



## THE SECOND INTERNATIONAL CONFERENCE ON SCIENTIFIC, ECONOMIC AND SOCIAL ISSUES

### DIGITAL TRANSFORMATION, COOPERATION AND GLOBAL INTEGRATION IN THE NEW NORMAL

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## WTO APPELLATE BODY REFORM IN THE CONTEXT OF ESCALATING GEOPOLITICAL TENSIONS

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### **Abstract:**

*In today's world, with escalating tensions in the trade relations among major economies worldwide, the surge in retaliatory trade measures, economic sanctions, and the rise of protectionism, the role of the WTO in resolving disagreements, conflicts, and trade disputes among its members has become increasingly crucial. However, in recent times, the dispute settlement mechanism of the WTO seems to be paralyzed due to the suspension of operation and crisis of the WTO's Appellate Body, which is responsible for ensuring consistency and predictability in the application of WTO law, and the limitations of "negative reports" issued by the Dispute Settlement Body. Confronting this reality, Dr. Okonjo-Iweala, Director-General of the WTO, emphasized during the World Government Summit (WGS) 2023 on February 13 in Dubai, that one of the priorities of the WTO in the near future is to establish a fully functioning and effective two-tier dispute settlement system that all WTO members can access by 2024. Therefore, this article will: (i) clarify the role of the Appellate Body in the WTO dispute settlement system; (ii) analyse causes for suspension of operation of the Appellate Body and its impacts on the WTO dispute settlement system; (iii) propose solutions to contribute to the improvement of the Appellate Body's functioning.*

**Keywords:** *WTO, dispute settlement mechanism, suspension of operation, crisis, appellate body, reform*

### **1. Introduction**

Nowadays, with the outbreak of the COVID-19 pandemic and the trade tensions among some major world economies (such as the US and China, Russia and Western countries), the tremendous increase of political conflicts around the world (such as Russia-Ukraine), global supply chains are at risk of being disrupted, and, above all, the world is facing a trend of deglobalization and the rise of protectionism [Simon, 2022]. As a natural consequence, global trade in 2023 is predicted to grow by only 1.7%, a significant decrease compared to the 2.7% growth in 2022 [WTO, 2023]. In light of these circumstances, the role of the WTO, as a global trade organization with the objectives of "substantially reducing tariffs and other barriers to trade," "eliminating discriminatory treatment in international trade relations," and "providing an effective dispute settlement mechanism to prevent trade wars," is increasingly important and urgent [Adekola, 2019].

However, the reality shows that the role of the WTO is becoming increasingly blurred as trade wars among major economies become more complex. Unilateral retaliatory trade measures, contrary to WTO commitments, are being implemented on a large scale and have serious implications on global supply chains. Prime examples are the "Trump tariffs" and the "US-China Trade War".

Specifically, in 2018, the Trump administration imposed high tariffs on steel, solar energy panels, washing machines, and aluminum from its trading partners, ranging from 25%, 30%, 50%, to 10%, respectively, citing national security reasons under the Trade Expansion Act of 1962 [Schlesinger et al., 2018]. These tariffs went against the US's tariff concessions commitments under the GATT 1994 agreement and harmed the interests of WTO member countries. However, they are still in effect to this day, except for certain countries that have signed bilateral trade agreements with the US.

Furthermore, on March 22, 2018, the US government, by invoking Section 301 of the Trade Act, imposed tariffs ranging from \$50 to \$60 billion on Chinese goods, including medical devices, satellites, aircraft parts, and weapons, and threatened to impose an additional \$267 billion in tariffs on other Chinese goods, alleging that the Chinese government had conducted wrongful measures infringing upon intellectual property rights and investment activities of the US in China [Caporal, 2018]. In response to the US tariff measures, China also imposed \$110 billion worth of tariffs on US goods imported into China [Chen and Lawder, 2018].

The retaliatory trade measures in the US-China Trade War were carried out without relying on any rules or dispute settlement procedures of the WTO. Specifically, according to Article 23 of the Dispute Settlement Understanding (DSU), *"WTO members, if they find that their trade rights and interests have been violated by other WTO members through an investigation process, have an obligation to bring those member countries to the WTO's dispute settlement body (DSB), rather than taking unilateral safeguard measures or retaliatory trade actions."* However, both the US and China, although they filed complaints with the DSB, did not wait for the DSB to issue rulings and instead unilaterally implemented retaliatory trade measures against each other.

Similarly, several countries (US, Canada, EU, UK, Japan, and Switzerland) have imposed economic sanctions on Russia, such as freezing the assets of certain Russian entities and individuals, restricting exports of dual-use and luxury goods, and imposing import bans or increased tariffs on Russian products like oil, gas, steel, and iron, in response to Russia's invasion of Ukraine on February 24, 2022. These punitive measures may violate WTO principles such as Most-Favored Nation (MFN) treatment and Trade Liberalization (TL) [US. Department of the Treasury, 2023]. Moreover, these sanctions were implemented without going through the WTO's dispute settlement body and without relying on the dispute settlement procedures under the WTO's Dispute Settlement Understanding.

The current situation raises the question of why the WTO's dispute settlement mechanism, once hailed as the *"most effective and successful dispute international adjudication mechanism in the world"* (as of December 31, 2022, over 110 member countries have utilized this mechanism and more than 615 disputes have been requested for resolution) [Bhatia.U.S. (2022)], is failing to fulfill its role in preventing and curbing the escalation of trade wars, retaliatory trade measures, and economic sanctions among WTO member nations.

The 12th Ministerial Conference of WTO member countries identified one of the main reasons for the ineffective functioning and recent neglect of the WTO's dispute settlement mechanism as the inactivity and crisis of the Appellate Body of WTO ("AB") since December 10, 2019, when 4 out of 7 members retired and 2 out of 7 members' terms expired. This inactivity was caused by the United States' blockage of appointment of the remaining 6 out of 7 appellate body members [Ministerial Conference Twelfth Session Geneva, 2022]. According to the provisions of the DSU, the WTO appellate body acts as the highest authority in the WTO dispute settlement process, with the roles of *"clarifying ambiguous points in WTO law"* and *"upholding, modifying, or reversing the panel rulings to ensure the enforceability and binding nature of WTO provisions."* Given its crucial role, the cessation of the AB's operations has had a severe



impact not only on the global order but also negatively affects the majority of WTO member countries, especially developing nations, as the adjudicative body ensuring the enforcement of WTO regulations is paralyzed.

At the World Government Summit (WGS) 2023 held in Dubai, United Arab Emirates (UAE), Dr. Okonjo-Iweala, the Director-General of the WTO, emphasized the goal of building a fully functioning and effective two-tier dispute settlement system that all WTO members can access by 2024. This is one of the important and urgent tasks of the WTO in the near future: reforming the WTO's dispute settlement system, particularly the operations of the appellate body [Ghantous, 2023].

To assist the WTO in fulfilling its mission, this article will clarify: (i) an overview of the WTO's dispute settlement mechanism; (ii) the United States' opposition to the appointment of the AB's members, resulting in the cessation of its operations; (iii) the shortcomings in the functioning of the AB, which is one of the reasons for the US's opposition; (iv) proposed solutions to address the current situation.

## **2. Method and Theoretical Framework**

### **2.1. Method**

This paper adopts desk-review and jurisprudential analysis of several rulings given by the Panel, the Appellate Body and the Dispute Settlement Body of WTO to clarify and identify shortcomings in operation of WTO's Appellate Body in specific and of WTO dispute settlement system in general.

Primary sources such as WTO Agreements concerning dispute settlement mechanism; Decisions of WTO's Minister's Conference; Member Countries' proposals for WTO reform were discussed and critically analyzed.

### **2.2. Theoretical Framework for WTO dispute settlement mechanism**

WTO's dispute settlement activities are carried out by the WTO Dispute Settlement Body ("DSB") in accordance with the procedures set out in Articles 23, Article 24, and Article 25 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Dispute Settlement Understanding ("DSU").

According to the provisions of the GATT 1994 and the DSU, trade disputes between WTO member countries are resolved through a three-step process:

- Consultations: Disputing parties shall engage in negotiations, consultations, and discussions to find a mutually satisfactory resolution to the dispute, without resorting to the WTO exercising its adjudicative powers.

- Hearings: If consultations fail, the DSB may exercise its adjudicative powers through two levels of hearing: panel hearings and appellate review.

- + Panel hearings: Panels, consisting of 3 or 5 members, are established on an ad hoc basis for each dispute. Panels shall assess the validity of the complainant's claims regarding the respondent's alleged non-compliance with WTO obligations based on existing WTO laws. The panel's findings are summarized in a report submitted to the DSB, which helps the DSB make recommendations to the disputing parties.

- + Appellate review: Disputing parties may appeal legal issues in the panel report through a formal written request. The appellate review, conducted by the Appellate Body (AB), is initiated upon such a request. The AB comprises 7 members appointed by the DSB for a 4-year term (renewable once). AB members are selected based on their reputation, expertise in international law, international trade, and relevant areas covered by the agreements. However, the appellate review for each case is conducted by a panel of 3 AB members, independently and impartially. The AB's role is to review legal aspects and interpretations of the law in the panel report, rather than re-investigating the factual aspects of the dispute.

The AB's work results in a report where it can uphold, modify, or reverse the findings of the panel report. The AB report is adopted by the DSB and cannot be objected to or further appealed.

- Enforcement of rulings: After the DSB adopts the Panel's reports or the AB 's reports, the complaining party and the respondent are obliged to implement the recommendations contained in such those reports.

The dispute settlement process aims to provide a fair and transparent mechanism for resolving trade disputes among WTO member countries. It ensures the effective implementation of WTO rules and promotes the stability and predictability of the global trading system.

### **3. Result and Discussions**

#### **3.1. WTO's dispute settlement activities in practice**

From 1995 to date, the WTO has received 612 trade dispute cases among its member countries. Specifically, there have been 598 requests for consultations, of which 365 disputes have been resolved by panels. A total of 265 panel reports on dispute settlements have been issued, including 174 reports that have been appealed and are currently being addressed by the Appellate Body [Yuejiao, Z., 2022]

Among the WTO members, the United States, the European Union (EU), and China have been the most frequent users of the WTO's dispute settlement mechanism (DSM). Specifically, the United States has been involved in 452 dispute cases, with 124 cases as the complainant, 156 cases as the respondent, and 172 cases as a third party. Similarly, the EU has participated in 416 dispute cases, with 110 cases as the complainant, 90 cases as the respondent, and 216 cases as a third party. Likewise, China has been involved in 263 dispute cases, with 22 cases as the complainant, 49 cases as the respondent, and 192 cases as a third party. [WTO, 2022].

This situation can be easily explained considering that both the United States and the EU are developed countries with open economies, and they represent a significant share of world trade. However, a statistic reveals that there are nearly 50 unresolved disputes involving the participation of the United States, the European Union, and China, primarily due to the Appellate Body's inoperability. [WTO, 2022]

#### **3.2. Shortcomings in the functioning of the WTO Appellate Body**

##### **3.2.1 The suspension of the WTO Appellate Body's operation**

###### **a) Causes**

According to the provisions of the DSU, the WTO's Appellate Body is a standing body consisting of 7 members, appointed by the Dispute Settlement Body (DSB) for a term of 4 years and eligible for reappointment only once. The appointment of Appellate Body members must be approved at a meeting of the DSB, which includes member countries' diplomatic officials, through a consensus mechanism. Therefore, the appointment can only be made if no DSB member formally objects.

Since its establishment in 1995, the DSB has successfully appointed a total of 27 members to the AB in accordance with the aforementioned procedures. However, at this point in time, all members of the AB have completed their terms, specifically: Hong Zhao (2020); Ujal Singh Bhatia (2019); Thomas R. Graham (2019); Shree Baboo Chekitan Servansing (2018); Hyun Chong Kim (2017); Peter Van den Bossche (2017); Ricardo Ramírez-Hernández (2017) [WTO, 2023]. In order to address this situation, the DSB has held multiple meetings to approve the appointment of replacement members for those whose terms have expired. However, all of these meetings have been unsuccessful due to formal objections from the United States and several other countries.

Specifically, as follows:

In 2011, 2014, and 2016, the Obama administration of the United States prevented the reappointment of AB members, namely Jenifer Hillman, James Gathii, and Seung Wa Chang. In 2017, the United States once again blocked the appointment of new members to replace Mr. Ramirez-Hernandez, whose two terms had expired. [WTO, 2016]

In addition to the United States, several countries also formally expressed objections to the appointment of AB members, resulting in only one remaining member in the AB since 2019. The appellate function of the AB has been officially paralyzed because, in order to conduct appellate proceedings, the AB must have a minimum of three members. Although the DSU agreement remains in effect, member countries still have the right to appeal, but the AB lacks the ability to address appeal requests. [Eriksson, E., 2023]

#### b) Impacts

The suspension of the AB's operations has also had a significant impact on the two-tier dispute settlement mechanism of the DSB, rendering the DSB's activities ineffective. Specifically:

##### - *The WTO dispute settlement system will be delayed*

Article 16, Paragraph 4 of the DSU stipulates: "*Where a party has notified its decision to appeal, the DSB shall not consider the panel report until completion of the appellate proceedings.*" Therefore, if only one party in a dispute requests an appeal against the ruling made by the AB, the entire WTO dispute settlement process will be interrupted and indefinitely stalled until the AB has the minimum required number of three members or a temporary alternative mechanism is established for the appellate body.

To address this situation, some WTO member countries have developed the Multiparty Interim Appeal Arbitration Arrangement ("**MPIA**") to ensure that the panel report can still be considered through the appellate proceedings. As of now, the MPIA consists of 23 participating members, including 16 original negotiating members (Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, EU, Guatemala, Hong Kong, Mexico, New Zealand, Norway, Singapore, Switzerland, and Uruguay), 3 members who joined when the MPIA was notified to the WTO (Iceland, Pakistan, Ukraine), and 2 members who joined at a later stage (Ecuador, Nicaragua).

However, this mechanism has proven to be largely ineffective, with only 23 out of 164 WTO member countries participating. Up to this point, the MPIA has only been applied to three dispute cases at the WTO, including the cases of Australia versus Canada on liquor retailing measures (DS537), Brazil versus Canada on subsidies to commercial aircraft (DS522), and Costa Rica versus Mexico on import restrictions for avocados (DS524). In all three cases, the MPIA Arbitration Panel has not been established, and the dispute settlement process continues to be delayed [Dubey, R., 2023].

In a research study, Henry Gao concluded that the MPIA has not provided a suitable solution to address the appointment crisis of AB members due to certain deficiencies, shortcomings, and challenges within the MPIA regulations [Gao, H., 2021].

##### - *The WTO legal system will not ensure consistency in the enforcement process.*

One of the crucial tasks of the DSB is to interpret WTO law, ensuring a common understanding of the provisions of WTO agreements among disputing parties. This promotes compliance with binding commitments under WTO agreements and maintains order in the global trading system. Typically, this responsibility is assigned to the Appellate Body, which reviews and resolves disputes between member countries. However, since the Panel is established on a case-by-case basis, the interpretation of WTO law on the same legal issue may vary across different cases, potentially violating the provisions of Article 3.2 of the DSU. Consequently, the establishment of the AB is intended to review divergent and conflicting

interpretations in the panel reports of different disputes, thereby establishing a consistent understanding of a legal issue. The suspension of the AB's operations will create difficulties for members in applying the law and predicting the outcomes of dispute resolution without a clear direction on legal interpretation.

This situation has led WTO member countries to increasingly disregard the dispute settlement mechanism and unilaterally employ protective measures to safeguard their trade interests in disputes.

### 3.2.2. Failure to adhere to regulatory timelines for dispute settlement

One of the key criteria for assessing the success of a trade dispute settlement mechanism is the timeliness of resolving disputes. However, in practice, disputes at the WTO settled by the DSB, the AB, or the Panel have exceeded the allowed timeframe for each stage of the dispute settlement process as stipulated in the DSU.

Specifically, according to the DSU provisions, the timeframe for completing all stages of the WTO dispute settlement process (consultations, panel proceedings, appellate proceedings, etc.) is from 15 to 19 months. However, the actual time taken to resolve WTO disputes has far exceeded the permissible timeframe. For instance:

During the period from 1995-1999, the average time to resolve disputes from the initiation of consultations to the adoption of reports was 705.89 days (23.21 months). From 2007 to 2011, the average time to resolve disputes was 851.34 days (28 months). Since 2011 to 2022, the delay in WTO dispute settlement has worsened, with an average time of 33.83 months to resolve disputes [United States Trade Representative, 2023].

Such the delay is particularly evident in the appellate review process of the AB. Specifically:

According to Article 17.5 of the DSU, the maximum timeframe for the AB to resolve appeals is 60 days from the date one party officially notifies its decision to appeal until the Appellate Body issues its report to the DSB. In complex cases, the appeal process may exceed 60 days, but it should not exceed 90 days in any circumstance.

However, research has shown that only one appeal request was resolved within the prescribed time limit by the AB, while for other cases, the average time to resolve appeal requests was one year. For example, the United States - Large Civil Aircraft - Second Complaint (DS353) was resolved within the period from March 31, 2011, to March 12, 2012 [WTO, 2020], or the EC-Large Civil Aircraft case (DS316) was resolved from June 30, 2010, to May 18, 2011, and concluded on December 6, 2019 [WTO, 2020].

According to the author, the delay and prolongation in the dispute settlement process, in general, and the appeal process, in particular, have several negative impacts.

*First*, the delay and prolongation can make the WTO dispute settlement mechanism less attractive to member countries and businesses. Small and medium-sized enterprises may redirect their business activities to other countries instead of investing in countries where they face trade barriers caused by deficiencies in the trade dispute settlement mechanism.

*Second*, the longer the dispute settlement process is delayed, the greater the opportunity for the violating party to benefit from its wrongful measures. No recommendations or rulings can be enforced until the report of the Appellate Body or the Panel is adopted. As mentioned earlier, according to the DSU provisions in Article 16, the reports of the Appellate Body or the Panel can only be adopted by the DSB once the panel proceedings or appellate proceedings are completed.

Furthermore, the DSU lacks provisions for temporary measures to protect the trade interests of the parties involved while awaiting the final resolution of disputes. Therefore, during the delay period, the

prevailing party continues to suffer economic losses while the losing party continues to implement measures that violate WTO regulations.

### 3.2.3. WTO's Appellate Body acting beyond its jurisdiction

According to Article 17, Paragraph 6 of the DSU, the role of the AB is limited to examining whether the Appellate Body's legal interpretations and applications concerning the legal issues raised in the appeal request are accurate, complete, and reasonable.

However, in practice, in some cases, the Appellate Body has addressed legal issues not raised by the parties in the appeal request, and even in the initial complaint, while also provide unnecessary obiter dicta opinions.

For example, in the Argentina - Measures Relating to Trade in Goods and Services (DS453) case, the parties appealed the Panel's report, arguing that the Panel's interpretation of WTO provisions on the likeness of products as a basis for applying the MFN principle was inaccurate. In agreement with the appeal request, the Appellate Body set aside the Panel's ruling on the issue. However, the Appellate Body provided additional opinions on the application of the MFN principle, mitigating factors, and exceptions, without focusing on clarifying the likeness of products as requested by the parties in the appeal request [WTO, 2016].

Addressing legal issues that were not part of the appeal request hinders the timely resolution of disputes, contrary to the objective of Article 3.3 of the DSU, and has a negative impact on resolving future disputes. Specifically, the additional opinions of the Appellate Body are considered a precedent for the WTO Appellate Body under the "stare decisis" principle, which is one of the principles that shape the WTO's case law system.

Furthermore, Article 19, Paragraph 2 of the DSU also stipulates that the Appellate Body, when issuing its conclusions and recommendations, cannot add to or diminish the rights and obligations provided in the relevant agreements. However, according to the perspective of the United States and some developing countries, the Appellate Body is currently creating its own rules [Dispute Settlement Body, 2002].

## 4. Conclusions and Proposals

### 4.1. Conclusions

In summary, in today's world, with the increasing political conflicts among nations, the eruption of trade wars among major economies, the prevalence of protectionism, retaliatory trade measures, economic sanctions, and the application of trade defense measures on a large scale, the sustainable and stable development of the global trading system is threatened. In the face of this reality, the WTO, a trade organization established with the goal of promoting trade liberalization and eliminating discriminatory practices in trade among nations, must fully exert its role in resolving differences, conflicts, and trade disputes among its members within the framework of the multilateral trading system. However, the current dispute settlement mechanism of the WTO is being neglected by countries due to its inefficiency and existing flaws. One of the major limitations of this mechanism, which many countries propose to address in the upcoming WTO reform, is the functioning of the WTO Appellate Body.

The WTO Appellate Body is currently facing an unprecedented crisis since its establishment, as all members have completed their terms, and the Dispute Settlement Body (DSB) cannot appoint new members as replacements. The cause of this crisis lies in the existing provisions of the DSU regarding the establishment of the Appellate Body, such as appointment mechanisms, terms, and the number of members, which have many shortcomings. As a result, some countries have taken advantage of these deficiencies to delay the operation of the Appellate Body, effectively paralyzing the two-tier adjudication process of the

WTO. Furthermore, the Appellate Body has also exhibited several shortcomings in carrying out its functions, tasks, and powers, such as non-compliance with dispute resolution timeframes and actions exceeding its jurisdiction. The article has analyzed and clarified these deficiencies, shortcomings, and flaws of the Appellate Body while recommending remedial measures to help the WTO implement appropriate reforms to improve its dispute settlement mechanism.

#### **4.2. Proposals to address shortcomings in the operation of the WTO Appellate Body**

##### **4.2.1. Changes to the term and number of members of the Appellate Body**

As mentioned above, one of the reasons why the WTO dispute settlement system is currently paralyzed and ineffective is the inactivity of the WTO's AB due to the expiration of the terms of its incumbent members, leading to an insufficient number of members to conduct appeals as required. Therefore, the European Union (EU) has proposed extending the terms of Appellate Body members from 4 years to 6 to 8 years [European Commission, 2018].

The author agrees with this proposal because the reality shows that the average time to resolve appeal requests often exceeds 1 year. With the current 4-year term, the AB's members can only handle a small number of appeal requests, which will result in difficulties for the dispute resolution process when their terms end before the disputes are resolved.

Furthermore, the EU also proposes changing the number of Appellate Body members from 7 to 9, as stipulated in Article 17.1 of the DSU [European Commission, 2018].

The author supports this proposal as well because increasing the number of members will ensure that the AB has the minimum required number of 3 members to handle appeal requests in case some members' terms expire without replacements. Additionally, the proposed change ensures geographic balance in terms of the nationality of the AB's members.

##### **4.2.2. Applying a majority voting mechanism in the appointment of Appellate Body members by the DSB**

As mentioned earlier, one of the main reasons for the suspension of the AB's operation is the opposition from the United States and a few other countries in appointing replacement members when the terms of Appellate Body members expire, regardless of the agreement of the remaining WTO member states. This reality raises the question of whether the consensus-based appointment mechanism of Appellate Body members still ensures enforceability or creates invisible barriers that impede countries' access to the two-tier dispute settlement mechanism of the WTO. It also serves as a pretext for some countries to use their own safeguard measures, contrary to WTO commitments, to protect their trade interests in disputes and conflicts with other countries.

Therefore, in a research paper, Henry Gao proposed that the appointment of Appellate Body members should be based on a majority voting principle instead of the consensus-based approach used previously [Gao, H., 2021].

In agreement with Henry Gao, Pieter Jan Kuiper, former Director of the WTO Legal Affairs Division, recommended applying a majority voting mechanism, as stipulated in Article IX.1 of the Marrakesh Agreement, in appointing new members of the Appellate Body [Kuiper, P. J., 2017].

However, the author takes the view that the provision in Article IX.1 of the Marrakesh Agreement only applies to decisions made by the General Council and the Ministerial Conference, while decisions regarding the appointment of Appellate Body members fall within the decision-making authority of the DSB. Although the General Council and the DSB are considered as one entity with separate legal personalities, their roles, functions, and responsibilities are different.

4.2.3. Amending Article 17.5 of the DSU to ensure that appellate procedures are completed within the prescribed 90-day timeframe, except in cases where the disputing parties agree otherwise.

As discussed earlier, the current practice shows that almost all WTO appeals are resolved within an average timeframe of one year, with the majority of disputing parties agreeing to this. This reality raises concerns that the WTO dispute settlement mechanism may lose one of its advantages over other dispute resolution mechanisms, namely its promptness, timeliness, and effectiveness as stipulated in Article 3 of the DSU.

Therefore, some countries that have participated in WTO appeals, such as the EU, China, Canada, India, Norway, New Zealand, Sweden, Australia, South Korea, Iceland, Singapore, and Mexico, have proposed amending Article 17.5 of the DSU as follows:

*"In no case shall the resolution exceed 90 days, unless the parties agree to the proposal put forth by the Appellate Body. The parties shall consider this matter. In the event of no agreement among the parties, the Appellate Body shall consult with the parties and propose special working procedures and practices that do not affect the rights and obligations of the parties, allowing the Appellate Body to issue reports within this timeframe"* [WTO, 2018].

Not in agreement with the EU's proposal, Thailand argues that the above proposal is rigid and imposes a fixed 90-day deadline on the the AB's work. The reality is that there are complex cases that require resolution beyond the 90-day timeframe [WTO, 2019].

The author disagrees with Thailand's proposal because the AB's authority is limited to examining the accuracy, comprehensiveness, and completeness of the legal interpretations provided by the Panel regarding the legal issues raised in the appeal, not all legal issues raised in the initial complaint. Additionally, the AB is not tasked with clarifying the facts related to the case or the trade measures taken by member countries involved in the dispute. Therefore, the 90-day timeframe is sufficient for the AB to fulfill its functions and tasks. If the 90-day timeframe is extended, there is a risk of the Appellate Body exceeding its jurisdiction by considering and resolving issues that were not raised in the appeal or providing opinions unrelated to the legal interpretations of the Panel in the case.

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