

ing their own proposal to have litigation costs funded by the developed countries. In this connection, it was also noted that the EU-US dyad has actually seen a worsening in outcomes as issues move from the diplomatic stage of consultations to the litigation stage—concessions are negatively signed and statistically significant to a panel outcome, even those in favour of the complainant.

Some argued that the big challenge to the system was not to tighten up the legal procedures but to cut back the system before it breaks. The deepest issues here relate to legitimacy. The norms of democratic legitimacy developed for the nation state cause the international institutions to face inevitable challenges.

These problems are exacerbated when these institutions over-reach as, it was argued, each has tended to do. The IMF, World Bank and the WTO all suffer from this reaction. In the case of the WTO, the Financial Sales Corporation case, which addressed features of the US tax system, was cited as an example that had generated considerable anti-WTO sentiment within the United States. Such cases, it was suggested, are not contributing to the future viability of the system.

Others countered that it becomes very convenient for national governments to lay blame at the foot of the system rather than to acknowledge that they themselves set out the tasks for these institutions! In any event, sovereignty issues are not raised since a country can decline to implement panel recommendations and choose to maintain measures found not to be in conformance with its obligations; the consequence is simply a symmetric reduction in the obligations of other contracting parties to it.

From an historical perspective, it was noted that the basic tension between legal rigor and political/diplomatic flexibility goes back to the debate that took place when the DSU was being developed in the Uruguay Round. The ironic thing is that it was the EU that wanted diplomacy and non-transparency while the US, backed by Canada, wanted to make the system more legal and transparent. Now the US position has shifted and it is now proposing to make the DSU less automatic and to restore some political flexibility to the mechanism.