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**Interview of James Bacchus
conducted by Rosine Plank-Brumback
on June 10, 2009**

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1 **Rosine Plank-Brumback:** This is an interview of James Bacchus for an oral history of the
2 international trade regime which is being compiled by the Institute of International Economic
3 Law of Georgetown University Law Center. The date is Wednesday, June 10, 2009. It's a sunny
4 day in Washington, DC. We're in the law offices of Mr. Bacchus. I am Rosine Plank-Brumback,
5 who has the pleasure of conducting this interview. Thank you so much, Mr. Bacchus, for
6 participating in this project and giving us your valuable time. Your experiences as an assistant to
7 USTR [(Office of the) United States Trade Representative] Reubin Askew, as a two-term
8 member and trade whip in the US House of Representatives, as a founding original member and
9 chair of the WTO [World Trade Organization] Appellate Body—as well as being a pro-trade
10 advocate—are of enormous value to scholars and researchers tracing the evolution of the
11 international trade regime and also to government officials and diplomats for formulating future

12 policy. During your eight-year tenure at the Appellate Body, that body issued rulings on trade
13 disputes relating to goods, services, and intellectual property. Those disputes covered things like
14 alcohol, agricultural price bands, aircraft, asbestos, automobiles. Those are just the As, then we
15 move to the Bs, bananas, bed linens, blouses, and so on; footwear, lamb, patents, poultry,
16 sardines, shrimp, steel, etc.

17 To begin this interview, I would like you to please provide some information on your personal
18 background and your career history and then we'll move to your recollections of your time at
19 USTR, Congress and at the Appellate Body. I usually start by asking an interviewee to recount
20 where he or she was born and raised and where you went to university, but I've had a look at
21 your book *Trade and Freedom*,¹ so I know already you were born in Nashville, Tennessee, raised
22 in Florida, and you have history degrees from Vanderbilt and Yale. So what is it about the waters
23 of the Cumberland River that destined you and Mickey Kantor for the USTR and involvement in
24 the GATT [General Agreement on Tariffs and Trade] and the WTO?

25 **James Bacchus:** I think Cordell Hull may have put something in those waters to encourage all
26 those who followed him to be free-traders; it certainly had that effect on me. That part of
27 Tennessee is a place where farmers and small manufacturers have always looked to the rivers
28 and the waters, and to overseas, for their livelihood, and it's only natural that someone from that
29 neck of the woods would look at the world in the same way. And of course, not only was I born
30 in Tennessee but I grew up in Florida. Florida is a crossroads for the hemisphere and
31 increasingly for the entire world. It is by nature a trading state. Goods and services flow in and
32 out of Florida every day—fourteen ports—and then there are a lot of aspects of world trade that

¹ James Bacchus, *Trade and Freedom*, Cameron May (2004).

33 aren't even thought of as trade. Tourism, for example, is a service. It's an export; it's simply that
34 people from overseas show up and hand you the money personally. Anyone with that
35 background is likely to be inclined to think that we should engage in trade.

36 Furthermore, I'm from that part of Florida that includes the Kennedy Space Center. In the
37 Congress, I represented Cape Canaveral and the Kennedy Space Center and I worked as much on
38 the space program as I did on international trade while I was in the Congress. Part of the
39 enjoyment of that was that, in the aftermath of every shuttle mission, the shuttle astronauts would
40 come to see me in my office in Washington, in Congress, and present me with some memento of
41 the mission and talk to me about what they had done. And, to a person, they always said that
42 when they were up in space looking down on the Earth they didn't see all those lines on the map
43 that we human beings had drawn there. Those lines are artificial. The world really is one place.
44 Adam Smith taught us long ago that the extent of the market place is the only limit on the
45 division of labor. The broader the reach of the market place, the more we can divide and
46 subdivide the division of labor, which of course is the very definition of trade. Trade is by
47 definition a division of labor. As the world has turned, the extent of the market place has become
48 increasingly worldwide and the only reasons—given the death of distance—not to trade with
49 others in other parts of the world are political. They are reasons imposed by those artificial lines
50 we have drawn on the map.

51 **Plank-Brumback:** Speaking of political lines, what was your early work as an aide to Governor
52 Askew in Tallahassee? You've written that—how did you shape the laws and ways of Florida?

53 **Bacchus:** I had been a youthful journalist in Florida. I went to work for the *Sanford Herald* when
54 I was fourteen, and I went to work for the *Orlando Sentinel* when I was nineteen. I worked for

55 the *Sentinel* in the summers and vacations when I was an undergraduate at Vanderbilt; and then
56 later, in between my graduation from Vanderbilt and my stint in the army. And then between my
57 release from active duty and my time at Yale, I was a working reporter, but I was a pretty young
58 reporter even though I was adventurous. And I was fortunate in being able to cover politics at a
59 young age on a statewide basis and then also cover events in Washington as well.

60 I was a reporter in Washington, for example, for the *Sentinel* when I was twenty-two. When I
61 was twenty, there was a statewide governor's race in Florida and there was also a statewide
62 Senate race. I was working for the paper in the summer between my junior and senior years at
63 Vanderbilt. The paper wanted to encourage me to return after graduation by allowing me to
64 cover those statewide races, but I was very young, and they didn't want to risk having me cover
65 anyone who truly mattered. So they sent me out to cover two politicians who didn't matter
66 because they were such dark horses. One of them was a fellow running for the Senate named
67 Lawton Chiles, who was in the crazy act of walking across the state. "Walkin' Lawton" of course
68 was elected to the Senate, served eighteen years, and later served eight years as Governor. I
69 walked with Lawton Chiles. And the other dark horse candidate I was sent out to cover was an
70 obscure state senator from Pensacola named Reubin O'Donovan Askew. He had the crazy idea
71 that Florida should stand up for civil rights, and he was also in favor of tax reform and
72 investments in public education and protecting the environment, and he had a lot of other radical
73 ideas. So I covered Reubin Askew.

74 **Plank-Brumback:** Do you think your coverage helped him get elected?

75 **Bacchus:** I don't know about that, but I covered him in his race, and then I covered him a bit in
76 Tallahassee in between my educational stints. By the time 1974 rolled around, I was at Yale. I

77 had finished my master's degree in history. I had done all my course work for the doctorate and
78 was working on my dissertation, but it was the Watergate year and I had this compelling desire
79 to serve and this sense of obligation as a citizen. I wanted to do something that would make a
80 difference. One of my classmates asked me, "If you could do anything, what would you do?"
81 And I said, "Well, I greatly admire this man named Reubin Askew, who is Governor of Florida,
82 is running for re-election, and I would like to help him." So my friend said, "Well, why don't
83 you let him know that?" So I sent a letter to Askew's press secretary in the Governor's office and
84 told him I had a confession to make. Like Will Rogers, I said, I'm not a member of any
85 organized political party. I'm a Democrat, I believe in what Reubin Askew is doing and I would
86 like to help him get re-elected. So I was hired to work in his re-election campaign as a speech
87 writer. I imagined that I would be joining a platoon of speech writers, a think tank of sorts. I
88 arrived in Tallahassee and discovered that I was the speech writer. Two weeks after I arrived, the
89 press secretary—who had hired me—decided he was going to seek elected office himself. He
90 resigned, and at the age of twenty-five I became the press secretary of the Governor's re-election
91 campaign and his chief speech writer in his re-election campaign. He was already Governor, so
92 he had to run the state while he campaigned. I traveled with him and very quickly I became the
93 conduit between Governor Askew and the rest of the state government. I was also someone who
94 worked seven days a week, twenty-four hours a day, and so I very quickly became useful to him
95 in a lot of different ways. When he was re-elected I decided not to return to Yale to finish my
96 doctorate; instead I stayed and worked with him on the Governor's staff and eventually went to
97 law school there in Tallahassee while I did.

98 I did all kinds of things for Governor Askew during that time. Among other things, he was in the
99 midst of transforming Florida from a sleepy backward southern state into a major modern trading

100 state and we—here I get around finally to answering your question—we began changing the laws
101 of Florida to encourage international economic development. We created free trade zones. We
102 established opportunities for international banking. The Governor led trade missions to other
103 countries. We became more and more engaged in trying to add value-added in the Florida
104 economy through development of both imports and exports. And I became more and more
105 interested in trade. After Askew left the Governor’s office, he and I joined the same small law
106 firm in Miami, a firm called Greenberg Traurig. At the time, the firm had about fifty lawyers.
107 I’m with the firm again today; we have I think 1,850 lawyers now. But soon after I was admitted
108 to the bar, Askew was asked by President Carter to succeed Bob Strauss as US Trade
109 Representative. I came to Washington with him as his Special Assistant. The day I walked into
110 USTR, a lawyer named Bob Cassidy handed me a book. He said, “This is something called the
111 GATT; you ought to read this.” That was the first time. The rest, so to speak, is history.

112 **Plank-Brumback:** What made you decide to go to law school?

113 **Bacchus:** I was the youngest aide on the Governor’s staff, which, in retrospect, was a pretty
114 young staff. I was twenty-five when I went to work for him, and I had a lot of ideas about how
115 we ought to help the people of Florida. I had a lot of legislative and other suggestions about
116 appropriate governance for the state. Askew encouraged me and relied on me, in retrospect, to an
117 amazing extent. [laughter] Now I know how young I was. But frequently we would be discussing
118 issues with the Governor—those of us who were his aides— and I would advocate one thing or
119 another and the lawyers would say, “We can’t do that.” I replied, “Why not?” And they always
120 said, “Well, you’re not a lawyer; you wouldn’t understand.” As much as anything else, I went to
121 law school to eliminate that argument. After getting the law degree, I went on advocating the
122 same things I had always advocated, but no one ever said that to me again. That is a bit of an

123 overstatement, but that was fundamentally why I made the decision. I thought it would get me a
124 better opportunity to serve. I had decided by that time that I wouldn't be returning to Yale to
125 finish my doctorate and I would not be pursuing a career as a history professor, which is what I
126 had originally planned. I had also decided not to go back and be a journalist. There are people in
127 journalism who have never forgiven me for that. I recall the executive editor of the *Orlando*
128 *Sentinel* telling me, when I was a sitting member of the Congress, "Jim, you could have been
129 somebody." But all in all I'm happy I got the law degree. I went to law school at Florida State
130 University, two blocks from the Capitol; continued to work in the Governor's office during my
131 first year in law school; and worked pretty much for free during my second year when I left the
132 staff officially because I was editor-in-chief of the law review.

133 Once you work for Reubin Askew you always work for Reubin Askew. It doesn't matter if you
134 are actually on the payroll. He still calls on me. I remember—I'll tell you an anecdote from the
135 Appellate Body because Askew is my mentor and of course he was a great trader himself and
136 USTR and a great champion of trade. To the extent that I gave any thought to the Appellate
137 Body when we were creating the WTO, I thought that someone like Reubin Askew would be on
138 the Appellate Body. It never occurred to me that it might be me. All the other members of the
139 Appellate Body knew of my great affection for Askew. There was a time, several years into our
140 time together in Geneva, when the seven of us were in deliberations—an exchange of views on
141 an important case. One of the secretaries came in the room and said, "Mr. Bacchus, you have a
142 call from the United States." I said, "Well, I'm in deliberations." I was chairing the deliberations.
143 "Who is it?" "Well, it's Governor Askew." And I said, "Well, you know, perhaps I can call him
144 back." And the other members of the Appellate Body spoke up, "No, you have to take the call,
145 this is Governor Askew. You can't call him back." I said, "What about our deliberations?" "Oh,

146 we'll wait." So I took the call and the Governor wanted my thoughts on what he should say in a
147 particular speech and I ended up reducing my thoughts to writing for him as I often do.

148 **Plank-Brumback:** You've written that during that time Askew and many others engaged in the
149 shared effort to make a bright future for Florida, but some of those others have settled for much
150 less than what you together had sought, and they have lowered their sights and so has Florida.
151 What did you mean by that?

152 **Bacchus:** I'm afraid I mean that many of my youthful hopes for my home state have not been
153 fulfilled. Florida has retreated from a lot of the advances the state made under Governor Askew,
154 Governor Graham, and Governor Chiles. It's turned away from what Florida, to my mind, ought
155 to be. Florida ranks near the bottom, for example, in investments in public education. It's hard
156 for me to see how Floridians can succeed in the world economy if they don't have the best
157 possible education. Right now in Florida, as I speak, they are closing schools in my hometown of
158 Orlando. The only reason why there hasn't been an utter fiscal disaster in the state is because the
159 Congress just passed a bailout in the form of a stimulus bill that has given the state billions of
160 dollars. Even with that stimulus package, there is still a shortfall in the state budget. Florida
161 ranks fiftieth among the fifty states per capita on what it spends on social services. It ranks forty-
162 fourth among the fifty states in faculty salaries in higher education. It ranks forty-fifth in our
163 high school graduation percentage. I could go on and on and on. Florida succeeds to some extent
164 because it's Florida. It has enormous—in economic terms—comparative advantages in terms of
165 weather and location. But it's not nearly all that it could or should be. It saddens me greatly
166 because I spent so much of my life trying to shape a bright future for Florida. We've sold Florida
167 for decades as a land of low taxes, cheap labor and plenty of sunshine, and that will get you a lot
168 of T-shirt shops; it won't get you much in the way of value-added. The state's economy has been

169 based primarily on construction and tourism. That doesn't help you much when there is no
170 construction and when there is a decline in tourism. I regret what's happened to Florida under the
171 two governors named Jeb Bush and Charlie Crist.

172 **Plank-Brumback:** So you are sitting in the Miami offices of Greenberg Traurig with Governor
173 Askew, and he takes a call, and you write "trade" on a piece of paper as an area that he should
174 work on in Washington. How did Governor Askew approach that job as USTR? First of all, I
175 understand that he did not wish to be referred to as "Ambassador Askew" but "Governor
176 Askew."

177 **Bacchus:** He didn't much care; he was just accustomed to being called Governor. He was of
178 course an ambassador. In my experience, those who are USTR who haven't been a Governor are
179 happy to be called Ambassador. As for me, I don't use any of my discarded titles. I may be the
180 only former congressman in Washington who doesn't call himself Congressman. One reason is
181 because I think it's downright pretentious. Another reason is I am no longer to blame. But I still
182 call Governor Askew "Governor" and so do most people. It's a term of enduring respect.

183 When we came to the USTR, supposedly there wasn't going to be much to do because Bob
184 Strauss had just solved all the world's trade problems. We had just concluded the Tokyo Round.
185 And actually, technically, Reubin Askew was the first United States Trade Representative
186 because the Congress had just passed the Trade Act of 1979 and the Special Trade
187 Representative [STR] had now morphed into the United States Trade Representative. I remember
188 in those days people still routinely spoke of STR rather than USTR. That's now changed. You
189 can tell the old GATT hands if they say STR. One thing we found when we arrived was that
190 despite all the ballyhoo of the press conferences on the successes of the Tokyo Round, very few

191 countries had signed the various codes that were supposedly one of the signal successes of the
192 Round. So Governor Askew had to fly around the world trying to encourage other countries to
193 sign these codes. That experience is one thing that led me to support the single undertaking of the
194 Uruguay Round.

195 Another issue on which we were much engaged was in implementing the first bilateral trade
196 agreement with the People's Republic of China. The agreement had been concluded before
197 Askew got there, but there was now the matter of beginning to implement it. That was
198 fascinating, and that experience has proven useful to me in all kinds of ways in the thirty years
199 since.

200 **Plank-Brumback:** What exactly were your responsibilities as Askew's special assistant? You
201 write, "The reality was not nearly as lofty as the title, but the work seemed special to me."

202 **Bacchus:** There were three of us who came up from Florida to work for Askew. Lorna Allen was
203 his personal assistant. She had been his personal assistant when he was Governor. Bruce Starling
204 was his executive assistant. Bruce had been his General Counsel when he was Governor. Bruce
205 is one of my closest friends. I was Askew's special assistant. What did that mean? I continued to
206 do some of the things I had done for him in Florida. I wrote his speeches, for example. I didn't
207 do press work. There were other people at USTR to do that, but I was his liaison to his press
208 people. So I was much involved in that, even in Washington.

209 **Plank-Brumback:** Did you always know where he was going to go or did you sometimes
210 introduce things into the speeches to try to shape his ideas?

211 **Bacchus:** Oh, Reubin Askew always gave his own speeches. I was merely his helper. One never
212 asks a speechwriter that question. I am appalled at what some presidential speechwriters do in
213 claiming credit. You can ask other people that question about me and Governor Askew. I'll just
214 say that over the course of our many years of working together, Reubin Askew has influenced
215 me far more than I have influenced him. And very positively. Bruce Starling and I basically
216 divided up the job of assisting Askew at USTR. Bruce was Askew's liaison to the private sector
217 and to all those people who wanted his ear outside of USTR: interest groups, others. I was
218 essentially—I played something of the same role I played on the airplane during his re-election
219 campaign as Governor. I was the conduit between Askew and all of the substantive staff at
220 USTR. This was a wonderful job for me because I was able to be engaged in everything that
221 USTR was doing and educate myself about the substance of all the trade issues that were
222 pending, work together with some marvelous people at USTR at the time. Bob Hormats was, of
223 course, his deputy; he was the number two person at USTR. Bob Cassidy was the General
224 Counsel, but there were many other people. There were Geza Feketekuty, Dick Heimlich, and on
225 and on and on, and some young people who stayed and became legends as trade negotiators in
226 later years, such as Andy Stoler and Dorothy Dwoskin. And I worked with all those people. I
227 somewhat surprised them because my principal job was to find out what Governor Askew
228 needed to know and make sure he got the information he needed so he could make the right
229 decisions. And, evidently in contrast to Strauss's people, I was much inclined to bring the actual
230 staffers in to talk to Governor Askew. So when a staffer came to me and said, look, we've got
231 this issue with widgets, rather than simply learning the issue myself and then going and briefing
232 the Governor, I would take that staffer in with me and say, "Here is our expert on this issue,
233 Governor." This, I think, surprised them, but it also made me popular with the staff. [laughter]

234 But it was the best way to do the job because the Governor needed direct expertise, not my
235 indirect rendering of it. So I was able to work on all kinds of things.

236 **Plank-Brumback:** Were you involved in the post-Tokyo Round work on agriculture, services
237 and counterfeiting that would have evolved into the 1982 GATT work program and eventually
238 the negotiating agenda for the Uruguay Round?

239 **Bacchus:** I certainly did not play a major role in putting all that together, but I was involved in
240 helping lay the basis for it. For example, Geza Feketekuty came to me one day and said, “I have
241 a crazy idea.” “What’s your crazy idea, Geza?” “Well, it seems to me that all the rules that we
242 apply to trade in goods should also be applied to trade in services. You know, Jim, the United
243 States is becoming more and more of a service economy and it seems to me that we need rules
244 on services as much as rules on goods.” So I took Geza in to see Governor Askew and I said,
245 “Governor, Geza has an idea. He says it’s crazy, but it seems to me that it might be the future.”
246 Governor said, “Geza, what’s your idea?” Then he heard Geza out and sent him away to work
247 out his idea and Geza, of course, was a one-man think tank anyway. He still is. So that was the
248 kind of role that I played. I certainly didn’t come up with the idea, Geza did, but—

249 **Plank-Brumback:** But intellectually, I mean, coming from Florida the idea was appealing.

250 **Bacchus:** Yes. Between 70–75 percent of the US economy is services; about 90 percent of the
251 Florida economy is services. It was the kind of idea that instinctively appealed to me.

252 **Plank-Brumback:** It didn’t appeal instinctively to a lot of other countries though.

253 **Bacchus:** It still doesn’t, but we now have rules. We could use some more.

254 **Plank-Brumback:** Okay, let's move forward. Why did you decide to run for congressional
255 office?

256 **Bacchus:** There were a variety of reasons I decided to run. One is, I always wanted to prove to
257 myself that I could do something like that.

258 **Plank-Brumback:** And you ran in your home district.

259 **Bacchus:** Yes. Another reason was that, at that time, in the mid-80s, it didn't seem to me that
260 there was much likelihood that I was going to have much chance to be appointed anything again
261 any time again. My preference has always been to serve. My goal has always been to serve; it's
262 not been to be famous or be on the front pages or to have titles. I've always looked for
263 opportunities to serve and accomplish.

264 **Plank-Brumback:** That wasn't going to happen in the—

265 **Bacchus:** I didn't see that happening any time soon. I was later surprised that we got the White
266 House back as soon as we did. I'm not always right about these things, but by that time I was in
267 the Congress. So that was a part of it. I concluded that if I was going to get a chance to serve, I
268 would have to run myself. Askew had run for president in the early '80s, and I had spent three
269 years in his presidential campaign. He did not win. And it was after that that I decided that if I
270 were going to have a chance to serve, I needed to be willing to run myself. So I moved back to
271 Orlando in 1984 with the express purpose of building a base and eventually running for
272 Congress. I moved into the district of my friend Bill Nelson. I had known Bill for a long time. I
273 knew that eventually Bill was going to run statewide, and I wanted to be there and be ready to
274 run when he did.

275 **Plank-Brumback:** So how long a preparation did that take?

276 **Bacchus:** Well, I moved back to Orlando in 1984, and I was elected in 1990.

277 **Plank-Brumback:** Was trade part of your campaign?

278 **Bacchus:** It wasn't a major part of the campaign. That is a district that profits considerably from
279 trade, but generally when people profit from trade they believe they profited from their own
280 virtue. Somewhat to my surprise, my positions in favor of trade were always controversial in the
281 district. There was much opposition to NAFTA [North American Free Trade Agreement], for
282 example, in the district. There was no economic reason for people in the district to be opposed to
283 the NAFTA. It was a merely visceral fear, and oftentimes fears about trade have nothing
284 whatsoever to do with trade. Trade is frequently blamed for things that result from other changes,
285 such as technology.

286 **Plank-Brumback:** So your years in the US House of Representatives, 1991–1995, those were
287 especially active years for trade legislation. There was fast track authority, NAFTA you
288 mentioned, the completion of the Uruguay Round, implementation of its results, MFN [Most
289 Favored Nation] for China, the Caribbean Basin Initiative. Do you have any confessions as the
290 trade whip on getting to 218 'yes' votes or other war stories to enlighten us about this period?
291 You've referred to a few bipartisan legislative victories to which you've contributed. Could you
292 elaborate?

293 **Bacchus:** I was involved in many controversial issues in the Congress, but they weren't often
294 partisan issues. Trade issues are more controversial now than they were then, but they were
295 extraordinarily controversial then. It's hard to top NAFTA as a controversial issue, MFN for

296 China, others. We organized bipartisan whip teams to try to get 218 votes. That's the goal in the
297 House: getting 218 votes. And on trade, the House is the issue; it's not the Senate. The Senate of
298 the United States is never going to vote down a trade bill. The reason is very simple. At any
299 given time, only one-third of the Senate is running for re-election. There are plenty of senators
300 who are free to do the right thing irrespective of their electoral ambitions. The challenge in trade
301 is always getting 218 votes in the House. And that was our challenge then on a number of trade
302 issues.

303 **Plank-Brumback:** Did you find the—what do you call it—the Christmas tree approach? The
304 bigger the bill, the more Christmas tree balls you can place on it to get those 218 votes was the
305 inevitable, better approach than—

306 **Bacchus:** Sometimes better, sometimes worse. That really wasn't our approach on trade. I had a
307 particular approach in the Congress, which is that I always voted for what I thought was right
308 and then I tried to make it work politically. And I thought opening the doors to trade was the
309 right thing to do.

310 **Plank-Brumback:** How did you work with USTR during that congressional period?

311 **Bacchus:** Carla Hills can tell you a tale. When I was elected, there was a Republican president,
312 the first President Bush. Carla was his USTR. I was, of course, a Democrat. There was need to
313 get President Bush trade negotiating authority. As a freshman Democrat, I called up Carla Hills
314 on the telephone and told her, "Ambassador Hills" —she had not been Governor—"Ambassador
315 Hills, I'm Jim Bacchus from Florida. I'm a new member, I'm a Democrat. I'm calling you
316 because I would like to help you get trade negotiating authority for President Bush." Dorothy
317 Dwoskin was with her at the time, my old friend, and Dorothy later told me that Carla almost fell

318 out of her chair. I worked with USTR on getting President Bush trade negotiating authority. My
319 view is that any president, every president, always needs trade negotiating authority. That was
320 my view then, it's my view now.

321 I had another old friend from USTR named Bruce Wilson. Bruce is now the Legal Advisor to the
322 WTO. At the time, he was the chief trade counsel to the Trade Subcommittee of the House Ways
323 and Means Committee. Bruce and I had been at USTR together. The Chairman of the Trade
324 Subcommittee was Sam Gibbons from Florida. Sam Gibbons had been in the state legislature
325 with Askew in the '50s. Sam Gibbons had known me all my life. His son Cliff and I worked
326 together at USTR. Dan Rostenkowski was the chairman of the Ways and Means Committee.
327 Bruce went to Chairman Rostenkowski and told him, Mr. Chairman, there is a freshman from
328 Florida who used to be at USTR. We ought to get him involved in trade. So I was summoned to
329 the presence of the Chairman of the House Ways and Means Committee just a few days after I
330 was sworn in as a Member of the House. I went to his room in the Capitol, an ornate room. There
331 was a very long table. Chairman Rostenkowski was sitting at the far end of the table. He had a
332 dim light over his shoulder and a stack of papers. I stood at the other end of the table in his
333 august presence. It's true that he and I both had the same one vote in the House of
334 Representatives, but he was the Chairman. So I stood there while he finished reading and he took
335 off his glasses and looked up and he said, "You're from Florida." I said, "Yes, Mr. Chairman, I
336 am." He said, "I understand you've actually read the GATT." I said, "Yes Mr. Chairman, I
337 have." And he said, "Well then, you're on the trade whip team. Thanks for stopping by." And I
338 turned around and left. So that is how I got involved in trade issues.

339 **Plank-Brumback:** Bob Cassidy giving you the GATT served you well a decade later.

340 **Bacchus:** It was a distinct disadvantage as a member of the House to know what our
341 international obligations were. Had I not understood the obligations I could have been free to
342 vote differently.

343 **Plank-Brumback:** Were you involved, even from the Hill, or watching closely the negotiation
344 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, known
345 also as the Dispute Settlement Understanding?

346 **Bacchus:** I was not involved at all in that, I was not. I mean, I knew it was happening. I was very
347 much in favor of it. I very much supported the notion of a binding dispute settlement system. I
348 shared in the frustration of others in the United States that we had rules that could not always be
349 upheld. Nowadays we like to pretend that binding dispute settlement is something someone else
350 imposed on us. Perhaps the French were behind it. But the truth of the matter is it was an idea
351 that came from the United States and was supported by other leading countries as the natural
352 next step in GATT dispute settlement.

353 **Plank-Brumback:** Did you follow in general, very closely the negotiations?

354 **Bacchus:** I did. I did. I was one of the six original co-sponsors in the House of the implementing
355 legislation for the Uruguay Round trade agreements. I was much involved in the effort to pass
356 that bill. It turned out to be a pretty easy passage because it was passed in a lame duck session.
357 The Uruguay Round Trade Agreements Act was actually the last vote I cast as a member of the
358 House.

359 **Plank-Brumback:** Whose idea was it to have that, in a sense, safety valve, if you will—
360 domestically speaking at least—if there is a pattern of rulings that go against the United States to
361 have judges—

362 **Bacchus:** I don't know whose idea that was.

363 **Plank-Brumback:** Was that really necessary at the time?

364 **Bacchus:** I don't think it was necessary. I think there were only a couple of dozen votes against
365 the bill so I don't think it was necessary. I was asked about this while I was on the Appellate
366 Body. People are not accustomed to being second guessed. But I was a member of Congress!
367 [laughter] I don't have any problem with being second guessed. Still, there have always been
368 problems with this idea, the "Dole Commission" idea. I'm not even sure Senator Dole was
369 actually for it. He just thought it might be a useful expediency. One of the questions is, if you are
370 going to have second-guessing, who is going to do the second-guessing? People say, hmmm,
371 let's have some federal appellate judges do it. But how many of them have actually read the
372 GATT? And then you have members of the trade bar volunteer, who have axes to grind. People
373 who have lost cases in dispute settlement want to be on the commission. I shan't name any
374 names. Interest groups. Well, I don't think that idea was going anywhere; I don't think it's ever
375 going anywhere.

376 **Plank-Brumback:** How did your congressional experience help you perform on the Appellate
377 Body, apart with getting you used to being second-guessed?

378 **Bacchus:** Well, the goal in the House is to get 218 votes. The goal in the Appellate Body is to
379 get a consensus; not three, not four; a consensus. One thing I would note is that I judged sixty

380 appeals while I was on the Appellate Body. There was not one single dissent in any of those
381 appeals. That didn't happen by accident. I recommend our approach to the Supreme Court of the
382 United States. If I'm known for one thing, it's being a consensus builder. I believe in building
383 institutions, and I believe in building them by consensus. In everything I've ever tried to do in
384 life and public service, I've tried to find common ground and I've tried to find practical ways of
385 moving forward. I did not know at the time why I was nominated for the Appellate Body. I had
386 never foreseen being nominated for the Appellate Body; it never occurred to me that I might be. I
387 had just assumed that someone considerably older than I was at the time would be nominated. I
388 was by seventeen years the youngest of the seven members of the Appellate Body when I was
389 first appointed. Indeed, eight years later, when I was the only remaining original member and
390 was serving with six entirely different people, I was still the youngest the day I left. It's
391 getting harder and harder to find things to do where I'm the youngest. But I learned years later
392 from my friend Mickey Kantor why it was that I was asked to become a candidate for the
393 Appellate Body. It was because of the NAFTA, and because of how I acted in the NAFTA
394 debate in trying to build a consensus. If you will recall, one of the challenges in putting together
395 218 votes for the NAFTA in the House was the fact that the Florida delegation was holding back
396 because of the needs of Florida agriculture. Although there was never any chance I was not
397 going to vote for the NAFTA, I was officially neutral. What I was doing was working behind the
398 scenes with Mickey and others at USTR and with the Florida agriculture community to try to cut
399 a deal for Florida agriculture.

400 **Plank-Brumback:** On sugar?

401 **Bacchus:** Sugar wasn't a part of the deal, but fruits and vegetables were a big part of it. We
402 ended up cutting a deal, and I then suggested to Mickey that we take the deal to my colleague

403 Tom Lewis and have him announce the deal. And that I not be a part of it publicly. Why did I do
404 that? Most of the members of the Florida delegation were Republicans. The vast majority of the
405 members of the Florida delegation who were holding back were Republicans. Tom Lewis, my
406 good friend, was a Republican. I was a Democrat and a junior one at that. I was concerned that
407 all these Republicans would not want to be part of a deal that I was perceived to have put
408 together. So I voluntarily gave the deal and the credit to Congressman Lewis. He announced the
409 deal, all the Republicans and I endorsed it. We picked up about a dozen votes for NAFTA in
410 Florida and that turned the tide in favor of NAFTA toward the end of that debate. You can read
411 all you want about NAFTA and I doubt you'll find my name mentioned. But President Clinton
412 knew about this. He knew I had done this, and I was told that he thought it was rather unusual for
413 a politician to do something like that. When it came time to think of who might be the right
414 American to send to Geneva to serve on the Appellate Body, he thought of me for that reason.
415 He thought I could be the kind of person who would build a consensus and not worry about
416 being in the limelight.

417 **Plank-Brumback:** So that is how “just another lawyer from Orlando” got to be nominated to
418 something you quoted, “a faceless foreign judge.”

419 **Bacchus:** I think it is.

420 **Plank-Brumback:** Were you the only US nominee?

421 **Bacchus:** There were two. The other American nominated was a very distinguished lawyer, a
422 jurist named Tom Ehrlich. Tom Ehrlich has been Dean of Penn's law school, Provost at Penn,
423 President of Indiana University, President of the Legal Services Corporation. He's now a tenured
424 professor in the California state university system. He had been, I think, Legal Advisor for the

425 Department of State, an extraordinarily able and distinguished man. The two of us were
426 nominated by the United States.

427 **Plank-Brumback:** And you were both interviewed?

428 **Bacchus:** We were both interviewed in Geneva. There were about thirty-five people nominated
429 from around the world.

430 **Plank-Brumback:** I think the number is thirty-two candidates had been proposed from twenty-
431 three member countries.

432 **Bacchus:** Sounds about right. And Tom and I went to Geneva at the same time. We went from
433 there to Brussels together. We saw the same ambassadors at different times. We went through
434 the interview process by the committee selected by the WTO. I learned later we were asked the
435 same questions.

436 **Plank-Brumback:** How did you prepare for the interviews?

437 **Bacchus:** I didn't. [laughter]

438 **Plank-Brumback:** You had read the GATT! [laughter]

439 **Bacchus:** It was rather interesting. One of the ambassadors from—I forget whether he was from
440 Thailand or Singapore—was interviewing me and I was trying to make a point about my
441 commitment to international institutions, and he said, “Congressman Bacchus, you don't have to
442 explain all this to me. I have a condo in Vero Beach. I've read about the protesters against you
443 for supporting international trade.” It's a small world. For whatever reason, the members of the
444 WTO chose me.

445 **Plank-Brumback:** So you were interviewed by the so-called group or committee of six which
446 was the DG [Director-General] and the chairs but also interested delegations.

447 **Bacchus:** There was a formal interview and I can't recall exactly who, but the chairman of the
448 interviewing committee was the Chairman of the Dispute Settlement Body, Celso Lafer.

449 **Plank-Brumback:** Brazil.

450 **Bacchus:** And then the other members of the committee I think were the Chairman of the
451 Council on Goods and chairs of several of the other relevant councils. And in addition I was sent
452 around town by USTR, as was Professor Ehrlich, to meet on a one-on-one basis with the
453 ambassadors from a number of the leading WTO members.

454 **Plank-Brumback:** What kind of questions predominated?

455 **Bacchus:** These were not highly substantive legal quizzes. I think they were interested in my
456 attitude more than anything else.

457 **Plank-Brumback:** Your attitude about consensus or—?

458 **Bacchus:** About the system. Keep in mind, at this time no one quite foresaw just how significant
459 the Appellate Body would be. I'd figured it out. I had read the agreement! [laughter]

460 **Plank-Brumback:** Even some commentators, even Robert Hudec had his reservations.

461 **Bacchus:** His was an educated reservation. A lot of people hadn't focused on the Appellate
462 Body. They hadn't quite thought through the reality that the Appellate Body was de facto going
463 to have the final say on disputes. No one quite knew what would emerge in the system, and I
464 think the way in which the seven founding members of the Appellate Body acted in establishing

465 the institution had a lot to do with it emerging over time to its significance today. But my
466 recollection is that a lot of people didn't quite know what to ask me. I think they were looking
467 for some understanding of me as a person, some notion of my views. They seemed to like the
468 fact that I had a background both in trade and in the Congress. Professor Ehrlich, for all his
469 accomplishments, had no real background in trade and had not been an elected member of the
470 Congress.

471 **Plank-Brumback:** Do you think it might have helped on the home front, in terms of legitimacy,
472 to have a US member who had been elected by the people at a certain stage in his career?

473 **Bacchus:** Well, I don't think it was that so much as that it may have helped in the Congress that
474 a former member of Congress was over there doing this. I'm not among those who think there is
475 any lack of legitimacy in the WTO dispute settlement system. For Pete's sake, 150 countries
476 have signed this agreement, and this is what they've chosen to do in making decisions about the
477 rules they've all agreed to abide by.

478 **Plank-Brumback:** But not all 150 will ever be represented on the Appellate Body.

479 **Bacchus:** Well, that's not the point. They could be. I don't think it adds anything to the
480 legitimacy of the Appellate Body that I had once been elected to one house of one branch of the
481 federal government in one of the 153 countries from one small part of Florida. I don't think that
482 adds anything to the legitimacy of the WTO dispute settlement system. I don't think it subtracts
483 anything from it. That was the only point I was making.

484 **Plank-Brumback:** So once you were appointed, how did you get notified anyway that you had
485 been?

486 **Bacchus:** I got a phone call from Andy Stoler on my wife's birthday, on November 29. The
487 Clinton administration had not wanted me to leave the Congress. I was from a heavily
488 Republican district and yet I had the misfortune of agreeing with the president and voted with
489 him frequently. So their preference was for me to remain in the Congress. Since they couldn't
490 talk me out of leaving the Congress, their next best proposal was that I go into the
491 administration, but there I still had difficulties because my goal was to have more time with my
492 family. I actually meant that. I wanted to go back to Florida, ideally, and not be in Washington.
493 So I had left the Congress and was back home figuring out how to move forward when I got a
494 call from Mickey asking me if I wanted to be nominated for the Appellate Body. I agreed on the
495 spot. That was in February, 1995. I was not appointed to the Appellate Body until November
496 1995. I later learned that the reason it took so long had nothing whatsoever to do with me. I'm
497 told that they decided on me early on, but there were debates over some of the others.

498 **Plank-Brumback:** Geography?

499 **Bacchus:** Well, it was unclear. I mean, while countries still like to have their own nationals on
500 the Appellate Body, it's clear at this point, years later, to all the members of the WTO that the
501 members of the Appellate Body serve the whole system. For better or worse. I certainly proved
502 that I could rule against the United States of America, and other members of the Appellate Body
503 have done the same with their own countries when obligations have not been fulfilled by WTO
504 members. But at that time it wasn't clear, and the Europeans had said, "we want two members."
505 So Mickey Kantor said, "Well, if you want two, we want two." So he nominated two people. The
506 Europeans, being Europeans, nominated about a dozen. This, if it had happened, would have left
507 the entire rest of the world with only three members, so it was never going to happen. But this
508 debate went on for months. Finally the Europeans backed down. I think the record will reflect

509 that the WTO members did a pretty good job of selecting the first group of members to the
510 Appellate Body. In fact, I think they've gone a good job of selecting members of the Appellate
511 Body all along.

512 **Plank-Brumback:** Once you knew you were going to be appointed, how did you use that little
513 time to prepare yourself to serve on the Appellate Body?

514 **Bacchus:** Oh, I spent months then immersing myself in trade issues. I was also of course busy
515 establishing a law practice. The Appellate Body was and remains nominally a part-time gig;
516 done right it's not really part-time anymore, but that's another tale. Indeed, in the end—in the
517 last two and a half years of my eight years—I was working full-time for the Appellate Body even
518 though it was a part-time job. I was on leave of absence from my law firm by then. But, in 1995,
519 while awaiting appointment, I was in the process of building a law office for the Greenberg
520 Traurig firm in Orlando, while scrupulously avoiding any trade issues, and in my spare time I
521 spent hour upon hour studying trade issues. I was fully conversant with the covered agreements
522 before I was ever appointed to the Appellate Body.

523 **Plank-Brumback:** Well, had you been an Uruguay Round negotiator, how would you have
524 drafted, for example, the understanding on dispute settlement differently? The provisions on
525 appellate review are relatively few. Would you have added to that, subtracted? You've
526 mentioned the part-time versus full-time.

527 **Bacchus:** I think the Dispute Settlement Understanding has been a very effective document and
528 I'm generally from the school that says, if it ain't broke, don't fix it. People say to me, Jim, there
529 is so much controversy over dispute settlement, why don't the members of the WTO go in and
530 fix the system? The reason is, they don't think it's broken. By and large, the members of the

531 WTO are perfectly happy with the dispute settlement system. I'm probably more interested in
532 changing it than most of the members are. I see a lot of things that can be improved based on our
533 experience with the system, and I've said so publicly. Most of my ideas are viewed as a bit too
534 advanced. A full-time Appellate Body. Rules of evidence. Rules of procedure and discovery. I
535 have a lot of ideas that none of the members of the WTO support, but some of them have started
536 to support some of my ideas. For example, the very first speech I gave after leaving the
537 Appellate Body was a speech here in Washington in which I said that we needed to open up the
538 doors of dispute settlement, and that we needed to have open panel and Appellate Body hearings.
539 To some extent, they've started to do that. I've been gratified that I have been proven right; that
540 it turned out to be not that big a deal. These are actually very tedious proceedings that bore
541 people to tears. But opening the doors of dispute settlement shows all the world that the system is
542 thorough and fair.

543 **Plank-Brumback:** And people are not directly there. I mean they can watch it in a separate
544 room and only if they are present there; it's not available online for—

545 **Bacchus:** I'm in favor of making it all the more transparent. There are some practical problems
546 facing the WTO in terms of the size of rooms, but there doesn't seem to be an overwhelming
547 number of people who want to watch these things. The novelty seems to have worn off. I think
548 that the WTO has done itself harm by not acting sooner to open up these proceedings, because
549 keeping the proceedings closed allows the opponents of trade and of the WTO to make all kinds
550 of wild accusations about what goes on behind these closed doors. The truth of the matter is,
551 these are very fair and exhaustive proceedings, in which due process is respected to the nth
552 degree. The judges and the panelists are impartial and thorough and extremely competent. They

553 try to get the right answer and in the right way. This doesn't mean the system is perfect. No
554 system created by our species is perfect or ever will be. It can be improved a great deal.

555 Still, in terms of what changes I would make, I think we've reached the point for example—and
556 all this I've said publicly—I think we've reached the point where the members of the WTO
557 should make the Appellate Body full-time. There are financial implications of that for members
558 of the WTO. There are physical implications in terms of housing. I think we have reached the
559 point where we need to explore further the European idea about a standing panel body. There
560 I'm sympathetic to some of the things "the Americans," as we call them in Geneva, have said.
561 Having a standing panel body could limit your ability to draw on a whole world of people who
562 might be panelists. There I think there is a potential compromise. Maybe you could have a
563 standing panel body of panel chairmen and have the option of going beyond the standing body to
564 draw on others of particular expertise to be panelists in any given case, maybe a scientific expert
565 or an intellectual property expert in an IP case, for example.

566 At this point, we have 50,000 or 60,000 pages of WTO case law. I lose track. John Jackson keeps
567 count somewhere. There is this accretion of case law which of course is not precedent and not
568 *stare decisis* but nevertheless it's there and through that evolution of the system we have
569 developed a certain way of doing things on a regular basis—of making the system work. There is
570 case law relating to all kinds of things that aren't even mentioned in the Dispute Settlement
571 Understanding [DSU], and this is perfectly acceptable to all the members of the WTO; indeed,
572 they've encouraged it. An example is burden of proof. There is no reference to burden of proof
573 in the DSU but if you are going to have a legal dispute, one party or the other has to have the
574 burden of proving something. We came to this recognition early on, and in certain areas relating
575 to procedure and evidence you've seen the development of something akin to the evolution in the

576 English system over centuries of common law. But my view is it would be preferable to have
577 standard rules of procedure at the panel level. It would be preferable to have rules of evidence. It
578 would certainly be preferable for the members of the WTO to agree on these things rather than
579 having panelists and members of the Appellate Body develop these rules on an ad hoc basis as
580 they go along case by case. I would propose doing this in the same way that state legislatures
581 have done in the United States. You appoint an advisory committee of experts to prepare a
582 proposed code, you then vet it and either you adopt it or you don't. So far as I know, I'm the only
583 one in favor of this so I'm not anticipating it happening any time soon. [laughter] There are
584 certain things that are not yet in the Dispute Settlement Understanding that I think there is a
585 consensus that we need to do, and I think we will do when we finally get around to finishing the
586 Doha Development Round. These are part of DSU review. For example, I think the Appellate
587 Body needs remand powers.

588 **Plank-Brumback:** Do you believe there is a consensus on that?

589 **Bacchus:** My impression is that there is something approaching a consensus on that. I don't
590 think there is going to be any particular opposition to that. But more than anything else the
591 members of the WTO want a result from dispute settlement and it's rather frustrating when you
592 don't get a result. There have been a couple of cases where there just wasn't enough evidence in
593 the record and the Appellate Body was not able to complete the analysis and had nowhere to
594 send the case. Quite rightly the Appellate Body has no fact-finding power—that's the proper
595 domain of the panels—but the Appellate Body doesn't have the power to send the case back to a
596 panel to ask for more facts. If the panel has found the facts that turn out to be needed on appeal,
597 that's serendipitous, but sometimes that's not the case. I think the Canadian dairy case is an
598 example of that. It's extraordinarily frustrating to countries that are looking to the WTO system

599 to resolve their disputes to litigate for several years and then not get a resolution of the dispute.
600 So I think the WTO members are of the view that they ought to find a way forward on that
601 particular issue.

602 **Plank-Brumback:** What about a “reasonable period of time”?

603 **Bacchus:** Well, here I take a different view from the classic Hudec-Jackson debate over whether
604 dispute settlement is a diplomatic or a political system. Their debate went on for as long as Bob
605 was with us, and is symptomatic of the gradual evolution of the GATT dispute settlement into
606 the WTO dispute settlement, and more of a fully juridical system. And I’m certainly on the side
607 of those who want it to be more fully juridical. I believe in the international rule of law and I
608 think therefore you need law. And so I side with Jackson in that debate. But I don’t think it’s
609 accurate to say that the system, in the end, has been transformed from a political system into a
610 fully legal system. I think it’s more accurate to say that, as set out in the Dispute Settlement
611 Understanding, the system is either political or legal at different times during the process of the
612 dispute. Up to and until the time when there is finally the approval for the establishment of a
613 panel, it’s political. And once you have the approval by the Dispute Settlement Body of a panel
614 report, as possibly amended by an Appellate Body report, it then becomes political again in
615 terms of implementation. In between those times, it is a legal system that upholds the rule of law.

616 **Plank-Brumback:** Theoretically the parties could resolve the dispute while the panel
617 deliberations were ongoing.

618 **Bacchus:** Theoretically they could do that at any time, and indeed there was a case once where
619 there was an appeal pending—I think in the India autos case—a hearing was scheduled before
620 the Appellate Body, and the day before the hearing, the parties notified the Appellate Body that

621 they had resolved the dispute. The Appellate Body said, Hooray. The purpose of the dispute
622 settlement system is to settle disputes.

623 Once you get to the back end of the treaty, as we call it—that’s the Latin phrase—once you get
624 to the back end of the treaty after the adoption of the report, you have what is essentially a
625 political process in implementation. There are no particular ways in which the parties are
626 required to implement. If the parties to the dispute decide that they have resolved their dispute
627 and the way in which they have decided doesn’t affect anyone else, then no one else cares. But if
628 they are not in agreement, there are some tributaries back into the legal aspects of dispute
629 settlement that occur in the back end of the treaty. One of them is the “reasonable period of
630 time.” And there, interestingly, there is a whole body of case law now from arbitrators who have
631 been asked to determine what a reasonable period of time is under Article 21.3. You can read
632 these awards—I’ve written a couple of them. If you read them all, including mine, you will come
633 to the conclusion that I might think a reasonable period of time is a bit shorter than what some
634 other people may think. My reading of Article 21.3 is that it says “immediately but” and I give a
635 little more significance to the word immediately than some others do. But by and large I think
636 the WTO Members are satisfied with the general length of time that has been awarded on
637 average in these awards.

638 **Plank-Brumback:** So rather than codification, you think that the current system of ad hoc
639 rulings by arbitrators—

640 **Bacchus:** I would not codify any specific period of time for implementing a ruling because every
641 case is an individual case, and if a country happens not to be in compliance it can be not in
642 compliance in any number of different ways. You could have a ruling that a statute is

643 inconsistent. You could have a ruling that the statute is fine but the regulations implementing that
644 statute are inconsistent. You could have a ruling that the statute and the regulations are fine but
645 there is an administrative practice that is inconsistent. You could have a ruling that the statute,
646 the regulation and the practice are all fine but in this particular instance they have gone astray.
647 [laughter] There are any number of ways that rulings can be implemented because there are any
648 number of ways in which countries can be inconsistent with their obligations. And a different
649 period of time may be reasonable depending on the different circumstances.

650 **Plank-Brumback:** What about the sequencing issue of 21.5? Do you think that has pretty much
651 been taken care of by practice?

652 **Bacchus:** I think that's pretty much been taken care of by practice, and I think that's pretty much
653 the consensus of the members of the WTO. It's not reduced to writing in the treaty, but there is
654 now an expectation that countries will proceed in a certain way. And that is the way legal
655 systems develop over time.

656 **Plank-Brumback:** Could you describe your swearing-in ceremony on the Appellate Body? Why
657 was it decided to have the Director-General, Renato Ruggiero, so call "swear you in," and what
658 was the pronouncement?

659 **Bacchus:** Why was it decided to have a swearing-in ceremony or why was it decided to have
660 Ruggiero swear us in?

661 **Plank-Brumback:** Both.

662 **Bacchus:** I don't know the answer to either of those questions.

663 **Plank-Brumback:** You had nothing to do with it?

664 **Bacchus:** I was asked to show up and be sworn in. I seem to recall there was some kind of an
665 oath. I think Toy² wrote the oath.

666 **Plank-Brumback:** Was it based on Adam Smith's *Wealth of Nations* or the Marrakesh
667 Agreement?

668 **Bacchus:** I think Toy and Debra³ decided we needed an oath and they wrote an oath. And we all
669 signed it.

670 **Plank-Brumback:** Oh, you signed it.

671 **Bacchus:** Well, we agreed to uphold the rules, etc. etc., etc. and to be honest and faithful and
672 true. I think they still use the same oath. The great thing about being there at the beginning was
673 that it was the beginning. We were all "present at the creation," so everything we did was for the
674 first time, and I'm enormously pleased that a lot of the things that we did, sort of ad hoc that first
675 time, turn out now to be becoming traditions. [laughter]

676 **Plank-Brumback:** Speaking of tradition, in your book *Trade and Freedom*, which you
677 completed in the last days of your tenure at the Appellate Body, you wrote [speaking of the
678 Appellate Body]: "We do not wear robes. We do not wear wigs. We do not wear the white bibs
679 that are often worn by jurists on other international tribunals. We do not have all of the
680 institutional trappings that have accrued to other tribunals with the passage of time and with the
681 accretion of tradition. We do not even have titles ... we call ourselves simply Members of the

² Justice Florentino Feliciano of the Philippines, one of the original seven WTO Appellate Body members.

³ Debra Steger of Canada, first Director of the WTO Appellate Body Secretariat.

682 Appellate Body.”⁴ That sounds almost wistful. Would you have liked to have worn a wig or a
683 white bib?

684 **Bacchus:** Fortunately, as I approach the age of sixty, I don’t need a wig. [laughter] No, I didn’t
685 want a wig, nor did I want a robe or any of the other trappings I described. My point was that this
686 was a simple place and our job was simply to do our job to the satisfaction of the members of the
687 WTO. I think that’s the way the members of the WTO want it. They don’t want fancy trappings.
688 And as for me, I would far rather have the opportunity to serve in a significant and substantive
689 way than to have the trappings without any real substance.

690 I recall that about the same time that the Appellate Body was established, up in Hamburg, the
691 United Nations established the International Tribunal of the Law of the Sea. There was a
692 ceremony in Hamburg at the time. We read about it in the *International Herald Tribune* down in
693 Geneva. The German government had given the tribunal a beautiful building. They had a
694 marvelous swearing-in ceremony. They all wore sky blue robes, symbolic of the sea; there was a
695 string quartet, there were hors d’oeuvres, there was wine, there was much celebration. We had
696 none of that in Geneva.

697 **Plank-Brumback:** You had no music. You had to have had wine.

698 **Bacchus:** I don’t drink wine anyway, so I don’t recall. But we had nothing even remotely akin to
699 that in the prosaic halls of the WTO.

700 **Plank-Brumback:** You had Hannibal’s tapestry.

⁴ Bacchus, p. 24.

701 **Bacchus:** We had Hannibal's tapestry, but it was already there. We took some photos, we signed
702 the oath, I think we went to lunch, but there wasn't a lot of ceremony.

703 **Plank-Brumback:** Were there delegations there as well?

704 **Bacchus:** No, I don't think so; no, there weren't. But back to Hamburg. Several years later, I'm
705 sitting in Geneva as chairman of the Appellate Body, and one of the secretaries comes in and
706 says the president of the Tribunal of the Law of the Sea is on the phone from Hamburg. I get on
707 the phone with the president, "How are you Mr. President?" Well, he wants to come down to
708 Geneva and see me. "Sure, come on down." So he came down to Geneva and I took him to
709 lunch. I'm interested in the law of the sea. I'm actually in favor of the law of the sea and I even
710 think our country should ratify that convention, but it turned out that he had another question for
711 me. The question was this: "You know, Mr. Bacchus, we don't have any cases. You have lots of
712 cases. How do we get cases?" Well, unlike the WTO, they have no compulsory jurisdiction and
713 no enforcement powers. All in all, I would rather have cases than have a robe or a wig.

714 **Plank-Brumback:** Indeed, you further wrote, "We may be called judges because whatever we
715 may call ourselves and whatever else others may call us that word may best describe what we do.
716 We are cloaked with what amounts in most respects to a judicial responsibility."

717 **Bacchus:** It remains quasi-judicial and members of the Appellate Body do not call themselves
718 judges. Just as I don't call myself Congressman, I don't call myself Judge.

719 **Plank-Brumback:** While the selection process was moving forward on the membership of the
720 Appellate Body, the delegations were also working on rules of conduct. Would there have been
721 anything in the rules of conduct you would have drafted differently?

722 **Bacchus:** I'm not sure. I will point out that the Appellate Body adopted the rules of conduct even
723 before the members of the WTO did.

724 **Plank-Brumback:** On a provisional basis.

725 **Bacchus:** Yes. We adopted them as—

726 **Plank-Brumback:** But you still inherited them.

727 **Bacchus:** We took the draft and made the rules of conduct part of our rules of procedure and
728 agreed to be bound by them. Then later, of course, the members of the WTO adopted them in
729 their draft form as final rules. I think the rules of conduct have served the system well. We
730 haven't had any difficulty with the rules, to my knowledge. I think it's important for everyone to
731 know that there are rules of conduct. Naysayers and adversaries of the WTO say otherwise. It's
732 commonplace for critics of the WTO to say that there are no rules of conduct, and that there are
733 no rules relating to conflicts of interest. Not only are there rules, but they are on the WTO web
734 site and they have been in place from the very beginning. And I'm still bound by them even as a
735 former member of the Appellate Body.

736 **Plank-Brumback:** In that sense, there is an important duty to respect the confidentiality of
737 dispute settlement proceedings. You mention that in the early years the Appellate Body members
738 did not even eat in the WTO cafeteria.

739 **Bacchus:** Well, we thought it was important that we separate ourselves even from the rest of the
740 WTO because the Appellate Body and the Appellate Body Secretariat are separate and apart
741 from the overall WTO Secretariat. This was an expensive decision, by the way, because the

742 WTO cafeteria has good, cheap food. Later on, we went there, but by then everyone was fully
743 aware that we were separate and apart.

744 **Plank-Brumback:** What about attending diplomatic receptions?

745 **Bacchus:** I don't think I ever attended a single diplomatic reception during the entire eight years
746 I served on the Appellate Body.

747 **Plank-Brumback:** You were invited?

748 **Bacchus:** Yes. Often.

749 **Plank-Brumback:** Was that your particular reading of the rules, or a general shared view?

750 **Bacchus:** We had a general shared view that we should be reluctant to do that type of thing. We
751 were all of the view that, to the extent that he had an interest in doing so, Julio Lacarte [Muró]
752 should go to those events.

753 **Plank-Brumback:** In the name of the seven, you mean?

754 **Bacchus:** No, just in the name of Julio Lacarte. Julio Lacarte was and remains absolutely above
755 reproach. No one would ever question him. But I'm not Julio Lacarte. I aspire to be Julio
756 Lacarte, but I'm not. And I thought it was very important for me—especially as the American—
757 to be like Caesar's wife. I'm close friends with Andy Stoler. He and I were at USTR together in
758 the Carter administration. He was the Deputy Chief of Mission for USTR during the first several
759 years when I was in Geneva, and despite the fact that we were very good friends, Andy and I had
760 an understanding that we would only speak to each other in one place and that was in the hall
761 corridor downstairs in full view of everybody. We socialized together not at all while he was at

762 USTR. He then came over and became the Deputy DG, and I was able to spend a little bit more
763 time with him, but even then he would never have presumed to speak to me about a case.

764 **Plank-Brumback:** Either pending or one that had already been decided on.

765 **Bacchus:** No, no one outside the Appellate Body or within the WTO Secretariat ever presumed
766 to speak to a single member of the Appellate Body about a case.

767 **Plank-Brumback:** So your conversations were with other members of the Appellate Body and
768 the Appellate Body Secretariat.

769 **Bacchus:** Basically we were pretty much left to ourselves, and this was quite good in that we got
770 to know each other. We had an informal understanding. We would deliberate from ten to one and
771 from three to six. Sometimes it would go longer. But this doesn't mean we only worked from ten
772 to one and three to six. We would read before, after, weekends and work all the time. But we
773 would go to lunch together from one to three, and one of the standing rules for lunch was, we
774 would talk about anything but the case. Often we would also go to dinner together, and abide by
775 the same rule. As a member of the House, you want to get 218 votes—a majority of the 435. If
776 you—say, you and I are members of the House of Representatives and I want your vote, you're
777 not going to vote for my bill for my reasons, you are going to vote for my bill for your reasons.
778 So if I want your vote, I have to find some reason that you have to vote for my bill, something
779 that is important to you. I have to know how you think and what you need and where you are
780 trying to go. In the House, I was known for being able to get 218 votes. It was because I could go
781 up to you and say you know, you need to vote for this and this is why. You want to vote for this
782 bill and this is why. You want this to happen and this is why.

783 One of the things that I tried to do from the first day I got to the Appellate Body was become the
784 world's expert on the thinking of the other six members of the Appellate Body; to get to know
785 them personally, thoroughly. I'm sure they did the same for me. And generally we were like-
786 minded people anyway or we wouldn't have been selected. But that proved enormously helpful
787 and over time we developed intellectual economies of scale. With Julio or Toy or Claus,⁵ I could
788 be sitting thousands of miles away, read a paragraph in a submission, and say to myself, "Claus
789 is going to ask this." And then think, "What's the answer?" We got to know each other very,
790 very well. And that had a lot to do with our ability to reach consensus.

791 **Plank-Brumback:** Not dissimilar from trade negotiators.

792 **Bacchus:** No, very similar, very similar.

793 **Plank-Brumback:** Article 17.9 of the Dispute Settlement Understanding states that working
794 procedures shall be drawn up by the Appellate Body in consultation with the chairman of the
795 Dispute Settlement Body [DSB] and the Director-General and communicated to the members for
796 their information. How did that appear to be the first order of business of the Appellate Body,
797 and how did you go about developing these rules of procedure? Before you were appointed, the
798 DSB chair had consulted with members to obtain their views on the working procedures of the
799 Appellate Body and pass these views to the Appellate Body. If I may quote a bit from the
800 minutes of the Dispute Settlement Body:⁶ The Chair noted that the consultations that were
801 contemplated in Article 17.9 were neither a negotiations process nor a formal approval by the
802 DSB. The consultations "were in the nature of an advice, *consilium*, counsel to, and for the

⁵ Claus-Dieter Ehlermann of Germany, one of the original seven members of the WTO Appellate Body.

⁶ "Minutes of Meeting Held in the Centre William Rappard on 21 February 1996" circulated on 19 March 1996, (WT/DSB/M/11), p. 9.

803 benefit of the Appellate Body, but not a command, *praeceptum*, that obliged the Appellate
804 Body.”

805 **Bacchus:** That was Celso,⁷ wasn’t it?

806 **Plank-Brumback:** He even quoted Thomas Aquinas, who distinguished between *praeceptum*
807 (command) and *consilium* (advice).

808 **Bacchus:** That was definitely Celso.

809 **Plank-Brumback:** I think that “*praeceptum* implied necessity to obey while *consilium* provided
810 options for those to whom they were given.”⁸ Notwithstanding this distinction, even religious
811 distinctions, there were plenty of criticisms by the delegations on your working procedures. So
812 how did you arrive at the issues of the establishment of Divisions, rotation and, most
813 importantly, this notion of collegiality by which the three who sit in the Division that will hear
814 and decide an appeal, exchange views with the other four who are not in that Division?

815 **Bacchus:** Well, we certainly took the views of the members into account, but as Celso said so
816 artfully, the Dispute Settlement Understanding gives to the Appellate Body the responsibility on
817 its own of establishing its rules of procedure. And I would suggest that, thirteen years on, with
818 only minimal changes in those rules, the members of the WTO are by and large pretty happy
819 with the Working Procedures for Appellate Review. We took the suggestions of the members;
820 we took the suggestions of our staff, which had inventoried other approaches around the world.

⁷ Celso Lafer of Brazil was Chair of the WTO Dispute Settlement Body in 1995.

⁸ *Id.*

821 We sat down with a legal pad around our round table, and we set out to discuss each and every
822 one of the issues you mentioned, and a lot more, over a period of several weeks.

823 **Plank-Brumback:** So the issue of collegiality was already on the table when you sat with your
824 legal pads?

825 **Bacchus:** The issue of collegiality was already on the table and it did not arise with us, it arose
826 from the members themselves. If you read the DSU, it says that one of the purposes of the
827 dispute settlement system is to assure security and predictability in the trading system. This
828 implies that the rules of trade should mean the same thing every day and in every way. Certainly
829 under public international law, any particular ruling in dispute settlement is not a precedent, it is
830 not *stare decisis*, but the members of the WTO don't want national treatment to mean one thing
831 one day and another thing the next. If one reads the Dispute Settlement Understanding, one finds
832 that Julio Lacarte as chairman of the negotiations—for reasons that are known to Julio and his
833 fellow negotiators—decided that there would be divisions of three that would decide any
834 particular case.

835 **Plank-Brumback:** Of course, that was usually the case of panels.

836 **Bacchus:** I think it's purely an intellectual inheritance and there's nothing in the Dispute
837 Settlement Understanding about collegiality or an exchange of views. But it occurred—not to the
838 members of the Appellate Body but to the Americans and Europeans and others when they
839 finally got around to thinking about how this process would work—that if you had three
840 members of the Appellate Body rule on one particular issue you might have three other members
841 of the Appellate Body rule differently on that same issue in a different case, and they didn't want
842 that. You can't have three members of the Appellate Body say national treatment means X and

843 then have three other members of the Appellate Body say it means Y. That does not insure
844 “security and predictability” in the trading system, as sought by the DSU. So you need a system,
845 as required by the treaty, in which three decide; but you need some way in which those three can
846 be mindful of the views of the other four. This was the genesis of the notion of collegiality. We
847 were asked by the members of the WTO to put collegiality into the procedural rules.

848 **Plank-Brumback:** Had this come up already in your interviews in the selection process?

849 **Bacchus:** I don’t think so. I think it came up purely from the WTO members themselves.

850 **Plank-Brumback:** No one asked you what kind of working procedures you would be inclined
851 to—

852 **Bacchus:** I don’t recall them doing that, no. That was the source of collegiality. I mean, you see
853 what’s in the rule, it’s never been changed. There has been no need to change it. And human
854 nature takes effect. Especially with a busy caseload, one might be on one Division but not on
855 another in two pending appeals. If you are a member of the Division, you are going to listen very
856 closely to the views of others who are not on the Division, in part because you want them to
857 listen to you in the other case. In my case, I always prepared equally for every case whether I
858 was on the Division or not, in part so that I could be the most useful and be fully engaged in the
859 exchange of views. I like to think that made me a more effective member of the Appellate Body.
860 Also, we all had enormous respect for the views of the other six, so we wanted to hear their
861 views whether they were on a particular Division or not. Among the seven of us, of course, there
862 were subdivisions of perceived expertise. People had different experiences, different skills. All I
863 can say is, I think that collegiality has done much to promote a continuing consensus among

864 members of the Appellate Body, even as there's been a turnover in the membership, and even as
865 the cases have grown and multiplied. The record reflects that.

866 **Plank-Brumback:** And the issue of nationality—the randomness of sitting on a Division hearing
867 an appeal regardless if you're a national of the party—

868 **Bacchus:** That's in the Dispute Settlement Understanding. Nationality is a bar at the panel level,
869 but it is pointedly not a bar at the Appellate Body level. Think of the results if there had been a
870 nationality bar in a system where the United States and European Union are parties or third
871 parties to most disputes. Then Claus Ehlermann and I wouldn't have had much to do. And I think
872 we proved early on that nationality was not an issue. I'm quite proud that, to my knowledge, no
873 one has ever suggested that any member of the Appellate Body has ever acted out of nationality.

874 **Plank-Brumback:** How did you go about determining who would be—

875 **Bacchus:** Oh, one more point here. I think one of the mistakes that has been made by the
876 International Court of Justice is in accepting, as routine, the fact that if there is a case involving
877 the United States, then the American judge will rule for the United States. I think that's a
878 mistake. It's always been a mistake. I think it undermines the credibility and legitimacy of the
879 International Court of Justice. We haven't done that on the Appellate Body. Members of the
880 WTO now know they're going to get whatever ruling they're going to get irrespective of which
881 particular members of the Appellate Body are sitting as the Division.

882 **Plank-Brumback:** How did you go about selecting any three for a particular appeal and then
883 determining who among the three would be the presiding member of the Division?

884 **Bacchus:** I can't tell you. There is an anonymous system of rotation, and none of us has ever
885 described how that is done, nor do I have any idea whether they still do it in the way we did it
886 when I was there.

887 **Plank-Brumback:** And was it pretty much always decided that you would have a chairman of
888 the Appellate Body?

889 **Bacchus:** Yes, from the very beginning we thought it was important that we would have a
890 chairman and Julio was elected; we imposed it on him, he was the obvious choice.

891 **Plank-Brumback:** Was he elected the first day, before you got to work on your working
892 procedures?

893 **Bacchus:** I think he may have been. There was no opposition. There was a consensus that he
894 should do it, and in fact I think we changed the rules so that he could serve a second term. At this
895 point, I think Julio and I are the only two members of the Appellate Body who have served two
896 terms as chairman. One of the few changes in the rules of the working procedure was to permit
897 that. Later, I agreed to serve a second term at the request of the other six members. None of them
898 wanted the job. [laughter]

899 **Plank-Brumback:** How about your first case? How did you prepare for it, approach it? To use
900 some of the terms you use in your book, did you assume uncertainty and doubt in order to arrive
901 scientifically at the answer? You write that the—

902 **Bacchus:** Well, the first case was the *Gasoline* case involving the United States of America. I
903 was not on the Division. I was in the exchange of views. And that case was notable in that we
904 were doing everything for the first time. It was a fascinating experience.

905 **Plank-Brumback:** So what was—did you have, I don't know, any questions of form and
906 substance in the first hearing? Or did you more or less adopt—

907 **Bacchus:** I was not in that first hearing because I was not on the Division.

908 **Plank-Brumback:** But you might have exchanged views.

909 **Bacchus:** We did, and we assumed from the beginning that an Appellate Body hearing would
910 take the form of—would take the familiar form of an appellate hearing—

911 **Plank-Brumback:** Of the panel?

912 **Bacchus:** No, not the panel, of an appellate hearing in almost any appellate court anywhere in
913 the world. A panel is much more formalized. There are things that are done in the panel that are
914 totally unlike the Appellate Body. At the panel level, for example, the parties are free to ask each
915 other questions. They can't do that before the Appellate Body. A lot of what a panel does, even
916 today, is still more or less scripted. There are written submissions to the Appellate Body, but an
917 Appellate Body hearing is an extended oral inquisition.

918 **Plank-Brumback:** Between the Division and the parties?

919 **Bacchus:** Yes.

920 **Plank-Brumback:** Do you think that was a founded reason, not to have the appellant and
921 appellee be able to direct questions to one another?

922 **Bacchus:** I think it works as it should.

923 **Plank-Brumback:** So what is the role of the presiding member of the Division?

924 **Bacchus:** It's purely ministerial, organizational.

925 **Plank-Brumback:** It doesn't have a special role in forging a consensus or a compromise?

926 **Bacchus:** Not necessarily. It depends on who the person is. But no, not in that sense, it's more
927 organizational. To chair the deliberations and organize things. The Appellate Body is not a
928 hierarchical place.

929 **Plank-Brumback:** And the role of the chair of the Appellate Body?

930 **Bacchus:** Same thing, same thing. The chairman of the Appellate Body will chair general
931 meetings, but during an exchange of views, once the exchange begins on a particular case, the
932 chairman of the Appellate Body will yield the chair to the presiding member in that appeal. Now,
933 maybe it's the same person—you know sometimes you need a chair. But no, the presiding
934 member of the division is more of a facilitator; the chairman of the Appellate Body is a
935 facilitator.

936 **Plank-Brumback:** And would you like to comment on the role of the Appellate Body
937 Secretariat? There was much ado on its independence from the rest of the WTO Secretariat as it
938 was being set up.

939 **Bacchus:** It is, and it must be. The Appellate Body Secretariat works for the Appellate Body.
940 They are an outstanding group of lawyers and other civil servants and they provide legal advice
941 and counsel to the Appellate Body in the ways the Appellate Body deems necessary.

942 **Plank-Brumback:** There is a separate budget?

943 **Bacchus:** There is a separate budget for the Appellate Body Secretariat, yes.

944 **Plank-Brumback:** Is it part of the responsibilities of the chair of the Appellate Body to
945 administer that budget?

946 **Bacchus:** Generally the Executive Director is charged with the day-to-day stuff, but over time
947 the chairman of the Appellate Body has taken on more of an administrative role.

948 **Plank-Brumback:** Why do you think that is?

949 **Bacchus:** I think it's just a natural evolution of the system. In part, it's because the chairman of
950 the Appellate Body is there a little bit more now, with the growing case load. In part, it's because
951 there are more people in the Secretariat. It probably relates somewhat to some of the
952 personalities of the people involved.

953 **Plank-Brumback:** Were you present when the Dispute Settlement Chairman drew the lots to
954 determine which three members would only have an initial two-year term in July 1997?

955 **Bacchus:** I can't recall.

956 **Plank-Brumback:** Well, they didn't pick your name. You got eight years!

957 **Bacchus:** I can't recall whether I was present for that.

958 **Plank-Brumback:** Okay, without violating the rules of maintaining the deliberations
959 confidential—and if I sway too far away I am sure you will bring us back to being respectful of
960 the rules—the Appellate Body took immediately in its first case the *Gasoline* case, a very
961 interpretive, textual approach as reflected in the Vienna Convention on the Law of Treaties,
962 which is not specifically mentioned in the DSU. Was it a no-brainer that the customary rules of
963 interpretation of public international law would be in accordance with the Vienna Convention?

964 **Bacchus:** If you look carefully, first of all Article 3.2 of the DSU says that the rules shall be
965 clarified in dispute settlement in accordance with the customary rules of interpretation of public
966 international law. So the question is, what are those customary rules? The Appellate Body did
967 not say that the Vienna Convention of the Law of Treaties comprises the rules. If you look
968 carefully at what the Appellate Body said then, and has always said, you will see that the
969 Appellate Body has always said that these rules exist as a matter of custom and that the Vienna
970 Convention is a reflection—an expression—of those rules.

971 **Plank-Brumback:** Not all WTO members have signed the Convention.

972 **Bacchus:** That's correct, but the rules exist as a matter of custom and all members of the WTO
973 have expressed in the Dispute Settlement Understanding their agreement that these customary
974 rules should be applied. The Vienna Convention is a convenient place to look for the rules. If
975 there ever arose a question as to whether the Vienna Convention did not reflect customary rules,
976 then that would be an issue of law for the Appellate Body to address, but it's never happened.

977 **Plank-Brumback:** How likely would that be?

978 **Bacchus:** Very unlikely. It's an interesting legal question, but it's very unlikely to happen. By
979 the way, the United States was a party to that first dispute, and the record will reflect, I think, if
980 you'll look at the case, that the United States was asked about this issue because the United
981 States has not yet ratified the Vienna Convention, and the United States agreed that the Vienna
982 Convention should be used.

983 **Plank-Brumback:** In the *US Shrimp* panel, the Appellate Body decided that the panel there had
984 erred in its legal interpretation that accepting *amici curiae* briefs—not requested information

985 from non-governmental sources—was incompatible with the DSU, but the panel, the Appellate
986 Body decided, had acted within the scope of its authority in allowing any party to the dispute to
987 attach the briefs by non-governmental organizations. Could you comment on that?

988 **Bacchus:** I can't add anything that's not already in the record.

989 **Plank-Brumback:** What about in the—to continue with *amici curiae*—the decision in *EC*
990 *Sardines*, that the Appellate Body had the authority to accept a brief filed by a private individual
991 and to consider it?

992 **Bacchus:** I can't add anything to the record in that case either.

993 **Plank-Brumback:** And the same when, for the first time, Morocco, a WTO member that was
994 not a participant or third party in the appeal, nevertheless wished to submit an *amicus curiae*
995 brief? And I suppose the issue there was once you've already taken the decision that an NGO
996 [non-governmental organization] can file a brief and the Appellate Body has the discretion to
997 look at it or not, you couldn't treat a full-fledged WTO member country any differently.

998 **Bacchus:** That sounds like a compelling argument. I can't add anything to what we said at the
999 time.

1000 **Plank-Brumback:** Moving right along, on *Bananas*: private counsel. There the issue was the
1001 right of a party to the dispute (WTO member) to compose its delegation the way it saw fit, and
1002 then the immediate issue that it was a developing country to boot that wished to retain private
1003 counsel.

1004 **Bacchus:** I remember. I presided in that appeal.

1005 **Plank-Brumback:** And that was allowed. Was that—how about philosophically? Do you think
1006 that is a useful thing to have private counsel as a member of the legal delegation, or did that
1007 interject a certain—I don’t know—a litigation wanderlust among competing law firms in the
1008 world?

1009 **Bacchus:** I can’t add anything to what we said at that time. The decision was made on the basis
1010 of the rules, not on the basis of philosophy.

1011 **Plank-Brumback:** In your book, you quote Nobel Prize winning economist Ronald Coase, who
1012 said, “It is evident that, for their operation, markets ... require the establishment of legal rules
1013 governing the rights and duties of those carrying out transactions. To realize all the gains from
1014 trade, ... there has to be a legal system and political order.”⁹ You also quoted philosopher
1015 Friedrich Hayek that “only with rules that are ‘fixed and announced beforehand,’ only with
1016 ‘rules which make it possible to foresee with fair certainty’ how the rules will be enforced, will
1017 we be able to achieve the ‘predictability’ that is sought by the Members of the WTO in their
1018 efforts to make the most of international trade for all the world.”¹⁰ Do you think so far the
1019 Appellate rulings, and certainly your rulings in this regard, helped to accomplish that?

1020 **Bacchus:** Absolutely.

1021 **Plank-Brumback:** Would you like to elaborate?

1022 **Bacchus:** I believe in the rule of law, and I believe in the necessity of rules. [laughter] That’s
1023 much of what I’m all about.

⁹ Bacchus, p. 188.

¹⁰ *Id.* p. 189.

1024 **Plank-Brumback:** When you look back on your period at the Appellate Body, is there one
1025 particular experience or knowledge that you—that is particularly dear to your heart that is of
1026 public importance?

1027 **Bacchus:** There are too many to mention, among all I recall. It was a great joy to work especially
1028 with the six with whom I first served and it was a joy to work with everyone I was privileged to
1029 serve with while at the Appellate Body—both the members of the Appellate Body and the
1030 lawyers and others who worked with us. And several are now deceased and I miss them: Chris
1031 Beeby and Said El-Naggar and John Lockhart.

1032 **Plank-Brumback:** Did having those people of that caliber really help to lay the foundation for a
1033 good institution?

1034 **Bacchus:** It certainly helped me. I learned a great deal from everyone with whom I worked, and
1035 profited enormously as a person from having the privilege of working with them. These were
1036 great legal minds and individuals of broad and deep experience in the ways of the world.

1037 **Plank-Brumback:** You quoted Eudora Welty, “Emotions do not grow old,” and I can see that is
1038 still the case with your former friends in the Appellate Body.

1039 **Bacchus:** That’s right, that’s right. I see them as often as I can. They all mean a great deal to me.
1040 Toy called me this morning.

1041 **Plank-Brumback:** And so you continue now outside of the Appellate Body. You have regained
1042 your voice, as you say, and have launched a continuing career as advocate in favor of trade.

1043 **Bacchus:** I am that endangered species in America: a free-trade Democrat. I also see myself as
1044 very much an American and also as very much a citizen of the world. I noted that President
1045 Obama described himself as a citizen of the world in his speech in Europe recently. I was very
1046 pleased by that. I noted, to my dismay, that he was criticized for doing so by Newt Gingrich, who
1047 pointedly said he is not a citizen of the world. This is not the first time that Newt and I have
1048 disagreed.

1049 **Plank-Brumback:** One last question. Last week, before the Washington International Trade
1050 Association, former USTR Charlene Barshefsky stated that she was very pleased with the Cairo
1051 speech, and with Obama's overtures toward the Muslim world. She concluded with the message
1052 that you cannot have a progressive foreign policy with an anti-trade, regressive economic policy.

1053 **Bacchus:** I think she's absolutely right. Charlene and I usually agree.

1054 **Plank-Brumback:** Do you think this is how things will evolve?

1055 **Bacchus:** I think the President will inevitably move toward a freer trade policy. I think his
1056 biggest challenge in trade will not be with other countries, but with his fellow Democrats on the
1057 Hill, and especially my former colleagues in the US House of Representatives.

1058 **Plank-Brumback:** Are you hopeful in that regard?

1059 **Bacchus:** I'm hopeful. I'm always hopeful. [laughter]

1060

1061 [END OF INTERVIEW]