

For example, we can assess the extent to which the WTO legal system exerts a “compliance pull” on its Member states. We can examine the inputs into the WTO rule-making and dispute settlement processes to assess whether due process and fairness (i.e., “right process”) are applied in making and interpreting the rules. And we can analyze the outputs of the system, by assessing the quality and coherence of the dispute settlement decisions interpreting the rules.

Against this background, this chapter discusses the functioning of the dispute settlement system, which has pulls both toward diplomacy and judicialization, and of the WTO’s rule-making institutions—its political/legislative bodies—to assess whether they are effective in contributing to the legitimacy of the WTO as an international system of rules.

The Dispute Settlement System

The "Diplomatic" vs. The "Judicial" Model

There has long been a tension between the “diplomatic” and the “judicial” features of GATT/WTO dispute settlement.²⁹ Even during the GATT era, multilateral dispute settlement was evolving ever more towards a judicialized model. For example, in 1989, improvements to the dispute settlement process agreed at the Montreal Ministerial Meeting of 1988 enabled panels to be automatically established upon the request of a complaining party.³⁰ Under the previous GATT system, a consensus deci-

²⁹ I have previously referred to this as a “balance” between the pragmatic and the legalistic, but if it is a balance, it is a delicate one. Debra P. Steger and Susan M. Hainsworth, “World Trade Organization Dispute Settlement: The First Three Years”, 1:2 *Journal of International Economic Law* 199 (June 1998); See also Robert E. Hudec, *Enforcing International Trade Law: The Evolution of the Modern GATT Legal System*, Butterworths, 1993, 11-15; J.H. Jackson, *Restructuring the GATT System*, Royal Institute of International Affairs, 1990, 59-68.

³⁰ See “1989 Improvements to GATT Dispute Settlement Rules and Procedures” at <http://www.worldtradelaw.net/misc/disputetexts.htm>