

**WORLD TRADE  
ORGANIZATION**

**WT/AB/3**  
25 January 2005

(05-0287)

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**APPELLATE BODY**

**ANNUAL REPORT FOR 2004**

**JANUARY 2005**

**The Appellate Body welcomes comments and inquiries  
regarding this report at the  
following address:**

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## TABLE OF CASES CITED IN THIS REPORT

Short Title	Full Case Title and Citation
<i>Argentina – Footwear (EC)</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515
<i>Argentina – Textiles and Apparel</i>	Appellate Body Report, <i>Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items</i> , WT/DS56/AB/R and Corr.1, adopted 22 April 1998, DSR 1998:III, 1003
<i>Australia – Salmon</i>	Appellate Body Report, <i>Australia – Measures Affecting Importation of Salmon</i> , WT/DS18/AB/R, adopted 6 November 1998, DSR 1998:VIII, 3327
<i>Brazil – Aircraft</i>	Appellate Body Report, <i>Brazil – Export Financing Programme for Aircraft</i> , WT/DS46/AB/R, adopted 20 August 1999, DSR 1999:III, 1161
<i>Brazil – Aircraft (Article 21.5 – Canada)</i>	Appellate Body Report, <i>Brazil – Export Financing Programme for Aircraft – Recourse by Canada to Article 21.5 of the DSU</i> , WT/DS46/AB/RW, adopted 4 August 2000, DSR 2000:VIII, 4067
<i>Brazil – Desiccated Coconut</i>	Appellate Body Report, <i>Brazil – Measures Affecting Desiccated Coconut</i> , WT/DS22/AB/R, adopted 20 March 1997, DSR 1997:I, 167
<i>Canada – Aircraft</i>	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft</i> , WT/DS70/AB/R, adopted 20 August 1999, DSR 1999:III, 1377
<i>Canada – Aircraft (Article 21.5 – Brazil)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft – Recourse by Brazil to Article 21.5 of the DSU</i> , WT/DS70/AB/RW, adopted 4 August 2000, DSR 2000:IX, 4299
<i>Canada – Autos</i>	Appellate Body Report, <i>Canada – Certain Measures Affecting the Automotive Industry</i> , WT/DS139/AB/R, WT/DS142/AB/R, adopted 19 June 2000, DSR 2000:VI, 2985
<i>Canada – Dairy</i>	Appellate Body Report, <i>Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products</i> , WT/DS103/AB/R, WT/DS113/AB/R and Corr.1, adopted 27 October 1999, DSR 1999:V, 2057
<i>Canada – Dairy (Article 21.5 – New Zealand and US)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Recourse to Article 21.5 of the DSU by New Zealand and the United States</i> , WT/DS103/AB/RW, WT/DS113/AB/RW, adopted 18 December 2001, DSR 2001:XIII, 6829
<i>Canada – Dairy (Article 21.5 – New Zealand and US II)</i>	Appellate Body Report, <i>Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products – Second Recourse to Article 21.5 of the DSU by New Zealand and the United States</i> , WT/DS103/AB/RW2, WT/DS113/AB/RW2, adopted 17 January 2003
<i>Canada – Patent Term</i>	Appellate Body Report, <i>Canada – Term of Patent Protection</i> , WT/DS170/AB/R, adopted 12 October 2000, DSR 2000:X, 5093
<i>Canada – Periodicals</i>	Appellate Body Report, <i>Canada – Certain Measures Concerning Periodicals</i> , WT/DS31/AB/R, adopted 30 July 1997, DSR 1997:I, 449
<i>Canada – Wheat Exports and Grain Imports</i>	Appellate Body Report, <i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain</i> , WT/DS276/AB/R, adopted 27 September 2004
<i>Chile – Alcoholic Beverages</i>	Appellate Body Report, <i>Chile – Taxes on Alcoholic Beverages</i> , WT/DS87/AB/R, WT/DS110/AB/R, adopted 12 January 2000, DSR 2000:I, 281
<i>Chile – Price Band System</i>	Appellate Body Report, <i>Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products</i> , WT/DS207/AB/R, adopted 23 October 2002
<i>EC – Asbestos</i>	Appellate Body Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/AB/R, adopted 5 April 2001, DSR 2001:VII, 3243

Short Title	Full Case Title and Citation
<i>EC – Bananas III</i>	Appellate Body Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/AB/R, adopted 25 September 1997, DSR 1997:II, 591
<i>EC – Bananas III (Ecuador)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , Complaint by Ecuador, WT/DS27/R/ECU, adopted 25 September 1997, as modified by the Appellate Body Report, WT/DS27/AB/R, DSR 1997:III, 1085
<i>EC – Bananas III (Guatemala and Honduras)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , Complaint by Guatemala and Honduras, WT/DS27/R/GTM, WT/DS27/R/HND, adopted 25 September 1997, as modified by the Appellate Body Report, WT/DS27/AB/R, DSR 1997:II, 695
<i>EC – Bananas III (Mexico)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , Complaint by Mexico, WT/DS27/R/MEX, adopted 25 September 1997, as modified by the Appellate Body Report, WT/DS27/AB/R, DSR 1997:II, 803
<i>EC – Bananas III (US)</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , Complaint by the United States, WT/DS27/R/USA, adopted 25 September 1997, as modified by the Appellate Body Report, WT/DS27/AB/R, DSR 1997:II, 943
<i>EC – Bed Linen</i>	Appellate Body Report, <i>European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India</i> , WT/DS141/AB/R, adopted 12 March 2001, DSR 2001:V, 2049
<i>EC – Bed Linen (Article 21.5 – India)</i>	Appellate Body Report, <i>European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India – Recourse to Article 21.5 of the DSU by India</i> , WT/DS141/AB/RW, adopted 24 April 2003
<i>EC – Computer Equipment</i>	Appellate Body Report, <i>European Communities – Customs Classification of Certain Computer Equipment</i> , WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, adopted 22 June 1998, DSR 1998:V, 1851
<i>EC – Hormones</i>	Appellate Body Report, <i>EC Measures Concerning Meat and Meat Products (Hormones)</i> , WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, DSR 1998:I, 135
<i>EC – Poultry</i>	Appellate Body Report, <i>European Communities – Measures Affecting the Importation of Certain Poultry Products</i> , WT/DS69/AB/R, adopted 23 July 1998, DSR 1998:V, 2031
<i>EC – Sardines</i>	Appellate Body Report, <i>European Communities – Trade Description of Sardines</i> , WT/DS231/AB/R, adopted 23 October 2002
<i>EC – Tube or Pipe Fittings</i>	Appellate Body Report, <i>European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil</i> , WT/DS219/AB/R, adopted 18 August 2003
<i>EC – Tariff Preferences</i>	Appellate Body Report, <i>European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries</i> , WT/DS246/AB/R, adopted 20 April 2004
<i>EC – Tariff Preferences</i>	Award of the Arbitrator, <i>European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS246/14, 20 September 2004
<i>Guatemala – Cement I</i>	Appellate Body Report, <i>Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico</i> , WT/DS60/AB/R, adopted 25 November 1998, DSR 1998:IX, 3767
<i>India – Autos</i>	Appellate Body Report, <i>India – Measures Affecting the Automotive Sector</i> , WT/DS146/AB/R, WT/DS175/AB/R, adopted 5 April 2002

Short Title	Full Case Title and Citation
<i>India – Patents (US)</i>	Appellate Body Report, <i>India – Patent Protection for Pharmaceutical and Agricultural Chemical Products</i> , WT/DS50/AB/R, adopted 16 January 1998, DSR 1998:I, 9
<i>India – Quantitative Restrictions</i>	Appellate Body Report, <i>India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products</i> , WT/DS90/AB/R, adopted 22 September 1999, DSR 1999:IV, 1763
<i>Japan – Agricultural Products II</i>	Appellate Body Report, <i>Japan – Measures Affecting Agricultural Products</i> , WT/DS76/AB/R, adopted 19 March 1999, DSR 1999:I, 277
<i>Japan – Alcoholic Beverages II</i>	Appellate Body Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, 97
<i>Japan – Apples</i>	Appellate Body Report, <i>Japan – Measures Affecting the Importation of Apples</i> , WT/DS245/AB/R, adopted 10 December 2003
<i>Korea – Alcoholic Beverages</i>	Appellate Body Report, <i>Korea – Taxes on Alcoholic Beverages</i> , WT/DS75/AB/R, WT/DS84/AB/R, adopted 17 February 1999, DSR 1999:I, 3
<i>Korea – Dairy</i>	Appellate Body Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3
<i>Korea – Various Measures on Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, 5
<i>Mexico – Corn Syrup</i>	Panel Report, <i>Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States</i> , WT/DS132/R and Corr.1, adopted 24 February 2000, DSR 2000:III, 1345
<i>Mexico – Corn Syrup (Article 21.5 – US)</i>	Appellate Body Report, <i>Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States – Recourse to Article 21.5 of the DSU by the United States</i> , WT/DS132/AB/RW, adopted 21 November 2001, DSR 2001:XIII, 6675
<i>Mexico – Telecoms</i>	Panel Report, <i>Mexico – Measures Affecting Telecommunications Services</i> , WT/DS204/R, adopted 1 June 2004
<i>Thailand – H-Beams</i>	Appellate Body Report, <i>Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland</i> , WT/DS122/AB/R, adopted 5 April 2001, DSR 2001:VII, 2701
<i>Turkey – Textiles</i>	Appellate Body Report, <i>Turkey – Restrictions on Imports of Textile and Clothing Products</i> , WT/DS34/AB/R, adopted 19 November 1999, DSR 1999:VI, 2345
<i>US – 1916 Act</i>	Appellate Body Report, <i>United States – Anti-Dumping Act of 1916</i> , WT/DS136/AB/R, WT/DS162/AB/R, adopted 26 September 2000, DSR 2000:X, 4793
<i>US – Carbon Steel</i>	Appellate Body Report, <i>United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany</i> , WT/DS213/AB/R and Corr.1, adopted 19 December 2002
<i>US – Certain EC Products</i>	Appellate Body Report, <i>United States – Import Measures on Certain Products from the European Communities</i> , WT/DS165/AB/R, adopted 10 January 2001, DSR 2001:I, 373
<i>US – Corrosion-Resistant Steel Sunset Review</i>	Appellate Body Report, <i>United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan</i> , WT/DS244/AB/R, adopted 9 January 2004
<i>US – Cotton Yarn</i>	Appellate Body Report, <i>United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan</i> , WT/DS192/AB/R, adopted 5 November 2001, DSR 2001:XII, 6027

Short Title	Full Case Title and Citation
<i>US – Countervailing Measures on Certain EC Products</i>	Appellate Body Report, <i>United States – Countervailing Measures Concerning Certain Products from the European Communities</i> , WT/DS212/AB/R, adopted 8 January 2003
<i>US – FSC</i>	Appellate Body Report, <i>United States – Tax Treatment for "Foreign Sales Corporations"</i> , WT/DS108/AB/R, adopted 20 March 2000, DSR 2000:III, 1619
<i>US – FSC (Article 21.5 – EC)</i>	Appellate Body Report, <i>United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS108/AB/RW, adopted 29 January 2002, DSR 2002:I, 55
<i>US – Gasoline</i>	Appellate Body Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, 3
<i>US – Hot-Rolled Steel</i>	Appellate Body Report, <i>United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan</i> , WT/DS184/AB/R, adopted 23 August 2001, DSR 2001:X, 4697
<i>US – Lamb</i>	Appellate Body Report, <i>United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i> , WT/DS177/AB/R, WT/DS178/AB/R, adopted 16 May 2001, DSR 2001:IX, 4051
<i>US – Lead and Bismuth II</i>	Appellate Body Report, <i>United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom</i> , WT/DS138/AB/R, adopted 7 June 2000, DSR 2000:V, 2595
<i>US – Line Pipe</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea</i> , WT/DS202/AB/R, adopted 8 March 2002
<i>US – Line Pipe</i>	Report of the Arbitrator, <i>United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS202/17, 26 July 2002
<i>US – Offset Act (Byrd Amendment)</i>	Appellate Body Report, <i>United States – Continued Dumping and Subsidy Offset Act of 2000</i> , WT/DS217/AB/R, WT/DS234/AB/R, adopted 27 January 2003
<i>US – Oil Country Tubular Goods Sunset Reviews</i>	Appellate Body Report, <i>United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina</i> , WT/DS268/AB/R, adopted 17 December 2004
<i>US – Section 110(5) Copyright Act</i>	Award of the Arbitrator, <i>United States – Section 110(5) of the US Copyright Act – Arbitration under Article 21.3(c) of the DSU</i> , WT/DS160/12, 15 January 2001, DSR 2001:II, 657
<i>US – Section 211 Appropriations Act</i>	Appellate Body Report, <i>United States – Section 211 Omnibus Appropriations Act of 1998</i> , WT/DS176/AB/R, adopted 1 February 2002, DSR 2002:II, 589
<i>US – Shrimp</i>	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58/AB/R, adopted 6 November 1998, DSR 1998:VII, 2755
<i>US – Shrimp (Article 21.5 – Malaysia)</i>	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia</i> , WT/DS58/AB/RW, adopted 21 November 2001, DSR 2001:XIII, 6481
<i>US – Softwood Lumber IV</i>	Appellate Body Report, <i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada</i> , WT/DS257/AB/R, adopted 17 February 2004
<i>US – Softwood Lumber V</i>	Appellate Body Report, <i>United States – Final Dumping Determination on Softwood Lumber from Canada</i> , WT/DS264/AB/R, adopted 31 August 2004
<i>US – Softwood Lumber V</i>	Report of the Arbitrator, <i>United States – Final Dumping Determination on Softwood Lumber from Canada</i> , WT/DS264/13, 13 December 2004

<b>Short Title</b>	<b>Full Case Title and Citation</b>
<i>US – Softwood Lumber VI</i>	Panel Report, <i>United States – Investigation of the International Trade Commission in Softwood Lumber from Canada</i> , WT/DS277/R, adopted 26 April 2004
<i>US – Steel Safeguards</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Certain Steel Products</i> , WT/DS248AB/R, WT/DS249AB/R, WT/DS251AB/R, WT/DS252AB/R, WT/DS253AB/R, WT/DS254AB/R, WT/DS258AB/R, WT/DS259AB/R, adopted 10 December 2003
<i>US – Underwear</i>	Appellate Body Report, <i>United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear</i> , WT/DS24/AB/R, adopted 25 February 1997, DSR 1997:I, 11
<i>US – Upland Cotton</i>	<i>United States – Subsidies on Upland Cotton</i> , WT/DS267, Notice of Appeal filed 18 October 2004
<i>US – Wheat Gluten</i>	Appellate Body Report, <i>United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities</i> , WT/DS166/AB/R, adopted 19 January 2001, DSR 2001:II, 717
<i>US – Wool Shirts and Blouses</i>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R and Corr.1, adopted 23 May 1997, DSR 1997:I, 323



TABLE OF ABBREVIATIONS USED IN THIS REPORT

<b>Abbreviation</b>	<b>Description</b>
2004 TA Plan	WTO Technical Assistance and Training Plan 2004
<i>Anti-Dumping Agreement</i>	<i>Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994</i>
<i>ATC</i>	<i>Agreement on Textiles and Clothing</i>
DSB	Dispute Settlement Body
DSU	<i>Understanding on Rules and Procedures Governing the Settlement of Disputes</i>
Enabling Clause	Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries, GATT Document L/4903, 28 November 1979, BISD 26S/203
GATS	<i>General Agreement on Trade in Services</i>
GATT 1994	<i>General Agreement on Tariffs and Trade 1994</i>
GSP	Generalized System of Preferences
<i>Import Licensing</i>	<i>Agreement on Import Licensing Procedures</i>
<i>SCM Agreement</i>	<i>Agreement on Subsidies and Countervailing Measures</i>
<i>SPS Agreement</i>	<i>Agreement on the Application of Sanitary and Phytosanitary Measures</i>
STEs	State trading enterprises
<i>TBT</i>	<i>Agreement on Technical Barriers to Trade</i>
<i>TRIMs</i>	<i>Agreement on Trade-Related Investment Measures</i>
<i>TRIPs</i>	<i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i>
<i>Working Procedures</i>	<i>Working Procedures for Appellate Review</i>
WTO	World Trade Organization
<i>WTO Agreement</i>	<i>Marrakesh Agreement Establishing the World Trade Organization</i>



WORLD TRADE ORGANIZATION  
APPELLATE BODY

ANNUAL REPORT FOR 2004

The following report provides a summary of the activities undertaken by the Appellate Body of the World Trade Organization (the "WTO"), and its Secretariat, during 2004.

**I. Composition of the Appellate Body**

The Appellate Body is composed of seven Members appointed to four-year terms by the WTO's Dispute Settlement Body (the "DSB"). The current Members of the Appellate Body and their respective terms of office are:

Name	Nationality	Term(s) of office
Georges Michel Abi-Saab — Chairman	Egypt	2000-2004 2004-2008
Luiz Olavo Baptista	Brazil	2001-2005
Arumugamangalam Venkatachalam Ganesan	India	2000-2004 2004-2008
Merit E. Janow	United States	2003-2007
John Lockhart	Australia	2001-2005
Giorgio Sacerdoti	Italy	2001-2005
Yasuhei Taniguchi	Japan	2000-2003 2003-2007

On 1 June 2004, Mr. Georges Abi-Saab and Mr. A.V. Ganesan each commenced a new term of office, having been appointed by the DSB, on 7 November 2003, to a second four-year term that will expire on 31 May 2008.<sup>1</sup> Mr. Yasuhei Taniguchi was also appointed to a second four-year term on 7 November 2003. His second four-year term began on 11 December 2003 and will expire on 10 December 2007.

Appellate Body Members elected Mr. Abi-Saab, pursuant to Rule 5(1) of the *Working Procedures for Appellate Review* (the "*Working Procedures*"), to serve as Chairman of the Appellate Body from 13 December 2003 to 12 December 2004.<sup>2</sup> On 17 December 2004, Appellate Body Members elected Mr. Taniguchi to serve as Chairman of the Appellate Body from 17 December 2004 to 16 December 2005.<sup>3</sup>

Sadly, Dr. Said El-Naggar, one of the original seven Members of the Appellate Body, passed away on 11 April 2004. Dr. El-Naggar was appointed to the Appellate Body in December 1995 and served until 31 March 2000. During his term, he served on twelve Appellate Body Divisions and as arbitrator in two arbitrations under Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the "DSU").

In November 2004, Mr. Florentino Feliciano, who was a Member of the Appellate Body between 1995 and 2001, was named an Honorary Member of the American Society of International Law "for his distinguished work in international law". A list of former Appellate Body Members and chairpersons is provided in Annex 1.

<sup>1</sup>WT/DSB/M/157, paras. 62-63.

<sup>2</sup>WT/DSB/36.

<sup>3</sup>WT/DSB/38.

The Appellate Body receives legal and administrative support from the Appellate Body Secretariat, in accordance with Article 17.7 of the DSU. The Director of the Appellate Body Secretariat is Ms. Valerie Hughes, who heads a team of ten lawyers, one administrative assistant, and three support staff.

## II. Appeals Filed

Five appeals were filed during 2004. Under Rule 20(1) of the *Working Procedures*, an appeal is commenced by giving notice in writing to the DSB and filing a Notice of Appeal with the Appellate Body Secretariat. Table 1 (below) lists the WTO document numbers of the Notices of Appeal filed, the dates of filing, and the WTO Members that filed the Notices.

**Table 1: Notices of Appeal filed in 2004**

Case	Notice of Appeal document number	Date of Notice of Appeal	Appellant <sup>4</sup>
<i>EC – Tariff Preferences</i>	WT/DS246/7	8 January 2004	European Communities
<i>US – Softwood Lumber V</i>	WT/DS264/6	13 May 2004	United States
<i>Canada – Wheat Exports and Grain Imports</i>	WT/DS276/15	1 June 2004	United States
<i>US – Oil Country Tubular Goods Sunset Reviews</i>	WT/DS268/5	31 August 2004	United States
<i>US – Upland Cotton</i>	WT/DS267/17	18 October 2004	United States

Information on the number of appeals filed each year since 1995 is contained in Annex 2.

Under Article 21.5 of the DSU a panel may be established to hear a "disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB upon the adoption of a previous panel or Appellate Body report. No panel reports pursuant to Article 21.5 were adopted in 2004.

Of the eight panel reports adopted in 2004, six were appealed—that is, 75 per cent. Table 2 (below) lists panel reports that were adopted by the DSB during 2004 without an appeal having been filed.

**Table 2: Panel Reports adopted in 2004 without appeal**

Case	Date Panel Report circulated	Date DSB adopted Panel Report
<i>US – Softwood Lumber VI</i>	22 March 2004	26 April 2004
<i>Mexico – Telecoms</i>	2 April 2004	1 June 2004

Annex 3 summarizes the percentage of panel reports adopted from 1996 to 2004 that were appealed.

## III. Appellate Body Reports

The Appellate Body circulated five reports during 2004. One of the reports related to a Notice of Appeal filed in 2003.<sup>5</sup> The other four reports related to Notices of Appeal filed during 2004.

<sup>4</sup>Pursuant to Rule 20 of the *Working Procedures*.

<sup>5</sup>The Notice of Appeal in *US – Softwood Lumber IV* was filed on 21 October 2003.

The following table lists the five Appellate Body reports circulated during 2004.

**Table 3: Appellate Body Reports circulated in 2004**

Case	Date Appellate Body Report Circulated	Date DSB Adopted Appellate Body Report
<i>US – Softwood Lumber IV</i>	19 January 2004	17 February 2004
<i>EC – Tariff Preferences</i>	7 April 2004	20 April 2004
<i>US – Softwood Lumber V</i>	11 August 2004	31 August 2004
<i>Canada – Wheat Exports and Grain Imports</i>	30 August 2004	27 September 2004
<i>US – Oil Country Tubular Goods Sunset Reviews</i>	29 November 2004	17 December 2004

As of the end of 2004, the Appellate Body has circulated a total of 64 reports since it was established in 1995.

Since 1995, eight Appellate Body reports have been circulated regarding Article 21.5 panel reports.<sup>6</sup> In one dispute, parties resorted to Article 21.5 procedures twice and both panel reports were the subject of an appeal.<sup>7</sup> In another dispute, an Article 21.5 panel report was appealed, although the original panel report had not been appealed.<sup>8</sup> A list of appeals from panel reports circulated pursuant to Article 21.5 is provided in Annex 4.

#### IV. Participants and Third Participants

Table 4 (below) lists the WTO Members that participated in appeals in which an Appellate Body report was circulated during 2004. Table 4 distinguishes between appellants that filed a Notice of Appeal pursuant to Rule 20 of the *Working Procedures* (the "original appellant") and those that filed an appeal pursuant to Rule 23(1) of the *Working Procedures* (commonly known as "other appellants"). Rule 23(1) provides that "a party to the dispute other than the original appellant may join in that appeal or appeal on the basis of other alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel". Under the version of the *Working Procedures* that applied until the end of 2004, parties wishing to appeal pursuant to Rule 23(1) had to file an other appellant's submission within fifteen days of the filing of the Notice of Appeal.<sup>9</sup> The modified *Working Procedures* require parties wishing to appeal pursuant to Rule 23(1) to file a Notice of Other Appeal.

Table 4 also specifies whether third participants made an appearance under paragraphs (1), (2), or (4) of Rule 24 of the *Working Procedures*. Under Rule 24(1), a WTO Member that was a third party to the panel proceedings may file a written submission as a third participant within 25 days of the filing of the Notice of Appeal. Pursuant to Rule 24(2), a Member that was a third party to the panel proceedings that has not filed a written submission may, within 25 days of the filing of the Notice of Appeal, notify its intention to appear at the oral hearing and whether it intends to make an

<sup>6</sup>Under Article 21.5 of the DSU a panel may be established to hear a "disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB upon the adoption of a previous panel or Appellate Body report.

<sup>7</sup>See Appellate Body Report, *Canada – Dairy (Article 21.5 – New Zealand and US)* and Appellate Body Report, *Canada – Dairy (Article 21.5 – New Zealand and US II)*.

<sup>8</sup>Appellate Body Report, *Mexico – Corn Syrup (Article 21.5 – US)*.

<sup>9</sup>Changes to the procedures for participating in an appeal pursuant to Rule 23(1) of the *Working Procedures* became effective for appeals filed after 1 January 2005. An explanation of the changes is provided in Section VI of this Annual Report and the text of the amendments to the *Working Procedures* is provided in Annex 8.

oral statement at the hearing. Rule 24(4) provides that a Member that has neither filed a written submission in accordance with Rule 24(1) nor given notice in accordance with Rule 24(2) may notify its intention to appear at the oral hearing and request to make an oral statement.

**Table 4: Participants and Third Participants in Appeals – 2004<sup>10</sup>**

Case	Appellant <sup>11</sup>	Other Appellant <sup>12</sup>	Appellee <sup>13</sup>	Third Participant		
				Rule 24(1)	Rule 24(2)	Rule 24(4)
<i>US – Softwood Lumber IV</i>	United States	Canada	Canada United States	European Communities Japan	India	
<i>EC – Tariff Preferences</i>	European Communities		India	Bolivia Colombia Costa Rica Ecuador Panama Paraguay Peru United States Venezuela	Brazil El Salvador Guatemala Honduras Mauritius Nicaragua Pakistan <sup>14</sup>	Cuba
<i>US – Softwood Lumber V</i>	United States	Canada	Canada United States	European Communities Japan	India	
<i>Canada – Wheat Exports and Grain Imports</i>	United States	Canada	Canada United States	Australia China European Communities	Mexico Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	
<i>US – Oil Country Tubular Goods Sunset Reviews</i>	United States	Argentina	Argentina United States	European Communities Japan Korea Mexico	Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	

A total of 27 WTO Members appeared at least once, as an appellant, an appellee, or a third participant, in appeals in which an Appellate Body report was circulated during 2004.<sup>15</sup> Of these

<sup>10</sup>The various rules pursuant to which Members participate in appeals, as appellant, other appellant, appellee, or third participant, are described above on page 3.

<sup>11</sup>Pursuant to Rule 20 of the *Working Procedures*.

<sup>12</sup>Pursuant to Rule 23(1) of the *Working Procedures*.

<sup>13</sup>Pursuant to Rule 22 or Rule 23(3) of the *Working Procedures*.

<sup>14</sup>Pakistan initially submitted a request to appear at the oral hearing pursuant to Rule 24(2). Later, Pakistan submitted a request to make an oral statement pursuant to Rule 24(4).

<sup>15</sup>This represents an increase from the previous year, which saw 24 WTO Members appearing at least once in the six appeals in which an Appellate Body report was circulated during 2003. See *Appellate Body Annual Report for 2003*, WT/AB/1 (7 May 2004), p. 6.

27 WTO Members, 5 were developed country WTO Members and 22 were developing country WTO Members.

Of the 51 appearances by WTO Members before the Appellate Body during 2004, 24 were by developed country WTO Members and 27 by developing country WTO Members. Developed country WTO Members made 5 appearances as appellants, 3 as other appellants, 7 as appellees, and 9 as third participants. Developing country WTO Members made no appearances as appellants, 1 as other appellant, 2 as appellees, and 24 as third participants.

Certain amendments to the *Working Procedures*, which aimed to facilitate the involvement of WTO Members as third participants in appellate proceedings, became effective on 1 May 2003.<sup>16</sup> Although it is too early to evaluate fully the effects of these changes, there appears to be a discernible increase in the number of third participants in appeals in which an Appellate Body report was circulated during 2004 as compared to 2003. In 2004, appeals averaged 6.6 third participants, whereas in 2003, appeals averaged 5 third participants.<sup>17</sup> In appeals in which an Appellate Body report was circulated in the period 1996 to 2003, the average number of third participants was only 2.8.

Annex 5 lists the appellants, other appellants, appellees, and third participants in appeals for which an Appellate Body report was circulated between 1996 and 2004.

## V. Subject Matter of Appeals

### A. Appellate Body's Findings and Conclusions

Annex 6 contains summaries of the Appellate Body's findings and conclusions in the five Appellate Body reports circulated in 2004.

### B. Agreements Covered

The following table provides information about the WTO Agreements covered in the five Appellate Body reports circulated during 2004.

**Table 5: Agreements covered in Appellate Body Reports circulated in 2004**

Case	WTO Agreements Covered
<i>US – Softwood Lumber IV</i>	<i>SCM Agreement</i> GATT 1994
<i>EC – Tariff Preferences</i>	GATT 1994 (Enabling Clause)
<i>US – Softwood Lumber V</i>	<i>Anti-Dumping Agreement</i> GATT 1994
<i>Canada – Wheat Exports and Grain Imports</i>	GATT 1994 DSU
<i>US – Oil Country Tubular Goods Sunset Reviews</i>	<i>Anti-Dumping Agreement</i> GATT 1994 DSU

<sup>16</sup>See the *Appellate Body Annual Report for 2003*, WT/AB/1 (7 May 2004), pp. 7-8.

<sup>17</sup>The number of third participants in the appeal in *EC – Tariff Preferences*, which was circulated in 2004, was unusually high (17).

Two of these appeals dealt primarily with issues related to the *Anti-Dumping Agreement*<sup>18</sup>, and one appeal related mainly to the *SCM Agreement*.<sup>19</sup> Two other appeals focused on the GATT 1994, particularly the 1979 Decision of the Contracting Parties on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries (the "Enabling Clause")<sup>20</sup>, which deals with tariff preferences for developing countries<sup>21</sup>, and Article XVII, which concerns state trading enterprises ("STEs").<sup>22</sup> Annex 7 provides a statistical summary of the WTO Agreements covered in Appellate Body reports circulated between 1996 and 2004.

### C. *Procedural Issues*

Several appeals for which an Appellate Body report was circulated during 2004 involved procedural issues, which are summarized in the following paragraphs.

In *US – Softwood Lumber IV*, for scheduling reasons, the United States withdrew the Notice of Appeal that it had filed on 2 October 2003 and re-filed it on 21 October 2003. The United States' appellant's submission was filed on the same day as the re-filed Notice of Appeal, in accordance with the Working Schedule drawn up by the Division for the appeal. The European Communities, one of the third parties in the panel proceedings, requested the Appellate Body to modify the Working Schedule. The European Communities argued that the time-period within which it had to file a third participant's submission was contrary to Rule 24(1) of the *Working Procedures*, because it was less than 25 days from the date of re-filing of the Notice of Appeal. The Appellate Body declined this request, noting that an extension of the date for filing third participants' submissions would significantly reduce the time available for the Division to consider carefully the arguments raised therein, as well as the time available to the participants to respond to those arguments. The Division also observed that the two Notices of Appeal filed by the United States were identical in all relevant respects, and that the critical time-period for third participants and appellees to prepare their responses to arguments raised by appellants and other appellants is the period between the receipt of the appellant's or other appellant's submissions and the date for filing third participants' submissions. In this appeal, the time-period between the receipt of the appellant's submission and the due date for third participants' submissions was the same as it is in all appeals.<sup>23</sup>

In the same appeal, one of the Members of the Division hearing the appeal (Mr. A.V. Ganesan) was prevented from continuing to serve on the Division for serious personal reasons. Accordingly, the Appellate Body selected Mr. Giorgio Sacerdoti to replace Mr. Ganesan on the Division.<sup>24</sup>

In *EC – Tariff Preferences*, Pakistan submitted a request to make a statement at the oral hearing pursuant to Rule 24(4) of the *Working Procedures*. Pakistan had previously notified its intention to appear at the oral hearing as a third participant, pursuant to Rule 24(2) of the *Working Procedures*. No participant objected to Pakistan's request, and the Division hearing the appeal exercised its discretion in accordance with Rule 24(4) and authorized Pakistan to make a statement.<sup>25</sup>

During the oral hearing in *US – Softwood Lumber V*, Canada requested authorization to file the preliminary results of an anti-dumping duty administrative review and a memorandum of the

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<sup>18</sup>Appellate Body Report, *US – Softwood Lumber V* and Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*.

<sup>19</sup>Appellate Body Report, *US – Softwood Lumber IV*.

<sup>20</sup>GATT Document L/4903, 28 November 1979, BISD 26S/203. The Enabling Clause "has become an integral part of the GATT 1994". (Appellate Body Report, *EC – Tariff Preferences*, para. 90)

<sup>21</sup>Appellate Body Report, *EC – Tariff Preferences*.

<sup>22</sup>Appellate Body Report, *Canada – Wheat Exports and Grain Imports*.

<sup>23</sup>Appellate Body Report, *US – Softwood Lumber IV*, paras. 6-7.

<sup>24</sup>Appellate Body Report, *US – Softwood Lumber IV*, para. 10.

<sup>25</sup>Appellate Body Report, *EC – Tariff Preferences*, para. 7.



United States investigating authority, both of which, according to Canada, became available after the filing of Canada's other appellant's submission. Canada stated that it made its request pursuant to Rule 16 of the *Working Procedures*. The United States objected, arguing that the introduction of these materials would be inconsistent with Article 17.5(ii) of the *Anti-Dumping Agreement* and with the *Working Procedures*. The Division agreed that the materials at issue constituted new factual evidence and, therefore, fell outside the scope of the appeal pursuant to Article 17.6 of the DSU. Accordingly, the Division informed the participants in the course of the oral hearing that it denied Canada's request.<sup>26</sup>

The Division hearing the appeal in *US – Oil Country Tubular Goods Sunset Reviews* received a letter from Argentina (the appellee and the other appellant in the dispute) requesting that the parties be informed, in advance of the oral hearing, of the order in which the Division intended to address the issues on appeal. The United States (the original appellant) did not object to Argentina's request. The Division responded to Argentina's request in a letter sent to the participants and third participants, which stated that although "it is not the practice of the Appellate Body to inform the participants, in advance of the oral hearing, of the issues on which a Division intends to pose questions", the Division, exercising its discretion in the conduct of the oral hearing, had decided to provide and identify in advance the order in which the issues on appeal would be addressed during the questioning. The Division emphasized, however, that "this order of questioning is general in nature, and that it is also subject to change, at the Division's discretion, as the Division's work on this appeal continues".<sup>27</sup>

## **VI. Working Procedures for Appellate Review**

### *A. Amendments to the Working Procedures*

The Appellate Body adopted amendments to the *Working Procedures* that came into effect on 1 January 2005, and that apply to all appeals initiated after that date.<sup>28</sup> Revised, consolidated *Working Procedures* were circulated on 4 January 2005 as document WT/AB/WP/5, and certain previously issued documents were re-issued with new document numbers, as explained below.

The changes adopted by the Appellate Body are set out in full in Annex 8. In brief, they relate to:

#### (i) *Content of the Notice of Appeal*

Rule 20(2)(d) has been amended in order to clarify what is meant by the requirement that a Notice of Appeal set out a "brief statement of the nature of the appeal". Three new subparagraphs added to this Rule require a Notice of Appeal to include: identification of the specific error(s) of law that the panel is alleged to have made; a list of the specific legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and an indicative list of the specific paragraphs of the panel report containing the alleged error(s).

#### (ii) *New Requirement to File a Notice of Other Appeal and Associated Changes to the Deadline for the Appellant's Submission*

The Appellate Body amended Rule 23 to require other appellants to file a Notice of Other Appeal, the content of which must satisfy the same requirements as a Notice of Appeal. Until now, the only document required to be filed by an other appellant was an other appellant's submission. A new paragraph of Rule 23 requires other appellants to file a Notice of Other Appeal within 12 days of the filing of the (original) Notice of Appeal, which is three days before the deadline for submitting the

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<sup>26</sup>Appellate Body Report, *US – Softwood Lumber V*, para. 9.

<sup>27</sup>Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 10.

<sup>28</sup>These amendments were set out and explained in a communication from the Chairman of the Appellate Body to the Chair of the DSB on 7 October 2004, circulated to WTO Members as document WT/AB/WP/W/9.

other appellant's submission. The Appellate Body also amended Rule 21 to bring forward the deadline for the submission of *appellants'* submissions to *7 days after the filing of the Notice of Appeal*. Previously, Rule 21 required such submissions to be filed within 10 days of the filing of the Notice of Appeal. This change was made in order to allow other parties time to review an appellant's submission before deciding whether to file a Notice of Other Appeal.

(iii) *Amendment of a Notice of Appeal or Notice of Other Appeal*

The Appellate Body introduced a new Rule 23*bis*, which provides for the possibility for an appellant or other appellant to apply for leave to amend its Notice of Appeal or Notice of Other Appeal, and identifies some of the criteria that the Division hearing the appeal will take into account in deciding whether to grant such requests.

(iv) *Modification of the Deadline for Seeking Leave to Correct Clerical Errors in Submissions*

The Appellate Body modified the deadline by which Members must seek permission to correct clerical errors in the documents that they submit in appeals, in accordance with Rule 18(5). This provision previously required that such requests be made within three days of the filing of the relevant submission. The new version of Rule 18(5) requires such requests to be made no later than 30 days after the date of the filing of the Notice of Appeal.

(v) *Miscellaneous Other Amendments*

These amendments include modifications to Rule 27 concerning the scheduling of the oral hearing, to certain defined terms, and to Annex I, as well as the introduction of a new Annex III, a "Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review*". These amendments are consequential amendments made necessary by the changes described above, as well as changes designed either to reflect existing practice or to provide useful information to WTO Members.

The adoption of these amendments was the culmination of an extensive process of consultation carried out by the Appellate Body. Article 17.9 of the DSU and Rule 32(2) of the *Working Procedures* require the Appellate Body to consult with the Director-General and the Chairperson of the DSB in adopting amendments to the *Working Procedures*. Furthermore, in December 2002, the DSB adopted additional procedures for consultations between WTO Members and the Chairperson of the DSB with respect to amendments to the *Working Procedures*.<sup>29</sup> Taking account of these provisions, the Appellate Body circulated, on 8 April 2004, a document setting out a number of possible amendments to the *Working Procedures* and seeking the views of Members thereon. Over the next few months, Members provided extensive comments on the proposed amendments to the Appellate Body. Oral comments were provided at a regular DSB meeting<sup>30</sup> and an informal DSB meeting, and many Members also provided comments in writing. Having received these constructive and helpful comments from Members, the Appellate Body made certain modifications to the changes it had put forward in April 2004. The Appellate Body also decided not to adopt, for the time being, a proposed amendment that would have introduced two annual periods of three weeks each during which the 90-day appeal period would be suspended.

This is the fourth time that a revised version of the *Working Procedures* has been issued to reflect amendments. In 1997, the Appellate Body amended Rule 5(2) to allow the first Chairman of the Appellate Body to serve for a term of two years, rather than one year.<sup>31</sup> Rule 5(2) was amended

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<sup>29</sup>WT/DSB/31.

<sup>30</sup>Meeting of the DSB held on 19 May 2004, WT/DSB/M/169, paras. 41-87.

<sup>31</sup>From 4 January 2005, the new document number for the second version of the *Working Procedures* is WT/AB/WP/2. See Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review* included on the last page of Annex 7.

again in 2002 to allow for an Appellate Body Member serving as Chairman of the Appellate Body to be appointed to a second one-year term.<sup>32</sup> In September 2002, the Appellate Body provisionally amended the *Working Procedures* with a view to facilitating participation of third parties in appeals, but did not issue a new version of the *Working Procedures* until May 2003, upon adoption of the final version of those amendments.<sup>33</sup>

B. *New Numbering System for Documents Relating to the Working Procedures*

At the same time that it adopted the most recent amendments to the *Working Procedures*, the Appellate Body informed WTO Members that it had decided to introduce a new numbering system for the *Working Procedures*.<sup>34</sup> Previously, all documents relating to the *Working Procedures* had been issued with a "WT/AB/WP" series number, irrespective of the nature of such documents. Thus, the several versions of the *Working Procedures* themselves, as well as any explanatory documents or other communications about the *Working Procedures*, had been issued with a "WT/AB/WP" series number. The Appellate Body was concerned that this numbering system could make it difficult for Members to identify the most recent version of the *Working Procedures*. Accordingly, as from 2005, the "WT/AB/WP" document series will be reserved for versions of the *Working Procedures* themselves. All previous versions of the *Working Procedures* will be re-issued with a note indicating that they are no longer in force and, as necessary, a new "WT/AB/WP" number.

The Appellate Body has also introduced a new "WT/AB/WP/W" series for working or discussion papers, communications, and explanations relating to the *Working Procedures*. As a result, certain documents previously issued with a "WT/AB/WP" number will be re-issued with a new "WT/AB/WP/W" number. Notes in both the new "WT/AB/WP/W" document and any renumbered "WT/AB/WP" document will explain the new document number(s) and allow readers to locate the document that they seek, even if its number has changed. In addition, three communications from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body that were previously provided to Members in hard copy only, without any document numbers, will be circulated for the first time as "WT/AB/WP/W" documents.<sup>35</sup>

A table identifying all documents relating to the *Working Procedures*, along with their original and new document numbers, is attached as Annex 9. A copy of the "Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review*" is included on the last page of Annex 8.

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<sup>32</sup>From 4 January 2005, the new document number for the third version of the *Working Procedures* is WT/AB/WP/3. See Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review* included on the last page of Annex 7.

<sup>33</sup>From 4 January 2005, the new document number for the fourth version of the *Working Procedures* is WT/AB/WP/4. See Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review* included on the last page of Annex 7.

<sup>34</sup>WT/AB/WP/W/9, pp. 2 and 3.

<sup>35</sup>Eventually, Members will quickly and easily be able to identify the current version of the *Working Procedures* simply by going to the latest number in the "WT/AB/WP" series. However, a transition phase will be necessary before reaching that stage. This is because, thus far, documents WT/AB/WP/1 through WT/AB/WP/8 have already been issued, even though only four of those documents were versions of the *Working Procedures* themselves. Accordingly, in January 2005, the new revised, consolidated version of the *Working Procedures* (the fifth version of the *Working Procedures*) was issued as document WT/AB/WP/5, and the documents that previously carried the numbers WT/AB/WP/6, WT/AB/WP/7, and WT/AB/WP/8 were re-issued with new document numbers under the new series. At the same time, short explanatory notes were issued with the numbers WT/AB/WP/6, WT/AB/WP/7, and WT/AB/WP/8. These temporary documents contain nothing other than an identification of the new number of the original document and an explanation of the two separate document series. These notes will be eventually replaced as new versions of the *Working Procedures* are issued. This transition phase will come to an end once the eighth document in the updated "WT/AB/WP" series has been issued (that is, the eighth version of the *Working Procedures* themselves), after which time there will no longer be a need for new documents to be issued with explanatory notes about number changes.

## VII. Arbitrations under Article 21.3(c) of the DSU

Appellate Body Members are called upon from time to time to determine the "reasonable period of time" for the implementation by a WTO Member of the recommendations and rulings of the DSB, through binding arbitration under Article 21.3(c) of the DSU. The parties to the arbitration select the arbitrator or, if they cannot agree on an arbitrator, the Director-General of the WTO appoints the arbitrator. In carrying out arbitrations under Article 21.3(c), Appellate Body Members act in an individual capacity.

One award in an Article 21.3(c) arbitration was issued in 2004. Mr. John Lockhart was appointed by the Director-General as arbitrator in *EC – Tariff Preferences* on 4 August 2004.<sup>36</sup> Mr. Lockhart issued his award on 20 September 2004. The reasonable period of time determined in that arbitration was 14 months and 11 days from the date of adoption by the DSB of the Panel and Appellate Body Reports in *EC – Tariff Preferences*.<sup>37</sup> A summary of the award of the arbitrator is included in Annex 6.

On 4 November 2004, Mr. Lockhart accepted the parties' request that he act as arbitrator under Article 21.3(c) of the DSU in *US – Softwood Lumber V*.<sup>38</sup> On 13 December 2004, he issued a report noting that the parties had reached agreement on the reasonable period of time and that, therefore, it would not be necessary to issue an award.<sup>39</sup>

As of the end of 2004, Appellate Body Members have been appointed as arbitrators in a total of 19 arbitrations under Article 21.3(c).<sup>40</sup>

## VIII. Technical Assistance

The Appellate Body Secretariat made a significant contribution to the WTO Technical Assistance and Training Plan 2004 (the "2004 TA Plan")<sup>41</sup>, particularly to activities relating to dispute settlement. Appellate Body Secretariat staff participated in seven regional workshops on dispute settlement (five conducted in English, one in French, and one in Spanish), which were held in Africa, Asia, Central and Eastern Europe, Latin America and the Caribbean, and the Middle East. Also, Appellate Body Secretariat staff conducted five national seminars on dispute settlement (two in English and three in Spanish) in Africa, Asia, and Latin America. Furthermore, the Appellate Body Secretariat participated in nine other technical assistance missions falling under the 2004 TA Plan, including regional trade policy courses and national trade policy courses. Finally, the Appellate Body Secretariat provided resource persons for three Specialized Dispute Settlement Seminars (two in English and one in Spanish) and four Trade Policy Courses (two in English, one in French, and one in Spanish) held in Geneva. Overall, the Appellate Body Secretariat participated in 28 technical assistance activities during 2004.

## IX. Other Developments

### A. *WTO Appellate Body Repertory of Reports and Awards: 1995-2004*

In 2004, the Appellate Body Secretariat prepared a new publication entitled *WTO Appellate Body Repertory of Reports and Awards: 1995-2004*, which compiles excerpts from all Appellate Body reports circulated through 7 April 2004. The excerpts are indexed according to the provision of

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<sup>36</sup>WT/DS246/13.

<sup>37</sup>Award of the Arbitrator, *EC – Tariff Preferences*, para. 60.

<sup>38</sup>WT/DS264/11.

<sup>39</sup>Report of the Arbitrator, *US – Softwood Lumber V*, para. 5.

<sup>40</sup>In two of these arbitrations (*US – Line Pipe* and *US – Softwood Lumber V*), the parties reached an agreement on the reasonable period of time before the arbitrator had issued an award, so it was not necessary for the arbitrator to issue an award.

<sup>41</sup>WT/COMTD/W/119.

the WTO Agreements examined, and by subject matter. In addition, the publication includes excerpts from the awards issued in arbitrations under Article 21.3(c) of the DSU relating to the period of time granted to WTO Members to implement decisions by dispute settlement panels and the Appellate Body.

The *WTO Appellate Body Repertory of Reports and Awards: 1995-2004* will be published in the three official languages of the WTO. The English version will be published by Cambridge University Press in January 2005, and the French and Spanish versions will be published by the WTO shortly thereafter.

The Appellate Body Secretariat prepared this publication in the hope that it will be of assistance to WTO Members, academics, students, private practitioners, and others who have an interest in WTO dispute settlement. In particular, it is hoped that this publication will be of assistance to developing country WTO Members. Publication of the *WTO Appellate Body Repertory of Reports and Awards: 1995-2004* in 2005 will also mark the Tenth Anniversary of the establishment of the Appellate Body. Updates will be published annually, with the first update scheduled for publication in January 2006.

Copies of the *WTO Appellate Body Repertory of Reports and Awards: 1995-2004* can be ordered online at [https://secure.vtx.ch/shop/boutiques/wto\\_index\\_boutique.html](https://secure.vtx.ch/shop/boutiques/wto_index_boutique.html).

#### B. *Tenth Anniversary Conferences*

In 2005 and 2006, a series of regional conferences will be held to mark the Tenth Anniversary of the WTO Dispute Settlement System and the Appellate Body. They will be hosted by academic institutions with which some Members of the Appellate Body are affiliated. The conferences will focus on current dispute settlement issues and the Appellate Body's contribution to dispute settlement. Participants will include current and former Appellate Body Members, high-ranking government representatives, WTO officials, academics, journalists, students, and civil society representatives.

The first conference in this series will take place in Stresa, Italy, from 11 to 13 March 2005. It is being organized by the Research Centre on International Economic Organisations of the Universities of Piemonte Orientale, Torino, Genova, Milano, and Bocconi. Mr. Giorgio Sacerdoti, Appellate Body Member and Professor at Bocconi University, is a member of the steering committee for this conference. Further information about the Stresa conference, including an updated program, may be found online at <http://www.stresawtoat10.org>.

The second conference in the Tenth Anniversary series will be held in São Paulo, Brazil, from 15 to 17 May 2005. It is being organized by the Brazilian Institute of International Trade Law and Development (IDCID) in cooperation with the University of São Paulo (Law School/International Law Department – USP) and the Administrative Institute Foundation (FIA). Mr. Luiz Olavo Baptista, Appellate Body Member and Professor at the University of São Paulo Law School, is a member of the steering committee for this conference. The program will include issues of special interest to Latin American WTO Members. Further information about the São Paulo conference, including an updated program, may be found online at <http://www.idcid.org.br>.

The third conference will be held at the United Nations University in Tokyo, Japan, from 25 to 27 October 2005. It is being organized by Tokyo Keizai University with the support of governmental and semi-governmental agencies. The WTO Research Center of Aoyama Gakuin University in Tokyo and the Institute for International Studies and Training will also participate in the project. Mr. Yasuhei Taniguchi, Professor at Tokyo Keizai University and a Member of the Appellate Body, is a member of the conference steering committee, which is coordinated by the Fair Trade Center. Although the details are not yet finalized, it is contemplated that the program will focus on issues related to the Asia-Pacific region.

The tentative programs for the Stresa and São Paulo conferences are provided in Annex 10. Other conferences in the Tenth Anniversary series are scheduled for 2005 and 2006 in Cairo, Egypt; Sydney, Australia; and New York, United States.

Updated information on the Tenth Anniversary series of conferences may be obtained online at <<http://www.wto.org/appellatebody>>.

### C. *WTO Internship Program*

The Appellate Body Secretariat participates in the WTO internship program, which allows post-graduate university students to gain practical experience and a deeper knowledge of the multilateral trading system. Interns in the Appellate Body Secretariat obtain first-hand experience of the substantive and procedural aspects of WTO dispute settlement and, in particular, appellate proceedings. The internship program is open to nationals of WTO Members and also to nationals of countries and customs territories engaged in accession negotiations.

The Appellate Body Secretariat generally hosts two interns at a time, and each internship is for a three-month period. Efforts are made to ensure that at least half the interns are from developing countries or economies in transition. During 2004, the Appellate Body Secretariat welcomed interns from Germany, Greece, India, Peru, Poland, Russia, Slovakia, Ukraine, the United Kingdom, and Zimbabwe. Since 2001, the Appellate Body Secretariat has also had interns from Australia, Austria, Bangladesh, Belgium, Brazil, Canada, China, Ghana, Italy, Japan, Kazakhstan, Kenya, Mexico, the Netherlands, Romania, the Separate Customs Territory of Taiwan Penghu, Kinmen and Matsu, the United States, and Uruguay. A total of 33 students, of 28 different nationalities, have completed internships with the Appellate Body Secretariat since 2001.<sup>42</sup>

Further information about the WTO internship program, including eligibility requirements and application instructions, may be obtained online at <[http://www.wto.org/english/thewto\\_e/vacan\\_e/intern\\_e.htm](http://www.wto.org/english/thewto_e/vacan_e/intern_e.htm)>.

### D. *In-House Briefings and Other Activities*

Appellate Body Secretariat staff often participate in briefings organized for groups visiting the WTO, including students. In these briefings, Appellate Body Secretariat staff speak to visitors about the WTO dispute settlement system in general, and appellate proceedings in particular. During 2004, Appellate Body Secretariat staff gave briefings to 13 groups. Appellate Body Secretariat staff also participated as judges in the European Law Students' Association Moot Court Competition on WTO Law (in English) and the Charles Rousseau Moot Court in International Law (in French).

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<sup>42</sup>Data on internships for pre-2001 are not available.

**Annex 1**

**Former Appellate Body Members**

<b>Name</b>	<b>Nationality</b>	<b>Term(s) of Office</b>
James Bacchus	United States	1995-1999 1999-2003
Christopher Beeby*	New Zealand	1995-1999 1999-2000
Claus-Dieter Ehlermann	Germany	1995-1997 1997-2001
Said El-Naggar	Egypt	1995-1999 1999-2000
Florentino Feliciano	Philippines	1995-1997 1997-2001
Julio Lacarte-Muró	Uruguay	1995-1997 1997-2001
Mitsuo Matsushita	Japan	1995-1999 1999-2000

\*Mr. Beeby passed away on 19 March 2000, before completing his term, and was replaced by Mr. Yasuhei Taniguchi.

**Former Chairpersons of the Appellate Body**

<b>Name</b>	<b>Nationality</b>	<b>Term(s) as Chairperson</b>
Julio Lacarte-Muró	Uruguay	7 February 1996 – 6 February 1997 7 February 1997 – 6 February 1998
Christopher Beeby	New Zealand	7 February 1998 – 6 February 1999
Said El-Naggar	Egypt	7 February 1999 – 6 February 2000
Florentino Feliciano	Philippines	7 February 2000 – 6 February 2001
Claus-Dieter Ehlermann	Germany	7 February 2001 – 10 December 2001
James Bacchus	United States	15 December 2001 – 14 December 2002 15 December 2002 – 10 December 2003
Georges Abi-Saab	Egypt	13 December 2003 – 12 December 2004

Annex 2

**Appeals Filed Between 1995 and 2004**

<b>Year</b>	<b>Number of Notices of Appeal filed</b>
1995	0
1996	4
1997	6 <sup>43</sup>
1998	8
1999	9 <sup>44</sup>
2000	13 <sup>45</sup>
2001	9 <sup>46</sup>
2002	7 <sup>47</sup>
2003	6 <sup>48</sup>
2004	5
Total	67

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<sup>43</sup>This number includes two Notices of Appeal that were circulated at the same time in related matters, counted separately: *EC – Hormones (Canada)*; *EC – Hormones (US)*. A single Appellate Body Report was subsequently circulated in relation to these appeals.

<sup>44</sup>This number excludes one Notice of Appeal that was withdrawn by the United States, which subsequently filed another Notice of Appeal in relation to the same Panel Report: *US – FSC*.

<sup>45</sup>This number includes two Notices of Appeal that were circulated at the same time in related matters, counted separately: *US – 1916 Act (EC)*; *US – 1916 Act (Japan)*. A single Appellate Body Report was subsequently circulated in relation to these appeals.

<sup>46</sup>This number excludes one Notice of Appeal that was withdrawn by the United States, which subsequently filed another Notice of Appeal in relation to the same Panel Report: *US – Line Pipe*.

<sup>47</sup>This number includes one Notice of Appeal in relation to which the appeal was subsequently withdrawn: *India – Autos*. It excludes one Notice of Appeal that was withdrawn by the European Communities, which subsequently filed a new Notice of Appeal in relation to the same Panel Report: *EC – Sardines*.

<sup>48</sup>This number excludes one Notice of Appeal that was withdrawn by the United States, which subsequently filed a new Notice of Appeal in relation to the same Panel Report: *US – Softwood Lumber IV*.



### Annex 3

#### Percentage of Panel Reports Appealed: 1996 to 2004<sup>49</sup>

Year of adoption	All Panel Reports			Panel Reports other than Article 21.5 Reports <sup>50</sup>			Article 21.5 Panel Reports		
	<i>Panel Reports adopted<sup>51</sup></i>	<i>Panel Reports appealed<sup>52</sup></i>	<i>Percentage of Panel Reports appealed<sup>53</sup></i>	<i>Panel Reports adopted</i>	<i>Panel Reports appealed</i>	<i>Percentage of Panel Reports appealed</i>	<i>Panel Reports adopted</i>	<i>Panel Reports appealed</i>	<i>Percentage of Panel Reports appealed</i>
1996	2	2	100%	2	2	100%	0	0	-
1997	5	5	100%	5	5	100%	0	0	-
1998	12	9	75%	12	9	75%	0	0	-
1999	10	7	70%	9	7	78%	1	0	0%
2000	19	11	58%	15	9	60%	4	2	50%
2001	17	12	71%	13	9	69%	4	3	75%
2002	12	6	50%	11	5	45%	1	1	100%
2003	10	7	70%	8	5	63%	2	2	100%
2004	8	6	75%	8	6	75%	0	0	-
<b>Total</b>	95	65	68%	83	57	69%	12	8	67%

<sup>49</sup>No panel reports were adopted in 1995.

<sup>50</sup>Under Article 21.5 of the DSU, a panel may be established to hear a "disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB upon the adoption of a previous panel or Appellate Body report.

<sup>51</sup>The Panel Reports in *EC – Bananas III (Ecuador)*, *EC – Bananas III (Guatemala and Honduras)*, *EC – Bananas III (Mexico)*, and *EC – Bananas III (US)* are counted as a single Panel Report. The Panel Reports in *US – Steel Safeguards* are also counted as a single Panel Report.

<sup>52</sup>Panel reports are counted as having been appealed where they are adopted as upheld, modified, or reversed by an Appellate Body report. The number of panel reports appealed may differ from the number of Appellate Body reports because, for example, some Appellate Body reports address more than one panel report.

<sup>53</sup>Percentages are rounded to the nearest whole number.

Annex 4

**Appeals from Article 21.5 Panel Reports<sup>54</sup>: 1995 to 2004**

<b>Case</b>	<b>Date DSB adopted Appellate Body Report</b>	<b>Related earlier case</b>
<i>Brazil – Aircraft (Article 21.5 – Canada)</i>	4 August 2000	<i>Brazil – Aircraft</i>
<i>Canada – Aircraft (Article 21.5 – Brazil)</i>	4 August 2000	<i>Canada – Aircraft</i>
<i>Mexico – Corn Syrup (Article 21.5 – US)</i>	21 November 2001	<i>Mexico – Corn Syrup</i> <sup>55</sup>
<i>US – Shrimp (Article 21.5 – Malaysia)</i>	21 November 2001	<i>US – Shrimp</i>
<i>Canada – Dairy (Article 21.5 – New Zealand and US)</i>	18 December 2001	<i>Canada – Dairy</i>
<i>US – FSC (Article 21.5 – EC)</i>	29 January 2002	<i>US – FSC</i>
<i>Canada – Dairy (Article 21.5 – New Zealand and US II)</i>	17 January 2003	<i>Canada – Dairy</i>
<i>EC – Bed Linen (Article 21.5 – India)</i>	24 April 2003	<i>EC – Bed Linen</i>

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<sup>54</sup>Under Article 21.5 of the DSU a panel may be established to hear a "disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings" of the DSB upon the adoption of a previous panel or Appellate Body report.

<sup>55</sup>The Panel Report in *Mexico – Corn Syrup* was not appealed.

**Annex 5**

**Participants and Third Participants in Appeals Circulated Between 1996 and 2004**

As at the end of 2004, there are 148 WTO Members, of which 53 have participated in appeals in which Appellate Body reports were circulated between 1996 and 2004. No appeals were filed and no Appellate Body reports were circulated in 1995, the year the Appellate Body was established.

The various rules pursuant to which Members participate in appeals, as appellant, other appellant, appellee, or third participant, are described above on page 3.

**I. Statistical Summary**

<b>WTO Member</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>	<b>Total</b>
Argentina	2	1	3	2	8
Australia	1	1	4	10	16
Belize	–	–	–	1	1
Bolivia	–	–	–	1	1
Brazil	5	3	7	9	24
Cameroon	–	–	–	1	1
Canada	8	6	14	8	36
Chile	2	–	1	4	7
China	–	1	1	1	3
Colombia	–	–	–	3	3
Costa Rica	1	–	–	3	4
Côte d'Ivoire	–	–	–	1	1
Cuba	–	–	–	2	2
Dominica	–	–	–	2	2
Dominican Republic	–	–	–	1	1
Ecuador	–	1	1	5	7
Egypt	–	–	–	1	1
El Salvador	–	–	–	1	1
European Communities	8	11	24	28	71
Ghana	–	–	–	1	1
Grenada	–	–	–	1	1
Guatemala	1	1	1	1	4
Honduras	–	1	1	1	3
Hong Kong	–	–	–	4	4
India	5	1	5	11	22
Indonesia	–	–	1	1	2

<b>WTO Member</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>	<b>Total</b>
Israel	–	–	–	1	1
Jamaica	–	–	–	2	2
Japan	4	4	8	17	33
Korea	3	2	4	6	15
Malaysia	1	–	1	–	2
Mauritius	–	–	–	1	1
Mexico	1	1	3	12	17
New Zealand	–	2	5	4	11
Nicaragua	–	–	–	2	2
Nigeria	–	–	–	1	1
Norway	–	1	1	6	8
Pakistan	–	–	2	1	3
Panama	–	–	–	1	1
Paraguay	–	–	–	2	2
Peru	–	–	1	1	2
Philippines	1	–	1	1	3
Poland	–	–	1	–	1
Senegal	–	–	–	1	1
Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu	–	–	–	4	4
St. Lucia	–	–	–	2	2
St. Vincent and the Grenadines	–	–	–	1	1
Suriname	–	–	–	1	1
Switzerland	–	1	1	–	2
Thailand	1	–	2	3	6
Turkey	1	–	–	1	2
United States	19	8	37	20	84
Venezuela	–	–	1	5	6
<b>Total</b>	<b>64</b>	<b>46</b>	<b>131</b>	<b>200</b>	<b>441</b>

**II. Detailed Information by Year of Circulation**

**1996**

<b>Case</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>
<i>US – Gasoline</i>	United States	None	Brazil Venezuela	European Communities Norway
<i>Japan – Alcoholic Beverages II</i>	Japan	United States	Canada European Communities Japan United States	None

**1997**

<b>Case</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>
<i>US – Underwear</i>	Costa Rica	None	United States	India
<i>Brazil – Desiccated Coconut</i>	Philippines	Brazil	Brazil Philippines	European Communities United States
<i>US – Wool Shirts and Blouses</i>	India	None	United States	None
<i>Canada – Periodicals</i>	Canada	United States	Canada United States	None
<i>EC – Bananas III</i>	European Communities	Ecuador Guatemala Honduras Mexico United States	Ecuador European Communities Guatemala Honduras Mexico United States	Belize Cameroon Colombia Costa Rica Côte d'Ivoire Dominica Dominican Republic Ghana Grenada Jamaica Japan Nicaragua Saint Lucia St. Vincent and the Grenadines Senegal Suriname Venezuela
<i>India – Patents (US)</i>	India	None	United States	European Communities

**1998**

<b>Case</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>
<i>EC – Hormones</i>	European Communities	Canada United States	Canada European Communities United States	Australia New Zealand Norway
<i>Argentina – Textiles and Apparel</i>	Argentina	None	United States	European Communities
<i>EC – Computer Equipment</i>	European Communities	None	United States	Japan
<i>EC – Poultry</i>	Brazil	European Communities	Brazil European Communities	Thailand United States
<i>US – Shrimp</i>	United States	None	India Malaysia Pakistan Thailand	Australia Ecuador European Communities Hong Kong, China Mexico Nigeria
<i>Australia – Salmon</i>	Australia	Canada	Australia Canada	European Communities India Norway United States
<i>Guatemala – Cement I</i>	Guatemala	None	Mexico	United States

**1999**

<b>Case</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>
<i>Korea – Alcoholic Beverages</i>	Korea	None	European Communities United States	Mexico
<i>Japan – Agricultural Products II</i>	Japan	United States	Japan United States	Brazil European Communities
<i>Brazil – Aircraft</i>	Brazil	Canada	Brazil Canada	European Communities United States
<i>Canada – Aircraft</i>	Canada	Brazil	Brazil Canada	European Communities United States
<i>India – Quantitative Restrictions</i>	India	None	United States	None
<i>Canada – Dairy</i>	Canada	None	New Zealand United States	None
<i>Turkey – Textiles</i>	Turkey	None	India	Hong Kong, China Japan Philippines
<i>Chile – Alcoholic Beverages</i>	Chile	None	European Communities	Mexico United States
<i>Argentina – Footwear (EC)</i>	Argentina	European Communities	Argentina European Communities	Indonesia United States
<i>Korea – Dairy</i>	Korea	European Communities	Korea European Communities	United States

**2000**

<b>Case</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>
<i>US – FSC</i>	United States	European Communities	European Communities United States	Canada Japan
<i>US – Lead and Bismuth II</i>	United States	None	European Communities	Brazil Mexico
<i>Canada – Autos</i>	Canada	European Communities Japan	Canada European Communities Japan	Korea United States
<i>Brazil – Aircraft (Article 21.5 – Canada)</i>	Brazil	None	Canada	European Communities United States
<i>Canada – Aircraft (Article 21.5 – Brazil)</i>	Brazil	None	Canada	European Communities United States
<i>US – 1916 Act</i>	United States	European Communities Japan	European Communities Japan United States	European Communities <sup>56</sup> India Japan <sup>57</sup> Mexico
<i>Canada – Term of Patent Protection</i>	Canada	None	United States	None
<i>Korea – Various Measures on Beef</i>	Korea	None	Australia United States	Canada New Zealand
<i>US – Certain EC Products</i>	European Communities	United States	European Communities United States	Dominica Ecuador India Jamaica Japan St. Lucia
<i>US – Wheat Gluten</i>	United States	European Communities	European Communities United States	Australia Canada New Zealand

<sup>56</sup>In complaint brought by Japan.

<sup>57</sup>In complaint brought by the European Communities.



**2001**

<b>Case</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>
<i>EC – Bed Linen</i>	European Communities	India	European Communities India	Egypt Japan United States
<i>EC – Asbestos</i>	Canada	European Communities	Canada European Communities	Brazil United States
<i>Thailand – H-Beams</i>	Thailand	None	Poland	European Communities Japan United States
<i>US – Lamb</i>	United States	Australia New Zealand	Australia New Zealand United States	European Communities
<i>US – Hot-Rolled Steel</i>	United States	Japan	Japan United States	Brazil Canada Chile European Communities Korea
<i>US – Cotton Yarn</i>	United States	None	Pakistan	European Communities India
<i>US – Shrimp (Article 21.5 – Malaysia)</i>	Malaysia	None	United States	Australia European Communities Hong Kong, China India Japan Mexico Thailand
<i>Mexico – Corn Syrup (Article 21.5 – US)</i>	Mexico	None	United States	European Communities
<i>Canada – Dairy (Article 21.5 – New Zealand and US)</i>	Canada	None	New Zealand United States	European Communities

2002

<b>Case</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>
<i>US – Section 211 Appropriations Act</i>	European Communities	United States	European Communities United States	None
<i>US – FSC (Article 21.5 – EC)</i>	United States	European Communities	European Communities United States	Australia Canada India Japan
<i>US – Line Pipe</i>	United States	Korea	Korea United States	Australia Canada European Communities Japan Mexico
<i>India – Autos</i> <sup>58</sup>	India	None	European Communities United States	Korea
<i>Chile – Price Band System</i>	Chile	None	Argentina	Australia Brazil Colombia Ecuador European Communities Paraguay United States Venezuela
<i>EC – Sardines</i>	European Communities	None	Peru	Canada Chile Ecuador United States Venezuela
<i>US – Carbon Steel</i>	United States	European Communities	European Communities United States	Japan Norway
<i>US – Countervailing Measures on Certain EC Products</i>	United States	None	European Communities	Brazil India Mexico
<i>Canada – Dairy (Article 21.5 – New Zealand and US II)</i>	Canada	None	New Zealand United States	Argentina Australia European Communities

<sup>58</sup>India withdrew its appeal the day before the oral hearing was scheduled to proceed.

2003

<b>Case</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>
<i>US – Offset Act (Byrd Amendment)</i>	United States	None	Australia Brazil Canada Chile European Communities India Indonesia Japan Korea Mexico Thailand	Argentina Costa Rica Hong Kong, China Israel Norway
<i>EC – Bed Linen (Article 21.5 – India)</i>	India	None	European Communities	Japan Korea United States
<i>EC – Tube or Pipe Fittings</i>	Brazil	None	European Communities	Chile Japan Mexico United States
<i>US – Steel Safeguards</i>	United States	Brazil China European Communities Japan Korea New Zealand Norway Switzerland	United States Brazil China European Communities Japan Korea New Zealand Norway Switzerland	Canada Cuba Mexico Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu Thailand Turkey Venezuela
<i>Japan – Apples</i>	Japan	United States	Japan United States	Australia Brazil European Communities New Zealand Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu
<i>US – Corrosion-Resistant Steel Sunset Review</i>	Japan	None	United States	Brazil Chile European Communities India Korea Norway

2004

<b>Case</b>	<b>Appellant</b>	<b>Other Appellant</b>	<b>Appellee</b>	<b>Third Participant</b>
<i>US – Softwood Lumber IV</i>	United States	Canada	Canada United States	European Communities India Japan
<i>EC – Tariff Preferences</i>	European Communities		India	Bolivia Brazil Colombia Costa Rica Cuba Ecuador El Salvador Guatemala Honduras Mauritius Nicaragua Pakistan Panama Paraguay Peru United States Venezuela
<i>US – Softwood Lumber V</i>	United States	Canada	Canada United States	European Communities India Japan
<i>Canada – Wheat Exports and Grain Imports</i>	United States	Canada	Canada United States	Australia China European Communities Mexico Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu
<i>US – Oil Country Tubular Goods Sunset Reviews</i>	United States	Argentina	Argentina United States	European Communities Japan Korea Mexico Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

## Annex 6

### **Summaries of Appellate Body Reports and Article 21.3(c) Arbitration Awards Circulated in 2004<sup>59</sup>**

#### **I. Appellate Body Reports**

##### **Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada* ("US – Softwood Lumber IV"), WT/DS257/AB/R, adopted 17 February 2004.**

The Appellate Body upheld the Panel's finding that the United States had correctly determined that harvesting rights granted by Canadian provincial governments in respect of standing timber constitute the provision of goods under Article 1.1 of the *SCM Agreement*. The Appellate Body reversed the Panel's interpretation of Article 14(d) of the *SCM Agreement* and thus also reversed the Panel's finding that the United States had improperly determined the existence and amount of the "benefit" resulting from the financial contribution provided. The Appellate Body examined this issue in the light of its own interpretation of Article 14(d) but found that it was unable to complete the legal analysis of whether the United States had correctly determined benefit in this investigation, due to insufficient factual findings by the Panel and insufficient undisputed facts in the Panel record. The Appellate Body upheld the Panel's finding that the United States acted inconsistently with provisions of the *SCM Agreement* and the GATT 1994 by failing to analyze whether subsidies were passed through in sales of *logs* by timber harvesters who own sawmills to unrelated producers of softwood lumber. The Appellate Body, however, reversed the Panel's finding that the United States acted inconsistently with its WTO obligations by failing to consider whether subsidies were passed through in sales of *lumber* by sawmills to unrelated lumber remanufacturers.

##### **Appellate Body Report, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries* ("EC – Tariff Preferences"), WT/DS246/AB/R, adopted 20 April 2004.**

The Appellate Body upheld the Panel's finding that the Enabling Clause operates as an "exception" to Article I:1 of the GATT 1994 and therefore that the European Communities, as the responding party, was required to prove that its "special arrangements to combat drug production and trafficking" satisfy the conditions set out in the Enabling Clause. However, in contrast to the Panel, the Appellate Body found that the complaining party is obliged to raise the relevant provisions of the Enabling Clause in making its claim. The Appellate Body found that India had sufficiently raised paragraph 2(a) of the Enabling Clause before the Panel. The Appellate Body reversed the Panel's finding that the term "non-discriminatory" in footnote 3 to paragraph 2(a) of the Enabling Clause requires the provision of identical tariff preferences to all developing countries without differentiation, except as regards *a priori* limitations on imports from certain developing countries. Nevertheless, the Appellate Body upheld, for different reasons, the Panel's conclusion that the European Communities failed to demonstrate that its challenged measure is justified under paragraph 2(a) of the Enabling Clause.

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<sup>59</sup>These summaries are intended solely for information and do not constitute an authoritative interpretation of the relevant decisions.

**Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada* ("US – Softwood Lumber V"), WT/DS264/AB/R, adopted 31 August 2004.**

The Appellate Body upheld the Panel's finding that the United States acted inconsistently with Article 2.4.2 of the *Anti-Dumping Agreement* in determining the existence of margins of dumping on the basis of a methodology incorporating the practice of "zeroing". The Appellate Body furthermore reversed the Panel's finding that the United States did not act inconsistently with Articles 2.2, 2.2.1, 2.2.1.1, and 2.4 of the *Anti-Dumping Agreement* in its calculation of the amount for financial expense for softwood lumber for Abitibi Company—one of the Canadian companies under investigation—but did not make findings on whether the United States acted consistently or inconsistently with these provisions. The Appellate Body also upheld the Panel's findings that the United States did not act inconsistently with Articles 2.2, 2.2.1, 2.2.1.1, and 2.4 of the *Anti-Dumping Agreement* in its calculation of the amount for by-product revenue from the sale of wood chips as offsets in the case of Tembec Company, another of the Canadian companies under investigation.

**Appellate Body Report, *Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain* ("Canada – Wheat Exports and Grain Imports"), WT/DS276/AB/R, adopted 27 September 2004.**

The Appellate Body found that subparagraphs (a) and (b) of Article XVII:1 of the GATT 1994 ("State Trading Enterprises") are necessarily related to each other; subparagraph (a) is the general and principal provision, and subparagraph (b) explains it by identifying the types of differential treatment in commercial transactions that are most likely to occur in practice. Therefore, in most if not all cases, panels would not be in a position to make any finding of violation of Article XVII:1 until they have properly interpreted and applied subparagraphs (a) and (b) of that Article. In the present dispute, although the Panel assumed that inconsistency with subparagraph (b) is sufficient to establish a breach of Article XVII:1, its analytical approach was nevertheless consistent with the Appellate Body's interpretation of the relationship between subparagraphs (a) and (b). The Appellate Body found that the United States' claim relating to the phrase "solely based on commercial consideration" in the first clause of subparagraph (b) of Article XVII:1 was based on a mischaracterization of a statement made by the Panel and, therefore, dismissed this ground of appeal. In examining an additional argument submitted by the United States, the Appellate Body agreed with the Panel that, although state trading enterprises ("STEs") must act in accordance with "commercial" considerations, this is not equivalent to an outright prohibition on STEs using their privileges whenever such use might "disadvantage" private enterprises. The Appellate Body upheld the Panel's interpretation of the term "enterprises" in the second clause of subparagraph (b) of Article XVII:1. In addition, the Appellate Body rejected the United States' claims that the Panel had failed to examine the measure challenged by the United States in its entirety and had not discharged its obligations under Article 11 of the DSU. Finally, the Appellate Body upheld the Panel's finding that, in the particular circumstances of this case, Canada's preliminary objection to the adequacy of the United States' request for establishment of a panel under Article 6.2 of the DSU was not untimely solely because it was not raised at the DSB meetings at which the panel request was considered.

**Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina* ("US – Oil Country Tubular Goods Sunset Reviews"), WT/DS268/AB/R, adopted 17 December 2004**

The Appellate Body reversed the Panel's finding that one provision of the "Sunset Policy Bulletin" is inconsistent, as such, with Article 11.3 of the *Anti-Dumping Agreement*. The Appellate Body also found that the Panel had not met its obligation under Article 11 of the DSU to "make an objective assessment of the matter before it", in the analysis leading to this finding. Therefore, the Appellate Body was not able to reach its own conclusion, on the basis of the facts before it, as to the WTO-consistency of the Sunset Policy Bulletin. The Appellate Body upheld all the other findings of the Panel that were appealed, including the Panel's findings that a United States statutory provision and administrative regulation are inconsistent, as such, with Article 11.3 of the *Anti-Dumping Agreement*, and that the same administrative regulation is also inconsistent with Articles 6.1 and 6.2 of the *Anti-Dumping Agreement*. The Appellate Body upheld all of the Panel's findings on appeal with respect to the injury-related aspect of the sunset review determination at issue.

**II. Article 21.3(c) Arbitrations<sup>60</sup>**

**Award of the Arbitrator, *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries – Arbitration under Article 21.3(c) of the DSU* ("EC – Tariff Preferences"), WT/DS246/14, 20 September 2004.**

Mr. John Lockhart, who was appointed by the Director-General to serve as arbitrator, determined that the "reasonable period of time" for the European Communities to implement the recommendations and rulings of the DSB in *EC – Tariff Preferences* was 14 months and 11 days from the adoption of the Panel and Appellate Body Reports, and that this period would expire on 1 July 2005. The Arbitrator indicated that the period to be determined was the reasonable period of time for bringing into conformity the measure at issue in the dispute, namely the special arrangements to combat drug production and trafficking contained in the European Communities' existing Generalized System of Preferences ("GSP") scheme; the process for reforming the overall GSP scheme was irrelevant. The Arbitrator rejected the European Communities' argument that the particular nature and political sensitivity of the special arrangements warranted an increased period of time for implementation.

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<sup>60</sup>On 4 November 2004, Mr. John Lockhart accepted the parties' request to act as arbitrator under Article 21.3(c) of the DSU in *US – Softwood Lumber V*. On 13 December 2004, he issued a report noting that the parties had reached agreement on the reasonable period of time and that, therefore, it would not be necessary to issue an award. (Report of the Arbitrator, *US – Softwood Lumber V*, para. 5).

Annex 7

**WTO Agreements Covered in Appellate Body Reports Circulated Through 2004<sup>61</sup>**

Year of Circulation	DSU	WTO Agreement	GATT 1994	Agriculture	SPS	ATC	TBT	TRIMs	Anti-Dumping	Import Licensing	SCM	TRIPs	GATS	Safeguards
1996	0	0	2	0	0	0	0	0	0	0	0	0	0	0
1997	4	1	5	1	0	2	0	0	0	1	1	1	1	0
1998	7	1	4	1	2	0	0	0	1	1	0	0	0	0
1999	7	1	6	1	1	0	0	0	0	0	2	0	0	1
2000	8	1	7	2	0	0	0	0	2	0	5	1	1	2
2001	7	1	3	1	0	1	1	0	4	0	1	0	0	2
2002	8	2	4	3	0	0	1	0	1	0	3	1	1	1
2003	4	2	3	0	1	0	0	0	4	0	1	0	0	1
2004	2	0	5	0	0	0	0	0	2	0	1	0	0	0
<b>Total</b>	<b>47</b>	<b>9</b>	<b>39</b>	<b>9</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>14</b>	<b>2</b>	<b>14</b>	<b>3</b>	<b>3</b>	<b>7</b>

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<sup>61</sup>No appeals were filed in 1995.



## Annex 8

### Amendments to the Working Procedures for Appellate Review

The amendments to the *Working Procedures* that came into effect for appeals initiated after 1 January 2005 are reproduced below. The amendments include deletion of certain text (which is struck out ~~like this~~) and addition of certain text (which is underlined like this). The amendments are explained above in section VI:A of this report, and a new consolidated version of the *Working Procedures* is contained in WTO document WT/AB/WP/5.

#### 1. Content of the Notice of Appeal

Rule 20 will be amended as follows:

##### *Rule 20 (Commencement of Appeal)*

- (2) A Notice of Appeal shall include the following information:
- (a) the title of the panel report under appeal;
  - (b) the name of the party to the dispute filing the Notice of Appeal;
  - (c) the service address, telephone and facsimile numbers of the party to the dispute; and
  - (d) a brief statement of the nature of the appeal, including ~~the allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel:~~
    - (i) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
    - (ii) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
    - (iii) without prejudice to the ability of the appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.

#### 2. Notice of Other Appeal

Rules 1, 21 and 23 will be amended as follows:

##### *Rule 1 (Definitions)*

- "appellant" means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20 ~~or has filed a submission pursuant to paragraph 1 of Rule 23;~~
- ...
- "appellee" means any party to the dispute that has filed a submission pursuant to Rule 22 or paragraph ~~3~~ 4 of Rule 23;
- ...

"documents" means the Notice of Appeal, any Notice of Other Appeal and the submissions and other written statements presented by the participants or third participants;

...

"other appellant" means any party to the dispute that has filed a Notice of Other Appeal pursuant to paragraph 1 of Rule 23;

...

"participant" means any party to the dispute that has filed a Notice of Appeal pursuant to Rule 20, a Notice of Other Appeal pursuant to Rule 23 or a submission pursuant to Rule 22 or paragraphs ~~1 or 3-4~~ of Rule 23;

*Rule 21 (Appellant's Submission)*

- (1) The appellant shall, within ~~10~~ 7 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 and serve a copy of the submission on the other parties to the dispute and third parties.

*Rule 23 (Multiple Appeals)*

- (1) Within ~~15-12~~ 12 days after the date of the filing of the Notice of Appeal, a party to the dispute other than the original appellant may join in that appeal or appeal on the basis of other alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel. That party shall notify the DSB in writing of its appeal and shall simultaneously file a Notice of Other Appeal with the Secretariat.

- (2) ~~Any written submission made pursuant to paragraph 1 shall be in the format required by paragraph 2 of Rule 21.~~

A Notice of Other Appeal shall include the following information:

- (a) the title of the panel report under appeal;
- (b) the name of the party to the dispute filing the Notice of Other Appeal;
- (c) the service address, telephone and facsimile numbers of the party to the dispute; and either

- (i) a statement of the issues raised on appeal by another participant with which the party joins; or

- (ii) a brief statement of the nature of the other appeal, including:

- (A) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;

- (B) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying;  
and

- (C) without prejudice to the ability of the other appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.

- (3) The other appellant shall, within 15 days after the date of the filing of the Notice of Appeal, file with the Secretariat a written submission prepared in accordance with paragraph 2 of Rule 21 and serve a copy of the submission on the other parties to the dispute and third parties.
- (4) The appellant, any appellee and any other party to the dispute that wishes to respond to a submission filed pursuant to paragraph 4-3 may file a written submission within 25 days after the date of the filing of the Notice of Appeal, and any such submission shall be in the format required by paragraph 2 of Rule 22.
- (5) This Rule does not preclude a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule from exercising its right of appeal pursuant to paragraph 4 of Article 16 of the DSU.
- (6) Where a party to the dispute which has not filed a submission under Rule 21 or a Notice of Other Appeal under paragraph 1 of this Rule exercises its right to appeal as set out in paragraph 4-5, a single division shall examine the appeals.

### 3. Amending Notices of Appeal

A new Rule 23 *bis* will be inserted following Rule 23:

#### *Rule 23 bis (Amending Notices of Appeal)*

- (1) The division may authorize an original appellant to amend a Notice of Appeal or an other appellant to amend a Notice of Other Appeal.
- (2) A request to amend a Notice of Appeal or a Notice of Other Appeal shall be made as soon as possible in writing and shall state the reason(s) for the request and identify precisely the specific amendments that the appellant or other appellant wishes to make to the Notice. A copy of the request shall be served on the other parties to the dispute, participants, third participants and third parties, each of whom shall be given an opportunity to comment in writing on the request.
- (3) In deciding whether to authorize, in full or in part, a request to amend a Notice of Appeal or Notice of Other Appeal, the division shall take into account:
- (a) the requirement to circulate the appellate report within the time-period set out in Article 17.5 of the DSU or, as appropriate, Article 4.9 of the SCM Agreement; and,
- (b) the interests of fairness and orderly procedure, including the nature and extent of the proposed amendment, the timing of the request to amend the Notice of Appeal or Notice of Other Appeal, any reasons why the proposed amended Notice of Appeal or Notice of Other Appeal was not or could not have been filed on its original date, and any other considerations that may be appropriate.
- (4) The division shall notify the parties to the dispute, participants, third participants, and third parties of its decision. In the event that the division authorizes an amendment to a Notice of Appeal or a Notice of Other Appeal, it shall provide an amended copy of the Notice to the DSB.

**4. Correcting Clerical Errors**

Rule 18(5) will be amended as follows:

*Rule 18 (Documents)*

- (5) Upon authorization by the division, a participant or a third participant may correct clerical errors in any of its ~~submissions~~ documents (including typographical mistakes, errors of grammar, or words or numbers placed in the wrong order). ~~Such correction shall be made within 3 days of the filing of the original submission and a copy of the revised version.~~ The request to correct clerical errors shall identify the specific errors to be corrected and shall be filed with the Secretariat no later than 30 days after the date of the filing of the Notice of Appeal. A copy of the request shall be served upon the other parties to the dispute, participants, third parties and third participants, each of whom shall be given an opportunity to comment in writing on the request. The division shall notify the parties to the dispute, participants, third parties and third participants of its decision.

**5. Oral Hearing**

Paragraphs 1 and 4 of Rule 27 will be amended as follows:

*Rule 27 (Oral Hearing)*

- (1) A division shall hold an oral hearing, which shall be held, as a general rule, between 30 35 and 45 days after the date of the filing of a Notice of Appeal.
- ...
- (4) The Presiding Member may, ~~as necessary,~~ set time-limits for oral arguments ~~and presentations~~.

**6. Timetable for Appeals**

Annex I to the *Working Procedures* will be amended as follows:

**TIMETABLE FOR APPEALS<sup>1</sup>**

	<u>General Appeals</u>	<u>Prohibited Subsidies Appeals</u>
	Day	Day
Notice of Appeal <sup>+2</sup>	0	0
Appellant's Submission <sup>23</sup>	<del>10</del> <u>7</u>	<del>5</del> <u>4</u>
<u>Notice of Other Appeal<sup>4</sup></u>	<u>12</u>	<u>6</u>
Other Appellant(s) Submission(s) <sup>35</sup>	15	7
Appellee(s) Submission(s) <sup>46</sup>	25	12
Third Participant(s) Submission(s) <sup>57</sup>	25	12
Third Participant(s) Notification(s) <sup>68</sup>	25	12
Oral Hearing <sup>79</sup>	<del>30</del> <u>35-45</u>	<del>15</del> <u>17-23</u>
Circulation of Appellate Report	60 – 90 <sup>810</sup>	30 – 60 <sup>911</sup>
DSB Meeting for Adoption	90 – 120 <sup>1012</sup>	50 – 80 <sup>1113</sup>

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<sup>1</sup>Rule 17 applies to the computation of the time-periods below.

<sup>+2</sup>Rule 20.

<sup>23</sup>Rule 21(1).

<sup>34</sup>Rule 23(1).

<sup>35</sup>Rule 23(~~34~~).

<sup>46</sup>Rules 22 and 23(~~43~~).

<sup>57</sup>Rule 24(1).

<sup>68</sup>Rule 24(2).

<sup>79</sup>Rule 27.

<sup>810</sup>Article 17:5, DSU.

<sup>911</sup>Article 4:9, *SCM Agreement*.

<sup>1012</sup>Article 17:14, DSU.

<sup>1113</sup>Article 4:9, *SCM Agreement*.

**7. Table of Consolidated and Revised Versions of the *Working Procedures***

A new Annex III will be added to the *Working Procedures* as follows:

ANNEX III

**Table of Consolidated and Revised Versions of the *Working Procedures for Appellate Review***

<b>Document Number</b>	<b>Effective Date</b>	<b>Rules Amended</b>	<b>Working Documents/Explanatory Texts</b>	<b>Principal DSB Meeting(s) at which Amendments Discussed, Minutes</b>
WT/AB/WP/1	15 February 1996	N/A	WT/AB/WP/W/1	31 January 1996, WT/DSB/M/10 and 21 February 1996, WT/DSB/M/11
WT/AB/WP/2	28 February 1997	Rule 5(2) and Annex II	WT/AB/WP/W/2, WT/AB/WP/W/3	25 February 1997, WT/DSB/M/29
WT/AB/WP/3	24 January 2002	Rule 5(2)	WT/AB/WP/W/4, WT/AB/WP/W/5	24 July 2001, WT/DSB/M/107
WT/AB/WP/4	1 May 2003	Rules 24 and 27(3), with consequential amendments to Rules 1, 16, 18, 19, and 28, and Annex I	WT/AB/WP/W/6, WT/AB/WP/W/7	23 October 2002, WT/DSB/M/134
WT/AB/WP/5	1 January 2005	Rules 1, 18, 20, 21, 23, 23 <i>bis</i> , and 27, and Annexes I and III	WT/AB/WP/W/8, WT/AB/WP/W/9	19 May 2004, WT/DSB/M/169

Annex 9

**Documents Relating to the Working Procedures for Appellate Review**

OLD DOCUMENT NUMBER	NEW DOCUMENT NUMBER	DOCUMENT TITLE, DATE
No document number assigned when hard copy circulated in 1996	WT/AB/WP/W/1	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 7 February 1996
WT/AB/WP/1	WT/AB/WP/1 (no change)	<i>Working Procedures for Appellate Review</i> , 15 February 1996
WT/DSB/RC/2	WT/DSB/RC/2, WT/AB/WP/W/2	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 20 January 1997
WT/AB/WP/2	WT/AB/WP/W/3	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 24 February 1997
WT/AB/WP/3	WT/AB/WP/2	<i>Working Procedures for Appellate Review</i> , 28 February 1997
No document number assigned when hard copy circulated in 2001	WT/AB/WP/W/4	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 10 July 2001
No document number assigned when hard copy circulated in 2001	WT/AB/WP/W/5	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 18 September 2001
WT/AB/WP/4	WT/AB/WP/3	<i>Working Procedures for Appellate Review</i> , 24 January 2002
WT/AB/WP/5	WT/AB/WP/W/6	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 17 December 2002
WT/AB/WP/6	WT/AB/WP/W/7	Communication from the Chairman of the Appellate Body to the Chairman of the Dispute Settlement Body, 9 April 2003
WT/AB/WP/7	WT/AB/WP/4	<i>Working Procedures for Appellate Review</i> , 1 May 2003
WT/AB/WP/8	WT/AB/WP/W/8	Communication from the Chairman of the Appellate Body to the Chairperson of the Dispute Settlement Body, 8 April 2004

**Annex 10**

**Tenth Anniversary Conferences: Provisional Programs**

***The WTO at 10: The Role of the Dispute Settlement System***  
**11-13 March 2005**  
**Stresa, Italy**

Inter-University "Research Centre on International Economic Organisations" of the Universities of Piemonte orientale, Torino, Genova, Milano, Bocconi

The conference will address basic issues confronted by the current "rule oriented" multilateral trading system and its innovative dispute settlement system, on the occasion of the tenth anniversary of the WTO and of its Appellate Body. The conference will feature discussions between legal experts, diplomats and officials from the WTO community in Geneva, government officials from Member governments, NGOs, and other international experts.

Friday, 11 March 2005 (8 p.m.)

Inaugural Dinner and Opening Address

**"Ten Years after the Conclusion of the Uruguay Round: Bilateralism, Regionalism and the Multilateral Trading System"**

**Speaker:** H.E. Mr. Renato Ruggiero, Ambassador and Former Director-General of the WTO

Saturday, 12 March 2005 (Morning)

**The Challenges to the WTO from Within and Without**

**1st Session: "The Doha Round and the Future of the WTO"**

**Moderator:** Mr. Danilo Taino, Special Economics Correspondent, "Corriere della Sera"

**Discussants:**

Mr. E. Barón Crespo, Chair, European Parliament Committee on International Trade

Mr. Patrick Low, Director, Economic Research and Statistics Division, WTO

H.E. Ms. Amina Mohamed, Ambassador, Permanent Mission of Kenya to the WTO, Chair of the Dispute Settlement Body

**2nd Session: "The Limits of the WTO: Facing Non-Trade Issues"**

**Moderator:** Prof. Sergio Carbone, University of Genova, Chairman CIDOIE

**Reporter:** Prof. Friedl Weiss, University of Amsterdam

**Discussants:**

Mr. Guy Ryder, General Secretary, International Confederation of Free Trade Unions

Prof. Francesco Francioni, European University Institute, Florence

Mr. Jeremy Hobbs, Executive Director, Oxfam International

Mr. Faizel Ismail, Head of the South African Delegation to the WTO



Saturday, 12 March 2005 (Afternoon)

**The Dispute Settlement System in Action**

**3rd Session: "Trade Negotiations and Dispute Settlement: What Balance Between Political Governance and Judicialization?"**

**Chair:** Prof. Claus-Dieter Ehlermann, Counsel, Wilmer Cutler Pickering Hale and Dorr; and former Chairman of the Appellate Body

**Reporter:** Prof. Rob Howse, University of Michigan (with Susan Esserman)

**Discussants:**

Prof. Ernst-Ulrich Petersmann, European University, Florence

Prof. Hélène Ruiz-Fabri, University of Paris

H.E. Mr. Alejandro Jara, Ambassador of Chile to the WTO

Mr. Tim Reif, Chief Democratic Trade Counsel, Committee on Ways and Means, US House of Representatives

**4th Session: "From Initiating Proceedings to Ensuring Implementation: What Needs Improvement?"**

**Chair:**

H.E. Mr. David Spencer, Ambassador, Permanent Mission of Australia to the WTO and Chairman of the Special Session of the Dispute Settlement Body

**Reporter:**

Ms. Valerie Hughes, Director, Appellate Body Secretariat, WTO

**Discussants:**

Prof. Thomas Cottier, University of Bern

Mr. Pieter-Jan Kuijper, Principal Legal Advisor, External Relations, European Commission

Prof. Jacques Bourgeois, Collège Europe, Bruges ; Partner, Akin Gump LLP, Brussels

Mr. Daniel Brinza, Assistant US Trade Representative for Monitoring and Enforcement, Office of the US Trade Representative

Saturday Night Dinner

**Key note Address**

**Speaker:**

Dr. Supachai Panitchpakdi, Director-General, WTO

Dinner chaired by H.E. Mr. Adolfo Urso, State Minister for Foreign Trade of Italy

Sunday, 13 March 2005 (Morning)

**The Dispute Settlement System in Perspective**

**5th Session: "1995-2004, Ten Years and 64 Cases Later: The Contribution of the Appellate Body to the Development of International Trade Law"**

**Chairman:** Justice Florentino Feliciano, Member, ICC International Court of Arbitration, Paris; and former Chairman of the Appellate Body

**Reporter:** Prof. Peter Van den Bossche, University of Maastricht

**Discussants:**

Prof. Brigitte Stern, Directrice du CEDIN, Centre de droit international de l'Université de Paris I

Prof. Donald McRae, University of Ottawa

Prof. Petros Mavroidis, Columbia University and University of Neuchâtel

Ms. Gabrielle Marceau, Counsellor, Legal Affairs Division, WTO

**Final Round Table: "Treaty Interpretation in International Law: Comparing the Appellate Body with the Courts in the Hague, Hamburg and Luxembourg"**

**Chair:** Professor Georges Abi-Saab, Member and former Chairman of the Appellate Body

**Participants:**

H.E. Judge Gilbert Guillaume, Member and former Chairman of the International Court of Justice

H.E. Judge Paolo Mengozzi, European Court of Justice, Court of First Instance

H.E. Judge Allan Rosas, European Court of Justice, Luxembourg

H.E. Judge Tullio Treves, International Tribunal for the Law of the Sea

**Closing Remarks**

Prof. Giorgio Sacerdoti, Bocconi University and Member of the Appellate Body

***The WTO at 10: A Look at the Appellate Body***  
**15-17 May 2005**  
**São Paulo, Brazil**

Brazilian Institute of International Trade Law and Development (IDCID) in cooperation with  
the University of São Paulo (Law School/International Law Department - USP) and  
the Administrative Institute Foundation (FIA)

**Sunday evening**  
**Inaugural Dinner and Welcome to Brazil**  
(TBD)

Welcome speech

Monday morning

8:15 – 8:45: Credentials

8:45 – 9:15: Opening Address

9:15 – 10:45: 1st Session: **"The first years of the Appellate Body and the WTO Dispute Settlement System: a historical perspective"**

11:00 – 12:30: 2nd Session: **"The WTO Appellate Body's role: a view from the academic and diplomatic communities"**

Monday afternoon

1:45 – 3:15: 3rd Session: **"The panel process and the Appellate Body: locus for legal and cultural convergence"**

3:30 – 5:30: 4th Session: **"Jurisdiction and Interpretation: WTO dispute settlement in the international law context"**

Tuesday morning

8:30 – 10:30: 1st Session: **"Agriculture-related disputes in the WTO system"**

10:45 – 12:45: 2nd Session: **"Regional and Multilateral Dispute Settlement Systems: a comparative perspective"**

Tuesday afternoon

2:00 – 3:30: 3rd Session: **"Weaknesses and proposed improvements to the WTO Dispute Settlement System: an economic and market view"**

3:45 – 5:45: 4th Session : **"The WTO Dispute Settlement System in the Next Ten Years: Proposals for Systemic and Procedural Reforms"**

5:45 – 6:15: Closing Session

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