

The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves *to preserve the rights and obligations of Members* under the covered agreements, and *to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law*. Recommendations and rulings of the DSB *cannot add to or diminish the rights and obligations* provided in the covered agreements.<sup>43</sup>

With respect to Franck's first indicator, "determinacy", not all WTO rules are models of textual clarity. Indeed, some of the language in the 500 or so pages of the text of the WTO Agreement is deliberately vague, reflecting a lack of agreement among the negotiators. That being said, one of the purposes of dispute settlement as stated in Article 3.2 of the DSU, quoted above, is precisely "to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law." As Franck notes, it is common for treaties, and even constitutions, to contain rules that have a certain degree of ambiguity because of unresolved disagreements or uncertainties.<sup>44</sup> Such vagueness is not necessarily a problem; it may leave room for a rule to evolve flexibly through interpretation and application by a process of clarification recognized as legitimate by those to whom the rules are addressed.<sup>45</sup> Franck suggests that courts are a credible process of clarification, but not the only such process. Whether a "clarifying process" is successful in transforming an "indeterminate" rule into a "determinate" rule, depends upon such factors of legitimacy "as *who* is doing the interpreting, their *pedigree* or authority to interpret, and the *coherence* of the principles the interpreters apply."<sup>46</sup>

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<sup>43</sup> DSU, Article 3.2. Emphasis added.

<sup>44</sup> Franck, note 14, at 53.

<sup>45</sup> *Ibid.*, at 61.

<sup>46</sup> *Ibid.*