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The United States Needs a Reformed WTO Now

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Hearing on WTO Reform: Making Global Rules Work for Global Challenges

The United States Needs a Reformed WTO Now

The World Trade Organization (WTO) and with it the rules-based trading system is in deep trouble. In December 2020, the United States' blockage of appointments to fill vacancies on the WTO's Appellate Body left it without a quorum to decide any new cases, opening the door to countries avoiding compliance with rulings they do not like or find difficult to implement. Despite multiple calls for swift action, the WTO has not been able to reach an agreement to curb fishery subsidies that are contributing to depleting the world's supply of fish, or to write rules of the road for e-commerce and digital trade. Nor has the WTO been able to adopt new rules to address growing concerns over China's unfair trade practices ranging from intellectual property theft to forcing transfers of technology, or to extensive use of subsidies and State-Owned-Enterprises (SOEs) in an economy increasingly dominated by the Chinese Communist Party. Also left undone are reforms to the operations of the WTO itself.

Many of these problems were slated, perhaps optimistically, for resolution at its bi-annual ministerial meeting that was to have taken place in June 2020 in Kazakhstan but has been indefinitely postponed in the wake of the coronavirus pandemic. On May 14, the Director General of WTO, Roberto Azevêdo, announced he would be leaving his post prematurely at the end August 2020, leaving the WTO with the additional task of quickly selecting a new leader. As one of the candidates to fill DG Azevêdo's shoes, Dr. Ngozi Okonjo-Iwaela, put it, "Many people regard [the WTO] as an ineffective policeman of an outdated rulebook that is unsuited for the challenges of the 21st century global economy."[1]

Yet now is the time when the United States and the world need the WTO more than ever. As the coronavirus wreaks havoc on the economies of virtually every country in the world, placing great strains on supply chains and raising doubts about whether countries can rely on their trading partners when they need them most, the global community must count on the system working as it should. Moreover, when a vaccine or treatment drugs for the coronavirus are developed, the lessons WTO members learned from the failures to efficiently and effectively distribute HIV/AIDS drugs three decades ago will be important reminders of the essential need for cooperation and use of WTO rules to ensure a quick and fair distribution of COVID-19 vaccines and medicines. With all of the uncertainty created by the coronavirus, the stability and predictability of the basic trading rules provided by the WTO are a critical port in the storm.

I. WTO Reform Needs to Restore Balance to the System, Starting with Its Dispute Settlement System

[1] "Reviving the WTO," by Ngozi Okonjo-Iwaela, Project Syndicate; June 22, 2020. https://www.project-syndicate.org/commentary/reviving-the-world-trade-organization-by-ngozi-okonjo-iweala-2020-06?barrier=accesspaylog

At its core, the WTO has three main pillars: 1) a negotiating pillar allowing the WTO to serve as the forum for the creation of new trade rules and trade liberalization accords applicable to its 164 members; 2) an executive function, with the WTO serving as a central clearinghouse for tariff schedules, services commitments, non-tariff measures and subsidy notifications, along with supporting the important work of WTO committees; and 3) a dispute settlement arm designed to resolve disagreements over whether countries have lived up to their trade commitments. The collective work of the three has allowed the WTO to deliver on its promises of creating a rules-based global trading system with broadly declining barriers to trade in goods and services, while its dispute settlement system has held members accountable to follow those rules. This system has contributed immensely to global economic growth over the last seven decades, improving living standards for billions of people. The eight rounds of trade negotiations since the WTO's precursor, the General Agreement on Tariffs and Trade (GATT) came into being have helped increase global trade more than 40-fold, from $58 billion in 1948 to more than $20 trillion today. Moreover, rules-based global trade has helped underpin peace and security, because trading partners are more likely to resolve differences through negotiations than through armed conflict.

But the system is now badly out of balance, as the negotiating process has broken down, unable to reach any major agreements other than the Trade Facilitation Agreement since the WTO was created in 1995. The executive function has been hampered by the failure of many countries to provide timely notifications of their measures and by its limited power in WTO's member-driven system. The dispute settlement system, until its Appellate Body was upended in December 2020, was perceived to be very strong—with nearly 600 requests for consultations to resolve differences filed to date and countries throughout the world choosing to resolve their disputes at the WTO rather than through free-trade agreement or bilateral dispute settlement mechanisms. But that strength has contributed to the lack of balance in the system, with USTR's Ambassador Lighthizer noting "the WTO is losing its essential focus on negotiation and becoming a litigation-centered organization. Too often members seem to believe they can gain concessions through lawsuits that they could never get at the negotiating table."[2]

The need and the desire for WTO reform is now well documented.[3] But I believe the reform of the WTO needs to start with getting its dispute settlement system back on track. Why? Because the absence of a binding dispute settlement system means: a) countries will be less willing to make new commitments, including commitments to reform other aspects of the WTO, if they do not believe there is a functioning dispute settlement system holding countries to those commitments, b) countries take their existing obligations less seriously if there is no serious mechanism for enforcing

[2] https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/opening-plenary-statement-ustr

[3] "We reaffirm our support for the necessary reform of the World Trade Organization (WTO) to improve its functions." G-20 Leaders Declaration, G-20 Summit, Osaka Japan, June 29, 2019; H. Res. 746, a Resolution to Support and Reform the World Trade Organization (WTO); S. Res. 651 (Portman-Cardin) Sense of Senate finding value and usefulness in WTO, but noting significant reforms at the WTO are needed.

them, c) the United States and like-minded members of the WTO lose considerable leverage over China given the need for a multilateral approach to achieve structural and systemic changes in China, d) protectionism will continue to grow without a strong system to hold it in check, e) the growing riff with the European Union over digital-trade related issues such as data privacy, digital services taxes, cross-border data flows, and competition/antitrust disciplines on large high-tech companies will be harder to resolve, and f) a negative impression of the functionality of WTO prevails, creating a drag on momentum for a broader reform agenda.

II. The United States Has Gained Far More Than It Has Lost from the WTO and its Dispute Settlement System

When the WTO was created in 1995, a top goal for the United States was a binding dispute settlement system to replace the previous GATT process, which could be easily circumvented, thereby allowing countries to dodge their trade commitments. What was created in its stead was a two-stage process to determine whether a country has violated the rules or otherwise undermined the bargain between countries. At the first stage, an ad-hoc panel assesses the facts and applicable WTO rules to determine whether a violation has occurred. The parties can then request that the panel's determination be reviewed by the Appellate Body, which has the power to either uphold or overturn the decision. The Appellate Body is composed of seven people, with a minimum of three required to rule on an appeal. Each member serves a four-year term and can be reappointed once. The members serve on a part-time basis and are aided in their work by an increasingly powerful staff of full-time lawyers in its Secretariat.

The United States was the strongest proponent of creating an Appellate Body. Since the WTO rules provide for a nearly automatic adoption of panel reports, the United States sought a process to overturn any erroneous panel decisions before they became binding obligations. While appeals were expected to be rare and limited to narrow questions of law, access to the Appellate Body was considered essential both to ensure that countries could challenge decisions by ad hoc panels that they believed were wrongly made and to bring a measure of consistency across disputes over similar legal texts.

The WTO dispute settlement system succeeded initially. An increasing number of WTO members used it. Compliance with its decisions, while not perfect, was considered good. For its part, the United States filed more complaints than any other country, prevailing in 91 percent of these cases. However, the expectations that appeals would be rare and narrow proved to be wrong. Nearly 70 percent of panel reports have been appealed and the average appeal can raise a dozen or more claims, many of them going far beyond narrow legal questions.

More than a decade ago, the U.S. began raising concerns that extended far beyond dashed expectations to cover a range a both procedural and substantive concerns. In February 2020, the Trump administration released a report cataloguing them in significant detail. But there are two

major flaws with that report. First, it ignores the more than 100 hundred cases the United States won, providing greater market access for American exporters. Second, it provides no ideas or plan to fix the problems it carefully spells out.[4]

The U.S. wins from the WTO dispute settlement system have been considerable and must be kept in mind when assessing the United States' decision to strike down the Appellate Body. These victories for U.S. exporters are set forth in Annex A to this statement and include:

- In 1999, the United States challenged certain Indian restrictions on imports of auto parts. The panel determined, among other things, that India's measures illegally created a disincentive to import certain auto parts in favor of Indian products. U.S. exports of auto parts to India when the case was filed were $840,000; their 2019 total is $21.9 million. (DS175)
- In 2002, the United States challenged two restrictions on the sale and transport of wheat in Canada. A WTO panel found that Canada's laws gave an unfair advantage to Canadian versus American wheat. In 2005, Canada amended its rules to comply with the WTO ruling. U.S. exports of grain and wheat to Canada rose from $3.57 million when the case was filed to $41.5 million in 2019. (DS 276)
- In 2003, the United States challenged Mexico's decision to impose anti-dumping duties on U.S. long-grain rice and beef. The panel found that Mexico's anti-dumping measures violated the requirements of the WTO's Agreement on Anti-Dumping. U.S. exports at the time the case was filed were $13 million (long-grain rice) and $581 million (beef). After compliance with the ruling, U.S. exports rose in 2019 to $36.3 million (long-grain rice) and $744 million (beef). (DS 295)
- In 2006, the United States successfully challenged China's tariffs on U.S. auto parts, contending that China's 25% tariffs on finished autos was being illegally applied to auto parts, for which China's tariff was 10%. U.S. exports of auto parts to China when the case was filed totaled $532 million; in 2019 they had risen to $1.52 billion. (DS 342)
- In 2007, the United States challenged India's imposition of additional duties on, among other items, wine and distilled spirits. The Appellate Body found that the additional duties were in excess of India's commitments and must be removed. U.S exports of wine and distilled spirits to India were $2.5 million in 2007; in 2019, they had risen to $7.5 million. (DS 360)
- In 2010, the United States challenged Philippine taxes on distilled spirits, which were found to discriminate against imported spirits. U.S. exports were $16.3 million in 2010 but have risen in 2019 to $108.2 million. (DS 403)
- In 2016, the United States challenged China's administration of tariff-rate quotas (TRQs) on wheat, rice, and corn. The Panel ruled that China's TRQs did not meet the WTO requirements of transparency, predictability and fairness and that China's practice inhibited the TRQs from being fully utilized. While it is too early to know the exact trade effects of the

[4] United States Trade Representative, "Report on the Appellate Body of the World Trade Organization." February 2020, https://geneva.usmission.gov/wp-content/uploads/sites/290/AB-Report_02.11.20.pdf

ruling. USDA estimates that if China's TRQs had been fully used, it would have imported as much as $3.5 billion in corn, wheat and rice in 2015 alone. (DS 517)

III. The United States Should Seek to Reform Rather than Destroy the Appellate Body

Ever since May 2017 when the United States began blocking any process to appoint new members to the Appellate Body, our trading partners have been asking the question: is the U.S. goal to reform the Appellate Body or to destroy it? With his testimony to the Ways and Means Committee on June 17, Ambassador Lighthizer gave the answer: for the Trump Administration, the goal is to kill the Appellate Body.[5] I do not believe that decision is in the United States' interest or that it is a decision that should be left entirely to the U.S. Trade Representative to make, particularly given the clear expressions of support for a reformed Appellate Body from members of Congress.[6]

First, I believe that the United States won more than it lost from having a binding dispute settlement system and that the concerns that the United States has with the Appellate Body can be fixed. This view is shared by a wide variety of those in the business and agriculture communities in the United States and by our trading partners. Attached as Annex B to this testimony are letters and statements from some of those constituencies expressing support for a reformed Appellate Body.

Second, failure to come forward with any plan to fix the system risks squandering the leverage created by paralyzing the Appellate Body. The United States has now garnered the attention of the world. An entire process, led by New Zealand's Ambassador and Permanent Representative to the WTO, David Walker, was created at the WTO to address U.S. concerns. Numerous outside groups, including, for example, the Ottawa Group, led by Canada and made up of 12 other WTO members, such as the EU, Australia, Brazil, Japan, Mexico, Korea and others, have met regularly to devise Appellate Body reforms. So far, the United States has not been willing to indicate what reforms, if any, would be acceptable and Ambassador Lighthizer's recent testimony suggests that none would be. American refusal to engage in the process risks branding the United States' concerns as illegitimate and an attempt to destroy not just the Appellate Body, but the WTO itself. Moreover, perceived United States intransigence on Appellate Body reform makes it less likely that its proposals in others areas, including its plan to create specific criteria for countries to qualify as "developing" in order to be eligible for special and differential treatment[7] or its proposal to put teeth

[5] Inside U.S. Trade, June 17, 2020. USTR: If WTO Appellate Body never comes back, "that would be fine," Ambassador Lighthizer: "I don't feel any compulsion to have [the Appellate Body] every come back into effect." See also, https://waysandmeans.house.gov/legislation/hearings/2020-trade-policy-agenda, AB remarks at 2:28:40-2:30:40.

[6] H. Res. 746, Resolution to Support and Reform the World Trade Organization (WTO); S. Res. 651 (Portman-Cardin) Sense of Senate.

[7] WT/GC/W.764/Rev.1, November 25, 2019.

into the reporting requirements for subsidies and other notifications[8], will receive the attention they deserve given the lack of trust created by the U.S. approach to the Appellate Body.

Third, destroying the Appellate Body presumes that the United States will fare better in a system based on power and a willingness to retaliate rather than a rules-based system. For me, this is a dangerous road to travel. It is premised on a belief that the United States will always come out ahead because it can impose unilateral tariffs on countries that do not comply with adverse rulings but presumes other countries will not do the same to the United States. Yet we have seen a wide range of countries retaliate against the United States' unilateral tariffs on steel and aluminum, while China has not hesitated to apply tit-for-tat tariffs to American exports in response to our Section 301 duties. Most recently, China has taken a page from the American book in applying a non-market economy methodology for calculating anti-dumping duties to U.S. exports of n-propanol in light of what China claims are substantial subsidies to U.S. oil, gas and coal industries and overall non-market conditions in the U.S. energy and petrochemical sectors.[9] If the United States blocks the adoption of panel reports that it does not wish to comply with, other countries are likely to do the same when it is the United States that has prevailed.[10]

Finally, failure to engage in the debate to reform the Appellate Body cedes American leadership to others. Already, the rest of the world is moving ahead without the United States in the area of dispute settlement. Twenty-two countries, led by the European Union, have agreed to use an arbitration process for conducting appeals.[11] This Multi-Party Interim Appeal Arbitration Arrangement (MPIA) is based on the premise that "a functioning dispute settlement system of the WTO is of the utmost importance for a rules-based trade system" and that "an independent and impartial appeal stage must continue to be one of its essential features.[12]" It is quite likely that from the MPIA will emerge new approaches to handling appeals, but the United States will not have been a part of that process and will have no ability to shape its direction. In other areas of WTO reform, the perception that the United States is not genuinely interested in finding solutions and that it may well treat other issues as it has treated the Appellate Body—ultimately taking the view that there is no reform that would be satisfactory—will allow other WTO members, including China, to seek the leadership spot historically occupied by the United States. A loss of perceived leadership could be damaging to U.S. efforts to reach an agreement on new rules for e-commerce or new disciplines on fishery subsidies or

[8] JOB/GC/204/Rev.2, June 27 2019.
[9] https://ielp.worldtradelaw.net/2020/07/the-us-is-now-a-non-market-economy-anti-dumping-ruling-by-china.html
[10] Already, the United States has blocked the adoption of a panel report (DS436, *US-Carbon Steel India*) by filing a notice of appeal. Under the WTO's Understanding on Dispute Settlement, no action can be taken with respect to an appeal that it pending. (DSU Article 16.4). In the absence of a quorum of Appellate Body members, an appeal will pend indefinitely. The U.S. has also indicated that it would not comply with another decision (DS505 *US-Supercalendered Paper)* because it was issued by Appellate Body members whose terms had expired before the completion of the report.
[11] The 22 countries are Australia, Benin, Brazil, Canada, China, Chile, Colombia, Costa Rica, Ecuador, the European Union, Guatemala, Hong Kong, Iceland, Mexico, Nicaragua, New Zealand, Norway, Pakistan, Singapore, Switzerland, Ukraine, and Uruguay.
[12] https://trade.ec.europa.eu/doclib/docs/2020/april/tradoc_158731.pdf

a new set of rules to address the disruption caused by China's increasingly Communist Party dominated, non-market economy.

IV. A Fix for the Appellate Body is Achievable If We Act Now

The unwillingness of the United States to engage in negotiations to fix the Appellate Body frustrates many because the problems raised are ones that can be addressed. A solution that improves the efficiency of the Appellate Body and responds to U.S. concerns involves adopting a specific set of operating principles, establishing a new oversight committee to ensure adherence to those principles, and placing term limits on the legal staff to bring in fresh thinking and a better distribution of power between adjudicators and staff.

Adopt an amended version of the Walker principles. New Zealand's Ambassador and Permanent Representative to the WTO David Walker was appointed in February 2019 to "seek workable and agreeable solutions to improve the functioning of the Appellate Body." On November 28, 2019, he set forth specific principles designed to address U.S. concerns[13]. The principles require the Appellate Body to make its decisions in ninety days and for Appellate Body members to leave promptly at the end of a second term of office, to treat facts as facts (not subject to appeal), to respect the more deferential standard of review for antidumping investigations, to address only issues raised by parties and only to the extent necessary to resolving the dispute at hand so that its opinions are not advisory, to take previous Appellate Body or panel reports into account only to the extent they are relevant and not as precedent, and to ensure that its rulings do not add to the obligations or take away any rights of the parties as contained in the WTO rules. Collectively, the Walker principles are designed to make the Appellate Body more efficient by shortening its time frames and its reports while doing what the United States has demanded—return to the rules as written in 1995. Unreserved adoption of the principles by WTO members would demonstrate widespread member agreement that the Appellate Body has a limited mandate to resolve only legal questions raised on appeal in strict accordance with WTO rules.

If the specific provisions of the Walker Principles do not go far enough for the United States, then stricter versions of them can and should be negotiated. Two recent papers commissioned by the National Foreign Trade Council (NFTC), for example, suggest specific ways to enhance the Walker principles.[14]

Establish an oversight committee and audit to ensure compliance. To build trust that the Appellate Body will adhere to the Walker principles, the WTO should convene an oversight committee at least once

[13] https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=257689,255861,253985,253661,253388,251873&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False

[14] https://www.nftc.org/newsflash/newsflash.asp?Mode=View&articleid=4219&Category=All, https://www.nftc.org/newsflash/newsflash.asp?Mode=View&articleid=4228&Category=All

a year and when requested. The oversight committee could be made up of the chairs of the lead WTO committees—its General Council, Council for Trade in Goods, Council for Trade in Services, Council for Trade-Related Aspects of Intellectual Property Rights, and the Dispute Settlement Body, with the chair of the Dispute Settlement Body appointing four additional independent trade-law experts to the committee to ensure a proper representation of expertise. The committee's sole task should be to assess whether the Appellate Body has adhered to the Walker principles, either over the course of a given year or, when asked, in an individual case. In part, this oversight committee would help address the primary query raised by the United States when the Walker principles were presented: why should we believe the Appellate Body will adhere to them when it did not adhere to the language of the Dispute Settlement Understanding (DSU)? It will be the oversight committee's job to ensure that the Walker principles are followed and that the Appellate Body is called out quickly should it go astray.

Limit the service of members of the Appellate Body Secretariat to no longer than eight years—the maximum length of time of an Appellate Body member. The root cause of many U.S. concerns rests not just with the Appellate Body members themselves, but with its Secretariat—particularly the lawyers who work for the Appellate Body as a whole. Over time, the Secretariat has gained experience and expertise that often is greater than that of the Appellate Body members, who serve on a part-time basis for a maximum of eight years. Secretariat lawyers, on the other hand, devote all of their time over many years to working on appeals and are steeped in (and potentially wedded to) past decisions. Adopting a mobility principle would allow staff rotations throughout other WTO offices, bring new perspectives to appeals, reduce the tendency to treat past decisions as precedent, and help restore an appropriate balance of power between the Appellate Body members and the Secretariat staff. It would also send a strong signal of an end to business as usual. If mobility alone were not sufficient, others have suggested that each Appellate Body member could be appointed a clerk that would ensure that Appellate Body reports reflect their specific views and not necessarily the views of the Secretariat as a whole or its leadership.[15]

These reforms would make the Appellate Body more efficient while addressing U.S. concerns. For the United States, it is critical that the Appellate Body respect the current language of the WTO's Dispute Settlement Understanding. The Walker principles require just that. But the United States needs assurance that the mindset of the Appellate Body has been changed and that, this time around, the rules will be respected. The creation of an oversight process ensures that the Appellate Body will be judged on its consistency with the Walker principles, while injecting an additional measure of political oversight over the functioning of the Appellate Body. Staff rotation brings fresh thinking along with a renewed focus on completing appeals in accordance with the needs of WTO members.

[15] See, for example, the NFTC'paper, "Resolving the Appellate Body Crisis: Proposals on Precedent, Appellate Body Secretariat and the Role of Adjudicators," June 5, 2020, https://www.nftc.org/newsflash/newsflash.asp?Mode=View&id=236&articleid=4228&category=All.

V. Appellate Body Reform As Momentum for Overall Reforms of WTO

While the United States has refused to negotiate amendments to the Appellate Body, it has been leading the charge on two other institutional reforms: 1) the ability of countries to self-declare themselves to be "developing countries" eligible for the WTO's "special and differential treatment[16], and 2) the lack of timely compliance with requirements to notify the WTO of changes in trading regimes or levels of subsidies. In addition, the United States has been among those pushing hard to complete pending negotiations to curb fishery subsidies and create new rules on e-commerce. All will be difficult to bring to a final conclusion if the United States is not trusted as being genuinely interested in reform and if other WTO members remain skeptical of the value of reaching new agreements if those deals cannot be enforced because the Appellate Body has been paralyzed.

The surest way for the United States to achieve its various goals is to work to reform the Appellate Body first—both as a sign of good faith and because a reformed Appellate Body is in the United States' interest. An improved but functioning Appellate Body could also form the core of a broader package of WTO reforms. For example, the United States could agree to unblock the appointments to a reformed Appellate Body while the rest of the WTO members accept clear criteria defining which countries can be considered "developing" for purposes of the WTO's special treatment. A deal along these lines give everyone something they want. The United States gets both reforms to the Appellate Body and a guarantee that countries that are large enough or rich enough to be in the OECD or the G20 cannot claim special privileges as developing countries while the rest of the world gets a functioning but improved binding dispute settlement system that leaves in place special privileges for those countries that really need it. But such a process is unlikely to start unless and until the United States indicates which of the many ideas for reforming the Appellate Body could form the basis for a bargain.

VI. Conclusion

Given the global economic pain from the coronavirus pandemic and the likely emergence of a post-pandemic wave of protectionism, the world needs a strong and effective WTO more than ever. Successfully confronting a rising China with its state-run economy also requires a fully functioning WTO. The best way to achieve that is to start by fixing the dispute settlement system which underpins the rules-based trading system. Doing so will require U.S. leadership that moves beyond simply tearing the Appellate Body down. Now is the time to rebuild it. A revitalized dispute settlement system can then serve as a catalyst to broader reforms of the WTO itself.

[16] WT/GC/W/757/Rev.1, December 9 2019

Annex A

WTO Dispute Settlement Cases in which the United States Succeeded in Demonstrating Violations of WTO Obligations by Trading Partners[1]

Case	Title	Date Requested	Summary	Effects
Japan DS 8 (with EU[2] and Canada DS 8, 10 and 11)	Taxes on Alcoholic Beverages	7/71995	The complainants claimed that spirits exported to Japan were discriminated against under the Japanese Liquor Tax Law which created a system of internal taxes with a substantially lower tax on "shochu" than on whisky, cognac and white spirits. The Panel and the Appellate Body concluded that the Japanese Liquor Tax Law is inconsistent with the GATT, by taxing vodka in excess of shochu and by taxing different liquors at different rates to as to afford protection to domestic production.	Japan eliminated discriminatory taxes and all tariffs on distilled spirits. U.S. distilled spirits exports to Japan were $138 million in 2019.
EU DS 26	Measures Concerning Meat and Meat Products (Hormones)	1/26/1996	The U.S. claimed that measures taken by the EU restricting or prohibiting imports of meat and meat products from the U.S. because they were produced using hormones are inconsistent with the SPS Agreement. The Panel found that the EC ban on imports of meat and meat products from cattle treated with any of six specific hormones for growth promotion purposes was inconsistent SPS Agreement. The Appellate Body upheld the Panel's finding that the EU import prohibition was inconsistent with Article 5.1 of the SPS Agreement's requirement that measures be based on a risk assessment, which the EU had not done.	Settlement reached in 2009 for quota of 45,000 tons of non-hormone treated beef exports to the EU; agreement updated in 2019 to ensure U.S. access to 35,000 of the 45,000 tons, estimated at $420 million in U.S. beef exports.
Canada DS 31	Certain Measures Concerning Periodicals	3/11/1996	The U.S. challenged Canadian restrictions on imports of certain periodicals, which prohibited "special editions," and imposed a tax equal to 80 percent of the value of all the advertisements contained in the split-run edition, along with different postal rates for domestic versus foreign periodicals. The Appellate Body found the quantitative restrictions, tax, and postal rates to be in violation of Canada's commitments under the GATT and its taxes favorable postal rates to be discriminatory.	
India DS 50	Patent Protection for Pharmaceutical and Agricultural Chemicals	7/2/1996	The U.S. challenged India's lack of patent protection for pharmaceutical and agricultural chemical products in India. The Panel, as confirmed by the Appellate Body, found that India has not complied with its obligations under the TRIPS Agreement by failing to establish a mechanism that adequately preserves novelty and priority in respect of applications for product patents	

[1] While this list is intended to be comprehensive, it is possible that cases have been inadvertently left off of this list. The list does not include cases that were resolved through a mutually agreed upon settlement or means other than a dispute before a WTO panel.

[2] Throughout this document, the European Union (EU) and the European Communities (EC) shall be designated as "EU" even though the EC did not formally become the EU until the adoption of the Maastricht Treaty in 1992.

			for pharmaceutical and agricultural chemical inventions, and by failing to establish a system for the grant of exclusive marketing rights.	
Argentina DS 56	Measures Affecting Imports of Footwear, Textiles, Apparel and other times	10/4/1996	The U.S. challenged Argentina's imposition of minimum specific import duties on textiles and apparel, which were subject to either a 35 percent ad valorem duty or a minimum specific duty (whichever was higher) and other measures by Argentina. The Panel found that the minimum specific duties imposed by Argentina on textiles and apparel were in excess of those provided for in Argentina's tariff schedule. At the DSB meeting on 22 June 1998, Argentina announced that it had reached an agreement with the U.S., whereby Argentina would reduce the statistical tax to 0.5% by 1 January 1999, and cap specific duties on textiles and apparel at 35% by 19 October 1998.	
Indonesia DS 59 (with EU DS 54 and Japan DS 55)	Certain Measures Affecting the Automobile Industry	10/8/1996	The U.S. joined the EU and Japan in contesting Indonesia's National Car Program. The claim was that Indonesia's exemption for "national vehicles" and components thereof from customs duties and luxury taxes was discriminatory and violated the WTO's investment and subsidy rules. The Panel found that Indonesia was discriminating against imports in violation of Articles I and II:2 of GATT 1994, along with related violations of the WTO's TRIMs Agreement and the SCM Agreement	
Japan DS 76	Measures Affecting Agricultural Products-II	4/7/1997	The U.S. challenged Japan's quarantine measures applied to imports of certain agricultural products because Japan required that every variety of product be separately tested and subject to quarantine even if the treatment has proved to be effective for other varieties of the same product. The Panel and the Appellate Body found that Japan's varietal testing of apples, cherries, nectarines and walnuts is inconsistent with the requirements of the SPS Agreement.	
Korea DS 84 (with the EU DS 75)	Taxes on Alcoholic Beverages	5/23/1997	Korea internal taxes on certain alcoholic beverages were challenged as violating Korea's national treatment obligations (GATT Article III:2) because the taxes imposed on like imported alcoholic beverages were higher than domestically produced ones. The Panel found that Korea has taxed the imported products in a dissimilar manner, that the tax differential was more than de minimis, and is applied so as to afford protection to domestic production, in violation of Korea's GATT obligations.	U.S. distilled exports to Korea have grown to over $13 million in 2019. The U.S. is Korea's third largest source of imported distilled spirits.
India DS 90	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products	7/15/1997	U.S. claimed that quantitative restrictions (QRs) on imports of a large number of agricultural, textile and industrial products and the way in which the QRs were administered by India violated India's obligations under the of GATT 1994, the Agreement on Agriculture, and the Agreement on Import Licensing Procedures. The Panel agreed with the U.S. finding the measures to be inconsistent with India's obligations under Articles XI and XVIII11 of GATT	

			1994, and for agriculture products, inconsistent with Article 4.2 of the Agreement on Agriculture.	
Canada DS103	Measures Affecting the Importation of Milk and the Exportation of Dairy Products	10/8/1997	The U.S. challenged Canada's export subsidies for dairy products and the administration by Canada of the tariff-rate quota on milk, claiming the measures distort markets for dairy products and adversely affect U.S. sales of dairy products. The Appellate Body upheld one of the Panel's narrow findings: that Canada's value limitation set at Can $20 for each importation was inconsistent with the GATT schedule of concessions, as there was no mention of such value limitation in Canada's schedule.	Export Value of Milk to Canada; HS0401, HS0402; 1998 total: $1.6 million; 2019 total: $42.5 million
Australia DS126	Subsidies Provided to Producers and Exporters of Automotive Leather	5/4/1998	The U.S. challenged Australia's provision of prohibited export subsidies to Australian producers and exporters of automotive leather, including subsidies provided to Howe and Company Proprietary Ltd. (or any of its affiliated and/or parent companies), which allegedly involve preferential government loans of about $A25 million and non-commercial terms and grants of about $A30 million. The Panel found that some, but not all, of the subsides were prohibited subsidies on the grounds that the payments were "tied to" export performance.	
Mexico DS132	Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States	5/8/1998	The U.S. claimed that Mexico's anti-dumping duties on high-fructose corn syrup (HFCS) grades 42 and 55 were imposed without conducting a proper investigation. The U.S. contended that the manner in which the application for an anti-dumping investigation was made (regarding retroactivity, explanation of determination, and provisional measures), as well as the manner in which a determination of threat of injury was made, were inconsistent with various articles of the Anti-Dumping Agreement. The Panel and the Appellate Body agreed with a number of the U.S. complaints.	Export Value of HFCS to Mexico; HS170260, HS170250; 1998 total: $58.2 million; 2019 total: $422.9 million
Korea DS161	Measures Affecting Imports of Fresh, Chilled and Frozen Beef	2/1/1999	The U.S. challenged a Korean regulatory scheme that discriminates against imported beef by, among other things, confining sales of imported beef to specialized stores (dual retail system), limiting the manner of its display, and otherwise constraining the opportunities for the sale of imported beef. The Panel and the Appellate Body, found that Korea's dual retail scheme discriminated against imported beef and that sales opportunities were denied.	Export Value of Beef to Korea; HS201, HS202; 1999 total: $330.5 million; 2019 total: $1.77 billion
Canada DS170	Term of Patent Protection	5/6/1999	The U.S. challenged Canada's failure to provide a patent term of no less than 20 years from the filing date for the patent for all future and certain pre-exiting patents, as required by the TRIPS Agreement.	On 12 July 2001, Bill S-17 came into force which brought Canada's Patent Act into conformity with its obligations under the TRIPS Agreement.
European Union	Protection of Trademarks	6/1/1999	The U.S. challenged the EU's lack of protection of trademarks and geographical indications (GIs) for agricultural products and foodstuffs,	

DS174 (with Australia	and Geographical Indications for Agricultural Products and Foodstuffs		claiming that EC Regulation 2081/92 does not provide national treatment with respect to geographical indications and does not provide sufficient protection to pre-existing trademarks that are similar or identical to a geographical indication. The Panel agreed with the U.S. that the EU's GI Regulation does not provide national treatment and that the TRIPS Agreement does not allow unqualified coexistence of GIs with prior trademarks.	
India DS175	Measures Affecting Trade and Investment in the Motor Vehicle Sector	6/2/1999	The U.S. contested certain Indian measures requiring manufacturing firms in the motor vehicle sector to achieve specific levels of local content, neutralize foreign exchange, and limit imports based on the previous year's exports. The Panel determined that India had acted inconsistently with the indigenization requirement, had limited imports in relation to an export commitment, and created a measure to disincentivize purchases of imported products and discriminated against imported products.	Export Value of Included Autos and Auto Parts to India; HS8703, HS8706, HS8707; 1999 total: $840,000; 2019 total: $21,850,000
Mexico DS204	Measures Affecting Telecommunications Services	8/17/2000	The U.S. challenged Mexico's adoption or maintenance of anti-competitive and discriminatory regulatory measures, its toleration of certain privately-established market access barriers, and its failure to take needed regulatory action in the basic and value-added telecommunications sectors. The Panel ruled that Mexico had violated its GATS commitments	
Japan DS245	Measures Affecting the Importation of Apples	3/1/2002	The U.S. challenged Japan's restrictions on imports of apples which Japan claimed were necessary to protect against the introduction of fire blight. The Appellate Body upheld the Panel's finding that Japan's phytosanitary measure imposed on imports of apples from the U.S. was maintained "without sufficient scientific evidence," and that the Pest Risk Assessment conducted by Japan failed to evaluate the likelihood of entry, establishment, or spread of fire blight specifically through apple fruit.	Export Value of Apples to Japan; HS080810; 2002 total: $101,000; 2019 total: $792,000
Canada DS276	Measures Relating to Exports of Wheat and Treatment of Imported Grain	12/17/2002	The U.S. challenged actions by the Canadian Wheat Board and the treatment accorded to grain imported into Canada, claiming Canada and the Canadian Wheat Board (entity enjoying exclusive rights to purchase and sell Western Canadian wheat for human consumption) gave unfair treatment to domestically produced grain by restricting the mixing of imported and domestic wheat and by capping the maximum revenues that railroads can receive on the shipment of imported grain. In 2005, Canada amended its laws and regulations to bring Canada into compliance with the ruling.	Export Value of Grain and Wheat to Canada; HS1001, HS1007; 2002 total: $3.57 million; 2019 total: $41.48 million
European Union DS291	Measures Affecting the Approval and Marketing of Biotech Products	5/13/2003	The U.S. challenged the EU's 1998 moratorium on the approval of biotech products because it restricted imports of agricultural and food products from the U.S. The Panel found that, by applying the moratorium, the European Communities had acted inconsistently with its obligations under the SPS Agreement because the de facto moratorium led to undue delays in the completion of EC approval procedures.	

Mexico DS295	Definitive Anti-Dumping Measures on Beef and Rice	6/16/2003	The U.S. contested Mexico's definitive anti-dumping measures on beef and long grain white rice as well as certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil Procedure. The Panel upheld all of the U.S. claims concerning both the injury and the dumping margin determination of the Mexican investigating authority in the rice investigation, applying judicial economy with respect to some other related claims.	Export Value of U.S. Long Grain White Rice to Mexico; HS100630; 2003 total: $13.8 million; 2019 total: $36.3 million Export Value of U.S. Beef to Mexico; HS0201; 2003 total: $581.7 million; 2019 total: $743.7 million
Mexico DS308	Tax Measures on Soft Drinks and Other Beverages	3/16/2004	The U.S. challenged Mexican taxes on soft drinks and other beverages that use any sweetener other than cane sugar. The tax measures concerned included: (i) a 20 percent tax on soft drinks and other beverages that use any sweetener other than cane sugar ("beverage tax"), which is not applied to beverages that use cane sugar; and (ii) a 20 percent tax on the commissioning, mediation, agency, representation, brokerage, consignment and distribution of soft drinks and other beverages that use any sweetener other than cane sugar ("distribution tax"). The Appellate Body the taxes were levied in excess of taxes levied against like domestic products, were applied in a dissimilar manner to provide protections to domestic production, and gave imported like product less favorable treatment.	Export Value of Soft Drinks to Mexico; HS220210; 2004 total: $9.9 million; 2019 total: $15.7 million
European Union DS315	Selected Customs Matters	9/21/2004	The U.S. challenged the EU's convoluted administration of laws and regulations (25 different agencies due to one for each EU member state) pertaining to the classification and valuation of products for customs purposes and its failure to institute tribunals or procedures for the prompt review and correction of administrative action on customs matters. The US claimed the EU's process is a violation of its obligation to administer its customs laws in a uniform manner. The Panel and the Appellate Body found certain specific violations but did not rule on the EU system as a whole.	
European Union DS316	Measures Affecting Trade in Large Civil Aircraft	10/6/2004	The United States challenged a series of subsidies provided by the EU and four of its member states in support of Airbus as violations of the SCM Agreement. 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 Appellate Body upheld the Panel's finding that certain subsidies provided by the European Union and certain Member state governments to Airbus are incompatible with Article 5(c) of the SCM Agreement because they have caused serious prejudice to the interests of the U.S. On 2 October 2019, the U.S. requested authorization from the DSB to take countermeasures with respect to the	"In 2018, the U.S. requested authority to impose countermeasures commensurate with the adverse effects that the EU subsidies continued to cause and a WTO arbitrator found that the annual adverse effects to the United States amounted to $7.5 billion per year." **USTR Report**

			European Union and certain member States (Germany, France, Spain, and the United Kingdom) at a level not exceeding, in total, U.S. $7,496.623 million annually.	
Turkey DS334	Measures Affecting the Importation of Rice	11/2/2005	The U.S. challenged Turkey's import restrictions on rice, contending that Turkey requires an import license to import rice but fails to grant such licenses at Turkey's bound rate of duty. The Panel found that Turkey's action constitutes a quantitative import restriction and a practice of discretionary import licensing which is inconsistent with the Agreement on Agriculture. The Panel also concluded that Turkey's requirement that importers must purchase domestic rice in order to be allowed to import rice at reduced-tariff levels under the tariff quotas discriminated against imported rice.	Export Value of Rice to Turkey; HS1006; 2005 total: $38.8 million; 2019 total: $2.7 million
China DS342 (with the EU and Canada)	Measures Affecting Imports of Automobile Parts	3/30/2006	The U.S. challenged China's imposition of a 25 percent "charge" on imported auto parts "characterized as complete motor vehicles." If the number or value of imported parts in the assembled vehicle exceeded specified thresholds, the regulations assess each of the imported parts a charge equal to the tariff on complete automobiles (typically 28%) rather than the tariff applicable to auto parts (typically 10-14%). The Appellate Body upheld the Panel's findings that the measures were in violation of China's obligations under the GATT because they imposed an internal charge on imported auto parts that was not imposed on like domestic auto parts and because they accorded imported parts less favorable treatment than like domestic auto parts by, inter alia, subjecting only imported parts to additional administrative procedures.	Export Value of U.S. Auto Parts to China; HS8708; 2006 total: $532 million; 2019 total: $1.52 billion "The value of subsidies made available to auto and auto parts manufacturers in China between 2009 and 2011 was at least $1 billion." **USTR Report**
India DS360	Additional and Extra-Additional Duties on Imports from the United States	3/6/2007	The U.S. challenged India's "additional duties" or "extra additional duties" that India applied to imports, including wines and distilled products (HS2204, 2205, 2206 and 2208). The Panel concluded that the U.S. has failed to establish that the Additional Duty on alcoholic liquor is inconsistent with Article II:1(a) or (b) of the GATT 1994 and that it has also failed to establish that the SUAD is inconsistent with Article II:1(a) or (b) of the GATT 1994. The Appellate Body reversed the Panel to find that India's additional duties, to the extent that they imposed higher duties on imports than on domestic products, were a violation of India's GATT obligations.	Export Value of Wine and Distilled Products to India; HS2204, HS2208; 2007 total: $2.5 million; 2019 total: $7.5 million
China DS362	Measures Affecting the Protection and Enforcement of Intellectual Property Rights	4/10/2007	The U.S. challenged China's protection of intellectual property rights, focusing on four issues: 1) the thresholds that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties; 2) goods that infringe intellectual property rights that are confiscated by Chinese customs authorities, in particular the disposal of such goods following removal of their infringing features; 3) the scope of coverage of criminal procedures and penalties for unauthorized reproduction or unauthorized distribution of copyrighted works; and 4) the denial of copyright and related rights protection and enforcement to creative works of	

			authorship, sound recordings and performances that have not been authorized for publication or distribution within China. The Panel concluded that, to the extent that the Copyright Law and the Customs measures as such are inconsistent with the TRIPS Agreement, they nullify or impair benefits accruing to the U.S. under that Agreement.	
China DS363	Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products	4/10/2007	The U.S. challenged China over: (1) certain measures that restrict trading rights with respect to imported films for theatrical release, audiovisual home entertainment products (e.g. video cassettes and DVDs), sound recordings and publications (e.g. books, magazines, newspapers and electronic publications); and (2) certain measures that restrict market access for, or discriminate against, foreign suppliers of distribution services for publications and foreign suppliers of audiovisual services (including distribution services) for audiovisual home entertainment products. The Appellate Body upheld the Panel's conclusion that the provisions of China's measures prohibiting foreign-invested entities from engaging in the distribution of sound recordings in electronic form are inconsistent with China's market access and national treatment commitments of the GATS and violated China's Accession Protocol commitment to grant non-discretionary trade rights.	
European Union DS375	Tariff Treatment of Certain Information Technology Products	5/8/2008	The U.S. challenged the EU (and certain of its member states) over their tariff treatment of certain information technology products. The Panel upheld the U.S. claim that the European Union (EU) violated its WTO tariff commitments by imposing duties as high as 14% on three high-tech products. For all three products at issue – flat panel computer monitors, multifunction printers, and certain cable, satellite, and other set-top boxes – the Panel concluded that the EU tariffs were inconsistent with its obligations.	
China DS394	Measures Related to the Exportation of Various U.S. Raw Materials	6/23/2009	The U.S. contested China's restraints on the export (export duties, export quotas, minimum export price requirements, etc.) of various forms of raw materials (bauxite, coke, fluorspar, magnesium, etc). The Appellate Body upheld the Panel's finding that China's measures violate China's Accession Protocol, could not be counted as general exceptions under the GATT 1994, and that China failed to publish promptly its decision regarding an export quota.	
Philippines DS403	Taxes on Distilled Spirits	1/14/2010	The U.S. claimed that the Philippines taxes on distilled spirits discriminate against imported distilled spirits by taxing them at a substantially higher rate than domestic spirits. The Panel found that because imported spirits are taxed less favorably than domestic spirits, the Philippine measure, while facially neutral, is nevertheless discriminatory and thus violates the obligations under the first and second sentences of Article III:2 of the GATT 1994. The Appellate Body upheld the Panel's finding that each type of imported distilled spirit at issue — gin, brandy, rum, vodka, whisky, and tequila — made from	Export Value of Distilled Spirits to Philippines; HS2207, HS2208; 2010 total: $16.3 million; 2019 total: $108.2 million

			non-designated raw materials, is "like" the same type of distilled spirit made from designated raw materials and that the Philippine taxes constituted impermissible discrimination.	
China DS413	Certain Measures Affecting Electronic Payment Services	9/15/2010	The U.S. challenged China's restrictions permit only a Chinese entity (China UnionPay) to supply electronic payment services for payment card transactions denominated and paid in renminbi in China. The Panel found each of these requirements to be inconsistent with China's national treatment obligations under Article XVII of the GATS. It found, through these requirements, that China modifies the conditions of competition in favor of CUP and therefore fails to provide national treatment to EPS suppliers of other Members, contrary to China's commitments. in respect of this alleged across-the-board requirement.	"By industry estimates, the U.S. stands to gain 6,000 jobs related to EPS." **USTR Report**
China DS414	Countervailing and Anti-Dumping Duties on GOES	9/15/2010	The United States challenged China's investigation and decision to impose CVD and AD duties on Grain Oriented Flat-Rolled Electrical Steel (GOES) from the United States. The Panel and the Appellate Body found that China had committed a number of procedural and substantive errors that rendered their CVD and AD decisions inconsistent with the WTO's AD and SCM Agreement.	
China DS427	Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States	9/20/2011	The U.S. contested China's AD and CVD measures on broiler products from the U.S. contending that China acted inconsistently with the Anti-Dumping Agreement in its determination of the cost of production of the foreign like product for the purposes of constructing normal value, by (i) improperly rejecting the cost allocations kept in the normal books and records of the U.S. respondents; (ii) applying its own allocation methodology that did not reflect the costs associated with the production and sale of the products under consideration; and (iii) allocating the costs of producing certain products (blood and feathers) to the other products one of the respondents produced. The Panel upheld the complaint.	Export Value of Boiler Products to China; HS020713, HS020714, HS050400; 2011 total: $236.2 million; 2019 total: $235.1 million "In 2009 – the year before China imposed the duties – the United States exported over 613,000 metric tons of broiler meat to China. Exports fell almost 90 percent after the imposition of the duties." **USTR Report**
India DS430	Measures Concerning the Importation of Certain Agricultural Products	3/6/2012	The U.S. contested India's SPS restrictions imposed on the importation of various agricultural products, including meat and meat products, egg and egg powder, and milk and milk products, from the U.S. purportedly because of concerns related to Avian Influenza (India's AI measures). The Appellate Body agreed with the Panel that its finding, that India's AI measures were inconsistent with commitments under the Sanitary and Phytosanitary Agreement because they were not based on an international standard or a risk assessment, arbitrarily and unjustifiably discriminated between Members where identical or similar conditions prevailed, and were significantly more restrictive that required to achieve India's appropriate level of protection. On	Export Value of Meat and Meat Products to India; HS02; 2012 total: $94,000; 2019 total: $741,000

			7 July 2016, the U.S. requested the authorization of the DSB to suspend concessions or other obligations pursuant to the DSU because India has failed to comply with the recommendations and rulings of the DSB in this dispute within the reasonable period of time for India to do so.	
China DS431	Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum	3/13/2012	The U.S. challenged China's restrictions on the export of various forms of rare earths, tungsten and molybdenum. China had three types of restrictions: export duties, export quotas, and trading rights. The Panel found that the export duties and trading rights requirements were a violation of China's Accession Protocol that could not be justified under Article XX of the GATT. However, the quotas were not determined to be in violation.	
China DS440	Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States	7/5/2012	The U.S. challenged China's AD and CVD duties on certain automobiles from the U.S. The AD duties ranged from 2.0 percent to 21.5 percent, and the CVD duties ranged from 6.2 percent to 12.9 percent. The specific products affected by the duties are American-made cars and SUVs with an engine capacity of 2.5 liters or larger. The Panel found that MOFCOM erred in its determination of the residual anti-dumping and countervailing duty rates for unknown exporters of the subject product, by improperly determining that U.S. exports were causing injury to domestic Chinese industry and improperly analyzing the effects of U.S. exports on prices in the Chinese market.	"In 2013, the United States exported $64.9 billion of autos, with $8.5 billion of those exports, or 13 percent of the total, going to China. China's unjustified duties, which ranged up to 21.5 percent, affected an estimated $5.1 billion worth of U.S. auto exports in 2013..." **USTR Report**
Argentina DS444	Measures Affecting the Importation of Goods	8/21/2012	The U.S. challenged: (i) the requirement to present for approval of a non-automatic import license: Declaración Jurada Anticipada de Importación (DJAI); (ii) non-automatic licenses required in the form of Certificados de Importación (CIs) for the importation of certain goods; (iii) requirements imposed on importers to undertake certain trade-restrictive commitments; and (iv) the alleged systematic delay in granting import approval or refusal to grant such approval, or the grant of import approval subject to importers undertaking to comply with certain allegedly trade-restrictive commitments. With respect to the DJAI requirement, the Appellate Body upheld the Panel's findings that this requirement constitutes a restriction on the importation of goods and is therefore inconsistent with Article XI:1 of the GATT.	"The following U.S. states represented the largest share of exports to Argentina in 2013, each exporting over $180 million in goods that year: Texas, Florida, Louisiana, California, Illinois, South Carolina, Michigan, New York, Georgia, North Carolina." **USTR Report**
India DS456	Certain Measures Relating to Solar Cells and Solar Modules	2/6/2013	The U.S. challenged India's domestic content requirements under the Jawaharlal Nehru National Solar Mission ("NSM") for solar cells and solar modules. The Panel found that the DCR measures are trade-related investment measures covered by the TRIMs Agreement and that they were inconsistent with both the GATT 1994 and the TRIMs Agreement. On 19 December 2017, the U.S. requested the authorization of the DSB to suspend concessions or other obligations pursuant to Article 22.2 of the DSU on the grounds that India had failed to comply with the DSB's recommendations and rulings within the reasonable period of time.	Export Value of Solar Cells and Modules to India; HS854140; 2013 total: $15 million; 2019 total: $15.7 million

Indonesia DS478 (with New Zealand DS 477)	Importation of Horticultural Products, Animals and Animal Products	5/8/2014	The U.S. challenged 18 measures imposed by Indonesia on the importation of horticultural products, animals and animal products. Most of these measures (17) concerned Indonesia's import licensing regimes for horticultural products and animals and animal products. The challenged also included Indonesia's conditioning of importation of these products on the sufficiency of domestic production to fulfil domestic demand. The Panel found that all 18 measures at issue were prohibitions on importation or restrictions having a limiting effect on importation and thus inconsistent with the GATT. On 2 August 2018, the U.S. requested the authorization of the DSB to suspend concessions or other obligations pursuant to Article 22.2 of the DSU on the grounds that Indonesia had failed to comply with the DSB's recommendations and rulings within the reasonable period of time.	"In 2016, exports of the horticultural products and animal products affected by Indonesia's imports totaled $170 million...These restrictions cost U.S. farmers and ranchers millions of dollars per year in lost export opportunities in Indonesia." **USTR Report** "In 2015, U.S. exports of affected horticultural products to Indonesia exceeded $87 million, including $28 million of apples and over $29 million of grapes. U.S. exports of affected animals and animal products totaled $26 million in 2015." **USDA Press Release**
China DS511	Domestic Support for Agricultural Producers	9/13/2016	The U.S. challenged China's provision of domestic support in favor of agricultural producers, in particular, to those producing wheat, India rice, Japonica rice and corn. The Panel first determined all components necessary to compute China's market price support for wheat, Indica rice and Japonica rice before finding that China's level of domestic support in each of the years 2012-2015 exceeded its 8.5% de minimis level of support for each of these products.	"In 2015, China's "market price support" for these products is estimated to be nearly $100 billion in excess of the levels China committed to during its accession." **USTR Report**
China DS517	Tariff Rate Quotas for Certain Agricultural Products	12/15/2016	The U.S. contested the manner in which China administers its tariff rate quotas, including those for wheat, short- and medium- grain rice, long grain rice, and corn. The Panel concluded that China's TRQ administration as a whole is inconsistent with its obligations to administer TRQs on a transparent, predictable, and fair basis, to administer TRQs using clearly specified requirements and administrative procedures, and to administer TRQs in a manner that would not inhibit the filling of each TRQ.	"USDA estimates that if China's TRQs had been fully used, it would have imported as much as $3.5 billion worth of corn, wheat and rice in 2015 alone." **USTR Report** "AgResource calculates that China did not secure and import an estimated $45 billion of world corn/wheat over the past 16 years." **Farm Foundation**
India DS541	Export Related Measures	3/14/2018	The U.S. challenged India's provision of export subsidies under five sets of measures: the Export Oriented Units, Electronics Hardware Technology Park and Bio-Technology Park (EOU/EHTP/BTP) Schemes; the Export Promotion Capital Goods (EPCG) Scheme; the Special Economic Zones (SEZ) Scheme; a collection of duty stipulations described in these proceedings as the Duty-Free Imports for Exporters Scheme (DFIS); and the Merchandise Exports	

			from India Scheme (MEIS). The Panel found the subsidies to be inconsistent with India' obligations under the ASCM. India is in the process of appealing.	

Annex B

Statements by U.S. Stakeholders Regarding the WTO Appellate Body

U.S. Chamber of Commerce CEO Thomas J. Donohue, in his annual State of American Business address (1/9/2020):

> "Staying engaged in the world also means remaining committed to the multilateral organizations and trading arrangements that we helped build. If the World Trade Organization didn't exist, we'd have to create it. Its rules protect American business from unfair treatment and protectionism. Safeguarding this institution and its dispute settlement system should be an urgent international priority. **Let's not shutter the WTO Appellate Body. Such drastic action doesn't serve America's interests.** America must be involved, not isolated."

Letter to President Trump signed by 26 business and agriculture:

> "We urge your administration to embrace the plan to renovate the WTO appeals process outlined below. The proposal seeks to reform the Appellate Body in a manner consistent with concerns raised by USTR. . . .
>
> "USTR has resisted negotiating reforms to the WTO appeals process until other countries acknowledge that the Appellate Body has strayed beyond its mandate. The Walker Principles were developed with the purpose of restoring proper functioning to the Appellate Body. By adopting them along with the related enforcement measures and term limits for the secretariat, WTO members would be agreeing with the United States that the Appellate Body has overreached."
>
> "**We urge your administration to strike while the iron is hot by stating prior to December 10 that the goal of the United States is not to kill the Appellate Body, but rather to reform it.** The statement should clarify that adoption of the reform plan would end U.S. opposition to the appointment of new Appellate Body members."

Signed December 6, 2019 by:

Americans for Prosperity, American Craft Spirits Association, American Soybean Association, Center for Freedom and Prosperity, Citizens Against Government Waste, Coalition of American Metal Manufacturers and Users, Competitive Enterprise Institute, Computing Technology Industry Association (CompTIA), Consumer Choice Center, The Fashion Accessories Shippers Association, The Fashion Jewelry & Accessories Trade Association, FreedomWorks, Gemini Shippers Association, Institute for Policy Innovation, International Dairy Foods Association, The LIBRE Initiative, National Corn Growers Association, National Council of Farmer Cooperatives, National Retail Federation, National Taxpayers Union, North American Association of Food

Equipment Manufacturers, Retail Industry Leaders Association, R Street Institute, Taxpayers Protection Alliance, USA Poultry and Egg Export Council, U.S. Grains Council
https://www.rstreet.org/wp-content/uploads/2019/12/WTO-AB-coalition-letter-to-president-2019-12-06.pdf

National Foreign Trade Council:

> " . . a fully-functioning and binding dispute settlement system is essential to the credibility and functioning of the global trading system. WTO members must resolve this crisis immediately and agree on a way forward that addresses the legitimate concerns that have been raised. Those Members who have raised these concerns have a unique responsibility to put forward specific reform proposals that would enable the AB to resume operating and perform its function more effectively."

http://www.nftc.org/default/trade/WTO/2019-NFTC-Strengthening-the-WTO.pdf

Letter to President Donald J. Trump signed by 10 business and trade association groups:

> "We strongly urge you to state publicly that the goal of the United States is not to kill the Appellate Body, but rather to reform it. We further urge you to develop a reform proposal as quickly as possible and present it to WTO members, while indicating that adoption of such measures would lead to restarting the Appellate Body appointment process. This approach would maximize leverage for reform. That leverage is likely to decrease significantly if the Appellate Body stops functioning; some countries already have agreed to use arbitration procedures in lieu of formal appeals. The Appellate Body will go dormant in December unless new members are approved promptly. By acting expeditiously, the United States could lead a process of constructive change. Doing so would help to strengthen worldwide business confidence. This would serve the best interests of the many American companies and workers that earn all or part of their livelihoods from international trade.

Signed October 23, 2019 by:

Americans for Prosperity, The LIBRE Initiative, American Legislative Exchange Council, ALEC Action, Center for Freedom and Prosperity, Coalition of American Metal Manufacturers and Users, Competitive Enterprise Institute, National Taxpayers Union, Precision Metal forming Association, R Street Institute

https://mk0xituxemauaaa56cm7.kinstacdn.com/wp-content/uploads/2019/10/WTO-AB-letter-to-president-10-23-2019-2.pdf