

The Appellate Body, in its very first case, *United States — Standards for Reformulated and Conventional Gasoline*, set forth the interpretative approach that it was to follow in subsequent cases. In that case, the Appellate Body stated that the “general rule of interpretation” set forth in Article 31 of the Vienna Convention on the Law of Treaties is a rule of customary international law that is to be followed in interpreting and applying provisions of the WTO Agreement. Article 3.2 of the DSU, the Appellate Body noted, recognizes that the WTO rules are “not to be read in clinical isolation from public international law.”<sup>47</sup>

Rather than “legislating” to fill in gaps in the WTO’s legal framework, the Appellate Body has consistently applied an internationally agreed set of rules to interpret the provisions of the WTO Agreement. In so doing, it has developed a coherent approach to interpretation, in accordance with accepted principles of international law, and has required that panels follow the same method. Thus, the Appellate Body has adopted a “right process” for interpreting and clarifying the sometimes “indeterminate” rules in the WTO Agreement.

With respect to the factor of “symbolic validation”, which features of the WTO’s judicial bodies might be said to correspond to Franck’s concepts of “rituals” and “pedigree”?

In relation to “pedigree”, the Appellate Body is a relatively new judicial institution and was not created endowed with an established reputation. It has had to develop, through its first cases, its own credibility and legitimacy as an international tribunal. The Members of the WTO, in retrospect, made very wise decisions in selecting who would be the first seven Members of the Appellate Body. After interviewing 32 candidates nominated by Members of the WTO, the DSB, after a long, difficult process, finally selected the original seven members of the Appellate Body. As Franck has observed, *who* decides is an important factor in the legitimacy of a clarifying judicial proc-

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<sup>47</sup> Report of the Appellate Body, *United States — Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted May 20<sup>th</sup>, 1996, pg 17.