

“overreaching” and legislating in recent cases.² It is alleged that panels and the Appellate Body have disregarded the intent of negotiators in the WTO legal texts and have created new rights and obligations based on their own policy objectives. In doing so, it is argued, the dispute settlement bodies “undermine the legitimacy of the WTO’s agreements, the WTO and its dispute settlement system, and future negotiations on trade.”³ The imbalance that has emerged between the judicial and legislative branches of the WTO, some have argued, is a “formidable constitutional flaw”.⁴ It is against this background that the United States together with Chile tabled a proposal in the negotiations on the Dispute Settlement Understanding (DSU) in Geneva aimed at “improving flexibility and Member control in WTO dispute settlement”.⁵

² See John Greenwald, “WTO Dispute Settlement: An Exercise in Trade Law Legislation?”, James P. Durling, “Deference, by Only When Due: WTO Review of Anti-Dumping Measures”, and Richard O. Cunningham and Troy H. Cribb, “A Review of WTO Dispute Settlement of US Anti-Dumping and Countervailing Duty Measures”, in Vol. 6, No. 1, *Journal of International Economic Law* 113, 125, 155 (March 2003). See also Paul C. Rosenthal and Jeffrey S. Beckington, “Dispute Settlement Before the World Trade Organization in Antidumping, Countervailing and Safeguard Actions: Effective Interpretation or Unauthorized Legislation?”, speech delivered at a conference presented by the Trade and Customs Law Committee of the International Bar Association, “Developments in WTO Law”, Geneva, Switzerland, March 20-21, 2003.

³ Paul C. Rosenthal and Jeffrey S. Beckington, “Dispute Settlement Before the World Trade Organization in Antidumping, Countervailing and Safeguard Actions: Effective Interpretation or Unauthorized Legislation?”, speech delivered at a conference presented by the Trade and Customs Law Committee of the International Bar Association, “Developments in WTO Law”, Geneva, Switzerland, March 20 & 21, 2003, pg 1.

⁴ Claude E. Barfield, *Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization*, The AEI Press, 2001, pg 1.

⁵ Contribution by Chile and the United States, “Negotiations on Improvements and Clarifications of the Dispute Settlement Understanding on Improving Flexibility and Member Control in WTO Dispute Settlement”, WTO Doc. TN/DS/W/52, March 14th 2003. Ironically, in the Uruguay Round, it was the European Communities who called for greater “flexibility and Member control” in WTO dispute settlement while the United States