Chapter VI

PROCEEDINGS OF WTO DISPUTE SETTLEMENT AND CHALLENGES

Introduction

This chapter discusses the various stages of the dispute settlement proceedings. This involves initial consultation between the disputants. Adjudication by panel and then Appellate Body recommendations by for adoption and implementation of the recommendation are part of the proceedings. The above matter will be discussed hereunder.

There are four separate stages involved in the WTO dispute settlement proceedings. They are,

- Consultation
- Panel Proceedings
- Appellate review proceedings, and
- Implementation and enforcement of recommendation of the panel and Appellate Body, as adopted by the DSB.

6.1 Consultations

The DSU expresses a clear preference for resolving disputes amicably rather than through adjudication. With this end in view, the WTO dispute settlement proceedings always start with consultations (or, atleast an attempt to have consultations) between the parties to the dispute.
In Mexico-Corn Syrup (Article 21.5-US) the Appellate Body stressed the importance of consultation in the WTO dispute settlement as follows:

“Through consultation, parties exchange information, assess the strength and weakness of their respective cases, narrow the scope of differences between them and in many cases reach a mutually agreed solution in accordance with the explicit preference expressed in Article 3.7 of the DSU. Moreover, even where no such agreed solution is reached, consultation provides the parties an opportunity to define and delimit the scope of the dispute between them. Clearly, consultations afford many benefits to complaining and responding parties as well as to third parties and the dispute settlement system as a whole.”

It is an ascertained fact that the resolution of dispute through consultations is obviously more cost effective and more satisfactory for the long-term trade relations with the other parties to the dispute than adjudication by a panel. Consultations enable the disputing parties to understand better the factual situation and the legal claims in respect of the dispute. Consultation will at least allow a party to learn more about the fact and legal arguments that the other party is likely to use, when the dispute goes to adjudication. In this way, consultation can serve as an informal pre-trial discovery mechanism.

The request for consultations circumscribes the scope of the dispute. As held by Appellate Body in India-Patents (US).

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1 Appellate Body Report, Mexico-Corn Syrup (Article 21.5-US), para 54.
2 See Appellate Body Report, Mexico-Corn Syrup (Article 21.5-US) para 54.
All parties engaged in dispute settlement under the DSU must be fully forthcoming from the very beginning both as to the claim involved in a dispute and as to the facts relating to those claims. Claims must be stated clearly. Facts must be disclosed freely. This must be so in consultations as well as in the more formal setting of the panel proceedings. In fact, the demands of due process that are implicit in the DSU make this specially necessary during consultation. For, the claims that are made and the facts that are established during consultations do much to shape the substance and the scope of subsequent panel proceedings.3

**In US – Certain EC Products**, the Appellate Body found that one of the measures challenged by the European communities was not properly before the panel. The Appellate Body explained that, although the panel request referred to the measure, it was not possible for it to conclude on this basis alone, that the measure was within the panel’s terms of reference. It noted that the European communities request for consultations did not refer to the measure and that the European communities’ acknowledged that the measure was not the subject of the consultations.4 The **Appellate Body Ruled in US-Upland Cotton** that the scope of the consultations is determined by the request for consultations, rather than by what actually happened i.e., what actually was discussed during the consultations.5

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3 Article 4.4 of the DSU.


5 See Appellate Body Report US-upland Cotton, para 286-7. The Appellate Body in this case stated that: Examining what took place in the consultations would seem contrary to Article 4.6 of the DSU which provides that consultation shall be
6.2 Panel Proceedings

When consultations are unsuccessful, the complainant may request the establishment of a panel, the DSB will usually establish a panel by reverse consensus at the meeting in the order of priority of panel request on the DSB’s agenda. Subsequently, the parties will agree on the composition of the panel or, if they fail to do so, the composition of the panel will be decided on by the WTO Director General. In this connection, the following issues may arise with respect to panel proceedings.

(i) Working procedures for panel proceedings;
(ii) Written submissions and substantive panel meetings;
(iii) Rights of third parties;
(iv) Submission and admission of evidence;
(v) Use of experts;
(vi) Protection of confidential business information;
(vii) Panel deliberation and interim review;
(viii) Adoption or appeal of the panel report and
(ix) Duration of panel proceedings.

6.2.1 Working Procedures for Panel Proceedings

Article 12 of the DSU states the basic rules governing the panel proceedings. Article 12.1 of the DSU directs a panel to follow the working procedures contained in Appendix 3 of the DSU. But at the same time, a panel has the freedom to do otherwise, after confidential and without prejudice to the rights of any Member in any further proceedings. Appellate Body Report, US-Upland Cotton, para 287.
consulting the parties to the dispute. The Panel usually agrees to requests on procedural issues tabled by parties jointly.6

**In EC – Hormones,** the Appellate Body noted that panels enjoy

“a margin of discretion to deal, always in accordance with due process, with specific situations that may arise in a particular case.”7

**In India-Patents (US),** however the Appellate Body cautioned panels as follows

“Although panels enjoy some discretion in establishing their own working procedure, this discretion does not extend to modify the substantive provisions of the DSU. To be sure, Article 12.1 of the DSU says, panels shall follow a working procedure in Appendix 3 unless the panel decides otherwise, after consulting parties to the dispute. Yet that is all it says. Nothing in the DSU gives the panel authority either to disregard or to modify other explicit provisions of the DSU.”8

Article 12.2 of the DSU requires that panel procedures provide sufficient flexibility so as to ensure high quality panel reports while unduly delaying the panel process. Since the working procedures contained in the Appendix 3 to the DSU are rudimentary, most

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6 See that the discretion of panels is limited in that panels cannot modify the rules set out in the DSU itself.


8 Appellate Body Report India-Patents (Us) para 92; in this case, the Appellate Body reversed a decision by the panel that it would consider all claims made prior to the end of the first substantive meeting. All parties had agreed with this panel decision.
panels find it useful, if not necessary, to adopt more detailed adhoc working procedures.\(^9\)

Appendix 3 to the DSU stipulates a proposed time table for panel work.\(^{10}\) On the basis of this proposed time table, the panel will fix the time table for its work positively within a week of its composition. The panel at that time may decide a detailed adhoc working proceedings after consulting the parties to the dispute-in the organisational meeting.\(^{11}\)

6.2.2 Written Submissions and Substantive Panel Meetings

Each of the parties to the dispute submits two written submissions to the panel.

- a first written submission and
- a rebuttal submission

In the first written submission, parties present the fact of the case as they see them and their arguments relating to the alleged inconsistencies with WTO Law.\(^{12}\) In their rebuttal submission, they reply to the arguments and evidence submitted by the other party.\(^{13}\)

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\(^{10}\) See para 12 of the Appendix 3 to the DSU.
\(^{11}\) Article 12.3 and 12.5 of the DSU.
\(^{12}\) See Appellate Body Report, EC-Bananas III, para 145.
\(^{13}\) The first written submission of the complainant is usually filed two to three weeks in advance of the first written submission of the respondent. The rebuttal submissions are filed simultaneously. See Article 12.6 and para 12 of Appendix 3 to the DSU.
**In US-Shrimp**, the Appellate Body ruled the parties had a legal right to make the above mentioned submissions to the panel, and the panel in turn was obliged in law to accept and give due consideration to these submissions.¹⁴

After the first written submission the parties have filed, the panel held its first substantive meeting with the parties.¹⁵ At this meeting the panel asked the complainant to present its case. In the same meeting the respondent was also asked to present its’ point of view. Then the panel held a second substantive meeting with the parties after the rebuttal submissions had been filed. The rebuttal submissions were not mandatory. WTO panel meetings have become increasingly formal and court-like in recent years. Panels usually meet in closed session with only the delegation of the parties present. Panel meetings are always held at the premises of the WTO secretariat at Geneva. It may take one or more days.

The panel may, at any time, put questions to the parties and ask them for explanations either in the course of a meeting or in writing.¹⁶

Article 13.1 of the DSU states:
that a member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate (only relevant part).

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¹⁴ See Appellate Body Report, US-Shrimp, para 101, This is the case for submissions by third parties but see for submissions by any other Member or person (amicus curiae briefs).

¹⁵ See para 4 of the Appendix 3 to the DSU.

¹⁶ See para 8 of the Appendix 3 to the DSU. During panel meeting parties may also question each other. This does not happen during hearing of the Appellate Body.
In Canada—Aircraft the Appellate Body ruled that the word “should” in Article 13.1 is used in normative sense.\(^\text{17}\)

The Appellate Body held in this case that it is within the discretion of panels to draw adverse inferences from the fact that a party has refused to provide information requested by the panel. However, the Appellate Body stressed that panels must draw inferences on the basis of all the facts of record (and not only the refusal to provide information).\(^\text{18}\)

For the benefit of Developing Country Members Art. 12.10 of the DSU provides—(only relevant part).

In examining a complaint against a Developing Country Member, the panel shall accord sufficient time for the developing country to prepare and present its arguments.

In India—Quantitative Restrictions, India requested additional time from the Panel in order to prepare its first written submission. Noting the DSU’s strict time-frame for panel process, the United States objected to this request. Referring to Article 12.10 the panel ruled as follows:

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\(^{17}\) See Appellate Body Report, Canada-Aircraft, para 187.

\(^{18}\) See Appellate Body Report, Canada-Aircraft, para 204-5 and Appellate Body Report, US-Wheat Gluten, para 176-6. In US-upland cotton, The United States responded in part to the request of the panel to provide certain information but not all. The panel ultimately based on all the information before it and decided that it was not necessary to draw adverse inference in respect of information allegedly not submitted by the United States, See panel Reports, US-Upland Cotton, Canada – Aircraft credit and guarantees para 7.20 -7.42 and 7.609-7.633, para 7.379-7.386.
“In the light of this provision, and considering the administrative re-organisation taking place in India as a result of recent change in government, the panel has decided to grant an additional period of time to India to prepare its submission. However, bearing in mind also the need to respect the time frames of the DSU, and in the light of the difficulties of rescheduling the meeting of 7 and 8 May, the Panel considers that an additional period of ten days would represent, ‘sufficient time’, within the meaning of Article 12.10 of the DSU. India is, therefore, granted until 1 May 1998 (5 p.m) to submit its first written submission to the Panel. The original date of the first meeting remains unchanged as 7 and 8 May.”

6.2.3 Right of third parties

As discussed elsewhere, any WTO Member, having a substantial interest in a matter before a panel and having notified its interest in a timely manner to the DSB, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These third parties to the dispute are united by the panel to present their views during a special session of the first substantive meeting. Then written submissions to the panel are given to the parties to the dispute. Third parties, however, only receive the first written submission of the parties. It is clear from the above references

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19 Panel Report, India-Quantitative Restriction, para 5.10.
20 See Article 10.2 of the DSU.
21 See Article 10.2 of, and para 6 of Appendix 3 to the DSU.
22 Article 10.2 of he DSU. There submissions are attached to the panel report.
23 See Article 10.3 of the DSU.
that the third party’s right to participate in the panel proceedings is, as a rule, quite limited.\textsuperscript{24}

In some cases, third parties have sought and obtained increased third party rights. For e.g., \textbf{in EC-Bananas III}, third party developing country Members, having a major interest in the outcome of this case, were allowed to attend the entire first and second substantive meetings of the panel with the parties as well as make statements at both meetings. Third parties were also granted enhanced third party rights. E.g., \textbf{In EC-Hormones, EC-Tariff Preferences and EC-Export Subsidies on Sugar}\textsuperscript{25}

Note that the grant of enhanced third party rights is within the sound direction of the panel although such discretionary authority is, of course, unlimited and is circumscribed by the requirements of due process.\textsuperscript{26} Third parties were refused enhanced third party rights, as in \textbf{US-upland Cotton}.

\textsuperscript{24} Following a member of proposals on this point in the DSU, reform negotiations the chairman’s text contain a proposal to allow third parties to participate in all substantive panel meetings and to receive a copy of all written submission to the panel.

\textsuperscript{25} The panel in EC-Hormones, however refused third parties participation See panel reports, EC-Bananas III para 7.9 and in EC-Hormones enhanced third party rights were granted, due to the fact that third parties in the two disputes were complainants in a parallel panel procedure concerning the same EC measure to be dealt with the same panelists. See Panel Report; EC-Hormones (US) para 8.15 and panel Report, EC-Hormones (Canada), para 8.12 to 8.20 (upheld by Appellate Body).

\textsuperscript{26} Appellate Body Report US-1916 Act, paras 149 and 150. In this case the Appellate Body upheld the panel decision not to grant enhanced third party rights.
6.2.4 Submission and Admissibility of evidence

The DSU does not establish precise rules or deadlines for the submission of evidence by a party to the dispute.

In Argentina – Textiles and Apparel, the panel allowed the United States to submit certain evidence two days before the second substantive meeting. Argentina appealed the panel’s decision to admit this evidence. The Appellate Body rejected the appeal on the basis of the following reasons.

Article 11 of the DSU does not establish time limits for the submission of evidence to a panel. Article 12.1 of the DSU directs the panel to follow the Working Procedure set out in Appendix 3 of the DSU, but, at the same time, authorizes the panel to do otherwise after consulting the parties to the dispute. The working procedure in Appendix 3 also does not establish precise deadlines for presentation of evidence by a party to the dispute. It is evident that the working procedures do not ‘prohibit’ submission of additional evidence after the first substantive meeting of a panel with the parties.\(^{27}\)

The Appellate Body recognized that the DSU clearly contemplates two distinguishable stages in panel proceedings, say the first stage and the second stage, unless specific deadlines for the submission of evidence are set out in the ad-hoc working procedures of the panel. Parties can submit new evidence as late as the second meeting with the panel.\(^{28}\) The panel must, of course, always be

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\(^{27}\) See Appellate Body Report, Argentina-Textiles and Apparels para 79. See also Panel Report-Canada-Aircraft, paras 9.75-9.78.

\(^{28}\) In EC-Selected Customs Matters, the Appellate Body upheld the panel’s decision to exclude evidence contained in exhibits provided by the European
careful to observe due process of law, which entitles providing the parties with adequate opportunity to respond to the evidence submitted.29

The panel in EC-Trade Mark and Graphical Indications (Australia) rejected a request by Australia to exclude certain evidences submitted by the European Communities on the ground that it is not relevant. The panel ruled that the evidence, formed part of the respondent’s submission, and to the extent that it lacked evidentiary worth, it will suffer from the defect and the panel will disregard it.30

6.2.5 Use of Experts

Panels sometimes face complex matters brought before them for adjudication. It may involve, technical and scientific issues. These issues frequently play a control in the WTO dispute settlement proceedings. Article 13 of the DSU gives a panel the authority to seek information and technical advice from any individual or body which it deems appropriate31 Panels may consult experts to obtain their opinion on certain aspects of the matter under consideration.

committees at the interim review stage. The Appellate Body noted that the interim review stage is not the appropriate time to introduce new evidence.


30 Panel Report EC-Trademarks and Geographical Institutions (Australia) para 7.83-7.84; See also panel Report Japan-Apples, para 8.55-8.56.

31 In addition to Article 13 of the DSU, panels have either the possibility or the obligation to consult experts under a number of other covered agreements; Articles 14.2 and 14.3 of the TBT Agreement, Articles 19.3 and 19.4 of and Annex II to Agreement on customs valuation and Articles 4.5 and 24.3 of the CMS Agreement.
As the Appellate Body ruled: in Argentina-Textiles and Apparel this is a grant of discretionary authority.

In US – Shrimp, the Appellate Body further stated,

“A panel has the authority to accept or reject any information or advice which it may have sought and received, or to make some other appropriate disposition thereof. It is particularly within the province and authority of a panel to determine the need for information and advice in a specific case, to ascertain the acceptability and relevancy of information or advice received and to decide what weight to ascribe to that information or advice or to conclude that no weight at all should be given to what has been received.32

This authority is absolutely necessary to enable a panel to discharge its duty under Article 11 of the DSU to make an objective assessment of the matter before it.33

To date, panels have consulted experts in several cases, such as, EC-Harmones; Australia-Salmon; Japan-Agricultural products II, EC-Asbestos; Japan-Apples and EC-Approval and Marketing of Biotech products, which were all disputes involving complex scientific issues. In these cases, the panels typically selected the experts in consultation with the parties, presented the experts with a list of questions to which each expert individually responded in writing and finally called a special meeting with the experts at which these and other questions were discussed with the panellists and the parties.

Under Article 13 of the DSU, a panel may not only consult individual experts and scientists, it may also consult specialized international organisations.34

**In EC – Approval and Marketing of Biotech Products**, the panel sought information from the secretariat of convention on Biological Diversity, the Codex Alimentarious Commission, the Food and Agricultural Organisation, the International Plant Protection Convention, the International Organisation for Epizooties; the UN Environment Programme and the World Health Organisation.35

**In EC-Chicken Cuts**, the panel sought information from the World Customs Organisation.36

**In Dominican Republic – Import and sale of cigarettes**, the panel consulted the International Minority Fund and EC-Trade Marks and Geographical Indicators. The panel requested the World Intellectual Property Organisation for assistance in the form of any factual information available to it relevant to the interpretation of certain provisions of the Paris Convention for the protection of Industrial Property.37

It should be noted that, a panel has broad authority to consult experts to help it to understand and evaluate the evidence

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34 Such consultations of specialized international organisations are also possible under the other legal basis.
36 See Panel Report, EC-Chicken cuts, para 7.52-7.53 (complaint by Brazil) and paras 7.52-7.53 (complaint by Thailand).
37 Panel Report, EC-Trade Mark and Geographical Indications paras 2.16-2.18 (complaint by Australia) and para 2.16-2.18 (complaint by Australia) and paras 2.16-2.18 (complaint by the US)
submitted and arguments made by the parties. A panel may not with the help of its experts make the case for one or the other party. **In Japan-Agricultural products II**, the Appellate Body held as follows.

Article 13 of the DSU and Article 11.2 of the SPS Agreement suggest that panels have a significant investigative authority. However, this authority cannot be used by a panel to rule in favour of the complaining party which has not established a prima facie case of inconsistency, based on specific claims asserted by it. A panel is entitled to seek information and advice from experts and from any other relevant source it chooses, pursuant to Article 13 of the DSU and in an SPS case, Article 11.2 of the SPS Agreement to help it to understand and evaluate the evidence submitted and arguments made by the parties, but not to make the case for a complaining party.\(^3\)

**In Japan-Apples**, Japan referred to this finding by the Appellate Body to challenge an appeal for the Panel’s use of experts. Japan argued that, the US had not made claims or submitted evidence in

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\(^3\) Appellate Body Report: Japan-Agricultural Product II para, 129. In Japan-Agricultural Product II, the panel was correct to seek information and advice from experts to help to understand and evaluate the evidence submitted and the arguments made by the United States and Japan with regard to the alleged violation of Article 5.6 of the SPS Agreement. The panel erred, however, when it used that expert information and advice as the basis for a finding of inconsistency with Article 5.6 based on claims relating to the determination of sorption levels, since the United States did not establish ‘prima facie case’ of inconsistency with Article 5.6 based on such claims. The United States did not even argue that the determination of sorption levels is an alternative measure which meets the three elements under Article 5.6. See Appellate Body Report, Japan-Agricultural Products II, para 130, see further Appellate Body Report, Japan-Apples, para 158.
respect of the risk of transmission of fire blight by apples other than mature symptomless apples; yet the Panel had made finding of facts with regard to these other apples. Japan claimed that the panel had, thus exceeded the bounds of its investigative authority. The Appellate Body rejected Japan’s argument, finding that the Panel had acted within the limits of the investigative authority, as it did nothing more than assess the relevant allegations of facts asserted by Japan, in the light of the evidence submitted by the parties and the opinions of experts.\textsuperscript{39}

From the above, it is clarified that the panel may use the evidence of its experts to assist it in assessing not only the claims of the complaining Member, but also the allegations of the responding Member. In doing so, it cannot be said that the panel is exceeding its authority.

\textbf{6.2.6 Protection of Confidential business information}

As stated above, panel proceedings are confidential in nature. However, the panels in Canada-Aircraft and Brazil-Aircraft considered that parties had a legitimate interest in additional protection for sensitive business information submitted to the panels. Thus, special procedures governing this information were adopted.\textsuperscript{40} The confidential business information was to be stored in a safe, locked room at the premises of the relevant Geneva missions, with restrictions imposed on access. There is provision for either party to visit the other party’s Geneva mission, and review the proposed location of the safe, and suggest any change. In spite

\textsuperscript{39} Appellate Body Report, Japan-Apples, para 158.

\textsuperscript{40} See Panel Report, Canada-Aircraft, Annex 1; and Panel Report, Brazil-Air craft, Annex I.
of these procedures, Canada refused to submit certain confidential business information, because they did not, according to Canada, provide the requisite level of protection.41

When Panels are willing to provide additional protection of business confidential information, the Panel in Canada-Dairy (Article 21.5 – NewZealand and United States) made it clear that the party invoking procedures governing the business, confidential information must at least explain to the panel the nature of the information it seeks to protect and justify the insufficiency of the standard confidentiality requirements.42 Parties cannot just invoke, the business confidential nature of certain information as a justification for not submitting the information without having at least requested the panel to adopt special procedures.

In Turkey-Rice, Turkish officials informed the Panel that they did not feel comfortable in risking information leaks and possible criminal accusation of violation of Turkish Law on confidentiality.43

The protection of business confidential information has been, or currently is, an important issue in, inter alia, EC-Approval and Marketing of Biotech Products, EC-Export subsidies in sugar, Korea-commercial vessels, Canada-Wheat exports and Grain

41 On the consequences of such a refusal to submit information requested by the Panel. See Appellate Body Report, Canada-Aircraft, para 204-205.
43 Panel Report, Turkey-Rice, Para 7.92.
imports, EC-Tube or Pipe Fittings, US-Large Civil Aircraft and EC and certain Member States-Large Civil Aircraft.44

6.2.7 Panel Deliberations and Interim Review

Just like any other legal authority, Panel deliberations are confidential.45 Panel Reports are drafted without the presence of the parties to the dispute. They are drafted in the light of information provided and the statements made during the proceedings.46 After the completion of a draft of the descriptive sections of its report, the panel issues this draft to the parties for their comments.47 After the expiry of the time period for comments, the panel issues an interim report to the parties, including both descriptive section and the panel’s findings and conclusions.48 A party may submit a written request to the panel to review particular aspect of the interim report. At the request of a party, the Panel may hold a further meeting with the parties on the issues identified

45 See Article 14.1 of the DSU.
46 See Article 14.2 of the DSU.
47 See Article 15.1 of the DSU, see also Panel Report, US-Lead and Bismuth II. Recently some panels attached the submissions, the written versions of the oral statements and answers to questions to their report.
48 See Articles 15.2 of the DSU.
in the written comments.\textsuperscript{49} The final panel report must include a discussion of the arguments made at the interim review state.\textsuperscript{50}

\textbf{6.2.8 Adoption or Appeal of the Panel Report}

The final panel report, first issued to the parties to the dispute and then circulated to the Members of the WTO, was made available in the three working languages of the WTO. Once it is circulated to the WTO Members, the panel report becomes an unrestricted document available to the public. On the day of its circulation, a panel report is posted on the WTO website as a WT/DS document. Panel Reports are also included in the official WTO Dispute settlement Report, Published by Cambridge University Press.

A party who desires to go for appeal should notify its decision to the DSB, or DSB decides by consensus not to adopt the report.\textsuperscript{51}

If a panel report is appealed, it is not discussed by the DSB until the Appellate review proceedings are completed and the Appellate Body Report together with the Panel report comes before the DSB for adoption.

In order to provide sufficient time for the Members to review the panel report, the report shall not be considered for adoption by the DSB until twenty days after they had been circulated. Parties have

\textsuperscript{49} Ibid.

\textsuperscript{50} See Article 15.3 of the DSU, if no comments are received from any party within the comment period, the interim report shall be considered the final Report.

\textsuperscript{51} See Article 16.4 of the DSU, see also Panel Report Canada-Patent Term, para 1.5.
unfiltered right in the consideration of panel reports by the DSB and their views shall be fully recorded.\textsuperscript{52}

\section*{6.2.9 Duration of Panel Proceedings}

The period of the panel proceedings from the date of the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties shall not exceed six months.\textsuperscript{53} When the panel considers that it cannot issue its report within 6 months, it shall inform the DSB, in writing of the reason for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months.\textsuperscript{54}

\section*{6.3 Appellate Review}

So far, almost 70 percent of the Panel Report circulated among the Members were appealed to the Appellate Body. This section discusses important aspects of Appellate review proceedings:

\begin{itemize}
  \item Working Procedures for Appellate Review
  \item Initiation of Appellate review
  \item Withdrawal of an appeal
  \item Written submission and oral hearing
\end{itemize}

\textsuperscript{52} See Articles 16.1 and 16.3 of the DSU.

\textsuperscript{53} See Article 12.8 of the DSU. In cases of urgency including those relating to punishable goods the panel report will be issued as paras possible with three months and makes every efforts to accelerate the proceedings to the greatest extent possible. See Articles 12.9 and 4.9 of the DSU.

\textsuperscript{54} See Article 12.9 of the DSU.
• Rights of third participants
• Exchange of views, deliberations and the adoption of the Appellate Body report and
• Duration of appellate review proceedings.

### 6.3.1 Working Procedures for appellate review

Unlike Panels, the Appellate Body has its own detailed standard working procedures set out in the Working Procedures for Appellate Review.\(^{55}\) According to Article 17.9 of the DSU, these working procedures were drawn by the Appellate Body itself, in consultation with the Chairman of the DSB and the WTO Director General. In addition, where a procedural question arises, that is not covered by the working procedures, the division hearing the appeal may, in the interest of fairness and orderly procedure in the conduct of the appeal, adopt an appropriate procedure for the purpose of that appeal.\(^{56}\)

The additional procedure adopted in the conduct of the EC-Asbestos case in respect of the filing of amicus curiae brief was partially quoted and discussed elsewhere.

### 6.3.2 Initiation of Appellate review

As per rule 20(1) of the working procedures, Appellate review-proceedings commences with a party’s notification in writing to the

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\(^{56}\) Rule 16.1 of the working procedure, such procedure must, however, be consistent with DSU, the other covered agreements and the working procedures.
DSB of its decision to appeal and simultaneously filing of notice of appeal with the Appellate Body. The notice of appeal must adequately identify the findings or legal interpretations of the panel which are being appealed as erroneous. In addition to the title of the panel report under appeal, the name of the appellant and the address for service, Rule 20(2)(d) states that a notice of appeal will include:

identification of the alleged errors in the issues of the law covered in the panel report and legal interpretations developed by the panel.

If the notice of appeal fails to give the appellee sufficient notice of a claim of error, that claim cannot and will not be considered by the Appellate Body.57

In US-Upland Cotton, the Appellate Body found that the Notice of Appeal did not provide adequate notice to Brazil as contemplated by the Rule 20(2) of the Working Procedures, that the United States intended to make a claim of error under Article 12.7 of the DSU with respect to certain of the Panel’s findings. The Appellate Body, therefore, declined to rule on these findings.58

It is important that all claims intended to be made an appeal are expressly exhaustively covered in the notice of appeal.

**In US-Upland Cotton**, the Appellate Body held:

“We acknowledge that the wording....of the United States, Notice of Appeal suggests that the finding listed... are simply examples of findings challenged... being an illustrative rather than exhaustive

57 See Ibid, para 3.45.

list of the findings that the United States intends to challenge. An illustrative list is not conclusive as to whether the Notice of Appeal contains a sufficient reference to the Final findings... for us to conclude that these findings are included in the United States appeal.”

In the interest of due process, it would of course, be preferable for the appellant to raise such important issues in the notice of appeal. A party can appeal a panel report as soon as the report is circulated to WTO Members and it can do so as long as the report has not yet been adopted by the DSB. In practice, parties usually appeal shortly before the meeting of the DSB that would consider the adoption of the report.

If the other party to the dispute decides to ‘Cross appeal’ pursuant to Rule 23 of the working procedures, it must file a notice of other appeal within twelve days of the first notice. The notice of the other appeal must meet the same requirements as the first notice.

6.3.3 Withdrawal of an appeal

A Member can initiate an appeal, pursuant to Rule 30(1) of the working procedures. Likewise a Member can withdraw his appeal at any stage of the appellate review process. Such a withdrawal leads normally the termination of the Appellate Review.

In India – Autos, where the Appellate Body issued subsequent to the withdrawal, a brief report on the procedural history and the

60 See Rule 23(2) of the working procedures.
reason for not having completed its work due to India’s withdrawal.\footnote{See Appellate body Report, India-Autos, para 14-18.}

In some cases parties withdraw their appeals in order to submit new ones. This happened in \textbf{EC-Sardines}. In this case, Peru contended that the appeal of the European communities was insufficiently clear. In response, the European communities withdrew its appeal and filed a more detailed one. The Appellate Body rejected it. Peru’s claim that the withdrawal of European community appeal was invalid and clarified that there was no indication in Rule 30 that the right of withdrawal only encompasses unconditional withdrawal. Conditions are allowed as long as they do not undermine the fair, prompt, and effective resolution of the dispute and as long as the disputing party involved acts in good faith.\footnote{See Appellate Body Report, EC-Sardines, para 141.}

The Appellate Body allows an appellant to attach conditions to the withdrawal of its notice of appeal, savings its right to file a replacement notice. This is permissible under Rule 30(1) of the working procedures. In \textbf{US-Line pipe and US-FSC}, the Division and the appellate had prior knowledge of and agreed to the United States reservation that it would file a fresh notice under Rule 30(1).\footnote{See Appellate Body Report, US-Line Pipe, para 13 and Appellate Body Report. US-FSC para 4.} The Appellee Body ruled, in \textbf{EC-Sardines}, such prior notice or agreement is not a pre-condition and a requirement for validity of every withdrawal and replacement.\footnote{See Appellate Body Report, EC-Sardines, para 138.}
6.3.4 Written submission and Oral Hearing

As per the working procedure, the Appellant must file a written submission within seven days after filing the notice of appeal. The written submission exhibits a precise statement of the grounds of appeal including specific allegations of legal errors in the Panel Report and legal arguments in support of these allegations. Within fifteen (15) days of filing of the notice of appeal, the parties to the dispute that have filed a notice of other appeal (Twelve days before) must file an other appellant’s submission within twenty-five days of the filing of the notice of appeal. Any party that wishes to respond to allegations of legal errors, whether raised in the submission of the original appellant or in the submission(s) of other appellants, may file an appellees submission.

Should a participant fail to file a submission within the required time periods, the division, after hearing the views of the participants, issue such order, including dismissal of the appeal as it deems appropriate.

According to working procedures, the oral hearing, as decided by the divisions, is, as a general rule, held between thirty five and forty five days after the notice of appeal is filed.

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65 See Rule 21(1) of the working procedures.
66 See Rule 21(2) of the working Procedures. The submission also include the nature of the decisions or rule sought.
67 See Rule 21(2) of the working procedure.
68 See Rule 22(1) and 23(3) of the working procedures.
69 See Rule 29 of the working procedures.
70 See Rule 27(1) of the working procedures.
The purpose of the oral hearing is to provide participants with an opportunity to present and argue their case before the discussion, inorder to clarify the legal issues in the appeal. The oral hearing is usually completed in one day. In complex cases, the oral hearing may take more than a day.

In EC-Bananas III and, EC-Hormones, the oral hearing took two and a half days and two days respectively.

Throughout the proceedings, the participants and third parties are precluded from having ex-partee communications with the Appellate Body in respect of matters concerning the appeal. Neither a division nor any of its Members may meet with or contact a participant or third participants in the absence of other participants and third participants.  

6.3.5 Right of third participants

The rights of third parties in panel proceedings are limited. Normally third parties only attend and are heard, at, a special session of the first substantive meeting of the panel and to receive the first written submission of the parties only. At the same time third participants participating in appellate review proceedings have much broader rights.

In appellate review proceedings, all third parties have a right to file a written submission within twenty five days of the date of filing of

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71 See Article 18.1 of the DSU and Rule 19(1) of the working procedures. Also a Member of the Appellate Body who is not assigned to the division hearing the appeal shall not discuss any aspect of the subject matter of the appeal with any participant or third participant. (Rule 19(3) of the working procedures.)
the notice of appeal; containing grounds and legal arguments in support of their position.\footnote{See Rule 24(1) of the working procedures, see also Appellate Body Report, US-Soft wood Lumber IV, para 7. In exceptional circumstances do not exists, see Appellate Body Report, EC-Bananas III para 4.}

A third party has the right to participate in the oral hearing when

- It has filed a written submission; or
- It has notified the Appellate Body secretariat of its intention to participate in the oral hearing within twenty five days of the notice of appeal.\footnote{See Rule 27(2) of the working procedures, third participants are encouraged to rile written submission to facilitate their position being taken into account, see Rule 24(3) of the working procedures.}

A third party who has neither filed a written submission nor notified its intention to participate in the oral hearing within twenty five days may still participate in the oral hearing at the direction of due process, be allowed to make an oral statement at the hearing and respond to questions asked by the division.\footnote{See Rule 27(3)(b) and (c) of the working procedures.}

\textbf{6.3.6 Exchange of views, deliberations and the adoption of the report}

We found that the division is responsible for deciding an appeal will exchange views on issues raised by the appeal with other Members of the Appellate Body, before finalizing its report. The exchange of views puts into practice the principle of collegiality set out in the working procedures.\footnote{See Rule 4 of the working procedures.} Depending on the number and complexity of
the issues under discussion, the process usually takes place over two or more days.

The draft report of the division when finalized is signed by the three Members of the divisions. The report is then translated into the three languages of the WTO and is available in three languages. After translation the report is circulated to the WTO Members as an unrestricted document available to the public.

Within thirty days following the circulation of the Appellate Body Report, the Appellate Body Report and Panel Report as upheld, modified or reversed by the Appellate body are adopted by the DSB unless the DSB decides by consensus not to adopt the report.76 The adopted Appellate Body Report must be accepted unconditionally by the parties to the dispute. The WTO Members often take full advantage of this opportunity to comment on the report at the meeting of the DSB at which they are adopted.

6.3.7 Duration of Appellate Body Proceedings

As a general rule, DSU provides that the Appellate Body proceedings shall not exceed sixty days from the date of the party to the dispute formally notifies its decision to appeal to the date that the Appellate Body circulates its report.77 When the Appellate Body feels that it cannot render the report within sixty days, it shall inform the DSB in writing of the reason for the expected delay together with an estimate of the period within which it could submit

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76 See Article 17.14 of the DSU. On the reverse consensus requirements see page 236-37.

77 See Article 17.5 of the DSU; in case of urgency; for eg. Perishable goods, the Appellate Body makes every efforts to accelerate the proceedings to the great extent possible, See Article 4.5 of the DSU also.
its report. But in no case shall the proceedings exceeds ninety days.\textsuperscript{78} The reason for the delay of the Appellate Body proceedings included the complexity of the appeal, overload of work, delay in translation of the submissions or the report and the death of an Appellate Body Member hearing the appeal.\textsuperscript{79}

\textbf{6.3.8 Implementation and Enforcement}

A DSB meeting should be held within thirty days of the adoption of the panel report and/or the Appellate Body report. The concerned member must inform the DSB of its intention in respect of the implementation of the recommendation and rulings.\textsuperscript{80}

This section discusses the following procedural issues which arises with respect to recommendation and rulings.

\begin{itemize}
\item Arbitration on a reasonable period of time for implementation.
\item The surveillance of implementation by DSB
\item Disagreement on Implementation.
\item Arbitration on and authorization of, suspension of concessions or other obligations and
\item The sequencing issue.
\end{itemize}

\textsuperscript{78} See Article 17.5 of the DSU; Note that the ninety days includes the time need for translation.

\textsuperscript{79} This Append in US-Lead and Bismuth II, where Mr. Christopher Beebig a Member of the Appellate Body Division hearing the appeal deed sixty days after the conception of the oral hearing.

\textsuperscript{80} See Article 21.3 of the DSU.
6.3.9 Arbitration on the reasonable period of time for implementation

Prompt and immediate compliance with the recommendations and rulings are adopted by the DSB. However, if it is impracticable to comply with the recommendations and rulings immediately, the Member concerned has, pursuant to Article 21.3 of the DSU, a reasonable period of time to do so.81

If no agreement between the parties can be reached on the reasonable period of time for implementation, within forty five days of the adoption of the recommendations and rulings, the original complainant can refer the matter to Arbitration under Article 21.3(c) of the DSU.82 The parties must agree on an arbitrator within Ten days. In most cases they are able to do so. However, if they cannot agree on an arbitrator within ten days, either party may request the Director General of the WTO to appoint an arbitrator.83 The Director General will consult the parties and appoint an arbitrator within ten days.

The DSU does not provide for any rule or guideline as to the professional or other requirements a person should meet to serve as an Article 21.3(c) arbitrator.

The arbitration proceedings involve the filing of written submissions and a meeting of the parties with the arbitrator. The DSU stipulates

81 See Article 21.3(a) (b) and (c) of the DSU.
83 In most cases the parties agreed on arbitrator. In eight cases the Director General appointed the arbitrator.
that the arbitration proceedings do not exceed ninety days commencing on the date of the adoption of the panel and the Appellate Body Report by the DSB.

The mandate of the Article 21.3(c) arbitrator is narrow in scope:

**The Arbitrator in Korea-Alcoholic Beverages stated as follows:**

“My mandate in this arbitration relates exclusively to determining the reasonable period of time for implementation under Article 21.3(c) of the DSU. It is not within my mandate to suggest ways and means to implement the recommendations and rulings of the DSB.”

Note that, unlike panel or Appellate Body Reports on Article 21.3(c) arbitration award is not adopted by the DSB. An arbitration award is posted as a WT/DS document on the WTO website.

### 6.3.10 Surveillance of implementation by the DSB

The DSB keeps the implementation of adopted recommendations and ruling under surveillance. At any time, following adoption of the recommendations or rulings any WTO Member, may raise the issue of implementation at the DSB. Six months after the establishment of a reasonable period of time, the issue of implementation is placed on the agenda of each DSB meeting and remains on the DSB agenda until the issue is resolved. At least ten days prior to such a DSB meeting, the Member concerned must

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84 Award of the Arbitrator, Korea-Alcoholic Beverages, para 45.
85 See Article 21.6 of the DSU and Article 22.8 of the DSU.
provide a status report to the DSB on its progress in the implementation of the recommendations or rulings.\textsuperscript{86}

\textbf{6.3.11 Disagreement on the implementation}

Before the expiry of a reasonable period of time, the respondent must withdraw or amend the measure that was found to be WTO inconsistent. It is, however, common that the disagreement between the complainant and respondent with regard to any implementing measure was taken or whether any implementing measure is WTO inconsistent. Article 21.5 of the DSU provides that such disagreement as to the existence or consistency with WTO Law, of implementing measures shall be decided.

Article 21.5 requires that the panel circulates its report within ninety days after the date of the referred of the matter to it. However, this time frame is not realistic as is done by the fact that the average duration of the Article 21.5 compliance procedure is not 215 days i.e., more than double the time allowed.\textsuperscript{87}

The question when is a measure taken to comply with the recommendations and rulings was observed in \textbf{US-Softwood Lumber IV (Article 21.5 – Canada)}. According to the United States in that case, the measure at issue, the First Assessment Review, was not an implementing measure. The panel, therefore, lacked jurisdiction under Article 21.5 to consider Canada’s claim of inconsistency with regard to this measure. After a careful analysis

\textsuperscript{86} See Article 21.6 of the DSU. The status reports under Articles 21.6 of the DSU are posted on the WTO website WT/DS documents. For the debate on these reports see the minister of the relevant DSB meeting. WT/DSB/m/.

\textsuperscript{87} See www.world Trade Law, net/dis/database/paneltiming 1 asp visited on 24 Nov. 2007.
of Article 21.5, the Appellate Body noted that this provision strikes a balance between competing considerations.

The question of the existence of an implementing measure was addressed by the Article 21.5. Panel in US-Gambling (Article 21.5-Antigua and Barbuda). In this case the US requested that the compliance Panel re-examine the WTO inconsistency of its original measure based on new evidence and arguments not previously available to the panel or the Appellate Body. The panel rejected the request of the United States. It found that compliance entails a change relevant to the measure. This may take various forms, including the repeal or amendment of the measure at issue, a change in the way a measure is applied or changes in the factual or legal background that modify the effects of the measure. In this case no such changes had occurred. The panel made clear that the respondent’s original defence cannot be re-litigated in an Article 21.5 proceeding on the basis of a new arguments or evidence.

Like normal Panel and Appellate Body Reports. Article 21.5 compliance panel and Appellate Body Reports become legally binding on the parties only after adoption by the DSB. The DSB adopts these reports by reverse consensus.

An important difference between the recommendations and rulings of the normal reports and Article 21.5 reports is that the respondent does not benefit from a reasonable period of time to

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89 Ibid. paras 6.20-6.22.
90 See Ibid, para 6.27, Antigua and Barbuda argued before the panel that the United States had taken no measures to comply with the DSB ruling as the measures challenged in the original proceedings had not been amended, supplemented or otherwise changed.
implement the recommendations and ruling of Article 21.5 reports. Immediately after the adoption of these reports, the complainant can request authorization from the DSB to suspend the application of concessions or other obligations to the respondents.

6.3.12 Arbitration and Authorisation of suspension of concession or other obligations

If the respondent fails to implement the recommendations and ruling adopted by the DSB correctly within the reasonable period of time agreed by the parties or determined by an arbitrator, the respondent will at the request of the complainant, enter into negotiation with later party in order to come to an agreement on mutually acceptable compensation. If satisfactory compensation is not agreed upon within twenty days of the expiry of a reasonable period of time, the complainant may request authorization from the DSB to suspend the application of concession or other obligation to the respondent under the covered agreements. In otherwords it may seek authorization to retaliate. The DSB must decide on the authorization to retaliate within thirty days of the reasonable period of time. The DSB decides on the authorization to retaliate by reverse consensus, the authorization is thus quasi automatic.

If the non-complying Member objects the level of suspension proposed or claims that the principles and procedures for

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91 See Articles 22.2 of the DSU, on compensation under Article 22.
92 See Article 22.6 of the DSU.
93 See Article 22.6 of the DSU.
suspension have not been followed, the matter may be referred to arbitration before the DSB takes a decision.94

This arbitration under Article 22.6 of the DSU is carried out by the original panel, if the same members are available or by an arbitrator appointed by the Director General.95

The Arbitration must be completed within 60 days of expiry of reasonable period of time,96 and a second arbitration or appeal is not possible97. The DSB is informed promptly of the decision of the Arbitrator and grants, by reverse consensus, the requested authorization to suspend concessions or other obligations where the request is consistent with the decision of the Arbitrator.98 Decisions by the Arbitrator under Article 22.6 of the DSU, are circulated to WTO Members and posted on the WTO website as WT/DS documents.

At present DSU does not provide for a procedure for the withdrawal or termination of authorization to retaliate.99 The lack of such

94 See Article 22.6 of the DSU. On the appropriate level of suspension and on the principles and procedures of suspension.
95 See Article 22.6 of the DSU.
96 See Article 22.6 of the DSU. In EC-Bananas III (US) (Article 22.6-EC); the sixty days period was exceeded to give parties time to submit additional information requires by the Arbitrators, as the Arbitration considered it imperative to achieve greatest degree of clarity possible to avoid future disagreements between parties, in view of the fact that the Article 22.6 decision cannot be appeal, see the decrease by the Arbitrators, EC-Bananas III (US) (Arti. 22.6), para 2.12.
97 See Article 22.7 of the DSU.
98 See Article 22.7 of the DSU. Decision under Article 22.6 is notified to the DSB but is not adopted by it.
99 At the meeting of the special session of the DSB of 22 May 2006, negotiations discussed the proposal or Argentina, Brazil, Canada, India, New Zealand and
procedure is not a problem when the complainant is satisfied that the respondent has withdrawn or amended the WTO inconsistent measure. This situation arose in **EC-Hormones**, and led to the European Communities to initiate a new dispute settlement proceedings against the United States and Canada in an effort to secure the lifting of their retaliation measures.\(^{100}\)

### 6.3.13 The ‘Sequencing’ Issue (Article 21.5 time frame and Time frame of Authorisation for suspension etc)

As stated above, if the respondent fails to implement the recommendations and rulings within the ‘reasonable period of time’ and agreement on compensation cannot be reached, the complainant may request the DSB authorisation to retaliate. However, such retaliation is called for, only when the respondent has indeed failed to implement the recommendations and rulings. The complainant and respondent may disagree on whether such implementing measure exists or whether it is WTO consistent. To resolve such disagreements, the DSU provides for the Article 21.5 procedure. However due to clareless drafting of the DSU, there is a conflict between the time frame for this Article 21.5 procedure and the time frame within which authorization for the suspension of concession and other obligations must be requested and obtained from the DSB. As per Article 22.6, the authorization for retaliation must be granted by the DSB within 30 days of the expiry of the authorisation to retaliate, as well as what to do when the respondent Member has already taken steps to comply with the rulings. However, no clear consensus was reached for any of the proposed changes. See Bridges weekly Trade News Desert 24 May 2006.

\(^{100}\)See Canada-continued suspension, WT/DS/321, and US-continued suspension WT/DS/320.
reasonable period of time. It is well known that it is not possible to obtain authorization for retaliation etc. within 30 days.

In EC-Bananas III, this inconsistency led to serious institutional crisis as the US insisted on its right to obtain authorization for retaliation and the European community asserted that an Article 21.5 compliance Panel first had to establish that the implementing measures taken by the European Communities were not WTO consistent. The problem of the relationship between these two procedures (often referred to as sequency issue) remains and a change to the DSU is required to resolve the problem. However, the parties commonly agree on an ad-hoc basis the procedure of examining the WTO consistency of the implementing measures will need to be finished before the authorization of retaliation measures may be granted.\textsuperscript{101}

6.4 Future Challenges

There exists challenges to the dispute settlement activities of the WTO. At the beginning of the 21st century, the WTO is facing three fundamental challenges. Of these the first one is the reform of its own internal structures and decision-making to address adequately the needs of the future. Second it must respond to the demands of civil society and integrate broader social concerns into its agenda. And third it must address the problem of poverty and become more responsive to the needs of the developing countries. That these problems have arisen and the WTO has become controversial is a mark, not of future but of the organisation’s remarkable accomplishment. The WTO has evolved

\textsuperscript{101} See, Canada-Aircraft (Article 21.5 Brazil, Para 1.7 and Brazil-Aircraft (Art. 21.5 Canada), para 1.5.
into a unique intergovernmental body, an essential part of contemporary international relations.

6.4.1 Internal decision-making

WTO’s first challenge is the internal system for administration and taking decisions. There is an imbalance and a strange dichotomy between the fast-paced, legalistic, dispute settlement process administered by the DSB and the rapid, deadlock-plagued political decision-making process employed by other WTO bodies. Besides, there are no explicit links between the two. By the result, although the WTO Agreement (Art. IX.2) gives the Ministerial Conference and the General Council “exclusive authority” to interpret the multilateral trade agreements, in practice, definitive interpretations are issued by dispute settlement bodies.

6.4.2 Demands of Civil Society

Although the tactics and excesses of protestors at Seattle and elsewhere are subject to criticism and despite the incoherence of their message, there is no doubt that the WTO must formulate a response to the criticism of the larger civil society in many countries. What is called for is not the adoption of substantive norms protecting workers or the environment, which would deeply decide the WTO membership, but rather the introduction into WTO law and political practice of meaningful process of participation for groups and interest that presently consider themselves outside the system.

As a remedy against the ills, the WTO should establish rules for the publication most dispute settlement reports and official documents. Provision should be made for public access to dispute settlement
proceedings and appropriate rules freely allowing the submission and consideration of ‘amicus brief’.\textsuperscript{102}

Next, the WTO should explore ways to allow NGO’s and other non-governmental institutions meaningful participation in the system.

Further, the WTO might consider special procedures for interjecting social concerns into the multilateral trading system’s rules.\textsuperscript{103}

\textbf{6.4.3 Needs of Developing Countries}

The third challenge for the WTO is to do a better job of serving the needs of the developing countries. Despite the special and differential treatment of developing countries in the WTO multilateral trading agreements, developing countries are not fully integrated into the world trading system.\textsuperscript{104} At present, developing countries comprise 73 percent of the Membership of the WTO\textsuperscript{105}. Another 28 countries are applying for accession and these are mostly developing countries. WTO Members from developed countries effectively prevent poor countries that may have comparative advantage in commodities from agricultural export markets.\textsuperscript{106} Moreover, high tariff-rate quotas for certain products such as textiles and sugar, effectively exclude developing countries from markets. Another thing is that the particular concerns of

\begin{footnotesize}
\begin{enumerate}
\item See Symposium Boundaries of the WTO, 96 AM. J. INTL. L.1-158 (2002) (Edited by Jose E. Alvarez)
\item Constantine Michalopoulos, Developing Countries in the WTO, 17-21 (2001)
\item Ibid at 154
\item Carmen G. Gonzalez, Institutionalising Inequality, the WTO Agreement, on Agriculture, Food Security and Developing Countries. 27 Cot. J. Of. ENVTL L433 (2002).
\end{enumerate}
\end{footnotesize}
developing countries should be respected in the field of intellectual property. Specifically, provision should be made to allow developing countries to respond to health emergencies, traditional knowledge should be given IP protection, and poor countries should share in the economic benefits of patents derived from their natural resources. Further, the WTO should co-operate more closely with other intergovernmental organisations such as the IMF and the World Bank in plans to aid poor countries.

The next chapter explains the result of an analytical study of the WTO cases decided by the DSB through panel and Appellate Body decisions.
Chapter VII

CRITICAL APPRAISAL OF WTO’S APPELLATE BODY REPORTS OVER A PERIOD OF TEN YEARS (2001-2010)