

EXPERT COLLOQUY: WHY DIVERSE GROUPS OF PUBLIC HEALTH EXPERTS ARE IMPORTANT FOR SCIENTIFICALLY SOUND WTO DISPUTE RESOLUTION

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ABSTRACT

Despite the extensive procedures established for expert review groups in the Agreement on the Application of Sanitary and Phytosanitary Measures, the Dispute Settlement Understanding, and the Agreement on Technical Barriers to Trade, WTO dispute resolution panels have relied solely on the ad hoc use of individual experts. Speculation remains over whether this is a product of a concern for the timeliness of using expert review panels or whether it is a result of panel member pride. No matter what the reason is, this article argues that the current use of experts is accompanied with shortcomings that may be alleviated simply by following the promulgated text of the aforementioned treaties.

By examining the questioning of experts in WTO panels, this article emphasizes two criticisms of the current approach. First, the questions posed by the panel often are outside of the expertise of the chosen individual experts, resulting for example, in pathologists attempting to comment of the cost and benefits of wide-scale regulatory schemes. Second, since the process relies on the experts themselves to highlight their own areas of competence, experts who may not realize their own boundaries are enabled to

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address areas where they may not have sufficient expertise. This article argues the Appellate Body has misinterpreted DSU Article 13 to permit such rampant ad hoc use of individual experts. The article concludes that use of diverse expert groups which are able to colloquy and draw out areas of consensus and precise reasons for disagreement would help remedy these problems.

KEYWORDS: *WTO, DSU, individual experts, use of experts, SPS Agreement, TBT Agreement, diverse groups, public health.*