1 RULE 20

1.1 Text of Rule 20

Commencement of Appeal

20. (1) An appeal shall be commenced by notification in writing to the DSB in accordance with paragraph 4 of Article 16 of the DSU and simultaneous filing of a Notice of Appeal with the Secretariat.

(2) A Notice of Appeal shall include the following information:

(a) the title of the panel report under appeal;
(b) the name of the party to the dispute filing the Notice of Appeal;
(c) the service address, telephone and facsimile numbers of the party to the dispute; and
(d) a brief statement of the nature of the appeal, including:

(i) identification of the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the panel;
(ii) a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying; and
(iii) without prejudice to the ability of the appellant to refer to other paragraphs of the panel report in the context of its appeal, an indicative list of the paragraphs of the panel report containing the alleged errors.

1.2 Rule 20(2)(d): Notice of Appeal - "statement of the nature of appeal"

1.2.1 The purpose of Rule 20(2)(d)

1. In *US – Countervailing Measures on Certain EC Products*, the Appellate Body rejected the argument by the United States that the Notice of Appeal serves a limited purpose as simply a formal trigger for initiating the appeal and stressed the importance of the Notice of Appeal as the means to allow the appellees to exercise their right of defence:

> "[O]ur previous rulings have underscored the important balance that must be maintained between the right of Members to exercise the right of appeal meaningfully and effectively, and the right of appellees to receive notice through the Notice of Appeal of the findings under appeal, so that they may exercise their right of defence effectively. Hence, we disagree with the contention of the United States here that the Notice of Appeal 'serves a limited purpose' as 'simply a formal trigger for initiating the appeal.' Indeed, if this were the only objective of the notice, our *Working Procedures* would have included only the first paragraph of Rule 20, which refers to commencement of an appeal through written notification to the Dispute Settlement Body and Appellate Body Secretariat. However, Rule 20 also prescribes additional requirements for commencing an appeal; it provides that the Notice of Appeal must include 'a brief statement of the nature of the appeal, including the allegations of errors in the issues of law covered in the panel report and legal interpretations developed by the panel.'[1] The notification under Rule 20(1) serves as the 'trigger' to which the United States refers. The additional requirements under Rule 20(2) serve to ensure that the appellee also receives notice, albeit brief, of the 'nature of the appeal' and the 'allegations of errors' by the panel."[2]

1.2.2 The distinction between claims and arguments

2. In *US – Shrimp*, the Appellate Body upheld the Notice of Appeal against claims that it was "vague and cursory". The Appellate Body found that, although the references to the panel's findings were "terse", there was no mistaking which findings or interpretations of the panel the Appellate Body was asked to review:

> "The *Working Procedures for Appellate Review* enjoin the appellant to be *brief* in its notice of appeal in setting out 'the nature of the appeal, including the allegations of errors'. We believe that, in principle, the 'nature of the appeal' and 'the allegations of errors' are sufficiently set out where the notice of appeal adequately identifies the findings or legal interpretations of the Panel which are being appealed as erroneous. The notice of appeal is not expected to contain the reasons why the appellant regards those findings or interpretations as erroneous. The notice of appeal is not designed to be a summary or outline of the arguments to be made by the appellant. The legal arguments in support of the allegations of error are, of course, to be set out and developed in the appellant's submission."[3]

3. In *Chile – Price Band System*, Chile argued that the Panel had erred in choosing to examine Argentina's claim under Article 4.2 of the Agreement on Agriculture before examining its claim under Article II:1(b) of the GATT 1994. Argentina raised a procedural objection, alleging that Chile introduced this point for the first time in its appellant's submission, when, according to Argentina, Chile should have included this "allegation of error" in its Notice of Appeal pursuant to Rule 20(2)(d). The Appellate Body referred to the established distinction between claims and legal arguments in the context of Article 6.2 of the DSU, and considered that:

> "In our view, this distinction between claims and legal arguments under Article 6.2 of the DSU is also relevant to the distinction between 'allegations of error' and legal

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[1] (*footnote original*) The United States' comparison to the lack of notice provided to a cross-appellee is not appropriate because the *Working Procedures* do not impose any notification requirements under such circumstances.

[2] Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 62. See also Appellate Body Report, *US – Offset Act (Byrd Amendment)*, para. 200.

[3] Appellate Body Report, *US – Shrimp*, para. 95.

> arguments as contemplated by Rule 20 of the *Working Procedures.* Bearing this distinction in mind, we do *not* agree with Argentina that Chile's arguments regarding the order of analysis chosen by the Panel amount to a separate 'allegation of error' that Chile *should have*—or *could have*—included in its Notice of Appeal. In fact, we do not see, nor has Argentina explained, what *separate* 'allegation of error' could have been made, or what legal basis for such 'allegation of error' there could have been. Rather than making a separate 'allegation of error', Chile has, in our view, simply set out a *legal argument* in support of the issues it raised on appeal relating to Article 4.2 of the *Agreement on Agriculture* and Article II:1(b) of the GATT 1994.[4]"[5]

4. In *US – Countervailing Measures on Certain EC Products*, the Appellate Body contrasted the requirements of Rule 20(2)(d), regarding the Notice of Appeal, with the requirements of Rule 21(2):

> "[B]oth the Notice of Appeal and the appellant's submission must set out the allegations of errors; but, the appellant's submission must be more specific in this regard. The appellant's submission must be precise as to the grounds of appeal, the legal arguments which support it, and the provisions of the covered agreements and other legal sources upon which the appellant relies."[6]

5. In *US – Countervailing Duty Investigation on DRAMS*, Korea alleged that the United States' Notice of Appeal did not identify the alleged errors in the issues of law covered in the panel report and legal interpretations developed by the Panel. The Appellate Body disagreed. The Appellate Body considered that although Korea was correct that the United States' Notice of Appeal "simply tracks the Panel's finding", it was sufficient for purposes of Rule 20(2)(d)[7]

1.2.3 The consequence of failing to meet requirements of Rule 20(2)(d)

1.2.3.1 General rule: claim of error excluded from scope of appeal

6. In *EC – Bananas III*, the Appellate Body, having found that the European Communities had not properly indicated, in its Notice of Appeal, that it was appealing one particular Panel finding, decided to exclude that particular finding from the scope of the appeal:

> "In our view, the claims of error by the European Communities set out in paragraphs (c) and (d) of the Notice of Appeal do not cover the Panel's finding in paragraph 7.93 of the Panel Reports. The finding in that paragraph explicitly deals with Ecuador's right to invoke Article XIII:2 or XIII:4 of the GATT 1994, given that Ecuador acceded to the WTO *after* the *WTO Agreement* entered into force and *after* the tariff quota for the BFA countries had been negotiated and inscribed in the EC Schedule to the GATT 1994. There is no specific mention of this Panel finding in either the Notice of Appeal or in the main arguments of the appellant's submission by the European Communities. Therefore, Ecuador had no notice that the European Communities was appealing this finding. For these reasons, we conclude that the Panel's finding in paragraph 7.93 of the Panel Reports should be excluded from the scope of this appeal."[8]

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[4] (*footnote original*) Indeed, Chile suggests in paragraph 34 of its appellant's submission that, had the Panel begun with Article II:1(b), it would "most likely have avoided the error of inventing a new definition of 'ordinary customs duties' which has no apparent basis in the text of Article II:1(b)." Thus Chile is in fact making a legal argument in support of a substantive claim under Article II:1(b).

[5] Appellate Body Report, *Chile – Price Band System*, para. 182.

[6] Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 59. See also Appellate Body Report, *Brazil – Taxation*, para. 5.189.

[7] Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS*, para. 97.

[8] Appellate Body Report, *EC – Bananas III*, para. 152.

7. In *US – Offset Act (Byrd Amendment)*, the Appellate Body stated that "if an appellee has not received sufficient notice in the Notice of Appeal that a particular claim will be advanced by the appellant, that claim normally will be excluded from the appeal".[9]

8. In *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, the Appellate Body observed that Rule 20(2)(d) "does not stipulate what consequences flow from a failure to meet its requirements", and stated that in "assessing the potential consequences", we are mindful of the due process function that this Rule fulfills.[10] In that case, the Appellate Body ultimately found that certain defects in the Notice of Appeal did "not give rise to procedural detriment of the kind that would warrant the dismissal" of the European Communities' appeal.[11]

9. In *EC – Fasteners (China)*, the European Union argued that China had raised a claim not mentioned in China's Notice of Other Appeal. The Appellate Body agreed, and stated that:

> "Rules 20(2)(d)(ii) and 23(2)(c)(ii)(B) of the *Working Procedures* require a participant to include in its Notice of Appeal or Notice of Other Appeal 'a list of the legal provision(s) of the covered agreements that the panel is alleged to have erred in interpreting or applying'. The Appellate Body has recognized the due process function that a Notice of Appeal fulfils, emphasizing:
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> > … the important balance that must be maintained between the right of Members to exercise the right of appeal meaningfully and effectively, and the right of appellees to receive notice through the Notice of Appeal of the findings under appeal, so that they may exercise their right of defence effectively.[12]
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> If an appellee is not notified of the claims raised by the appellant or other appellant in the Notice of Appeal or Other Appeal, those claims are not properly within the scope of the appeal, and the Appellate Body will not make findings thereon.[13] China failed to list Article 11 of the DSU in its Notice of Other Appeal with regard to the confidential treatment of the identity of the complainants and supporters of the complaint, and we therefore find that this claim under Article 11 is not properly before us. Thus, absent a claim under Article 11 of the DSU, we are not called upon to evaluate whether the Panel made an objective assessment of the facts or to examine the Panel's weighing of the evidence before it."[14]

10. In *US – Large Civil Aircraft (2nd complaint)*, the Appellate Body found that the US Notice of Other Appeal sufficiently identified an allegation of error and, consequently, rejected the EU argument that the claim at issue was not properly within the scope of the appeal.[15] However, the Appellate Body stated that:

> "Nonetheless, we must caution that paragraph 3 of the Notice of Other Appeal is drafted at a level of vagueness and imprecision that makes it considerably difficult for the appellee, the third participants, and the Appellate Body to understand easily the full scope of the United States' claim. Understanding the full scope of an appellant's claim should not require such effort. Drafting the Notice of Appeal or Notice of Other Appeal with greater precision reduces the risk of procedural objections and possible

[9] Appellate Body Report, *US – Offset Act (Byrd Amendment)*, para. 206.
[10] Appellate Body Reports, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, para. 280.
[11] Appellate Body Reports, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, para. 283.
[12] (*footnote original*) Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 62.
[13] (*footnote original*) See Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 72; Appellate Body Reports, *EC – Bananas III (Article 21.5 – Ecuador II)/EC – Bananas III (Article 21.5 – US)*, para. 285; and Appellate Body Report, *Japan – Apples*, paras. 124-128.
[14] Appellate Body Report, *EC – Fasteners (China)*, para. 582.
[15] Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, paras. 679-688.

> dismissal of a claim because it does not comply with the requirements of Rule 20 or 23 of the *Working Procedures*."[16]

1.2.3.2 Some exceptions

1.2.3.2.1 Claim of error relating to jurisdiction / terms of reference

11. In *US – Offset Act (Byrd Amendment)*, the Appellate Body stated that:

> "[T]he issue of a panel's jurisdiction is so fundamental that it is appropriate to consider claims that a panel has exceeded its jurisdiction even if such claims were not raised in the Notice of Appeal."[17]

12. In *US – Continued Zeroing*, the United States requested that the Appellate Body find that the panel made findings on certain claims that were outside of its terms of reference. The Appellate Body addressed the merits of the United States' claim of error, notwithstanding that the United States "did not make this request in its Notice of Other Appeal, but only included this request subsequently in a footnote in its other appellant's submission".[18]

1.2.3.2.2 Filing of clarifications, further particulars, or supplementary or amended Notices of Appeal

13. In *EC – Sardines*, Peru requested a preliminary ruling from the Appellate Body excluding four of the nine points raised in the European Communities' Notice of Appeal because they allegedly did not meet the requirements of Rule 20(2)(d). The European Communities subsequently withdrew its original Notice of Appeal (pursuant to Rule 30) conditionally on the right to file a new Notice of Appeal, and then filed a new Notice of Appeal on the same day.[19]

14. In *US – Countervailing Measures on Certain EC Products*, the European Communities filed a request for a preliminary ruling alleging that the United States' Notice of Appeal was not in conformity with Rule 20(2)(d), and requesting that the Appellate Body order the United States "immediately to file further and better particulars to its Notice of Appeal identifying the precise legal findings and legal interpretations that it is challenging". The United States responded that the European Communities' request was unfounded. The Appellate Body invited the United States to identify the precise findings and interpretations of the panel that were alleged, in the Notice of Appeal, to constitute errors. The United States submitted a letter quoting in full the paragraphs of the panel report to which it had merely referred by paragraph number in the Notice of Appeal. The United States also provided information as to legal errors allegedly committed by the panel.[20] The Appellate Body stated that:

> "In conducting our analysis, we will examine both the Notice of Appeal and the letter of 13 September 2002 supplementing the Notice of Appeal. Although the *Working Procedures* do not expressly provide for the filing of clarifications or further particulars or supplementary or amended Notices of Appeal, we consider it appropriate, in the particular circumstances of this case, to examine both documents with a view to giving 'full meaning and effect to the right of appeal.' We note in particular that the additional document was filed by the United States in response to our invitation to do so, based in part on a request for additional particulars filed by the European Communities. Moreover, the additional document was filed shortly after the filing of the Notice of Appeal (three days). Finally, we note that the European Communities referred to both the Notice of Appeal and the letter of 13 September 2002 in its arguments on this issue."[21]

15. In 2005, the Appellate Body amended the Working Procedures by introducing Rule 23*bis* ("Amending Notices of Appeal").

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[16] Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 686.
[17] Appellate Body Report, *US – Offset Act (Byrd Amendment)*, paras. 206-208.
[18] Appellate Body Report, *US – Continued Zeroing*, fn 555.
[19] Appellate Body Report, *EC – Sardines*, paras. 11-13.
[20] Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, paras. 52-55.
[21] Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 64.

1.2.3.2.3 Absence of prejudice resulting from formal deficiencies

16. In *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, the Appellate Body found that although there were certain formal deficiencies in the European Communities' Notice of Appeal, the United States had suffered no prejudice from this:

> "The European Communities' Notice of Appeal identifies seven distinct legal issues. However, it makes no mention of any paragraph number of the US Panel Report to which the issues appealed relate. Nonetheless, we consider that the United States was in a position to discern the issues raised in the European Communities' Notice of Appeal. The European Communities has provided a brief description of each legal issue it raises on appeal. The fact that the United States has provided a comprehensive appellee's submission responding to all the issues of which the European Communities seeks review, suggests to us that the United States was, in fact, in a position to identify the Panel findings the European Communities is appealing, and did not suffer prejudice from the failure of the European Communities to provide a list of relevant paragraphs of the US Panel Report in its Notice of Appeal. Furthermore, we note that, in response to questioning at the oral hearing, the United States confirmed that it was not alleging that it had been prejudiced by the absence of paragraph numbers of the US Panel Report in the European Communities' Notice of Appeal. We therefore consider that, with respect to items (a)–(g) set out in paragraph 2 of the Notice of Appeal, the United States was in the position to 'know the case [it had] to meet', and was thus placed on notice of the issues raised in the European Communities' Notice of Appeal. The formal defects in the Notice of Appeal thus do not give rise to procedural detriment of the kind that would warrant the dismissal of the European Communities' appeal. We therefore *find* that the deficiencies in the European Communities' Notice of Appeal do not lead to dismissal of the European Communities' appeal."[22]

1.2.4 Potential deficiencies in a Notice of Appeal

1.2.4.1 Use of 'for example'

17. In *US – Upland Cotton*, the Appellate Body considered that the use of the words 'for example' in the US Notice of Appeal were insufficient to bring certain non-specified findings within the scope of the appeal:

> "We acknowledge that the wording of paragraph 10 of the United States' Notice of Appeal (and, in particular, the use of the words 'for example') suggests that the findings listed in this paragraph are simply *examples* of findings challenged in connection with Article 12.7 of the DSU, and that the United States' claim of error under Article 12.7 extends to other Panel findings. In other words, paragraph 10 purports to provide an illustrative rather than exhaustive list of the findings that the United States intends to challenge under Article 12.7 of the DSU. However, the fact that paragraph 10 purports to provide an illustrative list is not conclusive as to whether the Notice of Appeal contains a sufficient reference to the Panel's findings described in paragraph 493 above for us to conclude that these findings are included in the United States' appeal. The significance of terms such as 'for example' is likely to depend on the particular claim in question and the particular context in which the term is used in a given appeal. In our view, the United States' Notice of Appeal did not provide adequate notice to Brazil, as contemplated by Rule 20(2) of the *Working Procedures for Appellate Review* (the '*Working Procedures*'), that the United States intended to make a claim of error under Article 12.7 of the DSU with respect to the Panel's findings described in paragraph 493 above. We therefore decline to rule on these findings in connection with Article 12.7 of the DSU."[23]

[22] Appellate Body Report, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, para. 283.
[23] Appellate Body Report, *US – Upland Cotton*, para. 495.

1.2.4.2 Failure to clearly allege procedural errors by a panel

18. In *US – Offset Act (Byrd Amendment)*, the Appellate Body considered that generic statements in a Notice of Appeal do not give the appellees adequate notice of the nature of the appeal and the allegations of errors made by the panel. The Appellate Body made the following observations regarding allegations of 'procedural errors' by a panel:

> "We do not agree with the United States' contention that the first numbered paragraph of the United States' Notice of Appeal, referring generally to the Panel's failure properly to interpret Article 18.1 of the *Anti-Dumping Agreement* and Article 32.1 of the *SCM Agreement*, 'plainly covers' a claim that the Panel exceeded its terms of reference. As we have said, the Notice of Appeal 'serve[s] to ensure that the appellee also receives notice, albeit brief, of the 'nature of the appeal' and the 'allegations of errors' by the panel.' [24] Generic statements such as that relied upon by the United States cannot serve to give the appellees adequate notice that they will be required to defend against a claim that the Panel exceeded its terms of reference. This is particularly so for procedural errors; it can be especially difficult to discern a claim of procedural error by a panel from general references to panel findings or from extracts of a panel report, because allegations of procedural error by a panel may not necessarily be raised until the appellate stage."[25]

1.2.4.3 Failure to clearly allege a violation of Article 11 of the DSU by a panel

19. In *US – Countervailing Measures on Certain EC Products*, the Appellate Body established that a claim of error by a panel under Article 11 of the DSU is only possible in the context of an appeal and thus it needs to be included in the Notice of Appeal:

> "A *claim* of error by a panel under Article 11 of the DSU is possible only in the context of an appeal. By definition, this *claim* will not be found in requests for establishment of a panel, and panels therefore will not have referred to it in panel reports. Accordingly, if appellants intend to argue that issue on appeal, they must refer to it in Notices of Appeal in a way that will enable appellees to discern it and know the case they have to meet.
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> Accordingly, we do not believe that the European Communities can be said to have been notified that the United States intended to argue on appeal that the Panel failed to act consistently with Article 11 of the DSU, and, consequently, we consider that the issue of the Panel's compliance with Article 11 of the DSU is not properly before us in this appeal."[26]

20. In *Japan – Apples*, the Appellate Body stressed that notice of an Article 11 claim cannot be assumed merely because there is a challenge to a panel's analysis of a substantive provision of a WTO agreement.

> "By referring to the Panel's alleged failure to comply with Article 11 of the DSU only in the context of Article 2.2, Japan did not enable the United States to 'know the case [it had] to meet' [27] as to the Article 11 claim related to Article 5.1 of the *SPS Agreement*. The Appellate Body has consistently emphasized that due process requires that a Notice of Appeal place an appellee on notice of the issues raised on appeal. It is this concern with due process, reflected in Rule 20 of the *Working Procedures*, that underlay the Appellate Body's ruling on the sufficiency of the Notice of Appeal in *US – Countervailing Measures on Certain EC Products*.
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> Japan acknowledged during the oral hearing that it did not give the United States notice of its Article 11 claim specifically with respect to the Panel's analysis under

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[24] (*footnote original*) Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 62.

[25] Appellate Body Report, *US – Offset Act (Byrd Amendment)*, para. 200.

[26] Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 74. See also Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, fn 60 to para. 71.

[27] Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 74.

> Article 5.1 of the *SPS Agreement*. Japan claimed, however, that 'since we raised the claim under Article 5.1 of the *SPS Agreement*, this naturally involved some factual issues and ... we can assume that the United States was notified' as to the related Article 11 claim. We disagree. … the Appellate Body determined in *US – Countervailing Measures on Certain EC Products* that Article 11 claims are distinct from those raised under substantive provisions of other covered agreements. It follows from this distinction that notice of an Article 11 challenge cannot be 'assumed' merely because there is a challenge to a panel's analysis of a substantive provision of a WTO agreement. Rather, an Article 11 claim constitutes a 'separate 'allegation of error''[28] that must be included in a Notice of Appeal. We therefore reject Japan's assertion that an Article 11 challenge is only a 'legal argument' underlying the issues raised on appeal.[29]"[30]

21. In *US – Steel Safeguards*, the Appellate Body further emphasized that a claim under Article 11 of the DSU must not be vague or ambiguous but stand by itself and be substantiated, as such, and not as subsidiary to another alleged violation:

> 'A challenge under Article 11 of the DSU must not be vague or ambiguous. On the contrary, such a challenge must be clearly articulated and substantiated with specific arguments. An Article 11 claim is not to be made lightly, or merely as a subsidiary argument or claim in support of a claim of a panel's failure to construe or apply correctly a particular provision of a covered agreement. [31] A claim under Article 11 of the DSU must stand by itself and be substantiated, as such, and not as subsidiary to another alleged violation.
>
> The United States' arguments on Article 11 of the DSU are mentioned only in passing in its appellant's submission. Nowhere do we find a clearly articulated claim or specific arguments that would support such a claim. Moreover, the United States did not clarify its challenge under Article 11 of the DSU during the oral hearing. In sum, the United Stated has not substantiated its claim that the Panel acted inconsistently with Article 11 of the DSU, and this claim must therefore fail.'[32]

1.2.4.4 Rule 20(2)(d)(iii): shortcomings in references to paragraph numbers of panel report

22. In *US – Countervailing Measures on Certain EC Products*, the Appellate Body emphasized that, generally, a Notice of Appeal that simply refers to the paragraph numbers found in the "Conclusions and Recommendations" section of a panel report, or that simply quotes them in full, is insufficient to provide adequate notice of the allegations of error on appeal. In this case, however, as the section in question was particularly detailed, the Appellate Body considered that the Notice of Appeal was adequate in this respect:

> "We observe that, in coming to these conclusions, we have before us a rather unusual example of the 'Conclusions and Recommendations' section of a panel report. In most panel reports, the 'Conclusions and Recommendations' section is relatively brief,

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[28] (*footnote original*) Appellate Body Report, *Chile – Price Band System*, para. 182, quoting Rule 20(2)(d) of the *Working Procedures*. In this respect, we note the distinction between *claims* and *arguments* in the context of determining whether claims have been properly identified in the request for the establishment of a panel (Appellate Body Report, *EC – Bananas III*, paras. 141-143; Appellate Body Report, *EC – Hormones*, para. 156), and we affirm the Appellate Body's observation in *Chile – Price Band System* that "this distinction between claims and legal arguments under Article 6.2 of the DSU is also relevant to the distinction between 'allegations of error' and legal arguments as contemplated by Rule 20 of the *Working Procedures*." (Appellate Body Report, para. 182)

[29] (*footnote original*) Japan's response to questioning at the oral hearing. As discussed, *supra*, at paragraph 123, the Appellate Body rejected a similar contention by the appellant in *US – Countervailing Measures on Certain EC Products*. (Appellate Body Report, paras. 73-74) The Appellate Body made a similar observation in *US – Steel Safeguards*. (Appellate Body Report, para. 498)

[30] Appellate Body Report, *Japan – Apples*, paras. 126-127.

[31] (*footnote original*) The United States further clarified during the oral hearing that if we were to conclude that the Panel erred in its findings on Article 4.2(b) of the *Agreement on Safeguards*, it would not be necessary for us to reach its claim under Article 11.

[32] Appellate Body Report, *US – Steel Safeguards*, paras. 498-499.

> setting out findings in summary fashion. Detailed legal interpretations and reasoning upon which panels rely are usually found only in the 'Findings' sections of panel reports. In this case, however, the Panel's 'Conclusions and Recommendations' are more detailed than usual. Paragraphs 8.1(a)–8.1(d) of the Panel Report include, not only the Panel's findings, but also certain of the reasons leading to those findings. Hence, in this case, it is possible, by reading the 'Conclusions and Recommendations' section from the Panel Report, to discern alleged errors of law appealed by the United States. We emphasize, however, that generally, a Notice of Appeal that refers simply to the paragraph numbers found in the 'Conclusions and Recommendations' section of a panel report, or that quotes them in full, will be insufficient to provide adequate notice of the allegations of error on appeal, and, hence, will fall short of the requirements set out in Rule 20(2)(d) of the *Working Procedures*."[33]

23. In *US – Large Civil Aircraft (2nd complaint)*, the Appellate Body noted that the paragraphs of the Panel Report cited in the United States' Notice of Other Appeal did not correspond to the sections of the Panel Report where the Panel made the error alleged by the United States. The Appellate Body stated:

> "Nevertheless, we recall that Rule 23(2)(c)(ii)(C) of the Working Procedures requires an other appellant to provide an 'indicative list' of the paragraph numbers of the panel report containing the alleged error(s) and that this list is 'without prejudice to the ability of the other appellant to refer to other paragraphs of the panel report in the context of its appeal'. The failure to provide a complete and accurate list of paragraph numbers covered by the allegation of error is not by itself a basis to reject a claim.[34]"[35]

24. In *US – Tuna II (Mexico) (Article 21.5 – US)*, the Appellate Body noted that Mexico's Notice of Appeal failed to identify an indicative list of the paragraphs of the Panel Reports containing the alleged errors, nor the list of the legal provisions of the covered agreements that the Panels were alleged to have erred in interpreting or applying, as required under Rules 20(2)(d)(iii) and 20(2)(d)(ii), respectively. The Appellate Body then recalled its prior findings that took due process considerations into account in assessing whether there was a violation of the requirements of Rule 20(2)(d), and concluded that, in this case, Mexico's Notice of Appeal sufficiently identified the alleged errors.[36]

1.2.5 Conditional appeal

25. In *China – Rare Earths*, the Appellate Body declined China's request to reject the United States' Notice of Appeal due to its "conditional" nature. The Division considered that its jurisdiction to hear the United States' appeal was validly established given that the United States' Notice of Appeal conformed to the requirements of Rule 20 of the Working Procedures. Such jurisdiction was not, in the opinion of the Division, affected by the possibility that it might not need to rule on the issues raised by the United States in the event that the scenarios identified by the United States in its Notice of Appeal were to materialize.[37]

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[33] Appellate Body Report, *US – Countervailing Measures on Certain EC Products*, para. 70.
[34] (*footnote original*) See *Appellate Body Reports, EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, paras. 279 and 283, where the Appellate Body refused to dismiss a claim of the European Communities, even though the Notice of Appeal did not provide a list of the legal provisions of the covered agreements that the panel was alleged to have erred in interpreting or applying, or an indicative list of the paragraphs of the panel report containing the alleged errors.
[35] Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 688.
[36] Appellate Body Report, *US – Tuna II (Mexico) (Article 21.5 – US)*, paras. 6.310-6.313.
[37] Appellate Body Reports, *China – Rare Earths*, paras. 1.30-1.31, and Annex 4.