

which are not directly involved in a particular dispute, either as parties to the dispute or as third parties, to express views on issues of systemic interest raised by the case.

Although many Members of the WTO, particularly the developing countries, remain deeply committed to the principles of confidentiality in dispute settlement, the current rules work against the interests of Members of the WTO who are not parties or third parties to a dispute but who may face similar legal issues arising in other disputes or who take an interest in possible systemic implications.

In my view, the rules requiring confidentiality of documents and proceedings undermine the internal legitimacy of the dispute settlement system because they deny other WTO Member governments the opportunity to know what is being argued in particular cases. Furthermore, within civil society, these rules breed distrust and misunderstanding of the dispute settlement system. Nothing works against the external legitimacy of the WTO dispute system as powerfully as its lack of transparency and the secrecy within which panels and the Appellate Body are required to operate under the DSU. Opening the system up would not only eradicate the perceptions of a non-transparent process lacking in due process and fairness guarantees, but would also improve public understanding of the system.

The "Judicial" Features

The combined effect of introducing compulsory adjudication, automatic adoption of panel and Appellate Body reports, and automatic authorization of retaliation in cases of non-compliance has been to give the dispute settlement process some degree of predictability and to make the findings and conclusions of panels legally binding and effectively enforceable.

Some commentators, however, have argued that the DSU reforms have given an inordinate amount of power to the "judicial" branch of the WTO, resulting in an imbalance of power