

As I have noted, until the World Trade Organization came into being, dispute settlement within the GATT, as transformer, was concerned primarily with the maintenance of a balance of reciprocal rights and obligations, rather than illegality or breaches of treaty obligations. This mechanism was a strange and unwieldy beast for trade lawyers, very different from the legal systems in which they had received their initial training. As an illustration, no consensus ever emerged on the nature of a GATT panel ruling - whether it was binding on the parties to the dispute and whether it created legally binding interpretations of GATT rules for future disputes.

Within this difficult framework, there developed additional problems over the years. Delays of up to two years between initial requests for consultations and circulation of a panel report occurred. The quality of panel reports, while generally good, could vary. There were even, on occasion, shortages of qualified, available panelists. Moreover, the adoption of panel reports could be blocked by one of the parties to the dispute if it found it convenient to do so. Even if adopted, implementation of recommendations by the offending party could be delayed.

Now, with the creation of the World Trade Organization, a new era in dispute settlement has dawned. Practical and positive changes are being wrought. The creation of a dispute settlement body to manage all disputes, improved time limits, automatic establishment of panels, the creation of an appellate body and improvements in implementation and compliance procedures all mean that the new World Trade Organization, the regulator, has been given some bite.

The WTO dispute settlement system has been judicialized. Even before the conclusion of the Uruguay Round, the eminent GATT jurist Robert Hudec discerned a trend in the GATT panel decisions toward "bright line substantive rules" and strict construction of these rules. Building on the achievements of the North American Free Trade Agreement, the Uruguay Round recognized the importance of effective institutional arrangements for conducting trade on a non-discriminatory basis. It recognized that the best form of dispute settlement is dispute avoidance. The best way to avoid disputes is to let others know what you are planning to do, to hear the views of others, and to correct small mistakes before they fester and become political issues. Hence the emphasis on transparency. The WTO also points toward more permanence in institutions.

This judicialization is also reflected in the fact that there is an increasing role for domestic authorities, and consequently domestic practitioners, in the enforcement of trade rules. With more and more areas of domestic economic regulation now disciplined to some extent by international rules, so too more and more provisions of domestic statutes have their genesis in an