

# WTO: 163 countries agree to make changes in rules governing trade dispute resolution

The decision is seen as a move to placate the US to keep the Appellate Body afloat

**D RAVI KANTH**

Geneva, December 1

In an unusual development on Friday, 163 countries agreed to make comprehensive changes to the rules governing the resolution of trade disputes merely to placate one member – the US – for keeping the Appellate Body afloat, trade envoys said.

The Appellate Body, which is the highest adjudicating court for global trade disputes will become dysfunctional on December 11 when it will be reduced to one member from the mandatory minimum of three members. The US has blocked the selection process for filling six vacancies at the AB for the past two years.

To appease the US, a draft General Council decision with comprehensive changes in the rules governing dispute settlement understanding was finalised on Friday. The draft decision makes several amendments to the rules in the DSU as per the US' demands.

At the informal meeting of trade envoys on Friday, the chair for the dispute settlement body Ambassador David Walker presented the draft GC decision that states unambiguously, as per the US' demand, that "the Appellate

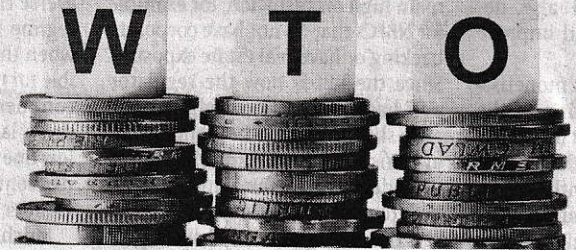
Body has, in some respects, not been functioning as intended under the Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU)".

The three-page restricted draft decision, if approved at the upcoming GC meeting on December 9, can be used by the US to claim that the WTO members have finally agreed to its long-stated complaint that the AB has failed to adhere to the DSU provisions in some trade disputes, said a trade envoy, who asked not to be quoted.

## Central importance

The draft decision emphasises that "the central importance of a properly functioning dispute settlement system in the rules-based multilateral trading system, which serves to preserve the rights and obligations of members under the WTO Agreement and ensures that rules are enforceable."

More important, it contains several amendments as per the US demands on what ought to be "transitional rules for outgoing Appellate Body members", "the 90-day rule for completing the AB reports" (including positive consensus that any member to the dispute can decide



The draft decision makes several amendments to the rules governing dispute settlement at the WTO as per the US' demands.

whether to go ahead or not), "scope of appeal", "advisor opinions", "precedent", "overreach" and "regular dialogue between the DSB and the Appellate Body."

The US managed to secure sweeping changes in the functioning of the Appellate Body as per its demands for free and without paying any price to other 163 countries, said a trade envoy.

Yet, there is no guarantee that the US would approve the draft GC decision when it comes up at the GC meeting as Washington insists that there has to be a discussion as to how the Appellate Body committed these mistakes from the beginning, said a trade envoy from an industrialised country.

## Filling up vacancies

The US is not ready to lift its blockage for launching the selection process for filling the six vacancies at the AB despite

securing the substantial changes in the AB's functioning, the envoy suggested.

The AB will become dysfunctional on December 11 when it would be reduced to one AB member, who will retire in November 2020. 117 countries had appealed to the US last week to lift the blockage for launching the selection process for filling the six vacancies.

Last week, the WTO Director-General worked out an arrangement that would limit the expenses for the three AB members at CHF 100,000 for adjudicating a trade dispute concerning plain package tobacco dispute between The Dominican Republic and Honduras on the one side, and Australia on the other.

However, members disapproved the Director-General's arrangement on grounds that it would amount to "differential" and "discriminatory" treatment.