

WTO Public Forum 2021

CUTS International Session

**“Time to Agree, Not Disagree: Imperative of Reforming the WTO’s
Appellate Body”**

**11:30-12:30 (Geneva time), Room: VR1 (Virtual Room), Friday, 1st
October, 2021**

FORMAT

Opening remarks (6 minutes): Pradeep S. Mehta

Panel presentation (24 minutes in total):

- 1. Anders Ahnlid (8 minutes): An EU perspective on Appellate Body (AB) reform.**
- 2. Juliana Peixoto Batista (8 minutes): A survey of the issues and the need for AB reform.**
- 3. Stephen Olson (8 minutes): US perspectives on AB reform and way forward.**

Panel discussion and Q&A (within 30 minutes)

Opening Remarks - PSM

It will soon be 2 years since the WTO's Appellate Body ceased to function. There are currently 21 Panel reports that have been appealed "into the void" since the Appellate Body became defunct.

WTO members and groups of countries have submitted various proposals for reform of the Appellate Body. The EU has led an initiative to establish a multi-party interim appeal arrangement (MPIA) which uses arbitration as the second tier of dispute settlement, as an alternative to the Appellate Body. The Walker Process, led by Amb. David Walker of New Zealand, has also made efforts to address the issues relating to Appellate Body functioning.

On the whole, while there seems to be intent to resolve the crisis and resurrect the Appellate Body, it has not been accompanied by either political will or action.

In a recent meeting between the USTR and the WTO D-G, while there was agreement that MC12 needs to deliver outcomes on issues like fisheries subsidies, there was no specific reference to resolution of the Appellate Body crisis. The US view seems to be that first the existing trade rules need to be overhauled, and only then can an Appellate Body function and decide on violations of those rules.

However, we believe that a working, two-tiered dispute settlement mechanism with an Appellate Body at its centre is essential for a well-functioning multilateral trading system under the WTO.

It brings rule predictability and security, which is the foundation of the WTO system. We also believe that a well-functioning dispute settlement mechanism will in turn inspire fresh efforts towards negotiations and modernization of the rules.

The WTO's crown jewel has become more a crown of thorns in the past few years. We need to find a way to get the sheen of the crown jewel back.

Our session today will examine the "Imperative of Reforming the WTO's Appellate Body". Our distinguished panellists will share a range of perspectives on the Appellate Body crisis, the urgent need for reform, and the way forward.

Each of our panellists will get 8 minutes to make their initial remarks, after which we will have a panel discussion where I will pose questions to the panellists. At the end, we will take a few questions from the participants.

In their remarks, I would request Anders to provide an EU perspective on Appellate Body reform, Juliana to survey the range of issues involved in Appellate Body reform, and finally, Stephen to provide some US perspectives on Appellate Body reform and the way forward.

Questions for Panel Discussion

- 1. Can we expect any forward movement and any outcome on AB reform at MC12? Is the EU working with the US on any joint proposal to resolve the AB stalemate? [Anders Ahnlid]**
- 2. In the absence of a functioning dispute settlement system, is there any incentive for WTO members to even attempt to modernise the rulebook? [Anders Ahnlid]**
- 3. The various proposals for AB reform made by WTO Members focus on legal amendments to the Dispute Settlement Understanding (DSU). How far can a legalistic approach help solve an essentially political challenge? [Juliana Peixoto Batista]**
- 4. What role can the middle powers in the WTO play towards bridging differences and moving forward on AB reform? [Juliana Peixoto Batista]**
- 5. Is it fair on the part of the US to mix the issue of the Appellate Body's working with the larger WTO reform agenda? [Stephen Olson]**
- 6. The US has already identified its areas of concern about the functioning of the Appellate Body. Why does it remain reluctant to engage on the way forward to find solutions? [Stephen Olson]**