



WTO OMC

# **RULES AND PROCEDURES OF THE WTO DISPUTE SETTLEMENT SYSTEM APPELLATE REVIEW**

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# Dispute settlement stages: where are we?



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**1**

**Consultations**

**2**

**Panel**

**3**

**Appeal**

**4**

**Adoption**

**5**

**Implementation**

# History and structure of the Appellate Body



- Innovation of Uruguay Round negotiations
- Established in 1995
- Governed by Article 17, DSU
- Standing body of 7 Members
- AB Membership to be broadly representative of WTO membership
- DSB-appointed (positive consensus) based on Members' nomination
- Serve 4-year term, renewable once
- Part time job

# History and structure of the AB



- Qualifications of AB Members:
  - ❑ Recognised authority
  - ❑ Demonstrated expertise in international law, trade and covered agreements subjects generally
  - ❑ Unaffiliated with any government
  - ❑ No conflict of interest

# Current members of the AB



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- Ujal Singh Bhatia (India, 12/2011 – 12/2015)
- Peter Van den Bossche (Belgium, 12/2009 – 12/2013)
- Seung Wha Chang (Korea, 06/2012 – 05/2016)
- Thomas R. Graham (United States, 12/2011 – 12/2015)
- Ricardo Ramírez-Hernández (Mexico, 07/2009–06/2013)
- David Unterhalter (South Africa, 7/2006 – 12/2013)
- Yuejiao Zhang (Chair) (China, 6/2008 – 5/2016)

# Appellate Body Members



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- “Broadly representative of membership”



# Appellate Body Members



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**From left to right:** David Unterhalter, Ujal Singh Bhatia, Peter Van den Bossche, Yuejiao Zhang, Ricardo Ramírez-Hernández, Thomas R. Graham and Seung Wha Chang

# Initiation of appellate review process deadline for filing appeal



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**Day 0**

**Circulation of panel  
report**

**Day 20**

**Considered for  
adoption**

**Day 60**

**No appeal – panel  
report adopted**

- Panel report not considered for adoption until 20 days after circulation
- DSB adoption within 60 days of circulation (negative consensus)
- Appeals must be filed no later than 60 days after Panel report is circulated to Members



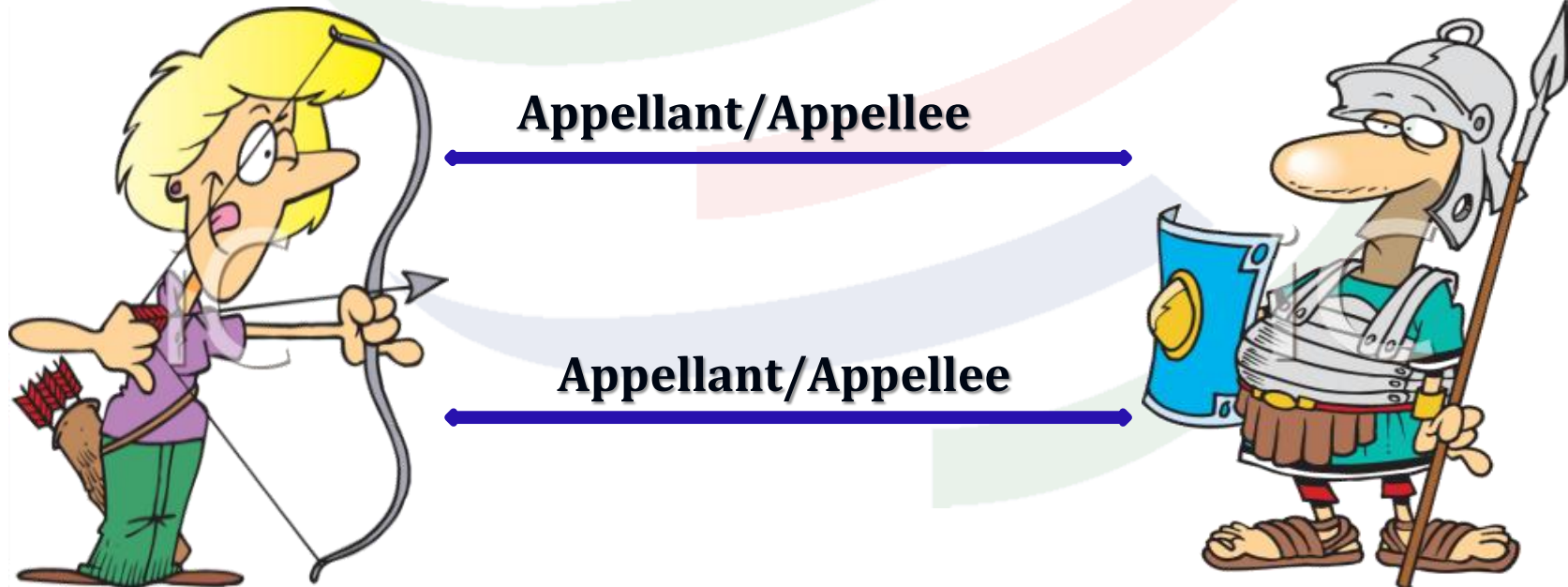


# Who can appeal?





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- Appeal only open to the parties to a dispute
- Either party can initiate the appeal – **appellant**
- Party responding referred to as **appellee**
- Third parties cannot initiate appeal



# Third participants in appellate review

- Referred to as **third participants**
- Only Members that were third parties at panel stage 
- Cannot appeal 
- Have a right to file written submissions and to participate in the oral hearing

# What can be appealed?



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- Appeals limited to:
  - ❑ issues of law covered in the panel report
  - ❑ legal interpretations developed by the panel
- No factual findings by the AB
- Panels' factual findings: In principle, outside the scope of appellate review

# Working procedures for appellate review

- Article 17.9, DSU
- WP drawn up by AB in consultations with Chairman of DSB and DG
- WP communicated to Members
- Unlike panel process, standard set of WP
- Latest, WT/AB/WP/6, 16 August 2010
- Annex 1 – sets out timetable for AB process

# Timetable for appellate review process



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**Day 0**

**Notice of appeal  
Appellant's submission**

**Day 5**

**Notice of other appeal  
Other appellant's submission**

**Day 18**

**Appellee's submission**

**Day 21**

**Third participant's submission  
Third participant's notification**

**Days 30 - 45**

**Oral hearing**

# Timetable for appellate review process



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**Days 60 - 90**

**Circulation of AB report**

**Days 90 - 120**

**DSB adoption of report**

# Timetable for appellate review process (prohibited subsidies)



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**Day 0**

**Notice of appeal  
Appellant's submission**

**Day 2**

**Notice of other appeal  
Other appellant's submission**

**Day 9**

**Appellee's submission**

**Day 10**

**Third participant's submission  
Third participant's notification**

**Days 15 - 23**

**Oral hearing**

# Timetable for appellate review process (prohibited subsidies)



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**Days 30 - 60**

**Circulation of AB report**

**Days 50 - 80**

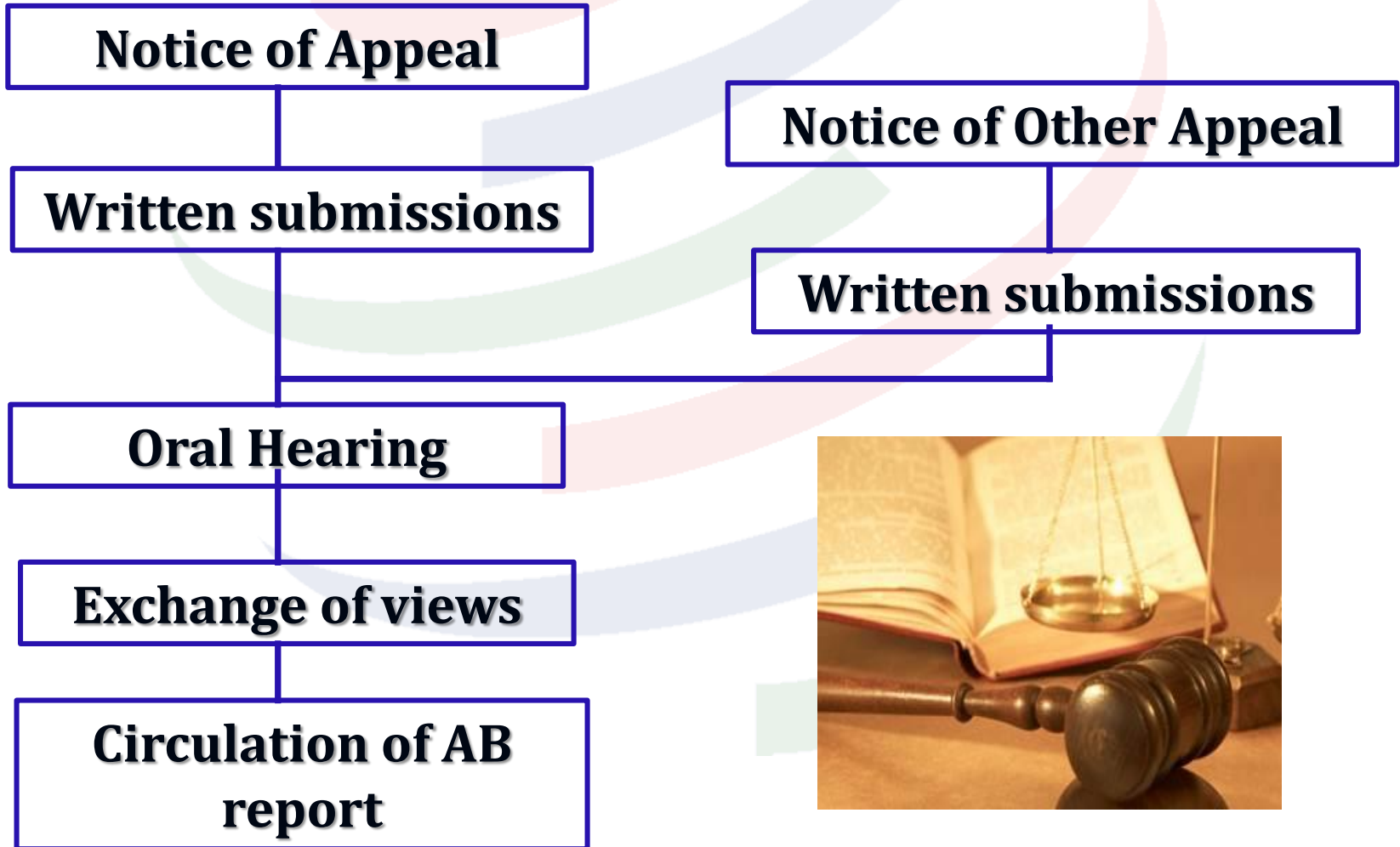
**DSB adoption of report**



# Appellate review process



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# Appellate review process – notice of appeal



## Form?

- In writing



## To whom?

- Notify AB of decision to appeal (Article 16.4, DSU)
- Notice of appeal to AB Secretariat (Article 20, WP)



## Content?

- Title of appealed report
- Name of party filing the notice of appeal
- Service address, telephone, fax
- Brief statement of the nature of appeal



## Circulated

- To Members as document “WT/DSXXX/1”

# Appellate review process – notice of appeal

- Brief statement of the nature of the appeal:
  - ❑ Alleged errors in the issues of law and legal interpretation
  - ❑ List of the legal provision(s) of the covered agreements with respect to which the panel is alleged to have erred
  - ❑ Indicative list of the paragraphs of the panel report containing the alleged errors (without prejudice to refer to the other paragraphs)
- Sufficiency of notice of appeal

# Appellate review process – oral hearing



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- Time limits for oral statements set by presiding Member
- AB Division asks parties questions
- Usually closed to the public, with a few recent exceptions: US/Canada – Continued Suspension; EC – Airbus; US – Boeing; Australia – Apples; US – COOL

# Appellate review process – Exchange views

- Division of 3 Members handling appeal
- Exchange of views with the other Members (principle of **collegiality**)
- Consensus decision-making, possibility of anonymous dissent



# Appellate review process – completing the legal analysis

- Basis – lack of remand authority
- Aim – secure a positive solution to the dispute
- When may AB complete legal analysis:
  - ❑ Resolving issues not addressed by the panel
  - ❑ Applying a different reasoning to the facts
- Occurs infrequently as it requires:
  - ❑ Sufficient factual basis drawn from Panel record
  - ❑ Compliance with due process



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# Content of AB report



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- Article 17.13, DSU – AB may:
  - ❑ Uphold
  - ❑ Modify
  - ❑ Reverse legal findings or conclusions of panel
  
- Practice, content of AB report:
  - ❑ Introduction
  - ❑ Arguments of parties and third participants
  - ❑ Issues raised on appeal
  - ❑ Findings
  - ❑ Conclusion

# Content of AB report – Recommendations

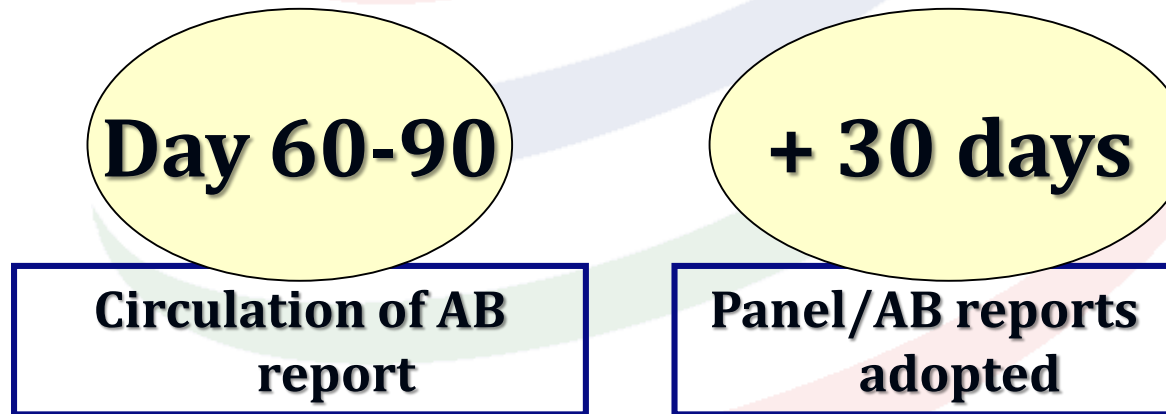
- Article 19, DSU:
  - ❑ Member to bring measure into conformity with the relevant covered agreement
  - ❑ AB may suggest ways in which Member could implement the recommendations (not often used)



# Adoption of panel and AB reports



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- Recent complex disputes have led to delays



# Statistics on AB process (As of 6 July 2012)



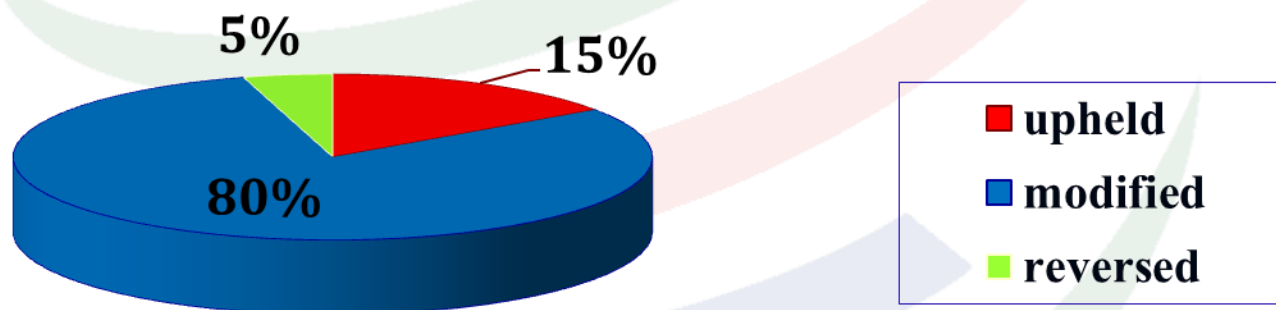
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- Appeals notified (excl. 21.5 appeals): 96
- Appellate Body reports adopted: 89

# Statistics of AB process (As of 6 July 2012)



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# Questions?



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The End



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THANK YOU!