

Lecture 34: Appellate Body Proceedings

Dear students and so, this is the last class with regard to the dispute settlement and within this particular module and in this class we are going to discuss about the appellate body mechanism within the dispute settlement understanding. So, the appellate body considers cases from the panel. So, the appeals will be came to the appellate body. So, the panel is the preliminary body and any one of the member countries those who are party to the dispute can appeal to the appellate body. And today we are going to discuss about the appellate body and also what happened to the appellate body in the recent times and what is the contribution of the appellate body in lawmaking international trade law.

CONCEPTS COVERED

- **Constitution of AB**
- **AB Process**



And we will see that the constitution of appellate body and the entire process of appellate body in this particular class.

AB

- Unlike panels, the Appellate Body is a permanent body of seven members entrusted with the task of reviewing the legal aspects of the reports issued by panels.
- The Appellate Body is thus the second and final stage in the adjudicatory part of the dispute settlement system.
- One important reason for the creation of the Appellate Body is the more automatic nature of the adoption of panel reports since the inception of the [DSU](#).



So, here there is a lot of difference between panel and appellate body and appellate body is a permanent body of seven members. Seven appellate body members are appointed by the DSB, and these seven members sit in panels and they come out with appellate body reports. So, this is the final stage of adjudication within the dispute settlement system. So, here the members so, as I told you from the very inception of the WTO appellate body has made a fantastic, they have come out with a lot of reports and they have contributed to the entire development of trade law jurisprudence through the cases which they dealt with. And the appellate body only concerned about the question of law in the disputes raised by the parties.

AB

- If a party files an appeal against a panel report, the Appellate Body reviews the challenged legal issues and may uphold, reverse or modify the panel's findings ([Article 17.13](#) of the DSU).

The appellate body reviews the challenged legal issue and factual issue appellate body is not going to look into. The appellate body may uphold, reverse or modify the panel findings. So, it have like the you know the supreme courts of the national systems they can uphold, reverse or modify the panel findings.

AB

- **No. of Panel Reports - 201**
- **No. of appeals – 136 – 68%**
- **Actual – 109**
- **A.21.5 proceedings – 172**
- **Reports appealed – 115 67%**
- **The term of the last sitting Appellate Body member expired on 30 November 2020.**

So, you can see that the panel reports almost you know you can see that a number of appeals. So, if you see the percentage of appeals from the panel reports around 68 percent of the panel reports are appealed. And the arbitration proceedings 67 percent of

arbitration proceedings 67 percent of the reports are sent to the arbitrators finally. It means that there is a higher number of disputes between the members and they are not able to agree with the panel with appellate body finally, for each and every issue they went for arbitrations, non compliance proceedings, review proceedings. So, more than 50 percent of the panel reports are appealed it shows that the intensity of disputes between members. So, whether actually the members use the appeal provisions or misuse the appeal provisions we do not know, but 68 percent of the panel reports are appealed. Almost similar percentage of disputes went for arbitration. Unfortunately, all the seven members of the appellate body, their term of appointment is expired with November. So, we are November for the last three years, there is no members in the appellate body. So, how it is happened and why it is happened we will discuss later. So, appellate body a sizable number of cases came to the appellate body for review.

Appeals - AB

- **Either side can appeal a panel's ruling. Sometimes both sides do so.**
- **No such system in GATT**
- **Appeals have to be based on points of law such as legal interpretation** — they cannot reexamine existing evidence or examine new issues.
- **Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership.**
- **Under Article 17 of the DSU, the Appellate Body is composed of seven Members who are appointed by the DSB to serve for four-year terms, with the possibility of being reappointed once.**



So, what is the jurisdiction of appellate body? So, either members, a complainant and respondent in the panel report can appeal and sometimes both side appeal, GATT there was no such systems. And appeal will be based on points of law and legal interpretation, no factual interpretation. And each appeal is dealt by three members of this permanent body a seven member body. And it is definitely it is a very small body dealt with a largest number of cases and appointed for a period of four years and some of the members are reappointed for another once. So, that means, total eight years, one time appointment is for four years and they can continue up to eight years if there is a reappointment. So, up to eight years they can be there in the appellate body.

AB

- **Innovation of UR**
- **Panel reports appealed -**
- **Appointed by DSB for a period of 4 years.**
- **They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.**
- **Appellate Body members have so far been university professors, practicing lawyers, past government officials or senior judges.**



And there is lot of changes, appellate body is an innovation from the GATT procedures. And they have to be individuals say that is of recognized standing in the field of trade law international trade not affiliated with any government. There may be university professors, practicing lawyers, past government officials, senior judge, etcetera.

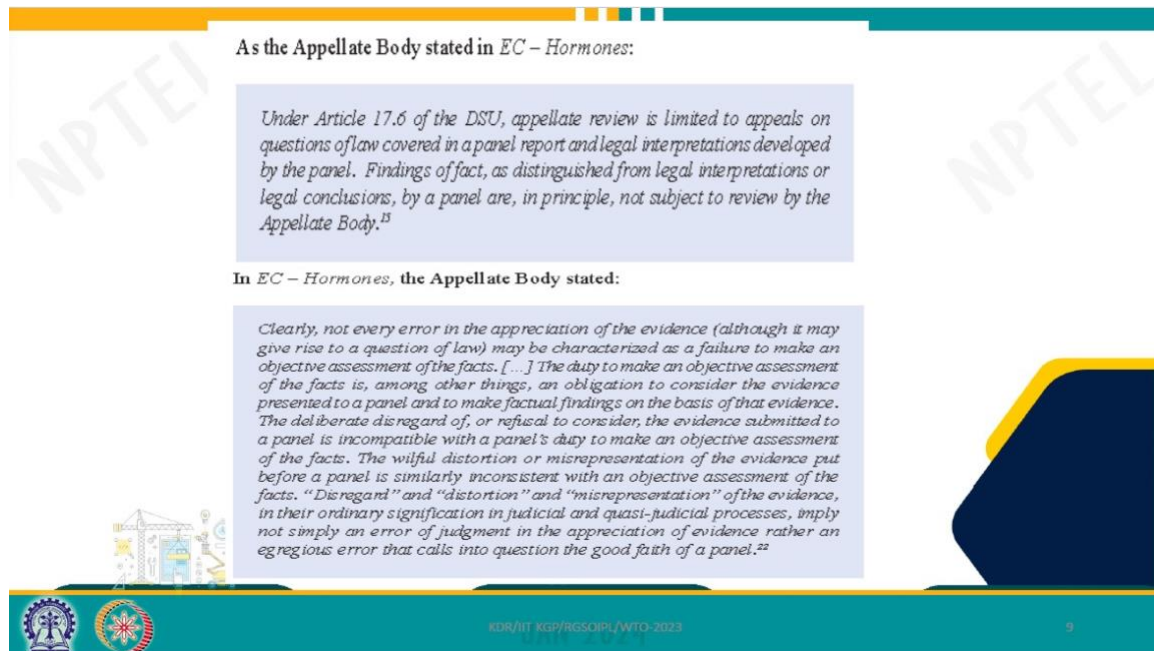
Composition

- **A Chairman is elected among the Members to serve a one-year term, which can be extended for an additional period of one year.**
- **The Chairman is responsible for the overall direction of Appellate Body business.**
- **A Division of three Members is selected to hear each appeal; each Division elects a Presiding Member.**



And each panel a chairman is elected among the members to serve as one year term. That means, appellate body there will be a chairman will be elected for one year and every one year they will change. And chairman is responsible for the overall working of

the appellate body system. So, each case is served by three members and each three members elect one presiding member. So, and they dealt with these cases.



As the Appellate Body stated in *EC – Hormones*:

Under Article 17.6 of the DSU, appellate review is limited to appeals on questions of law covered in a panel report and legal interpretations developed by the panel. Findings of fact, as distinguished from legal interpretations or legal conclusions, by a panel are, in principle, not subject to review by the Appellate Body.¹⁵

In *EC – Hormones*, the Appellate Body stated:

Clearly, not every error in the appreciation of the evidence (although it may give rise to a question of law) may be characterized as a failure to make an objective assessment of the facts. [...] The duty to make an objective assessment of the facts is, among other things, an obligation to consider the evidence presented to a panel and to make factual findings on the basis of that evidence. The deliberate disregard of, or refusal to consider, the evidence submitted to a panel is incompatible with a panel's duty to make an objective assessment of the facts. The wilful distortion or misrepresentation of the evidence put before a panel is similarly inconsistent with an objective assessment of the facts. "Disregard" and "distortion" and "misrepresentation" of the evidence, in their ordinary signification in judicial and quasi-judicial processes, imply not simply an error of judgment in the appreciation of evidence rather an egregious error that calls into question the good faith of a panel.²²

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So, appellate body what is the appeal you know the appeal provisions and what is the role of appellate body which is mentioned under the EC - Hormones case. The appellate body said the appellate review is limited to appeals or questions of law covered in a panel report and legal interpretations developed by the panel. Findings of fact as distinguished from legal interpretations or legal conclusions by a panel are in principle not subject to review by the appellate body. So, simply they said that is clearly the appellate body will consider only the law, interpretation of law not facts. And also it clearly said the appreciation of evidence that means, so if the panel made a mistake in an objective assessment of the facts. So, it is the duty of the every panel to make an objective assessment of the facts in every case then in is there any mistake or there is in any error in appreciating the evidence then the appellate body can consider that cases as well. So, the appellate body's role is very limited to the interpretation of law and not facts.

Results

- The appeal can uphold, modify or reverse the panel's legal findings and conclusions.
- Normally, **appeals should not last more than 60 days, with an absolute maximum of 90 days.**
- The **Dispute Settlement Body has to accept or reject the appeals report within 30 days — and rejection is only possible by consensus.**

So, the appellate body have the power to uphold, modify, or reverse the panel findings. And total time frame which is given is 60 days time with maximum time frame is 90 days, but in practical we saw that in many cases the appellate body has exceeded this 90 days time because of various reasons. So, the DSB has to accept the reports or reject the reports within 30 days time and this rejection again the negative consensus principle is applicable to the appellate body cases as well which has not happened so far.

Timetable for Appeals

Action	Day
Notice of Appeal	0
Appellant's Submission	10
Other Appellant(s) Submission(s)	15
Appellee(s) Submission(s)	25
Third Participant(s) Submission(s)	25
Oral Hearing	30
Circulation of Appellate Body Report	60 - 90
DSB Meeting for Adoption	90 - 120

And a clear time frame is given for the appellate body principles that is the notice of appeal is given and appellant submission within 10 days and total 15 days time for

submissions. Third party submissions within 25 days and then oral hearing and other hearings will be done within 30 days period of time and the appellate body report will be made within 60 to 90 days time and DSB Meeting adopted within 120 days time. So, the maximum time frame is given this maximum time frame 120 days.

What's next?

- **The DSU will ask the losing “defendant” to bring its policy into line with the ruling or recommendations.**
- **If the country that is the target of the complaint loses, it must follow the recommendations of the panel report or the appeals report.**
- **It must state its intention to do so at a Dispute Settlement Body meeting held within 30 days of the report’s adoption.**
- **If complying with the recommendation immediately proves impractical, the member will be given a “reasonable period of time” to do so (15 months).**



So, once the report is out what is the next step? As I said like panel then appellate body also ask the members to bring its policy into in line with the rulings and recommendations. So, that means if the appellate body found that one of the member has violated any one of the provisions of an agreement they will ask that measure to be in conformity with the provisions and the reasonable period of time mentioned is 15 months time.

Dispute Settlement in the WTO:

Implementation

If there is a finding of violation:

- Member must **bring the measures into conformity** with its WTO obligations (Article 19 DSU)
- Member must inform DSB of its **intentions in for implementation of the recommendations** (Article 1 DSU)

If it is impracticable or there is any dispute with regard to this 15 months' time so the members can go for arbitration and decide the time. So and the dispute settlement is procedure is very clear.

Arbitrators

- In addition to panels and the Appellate Body, arbitrators, either as individuals or as groups, can be called to adjudicate certain questions at several stages of the dispute settlement process.
- Arbitration is available as an alternative to dispute resolution by panels and the Appellate Body ([Article 25 of the DSU](#)), although it is a possibility that has so far very rarely been used.
- Arbitration results are not appealable but can be enforced through the DSU ([Articles 21 and 22 of the DSU](#)).

So, I said that if they cannot agree on the implementation period they can go on with arbitration procedures. So, any group any people can call to adjudicate certain questions at several stages of dispute settlement process. Arbitration is you know it is definitely an alternate method of dispute resolution mechanism even though the Article 25 says that you please find out the possibility of outside the WTO for arbitration, but arbitration is

final and arbitration results are not appealable and but can be enforced through DSU. So, arbitration is final and no appeals from such arbitrations.

Arbitrations

- **Appellate Body Members have also been called upon to determine, through binding arbitration under Article 21.3(c) of the DSU,**
- **the “reasonable period of time” for the implementation by a WTO Member of Appellate Body or panel rulings as recommended by the DSB.**
- **In carrying out arbitrations under Article 21.3(c), Appellate Body Members act in an individual capacity.**



So, arbitration which you can see as we already said that even appellate body members been called upon to determine through binding arbitration under 21.3(c). So, if there is any dispute with regard to the limitation of reasonable period of time so there can be an arbitration under article 21.3(c). So, appellate body here they sit appellate body members sit not as appellate body members they sit down in their individual capacity as arbitrators and they come out with arbitration reports.

Arbitration

- In the absence of agreement, that period of time may be set by arbitration.
- Suspension of concessions is viewed as a last resort and the preference is for the non-implementing Member to bring its measure into conformity with its obligations.
- **Article 21.5 of the DSU** provides that any disagreement over satisfactory implementation shall be referred to the original panel.
- 90 days.



So, dual role is given to arbitrations. I think it is a high time for to change this particular position of arbitration should be given to other forums like the permanent court of arbitration. So, that the appellate body can discharge its functions quickly. So, here again suspension of concessions. So, if one member says that satisfactory implementation is not done then there can be an arbitration. So, if satisfactorily not done the implementation there can be an arbitration.

Arbitration

- **Either as individuals or as groups, can be called to adjudicate certain questions at several stages of the dispute settlement process.**
- **Arbitration is available as an alternative to dispute resolution by panels and the Appellate Body (A.25).**
- **Arbitration results are not appealable but can be enforced through the DSU (Articles 21 and 22 of the DSU).**



And again as I told you such arbitrations can be done this arbitration can be done by the panel members and or arbitration is alternatively available under Article 25 and this arbitration is not appealable.

Arbitration

- **The first such situation, which an arbitrator may be called to decide on, is the establishment of the “reasonable period of time” granted to the respondent for implementation (Article 21.3(c) of the DSU).**
- **The second is where a party subject to retaliation may also request “arbitration” if it objects to the level or the nature of the suspension of obligations proposed (Article 22.6 of the DSU).**



So, arbitration under 21.3(c) is not arbitrable and if any arbitration with regard to party subject to retaliation also can ask for arbitration. So, if there any dispute with regard to the nature of suspension of obligations or the extent of or the quantum of compensation the quantity of compensation they can go for 22.6 arbitrations and finally, the arbitrators decide the compensation to be paid or the retaliation the suspension of concessions to be made or retaliation whether they can make the retaliations.

Reasonable period of time

21.3 of the DSU defines a “reasonable period of time” as follows:

The reasonable period of time shall be:

- (a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or in the absence of such approval,*
- (b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or in the absence of such agreement,*
- (c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.⁷ In such arbitration, a guideline for the arbitrator⁸ should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.*



So, what is the reasonable period of time? Reasonable period of time which is mentioned is 15 months time. So, what is this reasonable period? So, it is the period which is proposed by the members. So, and period of time mutually agreed by the parties to the dispute within 45 days. If there is any dispute between these implementation period they can go for arbitrations and the arbitrations the you know in such arbitrations the guidelines should be followed a reasonable period of time and this arbitration is finally, applicable on the members and which is not appealable.

Arbitrator - powers

As an arbitrator under Article 21.3(c), certainly my responsibility includes examining closely the relevance and duration of each of the necessary steps leading to implementation to determine when a “reasonable period of time” for implementation will end. My responsibility does not, however, include in any respect a determination of the consistency of the proposed implementing measure with the recommendations and rulings of the DSB. The proper concern of an arbitrator under Article 21.3(c) is with when, not what. What a Member must do to comply with the recommendations and rulings of the DSB in any particular case is addressed elsewhere in the DSU. If there is any question about whether what a Member chooses as a means of implementation is sufficient to comply with the recommendations and rulings of the DSB, as opposed to when that Member proposes to do it, then Article 21.5 applies, not Article 21.3. (italics in original)¹⁶

In non-violation complaints, however, Article 26.1(c) provides that an arbitrator under Article 21.3(c) may:

[u]pon the request of either party, ... include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment. ...



What are the arbitrators power in this particular case under 21.3(c). It says that their responsibility includes examining closely the relevance and duration of each of the necessary steps leading to the implementation to determine when a reasonable period of time exists. Reasonable period of time in non-violation complaints so that means, under article 21.3(c) arbitrations upon request of either party include a determination of a level of benefit which have been nullified or impaired and may also suggest ways and means of reaching mutually satisfactory adjustment. So, if there is any dispute with regard to the implementation, compensation, sanctions, you can go with arbitration.

Opinion of Experts

- **Article 11.2 of the Agreement on Sanitary and Phytosanitary Measures;**
- **Articles 14.2, 14.3 and Annex 2 of the Agreement on Technical Barriers to Trade;**
- **Articles 19.3, 19.4 and Annex 2 of the Agreement on Implementation of Article VII of GATT 1994;**
- **Articles 4.5 and 24.3 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement).**



And another important provision is acceptance of the expert opinions for example, in some of the agreements which provides for acceptance of expert opinions and for example, article 11.2 of the agreement on Sanitary and Phytosanitary measures SPS agreement, article 14.2, 14.3 and annex 2 of TBT agreement, article 19.3, 19.4 and annex 2 of the Agreement on Implementation of article VII of GATT 1994 and article 4.5, 24.3 of the agreement on subsidies and countervailing measures. So, all these agreement provides acceptance of expert opinion by the appellate body.

Suspension of concessions

- **Article 22.2 of the DSU** provides that if a Member fails to bring its nonconforming measure into compliance, the DSB must authorize (if requested and absent consensus to the contrary) the suspension of concessions within 30 days of the expiration of the reasonable period of time.

And the most important provision is the suspension of concessions. If a member is not listening to or not in conformity with the provisions of the report which is produced by the appellate body or the panels then if any member fails to bring its conformity with the measures the DSB authorize suspension of concessions. Suspension of concessions within a reasonable period of time.

Art. 22.3- suspension

- (i) with respect to goods, all goods;*
- (ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;*
- (iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS.*

And what is this 22.3 - Suspension? Suspension of concessions goods to goods that means, if the question is with regard to goods then the suspension will be allowed on

good sector. The respective the current service sector that particular service sector and if it is related to intellectual property rights and then the export or import the intellectual property right concerned so that means, the suspension of concession will be in respective sectors between the trade between two countries.

Surveillance

- **If Member fails to act within this period, it has to enter into negotiations with the complaining country (or countries) in order to determine mutually-acceptable compensation — for instance, tariff reductions in areas of particular interest to the complaining side.**
- **If after 20 days, no satisfactory compensation is agreed, the complaining side may ask the Dispute Settlement Body for permission to impose limited trade sanctions (“suspend concessions or obligations”) against the other side.**



And we said the DSB also do the surveillance of the implementation mechanism. So, if the members fail to implement or there is a disagreement among the implementation period the members to enter into negotiations between the complaining party. If there is no compensation is agreed then again sanctions, limited sanctions would be imposed which is known as the suspension of concessions and obligations.

Retaliation authorization

- **The Dispute Settlement Body must grant this authorization within 30 days of the expiry of the “reasonable period of time” unless there is a consensus against the request.**
- **In principle, the sanctions should be imposed in the same sector as the dispute.**
- **If this is not practical or if it would not be effective, the sanctions can be imposed in a different sector of the same agreement.**

And then if a particular sector there is no trade between two countries on that particular sector then the dispute settlement body grants authorization within 30 days and a retaliation authorization. That means, sanctions should be imposed on the same sector. If it is not practical the sanctions can be imposed on a different sector of the same agreement. This is retaliation authorization. So, first sanctions to retaliation authorization also can be done.

Cases

- **Canada got WTO authorization to retaliate in Byrd Amendment case in 2004 against the US.**
- **Brazil, Chile, India, Japan, SK, Mexico, and EU also got authorization.**
- **2005 – Canada declared to impose 15% surtax on US goods, swine, cigarettes, oysters, and fish.**

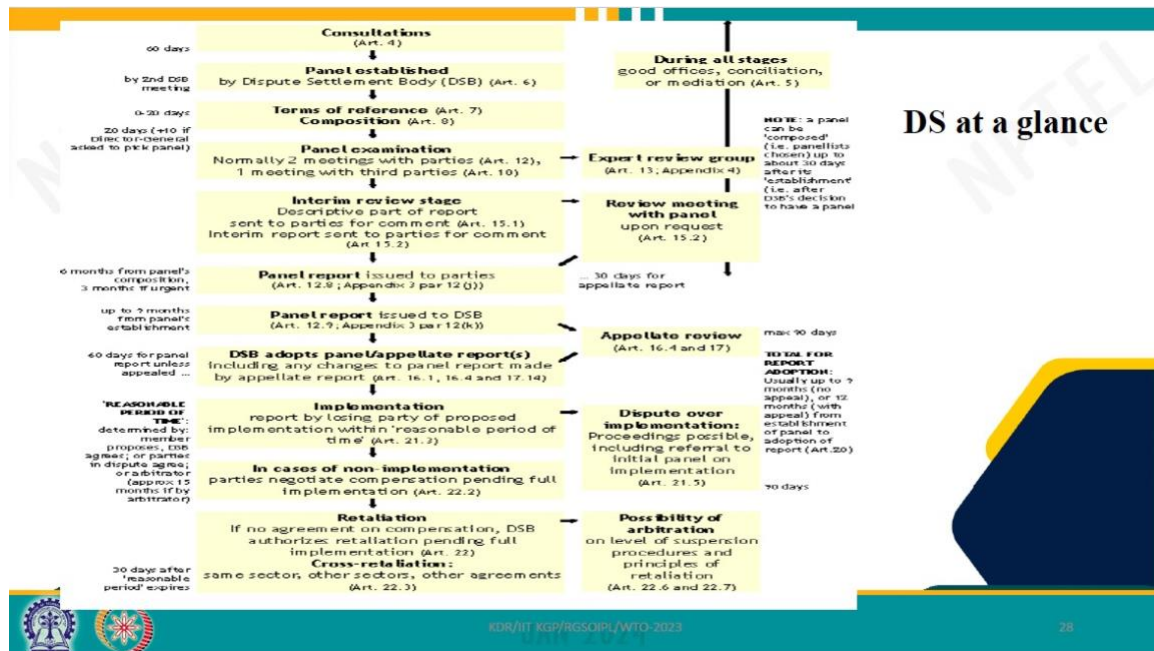
And we can see retaliation authorization is given to many countries. So, Canada got a retaliation authorization in Byrd Amendment in 2004 against the US. Brazil, Chile, India, Japan and other countries got an authorization and in 2005 Canada imposed 15 percent surtax on US on goods, swine, cigarettes, oyster and fish. India got a chance to impose this retaliatory sanctions against US, but it never did. Only Canada imposed 15 percent additional taxes on US goods, specific goods.

Cross-retaliation

- **In turn, if this is not effective or practicable and if the circumstances are serious enough, the action can be taken under another agreement.**
- **The objective is to minimize the chances of actions spilling over into unrelated sectors while at the same time allowing the actions to be effective.**
- **Antigua and Barbuda got authorization from the WTO to retaliate against the US on “recreational services” case - \$21 million against US Patents, copyrights, trademarks other IP as well as service sectors.**

And next is so we talked about retaliation, now is cross retaliation. If as we said that practically possible it should be on the same sector if it is practically not possible it should be on the different sector of within the same agreement. And now if the same agreement there is no trade between two countries not possible then another sector. Allowing the same level of concessions to be suspended on another agreement. For example, a small country like Antigua and Barbuda got an authorization from the WTO to retaliate against the US on recreational services. Recreational services they got a retaliation, but there is US there is no recreational services you know the services between the two countries. So, a cross retaliation is sanctioned to the tune of 21 million against the US patent, intellectual property sector. Even though they got a retaliation again in the service sector, but a cross retaliation was on the intellectual property sector patent, copyright, trademarks and other IP, as well as service sectors. So, if a country does not have a particular trade, goods trade with other country you can retaliate against cross retaliation against in the intellectual property sector. So, absolutely the cross retaliation even a small country like Antigua and Barbuda was able to put sanctions on the United States even for a very small amount of 21 million. Before the WTO small countries or least developed countries or even developing countries find it very difficult to put sanctions and pay the countries like India think twice to put sanctions on the US.

But here under the WTO system a small country like Antigua and Barbuda retaliated against the United States and that is the strength of the WTO dispute settlement system.



The appellate procedures which we already discussed about this particular table.

Developing countries

Indonesia Autos

Indonesia is not only a developing country; it is a developing country that is currently in a dire economic and financial situation. Indonesia itself states that its economy is “near collapse”. In these very particular circumstances, I consider it appropriate to give full weight to matters affecting the interests of Indonesia as a developing country pursuant to the provisions of Article 21.2 of the DSU. I, therefore, conclude that an additional period of six months over and above the six-month period required for the completion of Indonesia’s domestic rule-making process constitutes a reasonable period of time for implementation of the recommendations and rulings of the DSB in this case.³⁰

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So, developing countries always we say that there is a special concessions for developing countries. So, Indonesia Autos case also Indonesia asked for the special concessions or special concessions as a particular circumstances of the country. So, what did the Appellate body say? So, the Indonesia said that our economy is near collapse. So, the

particular circumstances you have to take into consideration affecting the matters of Indonesia as a developing country. So, what they said? So, I quote I therefore, conclude that an additional period of 6 months over and above the 6 months period required for the completion of Indonesia's domestic rule making process constitute a reasonable period of time for implementation of the recommendations and rulings of the DSB in this case. So, the developing countries special concessions are available, but mostly it is not given by other countries.

AB

- **The Appellate Body was established in 1995 under Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).**
- **It is a standing body of seven persons that hears appeals from reports issued by panels in disputes brought by WTO Members.**



So, here as I told you an appellate body was established in 1995 and the members there are so many members were you know seven people each appointed from time to time and they have contributed up to 2020 very well.

AB Members

2020



From left to right: Ujal Singh Bhatia, Peter Van den Bossche, Shree Baboo Chekitan Servansing, Thomas R. Graham, Yuejiao Zhang¹, Seung Wha Chang¹ and Ricardo Ramírez-Hernández



And this was the photograph of the last appellate body. So, you can see the various personalities from different countries. So, the last person who was retired in November 2020 not I would say that the retired and then nobody was appointed after 2020. So, presently the appellate body is without members why it is happened? How it is happened? It is happened mainly because the appellate body members are appointed to the appellate body through consensus. So, sometimes this consensus make problems as well there is no voting system in the WTO to implement its decisions its consensus. So, the U.S. non-cooperates the non-cooperation of U.S. has prevented the members from appointing appellate body members. So, from 2020, for the last 3 years, there are no appellate body members and all the appeals filed remain unheard.

Issues

- Presently there is no AB Members??
- US not allowing countries to appoint AB Members.



So, it is very interesting to note that the U.S. is not allowing to appoint members. So, the main argument of U.S. is that most of the appellate body reports are against the U.S. So, this is I would say that this is a colonial approach, the earlier colonial approach of the mindset of the countries to approach these international adjudicatory bodies because they think that yes I am contributing to the funds of WTO. So, they should give you know the judgment in favor of me this is the attitude of the countries like U.S. and but at the same time you can see that after you know the no members after 2020 the U.S. has filed appeals to the appellate body. So, it is something like that I file appeal to the appellate body where there is no members where I only prevent other members from appointing appellate body members. So, the I think the multilateral trading system has to find out other means and methods of appointing members.

Suggestions

- **Timely notification by the parties to a dispute to the DSB of mutually agreed solutions.**
- **More disciplines on the complaining party at the consultations stage.**
- **Elimination of the requirement of a "trade" interest for joining in consultations (Article 4.11) so that WTO members who have a “systemic interest” rather than a trade interest can also join as third parties.**



So, the system has worked very well from 1995 onwards that means exactly 25 years a quarter of a century the multilateral trading system the appellate body has you know one of the cornerstone contributed to the development of international trade law and come out with the reports with clear interpretation of the WTO law. And this made some of the countries you know worried about the ultimate because there is no appeal from the appellate body. There is no other court to go no other place to go rather than to comply with the provisions and also the countries big countries like the U.S. worried about the small countries going on with retaliation like what is happened to in the case of Antigua and Barbuda. So, they think that this particular system is against them. So, they try to destabilize the particular system, but actually this process make the entire world trading destabilize.

Suggestions

- **Selection of panelists from a fixed pool of candidates to ensure that the panelists have the necessary knowledge and expertise;**
- **Ethical standards for panelists so as to avoid conflicts of interest;**
- **Requiring all documentary evidence to be submitted no later than the time when the second written submissions are due, so as to avoid unnecessary delays;**
- **Unsolicited briefs from NGOs.**



Now almost three years the members were not able to find out an alternate system of dispute settlement in the appellate body they are not finding it. So, it is an impediment to international trade.

Conclusion

- **The Appellate Body (AB) is a key component of the dispute settlement mechanism of the World Trade Organization (WTO).**
- **In recent years, the functioning of the Appellate Body has faced challenges, including issues related to the appointment of new members and the expiration of terms for existing members.**
- **As of 2023, there were concerns about the Appellate Body's inability to hear new appeals due to the lack of a quorum, which is required for its effective functioning.**



And so, I believe that it is the duty of all 164 member countries to come out with an alternate solution if the U.S. is not agree let them not agree because they are not agree to many of the agreements important agreements like for example, in the case of UNCLOS 1982 U.S. is not a party. So, other 163 member countries can come out with an

agreement again the question is because the history says it is the U.S. that proposed the ITO international trade organization and finally, the U.S. said that we are not going to sign we are not going to write if they signed it they never approved it. So, that was the end of ITO because U.S. is an economic power and which you know is largest contributor to the world economy. So, without U.S. is also a problem. So, it is a concern. So, it is a concern of every countries especially I would say that the concerns of developing and least developed countries that there is no appellate body. So, lack of appellate body is a huge work of which made in the international trade. So, the member should come out with a solution to this alternate measures for example, recourse to article 25 alternate mechanism for arbitration they can approach other forums for arbitration and you know the methods like arbitration or alternate dispute resolution mechanism can be used for resolving disputes in case of appellate body. So, in conclusion I would say that the panel appellate body and the entire dispute settlement system of the WTO has contributed immensely to the international trading system for the last maybe you know the 25, 26 years or 27 years. And the destabilizing of appellate body is a mistake. So, it is a failure to the international trading system. So, it has to be restored at the earliest. Thank you.