

date, the Appellate Body has established a comprehensive jurisprudence on matters of judicial practice and procedure applicable not only to its own proceedings but also to the proceedings of panels.

On the issue of “adherence”, Professor Franck tells us: “A rule has greater legitimacy if it is validated by having been made in accordance with secondary rules about rule-making.”⁵¹ Although it is still early days in the history of the WTO dispute settlement system, there are some discernible trends beginning to emerge. In my observations above relating to the factor of “coherence”, I stated that the Appellate Body had developed a comprehensive and impressive set of rulings on practice and procedure in the appeals it has heard to date. These rulings together with the many interpretative rulings made by the Appellate Body weave together to make a fabric of secondary rules which help to build the foundation of a legitimate judicial institution out of the dispute settlement system of the WTO. This jurisprudence creates a permanent foundation, based on principles of natural justice, due process and fairness—a “right process”—for the WTO dispute settlement system.

The Rule-Making Institutions

While the Appellate Body has been working strategically and purposefully toward establishing its credibility and legitimacy as an international tribunal, the same cannot be said of the WTO political/legislative bodies. The latter WTO bodies have been characterized as “weak” by the key powers in the multilateral trading system.⁵² European trade lawyer and scholar, Marco Bronckers, has stated that under the new WTO procedures for adopting definitive interpretations or amending provisions of

Efficiency, Equity, Legitimacy: The Multilateral Trading System at the Millennium, Brookings, 2001, 334, 346.

⁵¹ Franck, note 14, at 193.

⁵² See the speech by Pascal Lamy, European Trade Commissioner, referred to in note 1 herein.