

The Estey

Journal of International Law and Trade Policy

Abstract

Dispute Settlement – Or Not?

William A. Kerr

Associate Member, College of Law, University of Saskatchewan, Canada

In December 2019, the WTO's dispute settlement system ceased to function when the Trump administration allowed the number of Appellate body members fall below the minimum specified for the hearing of an appeal. The non-cooperation in the appointment of Appellate body members was deliberate. It was part of a wider strategy to loosen WTO constraints on US trade policy and has been a major irritant in US relations with trading partners. The incoming administration of President Biden has vowed to take a more cooperative approach to trade and dealing with the disruption to the dispute settlement system could be an important step. Dissatisfaction with the dispute settlement system is not, however, simply an artifact of the Trump administration. This paper explores the roots of US dissatisfaction with the WTO's dispute settlement system and outlines what avenues are available to deal with it. It concludes that the options are few and that instead of a reversion to a strong multilateral mechanism a return to something akin to the weaker previous GATT system may prevail.

Keywords: Appellate, Biden, disputes, dumping, negotiation, WTO

*Editorial Office: Estey Journal of International Law and Trade Policy, College of Law,
University of Saskatchewan, 15 Campus Dr., Saskatoon, SK, S7N 5A6, Canada
Phone (306) 966-6879; email: estey.j.editor@usask.ca*