

Litigating a dispute at the WTO: What can be challenged, which procedures apply and why bring a dispute?

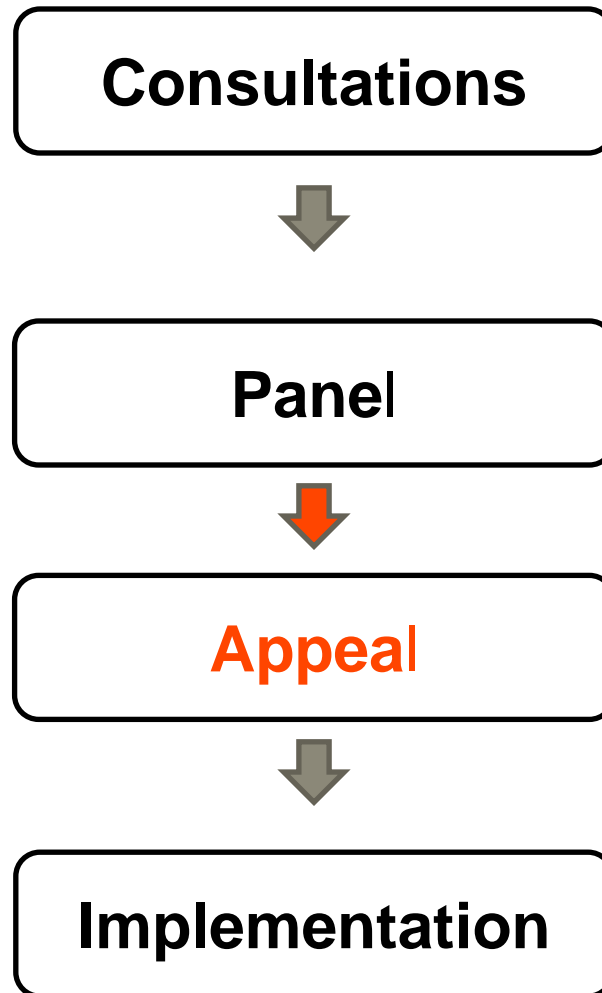
**Alan Yanovich, Senior Counsel
Akin Gump, Strauss, Hauer & Feld
Geneva, Switzerland**

International Annual WTO Forum
Kaliningrad State Technical University
20 - 22 March 2014

Main Features of the WTO DSM

- Compulsory jurisdiction
- State-to-State mechanism
- Automaticity
- Quasi-judicial mechanism with diplomatic origins
- Challengeable measures
- Types of claims
 - “As such”
 - “As applied”
 - “Ongoing conduct”
- Two-stage adjudication process
- Binding decisions
- The role of “precedent”
- Right to retaliate in cases of non-compliance
- Multilateral surveillance

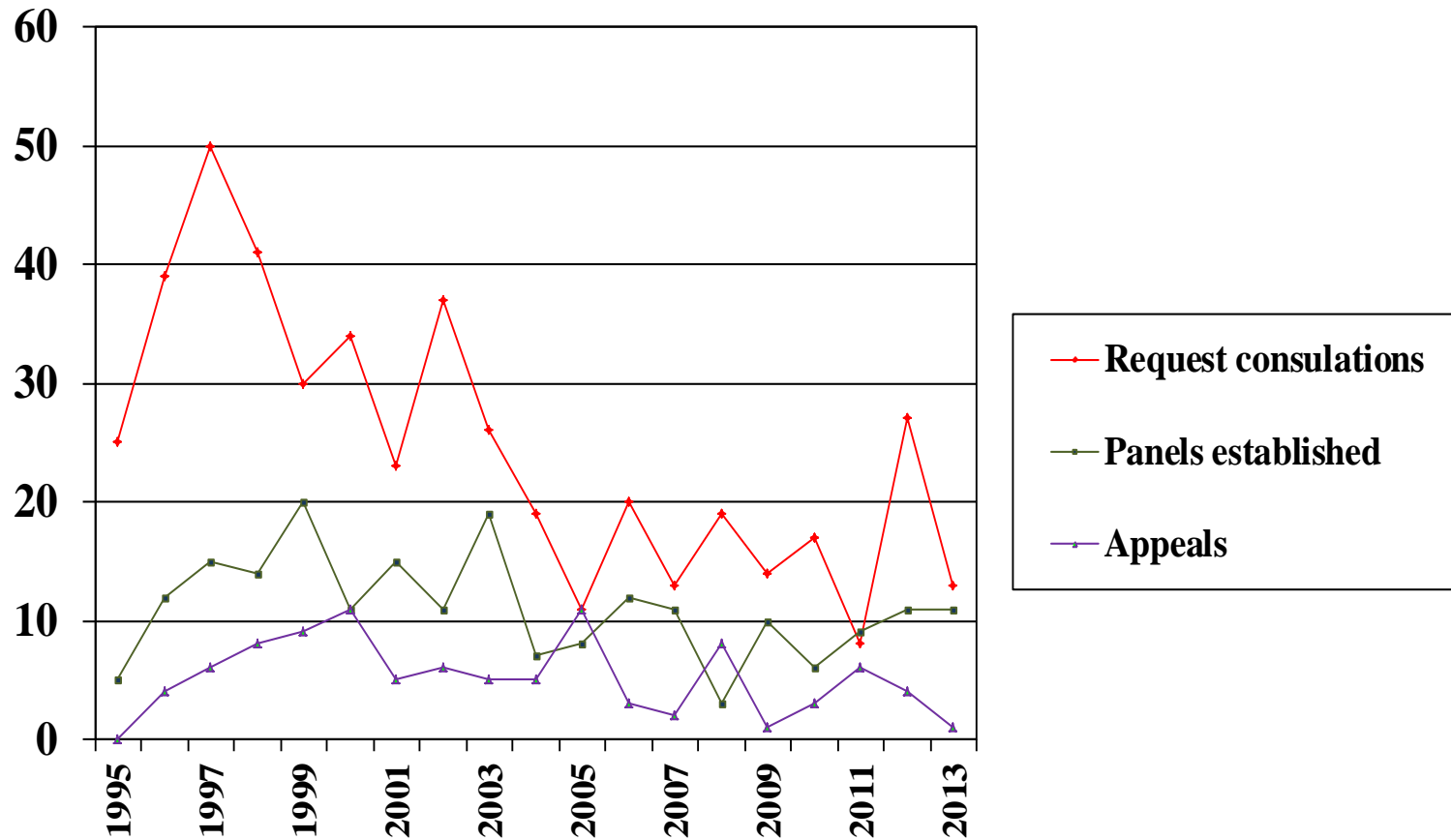
Main stages of the dispute settlement process





Objectives of bringing a dispute to the WTO

- Market access (removal of border or regulatory barrier)
- Change the future conduct of the respondent country
- Clarify the interpretation of the WTO agreements
- Dissuade other countries from pursuing similar conduct
- “Unclog” the bilateral agenda
- Two-pronged strategy together with investment dispute
- Other strategic reasons



Russia's participation in WTO DSM

■ As complainant

- *European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia* (DS474)

■ As respondent

- *Russian Federation – Recycling Fees on Motor Vehicles* (DS462 – EU; DS463 – Japan)

■ As third party- (10 cases) Some examples:

- *EC – Seal Products* (DS400 – Canada; DS401 – Norway);
- *China – Rare Earths* (DS431 – United States; DS432 – EU; DS433 – Japan);
- *US – Countervailing Measures (China)* (DS437);
- *US - Countervailing and Anti-Dumping Measures (China)* (DS449);
- *China – HP SSST (Anti-Dumping Duties on High-Performance Stainless Steel Tubes)* (DS454 – Japan; DS460 – EU)

Some WTO disputes relating to natural resources

Dispute	Complainants	Status
China - Raw Materials	Mexico, United States, EU	China has announced compliance.
Canada – Feed-in Tariff Program / Canada – Renewable Energy	EU, Japan	AB reports adopted 6 May 2013.
China – Rare Earths	Japan, EU, United States	Circulation of panel report expected in March.
European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia	Russian Federation	Consultations.
India — Certain Measures Relating to Solar Cells and Solar Modules	United States	Consultations.
European Union and Certain Member States — Certain Measures Affecting the Renewable Energy Generation Sector	China	Consultations.
European Union — Anti-Dumping Measures on Biodiesel from Argentina	Argentina	Consultations.