

Global Dispute Settlement

Why in news?

Recently concluded G-20 Declaration reiterated the need to pursue reform of the World Trade Organization (WTO) to ensure a fully and well-functioning dispute settlement system accessible to all members by 2024.

To know about the key takeaways from G20 summit click [here](#)

World Trade Organization (WTO)

- WTO is the only international organization that deals with the rules of trade between countries.
- **Establishment**- It was created in 1995 superseding the 1947 General Agreement on Tariffs and Trade (GATT).
- **Marrakesh Agreement**- WTO officially commenced under the Marrakesh Agreement, replacing the General Agreement on Tariffs and Trade (GATT).
- **Creation**- It was created by Uruguay round of negotiations and established in 1995.
- **Members**- The WTO is run by its 164 members representing 98% of world trade.

| WTO | |
|--------------------|--------------------------|
| Founded in | 1995 |
| Headquarters | Geneva, Switzerland |
| India's membership | India is a member |

- **Decision making**- Unlike other organisations, such as the IMF or World Bank, WTO does not delegate power to a board of directors or an organizational chief.
- All decisions are taken through consensus and any member can exercise a veto.
- **General Council**- It is the top day-to-day decision-making body that has representatives from all member governments and also meets, under different rules, as the Dispute Settlement Body.

What is WTO's dispute settlement system?

- **Crown jewel**- Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy.
- **Rules based system**- Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced.
- **Rule of law**- The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules.
- **Two tier system**-
 - Dispute settlement system

- Appellate body- It hears appeals from WTO panels.
- **Appellate body**- From 1995-2019 it has upheld the international rule of law by holding powerful countries accountable for international law breaches.
- **ISDS**- Investor State Disputes Settlement (ISDS), a part of Bilateral Investment Treaty is the principle means to settle international investment law disputes.
- **International arbitration**- The ISDS mechanism permits companies to drag governments to international arbitration without exhausting the local remedies.
- **Compensation**- It also allows them to claim huge amounts as compensation citing losses they suffered due to reasons, including policy changes.
- **Investment pact**-The contentious ISDS mechanism already has been incorporated by investment pact by the EU and Canada.
- **India in ISDS**- India has had a chequered history with ISDS, with 5 adverse awards: 4 in favour, and several pending claims.

A BIT is an agreement between two countries regarding promotion and protection of investments made by investors from respective countries in each other's territory.

What are the benefits of appellate review?

- **Rulings**- The dispute settlement system has issued over 493 rulings since its establishment in 1995 whereas International Court of Justice (ICJ) has dealt with only around 190 cases since 1947.
- **Crucial role**- The appellate body has been crucial in ensuring coherence and predictability in rulings, ensuring confidence in the WTO dispute settlement process.
- **Critical facet of ISDS mechanism**- It operates through ad hoc or one-off arbitration tribunals without any appellate review, it is also present in India's BITs and few free trade agreements.
- **Absence of an appellate review mechanism**- It has meant that inconsistent and incoherent decisions and legal reasoning dot the landscape of international investment law.
- This has caused instability and improbability for states and foreign investors, making the regime chaotic.
- **Rectify errors**- An appellate review mechanism will allow for rectifying errors of law and harmonising diverging interpretations.
- **Certainty**- It will have the power to uphold, modify, or reverse the decision of a first-tier tribunal and thus bring coherence and consistency, which, in turn, will infuse predictability and certainty into the ISDS system.
- **Better than annulment proceedings**- The appellate mechanism will also be superior to getting an ISDS award set aside on limited procedural grounds in a court at the seat of arbitration.

Annulment proceedings only apply to arbitrations administered by the International Centre for Settlement of Investment Disputes — an institution India is not a member.

It can only address limited issues, such as the improper constitution of an arbitration tribunal or corruption but cannot correct errors in legal interpretation.

What are the issues with WTO's dispute settlement body?

- **Dysfunctional**- WTO's dispute settlement system, conceived as a two-tier panel cum appellate body structure, has been dysfunctional since 2019.
- The USA has blocked the appointment of appellate body members.
- The U.S. seems inclined towards the dejudicialisation of international trade law, an approach whereby countries take back control from international courts and tribunals.
- **Adjudication**- However with the adjudication in national courts, the appellate review process at the international level serves as an essential check on the interpretation and application of law and ensures consistency.

What is India's stand?

- **Article 29 of BIT**- Although India has not made a formal statement, India presumably supports the idea of an appellate review in the ISDS because *Article 29 of the Indian model BIT* talks of it.
- **India's interest**- Given India's concerns about inconsistency and incoherence in the ISDS system, supporting the creation of an appellate review mechanism will be in India's interest.
- **Taking a stand** - India will have to take a stand during the ongoing investment treaty negotiations with the European Union, which is championing the creation of an appellate review mechanism for investment disputes.
- **Investor confidence**- Since India's quest has always been to establish a rule-based global order, it should support an appellate review which will usher in greater confidence for states and investors in international investment law.
- **Restore WTO appellate body**- India should also push for the restoration of the WTO appellate body towards achieving the goal of a fully and well-functioning dispute settlement system at the WTO.

References

1. [The Hindu- Global dispute Settlement India and appellate Review](#)
2. [WTO- About Dispute Settlement](#)