

## **Crisis in WTO's Appellate Body**

### **What is the issue?**

Over 20 developing countries recently met in New Delhi to discuss ways to prevent the World Trade Organization's dispute resolution system from collapsing.

### **What is the WTO's Appellate Body?**

- The Appellate Body of the WTO was set up in 1995 and is a standing committee of 7 members.
- It presides over appeals against judgments passed in trade-related disputes brought by WTO members.
- Over 500 international disputes had been brought to the WTO and over 350 rulings had been issued since 1995.
- With this, WTO's dispute settlement mechanism is one of the most active in the world.

### **How does it work?**

- Countries involved in a dispute can approach the Appellate body if they feel the report of the panel set up to examine the issue needs to be reviewed on points of law.
- The Appellate Body can uphold, modify, or reverse the legal findings of the panel that heard the dispute.
- Between 1995 and 2014, around 68% of the 201 panel reports adopted were appealed.
- Countries on either or both sides of the dispute can appeal.
- The Appellate Body has so far issued 152 reports.
- The WTO's dispute settlement procedure is vital to ensuring smooth international trade flows.
- The reports, once adopted by the WTO's disputes settlement body, are final and binding on the parties.

### **What is the ongoing crisis?**

- Over the last 2 years, the membership of the Appellate Body is down to just 3 persons instead of the required 7.
- This is because the United States has been blocking appointments of new

members.

- It also stalls the reappointments of some members who have completed their four-year tenures.
- The U.S. believes that WTO is biased against it, and is thus blocking appointments.
- Two of the three members will complete their tenures in December, 2019, leaving the body with just one member.
- Notably, at least 3 people are required to preside over an appeal.
- If new members are not appointed to replace the two retiring ones, the body will cease to be relevant.

### **What are the implications?**

- The understaffed appeals body has been unable to stick to its 2-3 month deadline for appeals filed in the last few years.
- The backlog of cases has prevented it from initiating proceedings in appeals that have been filed in the last year.
- The three members have been proceeding on all appeals filed since October, 2018.
- Unless the issue is resolved, the trade body could become defunct.
- Consequently, countries locked in international trade disputes will be left with no forum for recourse.
- The US is directly involved in more disputes than other WTO member countries.
- But several countries, including India, enter disputes as third parties.
- **India** - India has so far been a direct participant in 54 disputes, and has been involved in 158 as a third party.
- In February 2019, the appellate body said it would be unable to staff an appeal in a dispute between Japan and India.
- This was over certain safeguard measures that India had imposed on imports of iron and steel products.
- The panel had found that India had acted “inconsistently” with some WTO agreements.
- India had notified the Dispute Settlement Body of its decision to appeal certain issues of law and legal interpretations.
- But it has so far been unable to review at least 10 appeals that have been filed since July 2018.

### **What is the larger concern?**

- With the Appellate Body unable to review new applications, there is already uncertainty over WTO’s dispute settlement process.

- If the body is declared non-functional, countries may be compelled to implement rulings by the panel despite concerns with it.
- If a country refuses to comply with the panel's order, it will run the risk of facing arbitration proceedings initiated by the other party.
- This does not bode well for India which is facing a rising number of dispute cases, especially on agricultural products.
- Also, the overall weakening of WTO framework could have the effect of undoing over two decades of efforts to avoid protectionism in global trade.
- This is a major concern currently, because trade tensions such as between the US and China and the US and India, are on the rise.

### **What is the way forward?**

- New appointments to the Appellate Body are usually 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 have committed to working together to end the current impasse.
- This group, which includes India, can submit or support a proposal to the above effect, helping to get new members on the Appellate Body by a majority vote.

**Source: Indian Express**

