

## INDEX

- AB. *See* Appellate Body (AB)  
 “Absent cogent reasons” standard, 120, 122
- Academics, 114–15
- Acquiescence, estoppel distinguished, 79
- Actionable subsidy procedures  
 generally, 272–73  
 adoption of reports and, 450  
 “appropriate steps” to “remove adverse effects,” 450, 455–56, 505  
 combined prohibited and actionable subsidy procedures, 279–80  
 countermeasures  
 generally, 450  
 adaptation to specific case, 507–8  
 aggravating factors, 506–7  
 “appropriate,” 505–9  
 “commensurate,” 509–10  
 GATT 1994 and, 505–6  
 most-favored-nation (MFN) treatment and, 506  
 multiple complaints, 510–12  
 national treatment and, 506  
 nullification and impairment, 506, 508–9  
 proportionality, 507  
 SCM Agreement and, 505–7, 508, 509, 511, 512  
 defined, 504  
 implementation of reports and, 450  
 remedies generally, 460, 504–5  
 withdrawal of, 450, 452–55
- AD. *See* Anti-dumping Agreement (AD)
- Admissions, 310–12
- Adoption of reports  
 generally, 406  
 actionable subsidy procedures and, 450  
 Appellate Body proceedings, 407  
 meetings, 408–9  
 “negative consensus” and, 406, 408  
 objections, 407  
 “other situation” complaints, 456  
 prohibited or actionable subsidies, 408  
 prohibited subsidy procedures and, 450
- rules, 408–9  
 special meetings, 408  
 time requirements, 406–7, 409  
 Working Practices Concerning Dispute Settlement Procedures, 409
- Advisory Centre on WTO Law (ACWL), 30–31, 250
- African, Caribbean and Pacific Group of States (ACP), 99, 133, 296
- Agenda, 131
- Agreement Between the European Union and the Republic of India on Cane Sugar, 133
- Agreement on Agriculture  
 Appellate Body proceedings, completion of analysis, 396  
 burden of proof and, 331–32  
 ILC Draft Articles and, 134  
 interpretation of, 150–51  
 SCM Agreement and, 331
- Agreement on Government Procurement (GPA)  
 generally, 288  
 Agreement on Trade in Civil Aircraft compared, 291  
 Committee on Government Procurement, 288  
 consultations, 289  
 as covered agreement, 53  
 “cross-retaliation” precluded, 291, 489  
 domestic remedies, 289  
 DSB and, 289  
 error as principle of law and, 105  
 Government Procurement Committee, 460  
 interpretation of, 151  
 notice requirements, 289  
 nullification and impairment, 289  
 panel proceedings, 289  
 SCM Agreement compared, 290  
 terms of reference, 290  
 time requirements, 290–91, 434  
 written representations or proposals, 289  
 in WTO Agreement, 22

- Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation Agreement)  
 consultations, 267  
 DSU generally, 268  
 panel proceedings, 267–68  
 Technical Committee on Customs Valuation, 267–68  
 terms of reference, 267
- Agreement on Preshipment Inspection, 291–92
- Agreement on Safeguards  
 Appellate Body proceedings, 351  
 Committee on Safeguards, 185, 312  
 “reasonable period of time,” 412  
 “sequencing” problem and, 502–4
- Agreement on Subsidies and Countervailing Measures (SCM Agreement)  
 generally, 268  
 actionable subsidy procedures (*See* Actionable subsidy procedures)  
 Agreement on Agriculture and, 331  
 Agreement on Government Procurement compared, 290  
 Annex V procedures (serious prejudice)  
 generally, 273–74  
 determinations, 275  
 DSB and, 274, 275–76, 277–78  
 initiation of proceedings, 274, 277–78  
 notice requirements, 274  
 “peace clause” and, 276–77  
 in practice, 275–79  
 representative, 274, 275–76, 277  
 third parties, 275, 278–79  
 time requirements, 275–76
- Anti-dumping Agreement compared, 267
- Appellate Body proceedings  
 prohibited subsidy procedures, time requirements, 356–57  
 rulings, 397  
 separate opinions, 362  
 specific claims, 385–86
- arbitration, non-actionable subsidy procedures, 294–95
- burden of proof and, 333
- Committee on Subsidies and Countervailing Measures, 158, 294, 295
- competence of other WTO bodies and, 57–58
- consultations  
 requests, 273, 159, 269–71  
 statements of available evidence, 273, 269–71  
 time requirements, 268–69, 273
- countermeasures and, 505–7, 508, 509, 511, 512
- countervailing duties, 280–81
- Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on Subsidies and Countervailing Measures, 258–59
- developing countries and, 244, 281
- evidence  
 consultations, statements of available evidence, 269–71, 273  
 notice requirements, 312  
 statements of officials as admissions, 311
- GATT 1947, interplay with, 279–80
- good faith requirement, 270
- lex specialis* and, 111, 112
- non-actionable subsidy procedures, 280  
 arbitration, 294–95
- panel proceedings  
 meetings with parties, 221  
 reports, 269, 273  
 time requirements, 269, 273  
 withdrawal of measures “without delay,” 269
- Permanent Group of Experts (PGE)  
 generally, 271, 272  
 advisory opinions, 272  
 Draft Rules of Procedure, 271–72  
 hearings, 272  
 time requirements, 272
- precedent and, 123, 125–27
- prohibited subsidy procedures (*See* Prohibited subsidy procedures)
- “reasonable period of time” and, 424
- remedies and  
 generally, 281–82  
 Appellate Body and panel recommendations, 514  
 suspension of concessions, 466
- source of law, agreements mentioned in as, 94–95
- suspension of concessions and, 466
- terms of reference, 273
- time requirements, 434  
 Annex V procedures (serious prejudice), 275–76  
 consultations, 268–69, 273  
 panel proceedings, 269, 273  
 Permanent Group of Experts (PGE), 272
- Agreement on Technical Barriers to Trade (TBT Agreement)  
 generally, 252
- Appellate Body proceedings  
 completion of analysis, 393, 394–95  
 separate opinions, 362

- authoritative interpretations and, 97  
 burden of proof and, 324  
 Committee on Technical Barriers to Trade, 158  
 conflicts among special or additional rules, 54  
 covered measures, 252–53  
 developing countries and, 244, 254–55  
 evidence, 303  
 interpretation of, 146  
 judicial economy and, 389  
*lex specialis* and, 110  
 non-violation complaints, 232  
 panel proceedings, experts, 253–54, 320  
 source of law, agreements mentioned in as, 95  
 SPS Agreement compared, 253–54  
 TBT Committee, 100–1
- Agreement on Textiles and Clothing (ATC), 282–83
- Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)  
 generally, 250  
 Appellate Body proceedings, completion of analysis, 395–96  
 burden of proof and, 332–33  
 conflicts among special or additional rules, 54  
 consultations, 157, 251  
 developing countries and, 244, 251–52  
 evidence, 303  
 experts  
   conflicts of interest, 321  
   panel proceedings, 250–51  
   procedures, 322–23  
   selection of, 320–21  
 interpretation, 152  
 panel proceedings, experts, 250–51  
 source of law, agreements mentioned in as, 95  
 SPS Committee, 251  
 standard of review and, 338  
 TBT Agreement compared, 253–54
- Agreement on Trade in Civil Aircraft (TCA)  
 generally, 291  
 Agreement on Government Procurement compared, 291  
 Committee on Trade in Civil Aircraft, 291  
 in WTO Agreement, 22
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)  
 amendments, 98  
 Berne Convention and, 69  
 confidentiality and, 342
- Council for TRIPS, 158  
 as covered agreement, 53, 54  
 “cross-retaliation” and, 488–89  
 effective treaty interpretation and, 108–10  
*effet utile* and, 109  
 evidence, statements of officials as  
   admissions, 311  
 interpretation of, 151  
 non-application between Members, effect on jurisdiction *ratione personae*, 66  
 nullification and impairment, 287–88  
 origins of, 17  
 panel requests and, 184  
 Paris Convention and, 69  
 regional and local government entities, jurisdiction *ratione personae* and, 69  
 remedies, Appellate Body and panel recommendations, 516–17  
 source of law, agreements mentioned in as, 93–94  
 standing and, 70  
 subsidiary bodies, 99  
 suspension of concessions and  
   “cross-retaliation,” 488–89  
   jurisdiction of arbitrator, 475  
 in WTO Annexes, 21–22
- Agreement on Trade-Related Investment Measures (TRIMS)  
*lex specialis* and, 110–11, 112  
 origins of, 17
- Agreement Regarding International Trade in Textiles (MFA), 282
- Agriculture. *See* Agreement on Agriculture
- Aircraft. *See* Agreement on Trade in Civil Aircraft (TCA)
- Air transport services, 287
- American Bar Association, 140
- American Law Institute, WTO Dispute Settlement and Case Law Project, 34
- Amicus curiae* briefs  
 Appellate Body proceedings, 377–78  
 confidentiality and, 341–42  
 panel proceedings, 211–12  
 standing and, 73–75
- Anti-dumping. *See also* Anti-dumping Agreement (AD)  
 Article 21.5 proceedings, 442–44  
 business confidential information (BCI) and, 379  
 consultations and, 157  
 countervailing duties, overlap with, 267  
 estoppel and, 81–82  
 GATT 1947 dispute settlement, 14  
 suspension of concessions and, 483–84

- Anti-dumping Agreement (AD)  
 generally, 255  
 Appellate Body, municipal law and,  
 382–83, 384  
 Committee on Anti-Dumping Practices  
 (ADP), 99–100, 101, 158  
 conflicts among special or additional rules,  
 54–55  
 developing countries and, 244, 266  
 domestic law and, 382–83, 384  
 estoppel and, 81  
 evidence  
   national proceedings, evidence not used  
   in, 313  
   statements of officials as admissions, 311  
 general principles of law and, 104–5  
 judicial economy and, 389  
 matter before panel, 58  
 panel proceedings  
   confidentiality, 265–66  
   *de novo* review, 260–61  
   establishment of panel, 255–56  
   factual basis for review, 257–58  
   factual determinations, review of,  
   260–62  
   legal determinations, review of, 262–65  
   matters before panel, 256–57  
   standard of review, 258–59  
 remedies, Appellate Body and panel  
   recommendations, 515  
 rules of interpretation, 262–65  
 SCM Agreement compared, 267  
 standard of review and, 258–59, 339  
 terms of reference and, 48–49  
 VCLT and, 262–65  
 violation complaints, 230  
 zeroing and, 120, 265
- Appellate Body (AB)  
 adoption of reports and, 407  
 Agreement on Agriculture, completion of  
 analysis, 396  
 Agreement on Safeguards and, 351  
*amicus curiae* briefs, 377–78  
 Anti-dumping Agreement, municipal law  
 and, 382–83, 384  
 Appellant's Submission, 367–68  
   Notice of Appeal and, 365–66, 367–68  
 Appellee's Submission, 368  
 arbitration and, 294 (*See also* Arbitration)  
 Article 11 claims, 384–86  
 Chairperson, 358–59  
 completion of analysis  
   claims not raised in panels, 393  
   “closely related,” 393  
   *de novo* review, 391  
   factual findings of panels, 391–92, 394–96  
   legal findings, 391–92  
   “part of logical continuum,” 393  
 complexity of disputes, 32, 392  
 compliance with, 37  
 consensus in, 359–60  
 consistency in case law, 125–27  
 consolidation of appeals, 370  
 countermeasures, 37–38  
 courts compared, 153  
 creation of, 24, 40  
 crisis in  
   generally, 32–33, 398, 519  
   adverse effects of, 405  
   historical background, 398–99  
   Multi-Party Interim Appeal Arbitration  
   Arrangement (MPIA), 402–5  
   role of US, 348, 398–401, 519  
   US criticisms, 399–401, 519  
   Walker Process, 401–2, 520  
 cross appeals, 36, 351, 369  
 decision making, 36, 359–60  
 delays in, 32  
 Divisions, 359, 400  
 domestic law, treatment of, 382–84, 401  
 establishment of, 348  
 filing of documents, 362–63  
 final reports, grounds for appeal, 240–41  
 GATT 1994 and  
   completion of analysis, 390–91, 394–95  
   rulings, 397–98  
   safeguard measures, 351  
   separate opinions, 361–62  
 ICJ compared, 381  
 index, 33  
 interim review versus, 237–38  
 interpretation of law (*See* Interpretation  
 of law)  
 judicial economy in, 387–90 (*See also*  
 Judicial economy)  
 judicial versus legislative functions, 57–58  
 jurisdiction, 84–85 (*See also* Jurisdiction)  
 members  
   collegiality among, 360  
   conflicts of interest, 358  
   duties, 358  
   number of, 348  
   post-employment practice, 358  
   qualifications, 349  
 modification of decisions, 396–98  
 Multi-Party Interim Appeal Arbitration  
 Arrangement (MPIA), 402–5  
*non ultra petita* and, 49, 50  
 Notice of Appeal (*See* Notice of Appeal)  
*obiter dicta*, 400–1  
 opinions  
   anonymity of, 359–60

- concurring statements, 361
- separate opinions, 360–62
- oral hearings
  - generally, 372–74
  - attorneys, representation by, 377
  - business confidential information (BCI) in, 378–80
  - confidentiality, 374–75
  - failure to appear, 375–76
  - highly sensitive business information (HSBI) in, 378–79
  - interpreters, 374
  - open hearings, 374–75
  - time requirements, 372–74
  - written responses to questions, 375
- “other appeals,” 350, 351, 369
- Other Appellant’s Submission, 369
- panel proceedings and
  - compared, 119–25
  - hierarchy with panels, 119–25, 350
- precedent (*See* Precedent)
- prevailing parties, 350–51
- questions of law and questions of fact, 380–82
- quorum, inability to maintain, 32–33
- recent developments, 31–33
- record on appeal, 371–72
- remand authority, lack of
  - generally, 386–87
  - completion of analysis and, 390–96
  - judicial economy and, 387–90
- remedies, recommendations
  - generally, 512–13
  - anti-dumping, 513–16
  - legal effect of, 517
  - other agreements, 516–17
- reports, 36, 119–25
- reversal of decisions, 396–98
- “reversal” versus “evolution” in, 125–27
- right of appeal, 350–51
- Rules of Conduct for the Understanding on
  - Rules and Procedures Governing the Settlement of Disputes, 358
- rulings, 396–98
- SCM Agreement and
  - prohibited subsidy procedures, time requirements, 356–57
  - rulings, 397
  - separate opinions, 362
  - specific claims under, 385–86
- scope of appeal
  - overview, 349
  - Article 11 claims, 384–86
  - completion of analysis, 390–96
  - de novo* review, 349
  - domestic law, treatment of, 382–84
  - judicial economy, 387–90
  - questions of law and questions of fact, 380–82
  - rulings, 396–98
  - specific claims, 384–86
- Secretariat
  - generally, 349
  - business confidential information (BCI) and, 378–79
  - filing of documents with, 362, 363
  - Notice of Appeal and, 364
  - record on appeal and, 371
  - working schedule and, 367
- separate opinions in, 241–42
- specific claims, 384–86
- SPS Agreement, completion of analysis, 395–96
- standing (*See* Standing)
- statistics, 31–32
- summary of dispute settlement process, 34–38
- task of, 350
- TBT Agreement and
  - completion of analysis, 393, 394–95
  - separate opinions, 362
- terminology, 358
- terms of reference (*See* Terms of reference)
- third parties, 350, 371
- time requirements
  - overview, 351–52
  - Appellate Body limits, 357
  - completion of appeal, 354–55
  - crisis in Appellate Board and, 400
  - Decision on Expiration of Time-Periods in the DSU, 356
  - DSU limits, 352–55
  - initiation of appeal, 352–54
  - preparation of appeal, 352–54
  - prohibited subsidy procedures, 356–57
  - regular appeals, 355–56
  - timetable, 357
- two-tier system, 519–20
- upholding of decisions, 396–98
- Walker Process, 401–2, 520
- webpage, 33
- withdrawal of appeal, 376–77
- Working Procedures for Appellate Review
  - generally, 348, 357–58
  - adoption of reports and, 408
  - Appellant’s Submission, 367
  - Chairperson, 358–59
  - consolidation of appeals, 370
  - divisions, 359
  - filing of documents, 362–63
  - Notice of Appeal, 364–65

- Appellate Body (AB) (cont.)  
 “other appeals,” 351, 369  
 third parties and, 350  
 time requirements, 355  
 withdrawal of appeal, 376  
 working schedule, 367
- Arbitration  
 generally, 37–38  
 agreements to arbitrate, 292–93  
 Appellate Body and, 294  
 authority for, 84  
 burden of proof, 334  
 consensual versus compulsory, 293  
 Director-General and  
 generally, 296  
 “reasonable period of time,” 414  
 suspension of concessions, 472, 473  
 DSU generally, 155–56  
 GATS, 295  
 jurisdiction, 84  
 matters subject to, 293  
 Multi-Party Interim Appeal Arbitration  
 Arrangement (MPIA), 402–5  
 non-actionable subsidy procedures, 294–95  
 nullification and impairment and, 293–94  
 panel requests, 190–91  
 “reasonable period of time”  
 generally, 412–13  
 average time awarded, 419  
 Director-General, selection of panels, 414  
 15-month guideline, 417–18, 419  
 “immediate” implementation, 417, 418  
 mandate of arbitrator, 415–17  
 requests, time requirements, 413–14  
 selection of arbitrators, 414  
 “shortest period possible,” 418  
 time allowed for implementation, 417–20  
 requirements, 293  
 SCM Agreement, non-actionable subsidy  
 procedures, 294–95  
*sui generis* Bananas arbitration, 295–97  
 suspension of concessions (*See* Suspension  
 of concessions)  
 trade in services, 295  
 Arechaga, Jimenez de, 141–42
- Article 21.5 proceedings  
 generally, 406, 430–31  
 anti-dumping, 442–44  
 blocking, 432  
 burden of proof, 448–49  
 consultations, 436–37  
 “sequencing” problem and, 437  
 countervailing duties, 442–44  
 Director-General, selection of panels,  
 432–33  
 evolution of, 447  
 “existence” of implementing measures and,  
 438–39  
 GATT 1947, lack of compliance panels,  
 492  
 mutually agreed solutions, in lieu of, 463  
 omissions and, 438  
 panels, 432–33  
 procedures, 433  
 “reasonable period of time” and, 438–39  
 requests, 432  
 scope of review  
 generally, 439–42  
 circumvention and, 441–42  
 claims, limits on, 445–47  
 “close nexus” test, 444–45  
 consistency of measures, 440–41  
 “measure taken to comply,” 439–42, 444,  
 445–46  
 new measures, 440–41  
 preclusion of claims, 445–47  
 withdrawal of measures, 440–41  
 Secretariat and, 501  
 “sequencing” problem and  
 generally, 432  
 ad hoc “sequencing” agreements and, 498,  
 499, 500–1  
 Article 21.5 reports accepted, 498, 499  
 consultations, 437  
 “reasonable period of time,” arbitration  
 of, interplay with, 493–94  
 standing, 434–36  
 suspension of concessions, interplay with,  
 492–93  
 standing, 434–36  
 suggestions regarding implementation, 449  
 third parties in, 437–38  
 time requirements, 432, 433–34  
 zeroing, 443  
 “As such” claims, 46–47
- Attorneys  
 Appellate Body oral hearings, representation  
 in, 377  
 confidentiality and, 340–41  
 panel proceedings, representation in, 233
- Authentication of evidence, 301
- Authoritative interpretations, 96–97
- Azevêdo, Roberto, 31, 32
- Balance of Payments (BOP) Committee  
 competence of, 56, 57  
 notice requirements, 312
- Berne Convention  
 domestic law and, 69  
 as source of law, 93–94  
 TRIPS Agreement and, 69
- Bhatia, Ujal Singh, 32, 348, 399

- Bilateral agreements. *See also specific agreement*  
 Common Agricultural Policy (CAP), 135  
 GATT 1947 and, 135–36  
 as source of law, 134–36  
 VCLT and, 136
- Bona fides*. *See* Good faith
- Bown, Chad, 34
- Brauner, Karl, 29
- Bretton Woods Conference, 1–2, 20–21
- Burden of proof  
 generally, 323–25  
 Agreement on Agriculture and, 331–32  
 arbitration, 334  
 Article 21.5 proceedings, 448–49  
 defined, 323  
 exceptions, 329–30  
 excluding provisions, 329–30  
 GATT 1994 and  
   generally, 324  
   exceptions, 329  
   excluding provisions, 330  
   free trade agreements, 333–34  
   “general rule-exception” analysis, 330–31  
   non-violation complaints, 333  
 implied powers and, 91  
 presumptions, 324  
*prima facie* cases, 325–29 (*See also Prima facie* cases)  
 SCM Agreement and, 333  
 SPS Agreement and, 332–33  
 suspension of concessions, arbitration of, 478–80  
 TBT Agreement and, 324  
 VCLT and, 331
- Business confidential information (BCI)  
 Additional Working Procedures, 531–33  
 anti-dumping and, 379  
 Appellate Body oral hearings, 378–80  
 countervailing duties and, 379  
 panel proceedings, 343–46  
 suspension of concessions, arbitration of, 473, 474
- “Cabinet privilege,” 346–47
- Cambridge University Press, 34
- Canada  
 Multi-Party Interim Appeal Arbitration Arrangement and, 402–3  
 Patent Act, 425
- “Carousel” suspension, 471
- Chang, Seung Wa, 398–99
- China  
 Appellate Body and, 519  
 domestic law in, 383–84  
 “Closed consultations,” 170
- “Close nexus” test, 444–45
- Codex Alimentarius, 305
- Codex Alimentarius Commission, 95, 321
- Committee on Anti-Dumping Practices (ADP), 99–100, 101, 158
- Committee on Government Procurement, 288
- Committee on Regional Trade Agreements (CRTA)  
 competence of, 56, 57  
 NAFTA and, 334
- Committee on Safeguards, 185, 312
- Committee on Subsidies and Countervailing Measures, 158, 294, 295
- Committee on Technical Barriers to Trade, 158
- Committee on Trade in Civil Aircraft, 291
- Common Agricultural Policy (CAP)  
 bilateral agreements, 135  
 GATT 1947 dispute settlement, 15
- Compensation  
 generally, 458, 461  
 GATS, modification of schedules, 284  
 GATT 1947 and, 460  
 implementation of reports and, 430  
 infrequency of, 467–68  
 most-favored-nation (MFN) treatment and, 461–62  
 negotiation of, 462, 467  
 purpose of, 465–66  
 rebalancing versus inducing compliance, 465–66  
 reduction of tariffs, 461–62  
 suspension of concessions, preferred over, 467  
 temporary nature of, 462
- Complaints  
 generally, 229  
 co-complainants, 207–10  
 consultation requests, legal basis of complaint, 160–61, 163  
 counter-complaints, 210–11  
 GATT 1994  
   generally, 229  
   non-violation complaints, 230–32, 333  
   “other situation” complaints, 232  
   violation complaints, 230  
 multiple complainants, 207–10  
 non-violation complaints  
   burden of proof, 333  
   customary international law and, 103  
   GATS, 283–84  
   GATT 1947, 47  
   GATT 1994, 230–32, 333  
   panel proceedings, 230–32  
   TBT Agreement, 232  
 “other situation” complaints, 232, 456  
 panel proceedings (*See* Panel proceedings)

- Complaints (cont.)  
 violation complaints  
   Anti-dumping Agreement, 230  
   GATT 1994, 230  
   panel proceedings, 230
- Compliance review. *See* Article 21.5 proceedings
- Concessions. *See* Suspension of concessions
- Conciliation  
 confidentiality, 339  
 DSU generally, 154–56  
 1966 Understanding, 245–46
- Confidentiality  
 generally, 339  
 advisors and, 342  
*amicus curiae* briefs and, 341–42
- Anti-dumping Agreement, panel proceedings, 265–66
- Appellate Body oral hearings, 374–75  
 business confidential information (BCI), 378–80
- attorneys and, 340–41
- business confidential information (BCI)  
 Additional Working Procedures, 531–33  
 anti-dumping and, 379  
 Appellate Body oral hearings, 378–80  
 countervailing duties and, 379  
 panel proceedings, 343–46  
 suspension of concessions, arbitration of, 473, 474
- “cabinet privilege,” 346–47
- conciliation, 339
- consultations, 167–70, 339
- DSU reform and, 28
- GATT 1994, government information, 347
- good offices, 339
- government information, 346–47
- highly sensitive business information (HSBI), 345–46  
 Appellate Body oral hearings, 378–79
- importance of, 339
- mediation, 339
- non-disclosure provisions and, 342
- panel proceedings  
 generally, 200–1, 339–40  
 Anti-dumping Agreement, 265–66  
 business confidential information (BCI), 343–46  
 government information, 346–47  
 meetings with parties, 225–26  
 reports, 340  
 working procedures, 521
- personal safety and, 342–43
- proprietary information and, 342
- special procedures to protect, 343–46
- trade associations and, 341–42
- TRIPS Agreement and, 342
- Conflicts of interest  
 Appellate Body members, 358  
 experts, 321–22  
 panel proceedings, 203–4
- Consideration of reports. *See* Adoption of reports
- Consultations  
 generally, 156  
 adequacy of, 166–67  
 agenda, 164–65  
 Agreement on Government Procurement, 289  
 anti-dumping and, 157  
 Article 21.5 proceedings, 436–37  
   “sequencing” problem and, 437  
 “closed consultations,” 170  
 confidentiality of, 167–70, 339  
 COVID-19 pandemic, effect of, 164  
 Customs Valuation Agreement, 267  
 developing countries and  
   DSU generally, 247  
   1966 Understanding, 244–45  
 DSU generally, 35  
 failure to hold, 165–66  
 failure to object to lack of as estoppel, 81  
 failure to refer to measures in, 46–47  
 failure to settle dispute, 172  
 “fully forthcoming,” 166–67  
 GATT 1947 dispute settlement, 11–12  
 informal discussions, 165  
 initiation of, 44–45  
 meetings, 164–66  
 offers in, 167–68  
 in “ordinary” panel proceedings, 44  
 panel proceedings, use of information  
   obtained in, 168–69  
 preparation for, 156–57  
 purpose of, 158  
 requests  
   adequacy of, 160–64  
   Committees and, 158  
   contents of, 158–59  
   Councils and, 158  
   DSB and, 158  
   form of, 158–59  
   legal basis of complaint, 160–61, 163  
   responses to, 160, 171  
   specific measure at issue, 160–64
- SCM Agreement  
 requests, 273, 159, 269–71  
 statements of available evidence, 273, 269–71  
 time requirements, 268–69, 273  
 scope of, 45



- Secretariat and, 159  
 SPS Agreement, 157, 251  
 terms of reference and  
   parallels with, 44–47  
   use of information obtained in, 168  
 third parties in, 170–71  
 time requirements, 171–72  
 urgency cases, 171–72  
 waiver of, 165–66  
 written record of, absence of, 167  
 Contemporaneity, 113–14  
 Convention on Biological Diversity, 131  
 Convention on International Trade in  
   Endangered Species of Wild Flora  
   and Fauna, 131  
 Convention on the Conservation of Migratory  
   Species of Wild Animals, 131  
 Convention on the Law of the Sea, 131  
 Cotonou Agreement, 133  
 Council for Trade in Goods, 158  
 Council for Trade in Services, 158, 284, 285–86  
 Council for TRIPS, 158  
 Countermeasures  
   actionable subsidy procedures (*See*  
     Actionable subsidy procedures)  
   Appellate Body, 37–38  
   “commensurate,” 509–10  
   GATT 1994 and, 505–6  
   most-favored-nation (MFN) treatment  
     and, 506  
   multiple complaints, 510–12  
   national treatment and, 506  
   nullification and impairment and, 506, 508–9  
   prohibited subsidy procedures (*See*  
     Prohibited subsidy procedures)  
   proportionality, 507  
   SCM Agreement and, 505–7, 508, 509,  
     511, 512  
 Countervailing duties  
   anti-dumping, overlap with, 267  
   Article 21.5 proceedings, 442–44  
   business confidential information (BCI)  
     and, 379  
   GATT 1947 and, 459–60  
   jurisdiction *ratione materiae*, effect on,  
     63–64  
   SCM Agreement (*See* Agreement on  
     Subsidies and Countervailing  
     Measures (SCM Agreement))  
 Covered agreements  
   Agreement on Government  
     Procurement, 53  
   GATS, 53, 88  
   GATT 1994, 53–54, 88  
   jurisdiction *ratione materiae*, 53–54  
   as source of law, 87–89  
   TRIPS Agreement, 53, 54  
   WTO Agreement, 53, 88–89  
 COVID-19 pandemic  
   consultations, effect on, 164  
   panel meetings, effect on, 226–27  
   “reasonable period of time,” effect on, 429  
   suspension of concessions  
     effect on arbitration of, 477  
 Croley, Steven P., 262, 264  
 Cross appeals, 36, 351, 369  
 “Cross-retaliation.” *See* Suspension of  
   concessions  
 Customary international law  
   GATT 1947 and, 104  
   non-violation complaints and, 103  
   precautionary principle as, 102–3  
   rules of interpretation, 103, 131, 262–65,  
     331, 335  
   as source of law, 87, 88, 90, 102–4  
   VCLT as, 141, 149, 150  
 Customs Valuation Agreement. *See* Agreement  
   on Implementation of Article VII of  
   GATT 1994 (Customs Valuation  
   Agreement)  
 Dam, Kenneth W., 465  
 Davey, Bill, 144  
 Decision on Expiration of Time-Periods in the  
   DSU, 356  
 Decision on Trade and the Environment, 131  
 Deference in case of doubt (*in dubio mitius*),  
 de Scitovsky, Tibor, 8–9  
 Developing countries  
   Advisory Centre on WTO Law (ACWL)  
     and, 30–31, 250  
   Anti-dumping Agreement and, 244, 266  
   consultations and  
     DSU generally, 247  
     1966 Understanding, 244–45  
   DSU generally  
     generally, 30  
     consultations and, 247  
     legal assistance, 30  
     other provisions, 249–50  
     panel proceedings, 247–49  
   GATS and, 248–49  
   GATT 1947 and  
     generally, 244  
     dispute settlement, 244  
   least developed countries, 249  
   legal assistance  
     Advisory Centre on WTO Law (ACWL),  
       30–31  
     DSU generally, 30  
     1966 Understanding  
       generally, 244

- Developing countries (cont.)  
 conciliation, 245–46  
 consultations, 244–45  
 establishment of panel, 246  
 good offices, 245–46  
 mediation, 245–46  
 panel proceedings, 246–47  
 panel proceedings and  
 DSU generally, 247–49  
 1966 Understanding, 246–47  
 reports, 241  
 “reasonable period of time” and, 427–28  
 Resolution on Assistance to Developing Countries, 131  
 SCM Agreement and, 244, 281  
 Secretariat and, 30, 250  
 SPS Agreement and, 244, 251–52  
 TBT Agreement and, 244, 254–55
- Dictionaries, 143–45  
*Dictionary of Trade Policy Terms*, 144  
 Dillon Round, 7  
 Diplomacy, 518–19  
 Director-General  
 arbitration and  
 generally, 296  
 “reasonable period of time,” 414  
 suspension of concessions, 472, 473  
 Article 21.5 panels, selection of, 432–33  
 good offices, 245–46, 249  
 mediation, 154–56  
 panel proceedings, selection of panelists,  
 173, 195–97  
 record on appeal and, 371  
 Working Procedures for Appellate Review  
 and, 348, 357
- Dispute Settlement Body (DSB). *See also*  
*specific topic*  
 administration, 40, 41  
 adoption of reports (*See* Adoption of  
 reports)  
 Agreement on Government Procurement  
 and, 289  
 Appellate Body proceedings, time  
 requirements  
 completion of appeal, 354–55  
 initiation of appeal, 352–54  
 preparation of appeal, 352–54  
 authority of, 23  
 chairperson, 23  
 competence of, 56  
 computation of time and, 227–28  
 consensus, 23  
 consultations (*See* Consultations)  
 Decision on Expiration of Time-Periods in  
 the DSU, 356  
 functions of, 22–23  
 implementation of reports (*See*  
 Implementation of reports)  
 meetings, 23  
 “negative consensus,” 23  
 Notice of Appeal and, 352–53, 354–55  
 panel proceedings (*See* Panel proceedings)  
 review of measures taken in compliance with  
 DSB, 65  
 Rules of Conduct for the Understanding on  
 Rules and Procedures Governing the  
 Settlement of Disputes, 154, 321  
 SCM Agreement, Annex V procedures  
 (serious prejudice), 274, 275–76,  
 277–78  
 suspension of concessions, arbitration of,  
 472–73  
 terms of reference (*See* Terms of reference)  
 webpage, 33  
 Working Procedures for Appellate Review  
 and, 348, 357
- Dispute Settlement Understanding (DSU). *See*  
*also specific topic*  
 Agreement on Textiles and Clothing  
 and, 282  
 Appellate Body (*See* Appellate Body (AB))  
 appendices, 24  
 arbitration and, 155–56  
 Article 21.5 proceedings (*See* Article 21.5  
 proceedings)  
 common law versus civil law approach,  
 25–26  
 compliance, 29  
 compliance review (*See* Article 21.5  
 proceedings)  
 conciliation and, 154–56  
 confidentiality, 28  
 consultations (*See* Consultations)  
 Customs Valuation Agreement and, 268  
 Decision on Expiration of Time-Periods in  
 the DSU, 356  
 developing countries and  
 generally, 30  
 assistance for, 30  
 consultations and, 247  
 other provisions, 249–50  
 panel proceedings, 247–49  
 Doha Development Round and, 26–27  
 flexibility, 29  
 good offices and, 154–56  
 ICJ compared, 40–41, 87–88  
 implied powers and, 91–92  
 institutional structure, 23–25  
 interpretation of law generally, 141, 146, 152  
 jurisdiction (*See* Jurisdiction)  
 least developed countries, 249  
 mediation and, 154–56

- member control, 29
- panel proceedings (*See* Panel proceedings)
- precedent and, 25–26, 116
- reform proposals, 26–29, 153–54
- remand, 28
- reports, 24–25
- Rules of Conduct, 346
- sequencing and, 28
- sources of law (*See* Sources of law)
- special and differential treatment, 28–29
- special rules and procedures, 243
- standing (*See* Standing)
- statistics, 31–32
- success of, 518, 519
- summary of dispute settlement process, 34–38
- terms of reference (*See* Terms of reference)
- “thickening of legality” in, 518, 520
- third parties and, 28
- timeframes, 28
- transparency, 28
- Uruguay Round and, 18–19, 23
- Working Practices Concerning Dispute Settlement Procedures, 409
- Doha Development Round
  - generally, 6
  - Doha Declaration, 26–27
  - Doha Ministerial Decision, 97, 100, 146–47
  - Doha Waiver, 295–97
  - DSU reform and, 26–27
- Domestic law. *See also specific country*
  - Anti-dumping Agreement and, 382–83, 384
  - Appellate Body treatment of, 382–84, 401
  - Berne Convention and, 69
  - interpretation of
    - generally, 314
    - deference, 316–17
    - interpretation versus fact, 315
    - judicial decisions, 317
    - legislative history, 317–18
    - objective assessment of, 316
    - as question of fact, 314–15
  - Paris Convention and, 69
  - PCIJ and, 138, 381, 382
  - as source of law, 140
  - VCLT and, 140
- Double taxation, 283
- DSB. *See* Dispute Settlement Body (DSB)
- DSU. *See* Dispute Settlement Understanding (DSU)
- Dunkel, Arthur, 15
- Duties, effect on jurisdiction *ratione materiae*, 60, 62–63
- Eastern Caribbean Central Bank (ECCB), 481
- Editorial Guide for Panel Submissions, 524
- Effet utile*, 108–10
- Ehlermann, Claus-Dieter, 115
- Embargoes, effect on jurisdiction *ratione materiae*, 61–62
- Error, 105
- Estoppel, 79–82
  - acquiescence distinguished, 79
  - Anti-dumping Agreement and, 81
  - anti-dumping and, 81–82
  - consultations, failure to object to lack of as estoppel, 81
- European Community Common Agricultural Policy (CAP), 15, 135
- European Court of First Instance, 81
- European Court of Human Rights as source of law, 137
- European Union
  - Agreement Between the European Union and the Republic of India on Cane Sugar, 133
  - Appellate Board and, 398–99
  - Multi-Party Interim Appeal Arbitration Arrangement and, 402–3
  - waivers and, 99
- Evidence
  - generally, 298–99
  - admissibility of, 299
  - Anti-dumping Agreement
    - national proceedings, evidence not used in, 313
    - statements of officials as admissions, 311
  - authentication of, 301
  - compelling production, 303
  - defined, 299
  - domestic law, interpretation of
    - generally, 314
    - deference, 316–17
    - interpretation versus fact, 315
    - judicial decisions, 317
    - legislative history, 317–18
    - objective assessment of, 316
    - as question of fact, 314–15
  - domestic proceedings, evidence not used in, 312–14
  - evolving need for rules, 298–99
  - exhibits, 300
  - experts (*See* Experts)
  - form of, 299–300
  - GATT 1994
    - national proceedings, evidence not used in, 313–14
    - statements of officials as admissions, 311
  - growth in factual component of disputes, 298–99
  - notice requirements, 312
  - SCM Agreement, 312

- Evidence (cont.)  
 panel proceedings  
   authority of panel, 303  
   discretion of panel, 304  
   duty to provide, 306–8  
   factors to consider, 306  
   failure to provide, adverse inferences, 308–10  
   interim review, factual evidence during, 236–38  
   international organizations, obtaining from, 304–5  
   testing of, 305–6  
   working procedures, 523–24  
   written submissions, factual evidence in, 216, 224–25  
*prima facie* cases, 326–27  
 SCM Agreement  
   consultations, statements of available evidence, 273, 269–71  
   notice requirements, 312  
   statements of officials as admissions, 311  
 SPS Agreement, 303  
 suspension of concessions, arbitration of, 480–81  
 TBT Agreement, 303  
 time requirements, 301–2  
 translations, 301  
 TRIPS Agreement, statements of officials as admissions, 311  
 weight accorded to, 299  
 Exhaustion of local remedies requirement, 71–72  
 Exhibits, 300  
*Ex officio* review of jurisdiction, 76–77  
 Experts  
   generally, 303  
   conflicts of interest, 321–22  
   discretion to use, 318, 320  
   meetings with, 320  
   qualifications of, 322  
   reports, 319  
 SCM Agreement, Permanent Group of Experts (PGE)  
   generally, 271, 272  
   advisory opinions, 272  
   Draft Rules of Procedure, 271–72  
   hearings, 272  
   time requirements, 272  
 selection of, 319, 320–22  
 SPS Agreement  
   conflicts of interest, 321  
   panel proceedings, 250–51  
   procedures, 322–23  
   selection of, 320–21  
   TBT Agreement, panel proceedings, 253–54, 320  
   translation, 320  
   written questions to, 319–20  
 “Fast-track” procedure, 7–8  
 Feliciano, Fiorentino, 115  
 Fitzmaurice, Gerald, 87, 125  
 Food and Agriculture Organization (FAO), 305, 321–22  
 Framework Convention on Tobacco Control, 305  
 “Free riders,” 72  
 Free trade agreements (FTAs)  
   burden of proof and, 333–34  
   good faith engagement in procedures and, 82–83  
   as international law, 90  
   jurisdiction *ratione materiae*, 56, 57  
   North America Free Trade Agreement (NAFTA), 334  
   as subsequent agreements, 147  
 Froman, Michael, 519  
 GATS. *See* General Agreement on Trade in Services (GATS)  
 General Agreement on Tariffs and Trade (1947) (GATT 1947). *See also specific Round*  
   adopted reports, 117–18  
   bilateral agreements and, 135–36  
   compliance panels, lack of, 492  
   customary international law and, 104  
   developing countries and  
     generally, 244  
     dispute settlement, 244  
     1966 Understanding (*See* Developing countries)  
   dispute settlement  
     generally, 40  
     Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement, 12  
   anti-dumping, 14  
   blocking of adverse reports, 13, 19  
   Common Agricultural Policy (CAP), 15  
   consultations, 11–12  
   developing countries, 244  
   diplomatic roots of, 9–11  
   import restrictions, 9–10  
   improvements in, 15, 16  
   increase in, 14  
   “negative consensus,” 14  
   nullification and impairment, 12  
   origins of, 9  
   panel proceedings, 10, 25

- “positive consensus,” 13, 232
- pragmatism in, 14–15
- procedural rules, 11
- reports, 25
- statistics, 14
- subsidies, 14
- Understanding on Notification,
  - Consultation, Dispute Settlement and Surveillance of
  - 28 November 1979, 12–13
- documents, 33
- Drafting Committee, 3
- enforcement, 9
- “fast-track” procedure and, 7–8
- Geneva Final Act, 4
- Geneva meeting (1982), 17
- Governmental Assistance to Economic Development, 244
- grandfather rights, 5
- Harmonized System (HS), 134, 139
- highly qualified publicists and, 114–15
- ICJ and, 11
- ITO and, 2, 3–4
- Legal Affairs Division, 15
- most-favored-nation (MFN) treatment, 104
- multilateral agreements and, 130–33, 134
- national treatment, 126
- negotiation of, 3–4
- 1966 Understanding (*See* Developing countries)
- non-application between Members, effect
  - on jurisdiction *ratione personae*, 66–67
- non-tariff barriers (NTBs), 7–8
- non-violation claims, 47
- parties to, 6
- precedent and
  - adopted GATT reports, 117–18
  - GATT practice, 116–17
  - unadopted GATT reports, 118–19
- Preparatory Committee, 3
- Protocol of Provisional Application (PPA), 4–5
- “provisional” years, 6–8
- quotas and, 4–5, 506
- remedies and
  - generally, 457
  - Agreement on Government Procurement, 460
  - anti-dumping, 458–59
  - Appellate Body and panel recommendations, 513, 514, 515
  - compensation, 460
  - countervailing duties, 459–60
  - inconsistency of practice, 458
  - suspension of concessions, 460
- as “rich countries” club, 14–15
- Rounds, 6–7
- SCM Agreement, interplay with, 279–80
- suspension of concessions and, 460
- Trade and Development, 244
- trade liberalization and, 4–5
- unadopted reports, 118–19
- Understanding Regarding Notification,
  - Consultation, Dispute Settlement and Surveillance, 291
- WTO replacing, 2
- General Agreement on Tariffs and Trade (1994) (GATT 1994)
  - Agreement on Implementation of Article VII of GATT 1994
    - consultations, 267
    - DSU generally, 268
    - panel proceedings, 267–68
    - Technical Committee on Customs Valuation, 267–68
    - terms of reference, 267
  - Appellate Body proceedings and completion of analysis, 390–91, 394–95
  - rulings, 397–98
  - safeguard measures, 351
  - separate opinions, 361–62
- burden of proof and
  - generally, 324
  - exceptions, 329
  - excluding provisions, 330
  - free trade agreements, 333–34
  - “general rule-exception” analysis, 330–31
  - non-violation complaints, 333
- competence of other WTO bodies and, 56
- complaints
  - generally, 229
  - non-violation complaints, 230–32, 333
  - “other situation” complaints, 232
  - violation complaints, 230
- confidentiality, government information, 347
- consultations (*See* Consultations)
- contemporaneity and, 113–14
- Council for Trade in Goods, 158
- countermeasures and, 505–6
- as covered agreement, 53–54, 88
- creation of, 21
- “cross-retaliation” and, 486
- Customs Valuation Agreement
  - consultations, 267
  - DSU generally, 268
  - panel proceedings, 267–68

- GATT 1994 (cont.)  
 Technical Committee on Customs  
 Valuation, 267–68  
 terms of reference, 267  
 Declaration on Dispute Settlement Pursuant  
 to the Agreement on  
 Implementation of Article VI of the  
 General Agreement on Tariffs and  
 Trade 1994 or Part V of the  
 Agreement on Subsidies and  
 Countervailing Measures, 258–59  
 “directly competitive or substitutable,”  
 50  
 effective treaty interpretation and,  
 108–10  
*effet utile* and, 109, 110  
 evidence  
 national proceedings, evidence not used  
 in, 313–14  
 statements of officials as admissions, 311  
 expired measures, effect of, 61–62  
 good faith and, 106–7  
 IMF and, 95–96  
 as international law, 90  
 interpretation of, 145, 151, 152  
 judicial economy and, 389  
 legal justification for measures changed,  
 effect of, 60–61  
*lex specialis* and, 110–11  
 “like products,” 50  
 measures changed during proceedings,  
 effect of, 59  
 modification of schedules, GATS  
 compared, 284  
 money laundering and, 423  
 Non-Members, jurisdiction *ratione personae*  
 and, 65–66  
 non-violation complaints, 230–32, 333  
 panel proceedings (See Panel proceedings)  
 “reasonable period of time” and, 423, 424  
 regional and local government entities,  
 jurisdiction *ratione personae* and,  
 66–67  
 simultaneous application of different  
 agreements and, 55  
 standing and, 69–70, 71–72  
 subsidiary bodies, 99  
 suspension of concessions and  
 “cross-retaliation,” 486  
 requests for authorization, 470  
 General Agreement on Trade in Services  
 (GATS)  
 generally, 283  
 air transport services, 287  
 Annex on Financial Services, 193  
 arbitration, 295  
 Council for Trade in Services, 158, 284,  
 285–86  
 as covered agreement, 53, 88  
 “cross-retaliation” and, 486–87, 488–89  
 Decision on Certain Dispute Settlement  
 Procedures for the General  
 Agreement on Trade in Services, 287  
 developing countries and, 248–49  
 double taxation and, 283  
 GATS Council, 139  
 modification of schedules  
 generally, 284  
 compensation, 284  
 GATT 1994 compared, 284  
 most-favored-nation (MFN)  
 treatment, 284  
 notice requirements, 284  
 in practice, 285–87  
 Procedures for the Implementation of  
 Article XXI of the GATS  
 (Modification of Schedules), 284–85  
 time requirements, 284  
 non-application between Members, effect  
 on jurisdiction *ratione personae*, 66  
 non-violation complaints, 283–84  
 nullification and impairment, 283–84  
 origins of, 17  
 “other situation” complaints, 232  
 panel proceedings, 193, 287  
 “reasonable period of time” and, 424  
 regional and local government entities,  
 jurisdiction *ratione personae* and,  
 68  
 Scheduling Guidelines, 139  
 simultaneous application of different  
 agreements and, 55  
 subsidiary bodies, 99  
 in WTO Annexes, 21–22  
 General Council  
 generally, 22  
 Agreement on Preshipment Inspection  
 and, 292  
 authoritative interpretations and, 96–97, 116  
 Ministerial Conference and, 99–100  
 rules of procedure, 408  
 WTO agreements and, 96  
 General principles of law  
 generally, 104–5  
 Anti-dumping Agreement and, 104–5  
 contemporaneity, 113–14  
 deference in case of doubt (*in dubio mitius*),  
 107–8  
 effective treaty interpretation, 108–10  
*effet utile*, 108–10  
 error, 105  
 good faith (*bona fides*), 106–7

- lex specialis*, 110–13  
 narrow interpretation of exceptions, 108  
*non adimplenti contractus*, 105
- Geneva Final Act, 4
- Gobind-Daswani, Arti, 14
- Good faith  
 free trade agreements, good faith engagement in procedures and, 82–83  
 as general principle of law, 106–7  
 jurisdiction, good faith engagement in procedures and, 82–83  
 SCM Agreement and, 270  
 VCLT and, 106
- Good offices  
 confidentiality, 339  
 Director-General, 245–46, 249  
 DSU generally, 154–56  
 1966 Understanding, 245–46
- Government procurement. *See* Agreement on Government Procurement (GPA)
- Government Procurement Committee, 460
- GPA. *See* Agreement on Government Procurement (GPA)
- Graham, Thomas R., 32, 348, 399
- Harmonized System (HS), 134, 139
- Havana Charter  
 negotiation of, 3  
 not in force, 5  
 as source of law, 92
- Hearings  
 Appellate Body oral hearings (*See* Appellate Body (AB))  
 SCM Agreement, Permanent Group of Experts (PGE), 272  
 suspension of concessions, arbitration of, 474
- Highly qualified publicists, 114–15
- Highly sensitive business information (HSBI)  
 Appellate Body oral hearings, 378–79  
 confidentiality and, 345–46
- Horn, Henrik, 34
- Hudec, Robert E., 10, 13–14, 435
- ICJ. *See* International Court of Justice (ICJ)
- IMF. *See* International Monetary Fund (IMF)
- Implementation of reports  
 generally, 406  
 Article 21.5 proceedings (*See* Article 21.5 proceedings)  
 compensation and, 430  
 compliance review (*See* Article 21.5 proceedings)  
 notification of intention, 409–10
- “reasonable period of time” (*See* “Reasonable period of time”)
- surveillance by DSB, 429–30  
 suspension of concessions and, 430  
 written status reports, 429
- Implied powers, 91–92
- Import Licensing Agreement, 111
- Import restrictions  
 GATT 1947 dispute settlement, 9–10  
 jurisdiction *ratione materiae*, effect on, 60–61, 62
- India  
 Agreement Between the European Union and the Republic of India on Cane Sugar, 133  
 Appellate Body and, 400  
 domestic law in, 318, 382
- In dubio mitius*, 107–8
- Intellectual property rights  
 Berne Convention (*See* Berne Convention)  
 “cross retaliation” and, 487–88  
 Paris Convention (*See* Paris Convention)  
 TRIPS Agreement (*See* Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement))
- Inter-American Convention for the Protection and Conservation of Sea Turtles, 131
- Inter-American Court of Human Rights as source of law, 137
- International Agency for Research on Cancer, 321
- International Bank for Reconstruction and Development. *See* World Bank
- International Chamber of Commerce, 292
- International Court of Justice (ICJ)  
 Appellate Body compared, 381  
 DSU compared, 40–41, 87–88  
 GATT 1947 and, 11  
 panels citing, 42  
 precedent in, 115–16, 118, 125  
 questions of law and questions of fact in, 381  
 remedies and, 457  
 as source of law, 86–87, 137–38  
 Statute, 40, 41  
 WTO compared, 66
- International Federation of Inspection Agencies, 292
- International law  
 customary international law (*See* Customary international law)  
 free trade agreements as, 90  
 GATT 1994 as, 90  
 interpretation of law and, 148  
 as source of law, 89–90

- International Law Commission (ILC)  
 Draft Articles on Responsibility of States for Internationally Wrongful Act, 134, 138, 457  
*lex specialis* and, 110
- International Monetary Fund (IMF)  
 creation of, 1  
 GATT 1994 and, 95–96  
 panel proceedings and, 305  
 suspension of concessions, arbitration of, 481  
 WTO and, 20–21, 95–96
- International Office of Epizootics (OIE), 95–96
- International Plant Protection Commission, 95
- International Telecommunications Union (ITU), 134
- International Trade Organization (ITO) (proposed)  
 Charter, 11  
 GATT 1947 and, 2, 3–4  
 Havana Charter (*See* Havana Charter)  
 US opposition to, 3–4
- International Tribunal for the Law of the Sea, 138
- International tribunals, 137–38. *See also specific entity*
- Interpretation of law  
 Agreement on Agriculture, 150–51  
 Agreement on Government Procurement, 151  
 Anti-dumping Agreement and, 262–65  
 authoritative interpretations, 96–97  
 context and, 141, 142, 145–46  
 dictionaries and, 143–45  
 domestic law  
   generally, 314  
   deference, 316–17  
   interpretation versus fact, 315  
   judicial decisions, 317  
   legislative history, 317–18  
   objective assessment of, 316  
   as question of fact, 314–15  
 DSU generally, 141, 146, 152  
 effective treaty interpretation as general principle of law, 108–10  
 GATT 1994, 145, 151, 152  
 negotiation history and, 149–51  
 object and purpose of treaty, 141, 142, 145–46  
 ordinary meaning of terms, 141, 143–45  
 other languages, 151–52  
 preparatory work and, 149–51  
 rules of international law and, 148  
 rules of interpretation, 103, 131, 262–65, 331, 335  
 special meaning, 148  
 SPS Agreement, 152  
 subsequent agreements and, 146–47  
 subsequent practice and, 147–48  
 supplemental means of interpretation, 141, 142, 149  
 TBT Agreement, 146  
 translations, 151–52  
 TRIPS Agreement, 151  
 VCLT generally, 141–43  
 WTO Agreement, 145
- Investment measures. *See* Agreement on Trade-Related Investment Measures (TRIMS)
- Isolationism, 1
- ITO. *See* International Trade Organization (ITO) (proposed)
- Jackson, John H., 262, 264  
 Jackson, Robert H., 127  
 Jara, Alejandro, 29, 154  
 Johannesson, Louise, 433
- Judicial economy  
 advantages of, 387  
 Anti-dumping Agreement and, 389  
 in Appellate Body proceedings, 387–90  
 defined, 386  
 “false judicial economy,” 387–88  
 GATT 1994 and, 389  
 lack of remand authority and, 388  
 in panel proceedings, 51–52, 387–90  
 problems with, 387–88  
 TBT Agreement and, 389  
 terms of reference and, 51–52
- Judicial review. *See* Appellate Body (AB)
- Jurisdiction  
 generally, 23–24, 40–42  
 Appellate Body, 84–85  
 appellate jurisdiction, 84–85  
 arbitration, 84  
 challenges to, 75–76  
 estoppel, 79–82 (*See also* Estoppel)  
*ex officio* review of, 76–77  
 good faith engagement in procedures and, 82–83  
*non ultra petita* and, 49–50  
*ratione materiae* (*See* Jurisdiction *ratione materiae*)  
*ratione personae* (*See* Jurisdiction *ratione personae*)  
*res judicata*, 77–79  
 standing (*See* Standing)  
 suspension of concessions, jurisdiction of arbitrator, 474–76  
 terms of reference (*See* Terms of reference)  
 waiver of dispute settlement, 83  
 Jurisdiction *ratione materiae*  
 competence of other WTO bodies and, 56–58



- conflicts among special or additional rules, 54–55  
 countervailing duties, effect of, 63–64  
 covered agreements, 53–54  
 duties, effect of, 60, 62–63  
 embargoes, effect of, 61–62  
 expired measures, 61–65  
 findings versus recommendations, 64–65  
 free trade agreements, 56, 57  
 institutional balance and, 56–58  
 judicial versus legislative functions, 57–58  
 legal justification for measures changed, 60–61  
 matter before panel, 58  
 measures changed during proceedings, 59–60  
 review of measures taken in compliance with DSB, 65  
 simultaneous application of different agreements, 55–56  
 Jurisdiction *ratione personae*  
   non-application between Members, 66–67  
   Non-Members, 65–66  
   regional and local government entities, 67–69  
   territories and, 66  
 Kennedy Round, 7  
 Kim, Hyun Chong, 399  
 Korea  
   Appellate Body and, 399  
   Government Organization Act, 317  
 Lafer, Celso, 518  
 Language Services and Documentation Division, 235  
 League of Nations  
   Economic Committee, 10–11  
   US opposition to, 2  
 Least developed countries, 249  
 Legal Affairs Division, 194, 212–13, 215, 276  
 Legal interest requirement, 69–71  
*Lex specialis*, 110–13  
 Litigation, 518–19  
*Locus standi*. *See* Standing  
 Lodge, Henry Cabot, 2  
 Lomé Convention, 98–99  
 London Conference, 3  
 McCormick, Neil, 124, 129  
 Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement)  
   Agreement on Government Procurement in, 22  
   Agreement on Trade in Civil Aircraft in, 22  
   as covered agreement, 53, 88–89  
   creation of WTO, 16, 20  
   interpretation of, 145  
   Non-Members, jurisdiction *ratione personae* and, 65–66  
   precedent and, 116  
   simultaneous application of different agreements and, 55  
   US Constitution compared, 127  
 MAS. *See* Mutually agreed solutions (MAS)  
 Matsushita, Mitsuo, 115  
 Mavroidis, Petros C., 34, 433  
 McRae, Donald, 25  
 Measures  
   amendment of, 182  
   Article 21.5 proceedings, scope of review, 442–47 (*See also* Article 21.5 proceedings)  
   changed during proceedings, 59–60  
   consultation requests, specific measure at issue, 160–64  
   expired measures  
     jurisdiction *ratione materiae*, 61–65  
     panel requests, 183  
   legal justification for measures changed, 60–61  
   panel proceedings, specific measure at issue, 177–80 (*See also* Panel proceedings)  
   panel requests, specific measure at issue, 177–80 (*See also* Panel proceedings)  
   review of measures taken in compliance with DSB, 65  
   “unwritten” measures, 183  
 Mediation  
   confidentiality, 339  
   Director-General, 154–56  
   DSU generally, 154–56  
   1966 Understanding, 245–46  
 Meetings  
   adoption of reports, 408–9  
     special meetings, 408  
   consultations, 164–66  
   DSB, 23  
   experts, 320  
   panel proceedings (*See* Panel proceedings)  
   suspension of concessions, arbitration of, organizational meeting, 473  
 Mercosur  
   Ad Hoc Arbitral Tribunal, 81–82  
   Protocol of Olivos, 81–82, 136  
 MFN. *See* Most-favored-nation (MFN) treatment  
 Modalities Paper, 139, 151  
 Money laundering  
   GATT 1994 and, 423  
   “reasonable period of time” and, 423  
 Montaigne, Michel de, 141

- Montreal Rules, 19–20, 23, 232, 456
- Most-favored-nation (MFN) treatment  
 compensation and, 461–62  
 countermeasures and, 506  
 GATS, modification of schedules, 284  
 GATT 1947, 104  
 mutually agreed solutions and, 463  
*sui generis* Bananas arbitration and, 296–97
- Moynihan, Daniel Patrick, 15–16
- Multifibre Agreement, 137
- Multilateral agreements. *See also specific agreement*  
 GATT 1947 and, 130–33, 134  
 as source of law, 130–33  
 VCLT and, 133, 134
- Multilateral Agreements on Trade in Goods, 55
- Multi-Party Interim Appeal Arbitration Arrangement (MPIA), 402–5
- Mutually agreed solutions (MAS)  
 generally, 462  
 Article 21.5 proceedings in lieu of, 463  
 informal agreements, 464  
 most-favored-nation (MFN) treatment and, 463  
 negotiation, 464–65  
 notice requirements, 462–63  
 nullification and impairment and, 463  
 specificity of, 464
- Nairobi Decision on Export Subsidies, 101–2
- Nairobi Ministerial Conference, 101–2
- National treatment  
 countermeasures and, 506  
 GATT 1947, 126
- Negotiated settlement, 518–19
- 1966 Understanding. *See* Developing countries
- Non-actionable subsidy procedures  
 generally, 280  
 arbitration, 294–95
- Non adimplenti contractus*, 105
- Non-disclosure provisions, 342
- Non-tariff barriers (NTBs), 7–8
- Non ultra petita*  
 jurisdiction and, 49–50  
*prima facie* cases and, 328–29  
 standard of review and, 335  
 terms of reference and, 49–50
- Non-violation complaints  
 burden of proof, 333  
 customary international law and, 103  
 GATS, 283–84  
 GATT 1947, 47  
 GATT 1994, 230–32, 333  
 panel proceedings, 230–32  
 TBT Agreement, 232
- North America Free Trade Agreement (NAFTA), 334
- Norway, Multi-Party Interim Appeal Arbitration Arrangement and, 402–3
- Notice of Appeal  
 allocation of appeal numbers, 366  
 Appellant's Submission and, 365–66, 367–68  
 Appellee's Submission and, 368  
 clerical errors, correction of, 366  
 conditional appeal, 366–67  
 contents of, 364  
 DSB and, 352–55  
 Notice of Other Appeal, 369  
 objective assessment of facts, 365  
 sufficiency of, 364–65  
 third parties, 371  
 withdrawal of appeal, 376
- Notice requirements  
 Agreement on Government Procurement, 289  
 Balance of Payments (BOP) Committee, 312  
 Decision on Notification Procedures, 312  
 evidence, 312  
 GATS, modification of schedules, 284  
 implementation of reports, notification of intention, 409–10  
 mutually agreed solutions, 462–63  
 Notice of Appeal (*See* Notice of Appeal)  
 panel proceedings, third parties, 203–5  
 SCM Agreement  
 Annex V procedures (serious prejudice), 274  
 evidence, 312
- Nullification and impairment  
 Agreement on Government Procurement, 289  
 arbitration and, 293–94  
 countermeasures and, 506, 508–9  
 GATS, 283–84  
 GATT 1947, 12  
 mutually agreed solutions and, 463  
 suspension of concessions and  
 anti-dumping, 483–84  
 arbitration, 475  
 “carousel” suspension, 471  
 counterfactuals, 481–84  
 determination of level of, 481–84  
 econometric models, use of, 483  
 requests for authorization, 468–69  
 “sequencing” problem, 495–96  
 trade flows, 483  
 TRIPS Agreement, 287–88

- Oilseeds Agreement, 135–36  
 Oppenheim, Lassa, 113  
 Organisation of Economic Co-operation and Development (OECD)  
   on anti-competitive practice, 134  
   Arrangement on Guidelines for Officially Supported Export Credits, 94–95  
 Organization International des Épizooties. *See* World Organization for Animal Health  
 “Other situation” complaints, 232, 456  
*Oxford Dictionary*, 143, 144
- Panel proceedings  
   generally, 153–54  
   abandonment of claims, 50–51, 81  
   admissions, 310–12  
   adoption of reports, 242  
   Agreement on Government Procurement, 289  
   *amicus curiae* briefs, 211–12  
 Anti-dumping Agreement  
   confidentiality, 265–66  
   *de novo* review, 260–61  
   establishment of panel, 255–56  
   factual basis for review, 257–58  
   factual determinations, review of, 260–62  
   legal determinations, review of, 262–65  
   matters before panel, 256–57  
   standard of review, 258–59  
 Appellate Body and (*See also* Appellate Body (AB))  
   compared, 119–25  
   hierarchy with, 119–25, 350  
 arbitration and  
   requests, 190–91  
   third parties, 208  
 attorneys, representation by, 233  
 authority of, 197–98  
 “blocking,” 175, 192  
 clerical errors, correction of, 530  
 co-complainants, 207–10  
 complaints  
   generally, 229  
   legal basis of, 183–87  
     generally, 176  
     “how or why” standard, 186–87  
   inadvertent omissions, 185–86  
   specificity of provisions cited, 184–85  
   summary of, 183–84  
   in written submissions, 216–18  
   non-violation complaints, 230–32  
   “other situation” complaints, 232, 456  
   violation complaints, 230  
 complexity of, 153–54  
 composition of panels  
   generally, 173  
   Director-General naming, 195–97  
   disputes regarding, 196–97  
 Indicative List of Governmental and Non-Governmental Panelists, 193–94  
 influence of Secretariat, 214  
 informal meetings, 194–95  
 requests to name panelists, 195–97  
 requirements, 193  
 selection of panelists, 193–97  
 slates of proposed panelists, 195
- confidentiality  
   generally, 200–1, 339–40  
   Anti-dumping Agreement, 265–66  
   business confidential information (BCI), 343–46  
   government information, 346–47  
   meetings with parties, 225–26  
   reports, 340  
   working procedures, 521  
 conflicts of interest, 203–4  
 consultations, use of information obtained in, 168–69  
 counter-complaints, 210–11  
 courts compared, 153  
 Customs Valuation Agreement, 267–68  
 delegations  
   attorneys, representation by, 233  
   industry representatives, 234  
 descriptive portions of reports, 174, 234–35  
 developing countries and  
   DSU generally, 247–49  
   final reports, 241  
   1966 Understanding, 246–47  
 Director-General, selection of panelists, 173, 195–97  
 DSU generally, 24–25, 35–36  
 DSU reform and, 28  
 Editorial Guide for Panel Submissions, 524  
 establishment of panel, 40, 173, 191–93  
 evidence  
   authority of panel, 303  
   discretion of panel, 304  
   duty to provide, 306–8  
   factors to consider, 306  
   failure to provide, adverse inferences, 308–10  
   interim review, factual evidence during, 236–38  
   international organizations, obtaining from, 304–5  
   testing of, 305–6  
   working procedures, 523–24  
   written submissions, factual evidence in, 216, 224–25  
 experts (*See* Experts)

- Panel proceedings (cont.)  
 final reports  
   adoption of, 242  
   “basic rationale,” 239–41  
   confidentiality, 340  
   contents of, 239–41  
   developing countries and, 241  
   format of, 239  
   grounds for appeal, 240–41  
   separate opinions, 241–42  
   settlements, 241  
   working procedures, 528  
 findings versus recommendations, 64–65  
 function of panels, 197–98  
 GATS, 193, 287  
 GATT 1947 dispute settlement, 10, 25  
 ICJ, citing, 42  
 IMF and, 305  
 industry representatives in, 234  
 interim reports, 174, 235–36  
 interim review  
   generally, 234  
   appeal versus, 237–38  
   arguments during, 236–38  
   *de novo* review, 236–37  
   descriptive portions of reports, 174, 234–35  
   factual evidence during, 236–38  
   interim reports, 174, 235–36  
   meetings with parties during, 238–39  
   reconsideration during, 236  
   working procedures, 528  
 judicial economy in, 51–52, 387–90 (*See also* Judicial economy)  
 jurisdiction (*See* Jurisdiction)  
 legal basis of complaint, 183–87  
   generally, 176  
   “how or why” standard, 186–87  
   inadvertent omissions, 185–86  
   specificity of provisions cited, 184–85  
   summary of, 183–84  
   in written submissions, 216–18  
 matter before panel, 58  
 meetings with parties  
   generally, 220–22  
   closing statements, 223  
   confidentiality and, 225–26  
   COVID-19 pandemic, effect of, 226–27  
   first meeting, 222–23  
   interim review, 238–39  
   interpreters at, 221–22  
   opening statements, 222  
   open meetings, 225–26  
   questions at, 222–23  
   second meeting, 224–25  
   third meeting, 526–27  
   third parties, presence at, 205–7, 223–24  
   “virtual” meetings, 226–27  
   working procedures, 524–26  
   written record of, absence of, 215  
 multiple complainants, 207–10  
*non ultra petita* and, 49–50  
 obligation to consider all issues, 50–52  
 organizational meetings, 173, 201–2  
 precedent, reports as, 128–29 (*See also* Precedent)  
 preliminary rulings, 202–3  
   working procedures, 522–23  
 questions, working procedures, 524  
 remedies, recommendations  
   generally, 512–13  
   anti-dumping, 513–16  
   legal effect of, 517  
   other agreements, 516–17  
 requests for panels  
   generally, 173  
   adequacy of, 179–80  
   arbitration, 190–91  
   contents of, 175–77  
   defects in, 176–77, 180  
   form of, 175–77  
   procedure, 176  
   products listed, 187–89  
   reviews, 190–91  
   time requirements, 174–75  
 SCM Agreement  
   meetings with parties, 221  
   reports, 269, 273  
   time requirements, 269, 273  
   withdrawal of measures “without delay,” 269  
 Secretariat and  
   assistance, 349  
   influence on panelists, 214  
   meetings with parties, 223, 226  
   role in, 176, 212–14  
   selection of panelists, 173, 193–97, 204  
   suspension of proceedings, 228–29  
 separate opinions in, 241–42  
 service of documents, 528–30  
 settlements, 241  
 specific measure at issue, 177–80  
   generally, 176  
   amendment of measures after request, 182  
   description of, 179  
   expired measures, 183  
   laws and regulations as, 177–78  
   measure defined, 177–78  
   partial measures, challenging, 179  
   specificity of identification, 179  
   “unwritten” measures, 183

- SPS Agreement, experts, 250–51
- standing (*See* Standing)
- statements of officials as admissions, 310–12
- submission of claims, 47–49
  - working procedures, 521
- suspension of proceedings, 228–29
- TBT Agreement, experts, 253–54, 320
- terms of reference (*See* Terms of reference)
- third parties in
  - generally, 203
  - arbitration, 208
  - enhanced rights, 205–8
  - meetings with parties, presence at, 205–7, 223–24
  - multiple complainants and, 207–8
  - notice requirements, 203–5
  - reviews, 208
  - rights of, 205–8
  - written submissions, access to, 205, 206–7
- time requirements
  - computation of time, 227–28
  - establishment of panel, 191–93
  - reports, 227–28
  - requests, 174–75
  - third parties, notice requirements, 203–5
  - written submissions, 215
- TRIPS Agreement and, 184
- urgency cases, 175
- working procedures
  - generally, 198, 521
  - clerical errors, correction of, 530
  - confidentiality, 521
  - “double briefing,” 199
  - evidence, 523–24
  - executive summaries, 527
  - final reports, 528
  - interim review, 528
  - meetings with parties, 524–26
  - questions, 524
  - reform proposals, 199
  - sample, 521–30
  - service of documents, 528–30
  - special working procedures, 199–200
  - submission of claims, 521
  - third meeting, 526–27
  - written communication, 198–99
  - written submissions, 215, 216
- written submissions
  - generally, 173–74, 215
  - claims versus arguments, 216–18
  - defenses, 218–19
  - disclosure to public, 200–1
  - executive summaries, 220, 527
  - factual evidence in, 216, 224–25
  - first submission, 216–19
  - multiple complainants, 209
  - rebuttal, 218–19
  - second submission, 219
  - surveys in, 216
  - third parties, access to, 205, 206–7
  - third submission, 224–25
  - time requirements, 215
  - working procedures, 215, 216
  - written answers to questions, 219
  - zeroing and, 242
- Paris Convention
  - domestic law and, 69
  - as source of law, 93
  - TRIPS Agreement and, 69
- Pauwelyn, Joost, 89
- PCIJ. *See* Permanent Court of International Justice (PCIJ)
- Permanent Court of International Justice (PCIJ)
  - domestic law and, 138, 381, 382
  - remedies and, 457
- Personal jurisdiction. *See* Jurisdiction *ratione personae*
- Phytosanitary measures. *See* Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)
- Precautionary principle, 102–3
- Precedent
  - generally, 25–26, 115–16
  - “absent cogent reasons” standard, 120, 122
  - advantages of, 115
  - Appellate Body reports, 119–25
  - common law approach, 124
  - consistency in case law, 125–27
  - crisis in Appellate Body and, 400
  - DSU and, 25–26, 116
  - GATT 1947 and,
    - adopted GATT reports, 117–18
    - GATT practice, 116–17
    - unadopted GATT reports, 118–19
  - hierarchy between Appellate Body and panels, 119–25, 350
  - in ICJ, 115–16, 118, 125
  - panel reports, 128–29
  - “reversal” versus “evolution,” 125–27
  - SCM Agreement and, 123, 125–27
  - zeroing and, 120–24
- Prima facie* cases
  - burden of proof, 325–29
  - defined, 325–26
  - evidence, 326–27
  - mixed approach, 326–28
  - municipal systems versus WTO, 325–26
  - non ultra petita* and, 328–29
- Prior reports. *See* Precedent

- Prohibited subsidy procedures  
 generally, 268–69  
 adoption of reports and, 450  
 Appellate Body proceedings, time  
 requirements, 356–57  
 “appropriate steps” to “remove adverse  
 effects,” 505  
 combined prohibited and actionable subsidy  
 procedures, 279–80  
 countermeasures  
 adaptation to specific case, 507–8  
 aggravating factors, 506–7  
 “appropriate,” 505–9  
 “commensurate,” 509–10  
 GATT 1994 and, 505–6  
 most-favored-nation (MFN) treatment  
 and, 506  
 multiple complaints, 510–12  
 national treatment and, 506  
 nullification and impairment, 506, 508–9  
 proportionality, 507  
 SCM Agreement and, 505–7, 508, 509,  
 511, 512  
 defined, 504  
 implementation of reports and, 450  
 remedies generally, 460  
 withdrawal of  
 meaning of, 450, 452–55  
 recommendations, 450  
 time period for, 450, 451–52  
 “without delay,” 450, 451, 504–5
- Protocol of Accession, 88–89  
 Protocol of Provisional Application (PPA), 4–5  
 Publicists, 114–15  
 Punta del Este Declaration, 17
- Quotas  
 Agreement on Textiles and Clothing  
 and, 282  
 GATT 1947 and, 4–5, 506  
 Oilseeds Agreement and, 136
- Ramirez, Ricardo, 398–99, 400  
 “Reasonable period of time”  
 generally, 36  
 Agreement on Safeguards, 412  
 agreements establishing, 411–12  
 arbitration establishing  
 generally, 412–13  
 average time awarded, 419  
 Director-General, selection of panels, 414  
 15-month guideline, 417–18, 419  
 “immediate” implementation, 417, 418  
 mandate of arbitrator, 415–17  
 requests, time requirements, 413–14  
 selection of arbitrators, 414  
 “shortest period possible,” 418  
 time allowed for implementation, 417–20
- Article 21.5 proceedings and, 438–39  
 factors affecting  
 generally, 420–21  
 complexity, 421–23  
 contentiousness, 425–26  
 COVID-19 pandemic, 429  
 customs and enforcement, 423  
 developing countries and, 427–28  
 economic harm, risk of, 426  
 emergencies, 429  
 legislative action, need for, 423–25  
 money laundering, 423  
 natural disasters, 429  
 GATS and, 424  
 GATT 1994 and, 423–24  
 legal framework, 410–11  
 SCM Agreement and, 424  
 “sequencing” problem and, 493–94  
 Record on appeal, 371–72
- Remedies  
 generally, 458  
 actionable subsidy procedures (*See*  
 Actionable subsidy procedures)  
 Agreement on Government Procurement,  
 domestic remedies, 289  
 Anti-dumping Agreement, Appellate Body,  
 and panel recommendations, 515  
 Appellate Body recommendations  
 generally, 512–13  
 anti-dumping, 513–16  
 legal effect of, 517  
 other agreements, 516–17  
 compensation (*See* Compensation)  
 countermeasures (*See* Countermeasures)  
 exhaustion of local remedies requirement,  
 71–72  
 GATT 1947 and  
 generally, 457  
 Agreement on Government  
 Procurement, 460  
 anti-dumping, 458–59  
 Appellate Body and panel  
 recommendations, 513, 514, 515  
 compensation, 460  
 countervailing duties, 459–60  
 inconsistency of practice, 458  
 suspension of concessions, 460  
 ICJ and, 457  
 implementation of reports (*See*  
 Implementation of reports)  
 mutually agreed solutions (*See* Mutually  
 agreed solutions (MAS))  
 panel recommendations  
 generally, 512–13

- anti-dumping, 513–16
  - legal effect of, 517
  - other agreements, 516–17
- PCIJ and, 457
- priorities of, 461
- prohibited subsidy procedures (*See* Prohibited subsidy procedures)
- prospective nature of, 459–60, 462
- purpose of, 461
- retaliation (*See* Suspension of concessions)
- SCM Agreement and
  - generally, 281–82
  - Appellate Body and panel recommendations, 514
  - suspension of concessions, 466
- sequence of, 461
- suspension of concessions (*See* Suspension of concessions)
- TRIPS Agreement, Appellate Body, and panel recommendations, 516–17
- Uruguay Round and, 459–60
- Reports
  - adoption of (*See* Adoption of reports)
  - Appellate Body, 36, 119–25
  - developing countries, panel proceedings, 241
  - DSU, 24–25
  - experts, 319
  - GATT 1947
    - adopted reports, 117–18
    - dispute settlement, 25
    - unadopted reports, 118–19
  - implementation of (*See* Implementation of reports)
  - panel proceedings (*See* Panel proceedings)
  - precedent and
    - adopted GATT reports, 117–18
    - Appellate Body reports, 119–25
    - panel reports, 128–29
    - unadopted GATT reports, 118–19
  - SCM Agreement, panel proceedings, 269, 273
- Res judicata*, 77–79
- Resolution on Assistance to Developing Countries, 131
- Retaliation. *See* Suspension of concessions
- Rio Declaration on Environment and Development, 131
- Rome Convention as source of law, 93
- Rosenne, Shabtai, 118
- RPT. *See* “Reasonable period of time”
- Ruggiero, Renato, 494
- Rules Division, 32, 194, 213
- Rules of interpretation, 103, 131, 262–65, 331, 335
- Safeguards. *See* Agreement on Safeguards
- Sanitary measures. *See* Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)
- Santana, Roy, 14
- SCM Agreement. *See* Agreement on Subsidies and Countervailing Measures (SCM Agreement)
- Secretariat
  - Article 21.5 proceedings and, 501
  - consultations and, 159
  - developing countries and, 30, 250
  - functions of, 56
  - informal papers, 139
  - interpreters, 374
  - Modalities Paper, 139
  - panel proceedings and
    - assistance, 349
    - influence on panelists, 214
    - meetings with parties, 223, 226
    - role in, 176, 212–14
    - selection of panelists, 173, 193–97, 204
    - suspension of proceedings, 228–29
  - SCM Agreement Annex V procedures (serious prejudice) and, 276
  - Trade Policy Review Mechanism, 22
- “Sequencing” problem
  - ad hoc “sequencing” agreements
    - generally, 492, 497
    - Article 21.5 reports accepted, 498, 499
    - Article 22.6 arbitration held “in abeyance,” 497–98, 499
    - multiple Article 21.5 panels, 500–1
  - Agreement on Safeguards and, 502–4
  - Article 21.5 proceedings and
    - generally, 432
    - ad hoc “sequencing” agreements and, 498, 499, 500–1
    - Article 21.5 reports accepted, 498, 499
    - consultations, 437
    - “reasonable period of time,” arbitration of, interplay with, 493–94
    - standing, 434–36
    - suspension of concessions, interplay with, 492–93
  - in *Bananas III* dispute, 494–97
  - DSU generally, 28
  - persistence of, 499–500, 501
  - “reasonable period of time,” arbitration of, 493–94
  - reform proposals, 501
  - suspension of concessions and
    - arbitration of, effect on, 477

- “Sequencing” problem (cont.)  
 Article 21.5 proceedings, interplay with, 492–93  
 nullification and impairment, 495–96
- Servansing, Shree Baboo Chekitan, 399
- Shahabuddeen, Mohamed, 116, 118, 127
- Singapore Ministerial Conference, 102
- Sources of law  
 acts by international organizations, 134  
 ad hoc WTO bodies, decisions of, 102  
 amendments, 98  
 authoritative interpretations, 96–97  
 Berne Convention, 93–94  
 bilateral agreements, 134–36  
 circumstances surrounding WTO agreements, 137  
 covered agreements, 87–89  
 customary international law, 87, 88, 90, 102–4  
 defined, 86–87  
 domestic law, 140  
 general principles of law as (*See* General principles of law)  
 Havana Charter, 92  
 highly qualified publicists, 114–15  
 ICJ, 86–87, 137–38  
 implied powers, 91–92  
 Inter-American Court of Human Rights, 137  
 international agreements not incorporated into WTO agreements, 129 (*See also specific agreement*)  
 international law generally, 89–90  
 international tribunals, 137–38  
 interparty agreements, 134–36  
 other international agreements, 95–96  
 Paris Convention, 93  
 permanent WTO bodies, decisions of, 99–102  
 precedent (*See* Precedent)  
 prior reports (*See* Precedent)  
 Rome Convention, 93  
 SCM Agreement, agreements mentioned in, 94–95  
 SPS Agreement, agreements mentioned in, 95  
 TBT Agreement, agreements mentioned in, 95  
 Tokyo Round agreements, 129–30  
 Treaty on Intellectual Property in Respect of Integrated Circuits, 93  
 TRIPS Agreement, agreements mentioned in, 93–94  
 VCLT, 87, 88, 90, 138–39  
 waivers, 98–99  
 WTO agreements, 96
- Special meaning, 148
- SPS Agreement. *See* Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)
- Standard of review  
 Anti-dumping Agreement and, 258–59, 339  
 national authorities, deference to, 338  
*non ultra petita* and, 335  
 objective assessment of facts, 335–37, 338  
 objective assessment of matter, 334–35  
 rules of interpretation and, 335  
 SPS Agreement and, 338  
 VCLT and, 335
- Standing  
*amicus curiae* and, 73–75  
 Article 21.5 proceedings, 434–36  
 exhaustion of local remedies requirement, 71–72  
 “free riders” and, 72  
 GATT 1994 and, 69–70, 71–72  
 intensity of participation in dispute settlement and, 72–73  
 legal interest requirement, 69–71  
 private parties, participation of, 73–75  
 TRIPS Agreement and, 70
- Stanford University, 33
- Stare decisis*. *See* Precedent
- Subject matter jurisdiction. *See* Jurisdiction *ratione materiae*
- Subsidies  
 actionable subsidy procedures (*See* Actionable subsidy procedures)  
 GATT 1947 dispute settlement, 25  
 non-actionable subsidy procedures, 280  
 arbitration, 294–95  
 prohibited subsidy procedures (*See* Prohibited subsidy procedures)  
 SCM Agreement (*See* Agreement on Subsidies and Countervailing Measures (SCM Agreement))  
 Tokyo Round Subsidies Code, 5
- Sugar Protocol, 133
- Suspension of concessions  
 generally, 458, 461  
 anti-dumping and, 483–84  
 arbitration of  
 generally, 462  
 burden of proof, 478–80  
 business confidential information (BCI), 473, 474  
 consequences of, 477–78  
 COVID-19 pandemic, effect of, 477  
 Director-General, selection of panels, 472, 473  
 DSB and, 472–73  
 evidence, 480–81



- hearings, 474
- IMF and, 481
- jurisdiction of arbitrator, 474–76
- Methodology Paper, 473–74, 479–80
- nullification and impairment and, 475
- organizational meeting, 473
- private sector information in, 480–81
- referral to, 472–73
- selection of arbitrators, 472, 473
- “sequencing” problem, effect of, 477
- time requirements, 476–77
- written questions, 474
- “carousel” suspension, 471
- compensation preferred over, 467
- “cross-retaliation”
  - generally, 484–85
  - Agreement on Government Procurement,
    - “cross-retaliation” precluded, 291, 489
  - debate regarding, 489
  - factors to consider, 485–86
  - GATS and, 486–87, 488–89
  - GATT 1994 and, 486
  - infrequency of, 489
  - intellectual property rights, 487–88
  - sectors involved, 485
  - statement of reasons, 485
  - TRIPS Agreement and, 488–89
- defined, 458
- GATS, “cross-retaliation,” 486–87, 488–89
- GATT 1947 and, 460
- GATT 1994 and
  - “cross-retaliation,” 486
  - requests for authorization, 470
- implementation of reports and, 430
- imposition of tariffs, 462
- nullification and impairment and
  - anti-dumping, 483–84
  - arbitration, 475
  - “carousel” suspension, 471
  - counterfactuals, 481–84
  - determination of level of, 481–84
  - econometric models, use of, 483
  - requests for authorization, 468–69
  - “sequencing” problem, 495–96
  - trade flows, 483
- purpose of, 465–66
- rebalancing versus inducing compliance, 465–66
- requests for authorization
  - generally, 468
  - approval, 471–72
  - calculation methodologies, 468–69
  - identification of products, 469–70
  - nullification and impairment, 468–69
  - requirements, 468–69
- rescission of contract compared, 460
- SCM Agreement and, 466
- “sequencing” problem and
  - arbitration of, effect on, 477
  - Article 21.5 proceedings, interplay with, 492–93
  - nullification and impairment, 495–96
  - temporary nature of, 462, 489–91
  - third parties and, 491–92
- TRIPS Agreement and
  - “cross-retaliation,” 488–89
  - jurisdiction of arbitrator, 475
- Sutherland, Peter, 16, 17
- Tariffs
  - compensation, reduction of tariffs as, 461–62
  - GATT 1947 (*See* General Agreement on Tariffs and Trade (1947) (GATT 1947))
  - GATT 1994 (*See* General Agreement on Tariffs and Trade (1994) (GATT 1994))
  - non-tariff barriers (NTBs), 7–8
  - suspension of concessions, imposition of tariffs as, 462
- TBT Agreement. *See* Agreement on Technical Barriers to Trade (TBT Agreement)
- TCA. *See* Agreement on Trade in Civil Aircraft (TCA)
- Technical barriers to trade. *See* Agreement on Technical Barriers to Trade (TBT Agreement)
- Technical Committee on Customs Valuation, 267–68
- Terms of reference
  - Agreement on Government Procurement, 290
  - Anti-dumping Agreement and, 48–49
  - “as such” claims, 46–47
  - clarification of claims and, 47–48
  - consultations and
    - parallels with, 44–47
    - use of information obtained in, 168
  - Customs Valuation Agreement, 267
  - defenses, precluding, 48
  - judicial economy and, 51–52
  - non ultra petita* and, 49–50
  - obligation to consider all issues, 50–52
  - panel requests incorporated into, 173
  - rationale for, 42
  - SCM Agreement, 273
  - special terms, 44, 190
  - standard terms, 43, 189
  - submission of claims and, 47–49
- Territories, jurisdiction *ratione personae* and, 66

- Textiles Monitoring Body (TMB)  
 generally, 282  
 competence of, 56–57
- Third parties  
 Appellate Body proceedings, 350, 371  
 in Article 21.5 proceedings, 437–38  
 in consultations, 170–71  
 DSU reform and, 28  
 implied powers and, 91–92  
 Notice of Appeal, 371  
 in panel proceedings  
 generally, 203  
 arbitration, 208  
 enhanced rights, 205–8  
 meetings with parties, presence at, 205–7, 223–24  
 multiple complainants and, 207–8  
 notice requirements, 203–5  
 reviews, 208  
 rights of, 205–8  
 written submissions, access to, 205, 206–7
- SCM Agreement, Annex V procedures  
 (serious prejudice), 275, 278–79  
 suspension of concessions and, 491–92
- Time requirements. *See specific topic*
- Tokyo Round  
 Agreement on Government Procurement, 460 (*See also* Agreement on Government Procurement (GPA))  
 agreements as source of law, 129–30  
 dispute settlement after, 8, 12–13  
 “fast-track” procedure and, 7–8  
 incompleteness of, 16  
 Subsidies Code, 5, 458, 459–60  
 Uruguay Round compared, 129–30
- Torquay Round, 10
- Trachtman, Joel P., 89–90
- Trade associations, confidentiality and, 341–42
- Trade Facilitation Agreement, 6, 21–22
- Trade in services. *See* General Agreement on Trade in Services (GATS)
- Trade Policy Review Mechanism, 22
- Translations  
 evidence, 301  
 experts, 320  
 interpretation of law, 151–52
- Transparency, DSU reform and, 28
- Treaties. *See also specific treaty*  
 effective treaty interpretation as general principle of law, 108–10  
 interpretation of (*See* Interpretation of law)  
 negotiation history, 149–51  
 object and purpose of, 141, 142, 145–46  
 preparatory work, 149–51  
 VCLT (*See* Vienna Convention on the Law of Treaties (VCLT))
- Treaty of Versailles, 2
- Treaty on Intellectual Property in Respect of Integrated Circuits  
 as source of law, 93
- TRIMS. *See* Agreement on Trade-Related Investment Measures (TRIMS)
- TRIPS Agreement. *See* Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)
- Understanding on Rules and Procedures Governing the Settlement of Disputes. *See* Dispute Settlement Understanding (DSU)
- Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, 456
- United Kingdom  
 Customs and Excise, 318  
 domestic law in, 318  
 ITO and, 2
- United Nations. *See also specific Convention Charter*, 2  
 Conference on Trade and Employment, 3
- United States  
 on “absent cogent reasons” standard, 122  
 Appellate Body and, 348, 398–401, 519  
 Byrd Amendment, 515  
 Constitution, WTO Agreement compared, 127  
 Copyright Act, 293  
 countervailing duties in, 5  
 crisis in Appellate Body, role in, 348, 398–401, 519  
 criticisms of Appellate Body, 399–401, 519  
 Department of Commerce (USDOC), 301, 322, 384, 421, 442  
 domestic law in, 315, 317–18, 382–83, 384  
 Fishery Conservation and Management Act, 61  
 International Trade Commission, 266  
 International Trade Organization,  
 opposition to, 3–4  
 ITO and, 2, 3–4  
 League of Nations, opposition to, 2  
 measures changed during proceedings,  
 effect of, 59  
 on precedent, 124  
 Section 301 process, 14, 18–19, 24  
 Tariff Act of 1930, 59  
 Trade Act of 1974, 7–8  
 unilateral action by, 18–19

- Uruguay Round  
 generally, 6, 8  
 Anti-dumping Agreement and, 129–30 (*See also* Anti-dumping Agreement (AD))  
 appellate review and, 153  
 context of, 16–18  
 Decision on Notification Procedures, 312  
 dispute settlement  
   DSU and, 18–19, 23  
   improvements in, 15, 16  
   Montreal Rules and, 19–20  
 “negative consensus” and, 153  
 negotiation of, 17–18  
 Punta del Este Declaration, 17  
 remedies and, 459–60  
 time requirements and, 227  
 Tokyo Round compared, 129–30
- van den Dossche, Peter, 398–99
- Vienna Convention on the Law of Treaties (VCLT)  
 Anti-dumping Agreement and, 262–65  
 authoritative interpretations and, 97  
 bilateral agreements and, 136  
 burden of proof and, 331  
 contemporaneity and, 113  
 as customary international law, 141, 149, 150  
 domestic law and, 140  
 error and, 105  
 good faith and, 106  
 ILC Draft Articles and, 134  
 interpretation of law generally, 141–43 (*See also* Interpretation of law)  
*lex specialis* and, 110  
 multilateral agreements and, 133, 134  
 permanent WTO bodies, and decisions of, 100  
 precedent and, 124–25  
 recourse to for interpretation, 138–39  
 as source of law, 87, 88, 90, 138–39  
 standard of review and, 335
- Violation complaints  
 Anti-dumping Agreement, 230  
 GATT 1994, 230  
 panel proceedings, 230
- Volkai, János, 14
- Waivers  
 of consultations, 165–66  
 of dispute settlement, 83  
 as source of law, 98–99
- Walker, David, 401–2, 403
- Walker Process, 401–2, 520
- Washington Consensus, 14–15
- Webster’s Dictionary*, 144
- Weiler, Joseph, 214
- Wells, Sumner, 1
- Wilgress, Dana, 10
- Working Group on the Interaction between Trade and Competition Policies, 102
- World Bank  
 creation of, 1  
 WTO and, 20–21, 96
- World Court. *See* International Court of Justice (ICJ)
- World Customs Organization, 305
- World Health Organization (WHO), 133, 305, 321–22, 377–78
- World Intellectual Property Organization, 305
- World Organization for Animal Health, 96, 250–51, 305
- World Trade Organization (WTO). *See also specific agreement or entity*  
 Advisory Centre on WTO Law (ACWL), 30–31, 250  
 Annexes, 21–22  
 Appellate Body (*See* Appellate Body (AB))  
 Committees, 22, 56 (*See also specific Committee*)  
 consultations (*See* Consultations)  
 Councils, 22, 56 (*See also specific Council*)  
 creation of, 16, 20  
 Director-General (*See* Director-General)  
 documents, 33  
 DSB (*See* Dispute Settlement Body (DSB))  
 DSU (*See* Dispute Settlement Understanding (DSU))  
 Editorial Guide for Panel Submissions, 524  
 GATS (*See* General Agreement on Trade in Services (GATS))  
 GATT 1947, replacing, 2  
 GATT 1994 (*See* General Agreement on Tariffs and Trade (1994) (GATT 1994))  
 General Council  
   generally, 22  
   Agreement on Preshipment Inspection and, 292  
   authoritative interpretations and, 96–97, 116  
   Ministerial Conference and, 99–100  
   rules of procedure, 408  
   WTO agreements and, 96  
 ICJ compared, 66  
 IMF and, 20–21, 95–96  
 index, 33

- World Trade Organization (WTO) (cont.)  
 Language Services and Documentation  
 Division, 235  
 Legal Affairs Division, 194, 212–13, 215,  
 276  
 Marrakesh Agreement (*See* Marrakesh  
 Agreement Establishing the World  
 Trade Organization (WTO  
 Agreement))  
 as Member-driven organization, 116  
 Ministerial Conference, 22, 96–97, 99–100  
 (*See also specific Conference*)  
 Modalities Paper, 139, 151  
 negotiation groups, 22  
 panel proceedings (*See* Panel proceedings)  
 Protocol of Accession, 88–89  
 remedies (*See* Remedies)  
 researching, 33–34  
 Rules Division, 32, 194, 213  
 Secretariat (*See* Secretariat)  
 summary of dispute settlement process,  
 34–38  
 terms of reference (*See* Terms of reference)  
 TRIMS (*See* Agreement on Trade-Related  
 Investment Measures (TRIMS))
- TRIPS Agreement (*See* Agreement on Trade-  
 Related Aspects of Intellectual  
 Property Rights (TRIPS Agreement))  
 webpage, 33  
 Working Group on the Interaction between  
 Trade and Competition Policies, 102  
 World Bank and, 20–21,  
 96  
*The World Trade Review*, 34  
 WTO. *See* World Trade Organization  
 (WTO)  
 WTO Agreement. *See* Marrakesh  
 Agreement Establishing the World  
 Trade Organization (WTO  
 Agreement)  
 Wyndham-White, Eric, 10, 14–15
- Zdouc, Werner, 349  
 Zeroing  
 Anti-dumping Agreement and, 120,  
 265  
 Article 21.5 proceedings, 443  
 panel proceedings and, 242  
 precedent and, 120–24  
 Zhao, Hong, 32, 348, 399