



WTO OMC

RULES AND PROCEDURES OF THE WTO DISPUTE SETTLEMENT SYSTEM PANEL REQUEST AND COMPOSITION

Dispute settlement stages: where are we?



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1

Consultations

2

Panel

3

Appeal

4

Adoption

5

Implementation

How to initiate the panel process



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- Article 6, DSU
- Diplomatic means (consultations) have been unsuccessful
- Complaining party must make request for the establishment of a panel to the DSB

Formal requirements for the panel request



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Form?

- In writing



To whom?

- Addressed to the DSB



Legal basis?

- Article 6.2, DSU
- Specific dispute settlement provisions of the relevant covered agreement



Content?

- Indicate whether consultations were held
- Identify specific measures at issue
- Brief summary of the legal basis (claims)



Circulated

- To Members as document “WT/DSXXX/X”



Formal requirements – why are they important?

➤ A panel request that meets the requirements of Article 6.2:



- ❑ Properly defines measures and claims that form the panel's mandate (Article 7)
- ❑ Confirms the matter that is within the jurisdiction of the panel (Articles 7 & 11)
- ❑ Provides respondent/defendant with sufficient information to prepare its defence (due process)

Formal requirements for the panel request - content

- Indicate whether consultations were held
- Identify specific measures at issue
- Brief summary of the legal basis

Formal requirements – were consultations held?

- Complaining party may only request establishment of a panel after failure of consultations attempts
- Requirement only to state whether consultations were held.
- Requirement may be satisfied by statement “no consultations were held”.
- Failure to consult does not invalidate panel request

Formal requirements – identify specific measures at issue



➤ **What is specific?**

- ❑ “Specific aspects” of “specific measures” need not be identified - explicit detailed description is not required

➤ **What is a measure?**

- ❑ Any act or omission attributable to a WTO Member
- ❑ Measures may take a variety of forms, and may be challenged “as such” or “as applied”

Formal requirements – brief summary of the legal basis



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- Legal basis of the complaint = **claims**
- Identification of treaty provisions
- Identify which measures violate which provisions
- Need to identify all **claims** but not all **arguments**
- Summary must be sufficient to present the problem clearly

How panels are established



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- Article 6.1, DSU
- Panel **may** be established at 1st DSB meeting where it appears on the agenda (positive consensus)
- Panel **shall** be established at 2nd DSB meeting (negative consensus)

Establishment of a panel when there are multiple complainants

- Article 9, DSU:
- Whenever feasible, single panel to examine multiple complaints
- If not feasible, separate panels:
 - ❑ Greatest extent possible, same persons to serve as panelists
 - ❑ Timetables for the panel process shall be harmonized
 - ❑ Single or multiple reports may be issued

Terms of reference for a panel



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- Article 7, DSU
- Standard terms of reference unless parties agree otherwise
- Based on panel request
- ❑ To examine, in light of the relevant provisions cited in the panel request
- ❑ The matter referred to the DSB in panel request:
 - ❖ Specific measures at issue identified
 - ❖ Legal basis of the complaint (claims)

Reservation of third party rights



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- Article 10, DSU:
 - ❑ Silent on deadline
 - ❑ Substantial interest
 - ❑ Limited rights:
 - ❖ Rights extinguished after panel's first hearing
 - ❖ Enhanced third party rights on a case-by-case basis

How panels are composed



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- Article 8, DSU
- No permanent panel/ *ad hoc* panelists
- May be 3 or 5
- Secretariat proposes names to parties
- Parties can oppose for compelling reasons
- Well-qualified individuals
- If disagreement, nomination by DG

S & D Provisions



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- Panel composition - panelist from developing country Member (Article 8.10)
- Panel procedures (Article 12.10 and 12.11)
- All stages – particular considerations to special situation of LDCs (Article 24)
- Additional legal advice from Secretariat (Article 27.2)

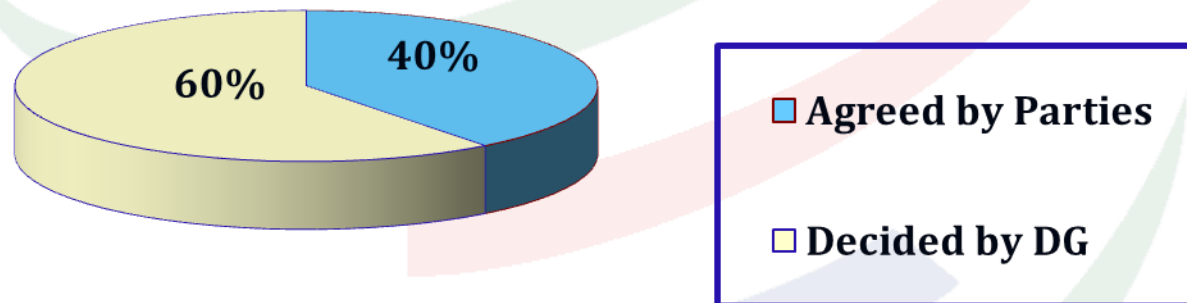
Statistics on panel process (request – composition) as of 6 July 2012

<input type="checkbox"/> Panels established by DSB:	191
<input type="checkbox"/> Disputes covered by panels established:	237
<input type="checkbox"/> Panels composed:	163
<input type="checkbox"/> Disputes covered by panels composed:	206
<input type="checkbox"/> Panels composed by DG:	98

Statistics on panel process (panel composition) as of 6 July 2012



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The End



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THANK YOU!