Workshop on the Ozone Treaties and Their Influence on the Building of International Environmental Regimes, UNEP/OzL.Pro.7/INF.1 (1995), *available at* http://www.unep.org/ozone/Meeting_Documents/mop/07mop/7mop.inf1.e.doc).

9. *The Kyoto Protocol.* As evidence of global warming became increasingly clear during the 1990s, states and NGOs proceeded to fashion an international legal regime to address that problem. The United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107, which was signed by over 150 states, was followed by periodic meetings of the Framework Convention's Conference of the Parties, which has reviewed implementation of states' commitments in the Framework Convention, facilitated cooperative measures, and spurred scientific assessment of climate change. One product of the Conference of the Parties was the Kyoto Protocol, Dec. 10, 1997, 37 I.L.M. 22 (1998), which contemplates a complicated regime, involving emissions trading, to limit greenhouse gases. Before the Kyoto Protocol could enter into force, it had to be accepted by at least 55 states accounting for a minimum of 55 percent of developed states' total carbon dioxide emissions for 1990. Russia's November 2004 acceptance of the Protocol satisfied the 55%-of-carbon-dioxide-emissions requirement, allowing the Protocol to enter into force. As of July 2005, there were 151 parties to the Kyoto Protocol; the United States has not accepted it. See http://unfccc.int/essential_background/kyoto_protocol/items/2830.php. For overviews of the Kyoto Protocol, see Clare Breidenich et al., "The Kyoto Protocol to the United Nations Framework Convention on Climate Change," 92 *American Journal of International Law* 315 (1998); John H. Knox, "The International Legal Framework for Addressing Climate Change," 12 *Penn State Environmental Law Review* 135 (2004). For discussion of the role of conferences of the parties in this and other environmental regimes, see Robin R. Churchill & Geir Ulfstein, "Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law," 94 *American Journal of International Law* 623 (2000). What factors are likely to contribute to the success of efforts to build regimes to remedy an environmental problem?

10. *A Comprehensive Environmental Treaty?* Threats to the environment may be interrelated. For example, as Professor Caron noted, certain substitutes for CFCs are also greenhouse gases that may contribute to global warming. More broadly, atmospheric pollution affects the oceans and land resources, which in turn affect the atmosphere. As we explore in Chapter 11, virtually all issues relating to the oceans were addressed in a comprehensive U.N. Conference on the Law of the Sea, which led to the now widely accepted 1982 Convention on the Law of the Sea. Should a comprehensive treaty-making conference be convened to address all issues relating to the use and pollution of the atmosphere?

THE SHRIMP-TURTLE CASE

United States–Import Prohibition of Certain Shrimp and Shrimp Products, World Trade Organization, Report of the Appellate Body, AB-1998-4 (1998), 38 *International Legal Materials* 118 (1999)

[The United States, in section 609 of Public Law 101-162 (1997), imposed an import ban on shrimp harvested in ways that could damage

sea turtles. A harvesting state could receive an annual certification allowing imports if it could show either (a) that its shrimp harvesting environment posed no threat to the incidental taking of sea turtles, or (b) that the harvesting state required Turtle Exclusion Devices (TEDs) comparable in effectiveness to those required to be used in the United States. Several states claimed that the U.S. policy was an illegal restraint on trade that violated the 1994 version of the General Agreement on Tariffs and Trade (GATT 1994), and India, Malaysia, Pakistan, and Thailand challenged the policy before a panel established under the World Trade Organization's (WTO) Dispute Settlement Understanding. The panel decided that the U.S. program violated Article XI(1) of GATT 1994, which prohibits quantitative barriers to trade, and was not justified under exceptions contained in Article XX. The United States appealed to the WTO's Appellate Body, a permanent quasi-judicial body composed of seven members broadly representing WTO membership. The United States argued that the panel had "erred in finding that the measure at issue constitutes unjustifiable discrimination between countries where the same conditions prevail and thus is not within the scope of measures permitted under Article XX of the GATT 1994."]

A. The Panel's Findings and Interpretative Analysis * * *

113. Article XX of the GATT 1994 reads, in its relevant parts:

> ARTICLE XX
>
> *General Exceptions*
>
> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures: . . .
>
> (b) necessary to protect human, animal or plant life or health; . . .
>
> (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption[.]

116. * * * Maintaining, rather than undermining, the multilateral trading system is necessarily a fundamental and pervasive premise underlying the *WTO Agreement*; but it is not a right or an obligation, nor is it an interpretative rule which can be employed in the appraisal of a given measure under the chapeau of Article XX. * * *

118. In *United States—Gasoline*, we enunciated the appropriate method for applying Article XX of the GATT 1994:

> In order that the justifying protection of Article XX may be extended to it, the measure at issue must not only come under one or another of the particular exceptions—paragraphs (a) to (j)—listed under

Article XX; it must also satisfy the requirements imposed by the opening clauses of Article XX. *The analysis is*, in other words, *two-tiered: first, provisional justification by reason of characterization of the measure under XX(g); second, further appraisal of the same measure under the introductory clauses of Article XX.* (emphasis added)

[The Appellate Body concludes that the panel did not follow this methodology.]

B. Article XX(g): Provisional Justification of Section 609

125. In claiming justification for its measure, the United States primarily invokes Article XX(g). * * *

1. *"Exhaustible Natural Resources"* * * *

128. * * * Textually, Article XX(g) is not limited to the conservation of "mineral" or "non-living" natural resources. [L]iving species, though in principle, capable of reproduction and, in that sense, "renewable," are in certain circumstances indeed susceptible of depletion, exhaustion and extinction, frequently because of human activities. Living resources are just as "finite" as petroleum, iron ore and other non-living resources.

129. The words of Article XX(g), "exhaustible natural resources," were actually crafted more than 50 years ago. They must be read by a treaty interpreter in the light of contemporary concerns of the community of nations about the protection and conservation of the environment. While Article XX was not modified in the Uruguay Round, the preamble attached to the *WTO Agreement* shows that the signatories to that Agreement were, in 1994, fully aware of the importance and legitimacy of environmental protection as a goal of national and international policy. The preamble of the *WTO Agreement*—which informs not only the GATT 1994, but also the other covered agreements—explicitly acknowledges "the objective of *sustainable development*[.]"

130. From the perspective embodied in the preamble of the *WTO Agreement*, we note that the generic term "natural resources" in Article XX(g) is not "static" in its content or reference but is rather "by definition, evolutionary." It is, therefore, pertinent to note that modern international conventions and declarations make frequent references to natural resources as embracing both living and non-living resources. [The Appellate Body reviews various sources that refer to the conservation and management of living resources, including the 1982 United Nations Convention on the Law of the Sea, the 1992 Convention on Biological Diversity, Agenda 21 adopted at the 1992 Rio Conference, the Resolution on Assistance to Developing Countries adopted in conjunction with the 1973 Convention on the Conservation of Migratory Species of Wild Animals, and GATT panel reports.]

131. * * * We hold that * * * measures to conserve exhaustible natural resources, whether *living or non-living*, may fall within Article XX(g).

132. We turn next to the issue of whether the living natural resources sought to be conserved by the measure are "exhaustible" under Article XX(g). That this element is present in respect of the five species of sea turtles here involved appears to be conceded by all the participants and third participants in this case. The exhaustibility of sea turtles would in fact have been very difficult to controvert since all of the seven recognized species of sea turtles are today listed in Appendix 1 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). The list in Appendix 1 includes "all species *threatened with extinction* which are or may be affected by trade." (emphasis added). . . .

133. Finally, we observe that sea turtles are highly migratory animals, passing in and out of waters subject to the rights of jurisdiction of various coastal states and the high seas. * * * The sea turtle species here at stake, i.e., covered by Section 609, are all known to occur in waters over which the United States exercises jurisdiction. Of course, it is not claimed that *all* populations of these species migrate to, or traverse, at one time or another, waters subject to United States jurisdiction. Neither the appellant nor any of the appellees claims any rights of exclusive ownership over the sea turtles, at least not while they are swimming freely in their natural habitat—the oceans. We do not pass upon the question of whether there is an implied jurisdictional limitation in Article XX(g), and if so, the nature or extent of that limitation. We note only that in the specific circumstances of the case before us, there is a sufficient nexus between the migratory and endangered marine populations involved and the United States for purposes of Article XX(g).

134. For all the foregoing reasons, we find that the sea turtles here involved constitute "exhaustible natural resources" for purposes of Article XX(g) of the GATT 1994.

[The Appellate Body also holds that "Section 609 is a measure 'relating' to the conservation of an exhaustible natural resource within the meaning of Article XX(g) of the GATT 1994," and that Section 609 is "made effective in conjunction with the restrictions on domestic harvesting of shrimp, as required by Article XX(g)."]

C. *The Introductory Clauses of Article XX: Characterizing Section 609 under the Chapeau's Standards* * * *

147. Although provisionally justified under Article XX(g), Section 609, if it is ultimately to be justified as an exception under Article XX, must also satisfy the requirements of the introductory clauses—the "chapeau"—of Article XX, that is,

ARTICLE XX

General Exceptions

Subject to the requirement that such measures are *not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade*, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures: (emphasis added)

We turn, hence, to the task of appraising Section 609, and specifically the manner in which it is applied under the chapeau of Article XX; that is, to the second part of the two-tier analysis required under Article XX.

1. *General Considerations* * * *

155. * * * Pending any specific recommendations by the [WTO's Committee on Trade and Environment] to WTO Members on the issues raised in its terms of reference, and in the absence up to now of any agreed amendments or modifications to the substantive provisions of the GATT 1994 and the *WTO Agreement* generally, we must fulfill our responsibility in this specific case, which is to interpret the existing language of the chapeau of Article XX by examining its ordinary meaning, in light of its context and object and purpose in order to determine whether the United States measure at issue qualifies for justification under Article XX. It is proper for us to take into account, as part of the context of the chapeau, the specific language of the preamble to the *WTO Agreement*, which [recognizes the objective of sustainable development and] gives colour, texture and shading to the rights and obligations of Members under the *WTO Agreement*, generally, and under GATT 1994, in particular. * * *

157. In our view, the language of the chapeau makes clear that each of the exceptions in paragraphs (a) to (j) of Article XX is a *limited and conditional* exception from the substantive obligations contained in the other provisions of the GATT 1994, that is to say, the ultimate availability of the exception is subject to the compliance by the invoking Member with the requirements of the chapeau. This interpretation of the chapeau is confirmed by its negotiating history. * * *

158. The chapeau of Article XX is, in fact, but one expression of the principle of good faith. * * * One application of this general principle, the application widely known as the doctrine of *abus de droit*, prohibits the abusive exercise of a state's rights and enjoins that whenever the assertion of a right "impinges on the field covered by [a] treaty obligation, it must be exercised bona fide, that is to say, reasonably." * * *

159. The task of interpreting and applying the chapeau is, hence, essentially the delicate one of locating and marking out a line of equilibrium between the right of a Member to invoke an exception under Article XX and the rights of the other Members under varying substantive provisions (e.g., Article XI) of the GATT 1994, so that neither of the competing rights will cancel out the other and thereby distort and nullify or impair the balance of rights and obligations constructed by the Members themselves in that Agreement. The location of the line of equilibrium, as expressed in the chapeau, is not fixed and unchanging; the line moves as the kind and the shape of the measures at stake vary and as the facts making up specific cases differ.

160. With these general considerations in mind, we address now the issue of whether the *application* of the United States measure, although the measure itself falls within the terms of Article XX(g), nevertheless constitutes "a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail" or "a disguised restriction on international trade." We address, in other words, whether the application of this measure constitutes an abuse or misuse of the provisional justification made available by Article XX(g). We note, preliminarily, that the application of a measure may be characterized as amounting to an abuse or misuse of an exception of Article XX not only when the detailed operating provisions of the measure prescribe the arbitrary or unjustifiable activity, but also where a measure, otherwise fair and just on its face, is actually applied in an arbitrary or unjustifiable manner. The standards of the chapeau, in our view, project both substantive and procedural requirements.

2. *"Unjustifiable Discrimination"*

161. We scrutinize first whether Section 609 has been applied in a manner constituting "unjustifiable discrimination between countries where the same conditions prevail." Perhaps the most conspicuous flaw in this measure's application relates to its intended and actual coercive effect on the specific policy decisions made by foreign governments, Members of the WTO. * * *

163. The actual *application* of the measure, through the implementation of the 1996 Guidelines and the regulatory practice of administrators, *requires* other WTO Members to adopt a regulatory program that is not merely *comparable*, but rather *essentially the same*, as that applied to the United States shrimp trawl vessels. Thus, the effect of the application of Section 609 is to establish a rigid and unbending standard by which United States officials determine whether or not countries will be certified, thus granting or refusing other countries the right to export shrimp to the United States. Other specific policies and measures that an exporting country may have adopted for the protection and conservation of sea turtles are not taken into account, in practice, by the administrators making the comparability determination.

164. We understand that the United States also applies a uniform standard throughout its territory, regardless of the particular conditions existing in certain parts of the country. * * * However, it is not acceptable, in international trade relations, for one WTO Member to use an economic embargo to *require* other Members to adopt essentially the same comprehensive regulatory program, to achieve a certain policy goal, as that in force within that Member's territory, *without* taking into consideration different conditions which may occur in the territories of those other Members.

165. Furthermore, when this dispute was before the Panel and before us, the United States did not permit imports of shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States if those shrimp originated in waters of countries not certified under Section 609. In other words, *shrimp caught using methods identical to those employed in the United States* have been excluded from the United States market solely because they have been caught in waters of *countries that have not been certified by the United States*. The resulting situation is difficult to reconcile with the declared policy objective of protecting and conserving sea turtles. This suggests to us that this measure, in its application, is more concerned with effectively influencing WTO Members to adopt essentially the same comprehensive regulatory regime as that applied by the United States to its domestic shrimp trawlers, even though many of those Members may be differently situated. We believe that discrimination results not only when countries in which the same conditions prevail are differently treated, but also when the application of the measure at issue does not allow for any inquiry into the appropriateness of the regulatory program for the conditions prevailing in those exporting countries.

166. Another aspect of the application of Section 609 that bears heavily in any appraisal of justifiable or unjustifiable discrimination is the failure of the United States to engage the appellees, as well as other Members exporting shrimp to the United States, in serious, across-the-board negotiations with the objective of concluding bilateral or multilateral agreements for the protection and conservation of sea turtles, before enforcing the import prohibition against the shrimp exports of those other Members. * * *

167. * * * First, [a]part from the negotiation of the Inter-American Convention for the Protection and Conservation of Sea Turtles which concluded in 1996, the record before the Panel does not indicate any serious, substantial efforts to carry out [the] express directions of Congress [to initiate negotiations with other states to develop treaties protecting sea turtles].

168. Second, the protection and conservation of highly migratory species of sea turtles, that is, the very policy objective of the measure, demands concerted and cooperative efforts on the part of the many countries whose waters are traversed in the course of recurrent sea turtle migrations. The need for, and the appropriateness of, such efforts have been recognized in the WTO itself as well as in a significant number of other international instruments and declarations. * * * Of particular relevance is Principle 12 of the Rio Declaration on Environment and Development, which states, in part:

> Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. *Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on international consensus.* (emphasis added)

[The Appellate Body notes similar language in Agenda 21, the 1992 Convention on Biological Diversity, the 1979 Convention on the Conservation of Migratory Species of Wild Animals, and a 1996 Report of the WTO's Committee on Trade and Environment.]

171. [T]he record does not, however, show that serious efforts were made by the United States to negotiate similar agreements with any other country or group of countries before (and, as far as the record shows, after) Section 609 was enforced on a world-wide basis on 1 May 1996. Finally, the record also does not show that the appellant, the United States, attempted to have recourse to such international mechanisms as exist to achieve cooperative efforts to protect and conserve sea turtles[174] before imposing the import ban.

172. Clearly, the United States negotiated seriously with some, but not with other Members (including the appellees), that export shrimp to the United States. The effect is plainly discriminatory and, in our view, unjustifiable. [T]he policies relating to the necessity for use of particular kinds of TEDs in various maritime areas, and the operating details of these policies, are all shaped by the Department of State, without the participation of the exporting Members. The system and processes of certification are established and administered by the United States agencies alone. The decision-making involved in the grant, denial or withdrawal of certification to the exporting Members, is, accordingly, also unilateral. The unilateral character of the application of Section 609 heightens the disruptive and discriminatory influence of the import prohibition and underscores its unjustifiability.

[The Appellate Body also finds additional differential treatment among countries desiring certification under Section 609. For example, the United States gave some countries a longer time than others to phase in the use of TEDs. In addition, the United States made "[f]ar greater efforts to transfer" required technology "to certain exporting countries * * * than to other exporting countries, including the appellees."]

176. When the foregoing differences in the means of application of Section 609 to various shrimp exporting countries are considered in their cumulative effect, we find, and so hold, that those differences in treatment constitute "unjustifiable discrimination" between exporting countries desiring certification in order to gain access to the United States shrimp market within the meaning of the chapeau of Article XX.

174. While the United States is a party to CITES, it did not make any attempt to raise the issue of sea turtle mortality due to shrimp trawling in the CITES Standing Committee as a subject requiring concerted action by states. In this context, we note that the United States, for example, has not signed the Convention on the Conservation of Migratory Species of Wild Animals or [the United Nations Convention of the Law of the Sea], and has not ratified the Convention on Biological Diversity.

3. *"Arbitrary Discrimination"*

177. We next consider whether Section 609 has been applied in a manner constituting "arbitrary discrimination between countries where the same conditions prevail." * * *

180. * * * The certification processes under Section 609 consist principally of administrative *ex parte* inquiry or verification by staff of the Office of Marine Conservation in the Department of State with staff of the United States National Marine Fisheries Service. [T]here is no formal opportunity for an applicant country to be heard, or to respond to any arguments that may be made against it, in the course of the certification process before a decision to grant or to deny certification is made. Moreover, no formal written, reasoned decision, whether of acceptance or rejection, is rendered on applications for * * * certification[.] Countries which are granted certification are included in a list of approved applications published in the Federal Register; however, they are not notified specifically. Countries whose applications are denied also do not receive notice of such denial (other than by omission from the list of approved applications) or of the reasons for the denial. No procedure for review of, or appeal from, a denial of an application is provided.

181. The certification processes followed by the United States thus appear to be singularly informal and casual, and to be conducted in a manner such that these processes could result in the negation of rights of Members. There appears to be no way that exporting Members can be certain whether the terms of Section 609, in particular, the 1996 Guidelines, are being applied in a fair and just manner by the appropriate governmental agencies of the United States. It appears to us that, effectively, exporting Members applying for certification whose applications are rejected are denied basic fairness and due process, and are discriminated against, *vis-à-vis* those Members which are granted certification.

182. The provisions of Article X:3[191] of the GATT 1994 bear upon this matter. In our view, Section 609 falls within the "laws, regulations, judicial decisions and administrative rulings of general application" described in Article X:1. Inasmuch as there are due process requirements generally for measures that are otherwise imposed in compliance with WTO obligations, it is only reasonable that rigorous compliance with the fundamental requirements of due process should be required in the application and administration of a measure which purports to be an exception to the treaty obligations of the Member imposing the measure and which effectively results in a suspension *pro hac vice* of the treaty rights of other Members.

191. Article X:3 states, in part:

(a) Each Member shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

(b) Each Member shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters....

183. * * * Article X:3 of the GATT 1994 establishes certain minimum standards for transparency and procedural fairness in the administration of trade regulations which, in our view, are not met here. The non-transparent and *ex parte* nature of the internal governmental procedures applied by the competent officials in the Office of Marine Conservation, the Department of State, and the United States National Marine Fisheries Service throughout the certification processes under Section 609, as well as the fact that countries whose applications are denied do not receive formal notice of such denial, nor of the reasons for the denial, and the fact, too, that there is no formal legal procedure for review of, or appeal from, a denial of an application, are all contrary to the spirit, if not the letter, of Article X:3 of the GATT 1994.

184. We find, accordingly, that the United States measure is applied in a manner which amounts to a means not just of "unjustifiable discrimination," but also of "arbitrary discrimination" between countries where the same conditions prevail, contrary to the requirements of the chapeau of Article XX. The measure, therefore, is not entitled to the justifying protection of Article XX of the GATT 1994. Having made this finding, it is not necessary for us to examine also whether the United States measure is applied in a manner that constitutes a "disguised restriction on international trade" under the chapeau of Article XX.

185. In reaching these conclusions, we wish to underscore what we have not decided in this appeal. We have *not* decided that the protection and preservation of the environment is of no significance to the Members of the WTO. Clearly, it is. We have *not* decided that the sovereign nations that are Members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles. Clearly, they can and should. And we have *not* decided that sovereign states should not act together bilaterally, plurilaterally or multilaterally, either within the WTO or in other international fora, to protect endangered species or to otherwise protect the environment. Clearly, they should and do.

186. What we *have* decided in this appeal is simply this: although the measure of the United States in dispute in this appeal serves an environmental objective that is recognized as legitimate under paragraph (g) of Article XX of the GATT 1994, this measure has been applied by the United States in a manner which constitutes arbitrary and unjustifiable discrimination between Members of the WTO, contrary to the requirements of the chapeau of Article XX. For all of the specific reasons outlined in this Report, this measure does not qualify for the exemption that Article XX of the GATT 1994 affords to measures which serve certain recognized, legitimate environmental purposes but which, at the same time, are not applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. * * * WTO Members are free to adopt their own policies aimed at protecting the environment as long as, in so doing, they fulfill their obligations and respect the rights of other Members under the *WTO Agreement*. * * *

188. The Appellate Body *recommends* that the DSB request the United States to bring its measure found in the Panel Report to be inconsistent with Article XI of the GATT 1994, and found in this Report to be not justified under Article XX of the GATT 1994, into conformity with the obligations of the United States under that Agreement.

Notes and Questions

1. *The GATT and the WTO.* The General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 187, a multilateral treaty adopted to further the goal of reducing tariffs and other barriers to trade, was one of several post-World War II initiatives relating to trade and development. The International Monetary Fund and the World Bank were also created in the 1940s as institutions designed to promote investment and economic growth. One guiding principle of the GATT is "national treatment," which provides for equal taxation and regulation of foreign and domestic goods after foreign goods have been imported. Another guiding principle is "most favored nation treatment," according to which a GATT Contracting Party must, when it grants a privilege to a product imported from one state, accord the same privilege to similar products from all GATT Contracting Parties; one exception is the GATT Generalized System of Preferences (GSP), which gives temporary preferences to specific goods imported from developing states. GATT Article XI(1), the 1994 version of which the complaining states argued was violated in the *Shrimp-Turtle Case*, prohibits discriminatory import restrictions based on standards related to the means of producing a product. Tariffs and various non-tariff trade barriers have been progressively lowered or eliminated in a series of GATT negotiating "Rounds" held since 1947.

The World Trade Organization came into existence on January 1, 1995, one product of the Uruguay Round of GATT negotiations. Unlike the original GATT, the WTO is an intergovernmental organization, headquartered in Switzerland and charged with administering WTO trade agreements. It serves as a forum for trade negotiations, provides technical assistance to developing states, and addresses trade disputes. As of February 2005 the WTO had 148 members. Other products of the Uruguay Round include an updated version of the GATT (GATT 1994), a General Agreement on Trade in Services (GATS), and an agreement on Trade–Related Aspects of Intellectual Property Rights (TRIPS).

2. *The WTO and Dispute Settlement.* Annex II of the 1994 Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 3, contains a Dispute Settlement Understanding (DSU), 1869 *id.* 401, which establishes a formal dispute settlement mechanism. The original GATT contemplated that consultation, good offices, or conciliation would resolve many disputes. In case such informal mechanisms proved unavailing, many GATT disputes could be submitted to a panel selected by the parties, which would issue a report containing recommendations for the parties. Although a panel report could be submitted to the Council of the GATT Contracting Parties in an effort to have it adopted as an authoritative ruling, a party to a dispute that felt itself disadvantaged by a panel report could block its adoption by the Council.