

occurring in an increasing number of cases, because the parties cannot always agree on the composition of panels.

The function of panels, as set forth in Article 11 of the DSU, illustrates the tension between the “judicial” and “diplomatic” approaches. On the one hand Article 11 requires a panel to “make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements”. On the other hand, this same Article states that panels “should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.”³⁷ In order to assist them in carrying out their functions, panels are provided with a sparse set of working procedures in an appendix to the DSU, and are instructed that they may devise additional procedures which “provide sufficient flexibility as to ensure high-quality panel reports, while not unduly delaying the panel process.”³⁸ While the DSU provides only that a panel must “consult” with the parties to the dispute when it wishes to adopt additional procedures, panels have been reluctant, on their own, to adopt procedures without the agreement of the parties. This has led the WTO Secretariat to develop a model set of working procedures, which most panels now adopt. However, these procedures deal mostly with issues such as timeframes for filing submissions, holding meetings and responding to questions. They do not deal with the more difficult and contentious issues, such as admissibility of *amicus curiae* briefs.

Panels are assisted in their deliberations by legal officers of the WTO Secretariat. Because the government officials who sit on panels tend not to be legally trained and often have little time for their panel work, the legal officers assigned to the panel at times take a lead role in assessing the facts, analyzing the legal issues and drafting the panel’s decision. The parties are given an opportunity to review the panel’s decision before it is circu-

³⁷ DSU, Article 11.

³⁸ DSU, Article 12.2.