

the agreements: "Clarifying rules is practically impossible" and "[a]dopting new rules is cumbersome".<sup>53</sup> "The bottom line," asserts Claude Barfield, "given the extreme difficulty of using normal legislative procedures in the WTO, is that dispute settlement panels and the Appellate Body will be under increasing pressure to legislate through interpretation and filling in the blanks in WTO disciplines."<sup>54</sup>

The administrative structure and the decision-making apparatus of the WTO is complex.<sup>55</sup> The general rule on decision-making is that the WTO will "continue the *practice* of decision-making by consensus followed under GATT 1947."<sup>56</sup> Where certain decisions cannot be arrived at by consensus,<sup>57</sup> the *Mar-*

---

<sup>53</sup> Marco C.E.J. Bronckers, "Better Rules for a New Millenium: A Warning Against Undemocratic Developments in the WTO", 2:4 *Journal of International Economic Law* 547, 551-552 (December 1999).

<sup>54</sup> Barfield, note 4, 42.

<sup>55</sup> These organizational features of the WTO are set forth in the *Marrakesh Agreement*, which is a sort of "mini-constitution" for the multilateral trading system. The *Marrakesh Agreement* was negotiated during the latter part of the Uruguay Round in the Institutions Group, chaired by Ambassador Julio Lacarte-Muro from Uruguay (who was the first Chairman of the Appellate Body). The history of this negotiation and the decision-making provisions of this agreement are described in Debra P. Steger, "The World Trade Organization: A New Constitution for the Trading System", in M. Bronckers and R. Quick (eds.), *New Directions in International Economic Law*, Kluwer, 2000, 135-153.

<sup>56</sup> *Marrakesh Agreement*, Article IX:1. The term "practice" is used to describe the way decisions were made in the GATT since the 1960s because consensus decision-making was not the rule—the rule under Article XXV of the GATT 1947 was majority voting—rather, it was the "practice". Article IX: I of the *Marrakesh Agreement* enshrined this "practice" and made it the "rule" for the WTO. Emphasis added.

<sup>57</sup> "Consensus" does not mean "unanimity". A decision is "deemed" to have been decided by consensus "if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision." *Marrakesh Agreement*, Article IX: 1, footnote 1. The Rules of Procedure of the General Council (the highest political/legislative body in the WTO when the Ministerial Conference is not in session) and the other Councils require that a quorum of two-thirds of the Members be present at any formal meeting; however, that does not always happen. Technically, therefore, a decision could