

# Dispute settlement

- WTO members filed 27 notifications of "requests for consultations" – the first stage in the dispute settlement process – in 2012, more than three times as many as in 2011.

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- The Dispute Settlement Body established 11 new dispute settlement panels, adopted 18 panel reports and 11 Appellate Body reports.

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- The 20-year EU-Latin America banana disputes reached a major milestone in 2012 when the European Union and Latin American countries formally settled their claims.

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- The WTO's Legal Affairs Division held a conference in June 2012 to mark the 30 years since its predecessor, the GATT Office of Legal Affairs, was created.

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Dispute settlement activity in 2012	76
Appellate Body	90

#### Background on dispute settlement

WTO members bring disputes to the WTO if they think their rights under trade agreements are being infringed. Settling disputes is the responsibility of the Dispute Settlement Body.

# Dispute settlement activity in 2012

There was a sharp increase in dispute settlement activity in 2012 with both developed and developing countries active in bringing disputes to the WTO for resolution. Some WTO members, including Russia, participated for the first time. Disputes covered a wide variety of areas, including some that are less often adjudicated, such as issues under the General Agreement on Trade in Services. The European Union and Latin American countries formally settled the long-running banana disputes. Efforts to achieve efficiencies in dispute settlement processes continued. Finally, the legal affairs division celebrated an important anniversary.

## Conclusion of the banana disputes

The 20-year EU-Latin America banana disputes reached a major milestone in 2012 when the European Union and Latin American countries formally settled their claims. Parties to the dispute had initially signed the Geneva Bananas Agreement in 2009. Following this, a number of legal steps were required, including each country ratifying the 2009 agreement and the European Union introducing legislation and regulations to implement it. As the WTO's membership has accepted the Bananas Agreement as part of the European Union's new scheduled commitment, it is now multilateral.

The new EU commitments to reduce its import tariffs on bananas were circulated on 27 July 2012 as a revision to the European Union's list (officially its "schedule") of commitments. WTO members were then given three months under WTO regulations to object. As there were no objections, the WTO Director-General certified the revised EU Schedule at the end of October and on 8 November 2012 the European Union and Latin American countries signed a mutually agreed solution through which they agreed to end all their pending banana disputes.

## 30th anniversary of Legal Affairs Division

In June 2012, the WTO's Legal Affairs Division (LAD) held a conference to mark the 30 years since its predecessor, the GATT Office of Legal Affairs, was created. The establishment of the division was an early indication of the importance that members and the Secretariat gave to a strong and clear legal framework for the conduct of international trade, including an effective and reliable dispute settlement system.

In a speech marking the event, Director-General Pascal Lamy said that initially the emphasis had been on finding politically acceptable solutions. However, over the years, procedures had evolved, moving to a dispute settlement system increasingly based on rules. Finally, he recalled the bold changes that members introduced at the end of the Uruguay Round, when they adopted the Dispute Settlement Understanding (DSU). As a result, WTO members enjoy one of the most successful systems for dispute settlement in the international sphere.



The European Union and ten Latin American countries signed an agreement on 8 November 2012 ending 20 years of EU-Latin American banana disputes.





### Background on dispute settlement activity

The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes arising from any agreement contained in the Final Act of the Uruguay Round that is subject to the Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding). The DSB, which met 18 times during 2012, has authority to establish dispute settlement panels, adopt panel and Appellate Body reports, maintain surveillance over the implementation of recommendations and rulings contained in such reports, and authorize suspension of concessions in the event of non-compliance with those recommendations and rulings.

### Enhancing panel efficiency

In March 2012, Deputy Director-General Alejandro Jara reported on his consultations with stakeholders on improving the efficiency of the panel in ways that do not affect the DSU itself. He grouped the proposals received into three broad categories: improving the effectiveness of the first meeting of the panel with the parties; improving the efficiency in terms of length and cost of the process, including by emulating the Appellate Body practice of setting time-limits for parties' oral statements; and improving the presentation of panel reports and reducing production costs through setting page limits for summaries of parties' arguments, and reducing the number of annexes attached to reports.

The Deputy Director-General observed that some of the innovations had already been put into place by some panels. Broader implementation would depend on WTO members working together with panellists. Members also made good progress in developing and designing a system to permit secure remote digital filing of dispute settlement documents.

### Dispute settlement activity in 2012

In 2012, the Dispute Settlement Body (DSB) received 27 notifications of "requests for consultations", the first stage in the WTO's dispute settlement process (see below). This is the highest number of requests in the last ten years. In addition, numerous disputes were already making their way through the system. Thus, in addition to the panels already under way, the DSB established 11 new panels to adjudicate 13 new cases. (Where more than one complaint deals with the same matter, the complaints may be adjudicated by a single panel.)

In 2012, the DSB also adopted 18 panel reports as well as 11 Appellate Body reports. Finally, the arbitrator established "reasonable periods of time" for implementing the DSB rulings and recommendations in two disputes.

Information about the disputes, including the reports adopted by the DSB, can be found in Table 1 on the next page.



At a ceremony to commemorate the 30th anniversary of the GATT/WTO Legal Affairs Division in June 2012, the WTO launched a new edition of the *Analytical Index*, a comprehensive guide to the interpretation and application of WTO agreements.

**Table 1: Panel and Appellate Body reports circulated in 2012\***

Case	Document number	Complainant(s)	Respondent	Third parties	WTO Agreements covered	Date of adoption by Dispute Settlement Body
China – Raw Materials (United States)	WT/DS394/AB/R WT/DS394/R	United States	China	Argentina, Brazil, Canada, Chile, Colombia, Ecuador, European Union, India, Japan, Republic of Korea, Mexico, Norway, Chinese Taipei, Turkey, Kingdom of Saudi Arabia	China's Accession Protocol General Agreement on Tariffs and Trade (GATT) 1994 Dispute Settlement Understanding (DSU)	22 Feb 2012
China – Raw Materials (European Union)	WT/DS395/AB/R WT/DS395/R	European Communities	China	Argentina, Brazil, Canada, Chile, Colombia, Ecuador, India, Japan, Republic of Korea, Mexico, Norway, Chinese Taipei, Turkey, Kingdom of Saudi Arabia, United States	China's Accession Protocol GATT 1994 DSU	22 Feb 2012
China – Raw Materials (Mexico)	WT/DS398/AB/R WT/DS398/R	Mexico	China	Argentina, Brazil, Canada, Chile, Colombia, Ecuador, European Union, India, Japan, Republic of Korea, Norway, Chinese Taipei, Turkey, Kingdom of Saudi Arabia, United States	China's Accession Protocol GATT 1994 DSU	22 Feb 2012
Dominican Republic – Safeguard Measures	WT/DS415/R	Costa Rica	Dominican Republic	China, Colombia, El Salvador, European Union, Guatemala, Honduras, Nicaragua, Panama, Turkey, United States	Agreement on Safeguards GATT 1994 DSU	22 Feb 2012
Dominican Republic – Safeguard Measures	WT/DS416/R	Guatemala	Dominican Republic	China, Colombia, Costa Rica, El Salvador, European Union, Honduras, Nicaragua, Panama, Turkey, United States	Agreement on Safeguards GATT 1994 DSU	22 Feb 2012

**Table 1: Panel and Appellate Body reports circulated in 2012\* (continued)**

Case	Document number	Complainant(s)	Respondent	Third parties	WTO Agreements covered	Date of adoption by Dispute Settlement Body
Dominican Republic – Safeguard Measures	WT/DS417/R	Honduras	Dominican Republic	China, Colombia, Costa Rica, El Salvador, European Union, Guatemala, Nicaragua, Panama, Turkey, United States	Agreement on Safeguards GATT 1994 DSU	22 Feb 2012
Dominican Republic – Safeguard Measures	WT/DS418/R	El Salvador	Dominican Republic	China, Colombia, Costa Rica, European Union, Guatemala, Honduras, Nicaragua, Panama, Turkey, United States	Agreement on Safeguards GATT 1994 DSU	22 Feb 2012
US – Large Civil Aircraft (2nd complaint)	WT/DS353/AB/R WT/DS353/R	European Communities	United States	Australia, Brazil, Canada, China, Japan, Republic of Korea	Subsidies and Countervailing Measures (SCM) Agreement GATT 1994 DSU	23 Mar 2012
US – Clove Cigarettes	WT/DS406/AB/R WT/DS406/R	Indonesia	United States	Brazil, Colombia, Dominican Republic, European Union, Guatemala, Mexico, Norway, Turkey	Sanitary and Phytosanitary Measures (SPS) Agreement Technical Barriers to Trade (TBT) Agreement GATT 1994 DSU	24 Apr 2012
US – Tuna II (Mexico)	WT/DS381/AB/R WT/DS381/R	Mexico	United States	Argentina, Australia, Brazil, Canada, China, Ecuador, European Union, Guatemala, Japan, Republic of Korea, New Zealand, Chinese Taipei, Thailand, Turkey, Bolivarian Republic of Venezuela	TBT Agreement GATT 1994 DSU	13 Jun 2012



**Table 1: Panel and Appellate Body reports circulated in 2012\* (continued)**

Case	Document number	Complainant(s)	Respondent	Third parties	WTO Agreements covered	Date of adoption by Dispute Settlement Body
US – Shrimp & Sawblades	WT/DS422/R	China	United States	European Union, Honduras, Japan, Republic of Korea, Thailand, Viet Nam	Anti-Dumping Agreement GATT 1994	23 Jul 2012
US – COOL [country of origin labelling] (Canada)	WT/DS384/AB/R WT/DS384/R	Canada	United States	Argentina, Australia, Brazil, China, Colombia, European Union, Guatemala, India, Japan, Republic of Korea, Mexico, New Zealand, Peru, Chinese Taipei	Rules of Origin Agreement SPS Agreement TBT Agreement GATT 1994	23 Jul 2012
US – COOL (Mexico)	WT/DS386/AB/R WT/DS386/R	Mexico	United States	Argentina, Australia, Brazil, Canada, China, Colombia, European Union, Guatemala, India, Japan, Republic of Korea, New Zealand, Peru, Chinese Taipei	Rules of Origin Agreement SPS Agreement TBT Agreement GATT 1994	23 Jul 2012
Korea – Bovine Meat (Canada)*	WT/DS391/R	Canada	Korea	Argentina, Brazil, India, China, European Union, Japan, Chinese Taipei, United States	SPS Agreement GATT 1994	[not adopted]
China – Electronic Payment Services	WT/DS413/R	United States	China	Australia, Ecuador, European Union, Guatemala, Japan, Republic of Korea, India	General Agreement on Trade in Services (GATS)	31 Aug 2012
China – GOES [grain-oriented flat-rolled electrical steel]	WT/DS414/AB/R WT/DS414/R	United States	China	Argentina, European Union, Honduras, India, Japan, Republic of Korea, Kingdom of Saudi Arabia, Viet Nam	Anti-Dumping Agreement SCM Agreement GATT 1994	16 Nov 2012

\*Appellate Body reports are the shaded rows. Further information on these reports is provided in Table 5 on page 91.

**Table 1: Panel and Appellate Body reports circulated in 2012\* (continued)**

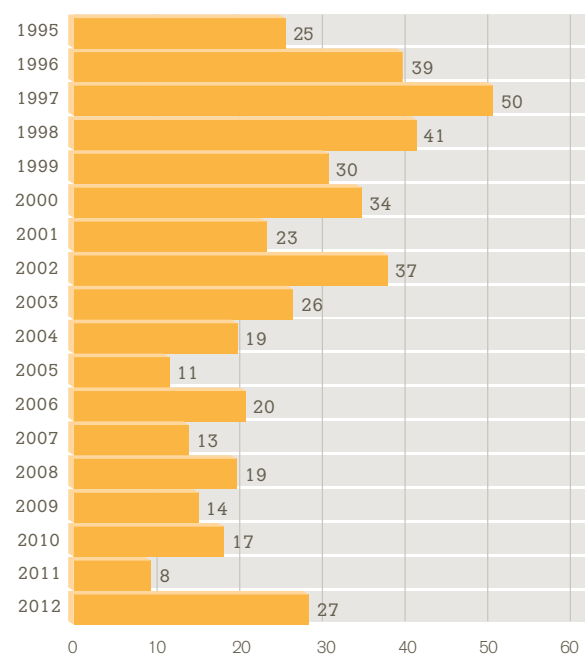
Case	Document number	Complainant(s)	Respondent	Third parties	WTO Agreements covered	Date of adoption by Dispute Settlement Body
Canada – Feed In Tariff Program	WT/DS426/R	Japan	Canada	Australia, Brazil, China, El Salvador, European Union, Honduras, India, Republic of Korea, Mexico, Norway, Kingdom of Saudi Arabia, Chinese Taipei, United States	SCM Agreement Trade Related Investment Measures (TRIMs) Agreement GATT 1994	[Panel Report under appeal on 5 Feb 2013]
Canada – Renewable Energy	WT/DS412/R	European Union	Canada	Australia, Brazil, China, El Salvador, India, Japan, Republic of Korea, Mexico, Norway, Kingdom of Saudi Arabia, Chinese Taipei, Turkey, United States	SCM Agreement TRIMs Agreement GATT 1994	[Panel Report under appeal on 5 Feb 2013]

**Sharp increase in “requests for consultations”**

The number of “requests for consultations” – the first stage in dispute settlement proceedings and an obligatory step before the establishment of a panel to adjudicate a complaint – increased more than threefold in 2012 to 27, compared with eight in 2011 (see Figure 1).

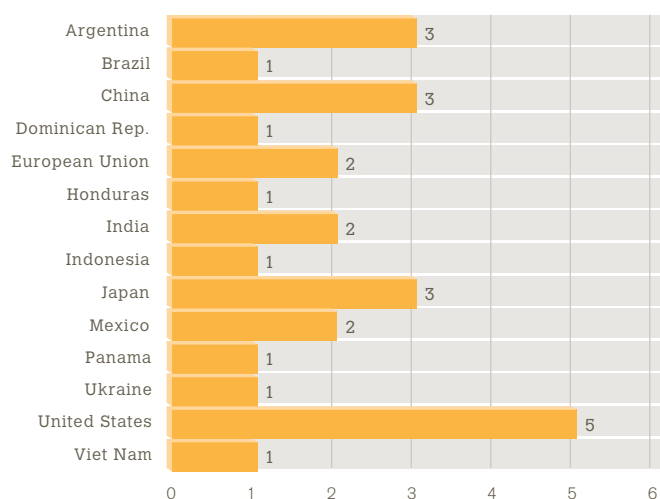
However, this does not mean that 27 new disputes will necessarily be working their way through the dispute settlement system in 2013, as about half of disputes overall do not proceed beyond the consultations stage. Often, the parties reach a satisfactory settlement, or a complainant decides for other reasons not to pursue the matter. This shows that consultations are often an effective means of dispute resolution in the WTO.

Consultations are one of the key diplomatic features of the WTO dispute settlement system. They allow parties to clarify the facts involved and the claims of the complainant, possibly dispelling misunderstandings as to the true nature of the measure(s) at issue. In this sense, consultations serve either to lay the foundation for a settlement or for further proceedings under the DSU. For those disputes that are not settled at the consultations stage, which may last up to 60 days, the next step is the establishment of a panel by the DSB.

**Figure 1: Number of disputes filed per year**



**Figure 2: Requests for consultations in 2012, by complainant**

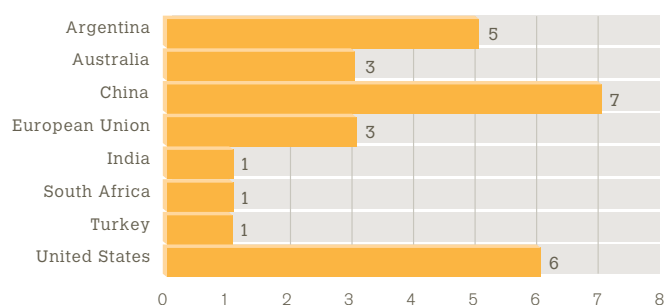


### Which WTO members were active in 2012?

Of the 27 new requests for consultations, Latin American members launched nine, with Argentina the most active with three complaints. A number of Asian members, including Japan, were also active during 2012. The United States initiated five requests, with China on the receiving end of three of them, while the European Union initiated two (see Figures 2 and 3).

Overall, as the information in Table 2 shows, developing countries participated strongly in the dispute settlement system, both as complainants and respondents.

**Figure 3: Requests for consultations in 2012, by respondent**



**Table 2: Requests for consultations in 2012**

Case	Document number	Complainant	Date of initial request	WTO Agreements cited	Status as of end of 2012
Turkey – Safeguard Measures on Imports of Cotton Yarn (other than Sewing Thread)	WT/DS428	India	13 Feb 2012	GATT Safeguards Agreement	In consultations
US – Anti-Dumping Measures on Certain Shrimp from Viet Nam	WT/DS429	Viet Nam	16 Feb 2012	GATT Anti-Dumping Agreement WTO Agreement DSU Viet Nam's Accession Protocol	In consultations
India – Measures concerning the Importation of Certain Agricultural Products	WT/DS430	United States	6 Mar 2012	SPS Agreement GATT	Panel established/ panel composition pending
China – Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum	WT/DS431	United States	13 Mar 2012	GATT China's Accession Protocol	Panel work has commenced



**Table 2: Requests for consultations in 2012 (continued)**

Case	Document number	Complainant	Date of initial request	WTO Agreements cited	Status as of end of 2012
China – Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum	WT/DS432	European Union	13 Mar 2012	GATT China's Accession Protocol	Panel work has commenced
China – Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum	WT/DS433	Japan	13 Mar 2012	GATT China's Accession Protocol	Panel work has commenced
Australia – Certain Measures concerning Trademarks and other Plain Packaging Requirements applicable to Tobacco Products and Packaging	WT/DS434	Ukraine	13 Mar 2012	GATT TRIPS Agreement TBT Agreement	Panel established/ panel composition pending
Australia – Certain Measures Concerning Trademarks, Geographical Indications and other Plain Packaging Requirements applicable to Tobacco Products and Packaging	WT/DS435	Honduras	4 Apr 2012	GATT TRIPS Agreement TBT Agreement	Panel request pending before the DSB
United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India	WT/DS436	India	12 Apr 2012	GATT SCM Agreement	Panel established/ panel composition pending
United States – Countervailing Duty Measures on Certain Products from China	WT/DS437	China	25 May 2012	GATT SCM Agreement China's Accession Protocol	Panel work has commenced
Argentina – Measures Affecting the Importation of Goods	WT/DS438	European Union	25 May 2012	GATT TRIMs Agreement Import Licensing Agreement Agriculture Agreement Safeguards Agreement	Panel request pending before the DSB
South Africa – Anti-Dumping Duties on Frozen Meat of Fowls from Brazil	WT/DS439	Brazil	25 Jun 2012	GATT Anti-Dumping Agreement	In consultations

**Table 2: Requests for consultations in 2012 (continued)**

Case	Document number	Complainant	Date of initial request	WTO Agreements cited	Status as of end of 2012
China – Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States	WT/DS440	United States	5 Jul 2012	GATT Anti-Dumping Agreement SCM Agreement	Panel established/ panel composition pending
Australia – Certain Measures concerning Trademarks, Geographical Indications and other Plain Packaging Requirements applicable to Tobacco Products and Packaging	WT/DS441	Dominican Republic	18 Jul 2012	GATT Trade-related Aspects of Intellectual Property (TRIPS) Agreement TBT	Panel request pending before the DSB
European Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia	WT/DS442	Indonesia	27 Jul 2012	GATT Anti-Dumping Agreement	In consultations
European Union and a Member State – Certain Measures Concerning the Importation of Biodiesels	WT/DS443	Argentina	17 Aug 2012	GATT TRIMs Agreement	Panel request pending before the DSB
Argentina – Measures Affecting the Importation of Goods	WT/DS444	United States	21 Aug 2012	GATT Import Licensing Agreement TRIMs Agreement Safeguards Agreement	Panel request pending before the DSB
Argentina – Measures Affecting the Importation of Goods	WT/DS445	Japan	21 Aug 2012	GATT Import Licensing Agreement TRIMs Agreement Safeguards Agreement	Panel request pending before the DSB
Argentina – Measures Affecting the Importation of Goods	WT/DS446	Mexico	24 Aug 2012	GATT Agriculture Agreement Import Licensing Agreement TRIMs Agreement Safeguards Agreement Technical Barriers to Trade (TBT) Agreement	In consultations

**Table 2: Requests for consultations in 2012 (continued)**

Case	Document number	Complainant	Date of initial request	WTO Agreements cited	Status as of end of 2012
United States – Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina	WT/DS447	Argentina	30 Aug 2012	GATT SPS Agreement WTO Agreement	Panel request pending before DSB
United States – Measures Affecting the Importation of Fresh Lemons	WT/DS448	Argentina	3 Sep 2012	GATT Sanitary and Phytosanitary Measures (SPS) Agreement WTO Agreement	Panel request pending before the Dispute Settlement Body (DSB)
United States – Countervailing and Anti-Dumping Measures on Certain Products from China	WT/DS449	China	17 Sep 2012	GATT SCM Agreement Anti-Dumping Agreement	Panel established/ panel composition pending
China – Certain Measures Affecting the Automobile and Automobile-parts Industries	WT/DS450	United States	17 Sep 2012	GATT SCM Agreement China's Accession Protocol	In consultations
China – Measures Relating to the Production and Exportation of Apparel and Textile Products	WT/DS451	Mexico	15 Oct 2012	GATT SCM Agreement China's Accession Protocol	In consultations
European Union and Certain Member States – Certain Measures Affecting the Renewable Energy Generation Sector	WT/DS452	China	5 Nov 2012	GATT Subsidies and Countervailing Measures (SCM) Agreement Trade in Investment Measures (TRIMs) Agreement	In consultations
Argentina – Measures Relating to Trade in Goods and Services	WT/DS453	Panama	12 Dec 2012	GATT General Agreement on Trade in Services (GATS)	In consultations
China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes from Japan	WT/DS454	Japan	20 Dec 2012	General Agreement on Tariffs and Trade (GATT) Anti-Dumping Agreement	In consultations

**Table 3: WTO members involved in disputes, 1995 to 2012\***

Member	Complainant	Respondent	Member	Complainant	Respondent
Antigua and Barbuda	1	0	Korea, Republic of	15	14
Argentina	18	22	Malaysia	1	1
Armenia	0	1	Mexico	23	14
Australia	7	13	Moldova, Republic of	1	1
Bangladesh	1	0	Netherlands	0	3
Belgium	0	3	New Zealand	7	0
Brazil	26	14	Nicaragua	1	2
Canada	33	17	Norway	4	0
Chile	10	13	Pakistan	3	2
China	11	30	Panama	6	1
Colombia	5	3	Peru	3	4
Costa Rica	5	0	Philippines	5	6
Croatia	0	1	Poland	3	1
Czech Republic	1	2	Portugal	0	1
Denmark	0	1	Romania	0	2
Dominican Republic	1	7	Singapore	1	0
Ecuador	3	3	Slovak Republic	0	3
Egypt	0	4	South Africa	0	4
El Salvador	1	0	Spain	0	3
European Union (formerly EC)	87	73	Sri Lanka	1	0
France	0	4	Sweden	0	1
Germany	0	2	Switzerland	4	0
Greece	0	3	Chinese Taipei	3	0
Guatemala	8	2	Thailand	13	3
Honduras	8	0	Trinidad and Tobago	0	2
Hong Kong, China	1	0	Turkey	2	9
Hungary	5	2	Ukraine	3	1
India	21	21	United Kingdom	0	3
Indonesia	6	5	United States of America	104	119
Ireland	0	3	Uruguay	1	1
Italy	0	1	Venezuela, Bolivarian Republic of	1	2
Japan	17	15	Viet Nam	2	0

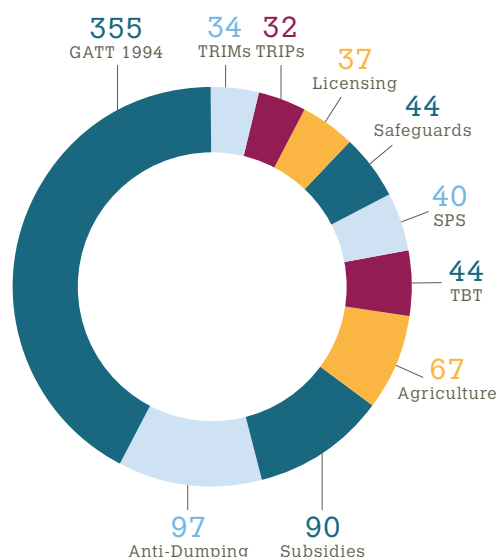
\*This table indicates notifications of "requests for consultations" received by the WTO.

### What issues are being litigated?

The DSB established a single panel to consider complaints by the European Union, Japan and the United States relating to China's alleged restrictions on the export of rare earths. Complaints brought by Canada and Norway against the European Union for banning the importation and marketing of seal products entered into the panel phase.

A panel was established to examine Ukraine's complaint against Australia's requirements concerning plain packaging on tobacco products. Honduras and the Dominican Republic also have pending requests before the DSB on a similar subject. Also pending before the DSB are requests from the European Union, the United States and Japan to establish a panel to look at their complaints concerning Argentina's measures that allegedly restrict the importation of goods.

**Figure 4: WTO agreements referred to in requests for consultations, 1995-2012 (number of times)**



The DSB set up seven panels in 2012 to examine complaints in the area of trade remedies; these disputes concern anti-dumping measures (to deal with export products sold at prices lower than those charged in the home market), countervailing duties (subsidies) and safeguard actions (to guard against import surges). Trade remedies allow governments to take remedial action in situations where the domestic industry is being injured. The recent trend of increasing numbers of disputes in the trade remedies area continued in 2012.

Table 2 shows the variety of WTO agreements that were raised in the disputes initiated in 2012. All disputes initiated in 2012 included challenges under the GATT 1994; since 1995, 355 of the 428 requests for consultations have included a claim under this agreement. Disputes under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Technical Barriers to Trade (TBT) Agreement occur much less often than do disputes under the Sanitary and Phytosanitary Measures (SPS) Agreement, the Subsidies and Countervailing Measures (SCM) Agreement, and the Anti-Dumping Agreement. Chart 3 shows the number of times an agreement has been referred to in requests for consultations from 1995 to 2012.

### Reports issued

Of the reports issued by panels and the Appellate Body during 2012, four addressed claims under the TBT Agreement and three addressed export restrictions. A long report dealt with subsidies relating to large civil aircraft, and another report on the case "China-GOES" (grain oriented flat-rolled electrical steel) addressed claims under the Anti-Dumping Agreement and the SCM Agreement.

Also issued in 2012 were reports addressing claims under agreements that have not recently been the subject of disputes: "China – Electronic Payment Services", which concerns US claims under the General Agreement on Trade in Services (GATS), and "Canada – Renewable Energy" and "Canada – Feed-in Tariff Programs", where the European Union and Japan raised claims under the Trade-Related Investment Measures (TRIMS) Agreement.

### Findings of the reports

In 2012, the Appellate Body issued a number of reports on technical regulations: "US – Clove Cigarettes", "US – Tuna II" and "US – COOL" (country of origin labelling).

"US – Clove Cigarettes" concerns a tobacco control measure adopted by the United States that prohibited the sale and production of flavoured cigarettes, including clove cigarettes, other than menthol-flavoured cigarettes. "US – Tuna II (Mexico)" concerns the use of a "dolphin-safe" label for tuna products sold on the US market. "US-COOL" concerns country of origin labelling requirements for meat products derived from both domestic and imported livestock.

One of the basic principles of the WTO is non-discrimination; thus, a country should not discriminate without justification between trading partners and it should not discriminate between its own and foreign products, services, service providers, or



nationals. In other words, these disputes concern how members deal with non-trade concerns under the TBT Agreement, which sets specific rules for technical regulations, standards and conformity assessment procedures.

Such regulations and standards may be drawn up by governments to address various policy concerns, including animal life or health, human health or safety, or the environment. All three recent disputes concerned technical regulations, which are mandatory measures laying down product characteristics, their related processes and production methods, or labelling requirements.

In “US – Clove Cigarettes”, “US – Tuna II” (Mexico) and “US – COOL”, the Appellate Body first explained that this non-discrimination principle is also found in the TBT Agreement. It added that technical regulations will, by their very nature, establish distinctions between products according to their characteristics or production methods, and it explained that any detrimental impact of the regulations on imports that stemmed exclusively from “legitimate regulatory distinctions” would not amount to discrimination.

In these three disputes, the Appellate Body was not persuaded that the detrimental impact of the technical regulations stemmed from legitimate regulatory distinctions and therefore found all three technical regulations at issue inconsistent with the TBT Agreement provision on non-discrimination (Article 2.1).

Another aspect of the TBT Agreement examined in these three disputes was the requirement under Article 2.2 that technical regulations not be more trade-restrictive than necessary to fulfil a legitimate objective, taking into account the risks that non-fulfilment would create. The complainant bears the burden of demonstrating that the technical regulation is “more trade-restrictive than necessary” and, for this purpose, in most cases it will present possible alternative measures that are less trade-restrictive and can achieve to the same degree the same objective as the challenged measure. It is for the member whose measure is challenged to explain its policy justifications.

In all three of the TBT disputes, the panel or Appellate Body accepted the policy aims identified as legitimate objectives. Those objectives were the protection of human health, animal life or health, or the environment, and the provision of consumer information. The ban on flavoured cigarettes in “US – Clove Cigarettes” was found by the panel to be not more trade-restrictive than necessary to fulfil the objective of protecting human health, although the measure was struck down on other grounds.

In “US – Tuna II”, the Appellate Body reversed the finding that the labelling requirements at issue were inconsistent with Article 2.2. However, the Appellate Body could not ultimately determine the consistency with Article 2.2 of the labelling requirements at issue in “US – COOL” because there were insufficient factual findings.

During 2012, export restrictions were also the subject of WTO dispute settlement. The GATT 1994 requires members, with certain exceptions, to eliminate all prohibitions and quantitative restrictions on exports (Article XI). However, it does not prevent members from imposing duties or taxes on their exports. Although this is the general rule, some recently acceded WTO members have undertaken commitments in their accession protocols to reduce or limit the export tariffs or export duties they apply to certain goods.

In “China – Raw Materials”, the European Union, the United States and Mexico challenged a number of export restrictions that they alleged China placed on the exportation of certain raw materials. In 2012, the Appellate Body issued its report in this dispute. The Appellate Body agreed with the panel that there is no basis in China’s Accession Protocol to allow the application of Article XX of the GATT 1994 to China’s obligations under the relevant paragraph of the Accession Protocol.

Furthermore, the Appellate Body upheld the panel’s finding that China did not demonstrate that its export quota on refractory-grade bauxite was “temporarily applied” to either prevent or relieve a “critical shortage”, within the meaning of Article XI: 2(a) of the GATT 1994. The Appellate Body agreed with the panel that such a restriction must be of a limited duration and not indefinite. Moreover, the Appellate Body found that the term “critical shortages” refers to those deficiencies in quantity that are crucial and of decisive importance, or that reach a vitally important or decisive stage.

The question of export restrictions will be considered again by a WTO dispute panel in 2013 as the DSB established in September 2012 a panel to consider complaints about export restrictions that China allegedly imposes on a number of rare earths.

In March 2012, the DSB adopted the panel and Appellate Body reports in the dispute brought by the European Union over aircraft subsidies provided by the United States (“US – Large Civil Aircraft”, often referred to as the Boeing dispute).

In the Boeing dispute, the Appellate Body upheld the panel’s findings that certain US subsidies enabled Boeing to launch its 787 plane (known as the “Dreamliner”) in 2004, thereby causing serious prejudice to the interests of the European Communities with respect to 200-300 seat large civil aircraft. The Appellate Body also found that certain subsidies had price effects and thus cause serious prejudice to the interests of the European Communities with respect to 100-200 seat large civil aircraft. No serious prejudice was found with respect to 300-400 seat large civil aircraft.

This was the second of the large and complex cases brought to the WTO dispute settlement system concerning subsidies given by governments to the civil aircraft industry. An earlier case concerned European subsidies provided to Airbus.

Dispute settlement activity relating to these cases is nevertheless continuing. According to the DSU, once a panel and/or Appellate Body report has been adopted, the dispute moves to the compliance stage where parties must bring into conformity the measures found not to be consistent with WTO rules.

The United States has alleged that the steps taken by the European Union have failed to bring its measures into compliance with the DSB's recommendations and rulings. A compliance panel has been set up to examine this issue. In the parallel dispute, the United States has notified the DSB that it has fully complied with the DSB recommendations and rulings. The European Union disagreed and a compliance panel was established to address this dispute.

### Conclusions

In sum, WTO dispute settlement activity increased markedly in 2012. It is clear that WTO members, both developed and developing, continue to have a high degree of confidence in the WTO dispute settlement mechanism to resolve their disputes in a fair and efficient manner. It is also evident that members are confident that the system is capable of adjudicating a wide variety of disputes covering significant questions and complex issues.

# Appellate Body

The Appellate Body's workload remained intense in 2012, although the number of new appeals levelled off. The Appellate Body circulated reports in nine disputes during 2012, four of which concerned appeals filed in 2011. New appeals were filed in five disputes, all of which were concluded in 2012. One Article 21.3(c) arbitration proceeding concerning the reasonable period of time for implementation was carried out in 2012. In June, a new member was appointed to the Appellate Body.

A full list of appeals filed and Appellate Body reports circulated in 2012 is provided in Tables 4 and 5. Further information on circulated reports is provided in Table 1 on pages 78-80.

**Table 4: Appeals filed in 2012**

Panel reports appealed	Date of appeal	Appellant	Document number	Other appellant	Document number
US – Clove Cigarettes	5 Jan 2012	United States	WT/DS406/6	-	-
US – Tuna II (Mexico)	20 Jan 2012	United States	WT/DS381/10	Mexico	WT/DS381/11
US – COOL [Certain Country of Origin Labelling] (Canada)	23 Mar 2012	United States	WT/DS384/12	Canada	WT/DS384/13
US – COOL (Mexico)	23 Mar 2012	United States	WT/DS386/11	Mexico	WT/DS386/12
China – GOES [Grain Oriented Flat-Rolled Electrical Steel]	20 Jul 2012	China	WT/DS414/5	-	-



**Table 5: Appellate Body (AB) reports circulated in 2012**

Panel reports appealed	Date of appeal	Appellant	Document number	Other appellant(s)	Document number	Circulation date of AB report
China – Raw Materials (United States)*	31 Aug 2011	China	WT/DS394/11	United States	WT/DS394/12	30 Jan 2012
China – Raw Materials (European Union)*	31 Aug 2011	China	WT/DS395/11	European Union	WT/DS395/12	30 Jan 2012
China – Raw Materials (Mexico)*	31 Aug 2011	China	WT/DS398/10	Mexico	WT/DS398/11	30 Jan 2012
US – Large Civil Aircraft (2nd Complaint)	1 Apr 2011	European Union	WT/DS353/8	United States	WT/DS353/10	12 Mar 2012
US – Clove Cigarettes	5 Jan 2012	United States	WT/DS406/6	-	-	4 Apr 2012
US – Tuna II (Mexico)	20 Jan 2012	United States	WT/DS381/10	Mexico	WT/DS381/11	16 May 2012
US – COOL (Canada)**	23 Mar 2012	United States	WT/DS384/12	Canada	WT/DS384/13	29 Jun 2012
US – COOL (Mexico)**	23 Mar 2012	United States	WT/DS386/11	Mexico	WT/DS386/12	29 Jun 2012
China – GOES	20 Jul 2012	China	WT/DS414/5	-	-	18 Oct 2012

\* These three Appellate Body reports were circulated in a single document.

\*\* These two Appellate Body reports were circulated in a single document.

Details of the Appellate Body's findings are set out on pages 87-89. By the end of 2012, the Appellate Body had circulated 117 reports since its establishment in 1995.

One Article 21.3(c) arbitration proceeding concerning the reasonable period of time for implementation was carried out in 2012. Further information about the arbitration is provided below in Table 6.

**Table 6: Article 21.3(c) arbitration awards circulated in 2012**

Dispute	Parties	Document number	Circulation date of arbitration award
US – COOL	Canada Mexico United States	WT/DS384/24 WT/DS386/23	4 Dec 2012



Members of the Appellate Body, from left to right: David Unterhalter, Ujal Singh Bhatia, Peter Van den Bossche, Yuejiao Zhang, Ricardo Ramírez-Hernández, Thomas R. Graham, and Seung Wha Chang

### Appellate Body members

The first term of office of Ms Yuejiao Zhang expired on 31 May 2012. The DSB reappointed Ms Zhang for a second four-year term beginning on 1 June 2012.

Mr Shotaro Oshima resigned from the Appellate Body effective 6 April 2012. On 24 May 2012, the Dispute Settlement Body appointed Mr Seung Wha Chang (Republic of Korea) to serve for four years as Appellate Body member commencing on 1 June 2012. Mr Chang was sworn in on 13 June 2012. His biography is provided below.

As of 1 June 2012, the seven Appellate Body members are:

- Ujal Singh Bhatia (India) (2011-15)
- Seung Wha Chang (Republic of Korea) (2012-16)
- Thomas R. Graham (United States) (2011-15)
- Ricardo Ramírez-Hernández (Mexico) (2009-13)
- David Unterhalter (South Africa) (2006-13)
- Peter Van den Bossche (Belgium) (2009-13)
- Yuejiao Zhang (China) (2008-16).



#### Background on the Appellate Body

The Appellate Body consists of seven members appointed by the Dispute Settlement Body. Each member is appointed for a term of four years, with the possibility of being reappointed for one further four-year term. Three members of the Appellate Body hear an appeal of a panel's ruling. Any party to a dispute may appeal the panel report to the Appellate Body. The appeal is limited to issues of law covered in the panel report and legal interpretations developed by the panel.



### Seung Wha Chang (Republic of Korea)

Born in the Republic of Korea on 1 March 1963, Seung Wha Chang is currently Professor of Law at Seoul National University, where he teaches international trade law and international arbitration.

He has served on several WTO dispute settlement panels, including "US – FSC [foreign sales corporations]", "Canada – Aircraft Credits and Guarantees", and "EC – Trademarks and Geographical Indications". He has also served as chairman or member of several arbitral tribunals dealing with commercial matters. In 2009, he was appointed by the International Chamber of Commerce as a member of the International Court of Arbitration.

Professor Chang began his professional academic career at the Seoul National University School of Law in 1995 and was awarded professorial tenure in 2002. He has taught international trade law and, in particular, WTO dispute settlement at more than ten foreign law schools, including Harvard Law School, Yale Law School, Stanford Law School, New York University, Duke Law School and Georgetown University. In 2007, Harvard Law School granted him an endowed visiting professorial chair title, Nomura Visiting Professor of International Financial Systems.

In addition, Professor Chang previously served as a Seoul District Court judge, handling many cases involving international trade disciplines. He also practised as a foreign attorney at an international law firm in Washington D.C., handling international trade matters, including trade remedies and WTO-related disputes.

Professor Chang has published many books and articles in the field of international trade law. In addition, he serves as an editorial or advisory board member of the *Journal of International Economic Law* (Oxford University Press) and the *Journal of International Dispute Settlement* (Oxford University Press).

Professor Chang holds a Bachelor of Laws degree (LL.B.) and a Master of Laws degree (LL.M.) from Seoul National University School of Law and a Master of Laws degree (LL.M.) as well as a doctorate in international trade law (S.J.D.) from Harvard Law School.



Mr Seung Wha Chang of the Republic of Korea was sworn in as a member of the Appellate Body on 13 June 2012.