

# Developing and using new reference tools to search the jurisprudence of the World Trade Organization

## The case of the Appellate Body Repertory

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*Ascertaining the current state of the law is a basic challenge for any lawyer. This – of course – is well appreciated by legal indexers, whose work provides key tools allowing researchers to move efficiently through the material relevant to an issue. In developed and well settled areas of the law, legal research tasks may be completed with relative ease. Greater challenges arise, however, where an area of law or jurisprudence is new and developing rapidly, and where the available reference tools have yet to catch up with developments. The law of the World Trade Organization (WTO) has been one such area. A new annual publication, the WTO Appellate Body Repertory of Decisions and Awards (the Repertory), aims to facilitate access to the developing jurisprudence in this important area of international law.<sup>1</sup>*

*This article comments on the utility of the various reference tools now included in this quick-reference guide. After reviewing some background to the publication of the Repertory, the article reviews how the various indexes and reference tables now included in the Repertory came to be developed, and comments on the uses and functionality of such resources, including in the context of creating the online version of the Repertory. The piece also comments on some of the difficulties associated with this publication project, particularly with respect to the challenge of converting the value added to the English edition by the various indexes into the French and Spanish versions.*

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### Some background: the WTO as a new, important and rapidly developing area of international law

The WTO comprises the 148 Member governments that have accepted or acceded to the WTO Agreement. It is a relatively new organization, established in 1995. Through the WTO Agreement, the WTO Members have committed to respect the general body of rules negotiated to govern international trade relations, and to fulfil various specific trade commitments undertaken. Recognizing, however, that there may be differences between Members as to the scope and meaning of the various rules and commitments, the WTO Agreement also provides a framework for the settlement of disputes amongst the WTO Members.

The dispute settlement system of the WTO is a novel hybrid of traditional diplomatic means of resolving international differences and a more judicial style of dispute settlement. The diplomatic aspects of the system mean that the entire Membership of the WTO oversees the conduct of each dispute settlement proceeding through a forum known as the Dispute Settlement Body (DSB).

The judicial elements are, by contrast, reflected in the fact that Members have accepted the compulsory jurisdic-

tion of the WTO dispute settlement system for all cases brought under the WTO Agreement. Furthermore, although the DSB maintains a general level of oversight and control with respect to WTO dispute settlement proceedings, the business of reviewing the merits of particular claims and complaints is delegated – virtually automatically – by the DSB to ad hoc panels of trade experts, and to a standing Appellate Body, which hears appeals regarding legal aspects of reports from panels. Unless all WTO Members agree not to adopt the decisions of panels or the Appellate Body, those decisions automatically become binding on the Members concerned, and may ultimately be enforced through a system of retaliatory trade sanctions.

The three key features of the WTO dispute settlement model – compulsory jurisdiction, an automatic process, and enforceable awards – make the WTO dispute settlement system an important new development in international law generally, where judicial and quasi-judicial processes do not always exhibit these characteristics. Moreover, these features have at least two important effects upon the culture of dispute settlement within the organization itself. First, these features mean that the jurisprudence developed by panels and the Appellate Body has become an important

guide for WTO Members and their stakeholders as they seek to determine the precise meaning or scope of the various relevant WTO obligations. Perhaps as a result of this, or maybe as a precursor to it, the 'judges' of the panels and Appellate Body<sup>2</sup> have attempted to decide like cases in a like manner, and frequently refer to earlier cases to guide their interpretations in later ones. Secondly, these features, along with other considerations, have made recourse to dispute settlement an attractive option for WTO Members that are dissatisfied with the conduct of their trading partners. This dynamic, in turn, has led to a large number of cases being filed: well over 300 in the first 10 years of the system.

## Enter the *Repertory*

Against the background of the rapid development of a new body of case law, the *Repertory* began its life as an internal response by the WTO Appellate Body Secretariat (ABS) – the institution charged with providing legal and technical support to the judges of the Appellate Body – to the need for easily accessible information on Appellate Body decisions. The *Repertory* was gradually compiled as a collection of short extracts from each decision of the Appellate Body. Lawyers involved in assisting the Appellate Body for each case were charged with selecting those elements of the case that shed light upon the interpretation of various WTO rules, commitments, or other elements of the system. The aim of the exercise was to assist the ABS lawyers involved in future cases to compile quickly relevant information on what the Appellate Body had done in the past, so that this could be made available to the Appellate Body judges.

As the collection of extracts making up the *Repertory* expanded, the ABS developed its own approach to ordering and cataloguing the material. Indeed, from the outset, material in the *Repertory* was compiled by subject, with subjects listed in alphabetical order. Under this approach, extracts from cases dealing with the Agreement on Agriculture (to take a random example) came to be listed under 'A'; jurisprudence on burden of proof found a home in 'B', and 'standard of review' was listed under 'S'. This system initially worked very well for the internal purposes of the ABS because ABS staff, being broadly familiar with issues pertaining to WTO law, knew where to look. At the beginning, the volume of material in the *Repertory* was also relatively limited, meaning a fairly simple search could turn up most, if not all, of the relevant material. As the *Repertory* grew, cross-references were included between different sections, and the table of contents evolved into a basic index, in alphabetical order, complete with many 'see also' references.

In 2004 a decision was taken to make the *Repertory* more widely available, with publication of the *Repertory* set to coincide with the tenth anniversary of both the WTO and its standing Appellate Body in 2005. The ABS initially proposed publication of a loose-leaf version, to be updated regularly. Somewhat to our surprise, publishers were resistant to this idea (loose-leaf publication has apparently

been largely superseded by CD-ROM editions of relevant publications) and proposed instead to publish the *Repertory* as a book, with revised editions being completed each year.

## The indexes to the *Repertory* – a user's perspective

The original structure of the *Repertory*, organized alphabetically by subject area, worked reasonably well for the cognoscenti. It was perhaps not so well suited to people less familiar with the details of the types of issues that typically arise in WTO disputes, or people not versed in the peculiar nomenclature that is sometimes applied in the context of WTO proceedings.

Given the wider intended audience for the new publication, it was decided to develop a comprehensive set of indexes for the volume. At length, three types of index were compiled: a lengthy index by subject, another index by reference to each case; and finally a table of references to the various articles of the treaties reviewed in the context of WTO dispute settlement proceedings. These indexes now coexist with the existing table of contents, which reflects the alphabetical subject ordering of the volume.

The indexes certainly make the material in the volume more accessible to general audiences, and when coupled with the existing table of contents, provide several different ways of accessing the same material from the volume. Interestingly, informal discussions with ABS staff suggest that this group of users continue to rely, at least in the first instance, on the traditional subject ordering of the *Repertory*, or on the cross-references included in the table of contents. Other users, however, including some from the Geneva diplomatic missions, suggest that the indexes do provide another useful way of accessing information, particularly where information is sought with respect to a subject (or provision) not specifically addressed in the table of contents.

The index by case – by concisely cataloguing the subjects for which extracts have been selected in regard to each appeal – also provides an unexpected additional tool. Essentially, this index provides a very short case note for each appeal, briefly detailing the legal issues that were covered in that case. This feature provides a method of reviewing jurisprudence that did not hitherto exist within WTO publications, where head notes or other basic reference information for cases published by the WTO have not traditionally been provided.

The table of references to articles addressed also provides a useful tool for quickly ascertaining the state of jurisprudence pertinent to each article of the WTO Agreement. This quick-reference table in the indexes of the *Repertory* is supplemented by a further annex that records, for each case, all of the articles that have been 'addressed' in one manner or another, even where the Appellate Body has not interpreted them in such a way as to justify inclusion of the full extract in the *Repertory* itself. An informal survey of WTO colleagues suggest that these tools are an effective way to obtain quickly an overall picture of the jurisprudence on any particular article.

There remain limitations, of course. It is sometimes the case, for example, that information sought is simply not included in the *Repertory* as a whole, meaning – obviously – that it is not to be found in the indexes. In this regard, however, the indexes play a potentially important role in assisting the editorial team responsible for compiling the substantive content of the *Repertory*. The indexes tend to reveal more quickly where lacunae exist in the body of the text. Such gaps can then be filled through the process of annual revision.

## Challenges of a multilingual publication

One particular challenge encountered during the publication of the *Repertory* was how to utilize the value added to the English version by the comprehensive indexes to the French and Spanish editions of the book. Compiling the actual content of the *Repertory* in French and Spanish – although laborious – was achieved relatively easily thanks to the availability of the texts of Appellate Body Reports in each official language of the WTO. The indexes, however, were a different matter. They had first to be translated, then reordered to correspond to alphabetical order in each language.

To facilitate the development of three different language versions, a decision was taken early on not to reorder the entire text of the volume. This had been a possibility because the English original was compiled in alphabetical order by subject, with the table of contents thus also in alphabetical order. But reordering the overall volume after translation would have been an enormous task, particularly in the light of the fact that the paragraph numbering system used for the indexes followed the sequential, alphabetical order of the extracts themselves. The decision not to reorder the book, however, meant that the alphabetical logic of the table of contents would be lost, rendering this a greatly less useful reference tool than it is in the English edition.

With respect to the indexes themselves, translation decisions were guided by the overall search for functional and stylistic equivalence (that is, concise style and precision in expressing interrelated ideas/concepts in subject indexes, and coherence in use of WTO terminology and references to jurisprudence). For instance, the conventional provision-referencing system in Spanish was adapted as far as possible to the concise system in English, from general to specific, using abbreviations, including some newly created to facilitate short reference (such as ‘AD 3.2’ instead of ‘*párrafo 2 del artículo 3 del Acuerdo Antidumping*’). (Some exceptions are discussed below.)

In order to fulfil the overall function of the text as a cross-referencing tool in Spanish and French:

- All the terminology in the indexes strictly adheres to that used in the original extracts cited in the *Repertory*, with the necessary adaptations in order to reflect established Spanish and French translations of rulings, agreements and other material included in the main part of the volume. For example, ‘precautionary principle’ was translated as ‘*principio de cautela o de precaución*’, so that the entry comprised the two equivalent terms used in relevant

texts in Spanish. This consideration was particularly important in the case of literal quotations.

- In cases where concepts were expressed with phrases, the emphasis put in the original on the first term of each entry (generally, as the main conceptual component for indexation) was maintained in the other languages as far as possible. This entailed the transposition (or change of grammatical category) of some terms in order to offer an adequate version in the target language within each context. For example, ‘subsequent practice, whether’ under ‘precedent’ was translated as ‘*práctica ulteriormente seguida o no*’, while ‘customary international law, whether’ under ‘precautionary principle’ was translated as ‘*derecho internacional consuetudinario, consideración o no como*’; and ‘GATS II and XVII distinguished’ was translated as ‘*AGCS II y XVII, distinción*’.

Most challenges in the translation were linked to conceptual and terminological divergences between English and the other languages. For instance:

- Synonymous or connected terms in English with no equivalent synonymous or terminological connection in Spanish for the relevant context (for example, an entry on ‘enforcement’, including a cross-reference to ‘implementation’) were omitted in Spanish in order to avoid repetition of the overarching term ‘*aplicación*’).
- There are some English terms with more than one possible translation in Spanish depending on the context (such as ‘claim’ used with the meaning of ‘complaint’ (‘*reclamación*’) or ‘allegation’ (‘*alegación*’); the lack of sufficient context often led to the need for clarification of the original, and in some cases, to corrections or further specifications in English).
- New abbreviations (see the example of concise style mentioned above) for three terms (*Convención de Viena* – Vienna Convention or VC; *Convenio de París* – Paris Convention or PC; *Órgano de Apelación* – Appellate Body or AB) were not acceptable under WTO and legal terminology conventions in Spanish. Such terms were therefore excluded from the list of abbreviations in the Spanish version.

The final alphabetical sorting and editing tasks were not completed by the translation team, but instead were left to the person who compiled the original English-language index, with checking by ABS lawyers. This required a good knowledge of French and Spanish by the indexer; but helped ensure the overall integrity of the final product.

## Building the *Repertory* online version

Reference books such as the *Repertory* are not designed to be read from cover to cover. Instead, users want specific information, and they want to find it quickly. When the WTO webteam started work on the online version of the *Repertory*, the priority was to find the best way to steer users towards the content of interest to them. One option would have been to use the table of contents and allow

WTO | Appellate Body Repertory of Reports and Awards 1995-2004 - Microsoft Internet Explorer

Address: [http://www.wto.org/english/tratop\\_e/dispu\\_e/repertory\\_e/repertory\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/repertory_e/repertory_e.htm)

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**DISPUTE SETTLEMENT: APPELLATE BODY**

## WTO Appellate Body Repertory of Reports and Awards 1995-2004

The Appellate Body Repertory is intended to serve as a source of information for those interested in the field of international trade law. It was initially developed as an internal research tool to assist the Appellate Body Secretariat in carrying out its duty to provide legal support to Appellate Body Members.

[Read the foreword](#)

The texts reproduced here do not have the legal standing of the original documents which are entrusted and kept at the WTO Secretariat in Geneva.

**Index by Subject** [back to top](#)

Examples: "burden of proof", "national treatment", "conditional appeal".

A	B	C	D	E	F	G	H	I	J	K	L
M	N	O	P	Q	R	S	T	U	V	W	XYZ

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**Index by Case** [back to top](#)

Cases are listed by short title, e.g. "Brazil – Aircraft".

users to browse to their area of interest. Some trials with users, however, showed this was not a good approach. The table of contents is (unusually) in alphabetical order (at least in English) and resembles an index; but is far less complete, and does not have the hierarchical logic found in the indexes. The main feedback was, 'If you have a more complete alphabetical list, why not use that instead of the table of contents?' Following this approach the subject index was given maximum prominence on the main *Repertory* page, as can be seen in the screen shot above.

Furthermore the *Repertory* has not one but several indexes: by subject, by case, and by Agreement or other instrument. Test users found this easy to understand as it corresponded well with their mindset. For example, lawyers specializing in the Agreement on Agriculture could find, article by article, jurisprudence on their subject. Conversely, students wanting information on a specific case, such as 'Brazil – Aircraft', could see at a glance how much material on this case was included in the *Repertory*, and what it was about. The subject index was more global, encompassing the entries for the other indexes.

Obviously the strength or weakness of this approach depends on the quality of the index itself. In this regard, the webteam was reassured by the fact that the index was comprehensive and completed by an experienced indexer,

and had been comprehensively reviewed by lawyers in the ABS.

### How the online index was built

The structure of the online index follows exactly that of the print version. Each paragraph in the body text has a paragraph number, assigned using a hierarchical dot-separated system, for example W.2.12.8. Each entry in the index links to one or more of paragraphs in the full text. In HTML terms this was set up using anchors (hidden marker tags). During the formatting of the body text, at each paragraph number, an anchor was inserted, consisting of that number. So paragraph W.2.12.18 has a tag `<a name="W.2.12.18 "></a>` next to it. This was done systematically for all paragraphs, regardless of whether or not there was an index entry pointing to them.

Once that was done, making links from the index to a specific point in the body text was a two-stage process. First, it was necessary to determine which page to link to, then within that, which anchor. To facilitate this, the body text was broken down into HTML pages based on the first part of the paragraph number, so a page called `w2_e.htm` contains all paragraphs whose number starts with `w.2`. When creating the link from the index, the linker would simply take the first two elements of the paragraph number to denote the page. So,

keeping the same example as before, the link was w2\_e.htm#w.2.12.8. (Note that the page naming convention follows that employed on the rest of the wto.org site: lower case, without the dots, and followed by \_e to denote English language. The same page in French would be called w2\_f.htm.) This process was easy to explain, but painstaking to execute, which made it a good candidate for outsourcing. This job was handled all manually, which, in turn, required a huge amount of checking. The webteam is examining ways of automating the process for future editions.

The WTO website has parallel content in English, French and Spanish. In general, the website is structured in such a way that it is easy to jump from one language to equivalent content in the other two. This works fine for the body text of the *Repertory*. Page w2\_e.htm has parallel content to page w2\_f.htm (French) and w2\_s.htm (Spanish). However, for the index itself we faced a challenge, because the index is alphabetical, and the terms do not fall under the same letters in the three languages. This forced us to break our normal convention, but this is a rather arcane problem and we expect that most users will not notice.

User feedback since we published the online version of the *Repertory* has been limited, but generally very positive.

## CD-ROM version

A CD-ROM version of the *Repertory* is in the works. Thanks to the low-tech approach we took to the web version, the CD-ROM edition was relatively simple to create. The links between the index and body text were all created as relative links, so provided the folder structure of the live site is replicated identically on the CD, all these links still work. As for the documents cited, they were copied from the Documents Online database onto the CD, again keeping the same folder structure as on the live site. A find and replace operation was sufficient to modify all these links so they work on the CD.

## Concluding comments: challenges for the future

Publication of the *Repertory* in three languages in both book and electronic form represents a substantial accomplishment for all involved. Its functionality is greatly improved by the addition of a comprehensive set of indexes in all three language versions. But the addition of these new tools presents further challenges as new editions of the *Repertory* are published each year. The greatest challenge is to minimize the degree to which material already processed needs to be revisited for each update.

At this stage, the publication team has been able to minimize the degree to which wheels have to be reinvented for the print version. This has been achieved by adopting, in consultation with our indexer, an underlying paragraph numbering system which facilitates annual additions to both the body of the volume and the indexes. Nevertheless – perhaps inevitably – some tasks are having to be completed for a second time.

Challenges also remain for the online edition, where the software tools used for compiling the original version limit

the degree to which the process can be automated. Overall, the process has been a learning one for all involved. We are optimistic that the difficulties encountered so far with the second edition will be entirely resolved by the time we start on the third!

## Notes

- 1 The *Repertory* is published in the three working languages of the WTO: English, French and Spanish. The English-language version is co-published by the WTO and Cambridge University Press. The French and Spanish-language versions are published by the WTO. Copies of all three language versions are available from the WTO bookshop online: <[https://secure.vtx.ch/shop/boutiques/wto\\_index\\_boutique.html](https://secure.vtx.ch/shop/boutiques/wto_index_boutique.html)>. The *Repertory* online version is available free of charge in all three languages on the WTO website:  
<[http://www.wto.org/english/tratop\\_e/dispu\\_e/repertory\\_e/repertory\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/repertory_e/repertory_e.htm)> (English);  
<[http://www.wto.org/french/tratop\\_f/dispu\\_f/repertory\\_f/repertory\\_f.htm](http://www.wto.org/french/tratop_f/dispu_f/repertory_f/repertory_f.htm)> (French);  
<[http://www.wto.org/spanish/tratop\\_s/dispu\\_s/repertory\\_s/repertory\\_s.htm](http://www.wto.org/spanish/tratop_s/dispu_s/repertory_s/repertory_s.htm)> (Spanish).
- 2 Panellists and members of the Appellate Body are not, technically speaking, 'judges'. The term is used in this article simply as a shorthand description.

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