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**GLAWCAL
COMMENT #178**

**THE FUNCTIONS AND ROLES OF
THE WTO PANELS**

Based on

Gregory Messenger

**“Reforming the law and institutions
of the WTO: the dangers of unexpected
consequences”**



gLAWcal
Global Law Initiatives for Sustainable Development

A gLAWcal comment on Gregory Messenger's "Reforming the law and institutions of the WTO: the dangers of unexpected consequences" in Antonio Segura Serrano (Ed.) "The Reform of International Economic Governance".

It is quite important when dealing with supranational institutions to clearly determine their competences in particular when such institutions include the establishment of international courts or tribunals which will rule over cases concerning disputes between member states in order to avoid the creation of an international diplomatic crisis and ensure the efficiency and in the same time the success of the mechanism created for this purpose. This is a very important condition if one wants to make sure that these international tribunals have the necessary legitimacy which would enable them to issue rulings or judgments that would have a binding nature. Indeed, not every international tribunal has the same legal powers or effects or is even respected in a similar manner to the one that enjoys huge international credibility. One could mention for instance the Dispute Settlement Body (DSB) of the World Trade organization (WTO) which enjoys huge international credibility where the current rules have clearly determined the functions of the panels that have the mission of issuing rulings when a particular trade dispute is taking place between two or more member states. In this regard, the panel's role is not only providing an adequate technical ruling but also preserving the international trade system by ensuring the fairness of the decision that is made and the possibility of the member state that was found in violation of the rules of the multilateral trade system to adequately amend its domestic legislations for this purpose. For this reason, the Dispute Settlement Understanding (DSU)

made sure to determine clearly the competences and functions of the WTO panels in Article 11 of the DSU. Hence, according to the said Article: "The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution." In the chapter "Reforming the Law and Institutions of the WTO: The Dangers of Unexpected Consequences," of the book "The Reform of International Economic Governance," the author Gregory Messenger discussed extensively this issue. In fact, the panel had also the opportunity to further elaborate on the role of the panels in the famous dictum in EC - Hormones by stating that: "The function of Panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a Panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution."

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