

access to the information prerequisite for informed participation, not only for Members of the WTO but also for non-state "stakeholders".³³

The "Diplomatic" Vestiges Remaining in the Panel System

Several vestiges of the "diplomatic" model of dispute settlement remain in the panel system in the WTO. They endure because most WTO Members put a high priority on retaining control and authority over the system (both in terms of inputs and outputs).³⁴ Two of the most important diplomatic features are the selection and *modus operandi* of panels and the confidentiality or secrecy of dispute settlement proceedings.

Panels are selected by the agreement of the parties to the dispute, based on nominations made by the WTO Secretariat, and can be composed of government officials or non-governmental individuals.³⁵ The overwhelming majority of panelists selected to serve since 1995 have been government officials, often working with delegations in Geneva. When the parties cannot agree on the three persons to sit on a panel, the Director-General of the WTO may appoint the panel.³⁶ This is

³³ For an excellent debate on who are the "stakeholders" in the WTO, and who should have standing in WTO dispute settlement, see: Philip M. Nichols, "Extension of Standing in the World Trade Organization", 17 *University of Pennsylvania Journal of International Economic Law* 310 (1996); Richard Shell, "The Trade Stakeholders Model and Participation by Nonstate Parties in the World Trade Organization", 17 *University of Pennsylvania Journal of International Economic Law* 370 (1996); Steve Charnovitz, "Participation of Nongovernmental Organizations in the World Trade Organization", 17 *University of Pennsylvania Journal of International Economic Law* 339 (1996); Philip M. Nichols, "Realism, Liberalism, Values, and the World Trade Organization", 17 *University of Pennsylvania Journal of International Economic Law* 859 (1996).

³⁴ The recent proposal by Chile and the United States in the Doha Round DSU negotiations underlines this desire to "control" even the judicial aspects of the dispute settlement system. See note 5 herein.

³⁵ DSU, Article 8.

³⁶ DSU, Article 8.7.