

---

# *Decisions of the Appellate Body of the World Trade Organization*

Joel Trachtman\*

WTO Appellate Body Report: *Canada — Measures Affecting the Importation of Milk and the Exportation of Dairy Products* (Article 21.5 DSU, first and second recourse), AB-2001-6 WT/DS103, 113/AB/RW, and WT/DS103, 113/AB/RW2, adopted by Dispute Settlement Body, 18 December 2001 and 17 January 2003, respectively. Canada, Appellant, New Zealand, United States, Appellees. European Communities, Third Participant in first recourse; Argentina, Australia and European Communities, Third Participants in second recourse. Division in first recourse: Taniguchi, Abi-Saab, Ganesan; division in second recourse: Baptista, Sacerdoti and Taniguchi.

Major topics addressed by the Appellate Body: meaning of 'payments' and 'financed by virtue of governmental action' in Article 9.1(c) of the Agreement on Agriculture.

WTO Appellate Body Report: *United States — Tax Treatment for Foreign Sales Corporations — Recourse To Article 21.5 of the DSU by the European Communities*, AB-2001-8, WT/DS108/AB/RW, Adopted By Dispute Settlement Body, 29 January 2002. United States, Appellant/Appellee; European Communities, Appellant/Appellee. Division: Feliciano, Ganesan and Taniguchi.

Major topics addressed by the Appellate Body: Definition of a subsidy under Article 1.1 of the SCM Agreement; revenue which is 'otherwise due' and thus gives rise to a 'financial contribution' within the meaning of Article 1.1(a)(1)(ii) of the SCM Agreement; definition of an export subsidy under Article 3.1(a) of the SCM Agreement; measures taken to avoid double taxation under Footnote 59 of the SCM Agreement; application of Article III:4 of GATT to requirement of domestic content; obligation to withdraw subsidies under Article 4.7 of the SCM Agreement.

*United States — Section 211 Omnibus Appropriations Act of 1998*, WT/DS17/AB/R, adopted 1 February 2002. European Communities, Appellant/Appellee, United States, Appellant/Appellee. Division: Ehlermann, Bacchus, Lacarte-Muró.

Major topics addressed by the Appellate Body: Articles 2.1 (incorporation by reference), 3 (national treatment), 15, 16 and 42 (enforcement) of TRIPS, Article 2.1

---

\* Professor of International Law at The Fletcher School of Law and Diplomacy, Tufts University, Medford, Massachusetts 02155, USA.

(national treatment), Article 6 *quinquies* (enforcement ‘as is’), and Article 8 (trade names) of the Paris Convention, Article 17.6 of the DSU.

WTO Appellate Body Report: *United States — Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, AB-2001–9 WT/DS202/AB/R, adopted by Dispute Settlement Body, 8 March 2002. United States, Appellant/Appellee; Korea, Appellant/Appellee. Australia, Canada, European Communities, Japan, Mexico, Third Participants. Division: Lacarte-Muró, Abi-Saab, Bacchus.

Major topics addressed by the Appellate Body: discrete determination of domestic investigating authority; procedural and substantive obligations of Article 5.1; ‘parallelism’ requirement in Articles 2 and 4; Articles 4.2, 9.1, 12.3 Safeguards Agreement.

WTO Appellate Body Report: *India — Measures Affecting the Automotive Sector*, AB-2002–1 WT/DS146,175/AB/R, adopted by Dispute Settlement Body, 5 April 2002. India, Appellant; European Communities, United States, Appellee. Korea, Third Participant. Division: Ganesan, Sacerdoti, Taniguchi.

Major topics addressed by the Appellate Body: passive observer status; withdrawal of appeal.

WTO Appellate Body Report: *Chile — Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, AB-2002–2 WT/DS207/AB/R, adopted by Dispute Settlement Body, 23 October 2002. Chile, Appellant; Argentina, Appellee. Australia, Brazil, Colombia, European Communities, Ecuador, Paraguay, United States, Venezuela, Third Participants. Division: Abi-Saab, Bacchus, Lockhart.

Major topics addressed by the Appellate Body: Article 11 DSU, Article 4.2 Agreement on Agriculture.

*European Communities — Trade Description of Sardines*, WT/DS231/AB/R, adopted 23 October 2002. European Communities, Appellant; Peru, Appellee; Canada, Chile, Ecuador, United States and Venezuela, Third Participants. Division: Bacchus, Abi-Saab, Baptista.

Major topics addressed by the Appellate Body: definition of ‘technical regulation’ under the TBT Agreement; definition of ‘relevant international standard’ under the TBT Agreement; Article 2.4 of the TBT Agreement; allocation of burden of proof under Article 2.4 of the TBT Agreement; *amicus curiae* briefs.

*United States — Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, WT/DS213/AB/R, adopted 19 December 2002. United States, Appellant/Appellee; European Communities, Appellant/Appellee; Japan and Norway, Third Participants. Division: Taniguchi, Ganesan, Sacerdoti.

Major topics addressed by the Appellate Body: *de minimis* standard with respect to sunset reviews under Art. 21.3 of the Agreement on Subsidies and Countervailing Measures; evidentiary standard and determination of likelihood of continuation or recurrence of subsidization under Article 21.3 of the Agreement on Subsidies and Countervailing Measures; Panel terms of reference under Article 6.2 of the Dispute Settlement Understanding.

The full text of these reports is available on the *EJIL*’s website: [www.ejil.org](http://www.ejil.org).