

## SYMPOSIUM ON THE FIRST THREE YEARS OF THE WTO DISPUTE SETTLEMENT SYSTEM

### Co-Chairs' Introduction

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This special issue sets out the proceedings of a symposium, held on February 20, 1998, on the first three years of operation of the Dispute Settlement Understanding (DSU) of the World Trade Organization (WTO). The symposium was sponsored by the ABA Section of International Law and Practice (SILP) and co-sponsored by the Georgetown University Law Center.

The impetus for the symposium was the Ministerial Decision taken at the time the WTO Agreements were signed in April 1994, that the Ministerial Conference of the WTO "complete a full review of dispute settlement rules and procedures" under the WTO by the end of 1998. The review—to be conducted in Geneva and in national capitals around the world—was so that the Members of the WTO could decide whether to "continue, modify or terminate" the innovative dispute resolution system that came into effect with the WTO in 1995.

The objective of the symposium was to bring together a "critical mass" of individuals with extensive experience in dispute resolution under the General Agreement on Tariffs and Trade (GATT) and the WTO—from national governments, the WTO Secretariat, academia, and the private bar—and provide an opportunity for in-depth discussion of the system's performance to date, as well as future challenges. The symposium was a forum for candid and thoughtful commentary and constructive criticism, so that strengths of the system could be reviewed, and both weaknesses and potential improvements identified.

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It would be impossible to summarize the proceedings in this short space. However, some common threads emerged from the many varied presentations:

1. *The dispute settlement system is a crucial, if not the most crucial, part of the WTO system.*

2. *While the system has, on the whole, been largely successful to date, it is possible to identify changes that would make it function better.* Virtually every presentation looked at possible changes to the DSU itself or to the way WTO Members use and approach the system. Participants agreed that debate on possible DSU amendments had not yet progressed very far (a situation that may well have changed by the time this volume goes to press), but a number of potential areas for improvement were identified. There was virtually no suggestion that the system be discontinued.

3. *A key issue confronting the system is whether it has and will have sufficient resources to fulfill its mandate.* The presentations of Ambassador Richard Bernal, Debra Steger, and Andrew Stoler in particular provided sobering thoughts and statistics on the increasing use of the system over the last three years. While providing a clear indicator that WTO Members are putting the system to good use, these statistics provide an equally clear warning light that, without adequate resources, the system will bog down and/or deliver poor quality decisions.

4. *The tension between substantive rules that are not always crystal clear, and the need for definitive rulings by panels and the Appellate Body, continues.* In addition, this tension may be heightened by the automaticity and greater speed of the dispute resolution process in contrast to the lengthy periods of time it takes to renegotiate substantive rules.

5. *Tension continues also over how "binding" WTO dispute settlement is and should be.* The WTO cannot, of course, enforce compliance with its rulings through the coercive means available to national governments and their courts. Yet, the system has been made "binding" in the sense that panel reports are automatically adopted by the Dispute Settlement Body (DSB), so that panels and the Appellate Body have the ability to define the international legal obligations of WTO Members. Further, the DSB provides for automaticity in implementation. These are big changes (underestimated in many analyses), and raise squarely questions such as whether a losing party can fully meet its international obligations by negotiating other concessions or accepting retaliation. This issue was the subject of a particularly interesting dialogue at the symposium, reported at pp. 792-3 in this volume.

These issues are only a sample of those raised at the symposium. And, needless to say, there was healthy disagreement on many topics raised. Nonetheless, our hope is that the thoughts, comments, and discussions in the pages that follow will contribute to a rigorous debate over points related to the WTO's dispute resolution provisions. Whether or not substantial amendments are adopted this year, the importance of the system to WTO Members, business, labor and other

commercial interests, nongovernmental organizations and others is too great for these issues to go undebated or unaddressed.

The papers and symposium proceedings presented in this volume speak for themselves; it is difficult to imagine a more thoughtful and educational review of the important issues facing WTO Members as they consider during 1998 the future of the dispute settlement mechanism created in the Uruguay Round. At the same time, this symposium is but one installment in what will be an ongoing process of examining and improving the WTO dispute settlement system. Only time, of course, will tell to what extent the symposium succeeded in advancing an ongoing dialogue. For our part, we hope to reconvene in 2000 to review the state of play, with the benefit of two additional years' experience and with the additional incentive of the scheduled review by the U.S. Congress that year of U.S. participation in the WTO.

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