

The Strange Death of Sir Francis Bacon:

The *Dos* and *Don'ts* of Appellate Advocacy in the WTO

By

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## **The Strange Death of Sir Francis Bacon: The Do's and Don'ts of Appellate Advocacy in the WTO**

The case was styled in the customarily cryptic way of the World Trade Organization: “EC — Measures Affecting the Importation of Certain Poultry Products, WT/DS69/9.”<sup>1</sup>

In other words, it was a chicken case.

It was a case arising from an international trade dispute between the European Communities and Brazil about restrictions the Europeans had imposed on imports of chicken from Brazil. The appeal in the case occurred early in my tenure on the Appellate Body of the WTO, and, through the workings of our system of anonymous and random rotation, I was anointed to sit as one of the division of three Members of the Appellate Body that would hear the appeal.<sup>2</sup>

On the morning of the oral hearing in the appeal, the delegations from the European Communities and from Brazil filed into the hearing room in Geneva. They had long been preparing for this last legal showdown over their chicken trade. And yet they obviously were not looking forward to the lengthy legal interrogation they rightly anticipated from our division of the Appellate Body.

Faces were grim. Jaws were set. Lips were pursed. Brows were furrowed. Nervous hands shuffled sheafs of paper as all in attendance awaited the onset of the long ordeal. This air of tension was sustained throughout the parties' opening statements and throughout the initial questions that were posed to the parties by my two colleagues on the division. The ordeal of the oral hearing promised to be long indeed.

Then it was my turn to pose a question. I removed my glasses. I turned to gaze at one of the delegates. I wore my gravest face. I summoned my most serious voice. And I asked:

“Did you know that Sir Francis Bacon was killed by a frozen chicken?”

From the frozen response on his face, one might have thought that *he* had been slain by a frozen chicken. He said not a word. He simply sputtered. Elsewhere in the room, others muttered. But no one anywhere in the room answered my question. And no one laughed.

It was then and there that I learned the extent to which the Europeans and the Brazilians take their chicken *seriously*.

It is not surprising that they would. Annual exports of broiler meat by the European Communities are 720,000 tons; annual exports by Brazil are 2.3 million tons.<sup>3</sup> This is definitely *not* chicken feed.

My question, though, was a joke. It was an attempt to introduce a little levity into the proceeding that might lighten the occasion, and might thereby make it possible for the participants in the hearing to relieve some of their tension, lighten up a little, and perhaps be able, in response to our questions, to enlighten us a little more about some of the subtler nuances of the legal issues they had raised on appeal in their chicken case.

I was not joking, however, about the strange death of Sir Francis Bacon. Those who know me best know that I take the philosophy of Sir Francis Bacon *seriously*.<sup>4</sup>

Certainly we are all familiar with the seriousness of quite a few longstanding and ongoing disputes in the WTO — about chicken and about much else. Like trade lawyers and trade diplomats, historians also have their longstanding and ongoing disputes. One such dispute is over Bacon’s strange death, and whether Bacon was, in fact, slain by a frozen chicken.

For those who know more about chicken than about Bacon, it may be worth recalling that Sir Francis Bacon was one of the makers of our modern world. In early 17<sup>th</sup> century England, his ardent advocacy of the rigorous methods of science and the practical applications of science helped lay the philosophical foundation for the modern world.<sup>5</sup> Bacon was an early champion of the Scientific Revolution in the Age of Reason. He saw the “trial and error” of the scientific method as the surest way to secure human progress. He believed in inductive reasoning through experiment. He believed in observing facts through experience. He believed in the open minds of the open societies that are sought by the modern world. Bacon was a philosopher of science. He was an eloquent essayist. He was also a gifted jurist who, after many years of striving, rose, at last, to become, first, the Attorney General, next, the Lord Keeper, and, eventually, the Lord Chancellor of England under King James I.

“All rising to great place is by a winding stair,” Bacon warned us,<sup>6</sup> and, after his long climb, he soon fell from his great place. It was revealed that Bacon had accepted bribes while on the judicial bench. He was dismissed in disgrace. He was imprisoned briefly in the Tower of London, banned from public office, and banished from the court. (Undoubtedly, Sir Francis Bacon would have had difficulties with the WTO Rules of Conduct.)

Bacon’s loss of high office was, however, a gain for higher learning. His disgrace freed him for his philosophy. He decided to devote the remainder of his life to his long-postponed literary and scientific pursuits. It may have been his passion for these pursuits that cost him his life in a fatal confrontation with a frozen chicken.

As the story goes, during the spring snow of 1626, the aging, ailing Bacon was returning by coach one night from London to his country estate when he suddenly decided to conduct a scientific experiment. He stopped the coach, bought a gutted chicken from a local villager, and stuffed the chicken with snow with his bare hands. His aim was to show with this experiment that food could be preserved when frozen. This

experiment proved fatal for Sir Francis Bacon. From the damp of the snow, he caught a chill from which he never recovered. A week later, he died. In recounting the sad ending to this story, the historian Thomas Macaulay later declared, “The great apostle of experimental philosophy was destined to be its martyr.”<sup>7</sup>

Perhaps. And perhaps Bacon was *not* killed by a frozen chicken. The dispute about the accuracy of this story continues to this day among historians. Some historians doubt that there ever was a frozen chicken.<sup>8</sup> Fortunately, the settlement of this particular longstanding and ongoing dispute is clearly beyond the jurisdiction of the Appellate Body of the WTO.

However he may have died, my intent in telling this story of the strange death of Sir Francis Bacon then was merely to move all those involved then toward the achievement of a “positive solution” in that particular dispute about the chicken trade between the European Communities and Brazil. Further, my intent in recalling this story of Bacon’s strange death now is to move others now to a positive awareness of all the many strange legal deaths of so many ardent advocates who have engaged in appellate advocacy in the WTO during my time on the WTO Appellate Body.

I was one of the seven founding Members of the Appellate Body in 1995. I am the last of the founding Members remaining on the Appellate Body. I am the only Member of the Appellate Body who has served since the very beginning of WTO dispute settlement. In the past eight years, I have participated in varying roles in nearly sixty appeals in the WTO. I have served on more divisions in WTO appeals than anyone else. I have seen many, many legal advocates suffer all kinds of strange legal deaths in oral hearings before the Appellate Body.

An oral hearing before the Appellate Body of the WTO is an inquiry by the Appellate Body in search of legal meaning and, thus, legal truth. It is an extended exercise in the classic Socratic method for finding truth. It is a rigorous exercise in relentless questioning in pursuit of truth in the form of the right legal answers that will enable the Appellate Body to help the Members of the WTO “clarify” the legal obligations in the “covered agreements” of the WTO treaty.<sup>9</sup>

The questioning of advocates in hearings before the Supreme Court of the United States usually lasts for only a few minutes. The questioning of advocates in hearings before the Appellate Body of the WTO always lasts for hours, and sometimes lasts for days. I have heard renowned, experienced advocates who have also appeared before many of the other notable international and other tribunals of the world say that no other tribunal in the world is as demanding, as exhausting, as inquisitive, or as downright persistent as the Appellate Body of the WTO in the pursuit of legal truth.

I take this as a compliment. I, for one, would not be eager at all to try to answer my own persistent questions, much less those of my distinguished colleagues on the Appellate Body, in the “quasi-judicial” quest for legal truth in our oral hearings. In my checkered past, I was at different times both a journalist and a politician. I have long

since repented and reformed. But I learned long ago that it is much easier to ask the questions than to answer them. No doubt Socrates would agree.

And yet, for all the strange hearsay about the Appellate Body, and for all the strange legal deaths before it, very little is really known in the world about what really happens in appellate advocacy in the WTO. Even now, after eight years, only a handful of lawyers in the world have appeared before the Appellate Body. Indeed, even now, after eight years, *the majority of the Members of the WTO* have never even seen a proceeding of the Appellate Body.

The chicken case was resolved in a “positive solution” some time ago.<sup>10</sup> In the years since, the word has no doubt spread to many of those who appear for the first time before the Appellate Body to beware the occasional odd question from the occasionally odd American who serves on the Appellate Body. Nowadays, some of the participants in our oral hearings sometimes laugh at my jokes — or at least pretend to laugh.

Still, all too little seems to be known in the world about the supposed mysteries of the Appellate Body’s “confidential” proceedings.<sup>11</sup> Very little seems to be known about the purely practical approaches that advocates would be advised to pursue in appeals in the WTO so as to avoid being numbered along with Sir Francis Bacon among those who have suffered strange deaths. Very little seems to be known about the *dos* and *don’ts* of appellate advocacy in the WTO.

What are those *dos* and *don’ts*? What *are* some of the *dos* and *don’ts* of appellate advocacy in the WTO?<sup>12</sup>

First of all, *do* remember to file your notice of appeal on time. Bacon said, “There is surely no greater wisdom than well to time the beginnings and onsets of things.”<sup>13</sup> There are deadlines in the WTO Dispute Settlement Understanding. Know them. Meet them. The Appellate Body does. Moreover ...

*Don’t* forget that, in accordance with the DSU, the Appellate Body has promulgated its own Working Procedures for Appellate Review. Every successful advocate knows that the small matter of procedure is often the largest matter of all. As Bacon said, “[S]mall matters win great commendation.”<sup>14</sup> Read those Working Procedures. Follow them. The Appellate Body does.

*Do* state your claims clearly in the notice of appeal. Both the other participants and the Appellate Body need to know what your appeal is about. They should not be left to wonder. But ...

*Don’t* feel that you need to set out your whole case in the notice of appeal. It is, after all, only a *notice* of appeal.

*Do*, by all means, file all necessary preliminary motions. Some concerns simply cannot wait until the oral hearing. But ...

*Don't* file needless or frivolous preliminary motions. The Appellate Body has only ninety days to produce a report in an appeal. In practice, this includes two weeks for translation. As Bacon said, “[A]n unseasonable motion is but beating the air.”<sup>15</sup>

*Do* use big print to make your points in your written submissions. I am the youngest Member of the Appellate Body, and even I can barely read the smallest print. Even with my bifocals, it looks like so much “chicken scratch.”

*Don't* fail to respond to the points that are made by the other party in its written submissions. Failure to acknowledge these points will not keep the Appellate Body from addressing them. Silence is not golden in WTO dispute settlement. Bacon said, “Silence is the virtue of fools.”<sup>16</sup>

*Do* be on time for the oral hearing. I may be best known within the WTO, not for my jokes, but for my insistence on starting our hearings on time. A clock on the title page of the first edition of Bacon's book, New Atlantis, showed truth being brought forth by time.<sup>17</sup> Best then, in search of truth, to get started on time.

*Don't* take too much time in your opening statement. The Appellate Body reads every word of the written submissions. There is no need to repeat them word for word. Bacon observed of opening remarks, “To use too many ... ere one come to the matter is wearisome ....”<sup>18</sup> Perhaps with this in mind, my former colleague on the Appellate Body, Claus-Dieter Ehlermann, once brought an egg timer with him when he presided in an oral hearing. In that particular case, the egg came before the chicken.

*Do* assume that the Appellate Body is prepared to hear the appeal. Usually, by the time of the oral hearing, the members of the division in an appeal have each spent many hours, on their own and together, preparing for the oral hearing. They are always prepared. And ...

*Don't* assume that the members of the division have already made up their minds by the time of the oral hearing. They have not. They are always mindful of Bacon's admonition that, “Surely there is in some sort a right in every suit....”<sup>19</sup> They always have open minds. And ...

*Do* know that the Members of the Appellate Body are independent and impartial. As the DSU requires, Members of the Appellate Body are “unaffiliated with any government” and “broadly representative of membership in the WTO.”<sup>20</sup> They are each there to represent *all* the Members of the WTO by representing *all* the world trading system. So ...

*Don't* assume from the nature or the slant of the questions asked by the members of a division of the Appellate Body in an oral hearing that they do *not* have open minds or that they are *not* independent and impartial. Their questions are not intended to reveal *their* thinking; they are intended to provoke *yours*.

*Do* answer the questions. If they are not answered, the members of the division will keep asking them until they are answered. As I have said many times to many advocates in our oral hearings, “Humor me.”

*Don't* tell the members that their questions are irrelevant. They choose the questions, and they have their reasons for asking them. Trust me.

*Do* answer the questions even if the answers seem obvious to you. The answers may not seem as obvious to the members of the division. Thus, be prepared to tell them, if they ask, why the chicken crossed the road.

*Don't* keep talking when you have finished answering a question. Stop. If you don't stop, you may say something you will later regret. “For he that talketh what he knoweth,” said Bacon, “will also talk what he knoweth not.”<sup>21</sup>

*Do* expect to be interrupted when you are answering a question. Bacon, the seasoned jurist, explained, “A sudden, bold, and unexpected question doth many times surprise a man, and lay him open.”<sup>22</sup> The Appellate Body's aim in interrupting by asking such a question is to lay the way open to legal truth.

*Don't* ask questions of the other parties. Only the Appellate Body asks questions of the parties in an oral hearing. Bacon's first act as Attorney General was to outlaw the practice of dueling in England.<sup>23</sup> An oral hearing of the Appellate Body is *not* a duel between the parties.

*Do* argue the law. An oral hearing before the Appellate Body of the WTO is a *legal* proceeding. The job of the Appellate body is to address each of the *legal* issues raised in the appeal.<sup>24</sup> That is their job, and that is their only job.

*Don't* argue politics or policy. The Members of the Appellate Body leave the politics and the policy entirely to the Members of the WTO. That is *not* their job.

*Do* argue WTO law. The law that interests the Appellate Body by far the most is the law that is found in the WTO “covered agreements.” WTO law is where WTO obligations are found.

*Don't* simply assume that a provision in WTO law will be interpreted in precisely the same way as a similar provision in your own municipal law. It may be. It may not be. What matters most in interpretation is whether the “covered agreements” say that it *must* be.

*Do* argue other international law — when it is relevant. As the Appellate Body has said from the very beginning, WTO law is a part of international law and cannot be viewed in “clinical isolation” separate and apart from other international law.<sup>25</sup> But ...

*Don't* assume the *relevance* of other international law. Whether other international law *is* relevant may be subject to debate in the WTO. To the extent that this debate will be resolved in WTO dispute settlement, it will be resolved, like so much else, on a case-by-case basis.

*Do* know the “covered agreements.” The “covered agreements” contain WTO law. Bacon advised, “[S]ome books are to be read, but not curiously; and some few to be read wholly and with diligence and attention.”<sup>26</sup> Read the whole of the “covered agreements” with diligence and attention.

*Don't* assume that it will be easy to discern the legal truth of the legal obligations of WTO Members from the “covered agreements.” If the right answer were obvious, the issue would never have reached the Appellate Body. As Bacon recalled, “*What is truth?*” said jesting Pilate, and would not stay for an answer.”<sup>27</sup> Stay awhile, and help the Appellate Body find the answer.

*Do* come prepared to stay a *long* while. The hearings *do* go on for hours and, frequently, for days. The Appellate Body asks *many* questions in search of the *right* answer. “Stay a little,” urged Bacon, “that we may make an end the sooner.”<sup>28</sup>

*Don't* be impatient if, in the methodical asking of their many questions, the members of the division do not seem to be proceeding with haste to the issue you see as most important. Be patient. They will get there. Bacon cautioned, “[M]easure not dispatch by the times of sitting, but by the advancement of the business.”<sup>29</sup>

*Do* argue the case law when it supports your claim. Yes, yes, it is true that there is no *stare decisis* — no rule of precedent — in public international law. However, in my experience, when the case law supports a party’s claim, that party argues the case law; and when the case law does not support a party’s claim, that party reminds the division hearing the appeal that there is no *stare decisis* in public international law. Moreover...

*Don't* merely ignore the case law when it does *not* support your claim. You are free, of course, to argue that the Appellate Body erred egregiously in its ruling in a previous case. You can argue that. Or, instead, you may wish to argue that your case can be distinguished from the previous case — if it can be.

*Do* know your brief. Know every single detail there is to know about the dispute. This will not be easy. Panel reports include hundreds of pages. Panel records include thousands of pages. But the lawyer who does the best is usually the lawyer who knows the brief the best. Bacon said, “Knowledge itself is power.”<sup>30</sup>

*Don't* contest the facts as found by the panel. The members of the division can discuss with you the endless nuances of what is “law” and what is “fact”. They can discuss with you how the law should be applied to the facts. But they are bound on appeal by the facts as found by the panel. Thus, like Bacon, they prefer, on appeal, “that reason which is elicited from facts ....”<sup>31</sup>

*Do* rely on the customary rules of interpretation of public international law. The Members of the WTO have instructed the Members of the Appellate Body to do so when assisting them in their efforts to “clarify” the provisions of the “covered agreements.”<sup>32</sup> They do. So should you.

*Don't* bother arguing that the Appellate Body should embrace some “teleological” approach to interpretation that would enable the members to impose their purely personal views on the meaning of the “covered agreements.” They don't. They won't.

*Do* know the measure. A dispute in every case involving a claim of a violation of the “covered agreements” is always about the application of some kind of a statute, regulation, administrative practice, or other governmental “measure.” The very first question in an oral hearing is almost always, “What is the measure?” Know the answer. But ...

*Don't* look at the measure without seeing it in relation to the claims. My former colleague on the Appellate Body, Florentino “Toy” Feliciano, is fond of saying that a measure is a prism that can be viewed from the perspective of many possible claims. As usual, I agree with Toy. Whether a measure, when viewed, is a violation, often depends on the nature of the claim.

*Do* know the difference between the *claims* that have been made, and the *arguments* that have been made about the claims. The Appellate Body will address all your claims. It will not necessarily give equal attention to all the arguments you make in support of your claims. Some arguments are better than others.

*Don't* confuse eloquence with persuasiveness in making your arguments. Bacon said, “Discretion of speech is more than eloquence.”<sup>33</sup> One precise sentence that makes a legal point effectively will be far more persuasive than a glittering effusion of eloquent sentences that are beside the point.

*Do* pursue your best arguments — even if the panel seemed to give them short shrift. You will never know which, of all your arguments, may, in the end, prevail. “For if there be fuel prepared,” Bacon said, “it is hard to tell whence the spark shall come that shall set it on fire.”<sup>34</sup> But ...

*Don't* cling to the weakness of your weakest arguments. Bacon said, “For what a man would like to be true, that he more readily believes.”<sup>35</sup> This does not mean, though, that the Appellate Body will believe it.

*Do* be flexible. Be ready to improvise in your oral argument at the drop of a question. It is not enough to know the law and to be able to argue the law. To be truly effective, an advocate must be able to seize the opportunity to improvise while arguing the law. Bacon said, “A wise man will make more opportunities than he finds.”<sup>36</sup>

*Don't* overlook the small but telling detail — the question not asked by the division, the question not answered by the other party, or perhaps the grudging concession by the other party in a buried footnote. Bacon reminded us, “The way of fortune is like the milken way in the sky, which is a meeting or knot of a number of small stars, not seen asunder but giving light together.”<sup>37</sup> So too with the small but telling details that shed a revealing light in an appeal in the WTO.

*Do* be willing to admit the obvious. Concede what cannot credibly *not* be conceded. You may not wish to make any concession at all, but, as Bacon told us, even “princes many times make themselves desires, and set their hearts upon toys....”<sup>38</sup> If you deny that the sky is blue, then the Appellate Body may be less likely to believe you when you say later that the rain is wet.

*Do* be aggressive in your advocacy. The Appellate Body will not make your case for you. You must make it yourself. One advocate in a recent appeal made a point of reminding me that he expected to win or lose solely on the strength of his own arguments. He did. All do. But ...

*Don't* be so aggressive as to be arrogant in your advocacy. Perhaps the worst show of arrogance in my experience was when one young lawyer from one large country told one of my learned colleagues in a patronizing tone, “I know this is difficult for you to understand, but ....” My colleague — forty years his senior and the author of numerous legal treatises — was too polite to reply. Bacon, the *former* Lord Chancellor, might have told that young lawyer that pride sometimes goes before a fall.

*Don't* get your hopes up if you ask the Appellate Body to recommend a means of compliance with its ruling. Under the Dispute Settlement Understanding, the Appellate Body “may suggest ways” to implement its recommendations.<sup>39</sup> To date, the Appellate Body has never done so. As Bacon noted, “[t]he predominancy of custom is everywhere visible....”<sup>40</sup>

*Do* know specifically what you are asking the Appellate Body to go and do at the conclusion of the oral hearing. Do you want a ruling that a statute is in violation of WTO obligations, or only that the statute *as applied* is in violation of those obligations? Do you want a ruling on *all* your claims, or only on *some* of them if the Appellate Body otherwise rules in a certain way? The members of the division may very well ask you in the oral hearing precisely what you want them to do. Know your answer. And, lastly...

*Don't* take too long with your concluding statement. Bacon took *thirty years* to complete his famous essays from which I have been reciting so freely. You should take considerably less time to complete your concluding remarks in an oral hearing in the WTO. As I have reminded advocates more than once toward the end of a long and arduous hearing, parties have prevailed more than once on appeal in the WTO *without making* a concluding statement. You may be the next.

These are only a few of the *dos* and *don'ts* of appellate advocacy in the WTO. I will save the others for another day. Notably, there are also *dos* and *don'ts* for those who happen to sit in judgment in appeals in the WTO. Bacon, for example, was of the view that, “Judges ought to be more learned than witty.”<sup>41</sup> He would probably *not* have laughed at my joke about his strange death. No doubt he would have advised me to tell fewer jokes and show more learning in our oral hearings. But what should we expect from a man who was so learned as to allow his learning to expose him to death by frozen chicken?

I had hoped, before leaving the Appellate Body, to have one more chance to tell my “frozen chicken” joke in an oral hearing. I watched and waited with anticipation as another dispute about the chicken trade — this time between Brazil and Argentina — made its way all the way through the WTO dispute settlement system. But, alas, that one last chance was plucked away. The Panel Report was adopted without an appeal. The dispute was settled.<sup>42</sup>

I am consoled by the knowledge that the purpose of the WTO dispute settlement system *is*, after all, the settlement of disputes. I am consoled also by some of the last words of Sir Francis Bacon. In his last letter, written after his fatal confrontation in the snow, and written on the eve of his strange death, Bacon reported that, for all its unexpected consequences, his experiment with the frozen chicken had “succeeded excellently well.”<sup>43</sup> I think, too, that, for all the unexpected consequences that sometimes result from appeals in the WTO, and for all the strange legal deaths that sometimes occur in our oral hearing in those appeals, the experiment with WTO dispute settlement has also, thus far, “succeeded excellently well.”

Yes, there are some who do take their chicken too seriously. There are some who seem always to be saying that “the sky is falling” on the WTO. But this is not so. The world needs the WTO. The world will continue to need the WTO, and, in the truly Baconian spirit of “trial and error,” the world will continue to make the WTO work for the world as a crucial part of the work of human progress. Moreover, the Appellate Body will continue to do its part to make the WTO dispute settlement system work for the world as a crucial part of the WTO.

Macaulay said that Bacon aimed, above all, at “the multiplying of human enjoyments and the mitigating of human suffering.”<sup>44</sup> In a world where 1.2 billion people live on less than \$1 per day, in a world where 2.8 billion people live on less than \$2 per day, that, of course, is likewise our aim today in the WTO.<sup>45</sup> That is why we have the WTO. That is why we have appellate advocacy in the WTO. And that is why it is imperative that the historic international experiment that we call the WTO continue to succeed “excellently well.”

*Do* remember that.

And — oh, yes — do remember also one last suggestion I have for achieving success in appellate advocacy in the WTO.

*Don't* forget to laugh at the jokes. Or, at least, pretend to laugh — even when the joke is about a frozen chicken.

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## Notes

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\*Chairman of the Appellate Body, World Trade Organization, Geneva; Professor of Law, Vanderbilt University Law School. This article is drawn from an address at The Barber-Surgeons Hall, Monkwell Square, London, June 20, 2003. The views expressed are solely those of the author, and are not the views of his colleagues on the Appellate Body or the official views of the WTO.

<sup>1</sup> The text of the Appellate Body Report in this appeal is online at wto.org.

<sup>2</sup> Article 17.2, Understanding on Rules and Procedures Governing the Settlement of Disputes (the “Dispute Settlement Understanding” or “DSU”).

<sup>3</sup> “Livestock and Poultry: World Markets and Trade,” Foreign Agriculture Service, United States Department of Agriculture (March, 2003).

<sup>4</sup> There are numerous biographies of Sir Francis Bacon. The best of the most recent are, on Bacon’s personal life, Lisa Jardine and Alan Stewart, Hostage to Fortune: The Troubled Life of Francis Bacon (New York: Hill and Wang, 1998); and, on Bacon’s philosophy, Peter Zagorin, Francis Bacon (Princeton: Princeton University Press, 1999). A less probing but well-written biography of some time back is Catherine Drinker Bowen, Francis Bacon: The Temper of the Man (Boston: Little, Brown and Company, 1963).

<sup>5</sup> For an informative and provocative discussion of Bacon’s thoughts on the scientific method, see Herbert Butterfield, The Origins of Modern Science, 1300-1800, revised edition (New York: The Free Press, 1965), 113-122 [1957].

<sup>6</sup> Francis Bacon, The Essays (London: Penguin Books, 1985), “Of Great Place,” 91, 92-93.

<sup>7</sup> Thomas Babington Macaulay, Essays and Poems: Critical, Historical and Miscellaneous, in Three Volumes (Boston: Dana Estes and Company, \_\_\_), Volume II, “Lord Bacon,” 336, 434.

<sup>8</sup> See especially Jardine and Stewart, Hostage to Fortune, at 502-511.

<sup>9</sup> Article 3.2, Dispute Settlement Understanding.

<sup>10</sup> Article 3.7, Dispute Settlement Understanding.

<sup>11</sup> Article 17.10, Dispute Settlement Understanding.

<sup>12</sup> Accustomed as I am to *asking* questions, before trying to *answer* this question, I took the time to pose it to my six colleagues on the Appellate Body, and also to the loyal and long-suffering lawyers who serve on our Appellate Body Secretariat. Their answers were all very much the same. Thus, in answering this question, I offer a view that, to a certain extent, can be considered as a “consensus” view that is shared by all the Appellate Body. I stress, however, that my attempted expression of this view is mine alone. I confess, moreover, that all my references to frozen chicken are, most definitely, mine alone.

<sup>13</sup> Francis Bacon, The Essays (London: Penguin Books, 1985), “Of Delays,” 125.

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14 Bacon, The Essays, “Of Ceremonies and Respects,” 213.

15 Bacon, The Essays, “Of Dispatch,” 134, 135.

16 Sir Francis Bacon, De Dignitate et Augmentis Scientiarum, I, vi, 31.

17 See the Francis Bacon Research Trust online at [fbtr.org.uk/pages/truth-time](http://fbtr.org.uk/pages/truth-time).

18 Bacon, The Essays, “Of Discourse,” 160, 161.

19 Bacon, The Essays, “Of Suitors,” 207.

20 Article 17.3, Dispute Settlement Understanding.

21 Bacon, The Essays, “Of Simulation and Dissimulation,” 76, 77.

22 Bacon, The Essays, “Of Cunning,” 126, 128.

23 Jardine and Stewart, Hostage to Fortune, at 341-342.

24 Articles 17.6, 17.12, and 17.13, Dispute Settlement Understanding.

25 United States – Standards for Reformulated and Conventional Gasoline, WT/DSU/AB/R, at 16 (May 20, 1996), 35 I.L.M. 603.

26 Bacon, The Essays, “Of Studies,” 209.

27 Bacon, The Essays, “Of Truth,” 61.

28 Bacon, The Essays, “Of Dispatch,” 134.

29 Id.

30 Sir Francis Bacon, Religious Meditations, “Of Heresies.”

31 Sir Francis Bacon, Novum Organum, Book I, Aphorism 26, Section 5.

32 Article 3.2, Dispute Settlement Understanding.

33 Bacon, The Essays, “Of Discourse,” 160, 161.

34 Bacon, The Essays, “Of Seditious and Troubles,” 101, 103.

35 Sir Francis Bacon, Novum Organum, Book I, Aphorism 49, Section 59-9.

36 Bacon, The Essays, “Of Ceremonies and Respects,” 213, 214.

37 Bacon, The Essays, “Of Fortune,” 181.

38 Bacon, The Essays, “Of Empire,” 115.

39 Article 19.1, Dispute Settlement Understanding.

40 Bacon, The Essays, “Of Custom and Education,” 179.

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<sup>41</sup> Bacon, The Essays, “Of Judicature,” 222.

<sup>42</sup> Argentina — Definitive Anti-Dumping Duties on Poultry from Brazil, WT/DS241/R.

<sup>43</sup> In a letter to the Earl of Arundel, Bacon wrote, “As for the experiment itself, it succeeded excellently well.” The letter is quoted in Jardine and Stewart, Hostage to Fortune, at 504, and also in Macaulay, “Lord Bacon,” at 434.

<sup>44</sup> Macaulay, “Lord Bacon,” at 436.

<sup>45</sup> World Bank, Human Development Report 2001 (Washington, D.C.), 9.