

## INDEX

AB. See Appellate Body (AB)	GATS and
Abbott, Kenneth W., 178, 384	generally, 271
Abi-Saab, Georges, 284	commercial commitments, 227
Accession protocols. See also specific	country-specific rules, 234, 237
country	SOEs as "public bodies," 264
overview, 8–9, 223–225, 271–273	systemic coherence based on non-
China—Auto Parts case, 228	discrimination principle, 249
China—Auto Parts Subsidies case, 229	WTO-plus, 231
China—Financial Information	GATT and
Services case, 229	generally, 271
China—Grants, Loans and Other	commercial commitments, 227
Incentives case, 229	conflict rules, 227-248
China—Publications and	country-specific rules, 234,
Audiovisual Products case, 229,	236–237, 238–239
245, 250–251, 269–270	multilateral trade agreements,
China—Rare Earths case (See	227
China—Rare Earths case)	non-discrimination principle, 249
China—Raw Materials case, 229,	relevance of one protocol to
249, 251, 270–271	interpretation of another,
China—Taxes case, 229	268–271
China—Tax Measures case, 229	SOEs as "public bodies," 264
China—Textile case, 229–230	WTO-minus, 231-232
China—Wind Power case, 229	WTO-plus, 231, 250-253
commercial commitments, 227	integration clauses, 226, 241
country-specific rules	interpretive issues
overview, 225	overview, 230–232, 257–258
under Marrakesh Agreement,	Marrakesh Agreement, accession
233–237	protocols and subsequent
under subsequent practice,	agreements interpreting,
237–239	265–268
dispute settlement and, 226	relevance of one protocol to
disputes regarding, 223-224,	interpretation of another,
228–230	268–271
EC—Bananas case, 268	SOEs as "public bodies,"
EC—Fasteners case, 255	259–265
EC—Footwear case, 255	monopolies and, 250-253
EC—Tariff Preferences case, 232	multilateral trade agreements and
foreign-invested enterprises (FIEs)	overview, 232–233, 271–273
and, 267–268	affirmation of obligations, 227



INDEX

422

Accession protocols (cont.) derogation from existing obligations, 228, 231-232, 253-257 distinctions between, 242-245 elaboration of existing obligations, 227 expansion of existing obligations, 227 - 228non-market economy (NME) provisions, 253-257 objective link to existing obligations and, 241-242 SCM Agreement and, 253-268 systemic coherence and overview, 245 "entry fee" theory, 249-250 lex posterior, 246 lex specialis, 246 non-discrimination principle, 248 - 250through conflict rules, 246-248 unclear legal status of, 225-226 US-AD/CVD (China) case, 258-259 US-Shrimp (Vietnam) case, 255-256 US—Shrimp II (Vietnam) case, 255-256 US—Tyres (China) case, 231-232, 254 US-Wool Shirts and Blouses case, 232 VCLT and generally, 257-258 country-specific rules, 233-234, 235, 238 interpretive issues, 265-266, 268 - 271lex posterior, 246 multilateral trade agreements, 244 - 245SOEs as "public bodies," 262, 264 WTO-minus, 228, 231-232, 253-257 WTO-plus, 227-228, 231, 250-253 Accountability, timely dispute settlement and, 135 African, Caribbean and Pacific (ACP)

Aggarwal, Vinod, 386 Agreement on Agriculture, 227, 247-248 Agreement on Government Procurement (GPA), 25 Agreement on Import Licensing Procedures, 227–253 Agreement on Safeguards, 242 Agreement on Subsidies and Countervailing Measures (SCM Agreement) generally, 31-32, 296-297 overview, 9, 276-278, 312-313 accession protocols and, 253-268 analysis of decisions under, 308-309 Appellate Body and interpretive attitudes, 289-290 negotiated balance in decisions, 309-311 panels contrasted, 289-290 Article 1 292 Article 1.1 293 Australia—Leather case, 290 Canada—Aircraft case, 292-294 Canada—Renewable Energy/FIT case, 301, 305-306 China, currency issues, 391 China—GOES case, 298 competition analysis under, 300 "discovery" of meaning, 292 dispute settlement, time frame for proceedings, 110-111 EC—Aircraft case, 290 EC—DRAMs case, 302 EC—Sugar case, 290 interpretation of laws and Appellate Body, attitude of, 289-290 panels, attitude of, 289-290 "invention" of meaning, 298-299 Korea—Commercial Vessels case, 302 negotiated balance in decisions under, 309-311 number of cases brought under, 276, 290-291 panels and Appellate Body contrasted, 289–290

interpretive attitudes, 289-290

Group of States, 325



INDEX 423
as, Andriamananiara, Soamiely, 370

negotiated balance in decisions, 309-311 time frame for proceedings, 110 - 111US-AD/CVD case, 303-305, 307 US—Carbon Steel case, 306-307 US—CVDs on EC Products case. 299-300 US—DRAMs case, 302-303, 307 US—Export Restraints case, 296–298, 302-303, 307 US-FSC case, 294-296 US—Lead Bars II case, 299-300 US—Softwood Lumber case, 300-301 vagueness of, 277 Agreement on Technical Barriers to Trade (TBT Agreement), 242, 266 Agreement on Textiles and Clothing, 232 Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), 395-396 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) border dynamics and, 380, 393 compliance rates as measure of performance, 31-32 determinants of dispute settlement in, 125-126 non-violation complaints, agreements on, 103-106 nullification and impairment and, 103-106 number of cases brought under, 393 PTAs, presence of WTO law in, 324-326, 333 spontaneous norms in dispute settlement and, 114, 115 TPP compared, 371 Agreement on Trade-Related **Investment Measures (TRIMS** Agreement), 242, 332-333, 335 Allee, Todd, 9-10 American Legal Realism, 407 Anderson, James, 49

Annecy Round, 64-65, 70 Anti-dumping as alternative to dispute settlement, 126, 152 PTAs, presence of WTO law in, 332 Anti-Dumping Agreement, 31-32, 253-257 Appellate Body (AB) China—Rare Earths case, 240–242 compensation of members, reform proposals regarding, 167 economic effectiveness of dispute settlement and, 176 increase in number of members proposed, 167 inflexibility of, 166 judicialisation and, 147 lawyers in, 157 other courts compared, 279-280 qualifications of members, reform proposals regarding, 167-168 reform proposals regarding, 159 renewal of terms of members, reform proposals regarding, 168-171 SCM Agreement and interpretive attitudes, 289-290 negotiated balance in decisions, 309-311 panels contrasted, 289-290 spontaneous norms emerging from practice, 111-113 delegation of legislative functions, 117 judicial economy, exercise of, 112 legal analysis, completion of, 111-112 time frame for proceedings, 112 - 113staff increases, 166 statistics, 150-151 summary reports, 166 time frame for proceedings, reform proposals regarding, 166-167 Arbitration in dispute settlement compliance and, 182-183 economic effectiveness and, 182-183 in implementation phase, 172



424 INDEX

Argentina	Baracat, Elías, 404, 405, 408-409, 410
Codex Alimentarius and, 398	Barsoom, Peter N., 175
criticism of dispute settlement, 154	Bartels, Lorand, 285
dispute settlement involving,	Bathia, Singh, 168
182–183	Bechtel, Michael M., 182, 183, 190, 195
national trade policy in, 10-11,	Belgium. See Benelux countries
404–406, 409	Bello, Judy, 288
retaliatory cases in dispute	Benelux countries
settlement, 152	GATT 1947, trade negotiation under
third party participation and, 210	bilateral negotiations involving,
Armenia, disputes regarding accession	81–83
protocols, 230	requests in, 85-86
Association of Southeast Asian Nations	tariff levels in, 55, 56, 57–58, 66–67
(ASEAN)	Bernauer, Thomas, 129-130
PTAs, presence of WTO law in,	Bhagwati, Jagdish, 185
332, 338	Biden, Joseph, 365
RCEP and, 360-361, 368	Bidwell, Percy W., 347, 348-349, 350
Atlantic Charter (1941), 351	Bilateral investment treaties (BITs),
Australia	332–333
criticism of dispute settlement, 154	Bilateral opportunism, third party
financial contributions to dispute	participation and, 212, 213
settlement, 164	Bilaterlism, GATT and, 347, 348
GATT 1947, bilateral negotiations	Bolivia, third party participation
under, 82-83	and, 205
PTAs, presence of WTO law in, 332	Border dynamics between WTO and
in RCEP, 360–361	international organisations
tariff levels in, 51, 54, 68, 70-71	overview, 10, 376–377, 399–400
third party participation and,	actors involved, 382-383
219–220	international organisations as
timely dispute settlement in, 136	agents, 382–383
in TPP, 360	member states as principals, 382
Australia-Chile Trade Agreement,	agreed shifts, 380, 392-393
327–328	categories of, 377–378, 390
Austria	Codex Alimentarius and, 394–399
financial contributions to dispute	conditioning factors
settlement, 164	overview, 383-384
tariff levels in, 56, 57-58	conjectures regarding, 388
Azevêdo, Roberto, 28, 150	control, 385-386
	delegation, 384–385
Bacchus, James, 282	nature of problem, 386–387
Backcasting tariff levels, 64-67	regulation, 387-389
Bagwell, Kyle, 21, 76-77, 78, 92, 212,	conflictual status quo, 380-381,
213, 407	393–394
Balassa, Bela, 56-57	cooperative status quo, 379-380,
Baldwin, Richard, 365	390–392
Bali Ministerial Conference (2013),	cooperative versus conflictual, 378
18–19, 147, 379–380	division of labour and, 385

Baltic Free Trade Area, 338

forced shifts, 381, 394-399



INDEX 425

lack of research regarding, 377 mission creep and, 383	panelists in dispute settlement from, 162
perception of relative strength of WTO, 376	subsidies, disputes involving, 300–301
shifting of borders, 378–379	tariff levels in, 51, 57–58, 68, 70–72
"trade-and" debate, 376, 389	timely dispute settlement in, 136
Bown, Chad P., 6, 131–132, 138,	in TPP, 360
177–178, 181, 188, 213, 411	United States and
Brauner, Karl, 155	free trade with, 352–354
Brazil	steel products safeguards, 412
Codex Alimentarius and, 397	Canada-Chile Trade Agreement, 325
criticism of dispute settlement, 154	Canada-EU Trade and Investment
determinants of dispute settlement	Agreement (CETA), 147
in, 128	Canada-Israel Trade Agreement,
dispute settlement involving, 156	324–325
financial contributions to dispute	Cartagena Protocol on Biosafety to the
settlement, 164	Convention on Biological
intellectual property and, 392-393	Diversity, 380-381, 388
third party participation and, 209	Cartland, Michael, 284, 296-297
United States steel products	Case-specific effectiveness, 30–32,
safeguards and, 413	33–34
in WTO, 16	CCD (Convention on the Protection
British Loan Negotiations (1945), 352	and Promotion of the Diversity
Brunei	of Cultural Expressions), 394
in P4, 361	CETA (Canada-EU Trade and
PTAs, presence of WTO law in, 338	Investment Agreement), 147
in RCEP, 360–361	Chang, Seung Wha, 168-169,
in TPP, 360	170–171, 313
Brusse, Wendy A., 71–72	Chase, Kerry, 351, 352–354
Brussels Tariff Nomenclature	Chayes, Abram, 175
(BTN), 50	Chen, Maggie X., 370
Busch, Marc L., 177, 210	Cheney, Richard, 411
Bush, George W., 365, 410-411, 416	Chile
	criticism of dispute settlement, 154
CAFTA-DR (Dominican	dispute settlement involving,
Republic-Central America Free	182–183
Trade Agreement), 338	GATT 1947, requests in trade
Cambodia in RCEP, 360–361	negotiation under, 85–86
Canada	in P3-CEP, 361
Codex Alimentarius and, 398	in TPP, 360
criticism of dispute settlement,	China
153, 154	accession protocols and
dispute settlement involving, 153	generally, 223–224, 236
GATT 1947, trade negotiation	Agreement on Import Licensing
under	Procedures, 227–253
bilateral negotiations involving,	conflict rules, 227–248
81–83	country-specific rules, 225, 226
requests in, 84, 85–86, 92	derogation, 228, 231–232, 253–257



426

China (cont.) disputes regarding, 228-230 foreign-invested enterprises

(FIEs), 267-268 multilateral trade agreements, 227-228

non-market economy (NME) provisions, 253-257

relevance of one protocol to interpretation of another, 268 - 271

SCM Agreement, 253-268 SOEs as "public bodies," 253-268 Working Party Report, 259–265

WTO-minus, 228, 231-232, 253-257

WTO-plus, 231

criticism of dispute settlement, 154

currency issues, 391

financial contributions to dispute settlement, 164

monopolies in, 250-253

panelists in dispute settlement from, 162

PTAs, presence of WTO law in, 332, 338

in RCEP, 360-361, 368-369

retaliatory cases in dispute settlement, 152

third party participation and, 207, 211, 215, 219-220

timely dispute settlement in, 136

TPP and, 364, 365-366 Trade in Services Agreement and, 366

United States steel products safeguards and, 413

in WTO, 3, 16, 19

China—Rare Earths case

generally, 229

overview, 239-240

in Appellate Body, 240-242

case-by-case approach, 241 critical appraisal of, 242-245

dissenting opinion, 240

integration clause and, 241

objective link to existing obligations,

241 - 242

panel ruling, 240

INDEX

Chinese Taipei. See Taiwan

CJEU. See Court of Justice of the

European Union

Clarke, Peggy, 288 Clemens, Michael A., 51

Cleveland, Harlan, 204

Codex Alimentarius, 381, 394–400

Collins-Williams, Terry, 288

Colombia, third party participation and, 215

Committee on Balance of

Payments, 391

Committee on Food Labeling, 396

Committee on Regional Trading Arrangements (CRTA), 358,

372 - 373

Compliance overview, 179-180

arbitration and, 182-183

countermeasures and, 180

dispute settlement and

arbitration in, 182-183

compliance rates, 151-152

problems in, 149

economic effectiveness of dispute settlement and

effects on, 180-182

focus on, 177, 178-179

as independent variable in

research, 187

studies regarding, 180-182

first order compliance, 120, 124, 126 - 128

measure of performance, rates as, 28-29, 31-32

negotiations and, 180

problems involving, 149

rates of, 151-152

reports, submission of, 179-180

second order compliance, 120,

128-132

time considerations, 180

trade policy substitutes and, 184-185

Conflict rules, accession protocols and, 246 - 248

Contractual nature of WTO law, 278

Convention on Biological Diversity,

380-381, 388



INDEX 427

Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CCD), 394 Cotonou Agreement, 325 Council for Foreign Relations, 348 Countermeasures in dispute settlement, 151-152, 172 Countervailing duties as alternative to dispute settlement, 126 subsidies and, 299-300 Court of Justice of the European Union Appellate Body compared, 279–280 delegation of legislative functions in, 117 interpretation in, 288 traveaux préparatoires and, 286 CRTA (Committee on Regional Trading Arrangements), 358, 372-373 Cuba GATT 1947, bilateral negotiations under, 82 third party participation and, 205 Cui, Yue, 23 Curzon, Gerard, 71-72, 356 Customary rules of interpretation, 281 - 283Customs Co-operation Council, 50

Dam, Kenneth, 288 Davis, Christina, 127, 130-131 "Deadlock," 4 de Bièvre, Dirk, 7 Delegation of legislative functions in dispute settlement, 117–118 "Democratic peace," timely dispute settlement and, 134-135, 136 Denmark, tariff levels in, 55, 56, 57-58 Depayre, Gérard, 284, 288 Designed norms in dispute settlement advantages over spontaneous norms, 115 - 116under GATT, 116-117 Design of Trade Agreements (DESTA), 328-329

Czech-Slovak Customs Union, 358

Determinants of dispute settlement overview, 7, 140-141 anti-dumping measures as alternative to dispute settlement, 126 bias and, 125 in Brazil, 128 countervailing duties as alternative to dispute settlement, 126 disputes never materialising, 123-126 domestic experts and, 127-128 empirical research on, 121-122 in EU, 128 GATS and, 125-126 gravity models and, 129-130 identifying universe of potential cases, 126-128 intra-industry trade and, 131 in Japan, 127 lack of research into uninitiated disputes, 124-126 LDCs and, 125-126 legal capacity and, 128-129 narrow disputes and, 125 policy measures targeted through WTO litigation and, 131–132 political pressure and, 130-131 potential determinants, 128-132 power asymmetries and, 129 PTAs and, 125-126, 132 reliance on notices as alternative to dispute settlement, 126-127 in South Korea, 128 SPS and, 126-127 TBT and, 126-127 temporary trade barriers as alternative to dispute settlement, 126 theoretical possibilities, 122 TRIPS Agreement and, 125-126 in United States, 127 weak states and, 125 Developing Countries in the GATT Legal System (Hudec), 418 Diamond, Richard, 288 Digital Dispute Settlement Registry, 157



428 INDEX

Dillon Round, 57, 64-65 Diplomacy national decisions and national interests, 417 objectives and, 418 reciprocity and, 418 theoretically consistent rationale of, 417 - 418war and, 416 WTO and, 416-417 "Discovery" of meaning versus "invention" of meaning, 280 - 281Dispute settlement overview, 7 accession protocols and, 226 achievements of, 150-153 adoption of, 99-100 amendment process, 101 appeals, 150-151 arbitration in compliance and, 182-183 economic effectiveness and, 182 - 183in implementation phase, 172 Australia—Tobacco case, 165 bilateral negotiations, 150-151 case law, development of, 148 complexity of disputes, 149, 155-158 compliance and arbitration in, 182-183 compliance rates, 151-152 problems in, 149 consent not required, 100 countermeasures in, 151-152, 172 criticism of, 147-148, 153, 154 delay in, 153-155, 156-157 delegation of legislative functions in, 117 - 118determinants of (See Determinants of dispute settlement) Digital Dispute Settlement Registry, 157 economic effectiveness of (See Economic effectiveness of dispute settlement) fees of panelists, 161, 162

financial resources, 162, 163-164

first order compliance, 120, 124, 126-128 importance of, 120-121, 122-123 Interim Review Stage, 161 international courts compared, 161 - 162liberalisation, failure to agree to, 149 limiting cases in, 152, 164-165 litigation, 150-151 monitoring role, 171 multi-stage procedure, effective functioning of, 148 negative consensus rule, 100 number of cases brought in, 148, 149, 150-152, 155-158 panels fees of panelists, 161, 162 recurrent panelists, 163 reform proposals at panel level, 158-159, 160-164 participation level in, 148, 151 predictability in, 148, 153 problems in, 153-155 proposals regarding, 158-160 PTAs, presence of WTO law in, 332-333 recurrent panelists, 163 reform proposals regarding in Appellate Body, 159 in implementation phase, 159, 171 - 172at panel level, 158-159, 160-164 in Secretariat, 160-164 structural reforms, 160-164 reports on complaints, 103 retaliatory cases, 152 review of, 101 RTAs and, 149, 160, 357-358 second order compliance, 120, 128-132 spontaneous norms in (See Spontaneous norms in dispute settlement) stability of, 148 statistics, 150-152, 155 surveillance role, 171-172 third party participation and, 205-206, 208-210, 211, 212



INDEX 429

DupeFreePro software, 329–330

timely dispute settlement in (See Timely dispute settlement) trade relations and, 172-173 unintended consequences of, 100-101 Dispute Settlement Body (DSB) economic effectiveness of dispute settlement and, 176 other courts compared, 279–280 problems in, 149-150, 153-155 usage rates and, 28 Dispute Settlement Understanding (DSU) generally, 276 Article 10, 206, 208-209 Article 11, 209-210 interpretation, rules of, 281-282 jurisdiction, rules of, 281-282 PTAs, presence of WTO law in, 327 third party participation under, 206, 208-210, 212 Doha Round generally, 4, 5, 18, 147 Development Agenda (DDA), 22, 26 dispute settlement, importance to, 122-123, 172-173 Doha Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights and Public Health, 380 Ministerial Declaration (2001), 160, 266 PTAs and, 22, 323-324 RTAs and, 359 steel products, United States safeguards and, 410 TPP and, 364 traveaux préparatoires, 286 Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), 338 Downs, George W., 175 Draft Articles on Responsibility of States for Internationally Wrongful Acts, 265 DSB. See Dispute Settlement Body (DSB) DSU. See Dispute Settlement

Dupont, Cédric, 10, 386 Dür, Andreas, 328, 364 Dutt, Pushan, 24-25 Dyadic trade relationship, timely dispute settlement and, 134 Economic effectiveness of dispute settlement overview, 7-8, 175-179, 195-196 Appellate Body and, 176 arbitration and, 182-183 compliance and effects of, 180-182 focus on, 177, 178-179 as independent variable in research, 187 studies regarding, 180-182 DSB and, 176 enforcement versus management, 175 findings overview, 191 post-implementation trade flows, 193-195 pre- versus post-settlement trade flows, 191-193 GATT, studies regarding, 175–176 implementation phase, focus on, 178 research design overview, 185-186 compliance as independent variable, 187 control variables in, 188-190 dependent variable in, 186–187 economic growth as control variable, 189 independent variables in, 187 - 188linear trend as control variable, 189-190 market size as control variable, 189 methodology, 190-191 settlement outcome as independent variable, 187-188 trade openness as control

variable, 189

Understanding (DSU)



INDEX

430

Economic effectiveness (cont.) trade policy substitutes as independent variable, 188 studies regarding, 175-177 trade flows, focus on, 177-178 trade policy substitutes and, 184-185 WTO, studies regarding, 175-176 Economics angle of WTO law overview, 19-20 accession to WTO and, 24 Agreement on Government Procurement and, 25 assessment, 27 commitment approach, 21 common measures of performance, goals, identification of, 22-25 managing political economy pressures, 23 new policy disciplines, 22 preventing backsliding, 23 reducing trade barriers, 22 objectives of Members, 20-22 PTAs and, 25-26 sources of performance, 25-27 trade effects of WTO, 20, 24-25 transparency and, 26 ECtHR (European Court of Human Rights), 29, 156 Ecuador, third party participation and, 205 EEC. See European Economic Community (EEC) EFTA (European Free Trade Association), 332 Ehlermann, Claus-Dieter, 280–281, 284 Elsig, Manfred, 5-6, 9-10, 31-32, 170, 216, 405, 417, 418 Elveren, Dilek, 394 Embedded effectiveness, 30-31, 32-33 Enabling Clause of 1979, 355 Enhanced third-party rights, 108-109 "Entry fee" theory, accession protocols and, 249-250 Erga omnes effectiveness, 30-31 Estevadeordal, Antoni, 26

**European Commission** Market Access Database, 128 Single Market Programme, 367 third party participation and, 208 Trade and Investment Barriers Report, 128 World Input-Output Database, 137 - 138European Court of Human Rights (ECtHR), 29, 156 European Court of Justice. See Court of Justice of the European Union European Economic Community (EEC) generally, 361 RTAs and, 356, 357 tariff levels in, 45, 57, 64, 67 European Free Trade Association (EFTA), 332 European Union Codex Alimentarius and, 397-398 criticism of dispute settlement, 154 determinants of dispute settlement in, 128 dispute settlement involving, 156 financial contributions to dispute settlement, 164 genetically modified (GM) crops, disputes regarding, 124 intellectual property and, 393 panelists in dispute settlement from, 162 PTAs and, 323, 338 RTAs and, 358 third party participation and, 210, 211, 215, 218, 219-220 in TTIP, 360, 366-368 United States steel products safeguards and, 413 Eurozone crisis, dispute settlement and, 122 - 123

Evenett, Simon, 23

332-333

Felbermayr, Gabriel, 371

RTAs and, 359

FDI (Foreign direct investment)

PTAs, presence of WTO law in,

European Coal and Steel

Community, 356



INDEX 431

Fergusson, Ian F., 364, 365	Gawande, Kishore, 23
FIEs (Foreign-invested enterprises),	General Agreement on Tariffs and
accession protocols and,	Trade (GATT). See also specific
267–268	topic
Financial contributions as subsidies	generally, 276
"entrust" and "direct" construed,	accession protocols and
302-303	generally, 271
export restraints as, 296-298	commercial commitments, 227
government practice involving direct	conflict rules, 227-248
transfer of funds, 306–307	country-specific rules, 234,
Financial Stability Board, 379	236–237, 238–239
Finger, Joseph Michael, 10–11, 23,	multilateral trade agreements, 227
409, 411	non-discrimination principle, 249
First order compliance, 120, 124,	relevance of one protocol to
126–128	interpretation of another,
First Preparatory Meeting (1946), 352	268–271
Foreign direct investment (FDI)	SOEs as "public bodies," 264
PTAs, presence of WTO law in,	WTO-minus, 231–232
332–333	WTO-plus, 231, 250–253
RTAs and, 359	Article XXII, 206–208
Foreign-invested enterprises (FIEs),	Article XXIII, 206–208
accession protocols and,	Article XXIV (See also Regional trade
267–268	agreements (RTAs))
Formalism in definition of subsidies,	overview, 31–32
292, 296	early application of, 355–357
Forum diversion, 366	
	historical background, 351–355
France	middle years, application during, 357–360
GATT 1947, trade negotiations	
under	Understanding on the
bilateral negotiations involving, 82	Interpretation of Article XXIV,
product lists in, 81	357–358
requests in, 84	bilateralism and, 347, 348
tariff levels in, 55, 56, 57–58, 66–67	China—Rare Earths case (See China
François, Joseph, 372	—Rare Earths case)
Free-Trade Area of Asia and the Pacific	Codex Alimentarius and, 395,
(FTAAP), 369	396–397, 398
Freund, Caroline, 26	compliance rates as measure of
Fried, Jonathan, 159, 171	performance, 31–32
Fritz, Johannes, 23	consensus, decision by, 205
Fronk, Jared, 25	designed norms in dispute
FTAAP (Free-Trade Area of Asia and	settlement under, 116–117
the Pacific), 369	development and, 15
	economic effectiveness of dispute
Gap-filling, 279–280, 284–285	settlement, studies regarding,
GATS. See General Agreement on	175–176
Trade in Services (GATS)	IMF and, 390
GATT. See General Agreement on	non-discrimination principle and,
Tariffs and Trade (GATT)	346-349



> INDEX 432

General Agreement on Tariffs (cont.) PTAs, presence of WTO law in, 323, 324, 326, 332 reduction in tariffs, contributions to, 47,65 tariff levels in post-war period, measurement of (See Tariff levels in post-war period, measurement of) third party participation under, 206-208 trade negotiation under GATT 1947 (See Trade negotiation under GATT 1947) United States tariff levels, effect on, 76 General Agreement on Trade in Services (GATS) accession protocols and generally, 271 commercial commitments, 227 country-specific rules, 234, 237 SOEs as "public bodies," 264 systemic coherence based on nondiscrimination principle, 249 WTO-plus, 231 compliance rates as measure of performance, 31-32 determinants of dispute settlement and, 125-126 market access commitments, 104 non-violation complaints, agreements on, 103-106 nullification and impairment and, 104-105 PTAs, presence of WTO law in, 323-324 General Council, 153 Generalised System of Preferences, 109 Genetically modified (GM) crops, disputes regarding, 124 Geneva Round, 60, 64-65, 70, 352 Germany, tariff levels in, 55, 56, 57-58 Global value chains (GVCs), timely dispute settlement and, 137-138 Goldstein, Judith, 6, 71-72, 75, 96,

Government Procurement Agreement (GPA), 326 Gowa, Joanne, 354 Graham, Thomas, 168, 286, 287 Gravity models, determinants of dispute settlement and, 129 - 130Great Depression, 78-79, 80 Greece, tariff levels in, 56 Greenwald, John, 288 G7, 379 G20, 379 Guatemala criticism of dispute settlement, 154 third party participation and, 215 Gulotty, Robert, 6, 96, 416 Gutner, Tamar, 13 GVCs (Global value chains), timely dispute settlement and, 137-138 Haas, Ernst, 377 Haggerty, Susan, 288 Handler Chayes, Antonia, 175 Harberger, Arnold C., 410 Harmonized Commodity Description and Coding System (HS), 50, 138, 185, 217 Havana Charter, 345, 348, 353 Havana Conference (1948-1949), 352 Hawkins, Darren, 382 Helfer, Laurence, 30-31, 32-33, 35-36 Helm, Carsten, 175 Herfindahl-Hirschman Index (HHI), 130 - 131Hillman, Jennifer, 279 Historical background, 3-5 Hoekman, Bernard, 5-6, 23, 405 Hofmann, Tobias, 7-8, 177, 185,

187, 417 Holmer, Alan, 288 Horlick, Gary, 288 Horn, Henrik, 185, 187, 323

Howse, Rob, 312 HS. See Harmonized Commodity Description and Coding System (HS)

Hudec, Robert E., 136, 288, 406-409, 418

354, 416



INDEX 433

Hufbauer, Gary, 288 Hull, Cordell, 79, 346-348, 349, 351 Hungary, accession protocols and, 236 Hunter, Dan, 288 ICC (International Criminal Court), 164 ICJ (International Court of Justice), 238, 288 ICSID (International Centre for Settlement of Investment Disputes), 164 IIT (Intra-industry trade), determinants of dispute settlement and, 131 IMF. See International Monetary Fund (IMF) Impairment GATS and, 104-105 non-violation complaints, agreements on, 103-106 panel practice, norms emerging from, 109-110 TRIPS Agreement and, 104-105 Codex Alimentarius and, 397 criticism of dispute settlement, 154 intellectual property and, 392-393 PTAs, presence of WTO law in, 338 in RCEP, 360-361, 368-369 tariff levels in, 51, 54 third party participation and, 215, 219 - 220in WTO, 16 Indonesia in RCEP, 360-361 Institutionalism overview, 404-406, 418 American Legal Realism and, 407 Hudec and, 407-408 minimal trade restrictions and, 406, 408 national trade policy and, 406 political economy of trade reform and, 407 recommendations, 418 rule of law and, 408

Intellectual property. See also Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) border dynamics between WTO and international organisations and, 380, 392-393 P4 and, 361 PTAs, presence of WTO law in, 333 RTAs and, 359 International Centre for Settlement of **Investment Disputes** (ICSID), 164 International Commercial Union (proposed), 348, 349, 350 International Court of Justice (ICJ), 238, 288 International Criminal Court (ICC), 164 International Historical Statistics (Palgrave Macmillan), 51, 54 International law angle of WTO law overview, 27-29 assessment, 36 case-specific effectiveness, 30-32, 33 - 34causation, 33-34 compliance rates as measure of performance, 28-29, 31-32 cost-effectiveness, 34 dimensions of performance, 30-31 embedded effectiveness, 30-31, 32-33 erga omnes effectiveness, 30-31 goal-based approach, 30 goals, identification of, 31-33 indicators for performance, 34–36 judicial independence and, 35 measurement, 33-34 norm-development effectiveness, 30 - 33usage rates as measure of performance, 28 International Monetary Fund (IMF), 384, 390–392, 399 International organisations border dynamics between WTO and (See Border dynamics between WTO and international organisations)

supranational authorities and,

406, 408



434

International organisations (cont.) perception of relative weakness of, 376 third party participation

compared, 204
International relations angle of WTO law overview, 14–15

assessment, 19

goals, identification of, 15–18 accommodation of new states, 16

affordable and equal access to dispute settlement and, 17–18 crisis management, 16

LDCs, integration of, 16

macro goals, 15 negotiation platform and, 16

regime management activities and, 17

rule of law, 15-16

technical assistance and capacity building and, 17

sources of performance, 18–19 International Trade Agency

(proposed), 348 International Trade Organization

(ITO), 79–80, 81, 348, 351, 352 Interpretation of laws

Interpretation of law act of, 289

ambiguity and, 284–285

"circumspection and care," 285 context of negotiation, importance of, 286–289

customary rules of interpretation and, 282-283

"discovery" of meaning, 280–281, 292

gap-filling and, 279–280, 284–285 history of negotiation, importance of, 286–289, 312

"invention" of meaning, 280–281, 298–299

lack of clarity and, 284-285

literature, use of, 288 negotiated balance and, 282-285

SCM Agreement and

Appellate Body, attitude of, 289–290 panels, attitude of, 289–290

INDEX

subsequent practice and, 287 supplementary means of interpretation and, 283

traveaux préparatoires, importance of, 286–287

Intra-industry trade (IIT),

determinants of dispute settlement and, 131

"Invention" of meaning versus "discovery" of meaning, 280–281

Investment Court, 147

Irwin, Douglas A., 6, 49, 60, 351 Israel

CCD and, 394

United States steel products safeguards and, 412

Italy, tariff levels in, 55, 56, 57–58

ITO. See International Trade Organization (ITO)

Jackson, John, 285, 288 Japan

Agreement on Government
Procurement and, 25
criticism of Appellate Body, 167
criticism of dispute settlement, 154
determinants of dispute settlement

terminants of dispute settlemer in, 127

financial contributions to dispute settlement, 164

panelists in dispute settlement from, 162

political pressure in, 130 PTAs, presence of WTO law in, 332, 338

in RCEP, 360–361, 368

Report on Compliance by Major Trading Partners with Trade Agreements, 127

tariff levels in, 45, 57, 64, 67, 71 third party participation and, 215

in TPP, 360 United States steel products

safeguards and, 413 Japan–Mexico Trade Agreement, 326–327

Jellinek, Georg, 114



Johns, Leslie, 207, 217

INDEX 435

Johnson, Harry G., 76 Jones, Ronald W., 76 Jordan, United States steel products safeguards and, 412 Judicial independence, 35 Kee, Hiau, 49 Kennedy, Daniel L.M., 406 Kennedy, John F., 410, 416 Kennedy Round EEC and, 364 non-compliance and, 185 tariff rates at time of, 45, 47, 51, 57, 64-66 Keohane, Robert, 14 Kerr, Robert, 410 Kim, Soo Yeon, 7-8, 177, 185, 187, 417 Kono, Daniel, 25, 185 Krasner, Stephen, 378 Krauss, Lawrence, 416 Krugman, Paul, 369-370 Kucik, Jeffrey, 181-182, 192, 213 Laos in RCEP, 360-361 Law of constant protection, 185 League of Nations, 50 Least-developed countries (LDCs) determinants of dispute settlement in, 125-126 integration as goal of WTO, 16 Legal Affairs Division, 157, 158 Legal capacity, determinants of dispute settlement and, 128 - 129Lenaerts, Koen, 286 Levine, Mike, 288 Lex posterior, 246 Lex specialis, 246 Liu, Xuepeng, 24-25 Lloyd, Peter, 48, 71 Loke, Wai-Heng, 370 London World Economic Conference, 347 Lowenfeld, Andreas F., 356 Luxembourg. See Benelux

Malaysia PTAs, presence of WTO law in, 338 in RCEP, 360-361 in TPP, 360 Market access commitments, 104 Marrakesh Agreement Establishing the World Trade Organization generally, 225, 390-391 accession protocols and, 225-226, 233-237, 257-258, 265-268, 271 - 273Article XI, 234, 236, 237 Article XII, 233-237 China—Rare Earths case (See China -Rare Earths case) dispute settlement and, 170 Marvel, Howard P., 185 Mattoo, Aaditya, 370 Mavroidis, Petros C., 185, 187, 279, 295, 351, 358, 366 McCann, Maegan, 325-326 McNair, Lord, 289 MDS (Multi-dimensional scaling), 218 - 220Meade, James, 347, 348, 349-350 Mega-regionals. See also specific Agreement generally, 345 overview, 360-361 multilateralism and, 369-372 statistics, 362-363 MERCOSUR, PTAs and, 338 Mexico accession protocols, disputes regarding, 229-230, 270-271 criticism of dispute settlement, 154 dispute settlement involving, 153 PTAs, presence of WTO law in, 338 in TPP, 360 United States steel products safeguards and, 412 MFN treatment. See Most-favoured nation (MFN) treatment Ministerial Decision on the Acceptance of and Accession to the Agreement Establishing the World Trade Organization, 235 Mitchell, Brian, 51

countries



436

Mitchell, Ronald, 175

Moghadam, Valentine, 394

Monopolies accession protocols and, 250-253 in China, 250-253 Most-favoured nation (MFN) treatment accession protocols and, 231-232, 247 GATT 1947, trade negotiation under, 79, 80-81 reduction in tariffs and, 47 third party participation and, 212, 213 - 214Multi-dimensional scaling (MDS), 218 - 220Multidisciplinary analysis of WTO law overview, 5-6, 12-13, 36-38 assessment, 14 disciplinary objectives, 37 discursive tools, 38 economics angle (See Economics angle of WTO law) goals, identification of, 13 international law angle (See International law angle of WTO law) international relations angle (See International relations angle of WTO law) sources of performance, 13-14 vibrant nature of literature, 37-38 Multilateralism, RTAs and overview, 345-346, 372-373 mega-regionals, 369-372

non-discrimination principle and, 346

accession protocols and overview, 232–233, 271–273

China—Rare Earths case (See China

elaboration of existing obligations, 227

expansion of existing obligations,

affirmation of obligations, 227

—Rare Earths case)derogation from existing obligations,

distinctions between, 242-245

228, 253-257

227-228

Multilateral trade agreements,

INDEX

Murray, Tracy, 411 Mutual Aid Agreement (1942), 351 Myanmar in RCEP, 360–361

NAFTA. See North American Free Trade Agreement (NAFTA) Nairobi Ministerial Conference (2015), 4, 147 Nash tariff, 46-47 National trade policies overview, 10-11, 404-406, 418 in Argentina, 10-11, 404-406, 409 institutionalism and, 406 minimal trade restrictions and, 406, 408 in Peru, 10-11, 404-406, 409-410 political economy of trade reform and, 407 recommendations, 418 rule of law and, 408 supranational authorities and, 406, 408 in United States (See Steel products, United States safeguards) National treatment, reduction in tariffs and, 47 Neagu, C., 49 Neary, J. Peter, 49 Negotiated balance Appellate Body, in decisions of, 309-311 interpretation of laws and, 282-285 panels, in decisions of, 309-311 SCM Agreement, in decisions under, 309-311 subsidies and, 292 Netherlands. See Benelux countries New York Meeting (1947), 352 New Zealand in P3-CEP, 361 PTAs, presence of WTO law in, 338 in RCEP, 360-361 tariff levels in, 51-54 third party participation and, 219-220 in TPP, 360

United States steel products

safeguards and, 413



INDEX 437

Nicaragua, third party participation and, 205 Nicaragua-El Salvador FTA, 356 Nicita, Alessandro, 49, 188 NME (Non-market economy) provisions in accession protocols, 253-257 Nogués, Julio, 409 Non-discrimination principle accession protocols and, 248-250 GATT and, 346-349 multilateralism and, 346 reduction in tariffs and, 47 RTAs and, 346-349 Non-market economy (NME) provisions in accession protocols, 253-257 Non-tariff measures (NTMs), 345, 359 Norm-development effectiveness, 30 - 33North American Free Trade Agreement (NAFTA), 321-322, 358, 361, 364 Norway criticism of dispute settlement, 154 GATT 1947, trade negotiation under bilateral negotiations involving, 82 requests in, 85-86 tariff levels in, 55, 56, 57-58 timely dispute settlement, 136 United States steel products safeguards and, 413 NTMs. See Non-tariff measures (NTMs) Nullification GATS and, 104-105 non-violation complaints, agreements on, 103-106 panel practice, norms emerging from, 109-110 TRIPS Agreement and, 104-105 Obama, Barack, 153, 365

Organisation of Economic Co-operation and Development (OECD), 323 Ornelas, Emanuel, 26 Ossa, Ralph, 46-47 Pacific-4 (P4), 361, 364 Pacific Three Closer Economic Partnership (P3-CEP), 361 Pakistan criticism of dispute settlement, 154 dispute settlement involving, 150 Palgrave Macmillan, 51 Palmeter, David, 407 Panels in dispute settlement fees of panelists, 161, 162 recurrent panelists, 163 reform proposals at panel level, 158-159, 160-164 enhanced third-party rights, 108-109 impairment, norms emerging from panel practice, 109-110 nullification, norms emerging from panel practice, 109-110 SCM Agreement and Appellate Body contrasted, 289-290 interpretive attitudes, 289-290 negotiated balance in decisions, 309-311 time frame for proceedings, 110 - 111spontaneous norms emerging from practice, 108-111 enhanced third-party rights, 108-109 impairment and, 109-110 nullification and, 109-110 time frame for proceedings, 110-111 time frame for proceedings, 110-111 Pauwelyn, Joost, 5-6, 162, 163, 253, 393, 405 Pelc, Krzysztof J., 8, 181-182, 192, 207, 210, 213, 217

Objectives, 418

Olarreaga, Marcelo, 49, 188

analysis, 220

Ordinary least squares (OLS)



438 INDEX

Peru national trade policy in, 10-11, 404-406, 409-410 PTAs, presence of WTO law in, 338 tariff levels in, 54 in TPP, 360 Petri, Peter A., 372 Petriccione, Mauro, 288 Philippines in RCEP, 360–361 Plummer, Michael G., 372 Poland, accession protocols and, 236 Poletti, Arlo, 7 Political economy of trade reform, 407 Pollack, Mark A., 170, 389 Portugal, tariff levels in, 54, 55, 357 Posner, Eric, 35 Posner, Richard, 284 Power asymmetries, determinants of dispute settlement and, 129 Preferential trade agreements (PTAs) determinants of dispute settlement in, 125-126, 132 economic effects of, 25-26 presence of WTO law in overview, 9-10, 321-322, 338-342 actors most likely to evoke WTO law, 337-338 clarity of WTO law and, 323 coding and, 322, 328-329, 332-333 complements versus substitutes, 336-337 "copy-paste" of WTO provisions, 333-336 explicit references to WTO, 322, 324-326, 329-330, 333 findings regarding, 331-341 GATT and, 323, 324, 326, 332 methodology of study, 322, 328-330 patterns of, 337-338 research regarding, 323-324 trade negotiators and, 323 treaty overlap, assessment of, 324, 326-328 universal applicability of WTO law and, 323 well-established nature of WTO law and, 323 shift toward, 22

Price supports, subsidies and, 298
Principal supplier rule, 79, 91–92, 347
Privatisation, subsidies and, 299–300
Producer power, trade negotiation
under GATT 1947 and, 76
Protectionism, 2008 crisis and, 23
Protocol of Provisional Application
(1947), 239
PTAs. See Preferential trade
agreements (PTAs)
Public bodies
SOEs as, 253–268
subsidies and, 303–305
Qin, Julia, 8–9

Raustiala, Kal, 29, 377, 379
Ray, Edward J., 185
RCEP. See Regional Comprehensive
Economic Partnership (RCEP)
Reciprocity
diplomacy and, 418
GATT 1947, trade negotiation
under, 79, 80–81
Regan, Donald, 417–418
Regional Comprehensive Economic
Partnership (RCEP), 360–361, 368–369

Regional trade agreements (RTAs). See also specific Agreement overview, 10, 344–346, 372–373 Committee on Regional Trading Arrangements (CRTA), 358, 372–373

dispute settlement, effect on, 149, 160 early application of Article XXIV, 355–357

early treatment of, 349–351 foreign direct investment (FDI) and, 359

historical background, 345, 351–355 intellectual property and, 359 mega-regionals (*See also specific* 

generally, 345 overview, 360–361 multilateralism and, 369–372 statistics, 362–363

Agreement)



INDEX 439

middle years, application of Article	Sanitary and Phytosanitary
XXIV during, 357-360	Standards (SPS)
multilateralism and	determinants of dispute settlement
overview, 345-346, 372-373	and, 126–127
mega-regionals, 369-372	P4 and, 361
non-discrimination principle	reliance on notices as alternative to
and, 346	dispute settlement, 126-127
non-discrimination principle and,	SPS Agreement, 395–396
346–349	SPS Committee, 124
non-tariff measures (NTMs) and,	Sanitary and Phytosanitary Standards
345, 359	(SPS) Committee, 124
political nature of treatment of,	Sapir, André, 355
344–345	Sattler, Thomas, 129–130, 182, 183,
principal supplier rule and, 347	190, 195
substantive conditions, 355	Saudi Arabia, disputes regarding
tariffs and, 359–360	accession protocols, 262
Transparency Mechanism for	Schaffer, Lena M., 185
Regional Trading	Schott, Jeffrey J., 369
Agreements, 358	Schwab, Susan, 364
Regression analysis of tariff levels, 67–71	Schwob, Claude, 347, 348
Reinhardt, Eric, 177	SCM Agreement. See Agreement on
Retaliation	Subsidies and Countervailing
retaliatory cases in dispute	Measures (SCM Agreement)
settlement, 152	Seattle Ministerial Conference (1999), 4
threat of and timely dispute	Second order compliance, 120, 128–132
settlement, 132–134	Second Preparatory Meeting
Reynolds, Kara M., 131–132, 138	(1947), 352
Rickard, Stephanie, 25	Sequencing agreements, 102–103
Rivers, Douglas, 71–72	Shaffer, Gregory, 389
Robert-Nicoud, F., 365	Shany, Yuval, 29, 30, 35
Rocke, David M., 175	Shelton-Erb, Joanna, 288
Roessler, Frieder, 6–7	Shingal, Anirudh, 25
Romania, accession protocols and, 236	Simple average tariffs
Rose, Andrew, 24, 75	access to detailed rates, 50–51
RTAs. See Regional trade agreements	conversion to ad valorem equivalent
(RTAs)	rates, 49
Rubini, Luca, 9, 296–297	data, 55-60
Rule of law	evidence of, 55–60
as goal of WTO, 15-16	tariff levels in post-war period, use in
institutionalism and, 408	measurement of, 49–51
Rules Division, 157, 158, 296–297	Singapore
Russia	financial contributions to dispute
accession protocols and, 225	settlement, 164
criticism of dispute settlement, 154	in P3-CEP, 361
in WTO, 3, 16, 19	PTAs, presence of WTO law in, 338
	in RCEP, 360–361
Sacerdoti, Giorgio, 7, 170-171	in TPP, 360
Salembier, Geny, 288	Slaughter, Anne Marie, 35–36



440

Smythe, Elizabeth, 396 impairment and, 109-110 SOEs. See State-owned enterprises nullification and, 109-110 (SOEs) time frame for proceedings, South Africa, dispute settlement 110 - 111involving, 150 voluntary arrangements, 102-108 South Africa-Rhodesia Customs impairment and, 103-106 Union, 356 non-violation complaints, Southern African Development agreements on, 103-106 Community, PTAs and, 338 nullification and, 103-106 South Korea opening proceedings to public, criticism of dispute settlement, agreements on, 106-107 149-150, 154 sequencing agreements, 102-103 determinants of dispute settlement Sprinz, Detlef F., 175 in, 128 SPS. See Sanitary and Phytosanitary Ministry of Foreign Affairs, 128 Standards (SPS) Ministry of Trade, Industry and Staiger, Robert, 21, 76-77, 212, 213, 407 Energy, 128 State-owned enterprises (SOEs) National Report on Foreign Trade accession protocols and, 253-268 TPP and, 371 Environment, 128 PTAs, presence of WTO law in, 338 Statute of the International Court of in RCEP, 360-361, 368 Justice, 288 United States steel products Steel products, United States safeguards safeguards and, 413 overview, 10-11, 404-406, 410-411 Southwick, James D., 406 affirmative determination by ITC, Spain, tariff levels in, 54, 357 411 - 412Spontaneous norms in dispute management of restrictions, 412-413 mid-term review by ITC, 413-414 settlement overview, 6-7, 99-102, 116-118 preemption of anti-dumping, 411 advantages of, 113-115 termination of restrictions, 414-415 Appellate Body practice, norms WTO case, 413 emerging from, 111-113 Stucki, Philipp, 216 delegation of legislative Subramanian, Arvind, 24 functions, 117 Subsidies. See also Agreement on judicial economy, exercise of, 112 Subsidies and Countervailing Measures (SCM Agreement) legal analysis, completion of, overview, 9, 276-278, 312-313 111-112 time frame for proceedings, benefits, marketplace and, 292-294, 301, 305-306 112 - 113Australia—Tobacco case, 165 countervailing duties and, 299-300 designed norms, advantages of, country of provision, market 115-116 benchmarks and, 300-301 disadvantages of, 115-116 financial contributions "entrust" and "direct" construed, EU-Sardines case, 116 evolution of, 99-102 302-303 panel practice, norms emerging export restraints as, 296-298 from, 108-111 government practice involving direct transfer of funds, enhanced third-party rights, 306-307 108-109

INDEX



> INDEX 441

formalism in definition of, 292, 296 government as sovereign versus government as market operator, 294-296 importance of, 276 market benchmarks and, 300-301, 305-306 market-orientation of definition of, 292 negotiated balance and, 292 policy goals and, 276 price supports and, 298 privatisation and, 299-300 public bodies and, 303-305 subsidy-like effects, 276 substantialism in definition of, 296 taxation and, 294-296 Substantialism in definition of subsidies, 296 Supplementary means of interpretation, 283 Sweden, tariff levels in, 55, 57-58 Switzerland Agreement on Government Procurement and, 25 PTAs, presence of WTO law in, 338 United States steel products safeguards and, 413 Sykes, Alan O., 351

Tang, Man-Keung, 24 Tariff levels in post-war period, measurement of. See also specific country overview, 6, 45-47, 71-72 backcasting data, 64-67 measurement methods, 48-51 regression analysis of, 67-71 simple average tariffs, 49-51

access to detailed rates, 50-51

conversion to ad valorem

accession protocols and, 225

criticism of dispute settlement, 154

Taiwan

equivalent rates, 49 data, 55-60 evidence of, 55-60

time path, effect of, 67-71

trade-weighted average tariffs, 48-49 comparison of countries, 49 data, 52-53 downward bias in, 48-49 evidence of, 51-55 import changes independent of policy, effect of, 49 uncertainty in estimating, 45-47 Tariff reduction swaps, 75–76 Tariffs. See also specific country MFN treatment, reduction in tariffs and, 47 Nash tariff, 46-47 national treatment, reduction in tariffs and, 47 non-discrimination principle, reduction in tariffs and, 47 post-war period, measurement of tariff levels during (See Tariff levels in post-war period, measurement of) RTAs and, 359-360 Taxation, subsidies and, 294-296 TBT. See Technical Barriers to Trade (TBT) Technical Barriers to Trade (TBT) determinants of dispute settlement

and, 126-127 P4 and, 361

reliance on notices as alternative to dispute settlement, 126-127

TBT Agreement, 242, 266 TBT Committee, 124, 266

Temporary trade barriers as alternative to dispute settlement, 126

Temporary Trade Barriers Database, 188

Thailand in RCEP, 360-361

Third party participation overview, 8, 203-205, 220-221

content of submissions, 218-220 debate regarding, 205

dispute settlement and, 205-206, 208-210, 211-212

externalities

overview, 203-204, 210

bilateral opportunism, 212, 213



442

INDEX

Third party participation (cont.) chances of settlement, effect on, 211 - 212distributional effects, 212-214 trade flows, effect on, 213 fairness and, 214 GATT and, 206-208 MFN treatment and, 212, 213-214 multi-dimensional scaling (MDS), 218 - 220nonparticipation, 214-218 overview, 214-216 costs as reason, 216 decreased chance of settlement as reason, 216-218 reasons for, 216-218 ordinary least squares (OLS) analysis, 220 other international organisations compared, 204 protection of third party interests, 204 rates of participation, 214-216 US-Animals case, 209-210 use as proxy, 210 US-Upland Cotton case, 216 WTO rules regarding, 206-210 Thompson, Alexander, 13 Timely dispute settlement overview, 140-141 accountability and, 135 "democratic peace" and, 134-135, 136 dyadic trade relationship and, 134 external pressure for, 132–134 global value chains (GVCs) and, 137 - 138internal pressure for, 133, 134-135 lack of research regarding, 135-136 measurement methods, 135-140 number of veto players, effect of, 135 retaliation, threat of, 132-134 Time path, effect on measurement of tariff levels, 67-71 Tokyo Round, 277 Tokyo Subsidies Code of 1979, 259 Tomz, Michael, 71-72

TPP. See Trans-Pacific Partnership (TPP) "Trade-and" debate, 376, 389 Trade Facilitation Agreement, 379-380 Trade flows economic effectiveness of dispute settlement focus on, 177-178 post-implementation trade flows, 193-195 pre- versus post-settlement trade flows, 191-193 GATT 1947, trade negotiation under, 89, 91 third party participation in WTO, effect of, 213 Trade in Services Agreement, 366 Trade Negotiations Committee, 107 Trade negotiation under GATT 1947 overview, 6, 75-78 alteration of offers in, 93 bilateral negotiations, 81-83 bilateral offers, 81, 95 bindings, 91 complex requests, response to, 88-90 concessions in, 83-84, 86 data collection, 95 GATT, role of, 93 liberalisation, 79 MFN treatment and, 79, 80-81 political considerations in, 77-78 pre-vetting of products, 92 principal supplier rule and, 79, 91–92 producer power and, 76 product lists, 81 reciprocity and, 79, 80-81 relationship between requests and concessions, 88, 89-90 requests in, 83-85, 95 statistical analysis of, 87-90 trade flows and, 89, 91 treaties, importance of, 76-77 unexpected role of GATT in, 93 Trade policy substitutes compliance and, 184-185 economic effectiveness of dispute settlement and, 184-185 as independent variable in

research, 188

Toye, Richard, 348

Torquay Round, 64-65, 66, 70, 93



Trade-weighted average tariffs

comparison of countries, 49

INDEX 443

data, 52-53 downward bias in, 48-49 evidence of, 51-55 import changes independent of policy, effect of, 49 tariff levels in post-war period, use in measurement of, 48-49 Trans-Atlantic Trade and Investment Partnership (TTIP), 366-368 generally, 22, 371 overview, 360 dispute settlement and, 147, 149 multilateralism and, 369-372 Trans-Pacific Partnership (TPP), 361-366 generally, 22, 149, 173 overview, 360 China and, 364, 365-366 Doha Round and, 364 forum diversion and, 366 **Investor-State Dispute Settlement** Chapter, 371 multilateralism and, 369-372 RCEP compared, 368-369 SOEs and, 371 TRIPS Agreement compared, 371 United States and, 360, 364-365 Transparency, 26 Transparency Mechanism for Regional Trading Agreements, 358 Traveaux préparatoires, 286-287 **Treaties** GATT 1947, importance in trade negotiation under, 76-77 small nations and, 77 TRIMS Agreement. See Agreement on Trade-Related **Investment Measures (TRIMS** Agreement) TRIPS Agreement. See Agreement on Trade-Related Aspects of **Intellectual Property Rights** (TRIPS Agreement) Truman, Harry, 353 TTIP. See Trans-Atlantic Trade and Investment Partnership (TTIP)

Turkey, third party participation and, 215 2008 crisis dispute settlement, importance to, 122 - 123protectionism and, 23 Ukraine, disputes regarding accession protocols, 230, 270-271 Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, 357-358 United Kingdom GATT 1947, trade negotiation under bilateral negotiations involving, product lists in, 81 Imperial Preferences, 349-350, 351-355 tariff levels in, 45, 51-54, 55, 56, 57, 64, 66-67, 68, 70-71 United Nations Comtrade Database, 187 Educational, Scientific and Cultural Organization (UNESCO), 393-394 Food and Agricultural Organization (FAO), 395 Framework on Biodiversity, 380-381 United States accession protocols, disputes regarding, 230, 259-262, 265, 267-268, 270-271 Canada, free trade with, 352-354 CCD and, 394 China, currency issues, 391 Codex Alimentarius and, 397-398 Commerce Department, 300-301, 307 Committee for Reciprocity Information, 80 complex requests, response to, 88-90 criticism of Appellate Body, 168-169, 170-171 criticism of dispute settlement, 154

Democratic Party, 78-79, 80



444 INDEX

United States (cont.) overview, 10-11, 404-406, determinants of dispute settlement 410 - 411in, 127 affirmative determination by ITC, dispute settlement involving, 153 411 - 412management of restrictions, Extra-Territorial Income Act, 295 financial contributions to dispute 412-413 settlement, 164 mid-term review by ITC, 413-414 preemption of anti-dumping, 411 Foreign Sales Corporation Act, 295 GATT 1947, effect on tariff levels, 76 termination of restrictions. GATT 1947, trade negotiation under 414-415 alteration of offers in, 93 WTO case, 413 bilateral negotiations involving, Supreme Court, 168 81 - 83Tariff Commission, 60, 80 bindings in, 91 tariff levels in, 45, 54-55, 56, 57-58, 60-64, 65-67, 68, 70-72 concessions in, 84, 85-87 pre-vetting of products, 92 tariff schedule, 96 principal supplier rule in, 91-92 third party participation and, 208, product lists in, 81 210, 215, 218, 219-220 relationship between requests and timely dispute settlement in, 136 concessions in, 88, 89-90 TPP and, 360, 364-365 requests in, 84, 85-87 Trade Agreements Committee, 80 trade flows and, 89, 91 Trade in Services Agreement genetically modified (GM) crops, and, 366 disputes regarding, 124 Trade Representative, 127, 411, in IMF, 391-392 412-413, 415 intellectual property and, 393 in TTIP, 360, 366-368 International Trade Commission, UNESCO and, 394 54 - 55unilateralism in, 15-16 Joint Plant Committee, 307 Ways and Means Committee, National Trade Estimate Report on 413-414 in WTO, 391-392 Foreign Trade Barriers, 127 national trade policy in (See Steel Uruguay Round products, United States generally, 225, 296-297, 310 safeguards) accession protocols and, 234-235 panelists in dispute settlement ambiguity in, 284 border dynamics between WTO and from, 162 political pressure in, 130 international organisations PTAs, presence of WTO law in, and, 393 332, 338 Codex Alimentarius and, 395 Reciprocal Trade Agreements Act of cost-effectiveness and, 34 1934, 60-64, 80, 83, 347 NAFTA and, 364 PTAs, presence of WTO law in, 338 retaliatory cases in dispute settlement, 152 RTAs and, 357, 359 Smoot-Hawley Tariff Act of 1930, subsidies and, 277 46-47, 60, 78-79 Usage rates Dispute Settlement Body and, 28 State Department, 348 Steel Development Fund, 307 as measure of performance, 28 steel products safeguards US-Chile Trade Agreement, 325



INDEX 445

Valdés, Raymundo, 325-326 Van Damme, Isabelle, 287 Venezuela, third party participation and, 215 Vernon, Raymond, 417 Victor, David, 377, 379 Vienna Convention on the Law of Treaties (VCLT) accession protocols and generally, 257-258 country-specific rules, 233-234, 235, 238 interpretive issues, 265-266, 268 - 271lex posterior, 246 multilateral trade agreements, 244-245 SOEs as "public bodies," 262, 264 context of negotiation, importance of, 286 customary rules of interpretation and, 281-283 history of negotiation, importance of, 286-289 subsequent practice and, 287 supplementary means of interpretation and, 283 traveaux préparatoires and, 286-287 Vietnam accession protocols and generally, 236 country-specific rules, 225 derogation, 228, 253-257 disputes regarding, 230 non-market economy (NME) provisions, 253-257 relevance of one protocol to interpretation of another, 269-270 WTO-minus, 228, 253-257 in RCEP, 360-361 third party participation and, 215 in TPP, 360, 366 von Clausewitz, Carl, 416

Washington Seminar (1943), 351 WDI. See World Development Indicators (WDI) Wei, Shang-Iin, 24 Weiler, Joseph, 312, 313 WHO (World Health Organization), 380, 395 Wilcox, Claire, 354-355 Williamson, Jeffrey G., 51, 408 Winham, Gilbert, 388 Winters, L. Alan, 10, 370 WIPO (World Intellectual Property Organization), 380, 392–393 Working Group on Trade, Debt and Finance, 391 World Bank border dynamics with WTO, 390-391 Trade Flows and Trade Disputes Database, 138 World Development Report, 46 World Development Indicators (WDI), 188, 189, 360 World Economic Conference (1927), 50World Health Organization (WHO), 380, 395 World Intellectual Property Organization (WIPO), 380, 392-393 World Trade Forum 2015, 4 World Trade Organization (WTO). See specific topic Woytinksy, Emma S., 55-56 Woytinksy, Wladimir S., 55-56 Woznowski, Jan, 284, 296-297, 310 WTO Agreement. See Marrakesh Agreement Establishing the World Trade Organization Yildirim, Aydin, 7 Yoo, John, 35

Zhang, Yeujiao, 170 Zoellick, Robert, 415