



EXECUTIVE SUMMARIES OF WRITTEN SUBMISSIONS IN APPELLATE PROCEEDINGS

COMMUNICATION FROM THE APPELLATE BODY

The Working Procedures for Appellate Review¹ (Working Procedures) identify the written submissions that WTO Members participating in appeals are to submit in appellate proceedings, as well as the deadlines and modalities for the submission of such documents. For many years, the Appellate Body has requested participants in appellate proceedings to submit executive summaries of their written submissions by the same deadline as for the written submissions themselves. These executive summaries were intended to assist the Appellate Body in summarizing the arguments of the participants in its report in each proceeding. The Appellate Body wishes to inform the WTO Membership that it is adopting new guidelines regarding executive summaries.

The Appellate Body intends to continue the practice of asking participants in appeals to submit executive summaries of their written submissions. The deadlines for filing such summaries will also remain unchanged, namely, the same deadline as for the written submissions themselves. Nevertheless, the Appellate Body is introducing two new aspects to this practice. First, the Appellate Body will request not only the participants but also each third participant that elects to file a written submission in an appeal to submit an executive summary of such written submission at the same time. Second, rather than using the executive summaries to assist in drafting its own description of the arguments of the participants, the Appellate Body will instead annex to each of its reports the executive summaries submitted by the participants and third participants² in the relevant appellate proceedings. A similar practice has been followed with success by WTO dispute settlement panels for some time. This change will enable Members to ensure that their own positions and requests to the Appellate Body are accurately reflected, in their own words, in Appellate Body reports. It will also enable the Appellate Body to make optimal use of its limited resources, and to re-direct resources formerly used to summarize the arguments of the participants and third participants to other areas of appeal work.

The Appellate Body intends to implement this approach on a trial basis, as from the next appeal. At present, two panel reports have been circulated and may be subject to appeal. The parties in these two disputes (*Peru – Agricultural Products* (WT/DS457) and *China – HP-SSST (Japan) / China – HP-SSST (EU)* (WT/DS454 / WT/DS460)) have been informed of how the Appellate Body intends to treat their executive summaries in the event of an appeal. However, the Appellate Body also wishes to inform the WTO Membership as a whole of these developments. Accordingly, the remainder of this document sets out certain guidelines for executive summaries submitted in appellate proceedings.

The guidelines seek to allow WTO Members to summarize their own positions and supporting arguments in their own words, while at the same time encouraging a degree of harmonization in the structure and length of such summaries. The Appellate Body will consider whether it would be

¹ WT/AB/WP/6, 16 August 2010.

² Pursuant to the Working Procedures, third participants may elect, but are not required, to submit written submissions to the Appellate Body.

useful to incorporate some or all aspects of these guidelines into the Working Procedures once both the Appellate Body and Members have some experience with the guidelines now introduced on a trial basis. The Appellate Body notes that amendments to the Working Procedures will in any event be necessary in the near-term future once the Digital Dispute Settlement Registry is launched. With respect to these matters, the Appellate Body will engage in consultations as required or appropriate.³

³ With respect to amendments to the Working Procedures, Article 17.9 of the Understanding on Rules and Procedures Governing the Settlement of Disputes provides for the Appellate Body to draw up its working procedures in consultation with the Chair of the Dispute Settlement Body (DSB) and the Director-General, and Rule 32(2) of the Working Procedures specifies that the same procedures apply in the event of amendments to those working procedures. The DSB has also adopted procedures for consultations between the Chair of the DSB and WTO Members with respect to amendments to the Working Procedures. This Decision is set out in document WT/DSB/31.

**GUIDELINES IN RESPECT OF EXECUTIVE SUMMARIES OF
WRITTEN SUBMISSIONS IN APPELLATE PROCEEDINGS**

Each participant filing an appellant's, other appellant's, or appellee's submission, and each third participant filing a written submission shall submit an executive summary of such written submission by the same deadline, using the same means (paper and electronic copies), word-processing program (preferably Microsoft Word), and format (preferably Verdana font size 10) as for that written submission. In their executive summaries, participants may wish to identify each claim of error or response to a claim of error and each request to reverse, modify, or uphold specific panel findings and conclusions, and summarize concisely the main arguments in support of such claims, responses, and requests, as presented in the relevant written submission. In their executive summaries, third participants may wish to identify the legal issue(s) on appeal upon which they wish to express a view, and summarize concisely their position or view on such issue(s). The maximum length of each executive summary of a written submission shall be limited to the longer of 250 words or 10% of the total word count of the written submission itself.

An executive summary may be submitted as a separate document, or as part of the written submission that it summarizes. When a Member elects to submit a single document containing both the executive summary and its written submission, the part of the document that constitutes the executive summary shall be clearly identified. Whether the executive summary is contained in a separate document or in the document containing the relevant written submission, the participant or third participant concerned shall in each case clearly indicate the total word count (including footnotes) of the executive summary, as well as the total word count (including footnotes) of its written submission (not including the text of the executive summary).

Participants and third participants are advised that their executive summaries will be annexed as addenda to the Appellate Body report, and that the content of such executive summaries will not be revised or edited by the Appellate Body.⁴ These executive summaries do not serve as a substitute for the submissions of the participants and third participants in the Appellate Body's examination of the appeal. The Appellate Body will, in addressing and disposing of the issues on appeal, continue to draw upon and summarize the arguments of the participants and third participants as appropriate.

⁴ As with Notices of Appeal, the text may need to be formatted prior to circulation in order to adhere to WTO document style.