

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