

control” into the panel and Appellate Body processes as some have proposed, the legitimacy challenges facing the WTO would best be met by improving the diplomatic process while at the same time taking measures to further “judicialize” or “professionalize” the panel system, improve the rules and procedures for compliance with WTO rulings, and enhance transparency and understanding of the system by opening up panel and Appellate Body hearings to the public.

The following section discusses the issue of legitimacy in conceptual terms. Subsequently, the issues of legitimacy raised by the functioning of the dispute settlement mechanism and of the WTO’s rule-making institutions are addressed in turn. The final section draws some conclusions.

What is “Legitimacy”?

The issue of legitimacy is, as noted by J.H.H. Weiler, an inveterate observer of the evolution of the European Community, “part of the standard vocabulary of court watching”.⁹ In the last few years, it has also become a hot topic for WTO watchers. Although many commentators have written about the so-called “crisis of legitimacy” in the WTO, few have defined the term with any precision.¹⁰

Robert Keohane and Joseph Nye Jr. equate “legitimacy” with notions of democracy and accountability. They state that

⁹ J.H.H. Weiler, “The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement”, 35(2) *Journal of World Trade* 2001, 191-207, 193.

¹⁰ See Robert Howse and Kalypso Nicolaidis, “Legitimacy and Global Governance: Why Constitutionalizing the WTO is a Step Too Far” (with Comments by Steve Charnovitz and Gary N. Horlick); Robert O. Keohane and Joseph S. Nye Jr., “The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy” (with Comments by Robert E. Hudec and Daniel C. Esty); and Frieder Roessler, “Are the Judicial Organs of the WTO Overburdened?” (with Comments by William J. Davey), in R.B. Porter, P. Sauve, A. Subramanian, A.B. Zampetti (eds.), *Efficiency, Equity, Legitimacy: The Multilateral Trading System at the Millenium*, Brookings, 2001, 227-333.