

time to time, where appropriate, from the practice of other international tribunals and public international law generally. Moreover, the Appellate Body has developed a comprehensive set of rulings on matters of judicial practice and procedure, dealing with such issues as standing, burden of proof, treatment of evidence and experts, standard of review, jurisdiction of panels, rights of third parties, right to be represented by counsel and treatment of *amicus curiae* briefs.

In making some of its procedural rulings, particularly with respect to the right to representation by private counsel and the acceptance and consideration of *amicus* briefs, the Appellate Body has come under criticism by many WTO Members and some commentators, who maintain that these procedural gaps in the DSU can only be filled by the Members of the WTO, acting in their legislative capacity, and not by the "judicial" bodies of the WTO through the development of case law.⁴⁹ Whether or not they agree with individual rulings of the Appellate Body on these matters, legal scholars generally concur that the Appellate Body has behaved, in general, like a prudent, conservative court, motivated by general principles of natural justice, due process and fairness, taking pains to demonstrate its motivations and legal reasoning in its published decisions.⁵⁰ In its rulings to

⁴⁹ Barfield, note 4, 50-53.

⁵⁰ See: William J. Davey, "Has the WTO Dispute Settlement System Exceeded Its Authority?", in Thomas Cottier and Petros Mavroidis (eds.), *The Role of the Judge: Lessons for the WTO*, Kluwer forthcoming, 2002; Robert Howse, "The Most Dangerous Branch? WTO Appellate Body Jurisprudence, on the Nature and Limits of the Judicial Power, in Thomas Cottier and Petros Mavroidis (eds.), *The Role of the Judge: Lessons for the WTO*, Kluwer forthcoming, 2002; Robert Howse, "Adjudicative Legitimacy and Treaty Interpretation in International Trade Law: The Early Years of WTO Jurisprudence", in J.H.H. Weiler (ed.), *The EU; the WTO and the NAFTA: Towards a Common Law of International Trade*, Oxford University Press, 2000, 35; John H. Jackson, "Dispute Settlement and the WTO: Emerging Problems", 1 *Journal of International Economic Law* 329 (1998); Robert E. Hudec, "The New WTO Dispute Settlement Procedure: An Overview of the First Three Years", 8 *Minnesota Journal of Global Trade* 1 (1999); J.H.H. Weiler, "The Rule of Lawyers and the Ethos of Diplomats: Reflections on WTO Dispute Settlement", in Porter, Sauve, Subramanian & Zampetti (eds.),