Enforcement procedures under the GPA: the WTO Dispute Settlement Understanding

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Contents of Presentation

- Dispute settlement in the WTO: general background
- A few special considerations relating to dispute settlement in the GPA
- Specific disputes under the GPA (only three)
- Some statistics and reflections on dispute settlement in the WTO generally

Dispute Settlement in the WTO

"a central element in providing security and predictability to the multilateral trading system"

(DSU, Article 3:2)

Dispute settlement in the WTO: purpose

- **To ensure that rights and obligations created through negotiations and mutually-agreed rules are honoured.**

- **Priority is nonetheless to settle disputes (consistent with agreed rules) and *to secure withdrawal of inconsistent measures***

Dispute settlement in the WTO
Overview

WTO OMC

An integrated system:

Applies to all the multilateral agreements

a single set of rules for all disputes

only a few specific rules in some agreements

Task of panels

- Review the facts and arguments submitted by the parties to a particular dispute
- Reach conclusions as to alleged violations/related matters

Task of the Appellate Body

- **Review the issues of law addressed by panels, on appeal**

"The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel" (Art. 17.12 DSU)

Panel Procedures: deadlines

WTO OMC

As a general rule, **6 months** from composition/terms of reference to issuance of final report of the panel to the parties

(Art. 12.8 DSU)

As a general rule, **9 months** from establishment of panel to consideration of report for adoption (if no appeal)

12 months where report is appealed

(Art. 20 DSU)

Situation under the GPA

- **DSU fully applicable to disputes between GPA Parties**
- **Procedures apply to all provisions**
- **Certain special rules/procedures apply: e.g. (i) panels must include persons qualified in government procurement); (ii) absence of cross-retaliation under other WTO agreements**
- **In practice, *actual disputes have been rare and voluntary settlements have usually been reached***

Disputes to date (1)

- **Japan: Procurement of a navigation satellite (panel requested by EC). Key allegation: tender specifications inconsistent with GPA in that they were based (partly) on a specific U.S. system, details of which not widely known. Resolved by negotiated settlement intended to facilitate development of a non-exclusive global navigation system.**
- **US: Massachusetts "Burma Act" (panel requested by EC and Japan). Case involved Massachusetts state law prohibiting procurement from companies having dealings (direct or indirect) with Myanmar. Issue resolved by U.S. Supreme Court decision barring implementation of the Massachusetts law).**

Disputes to date (2)

- **Korea: Procurement of Inchon International Airport (panel requested by US). A key question was whether the procuring entity was covered by the GPA. The case also comprised a "non-violation" claim that procurement practices in this case nullified or impaired rights that the US expected to be granted vis-à-vis Korea pursuant to the GPA.**

Disputes to date (3): more on the Korea Airport case

- **Panel held the procurement was *not* covered by the GPA since:**
  - **Entity not specifically listed**
  - **Entity was independent of the relevant listed entity, the Ministry of Construction and Transportation (not a "subordinate linear organization" or "attached organ").**
- **Also no valid non-violation claim since other countries had noted that the procuring entity in question was not covered by Korea's offer and made corresponding derogations in their own Annexes.**

Insights from the disputes

- A couple of key insights from these cases:
  - Central importance of the Schedules
  - Potential role of non-violation claims (but difficult to establish in practice).

Dispute Settlement in the WTO: Some figures on recourse to dispute settlement to date

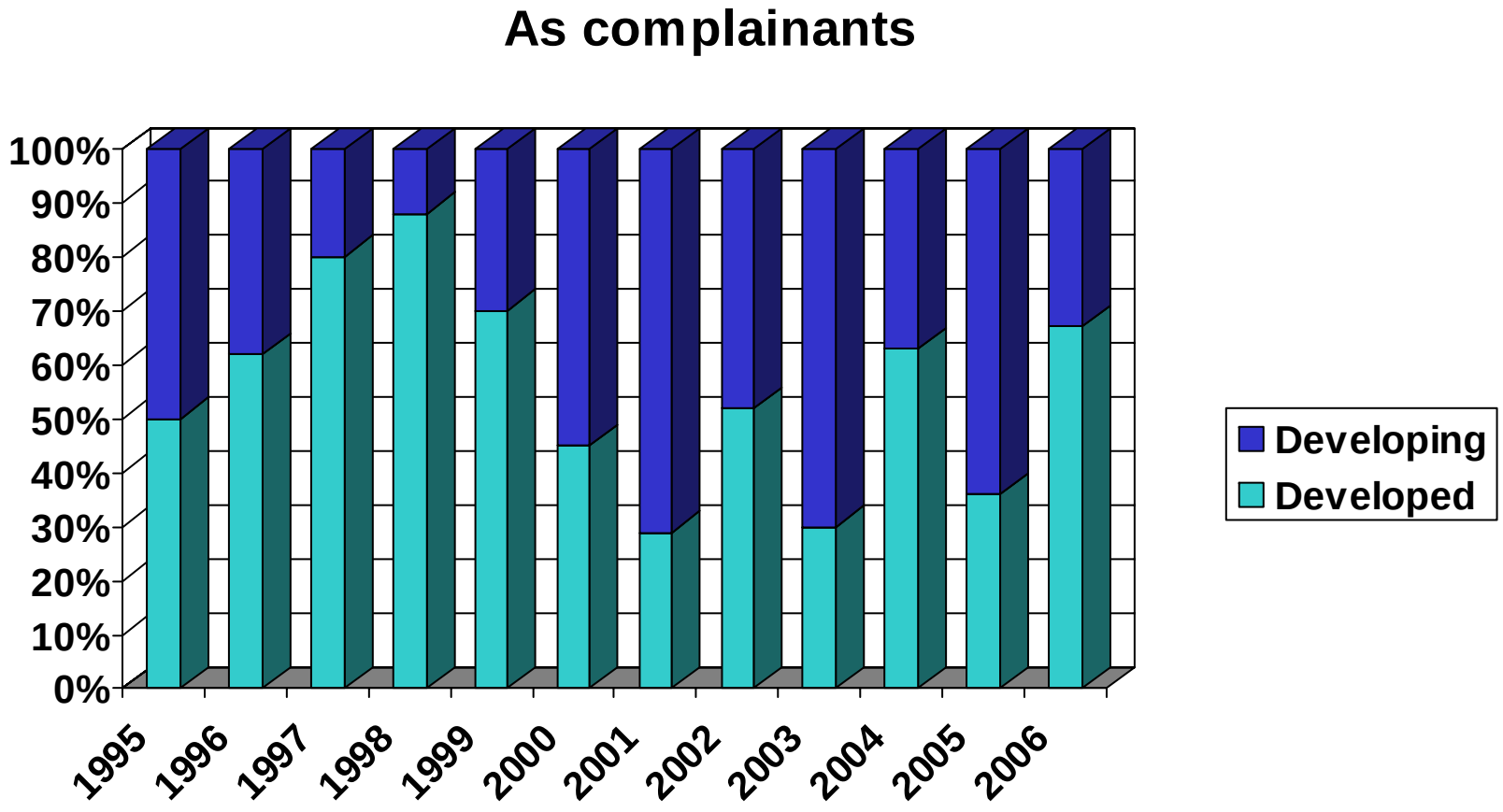
(January 1995 to April 2006)

WTO dispute settlement statistics

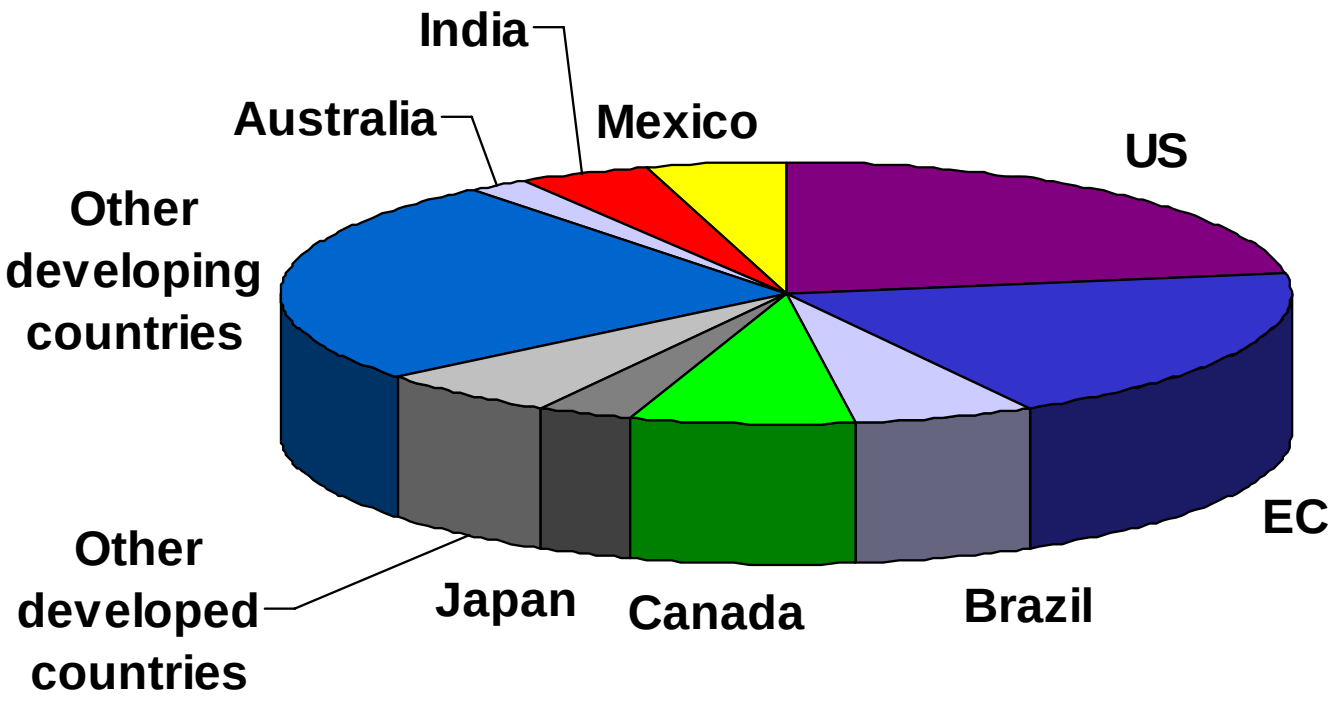
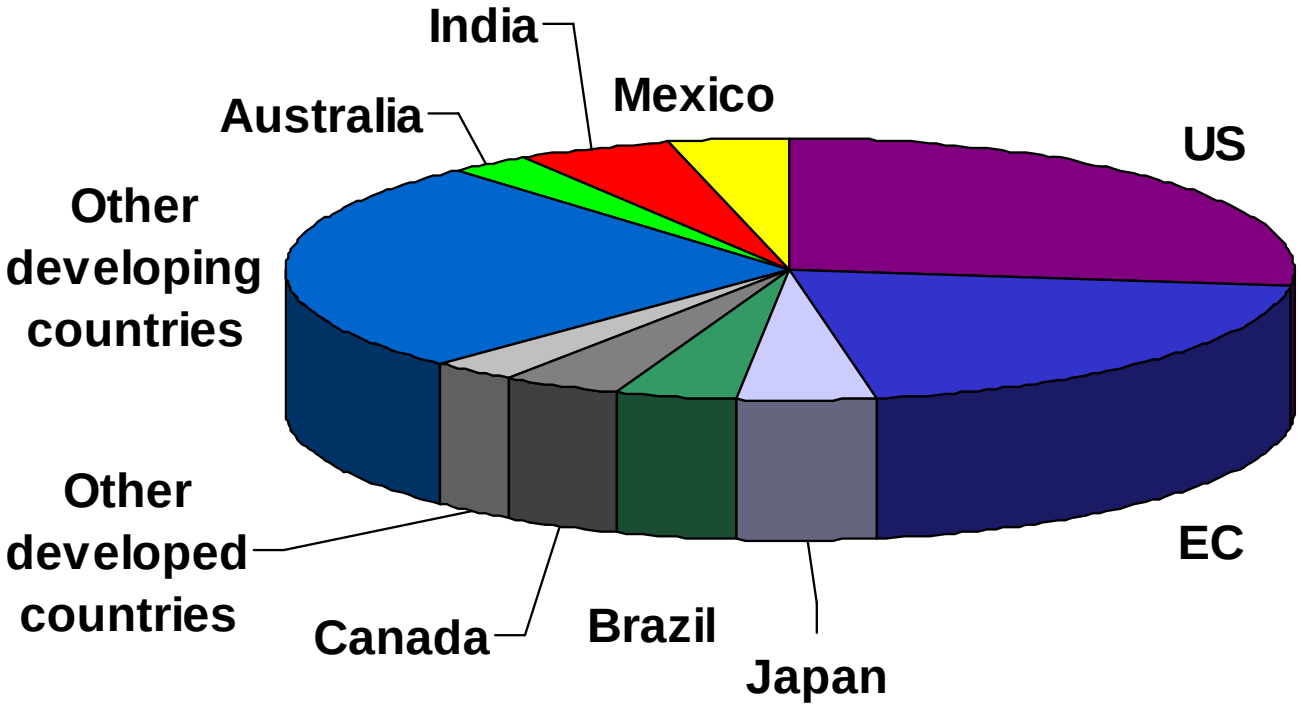
(as of 3 April 2006)

Requests for consultations	**341**
Mutually agreed solutions:	**69**
Panels established:	**138/167**
Panels composed:	**115/144**
Panel reports:	**101**
Appellate Body reports:	**65**
Compliance panels:	**16**
Appeals from compliance panels:	**10**
Arbitrations on "retaliation" :	**16**
Authorizations to "retaliate" :	**15**

Trends in the Use of the Dispute Settlement Mechanism
(as of 3 April 2006)



Complainants



Respondents