

adoption of panel reports—in effect, it was to safeguard against the occasional “wrong” decision of panels.³² The Appellate Body is comprised of seven persons, appointed by consensus by the Members of the WTO, on the basis of their qualifications taking into account the overall geographic representation and diversity of legal systems within the WTO Membership. All but one of the seven incumbents of the Appellate Body are legally-trained jurists; most have distinguished backgrounds in public international law or international economic law generally, rather than in trade policy *per se*. Their qualifications are very similar to those of judges appointed to other international tribunals. The Members of the WTO, whether by deliberate design or by default, have appointed highly respected jurists—with judicial skills and perspectives—to the Appellate Body.

The DSU reforms, especially the establishment of the Appellate Body, have driven the system more dynamically toward a “judicialized” model, but elements of the “diplomatic” model remain. These diplomatic elements make the dispute settlement system more acceptable to the delegations of WTO Member governments in Geneva, and thus contribute to its “internal” legitimacy. However, these same diplomatic elements raise questions of accountability and reduce the transparency of the WTO dispute settlement system to the outside world—in other words, they detract from its “external” legitimacy.

There is a struggle over legitimacy within the WTO, and the dispute settlement system has become the battleground. There are conflicting pulls on the system. From *within*, Member governments perceive the dispute settlement system as essentially diplomatic and want to keep it that way so as to enhance their “control” over it. From *outside*, NGOs and representatives of civil society maintain that the system must become more open and transparent, and must provide greater access to WTO processes—e.g., through *amicus curiae* briefs—as well as

³² Debra P. Steger, “The Appellate Body and its Contribution to WTO Dispute Settlement”, in D. Kennedy and J. Southwick (eds.), *The Political Economy of International Trade Law: Essays in Honour of Robert E. Hudec*, Cambridge University Press, 2002, 482-495, at 483.