

WHY SHOULD THE WTO'S DISPUTE SETTLEMENT SYSTEM BE BACK ON TRACK?

Day/Date: Tuesday, 27 February

Time: 1030hrs to 1200hrs (Abu Dhabi time)

Venue: Room 1, NGO Area, Abu Dhabi National Exhibition Centre (ADNEC)

Background and Context

The WTO's dispute settlement system (DSS) has been called its crown jewel. A two-tiered system with a standing Appellate Body (AB) as a final arbiter of trade disputes between WTO members has been central to the DSS since 1995. However, the second tier of the DSS has been paralysed since 2019, with the United States (US) blocking all new appointments to the Appellate Body (AB), citing procedural and substantive issues. Consequently, the AB has been disbanded, and more than 30 panel rulings have been 'appealed into the void', leaving the disputes in suspended animation.

The inability of a multilaterally accepted AB to provide definitive rulings severely jeopardizes the goal of providing a secure and predictable international trading system. While some WTO members share US concerns about the AB and several others have expressed their willingness to discuss the issues, differences in opinions on the AB's role hinder progress.

Efforts to overcome the deadlock have included informal processes to resolve the differences among members on this issue. Following a year of facilitated informal negotiations ("Walker Process"), a draft decision was presented on the AB's functioning. However, it failed to gain consensus. Simultaneously, the European Union and other countries have introduced the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) to provide an alternate appeals mechanism through an arbitration procedure until the AB starts functioning again.

Acknowledging the severity of the situation, Ministers at the 12th Ministerial Conference (MC12) committed to having a fully and well-functioning dispute settlement system accessible to all WTO members by 2024.

Taking the MC12 mandate forward, informal meetings related to dispute settlement reform have been underway since. The informal process is being driven by interest-based, rather than position-based negotiations. Now, in the run up to and at MC13, efforts are ongoing to close text-based discussions and secure outcomes. Against this backdrop, this Session will delve into the future trajectory of the AB and the WTO's dispute settlement system.

Anchoring Questions

1. Any negotiated DS reforms must consider several perspectives, including how a reformed Appellate Body should operate. What should be the trajectory of reform – first, resolve procedural issues, and then move on to substantive ones, or discuss them in tandem?
2. The need for a well-functioning dispute settlement system becomes even more crucial in light of growing geopolitical tensions and climate and developmental concerns. What measures should be introduced while reforming the dispute settlement system to address these emerging issues?
3. What are the best and worst-case outcomes on DS reform we can expect at MC13? What will they mean for the future of the WTO dispute settlement mechanism?