

Thus, within the panel system, there are weak institutional mechanisms for ensuring coherence and consistency. This militates against common approaches to issues of natural justice, fairness and due process. Moreover, since panelists are appointed solely to hear the case before them, they do not typically take a long-term institutional view of the practices and procedures they are developing, or of the substantive issues of interpretation they may confront, because their goal is simply to assist the parties to that dispute to come to a mutual resolution of that case.

Confidentiality or secrecy is a hallmark of WTO dispute settlement which is explicitly mandated in the DSU: panel deliberations, Appellate Body proceedings, submissions of parties and third parties to a dispute, as well as information provided to a panel by outside individuals or bodies are required to be kept confidential.<sup>39</sup> This emphasis on confidentiality is a vestige of "diplomatic" dispute settlement. Governments have traditionally maintained that keeping proceedings confidential provides them the flexibility to resolve disputes through negotiation. It is true, keeping submissions and proceedings confidential does give the governmental parties to a dispute a privileged position of being the only ones who know what a case is about and thus greater room to manoeuvre in reaching settlements.

At the same time, however, there are important counter arguments. Under the GATT, there was a perception within the system that disputes were of interest only to the parties to the dispute and that panel rulings applied only narrowly to those parties. However, it is clear that this perception has changed within the context of the WTO. In an overwhelming majority of disputes under the WTO to date, there has been a high degree of third party participation by other Members of the WTO. Often Members who notify their interests as third parties to the DSB do not have trade interests at stake, but rather openly state that their interest is "systemic" in nature. Also, it has become commonplace in DSB meetings for Members of the WTO

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<sup>39</sup> DSU, Articles 13.1, 14.1, 17.10, 18.2 and Appendix 3, para. 3.