



## WTO's Appellate Body

**For Prelims:** World Trade Organization, WTO's Appellate Body, Anti-dumping Duties

**For Mains:** Issues with the WTO's appellate Body and Implications

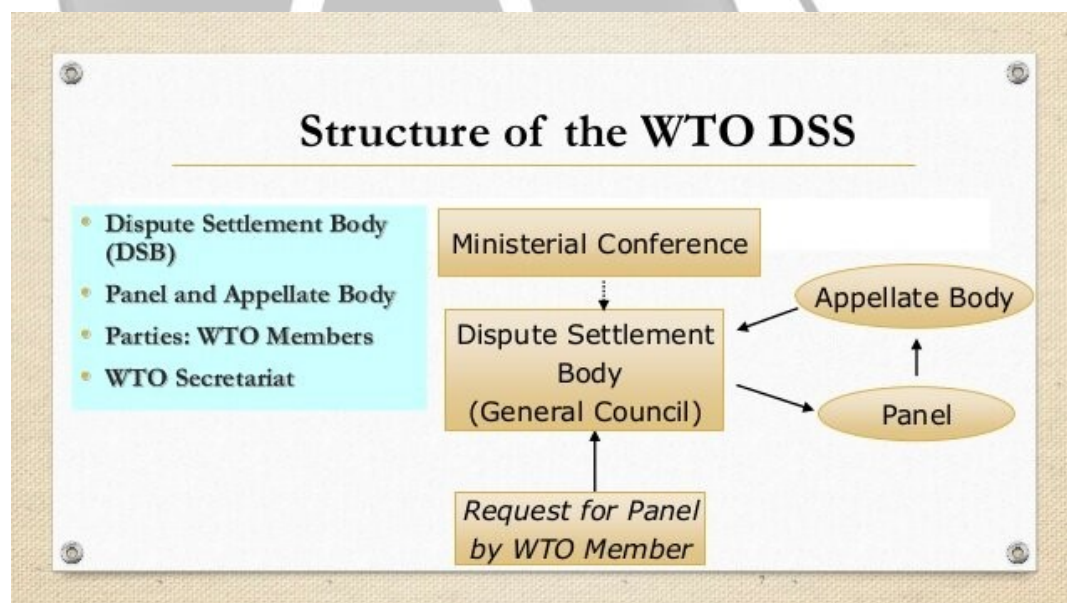
### Why in News?

There was no discussion to revive the [World Trade Organization's \(WTO\) Appellate Body \(AB\)](#), which has been **redundant since 2019**, at the recently concluded [12<sup>th</sup> ministerial conference](#).

### What is WTO's Appellate Body?

#### ▪ About:

- WTO was established **to provide a platform for negotiations for liberating trade and creating rules**, as well as to monitor and administer multilateral trades.
- One of the key **objectives was also to address the grievances between its members by acting as a court for global trade**.
- The Appellate Body, set up in 1995, is **a standing committee of seven members** with a limited **four-year term** that presides over appeals against judgments passed in trade-related disputes brought by WTO members.
- Disputes arise when **a member country observes that another member government is breaching a commitment, or a trade agreement** made at the WTO.



#### ▪ Structure:

- The Appellate Body is composed of **seven Members** who are appointed by the **Dispute**

**Settlement Body (DSB)** to serve for four-year terms.

- The **DSB has authority to establish dispute settlement panels**, refer matters to arbitration, adopt panel, Appellate Body and arbitration reports, maintain surveillance over the implementation of recommendations and rulings contained in such reports, and authorize suspension of concessions in the event of non-compliance with those recommendations and rulings.
- Each person may be **reappointed for another four-year term**.
- **Appointment:**
  - Each member of the Appellate Body is required to be a person with demonstrated expertise in law, international trade and the subject-matter of the covered agreements generally.
  - They are also required to be **unaffiliated with any government and are to be broadly representative of the membership** of the WTO.
  - A Chairman is elected among the Members to serve a one-year term, which can be extended for an additional period of one year.
  - He is responsible for **the overall direction of Appellate Body business**.
    - The current Chairperson is Hong Zhao of China.
  - A Division of **three Members is selected to hear each appeal and each division elects a Presiding Member**.

## What are the Issues?

- **Stopping of the Judges' Appointment:**
  - The United States stopped the process of reappointing judges, after their terms expired in 2017. In December 2019, the number of judges in the court fell below three — the minimum required.
    - It believes the WTO is biased against it, and has criticised it for being “unfair”.
  - At least three people are required to preside over an appeal, and **if new members are not appointed to replace** the two retiring ones, the body will cease to be relevant.
- **Very Less Efficient at Rulings:**
  - Over 600 cases reached the body since its formation in 1995 and rulings were issued in some 350.
  - It has even blamed that the AB has failed to issue rulings within the 90-day deadline.

## What are the Implications?

- With the Appellate Body unable to review new applications, **there is already great uncertainty over the WTO's dispute settlement process**.
- If the body is declared non-functional, countries may be **compelled to implement rulings by the panel even if they feel that gross errors** have been committed.
- Countries **may refuse to comply with the order of the panel** on the ground that it has no avenue for appeal. It will run the risk of facing arbitration proceedings initiated by the other party in the dispute.
- This also does not bode well for India, which is facing a rising number of dispute cases, especially on agricultural products.
- In the backdrop of rising trade tension between the US and China, the overall weakening of the WTO framework **could have the effect of undoing over two decades of efforts to avoid protectionism in global trade**.

## What are the Disputes Involving India at the WTO?

- The disputes where India is a **complaining party** are countervailing duty by the US on Indian steel products, measures by America concerning non-immigrant visas, renewable energy programmes of the US, and import duties imposed on steel and aluminium products by America.
- WTO disputes where **India is a responding party** include prohibition by India on import of poultry and poultry products filed by the US, and import duties on certain information and communication technology goods filed by the EU, Japan and Taiwan.
- In January 2022, India **appealed against a ruling of WTO** trade dispute settlement panel which ruled that the country's domestic support measures for **sugar and sugarcane** are inconsistent

with global trade norms.

## Way Forward

### ▪ Support Proposal to get New Members:

- Usually, new appointments to the Appellate Body are made by a consensus of WTO members, but there is also a provision for voting where a consensus is not possible.
- The group of 17 least developed and developing countries, including India, that have committed to working together to end the impasse at the Appellate Body can submit or support a proposal to this effect, and try to get new members on the Appellate Body by a majority vote.
- But, this may be an option of the last resort, as all countries fear unilateral measures by the US as a consequence of directly opposing its veto.

### ▪ Suitable Punishment if Breaks Law:

- If a country has done something wrong, it should swiftly correct its fault. And if it continues to break an agreement, **it should offer compensation or face a suitable response that has some bite — although this is not actually a punishment:** it's a "remedy", the ultimate goal being for the country to comply with the ruling.

### ▪ Reformatory Approach:

- The permanent long-term solutions based on **reformatory approach include having a transitional rule for the outgoing members**, allowing them to completely dispose the pending appeals even after the expiry of their terms and limiting the Appellate body's interpretation to the meaning of consented national laws without stepping over the policy space, so as to preserve sovereignty of the nations.

### ▪ Regular Meeting of the Members:

- The other long-term solutions include **regular meetings of the WTO members with the Appellate body** to ensure effective communication and immediate redressal mechanism.
- Thus, **all the nations must come together to bring in a common ground to address the crisis** so as to not be faced with the worst-case scenario.

[Source: DTE](#)

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