

**Turning Offense Into Defense:**

*Making Sense of Public Citizen's Arguments Against the WTO*

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## ABSTRACT

The World Trade Organization (WTO) is under considerable fire from nearly every quarter. Undoubtedly, the biggest gun currently belongs to Public Citizen's Global Trade Watch (GTW). GTW is the undisputed leader of the coalition that derailed the Millennium Round of WTO talks in Seattle. In 2004, GTW published a second edition of its book, *Whose Trade Organization?* that had been the manifesto of the Seattle protesters.

The WTO Dispute Settlement Body (DSB) is one of the most frequent target of the anti-WTO crowd (and sometimes the pro-WTO crowd.) One chapter of GTW's book is reserved for its criticism of the DSB. In this chapter, GTW makes four main arguments. One, that the GATT dispute settlement system was superior to that of the WTO. Two, that the dispute settlement system is rigged against the poor countries. Third, that the WTO dispute settlement system is secret and unaccountable. Fourth, that the DSB panelists and Appellate Body members are incompetent free trade fanatics.

The first argument is not true. The GATT system ensured that the most important decisions would never be implemented. The second argument is only true to the extent that any competitive system will favor a party that has more resources with which to compete. The third argument is true, although not nearly to the degree that GTW would have its readers think. The fourth argument is not true. Regardless of their truth, all of GTW's arguments are converted into counterfactuals to evaluate their desirability.

The paper concludes that GTW makes three types of arguments. The first type is based on accurate assertions. The second is based on exaggerated assertions. The third type is based on inaccurate assertions. All of GTW's counterfactually deduced propositions lead to questionable or undesirable outcomes.

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## Introduction

The World Trade Organization (WTO) has been both praised as the savior of humanity and condemned as the end of the world. Attempting to identify and respond to all of the criticisms levied at the WTO would require a lifetime. However, there are relatively reputable organizations that make it their business to criticize the WTO. It is possible to augur a somewhat accurate reflection of popular concern by evaluating the criticisms of these organizations.

Public Citizen is one of these organizations. Founded by Ralph Nader in the 1970's, Public Citizen has created a permanent division called Global Trade Watch (GTW).<sup>1</sup> GTW published a book, *Whose Trade Organization?* in 1999, which slammed the WTO on almost every front.<sup>2</sup> GTW updated this book by releasing a second edition in 2004.<sup>3</sup> Both books level nearly every conceivable criticism at the WTO. Indeed, the most popular rebuttal to the original book was that it tried to be all things to all critics by attacking everything and defending nothing.<sup>4</sup>

This is true to some extent. The authors attack WTO decisions that hurt developing countries with the same breath as they attack decisions that help developing countries.<sup>5</sup> Some have argued that this is an intentional effort to bring as many people in

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<sup>1</sup> For more information on Public Citizen's Global Trade Watch, see <https://www.citizen.org/trade/index.cfm>

<sup>2</sup> Lori Wallach & Michelle Sforza, *Whose Trade Organization?: Corporate Globalization and the Erosion of Democracy* (1999).

<sup>3</sup> Lori Wallach and Patrick Woodall, *Whose Trade Organization?: A Comprehensive Guide to the World Trade Organization, Second Edition*, (2004).

<sup>4</sup> See Larry Lee, *Reading the Seattle Manifesto: In Search of A Theory*, 78 N.Y.U. L. Rev. 2305 (2003); Moises Naim, *Lori's War: The FP Interview*, Foreign Pol'y, Spring 2000, at 30.

<sup>5</sup> See, e.g., Wallach, supra note 3, at 12 (claiming that the EU rescinded its preferential treatment system of banana importation as a consequence of the EU – Bananas result, “devastating many small, independent Caribbean banana farmers.”); at 35 (attacking the U.S. – Shrimp decision for weakening environmental regulations when the WTO panel found that those regulations were applied in a manner that penalized developing countries and protected U.S. business).

the anti-WTO camp, under GTW's banner, as possible.<sup>6</sup> Not being hampered by a constituency to defend leaves one free to level arguments unbound by internal consistency.

Do the criticisms advanced by GTW sacrifice coherence so as to create common cause between union members and punk rockers? Or is there a single note blowing through the cacophony? GTW's criticisms mainly consist of flat assertions draped with prejudicial adjectives. While it is true that this form of criticism advanced the claim that GTW argues against all and for none, there is a means of analyzing their position that is taught to every first year law student: the counterfactual. By flipping GTW's assertions around, it is possible to see what they are advocating, rather than denouncing.

The paper focuses on a chapter in the latest book titled "The WTO's Operating Procedures and Enforcement System: World Government By Slow-Motion Coup D'Etat."<sup>7</sup> This chapter focuses on the form and function Dispute Settlement Body (DSB) of the WTO. The sections will first cite GTW's arguments, which will be in italics. The counterfactuals will be then be given in bold. Plain text will be used for evaluation. First I will evaluate the validity of the underlying assertions within the argument. Regardless of the validity of the assertion, I will then evaluate the desirability of the counterfactual.

Part One will compare the dispute settlement system under GATT to that of the WTO. Part Two will evaluate the role wealth plays in success in front of the DSB. Part Three will evaluate the confidential nature of WTO DSB proceedings. Part Four will evaluate the selection criteria of panelists and Appellate Body members. Part Five will

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<sup>6</sup> See Lee, *supra* note 4.

<sup>7</sup> Wallach, *supra* note 3, at 239.

evaluate the competency of panelists and Appellate Body members to hear the disputes before them.

## **I. From Singularity to Unanimity**

The WTO dispute settlement system has not existed forever. It was initially composed of a skeletal framework in the General Agreement on Trade and Tariffs (GATT). Part of the conversion of the GATT into the WTO included an overhaul of the dispute settlement system. The most important change to the system concerned the voting requirements for the adoption of findings of trade violations under GATT.

### **A. DISPUTE SETTLEMENT UNDER THE GATT**

The GATT is a treaty that was supposed to create an international trade organization. When the establishment of that organization failed, countries were left only with the agreements embodied in the GATT.<sup>8</sup> The GATT did not comprehensively deal with dispute resolution. Article XXIII allows a contracting party to request consultations with another contracting party when the former feels the latter is engaging in a GATT-inconsistent trade practice.<sup>9</sup> Should consultations fail, the matter is referred to all of the contracting parties.<sup>10</sup> The Contracting Parties may then rule on the matter and authorize retaliatory action.<sup>11</sup>

In 1952, the Contracting Parties began using panels to hear complaints. The panels were comprised of neutral representatives of contracting parties who were not a party to

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<sup>8</sup> For a more detailed analysis, see J.H. JACKSON, *THE JURISPRUDENCE OF GATT AND THE WTO* 119 (2000).

<sup>9</sup> See General Agreement on Trade and Tariffs (hereinafter "GATT") Art. 23:1, *reprinted in* RAJ BHALA, *INTERNATIONAL TRADE LAW HANDBOOK* (hereinafter "BHALA") 229 (2ed. 2002).

<sup>10</sup> See *id.* Art. 23:2.

<sup>11</sup> See *id.*

the dispute.<sup>12</sup> After the panels heard the issues in the dispute, they would issue panel reports which contained findings regarding the trade measures at issue. To be given any effect, these panel reports would have to be adopted by the Contracting Parties.<sup>13</sup> Only after the Contracting Parties had voted to adopt a panel report could it be enforced.

The Contracting Parties adopted all measures, including panel reports, by consensus.<sup>14</sup> This adoption method required that every contracting party agree to be bound by a panel report, including the party who was on the losing end of the report. This practice effectively gave every contracting party a veto over any panel report.

## **B. DISPUTE SETTLEMENT UNDER THE WTO**

A new round of trade negotiations was launched in Punta Del Este, Uruguay in 1986 (the Uruguay Round).<sup>15</sup> One of the main catalysts of the Uruguay Round was the feeling that GATT's dispute settlement system was broken.<sup>16</sup> The Uruguay Round took eight years to produce what is now called the World Trade Organization.<sup>17</sup> The WTO is actually an amalgamation of several different agreements on trade. One of these agreements is the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

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<sup>12</sup> See R.E. HUDEC, ENFORCING INTERNATIONAL TRADE LAW: THE EVOLUTION OF THE MODERN GATT LEGAL SYSTEM 30 (1993).

<sup>13</sup> See GATT, *supra* note 10.

<sup>14</sup> Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, 56(2) Int'l Org. 339, 341 (2002).

<sup>15</sup> World Trade Organization (hereinafter "WTO"), *Understanding the WTO: The Uruguay Round*, available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm).

<sup>16</sup> See GATT, *Ministerial Declaration, Punta Del Este*, (1986) ("To assure prompt and effective resolutions of disputes to the benefit of all contracting parties, negotiations shall aim to improve and strengthen the rules and procedures of the dispute settlement process, while recognizing the contribution that would be made by more effective and enforceable GATT rules and disciplines. Negotiations shall include the development of adequate arrangements for overseeing and monitoring of the procedures that would facilitate compliance with adopted recommendations." See also GATT, *Marrakesh Declaration of 15 April 1994* (1994) (welcoming "the stronger and clearer legal framework [members] have adopted for the conduct of international trade, including a more effective and reliable dispute settlement mechanism.")

<sup>17</sup> See *id.*

The DSU establishes the Dispute Settlement Body (DSB).<sup>18</sup> The DSB is comprised of all members of the WTO and is empowered to appoint panels to hear disputes between members.<sup>19</sup> If a member objects to the findings of the original panel, it may appeal those findings to the Appellate Body.<sup>20</sup> The process for adopting panel reports was reversed. It now requires a consensus, or a unanimous vote, to *block* the adoption of a panel or an Appellate Body report.<sup>21</sup>

### C. COMPARISON

*“In order to maintain the legitimacy of the GATT system, countries rarely objected to rulings against them, although the option existed as a sort of emergency brake.”*<sup>22</sup>

This is the closest GTW comes to advocating a return to the GATT system within the book. However, the implicit context around the statement was that the GATT system was superior to that of the WTO. Wallach would later state this return to the GATT dispute settlement system as GTW’s official position.<sup>23</sup> Before we evaluate this argument, let us examine the above statement by GTW. Is it even true?

The answer is a resounding affirmative if the book had been written in 1979. Between 1950 and 1980, out of 28 violations found, only one finding had been blocked.<sup>24</sup>

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<sup>18</sup> See *Agreement on the Understanding on Rules and Procedures Governing the Settlement of Disputes*, (hereinafter “DSU”) Art 2:1 (adopted April 15, 1994) reprinted in BHALA, *supra* note 9, at 603.

<sup>19</sup> See *id.* Art 6:1.

<sup>20</sup> See *id.* Art. 16:4.

<sup>21</sup> See *id.* (for panel reports); *id.* Art. 17:14 (for Appellate Body reports).

<sup>22</sup> Wallach, *supra* note 3, at 240.

<sup>23</sup> Television interview with Wallach on “Flipside,” October 25, 2004, available at <http://www.citizen.org/documents/FlipSideTranscript10-04.pdf>. (“What I would recommend for the future, basically, is more or less we go back to the GATT. We need to get rid of these extraneous agreements that don’t have to do with trade, but rather undermine our abilities, as consumers, as voters, as citizens in a democracy, to decide all these other non-trade things.”)

<sup>24</sup> See ROBERT HUDEC, *ENFORCING INTERNATIONAL TRADE LAW: THE EVOLUTION OF THE MODERN GATT SYSTEM* at Appendix (1993).



However, during the 1980's, 10 out of 40 findings of a violation were blocked.<sup>25</sup> While GTW's claim may be true in the aggregate, blocking findings of a violation was becoming more frequent as the global economy became more integrated.

Which system is better? Imagine a judicial system in which the losing party can veto the decision of the jury at will. No legitimate judicial system functions in such a manner for important reasons. The most obvious reason being that a dispute resolution process that allows the loser to avoid the verdict is not much of a process at all.

However, not all losers avoided the results of a decision against them under the GATT dispute settlement system. Out of 68 violations found, only 11 were blocked.<sup>26</sup> Why would a contracting party choose not to block a decision that it had lost? One reason is reputational harm. If a contracting party consistently blocked findings that were not in its favor, that party might find itself being viewed with suspicion by its colleagues. That suspicion might later spill over into fields other than trade. Aside from reputational harm, a contracting party might be concerned with the legitimacy of the system itself. The perception of a toothless GATT dispute settlement system would not inspire much confidence. That lack of confidence could bleed into the system as a whole. This concern seems to have been disregarded during the 1980's, as instances of blocked findings relatively skyrocketed. This increase appears to have validated the legitimacy concern and prompted the overhaul of the system.<sup>27</sup>

Reputational and legitimacy concerns, while weighty, did not trump all. 11 findings were actually blocked.<sup>28</sup> What would motivate a contracting party to block a

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<sup>25</sup> *See id.*

<sup>26</sup> *See id.*

<sup>27</sup> *See GATT, supra note 16.*

<sup>28</sup> *See HUDEC, supra note 24.*

finding against it? It could be in a party's best interest to ignore the damage done to its reputation and the GATT's legitimacy. This disregard would occur when the potential adverse consequences of a panel decision outweigh any of the concerns mentioned above. Given the context, the primary adverse consequence of any ruling would most likely be economic. The adverse economic consequences would logically have to be high enough to offset the damage done both to a Contracting Party's reputation and the GATT's legitimacy.

What would GTW's proposition leave us with? A system that can only reliably enforce decisions that do not have high economic consequences. Imagine a judicial system that allowed parties to veto multi-million dollar verdicts but required them to comply with small claims verdicts. Allowing enormous trade-distorting practices while outlawing miniscule trade-distorting practices effectively accomplishes nothing. Reputation and legitimacy can play an important role in constraining member behavior. However, in this context, they ensure that the GATT dispute settlement system would only break down precisely when it was needed most.

#### **D. INTERIM MEASURES**

*"It is the official position of the U.S. government that such sanctions [resulting from a violation] or negotiated compensation are only interim measures and that the WTO rules require countries to amend their domestic laws to comply with WTO rulings."*<sup>29</sup>

**Counterfactual: It should not be the official position of the U.S. government that such sanctions or negotiated compensation are only interim measures and that WTO rules require countries to amend their domestic laws.**

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<sup>29</sup> Wallach, *supra* note 3, at 240.

It bears mentioning that this position does not only belong to the U.S. government. It is also the position of the DSU Agreement that all WTO members signed. The agreement explicitly states that compensation and sanctions are “temporary measures.”<sup>30</sup> Moreover, when a DSB panel or the Appellate Body find violations, they are to “recommend that the Member concerned bring the [violating] measure into conformity with that agreement.”<sup>31</sup>

GTW’s argument seems to be one of sovereignty. Specifically, that a member should be allowed to maintain laws or regulations that violate the member’s obligations if that member is willing to pay compensation or withstand retaliation. The right to enact laws is one of the core attributes of sovereignty. Any limitation of that right necessarily limits sovereignty. The DSU Agreement infringes on that sovereignty by requiring members to bring their domestic laws or regulations into compliance with the panel and/or Appellate Body’s interpretation of that member’s obligations. Given the importance of sovereignty, would it not be more desirable to simply allow members to avoid their obligations by withstanding retaliation or paying compensation?

Most certainly not. The DSU is a treaty that all members of the WTO have ratified.<sup>32</sup> Treaties, by definition, cede some degree of sovereignty.<sup>33</sup> Parties to a treaty agree to constrain their future behavior in accordance with the text of the treaty. In the absence of such a treaty, the parties would be free to act as they saw fit. The parties to the DSU Agreement understood that they would be required to bring their domestic laws or

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<sup>30</sup> DSU, *supra* note 18 Art. 22:1.

<sup>31</sup> *Id.* Art 19:1.

<sup>32</sup> The DSU is one of the agreements a country must become a signatory to before it is allowed to accede to the WTO. See *Agreement Establishing the World Trade Organization* Art 2:2 (adopted April 15, 1994) *reprinted in* BHALA, *supra* note 9, at 274.

<sup>33</sup> See BLACK’S LAW DICTIONARY 1507 (7th ed. 1999) (“A treaty is not only the law in each state but also a contract between the signatories.”)

regulations into compliance with findings of the DSB. An agreement without such a provision would reintroduce the days of the toothless GATT dispute settlement system.

Moreover, allowing members to simply withstand retaliation or pay compensation unfairly discriminates against poor members. The U.S. and EU have withstood millions of dollars of retaliation with little effect to their domestic economies.<sup>34</sup> However, one can imagine the damage such retaliation would wreck upon an Ecuador or a Burkina Faso. Poor members would also lose under a system that allowed members to avoid their obligations simply by paying compensation. Rich members are obviously in a stronger position to avoid their obligations than poor ones. The system that GTW advocates would allow rich members to avoid their obligations while binding poor members to theirs.

A goal of the WTO is to increase the international flow of goods by creating consistency in trade regimes across the globe.<sup>35</sup> Another is to ensure that poor members benefit from international trade.<sup>36</sup> Allowing members to avoid their obligations creates a world where trade practices look less consistent. Allowing members to do so according to wealth unfairly penalizes poor members. GTW's proposals would not only undermine the founding purpose of the WTO but would do so by giving rich members an even greater advantage over their poorer colleagues.

### **III. SHE WITH THE MOST LAWYERS WINS**

*“Countries that can afford to launch WTO challenges generally are winning.”<sup>37</sup>*

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<sup>34</sup> The U.S. imposed \$191.4 million in duties on EU-originating imports as a result of the EU-Bananas case. *See* 64 FR 12092, April 19, 1999. The EU imposed an estimated \$475 million (out of a permissible \$4.043 billion) in duties on U.S.-originating imports as a result of the U.S. – Foreign Sales Corporation case. *See* Joe Kirwin, "EU Sets March 1 Deadline for ETI Repeal, Details Plan to Phase in Sanctions Otherwise," *BNA Daily Tax Report*, Nov. 6, 2003, p. GG-1.

<sup>35</sup> *See* GATT, *Agreement Establishing the World Trade Organization* at Preamble (adopted April 15, 1994), *reprinted in* BHALA, *supra* note 9, at 273.

<sup>36</sup> *See id.*

<sup>37</sup> Wallach, *supra* note 3, at 244.

**Counterfactual: Countries that cannot afford to launch WTO challenges generally are losing.**

The implicit criticism is that the DSB favors wealthier members. Wealthier members have more resources with which to bring suit in the DSB. Poorer members have less resources with which to defend suits in the DSB. Before the criticism can be analyzed, however, it must be stripped of some clever insulation that its authors have crafted.

There is no way to evaluate if members that cannot afford to bring suit in the DSB are less successful than those who can afford to bring suit. GTW's argument separates members into two distinct groups: those who can afford to bring suit and those who cannot. One can easily measure the success rate of the former group by tallying up their wins and losses in front of the DSB. Such a technique cannot be employed for the latter group. By definition, they cannot afford to bring suit in the DSB, which means they have not done so. Therefore, an attempt to tally their wins and losses in front of the DSB must yield a result of zero and zero. Technically, GTW's statement is correct. Members that have brought suit in the DSB have won at least one case. Members have not brought suit in the DSB have won zero cases. One is more than zero.

What is also interesting is what GTW does *not* say in its argument. It does not make a general statement that wealthier members are more successful in front of the DSB. This would logically be the clearest way to explicitly advance their implicit claim. However, GTW omits how wealthy members do when they are on the defending side of a DSB suit. If the DSB truly discriminates against members based on wealth, then that

result should become apparent when a wealthier member is both a complainant and a respondent in a dispute.

There are more accurate methods of measuring the link between wealth and success in front of the DSB. Perhaps the easiest method would be to study how many completed cases in front of the Appellate Body involved a wealthier member arguing against a poorer member and the accompanying win/loss ratio. For purposes of this exercise, any member that is also a member of the Organization for Economic Cooperation and Development (OECD) will be considered wealthier than a non-member of the OECD.<sup>38</sup>

It should be noted that rarely does any member win on every issue it brings before the DSB. Members often bring complaints based on several issues and may be primarily concerned with winning one issue. However, for purposes of GTW's argument, poorer members should be losing on every point. Therefore, a win consists of a complaint in which a member prevailed on at least *one* issue. The table below summarizes the relevant findings.<sup>39</sup>

*Table 1: Success in Disputes Between OECD and non-OECD Member Countries*

Type of Dispute	Poor Win	Wealthy Win	Total
Complaint By Poor Against Wealthy	13	0	13
Complaint By Wealthy Against Poor	1	8	9
Total	14	8	22

<sup>38</sup> Members of the OECD include: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, European Community, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States. OECD. *Listing of Member Countries*, available at [http://www.oecd.org/countrieslist/0,3025,en\\_33873108\\_33844430\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/countrieslist/0,3025,en_33873108_33844430_1_1_1_1_1,00.html).

<sup>39</sup> This table is drawn from WTO, *Update of WTO Dispute Settlement Cases*, WT/DS/OV/23 (2005).

A cursory glance at the statistics tells us why GTW phrased their criticism in such a manner. It is not just that wealthier members are winning their trade complaints. It is that *all* members are winning their trade complaints. The relative wealth of the members involved does not seem to be the dominant factor. Rather, what side of the “vs.” a member happens to be located on does seem to be the dominant factor.

Generally, wealth will always be somewhat determinative of success in any competitive enterprise. Wealthier members have more resources with which to compete than their poorer adversaries. It is logical that those capable of fielding more resources will often have a higher rate of success than those who have less resources. Litigation in front of the DSB is no different. However, this is not a phenomenon that has gone unaddressed by the WTO. Somewhat ironically, the Agreement Establishing the Advisory Centre on WTO Law (ACWL) was signed during the Seattle Ministerial conference in 1999.<sup>40</sup> The ACWL functions as a type of legal aid clinic, funded by wealthy members, which will represent poorer countries in DSB proceedings at deeply discounted rates.<sup>41</sup> The ACWL has actually helped poorer members defeat their wealthier neighbors in front of the DSB. In Peru’s dispute with the EU, the Peruvian lawyer confessed that he could not have managed the case without the ACWL’s assistance.<sup>42</sup> At no point does GTW even acknowledge the existence of this organization.

The reasons behind the better win ratio for complainants rather than respondents are beyond the scope of this paper. However, GTW’s attempt to make relative wealth one

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<sup>40</sup> See Advisory Centre on WTO Law (hereinafter “ACWL”), *The Agreement Establishing the Advisory Centre on WTO Law* (adopted June 15, 2001).

<sup>41</sup> See *id.*

<sup>42</sup> See Gregory Shaffer & Victor Mosoti, *EC Sardines: A New Model for Collaboration in Dispute Settlement?*, 6(7) Int’l Centre for Trade & Sustainable Dev. Bridges 15, 15 (2002).

of those reasons falls flat. Win for loss, the poorer members have a better batting average when they go toe-to-toe with their wealthier opponents.

#### **IV. BACKROOM JUSTICE**

*“[D]ispute panels operate in secret, documents are restricted to the countries in the dispute, and the press and public are excluded.”<sup>43</sup>*

**Counterfactual: Dispute panels should not operate in secret, documents should not be restricted to the countries in the dispute, and the press and public should not be excluded.**

##### **A. WHAT IS AND IS NOT “SECRET”**

GTW’s criticism conjures an image of an Orwellian court making decisions that no one is allowed to read. This image is false. While some of the materials are confidential, the most important ones are not.

The deliberations of the panel are confidential.<sup>44</sup> Individual opinions expressed by panelists in the panel report are confidential.<sup>45</sup> Written submissions to the panel are confidential, but a party may release its own submissions.<sup>46</sup> A party may not release another party’s submissions.<sup>47</sup> Any member who is not a party to a dispute may request that the parties release a non-confidential summary of their panel submissions that can be released to the public.<sup>48</sup> The panel itself meets in closed session with parties to the dispute and interested third parties.<sup>49</sup>

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<sup>43</sup> See Wallach, *supra* note 3, at 245.

<sup>44</sup> See DSU Art. 14:1.

<sup>45</sup> See *id.* Art. 14:3.

<sup>46</sup> See *id.* Art. 18:2.

<sup>47</sup> See *id.*

<sup>48</sup> See *id.*

<sup>49</sup> See *id.* at Appendix 3:3.



Panel reports are not confidential. The Appellate Body reports are not confidential. They are available at the WTO's website in three languages.<sup>50</sup> Furthermore, the WTO compiles an annual survey of cases before the DSB, both at the panel and Appellate Body stage, and publishes this report on its website as well.<sup>51</sup> The panel and the Appellate Body reports are arguably the *most* important documents created by the DSB. The reports begin by listing (in excruciating detail) every argument advanced by every party to the dispute. The reports then proceed to evaluate the arguments in light of the text of the relevant agreement. The reports conclude by outlining their findings and making recommendations consistent with those findings.

The names of the panelists are also available. The Secretariat of the WTO keeps a roster of panelists from which the parties may select three (or sometimes five) to serve on their panel on an *ad hoc* basis.<sup>52</sup> The Appellate Body is a permanent standing body whose members must be confirmed by the DSB.<sup>53</sup> It has seven members which serve in rotations of three to hear disputes.<sup>54</sup> While the individual opinions of panelists expressed in the reports are unsigned, the reports themselves are signed by all members of the panel.<sup>55</sup>

## **B. WHY IS IT SECRET?**

There are two remaining secrets in a DSB proceeding: the submissions, or “briefs,” of the parties and the proceedings themselves. That the substance of these secrets eventually comes out in the panel report only undercuts the argument for continued confidentiality. If it is so vital to keep the issues contained in the submissions

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<sup>50</sup> See e.g., the WTO's website at [www.wto.org](http://www.wto.org).

<sup>51</sup> See e.g., WTO, *Update of WTO Dispute Settlement Cases*, WT/DS/OV/23 (2005).

<sup>52</sup> See DSU Art. 8:4 and 5.

<sup>53</sup> See DSU Art. 17:2.

<sup>54</sup> See *id.*

<sup>55</sup> There is no specific provision that the reports be signed by the panelists, but this has become common practice.

and proceedings secret, then why are they later released to the public in the form of the panel report?

There are two possible reasons to keep submissions and proceedings confidential. The former is concerned primarily with submissions, while the latter is concerned with proceedings. The first is that the submissions may contain proprietary trade secrets and/or national security secrets. A forced disclosure of these secrets would create a very powerful deterrent against bringing a case in front of the DSB. The second reason for confidentiality is frankness. Proceedings in front of the DSB may consist more of negotiation rather than litigation. Bringing the public into a negotiating room could limit what can be discussed.

The trade/security secret rationale is somewhat compelling. Domestic courts in many countries typically deal with the same issues without resorting to complete secrecy. These courts have gag orders, *in camera* review, and other devices to sufficiently protect confidentiality concerns. However, those processes, in theory, allow for the possibility that information can be deemed non-confidential over the submitting party's objection. If a WTO member chooses not to make its submission public, could the DSB force it to do so? Should it? The alternative at least raises the possibility that a party would be compelled by the DSB to divulge information the party believes should remain confidential. This would constitute a further erosion of members' sovereignty in favor of the WTO.

The idea of the proceeding as a negotiation is also flimsy. This idea springs out of the original GATT proceedings, which encouraged consultation and compromise.<sup>56</sup>

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<sup>56</sup> See Nick Covelli, *Public International Law and Third Party Participation in WTO Panel Proceedings*, 33 J. WORLD TRADE 125, 125 (1999); John A. Ragosta, *Unmasking the WTO – Access to the DSB*

However, the DSB is not a diplomatic body. It is an adjudicative body. While the diplomatic model might have served the GATT system well, it has no place in the DSB. Not that diplomacy and negotiation do not have their place. They are expressly allowed for by the provision in the DSU which mandates a period of confidential negotiations before a panel can be formed.<sup>57</sup> Moreover, there is nothing to prohibit parties from meeting outside the panel proceedings to attempt to negotiate a compromise. However, once the parties step into the panel proceeding, negotiation is suspended. The parties are there to litigate.

GTW's argument is technically correct. *Some* documents are secret. However, it is not correct to the extent that GTW would have its readers believe. Submissions remain secret only if the party submitting them wishes to classify them as such. GTW is correct in identifying the proceedings as secret, and is right to criticize the DSB for it.

## **V. ADAM SMITH JUDGING MILTON FRIEDMAN**

*“These qualifications [for serving on WTO dispute panels] promote the selection of panelists with a stake in the existing system and rules, eliminating potential panelists who do not share an institutionally derived philosophy about international commerce and the primacy of the WTO system.”*<sup>58</sup>

**Counterfactual: Qualifications for serving on WTO dispute panels should not promote the selection of panelists with a stake in the existing system and rules, because the qualifications eliminate potential panelists who do not share an**

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*System: Can the WTO Live Up to the Moniker “World Trade Court”?* 31 Law & Pol’y Int’l Bus. 739, 750-1 (2000).

<sup>57</sup> See DSU Art. 4:3 and 6.

<sup>58</sup> See Wallach, *supra* note 3, at 246.

**institutionally derived philosophy about international commerce and the primacy of the WTO system.**

The argument criticizes how DSB panelists are selected. A point begs for clarification before delving into the merits of the argument. DSB panelists are separate from members of the WTO Appellate Body. Panelists are selected on an *ad hoc* basis to hear disputes.<sup>59</sup> Appellate Body members are selected by the DSB to serve for a fixed term.<sup>60</sup> GTW does not discriminate between their condemnation of panel and Appellate Body decisions. The selection criteria for both panelists and Appellate Body members will be addressed due to this lack of discrimination.

**A. CRITERIA FOR SELECTION OF PANELISTS AND APPELLATE BODY MEMBERS**

The lone requirement to be a panelist consists of being a “well-qualified government and/or non-governmental individual[.]”<sup>61</sup> The paragraph then goes on to provide an illustrative list of potential characteristics that would “qualify” an individual to become a panelist. These include those who have been on a panel, argued before a panel, served as a representative to the WTO or its predecessors, served in the Secretariat to the WTO, taught or published on international trade law or policy, or served as a trade policy official.<sup>62</sup> Panelists are nominated by members subject to the approval of the DSB.<sup>63</sup> Once approved, panelists are kept on a roster by the Secretariat.<sup>64</sup> The parties to a dispute typically select the panelists to hear their dispute, although the Director-General

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<sup>59</sup> See DSU Art. 6:1.

<sup>60</sup> See *id.* Art. 17:1.

<sup>61</sup> *Id.* Art. 8:1.

<sup>62</sup> *Id.*

<sup>63</sup> See *id.* Art. 8:4.

<sup>64</sup> See *id.*

can do so if the parties cannot agree on a set of panelists.<sup>65</sup> Panelists are selected to hear disputes that correspond to their particular fields of expertise.<sup>66</sup>

To serve on the Appellate Body, one must be one of “recognized authority, with demonstrated experience in law, international trade and the subject matter of the [DSU] covered agreements generally.”<sup>67</sup> There is no illustrative list to accompany this requirement as found in the requirement to become a panelist. The Appellate Body is comprised of seven people, but only three hear any given complaint.<sup>68</sup> Appellate Body members are appointed to four-year terms by the DSB, and may be re-appointed to one additional term.<sup>69</sup>

## **B. EXPERTISE AMONGST THE PANELISTS & APPELLATE BODY**

### **MEMBERS**

GTW’s implicit criticism is that DSB panels and the Appellate Body pursue a narrow policy of trade above all else. They make this criticism explicitly in other sections of the chapter.<sup>70</sup> The corresponding implication is that the DSB system is rigged; that the selection criteria for panelists and Appellate Body members only allows those with a pre-existing belief in trade above all else to serve. According to GTW, otherwise-qualified potential panelists and Appellate Body members who do not share this mentality are prohibited from serving.

It is possible to test this hypothesis in a limited fashion. The Appellate Body is comprised of seven members. If GTW’s hypothesis holds, then it would predict that all of

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<sup>65</sup> *See id.* Art 8:7.

<sup>66</sup> *See id.*

<sup>67</sup> *Id.* Art. 17:3.

<sup>68</sup> *See id.* Art. 17:1.

<sup>69</sup> *See id.* Art 17:2.

<sup>70</sup> Wallach, *supra* note 3, at 240 (“The enforcement system is not designed to be a neutral arbitrator of disagreements between countries; the WTO’s stated purpose is ‘expanding...trade in goods and services’ and its enforcement system is designed to implement that purpose.”)(internal citations omitted).

the Appellate Body members would be unflinching advocates for the WTO and the supremacy of international commerce. An evaluation of the current Appellate Body members does not fit this prediction. Georges Michel Abi-Saab is an expert in humanitarian law, having served as a judge on the International Court of Justice and International Criminal Tribunals for the Former Yugoslavia and for Rwanda.<sup>71</sup> Merit E. Janow has argued against expanding WTO or DSB jurisdiction to antitrust matters.<sup>72</sup> John S. Lockhart is a former executive director of the Asian Development Bank.<sup>73</sup> A.V. Ganesan, prior to his appointment to the Appellate Body, publicly criticized the WTO for many of the same reasons as GTW does.<sup>74</sup>

GTW's hypothesis does not hold. The selection criteria for the Appellate Body has not resulted in a collection of individuals who believe that trade trumps all. It would be unduly burdensome to conduct the same analysis at the panelist level. The panelist roster maintained by the Director-General has over 300 people from 49 countries.<sup>75</sup> However, one may safely assume that the same if not a greater level of diversity exists at the panelist level as at the Appellate Body level.

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<sup>71</sup> See WTO, *Appellate Body Members*, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/ab\\_members\\_bio\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/ab_members_bio_e.htm).

<sup>72</sup> Merit Janow, *Public, Private, and Hybrid Public/Private Restraints of Trade: What Role for the WTO?* 31 *Law & Pol'y Int'l Bus.* 977, 979 (2000).

<sup>73</sup> See DSU, *supra* note 67.

<sup>74</sup> See A.V. Ganesan, Presidential Address at the Fourteenth EXIM BANK Commencement Day Annual Lecture (March 10, 1999) (transcript available at <http://www.eximbankindia.com/lec990511-1.html>). Ganesan criticized the WTO as “adopting an ‘one size fits all’ approach. Under this approach, the substantive rules, which are basically rules that emanate from the industrialised countries, are kept common and uniform for all countries. And it is argued that if a longer transitional period is allowed for developing countries, that would suffice to take care of their problems. The TRIPS Agreement of the WTO is a classical example of the ‘one-size fits all’ approach. It simply reflects the rules and demands of the industrialised world for the protection of intellectual property rights.” See *e.g.*, Wallach, *supra* note 3, at 289 (GTW calls for the elimination of the TRIPS Agreement).

<sup>75</sup> See WTO, *Indicative List of Governmental and Non-Governmental Panelists*, WT/DSB/33 (2003). See also WTO, *Indicative List of Governmental and Non-Governmental Panelists – Addendum WT/DSB/33/Add.1* (2004) and *Indicative List of Governmental and Non-Governmental Panelists – Addendum WT/DSB/33/Add.2* (2005).

Putting aside the validity of GTW's hypothesis, should the selection criteria be changed? The current requirements are quite loose. All that is asked is that a person be qualified to sit on a panel or be a recognized authority to sit on the Appellate Body. Obviously, adopting a standard which would allow unqualified persons to serve on these bodies is not desirable. There does not seem to be much more that can be done to open the selection criteria further. One option is to appoint individuals who are opposed to the multilateral trading system in general and the WTO in particular. This option appears to be the desire of GTW.

Individuals such as these should not be selected to serve either at the panel level or on the Appellate Body. The role of panel and Appellate Body members is not to ask themselves whether the agreements at issue should ever have been ratified in the first place. That train has already left the station. Their role is to merely interpret the text of the agreements in light of the facts of the dispute before them. This is not to say that those who have misgivings about a particular agreement are incapable of fairly interpreting that agreement. However, GTW is not arguing for a replacement of the current panelists and Appellate Body members with individuals who think differently but decide similarly. That result would not change the outcomes of any DSB decisions and GTW clearly has problems with such outcomes. Therefore, GTW is arguing that panelists and Appellate Body members should disregard the text of agreements before them in favor of other considerations.

This is not the proper role of the DSB system. Countries signed on to the DSU with the expectation that it would enforce trade agreements. Allowing panelists or Appellate Body members to deviate from the text of those agreements at their whim

would introduce an intolerable level of uncertainty in an already fragile system. The DSB has already been attacked for making rulings that imposed obligations on members that they had not expected.<sup>76</sup> Injecting more uncertainty into the system, via judicial fancy and textual nullification, would certainly intensify those attacks.

GTW's argument does not hold. The selection criteria for appointing panelists and Appellate Body members has not led to the appointment of puritanical free trade fanatics. Instead, those who are called to resolve disputes are bound by the texts of the agreements that provide the bases for the disputes. It is the agreements, not the arbitrators, that are single-minded in their pursuit of free trade.

## **VI. THE BLIND LEADING THE BLIND**

*“There are no mechanisms for ensuring that individuals serving as panelists have any expertise in the subject of the dispute before them.”<sup>77</sup>*

**Counterfactual: There should be mechanisms for ensuring that individuals serving as panelists have expertise in the subject of the dispute before them.**

GTW's argument is facially false. There are significant mechanisms for ensuring that panelists have expertise in the matters they are selected to hear. Given a choice between calling GTW a deceiver and giving it the benefit of the doubt, I will choose the latter. It is possible that GTW merely meant that there should be *more* mechanisms to ensure that panelists have expertise in the subject matter of the dispute before them.

Two significant mechanisms exist to ensure panelists have expertise in the fields of the disputes before them. The first is how panelists become panelists. Members can propose, subject to the approval of the DSB, people to be included on the roster of

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<sup>76</sup> See generally, John Ragosta *et.al.*, *WTO Dispute Settlement: The System Is Flawed and Must Be Fixed*, 37 Int'l Law 697 (2003).

<sup>77</sup> See Wallach, *supra* note 3, at 246-7.



potential panelists maintained by the Secretariat.<sup>78</sup> When doing so, the proposing member must include relevant information on the potential panelist's knowledge of international trade, specific economic sectors, and subject matter of the relevant agreements.<sup>79</sup> The roster itself "shall include specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements."<sup>80</sup> The roster of panelists maintained by the Secretariat includes the specific expertise of each panelist next to their name.<sup>81</sup>

The second mechanism at a panel's disposal is the right to seek information. Each panel, upon notifying the parties to the dispute, has the right to seek any kind of information from any source it desires.<sup>82</sup> Furthermore, a panel may establish an expert review group to render an opinion on a scientific or other technical matter.<sup>83</sup> The expert review group can also seek any kind of information from any source it desires.<sup>84</sup> The expert review group will then issue a preliminary report to the parties in order to seek their comments.<sup>85</sup> The expert review group will then issue a final report to the parties and the panel.<sup>86</sup> The report is advisory only, and the panel is not bound to its contents.<sup>87</sup>

These mechanisms contemplate two types of expertise. Trade expertise consists of expertise with the trade agreements that comprise the WTO. The WTO consists of sixteen

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<sup>78</sup> See DSU Art. 8:4.

<sup>79</sup> See *id.*

<sup>80</sup> *Id.*

<sup>81</sup> See WTO, *supra* note 71.

<sup>82</sup> See DSU Art. 13:1.

<sup>83</sup> See *id.* Art. 13:2.

<sup>84</sup> See *id.* Appendix 4:4.

<sup>85</sup> See *id.* Appendix 4:6.

<sup>86</sup> See *id.*

<sup>87</sup> See *id.*

trade agreements.<sup>88</sup> It is logical that some people will have more expertise with some agreements than others. For instance, it would be rare that an expert in international intellectual property would also be an expert in the international textile trade.

Individualized diversity of expertise in the agreements is desirable. It helps to ensure that those with the deepest expertise in their particular fields sit on panels that mirror their expertise. A field of unsophisticated generalists would hardly be a better result.

The other type of expertise is technical expertise. This expertise has nothing to do with the trade agreements themselves but with scientific areas. The drafters of the DSU rightly recognized that scientific disputes are certain to arise between parties in trade disputes. While parties are free to submit the scientific conclusions of their own experts, the panel itself can establish a group of experts to review the relevant arguments of the parties. The expert groups are not limited to certain fields, such as medicine or nutrition. Rather, a panel can establish an expert group on any issue it sees fit.

There does not appear to be more that the drafters of the DSU could have done to ensure that panelists have expertise or access to expertise in the disputes they hear. GTW goes further in its criticism, suggesting that “[o]ne very basic safeguard for minimally ensuring accurate legal analysis would be the selection of panelists with broader competencies. The International Court of Justice, for example, requires its judges to

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<sup>88</sup> *Agreement Establishing the World Trade Organization*, Art. 2:2 (adopted April 15, 1994) makes the agreements in Annex I, II, and III binding on all members. Annex IA includes the General Agreement on Tariffs and Trade 1994, Agreement on Agriculture, Agreement on the Application of Sanitary and Phytosanitary Measures, Agreement on Textiles and Clothing, Agreement on Technical Barriers to Trade, Agreement on Trade-Related Investment Measures, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, Agreement on Preshipment Inspection, Agreement on Rules of Origin, Agreement on Import Licensing Procedures, Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards. Annex IB includes the General Agreement on Trade in Services. Article IC includes the Agreement on Trade-Related Aspects of Intellectual Property Rights. Annex II includes the Understanding on Rules and Procedures Governing the Settlement of Disputes. Annex III includes the Trade Policy Review Mechanism.

possess competence in international law and be of high moral standard.”<sup>89</sup> This is a bizarre suggestion. Panelists are already required to be well qualified in international trade law.<sup>90</sup> GTW implies that panelists should also be required to be of high moral standard. Being of high moral standard is certainly desirable in its own right. However, any first year law student who has endured the Socratic method can attest to the fact that morality bears little relation to accurate legal analysis. What seems more likely is that GTW was looking for an example of a justice system that required its jurists to have qualifications in addition to knowing the law and came up short.

GTW also argues that the DSB should require “broader competency” for panelists. Competency can extend to either scientific competency or trade competency. It would be outlandish to require every panelist to be both a scientist and an international trade expert. How many of these experts exist is unknown, but is certainly less than the current roster of panelists. Winnowing the field of potential panelists to such a degree would serve no purpose. Panelists may already seek information from scientific experts. There is no need to actually put scientists on the panel. Almost every court gives special weight to expert testimony. No court actually allows the expert to make the decision.

Requiring panelists to have broader trade competencies would have two effects. First, it would reduce the quantity of panelists available to hear disputes. While there may be 100 people who are experts in the international agriculture trade, there will be less who are also experts in import licensing procedures. Such a reduction in the quantity of potential panelists would make the remaining panelists more influential. As less

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<sup>89</sup> Wallach, *supra* note 3, at 247.

<sup>90</sup> See DSU, *supra* note 57.

individuals are qualified to be panelists, the remaining panelists' own ideologies and interpretations will gain more weight. A less diverse panel would certainly be the result.

A broader competency requirement would also reduce the quality of panelists. This may seem counterintuitive at first blush. However, broad knowledge does not necessarily imply deep knowledge. For every hour that a potential panelist spends learning or thinking about one sector or agreement is an hour she is not learning or thinking about another sector or agreement. Limiting panels to "cross-specialists" dilutes the expertise available to the panels. For instance, take two potential panelists. One has studied government procurement her entire professional career. The other has divided her career between government procurement and intellectual property. If a dispute arose concerning government procurement, the first potential panelist would seem to have the most expertise. However, a broader competency standard would mandate selection of the latter potential panelist. The standard GTW suggests would make it more likely that panelists would have less expertise in the field upon which the dispute before them is based.

What GTW really seems to be arguing is not that it wants more qualified people to sit on panels, but that it wants more of *its* qualified people to sit on panels. *Its* people would be defined as those who share a hostility towards the WTO and are willing to carve out policy exceptions to the agreements that do not exist in the text. The dangers of selecting such people to sit on panels has been argued above.

GTW's argument is not accurate. There are mechanisms to ensure that panelists have both trade expertise in the matters they are selected to hear. There are mechanisms to ensure that panelists have access to scientific expertise in the matters they are selected

to hear. A broader competency standard, such as one advocated by GTW, would only serve to weaken the quantity and quality of potential panelists.

## VII. CONCLUSION

Attempting to analyze GTW's criticisms are frustrating because they are, as one WTO official put it, a mix of "legitimate concerns, deliberate or partly deliberate misinformation, and populist rhetoric."<sup>91</sup> The quote divides GTW's criticisms into three accurate categories: valid arguments, exaggerated arguments, and invalid arguments. Valid arguments are based on accurate assertions. Exaggerated arguments are also based on accurate assertions, but the assertions do not encapsulate the entire truth. Invalid arguments are based on false assertions.

The only valid argument that GTW advances is the secrecy of panel proceedings. The assertion that panel proceedings are secret is completely true. No one who is not a party to the dispute may observe a panel or Appellate Body proceeding. No transcript is made of the proceeding. No compelling rationale exists for continuing the confidentiality of panel and Appellate Body proceedings. This secrecy only serves to fuel conspiracy theories of corporate world-domination. GTW is correct in criticizing the DSB's lack of transparency in panel and Appellate Body proceedings.

GTW makes four exaggerated arguments. The first concerns the secrecy of documents in WTO dispute proceedings. GTW makes the assertion that documents are secret. Technically, this is correct. What GTW does not address is the *degree* of secrecy associated with the documents. GTW's assertion that "documents are secret" would lead a rational reader to conclude that *all* documents are secret. This is not the case. *Some* documents are secret. *Some* documents can be made secret. *Some* documents are never

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<sup>91</sup> Lee, *supra* note 4, at 2306.

secret. GTW does not bother with this distinction. Forcing a party to disclose information within a document which the party believes should be kept confidential raises serious concerns.

GTW's second exaggerated argument concerns the link between wealth and success at the DSB. GTW's assertion is that members that can afford to bring DSB disputes are winning. Technically, this is correct. Members that cannot afford to bring WTO suits have, by definition, never brought a dispute. Therefore, they have never won a dispute. Members that have brought a dispute have won at least once. One is more than zero. By using the phrase "afford to bring," GTW implies that the success rate of DSB parties is tied to wealth. However, the most cursory analysis shows this is not the case. Relatively poorer members have actually won more cases against their wealthier adversaries than the wealthy have won against the poor.

GTW's third exaggerated argument concerns the comparison between the dispute resolution system under GATT and the WTO. GTW asserts that members rarely blocked the adoption of violations under the GATT system. Technically, this is correct. On the whole, only 11 out of 68 violations were blocked from being adopted. However, GTW's analysis does not take into account the temporal frequency of blocked violations. More violations were blocked as trade flows increased between countries. The problem was progressive. Furthermore, a return to the GATT dispute settlement system would only exacerbate existing inequalities between developed and developing members while preventing the settlement of the most important disputes.

GTW's fourth exaggerated argument concerns the nature of compensation and/or trade sanctions as a consequence of an adverse DSB finding. GTW asserts that the U.S.

position is that such interim measures are only temporary and that a losing party must bring its trade policies in conformity with the DSB ruling. Technically, this is correct. However, GTW fails to mention that this position is also explicitly spelled out in the text of the DSU. Because it is in the agreement, such a position should be shared by all WTO members. Furthermore, the alternative is undesirable. Allowing members to pay compensation or withstand sanctions would give wealthier members an unjust advantage over their poorer colleagues.

GTW makes two invalid arguments. The first invalid argument concerns the selection criteria for panelists and Appellate Body members. GTW's assertion is that the selection criteria eliminate potential panelists and Appellate Body members who have disagreements with the WTO. This assertion is false. The only criterion that the DSU contains for selection of panelists is that the person be well-qualified in international trade law. The only criterion for selection as an Appellate Body member is that the person be a recognized authority with demonstrated experience in international law. The strongest empirical rebuttal to GTW's assertion is the appointment to the Appellate Body of a member who has publicly criticized the WTO. Furthermore, appointing panelists or Appellate Body members who would ignore the text of the multilateral agreements in favor of their own prejudices would throw the DSB into turmoil.

GTW's second invalid argument concerns the expertise of the panelists. GTW's assertion is that there is no mechanism to ensure that panelists have expertise in the subject matter of the disputes they hear. This assertion is false. There are two mechanisms to ensure that panelists have the necessary expertise. The first mechanism is the listing of each panelist on a roster with their specific expertise listed next to their

name. The second mechanism is the ability of a panel to establish expert review groups to decide scientific or technical matters. GTW further argues for a broader competency standard for the selection of potential panelists. The adoption of such a standard would winnow the number of potential panelists while ensuring that those who actually sat on panels had less expertise in the subject matter of the dispute than other potential panelists.

Critics of GTW's book have correctly labeled it as "propaganda."<sup>92</sup> GTW has not just sacrificed internal consistency in an attempt to find common cause with every conceivable opponent of the WTO. It has engaged in intellectual dishonesty. GTW uses a variety of exaggeration and deception in its attempt to score points with an unsophisticated audience. Such dishonesty does nothing to further the debate over the proper form and function of the WTO. It has robbed a segment of the anti-WTO constituency of the ability to intelligently discuss their concerns about the WTO by sacrificing accuracy for activism.

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<sup>92</sup> *Id.*