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Abstract

This paper examines the major developments in WTO dispute settlement during three time periods (1995-1999, 2000-2004, 2005-2012) and considers the effectiveness of the system in restraining the use of trade measures by the United States and the European Union. It finds that the first period was characterized by the large number of cases brought by the United States and the European Union and that the second and third periods were noteworthy for the increased number of cases brought by developing countries and by the numerous cases brought against the United States. On the question of effectiveness, the paper finds that the system has succeeded in restraining the use of WTO-inconsistent trade measures by the United States and the European Union, but often only after considerable delays in implementation of DSB rulings.

Keywords

WTO dispute settlement

The WTO dispute settlement system has now been in operation for 18 years. In this working paper, I review the major developments over its short life – focusing on what I view as the most salient aspects of its record during three periods: the first five years; the second five years; and the last eight years. For me, each of these periods evidences distinct developments in the evolution of the system. Thereafter, I consider how promptly and faithfully the decisions of the panels and Appellate Body have been implemented by the major players in the WTO – the United States and the European Union.

I. Major Developments in the Operation of WTO Dispute Settlement System[1]

A. The First Five Years (1995-1999)

The first five years of WTO dispute settlement were noteworthy for the heavy usage made of the system, the large number of controversial cases and issues carried over from the GATT days and the flowering of the Appellate Body.

1. Heavy Usage

From 1995 through 1999, the WTO dispute settlement system was characterized by extensive use of the system by the United States initially, and later by the European Union.2 While there was a wide range of disputes, this period was especially notable for carryover cases from the days of GATT and a focus on implementation of Uruguay Round results, particularly in respect of the TRIPS Agreement. There were 185 consultation requests made from 1995 through 1999, or 37 per year.3 The United States initiated 60 consultation requests, or about one-third of the disputes. Indeed, in the first three years, the United States initiated 35% of the consultation requests made. During the first five years, the European Union initiated 47 consultation requests, also about one-third of the disputes. Interestingly, the European Union initiated 31% of the consultation requests in the last three years of the period (1997–1999), compared to only 11% in the first two years of the period (1995–1996). Of the other WTO members, Canada was also relatively active in the first two years, initiating 8 consultation requests (12.5%).

2. Controversial Carry-Over Cases

Probably the most noteworthy characteristic of WTO dispute settlement in its early years was the large number of very controversial cases involving systemic issues or specific fact situations that were carried over from the GATT system. Examples would include the *EC Bananas III* case, the *EC Hormones* case, the *Japan Film* case, the *US Shrimp* case, the *US Helms-Burton* case, the *Turkey Textiles* case, the *India Quantitative Restrictions* case, the *US Section 301* case and, in a matter decided just after the end of the period, the *US FSC* case.[4] These cases all involved the United States and/or European Union and raised very sensitive and controversial issues. Except for the *Bananas* and the *FSC* cases, the disputes did not directly involve great amounts of trade, but they were nonetheless

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1 The discussion of the first ten years is taken from William J. Davey, The WTO Dispute Settlement System: The First Ten Years, 8 Journal of International Economic Law 17, 17-25 (2005).

2 I use the term "European Union" or "EU" throughout this paper, notwithstanding the fact that during much of the WTO's existence, the "European Community(ies)" or "EC" was the official name of the party to the WTO Agreement.

3 This information is available from the WTO website: www.wto.org. Some of these requests involved the same underlying dispute. For example, there were two underlying consultation requests in the first WTO case resulting in a panel report (*US Gasoline*) and three consultations in the second (*Japan Alcohol Taxes II*). For simplicity, I have not tried here to group related consultations requests, although I have done so elsewhere. See id.

4 For a brief description of these cases, see Annex I.

considered very important for symbolic reasons. Fortunately for the system, it managed to defuse these cases—the United States lost the *Film* case and the European Union lost the *Section 30*1 case and neither appealed, perhaps because in each case the losing party won some useful points; the *Helms-Burton* case was informally settled on the day the first written submission was due to be received by the panel. The *Turkey Textiles* and *India QR* cases disturbed some members for systemic reasons, but the actual results of the cases did not result in serious implementation difficulties for either respondent nor has the systemic issue arisen again. In *Shrimp*, the United States lost, but while the case was controversial, the Appellate Body report was welcomed by many as making the WTO more environmentally friendly and the United States had no problem implementing the report. The *Bananas* case presented the most difficult implementation problem because of a United States–European Union dispute over how to interpret the WTO Dispute Settlement Understanding. Indeed, that dispute came close to destroying the system in its relative infancy, but it was ultimately finessed,[5] and an agreement on implementation was reached in 2001. That agreement failed, but the case was formally settled in 2012.[6] Of this early group of cases, only *Bananas*, *Hormones* and *FSC* remained unimplemented for substantial periods of time and all were subject to the imposition of retaliatory measures. The United States ultimately implemented the *FSC* decision in 2005 and the United States settled the *Hormones* case in 2009 by accepting increased access to the EU beef market.[7] Overall, the WTO dispute settlement system seemed to survive these controversial cases reasonably well, although it must be conceded that some of the WTO Members directly involved in the specific cases were somewhat embittered at certain results.

3. The Appellate Body

The most noteworthy single development in the first five years of WTO dispute settlement was the flowering of the Appellate Body. The role it would play in the WTO system was quickly put to the test as the first 12 panel reports were appealed. From the outset, the Appellate Body established itself as an activist tribunal. It modified 10 of the reports, effectively reversing one of them. In its review of panel reports, the Appellate Body did not focus on whether it approved of the result in general terms as some appellate tribunals do, but rather it closely examined the reasoning and wording of the panel reports, and it did not hesitate to modify reasoning or wording with which it disagreed.

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5 In the *Bananas* case, the United States requested the WTO Dispute Settlement Body to authorize it to suspend concessions under DSU article 22 on the grounds that the European Union had failed to implement the DSB recommendations in the case. The European Union argued that since it had implemented and that since there was a dispute over whether its implementing measure was consistent with WTO rules, there had to be a determination under DSU article 21.5 that its implementation measure was WTO inconsistent before suspension of concessions could be authorized. The United States responded that DSU article 22 did not impose such a condition and that, as a practical matter, it would lose the right to have suspension of concessions approved by reverse consensus if its request were not acted upon within 30 days of the expiration of the reasonable period of time. In that regard, it noted that an article 21.5 panel would never be able to issue its report within such a timeframe. Ultimately, after a week-long DSB meeting and much controversy (e.g., several suspensions of the meeting and a challenge to a ruling by the chair, including a call for a vote to overrule the chair), the US request was ruled to be in order. The European Union then requested arbitration under DSU article 22.6 to determine the level of suspension. Under the DSU, the arbitrators were the members of the original panel, who were contemporaneously conducting an article 21.5 proceeding brought a few weeks earlier by Ecuador (one of the original complainants with the United States). The panel/arbitrators simultaneously ruled in *both* matters that the EU implementing measures were not WTO-consistent and in the arbitration set the level of suspension at a level considerably below the US request. At the time, it was unclear (i) what the United States would do if its request had not been ruled to be in order (although it was assumed that it would take retaliatory measures unilaterally, as it later did when it decided that the arbitration was taking too long) and (ii) once the request was ruled to be in order, whether the European Union would press its demand for a DSB vote to overrule the chair, ask for arbitration or take other action. The Secretariat had been urging the parties to go to arbitration with an agreed timetable. In the end, the EU request effectively implemented the Secretariat approach, but without an agreed timetable. See WT/DSB/M/54.

6 See Annex III.

7 See Annexes II (FSC) & III (Hormones).

The first appeal (*US Gasoline*) was noteworthy in that the Appellate Body stressed the need to focus on the exact words of the relevant treaty text and to apply the rules of the Vienna Convention on the Law of Treaties in order to interpret the WTO agreements. Moreover, in that appeal, which involved a successful challenge by Venezuela and Brazil of a US environmental measure, the Appellate Body first evinced a concern with ensuring that governments have adequate discretion to take what they view as necessary environmental measures, assuming of course that they meet GATT's nondiscrimination requirements. Thus, while the US failed to convince the Appellate Body that it met those requirements, it did obtain a decision that it considered to be more environmental-friendly.

The role of the Appellate Body in handling the six controversial cases discussed above that were appealed is quite instructive. The six cases involved commercial issues (*Bananas* and *FSC*), institutional issues (*India QR* and *Turkey Textiles*) and environmental/health issues (*Hormones* and *Shrimp*). In the cases involving commercial issues, the Appellate Body applied the rules relatively strictly. Indeed, in the *Bananas* case, the panel had ruled in the EU's favor on one of the two major issues in the case by interpreting a waiver obtained by the EU that explicitly permitted banana tariff preferences as also covering quota preferences. The Appellate Body—emphasizing the text of the waiver—reversed that part of the panel report. In the two institutional cases, the Appellate Body took a broad view of the jurisdiction of the WTO dispute settlement system—effectively ruling that it was competent to consider the justification of balance-of-payments measures and to decide on whether a free trade area or customs union was consistent with GATT Article XXIV.

In contrast, in the two environmental/health cases, the Appellate Body reports interpreted the relevant agreements so as to increase governmental discretion. In the *Hormones* case, the Appellate Body made a number of statements suggesting that the SPS Agreement should be interpreted so as to afford discretion to governments, such as by invoking the *in dubio mitius* principle and noting that although SPS measures are to be science-based, governments were not required to follow mainstream scientific opinion. In the *Shrimp* case, it built upon the *Gasoline* case in giving breadth to the exception in GATT Article XX(g) for measures related to the conservation of exhaustible natural resources. While it ultimately did not reverse the panels' findings of violations in the two cases, its criticisms of the strict approach taken by the panels, as well as the general tone and some of the specific language in its reports, were welcomed by those concerned that trade rules not override environmental measures.

Although the number of trade remedy and subsidy cases was relatively small compared to later years,[8] the Appellate Body established in this period that it would generally find fault with trade remedies imposed and subsidies provided by WTO members.

4. Summary

The WTO dispute settlement system survived its first five years in good shape. It was used frequently by WTO members and it had successfully handled a number of very controversial cases. While members had complaints about individual cases, they all stated their general satisfaction with the system in the course of the 1998–1999 DSU review in which it was agreed that only some fine-tuning of the system was needed.

B. The Second Five Years (2000–2004)

The second five years of WTO dispute settlement were noteworthy for a moderate decline in usage of the system; a sharp increase in developing country usage of the system; and the evolution of the role of the United States in the WTO dispute settlement system from principal complainant to principal target. In addition, it was noteworthy that the second five years saw a significant increase in the number of

[8] See discussion in text at note 11 infra.

trade remedy cases involving safeguards, dumping and subsidies. As noted above, trade remedy cases had been relatively rare in the initial years of dispute settlement.

1. Usage Moderates

The second five years of the WTO dispute settlement system were marked by a noticeable decline in consultation requests—a total of 139 requests, or 28 requests per year, as opposed to 37 requests per year in the first five years. In other words, usage declined by roughly 25%. More significantly, the United States and the European Union no longer were as dominant as complainants in the system. In the 2000–2004 period, the United States filed 20 consultation requests (14% of the requests), as did the European Union.

2. Advanced Developing Countries Discover WTO Dispute Settlement

In contrast, developing country use of the system increased dramatically. Indeed, it is striking to consider the evolution in the use of the WTO dispute settlement system by developing countries, particularly advanced developing countries. In the first five years of the system's existence, developing countries initiated by themselves roughly one-quarter of the consultation requests. In the 2000-2004 period, developing countries initiated over one-half of the consultation requests—more than doubling their relative share of initiations. Brazil was particularly active, initiating 9 consultation requests. Thus, developing countries became more frequent users of WTO dispute settlement, both in absolute and relative terms. Interestingly, the majority of those cases have involved developing country respondents. That is to say, developing countries seem to have found the WTO dispute settlement system to be a useful mechanism to deal with a wide range of trade disputes—using it not only against developed countries, but also in their trading relations with other developing countries. Of particular note is the way in which Latin American countries have made extensive use of the system in their dealings with other. The importance of this development cannot be over-emphasized because it has been argued since the beginning of the WTO that the WTO dispute settlement mechanism is too complicated for developing countries to make effective use of.

3. The United States as Principal Target of WTO Dispute Settlement Reports

In the first five years of dispute settlement, the United States and the European Union were each the respondent in four reports issued by the Appellate Body (16% each of total reports), while the rest of the WTO membership were respondents in 17 such reports.[9] In the second five years of WTO dispute settlement, the United States was the respondent in 20 out of 38 Appellate Body reports circulated (53%), while the European Union was a respondent in six and the rest of the membership were respondents in 13.[10] As we will see, this trend continues to the present. For reference, it is worth noting that in the first decade only Canada, which was the respondent in eight cases, was a respondent in more than three Appellate Body reports.

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[9] I use Appellate Body reports exclusively for this metric. Generally, I think that the cases appealed to the Appellate Body are the more important cases. However, if unappealed panel reports are included in the calculations, the numbers for the first five years would be: United States: 7/33 (21%); European Union 5/33 (15%); others: 21/33 (64%). For the second five years (2000-2004): United States: 28/60 (47%); European Union: 6/60 (10%); others: 26/60 (43%). As these numbers suggest, respondents other than the United States and the European Union appeal less often on average than do the United States and the European Union. In any event, the basic trend is still apparent – the United States has become by far the major target of WTO complaints that are pursued through the dispute settlement process.

[10] I did not count the *India Autos* report since the appeal was withdrawn and report was only a few pages in length.

4. Trade Remedies and Subsidies

In the first years of WTO dispute settlement, subsidy and trade remedies cases were not that common.[11] That changed dramatically in the second five year period from 2000-2004. Of the 20 Appellate Body cases involving the United States in that period, seventeen were subsidy or trade remedy cases, as were six of the 18 cases involving other WTO members. Thus, in total, subsidy and trade remedy cases made up 26 of the 38 cases, or two-thirds of the cases.

5. Summary

The second five-year period saw the WTO dispute settlement system become in large part a mechanism for challenging US trade remedies and subsidies. Of the cases reaching the Appellate Body, 17 of 38 fell into this category (45%). Among its other cases, the most notable were *EC Asbestos*, *EC Tariff Preferences* and *Korea Beef.* Generally, the Appellate Body continued to find fault with WTO member decisions imposing trade remedies or providing subsidies. Its approach in other cases continued as commented on earlier – deference was given in the health case (*Asbestos*), but not in the commercial case (*Beef*).[12]

C. The Next Eight Years (2005-2012)

The major developments of the next eight years through 2012 were the continuing decline in consultation requests (although China became an active complainant); that the United States remained by far the main target of complaints (as it had been in the second period), especially in respect of challenges to its use of "zeroing"; and the inability of the Appellate Body to deal with its caseload in the prompt manner WTO members had come to expect.

1. Usage Declines Further and China Becomes an Active Complainant

The next eight years of the WTO dispute settlement system (2005-2012) were marked by a significant decline in consultation requests—a total of 130 requests, or 16 requests per year, as opposed to 37 requests per year in the first five years and 28 requests per year in the second. In other words, usage declined by roughly 40% compared to the second five year period and almost 60% compared to the first. As in the second period, the United States and the European Union easily remained the most frequent complainants in the system, although they were not as dominant as in the first period. In the 2005–2012 period, the United States filed 23 consultation requests (18% of the requests), and the European Union filed 19 (15%). Interestingly, China became the third most frequent complainant (tied with Mexico) with 10 requests (8%). All told, 30 WTO members filed consultation requests during the period, including 12 Latin American countries. China's complainants were all directed at US (seven requests) or EU (three requests) actions, and those two launched numerous complaints against China as well – fourteen by the United States and six by the European Union. Indeed, the future success of the WTO dispute settlement system may well turn on whether it can successfully deal with these disputes.

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[11] There were two special textiles safeguard cases (*US Wool Shirts* and *US Underwear*), two regular safeguard cases (*Korea Dairy* and *Argentina Footwear*), two subsidy cases (*Brazil Air* and *Canada Air*), one dumping case (*Guatemala Cement*) and one countervail case (*Brazil Coconuts*), or only eight out of 25 cases – less than one-third. (One other case involved, inter alia, the interpretation of the special agricultural safeguard (*EC – Poultry*)).

[12] It is worth noting that, after *Hormones*, deference in health cases was limited to those interpreting GATT Article XX(b), as virtually all SPS measures challenged have been found deficient under the SPS Agreement.

2. The United States as Target and "Zeroing" as the Issue

In the most recent eight years of WTO dispute settlement (2005-2012), the United States was the respondent in 24 out of 44 Appellate Body reports circulated (55%), while the European Union was a respondent in six (14%) and the rest of the membership were respondents in 14 (32%).[13] Thus, the pattern remained essentially the same as in the second five-year period, with the exception that China became a more common respondent before the Appellate Body (4 cases in the 2008-2012 period).[14]

Part of the reason that the United States had become a frequent target of complaints was its continuation of zeroing in antidumping cases. Of the 24 Appellate Body cases involving the United States as a respondent during the period, eight of them (33%) concerned zeroing as the main issue, while another six (25%) involved other challenges to US trade remedy actions, while four involved US subsidies (17%), or 75 percent in total.[15] Although the zeroing issue seems to have been settled at the time of this writing (early 2013) as the United States has agreed to stop zeroing in regular cases, it may well reappear as there may be an exception in the Antidumping Agreement that would allow zeroing in cases of "targeted dumping", something that is apparently now commonly alleged in US and EU antidumping petitions. The Appellate Body's treatment of the zeroing issue has been very unsatisfactory in the eyes of the United States, which believes that the Appellate Body's zeroing decisions are not consistent with what was negotiated in the Uruguay Round and are not soundly reasoned. At the time the Uruguay Round implementing legislation was drafted, it was the view of the United States that it had to forego simple zeroing in investigations, but that it was permitted to continue to zero in annual reviews.[16] Thus, the Appellate Body's failure to analyze or give any weight to the words "during the investigation phase" in article 2.4.2 of the Antidumping Agreement upsets the United States, especially since the Appellate Body has held that the *de minimis* rules of Article 11.9 of the SCM Agreement (similar to Article 5.8 of the Antidumping Agreement) apply only to investigations and not reviews. More generally, the current view of the Appellate Body on zeroing seems grounded in its view of the definition of "dumping" and "margins of dumping" in GATT Article VI, which suggests that zeroing has always been a GATT violation, notwithstanding the fact that it has long been the subject of negotiations. In addition, the Appellate Body's conclusion that zeroing violates the "fair comparison" language of article 2.4 would seem to make article 2.4.2 mostly superfluous. In any event, its zeroing decisions are the only ones that panels have ever flatly rejected (to little effect in the end, of course).

3. The Appellate Body Overwhelmed

In the last few years prior to this writing, the Appellate Body seemed overwhelmed by its caseload and, in particular, the need to deal with the so-called Boeing-Airbus disputes, which resulted in reports of 369 and 399 substantive pages and took many months to process. These two cases so disrupted the Appellate Body's work that a number of other appeals were delayed as well. While no one would question that the two aircraft subsidy cases were massive, one can ask whether an Appellate Body of seven should be so disrupted by two cases over two years, each of which is dealt with by only three members, leaving four others to handle the remaining cases, which amounted to four cases per year.

If one looks at the Appellate Body reports over time, they seem to have become longer and longer, although it is not clear to me that the typical cases have become all that much more complex. In the

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[13] I have counted the *Continued Suspension* case as one case, involving the United States; I realize that there was a second report dealing with Canada, but the reports are basically the same.

[14] If unappealed panel reports are included, the totals would be United States (33 of 71, or 46%); European Union (13 of 71, or 18%); the rest (26 of 71, or 37%).

[15] Of the cases involving respondents other than the United States, only five of 21 involved such cases.

[16] See Ways & Means Memo on AD/CVD Provisions, May 24, 1994, in Special Report, Inside US Trade, June 3, 1994.

first five year period of WTO dispute settlement, the Appellate Body issued 25 reports (six[17] per year) and the substantive portion of reports had a median length of 22 pages , while in the second five year period, it issued 39 reports (almost eight per year) and the median length of the substantive section was 41 pages. In the most recent eight years, however, it issued 43 reports (five and one-half per year) and the median length of the substantive part of the reports was 63 pages. Excluding the four 200 page and over reports, would have lowered the median, but only to 58 pages. Thus, there has been a steady progression towards longer and longer reports.

One thing that has changed, however, is the style of Appellate Body reports. They seem more institutional in style than did the early reports. Given that the length of the reports started to grow about a year after there was a significant in personnel in the Appellate Body Secretariat – the staff went from nine in 2000 to 13 in 2001 – one cannot help but wonder whether more staff producing more memoranda has led to more material being incorporated into the reports, which probably complicates the process somewhat and may explain part of the difficulty the Appellate Body has faced in meeting its time limits in recent years.

4. Summary

In general, the most recent eight years have not differed so much from the 2000-2004 period. The United States remained the main respondent in the Appellate Body and most of the cases continued to concern subsidies and trade remedies. While panels and the Appellate Body were busy, one has to be concerned that the decline in consultation requests may indication some degree of dissatisfaction with the system and the delays in getting final results.[18] That concern is moderated by the fact that there was a sharp increase in consultation requests in 2012 (27 requests were filed, twice the average of 13 per year in the preceding three years). As to the output during this period, probably the most significant Appellate Body cases were the three 2012 TBT cases, two aircraft subsidy cases, the cotton subsidy case and the *Brazil Tyres* case. The TBT cases presented the most interesting issues and were the Appellate Body's most innovative reports. How the cases will be ultimately resolved remains unclear; they all involve the United States, which needs to revise the measures challenged in the course of 2013. In respect of the *US Clove Cigarettes* case, that may difficult for the United States to do. If so, the decision of the Appellate Body to strike down an anti-tobacco measure may stir-up considerable controversy, although could be moderated if it upholds the Australian tobacco plain-packaging law, which will probably reach the Appellate Body in 2014.

II. Implementation of Panel and Appellate Body Reports

The ultimate goal of the WTO dispute settlement system is to resolve disputes between WTO members. How effectively has it performed this critical function? In some respects, this is a difficult question to answer because, *inter alia*, (i) publicly available information about the ultimate outcomes of some disputes is simply not available; (ii) some complainants win but may not receive much practical benefit from their victory or may end up accepting less than full vindication of their rights; (iii) some disputes are resolved, but only after a very long time; and (iv) some disputes are never

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[17] The Appellate Body had no members until the very end of 1995, so I divided the total number of reports by four rather than five.

[18] In this regard, the time taken by the panel process has greatly exceeded the timeframes established in the DSU (far more than the Appellate Body, which has had problems only in the last couple of years) and the frequent recourse to compliance proceedings under DSU article 21.5 mean that it takes years to resolve some disputes. I discuss the timeliness problem in William J. Davey, Expediting the Panel Process in WTO Dispute Settlement, in Merit E. Janow, Victoria Donaldson & Alan Yanovich (eds.), The WTO: Governance, Dispute Settlement and Developing Countries 409-470 (New York: Juris Publishing, 2008).

resolved, but appear to be of little significance. In this section, I will consider the overall picture first and then focus on how the United States and the European Union have performed in implementation.

A. Overall Implementation

Based on several studies of the outcomes of WTO disputes,[19] the following conclusions can be drawn. First, it appears that roughly one-half of the consultation requests are effectively settled. While this degree of settlement is not reflected in notifications of mutually agreed solutions to the DSB under DSU Article 3(6), further research and conversations with participants reveals that (i) some cases are settled but the parties for whatever reason choose not to notify the settlement; (ii) other cases are settled during the panel process; (iii) some cases involve measures that are never enacted or are modified or withdrawn, thus removing the basis for the dispute; and (iv) some cases are effectively abandoned because they are seen as not having a sufficient legal or factual basis, seek results that are thought to be more likely achievable in negotiations or for some other reason (e.g., a merger of the two companies that were on opposite sides of the dispute).

Second, of those cases that result in adopted panel/Appellate Body reports, the studies found that over 80 per cent had been implemented within the period examined – about one-half within the reasonable period of time set for implementation and, in respect of the rest, the amount of time that elapses between the due date for implementation and actual implementation varies from a few weeks to many years. However, in the long run, almost all reports are eventually implemented, although a few relatively insignificant cases have remained on the DSB's surveillance agenda for many years. Examples of cases that took a particularly long time to resolve include *EC Bananas*, *EC Hormones*, *US FSC*, *US Byrd Amendment*, the various *Lumber* cases brought by Canada against the US and the various US *Zeroing* cases. The first four cases are the only ones to date where retaliatory measures have been imposed.

Third, implementation may sometimes bring only limited benefits to the complaining member. For example, several safeguard measures have been successfully challenged in WTO dispute settlement, but given the time taken by the panel and appellate process and the reasonable period of time set for implementation, the safeguard will have been in force for as many as three years before it is required to be removed. Thus, the respondent will have achieved its policy goal and suffered no consequence (beyond reputation) for violating the Safeguards Agreement. Similarly, in antidumping cases, the respondent may be required to reconsider the dumping or injury issue because its original determinations violated the Antidumping Agreement, but in many cases, the reconsideration does not lead to a significantly different antidumping duty being imposed.

Nonetheless, overall I think that the WTO dispute settlement system has to be judged a major success. It has dealt successfully with many controversial cases, particularly between major powers such as the United States and the European Union. While the timeliness of compliance with rulings has been a problem in some cases, the key fact is that compliance generally occurs, even if the benefits are less than might have been anticipated. It is instructive, however, to consider the record of the United States and the European Union in this regard, as more information is available on their compliance action.

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[19] See generally William J. Davey, The WTO Dispute Settlement System: The First Decade, 8 [Oxford] Journal of International Economic Law 17-50 (2005); William J. Davey, Evaluating WTO Dispute Settlement: What Results Have Been Achieved Through Consultations and Implementation of Panel Reports?, in Y. Taniguchi, A. Yanovich & J. Bohanes (eds.), The WTO in the Twenty-First Century: Dispute Settlement, Negotiations and Regionalism in Asia 98-140 (Cambridge: Cambridge University Press 2007); William J. Davey, Compliance Problems in WTO Dispute Settlement, 42 Cornell J. Intl. Law 119 (2009); William J. Davey, WTO Dispute Settlement: Promise Fulfilled? in Inge Govaere, Reinhard Quick & Marco Bronckers (eds.), Trade and Competition Law in the EU and Beyond 194-203 (Edward Elgar 2011).

B. Implementation by the United States of WTO Dispute Settlement Reports

The United States has lost 48 cases in the WTO dispute settlement system. To assess its implementation record it is useful to subdivide the cases into six categories: safeguards; subsidies; TRIPS; health, environment and consumer protection; dumping and countervail cases; and other cases. This has been done in Annex II, which indicates on a case-by-case basis, the date the report was adopted, the date implementation was due, an explanation of the implementation action and the time at which it occurred, and the time period, if any, by which the date of implementation exceeded the original due date. Where applicable, dates of adoption of compliance reports under DSU article 21.5 and of subsequent implementation actions are also indicated.

1. Safeguards

As shown in Annex II, the United States has an excellent record in implementing the results of the seven safeguard cases where its use of the safeguard was found to be inconsistent with the relevant WTO agreement. All of the challenged measures were removed by the end of the reasonable period of time for implementation, except in the case of the *Line Pipe* safeguard, where the complainant was compensated for the implementation delay of six months. Of course, the trade impact of the safeguards at issue was often felt for several years. Nonetheless, technical compliance was achieved.

2. Subsidies

The United States has been involved in three subsidy cases where it has been found to have violated the WTO Subsidies Agreement. In all three cases there were subsequent article 21.5 proceedings (and in the *FSC* case – two article 21.5 proceedings). In these cases, the compliance record is more complicated. In *FSC*, the initial implementation measures had clear WTO-consistency problems, as panels found. Thus, one can wonder if implementation was completely in good faith. In any event, the *FSC* case was implemented, with an overall delay of a little over six years. In *Cotton*, there was partial implementation, but the article 21.5 implementation found that implementation was not complete. At this point, implementation is more than seven years overdue and that status is continuing. However, Brazil has accepted compensation for the time being, so the United States is in a way meeting its current obligations. The third subsidy case – C*ivil Aircraft* – is in an ongoing article 21.5 proceeding that will likely drag on for several years. Overall, the US record on implementation in subsidy cases is not so great.

3. TRIPS

The United States has lost two TRIPS cases – *Section 110(5)* and *Section 211*. In both cases, the congressional action necessary to implement has not occurred despite the passage of much time – eleven years in *Section 110(5)* (although compensation was provided for three years) and seven and one half years in the *Section 211* case. The US implementation record in these cases can only be described as completely unsatisfactory, although it is worth noting that the commercial importance of the cases is fairly small.

4. Health, environment and consumer protection cases

The United States has been on the losing end of five health, environment and consumer protection cases, but three of the cases were from 2012 and the reasonable periods of time for implementation have not yet expired. In the other two cases, the United States implemented in a timely manner in one case (*Shrimp*), and was only a few months late in the other (*Gasoline*). Thus, for the moment, it has a good record in this category.

5. Antidumping and countervail cases

The United States has lost 28 antidumping or countervail cases, that is, more than half of the cases that it has lost fall into this category. The US record in implementing these losses is not so good. However, some insight can be gained if the losses are subdivided into three groups: the *Lumber* cases, the contested *Zeroing* cases[20] and the rest.

Of the four *Lumber* cases, one involved a measure that had expired prior to adoption of the panel report and in one case the Canadian challenge to US implementation failed (although there was not actually a finding that the United States had implemented). The *Lumber* cases were ultimately settled on a global basis and that occurred one year and nine months after implementation was due in one case and one year and four months after it was due in the other.

Of the six contested *Zeroing* cases, three were settled, but the settlement occurred years after compliance was due. Indeed, it occurred more than two years after the United States lost two article 21.5 proceedings in the cases. Three other cases have not yet been formally settled (the outstanding issue in at least two of the cases is what to do about past uses of zeroing, as the antidumping orders in the cases have been revoked; in the third case there are non-market economy issues as well), so the period of non-compliance continues to grow. It is almost four years in one case and is approaching one year in the other two cases.

Of the other 18 cases, the reasonable period of time has not yet expired in one. Of the remaining 17 cases, compliance was achieved within the reasonable period of time in eight cases. In three cases, implementation occurred within a year of the expiration of the reasonable period of time for implementation. In the other six cases, implementation did not occur until more than a year had passed after the expiration of the reasonable period of time for implementation.

To summarize the overall situation in the antidumping and countervail area, the following table indicates the number of reports implemented within the reasonable period of time, the number that were not more than six months late, the number that were between six and twelve months late and the number that were implemented more than a year late.

Implementation in US Antidumping and Countervail Cases	
Timely implementation	10
0-6 months late	2
6-12 months late	3
More than one year late	12

Altogether five cases are currently overdue for implementation: the three zeroing cases, the *Byrd Amendment* case and the *Hot-Rolled Steel* case. In *Byrd*, smaller and smaller distributions are being made over time since only duties collected prior to October 2007 are eligible. As noted, the United States has stopped zeroing (except in targeted dumping cases), so those three cases will presumably fade away at some point. The challenged antidumping measure in *Hot-Rolled Steel* was revised and compliance was accepted, but the required statutory change has never been made.

[20] In some *Zeroing* cases, the United States accepted that its action had violated the rules and it facilitated expedited panel proceedings and prompt implementation; but in other cases, it contested the outcome through article 21.5 proceedings and/or deliberately delayed implementation. I include in the latter "contested" group the following cases: DS294, DS322, DS344, DS350, DS382 and DS 404.

6. Other cases

The United States has lost three other cases that are not easily categorizable. One case involved its "premature" retaliation against European Union in the *Bananas* case, but the challenged measure was only in force for a very short time and long since expired by the time the case was completed. A second case involved a discriminatory measure aimed at China (a prohibition of spending money needed to remove China from an SPS measure), which had also expired before the proceeding had been completed. [This was found to be an SPS measure, but even if it was technically, it has little in common with other health cases.] Finally, the United States lost one GATS case – *Gambling*, where non-compliance has lasted almost seven years and is continuing. This case is also somewhat unusual in that the challenged measure concern a GATS commitment that the United States has since renegotiated with all other interested WTO members except the complainant (Antigua).

7. Summary

The overall record for the United States is indicated in the following table:

US Implementation In All WTO Cases Where RPT Has Expired	
Timely implementation	20
0-6 months late	3
6-12 months late	3
More than one year late	17

There are currently nine cases where implementation is due and has not occurred: the three zeroing cases, the *Byrd Amendment* case and the *Hot-Rolled Steel* case (mentioned above), plus the two TRIPS cases, the *Gambling* case and the *Cotton* case. With the exception of the *Cotton* case, where the United States is paying compensation to Brazil, the remaining issues in these cases are generally fairly minor in commercial terms.

In summary, the United States generally complies, but not promptly. Compliance has been overdue by more than a year in one-half of the cases that the United States lost. This record undoubtedly undermines the WTO system by making tardy compliance a standard practice, but the fact that compliance usually occurs in the significant cases is positive in the sense that the world's leading economic power eventually accepts rules-based dispute settlement. Moreover, the principal cases of non-compliance are due to a failure of Congress to act (all except the zeroing cases), which suggests the US administrations have continued to act responsibly towards the WTO.

C. Implementation by the European Union of WTO Dispute Settlement Reports

An analysis of the compliance record of the European Union is much simpler than that concerning the US record, as indicated in the table below. The European Union has lost 19 cases (18 if the two *Hormones* cases are counted as one, as they will be hereafter). Of those 18 cases, compliance is being challenged in one case. In the other 17 cases, as indicated in Annex III, the European Union has complied in a timely fashion in 13 cases. While full compliance has been question in a number of these cases, no further proceeding have been initiated, and only in the *Sugar* case have the complainants continued to raise compliance questions over time. There have been four problematic cases. Probably the most noteworthy case, and one that is quite significant commercially, is the *Bananas* case, which was recently settled (apparently definitively) after almost 14 years of non-compliance. The second most notorious case of EU non-compliance is the *Hormones* case, where the European Union has claimed that it is in compliance, but has been unable to prevail in a panel proceeding to that effect – its challenge to US and Canadian sanctions ended without a definitive determination. It has, however, settled with both of those parties thus effectively ending the case some

10 to 12 years after the expiration of the reasonable period of time for implementation. The third case of EU non-compliance involves the *Biotech* case, where it settled with Argentina and Canada, but is still negotiating with the United States some five years after expiration of the reasonable period of time. Finally, in the *Bed-Linen* case, the European Union was found not to have complied in an Article 21.5 proceeding; it revoked the duty some eight months after that finding (or one year, four months after the expiration of the reasonable period of time). Thus, the only continuing case of contested compliance is with the United States in the *Biotech* case.

EU Implementation In All WTO Cases Where RPT Has Expired	
Timely implementation	13
More than one year late	4

Overall, the EU record of compliance is generally very good, the *Bananas* and *Hormones* cases excepted.

D. Conclusion

Overall, I think that the WTO dispute settlement system has done a credible job in controlling the trade actions of the two major players: the United States and the European Union. By and large, they have complied with adverse WTO rulings, although not at all promptly at times. For the future, I think that the critical test for the WTO dispute settlement system will be whether it is able to deal with the increasing number of disputes involving the United States and/or European Union on one side and China on the other. While such cases through 2012 had been resolved more or less satisfactorily (see China's implementation record to date in Annex IV), it is too early to draw any firm conclusions as to whether the system will be able to handle these disputes as effectively as it has tended to handle US/EU disputes. Of course, in the years ahead, similar issues may arise in respect of Russia if it becomes a major participant in the dispute settlement system.

Annex I

Description of Major Controversial WTO Cases in 1995-1999 Period[21]

EC Bananas. The Bananas cases (DS27) involved a challenge by the United States, Ecuador Guatemala, Honduras and Mexico to the EU-wide regime for banana imports that had replaced EU Member State regimes in 1993. It provided tariff and quota preferences to the ACP countries (Asian, Caribbean and Pacific countries, who were parties to the EU's Lomé Convention, which was designed to provide preferential treatment to former colonies of EU members) and quota preferences to certain Latin American countries (the so-called Banana Framework countries – Colombia, Costa Rica, Nicaragua and Venezuela). It also set up a complex system of allocating import licenses that favored European companies over US and other non-EU companies that had traditionally supplied the EU banana market. There had been two cases in GATT – one successfully challenging the Member States regimes (EEC – Member States' Import Regimes for Bananas, DS32/R, 3 June 1993) and one successfully challenging the EU-wide regime (EEC – Import Regime for Bananas, DS38/R, 18 January 1994), but neither report had been adopted by the GATT Council. The case was particularly difficult for the European Union because the banana import regime had involved very difficult compromises by the member states – some of which had enjoyed tariff-free or low-tariff bananas for decades and wanted that to continue (Germany and many northern countries), while others wanted to support producers in former colonies or overseas possessions by giving them preferential treatment in the EU market (particularly France, Spain and the United Kingdom).

EC Hormones. The Hormones case (DS26; DS48) involved a US and Canadian challenge to an EU ban on the importation of meat from beef cattle that had been treated with growth-promoting hormones. It had been subject of much discussion in the GATT Council and in the GATT Standards Code Committee in the late 1980's, where a panel had been established but never composed. GATT, GATT Activities 1987, at 80; GATT, GATT Activities 1988, at 72-74; GATT, GATT Activities 1989, at 123.

Japan Film. The Film case (DS44) symbolized the US government's long quest to open Japanese markets to US products and was pressed by a US firm – Kodak, which claimed that Japan had implemented a number of measures to nullify or impair the benefits that were expected to result from Japan's tariff and quota liberalization actions in the 1960's and 1970's. The case was colloquially known as the Kodak-Fuji case. It was largely based on a non-violation claim – a form of claim permitted by GATT, but one that has long been controversial since no violation of any agreement is alleged. Only one such claim has succeeded since the early 1950's. John H. Jackson, William J. Davey & Alan O. Sykes, Legal Problems of International Economic Relations 287-288 (2002).

US Shrimp. The Shrimp-Turtle case (DS56) involved a challenge by a number of developing countries – India, Thailand, Malaysia and Pakistan – to US rules that, for the most part, permitted shrimp imports only from countries that had adopted US rules and practices with respect to protecting turtles in connection with shrimp fishing through the use of so-called turtle excluder devices that allow turtles to escape from the shrimp nets. It involved the same issues of US "environmental unilateralism" under the Marine Mammal Protection Act that had been controversial in the unadopted GATT Tuna-Dolphin panel reports. United States – Restrictions on Imports of Tuna, DS21/R (3 September 1991) & DS29/R (20 May 1994). It was the Tuna-Dolphin case, more than any other event or action, that first made the GATT system widely controversial: "While the [1990 proposal for] NAFTA drew attention to the trade and environment issue, a 1991 GATT panel decision on US-Mexican tuna trade turned that interest into fury." Daniel C. Esty, Greening the GATT: Trade, Environment, and the Future 29 (1994).

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[21] These descriptions are taken largely from Davey, The First Ten Years, at 18-19, nn. 4-12.

US Helms Burton. The Helms-Burton case (DS38) involved an EU challenge to a US law that provided for treble damage actions against foreign entities investing in confiscated US (including Cuban-American) assets in Cuba and required the denial of US visas to individuals connected with those entities. The case symbolized the EU's longstanding complaints about US unilateralism and attempts to apply US law extraterritorially. The law had been sponsored by a powerful US Senator – Jesse Helms.

Turkey Textiles. The Turkey Textiles case (DS34), which was brought by India, presented the question of whether the compatibility of a customs union or free trade area with GATT Article XXIV could be considered by a dispute settlement panel, an issue that had been controversial in unadopted GATT panel reports. See, e.g., EEC – Tariff Treatment of Citrus Products from Certain Mediterranean Countries, L/5776 (7 February 1985). The Turkey Textiles case involved the EC-Turkish Customs Union.

India Quantitative Restrictions. The India Quantitative Restrictions case (DS90) brought by the United States involved the question of whether the dispute settlement system or only the General Council and WTO Balance-of-Payments Committee could consider the issue of the justification of measures imposed for balance-of-payments reasons under GATT Articles XII & XVIIIB. The issue had been considered, but arguably had not been settled definitively, in Korea – Restrictions on Imports of Beef, BISD 36S/202, 234 & 268, adopted on 7 November 1989.

US Section 301. The Section 301 case (DS152) involved a challenge by the European Union to the basic US statute – Sections 301-310 of the Trade Act of 1974 – under which US authorities had taken unilateral action against various foreign laws and regulations that they considered objectionable. One of the goals of a number of countries in the adopting the WTO dispute settlement system was to rein in US use of this law. See DSU, art. 23.

US Foreign Sales Corporations. The Foreign Sales Corporation case (DS108) involved an EU challenge to US tax rules that allegedly provided an export subsidy. The FSC rules replaced rules found to be GATT-inconsistent in the Domestic International Sales Corporation (DISC) case. US Tax Legislation (DISC), BISD 23S/98, adopted on 7-8 December 1981. Some thought that the European Union resurrected what the United States supposedly viewed as a settled dispute as a counteraction to the US prosecution of the *Bananas* and *Hormones* cases, with the thought that US implementation would be difficult since the US Congress would have to change corporate tax breaks.

Annex II
The US Implementation Record, as of 31 December 2012

Case Number/Name	Report Adopted	Implementation Due	Implementation Action and Comment	Time in excess
Safeguard Cases				
24-Underwear	25 Feb 97	None	Challenged measure expired 28 Mar 97; WT/DSB/M/31 (10 Apr 97); accepted	0
33-Wool Shirts	23 May 97	None	Challenged measure expired 3 Dec 96; accepted	0
166-Wheat Gluten	19 Jan 01	2 Jun 01	Challenged measure expired 1 Jun 01, as did EU countermeasure; BNA ITD, 5 Jun 01	0
177-Lamb	16 May 01	None formally	Challenged measure expired 15 Nov 01; accepted as timely; WT/DSB/M/113 (21 Nov 01)	0
192-Yarn	5 Nov 01	None	Challenged measure expired 9 Nov 01; WT/DSB/M/113 (21 Nov 01)	0
202-Line Pipe	8 Mar 02	1 Sep 02	Challenged measure expired 1 Mar 03; complainant (Korea) agree to accept expanded quota access as compensation for six month delay; WT/DS202/18 (31 Jul 02)	6m*
248-Steel Safeguard	10 Dec 03	None	Challenged measure terminated 4 Dec 03; WT/DSB/M/160	0
Antidumping and Countervail Cases				
99-DRAMS (Korea)	19 Mar 99	19 Nov 99	Compliance challenged	11m
99-DRAMS (Korea)21.5	X	X	Panel report noted settlement; settled 20 Oct 00; WT/DS99/12 (25 Oct 00)	
136-1916 Act	26 Sep 00	31 Dec 01 (ext)	Act repealed 3 Dec 04; WT/DSB/M/180 (17 Dec 04)	2y/11m
138-Lead & Bismuth	7 Jun 00	None	Measure had been terminated as of 14 Mar 00; WT/DSB/M/85 (5 Jul 00)	0
179-Stainless (Korea)	1 Feb 01	1 Sep 01	Measure revised as of 28 Aug 01, compliance accepted; WT/DSB/M/109 (10 Sep 01)	0
184-Hot Rolled Steel	23 Aug 01	31 Jul 05 (ext)	Challenged AD measure revised 22 Nov 02, compliance accepted; WT/DSB/M/137 (28 Nov 02); AD statute unchanged	7y/5m+
206- Steel Plate (India)	29 July 02	31 Jan 03 (ext)	Measure revised 7 Feb 03; compliance questioned but not pursued; WT/DSB/M/143 (19 Feb 03)	1w
212-CVD (EC)	8 Jan 03	8 Nov 03	Measures revised 24 Oct 03; compliance challenged	2y/7m
212-CVD (EC) 21.5	27 Sep 05	X	Measures revised 26 May 06; compliance questioned, not pursued; WT/DSB/M/215(19 Jun 06)	
213-Carbon Steel	19 Dec 02	None	Measure revoked 1 Apr 04; WT/DSB/M/167 (20 Apr 04)	0
217 -Byrd	27 Jan 03	27 Dec 03	Measure repealed in Feb 06 effective as of 30 Sep 07; but duties collected as that date continue to be distributed; WT/DSB/M/205 (17 Feb 06); EU and Japan continue retaliation	9y+
236-Lumber III	1 Nov 02	None	Challenged (provisional) CVD measure no longer in force as of 25 Mar 02 final measure	0
257-Lumber IV	17 Feb 04	17 Dec 04	Challenged (final) CVD measure revised 10 Dec 04 - compliance challenged	1y/9m
257-Lumber IV 21.5	20 Dec 05	X	Non-compliance found; settled 12 Sep 06; WT/DS257/26	
264-Lumber V	13 Aug 04	2 May 05 (ext)	Challenged AD measure revised 27 Apr 05; WT/DSB/M/189 (19 May 05); compliance challenged	1y/4m
264-Lumber V 21.5	1 Sep 06	X	Non-compliance found; settled 12 Sep 06; WT/DS264/29	
268-OCTG (Argentina)	17 Dec 04	17 Dec 05	Challenged measure revised 16 Dec 05; WT/DSB/M/202 (20 Dec 05); compliance challenged	1y/6m
268-OCTG (Argen) 21.5	11 May 07	X	Non-compliance found; measure revoked 22 Jun 07; 72 FR 34442, effective 25 Jul 06	

277-Lumber VI	26 Apr 04	26 Jan 05	Challenged measure revised Nov/Dec 04; WT/DSB/M/182 (25 Jan 05); compliance challenged	0
277-Lumber VI 21.5	9 May 06	X	Inconclusive 21.5 challenge; settled 12 Sep 06; WT/DS277/20	
282-OCTG (Mexico)	28 Nov 05	28 May 06	Non-action challenged	1y/4m
282-OCTG (Mex) 21.5	X	X	Compliance panel suspended 5 Jul 07; measure revoked 1 Oct 07;72 FR 55747;effective 11 Aug 00	
294-Zeroing (EC)	9 May 06	9 Apr 07	Zeroing case; compliance challenged	4y/10m
294-Zeroing (EC) 21.5	11 Jun 09	X	Non-compliance found; provisionally settled 6 Feb 12; WT/DS294/43; retaliation request withdrawn 2 Jul 12; WT/DS294/46	
296-DRAMS (Korea)	20 Jul 05	8 Mar 06	Challenged measure reaffirmed 8 Mar 06; compliance questioned but not pursued; WT/DSB/M/206 (14 Mar 06)	0
322-Zeroing (J)	23 Jan 07	24 Dec 07	Zeroing case; compliance challenged	4y/1m
322-Zeroing (J) 21.5	31 Aug 09	X	Non-compliance found; provisionally settled 6 Feb 12; WT/DS322/44; retaliation request withdrawn 3 Aug 12; WT/DS322/46	
335-Shrimp (Ecuador)	20 Feb 07	20 Aug 07	Challenged measure revoked eff. 15 Aug 07; compliance accepted; WT/DSB/M/238 (31 Aug 07)	0
344-Stainless (Mexico)	20 May 08	30 Apr 09	Zeroing case; compliance challenged	?
344-Stainless (Mex) 21.5			21.5 panel suspended as of 27 Apr 12; WT/DS344/23, 24 & 25	
346-Customs Bond	1 Aug 08	1 Apr 09	Challenged measure revoked 1 Apr 09; WT/DSB/M/267	0
350-Contin'd Zero(EC)	19 Feb 09	19 Dec 09	Zeroing case; provisionally settled 6 Feb 12; WT/DS350/20	2y/2m
379-CVD/AD (China)	25 Mar 11	25 Apr 12 (ext)	Challenged measure revised 21 Aug 12; compliance disputed, but not challenged WT/DSB/M/321 (31 Aug 12). Panel established in new case by China on similar issues-DS437	4m
382-OJ (Brazil)	7 Jun 11	17 Mar 12	AD order revoked; WT/DSB/M/315 (24 Apr 12); compliance not accepted re past zeroing	9m+
383-Bags (Thailand)	18 Feb 10	18 Aug 10	Challenged measures revised 28 Jul 10; compliance accepted; WT/DSB/M/286 (31 Aug 10)	0
402-Zeroing (Korea)	24 Feb 11	24 Oct 11	Challenged measures revised within RPTs; compliance accepted; WT/DSB/M/308 (19 Dec 11)	0
404-Shrimp (Vietnam)	2 Sep 11	2 Jul 12	Zeroing case; no action as of 31 Dec 12, although US has agreed to stop zeroing	6m+
422-Sawblades (China)	23 Jul 12	23 Mar 13	RPT not expired	?
Subsidy Cases				
108-FSC	20 Mar 00	1 Nov 00 (ext)	Compliance challenged	6y/1m
108-FSC 21.5 I	29 Jan 02	X	First measure found non-compliant	
108-FSC 21.5 II	14 Mar 06	X	Second measure found non-compliant; implementation as of 31 Dec 06; Pub L 109-222, s 513	
267-Cotton	21 Mar 05	21 Sep 05	Compliance challenged	7y/3m+*
267-Cotton 21.5	20 Jun 08	X	Non-compliance found; "compensation" agreement as of [25 Aug 10]	
353-Civil Aircraft	23 Mar 12	23 Sep 12	Compliance challenged	?
353-Civil Aircraft 21.5	Pending			
Health, Environment, Consumer Protection Cases				
2-Gasoline	20 May 96	20 Sep 97	On 19 Aug 97, the US revised its rules for imported conventional gasoline; the different rules for imported reformulated gasoline were due to expire 1 January 1998; WT/DSB/M/37 (25 Sep 97); no further discussion in DSB	3m/10d
58-Shrimp	6 Nov 98	6 Dec 99	New guidelines 8 Jul 99 + other actions later; compliance challenged 12 Oct 00	0

58-Shrimp 21.5	21 Nov 01		Compliance found	
381-Tuna (Mexico)	13 Jun 12	13 Jul 13	RPT not expired	?
384-COOL	23 Jul 12	23 May 13	RPT not expired	?
406-Clove Cigarettes	24 Apr 12	24 Jul 13	RPT not expired	?
TRIPS Cases				
160-Section 110(5)	27 Jul 00	31 Dec 01 (ext)	Not implemented; three-year compensation agreement	11y+*
176-Section 211	2 Jan 02	30 Jun 05 (ext)	Not implemented	7y/6m+
Other Cases				
165-Certain EC Prods	10 Jan 01	None	Challenged measure had expired on 19 Apr 99; WT/DSB/M/96 (10 Jan 01)	0
285-Gambling	20 Apr 05	3 Apr 06	Non-action challenged as non-compliant	6y/9m+
285-Gambling 21.5	22 May 07	X	Non-compliance found; GATS commitment at issue re-negotiated with all interested members, except complainant – Antigua; BNA ITD, 17 Mar 08	
392-Poultry (China)	25 Oct 10	None	Challenged measure had expired in 2009; WT/DSB/M/288 (25 Oct 10)	0

Annex III
The EU Implementation Record

Case Number/Name	Report Adopted	Implementation Due	Implementation Action and Comment	Time in excess
Antidumping and Countervail Cases				
141-Bed Linen (India)	12 Mar 01	14 Aug 01	Challenged measure revised 14 Aug 01; WT/DSB/M/108 (23 Aug 01); compliance challenged	1y/4m
141-Bed Linen 21.5	24 Apr 03	X	Non-compliance found; measure terminated 20 Dec 03; G/ADP/N/113/EEC (8 Mar 04)	
219-Tubes (Brazil)	18 Aug 03	19 Mar 04	Challenged measure revised 8 Mar 04; WT/DS219/13; questioned, but not pursued; WT/DSB/M/167 (20 Apr 04)	0
299-DRAMS (Korea)	3 Aug 05	3 Apr 06	Challenged measure revised 13 Apr 06; WT/DS299/9; questioned, but not pursued; WT/DSB/M/210 (21 Apr 06)	10d
337-Salmon (Norway)	15 Jan 08	15 Nov 08	Challenged measure revoked 20 Jul 08; WT/DSB/M/254 (1 Aug 08)	0
397-Fasteners (China)	28 Jul 11	12 Oct 12	Challenged measure revised 4 Oct 12; WT/DS397/15/Add.3; questioned, but not pursued; WT/DSB/M/?? (23 Oct 12)	0
405-Footwear (China)	22 Feb 12	10 Oct 12	Challenged measure revised 3 Sep 12; WT/DS405/9; questioned, but not pursued; WT/DSB/M/?? (17 Dec 12)	0
Health, Environment & Consumer Protection Cases				
26-Hormones (US)	13 Feb 98	13 May 99	Non-compliance admitted; retaliation imposed; unsuccessfully challenged in DS320; settled 13 May 09; WT/DS26/28	10y
48-Hormones (Canada)	13 Feb 98	13 May 99	Non-compliance admitted; retaliation imposed; unsuccessfully challenged in DS321; settled 17 Mar 11; WT/DS48/26	11y/10m
174-Geo Indications	20 Apr 05	3 Apr 06	Challenge measure revised 31 Mar 06; questioned, but not pursued; WT/DSB/M/210 (21 Apr 06)	0
231-Sardines	23 Oct 02	1 Jul 03 (ext)	Challenged measure revised 1 Jul 03; mutually agreed solution; WT/DS231/18	0
291-Biotech	21 Nov 06	11 Jan 08 (ext)	Settled with Canada/Argentina, but not US; negotiations continue; art. 22 request suspended	5y+
Agriculture Cases				
27-Bananas	25 Sep 97	1 Jan 99	Multiple compliance proceedings; mutually agreed solution 27 Oct 12; WT/DS27/98	13y/10m
69-Poultry	23 Jul 98	31 Mar 99	?? – no discussion in DSB	?
265-Sugar	19 May 05	22 May 06	Challenged measure revised 19 May 06; WT/DS265/35/Add.1; questioned in DSB ever since (e.g., WT/DSB/M/311 (20 Jan 12)), but not pursued in dispute settlement	0
269-Chicken Cuts	27 Sep 05	27 Jun 06	Challenged measure revised 27 Jun 06; questioned, but not pursued; WT/DSB/M/217 (19 Jul 06)	0
Other Cases				
246-Tariff Preferences	20 Apr 04	1 Jul 05	Challenged measure revised 27 Jun 06; questioned, but not pursued; WT/DSB/M/194 (20 Jul 05)	0
301-Commercial Vessels	20 Jun 05	None	Challenged measure expired 31 Mar 05; WT/DSB/M/194 (20 Jul 05)	0
315-Customs	11 Dec 06	None	Compliance claimed 11 Dec 06; WT/DSB/M/233 (11 Dec 06)	0
316-Civil Air	1 Jun 11	1 Dec 11	Compliance challenged	?
316-Civil Air 21.5	Pending			

Annex IV
The Chinese Implementation Record, as of 31 December 2012

Case Number/Name	Report Adopted	Implementation Due	Implementation Action and Comment	Time in excess
339-Auto Parts	12 Jan 09	1 Sep 09	Compliance claimed 1 Sep 09; WT/DSB/M/273	0
362-IP Rights	20 Mar 09	20 Mar 10	Compliance claimed 1 Apr 09; WT/DSB/M/282; questioned, not pursued	12d
363-Audiovisual	19 Jan 10	19 Mar 11	MOU signed in Feb 12; WT/DS363/19; China claims compliance; US questions, not yet pursued	1y?
394-Raw Materials	22 Feb 12	31 Dec 12	Compliance claimed 31 Dec 12; WT/DSB/M/---; questioned, not yet pursued	0
413-Payment Systems	31 Aug 12	31 Jul 13	Pending	?
414-GOES AD/CVD	16 Nov 12	In arbitration		?

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