Introduction

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The year 2011 has been a remarkable one for WTO dispute settlement: there were substantially more decisions than the previous year, covering a wide range of issues from anti-dumping and customs matters to consumer and environmental protection. The WTO adjudicating bodies had to confront some issues for the very first time, and this led to noteworthy jurisprudential developments. As customary, we gathered a stellar group of scholars to evaluate from a joint law-and-economics analysis all Reports by the Appellate Body (AB) issued during the calendar year 2011, as well as all Panel Reports that were not appealed and could no longer be appealed (at our cutoff date, 31 December 2011). We made only one exception to our rule, we invited Rob Howse and Phil Levy to write a report on the three TBT (Technical Barriers to Trade) Panel Reports issued during 2011, although all three of them were appealed and AB Reports have been issued in 2012; the reason for disregarding custom has to do with the immense interest that these Reports provoked, the first Reports in the TBT area since *EC–Sardines* (2002). Here we proceed with a short presentation of the Reports in the hope that the reader will find the analyses provided insightful and stimulating.

Hahn and **Mehta** discuss the AB Report on *EC and Certain Member States – Large Civil Aircraft* (DS316), a case involving the subsidization of the Airbus industry by the EU (European Union) and its member states. The authors note that the emergence of Airbus transformed the market structure of the LCA (Large Civil Aircraft) industry into a duopoly of similar-sized full-range manufacturers. The financing of Airbus's upfront investment expenditures came in a significant proportion from public funds. The United States alleged that this violated the SCM Agreement. The United States prevailed before the Panel, and the EU appealed the Report. While the AB followed the US view to a great extent, it did so in a measured way: the category of *per se* illegal export subsidies was interpreted with a view to the manipulation of normal market conditions. In the AB's view, what matters is the distortion on competitive conditions and not the increase of exports. Other aspects of the SCM Agreement were also clarified. For example, the relationship between the effect of the subsidy and the granting of the subsidy itself are closely related but not identical concepts. The Report operates from the premise that the SCM Agreement's regime focuses on the effect, and not on the subsidy as such, which is a manifestation of a political choice by a sovereign Member State. The AB affirmed that a subsidy has a 'life', shorthand for a beginning and an end; in this view, the effect of a subsidy is not bound to be permanent but is

bound to terminate. The authors note, with regret, some omissions in the AB Report and most notably the fact that the AB did not clarify to what extent partial privatization, that is sale of assets at market prices to private investors, 'extinguishes' subsidies.

Davey and **Maskus** analyze the AB report on *Thailand – Cigarettes (Philippines)* (DS371). This case evolved around the question whether Thailand was affording to foreign cigarettes less favourable treatment than that reserved for its domestic cigarettes through a host of internal measures (policies). Their paper suggests two improvements that could be made to Panel procedures. It supports the AB's interpretation of Article XX(d) GATT in the present case, which seems to discard an earlier mistaken approach to this provision. It further examines, in some detail, whether the AB's application of the 'less favourable treatment' component of Article III:4 GATT in this and other cases is consistent with the jurisprudence under Article III:2 GATT, and Article 2.1 TBT. From an economics perspective, the case is straightforward on its face. However, the AB's rigorous application of the 'less favourable treatment' principle might not survive a fuller market analysis in terms of policy impacts on conditions of competition. Further, while the authors agree with the rejection of Thailand's claim under Art. XX GATT, they raise the question of whether a strict national-treatment rule may be an unwarranted constraint on policy where there is a clear trade-related external cost to address.

Prusa and **Vermulst** analyze the AB Report on *US–Anti-Dumping and Countervailing Duties (China)* (DS379). In 2007, the United States reversed its longstanding policy prohibiting the simultaneous imposition of anti-dumping duties (ADDs) and countervailing duties (CVDs) against nonmarket economies (NMEs). Subsequently, the United States has imposed concurrent ADDs and CVDs in numerous cases against China. China challenged a number of aspects of the US practice, most notably the double-remedies issue, which occurs when a domestic subsidy is offset by both an ADD and a CVD. The AB correctly ruled, the authors note, that double remedies are inconsistent with the SCM Agreement and that the burden was on the investigating authorities to ensure that double remedies were not being imposed; however, the AB largely limited its discussion to measurement concerns, an approach that may have inadvertently opened the door to future double-remedies disputes involving other methods for computing normal value. Two other issues that are likely to have significant long-term ramifications, in the authors' view, are: (a) the scope of the term 'public body'; and (b) the appropriate use of out-of-country benchmarks. On both issues, the authors believe the AB's conclusions and analysis were correct.

Bown and **Mavroidis** discuss the AB Report on *EC–Fasteners* (DS397). The AB dealt with a number of issues for the first time in this Report. Importantly, it discussed the consistency of the EU regulation on the conditions for deviating from the obligation to calculate individual dumping margins with the multilateral rules. Although China formally won the argument, the AB may have opened the door to treat China as an NME even beyond 2016 when China's NME status was thought

to expire under the terms of China's 2001 WTO Accession Protocol. The AB further dealt with numerous other issues ranging from statistical sampling to the treatment of confidential information. In handling its investigation, the EU authorities made a number of questionable decisions regarding the collection of information, and this aspect of the process was central to China's legal challenges.

Hoekman and **Charnovitz** analyze the AB Report on *US–Tyres (China)* (DS399). In 2009, the United States imposed additional tariffs for a three-year period on imports of automotive tires from China under a special safeguard provision included in China's 2001 WTO Accession Protocol. China challenged the measure in the WTO. The case marked the first WTO dispute in which a challenged safeguard was upheld by the AB, the first in which an accession protocol was used successfully as a defense, and the first that China lost as a complaining party. It also was noteworthy, the authors note, in that the safeguard was sought by a labour union and not the domestic industry.

Neven and **Trachtman** assess the AB Report on *Philippines–Distilled Spirits* (DS396). In this case, the AB reconsidered its case law on 'like products' and 'DCS' (directly competitive or substitutable) products (Art. III:2 GATT). The authors note that the AB focused on the effect of differential taxation on domestic products ignoring the degree of substitution across products, a finding that they find hard to reconcile with the overarching purpose of Art. III GATT. They are unhappy with the treatment of evidence by the Panel and the AB since, in their view, foreign and domestic products are distant substitutes for the bulk of the market examined. Putting aside the jurisprudence, a methodologically sound finding regarding substitution (and competition) seems necessary, but not sufficient, for a finding of inefficient discrimination. In order to find inefficient discrimination, there must also be a finding that the nonprotectionist benefits that may arise from the national regulation are not sufficient to justify the discriminatory action. Otherwise, rational regulation that is globally efficient might be invalidated and inappropriately restrict the national right to regulate. In the present case, the Philippines articulated no nonprotectionist rationale for its distinctions. Existing WTO jurisprudence in this area, prior to the AB decision in *US–Clove Cigarettes*, has only hinted at the additional focus on the justificatory role of nonprotectionist regulatory benefits, yet an explicit and appropriately contextualized reference to the nonprotectionist rationale, if any, of regulation seems to be a necessary part of decisionmaking.

Howse and **Levy** authored a paper that examines the basic issues in the three TBT Panel Reports issued in 2011: *US–Clove Cigarettes* (DS406), *US–COOL* (DS386), and *US–Tuna II (Mexico)* (DS381). In a series of controversial decisions, the WTO Panels sought to reconcile legitimate regulatory interests of the state with various obligations to treat imported products in an even-handed and not unnecessarily trade-restrictive manner. Among the key points of contention were which obligation pertained in each case, e.g. national treatment, limits on technical regulations, or rules governing standards. In each case, the Panel imposed

significant restrictions on national regulatory practices, and in each case Panel reasoning was challenged by the AB. The authors address some of the key legal and economic issues raised in the original Panel decisions, leaving the late-breaking AB decisions for future analysis. Given the unsettled nature of the terrain, the economic analysis focuses primarily on the question of national treatment, while the legal analysis deals with other interesting points that emerge from these rulings, such as the appropriate level of deference to international standards and the legitimacy of labeling requirements.

Saggi and **Wu** review the Panel Report on *US–Orange Juice (Brazil)* (DS382). Their paper analyzes Brazil's WTO challenge to the methods undertaken by the United States in calculating anti-dumping duties in administrative reviews and other investigations of Brazilian orange juice. The dispute resulted in a Panel ruling that conforms with earlier AB decisions outlawing the use of 'weighted average to transaction' zeroing in such reviews. However, the Panel's stance was driven largely from a desire to preserve 'stability and predictability' within the system, suggesting a practical recognition of the shadow of past AB decisions on the same legal question. In addition, the authors argue that to understand fully the effects of zeroing, it is important to account for the underlying reasons behind observed price changes in the market. They show that zeroing is more likely to convert a negative dumping determination into a positive one when price changes are driven by variations in demand relative to when they are driven by variations in the cost of exporting. In the present case, Brazilian exporters of orange juice experienced an increase in (residual) demand for their product, since, by reducing the local supply of round oranges, adverse weather conditions in the United States made it difficult for US orange-juice producers to meet local demand.

Prusa and **Rubini** scrutinize the Panel Report on *US–Zeroing (Korea)* (DS402) regarding the method of calculating anti-dumping duties. The case mirrors other recent WTO disputes involving zeroing. Even though the United States ceased zeroing in original investigations in December 2006, it implemented the policy change only prospectively. As a result, the margins applied to the products in this dispute remained unchanged because they had been calculated prior to the policy change. The United States did not contest Korea's claims. The Panel confirmed that zeroing was used and, following the long line of Panel and AB rulings, found the practice inconsistent with the Anti-Dumping Agreement. After the Panel Report was adopted, the United States recalculated the margins without zeroing. Nevertheless, it refused to refund unliquidated cash deposits that were based on zeroing, highlighting the United States's continued lukewarm compliance with WTO rulings on zeroing. This dispute offers an opportunity to ponder the weaknesses of the WTO Dispute Settlement and the ability of one Member to take advantage of it. The authors go on to ask two questions: since the facts and their legal assessment were undisputed, why was litigation necessary? Can compliance with WTO law be improved with broader findings and more incisive remedies? In their contribution, the authors offer tentative responses.

Finally, **Broude** and **Moore** analyze the Panel Report on *US–Shrimp (Viet Nam)* (DS404). This unappealed Panel Report not only deals with now-standard controversies involving US zeroing practices, but it also involves a number of novel problems in administrative reviews of US anti-dumping orders that transcend zeroing issues. Most importantly, this dispute highlights the economic, legal, and statistical importance of sample-selection bias when calculating 'all others' rates for exporters that were not queried during dumping investigations. Sampling is particularly problematic in this dispute, since US investigators found only zero and *de minimis* margins in the administrative reviews, a situation in which the relevant provision of the Anti-Dumping Agreement appears to provide no guidance (an apparent '*lacuna*'). The Panel did not directly deal with the key sample-selection issues in the case, and so the authors provide an alternative legal and statistical analysis. Because these issues are likely to become more important as the United States phases out the practice of zeroing, the authors query whether sampling may indeed become the new zeroing.

We would like to thank The American Law Institute (ALI) for its support over the years, without which this project would have never taken off, and especially Marianne Walker and Todd Feldman who yet again provided excellent editorial assistance. We would also like to extend our gratitude to the European University Institute (EUI), and more specifically, to the Global Governance Programme (GGP) of the Robert Schuman Centre (RSC) for cohosting this year's conference and organizing the event in Florence on 4 June 2012: Miguel Maduro, the Director of the GGP, as well as Carlo Maria Cantore (EUI), Silvia Dell'Acqua, and Angelika Lanfranchi (both GGP staff) should be credited with the successful organization.

Our discussants, both those who published their comments as well as those who did not, helped our authors improve the quality of their drafts: Geoff Carlson, Jorge Huerta-Goldman, Fernando González-Rojas, Mark Koulen, Joost Pauwelyn, Michele Ruta, Mark Sanctuary, Simon Schropp, Jasper-Martijn Wauters, and Erik Wijkström did a remarkable job in this respect.

Finally, this is the year that Henrik Horn decided to step down as co-organizer of this enterprise, and Chad P. Bown graciously accepted the invitation to take over his role. This project will always have the footprint of Henrik's idea to organize a permanent law-and-economics forum to seriously scrutinize the output of the WTO adjudicating bodies. We can only endeavor to hope that future editions live up to his dream.

It's a Bird, It's a Plane: Some Remarks on the *Airbus* Appellate Body Report (*EC and Certain Member States – Large Civil Aircraft*, WT/DS316/AB/R)

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Abstract: The emergence of Airbus transformed the market structure of the LCA industry into a duopoly of similar-sized full-range manufacturers. The financing of Airbus's upfront investment expenditures came in a significant proportion from public funds, which violated, in the US's opinion the SCM Agreement. While the Appellate Body follows this view of things to a large extent, it does so in a measured way: the category of *per se* illegal export subsidies is interpreted with a view to the manipulation of normal market conditions; the distortion on competitive conditions matters, not the increase of exports as such. Other aspects of subsidies law clarified are the relationship between effect and subsidy. They are closely related but not identical; rightly, the report operates from the premise that the SCM Agreement's regime focuses on the effect, and not on the subsidy as such, which is a manifestation of a political choice by a sovereign Member state. The Appellate Body affirms that a subsidy has a 'life', a shorthand for a beginning and an end: it follows that the effect of a subsidy is not bound to be permanent but is bound to terminate. It is to be regretted that the Appellate Body avoided clarifying to what extent partial privatization, hence sale of assets at market prices to private investors, 'extinguish' subsidies.

1. Introduction

A comprehensive analysis of this seminal Report ('the *Airbus Report*') will require more than one Ph.D. thesis: After all, we are talking of a Report that was more than nine months in the making (after a Panel had toiled on the case for five years), with three distinguished Appellate Body Members (*Unterhalter, Bautista, Van den Bossche*) and the Secretariat lawyers[1] authoring some 650 pages, with the operative

1 The notice of appeal is dated 12 August 2010, and the Report was circulated on 18 May 2011. However, it is a fair assumption that the Appellate Body Secretariat was starting to work on this Report significantly earlier.

part of the Report starting at page 270. For an institution that prides itself of its Swiss-watch precision (and distinguishes it from some panels) this is, if not a record, then at least one of the longer periods spent on an appeal. We shall not undertake, in the framework of this paper, to analyze in-depth all major issues addressed in the Report. Rather, we understand this small piece as an *amuse bouche* that is supposed to whet the appetite for more. Hence, we will limit ourselves to highlight certain aspects of the decision we consider particularly interesting and worthy of discussion.

It is to be reminded that the *Airbus Report* is part of the on-going *Airbus–Boeing* saga[2], which also led, in 2012, to the Appellate Body Report *United States – Measures Affecting Trade in Large Civil Aircraft – Second Complaint* (WT/DS353) that will be reported next year: the United States and the European Union, respectively, claim that the other partner is unfairly subsidizing its producer of large civil aircrafts ('LCA').

The emergence of Airbus transformed the market structure of the LCA industry from that of a dominant incumbent with two fringe producers with a narrow product range into a duopoly of similar-sized full-range manufacturers. The financing of Airbus's important upfront investment expenditures came in a significant proportion from public funds. The rivalry between Boeing and Airbus on the global market has resulted in new product launches which, together with competition between the LCA manufacturers for orders, significantly increased global demand, but which has shown a relative decline in the preponderant position of Boeing.

The *Airbus* case was initiated by the United States in late 2004;[3] the Panel was established on 20 July 2005 and issued its Report some five years later on 30 June 2010, exceeding considerably the nine months allocated to the Panel phase by the DSU.[4] The European Union appealed, and the Appellate Body Report was adopted on 1 June 2011.

At issue were more than 300 instances of alleged support measures by France, Germany, Spain, the United Kingdom, and by the EC itself over almost four decades. The measures included: the provision of financing for design and development to Airbus companies ('launch aid'); the provision of grants and government-provided goods and services to develop, expand, and upgrade Airbus manufacturing sites for the development and production of the Airbus A380; the provision of loans on preferential terms; the assumption and forgiveness of debt resulting from launch and other large-civil-aircraft production and development

2 See Douglas A. Irwin and Nina Pavcnik (December 2001), 'Airbus versus Boeing Revisited: International Competition in the Aircraft Market', NBER Working Paper No. 8648.

3 *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft* – Request for Consultations by the United States, WT/DS316/1.

4 Cf. Brendan McGivern (2010), 'Aircraft Subsidies and WTO Rules: The Airbus Decision', 35:4/5 *Air and Space Law*, 305–315.

financing; the provision of equity infusions and grants; the provision of research and development loans and grants in support of large-civil-aircraft development, directly for the benefit of Airbus, and any other measures involving a financial contribution to the Airbus companies. The alleged subsidies relate to the entire family of Airbus planes (A300 through the A380).

Whereas all these measures were, in the US view, subsidies pursuant to Articles 1 and 2 of the WTO Agreement on Subsidies and Countervailing Measures ('SCM Agreement' or 'SCM') causing adverse effects (Articles 5, 6 SCM), the United States further alleged that certain launch aid provided for the A340 and A380 violated the absolute prohibition of Article 3 SCM Agreement to make subsidies contingent on export performance.

2. Claims before the Appellate Body[5]

The main issues that were presented to the AB related to:

(i) the temporal scope and life of a subsidy in application of Article 5 SCM,
(ii) the interpretation of *extinguishment, extraction*, and *pass-through* of subsidies under the provisions of Articles 1, 4.7, 5, 6, and 7.8 SCM,
(iii) the appropriate calculation of benefit of certain subsidies ('Launch Aids') according to the market-investor principle in line with Articles 1 and 14(b) SCM,
(iv) the determination of what is a *de facto* export subsidy pursuant to Article 3.1 (a) SCM,
(v) the weight to be given to a realistic product and geographic-market definition in a case involving Article 6.3(a) and (b) SCM, and
(vi) the assessment of product displacement and lost sales under Article 6.3(a) and (b) SCM.

3. Issues of particular interest

I.

1. The WTO's subsidy's regime is not about prohibiting subsidies *per se* (the lone exception, export subsidies, will be discussed immediately, Subsection II). Rather, it is merely imposing the obligation to do no harm to fellow Members through the granting of state aid.[6] Maybe clearer than ever before, the Appellate Body explains that subsidy and caused effect are two different issues, and that the former is – from

5 Appellate Body Report, *Airbus*, paras. 571 (issues raised by the European Union) and 572 (issues raised by the United States).

6 For a timely and comprehensive overview, cf. Petros C. Mavroidis, Patrick A. Messerlin, and Jasper M. Wauters (eds.) (2008), *The Law and Economics of Contingent Protection in the WTO*, Cheltenham, UK: Edward Elgar Publishing; Marc Bacchetta and Michele Ruta (eds.) (2011), *The WTO, Subsidies and*

a substantive perspective[7] – of interest to Article 5 SCM only as a cause to the latter (unless it is not a priori *verboten*, pursuant to Article 3 SCM).[8]

2. Several consequences arise from this. Firstly, as the SCM focuses on effect and not on cause, the EU argument that subsidies granted – and, possibly, subsidy programs started – before the entry into force of the SCM were immune from its disciplines was a non-starter.[9]

Secondly, this constellation gives occasion to rethink the issue of the 'life of a subsidy' and the Appellate Body takes this invitation up with almost palpable *gusto*. While it flatly rejects the European Union's proposition 'that there must be "present benefit" during the reference period',[10] the proposition that a subsidy has a 'life' is explicitly recognized:

> [It] may come to an end, either through the removal of the financial contribution and/or the expiration of the benefit . . . where it is so argued, a panel must assess whether there are 'intervening events' that occurred after the grant of the subsidy that may affect the projected value of the subsidy as determined under the ex ante analysis. Such events may be relevant to an adverse effects analysis because they may affect the link that a complaining party is seeking to establish between the subsidy and its alleged effects.[11]

Countervailing Measures, Cheltenham, UK: Edward Elgar Publishing; Luca Rubini (2010), *The Definition of Subsidy and State Aid: WTO and EC Law in Comparative Perspective*, New York: Oxford University Press; Pietro Poretti (2009), *The Regulation of Subsidies within the General Agreement on Trade in Services of the WTO: Problems and Prospects*, Alphen aan den Rijn, The Netherlands: Kluwer Law International; Kostantinos Adamantopoulos and Maria Jesus Pereyra-Friedrichsen (2007), *EU Anti-subsidy Law and Practice*, London: Sweet & Maxwell; Marc Benitah (2001), *The Law of Subsidies under the GATT/WTO System*, Alphen aan den Rijn, The Netherlands: Kluwer Law International; Fabian Böhm (2007), *Strukturen internationalen Subventionsrechts: EG-Beihilfenrecht und WTO-Subventionsrecht aus rechtsvergleichender Perspektive*, Frankfurt: Peter Lang. For valuable context cf. Andrew L. Stoler (2010), 'The Evolution of Subsidies Disciplines in GATT and the WTO', **44**:4 *Journal of World Trade*, 797–808; Debra P. Steger (2010), 'The Subsidies and Countervailing Measures Agreement: Ahead of Its Time or Time for Reform?', **44**:4 *Journal of World Trade*, 779–796.

7 Procedurally, it is of great interest to determine whether the decision of the Appellate Body only covers specific subsidies or, rather, a subsidy program. If the latter is the case, new manifestations of that program are covered by the pertinent decision of the DSB and thus allow the complainant to resort to procedures under Article 21.5 DSU, and thus to speedier resolutions. If the former is the case, any dissatisfaction caused due to harm incurred will have to be resolved by a new complaint: see para. 7.514 et seq. of the Panel Report and para. 471 et seq. of the Appellate Body Report.

8 See the wording of Article 5 SCM: 'No Member should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, adverse effects to the interests of other Members, i.e.: (a) injury to the domestic industry of another Member; (b) nullification or impairment of benefits accruing directly or indirectly to other Members under GATT 1994 in particular the benefits of concessions bound under Article II of GATT 1994; (c) serious prejudice to the interests of another Member.'

9 Appellate Body Report, *Airbus*, para. 655 et seq., in particular 681–690.

10 Ibid., para. 711. As a consequence of the European Union's mistaken interpretation of Article 5 (and 6) SCM, it 'conflate[d] present adverse effects, which must be demonstrated under Article 6.3, with present subsidization, which need not' (ibid., para. 712).

11 Ibid., para. 709.

Focusing on the nexus between subsidy and its alleged effect, the Appellate Body explained:

> At the time of the grant of a subsidy, the subsidy will necessarily be projected to have a finite life and to be utilized over that finite period. In order properly to assess a complaint under Article 5 that a subsidy causes adverse effects, a panel must take into account that a subsidy provided accrues and diminishes over time, and will have a finite life. The adverse effects analysis under Article 5 is distinct from the 'benefit' analysis under Article 1.1(b) of the SCM Agreement and there is consequently no need to re-evaluate under Article 5 the amount of the benefit conferred pursuant to Article 1.1(b). Rather, an adverse effects analysis under Article 5 must consider the trajectory of the subsidy as it was projected to materialize over a certain period at the time of the grant.[12]
>
> In sum, a panel's analysis of the adverse effects must take into account how the subsidy has materialized over time. As part of this analysis, a panel must assess how the subsidy is affected, both by the depreciation of the subsidy that was projected ex ante and the 'intervening events' referred to by a party that may have occurred following its grant.[13]

Thus, one may visualize the life-span of the subsidy *as such* and its effects as parallel curve graphs, which are not identical but rather in a sequencing order and may be partially overlapping.

3. Of course, it is one thing to embrace the concept that a subsidy must have an end, and another one to officially determine the 'time of death' – and the effect on the adverse-effect analysis under Article 5 SCM. The European Union had argued that 'sales of shares between private entities, and sales conducted in the context of partial privatizations' had eliminated all or part of past subsidies.[14] In support of this proposition, it had invoked the Appellate Body Reports in *US–Lead and Bismuth II*[15] and *US–Countervailing Measures on Certain EC Products*.[16]

12 Ibid.

13 [*Footnote in the original*] For this reason, we disagree with the Panel, at paragraphs 7.224, 7.225, and 7.266 of the Panel Report, insofar as it suggests that a consideration of 'intervening events', such as the 'extinction' and 'extraction' of subsidies, are not relevant under an adverse-effects analysis.

14 Appellate Body Report, *Airbus*, para. 724.

15 Appellate Body Report, *United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom*, WT/DS138/AB/R; see Gene M. Grossman and Petros C. Mavroidis (2003), 'United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom: Here Today, Gone Tomorrow? Privatization and the Injury Caused by Non-Recurring Subsidies', in Henrik Horn and Petros C. Mavroidis (eds.), *The WTO Case Law of 2001*, Cambridge: Cambridge University Press, pp. 170–200; see also Sherzod Shadikhodjaev (2012), 'How to Pass a Pass-Through Test: The Case of Input Subsidies', **15**:2 *Journal of International Economic Law*, 621–646.

16 Appellate Body Report, *United States – Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/AB/R.