

Specialised Course on Select World Trade Organization Issues: *Mock Dispute Session*

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Request for Establishment of Panel:

Points to remember...

- Article 6.2 DSU
 - Request to be made in writing
 - Indicate whether consultations held
 - Identify the specific measures at issue
 - Provide a brief summary of the legal basis of complaint sufficient to present the problem clearly.
- *China – Exportation of Raw Materials (AB)*
 - Brief summary of the legal basis of the complaint – explain *how or why* the measure at issue is considered to be violating WTO obligation
 - Clarify which allegation of error pertains to which particular measure or set of measures
- *EC Bed Linen III*
 - Claims not mentioned in the Panel Request not adjudicated even if pleadings refer to them

Claims v Arguments

Points to remember...

- Any claim not asserted in the request for establishment of a panel may not be submitted at any time after submission and acceptance of request.
- ‘Claim’ means a claim that the respondent party has violated, or nullified or impaired the benefits arising from, an identified provision of a particular agreement
- ‘Argument’ to be distinguished from claims; adduced by a complaining party to demonstrate that the responding party’s measures do indeed infringe upon identified treaty provision
- Arguments supporting a claim are set out and progressively clarified and refined during submissions and meetings of the panel.
- *Korea Brazil (AB) and EC – Pipe Fittings (Brazil)*

Burden of Proof

Points to Remember...

- The general rule of burden of proof is that one who asserts a claim has the burden to establish it
- The general rule of burden of proof for exceptions is that the defending party raises the exception as well as proves that it meets the requirements of an exception.
- *US – Wool Shirt and Blouses* –
 - Exceptions such as Articles XI:2 and XX of GATT are not positive rules establishing obligations
 - Are in nature of affirmative defenses
 - Only reasonable that the burden of establishing such a defense should rest on the party asserting it.
- *EC - GSP Case* – deviated from the general rule w.r.t. Enabling Clause. Since the Enabling Clause has a *special status* and Members are *encouraged* to deviate from the MFN Clause, the complainant must raise the exception while the defendant will still have the burden of proving it.