Proceedings of the 3rd International Conference on Financial Technology and Business Analysis
DOI: 10.54254/2754-1169/89/20231471

The Roots of the Crises in the WTO Appellate Body and Reform Proposals

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Abstract: Since the WTO Appellate Body "suspension" crisis, how to reform the Appellate Body has become a hot topic among member states. Especially after the official "suspension" of the Appellate Body, member states have put forward proposals to reform the Appellate Body, but these proposals have failed to achieve substantive results, and the reform of the Appellate Body has been stalled. Therefore, analyzing and studying the reform of the WTO Appellate Body is conducive to promoting the reform of the Appellate Body, getting rid of the crisis of the Appellate Body, and also has positive significance to the reform of the WTO dispute settlement system. The three parts of this article are as follows: the first part studies the WTO Appellate Body's fundamental procedures and gives a general overview of the body to lay the theoretical foundation for the subsequent investigation of the WTO Appellate Body's issues; The second portion examines the legal ramifications of the WTO suspension conundrum. The more divisive practical matters, such as overtime hearings, confusing hearing scope, and the influence of Appellate Body decisions on precedent; The third section of the WTO Appellate Body Reform Suggestions includes suggestions from WTO members regarding current trends in the reform, academic theory surrounding the reform, Appellate Body cases, and reform of the practice of combining future reform of the WTO-specific measures.

Keywords: WTO, Appellate Body, Reform

1. Introduction

1.1. Background

According to statistics, 153 disputes handled by the WTO between its creation and August 2023 underwent the appeals process, accounting for more than 30% of all conflicts[1]. The efficient operation of the Appellate Body is necessary for the WTO Dispute Settlement Body. Whatever the system's effectiveness level, it depends on the right sociopolitical and economic conditions to function. Since the beginning of the twenty-first century, the gap between industrialized and developing countries, including the United States and Europe, has been quickly closing. The United States and other affluent countries have fallen behind developing countries due to economic globalization, which has also transformed the industrial structure and the economic division of labor. Several well-established industries in industrialized countries like the United States have gradually lost their

DOI: 10.54254/2754-1169/89/20231471

industrial advantages due to economic globalization, which has also changed the global economic division of labor and industrial structure. Additionally, the recent unfavorable WTO decisions have greatly disappointed the United States. In order to maintain its hegemonic position, the United States interfered with and hindered these processes.

The United States formalized its complaints against the Appellate Body on March 1, 2019, in the 2019 Trade Policy Agenda and 2018 Annual Report. These complaints included the Appellate Body's overstaying of cases and acceptance of appeals, irregularities in reviewing factual issues about domestic law, the issuance of obiter dicta, and self-identification with the precedential value of its reports.[2] Since then, China, the European Union, Canada, Australia, Honduras, Brazil, Japan, Chile, India, and other members have each individually or collectively proposed their reform programs to address the problems mentioned above; however, due to the members' divergent viewpoints and the United States of America's lack of interest in the reform program, the aforementioned numerous problems have persisted. Due to the need for a sufficient number of members to meet the statutory criteria for regular operation, the Appellate Body had to put its work on pause in December 2019. China, the European Union, and other WTO members will establish the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) in April 2020 based on Article 25 of the Understanding of Rules and Procedures Governing the Settlement of Disputes (DSU) in order to resolve this kind of disputes appropriately. The MPIA is only a backup plan for resolving members' disputes until the Appellate Body. The Appellate Body will soon be reorganized to resume operations as soon as feasible. On August 21, 2020, the Office of the United States Trade Representative (USTR) suggested that the Panel proceedings concentrate on commercial arbitration and that the Appellate Body be permanently dissolved, effectively returning the WTO's dispute resolution process to that of the GATT. The Appellate Body eventually ended after losing its final member on November 30, 2020. Even though there are still 29 currently notified appeals as of August 2023, the Appellate Body is unable to consider cases due to persistent vacancies, and it is expected that the number of appeal cases will continue to rise. In order to prevent a return to the "law of the jungle" era of international commerce, the WTO Appellate Body needs to be reformated.

1.2. Purpose

This time, the Appellate Body has suspended functioning due to problems with its judges' selection and decision-making processes. However, other Appellate Body problems have given the United States cunning chances. Reviewing the past WTO member negotiations on the Appellate Body's creation and the experience of the Appellate Body's operation throughout time makes this clear.[3]

Based on this, the selected subject will focus on the critical concerns in the core principles governing the WTO Appellate Body's operation. The purpose of this choice is first to raise the question of the length of the Appellate Body's hearings and then to assess the extent of its review, including the "factual issues," "legal issues," and "incidental legal opinions." Thirdly, it will make clear the members' practical agreement and disagreement on this matter. It will next review any "incidental legal opinions" and "factual issues" that might arise. It then examines the applicability of the Appellate Body's law and the effectiveness of the decision; finally, it will present focused recommendations on specific steps for the reform of the Appellate Body in light of the most recent trends in the reform of the Appellate Body among WTO members as well as the academics' views.

1.3. Significance

The operation of the Appellate Body has revealed several issues. However, these issues should not be used to undermine the Appellate Body because it is crucial to the proper resolution of international economic and trade frictions and because its operation has been instrumental in advancing the growth

DOI: 10.54254/2754-1169/89/20231471

of trade and the global economy. The Appellate Body's functions have been suspended because the United States has essentially used its problems as a pretext for criticism based on those problems. In order to reform and improve the WTO Appellate Body, it is crucial to conduct a study on it and theoretically suggest modifications. When the Appellate Body stops functioning, the MPIA, which WTO members facilitate to settle disputes, can only function temporarily.

The WTO members have reached a high degree of agreement on the following point of view, despite having differing opinions on the specific direction and position of reform: despite the WTO's problems and crises, what we need to do is not to abandon and destroy the WTO, but to solve the current problems and avert the current crisis through collaborative efforts. Nowadays, WTO members and even the international community share the concern of analyzing the reform of the Appellate Body from the theoretical and practical perspectives and proposing a middle-of-the-road, moderate, and more acceptable reform plan for all parties as soon as possible. For this reason, it is necessary to make reference to the specific practice of the Appellate Body in its operation for many years and to seek a balance of interests among WTO members.

1.4. Literature review

In order to explain the causes of the WTO Appellate Body problem, Amrita Bahri uses the connection between the WTO and the U.S. as a starting point. She also analyzes the U.S. position on the reform of the Appellate Body and quickly assesses the reform ideas put up by academics.[4]

Joost Pauwelyn examines the many outcomes that could happen in the Panel report after the Appellate Body ceases to function and suggests that to resolve the Appellate Body's dilemma, it is necessary to look for a balanced political and legal solution.[5]

Claus-Dieter Ehlermann believes that the high rate of WTO appeals in recent years and the insufficient number of people make it difficult for the Appellate Body to cope with the huge workload, which is the most important reason for the Appellate Body to have problems such as overrunning trials, and then briefly outline and summarize the reform proposals put forward by some WTO members.[6]

Geraldo Vidigal believes that it is less practical to reform the Appellate Body under the US's hair-splitting against the Appellate Body; as a result, consideration can be given to temporarily replacing the appellate process during the Appellate Body's period of ceasing to function under the arbitration mode of Article 25 of the DSU, while advancing the bilateral, multilateral, and plurilateral negotiations for the resolution of the Appellate Body[7]

The General Council could end the current deadlock in the appointment of Appellate Body members by using the power of authoritative interpretation, according to Alex Ansong, who has examined the issue of judicial activism in the Appellate Body that the United States brought up.[8]

2. What is the WTO Appellate Body

The Appellate Body has a distinctly judicialized character because to the Understanding of Rules and Procedures Governing the Settlement of Disputes (DSU), which serves as the foundation for WTO dispute resolution.[9] Introducing and formalizing an appellate procedure in domestic law represents a crucial innovation in international law. It distinguishes the appellate body from Panels, known for their ad hoc and case-by-case nature, i.e., permanence. The Appellate Body was established not only to correct errors in individual case but also to maintain members' confidence in the WTO and to guarantee the realization of justice, which is the final guarantee of a final and successful settlement of disputes.[10]

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2.1. Composition of members of the appeals body

The creation of the Appellate Body was specifically urged during the original debates on its founding to strengthen the authority of decisions made in WTO cases and boost member confidence in the organization. In addition to this, the Appellate Body was mainly created to fix any potential legal mistakes in the Panel's decisions[11].

A quorum of seven members is required for the Appellate Body by Article 17 of the DSU. It has a four-year term that is renewable for one more. In the case of a quorum shortfall, the Dispute Settlement Body shall appoint additional members to replace the vacancies.[12] The DSU needs to be more specific regarding the requirements for membership in the Appellate Body, requiring merely that they understand international trade and other relevant multidisciplinary subjects but not that they have a background in law. Additionally, these authorities can work other jobs in the WTO if consistent with their duties and commitments. The DSU excludes criteria for identifying disputes and resolving them when they occur, even while it calls for candidates for the WTO Appellate Body to be diverse regarding occupational distribution and nationality to support the fairness and impartiality of case review. Because the WTO does not mandate that members of the Appellate Body of the nationality of the disputing country recuse themselves, this reduces the Appellate Body's independence.[13]

The subsistence stipend, accommodation, food, and travel expenses for the members of the Appellate Body while serving in that capacity shall be borne by the WTO. The secretariat must be informed of the members' locations to get in touch with them and preserve their independence promptly. The Appellate Body is independent of all governments and is not subject to their authority.[14] To increase the fairness and objectivity of the hearing of disputes, each appeal case should be treated in turn. In each case, the Appellate Body mandates the attendance of three members of the Appellate Body.

2.2. Powers of the Appellate Body

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Second, when interpreting WTO regulations, it is essential to consider the Panel and the Appellate Body. Article 9(2), the relevant provisions in Articles 3 and 17 of the DSU, and the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement") all imply that the Panel and the Appellate Body are entitled to the power of legal interpretation, even though the DSU does not expressly state this. Although "clarify" is the word used in the articles, it can be assumed that the Appellate Body's use of the word "clarify" is fundamentally a legal interpretation because the phrase "legal interpretations" is used in Article 17, paragraph 6 of the DSU.[15] Only that interpretive power can be distinguished from the solemn interpretive authorities of the Ministerial Conference and the General Council. The Appeals Body also has the power to interpret rules regarding procedure. The Appeals Body's interpretation shall take precedence in the case of a disagreement between the parties to a dispute involving a procedural issue. Thirdly, suppose the relevant treaty does not cover a procedural issue, and the procedure does not conflict with the relevant provisions and spirit of the WTO Agreement. In that case, the Appellate Body may choose a suitable way in a given case.

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2.3. Duties of the appeals body

The task of the Appellate Body is to evaluate the Panel's conclusions and reach decisions in light of them. It should be emphasized that the Appellate Body is defined under Article 17, paragraph 6 of the DSU, which limits the scope of the appeal to the legal issues addressed in the Panel's report and its legal interpretation. The scope of the appeal is understood to be the same as the scope of the Appellate Body, specified in paragraphs 1 and 12 of the same article and is restricted to all concerns submitted by the appellant under paragraph 6, according to the systematic approach to interpretation. Therefore, the Panel's report is subject to examination by the Appellate Body, which must subsequently decide whether to amend, modify, or repeal it after considering the legal questions and interpretations included therein.[16] The primary justification for this clause is that it is consistent with the need to conserve litigation resources, given that the Panel's hearings take place over a more extended period and that the Panel is, therefore, better equipped to conduct in-depth investigations and hearings on the facts supporting the case's trial.[17] As a result of the above-discussed hazy distinction between "questions of law" and "questions of fact" and the absence of a legal text to which to refer in order to define the criteria, which will be covered in more detail later, the appeal procedure can only be started when the parties to the dispute appeal, which is more contentious in practice.

2.4. Procedures for the Functioning of the Appeals Body

Justice in the legal sense requires both substantive and procedural justice. The Appellate Body has been given the authority to develop and interpret procedural matters to fill legal gaps because the DSU cannot contain every dispute resolution rule. The Appellate Working Procedures are a primary guide to the Appellate Body's working methods. The Appellate Body has highlighted that adopting standard operating procedures can make it simpler to follow the norms of due process when addressing cases.[18]

2.4.1. Initiation of appeal proceedings

The Notice of Appeal marks the beginning of the appeals process, but before that, the disputing parties must go through a Panel process and consultation, and a disputing party who is not pleased with the Panel's report may appeal. The parties must submit the written Notice of Appeal within 60 days following the distribution of the Panel's findings, and there are stringent deadlines.

Although it is much simpler for them to do so, the appealing party has the right to withdraw the appeal request at any moment during the appeal's processing. Generally, the respondent and any additional disputing parties may join the appeal within 25 days of filing the notice of appeal, and the appellant and respondent must each provide the Secretariat with the necessary evidence within ten days of submitting the notice of appeal. In cases involving unlawful subsidies, the deadlines for filing, replying to written comments, and joining the appeal have been shortened to 5 days, 7 days, and 12 days, respectively.

2.4.2. Distribution and adoption of reports of the appellate bodies

In terms of the time frame during which the Appeals Chamber preside over the oral hearing, appeals are typically handled within 30 days following the notice of appeal's filing. This time frame was cut down to 15 days for prohibited subsidies. After hearing both sides, the Appeals Chamber will issue a ruling or, in extreme cases, dismiss the appeal if the disputing parties do not submit their arguments or attend the oral hearing within the allotted time.

The Appellate Body uses reverse consensus to decide cases, which is an effective strategy for minimizing the potential meddling of powerful States in the Appellate Body's ordinary decision-

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making. Members of the Appellate Body surreptitiously express their ideas while making every attempt to reach a consensus.[19]To decide whether to approve the Appellate Body's report, the Dispute Settlement Body must meet within 30 days of the oral hearing. In general, the Appeals Body members must reach a unanimous conclusion about the report from the Appellate Body whenever possible.

3. Legal Issues in the WTO Appellate Body Crisis

The WTO Appellate Body was suspended due to the United States' willful obstruction and unilateral acts. It is essential to analyze the arguments the United States put out to resolve the impasse of the WTO Appellate Body. The WTO Appellate Body Report, which outlines the fundamental shortcomings of the Appellate Body, was released by the Office of the United States Trade Representative (USTR) on February 11, 2020. The Report lists three legal factors related to the Appellate Body suspension scenario.[20]

3.1. Trial overruns

Under Article 5 of the Understanding, an appeal must be reported to the Dispute Settlement Body and the Secretariat within 60 days of the disputeant notifying them of the appeal. If the Appellate Body cannot finish the report by the due date, the Dispute Settlement Body shall be notified in writing of the reasons for the delay and the projected submission date. Regardless of the reason, the appeal process cannot last more than 90 days.[21]

Before 2011, the Appellate Body did strictly follow the requirement, but since the 2011 "United States-Tire (China)" case[22], the Appellate Body no longer obtains the consent of the parties to hear cases beyond the deadline[23], and in the last five years, the Appellate Body has often issued reports far beyond 90 days. Being found before 2016, the occasional delayed trials of the Appellate Body should be condemned. However, the frequency of delayed trial after 2016 is reasonable since 2016, under the continuous obstruction of the United States, the number of members of the Appellate Body is decreasing every year, while the international trade activities and disputes are increasing, and the appeal rate is also increasing today. The members of Appellate Body are decreasing continuously, which makes it even more difficult to ensure that cases are completed on time. As of August 2023, 29 cases in the appellate body have passed the hearing deadline because of the ongoing vacancies in the Appellate Body.

The Appellate Body has struggled in recent years to finish cases' trials within the allotted time for various reasons. First, as a result of increased trade friction brought on by economic globalization, the number of cases submitted by WTO members to the WTO for dispute settlement increased significantly, which means that more cases are now entering the appeals process .[24]

Second, many cases are brought before the Appellate Body, and the merits of disputes brought before the WTO are getting more complicated. Nevertheless, there needs to be more members of the Appellate Body to handle the many complex cases in the short amount of time available.[25]

The Appellate Chamber is collegial, and members of the Appellate Body are required to process appeals within 90 days, according to the DSU. It is challenging to finish the case in a high-quality manner within the limited 90 days because, in reality, even though each case is only formally considered by three members of the Panel, the other four members are also involved in handling the case. This results in an unseen increase in each member's workload of the Appellate Body.

Fourth, even though most of the Appellate Body members work part-time jobs, most already do so. [26] Despite this, it is challenging to finish the processing of appeals cases on time with little time and effort, given the growing amount and complexity of materials presented by member States to the Appellate Body in recent years.

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In addition, the WTO does not restrict the conditions of appeal, and the disputing party can choose whether to exercise the right of appeal by itself, which protects the disputing party's right of appeal, but increases the possibility of indiscriminate litigation.

Under the combination of the above reasons, the appellate Body will inevitably hear cases beyond the deadline occasionally.

3.2. Problems in the scope of the review

3.2.1. Excessive powers of the Appellate Body to review questions of fact

As noted earlier, the Appellate Body's review concentrates on the legal arguments made by the parties to a dispute that a Panel has considered and the legal conclusions the Panel reached. Panels are tasked with examining whether the dispute's facts and a nation's domestic law adhere to the WTO agreements as part of the WTO dispute settlement procedure. After that, the Appellate Body determines whether the Panel's assessment of the legal issue was correct and appropriate. In this process, the former are accepted as "questions of fact", whereas the latter are frequently accepted as "questions of law". It can be challenging to distinguish between the two issues because there are no standards for doing so in the DSU and because of some overlap. Because it must correctly and appropriately separate the two issues to assess whether it has the jurisdiction to review, the Appellate Body is not in a position to ignore this issue in its consideration of the case.

To address this matter, the Appellate Body clarified the two EC Meat and Product Measures. According to the Appellate Body, while the Panel's objective assessment of the facts and its determination of whether a particular fact is compatible with the treaty are questions of law, determining particular circumstances in this case, such as the time and location of an event's occurrence, are questions of fact.[27] However, due to the rapid growth of international trade, it is difficult to clearly define the intertwined and interwoven factual and legal issues in most cases, making this definition an insufficient reference for the screening of the issues above in practice. After this case, settling the debate over this issue in practice is still challenging, even with additional justifications in cases like US-Upland Cotton, Chile-Alcoholic Beverages, and India-Patents.[28]

3.2.2. Handling of unresolved issues in Panel reports by the Appeals Body

It is also crucial to remember that, concerning the Appellate Body's jurisdiction to consider a matter, even if the Panel's factual conclusions need to be changed, the Appellate Body cannot remand a matter. However, a Panel may frequently disregard factual and legal concerns that can be resolved by looking at only a portion of the relevant facts in a dispute to uphold the principle of judicial economy. However, the application of this principle may be overly broad in practice because the principle of judicial economy is not expressly stated in the law. Additionally, due to the complexity of global economic and trade activities and the growing burden of adjudication on the Panel, inevitably, some matters that ought to have been decided are not decided for accidental or other reasons. In these circumstances, the Appellate Body must choose between "completing the legal analysis" and overturning the Panel's decision to put the subject back on the table.[29]

In numerous cases, the Appellate Body has already assessed legal issues that the Panel should have addressed. These evaluations violated the contesting parties' ability to appeal the matter, which the DSU and related agreements did not authorize, which caused member discontent. When the Appellate Body assesses a legal matter that still requires a Panel's resolution in conformity with the WTO's restrictions on the Appellate Body's authority, it performs the duties of the Panel.[30] The resulting report lacks a legal basis because such "legal analysis" is outside the Appeals Body's statutory review scope. Completing the legal analysis typically increases the weight of the Appellate Body's hearings, making it more challenging to complete such hearings by the deadlines outlined in the statute. It

DOI: 10.54254/2754-1169/89/20231471

seems doubtful that the Appellate Body would choose the second choice and overturn the Panel's decision. This would make the efforts of the Panel and the Appellate Body futile and result in a significant waste of human resources because the issue would still need to be solved. If the disputing parties wanted to resolve the matter, they would have to restart the dispute, which would be a massive waste of their time, resources, and other costs.

3.2.3. Ancillary Legal Opinions Issued by Appellate Body

The United States claims that the Appellate Body has sometimes devoted more than half of its findings to lengthy obiter dicta or advisory conclusions that are not required to settle the issue. The majority of these decisions, which are needless, involve the Appellate Body concluding legal assessments of in question expired legislation and issuing legal interpretations and recommendations that go beyond the parameters of the finding. The appellate body is burdened by these pointless obiter dicta, which raises the possibility that cases will be considered after their scheduled time has passed.

According to the European Union, China, Japan, and other members, although the Appellate Body should not be allowed to issue unnecessary opinions, there is currently no uniform standard for determining whether the Appellate Body's decisions are necessary, so members should improve their communication to encourage the improvement of the relevant standard. The academic research on this topic is closely related to the discussion of judicial activism, and further analysis reveals that Members' differing expectations of the Appellate Body's decision-making style are the root of their disagreement on this issue. In any case, the Appellate Body's discretion should be used following the WTO Agreements.

3.3. Precedents for Appellate Body Decisions

In domestic legal systems, precedent-following happens regularly. Its primary significance is that a later case should be handled in the same manner as an earlier case where it involves issues fundamentally the same as or comparable to those in the earlier case, i.e., the earlier case has a binding effect on the later case. However, international law does typically not apply stare decisis.

Under the WTO Agreement and the relevant DSU rules, the Ministerial Conference, General Council, Panel, and Appellate Body are the central bodies interpreting WTO law. The latter two's legal interpretations are particular in their handling of each situation individually, much like the judicial interpretation of domestic law, which only applies to specific instances. Only the legal interpretations made by the first two belong to the authoritative interpretation, similar to the legislative interpretation in the sense of domestic law. In domestic legal systems, precedent-following happens regularly. Its primary significance is that a later case should be handled in the same manner as an earlier case where it involves issues fundamentally the same as or comparable to those in the earlier case, i.e., the earlier case has a binding effect on the later case. However, international law does typically not apply stare decisis.

In order to prevent the arbitrary growth of the significance of individual interpretations, a phrase like that takes into account the requirement for members to have control over how the law is construed. No determination reached during the dispute resolution process may change the relationship between rights and obligations under the WTO Agreement, according to Article 3, Paragraph 2 of the DSU.[31] As a result, when altering how the rights and obligations of WTO members relate to one another, this "law-making" violates Article 3, Paragraph 2 of the DSU in situations where the Appellate Body self-identifies with the precedent-setting nature of its decisions.

Since the interests of the organization's members had to be balanced for it to become law, several WTO provisions include ambiguous language. The Appellate Body shall interpret the contested articles by other means in the actual trial, with an essential basis being Articles 31 and 32 of the

DOI: 10.54254/2754-1169/89/20231471

Convention on the Law of Treaties. This is because the WTO-covered agreements do not identify the law that shall regulate the interpretation of the law.[32]

The Panels and the Appellate Body's interpretations should only be binding on specific instances under the general international law principles. However, the Panels frequently consult prior Appellate Body decisions in related cases to avoid having their reports reversed. When examining later cases, the Appellate Body frequently turns to the line of reasoning from related earlier judgments, which results in the presence of "precedents".It would also be an invasion of the member parties' sovereignty and interests to use the prior jurisprudence at this time, given that preserving objectivity in the Appellate Body's "law-making" behaviour is challenging. Additionally, some WTO members were displeased with the legal interpretation of the prior instances because of the absence of strict theoretical backing.[33]

Although many subsequent judgments in WTO trial procedure have cited earlier decisions, this does not imply that they represent binding precedent in the sense of case law; instead, these earlier cases are just references to the trial of the later cases without requiring binding force. The distinction that needs to be kept in mind is that, even though WTO law does not mandate following precedent, because many prior cases have resulted in judgments of cases after demonstration, if a particular line of reasoning through many years of repeated practice, and members of the formation of a sizable range of legal certainty, then at this point customary law is being formed.

Although WTO legislation does not clearly state the legal foundation for its interpretation, the Appellate Body has used Article 31 of the Convention on the legislation of Treaties as the appropriate law of legal interpretation. This was done by applying Article 3, Paragraph 2 of the Understanding, as in the United States Gasoline Standards case.[34]The WTO Agreement is also mentioned in Article 3, Paragraph 2 of the DSU.[35] It is probable that when the Appellate Body mentioned the earlier decision, it followed precedent. It is merely researching the subject in line with accepted worldwide standards.

4. Reform of the Appellate Body

4.1. Reform of the duration of hearings

The following ideas, from Japan, Australia, and Chile, address the 90-day standard by strictly enforcing the 90-day timeframe for review by the Appellate Body and are, therefore, more representative of the lines of reform about hearing length. The Thailand plan further recommends that all appeals heard by the Appellate Body should be concluded within the allotted period [36] for hearings. The 14-nation proposal from China, Europe, and Canada calls for changing the 90-day norm.[37] Honduras, on the other hand, is adaptable and, generally speaking, prefers that the Appellate Body be given additional time to hear cases, even if it still abides by the current 90-day time limit. However, it advises that vacation days and the time required for report translation be removed from the 90-day time limit.[38]The members' proposals differed greatly; one group demanded strict adherence to the original deadlines and the status quo, while the other suggested extending the trial period because the original deadlines allowed for an excessively brief period for case resolution.

4.2. Reform of the scope of the Appellate Body review

Japan, Australia, and Chile have argued that the Appellate Body is ineligible to judge matters of fact, including those relating to the interpretation of domestic law, and that because this is a matter of fact, it is ineligible to do so. Chile further argued that WTO members should refrain from filing appeals with the Appellate Body that fall outside their areas of expertise and emphasized that Panels had established thorough fact-finding procedures and methods through years of experience, allowing for

DOI: 10.54254/2754-1169/89/20231471

the fundamental resolution of factual issues at that stage. Chile also argued that any dispute resolution body should strike a balance between fairness and efficiency in the consideration of a case and the merits.[39]

On this issue, Canada suggested that consideration could be given to introducing certain disputes or issues into alternative dispute resolution (ADR) and that the Appellate Body should be guided by certain constraints to avoid expanding the scope of its review.[40] Of the reform proposals, the Canadian proposal is more flexible than the others in that it proposes alternative dispute resolution paths to appeal, but has the disadvantage of potentially marginalizing the Appellate Body. The reform suggestions all aim to establish and clarify that the Appellate Body lacks factual review authority and that the meaning of domestic law, in general, is not covered by its purview. What the Appellate Body should do when a Panel's conclusions of fact are insufficient is not covered by the current recommendations.

The Appellate Body's conclusions regarding obiter dicta should only be dispute-specific, according to the joint proposal from Brazil, Paraguay, and Uruguay. It should also refrain from making noteworthy observations outside the bounds of those conclusions that could impact the recommendations or decisions of the Dispute Settlement Body. [41] According to Chile, the Appellate Body is not entitled to issue judgements on any legal questions about WTO agreements, and the Dispute Settlement Body's recommendations and conclusions are governed by Article 3, Paragraph 2 and Article 19, Paragraph 2 of the DSU, respectively;[42] The Joint Proposal by Europe, China, Canada, and Fourteen Other Countries emphasizes that members should restrict their opinions when expressing them to what is necessary for the resolution of conflicts in order to address the issue of needless obiter dictum.[43] The Brazilian proposal is more practical because it uses the scope of the findings as a criterion for characterizing legal opinions. As seen from the proposals above, there is a fair amount of agreement among members on this issue, i.e., members believe that unnecessary legal opinions should be avoided.

4.3. Reform of the issue of precedents

Regarding the proposal on the subject of precedent, Honduras' position is more accommodating and offers three options for resolving the matter: method one is to maintain the status quo; method two is to forbid the use of any precedents; and method three is to take a potentially middle ground where the issue of how the law is interpreted in the reports of the appellate bodies and whether it can serve as a precedent is decided by consensus of the mem[44] Contrarily, the proposals from Japan, Australia, and Chile explicitly state that the Appellate Body and Panels may individually interpret WTO provisions and that the Appellate Body's view of those articles does not set a precedent.[45]Contrarily, the Joint Proposal of Brazil, Paraguay, and Uruguay proposes that earlier decisions of the same kind bind neither the Appellate Body nor the Panels and that subsequent cases only be taken into consideration if earlier decisions of the same kind are sufficiently persuasive to significantly raise the reasonable expectations and confidence of WTO members in the case at hand.[46] On the whole, judging from the existing proposals, members agree that the decision of a prior case is not mandatorily binding on a subsequent case. The proposals of members such as China, Honduras, Canada, India, Brazil, Japan, Australia, and Chile all address this issue. At the same time, however, it should be noted that, as mentioned in the above-mentioned proposal, even if precedents are not binding, their relevance to similar cases should be respected.

5. Conclusion

The Appellate Body's obligations include protecting the WTO's multilateral trading system and facilitating the equitable resolution of trade disputes. Its cases contributed to the growth of

DOI: 10.54254/2754-1169/89/20231471

international law and served as significant resources for the work of other international bodies. Although the United States' challenges and obstructions are mostly to blame for the WTO Appellate Body's near paralysis, the issues with the Appellate Body itself must be considered when determining the cause.[47]The Appellate Body will be eliminated if the WTO does not dramatically alter the global economy, trade pattern, reform, and optimization. The WTO has to be altered immediately as a result.

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