



WTO appellate board remains handicapped

Appellate Body no longer has the minimum three members needed to hear new appeals as WTO members seek fix.

Jacqui Fatka | Dec 20, 2019

While the world remains at war seemingly in intercountry trade wars, the World Trade Organization's (WTO) ability to appeal any rulings on trade wrongdoings has come to a halt. On December 10 the Appellate Body was reduced to one member after the second terms for two of the remaining three members expired. Normally composed of seven members, the Appellate Body no longer has the minimum three members needed to hear new appeals.

WTO members vowed at a meeting on December 18 to continue their efforts to resolve the impasse over the start of the selection process for new Appellate Body members and improving the functioning of the Appellate Body. At a meeting of the WTO's Dispute Settlement Body (DSB), members welcomed Director-General Roberto Azevêdo's pledge to launch more intensive, high-level consultations on how to overcome the impasse while at the same time urging the General Council chair to continue informal discussions with WTO members aimed at seeking a solution.

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Ian Sheldon, Ohio State University international trade economist, shared that in the last four of five years, under both the current and Obama Administration, the United States and European Union actually prevented some renewals to the appellate board or prevented people being appointed to the appellate board.

Without a panel of at least three appellate judges, if a country does not like a ruling brought down by the WTO, no disputes can be filed. Sheldon argued the actions by the U.S. in blocking, or limiting new appointees, is doing more damage to the WTO than what is currently going on through trade disputes.

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Speaking on behalf of the group, which now numbers 119 WTO members, Mexico said the considerable number of members submitting the proposal reflects a common concern over the current situation in the Appellate Body that is seriously affecting its workings as well as the workings of the overall dispute settlement system against the best interest of members. WTO members have a responsibility to safeguard and preserve the Appellate Body, the dispute settlement system and the multilateral trading system, Mexico said.

Sheldon explained the concerns from the United States stem from concern over the appellate board's judicial overreach. Sheldon shared it also involves not necessarily judicial overreach from the judges,

but rather “lawyers who work with the appellate board and are writing the decisions and making the law more than would perhaps be the case in the Supreme Court or in any appeals court here in the U.S.”

“It looks like the WTO itself, the legal system and the member countries, need to step in and say, ‘Hey, we decide the rules, not you,’” Sheldon shared.

In a statement from the WTO, it said the United States once again said it was still not in the position to support the decision and that the systemic concerns that it previously identified remain unaddressed. The fundamental problem, it said, is that the Appellate Body is not respecting the current, clear language of the WTO's Dispute Settlement Understanding, and members cannot find meaningful solutions to this problem without understanding how members arrived at this point. “The U.S. said it is determined to bring about real WTO reform, ensuring that the dispute settlement system reinforces the WTO's negotiating and monitoring functions,” the WTO Said.

Nearly 20 members took the floor to underline the importance of resolving the impasse as soon as possible and re-establishing a functioning Appellate Body. They urged the General Council chair and Ambassador David Walker (New Zealand), who was appointed as facilitator for the informal discussions on resolving differences over the functioning of the Appellate Body, to continue their efforts to seek a solution acceptable to all, and welcomed DG Azevêdo's December 9 statement that he would launch more intensive, high-level consultations on how to resolve the longstanding impasse.

Sitting in for Ambassador Walker as DSB chair, Ambassador Sunanta Kangvulkij (Thailand) said that both Ambassador Walker and she, as chair of the General Council, will be looking to assist WTO members in their efforts going forward in order to find a workable and agreeable solution to improve the functioning of the Appellate Body.

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