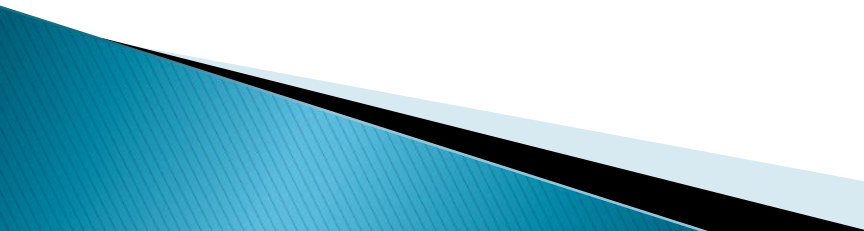




Dispute Settlement Understanding – Reforms

CWS -ITEC Programme,
New Delhi
7 February 2014
Centre for WTO Studies


The Doha Mandate

- The November 2001 Doha Ministerial Declaration provided:
 - *30. We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter.*
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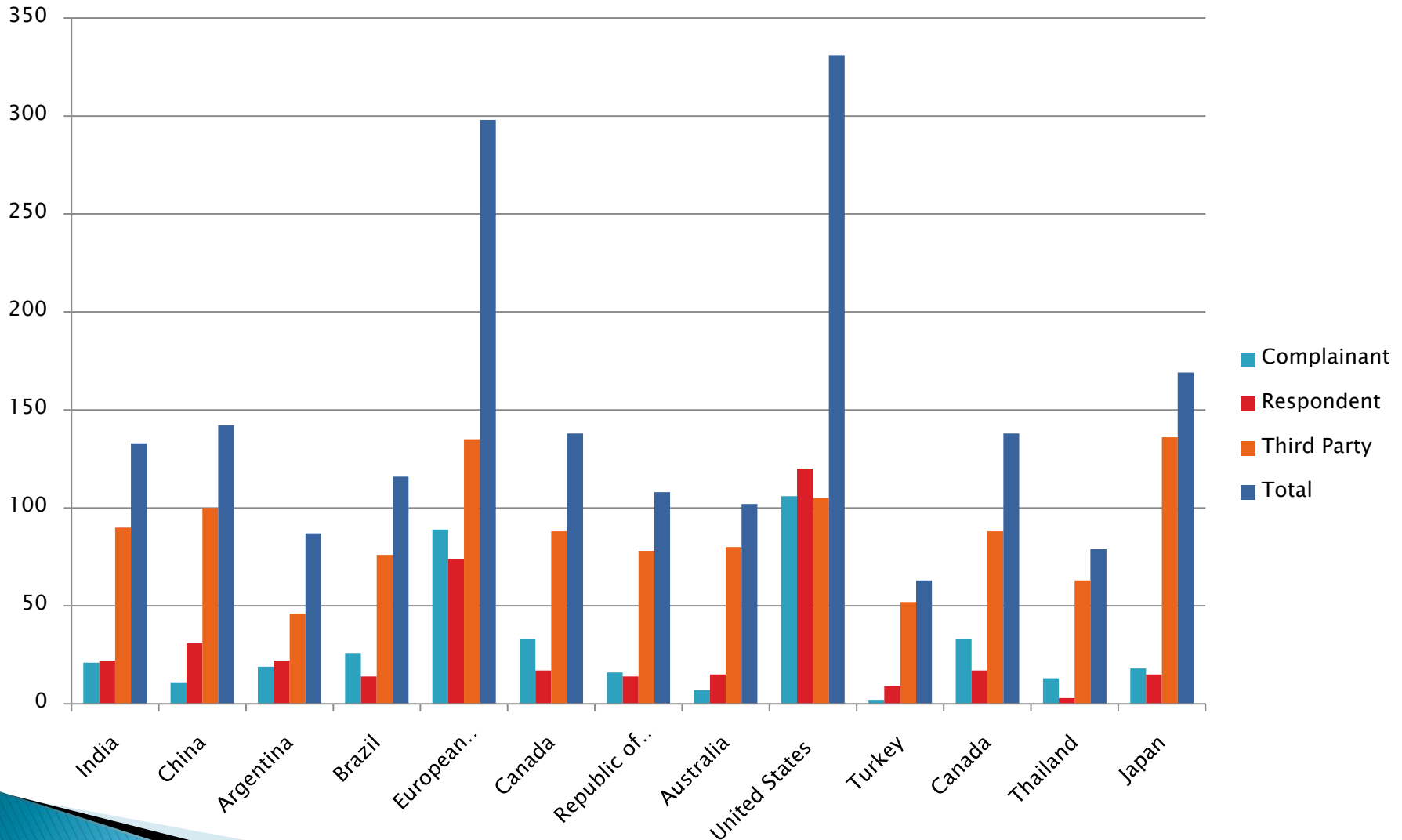
Not part of single undertaking

- ▶ The Doha Declaration further states in paragraph 47 that these negotiations will not be part of the single undertaking i.e. that they will not be tied to the overall success or failure of the other negotiations mandated by the declaration.

DSU Reforms–Work so far

- ▶ **Work in Special Session of the DSB**
 - ▶ **Chair's Draft text Document JOB(08)/81 of 8 July 2008**
 - ▶ **Chair's Report TN/DS/25 of 21 April 2011**
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MAJOR USERS OF THE WTO DSM BETWEEN 1995-2013

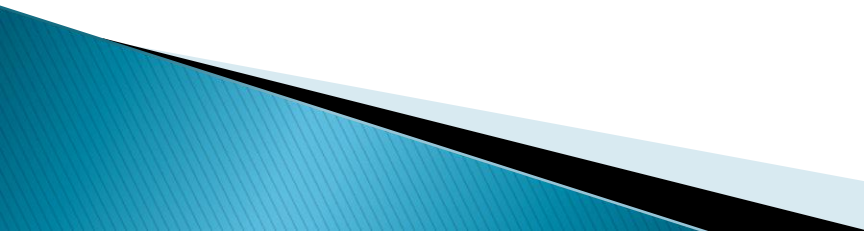


RANKING OF PARTICIPATION IN WTO DISPUTES VIS-À-VIS RANK IN GDP


Members participation in the DS			WTO Members GDP (2010)		
RANK	WTO Member	DS Participation	RANK	WTO Member	GDP (MillionUSD)
1	USA	211	1	EU	16,250,522
2	EU	155	2	USA	14,582,400
3	Canada	50	3	China	5,878,629
4	Brazil	39	4	Japan	5,497,813
5	India	39	5	Brazil	2,087,890
6	Mexico	35	6	India	1,729,010
7	Argentina	32	7	Canada	1,574,052
8	China	31	8	Mexico	1,039,662
9	Japan	29	9	Korea	1,014,483
10	Korea	29	10	Australia	924,843
11	Chile	23	11	Turkey	735,264
12	Australia	17	12	Indonesia	706,558
13	Thailand	16	13	Switzerland	523,772
14	Philippines	11	14	Saudi Arabia	434,666
15	Guatemala	10	15	Chinese Taipei	429,918
16	Turkey	10	16	Norway	414,462
17	Indonesia	9	17	Venezuela	387,852
18	Colombia	8	18	Argentina	368,712
19	Dominican Republic	7	19	South Africa	363,704
20	Honduras	7	20	Thailand	318,847

Table Source: Jan Bohanes and Fernanda Garza, *Going Beyond Stereotypes: Participation of Developing Countries in WTO Dispute Settlement*, 4(1) TRADE L. & DEV. 59 (2012),

Various stages in the dispute Settlement Process

- ▶ Consultations,
 - ▶ panel establishment,
 - ▶ report of the panel,
 - ▶ Appeal procedure,
 - ▶ compliance, compliance panel, arbitration, compensation/retaliation
 - ▶ DSB adopts panel/ AB reports by negative consensus
- 

Sequencing:

- Bananas dispute between the US and EU
 - Relationship between Article 21.5 and 22 of DSU
 - Proposal to introduce Article 21 *bis* and Article 22.1 *bis*
 - In the event of a disagreement over whether an implementing measure is WTO-consistent, an expedited panel process would be employed
- 

Not all Disputes go to Panels

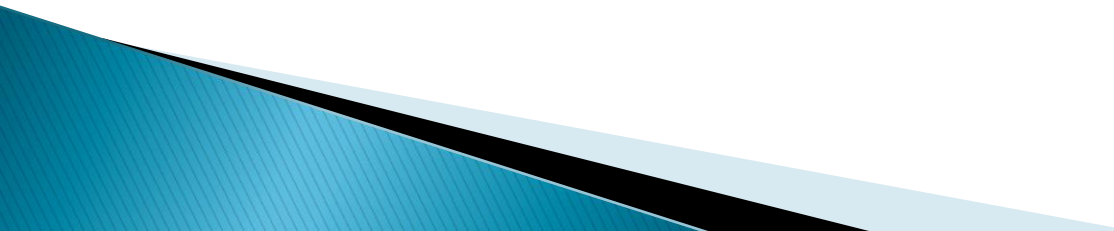


As on September 2013

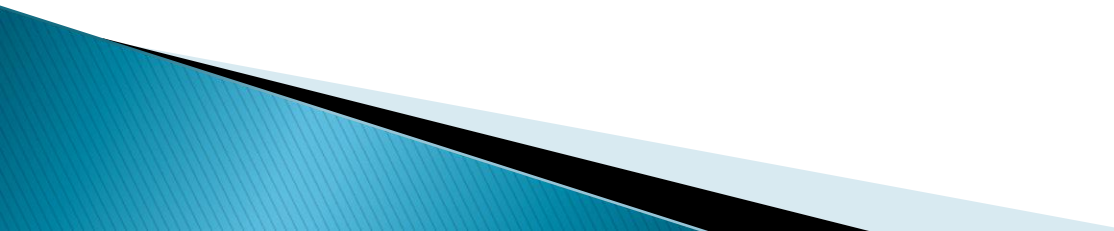
- ▶ Disputes brought to the WTO– 467
- ▶ At Consultations stage: 146
- ▶ Settled or terminated (Withdrawn or Mutually agreed solutions): 94
- ▶ Panel stage and thereafter: 227

(source– WTO)

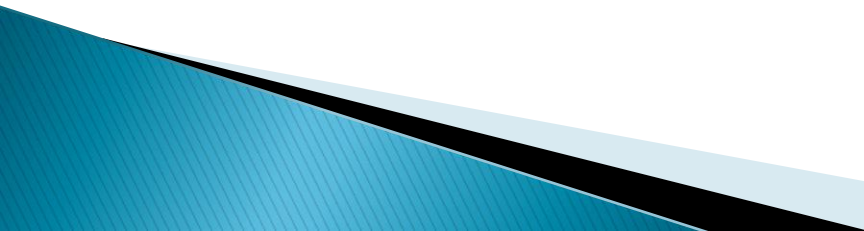
Mutually Agreed Solutions

- ▶ Article 3.6
 - ▶ Currently, there is no specified time for notification to the DSB
 - ▶ MAS to be notified to DSB within 10 days
- 

Right to seek information

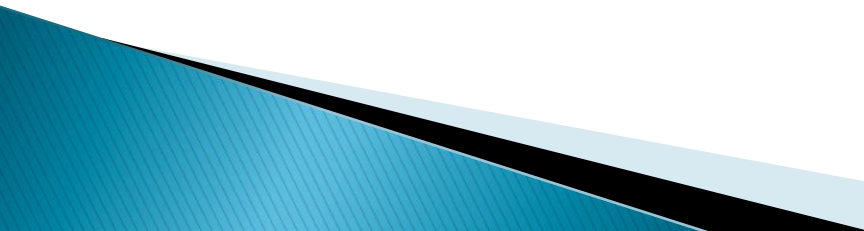
- ▶ Article 13
 - ▶ Developing countries' proposal to restrict the panel to not accept any unsolicited *amicus curiae* briefs.
 - ▶ Contentious
- 

Special and differential treatment – cross retaliation – Article 22.3

- The LMG propose that a complaining developing-country Member should be permitted to seek authorization for suspending concessions and other obligations in sectors of their choice.
 - They should not be required to go through the process set out in Article 22.3 which requires them to prove that it was not "practicable or effective" to suspend concession in the same sector or agreement where the violation was found.
- 

S& D proposals

Litigation costs

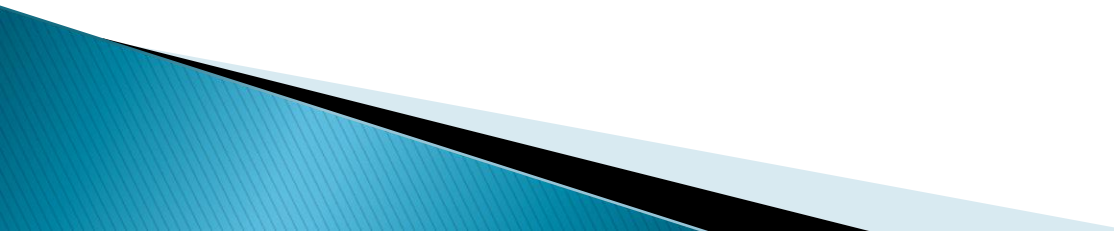
- Article 3 bis
 - Developed country to bear the litigation cost if found to be in violation in a dispute brought by a developing country.
 - This has remained a non-starter
 - Africa Group has proposed a Dispute Settlement Fund for developing countries.
- 

Enhanced third party rights

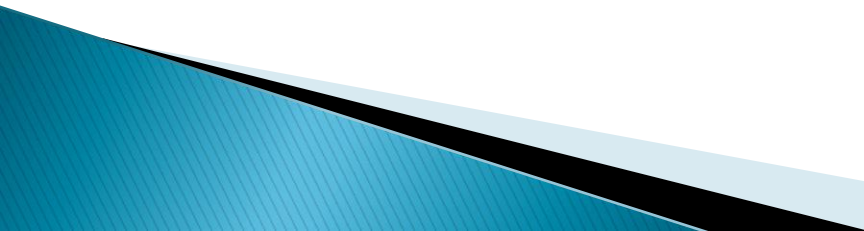
Article 10 and Appendix 3 of the DSU

- Presently, third parties receive copy of parties' submissions to the panel, can make written submissions to the panel and can appear before the panel at a session of the first meeting.

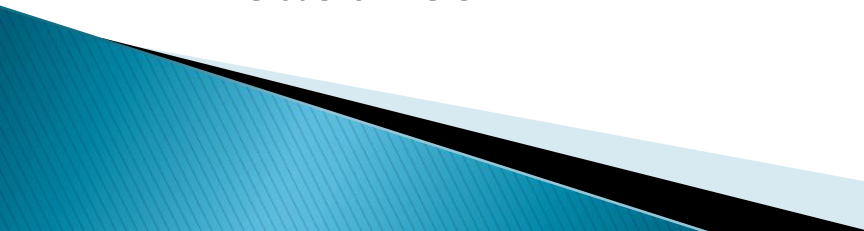
Proposed amendments

- Third parties to be allowed to attend all substantive panel meetings, To receive copies of the parties' submissions to the panel prior to the issuance of interim report.
 - Right to receive the interim report and make comments
 - To join at the appeal stage.
- 

Flexibility and member control

- Interim reports at the appellate body stage – allowing parties to comment on the report
 - Most members have concerns except the US
 - Partial adoption report
 - Providing the parties the rights by mutual agreement to suspend panel and appellate body procedures
 - Such a procedure exists at the panel stage
- 

Time savings

- Existing 60 days consultation period be reduced to 30 days
 - This 30 day period shall be extended up to 60 days at the request of a developing country member
 - Panels to be established at the first request of the DSB
 - Accelerated time frame for dispute on safeguard measures
- 

Questions

Thanks

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