

CONTRIBUTION FROM INDONESIA AND THAILAND

The following communication, dated 8 December 2003, is being circulated at the request of the Delegation of Thailand on behalf of Indonesia and Thailand.

1. Problems

Once a panel is established, one cannot deny that qualified panelists are mostly welcome. The term "qualification" in this sense means appropriateness based on educational background and experience, taking into account the fact that WTO law is quite unique in nature, as opposed to general international trade law.

For those who have experience in WTO litigation, there is a possibility that we find it quite difficult, particular for developing countries, to hand-pick someone, who, in our view, is best qualified to serve as a panelist for our case from the Indicative List of Panelists prepared by the Secretariat, or any slate of candidates proposed by the Secretariat, as the case may be. Even though curriculum vitae of candidates could be given, it is not usually available as it is not attached to the List, let alone detail as may be required by parties to a dispute in their determination of the composition of a panel. On top of that, we cannot but make judgement on merely what is written on the CV whereas his performance is omitted.

2. Questions

1. Do we want to facilitate the DG in the process of appointment of panelists?
 2. Based on statistics shown on page 15 of the Mexican paper, it takes approximately 59 days on average for panel composition. Do we want to save as much as possible the time period at this stage, during which damage could be lessened?
 3. How many chances are there for panelists whose names are on the above-mentioned List to be appointed, or proposed for appointment, as panelists?
 4. Do we need an experienced panelist to serve as a panel chairman? Isn't it in our interest to have an experienced panelist to sit as chairman?
 5. Do we want to maintain the principle where parties to a dispute have control over the selection of panelists, on the one hand, and the need to expedite the process of panel composition, on the other hand, while having the assurance that at least one of the panelists is selected from a roster of qualified experts in WTO jurisprudence?
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