

CHAPTER 17

DISPUTE SETTLEMENT PROCEDURES UNDER WTO

As mentioned in the “Preface,” this Report attaches special importance to the use of the WTO dispute settlement mechanism as a means to resolve issues related to trade policies and measures. This is because the WTO dispute settlement procedures effectively function as a mechanism for reaching objective resolutions based on internationally agreed rules, avoiding economic disputes between countries from taking longer than necessary or turning into a political issue. Please refer to the 2018 Unfair Trade Report 359-365 for an analysis of the actual conditions and causes of ensuring implementation in the WTO dispute settlement procedures.

OUTLINE OF THE WTO DISPUTE SETTLEMENT MECHANISM

1. TYPE OF DISPUTES SUBJECT TO THE MECHANISM

Paragraph 1, Article 1 of the Dispute Settlement Understanding (DSU) provides that the rules and procedures of the DSU shall apply to the following.

- 1) Disputes brought pursuant to the consultation and dispute settlement provisions of the Agreements listed in Appendix 1 to the DSU; and,
- 2) Consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization (WTO Agreement).

Based on the above, the DSU rules and procedures apply to the following specific agreements:

- WTO Agreement
- General Agreement on Tariffs and Trade (GATT)
- Agreement on Agriculture
- Agreement on Sanitary and Phytosanitary Measures (SPS)
- Agreement on Technical Barriers to Trade (TBT)
- Agreement on Trade-Related Investment Measures (TRIMs)
- Agreement on Implementation of Article VI of GATT 1994 (Anti-dumping measures)
- Agreement on Subsidies and Countervailing Measures (SCM)
- Agreement on Safeguards (SG)
- General Agreement on Trade in Services (GATS)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Government Procurement Agreement (GPA)

2. CONSULTATION

(1) CONSULTATION UNDER ARTICLE 4 OF THE DSU

The DSU specifies that it adheres to the principles of the management of disputes applied under

Articles XXII and XXIII of GATT (paragraph 1, Article 3 of the DSU). Article 4 of the DSU provides for consultation procedures and rules and specifies that each party should give sympathetic consideration to any representations made by another party and should provide adequate opportunity for consultation (paragraph 2, Article 4 of the DSU). It provides that the parties which enter into consultations should attempt to obtain satisfactory adjustment of the matter concerned (paragraph 5, Article 4 of the DSU).

According to the DSU (paragraph 4, Article 4), a request for consultations shall be effective when such request is submitted in writing, gives reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint and is notified to the DSB (Dispute Settlement Body of WTO). It provides that the party to which a request is made shall reply within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution (paragraph 3, Article 4 of the DSU).

WTO Members other than the consulting parties are to be informed in writing of requests for consultations, and any Member that has a substantial trade interest in consultations may request to join in the consultations as a third party. It is provided that a third party can join consultations when the party to which the request for consultations is addressed considers that said third party's claim of "substantial trade interest" is well-founded. (paragraph 11, Article 4 of the DSU).

3. *PANEL PROCEDURES*

(1) *ESTABLISHING A PANEL*

Under the WTO dispute settlement mechanism, when consultations fail to settle a dispute within 60 days after the date of receipt of a request for consultations, the complaining party may submit a written request to the DSB for the establishment of a panel (paragraph 7, Article 4, and paragraph 2, Article 6 of the DSU). It is provided that such written request should indicate whether consultations were held, identify the specific measures at issue, and provide a brief summary of the legal basis of the complaint (paragraph 2, Article 6 of the DSU). The contents of the written request for the establishment of a panel are extremely important because they have the effect of determining the panel's terms of reference.

As a rule, decisions of the DSB are made by consensus, but the so-called "negative consensus method" is applied to the issues of "establishment of panels" (paragraph 1 of Article 6), "adoption of reports of a panel or Appellate Body" (paragraph 4 of Article 16 and paragraph 14 of Article 17) and "compensation and the suspension of concessions" (paragraph 6 of Article 22), the requested action is approved unless all participating Member countries present at the DSB meeting unanimously object. As far as the establishment of a panel is concerned, paragraph 1, Article 6 of the DSU specifies that "a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel."

Parties other than the complaining party which requested the establishment of a panel are entitled to block the panel establishment but only once (paragraph 1, Article 6 of the DSU). This veto is most frequently employed by the respondent. Therefore, in most cases, a panel is established at the second DSB meeting at which the request appears as an item on the DSB's agenda.

Any Member that desires to be joined in the panel procedure as a third party having a substantial interest in the matter concerned is required to express such desire within 10 days after the date of the panel establishment.

(2) COMPOSITION OF PANELS

Once a panel is established, the next step is to select panelists. Selection of panelists is conducted through proposals by the WTO Secretariat on panelists (paragraph 6, Article 8 of the DSU). Generally, the Secretariat summons the disputing parties and hears their opinions concerning desirable criteria for selecting panelists, such as home country, work experience and expertise.

Then, the Secretariat prepares a list of nominees (generally six persons) providing their names and brief personal record, and show the list to both parties. It is provided that citizens of the disputing parties or third parties joined in the panel procedure may not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise (paragraph 3, Article 8 of the DSU).

It is also provided that either disputing party “shall not oppose nominations except for compelling reasons” (paragraph 6, Article 8 of the DSU). However, since the definition of a compelling reason is not very strict, frequently nominations made by the WTO Secretariat are not accepted by either party, and sometimes this happens several times.

Also, it is provided that if there is no agreement on the panelists within 20 days after the date of the establishment of a panel, the Director-General, upon request of either party, shall determine the composition of the panel after consulting with the parties to the dispute (paragraph 7, Article 8 of the DSU).

(3) MAKING WRITTEN SUBMISSIONS

After the composition of a panel is determined, the panel meets to determine the timetable for the panel process and the working procedures it will follow throughout the dispute. Then, after three to six weeks from the establishment of the panel, the complainant provides the panel a written submission containing all facts relating to the issue concerned and its claims. The respondent also provides a written submission to the panel in two to three weeks after the receipt of the complainant’s written submission (paragraph 12 of Appendix 3 of the DSU). Although there is no rule specifying the composition of a written submission, in many cases they are composed of five parts: 1) introduction; 2) facts behind the complaint; 3) procedural points at issue; 4) claims based on legal grounds; and 5) conclusion.

Regarding the disclosure of the written submissions, it is provided (in paragraph 3, Appendix 3 of the DSU) that “deliberations of a panel and documents submitted to it shall be kept confidential. Nothing in the DSU shall preclude a party to a dispute from disclosing statements of its own positions to the public.” Thus, disputing parties may disclose their own written submissions to the public. Actually, the United States and EU disclose many of their written submissions to the public, and Japan also releases some of its written submissions to the public on websites.

(4) PANEL MEETING

A panel generally meets two times. Meetings of a panel are held in the WTO building, instead of a special facility such as a court. Traditionally, a panel meets in closed session, just like other meetings of WTO. Generally, panel meetings last one to three days.

The first meeting of a panel is supposed to be held in one to two weeks after the receipt of the written submission submitted by the respondent (paragraph 12, Appendix 3 of the DSU). This first substantive meeting is to begin with a briefing made by the chairman of the panel on how to proceed with the meeting. Then, the complainant and the respondent, respectively, give oral statements regarding their own written submissions. This is followed by questioning by the panel and in some cases a question-and-answer session between the disputing parties. Next, a third party

session is held, where oral statements and a question-and-answer session occurs. As a rule, the presence of third parties is permitted only at these third party sessions, and third parties may not be present at substantive meetings.

The second substantive meeting of a panel is supposed to be held after two to three months since the first substantive meeting. The second meeting focuses mainly on counter-arguments against claims of the other party made during the first substantive meeting. Unlike the first substantive meeting, third parties are not permitted to attend the second substantive meeting. Unless otherwise agreed between the disputing parties, third parties may not make written submissions or obtain written submissions submitted by the disputing parties.

(5) INTERIM REPORT

Following the second substantive meeting, the panel issues an interim report to the disputing parties. The interim report describes the findings and conclusions of the panel. An interim report provides the first opportunity for disputing parties to tell whether their arguments are supported by the panel or not. Disputing parties are entitled to submit comments or submit a request for the panel to review and correct technical aspects of the interim report for correction.

(6) FINAL PANEL REPORT

The DSU provides (in paragraph 8 of its Article 12) that the period in which the panel conducts its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the disputing parties, “shall not exceed six months as a general rule.” When the panel considers that it cannot issue its report within six months, it is supposed to inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will issue its report (paragraph 9, Article 12 of the DSU). The recent trend is that cases requiring an examination period exceeding six months are increasing because of the difficulty in confirming facts due to the existence of a highly technical matter or difficult interpretations of a legal matter at issue.

Generally, a final panel report is issued shortly after the disputing parties comment on the interim report, first to disputing parties and then to all Members in the three official languages of the WTO (English, French and Spanish).

A panel report contains, in its conclusion, the judgment reached by the panel as well as recommendations regarding correction of the measures in question. This conclusion is referred to the DSB, where the “negative consensus method” is applied for the adoption of the panel report. The DSB adopts the “recommendation and rulings”, which are legally binding the parties concerned. Adoption of a panel report is supposed to be completed between 21 and 60 days after the date the report has been circulated to the Members (paragraphs 1 and 4 of Article 16 of the DSU).

4. APPEAL (REVIEW BY THE APPELLATE BODY)

If there is an objection to a panel report, disputing parties may request the Appellate Body to examine the appropriateness of the legal interpretations employed by the panel (paragraph 4, Article 17 of the DSU). The Appellate Body is a standing group composed of seven persons of recognized authority with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally; the Appellate Body membership is broadly representative of membership in the WTO. Three persons out of the seven Appellate Body members are to serve on any one case (paragraphs 1 and 3 of Article 17 of the DSU). Persons serving on the Appellate Body

are selected by a consensus of all Members at the DSB and serve for a four-year term. Each person may be reappointed once (paragraph 2, Article 17 of the DSU).

A Notice of Appeal should be filed no later than the DSB meeting at which a panel report is scheduled to be adopted. Since it is provided that the adoption of a panel report should be completed within 60 days after the date of circulation of the panel report to the Members, an appeal is supposed to be made within 60 days after the date of circulation (paragraph 4, Article 16 of the DSU).

It is provided (in paragraph 6 of Article 17 of the DSU) that an appeal should be limited to issues of law covered in the panel report and legal interpretations developed by the panel. In principle, factual findings of a panel may not be challenged. Regarding legal interpretations and findings, there is a precedent that mentions: “To determine whether a certain incident occurred at a certain place/time is a matter of fact typically. However, to determine whether a certain fact or a series of facts complies with any given rule of a certain convention is a matter of law and requires legal interpretation.” (*EC-Hormone-Treated Beef Case* (DS26))

After the filing of a Notice of Appeal, the Appellate Body shows the timetable for set out in its working procedures. The three major steps in the procedures are: (1) filing of a written submission by the appellant; (2) filing of written submissions by the appellee and third participants, respectively; and (3) meeting of the Appellate Body with the parties (oral hearing). It is provided that the appellant’s filing of its written submission ((1) above) should be made at the time of the filing of a Notice of Appeal, that the appellee’s filing of its written submission ((2) above) should be made within 18 days after the date of the filing of a Notice of Appeal, that third participants’ filing of their written submissions ((2) above) should be made within 21 days after the date of the filing of a Notice of Appeal, and that the meeting of the Appellate Body (oral hearing) ((3) above) is supposed to be held between 30 and 45 days after the date of the filing of a Notice of Appeal (paragraphs 21, 22, 24 and 27 of Working Procedures for Appellate Review “WT/AB/WP/6”). It is also provided that the participation of a third party in appellate review procedures may be accepted only if such party was joined in the panel procedure (paragraph 4, Article 17 of the DSU). Third party participants may file written submissions and also may be present at the meeting of the Appellate Body.

During a meeting of the Appellate Body (1) the appellant, (2) the appellee and (3) third participant(s), respectively, make oral arguments in the order mentioned. This is followed by questioning by the Appellate Body of the disputing parties as well as of third party participants; and each party is required to address the questions. The Appellate Body takes the initiative in questioning, and either disputing party is generally not allowed to ask a question to the other party. In general, following the question-and-answer session, disputing parties and third party participants are provided with the opportunity to make oral statements again at the end of the meeting.

Following the meeting, the Appellate Body is to circulate its report to the Members within 60 days after the date of filing of a Notice of Appeal. The proceedings should not exceed 90 days in any case (paragraph 5, Article 17 of the DSU). Unlike panel procedures, there is no rule concerning an interim report for appellate review procedures.

5. ADOPTION OF REPORTS

A report prepared by the panel or the Appellate Body following the review process needs to be adopted by the DSB. Regarding the adoption of panel reports, the DSU provides (in paragraph 1, Article 16) that “In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date on which they

have been circulated to the Members.” It is also provided (in paragraph 4, Article 16 of the DSU) that “within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting.” Regarding the adoption of reports of the Appellate Body, the DSU provides (in paragraph 14, Article 17) that “a report shall be adopted within 30 days after the date of circulation of the report to the Members.” Together with a panel report, a report of the Appellate Body becomes the official written recommendations and rulings of the DSB once it is adopted at a DSB meeting.

6. IMPLEMENTATION OF RECOMMENDATIONS

It is provided that at a DSB meeting held within 30 days after the date of adoption of the panel or Appellate Body report, the Member to which the recommendations are directed is supposed to express its intentions with respect to implementation of the recommendations mentioned in the report (paragraph 3, Article 21 of the DSU). If it is impracticable to comply immediately with the recommendations, the Member is given a reasonable period of time to do so (paragraph 3, Article 21 of the DSU). Such reasonable period of time may be decided by mutual agreement between the disputing parties concerned (item (b), paragraph 3, Article 21 of the DSU). However, in the absence of such mutual agreement, the parties may refer the decision to arbitration (item (c), paragraph 3, Article 21 of the DSU). In principle, an arbitrator usually is one of the three Appellate Body members who conducted the appellate review of the case concerned. The mandate of the arbitrator is to determine the “reasonable period of time” within 90 days after the date of the adoption of report (item (c), paragraph 3, Article 21 of the DSU). It is provided (in item (c), paragraph 3, Article 21 of the DSU) that the reasonable period of time to implement the recommendations mentioned in a panel or Appellate Body report should, as a general rule, not exceed 15 months from the date of adoption of the report. It is also provided that the DSB should keep under surveillance the implementation of adopted recommendations and that the Member concerned should provide, after a certain period of time following the date of establishment of the reasonable period of time, the DSB with a status report in writing of its progress in the implementation of the recommendations until the issue of implementation is resolved (paragraph 6, Article 21 of the DSU).

In general, a panel or the Appellate Body recommends that the Member concerned bring a measure determined to be inconsistent with a covered agreement into conformity with that agreement. It does not usually give any specific instruction on how to implement the recommendations. Therefore, it is not unusual that disagreement arises between disputing parties as to the existence or consistency with the WTO Agreement of measures taken to comply with the recommendations. In this respect, the DSU provides (in paragraph 5, Article 21) that “such disagreement as to the existence or consistency with a covered agreement of measures taken to comply with adopted recommendations or rulings” may be referred to a panel. Such panel established for the purpose of determining whether there has been implementation of adopted recommendations or rulings (“compliance panel”) is supposed to be composed of those panelists who served on the original panel. The panel is required to issue a report within 90 days after the date when disagreement is referred to the panel (paragraph 5, Article 21 of the DSU). Unlike regular panel procedures, establishment of the compliance panel does not have to be preceded by consultations. Generally, such panels meet only once. When the complaining party doubts that there has been appropriate implementation of adopted recommendations or rulings, it may request review by a compliance panel repeatedly without limitation. In addition, there is a precedent that compliance panel decisions may be appealed to the Appellate Body for review, although DSU does not have any provision providing for such process.

7. *COMPENSATION AND THE SUSPENSION OF CONCESSIONS*

With the approval of the DSB, the complainant may take countermeasures, such as suspension of concessions, against the party whose interests also in cases where it fails to implement the recommendations adopted by the DSB within a given reasonable period of time, provided that no agreement on compensation is reached between both parties (paragraph 2, Article 22 of the DSU). Specifically, it is provided that the complainant may request the DSB to suspend the application, to the Member concerned, of concessions or other obligations under covered agreements (“countermeasures”) when such Member fails to bring the measures found to be inconsistent with a covered agreement into compliance therewith within the said “reasonable period of time” or that a panel or the Appellate Body confirms a failure of such member to fully implement adopted recommendations (paragraph 2, Article 22 of the DSU). (see Chart II-17-2 for past application for approval of countermeasures.)

There are rules as to the sectors and level of countermeasures to be taken. For instance, it is provided (by item (a), paragraph 3, and paragraph 4, Article 22 of the DSU) that the complainant, when taking countermeasures, should first seek to target sector(s) that are the same as that to which the dispute concerned is associated, and also that the level of countermeasures should be equivalent to the level of the “nullification or impairment” caused. If the complainant considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement (item (b), paragraph 3, Article 22 of the DSU). In addition, if that party considers that it is not practical or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement (item (c), paragraph 3, Article 22 of the DSU). The latter practice is called “cross retaliation,” and it can be represented by a case where retaliation for a violation of TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) involves the suspension of customs-related concessions under GATT. Such cross retaliation is one of the unique measures employed in the WTO dispute settlement mechanism, and was introduced as a result of the coverage of the WTO Agreement over not only goods but also services and intellectual property rights (However, GPA sets special provisions on prohibition of “cross retaliation.” Paragraph 3, Article 20 stipulates that “any dispute arising under any Agreement ...other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement.”).

In the case that the respondent objects to the contents or level of the countermeasures for which the complainant requested authorization, the matter may be referred to arbitration (paragraph 6, Article 22 of the DSU). When arbitration is conducted, the resulting decision is taken into consideration for the authorization of countermeasures. The negative consensus method is applied to finalize the authorization of the DSB (paragraph 7, Article 22 of the DSU).

DSU REVIEW NEGOTIATION

As mentioned above, the effectiveness of WTO dispute settlements has been greatly improved in comparison to that at the time of GATT. However, it is also true that problems that were not clear when the DSU was established have surfaced, including the increase in the burdens of panels and the Appellate Body due to the quantitative and qualitative increase in disputes and inadequacy of the DSU procedures. In order to examine these problems, WTO Members agreed to initiate

negotiations to improve and clarify the DSU (DSU Review Negotiation).

Based on the Marrakech Ministerial Declaration in 1994, the DSU review negotiation started in the special session of the WTO's Dispute Settlement Body (DSB), with an eye toward aim of completing the revision of the DSU provisions from by the end of 1997. Especially in October 2001, which was immediately before the Doha Ministerial Conference, 14 countries, including Japan and Canada, submitted a joint proposal to the General Council Meeting about: (1) clarification of the sequencing of compliance panel and suspension of concession; (2) shortening the period of various dispute settlement procedures; and (3) strengthening the rights of third parties.

These discussions on DSU review, the DSU Review Negotiation was included in the Doha Ministerial Declaration although it was outside the framework of a single undertaking, and the deadline for concluding the negotiations was set for May 2003 (Paragraph 30 of the Doha Ministerial Declaration). After the Doha Ministerial Declaration, Members submitted various proposals and the negotiations could not be concluded by May 2003. In the framework agreement adopted in the General Council Meeting in July 2004, it was agreed to continue the DSU Review Negotiation. After this General Council Meeting, 7 countries, led by Canada and Norway, had discussions on the October 2001 submission, focusing on: (1) sequencing; and (2) procedures relating to termination of countermeasures. The Hong Kong Ministerial Declaration confirmed the policy to "continue to work towards a rapid conclusion of the negotiations" (Paragraph 34 of the Hong Kong Ministerial Declaration).

Currently, the DSU is functioning comparatively well, and discussions are continuing among the participating countries, based on the basic understanding that revisions should be limited to the minimum necessary. The proposals currently being discussed include a joint proposal by Japan and the European Communities on "post-retaliation" (procedure to lift countermeasures) and "sequencing (procedures for clarifying the order of "judging whether the losing country is implementing DSB recommendations or not" and "the winning country imposing sanctions on the losing country for not implementing the recommendations")"; "securing the transparency of dispute settlement procedures" (opening panel meetings with the parties to the public) by the United States; and a joint proposal by seven countries, including Mexico, Argentina and Brazil, on "augmentation of third parties' rights."

Actual Conditions of Use of GATT/WTO Dispute Settlement Procedures

From the time of the former GATT, dispute settlement procedures – through consultation and panels – have been used relatively frequently. The number of panels established was low in the 1960s, but it increased rapidly in the latter half of the 1970s. After the inauguration of the WTO in January 1995, dispute settlement procedures again increased. From the inauguration in 1995 to the end of December 2018, 573 cases (requests for consultation) have been initiated under the WTO dispute settlement procedures (Refer to Table II-17-3).

DISPUTES IN WHICH JAPAN WAS INVOLVED (AFTER WTO'S ENTRY INTO FORCE)

(1) CASES IN WHICH JAPAN WAS COMPLAINANT

Name	Consultation requested	Panel establishment decided	Report adopted	Conclusion
US - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade Act of 1974 (DS6)	May 1995	-	-	Mutually agreed solution (July 1995) (Invocation of unilateral measures was avoided)
Brazil - Certain Automotive Investment Measures (DS51)	July 1996	-	-	Consultation suspended (Brazil effectively removed measures)
Indonesia - Certain Measures Affecting the Automobile Industry (DS55, 64)	Oct. 1996	Jun. 1997	Jul. 1998 (Panel report)	Japan's claim was approved
US - Measure Affecting Government Procurement (DS95)	Jul. 1997	Oct. 1998	-	Panel dissolved (Feb. 2002) (US measure judged as unconstitutional in the United States)
Canada - Certain Measures Affecting the Automotive Industry (DS139)	Jul. 1998	Feb. 1999	Jun. 2000 (Appellate Body report)	Japan's claim was approved
US - Anti-Dumping Act of 1916 (DS162)	Feb. 1999	Jul. 1999	Sep. 2000 (Appellate Body report)	Japan's claim was approved
US - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (DS184)	Nov. 1999	Mar. 2000	Aug. 2001 (Appellate Body report)	Japan's claim was approved. Not fully implemented despite the compliance period being over
US - Continued Dumping and Subsidy Offset Act of 2000 (The Byrd Amendment), (DS217)	Dec. 2000	Sep. 2001	Jan. 2003 (Appellate Body report)	Japan's claim was approved (Period for implementation has expired but it has not been put into practice)
US - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (DS244)	Jan. 2002	May 2002	Jan. 2004 (Appellate Body report)	Japan's claim was not approved
US - Definitive Safeguard Measures on Imports of Certain Steel Products (DS249)	Mar. 2002	Jun. 2002	Dec. 2003 (Appellate Body report)	Japan's claim was approved
US - Measures Relating to Zeroing and Sunset Reviews (DS322)	Nov. 2004	Feb. 2005	Jan. 2007 (Appellate Body report)	Japan's claim was approved
US - Measures Relating to Zeroing and Sunset Reviews (DS322) (compliance panel)	-	Apr. 2008	Aug. 2009 (Appellate Body report)	Japan's claim was approved
EU - Tariff Treatment of Certain Information Technology Products (DS376)	May. 2008	Sep. 2008	Aug. 2010 (Panel report)	Japan's claim was approved
Canada - "Local Content Requirement" in the Ontario's Feed-in Tariff Program for Renewable Energy (DS412)	Sept. 2010	Jul. 2011	May 2013 (Appellate Body report)	Japan's claim was approved

Name	Consultation requested	Panel establishment decided	Report adopted	Conclusion
China - measures related to exports of rare earth materials, tungsten and molybdenum (DS433)	Mar. 2012	Jul. 2012	Aug. 2014 (Appellate Body report)	Japan's claim was approved
Argentina - Import Restrictions on Wide-Ranging Goods (DS445)	Aug. 2012	Jan. 2013	Jan. 2015 (Appellate Body report)	Japan's claim was approved
China - AD Measure on Japanese High-Performance Stainless Steel Seamless Tubes (DS454)	Dec. 2012	May 2013	Oct. 2015 (Appellate Body report)	Japan's claim was approved
Russia - Recycling Fee on Motor Vehicles (DS463)	Jul. 2013	-	-	Consultation suspended (Jan. 2014, measure corrected)
Ukraine - Definitive Safeguard Measures on Certain Passenger Cars (DS468)	Oct. 2013	Mar. 2014	July 2015 (Panel report)	Japan's claim was approved
Korea - Import Bans, and Testing and Certification Requirements for Radionuclides (DS495)	May 2015	Sep. 2015		Appellate Body pending
Brazil - Certain Measures Concerning Taxation and Charges (DS497)	Jul. 2015	Sep. 2015	Jan. 2019 (Appellate Body report)	Japan's claim was approved
Korea - Anti-Dumping Duties on Pneumatic Valves from Japan	Mar. 2016	Jul. 2016		Appellate Body pending
India - Certain Measures on Imports of Iron and Steel Products	Dec. 2016	Apr. 2017		Appellate Body pending
Anti-dumping measures for Japanese stainless steel bars in Republic of Korea (DS553)	Jun. 2018	Oct. 2018		Panel pending
Public aid for Republic of Korea's shipbuilding industry (DS571)	Nov. 2018			Bilateral discussion in progress

(2) CASES FOR WHICH JAPAN WAS RESPONDENT

Name	Complainant	Consultation requested	Report adopted	Conclusion
Taxes on Alcoholic Beverages (DS8, 10, 11)	EC, US, Canada	Jun. 1995	Nov. 1996 (Appellate Body report)	Japan's claim was not approved
Measures Affecting the Purchase of Telecommunications Equipment (DS15)	EC	Aug. 1995	-	Mutually agreed solution (Sep. 1995)
Measures concerning Sound Recordings (DS28, 42)	US, EC	Feb. 1996	-	Mutually agreed solution (Jan. 1997)
Measures Affecting Consumer Photographic Film and Paper (DS44)	US	Jun. 1996	Apr. 1998 (Panel report)	Japan's claim was approved
Measures Affecting Distribution Services (Large-Scale Retail Store Law) (DS45)	US	Jun. 1996	-	Essentially closed at consultation stage

Name	Complainant	Consultation requested	Report adopted	Conclusion
Measures Affecting Imports of Pork (DS66)	EC	Jan. 1997	-	Essentially closed at consultation stage
Procurement of a Navigation Satellite (DS73)	EC	Mar. 1997	-	Mutually agreed solution (Jul. 1997)
Measures Affecting Agricultural Products (DS76)	US	Apr. 1997	Mar. 1999 (Appellate Body report)	Japan's claim was not approved
Tariff Quotas and Subsidies Affecting Leather (DS147)	EC	Oct. 1998	-	Essentially closed at consultation stage
Measures Affecting the Importation of Apples (DS245)	US	Mar. 2002	Dec. 2003 (Appellate Body report)	Japan's claim was not approved
Import Quotas on Dried Laver and Seasoned Laver (DS323)	Republic of Korea	Dec. 2004	Feb. 6, 2006 (Panel report, including the details of the case only)	Mutually agreed solution
Countervailing Duties on Dynamic Random Access Memories from Republic of Korea (DS336)	Republic of Korea	Mar. 2006	Jan. 2008 (Appellate Body report)	Part of Japan's claim was not approved
Countervailing Duties on Dynamic Random Access Memories from Republic of Korea (DS336) (compliance panel)	Republic of Korea	Sep. 2008 (Compliance panel measures)	-	Since the suspension of proceedings over 12 months, the authority for the establishment of the panel lapsed and the proceedings are finished (Mar. 2010)

(3) CASES IN WHICH JAPAN WAS A THIRD PARTY (EXCLUDING CASES ESSENTIALLY CLOSED)

Name	Complainant	Stage
EC - Measures Affecting Trade in Large Civil Aircraft (DS316)	US	Compliance review procedure
US - Measures Affecting Trade in Large Civil Aircraft — Second Complaint (DS353)	EU	Compliance review procedure
Thailand - Customs and Fiscal Measures on Cigarettes from the Philippines (DS371)	Philippines	Compliance review procedure
US - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379)	China	Confirming compliance
US - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (DS381)	Mexico	compliance review procedure
India - Measures Concerning the Importation of Certain Agricultural Products (DS430)	US	Approval of countermeasures
China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum (DS431, 432)	US, EU	Confirming compliance
Australia - Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging ¹ (DS435, 441, 458, 467)	Honduras, Dominican Republic, Cuba, Indonesia	Appellate Body pending
US - Countervailing Duty Measures on Certain Products such as solar panel from China (DS437)	China	Compliance review procedure

¹ Ukraine also requested consultations (DS434). However, on May 28, 2015, Ukraine filed for the suspension of the panel procedures pursuant to paragraph 12, Article 12 of the DSU, and the authority for establishment of the panel lapsed on May 30, 2016. In the letter dated May 29, 2015, Australia confirmed that it reached a bilateral agreement with Ukraine.

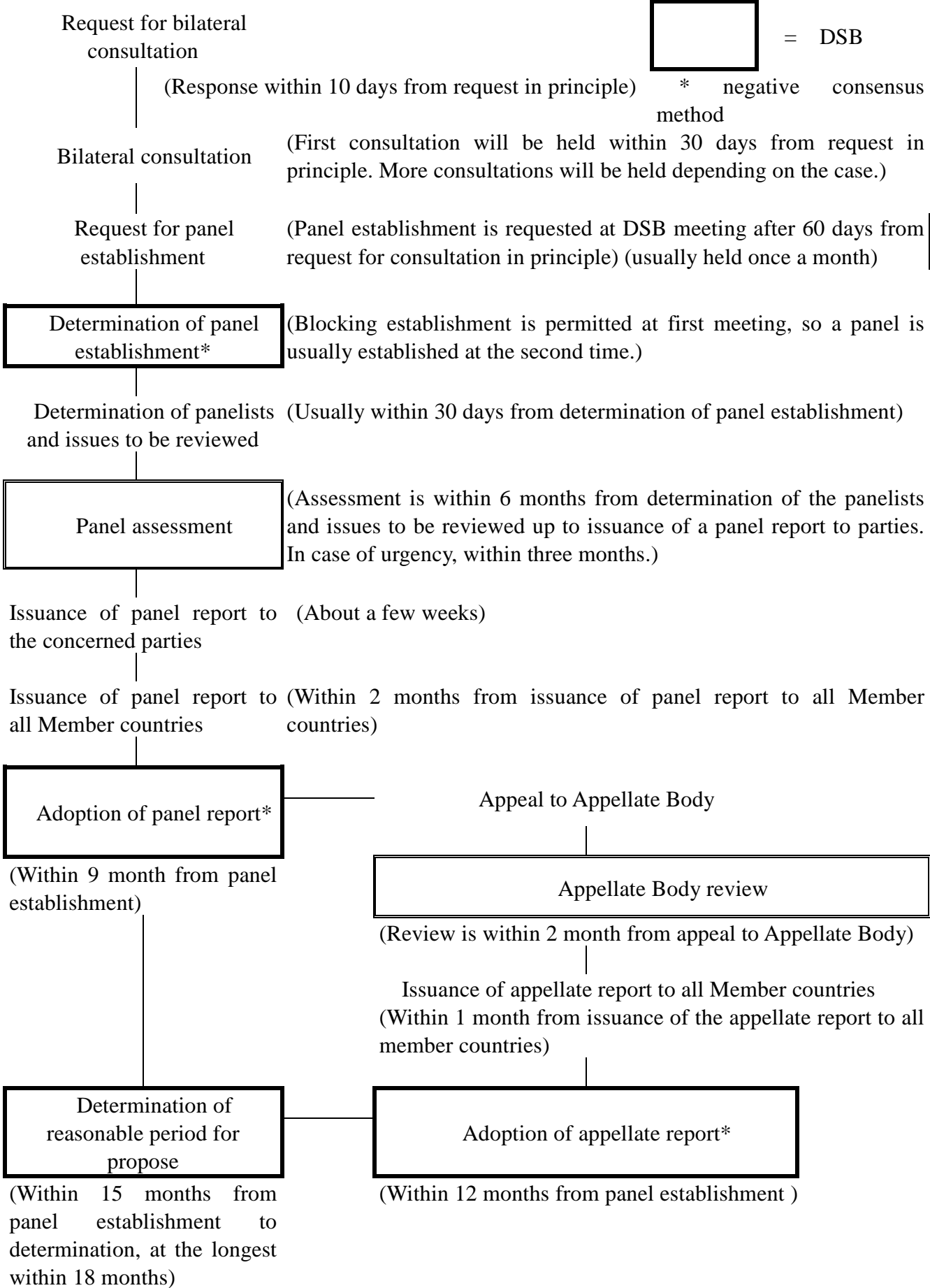
Name	Complainant	Stage
China - Certain Measures Affecting the Automobile and Automobile-Parts Industries (DS450)	US	Bilateral discussion in progress
EU and certain Member States - Certain Measures Affecting the Renewable Energy Generation Sector (DS452)	China	Bilateral discussion in progress
Indonesia - Importation of horticultural products, animals and animal products (DS455)	US	Compliance Panel
India - Certain Measures Relating to Solar Cells and Solar Modules (DS456)	US	Applying for countermeasures
Russia - Recycling Fee on Motor Vehicles (DS462)	EU	Confirming compliance
US - Anti-dumping and Countervailing Measures on large residential washers from Korea (DS464)	Republic of Korea	Applying for countermeasures
US - Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China (DS471)	China	Applying for countermeasures
Brazil - Certain Measures Concerning Taxation and Charges (DS472)	EU	Appellate Body report issue completed
Russia - Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union (DS475)	EU	Compliance review procedure
EU and its Member States - Certain Measures Relating to the Energy Sector (DS476)	Russia	Appellate Body pending
Indonesia - Importation of Horticultural Products, etc. (DS478)	US	Applying for countermeasures
China - Anti-Dumping Measures on Imports of Cellulose Pulp from Canada (DS483)	China	Confirming compliance
China - Measures Related to Demonstration Bases and common Service Platforms Programmes (DS489)	US	Panel established
Russia - Measures affecting Importation of Railway Equipment and Parts thereof (DS499)	Ukraine	Appellate Body pending
US - Countervailing Measure on Supercalendered Paper from Canada (DS505)	Canada	Appellate Body pending
China - Export Duties on Certain Raw Materials (DS508, DS509)	US (DS508) EU (DS509)	Panel established
China – Domestic Support for Agricultural Producers (DS511)	US	Panel pending
Russia - Measures Concerning Traffic in Transit (DS512)	Ukraine	Panel pending
Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey (DS513)	Turkey	Appellate Body pending
EU - Measures Related to Price Comparison Methodologies (DS516)	China	Panel pending
China - Tariff Rate Quotas for Certain Agricultural Products (DS517)	US	Panel pending
Canada — Measures Concerning Trade in Commercial Aircraft (DS522)	Brazil	Panel pending
US - Countervailing Measures on Certain Pipe and Tube Products (Turkey) (DS523)	Turkey	Panel report issue completed
Measures on trade in goods and services, and trade-related aspects of intellectual property rights in the United Arab Emirates (DS526)	Qatar	Panel pending
Anti-dumping measures for Australian A4 copy paper (DS529)	Indonesia	Panel pending
Countervailing measures against Canadian softwood in the US (DS533)	Canada	Panel pending

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Measures concerning the application of different pricing methods to Canadian softwood in the US (DS534)	Canada	Panel pending
Anti-dumping measures for fish fillets in the US, from Viet Nam (DS536)	Viet Nam	Panel pending
Anti-dumping measures for biaxially oriented polypropylene films in Pakistan, from the United Arab Emirates (DS538)	UAE	Panel pending
US anti-dumping and countervailing measures and available facts (DS539)	Korea	Panel establishment
Measures related to Indian exports (DS541)	US	Panel pending
Measures related to US steel and aluminum (Article 232) (DS544)	China	Panel establishment
Measures related to US steel and aluminum (Article 232) (DS546)	India	Panel establishment
Measures related to US steel and aluminum (Article 232) (DS548)	EU	Panel establishment
Measures related to US steel and aluminum (Article 232) (DS550)	Canada	Panel establishment
Measures related to US steel and aluminum (Article 232) (DS551)	Mexico	Panel establishment
Measures related to US steel and aluminum (Article 232) (DS552)	Norway	Panel establishment
Measures related to US steel and aluminum (Article 232) (DS554)	Russia	Panel establishment
Measures related to US steel and aluminum (Article 232) (DS564)	Turkey	Panel establishment
Safeguard measures for solar panels in the US (DS545)	Korea	Panel establishment
Safeguard measures for large washing machines in the US (DS546)	Korea	Panel establishment
Re-balancing measures against Article 232 of Canada (DS557)	US	Panel establishment
Re-balancing measures against Article 232 of China (DS558)	US	Panel establishment
Re-balancing measures against Article 232 of the EU (DS559)	US	Panel establishment
Re-balancing measures against Article 232 of Mexico (DS560)	US	Panel establishment

(As of Jan. 2019)

Figure II-17-1 Flow of Dispute Settlement Process in DSU



<In case of dispute over implementation between the parties>

Compliance panel/appellate procedures

(DSU 21.5)

Panelist from initial panel in principle

Panel assessment

Issuance of panel report to Member countries

(within 90 days from request for establishment of compliance panel)

Appellate review

Circulation of appellate report among Members

(within 90 days from request for establishment of determining panel)

(In case of no agreement on satisfactory compensation within 20 days from the expiry date of the reasonable period for implementation)

Request for approval of countermeasure

Arbitration on level of sanction

Approval of counter measure*

(Within 30 days from the expiry date of the reasonable period in principle)

**Figure II-17-2 Past Requests for the Authorization of Countermeasures in the WTO
Dispute Settlement Procedure**

Case	Article 22.2 (Request for the authorization of countermeasures)	Article 22.6 (Extent of countermeasure and result of arbitration)	Result of the countermeasure
Australia: salmon (DS18: Canada)	Requested countermeasures of 4.5 million CAD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	No arbitration awarded. (Reached a bilateral agreement during the interruption of arbitration.)	-
EC: hormone-treated beef (DS26: U.S.)	Requested countermeasures of 202 million USD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	Countermeasures of 116.8 million USD per year in total by the U.S. were authorized.	The U.S. imposed a supplemental tariff on imports from EC in July 1999.
EC: hormone-treated beef (DS48 (merged with 26): Canada)	Requested countermeasures of 75 million USD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	Countermeasures of 11.3 million CAD per year in total by Canada were authorized.	Canada imposed a supplemental tariff on imports from EC in August 1999.
EC: banana (DS27: U.S.)	Requested countermeasures of 520 million USD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	Countermeasures of 191.4 million USD per year in total by the U.S. were authorized.	The U.S. imposed a supplemental tariff on imports from EC in April 1999. The U.S. lifted its countermeasures by July 2001, following an agreement reached between the U.S. and EC on measures to settle this dispute.
EC: banana (DS27: Ecuador)	Requested countermeasures of 450 million USD per year in total. (Cease of certain obligations under GATS and TRIPS)	Countermeasures of 201.6 million USD per year in total by Ecuador were approved.	Not invoked.
Brazil: aircraft (DS46: Canada)	(i) Cease application of certain obligations under GATT Article VI	Countermeasures of 344.2 million CAD per year in total by	Not invoked.

Case	Article 22.2 (Request for the authorization of countermeasures)	Article 22.6 (Extent of countermeasure and result of arbitration)	Result of the countermeasure
	(ii) Cease of certain obligations under textile agreement (iii) Cease application of certain obligations under import license procedures agreement (iv) Addition of supplemental tariff (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff) Requested above countermeasures of 700 million CAD per year in total.	Canada were approved.	
Canada: dairy products (DS103: U.S.)	Requested countermeasures of 35 million USD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	No arbitration awarded. (Reached a bilateral agreement during the interruption of arbitration.)	-
Canada: dairy products (DS113 (merged with 103): NZ)	Requested countermeasures of 35 million USD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	No arbitration awarded. (Reached a bilateral agreement during the interruption of arbitration.)	-
U.S.: FSC (DS108: EC)	Requested countermeasures of 4 billion 430 million USD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	Countermeasures of 4 billion 430 million USD per year in total by EC were approved.	EC increased tariff on imports from the U.S. in phases from March 2004 to January 2005. The U.S. abolished FSC tax system in October 2004.
U.S.: 1916 AD Law (DS136: EC)	Enactment of “mirror act”	Accumulated amount paid by EC companies based on the final decision of the court or reconciliation.	Not invoked. (The U.S. abolished the 1916 AD Law in

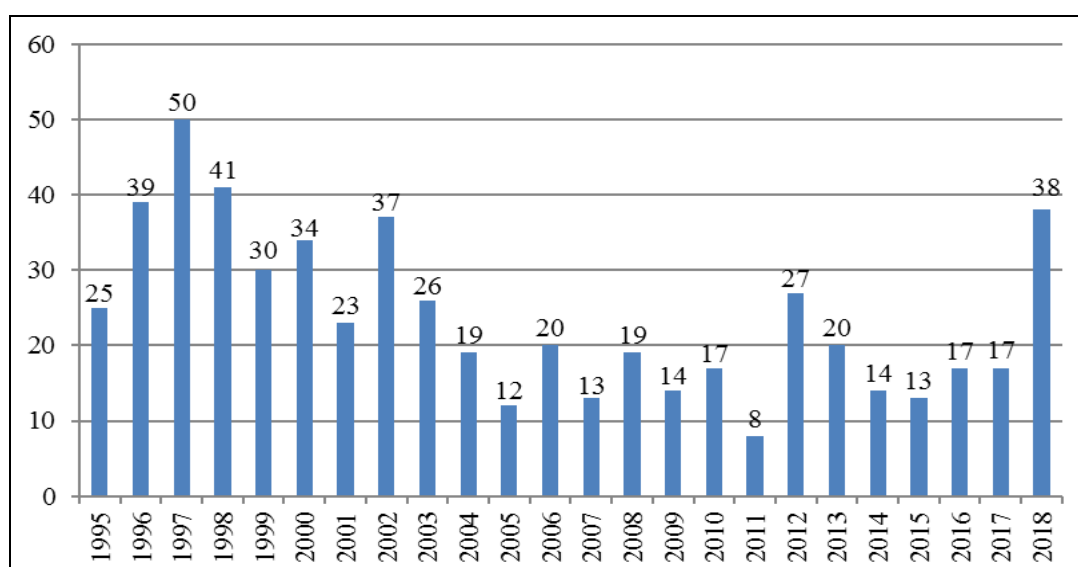
Case	Article 22.2 (Request for the authorization of countermeasures)	Article 22.6 (Extent of countermeasure and result of arbitration)	Result of the countermeasure
			December 2004.)
U.S.: 1916 AD Law (DS162: Japan)	Enactment of “mirror act”	No arbitration awarded. (1916 AD Law abolished during the interruption of arbitration.)	-
U.S.: Copyright Act Section 110 (DS160: EC)	Requested countermeasures of 1.22 million Euro per year in total. (Cease of obligations under TRIPS agreement and addition of special expenses at national borders)	No arbitration awarded. (Reached a bilateral agreement during the interruption of arbitration.)	-
Japan: Apple (DS245: U.S.)	(i) Addition of supplemental tariff (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff) (ii) Cease of certain concessions related to SPS agreement (iii) Cease of certain concessions related to agricultural agreement Requested above countermeasures of 143.4 million USD in total.	No arbitration awarded. (Reached a bilateral agreement during the interruption of arbitration.)	-
U.S.: Softwood IV (DS257: Canada)	Requested countermeasures of 200 million CAD per year in total. (Cease application of concessions and other obligations under GATT 1994 (excessive taxation))	No arbitration awarded. (Reached a bilateral agreement during the interruption of arbitration.)	-
U.S.: Softwood V (DS264: Canada)	Requested countermeasures of 400 million CAD per year in total. (Cease application of concessions and other obligations under GATT 1994 (amount equivalent to excessive taxation through zeroing))	No arbitration awarded. (Reached a bilateral agreement during the interruption of arbitration.)	-
U.S.: Raw Cotton (DS267: Brazil)	(i) Requested countermeasures of 1 billion 37 million USD per year in total. (Cease	Arbitration interrupted. (Now under the panel for the confirmation of implementation)	Not invoked. (Bilateral Agreement was concluded which

Case	Article 22.2 (Request for the authorization of countermeasures)	Article 22.6 (Extent of countermeasure and result of arbitration)	Result of the countermeasure
	application of concessions and other obligations under GATT 1994 and impose supplemental tariff) Considering it as insufficient, requested (ii) and (iii) below as well in addition to (i). (ii) Restriction on the protection of intellectual property rights (iii) Restriction on protection under GATS		provided Brazil would not impose the countermeasures as long as the mutually agreed framework is in effect.)
U.S.: OCTG (DS268: Argentina)	Requested countermeasures of 44 million USD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	Arbitration interrupted. (At the time of sunset review, ITC had a negative determination of continuing Anti-dumping measures for OCTG imported from Argentina.)	-
U.S.: Softwood VI (DS277: Canada)	Requested countermeasures of 4 billion 250 million CAD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	No arbitration awarded. (Reached a bilateral agreement during the interruption of arbitration.)	-
EC: Genetically Modified Products (DS291: U.S.)	(i) Cease of application of concessions and other obligations under GATT 1994 (ii) Cease of certain concessions related to SPS agreement (iii) Cease of certain concessions related to agricultural agreement Requested above countermeasures. (Level of the cease of obligations is equivalent to the annual lost earnings of the U.S. due to the measures taken by EC)	Arbitration interrupted. (Now before the panel for the confirmation of implementation)	-

Case	Article 22.2 (Request for the authorization of countermeasures)	Article 22.6 (Extent of countermeasure and result of arbitration)	Result of the countermeasure
US: Zeroing (DS294: EU)	Addition of supplementary tariff of 310.0 million USD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	Arbitration completed. (In February 2012, Japan and the US agreed to a Memorandum of Understanding, pursuant to which the US amended the DOC regulation to abolish the zeroing measure. In August 2012, pursuant to the Memorandum, Japan withdrew a request for arbitration by withdrawing the request for countermeasures.)	-
U.S.: Zeroing (DS322: Japan)	Addition of supplementary tariff of 248.5 million USD per year in total. (Cease application of concessions and other obligations under GATT 1994 and impose supplemental tariff)	Arbitration completed. (In February 2012, the EU and the US agreed to a Memorandum of Understanding, pursuant to which the US amended the DOC regulation to abolish the zeroing measure. In June 2012, pursuant to the Memorandum, the EU withdrew a request for arbitration by withdrawing the request for countermeasures.)	-
EU: Large Civil Aircraft (DS316: US)	(i) Termination of the application of concessions and other obligations under the 1994 GATT. (ii) Termination of horizontal or sectional commitments under the GATT. Requested above countermeasures of approx. 7-10 billion USD per year in total.	Arbitration interrupted.	-

Case	Article 22.2 (Request for the authorization of countermeasures)	Article 22.6 (Extent of countermeasure and result of arbitration)	Result of the countermeasure
US: Large Civil Aircraft (Second Complaint) (DS353: EU)	<p>(i) Termination of the application of concessions and other obligations under the 1994 GATT.</p> <p>(ii) Termination of the application of concessions and other obligations under the SCM Agreement.</p> <p>(iii) Termination of horizontal or sectional commitments under the GATT.</p> <p>Requested above countermeasures of approx. 12 billion USD per year in total.</p>	Arbitration interrupted.	-
US: Clove Cigarettes (DS406: Indonesia)	<p>(i) Termination of the application of concessions and other obligations under the 1994 GATT.</p> <p>(ii) Termination of the application of concessions and other obligations under the TBT Agreement.</p> <p>(iii) Termination of the application of concessions and other obligations under the Agreement on Import Licensing Procedures.</p> <p>Requested above countermeasures.</p>	Arbitration terminated. (Reached a bilateral agreement during the interruption of arbitration.)	-

Figure II-17-3 Changes in the Number of Dispute Cases



(Note) The number of dispute cases covers cases in which consultations are requested, equivalent to the dispute cases numbered.

Figure II-17-4 Consultations and Panels Based on Files Made by Japan in the History of GATT (including some exceptions)

(1) Consultations* Refer to (2) below for cases being shifted to a panel.

Subject	Counter-part country	Supporting clauses	Files made in	Period of discussion	Other status
Import restrictions	Italy	Paragraph 1, Article 22	Jul 1960		
Chassis cab (raise of tariffs through changes in tariff classification)	U.S.	Paragraph 1, Article 22 Paragraph 1, Article 23	Aug 1980 Apr 1982	Jul 1981 Nov 1982	No request made for panel
VTR (import restrictions)	Austria	Paragraph 1, Article 22	Mar 1981	Mar 1981 Nov 1981	Import restrictions abolished
VTR (import restrictions)	EC (France)	Paragraph 1, Article 23	Dec 1982	No consultation	France normalized customs procedures
Semiconductor (unilateral measure)	U.S.	Paragraph 1, Article 23	Aug 1987	Aug 1987	No request made for panel
Polyacetal resin (abuse of AD duties)	Republic of Korea	AD Code Paragraph 2, Article 15	Sep 1991	Oct 1991 May 1992	U.S. filed to the panel in October 1991 Panel adopted in April 1993
Inclusion of paid AD tax in costs (abuse of AD duties)	EC	AD Code Paragraph 2, Article 15	Apr 1992	Oct 1992 Apr 1993	Provisions in the new AD Agreement on this issue were clarified

U.S. market of photographic films and photographic papers	U.S.	1960 decision pertaining to the consultation on restrictive practices	Oct 1996		Request for consultation was received from the U.S. in June 1996. Consultation following files by both Japan and the U.S. had not been implemented so far.
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(2) Panels

Cases	Counter-part country	Supporting clauses	Panel organized in	Reports distributed in	Report adopted in	Conclusion
Settlement on the definition of subsidies (Zenith case)	U.S.	Working group was established without going through consultation	May 1977 (Working group)	Jun 1977	Jun 1977	Japan's position was accepted
AD regulation on parts by EC (abuse of AD duties)	EC	Paragraph 2, Article 23	Oct 1988	Mar 1990	May 1990	Japan's position was accepted
Audio cassette (abuse of AD duties)	EC	AD Code Paragraph 5, Article 15	92.10	Apr 1995	Not adopted	

Figure II-17-5 Panels Filed to Japan in the History of GATT

	Country filed	Panel organized in	Panel report adopted in (report to committees adopted in)	Conclusion of the panel, etc.
Import restrictions by industrialized countries (Article 23)	Uruguay	Feb 1962	Nov 1962	Some of restrictions on primary products placed by 15 industrialized countries were ruled to be violations of GATT.
Import restrictions of silk threads	U.S.	Jul 1977	May 1978	Concluded through bilateral agreement.
Import restrictions of leather	U.S.	Jan 1979	Nov 1979	Concluded through bilateral agreement.
Import restrictions of leather	Canada	Nov 1979	Nov 1980	Concluded through bilateral agreement.
Import restrictions of tobacco products	U.S.	Feb 1980	Jun 1981	Concluded through bilateral agreement.
Import restrictions of leather	U.S.	Apr 1983	May 1984	Violation to Article XI of GATT was approved.

	Country filed	Panel organized in	Panel report adopted in (report to committees adopted in)	Conclusion of the panel, etc.
Import restrictions of leather footwear	U.S.	Jul 1985		Concluded through bilateral agreement.
Import restrictions of twelve agricultural products	U.S.	Oct 1986	Feb 1988	Application of GATT Article XI to national trade was ruled, and violation to said article was identified.
Tariffs, inland duties and labeling pertaining to alcohol beverages	EC	Feb 1987	Nov 1987	Violation to Article III of GATT by the liquor tax system was ruled.
Third-country monitoring for semiconductors, etc.	EC	Apr 1987	May 1988	Violation to Article XI of GATT by third-country monitoring was ruled.
Tariffs on SPF processed materials	Canada	Mar 1988	Jul 1989	Wide scope of discretion approved in relation to tariff classification, and violation to Article XI of GATT was ruled.
Import restrictions of beef and citrus fruits	U.S.	May 1988		Concluded through bilateral agreement.
Import restrictions of beef	Australia	May 1988		Concluded through bilateral agreement.
Import restrictions of beef	New Zealand	May 1988		Concluded through bilateral agreement.

COLUMN:**ISSUES CONCERNING THE WTO APPELLATE BODY****1. BACKGROUND**

Three WTO Appellate Body members finished their terms of office consecutively in June, August, December of 2017, and September 2018. As of February 2018, there were four remaining WTO Appellate Body members, with three member seats left vacant (those for Central and South America, Asia, and Europe). Normally, the selection of successor Appellate Body members is conducted before the end of the terms of Appellate Body members. However, the selection process has not yet commenced to date, because the dispute among WTO Members concerning the selection process has not converged at the Dispute Settlement Body (DSB).

Japan chaired the DSB until March 2018 and has sought solutions to commence the selection process of Appellate Body members. Below, the situation concerning the Appellate Body is summarized.

2. PROBLEMS POINTED OUT BY THE UNITED STATES

Announcing “The President’s Trade Policy Agenda” in March 2018, the US said that “The biggest concern is that the panel and the Appellate Body aggravated and reduced the rights and obligations (of the member countries) defined in the WTO Agreement. Moreover, “The long standing position of the United States is that the Panels and Appellate Body are required to apply the WTO Agreement in accordance with the text of the Articles negotiated and agreed by the member countries”. As specific examples of concerns, The five points are: (1) ignoring the 90-day deadline, (2) continuing operations after the term of office of Appellate Body members, (3) issuing advisory opinions not necessary for dispute resolution, (4) review of national laws of member countries by the Appellate Body and (5) the Appellate Body members' claim that its report should be treated as a precedent.

Regarding (1) (ignoring the 90-day deadline), Article 17-5 of DSU has made it mandatory for the Appellate Body to issue a report in principle, within 60 days of filing an appeal to the Appellate Body, and at the most, maximum within 90 days. The US points out that prior to 2011, it was the practice of the Appellate Body to comply with this deadline and to obtain Member countries' consent to extend the deadline if it exceeded 90 days. On the other hand, since 2011, the Appellate Body has been criticized for non-compliance and non-transparency of the DSU, not consulting with the member countries to obtain their consent, but only informing them that the deadline could not be met.

(2) (Regarding the continuation of duties after the term of Appellate Body member) Article 15 of the Rules of the Appellate Body states that A person who is no longer a member of the Appellate Body shall be a member of the Body upon its approval, and notification to the dispute resolution body, to complete the appeal process assigned when he were a member “The person will be deemed to be a member of the Appellate Body only for that purpose.” The United States considers that it is a problem that Appellate Members practically conduct member appointment themselves under said Rule, even though the right to appoint Appellate Body members belongs to the DSB and decisions concerning the appointment of Appellate Body members should be made by WTO Members. The United States, without obtaining the approval of the dispute resolution agency, was in charge of the project based on this article for Ramirez (Mexico), whose term ended in June of last year, and Bandenbosch (Belgium), whose term of service ended in December of last year. It also criticizes the decision to continue.

(3) Regarding the issue of advisory opinions that are not necessary for dispute resolution, the United States stated that, “the recommendation or decision made by the dispute resolution agencies are intended to achieve a satisfactory resolution of the problem, in accordance with the rights and obligations based on this understanding and the covered agreement”, based on DSU Article 3.4, and “The purpose of the dispute resolution system is to ensure a clear resolution of disputes”, based on Article 3-7. The purpose of the dispute resolution system is not about “making the law”, but to help member countries resolve their disputes, and has commented that Unlike national courts and some international courts, WTO member states have not authorized the Panel and the Appellate Body to issue “recommended opinions”.

(4) Regarding (Review of the domestic laws of member countries by the Appellate Body), the United States has commented that despite the DSU Article 17-6 stipulating that “Appeals to the Appellate Body are limited to legal issues covered in the subcommittee report and legal interpretations made by the subcommittee”. It said that the Appellate Body could review the meaning of Member countries' domestic laws as a legal matter, and criticized the panel for finding facts and drawing conclusions based on facts that were not discussed between the parties.

Regarding (5) (the Appellate Body's claim that its report should be treated as a precedent), the United States stated that in spite of the WTO Agreement, which said that precedent binding is not allowed in the judgment of the Appellate Body, the Appellate Body has ruled that unless there is a "cogent reason", the Panel must follow past Appellate Body reports. The United States criticized that the Appellate Body report is treated like a WTO agreement negotiated by member countries.

3. EFFORTS OF THE INDIVIDUAL COUNTRIES

Even as of February 2019, the United States has not agreed to start the process of appointing Appellate Body members, as the problem described in 2 has not yet been resolved. In response, a proposal to reform the Appellate Body was submitted to the general council in December 2018, led by the EU. This is a proposal related to "Procedures and Regulations" in which 12 countries/regions of the EU, China, India, Norway, Canada, Australia, NZ, Switzerland, Singapore, Mexico, Korea, and Iceland are joint proposers. ((1) stipulates that if the Appellate Body determines that it takes 90 days or more to issue a report, the consent of the relevant country should be obtained. (2) For cases where oral hearings have been completed during the term of Appellate Body members in charge of the case, extension of the term of the said members is permitted until the end of the case. (3) The Appellate Body stipulates that judgment is made only to the extent necessary to resolve the case. (4) The Appellate Body stipulates that the meaning of the domestic laws of the member countries cannot be interpreted. (5) Regular meetings will be held between Member Countries and the Appellate Body, and Member Countries will have the opportunity to express their opinions on the contents of the Appellate Body report) Proposal related to "independence of Appellate Body members/strengthening the structure of the secretariat of the Appellate Body" in which only the three countries/regions of the EU, China and India are joint proposal countries ((1) The term of office of Appellate Body members will be changed from the current term of 4 years (with reappointment) to the term of 6-8 years (without reappointment) (2) Increase the number of Appellate Body members (7 to 9), stipulate full-time Appellate Body members, and increase the number of Appellate Body secretariat personnel. (3) The Appellate Body member whose term of office will expire shall be stipulated to continue his duties until the replacement member is decided (maximum extension period is 2 years). (4) It is defined that the election process for the replacement members will be automatically started when the term of Appellate Body members is still remaining for 6 months). A revision of DSU is proposed, as a means to achieve the above. It has also been proposed to adopt DSU amendments based on both proposals at the same time. In light of concerns raised by the United States in the General council that the Panel and Appellate Body have been adding or reducing the rights and obligations of Member States, a joint proposal by Australia and Singapore calling for the immediate start of a solution-focused process has also been submitted.

First of all, for these suggestions regarding joint proposals related to "procedures and rules" by 12 countries and regions, The United States, in the General Council stated that, "If you read carefully, the proposal does not effectively address the concerns of the US". Rather than going back to the DSU rules, the proposal appears to approve the rule changes, but the Appellate Body must follow the rules agreed to by the member countries. Member countries participated in deep discussions, why the Appellate Body" deviates from the rules, and the need to think as to what needs to be done so that the rules can be followed", the United states commented with negative nuance. In addition, in response to the joint proposal by the EU, China, and India regarding "the independence of Appellate Body members and strengthening the system of the secretariat of the Appellate Body", it was criticized with a strong tone, as "rather, make the Appellate Body less-accountable and make overreach easier.", On the other hand, for the Australia-Singapore joint proposal, "we share concerns about the overreach of the Appellate Body. Over the years, the United

States and other member states have raised an alarm that the Appellate Body has added or reduced member's rights and obligations in various areas of the WTO Agreement. Positively nuanced comments like looking forward to further discussions with member countries in the future were being made".

In response to these developments, Ambassador Walker of New Zealand has become a facilitator since January of this year, and with the Delegation of the Japanese Government, International Organization in Geneva, an informal meeting on Appellate Body reform was held, and at the General Council at the end of February this year, the progress of the discussion so far was reported.

4. FUTURE CHALLENGES

While any appeal must be signed off by three Appellate Body members, there will be just three Appellate Body members after the expiry of the term of another Appellate Body member scheduled at the end of 2018, unless new members are not selected. There is even a risk that some appeals cannot be handled, as three Appellate Body members may not be convened due to conflict of interest. Since panel rulings are not adopted until appellate review is completed (see DSU 16.4), the absence of a sufficient number of Appellate Body members would allow countries that lost in panel cases to block the DSB recommendations they received. The dispute settlement mechanism may become dysfunctional should such situation arise.

In order to avoid such situation and maintain the proper functioning of the dispute settlement mechanism, all WTO members need to actively participate in discussions toward solution. Japan should be constructively involved in international discussions on the reform of the Appellate Body in order to advance such discussions and find keys to solutions to resolve this issue.

