</p>	<p>relationships within and between agreements</p> <p>AD 18.4/SCM 32.5/WTO XVI:4 SCM 596</p> <p>DSU 3.3/DSU 9.2 DSU 448</p> <p>special and differential treatment for developing countries (Doha), terms of reference of panels (DSU 7) and DSU 717</p> <p>specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement AD 957–8</p> <p>“against” AD 957</p> <p>US – Offset Act (Byrd Amendment) (Article 21.3(c)), WT/DS217/14</p> <p>developing countries (DSU 21.2) (implementation of DSB recommendations and rulings) DSU 1010</p> <p>panel’s discretionary suggestions, legal effect DSU 986</p> <p>implementation of panel or AB recommendations (DSU 19.1), panel’s discretionary suggestions DSU 986</p> <p>“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)</p> <p>15-month guideline DSU 1041</p> <p>choice of methods, relevance DSU 1078</p> <p>as legal criterion DSU 1059</p> <p>contentiousness/political sensitivity, relevance DSU 1059</p> <p>developing countries and (DSU 21.2) DSU 1010</p> <p>harm to economic operators, relevance DSU 1066</p> <p>international obligations, relevance DSU 1059</p> <p>legislative schedule and DSU 1072</p> <p>limitation to cases of impracticality DSU 1015</p> <p>“reasonable” DSU 1036</p> <p>structural adjustment, relevance of need for DSU 1066</p> <p>US – Offset Act (Byrd Amendment) (Brazil) (Article 22.6 – US), WT/DS217/ARB/BRA, DSR 2004:IX, suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), level equivalent to nullification or impairment (DSU 22.4), trade effect and DSU 1226</p> <p>US – Offset Act (Byrd Amendment) (Canada) (Article 22.6 – US), WT/DS234/ARB/CAN, DS 2004:IX</p> <p>arbitration (DSU 22.6)</p> <p>scope of review/arbitrators’ mandate/task (DSU 22.7), suspension of concessions or “other obligations”, limitations on role DSU 1220–2</p> <p>working procedures DSU 1212</p> <p>suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)</p> <p>agreement to DSU 1272</p> <p>“or other obligations”, authorization to suspend (DSU 22.2) DSU 1194</p> <p>“specific” DSU 1197</p> <p>US – Offset Act (Byrd Amendment) (Mexico) (Article 22.6 – US), WT/DS234/ARB/MEX, DSR 2004:IX, suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), “or other obligations”, authorization to suspend (DSU 22.2) DSU 1195</p> <p>US – Offset Act (Byrd Amendment) (Article 22.6) (all), WT/DS217/ARB, DSR 2004:IX</p> <p>arbitration (DSU 22.6), “specific”, product list DSU 1188</p> <p>of concessions for non-implementation of DSB recommendations and rulings (DSU 22), level equivalent to nullification or impairment (DSU 22.4), reasoned estimates, need for DSU 1230</p> <p>nature and purpose of counter measures DSU 1181–2</p> <p>nullification or impairment (DSU 3.8), presumption in case of inconsistency with covered agreement DSU 1225</p> <p>suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)</p> <p>agreement to DSU 1271, 1273</p>
---	--

- (*cont.*)
inducement of compliance as objective DSU 1181–2
level equivalent to nullification or impairment (DSU 22.4) DSU 1205–6
disbursements operating as subsidies DSU 1238
US – Oil Country Tubular Goods Sunset Reviews (AB), WT/DS268/AB/R, DSR 2004:VII
determination of injury (AD 3)
cumulative assessment (AD 3.3), sunset review (AD 11.3), applicability to AD 796
“positive evidence” / “objective examination” requirement (AD 3.1), sunset review (AD 11.3), applicability to AD 768
due process (anti-dumping measures) (AD 6), as underlying principle AD 425
evidence (dumping investigation) (AD 6)
“ample opportunity to present in writing all evidence” (AD 6.1), obligation to take *all* submitted information into account SCM 390 n. 643
due process as underlying principle AD 425
balance of interests considerations AD 444
time-limits, right to set (AD 6.1.1), sunset reviews AD 444–5
good faith (including *pacta sunt servanda* principle (VCLT 26)), seriousness of claim/need for diligence in presentation DSU 279
identification of specific measures (DSU 6.2), “sufficient to present the problem clearly” DSU 340
legal status of adopted AB reports (DSU 17.14), as precedent DSU 902
legislation as such, right to challenge (WTO XVI:4)
claims “as such” vs claims “as applied”, relevance of distinction DSU 337
normative value as determining factor DSU 283
seriousness of claim/need for diligence in presentation DSU 279
“measures at issue” (DSU 6.2), “practice” as DSU 269
relationships within and between agreements
AD 3/AD 11.3 AD 767–8
AD 3.3/AD 11.3 AD 796
AD 3.7/AD 11.3 AD 787
request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 340
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), law vs fact, panel as trier of facts DSU 611
sunset review (AD 11.3) (including “likelihood” test)
cumulative assessment (AD 3.3), applicability AD 796
mandatory rule/exception AD 756
methodology
absence of specific provision AD 767–8
“likelihood of injury” obligations (AD 3), applicability AD 767–8
overall/separate factor determination AD 801
“positive evidence”, need for AD 761
time-frame AD 778
US – Oil Country Tubular Goods Sunset Reviews (Panel), WT/DS268/AB/R, DSR 2004:VIII
burden of proof (general rules), *prima facie* case requirement AD 610
determination of dumping (AD 2)
calculation of normal value, factors to be taken into account (AD 2.1), sale “destined for consumption in exporting country” AD 25
determination of dumping (AD 2), calculation of dumping margins (AD 2.4), comparability of price AD 25
due process (dispute settlement proceedings), prejudice to party, relevance DSU 344
evidence (dumping investigation) (AD 6), notification to all interested parties of essential facts under consideration (AD 6.9), choice of means AD 610
implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 979
oils, sunset review (AD 11.3) (including “likelihood” test), “positive evidence”, need for, presumptions, exclusion AD 774–5
relationships within and between agreements
AD 3/AD 11.3 AD 765–6
AD 11.2/AD 11.3 AD 749, 800
request for establishment of panel, requirements (DSU 6.2), due process/ability to defend itself considerations DSU 344
standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, events during proceedings, exclusion from panel’s considerations DSU 942
sunset review (AD 11.3) (including “likelihood” test)
methodology
absence of specific provision AD 765–6, 786
“likelihood of injury” obligations (AD 3), applicability AD 765–6
time-frame AD 786
US – Oil Country Tubular Goods Sunset Reviews (Article 21.3(c)), WT/DS268/12, DSR 2005:XXIII
developing countries (DSU 21.2) (implementation of DSB recommendations and rulings), “reasonable period” (DSU 21.3(c)) DSU 1067
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)
administrative measures as means of implementation, relevance DSU 1048
developing countries and (DSU 21.2) DSU 1067
US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 - Argentina) (AB), WT/DS268/AB/RW, DSR 2007:IX
arguendo assumptions, “even assuming” DSU 658–9
relationships within and between agreements, AD 11.3/DSU 11 816
standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis, difficulty of, inadequacy of the record/*arguendo* assumptions DSU 658–9
sunset review (AD 11.3) (including “likelihood” test)
company-specific determination, need for AD 785
determination of likelihood
volume analysis
adequacy of analysis AD 781
analysis from previous review as part “measure taken to comply” AD 782
standard of review, objective assessment (DSU 11) and AD 804
waiver of right to participate AD 785
US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 - Argentina) (Panel), WT/DS268/RW
anti-dumping duties, duration and review (AD 11), special rules and procedures (DSU 1.2), whether DSU 12
confidential information (AD 6.5), non-confidential summaries (AD 6.5.1), access to confidential information, relevance AD 516
due process (anti-dumping measures) (AD 6), as underlying principle AD 426
evidence (dumping investigation) (AD 6)
due process as underlying principle AD 426
questionnaires (AD 6.1.1), supplementary questionnaires, obligation/practice AD 435
sunset review procedures compared AD 792
timely disclosure to interested parties of information relevant for presentation of case (AD 6.4)
“information used by the authorities” AD 484
sunset reviews and AD 484–5
pressure of time, relevance AD 485
implementation of panel or AB recommendations (DSU 19.1), subsequent proceedings/continuance of recommendations DSU 944

relationships within and between agreements, AD 11/DSU 1.2 DSU 12	implementation of panel or AB recommendations (DSU 19.1)
special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as, AD 17 DSU 12	identification of specific measures (DSU 6.2), (DSU 6.2) and DSU 394
sunset review (AD 11.3) (including “likelihood” test)	measure terminated in course of proceedings/no longer in existence DSU 937
company-specific determination, need for AD 784–5	interim review (DSU 15), reargument of case, exclusion DSU 785
determination of likelihood	interpretation of covered agreements, rules relating to including VCLT provisions
likely past dumping AD 777	dictionaries SPS 231
volume analysis	same or closely related phrases in different agreements, SPS 5.5/ TRIPS 3 and 4 SPS 243
adequacy of analysis AD 780	same or closely related phrases in same agreement
analysis from previous review as part “measure taken to comply” AD 778–9	DSU 4.4/DSU 6.2 (“legal basis of the complaint”) DSU 158
original investigation distinguished, new factual basis AD 791–2, 819	GATT XX chapeau/SPS 2.3/SPS 5.5 (“arbitrary or unjustifiable”) SPS 232–3
“positive evidence”, need for AD 769	as a whole/holistic/harmonious exercise WTO 22, DSU 158
time-frame	legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), request for consultations (DSU 4.4) compared DSU 158
new factual basis and AD 792	
specification, relevance AD 788	
waiver of right to participate AD 784	
US – Orange Juice (Brazil) (Panel), WT/DS382/R	<i>lex specialis</i> /presumption against treaty conflicts
consultation and dispute settlement (AD 17), legal basis for consultation/claim (AD 17.3/AD 17.4), “measure” (AD 17.4), continued zeroing AD 897	General Interpretative Note (WTO Annex 1A) DSU 1727
“dumping” (AD 2.1)	possibilities of conflict considered by panel/AB, GATT XX(b)/SCM DSU 1727
ambiguity/alternatives AD 934–5	“like product” (GATT III:2 and III:4)
product specific requirement AD 19	“like product” analysis, nationality of producer or origin of product (“hypothetical” like products) GATT 43
interpretation of covered agreements, rules relating to including VCLT provisions, parties’ common intentions (VCLT 31 (1)), ordinary meaning as aid in establishing AD 934	relevant factors
<i>lex specialis</i> /presumption against treaty conflicts AD 934	consumer preferences GATT 42
“zeroing” (AD 9.3/GATT VI:2)	end-uses GATT 42
comparison of weighted average normal value with weighted average of <i>all</i> comparable export transactions (AD 2.4.2), transaction-to-transaction method AD 136	physical properties GATT 42
as “measure” (AD 17.4) AD 897	tariff classifications GATT 42
US – Poultry (China) (Panel), WT/DS392/R	MFN treatment (GATT I:1)
ALOPs (SPS 5.4–5.6 and Annex A(5))	“accorded immediately and unconditionally to the like product”, differential treatment on the basis of origin of product and GATT 54
consistency in application (SPS 5.5), “specific” SPS 221, 223	“advantage”, access to certification procedures GATT 37
measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6), “appropriate level”, determination, Member’s prerogative SPS 253	“all rules and formalities”, “in connection with importation” GATT 30
“any procedure to check and ensure”, applicability (Annex C(1)(a))	ordinary meaning of terms used in covered agreements
“any procedure to check and ensure” (Annex C(1)(a))	“arbitrary or unjustifiable” SPS 231
development of SPS measures SPS 552	“elaborate” (SPS preamble) SPS 596
title or characterization of measure, relevance SPS 554	quantitative restrictions, elimination (GATT XI), “prohibition or restriction” (GATT XI:1), import prohibition GATT 610
“arbitrary or unjustifiable discrimination”	relationships within and between agreements DSU 394
“discrimination” in SPS 5.5 and TRIPS 3 and 4 compared SPS 243	GATT XX(b)/SPS SPS 596–8
ordinary meaning SPS 231	SPS 2.2/SPS 5.1 and 5.2 SPS 49
use in GATT XX, SPS 2.3 and SPS 5.5 compared SPS 232–3, 242	SPS 4/SPS Annex C(1) SPS 586
arbitrary or unjustifiable distinctions resulting in discrimination or disguised restriction on international trade (SPS 5.5), disguised restriction on international trade/warning signals SPS 239	SPS 4/SPS as a whole SPS 105, 119–20
consultations (DSU 4)	SPS 5.1/Annex A(4) SPS 527
adequacy of consultations (DSU 4.5), Panel responsibilities in relation to DSU 163	SPS 5.1/SPS 5.5 SPS 233
conditional request DSU 148	SPS 8/Annex C(1) SPS 374
confidentiality (DSU 4.6), determining adequacy of consultations and DSU 163	SPS Annex A(4), relationships within SPS 528
notification of request for (DSU 4.4), legal basis of the complaint, DSU 6.2 compared DSU 158	risk assessment, need for (SPS 5.1–5.3)
Equivalence, Decision on Implementation of SPS 4 (26 October 2001), SPS 4/SPS as a whole, status as non-binding instrument SPS 105	measures “appropriate to the circumstances” (SPS 5.1) SPS 133
identification of specific measures (DSU 6.2), recommendations of panel/DSB (DSU 19.2), effect DSU 394	“measures at issue” (DSU 6.2), termination following agreement on terms of reference DSU 394
	risk assessment (SPS Annex A(4)(4)), elements/three-pronged nature of test SPS 133
	scientific evidence, need for sufficient (SPS 2.2), rational and objective relationship between SPS measure and scientific evidence, need for SPS 22
	SPS Agreement
	applicability (SPS 1.1), “measures which may directly or indirectly affect trade” SPS 13
	basic rights and obligations (SPS 2), applicability to SPS as a whole SPS 20
	GATT XX(b) and GATT 950

<i>(cont.)</i>	
‘SPS control, inspection and approval procedures (SPS 8 and Annex C), “any procedure to check and ensure”, applicability (Annex C(1)(a)), comprehensive nature of provision SPS 553	“legitimate” TRIPS 123
SPS measure, definition/classification as (Annex A(1))	ordinary meaning TRIPS 123
legal form and nature, relevance/distinguishability SPS 456	“prejudice”, criteria/test TRIPS 124–6
purpose as test SPS 457	“unreasonably” TRIPS 124
substantive measures and procedural requirements distinguished SPS 459	interpretation of covered agreements, rules relating to including VCLT provisions
standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, independent assessment, in absence of contested claims DSU 524	context (VCLT 31(2))
third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6 DSU 486	“any agreement relating to . . . made in connection with the conclusion. . .” (VCLT 31(2)(a)) TRIPS 100–1, DSU 1560–1
WTO Agreement, as single undertaking (WTO II:2) WTO 22	minor exceptions doctrine DSU 1560–1
US – Section 110(5) Copyright Act (Panel), WT/DS160/R, DSR 2000:VIII	“teachings of the most highly qualified publicists” (ICJ Statute 38 (1)(d)) TRIPS 115
Berne Convention DSU 101	as a whole/holistic/harmonious exercise TRIPS 88, 118
Berne Convention/TRIPS	legitimate interests, TRIPS 13 TRIPS 109, 118 n. 123, 122–6
applicability to WTO members (TRIPS 9) TRIPS 85–6	<i>lex specialis</i> /presumption against treaty conflicts
broadcasting (Berne 11 <i>bis</i>)	possibilities of conflict considered by panel/AB
compulsory licence, right to substitute (Berne 11 <i>bis</i> (2)) TRIPS 98	TRIPS/Berne Convention TRIPS 85–6, 88
TRIPS 13 distinguished TRIPS 111	TRIPS/WIPO Copyright Agreement (1967) TRIPS 89
nature and scope of protection TRIPS 96	ordinary meaning of terms used in covered agreements
as specific application of Berne 11 rule TRIPS 95	“exclusive right” (TRIPS 16.1) TRIPS 131
control of circulation, presentation or exhibition (Berne 17), special agreements (Berne 20)/TRIPS 2.2, possibility of inconsistency with TRIPS 105	“exploit” (TRIPS 13) TRIPS 117
minor exceptions doctrine TRIPS 100–1, DSU 1560–1	“interests” (TRIPS 13) TRIPS 123
agreement on as “agreement . . . made in connection with the conclusion of the treaty” (VCLT 31(2)(a)) TRIPS 101	“normal” (TRIPS 13) TRIPS 118
Berne Convention <i>acquis</i> /context for interpreting (VCLT 31(2)) TRIPS 100–1, DSU 1560–1	“prejudice” (TRIPS 13) TRIPS 123
incorporation into TRIPS TRIPS 101	“unreasonably prejudice” (TRIPS 13) TRIPS 124
<i>lex specialis</i> /presumption against treaty conflicts and TRIPS 88	preparatory work (VCLT 32), TRIPS 13 TRIPS 118 n. 123
order of analysis TRIPS 100–1	relationships within and between agreements
public performance (Berne 11)	Berne 11/Berne 11 <i>bis</i> TRIPS 95
scope TRIPS 92	Berne 13/Berne 20 and TRIPS 2.2 TRIPS 105
types of communication TRIPS 93	successive treaties relating to the same subject matter (VCLT 30)
relationship (TRIPS 9)	“minor exceptions” doctrine and TRIPS 101
incorporation, effect TRIPS 85–6	WIPO Copyright Agreement (1996) DSU 1533
limitations and exceptions (TRIPS 13), applicability to Berne 11/11 <i>bis</i> TRIPS 110–12	trademarks (TRIPS Part II Section 2), “limited exceptions” (TRIPS 17), burden of proof TRIPS 144
Convention (1971)/TRIPS, relationship (TRIPS 9), successive treaties relating to the same subject matter (VCLT 30) and TRIPS 101	WIPO Copyright Agreement (1996)
copyright and related rights (TRIPS Part II Section 1)	<i>lex specialis</i> /presumption against treaty conflicts TRIPS 89
limitations and exceptions (TRIPS 13)	successive treaties relating to the same subject matter (VCLT 30) and DSU 1533
“certain special cases” TRIPS 114–16	US – Section 110(5) Copyright Act (Article 21.3(c)), WT/DS160/12, DSR 2001:II
cumulative nature TRIPS 109	implementation of DSB recommendations and rulings (DSU 21), prompt compliance (DSU 21.1), adoption of report, obligation to begin implementation following DSU 1004
legitimacy/legitimate public policy and TRIPS 114–16	“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)
new TRIPS rights, whether limited to TRIPS 107, 110	contentiousness/political sensitivity, relevance DSU 1057
public performance (Berne 11)/broadcasting (Berne 11 <i>bis</i>), applicability to TRIPS 110–12	obligation to commence implementation in good time DSU 1044
“which do not conflict with a normal exploitation of the work” application to individual exclusive rights, need for TRIPS 119	US – Section 110(5) Copyright Act (Article 25.3), WT/DS160/ARB25/1, DSR 2001:II
criteria/test TRIPS 120–1	arbitration (DSU 25)
“exploit” TRIPS 117	advantages DSU 1330
“normal” TRIPS 118	as alternative to panel procedure DSU 1329, 1337, 1340
“which do not unreasonably prejudice the legitimate interests of the right holder”	applicable law
equitable remuneration and TRIPS 118 n. 123	AB practice DSU 1335
“interests” TRIPS 122–3	burden of proof (DSU 22.6) DSU 1328
	DSU 21 and 22 (DSU 25.4) DSU 1329, 1336
	DSU 22.6 DSU 1328, 1331
	confidentiality of proceedings, applicability of AB practice DSU 1335
	jurisdiction/arbitrators’ mandate
	agreement of parties (DSU 25.1 and 25.2) as basis DSU 1330, 1340
	<i>compétence de la compétence</i> DSU 1327
	determination of level of nullification or impairment (DSU 3.8) and DSU 1327, 1329–30
	determination of WTO-consistency of measure DSU 1336

prompt and satisfactory resolution of disputes, Members' right to (DSU 3) and DSU 1330, 1343	AB procedures (DSU 17.9 and ABWP), written reponses (ABWP 28), requests for additional memoranda/submissions DSU 1463
procedural requirements	domestic law
Article 22.6 proceedings distinguished DSU 1333, 1342	as evidence of
consistency with WTO rules and principles, responsibility for ensuring DSU 1326	compliance with international obligations DSU 532, 847
notification of arbitration to DSB, limitation to DSU 1326, 1338	determination as legal issue DSU 847
Berne Convention/TRIPS	interpretation of legislation distinguished
broadcasting (Berne 11 <i>bis</i>), Members' obligations and rights holders' exercise/exploitation of rights distinguished TRIPS 97	as fact for purposes of international adjudication DSU 532
public performance (Berne 11), Members' obligations and rights holders' exercise/exploitation of rights distinguished TRIPS 94	fair and equitable procedures (TRIPS 42)
burden of proof (general rules), arbitration (DSU 25) DSU 1328	international minimum standard (TRIPS 1.3) and TRIPS 223
competence of panels and AB (DSU 3.2/DSU 11/DSU 17), <i>compétence de la compétence</i> /obligation to address jurisdictional issues [on own motion], as general rule of international arbitration DSU 1327	as procedural requirement TRIPS 223–4
confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3)	“right holders” TRIPS 222
acceptance of information or technical advice (DSU 13) and DSU 764, 1334	intellectual property conventions (TRIPS 2)
non-confidential summary of information (DSU 18.2) DSU 1335	national treatment (PC 2(1))/TRIPS 3.1 TRIPS 20
DSU, “dispute settlement”, expeditious arbitration as alternative means (DSU 25.1) DSU 1329, 1337, 1341	trade names (PC 8) TRIPS 19, 30, DSU 870
information or technical advice, panel's right to seek (DSU 13.1/SPS 11.2)	intellectual property rights, availability, scope and use (TRIPS Part II), “intellectual property” (TRIPS 1.2), categories covered TRIPS 12
confidential information (SG 3.2) and DSU 764	international minimum standard (TRIPS 1.3), procedural rights (TRIPS 42) and TRIPS 223
confidentiality considerations DSU 764, 1334	interpretation of covered agreements, rules relating to including VCLT provisions, effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>) DSU 870
panel's rights, to accept or reject requested information or advice DSU 1334	legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability DSU 300 n. 483
prompt and satisfactory settlement (DSU 3.3), impairment of benefits by measures taken by another Member (DSU 3.3), arbitration (DSU 25) and DSU 1330, 1343	MFN treatment (TRIPS 4), “protection of intellectual property” (chapeau), trade names, applicability of findings on trade marks TRIPS 67
relationships within and between agreements, DSU 3.3/DSU 25 DSU 1343	national treatment (TRIPS 3)
standard/powers of review (panel) (DSU 11), “objective assessment of the facts”, facts available at time of establishment of panel, limitation to DSU 1333	“enjoy the advantages” (PC 2.1) distinguished TRIPS 20
suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22)	“treatment no less favourable” (TRIPS 3.1)
level equivalent to nullification or impairment (DSU 22.4)	GATT III:4 compared TRIPS 27, 39
Article 25.3 Arbitrator's right to review DSU 1327, 1329–30	GATT practice TRIPS 61
benefits foregone by right holders and Member distinguished DSU 1332	offset TRIPS 39–43, 66
critical date DSU 1333	applicability to all trademark owners requirement TRIPS 40–1
economic benefits as measure DSU 1331	discretionary administrative procedure as TRIPS 42–3
TRIPS Agreement, implementation obligation (TRIPS 1.1) TRIPS 94 n. 95	ordinary meaning of terms used in covered agreements, “owner” (TRIPS 16.1) TRIPS 130
US – Section 129(c)(1) URAA (Panel), WT/DS221/R, DSR 2002:VII	Paris Convention (PC)/TRIPS
implementation of DSB recommendations and rulings (DSU 21), suspension of WTO-inconsistent measure during “reasonable period of time”, need for DSU 1095–6	applicability of Paris Convention, obligation to argue/make <i>prima facie</i> case TRIPS 22
legislation as such, right to challenge (WTO XVI:4)	national treatment (PC 2(1)) TRIPS 20
mandatory/discretionary legislation, distinguishability AD 880	standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6)
assessment of mandatory nature DSU 295	completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 870
order of analysis	law vs fact, compliance/consistency with treaty obligations, assessment of domestic law for purpose of determining DSU 847
mandatory nature of legislation/consistency with WTO obligations AD 880	standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, independent assessment of domestic law DSU 532
mandatory/discretionary nature of legislation/substance DSU 295	trade names, obligation to comply with PC 8 as incorporated by TRIPS 2.1 TRIPS 19, 30
“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations), continued application of WTO-inconsistent measures during reasonable period DSU 1095–6	applicability of trademark findings TRIPS 55
US – Section 211 Appropriations Act (AB), WT/DS176/AB/R, DSR 2002:II	MFN treatment (TRIPS 4), applicability of findings on trademarks TRIPS 67
	ownership issues and TRIPS 31
	trademarks (Paris Convention (PC))
	protection in other countries of the Union (PC 6 <i>quinquies</i>), “as is” / “telle quelle” TRIPS 29
	registration conditions (PC 6), Members' discretion (PC 6(1)) TRIPS 25
	trademarks (TRIPS Part II Section 2)

<i>(cont.)</i>	
denial of protection on “other grounds” (TRIPS 15.2) TRIPS 128	mandatory/discretionary legislation, distinguishability
“other grounds” for denial of registration (TRIPS 15.2) TRIPS 128	assessment of mandatory nature DSU 295
“protectable subject-matter” (TRIPS 15) TRIPS 127–8	DSU 23 and WTO 286, DSU 296, 1312
“distinctiveness” requirements, restrictions on legislative conditions and TRIPS 127	rejection/non-endorsement of doctrine DSU 296
rights conferred (TRIPS 16)	relevance DSU 296
“making rights available on the basis of use” TRIPS 135	State responsibility and DSU 339
“the owner” (TRIPS 16.1) TRIPS 130	unilateral action (DSU 23) and DSU 339, 1312
usage and registration as basis of ownership distinguished TRIPS 130	“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations), determination by WTO or parties jointly DSU 1314
US – Section 211 Appropriations Act (Panel), WT/DS176/R, DSR 2002:II	relationships within and between agreements
abuse of rights/ <i>abus de droit</i> , <i>pacta sunt servanda</i> /performance in good faith (VCLT 26) and TRIPS 77	DSU 23/WTO XVI:4 WTO 286
good faith (including <i>pacta sunt servanda</i> principle (VCLT 26))	DSU 23.1/DSU 23.2 DSU 1298
abuse of rights/ <i>abus de droit</i> and TRIPS 77	security and predictability of WTO obligations (DSU 3.2) DSU 988
balance of rights and obligations as objective (TRIPS 7) TRIPS 77	as WTO objective DSU 44
interpretation of covered agreements, rules relating to including VCLT provisions, “any subsequent agreement . . . regarding its interpretation or application” (VCLT 31(3) (a)) DSU 1577	sovereignty, unilateral statements and DSU 1685
national treatment (TRIPS 3), “treatment no less favourable” (TRIPS 3.1), difference of treatment between EU and non-EU members TRIPS 48	standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, independent assessment of domestic law DSU 527
relationships within and between agreements, GATT III:4/TRIPS 3.1 GATT 416	State responsibility as rule/general principle of international law (ILC Articles), legislation as such and DSU 339
trade names, obligation to comply with PC 8 as incorporated by TRIPS 2.1 TRIPS 19	suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), WTO authorization, need for (DSU 3.7, 22.6 and 23.2(c)), cumulative nature of DSU 23.2(c) obligations DSU 1316
trademarks (Paris Convention (PC)), well-known trademarks, prohibition on use (PC 6 <i>bis</i>) TRIPS 26	unilateral action by Member, prohibition (DSU 23.1) legislation [as such] in breach of unilateral undertaking DSU 132, 339
TRIPS Agreement	relationship between DSU 23.1 and 23.2 DSU 1298
implementation obligation (TRIPS 1.1), good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) TRIPS 77	unilateral statements, legal effect DSU 1685
object and purpose (preamble/TRIPS 7), balance of rights and obligations TRIPS 77	WTO Agreement, preamble, “secure and predictable” WTO 10
US – Section 301 Trade Act (Panel), WT/DS152/R, DSR 2000:II	US – Section 337 (GATT Panel), BISD 365/345 , national treatment, regulatory discrimination (GATT III:4), “less favourable treatment”, equality of competitive conditions as test GATT 370, 371
burden of proof (general rules), <i>prima facie</i> case requirement, inconclusive outcome / “equipoise” DSU 545	US – Shrimp (Viet Nam) (Panel)
customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), general rule of interpretation (VCLT 31) as DSU 1537	Anti-Dumping Agreement (AD), applicability (AD 18.3), pre-/post-WTO reviews AD 967
domestic law	anti-dumping duties, imposition and collection (AD 9)
as evidence of	assessment (AD 9.3), “product as a whole” (AD 2.1) and AD 685
compliance with international obligations DSU 527	calculation of “all other” anti-dumping duty rate (AD 9.4), margins established under circumstances referred to in AD 6.8, exclusion, lacuna situation AD 711–16
interpretation of legislation distinguished, DSU 527	determination of dumping (AD 2), fair comparison of export price and normal value (AD 2.4), NMEs and (Note 2 <i>Ad</i> Article VI:1) GATT 458, AD 167, 715
as fact for purposes of international adjudication DSU 527	publication and administration of trade regulations (GATT X), independent tribunals (GATT X:3(b)) GATT 586
DSU dispute settlement	relationships within and between agreements, AD 2.1/AD 9.4 AD 711
obligation to have recourse to (DSU 23.1)	sampling (AD 6.10)
as “exclusive jurisdiction” clause DSU 1310	choice of sample AD 635
“recourse to, and abide by” DSU 1310	voluntary responses (AD 6.10.2) AD 638
time-frame (DSU 12.8, 12.9, 17.5 and 20), indicative nature DSU 995	US – Shrimp dispute (WT/DS58) , “sequencing” (interrelationship between Article 21.5 and Article 22.6 arbitration, ad hoc procedural agreements), recourse to Article 21.5 before Article 22 DSU 1159
evidence (dumping investigation) (AD 6), on-the-spot verification (AD 6.7), participation of non-governmental experts (Annex I, para. 2), notification of participation, burden of proof AD 530	US – Shrimp (AB), WT/DS58/AB/R, DSR 1998:VII
good faith interpretation of treaty (VCLT 31(1))	AB procedures (DSU 17.9 and ABWP)
avoidance of legislation threatening prohibited conduct DSU 1544	appellant’s submission (ABWP 21), materials attached to as integral part DSU 1431
ordinary meaning of the text and DSU 1543	written responses (ABWP 28), requests for additional memoranda/submissions DSU 1461
international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), legislation as such and DSU 339	abuse of rights/ <i>abus de droit</i> , <i>pacta sunt servanda</i> /performance in good faith (VCLT 26) TRIPS 77, DSU 1501
legislation as such, right to challenge (WTO XVI:4) WTO 286	access to dispute settlement process, limitation to WTO Members DSU 516

<i>amicus curiae</i> briefs	panel's right to evaluate source of information or advice DSU 736
AB and, right to accept (DSU 17.9) DSU 516	panel's rights
panel's authority/discretion to accept or reject DSU 516, 685, 697, 738–9	to accept or reject requested information or advice DSU 738–9
rejection as error of law DSU 739	to evaluate information or advice DSU 736
third party rights distinguished DSU 516, 685	international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)) DSU 1587
arbitrary or unjustifiable discrimination, GATT XX measure as (GATT XX chapeau)	good faith as GATT 857
“between countries where the same conditions prevail” GATT 242, 859	as supplementary means / “taken into account” DSU 1596
between importing and exporting countries GATT 861	interpretation of covered agreements, rules relating to including VCLT provisions
constituent elements GATT 859, 862, 864	evolutionary approach/intertemporal law WTO 2, GATT 935, DSU 1596, 1618
discrimination in substantive GATT obligations distinguished GATT 858, 864	object and purpose, caution in use of DSU 1568
failure to consider appropriateness of regulatory programme and GATT 865–7	parties' common intentions (VCLT 31(1)), preamble as reflection of GATT 858
DSB	notice of appeal, requirements (ABWP 20(2))
access to, limitation to WTO Members DSU 516	statement of allegation of error on issues of law/legal interpretations (ABWP 20(2)(d))
proper parties DSU 516	identification of facts requiring panel to draw inferences DSU 1411
environment, protection as legitimate goal of national and international policy WTO 2	indication of appropriate factual or legal inferences DSU 1411
GATT 1947, WTO continuity with WTO 3	legal argument in support of claim distinguished DSU 1411
General Exceptions (GATT XX) (general)	panel procedures (DSU 12 and Appendix 3 (WP))
obligation to comply with domestic legislation, relevance GATT 845	access to dispute settlement process (DSU 12.6) DSU 516, 697
limited and conditional nature of exceptions GATT 856	submission, right of (DSU 12.6 and WP 4) DSU 516, 697
two-step analysis (justification under paras. (a)-(j)/compliance with chapeau) GATT 849, 856	panel reports, high quality/flexibility of panel procedures balance (DSU 12.2) DSU 685
General Exceptions (GATT XX), preamble/chapeau	preparatory work (VCLT 32), GATT XX GATT 856
as balance between competing rights GATT 846, 856–7	publication and administration of trade regulations (GATT X)
good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) and GATT 857, DSU 1501	transparency and due process, GATT X:3 and GATT 548
preparatory work (VCLT 32) GATT 856	uniform, impartial and reasonable administration (GATT X:3(a))
prevention of abuses of exceptions as objective GATT 856	due process requirement GATT 552 n. 774
General Exceptions (GATT XX(d)), measures necessary to secure compliance with GATT-consistent measure, constituent elements, “necessary” to secure compliance, balancing of factors GATT 919	“uniform”, “impartial” and “reasonable” as independent elements GATT 550
General Exceptions (GATT XX(g)), measures relating to the conservation of exhaustible natural resources	relationships within and between agreements, GATT XX chapeau/ GATT XX paras. (a)-(i) exceptions GATT 849
“exhaustible natural resources”	special or additional procedures (panel) (DSU 12.1), margin of discretion DSU 685
as evolutionary concept/intertemporal law WTO 2, GATT 935, GATS 5 n. 7, DSU 1596, 1618	third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6
living natural resources, whether WTO 2, GATT 935	opportunity to be heard (DSU 10.2) DSU 516, 697
sustainable development as objective WTO 2, 3	“substantial interest” (DSU 10.2) DSU 469
“full use of the resources of the world” distinguished WTO 3	WTO Agreement
WTO Preamble as aid to interpretation WTO 2, GATT 858	GATT 1947, continuity with WTO 3
jurisdictional limitation, whether GATT 934	preamble
“made effective in conjunction with”, as balance between conservation and domestic production/consumption GATT 947	applicability
“relating to”, “primarily aimed at” distinguished GATT 942	all covered agreements WTO 3
good faith (including <i>pacta sunt servanda</i> principle (VCLT 26))	GATT XX WTO 2
abuse of rights/ <i>abus de droit</i> and GATT 857, TRIPS 77, DSU 1501	US – Shrimp (Panel) , WT/DS58/R and Corr.1, DSR 1998:VII
as fundamental rule of treaty interpretation/performance DSU 1501	<i>amicus curiae</i> briefs, panel's authority/discretion to accept or reject DSU 738
GATT XX and GATT 857	expert evidence (DSU 13.2/SPS 11.2), independence and impartiality, Rules of Conduct (RoC I and III:2) DSU 1477
as general principle of international law DSU 1594	General Exceptions (GATT XX), obligation to comply with domestic legislation, relevance GATT 845
as general principle of law DSU 1594	quantitative restrictions, elimination (GATT XI)
good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)), definition DSU 1501	GATT XIII and GATT 685 n. 960
treaty performance and	“prohibition or restriction” (GATT XI:1), import prohibition GATT 608
information or technical advice, panel's right to seek (DSU 13.1/SPS 11.2)	relationships within and between agreements
comprehensive nature of panel's authority DSU 736, 738	GATT I/GATT XI GATT 113
discretion not to seek DSU 736, 738–9, 754 n. 1216, 757 n. 1220	GATT XI/GATT XIII GATT 685 n. 960
discretion to accept or reject unrequested information or advice DSU 738–9	Rules of Conduct, independence and impartiality (RoC I and III:2), scientific experts DSU 1477
	unilateral action by Member, prohibition (DSU 23.1) DSU 1294

(cont.)

US – Shrimp (Article 21.5 – Malaysia) (AB), WT/DS58/AB/RW, DSR 2001:XIII
AB procedures (DSU 17.9 and ABWP)
oral hearings (ABWP 27), change of date DSU 1394
timetable, modification in exceptional circumstances (ABWP 16 (2)) DSU 1394
timetable (ABWP 26), modification in exceptional circumstances (ABWP 16(2)), modification of date of oral hearing (ABWP 16(2)) DSU 1394
domestic law
as fact for purposes of international adjudication DSU 531
decisions of domestic courts, applicability, unfinished proceedings, relevance DSU 531
good faith (including *pacta sunt servanda* principle (VCLT 26)), as fundamental rule of treaty interpretation DSU 1505, 1507
international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)) DSU 1589
treaties concluded by parties as DSU 1589
legal status of adopted AB reports (DSU 17.14) DSU 899
as final resolution of dispute DSU 826, 899, 1137
legal status of panel reports, unappealed finding in adopted report DSU 826, 1130, 1137
review of implementation of DSB rulings (DSU 21.5) DSU 1101
competence of DSU 21.5 (compliance) panel
determination of consistency of measure with WTO obligations DSU 1101
deviation from original panel report DSU 1105 n. 1709
limitation to claims at time of referral to review panel DSU 1101
“measures taken to comply”
examination on basis of facts proved during panel proceedings DSU 1101
measure found to be consistent in original proceedings DSU 1137
measure subject of original dispute distinguished DSU 1101
unappealed finding and DSU 826, 1130, 1137
sovereignty, unilateral environmental protection measures as breach DSU 1737
standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, independent assessment of domestic law DSU 531
US – Shrimp (Ecuador) (Panel), WT/DS335/R, DSR 2007:II
anti-dumping duties, imposition and collection (AD 9), assessment (AD 9.3), “product as a whole” (AD 2.1) and AD 120
mutually agreed/acceptable solution to matters raised formally (DSU 3.6), characterization as such by parties, need for DSU 522
panel reports, rationale/reasons, need for (DSU 12.7), in case of mutually agreed solution DSU 706
standard/powers of review (panel) (DSU 11)
“objective assessment of matter before it”
all arguments DSU 522
independent assessment, in absence of contested claims DSU 522
“zeroing” (AD 9.3/GATT VI:2), comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), “comparable” AD 120
US – Shrimp (Thailand)/US – Customs Bond Directive (AB), WT/DS343/AB/R / WT/DS345/AB/R, DSR 2008:VII, / DSR 2008:VIII
AB procedures (DSU 17.9 and ABWP)
timetable (ABWP 26), modification in exceptional circumstances (ABWP 16(2)) DSU 1392
transition (ABWP 15) DSU 1377
arguendo assumptions, judicial economy and DSU 660
burden of proof

prima facie case requirement
establishment of party’s case by panel, exclusion DSU 557
evidence other than that submitted by parties, panel’s right to consider DSU 550
consultations (DSU 4)
identity of specific measures in the consultations and the request for establishment of a panel, relevance DSU 145
as prerequisite to establishment of panel/requirement to indicate whether held (DSU 6.2) DSU 145
purpose/importance, definition of dispute DSU 145
written request (DSU 4.4) as basis DSU 147
identification of specific measures (DSU 6.2)
identity with specific measure the subject of consultations, relevance DSU 145
“scope” of consultations and DSU 147
legislation as such, right to challenge (WTO XVI:4), US Customs Bond Directive AD 964
lex specialis/presumption against treaty conflicts
General Interpretative Note (WTO Annex 1A) DSU 1726
possibilities of conflict considered by panel/AB, AD 18.1/GATT VI DSU 1726
precedence/hierarchy in case of conflict DSU 1726
multiple appeals (special procedure for consolidation (ABWP 16 (1))) DSU 1383
multiple complainants (DSU 9), separate AB reports DSU 458
multiple panels/different parties/measure in common DSU 183
multiple panels/same parties/same dispute (DSU 9.3), harmonization of timetables DSU 463
provisional measures (AD 7), specific action against dumping (Note *Ad* Article VI:2–3) AD 653
relationships within and between agreements, AD 7/GATT VI AD 653
special or additional procedures (AB) (ABWP 16(1)), multiple appeals DSU 1383
specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement
“against” GATT 473, AD 963
reasonable security/bonding (Note 1 *Ad* Article VI:2–3) GATT 473, 474–7, AD 697, 964
provisional measures (AD 7) and AD 653
US Customs Bond Directive “as such” AD 964
standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, *all* arguments DSU 517, 557
third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6, participation in proceedings initiated by another complainant (DSU 9) DSU 493
US – Shrimp (Thailand) (Panel), WT/DS343/R
burden of proof, *prima facie* case requirement AD 121
“zeroing” (AD 9.3/GATT VI:2), comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), “comparable” AD 121
US – Softwood Lumber II (GATT Panel), SCM/162, BISD 40S/358
investigation of dumping (AD 5)/subsidy (SCM 11), sufficiency of evidence (AD 5.3), determination of sufficiency standard of review (DSU 17.6) AD 367
relationships within and between agreements, AD 5.3/AD 17.6 AD 367
standard/powers of review (panel) (AD 17.6), assessment of the facts (AD 17.6(i)), AD 5.3 (sufficiency of evidence), applicability to AD 367
US – Softwood Lumber III (Panel), WT/DS236/R, DSR 2002:IX
countervailing duties (SCM Part V)
expedited review, right to (SCM 19.3), *entitled* SCM 464
review of need for continued imposition (SCM 21.2)

<div>in absence of request SCM 483</div> <div>administrative review SCM 482</div> <div>expedited review, right to (SCM 19.3), aggregated investigations SCM 465</div> <div>interpretation of covered agreements, rules relating to including VCLT provisions</div> <div>text/plain language (VCLT 31(2)) SCM 475</div> <div>as a whole/holistic/harmonious exercise SCM 475</div> <div>legislation as such, right to challenge (WTO XVI:4), future application distinguished SCM 483</div> <div>provisional measures (SCM 17)</div> <div>date of commencement (SCM 17.3) SCM 455</div> <div>duration (SCM 17.4) SCM 456</div> <div>retroactivity (SCM 20) and SCM 455, 466, 473–5, 477</div> <div>relationships within and between agreements, SCM 17.3/SCM 20 SCM 475</div> <div>retroactivity (SCM 20), exceptions SCM 455, 473–5, 475</div> <div>subsidy, definition (SCM 1.1(b)) (conferral of benefit), passing the benefit through, subsidized inputs SCM 85–6</div> <div>US – Softwood Lumber IV (AB), WT/DS257/AB/R, DSR 2004:II</div> <div>AB procedures (DSU 17.9 and ABWP), replacement of member (ABWP 13), for serious personal reasons (AWP 12) DSU 1375</div> <div>anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement</div> <div>calculation of subsidies (GATT VI:3/SCM 19.4), “pass-through” analysis (GATT 6:3/SCM 10 and 32) GATT 472</div> <div>countervailing duties, compliance with both GATT VI:3 and SCM GATT 472</div> <div>conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4), characterization of transaction under domestic law, relevance DSU 1625</div> <div>countervailing duties (SCM Part V)</div> <div>compliance with GATT VI:3 and SCM Agreement (SCM 10) GATT 472, SCM 358</div> <div>“countervailing duty” (SCM 10 footnote 36), “any subsidy bestowed directly or indirectly” SCM 354</div> <div>customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), multiple authentic languages (VCLT 33) and DSU 1665 n. 2604</div> <div>domestic law</div> <div>characterization of transactions, appropriateness as applicable law DSU 1625</div> <div>interpretation of covered agreements, relevance to DSU 1625</div> <div>interpretation of covered agreements, rules relating to including VCLT provisions</div> <div>object and purpose</div> <div>caution in use of DSU 1571</div> <div>SCM 1.1(a)(1) SCM 6</div> <div>same or closely related phrases in different agreements, caution in use of SCM 40</div> <div><i>lex specialis</i>/presumption against treaty conflicts</div> <div>General Interpretative Note (WTO Annex 1A) DSU 1723</div> <div>possibilities of conflict considered by panel/AB, GATT VI/SCM Part V DSU 1723</div> <div>multiple authentic languages, interpretation (VCLT 33)</div> <div>customary international law rules of interpretation, applicability DSU 1665 n. 2604</div> <div>English, French and Spanish texts compared SCM 43</div> <div>ILC Commentary on DSU 1665 n. 2604</div> <div>“ordinary meaning” (VCLT 31(1)) and SCM 43, DSU 1662</div> <div>presumption of identity of meaning (VCLT 33(3)) SCM 43, DSU 1662</div> <div>ordinary meaning of terms used in covered agreements</div> <div>domestic law concepts, relevance DSU 1625</div> <div>“provides” (SCM 1.1(a)(1)(iii)) SCM 40</div>	<div>SCM Agreement</div> <div>object and purpose (SCM 1) SCM 6</div> <div>strengthening and improvement of GATT disciplines on subsidies and countervailing measures SCM 8, 44, 493</div> <div>security and predictability of WTO obligations (DSU 3.2), interpretation contradictory to object and purpose of agreement and SCM 6, 44</div> <div>specific action against dumping (AD 18.1) or subsidy (SCM 32.1) in accordance with GATT VI as interpreted by AD/SCM Agreement, calculation of amount of subsidy (SCM 14 (d)) and SCM 589</div> <div>standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis in case of, contentiousness/omission/ insufficiency of facts DSU 872</div> <div>subsidy, calculation in terms of benefit to recipient (SCM 14)</div> <div>“any” method (chapeau) SCM 403</div> <div>“adequately explained” SCM 403</div> <div>provision of goods or services (SCM 14(d))</div> <div>benchmarks SCM 412</div> <div>“prevailing market conditions” /benchmarks SCM 416–18</div> <div>subsidy, definition (SCM 1.1(a)(1)) (financial contribution)</div> <div>conferral of benefit (SCM 1.1(b)) as parallel requirement SCM 11</div> <div>cumulative nature of SCM 1.1(a)(1) requirements SCM 87</div> <div>preparatory work (VCLT 32), SCM 1.1(a)(1) SCM 14</div> <div>“private body” (SCM 1.1(a)(1)(iv)), government entrustment or direction, effect SCM 50</div> <div>provision of goods or services (SCM 1.1(a)(1)(iii))</div> <div>“goods” SCM 43–4</div> <div>“provides” SCM 40–1</div> <div>range of transactions qualifying as SCM 13</div> <div>transactions not qualifying as SCM 14</div> <div>subsidy, definition (SCM 1.1(b)) (conferral of benefit)</div> <div>passing the benefit through</div> <div>“countervailing duty” (SCM 10 footnote 36) and SCM 355, 358</div> <div>subsidized inputs SCM 87</div> <div>withdrawal of appeal (ABWP 30), withdrawal and re-filing of appeal, for scheduling reasons DSU 1472</div> <div>“world market share” (SCM 6(3)(d)) SCM 326</div> <div>US – Softwood Lumber IV (Panel), WT/DS257/R, DSR 2004:II</div> <div>anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement</div> <div>calculation of subsidies (GATT VI:3/SCM 19.4), “pass-through” analysis (GATT 6:3/SCM 10 and 32) GATT 472</div> <div>countervailing duties, compliance with both GATT VI:3 and SCM GATT 472</div> <div>countervailing duties (SCM Part V)</div> <div>compliance with GATT VI:3 and SCM Agreement (SCM 10) GATT 472</div> <div>calculation of subsidies GATT 472</div> <div>interpretation of covered agreements, rules relating to including VCLT provisions, dictionaries, cautious approach to SCM 43</div> <div>subsidy, definition (SCM 1.1(a)(1)) (financial contribution)</div> <div>provision of goods or services (SCM 1.1(a)(1)(iii))</div> <div>“provision” and “purchase” distinguished SCM 39</div> <div>“provision” and “purchase” distinguished SCM 6</div> <div>subsidy, definition (SCM 1.1(b)) (conferral of benefit), “benefit”, recipient, need for SCM 87</div> <div>subsidy, specificity (SCM 2)</div> <div><i>de facto</i> specificity (SCM 2.1(c)), deliberate limitation SCM 109</div> <div>relevant factors other than those listed under SCM 2.1(a) and (b) (SCM 2.1(c)) SCM 111</div>
--	--

(cont.)

US – Softwood Lumber IV (Article 21.5 – Canada) (AB), WT/DS264/AB/R, DSR 2004:V
AB procedures (DSU 17.9 and ABWP), written reponses (ABWP 28), requests for additional memoranda/submissions DSU 1465
interpretation of covered agreements, rules relating to including VCLT provisions, dictionaries DSU 1114
lex specialis/presumption against treaty conflicts AD 83
review of implementation of DSB rulings (DSU 21.5)
competence of DSU 21.5 (compliance) panel, determination of consistency of measure with WTO obligations DSU 1117
measures other than measures taken to comply DSU 1128
“measures taken to comply”
measure taken “to comply” /measure subject of original dispute distinguished DSU 1114
measures close to measure taken to comply DSU 1118, 1120
US – Softwood Lumber IV (Article 21.5 – Canada) (Panel), WT/DS264/R
implementation of panel or AB recommendations (DSU 19.1), subsequent proceedings/continuance of recommendations DSU 946
review of implementation of DSB rulings (DSU 21.5)
competence of DSU 21.5 (compliance) panel, limitations on DSU 1104
composition of panel, as close as possible to original panel DSU 1104
DSU 6.2 procedures, applicability
procedures distinguished DSU 1104
time-limits distinguished DSU 1104
measures other than measures taken to comply DSU 1128
“measures taken to comply”, considered in context DSU 1103
subsidy, definition (SCM 1.1(b)) (conferral of benefit), passing the benefit through, benefit to recipient test SCM 87
US – Softwood Lumber V (AB), WT/DS264/AB/R, DSR 2004:V
AB procedures (DSU 17.9 and ABWP), reports, as precedent DSU 900
anti-dumping duties, imposition and collection (AD 9), assessment (AD 9.3), “product as a whole” (AD 2.1) and AD 120
determination of dumping (AD 2)
calculation of dumping margins (AD 2.4), comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), zeroing and AD 114
cost data (AD 2.2.1.1)
“negative” nature of obligations (“what is not prohibited. . .”) AD 49
“shall consider all available evidence” AD 50
“normal value . . . in the ordinary course of trade” (AD 2.1)
calculation of dumping margins (AD 2.4)
comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2) AD 117
product types/product as a whole (AD 2.4.2) AD 125
“margins” of dumping AD 114
GATT 1947/WTO continuity, decisions, procedures and customary practices under GATT 1947 (WTO XVI:1) (GATT *acquis*), AB reports DSU 900
legal status of adopted AB reports (DSU 17.14) DSU 900
standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6), law vs fact, alleged failure of panel to make objective assessment (DSU 11) DSU 848
“zeroing” (AD 9.3/GATT VI:2)
comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2) AD 114, 117
non-comparable types AD 125

US – Softwood Lumber V (Panel), WT/DS264/R, DSR 2004:V
determination of dumping (AD 2)
fair comparison of export price and normal value (AD 2.4), “due allowance”, “differences which affect price comparability” AD 92–3
“normal value . . . in the ordinary course of trade” (AD 2.1), calculation of administrative, selling and general costs and profits (AD 2.2.2), actual data “pertaining to” AD 56
implementation of panel or AB recommendations (DSU 19.1), panel’s discretionary suggestions DSU 949
investigation of dumping (AD 5)/subsidy (SCM 11)
rejection of application (AD 5.8), applicability prior to initiation of investigation AD 399
sufficiency of evidence (AD 5.3), “such evidence is reasonably available to the applicant” (AD 5.2) AD 341
“like product” (AD 2.6), “another product” AD 151
US – Softwood Lumber V (Article 21.5 – Canada) (AB)
Anti-Dumping Agreement (AD), object and purpose, absence of specific provision/preamble AD 3
determination of dumping (AD 2)
calculation of dumping margins (AD 2.4), comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), zeroing and AD 688
fair comparison of export price and normal value (AD 2.4), “fair comparison”, zeroing (AD 9.3) and AD 83
interpretation of covered agreements, rules relating to including VCLT provisions, multiple permissible interpretations AD 929
standard/powers of review (panel) (AD 17.6), interpretation of relevant provisions of AD (AD 17.6(ii)), “admits of more than one permissible interpretation” AD 929
“zeroing” (AD 9.3/GATT VI:2)
comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2)
mathematical equivalence AD 140
transaction-to-transaction method AD 83, 132–5, 688, 929
“fair comparison” (AD 2.4) and AD 83
prospective normal value system (AD 9.3.2) and AD 688
US – Softwood Lumber IV (Article 21.5 – Canada) (Panel), WT/DS264/RW, review of implementation of DSB rulings (DSU 21.5), “measures taken to comply”, measure taken “to comply” /measure subject of original dispute distinguished DSU 1113
US – Softwood Lumber V (Article 21.5 – Canada) (Panel)
composition of panel (DSU 8), replacement of panellist DSU 442
determination of dumping (AD 2), calculation of dumping margins (AD 2.4), comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), zeroing and AD 688
“zeroing” (AD 9.3/GATT VI:2)
comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), mathematical equivalence AD 137–8
prospective normal value system (AD 9.3.2) and AD 688
US – Softwood Lumber VI (Panel), WT/DS277/R, DSR 2004:VI
countervailing duties (SCM Part V), public notice and explanation of determinations (SCM 22), AD 12.2.2, SCM 22.4 and SCM 22.5, close similarity SCM 504
determination of injury (AD 3)
threat of material injury (AD 3.7)
AD 3.2 and SCM 15.2 factors and AD 301
AD 3.4 factors and AD 300–1
“facts, not merely allegation, conjecture or remote possibility” a “clearly foreseen and imminent” change of circumstances, need for AD 292

<p>“consideration” of facts AD 293–5</p> <p>“special care” requirement (AD 3.8/SCM 15.8) AD 305–6, SCM 451–2</p> <p>underlying principles (AD 3.1) and AD 178</p> <p>determination of injury (SCM 15), threat of injury (SCM 15.8), “special care” requirement (AD 3.8/SCM 15.8) AD 305–6, SCM 451–2</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>dictionaries AD 305</p> <p>same or closely related phrases in different agreements, AD 12.2.2/SCM 22.4 and 22.5 SCM 504</p> <p>order of analysis, AD-consistent measure/compliance with public notice (AD 12.2) requirements AD 835</p> <p>public notice of preliminary or final determination (AD 12.2) AD 12.2.2, SCM 22.4 and SCM 22.5, close similarity SCM 504</p> <p>compliance with other obligations, dependence on AD 839</p> <p>explanations for initiation of investigations (AD 12.2.2), relevance/sufficiency AD 835</p> <p>relationships within and between agreements, AD 17.6/DSU 11 AD 912</p> <p>standard/powers of review (panel) (AD 17.6)</p> <p>assessment of the facts (AD 17.6(i)), <i>de novo</i> review, exclusion AD 912</p> <p>interpretation of relevant provisions of AD (AD 17.6(ii))</p> <p>“admits of more than one permissible interpretation” AD 963</p> <p>DSU 11 compared AD 936, 963</p> <p>standard/powers of review (panel) (DSU 11), “objective assessment of matter before it”, AD 17.6(ii) compared AD 936</p>	<p>risk of bankruptcy, relevance AD 98–100</p> <p>for unforeseeable costs AD 102</p> <p>exchange rates and (AD 2.4.1) AD 107</p> <p>determination of relevant currency AD 109</p> <p>general “fair comparison” requirement and AD 110</p> <p>when “required” AD 108–9</p> <p>“sales made at as nearly as possible the same time” AD 87</p> <p>“normal value . . . in the ordinary course of trade” (AD 2.1)</p> <p>calculation of dumping margins (AD 2.4)</p> <p>averaging periods AD 130–1</p> <p>comparison of weighted average normal value with weighted average of <i>all</i> comparable export transactions (AD 2.4.2)</p> <p>“comparable” AD 129</p> <p>multiple averaging (AD 2.4.2) AD 128–9</p> <p>relationship between, AD 2.1, 2.3 and 2.4 AD 37</p> <p>implementation of panel or AB recommendations (DSU 19.1)</p> <p>dictionaries AD 102</p> <p>panel’s decision not to make suggestions DSU 971</p> <p>text/plain language (VCLT 31(2)) AD 99, 107 n. 143</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, effectiveness principle (<i>ut res magis valeat quam pereat/effet utile</i>) AD 101</p> <p>non-discriminatory administration of QRs (GATT XIII), publication and administration of trade regulations (GATT X:3(a)) GATT 596</p> <p>order of analysis, specific/general provision AD 86</p> <p>publication and administration of trade regulations (GATT X)</p> <p>Anti-Dumping Agreement and GATT 596</p> <p>uniform, impartial and reasonable administration (GATT X:3 (a))</p> <p>consistency of administration with Member’s domestic law, relevance GATT 562</p> <p>“uniform” GATT 562</p> <p>relationships within and between agreements</p> <p>AD 1, 9 and 18/GATT VI/AD 3, 5, 7, 12 and Annex I, para. 2 AD 10</p> <p>AD 2/AD 6 AD 641</p> <p>AD 2.4.1/GATT X:3(a) GATT 596</p> <p>AD 2.1, 2.3 and 2.4 AD 37</p> <p>AD 2.4, sentences within AD 86</p> <p>AD 2.4/AD 2.4.2 AD 129</p> <p>AD 2.4.1/AD 2.4 AD 110</p> <p>AD 6.8/AD Annex II AD 535</p> <p>assessment of the facts (AD 17.6(i)), “unbiased and objective” AD 919</p> <p>standard/powers of review (panel) (AD 17.6), “facts made available” (AD 17.5(ii)), evidence before authority at time of determination, limitation to AD 916</p>
<p>US – Softwood Lumber VI (Article 21.5 – Canada) (AB), WT/DS277/RW</p> <p>AB procedures (DSU 17.9 and ABWP)</p> <p>submission, correction of clerical error (ABWP 18(5)), requests for DSU 1407</p> <p>timetable (ABWP 26), modification in exceptional circumstances (ABWP 16(2)), modification of date of oral hearing (ABWP 16(2)) DSU 1395</p> <p>burden of proof, impossible burden, proving a negative DSU 569</p> <p>review of implementation of DSB rulings (DSU 21.5), competence of DSU 21.5 (compliance) panel, deviation from original panel report DSU 1105–6</p>	<p>US – Stainless Steel (Mexico) (AB), WT/DS344/AB/R, DSR 2008:II</p> <p>AB procedures (DSU 17.9 and ABWP)</p> <p>compliance obligation DSU 1366</p> <p>documents (ABWP 18), failure to file by deadline (ABWP 18(1)) DSU 1398</p> <p>due process and DSU 1366</p> <p>AD 9.3/GATT VI:2 requirements GATT 465</p> <p>anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement</p> <p>dumping, constituent elements (AD 2/GATT VI:1), consistency of definition throughout AD and GATT GATT 453</p> <p>dumping, constituent elements/definition (AD 2/GATT VI:1), “margin of dumping” (GATT VI:2) / “margins of dumping” (AD 2.1), equivalence GATT 453</p> <p>anti-dumping duties, imposition and collection (AD 9), assessment (AD 9.3), “product as a whole” (AD 2.1) and AD 681–4</p>
<p>US – Sonar Mapping (GATT Panel), GPR.DS1/R, Government Procurement Agreement (GPA), definitions (GPA I:1), “government procurement” GPA 5</p> <p>US – Spring Assemblies (GATT Panel), BISD 30S/107</p> <p>General Exceptions (GATT XX) (general)</p> <p>applicability to GATT as a whole (chapeau) GATT 860 n. 1180</p> <p>“countries” GATT 860 n. 1180</p> <p>General Exceptions (GATT XX), preamble/chapeau, applicability of GATT XX to GATT as a whole GATT 860 n. 1180</p>	
<p>US – Stainless Steel (Korea) (Panel), WT/DS179/R, DSR 2001:IV</p> <p>Anti-Dumping Agreement (AD), principles (AD 1), “initiated and conducted in accordance with the provisions of this Agreement”, violation of other AD provisions as evidence of breach of AD 1 AD 10</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17)</p> <p>competence of domestic courts, need to avoid trespassing on GATT 562</p> <p>preservation of rights and obligations of Members under covered agreements GATT 562</p> <p>determination of dumping (AD 2)</p> <p>fair comparison of export price and normal value (AD 2.4)</p> <p>“due allowance”</p> <p>“costs . . . incurred between importation and resale” AD 102</p> <p>differences in “terms and conditions of sale” AD 98–100</p> <p>legal effect / “should also be made” AD 101</p> <p>object and purpose AD 102</p>	

- (*cont.*)
- customary international law rules of interpretation [as codified in the VCLT] as applicable law, AD 17.6(ii) AD 930
- determination of dumping (AD 2)
- calculation of dumping margins (AD 2.4), “margins” of dumping (AD 2.4.2), “margin of dumping” (GATT VI:2), equivalence GATT 453
- relationships within and between agreements, AD 2.1/GATT VI:1 GATT 453
- DSB, “*accordingly* the DSB shall have authority” (DSU 2.1), “*accordingly* the DSB shall have authority” (DSU 2.1) DSU 32
- DSU dispute settlement, hierarchical structure DSU 835
- “dumping” / “margin of dumping” (AD 2.1)
- as exporter-specific concepts 691–4, GATT 453
- AD 9.3 and AD 691–4
- “for purposes of this agreement” / identity of meaning throughout AD Agreement AD 16
- identity of meaning throughout AD Agreement AD 16
- interpretation of covered agreements, responsibility for authoritative (WTO IX:2), “clarify the existing provisions” (DSU 3.2) and DSU 53
- interpretation of covered agreements, rules relating to including VCLT provisions
- multiple permissible interpretations AD 930
- same or closely related phrases in same agreement
- DSU 2.1/DSU 11 (“*accordingly*”) DSU 32
- identity of meaning throughout agreement AD 16
- legal status of adopted AB reports (DSU 17.14), as precedent DSU 903
- precedent
- AB jurisprudence, importance of following DSU 53, 68, 835, 903, 1701
- security and predictability of WTO obligations (DSU 3.2) and DSU 53, 835, 903, 1701
- prompt and satisfactory settlement (DSU 3.3), security and predictability of WTO obligations (DSU 3.2) as aid to DSU 68
- relationships within and between agreements AD 691–4
- security and predictability of WTO obligations (DSU 3.2) DSU 46
- certainty of the law DSU 24
- “clarify the existing provisions” and DSU 53
- precedent/AB jurisprudence, need to follow DSU 53, 835, 903, 1701
- prompt and satisfactory settlement (DSU 3.3) and DSU 68
- standard/powers of review (panel) (AD 17.6), interpretation of relevant provisions of AD (AD 17.6(ii)), “admits of more than one permissible interpretation” AD 930
- “zeroing” (AD 9.3/GATT VI:2)
- comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), mathematical equivalence AD 141
- margin of dumping as ceiling GATT 465
- US – Stainless Steel (Mexico) (Article 21.3(c)), WT/DS344/15**
- “reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations)
- administrative measures as means of implementation, relevance DSU 1051
- complexity of implementation process DSU 1054
- US – Steel Plate dispute**
- consultations (DSU 21.5), ad hoc procedural agreement DSU 1168
- review of implementation of DSB rulings (DSU 21.5)
- ad hoc procedural agreements
- consultations DSU 1168
- non-prejudice to parties’ other rights DSU 1174
- US – Steel Plate (Panel), WT/DS206/R and Corr.1, DSR 2002:VI**
- anti-dumping duties, imposition and collection (AD 9), lesser duty, possibility of (AD 9.1) AD 861
- determination of dumping (AD 2), relationship between, AD 2.2 and AD 2.4/AD 6.8 AD 161
- developing countries (AD 15)
- “constructive remedy”
- decision not to impose anti-dumping duties AD 857 n. 1156
- lesser duty or price undertaking AD 861
- “shall be explored” AD 861
- obligations (first sentence) AD 854
- “special regard” AD 856
- domestic law, as fact for purposes of international adjudication AD 602 n. 836
- evidence (dumping investigation) (AD 6)
- “facts available”, right to use (AD 6.8/Annex II), “less favourable result” as possible consequence of failure to cooperate (AD Annex VII para. 7), cooperation “to the best of its ability” AD 575
- resort to “facts available” (AD 6.8/Annex II)
- Annex II, mandatory nature AD 537
- in case of partial lack of necessary information AD 551–2
- in case of verifiable information, “verifiable” (Annex II para. 3) AD 557
- conditions for (Annex II) AD 550–2
- “information appropriately submitted . . .” (Annex II para. 3) AD 560
- information in medium or computer language required (Annex II para. 1) AD 572
- information provided within reasonable period, investigating authorities’ obligation to use AD 550–2
- obligation to submit information “as soon as possible” (Annex II para. 1) AD 537
- “shall” AD 537
- identification of specific measures (DSU 6.2), “practice” as measure DSU 268
- implementation of DSB recommendations and rulings, surveillance (DSU 21), choice of means at authorities’ discretion (DSU 21.3) DSU 983
- implementation of panel or AB recommendations (DSU 19.1)
- choice of means at authorities’ discretion (DSU 21.3) DSU 528
- panel’s decision not to make suggestions DSU 974
- panel’s discretionary suggestions DSU 948, 974
- international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)), good faith as AD 575
- interpretation of covered agreements, rules relating to including VCLT provisions
- dictionaries AD 557, 560
- object and purpose, AD as a whole AD 551
- legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability, resort to facts available (AD 6.8/Annex II) and AD 602
- “measures at issue” (DSU 6.2)
- independent operational status test AD 885, DSU 268, 290 n. 463
- “practice” as AD 885
- ordinary meaning of terms used in covered agreements, “all” AD 550
- relationships within and between agreements
- AD 6.8/AD 9.3 AD 719
- AD 9.1/AD 15 AD 857, 861
- AD 17.6/DSU 11 AD 926
- right of panel or AB to make suggestions DSU 948
- standard/powers of review (panel) (AD 17.6), assessment of the facts (AD 17.6(i)), DSU 11 compared AD 926
- terms of reference of panels (DSU 7), abandoned claim, right to resurrect AD 902, DSU 413
- third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6, abandoned claims and DSU 413

<p>US – Steel Safeguards (AB), WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS258/AB/R, WT/DS259/AB/R, DSR 2003:VIII</p> <p>causation analysis (SG 4.2(b)) (determination of serious injury or threat of)</p> <p>“demonstrates” SG 77, 180–1</p> <p>“on the basis of objective data” SG 179, 181, 189</p> <p>determination of serious injury or threat of, definitions (SG 4.1),</p> <p>“serious injury” (SG 4.1(a)), as “significant overall impairment” / “very high standard of injury” SG 180</p> <p>determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a))</p> <p>factors other than increased imports causing injury, non-attribution requirement, order of analysis, relevance SG 214</p> <p>“factors other than increased imports” (SG 4.2(b)), imports from excluded sources as SG 77–8</p> <p>emergency action (GATT XIX)</p> <p>“as a result of unforeseen developments” (GATT XIX:1(a))</p> <p>“as a result of” GATT 804 n. 1087, 818–20</p> <p>“demonstration”, need for, in respect of each measure GATT 812–13</p> <p>publication of findings and reasoned conclusions (SG 3.1) and SG 95, 99</p> <p>reasoned and adequate explanation requirement (SG 3.1) GATT 801–2, 811, 814</p> <p>standard of review GATT 801–2</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>dictionaries GATT 819</p> <p>same or closely related phrases in different agreements, GATT XIX:1(a)/SG 2.1 SG 48</p> <p>judicial economy, discretionary nature, reasons for not exercising SG 181</p> <p>multiple complainants (DSU 9)</p> <p>separate panel reports (DSU 9.2)</p> <p>structure DSU 452</p> <p>timeliness of request DSU 450, 811</p> <p>notice of appeal, requirements (ABWP 20(2)(d)), clear allegation of panel’s failure to make objective assessment (DSU 11) DSU 1430</p> <p>ordinary meaning of terms used in covered agreements, “result” (GATT XIX:1(a)) GATT 819</p> <p>panel reports, rationale, need for (DSU 12.7), sufficiency DSU 705</p> <p>“product being imported” (SG 2.1), as sudden and recent increase SG 43–5</p> <p>publication of findings and reasoned conclusions (SG 3.1) GATT 814</p> <p>application of safeguard measures (SG 5.1), Members’ right to choose method and SG 99</p> <p>“as a result of unforeseen developments” (GATT XIX:1(a)) SG 99, 109</p> <p>multiple findings SG 95</p> <p>non-compliance with SG 3.1 as violation of SG 2.1/SG 4 SG 99</p> <p>“reasoned conclusions”. SG 101–2</p> <p>publication of findings and reasoned conclusions (SG 3.1) and SG 95, 99</p> <p>reasoned and adequate explanation requirement (SG 3.1)</p> <p>“as a result of unforeseen developments” (GATT XIX:1(a)) GATT 801–2, 811, 814</p> <p>“demonstration”, need for GATT 812–13</p> <p>panel’s obligation to confirm SG 109</p> <p>publication as authorities’ obligation GATT 814</p> <p>relationships within and between agreements</p> <p>GATT XIX/SG 3.1 and SG 4.2(c) SG 108</p> <p>SG 2 and 4/SG 3 SG 99</p> <p>SG 3.1/SG 4.2(c) SG 107</p>	<p>safeguard measures, conditions (SG 2)</p> <p>parallelism between investigation (SG 2.1/SG 4.1(c)) and application of measure (SG 2.2) SG 74–9</p> <p>“factors other than increased imports” (SG 4.2(b)), imports from excluded sources as SG 77–8</p> <p>reasoned and adequate explanation requirement SG 45, 74, 76–9</p> <p>“such increased quantities” (SG 2.1)</p> <p>absolute increase SG 50</p> <p>“recent” SG 40–5</p> <p>trends SG 42–5</p> <p>“under such conditions” SG 59</p> <p>standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 871</p> <p>standard/powers of review (panel) (DSU 11)</p> <p>applicability to SG/GATT XIX SG 109</p> <p>DSU 11, applicability GATT 801</p> <p>DSU 11 (function of panel) claims and claims relating to substantive provisions distinguished DSU 1430</p> <p>error of law, error not rising to a breach of DSU 11 DSU 596</p> <p>“objective assessment of matter before it”, reasoned and adequate explanation (SG 4.2(a)) and SG 99</p> <p>“sufficient to cause serious injury or threat” (SG 2.1) SG 48</p> <p>US – Steel Safeguards (Panel), WT/DS248/R and Corr.1, WT/DS249/R and Corr.1, WT/DS251/R and Corr.1, WT/DS252/R and Corr.1, WT/DS253/R and Corr.1, WT/DS254/R and Corr.1., WT/DS258/R and Corr.1, WT/DS259/R and Corr.1</p> <p>causation analysis (SG 4.2(b)) (determination of serious injury or threat of)</p> <p>analysis of conditions of competition SG 193–5</p> <p>price analysis and SG 194</p> <p>relevant factors SG 193–5</p> <p>coincidence of trends in imports and in injury factors SG 185–9</p> <p>“demonstrates” SG 187–8, 193</p> <p>quantification, relevance SG 211–13</p> <p>reasoned and adequate explanation SG 95, 99</p> <p>confidential information (SG 3.2), publication of findings and reasoned conclusions (SG 3.1) and SG 112</p> <p>confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3)</p> <p>interim review reports DSU 815</p> <p>non-confidential summary of information (DSU 18.2) DSU 912</p> <p>determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a))</p> <p>“factors other than increased imports” (SG 4.2(b)) SG 74</p> <p>imports from excluded sources as SG 74</p> <p>DSU dispute settlement, time-frame (DSU 20), separate panel reports (DSU 9.2) and DSU 994</p> <p>due process (dispute settlement proceedings), opportunity to respond to evidence/presentations of other parties, timing of submission of evidence (DS 12) and DSU 628</p> <p>emergency action (GATT XIX)</p> <p>“as a result of unforeseen developments” (GATT XIX:1(a))</p> <p>“as a result of” GATT 818</p> <p>confluence of developments as basis GATT 817</p> <p>“demonstration”, need for</p> <p>prior to application of measure GATT 810</p> <p>in respect of each measure GATT 812–13</p> <p>objective/subjective nature of legal standard GATT 816</p> <p>publication of findings and reasoned conclusions (SG 3.1) and SG 95, 99</p> <p>reasoned and adequate explanation requirement (SG 3.1) GATT 800, SG 95</p> <p>standard of review GATT 800–2</p>
---	--

<i>(cont.)</i>	
evidence (panel) (DSU 12), time-limits for submission, “rebuttal submissions” DSU 628	“objective assessment of matter before it”, reasoned and adequate explanation (SG 4.2(a)) and GATT 800, SG 310
executive summaries (panel working procedures)	“under such conditions”, safeguard measures, conditions (SG 2), price analysis, relevance SG 62–3
length/structure DSU 735	WTO Agreement, cumulative nature of obligations SG 10
preliminary ruling on DSU 735	US – Sugar Waiver (GATT Panel), BISD 37S/228
interim review (DSU 15)	Lomé waiver WTO 209
confidentiality of reports DSU 815	relationships within and between agreements, GATT II/GATT XIII GATT 169
multiple complainants/separate reports DSU 811	Schedules of Concessions (GATT II)
interpretation of covered agreements, rules relating to including VCLT provisions, as a whole/holistic/harmonious exercise SG 112	diminishment of obligations, exclusion GATT 138
investigation of conditions for safeguard measures, requirements (SG 3.1/SG 4.2(c))	non-discriminatory administration of QRs (GATT XIII) and GATT 169
interested parties, obligation to consult SG 96	“subject to the terms, conditions or qualifications in the schedule” (GATT II:1(b)), additional concession GATT 140 n. 204
internal decision-making process, relevance SG 98	VCLT as applicable law GATT 169
margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3), separate panel reports DSU 452	US – Superfund (GATT Panel) BISD 34S/136
multiple complainants (DSU 9), separate interim review reports (DSU 9.2) DSU 811	legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability, assessment of mandatory nature DSU 294 n. 467
panel procedures (DSU 12 and Appendix 3 (WP))	nullification or impairment (DSU 3.8), presumption in case of inconsistency with covered agreement DSU 90
panel procedures (DSU 12 and Appendix 3 (WP)), timetable (panel) (DSU 12.3), flexibility DSU 696	US – Textiles Rules of Origin (Panel), WT/DS243/R and Corr.1, DSR 2003:VI
“rebuttal submissions” DSU 628, 698	interpretation of covered agreements, rules relating to including VCLT provisions, dictionaries RO 12
time-limits for filing of written submissions (DSU 12.5 and WP), modification by agreement DSU 721	multiple authentic languages, interpretation (VCLT 33), “unduly strict requirements” (RO 2(c)) RO 12 n. 20
preliminary rulings on	preparatory work (VCLT 32), RO 2(c) RO 12 n. 22
confidentiality issues DSU 912	Rules of Origin Agreement (RO)
executive summaries DSU 735	design and application, Members’ discretion RO 2
timetable for panel proceedings DSU 696	documentation requirements RO 12 n. 21
timing of submission of evidence DSU 628	“fulfilment of a certain condition not related to manufacturing or processing” (RO 2(c)) RO 13
proportionality, safeguard measures (SG 5.1) (“to the extent necessary”) and SG 15	“negative” nature RO 2
publication of findings and reasoned conclusions (SG 3.1)	non-discrimination (RO 2(d)), closely related goods RO 14
application of safeguard measures (SG 5.1), Members’ right to choose method and SG 98	restrictive, distorting or disruptive effects on international trade, exclusion (RO 2(c))
format of report, relevance SG 104	adverse effects on trade in different goods RO 11
multiple findings SG 95	“create” RO 9
timing of report, relevance SG 105	“effects on international trade” RO 11
reasoned and adequate explanation requirement (SG 3.1), “as a result of unforeseen developments” (GATT XIX:1(a)), “demonstration”, need for GATT 812–13	individual “rules” and system distinguished RO 11 n. 18
reasoned and adequate explanation requirement (SG), causation (SG 2.1/SG 4.2(b)) SG 74	“themselves” RO 8
relationships within and between agreements	trade objectives, exclusion as instrument of (RO 2(b)) RO 3–7
GATT XIX:1/SG 11.1 SG 10	design and structure of measure as evidence of protective application RO 5
GATT XIX/SG 1 SG 10	GATT III:2 obligations compared RO 5
GATT XIX/SG 3.1 and SG 4.2(c) SG 108	incidental trade effect distinguished RO 7
SG 3.1/SG 3.2 SG 112	intention, relevance RO 5
SG 3.1/SG 4.2(c) SG 107	“trade objectives” RO 4, 6
safeguard measures, application (SG 5), “to the extent necessary” (proportionality) (SG 5.1) SG 15	“unduly strict requirements” (RO 2(c)) RO 12
safeguard measures, conditions (SG 2)	French and Spanish versions RO 12 n. 20
parallelism between investigation (SG 2.1/SG 4.1(c)) and application of measure (SG 2.2), “factors other than increased imports” (SG 4.2(b)), imports from excluded sources as SG 74	preparatory work (VCLT 32) RO 12 n. 22
reasoned and adequate explanation requirement GATT 800, SG 45, 74, 95	RO 2(a) as context RO 12
right to apply measure and exercise of right distinguished SG 15	“strict” RO 12
“such increased quantities”, as sudden and recent increase SG 40–2	“unduly” RO 12
“such increased quantities” (SG 2.1), trends SG 42, 45	rules of origin disciplines (RO 2) (transition period), “shall not themselves create” (RO 2(c)), “restrictive, distorting or disruptive effects” RO 10
standard/powers of review (panel) (DSU 11)	US – Tobacco (GATT Panel), BISD 41S/I/131 , legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability DSU 290, 294
applicability to SG/GATT XIX GATT 800	US – Tuna (GATT Panel), DS29/R
<i>de novo</i> review, exclusion GATT 800, SG 310	GATT 1947/WTO continuity
	decisions, procedures and customary practices under GATT 1947 (WTO XVI:1) / “other decisions of the Contracting

Parties to GATT 1947" (GATT 1994 1(b)(iv)), panel reports (unadopted) GATT 608 n. 868	"necessary" GATT XX and TBT 38 SPS 5.6 footnote 3 and TBT 40
"decisions" (WTO XVI:1/GATT 1(b)(iv)), classification as, panel reports (adopted) GATT 608 n. 868	"taking account of risks" of non-fulfilment TBT 46
non-violation claims (GATT XXIII:1(b)), nullification or impairment, need for, measures in force, limitation to GATT 973	"trade-restrictive" TBT 36 two-step analysis TBT 31
US – Tuna II (Mexico) (Panel), WT/DS381/R	order of analysis (TBT 2.4) TBT 48
<i>amicus curiae</i> briefs, due process and DSU 682, 744	"technical regulation" (Annex 1.1), mandatory compliance TBT 164
burden of proof (general rules), <i>onus probandi actori incumbit</i> TBT 53	three-tier test/order of analysis (TBT 2.4) TBT 48
composition of panel (DSU 8), replacement of panellist DSU 442	US – Tyres (China) (AB), WT/DS399/AB/R
due process, <i>amicus curiae</i> briefs and DSU 682, 744	causation analysis (SG 4.2(b)) (determination of serious injury or threat of), reasoned and adequate explanation (SG 4.2(a)) SG 330
interim review (DSU 15), reconsideration of evidence, arguments and findings DSU 798	determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a)), "factors other than increased imports" (SG 4.2 (b)), non-attribution requirement SG 331–2
"international standards . . . as a basis for technical regulation" (TBT 2.4/Annex 1)	reasoned and adequate explanation requirement (SG), causation (SG 2.1/SG 4.2(b)) SG 330
burden of proof	safeguard measures, maintenance of substantially equivalent level of concessions (SG 8), "absolute" increase in imports (SG 8.3) SG 322
effectiveness of standard TBT 53	standard/powers of review (panel) (DSU 11)
<i>onus probandi actori incumbit</i> TBT 53	"objective assessment of the facts", <i>de novo</i> review, exclusion SG 153
"in fulfilment of legitimate objective" (TBT 2.4), "ineffective or inappropriate means" (including distinction between) TBT 69	"objective assessment of matter before it", reasoned and adequate explanation (SG 4.2(a)) and SG 153
"international standard"	transitional safeguard measures (SG) (China) (Accession Protocol 16)
elements TBT 54	causation analysis (Protocol 16.4)
ISO/IEC Guide 2 TBT 54–5, 154	cumulative impact SG 329
"standard" (Annex 1.2) distinguished TBT 54–5, 167	non-attribution requirement SG 331–2
ISO/IEC Guide/Annex 1, relationship TBT 154	"significant cause" SG 326–8
"relevant" TBT 66	compliance, standard of review (DSU 11) SG 313
use "as a basis for" GATT 48, 66	consultations (Protocol 16.1)
"international standards . . . as a basis for technical regulation" (TBT 2.4/Annex), "as a basis for" TBT 66	significance of consultations provision SG 315
interpretation of covered agreements, rules relating to including VCLT provisions, object and purpose, preamble as evidence of TBT 7	determination of market disruption (Protocol 16.4) as context SG 315
judicial economy, irrelevant considerations DSU 656	duration of remedy (Protocol 16.6) SG 333
<i>lex specialis</i> /presumption against treaty conflicts	market disruption (Protocol 16.4)
General Interpretative Note (WTO Annex 1A) DSU 1729	"absolute" increase SG 322
possibilities of conflict considered by panel/AB, GATT/TBT DSU 1729	investigation period SG 321
"measures at issue" (DSU 6.2), several instruments as single measure DSU 275–6	"material injury" vs "serious injury" SG 320
MFN treatment (TBT 2.1) TBT 17	rate of increase, relevance SG 324
relationships within and between agreements	US – Tyres (China) (Panel), WT/DS399/R
GATT III:4/TBT 2.1 TBT 20	burden of proof (general rules), <i>onus probandi actori incumbit</i> SG 314, 317, 333
GATT XX/TBT 2.2 TBT 38	safeguard measures, duration and review (SG 7), burden of proof SG 333
SPS 5.6 and footnote 3/TBT 2.2 TBT 40	transitional safeguard measures (SG) (China) (Accession Protocol 16)
SPS/TBT SPS 286	compliance, burden of proof SG 314
State responsibility as rule/general principle of international law (ILC Articles), responsibility for act or omission of, judicial authorities DSU 1684	"to the extent necessary" (Protocol 16.3) SG 317–18
TBT Agreement	US – Underwear (AB), WT/DS24/AB/R, DSR 1997:I
definitions (TBT 1.1 and Annex 1), international standards definitions and (TBT 1.1) TBT 9	AB procedures (DSU 17.9 and ABWP), written reponses (ABWP 28) DSU 1459
object and purpose (preamble), as aid to interpreting TBT Agreement TBT 7	consultations (ATC 6.7)
technical regulations (TBT 2/Annex 1.1)	due process and ATC 76
MFN treatment (TBT 2.1) TBT 17	obligatory nature ATC 79
"not more trade-restrictive than necessary to fulfil a legitimate objective" (TBT 2.2)	retroactivity (trade measures) (ATC 6.10) and ATC 76
availability of less trade-restrictive alternative TBT 27	due process (dispute settlement proceedings), consultations (ATC 6.10) ATC 76
burden of proof TBT 29	interpretation of covered agreements, rules relating to including VCLT provisions
"for this purpose" /interrelationship between first and second sentences TBT 35	other treaties, MFA ATC 77–8
"legitimate objective"	same or closely related phrases in different agreements, GATT X:2/ATC 6.10 ATC 74, 80, 87
multiple objectives TBT 43	
qualification as TBT 27, 45	

<i>(cont.)</i>	
ordinary meaning of terms used in covered agreements, “suppress” (SCM 6.2(c))	SCM 290
publication and administration of trade regulations (GATT X)	
measures of general application (GATT X:1), “of general application”	GATT 518
transparency and due process, GATT X:2 and GATT 540	
relationships within and between agreements	
ATC 6.10/ATC 6 as a whole	ATC 76
ATC 6.10/GATT X:2	ATC 74, 80, 87
retroactivity (trade measures) (ATC 6.10)	ATC 74–80
ATC 6.10 measure as measure of general application (GATT X:2)	ATC 74, 80, 87
consultations, request for and notification to TMB (ATC 6.10)	and ATC 76
MFA provision, omission from ATC	ATC 77–8
provisional application of restraint measures authorized under ATC 10 (ATC 11) and ATC 79	
transitional safeguards (ATC 6), as balance of rights and obligations	ATC 76
US – Underwear (Panel), WT/DS24/R, DSR 1997:I	
confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3), interim review reports	DSU 814
consultations (DSU 4)	
confidentiality (DSU 4.6), offers of settlement during consultations and	DSU 168
legal status of offers made in course of unsuccessful consultations	ATC 26, DSU 168
“without prejudice” nature of obligation (DSU 4.6), offers made during consultations and	DSU 168
implementation of panel or AB recommendations (DSU 19.1), panel’s discretionary suggestions	DSU 952
interim review (DSU 15), confidentiality of reports	DSU 814, 81814
publication and administration of trade regulations (GATT X), retroactivity (trade measures) (ATC 6.10)	GATT 541
quantitative restrictions (ATC 2) (integration process), conformity with ATC provisions, need for (ATC 2.4), transitional safeguards (ATC 6) and ATC 84	
retroactivity (trade measures) (ATC 6.10), prior publication (GATT X:2), relevance	GATT 541
standard/powers of review (ATC 8.3)	ATC 99
standard/powers of review (panel) (DSU 11)	
“objective assessment of the facts”, <i>de novo</i> review of facts, exclusion	ATC 99
serious damage or actual threat of (ATC 6.2)/SG 4, Member’s determination of, statement to TMB, admissibility	ATC 23–4
Textiles and Clothing Agreement (ATC), object and purpose, full integration of textiles into GATT	WTO 3
Textiles and Clothing Agreement (ATC), administration of restrictions (ATC 4), statements during review proceedings, admissibility in panel proceedings (DSU 11)	ATC 41–2
Textiles Monitoring Body (TMB)	
review proceedings, statements during, admissibility in panel proceedings (DSU 11)	ATC 23–4
standard/powers of review (ATC 8.3)	ATC 99
transitional safeguards (ATC 6)	
attribution of damage from “sharp and substantial increase in imports” /criteria (ATC 6.4), comparative analysis, methodology	ATC 66
attribution of damage from “sharp and substantial increase in imports” (ATC 6.4)/criteria, comparative analysis	ATC 61 n. 91, 66
burden of proof	ATC 28, 66
“more favourable treatment” for re-imports (ATC 6.6(d))	
“in the application of” (ATC 6, chapeau)	ATC 67
options for	ATC 68
object and purpose (ATC 1.1) and ATC 3	
relevant facts (ATC 6.3), obligation to examine all	ATC 54
serious damage or actual threat of (ATC 6.2)	
“demonstrably”	ATC 51
“or actual threat of”	ATC 35
US – Upland Cotton (AB), WT/DS267/AB/R, DSR 2005:I	
AB procedures (DSU 17.9 and ABWP), documents (ABWP 18), failure to file by deadline (ABWP 18(1))	DSU 1397
Agriculture Agreement (AG), relationship with other WTO agreements (AG 21.1), SCM Agreement, AG 6.3/SCM 3.1 (b) AG 79, 193–4, SCM 186–7	
competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “shall address the relevant provisions/each issue” (DSU 7.2/17.12)	DSU 891
confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27), Article 22.6 proceedings	DSU 927
consultations (DSU 4)	
identity of specific measures in the consultations and the request for establishment of a panel, relevance	DSU 143
measure at issue (DSU 4.4)	
“affecting”	DSU 152
discretion in identifying (DSU 4.2), desirability	DSU 152, 200 n. 267
expired measures (DSU 4.2)	DSU 152
as prerequisite to establishment of panel/requirement to indicate whether held (DSU 6.2)	DSU 141
purpose/importance, definition and clarification of dispute	DSU 152
written request (DSU 4.4) as basis	DSU 146
consultations (SCM 4.1–4)	
object and purpose, clarification and development of the facts of the situation (SCM 4.3)	SCM 199
“statement of available evidence” (SCM 4.2)	
“available”	SCM 199
role and purpose	SCM 199
domestic support commitments (AG 6)	
“considered to be in compliance” (AG 6.3)	AG 79
SMC 3.1(b) and AG 79, 193–4	
due restraint (AG 13) (“peace clause”)	
domestic support measures conforming with AG 6 (AG 13(b))	
“grant” (AG 13(b)(ii))	AG 140
“measures . . . not grant[ing] support to a specific commodity” (AG 13(b)(ii))	AG 141–3
green box measures (AG Annex 2) (AG 13(a))	
Annex 2, para. 6(b) and 6(e) distinguished	AG 198
Annex 2, para. 11 and AG 199	
measures not qualifying as (Annex 2, para. 6(b))	AG 196–7
export subsidy commitments (AG 9), “direct subsidies, including payments-in-kind” (AG 9.1(a)), “contingent on export performance”	AG 86
export subsidy commitments, prevention of circumvention (AG 10)	
export credit guarantees (AG 10.2)	
“development”	AG 124–5
exclusion from AG 10.1, whether	AG 124–5
“export subsidies” (AG 9.1) and AG 125	
“export subsidies . . . applied in a manner which results in, or which threatens to lead to, circumvention . . .” (AG 10.1)	
“circumvention”	
threat of circumvention	AG 115
threat of circumvention, obligation to take action	AG 113
tax exemption, discretionary nature/legal right	AG 115
“export subsidy” (AG 1(3)/SCM 1.1 and 3.1)	AG 17
international food aid (AG 10.4), relationship with AG 10.1	AG 129

export subsidy, prohibited (SCM, Part II)	“effect of the subsidy”, continuing effect SCM 299
“contingent in law . . .” (SCM 3.1(a)) SCM 131	“in the same market” SCM 319, 321–2, 325
“except as provided in the Agreement on Agriculture” (SCM 3.1 chapeau) SCM 124	“price suppression” SCM 278, 316
identification of specific measures (DSU 6.2)	quantification, relevance SCM 297
identity with specific measure the subject of consultations, relevance DSU 143	“significant” SCM 310
recommendations of panel/DSB (DSU 19.2), effect DSU 353	unitary vs two-step approach SCM 290
Illustrative List of Export Subsidies (SCM Annex I), export credit guarantee or insurance (item (j)), assessment of adequacy to cover SCM 624	special or additional rules and procedures (DSU 1.2 and Appendix 2), “shall prevail” in case of a difference with DSU DSU 21
implementation of panel or AB recommendations (DSU 19.1)	standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6)
choice of means at authorities’ discretion (DSU 21.3) DSU 1108–9	completion of the legal analysis in case of, agreement with panel DSU 1323
identification of specific measures (DSU 6.2) DSU 353	law vs fact, compliance/consistency with treaty obligations DSU 843 n. 1331
international food aid (AG 10.4), relationship with AG 10.1 AG 129	standard/powers of review (panel) (DSU 11), error of law, incorrect interpretation of covered agreement SCM 326
interpretation of covered agreements, rules relating to including VCLT provisions	terms of reference of panels (DSU 7), request for establishment of panel as basis DSU 143
same or closely related phrases in same agreement, AG Annex 2, para. 6(b)/para. 11 AG 199	us – upland cotton (AB), ordinary meaning of terms used in covered agreements, “related to” (AG Annex 2, para. 6(b)) AG 196
as a whole/holistic/harmonious exercise DSU 1555 n. 2388	WTO Agreement, as single undertaking (WTO II:2) WTO 21
judicial economy	US – Upland Cotton (Panel), WT/DS267/R, Corr.1 and Add.1 to Add.3
explicit reference to, relevance DSU 650	adverse inferences from party’s refusal to provide information, panel’s right to draw (DSU 13), “serious prejudice” (SCM 5()), “significant price undercutting/suppression” (SCM 6.3(c)) as SCM 265
limitation of consideration to claims essential to resolution of dispute (DSU 3.2) DSU 891	Aggregate Measurement of Support (AMS) (AG 1(a)/Annex 3)
prior decision on another point rendering discussion otiose SCM 326	“support” (Annex 3, para. 1) AG 9
“shall address the relevant provisions/each issue” (DSU 7.2/DSU 17.12) DSU 891	calculation for purposes of AG 13(b)(ii) AG 144
least-developed countries (LDCs)	GATT XVI:1 compared AG 9
“serious prejudice” (SCM 5(c)) DSU 1323	“agricultural products” (AG 2/Annex 1)
special procedures (DSU 24) DSU 1323	applicability of jurisprudence relating to non-agricultural products AG 24
legal basis of claim / “claim” / “matter referred” (DSU 6.2/7.1), clarification of claim during proceedings DSU 152	“commodity” (AG 13(b)(ii)), as context for AG 23
“measures at issue” (DSU 6.2), expired measure with continuing effects DSU 255, 257, 380	scheduled and unscheduled products distinguished AG 23
multiple authentic languages, interpretation (VCLT 33), “ordinary meaning” (VCLT 31(1)) and DSU 1664	Agriculture Agreement (AG)
notice of appeal, requirements (ABWP 20(2)(d))	relationship with other WTO agreements (AG 21.1)
failure to meet, consequences DSU 1426	GATT XVI (subsidies) GATT 715, 717
statement of allegation of error on issues of law/legal interpretations (ABWP 20(2)(d)), “for example”, sufficiency DSU 1426	SCM Agreement, AG 6.3/SCM 3.1(b) AG 79, 193–4, SCM 186–7
ordinary meaning of terms used in covered agreements	confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3/ABWP 27)
“affecting” (DSU 4.2) DSU 152	interim review reports DSU 918
“market” (SCM 6.3(c)) SCM 319 n. 531, 321	private counsel/advisers not part of delegation and DSU 918
multiple authentic languages (VCLT 33) and DSU 1664	consultations (DSU 4)
“related to” (AG Annex 2, para. 6(b)) AG 196	measure at issue (DSU 4.4)
“world market share” (SCM 6(3)(d)) SCM 326	“affecting” DSU 152
panel reports, rationale/reasons, need for (DSU 12.7), sufficiency SCM 310	expired measures (DSU 4.2) DSU 152
prompt and satisfactory settlement (DSU 3.3), impairment of benefits by measures taken by another Member (DSU 3.3), “Member considers” DSU 69	consultations (SCM 4.1–4)
relationships within and between agreements	object and purpose SCM 198
AG 1(e)/AG 9.1/AG 10/2 AG 125	“statement of available evidence” (SCM 4.2)
AG 6.3 and Annex 3 para. 7/SCM 3.1(b) SCM 186–7	“available” SCM 198
AG 6.3/SCM 3.1(b) AG 79, 193–4	role and purpose SCM 198
AG 10.1/AG 10.4 AG 129	domestic support commitments (AG 6)
AG 21.1/SCM 3.1 as determinants of AG/SCM relationship SCM 184–5	“considered to be in compliance” (AG 6.3) AG 79
AG3.1/SCM SCM 124	SMC 3.1(b) and AG 79, 193–4
DSU 6.2/DSU 19.1 DSU 353	due process (dispute settlement proceedings), prejudice to party, relevance DSU 467, 749
review of implementation of DSB rulings (DSU 21.5), “measures taken to comply”, identification of DSU 1119	due restraint (AG 13) (“peace clause”)
“serious prejudice” (SCM 5(c)), LDCs and (DSU 24.1) DSU 1323	domestic support measures conforming with AG 6 (AG 13(b)) AG 133
“serious prejudice” (SCM 6)	calculation of AMS (AG 1(a)/Annex 3) AG 144
“significant price undercutting/suppression” (SCM 6.3(c))	“exempt from actions” (AG 13(b)(ii)) AG 139
	“measures . . . not grant[ing] support to a specific commodity” (AG 13(b)(ii)) AG 143

<i>(cont.)</i>	
“that decided during the 1992 marketing year” AG 145–7	“serious” (SCM 5(c)) SCM 265
green box measures (AG Annex 2) (AG 13(a)) AG 133	“significant” (SCM 6.3(c)) SCM 310
exemption from GATT XVI and SCM Part III AG 134	preliminary rulings (procedural aspects), third parties’ rights relating to DSU 502
measures not qualifying as (Annex 2, para. 6(b)) AG 196	relationships within and between agreements
structure AG 133	AG 2/AG 13(b)(ii) AG 23
export subsidy commitments, prevention of circumvention (AG 10)	AG 6.3/SCM 3.1(b) AG 79, 193–4, SCM 186–7
burden of proof (AG 10.3), scheduled products, limitation to AG 128	AG 13/DSU 1.2 DSU 11
export credit guarantees (AG 10.2), exclusion from AG 10.1, whether AG 124	AG 13(a)/GATT XVI/SCM Part III AG 134
export subsidy, definition (AG 1(e)), “contingent upon export performance”, SCM 3.1(a) compared AG 17	DSU 3.7, 3.10 and 24.1 DSU 1324
good faith engagement in dispute settlement procedures (DSU 3.10), prompt challenge to deficient procedures DSU 114	GATT XVI:3/AG 1(3), 3.3, 8, 9 and 10 GATT 715
Illustrative List of Export Subsidies (SCM Annex I)	SCM 2.3/SCM 3 SCM 121
export credit guarantee or insurance (item (j))	“serious prejudice” (GATT XVI:1), “serious prejudice” (SMC 5(c)/6.3(c)), identity of meaning GATT 714
assessment of adequacy to cover SCM 623	“serious prejudice” (SCM 5(c))
as contextual guidance SCM 617	aggregated analysis SCM 304
“export credit guarantee . . . programmes” SCM 618	LDCs and (DSU 24.1) DSU 1321–2
“inadequate to cover” SCM 620	aggregated analysis SCM 304
“long-term” SCM 620	“price suppression” SCM 278, 315–16
“operating costs and losses” SCM 622	unitary vs two-step approach SCM 290
“premiums” SCM 619	“serious prejudice” (SCM 6)
information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), “from any individual or body”, parties DSU 749	“significant price undercutting/suppression” (SCM 6.3(c))
interim review (DSU 15)	“in the same market” SCM 321
confidentiality of reports DSU 918	“significant” SCM 310
multiple complainants/separate reports, on a particular issue DSU 812	“subsidized product” vs “effect of the subsidy” SCM 303
interpretation of covered agreements, rules relating to including VCLT provisions	special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as, AG 13 DSU 11
context (VCLT 31(2)), other articles in same agreement AG 23	special procedures involving LDCs (DSU 24)
dictionaries SCM 622	due restraint obligation DSU 1324
different language in same agreement, SCM 5(c) and 6.3(c)/SCM 15.2 and 15.5 SCM 303	“particular consideration shall be given” (DSU 24.1) DSU 1321–2
same or closely related phrases in different agreements AG 1(e)/SCM 3.1(a) AG 17	subsidies (GATT XVI)
AG Annex 3, para. 1/GATT XVI:1 AG 9	AG 3.3, 8, 9 and 10 and GATT 715
GATT XVI:1/SCM 5(c)/6.3(c) GATT 714	SCM 5(c)/6.3(c) and GATT 714
least-developed countries (LDCs)	“serious prejudice” (GATT XVI:2) GATT 714
“serious prejudice” (SCM 5(c)) DSU 1321–2	subsidy, specificity (SCM 2)
special procedures (DSU 24) DSU 1321–2	“certain enterprises” (SCM 2 chapeau) SCM 102
legislation as such, right to challenge (WTO XVI:4), mandatory/discretionary legislation, distinguishability, assessment of mandatory nature DSU 291	subsidy “contingent upon the use of domestic over imported goods” (SCM 2.3/SCM 3.1) SCM 121
<i>lex specialis</i> /presumption against treaty conflicts	third party enhanced rights/rights beyond those indicated in DSU 10.2, DSU 10.3 and Appendix 3, para. 6 DSU 483
General Interpretative Note (WTO Annex 1A) DSU 1724	third party rights (DSU 10 and Appendix 3)
precedence/hierarchy in case of conflict DSU 1724	obligation of panels to take “fully” into account (DSU 10.1) DSU 467
multiple complainants (DSU 9), separate interim review reports (DSU 9.2), on a particular issue DSU 812	panel’s right to draw on third party submissions DSU 498
order of analysis	US – Upland Cotton (Article 21.5 – Brazil) (AB), WT/DS267/AB/RW, DSR 2008:III
AD 13/SCM 3, 5 and 6/GATT XVI DSU 693	adverse effects (SCM 5)
GATT/SCM DSU 1724	obligation to remove adverse threats or withdraw subsidy (SCM 7.8)
order of analysis of AD 13/SCM 3, 5 and 6/GATT XVI DSU 693	adverse effects arising subsequent to original proceedings, applicability to SCM 329
ordinary meaning of terms used in covered agreements	affirmative action requirement SCM 329
“affecting” (DSU 4.2) DSU 152	special or additional rules and procedures (DSU 1.2 and Appendix 2) and DSU 21
“inadequate to cover” (Illustrative List item (j)) SCM 620	“withdrawal of subsidy without delay” (SCM 4.7) compared SCM 329
“inadequate to cover” (SCM footnote 9) SCM 620	burden of proof, <i>prima facie</i> case requirement, “more likely than not” test DSU 555
“long-term” (Illustrative List item (j)) SCM 620	Illustrative List of Export Subsidies (SCM Annex I)
“long-term” (SCM Illustrative list item (k)) SCM 621	export credit guarantee or insurance (item (j))
“operating costs and losses” (SCM Illustrative List item (j)) SCM 622	assessment of adequacy to cover SCM 626
“premium” (SCM footnote 59) SCM 619	as contextual guidance SCM 617
“price undercutting/suppression” (SCM 6.3(c)) SCM 316	ordinary meaning of terms used in covered agreements, “suppress” (SCM 6.2(c)) SCM 281
	prompt and satisfactory settlement (DSU 3.3), multiple proceedings, avoidance of DSU 67

<p>“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations), WTO-consistent measures, limitation to DSU 1129</p> <p>review of implementation of DSB rulings (DSU 21.5)</p> <p>“measures taken to comply”</p> <p>identification of DSU 1119</p> <p>new measures DSU 1136</p> <p>relitigation of original dispute, exclusion DSU 1132</p> <p>“serious prejudice” (SCM 6)</p> <p>genuine causal link requirement SCM 282 n. 462, 289</p> <p>“significant price undercutting/suppression” (SCM 6.3(c))</p> <p>“but for” test SCM 281, 289</p> <p>“effect of the subsidy”, continuing effect SCM 300</p> <p>non-attribution of adverse effects caused by other factors SCM 282, 285–6, 289</p> <p>“price depression” and “price suppression” distinguished SCM 309</p> <p>“price suppression”, “price depression” distinguished SCM 317</p> <p>“significant” SCM 311</p> <p>“significant price undercutting/suppression” (SCM 6.3(c)), counterfactual analysis SCM 293–4</p> <p>standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), law vs fact, mixed fact and law DSU 849</p> <p>“withdrawal of subsidy without delay” (SCM 4.7), withdrawal of subsidy as SCM 7.8 remedy compared SCM 329</p> <p>US – Upland Cotton (Article 21.5 – Brazil) (Panel), WT/DS267/RW and Corr.1</p> <p>adverse effects (SCM 5)</p> <p>obligation to remove adverse threats or withdraw subsidy (SCM 7.8)</p> <p>adverse effects arising subsequent to original proceedings, applicability to SCM 328</p> <p>“withdrawal of subsidy without delay” (SCM 4.7) compared SCM 328</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17)</p> <p><i>compétence de la compétence</i>/obligation to address jurisdictional issues [on own motion] DSU 438</p> <p>finding on issue not raised by parties DSU 438</p> <p>composition of panel (DSU 8)</p> <p>determination by Director-General (DSU 8.7), challenge to DSU 438</p> <p>determination by panel DSU 438 n. 721</p> <p>DSU dispute settlement, “positive solution to a dispute” as aim (DSU 3.7) DSU 438</p> <p>export subsidy commitments, prevention of circumvention (AG 10), “export subsidy” (AG 1(3)/SCM 1.1 and 3.1) AG 18</p> <p>export subsidy, definition (AG 1(e)), “contingent upon export performance”, SCM 3.1(a) compared AG 18</p> <p>Illustrative List of Export Subsidies (SCM Annex I), export credit guarantee or insurance (item (j)), assessment of adequacy to cover SCM 625</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions, same or closely related phrases in different agreements, AG 1(e)/SCM 3.1(a) AG 18</p> <p>“serious prejudice” (SCM 5(c))</p> <p>“but for” test SCM 281</p> <p>“of another Member” SCM 266</p> <p>“serious prejudice” (SCM 6)</p> <p>elements listed in SCM 6.3, sufficiency to establish, “where one or several . . . apply” SCM 278</p> <p>genuine causal link requirement, burden of proof SCM 283</p> <p>“significant price undercutting/suppression” (SCM 6.3(c))</p> <p>“but for” test SCM 281, 288</p> <p>“effect of the subsidy”, period of review SCM 301</p>	<p>non-attribution of adverse effects caused by other factors SCM 288</p> <p>unitary vs two-step approach SCM 291</p> <p>special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as, SCM 7.8 DSU 21</p> <p>third party rights (DSU 10 and Appendix 3), panel’s right to draw on third party submissions DSU 499</p> <p>“withdrawal of subsidy without delay” (SCM 4.7), withdrawal of subsidy as SCM 7.8 remedy compared SCM 328</p> <p>US – Upland Cotton (Article 22.6 – United States I), WT/DS267/ARB/1</p> <p>arbitration (DSU 22.6)</p> <p>scope of review/arbitrators’ mandate/task (DSU 22.7)</p> <p>determination of appropriateness of countermeasure (SCM 4.11) SCM 233</p> <p>determination of “appropriateness/appropriate” countermeasure (SCM 4.11) SCM 245</p> <p>scope of review/arbitrators’ mandate/task (SCM 4.11), burden of proof, allocation SCM 249</p> <p>burden of proof (general rules)</p> <p>Article 22.6 arbitrations, allocation by arbitrator SCM 249</p> <p><i>onus probandi actori incumbit</i> SCM 249</p> <p>countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10)</p> <p>“appropriate”</p> <p>arbitration (DSU 22.6) and (SCM 4.11) SCM 245</p> <p>proportionality (footnote 9) SCM 227, 230</p> <p>SCM 4.10/4.11, identity of meaning SCM 231</p> <p>calculation of countermeasure, possible bases/relevant factors adverse trade effects SCM 233</p> <p>amount of subsidy SCM 233</p> <p>suspension of concessions (DSU 22.4) distinguished SCM 233, 254</p> <p>“countermeasure” SCM 223</p> <p>as retaliatory act SCM 223, 232</p> <p>temporary nature SCM 223</p> <p>inducement of compliance as objective SCM 232</p> <p>State responsibility and SCM 223, 227</p> <p>countermeasures in case of failure to take measures to remove adverse effects of or withdraw subsidy (SCM 7.9), “countermeasures”, SCM 4.10 and 4.11 compared SCM 223</p> <p>countermeasures (general principles), proportionality SCM 227, 230</p> <p>interpretation of covered agreements, rules relating to including VCLT provisions</p> <p>dictionaries SCM 227</p> <p>cautious approach to SCM 223, 277</p> <p>different language in same agreement, SCM 4.10 and 4.11/SCM 7.9 SCM 252</p> <p>footnotes to treaty as aid/integral part of treaty SCM 230</p> <p>same or closely related phrases in same agreement, SCM 4.10/SCM 4.11 SCM 231</p> <p><i>lex specialis</i>/presumption against treaty conflicts, possibilities of conflict considered by panel/AB, ILC Articles on State Responsibility SCM 223 n. 356</p> <p>proportionality, countermeasures SCM 227, 230</p> <p>relationship between and within agreements, SCM 4.11/SCM 7.9 SCM 252</p> <p>State responsibility as rule/general principle of international law (ILC Articles), countermeasures SCM 223, 227</p> <p>suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22), level equivalent to nullification or impairment (DSU 22.4), “appropriate” (SCM 4.10) distinguished SCM 233, 254</p>
--	--

(cont.)

US – Upland Cotton (Article 22.6 – United States II), WT/DS267/ARB/2 and Corr.1

- arbitration (DSU 22.6)
 - scope of review/arbitrators’ mandate/task (DSU 22.7), determination of “appropriateness/appropriate” countermeasure (SCM 7.10) SCM 336
 - scope of review/arbitrators’ mandate/task (SCM 7.10), burden of proof, allocation SCM 337
 - burden of proof (general rules)
 - Article 22.6 arbitrations, allocation by arbitrator SCM 337
 - onus probandi actori incumbit* SCM 337
 - countermeasures in case of failure to comply with panel or AB report within specified time-period (SCM 4.10), State responsibility and SCM 331
 - countermeasures in case of failure to take measures to remove adverse effects of or withdraw subsidy (SCM 7.9)
 - “adverse effects determined to exist” SCM 334
 - arbitrators’ mandate/task (SCM 7.10) SCM 336
 - “commensurate” SCM 332
 - SCM 4.10 and 4.11 compared SCM 252, 331
 - “countermeasures”
 - as retaliatory act SCM 331, 335
 - SCM 4.10 and 4.11 compared SCM 340
 - “degree and nature” SCM 333
 - inducement of compliance as objective, SCM 4.10 and DSU 22.4 compared SCM 335
 - special or additional rules and procedures (DSU 1.2 and Appendix 2) and SCM 338, DSU 24
 - countermeasures (general principles)
 - “countermeasure”, as retaliatory act SCM 331, 335
 - temporary nature SCM 331
 - interpretation of covered agreements, rules relating to including VCLT provisions
 - dictionaries, cautious approach to SCM 331
 - different language in same agreement SCM 340
 - lex specialis*/presumption against treaty conflicts, possibilities of conflict considered by panel/AB, ILC Articles on State Responsibility SCM 331 n. 557
 - ordinary meaning of terms used in covered agreements,
 - “appropriate” (SCM 4.10) SCM 277
 - relationships within and between agreements, DSU 22.3/SCM 7.9 and 7.10 DSU 24
 - special or additional rules and procedures (DSU 1.2 and Appendix 2)
 - arrangements considered for classification as, SCM 7.9 and 7.10 SCM 338, DSU 24
 - “shall prevail” in case of a difference with DSU DSU 24
 - State responsibility as rule/general principle of international law (ILC Articles), countermeasures SCM 331
- US – Wheat Gluten (AB), WT/DS166/AB/R, DSR 2001:III**
- adverse inferences from party’s refusal to provide information,
 - panel’s right to draw, obligation to respond promptly to panel’s requests for information and (DSU 13.1), confidential information (SG 3.2) and SG 115
 - adverse inferences from party’s refusal to provide information,
 - panel’s right to draw (DSU 13)
 - discretionary nature DSU 562
 - judicial economy and DSU 562
 - causation analysis (SG 4.2(b)) (determination of serious injury or threat of)
 - “demonstrates” SG 177–8, 208
 - “on the basis of objective data” SG 181
 - order of analysis SG 202
 - relationships within and between agreements SG 58, 178
 - competence of panels and AB (DSU 3.2/DSU 11/DSU 17),
 - competence of panel and AB compared DSU 605, 846

- confidential information (SG 3.2), DSU 13.1 confidentiality requirements and SG 114
- customs unions (GATT XXIV:5(a)), safeguard measures (SG 2.1 footnote 1) GATT 1056
- customs value determination (VAL), transaction value, examination of circumstances of sale in related-party transaction (VAL 1.2(a)), responsibility for providing information VAL 18
- determination of injury (AD 3)
 - causal relationship, manner of evaluating (AD 3.5), non-attribution to dumped imports of injury caused by other factors (AD 3.5), SG 4.2(b) compared AD 251, 285, 323
 - evaluation of injury factors (AD 3.4), *all* relevant economic factors and indices having a bearing on, SG 4.2(a) factors and AD 247 n. 343
- determination of serious injury or threat of, definitions (SG 4.1), “serious injury” (SG 4.1(a))/ “threat of serious injury” (SG 4.1(b)), as “significant overall impairment” / “very high standard of injury” (SG 4.1(a)) SG 120
- determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a)) SG 120, 207
- consistency of interpretation between SG 4.2(a) and SG 4.2(b), need for SG 142, 207
- evaluation of injury factors (AD 3.4) and AD 247 n. 343
- factors not listed in SG 4.2(a), right/obligation to examine SG 164–5
- “factors other than increased imports” (SG 4.2(b)) SG 74 n. 128, 177, 207, 207–8
 - non-attribution requirement SG 199–202, 209
- factors relating to imports *and* domestic industry SG 141–2, 207
- obligation of competent authorities to seek information additional to that supplied by interested parties / “investigate” AD 914 n. 1246, SG 92–4, 165, 309
- developing countries (SG 9), exclusion of developing country exporting less than *de minimis* levels (SG 9.1), as exception to general SG rules SG 68 n. 114
- dispute settlement (SG 14), standard of review (DSU 11), “objective assessment of the facts”, reasoned and adequate explanation (SG 4.2(a)) and SG 309
- emergency action (GATT XIX), free trade agreements/customs unions and (SG 2.1 footnote 1) GATT 1056
- information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2)
 - confidential information (SG 3.2) and SG 115
 - prompt and full response requirement DSU 763
- interpretation of covered agreements, rules relating to including VCLT provisions
 - evaluation of all factors
 - obligation of competent authorities to seek information additional to that supplied by interested parties SG 92–4
 - opportunity to respond to presentations of other parties SG 92
 - opportunity to submit evidence and views SG 92
 - same or closely related phrases in same agreement, SG 2.1/SPG 2.2 SG 68
- investigation of conditions for safeguard measures, requirements (SG 3.1/SG 4.2(c)), interested parties, notification to SG 92
- judicial economy
 - adverse inferences and DSU 562
 - prior decision on another point rendering discussion otiose GATT 825, SG 230
- notification and consultation (SG 12)
 - “adequate opportunity for prior consultations” (SG 12.3) SG 286
 - level of concessions (SG 8.1) and SG 239
 - “all pertinent information” (SG 12.2), precise description of proposed measure sufficient for prior consultation under SG 12.3 SG 287

<p>“immediately” SG 12.1 SG 264 SG 12.1(a) SG 267, 270 SG 12.1(b) SG 270 SG 12.1(c) SG 273–5 translation delays SG 264 timing (SG 12.1)/content (SG 12.2) distinguished SG 273–4 ordinary meaning of terms used in covered agreements “immediately”, SG 12.1 SG 263 “investigation” (SG 3.1) SG 92 publication of findings and reasoned conclusions (SG 4.2(a)) SG 68 reasoned and adequate explanation requirement (SG), causation (SG 2.1/SG 4.2(b)) GATT 801, SG 181, 209 relationships within and between agreements DSU 11 and 13/SG 3.2 SG 114 GATT XIX:1/SG 2 and 4 GATT 825 SG 2.1/SG 4.2(b) SG 58, 178, 209 SG 3.1/SG 4.2(a) SG 92–4 SG 4.2(a)/SG 4.2(b) SG 142, 207 safeguard measures, conditions (SG 2) free trade agreements/customs unions and (SG 2.1 footnote 1) GATT 1056 parallelism between investigation (SG 2.1/SG 4.1(c)) and application of measure (SG 2.2) SG 68–9 “irrespective of source”, applicability to RTAs SG 68–9 separate investigation into RTA member, relevance SG 69 reasoned and adequate explanation requirement SG 69 “under such conditions” SG 51, 58, 178 “factors other than increased imports” (SG 4.2(b)) and SG 58 safeguard measures, maintenance of substantially equivalent level of concessions (SG 8) “equivalent” SG 239 “adequate opportunity for prior consultations” (SG 12.3) and SG 239 standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6) law vs fact alleged failure of panel to make objective assessment (DSU 11) DSU 605, 846 panel as trier of facts DSU 562, 605 standard/powers of review (panel) (DSU 11), “objective assessment of the facts” DSU 605, 846 translation, delays caused by (SG 12) SG 264</p> <p>US – Wheat Gluten (Panel), WT/DS166/R, DSR 2001:III business confidential information (BCI), <i>ex parte</i> communications with panel or AB (DSU 18.1) and DSU 906 causation analysis (SG 4.2(b)) (determination of serious injury or threat of) coincidence of trends in imports and in injury factors SG 184, 187 “demonstrates” SG 176 relationships within and between agreements SG 58 relevance in absence of serious injury SG 74 n. 128, 177 confidential information (SG 3.2) SG 110–11 non-confidential summaries SG 111 panel’s right to seek information or technical advice (DSU 13/ SPS 11.2), relevance SG 113–14 confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3), panel’s right to seek information or technical advice (DSU 13/SPS 11.2), relevance SG 113–14 customs unions (GATT XXIV:5(a)), safeguard measures (SG 2.1 footnote 1) GATT 1056 determination of serious injury or threat of, definitions (SG 4.1) “serious injury” (SG 4.1(a)), current serious injury SG 122 “serious injury” (SG 4.1(a)) / “threat of serious injury” (SG 4.1 (b)), as “significant overall impairment” / “very high standard of injury” (SG 4.1(a)) SG 119</p>	<p>determination of serious injury or threat of, evaluation of all relevant factors of objective and quantifiable nature (SG 4.2(a)) SG 146 all factors listed in SG 4.2(a) SG 146 factors not listed in SG 4.2(a), right/obligation to examine SG 164–5 “factors other than increased imports” (SG 4.2(b)) SG 58, 176 non-attribution requirement SG 199 “productivity” SG 163 emergency action (GATT XIX), free trade agreements/customs unions and (SG 2.1 footnote 1) GATT 1056 <i>ex parte</i> communications with panel or AB (DSU 18.1), BCI (DSU 18.2) and DSU 906 information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2), confidential information (SG 3.2) and SG 113–14 investigation of conditions for safeguard measures, requirements (SG 3.1/SG 4.2(c)) data of an objective and quantifiable nature methodology, absence of provision SG 171 representativeness SG 135 published report, confidential information (SG 3.2) and SG 110–11 judicial economy, prior decision on another point rendering discussion otiose SG 230 “like or directly competitive product” (SG 2.1/SG 4.1(c)) “domestic industry” (SG 4.1(c)) and, “collective output . . . constitutes a major proportion”, representative data and SG 135 “immediately” SG 12.1 SG 263 SG 12.1(a) SG 266, 269 SG 12.1(b) SG 269 notification and consultation (SG 12), timeliness (SG 12.1, 12.2 and 12.3) SG 287 ordinary meaning of terms used in covered agreements, SG 12.1 SG 263 prompt and satisfactory resolution of disputes, Members’ right to (DSU 3), failure to provide confidential information (SG 3.2) and SG 115 relationships within and between agreements DSU 11 and 13/SG 3.2 SG 113 SG 2 and 4/SG 5 SG 230 SG 2/SG 4 SG 20 SG 2.1/SG 4.2(b) SG 20, 58 SG 3.2/SG 4.2(c) SG 222 safeguard measures, conditions (SG 2) determination of serious injury or threat (SG 4), violation as violation of SG 2 SG 20 free trade agreements/customs unions and (SG 2.1 footnote 1) GATT 1056 “such increased quantities” (SG 2.1) absolute increase SG 50 as sudden and recent increase SG 32 “sufficient to cause serious injury or threat” (SG 2.1) SG 32 “under such conditions” SG 51, 56, 58 price analysis, relevance SG 61</p> <p>US – Wool Shirts and Blouses (AB), WT/DS33/AB/R and Corr.1, DSR1997:I AB procedures (DSU 17.9 and ABWP), timetable (ABWP 26), modification in exceptional circumstances (ABWP 16(2)) DSU 1386 burden of proof (general rules) <i>onus probandi actori incumbit</i> GATT 768, 853, SPS 33, SCM 653, DSU 539 <i>prima facie</i> case requirement GATT 598, 853 evidence necessary to establish, determination case-by-case approach SPS 35, DSU 548</p>
---	--

<p>(cont.)</p> <p>competence of panels and AB (DSU 3.2/DSU 11/DSU 17), “clarification of existing provisions” DSU 52, 386, 639</p> <p>DSU, “positive solution to a dispute” as aim (DSU 3.7) DSU 78</p> <p>General Council (WTO IV:2), functions, interpretation of WTO Agreement WTO 198</p> <p>General Exceptions (GATT XX), burden of proof GATT 853</p> <p>interim review (DSU 15), termination of measures following, effect DSU 384 n. 623</p> <p>interpretation of covered agreements, responsibility for (WTO IX:2), Ministerial Conference/General Council (WTO IV:2) WTO 198</p> <p>interpretation of covered agreements, responsibility for authoritative (WTO IX:2), “clarify the existing provisions” (DSU 3.2) and DSU 52, 639</p> <p>judicial economy</p> <p> legal basis (DSU 11) DSU 638–9</p> <p> limitation of consideration to claims essential to resolution of dispute (DSU 3.2) DSU 52, 638–9</p> <p> “make such other findings” (DSU 11) and DSU 637–8</p> <p> “positive solution to dispute” requirement (DSU 3.7)/false judicial economy and DSU 638</p> <p> security and predictability of WTO obligations (DSU 3.2) and DSU 52</p> <p> “measures at issue” (DSU 6.2), terminated measures, termination following interim review DSU 384 n. 623</p> <p>national treatment, regulatory discrimination (GATT III:4), burden of proof GATT 326</p> <p>quantitative restrictions (ATC 2) (integration process), conformity with ATC provisions, need for (ATC 2.4), transitional safeguards (ATC 6) and ATC 84</p> <p>relationships within and between agreements, GATT I/GATT XI GATT 113</p> <p>security and predictability of WTO obligations (DSU 3.2)</p> <p> “clarify the existing provisions” and DSU 52</p> <p> judicial economy and DSU 52</p> <p>standard/powers of Review (AB) (issues of law and legal interpretations) (DSU 17.6), legal findings or developed interpretations, limitation to (DSU 17.13) SPS 345, DSU 896</p> <p>standard/powers of review (panel) (DSU 11)</p> <p> “objective assessment of matter before it”</p> <p> all legal claims, need to consider under DSU 3.2 DSU 598 n. 955, 639, 644</p> <p> “positive solution” requirement (DSU 3.7) and DSU 78</p> <p>US – Wool Shirts and Blouses (Panel), WT/DS33/R, DSR1997:I</p> <p> composition of panel (DSU 8), citizens of parties (DSU 8.3), TMB distinguished DSU 433</p> <p> interim review (DSU 15), termination of measures following, effect DSU 384 n. 623</p> <p> judicial economy, “make such other findings as will assist . . .” (DSU 11) and DSU 637</p> <p> “measures at issue” (DSU 6.2)</p> <p> terminated measures</p> <p> termination following agreement on terms of reference DSU 391</p> <p> termination following interim review DSU 384 n. 623</p> <p> non-violation claims (GATT XXIII:1(b)), nullification or impairment, need for, measures in force, limitation to GATT 973</p> <p> quantitative restrictions (ATC 2) (integration process), conformity with ATC provisions, need for (ATC 2.4), transitional safeguards (ATC 6) and ATC 85</p> <p> standard/powers of review (ATC 8.3) ATC 100</p> <p>Textiles Monitoring Body (TMB)</p> <p> composition (ATC 8.1), DSU 8.3 distinguished DSU 433</p> <p> recommendations, legal status (ATC 8.9) ATC 102</p>	<p>role (ATC 8), dispute settlement panels distinguished ATC 90</p> <p>transitional safeguards (ATC 6)</p> <p>as balance of rights and obligations ATC 28</p> <p>burden of proof ATC 28</p> <p>criteria/relevant factors (ATC 6.3), obligation to examine all ATC 55, SG 144</p> <p>serious damage or actual threat of (ATC 6.2)</p> <p> “demonstrably” ATC 52</p> <p> “not by other factors” ATC 52</p> <p>US – Zeroing (EC) (AB), WT/DS294/AB/R and Corr.1, DSR 2006:II</p> <p>AB procedures (DSU 17.9 and ABWP), transmittal of records (ABWP 25), inclusion of correspondence not in the record of the panel proceedings DSU 1446</p> <p>AB procedures (DU 17.9 and ABWP), transmittal of records (ABWP 25), inclusion of correspondence not in the record of the panel proceedings DSU 1446</p> <p>anti-dumping duties, imposition and collection (AD 9), assessment (AD 9.3), retrospective assessment (AD 9.3.1), zeroing and AD 686–7</p> <p>conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4), legislation “as such” and, zeroing procedures and AD 144</p> <p>determination of dumping (AD 2)</p> <p> fair comparison of export price and normal value (AD 2.4)</p> <p> “due allowance”, “differences which affect price comparability” AD 95</p> <p> “fair comparison” AD 82</p> <p> zeroing (AD 9.3) and AD 82</p> <p>legislation as such, right to challenge (WTO XVI:4)</p> <p> mandatory/discretionary legislation, distinguishability, rejection/non-endorsement of doctrine DSU 301</p> <p> normative value as determining factor DSU 285–6</p> <p>relationships within and between agreements, AD 2.4/AD 9.3 AD 82</p> <p> “zeroing” (AD 9.3/GATT VI:2) AD 686</p> <p> administrative reviews and GATT 464, AD 686–7</p> <p> as an allowance or adjustment (AD 2.4) AD 146–7</p> <p> legislation “as such” (AD 18.4) and AD 144, DSU 286</p> <p> retrospective assessment and AD 686–7</p> <p>US – Zeroing (EC) (Panel), WT/DS294/R</p> <p>interim review (DSU 15), additional comments following relevant AB report DSU 817</p> <p> “zeroing” (AD 9.3/GATT VI:2), as an allowance or adjustment (AD 2.4) AD 146</p> <p>US – Zeroing (EC) (Article 21.5 – EC) (AB), WT/DS294/AB/RW and Corr.1</p> <p>anti-dumping duties, imposition and collection (AD 9), calculation of “all other” anti-dumping duty rate (AD 9.4), margins established under circumstances referred to in AD 6.8, exclusion, lacuna situation AD 710</p> <p>determination of dumping (AD 2), fair comparison of export price and normal value (AD 2.4), “fair comparison”, as independent obligation AD 81</p> <p>implementation of panel or AB recommendations (DSU 19.1), panel’s discretionary suggestions DSU 951</p> <p>standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), new evidence DSU 854</p> <p>US – Zeroing (EC) (Article 21.5 – EC) (Panel), WT/DS294/RW</p> <p>composition of panel (DSU 8)</p> <p> citizens of parties (DSU 8.3) DSU 439</p> <p> determination by Director-General (DSU 8.7)</p> <p> challenge to DSU 439–40</p> <p> discretionary nature DSU 440</p> <p>interim review (DSU 15), new arguments DSU 803</p> <p>terms of reference of panels (DSU 7), “matter referred to the DSB” (DSU 7.1) DSU 221</p>
--	--

US – Zeroing (Japan) (AB), WT/DS322/AB/R

Anti-Dumping Agreement (AD), object and purpose, absence of specific provision/preamble AD 4

anti-dumping and countervailing duties (GATT VI) including interrelationship with AD Agreement, dumping, constituent elements (AD 2/GATT VI:1), consistency of definition throughout AD and GATT GATT 452

anti-dumping duties, imposition and collection (AD 9)

assessment (AD 9.3)

“product as a whole” (AD 2.1) and AD 18, 680

retrospective assessment (AD 9.3.1) AD 678, 680

zeroing and AD 680

conformity of laws, regulations and administrative procedures with WTO obligations, obligation to ensure (WTO XVI:4), judicial decisions WTO 288

customary international law rules of interpretation [as codified in the VCLT] as applicable law, AD 17.6(ii) AD 929

determination of dumping (AD 2), definitions, “product” AD 18

“dumping” / “margin of dumping” (AD 2.1)

as exporter-specific concepts AD 690

AD 9.3 and AD 690

“dumping” (AD 2.1), product specific requirement AD 18

interpretation of covered agreements, rules relating to including VCLT provisions, multiple permissible interpretations AD 929

judicial decisions, conformity with WTO obligations, obligation to ensure (WTO XVI:4) WTO 288

judicial review (AD 13), special or additional rules and procedures (DSU 1.2 and Appendix 2) and DSU 16

legislation as such, right to challenge (WTO XVI:4), normative value as determining factor DSU 287

margin of discretion [in accordance with due process] (panel) (DSU 12.1 and Appendix 3), evaluation of evidence (DSU 11) and DSU 612

order of analysis

covered agreements/DSU DSU 16

“substantive” agreements/DSU DSU 16

relationships within and between agreements

AD 2.1/AD 9.3 AD 690

AD 2.1/GATT VI:1 GATT 452

request for establishment of panel, requirements (DSU 6.2), “sufficient to present the problem clearly” DSU 190

special or additional rules and procedures (DSU 1.2 and Appendix 2), arrangements considered for classification as, AD 13 DSU 16

standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), law vs fact, panel as trier of facts DSU 612

standard/powers of review (panel) (AD 17.6), interpretation of relevant provisions of AD (AD 17.6(ii)), “admits of more than one permissible interpretation” AD 929

“zeroing” (AD 9.3/GATT VI:2) GATT 464

administrative reviews and GATT 464

comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), mathematical equivalence AD 139

retrospective assessment and AD 680

US – Zeroing (Japan) (Panel), WT/DS322/R

anti-dumping duties, imposition and collection (AD 9)

assessment (AD 9.3)

“product as a whole” (AD 2.1) and AD 679

retrospective assessment (AD 9.3.1) AD 679

conformity of laws, regulations and administrative procedures with AD obligations, obligation to ensure (AD 18.4), legislation “as such” and, zeroing procedures and AD 143

determination of dumping (AD 2)

calculation of dumping margins (AD 2.4), comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), zeroing and AD 115, 689

fair comparison of export price and normal value (AD 2.4), “fair comparison”, zeroing (AD 9.3) and AD 84–5

judicial economy, prior decision on another point rendering discussion otiose AD 84

legislation as such, right to challenge (WTO XVI:4)

normative value as determining factor DSU 287, 287–8

unwritten instrument and DSU 288

sunset review (AD 11.3) (including “likelihood” test), zeroing and AD 770

“zeroing” (AD 9.3/GATT VI:2)

comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), transaction-to-transaction method AD 112, 135, 828

“fair comparison” (AD 2.4) and AD 84–5

legislation “as such” (AD 18.4) and AD 143, DSU 287–8

“model zeroing” vs “simple zeroing” AD 112

sunset reviews (AD 13.3) and AD 770

US – Zeroing (Japan) (Article 21.3(c)), WT/DS322/21, DSR 2007:X,

“reasonable period” for implementation of recommendations and rulings (Article 21.3(c) arbitrations), conclusion following appointment of Arbitrator DSU 1018

US – Zeroing (Japan) (Article 21.5 – Japan) (AB), WT/DS322/AB/RW

burden of proof (general rules), on WTO law DSU 577

domestic law, as justification for failure to fulfil international obligations, exclusion (VCLT 27) DSU 1520

interpretation of covered agreements, rules relating to including VCLT provisions, as a whole/holistic/harmonious exercise DSU 16

“measures at issue” (DSU 6.2)

measure in existence at time of establishment of panel, limitation to DSU 257

prospective measure, “subsequent closely related measures” DSU 262 n. 395, 382 n. 618

prompt and satisfactory settlement (DSU 3.3), multiple proceedings, avoidance of DSU 66

Schedules of Concessions (GATT II), anti-dumping duties applied consistently with GATT II:2(b), “safe harbour” GATT 161

US – Zeroing (Korea) (Panel), WT/DS402/R

burden of proof (general rules), *prima facie* case requirement AD 123

panel reports, rationale/reasons, need for (DSU 12.7), in case of mutually agreed solution DSU 707–8

“zeroing” (AD 9.3/GATT VI:2), comparison of weighted average normal value with weighted average of *all* comparable export transactions (AD 2.4.2), “comparable” AD 123

US/Canada – Continued Suspension (AB), WT/DS320/AB/R and WT/DS321/AB/R, DSR 2008:X

AB procedures (DSU 17.9 and ABWP)

documents (ABWP 18), failure to file by deadline (ABWP 18(1)) DSU 1399

failure to appear (AB 29) DSU 1467

oral hearings (ABWP 27), AB authority to organize and conduct DSU 1449

transition (ABWP 15) DSU 1378

ALOPs (SPS 5.4–5.6 and Annex A(5)), measures “not more trade restrictive than required to achieve their appropriate level of . . . protection” (SPS 5.6), “appropriate level”, determination, “acceptable level of risk” test (SPS 5.1/Annex A(4)) and SPS 530

arbitration (DSU 25), as alternative to panel procedure DSU 1339

- (cont.)
- burden of proof (general rules)
 - difficulty in collecting information and DSU 572
 - good faith (including *pacta sunt servanda* principle (VCLT 26)) DSU 1512
 - good faith presumptions, relevance DSU 1276
 - post-suspension cases (DSU 22.8/SPS 5.7) DSU 1274–6
 - procedural fairness and DSU 572
 - Codex Alimentarius Commission, cooperation with, food safety standards and SPS 70
 - consultations (DSU 4), good faith and (DSU 4.3) DSU 105, 132, 155
 - DSB, statements by Members at DSB meetings, legal effect, as prohibited unilateral action (DSU 23.1) DSU 29, 1313, 1689
 - DSU, “dispute settlement”, expeditious arbitration as alternative means (DSU 25.1) DSU 1339
 - DSU dispute settlement
 - compulsory (panel proceedings) vs consensual (consultations, mediation, good offices and arbitration) DSU 1339
 - obligation to have recourse to (DSU 23.1)
 - “seeking redress of WTO violation” DSU 1308–9
 - suspension of concessions (DSU 22) as DSU 1308–9
 - temporary nature of suspension of concessions (DSU 22) and DSU 1319
 - due process (dispute settlement proceedings)
 - expert evidence and DSU 1478
 - objective assessment obligations (DSU 11) and DSU 619–20
 - prejudice to party, relevance DSU 29
 - expert evidence (DSU 13.2/SPS 11.2)
 - disclosure requirement SPS 409–10
 - independence and impartiality
 - affiliations raising doubts SPS 414–15, DSU 619–20, 1478–80
 - panel’s obligation to ensure SPS 411–13, DSU 620, 1480
 - Rules of Conduct (RoC I and III:2) SPS 418, DSU 1478–80
 - self-disclosure (RoC VI) SPS 410, DSU 1491–2
 - selection process
 - consultation with parties SPS 401
 - importance SPS 399–400
 - significant investigative authority, panel’s ‘broad discretion’ SPS 28, 419
 - Working Procedures applicable to SPS 417
 - good faith engagement in dispute settlement procedures (DSU 3.10)
 - burden of proof and DSU 1276
 - consultations and (DSU 4.3) DSU 105, 132, 155
 - implementation of DSB recommendation and rulings and DSU 105, 1276
 - presumption of DSU 105, 1276
 - good faith (including *pacta sunt servanda* principle (VCLT 26)), as fundamental rule of treaty interpretation DSU 1512
 - good offices, conciliation and mediation (DSU 5), compulsory adjudication distinguished DSU 178
 - harmonization of SPS measures (SPS 3)
 - measures based on international standards (SPS 3.1)
 - Codex Alimentarius and SPS 70
 - presumption of consistency with SPS/GATT (burden of proof) (SPS 3.2) SPS 79
 - measures which conform to international standards (SPS 3.2), burden of proof SPS 84, 88, 300–2, 338
 - measures which result in a higher level of protection (SPS 3.3)
 - as autonomous right SPS 94
 - presumption of consistency with SPS/GATT (burden of proof) (SPS 3.2) and SPS 79, 84, 94
 - risk assessment obligation (SPS 5) and SPS 178–80, 530
 - as SPS object and purpose (preamble) SPS 69
 - as SPS object and purpose (SPS 3.1/preamble) SPS 3
 - implementation of DSB recommendations and rulings (DSU 21), good faith obligation, whether DSU 105
 - implementation of panel or AB recommendations (DSU 19.1), subsequent proceedings/continuance of recommendations DSU 945
 - information or technical advice, panel’s right to seek (DSU 13.1/SPS 11.2)
 - applicability of SPS 11(2) SPS 394
 - comprehensive nature of panel’s authority DSU 737
 - role/value SPS 395
 - multiple complainants (DSU 9), separate AB reports DSU 459
 - ordinary meaning of terms used in covered agreements,
 - “determination” (DSU 23.2) DSU 1313
 - panel procedures (DSU 12 and Appendix 3 (WP)), experts, applicability to SPS 417
 - provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7)
 - assessment period SPS 307
 - “available pertinent information” SPS 309
 - burden of proof, limitation of Article 21.5 review to insufficiencies identified by Member adopting measure DSU 1278 n. 2005
 - impossibility of reaching objective conclusion and SPS 292
 - “insufficient” SPS 298–9
 - international standard as evidence of sufficiency SPS 300–2
 - precautionary principle and SPS 330
 - as qualified exemption/autonomous right SPS 290
 - rational and objective relationship between SPS measure and scientific evidence, need for SPS 309
 - review within “a reasonable period of time” SPS 319
 - evolution of scientific evidence subsequent to adoption of provisional measure and SPS 322–3
 - risk assessment (SPS 1) and SPS 308
 - scientific uncertainty/controversy, relevance SPS 299
 - “seek to obtain additional information” for more objective assessment of risk SPS 313–15
 - standard of insufficiency SPS 304
 - public hearings, AB (ABWP 27), third participants (ABWP 24) DSU 1442
 - public observation of oral hearing / “passive participation” (ABWP 27(3)) DSU 1442
 - AB authority to agree to DSU 1442, 1449
 - amendment of ABWP 24 and 27(3) (2003) DSU 1449
 - relationships within and between agreements
 - DSU 22.8/DSU 23 DSU 1319
 - DSU 23.1/DSU 23.2 DSU 1302
 - SPS 2.2/SPS 5.1 and 5.7 SPS 57
 - SPS 3.2 and 3.3/Annex A(3) SPS 501
 - SPS 3.2/SPS 5.7 SPS 88, 300, 338
 - SPS 5.1/SPS 5.7 SPS 308
 - review of implementation of DSB rulings (DSU 21.5)
 - ascertainable and theoretical risk distinguished (SPS 5.1), quantitative threshold, relevance SPS 162
 - burden of proof DSU 1274–6
 - competence of DSU 21.5 (compliance) panel
 - limitations on, insufficiencies in scientific evidence identified by Member adopting measure DSU 1278
 - panel performing functions similar to Article 21.5 panel DSU 1277
 - factors to be taken into account including “available scientific evidence” (SPS 2)
 - non-scientific/non-quantifiable factors SPS 198, 530
 - open vs closed list SPS 198–9
 - Member’s obligation to determine [in accordance with SPS obligations] SPS 208, 272
 - Member’s prerogative SPS 269
 - potential abuse of controlled substance SPS 198–9
 - risks arising from difficulties of control, inspection and approval/assessment (SPS 8 and Annex C) SPS 376

measures “appropriate to the circumstances” (SPS 5.1) direct causality between substance and possible adverse health effects SPS 174 discretion not to take measures and SPS 169, 512 flexibility SPS 168–9 interdependence of level of protection and risk assessment SPS 178–80, 530 risk management distinguished (SPS 5.1 and Annex A(4)) SPS 131, 522–4 standard of review, “objective assessment of matter before it” (DSU 11) DSU 1277 types of risk (“likelihood” vs “potential”), “likelihood”, “according to SPS measures which might be applied” SPS 512 risk assessment, need for (SPS 5.1–5.3), minimization of negative trade effects obligation (SPS 5.4) and SPS 208 risk assessment (SPS Annex A(4)(4)) ALOPs (SPS 5.4–5.6 and Annex A(5)) and SPS 530 quantification, relevance (including SPS 5.2 requirements) SPS 517–18 types of risk (“likelihood” vs “potential”), “potential”, “likelihood” distinguished SPS 517 Rules of Conduct (RoC) material violations (RoC VIII) DSU 1495 self-disclosure (RoC VI) SPS 410, DSU 1491 scientific evidence, need for sufficient (SPS 2.2) burden of proof, SPS 5.7 and DSU 1278 n. 2005 rational and objective relationship between SPS measure and scientific evidence, need for, provisional measures (SPS 5.7) and SPS 309 standard/powers of review (panel), own assessment, exclusion SPS 124–5, 126–7 security and predictability of WTO obligations (DSU 3.2), suspension of concessions (DSU 22.4) and DSU 47–8 SPS Agreement object and purpose (preamble) consistency of measures with SPS obligations SPS 1 harmonization of international standards SPS 3 SPS control, inspection and approval procedures (SPS 8 and Annex C), risk assessment (SPS 5.2) and SPS 195, 376 standard/powers of review (AB) (issues of law and legal interpretations) (DSU 17.6), completion of the legal analysis in case of, contentiousness/omission/insufficiency of facts DSU 878 standard/powers of review (panel) (DSU 11) error of law, failure to apply proper standard of review SPS 124–5 “objective assessment of matter before it” Article 21.5-type proceedings and DSU 1277–8 due process and DSU 619–20 suspension of concessions for non-implementation of DSB recommendations and rulings (DSU 22) authorization, need for (DSU 3.7, 22.6 and 23.2(c)), security and predictability of WTO obligations (DSU 2) and DSU 47–8 burden of proof in post-suspension position (DSU 22.8/SPS 5.7) DSU 1274–6 inducement of compliance as objective DSU 47 as “seeking redress” (DSU 23.1) DSU 1308–9 as temporary measure (DSU 22.8) DSU 1319 obligation to engage actively in dispute settlement proceedings DSU 1319 third party participants (AB proceedings) (ABWP 24/ABWP 27), role DSU 1442	unilateral action by Member, prohibition (DSU 23.1) “chilling” effect DSU 29, 1313, 1689 “determination” DSU 1313 examples of excluded actions (DSU 23.2) DSU 1302 relationship between DSU 23.1 and 23.2 DSU 1302 statements at DSB meetings as DSU 29, 1313, 1689 unilateral statements, legal effect DSU 1689 US/Canada – Continued Suspension (Panel), WT/DS320/R and WT/DS321/R burden of proof (general rules), good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) DSU 1511 confidentiality of proceedings (DSU 14/DSU 17.10/DSU 18.2/WP 3) “deliberations” (DSU 14.1) DSU 770 international tribunal practice DSU 770 n. 1233 confidentiality of proceedings (RoC VII:1), public hearings and DSU 1483 customary international law rules of interpretation [as codified in the VCLT] as applicable law (DSU 3.2), customary international law other than customary rules of interpretation DSU 1597 DSB, statements by Members at DSB meetings, legal effect, as prohibited unilateral action (DSU 23.1) DSU 29, 1313, 1689 good faith (including <i>pacta sunt servanda</i> principle (VCLT 26)) as fundamental rule of treaty interpretation DSU 1510–11, 1513 as fundamental rule of treaty interpretation/performance DSU 1597 as general principle of international law DSU 1597 implementation of panel or AB recommendations (DSU 19.1), panel’s decision not to make suggestions DSU 959 interim review (DSU 15) additional meeting DSU 807 failure to inform panel of errors DSU 788 inclusion of discussion of arguments (DSU 15.3) DSU 808 “precise aspects of the interim report”, limitation to (DSU 15.2) DSU 781 reconsideration of evidence, arguments and findings DSU 796 international law / “relevant rules of international law” (VCLT 31 (3)(c)) with particular reference to the interpretation of covered agreements (DSU 3(2)) DSU 1597 good faith as DSU 1597 provisional adoption of SPS measures in case of insufficiency of scientific evidence (SPS 5.7), burden of proof, limitation of Article 21.5 review to insufficiencies identified by Member adopting measure DSU 1278 n. 2005 public hearings AB (ABWP 27) DSU 1449 panel DSU 689–90, 924 Rules of Conduct (RoC) independence and impartiality (RoC I and III:2), panellists DSU 1482 “shall in no way modify the rights and obligations” (RoC II), confidentiality (RoC VII) and DSU 1483 scientific evidence, need for sufficient (SPS 2.2), burden of proof, SPS 5.7 and DSU 1278 n. 2005 special or additional procedures (panel) (DSU 12.1) margin of discretion DSU 686 open panel hearings DSU 689–90 unilateral action by Member, prohibition (DSU 23.1) “chilling” effect DSU 29, 1313, 1689 statements at DSB meetings as DSU 29, 1313
--	--