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GLAWCAL COMMENT #199

Dispute Settlement System under the WTO: The Birth of a Quasi-Judicial Body?

Based on

Gregory Messenger "Reforming the Law and Institutions of the WTO: The Danger of Unexpected Consequences"

gLAWcal
Global Law Initiatives for Sustainable Development

A gLAWcal comment on Gregory Messenger "Reforming the Law and Institutions of the WTO: The Danger of Unexpected Consequences" in Antonio Segura Serrano (Ed.) "The Reform of International Economic Governance".

The chapter written by Gregory Messenger "Reforming the Law and Institutions of the WTO: The Danger of Unexpected Consequences" in the book "The Reform of International Economic Governance" addresses the issue of dispute settlement mechanism within the framework of the World Trade Organization (WTO). This role rests essentially with the Appellate Body, which in its current form resembles to a different structure than the one originally imagined by the contracting parties of the GATT. Originally, the dispute settlement mechanism in this context was widely associated with the idea of a so-called sui generis mechanism, which should have been largely different from the mechanisms of ordinary judicial bodies. Considering the context associated with the trade-related nature of the relations between the parties should have been also translated in the dispute resolution mechanism. The conflicts and tensions should have been ideally prevented and the focus should have been placed on the negotiation and reaching of settlements. In the course of the time, the Appellate Body has adopted many features which are typical mainly for judicial bodies. One example might be for instance represented by the amicus curiae letters, which have been gradually accepted by the Appellate Body to the discontent of many parties which voiced displeasure with such an approach and accused the Appellate Body of violating the founding documents of the organization. However, this process cannot be only characterized by negative connotations. The founding documents understandably contain certain gaps which their drafters could not have really anticipated and which have been revealed only in the course of time. The rule-making mechanisms of the WTO solely is also not able to adequately react to all the challenges that the organization and its founders are facing and the jurisprudence of the Appellate Body has been able to effectively make up for this deficit. It remains to be seen, what the future will bring for the dispute settlement mechanism within the WTO framework.

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The gLAWcal comments are insight and short analytical pieces written by the gLAWcal team. The gLAWcal comments are based on, and inspired by, the books and chapters published within one of the gLAWcal book series published by Routledge Publishing (New York/London).

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gLAWcal
Global Law Initiatives for Sustainable Development

Email: research@glawcal.org.uk
Website: glawcal.org.uk
Facebook: gLAWcal - Global Law Initiatives for Sustainable Development
Twitter: @gLAWcal
LinkedIn: gLAWcal