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David Palmeter and Petros C. Mavroidis

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DISPUTE SETTLEMENT IN THE WORLD TRADE ORGANIZATION

Any experienced lawyer knows that cases are most often won or lost on procedural grounds; yet procedural issues are often considered too technical for proper treatment in legal literature. In this extensively revised new edition of Palmeter and Mavroidis' authoritative book on WTO dispute settlement, the authors discuss all WTO dispute settlement provisions and their interpretation in WTO jurisprudence. All the decisions of panels and the Appellate Body are discussed, from the inception of the WTO in 1995 until the end of May 2003. Although the book contains considerable technical expertise, it is at the same time written for accessibility to a wide readership. This volume – an essential tool for practitioners, diplomats and government lawyers – is a comprehensive study of compulsory third party adjudication in international law.

DAVID PALMETER is a partner in the law firm of Sidley Austin Brown & Wood LLP, and a long-time advisor of governments and interested private parties in WTO dispute settlement proceedings. From 1994 to 1998 he was liaison for the International Bar Association to GATT, the WTO and UNCTAD. He is a regular lecturer on WTO law at numerous universities, and is the author of *The WTO as a Legal System*.

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*Legal progress is often secreted
in the interstices of legal procedure.*

– Oliver Wendell Holmes, Jr.

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PREFACE

This is a work for practitioners – for diplomats, government officials and lawyers – who prepare and present cases to dispute settlement panels of the World Trade Organization (WTO) and its Appellate Body, and for private practitioners who advise or represent governments and private clients with an interest in the outcomes of these proceedings. It grew from the experience of its authors, a private practitioner who has advised and represented governments and private parties under both the WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT), and a former official of the Legal Affairs Division of both GATT and the WTO, who advised numerous panels.

The book attempts to address the kinds of procedural questions that confront practitioners in the very practical world of dispute settlement. While it relies heavily on panel and Appellate Body jurisprudence, it also describes the informal practices and WTO “ways of doing things” that have evolved, both to facilitate the dispute settlement process and to contend with the lacunae in the legal texts that time has exposed. From time to time we do comment critically on the decisions of panels and the Appellate Body, but this is not the focus of the book. Scholars increasingly are producing critical and analytical procedural literature, to which we refer at appropriate points in the text and list in the bibliography.

The first edition of this work, which appeared in 1999, contained extended annexes setting forth the text of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* and the relevant dispute settlement provisions of other WTO agreements. For this edition, we concluded that the widespread availability of those documents makes their further reproduction here unnecessary. They may be found at the WTO’s web site, www.wto.org, and are published in a convenient volume by the WTO and Cambridge University Press in *THE WTO DISPUTE SETTLEMENT PROCEDURES*, now in its second edition.

Chapter 3 of this volume is a now highly revised version of an article, *The WTO Legal System: Sources of Law*, that first appeared in volume 92 of

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