



Max Planck Institute  
**LUXEMBOURG**  
for Procedural Law

# **WTO Dispute Settlement System: The “Crown Jewel” in the Fog**

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Law Libraries

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Henok Asmelash  
Research Fellow, MPI Luxembourg

# Outline

- Introduction
- Key features of the dispute settlement system
- The nature of the disputes and the disputants
- The ongoing crisis



## Introduction

- The WTO deals with the rules of trade between nations
- It was established in 1995 (replacing the GATT) and currently has 164 Members
- Its functions include: facilitating the implementation of WTO agreements; providing a forum for negotiation; providing technical assistance to developing countries; and resolving trade disputes
- The Dispute Settlement System (DSS) is the judicial arm of the WTO



WORLD TRADE  
ORGANIZATION



## Key Features of the Dispute Settlement System

- Jurisdiction: compulsory, exclusive, and contentious (CEC)
- Access/standing: only WTO Members
- Remedies: only prospective remedies (no compensation for damages)
  - Withdrawal of the inconsistent measure
  - Compensation and retaliation
- Prompt settlement of disputes (Art 3.3 DSU)
- Preference to mutually agreed solutions (Art 3.7 DSU)
- Different methods of dispute settlement: consultations/negotiations, adjudication, arbitration, good offices, mediation and conciliation



## Key Features

The dispute settlement system of the WTO is a central element in *providing security and predictability* to the multilateral trading system. The Members recognize that it serves to *preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements* in accordance with customary rules of interpretation of public international law. *Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.*

DSU Art 3.2



# Institutions

Legal Affairs Division and  
Appellate Body Secretariat



## The Dispute Settlement Body (DSB)

- Composed of all WTO Members
- Establishes panels, appoints ABMs, adopts Panel/AB reports; monitors compliance with Panel/AB decisions, authorizes retaliation, etc.
- Takes decisions by 'reverse consensus'!



## Panels

- First instance
- Works on ad hoc basis
- Established by the DSB
- Composed of three qualified individuals appointed by the parties or by the WTO Director-General
- Independent and impartial!



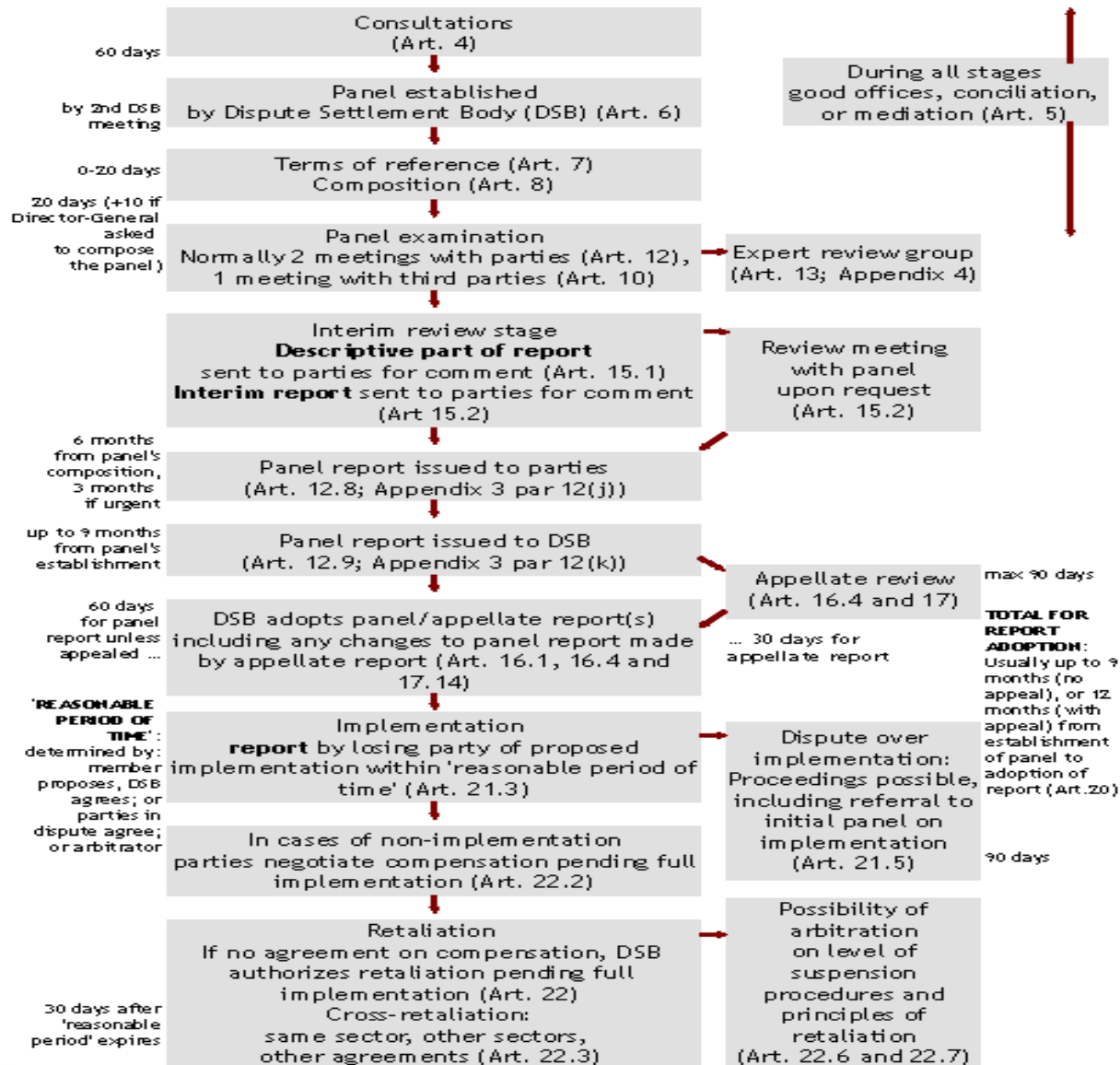


## Appellate Body

- Appellate review
- Permanent body
- DSU Art. 17(1) “shall be composed of seven persons, three of whom shall serve on any one case”
- ABMs are appointed for the term of four years (renewable only once)
- Broad representation of the WTO membership
- Independent and impartial!

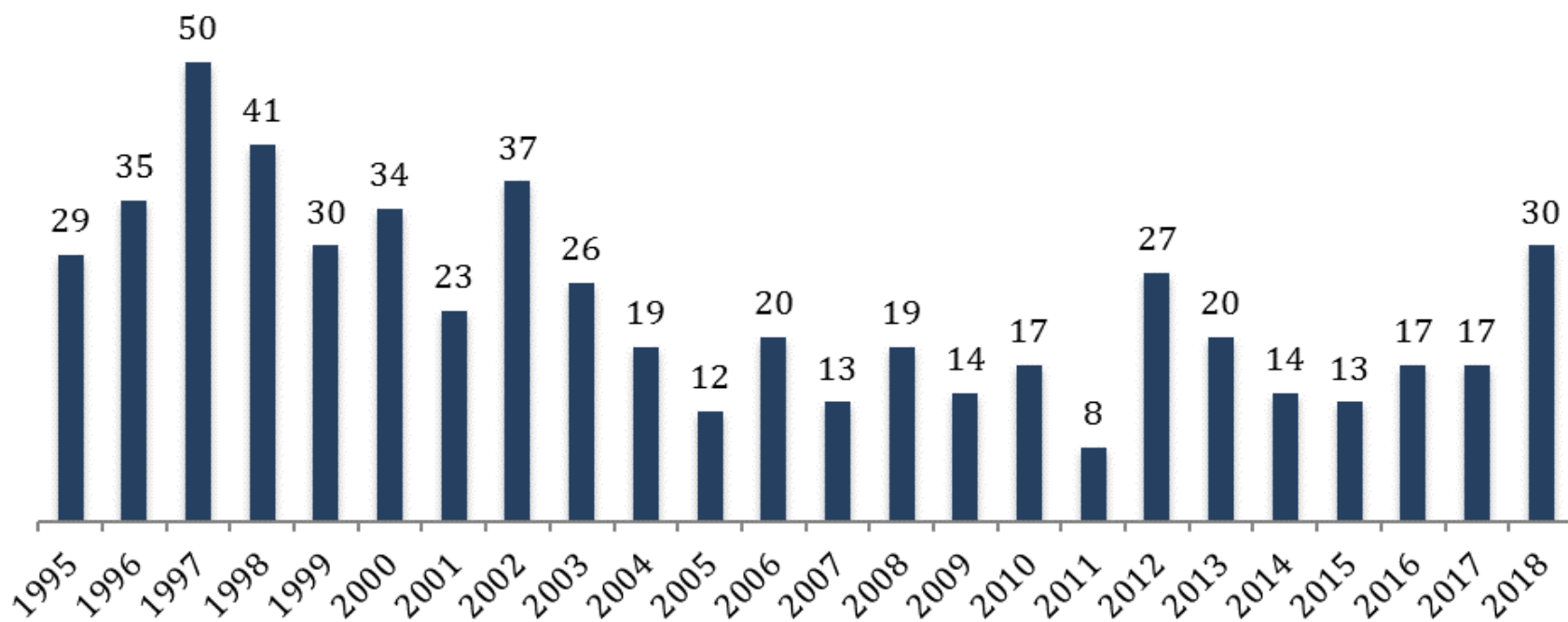


# Dispute Settlement Process



# Number of Disputes (as of 30 Sept. 2018)

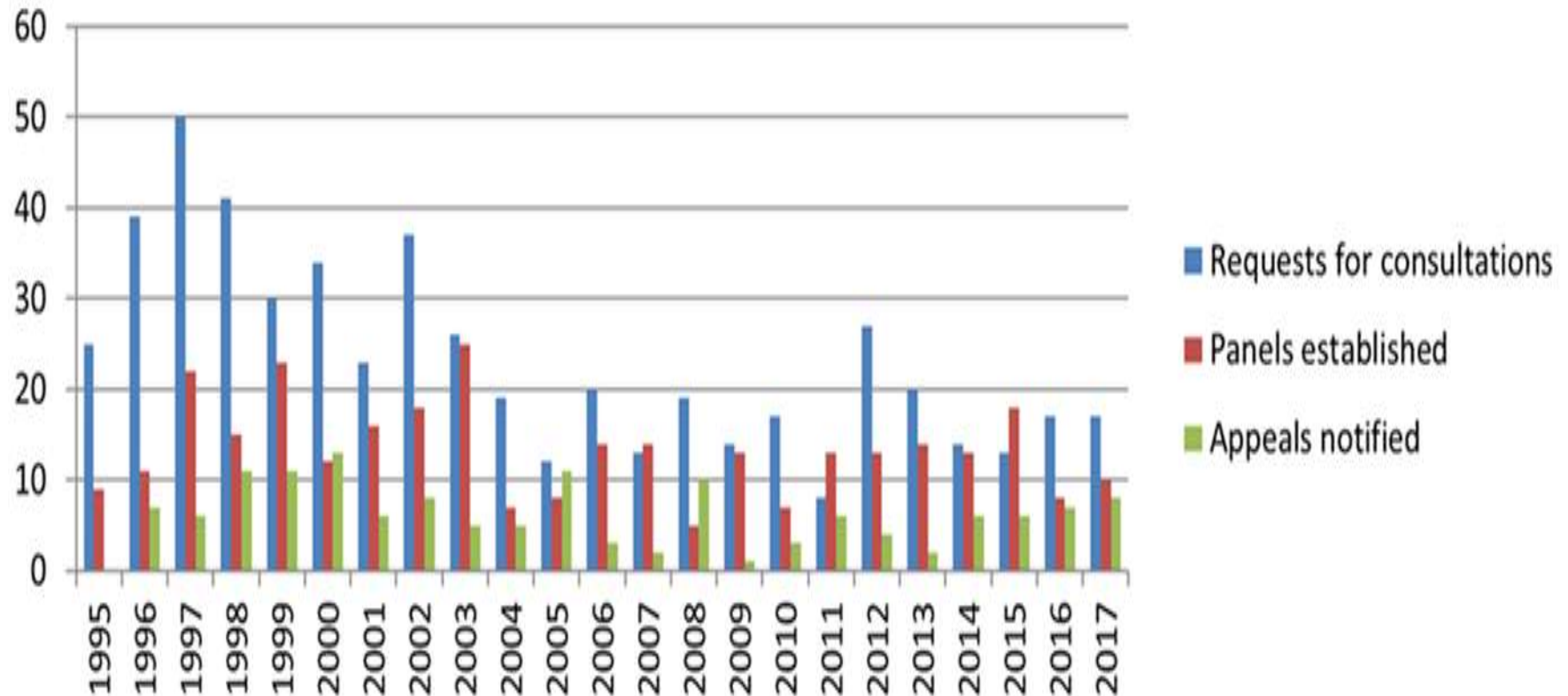
Requests for consultations: 566



Source: own compilation



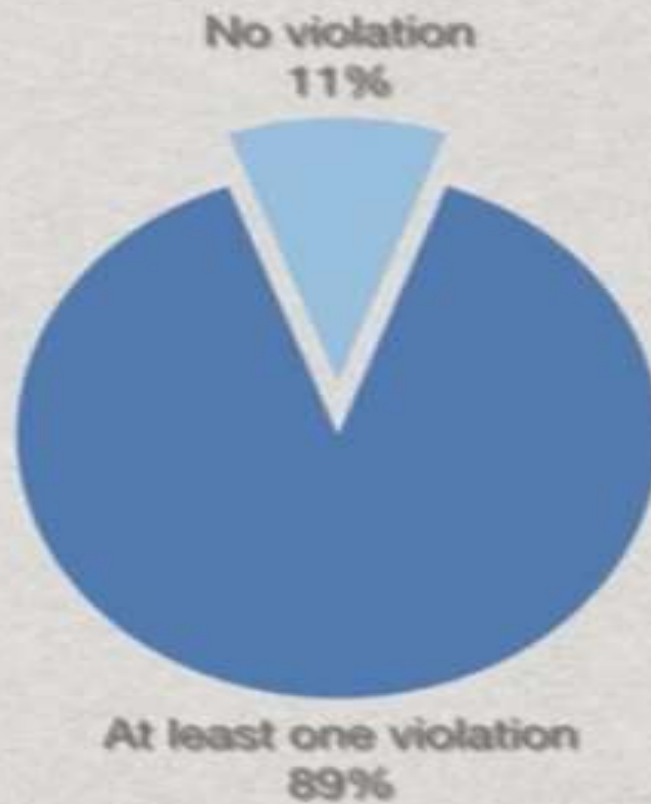
## Number of Disputes (as of 31 December 2017)



Source: WTO website



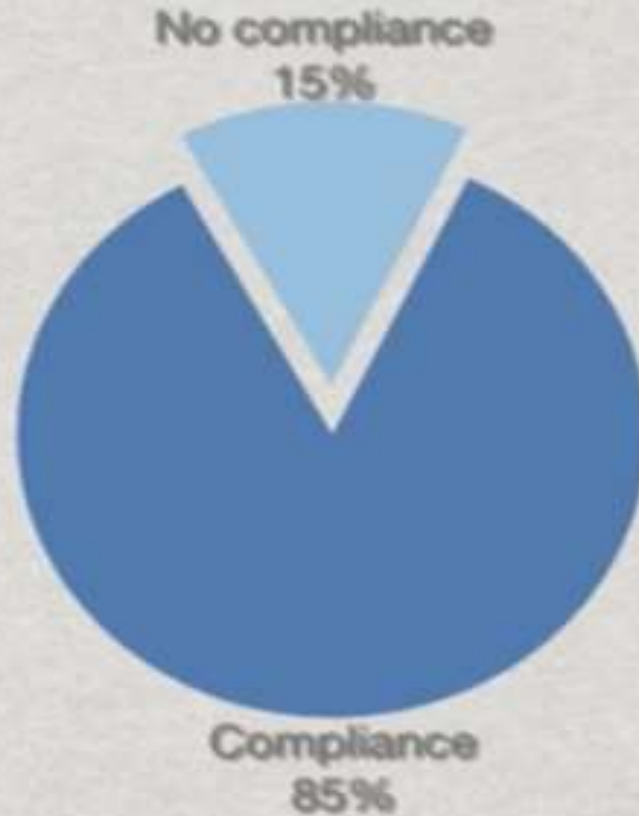
## Findings of WTO Inconsistency



*Source: Van den Bossche (2018)*



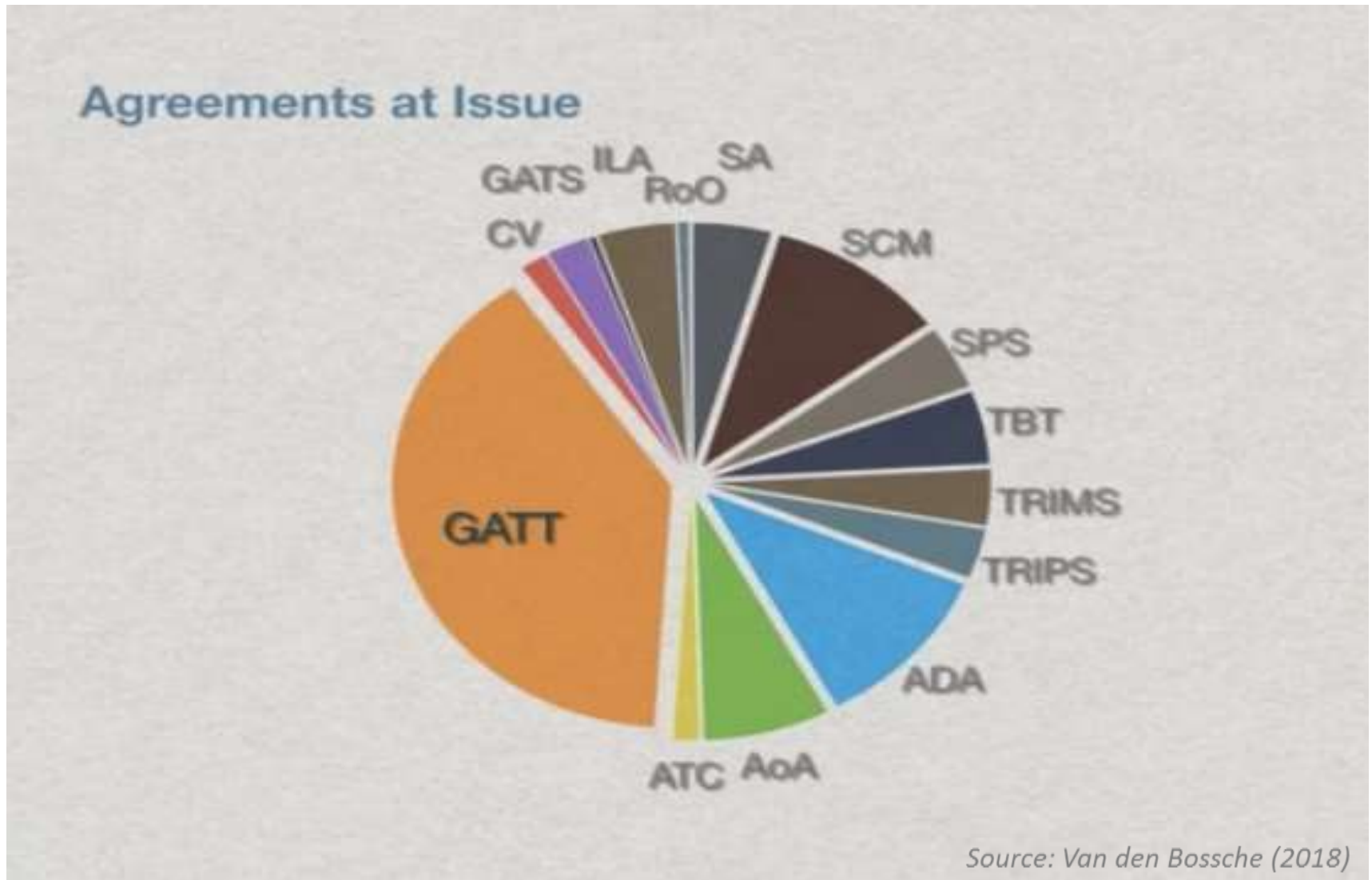
## Compliance with Recommendations and Rulings



*Source: Van den Bossche (2018)*



# The Nature of the Disputes



## The Nature of the Disputes



- *US – Gambling*



- *EC – Bananas III*



- *US – Aluminum and Steel*



- *Australia – Tobacco Plain Packaging*



- *EU – Seal Products*

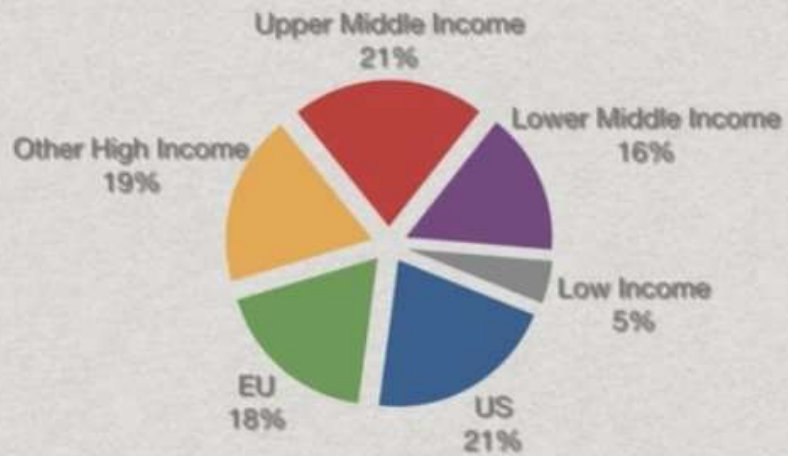


- *India – Solar Cells*



# Disputants

## Complainants



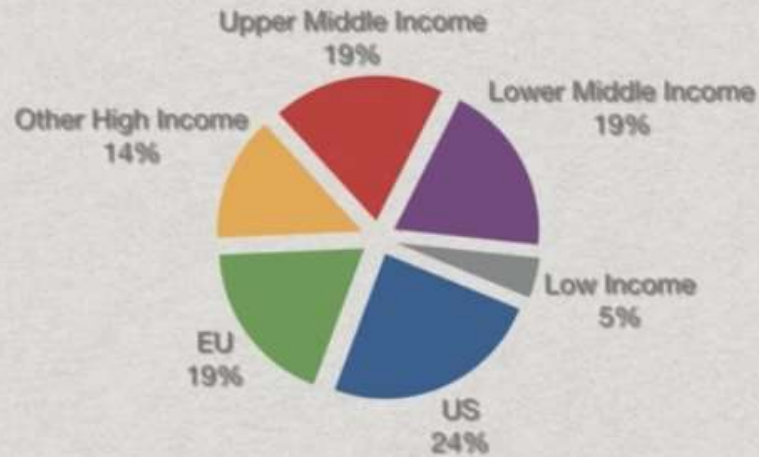
Member	No of cases initiated
US	115
EC / EU	100
Canada	38
Brazil	31
Mexico	24
India	23
Japan	23
Argentina	20
Korea	17
China	15

Source: Van den Bossche (2018)



# Disputants

## Respondents



Member	No of cases defended
US	134
EC / EU	99
China	39
India	24
Argentina	22
Canada	22
Korea	16
Brazil	16
Japan	15
Mexico/Indonesia	14

Source: Van den Bossche (2018)



## The Ongoing Crisis

- The number of Members has reduced from seven to three
  - Heavy case load and short timeframes
- Deadlock in the appointment and reappointment process
- Complaints against the Appellate Body
  - Judicial activism
  - ABMs serving after the expiry of their terms
  - Advisory Opinions (*Obiter Dicta*)



“The WTO, World Trade Organization, was set up for the benefit for everybody but us. They have taken advantage of this country like you wouldn’t believe.... As an example, **we lose the lawsuits, almost all of the lawsuits in the WTO....** Because we have **fewer judges than other countries.** It’s set up as you can’t win. In other words, the panels are set up so that **we don’t have majorities.** It was set up for the benefit of taking advantage of the United States.”

Donald J. Trump (25 October 2017)



# Thank you!

- New! WTO iLibrary <https://www.wto-ilibrary.org/>
- Popular blog - <http://worldtradelaw.typepad.com/>
- Case Summary - <http://worldtradelaw.net/>
- Popular podcast – Trade Talks

