

## A WTO in crisis – but not at breaking point

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### World Trade Organisation's (WTO) dispute settlement body suspended

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The Appellate Body of the WTO, responsible for settling international trade disputes, has been unable to function since 11 December. The development marks the crumbling of a pillar of the multi-lateral trading order. What does this mean for the cross-border movement of goods and services, cooperation between states, and the organisation itself?

#### What has led to this?

The Appellate Body is the final appeals body in the WTO's dispute settlement process. It pronounces a final decision on whether a WTO Member has infringed WTO rules, and whether the other party is entitled to take countermeasures. Usually, it consists of seven members. At least three are necessary for its ability to take decisions. Since the summer of 2017, the US has repeatedly blocked the nomination of new members to the panel. Now, as a result of the withdrawal of two representatives on 11 December, the Appellate Body has shrunk to just one member. In future, if one party in a trade dispute does not accept a WTO dispute settlement panel ruling, the Appellate Body will be unable to process the case.

**There are two reasons behind the US' blocking approach to the nomination of replacements to the arbitration panel.** First, Washington is unhappy with the way the Appellate Body works. Part of this is understandable criticism of the fact that deadlines are not respected. More serious is the accusation that the body oversteps its authority – an accusation which the US has made repeatedly in the course of at least a decade. In contrast with the EU's understanding of the Appellate Body's role, the US does not see it as a court (with judges), and complains that it has used cases to create precedents, thus establishing a kind of 'jurisprudence'. The US is seeking a return to stronger accountability on the part of the appeals body a narrow interpretation of its mandate.

Second, the US is unhappy with some more fundamental developments in the WTO, with numerous states benefiting from their self-declared status as a 'developing country' although they have long since evolved beyond this description.

**China receives the brunt of US criticism:** Beijing, they say, insists on developing-country status, has obeyed WTO decisions since its accession in 2001 only superficially, and side-steps WTO rules through particular forms of state subsidies. Other countries share the US view. Moreover, the WTO's present set of tools barely equips them to counteract the practices of member states that do not subscribe to the market economy principle. Blocking the Appellate Body is thus a means by which Washington exerts pressure, albeit less to force the necessary WTO reforms – which the G20 itself is calling for – than to achieve changes in the trade policy-related practices of certain states, namely China.

#### The US is not the only one to blame

The Trump administration does bear most of the responsibility for the worsening crisis in the WTO as an institution. **Yet other member states are also responsible.** Some have done so through a reluctance to discuss reforms, others through the circumvention of WTO rules. Nor is the EU free from blame. In 2017, it blocked the nomination of a member of the Appellate Body and paid too little attention to US criticism of developments in the WTO – criticism that in many cases was justified.

Observers say that the consequences of a short outage in the workings of the Appellate Body are manageable. But a down-time of several years would have serious repercussions for world trade. Trade conflicts between states could quickly pile up and escalate, because arguments between two companies would not be resolved. Mindful of this, **the EU is seeking an interim solution** (the so-called 'interim appeal arbitration arrangements', based on Article 25 of the dispute settlement understanding of the WTO). At present, Norway and Canada have agreed to such arrangements and other countries have informally shown interest. Critics (including the US) see this solution as an attempt to reproduce the deficient Appellate Body.

### **A stress test for world trade: no clear solution to the WTO crisis**

All WTO member states and the G20 highlight the importance of the WTO; yet all over the world, protectionist tendencies are on the up. Trade policy has become the most sensitive of subjects between states, which means that the cross-border exchange of goods could stagnate. On the positive side, ideas for reform have been mooted. David Walker, Ambassador of New Zealand to the WTO has written a paper propos-

ing a compromise, with specific suggestions for a solution (including proposals on stricter rules for the respect of deadlines by the Appellate Body and the scope of its mandate). The European Parliament, the Commission and all EU Member States are pushing for an agreement. In US eyes, the Walker report does not go far enough; on the other hand, a number of major WTO members stand in the way of reforms that are overly far-reaching. A vital precondition for making a breakthrough in the matter would be a frank dialogue between the EU and the US, conducted without any moralising. The likelihood of a solution appearing over the next few months seems rather small.

### **The WTO is not at breaking point**

Dispute settlement is an important pillar of the WTO, but not the only one. The WTO coordinates the trade policies of its member states and hosts negotiations to strengthen rule-based international trade in various sectors. One aspect of these activities is talks on reducing subsidies for fisheries, another is the increasingly important area of e-commerce. The US is playing a constructive role in both topics. Irrespective of the dispute settlement problem, the work of the WTO within these and other areas continues.

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