



KARL BRAUNER

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Jeffry FRIEDEN

I am going to ask Karl, who comes to us from the WTO, to address a question that was raised in the previous panel and that I think is on the minds of many of us, which is what on earth will become of the WTO in the current situation?

Karl BRAUNER

Thank you very much. I must confess we are in crisis mode. We are in crisis mode because we are about to lose one of the features that distinguishes the WTO as an international organisation, from other international organisations. We have a well-functioning dispute settlement mechanism. When you join the WTO as a state, you subject yourself to this compulsory dispute settlement, so if a state wants to sue another one, there is no way out. You cannot prevent that litigation from taking place. The others were very disciplined in only using five to seven minutes, so I will not explain how the system works. I will only say that it has been very successful over the past 23 years. It has been used more than 530 times. It is also used by countries that have their own bilateral arrangements among themselves and their own dispute settlement, but they prefer to come to Geneva and have their disputes settled there. We have a very good compliance rate and states also comply in reasonable time.

Now, all this is in danger, because the appeal function in this system is losing heads. We have seven members of the appellate bodies normally; right now, we only have three. There are four vacancies and the US blocks them from being filled. The question is why does the US do it? I think we have already heard two significant answers to this question. One has to do with sovereignty and the other has to do with China. In fact, it was the US who at the end of the Uruguay Round, demanded the establishment of an appellate body to solve disputes that would arise in the WTO. It was the Europeans who were afraid of it because of the agricultural policy, but the Americans insisted on it. The Americans had the idea, there was massive liberalisation through the Uruguay Round, through the establishment of the WTO and this would be matched with targeted protection. Therefore, they should have strong instruments of anti-dumping and anti-subsidy, so that wherever an unfair situation would occur, they could protect themselves reasonably. They were already disappointed in the early days of this dispute settlement mechanism, because the court... I am sorry I used the word court, while the Americans would never call it a court, it is a dispute settlement mechanism. It used a methodology in determining dumping which weakened the instrument of anti-dumping and on the subsidy front, and this has a lot to do with China, they developed an approach to determining what illegal subsidy is, that also looked at who dispenses the money. They requested a public body to dispense the money, and because there are many ways of moving money into your economy, the way one could attack subsidies was limited. Therefore, the Americans were not happy, they were disappointed in their expectation of having massive liberalisation and targeted protection; the protection was too weak.

They also criticised this institution, the appellate body (AB), for developing the law. The AB filled gaps. The Americans attacked it as overreach. One must understand that this is the only, let me call it "court" to which the Americans subjected themselves to, the only international court. They introduced a number of ideas by which they would make sure that this would not lead to an extended transfer of sovereignty away from the US. The Europeans have no problem with it, because the Europeans are used to their European Court of Justice, all the time deciding in favour of the Union and taking small pieces of sovereignty away from the member states. For the United States this was a problem, is a problem and was already a problem under the Obama administration.

There are other issues. I only want to say that while we are sitting here, in Ottawa there is a group of ministers joined together at the invitation of Canada to discuss reforms. The Europeans have put something on the table, which they think takes on board all the grievances of the Americans. I spoke to an author of the European proposal; he thinks it is



so good that the US could not possibly reject it. If we could really get together and create a spirit of cooperation, then reforms would be possible. On the technical level in the WTO right now, there is a strong spirit of cooperation, but whether this extends to the higher political level must be seen in the future. If we do not manage reform then we will go back to the rule of the jungle, which for me would be a regression of civilisation. The WTO is about rule-guided globalisation and we would replace the rule of law by the deal of the day and that would be very bad. Thank you very much.

Jeffry FRIEDEN

Thank you. That is an optimistic interpretation. I certainly agree that the rule of law is better than the rule of the jungle and I would point out that many of the proposals that have been suggested are in fact workable and sensible. I would point out, in the spirit of Marc Noland's pessimism, that the administration or at least members of the administration, have said that they reject a rule-based international economic order, which is a problem. One thing is what makes sense intellectually and even normatively, and the other is what is feasible politically.