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## **Mexico and the WTO Appellate Body Crisis**

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The World Trade Organization (WTO) is an international multi-lateral organization, which was established back in the 1995 as a substitute to the older platform known as the General Agreement on Tariffs and Trade (GATT). The WTO's declares international trade liberalization and establishment of proper and clear rules of international trade as its primary aims. In order to reach these objections the WTO is made up of several bodies, including the WTO Secreteriat, the WTO General Council, Dispute Settlement Body and the Appellate Body. This paper concerns the crisis, which has emerged with the paralysis of the Appellate Body and the reaction to this crisis of one of the countries depending on the successful performance of the WTO – Mexico.

### **The WTO's Appellate Body Crisis**

The WTO's Appellate Body is a permanent WTO's body, which purpose is to issue a final verdict on the tensions on trade issues between the WTO members. It is made up from seven judges, each of whom is elected for a 4-year term. There Appellate Body needs at least three judges to be able to pass the verdicts.

The WTO's Appellate Body crisis emerged back in the early 2010s, when the US President Barack Obama Administration in 2011 and 2016 has blocked the appointment and reappointment of the Appellate Body members claiming the WTO has failed to protect American interests. However, since 2016, the US President Donald Trump Administration has been blocking all the appointments of the Appellate Body members. Thus, by the 10th of December, 2019, two out of its three remaining members' four-year terms came to an end, and the body was left powerless. The US Trade Representative in its "Report on the Appellate Body of the World Trade Organisation" issued on the 11th of February, 2020 claims that "the Appellate Body chronically violates the rules imposed by WTO members, undermining the dispute settlement system and the WTO generally". In particular, it claims that:

1) “The Appellate Body has departed from the dispute settlement system and rules agreed to by WTO Members in a number of ways. For example, disregarding the fact that the DSU plainly states that an appeal can in no event exceed 90 days, the Appellate Body has over time respected that deadline less and less until it now no longer even pretends to take it seriously”.

2) The Appellate Body “has exceeded its authority and reviewed issues of fact and panel fact-finding, including issues of what a WTO Member’s domestic law is or does” [7; 8; 10].

In 2020, with election of Joe Biden as the US President, the trend of return of the United States to the policy of greater involvement in the international politics has strengthened. However, the protectionist positions are still strong, that’s why the problem of the performance of the WTO is still actual.

### **The Participation of Mexico in the WTO and its Constitutive Bodies**

Nowadays Mexico is a rapidly-developing country: its real GDP has doubled on the last 30 years from \$621.8 bln. in 1989 to \$1 310 bln. in 2019 (data by the World Bank; given in the current 2010 US dollars). Moreover, Mexico today is one of the top 10 exporters of manufactured goods globally. Also, it is nowadays expanding its range of exportables with its growing IT sector and outsourcing services.

Mexico joined GATT in 1986 and in 1995 it was a founding member of the World Trade Organization. The official attitude of the Mexican government towards participation in the WTO is positive. Mexico highly depends on the WTO’s efforts of creation of a rules-based trading system, which helps Mexican public and private entities to lower the prices in the shops, to create jobs, to sell goods and services abroad and, as a result, to foster a strong and stable economic growth. Also, Mexico and the majority of its non-governmental organizations generally favor the WTO’s commitment to the principles of elimination of trade tariffs in the vast majority of fields, namely agriculture, electric and electronics sector as well as services [3; 4]. Thus, Mexico sees the WTO as a tool for promoting the Mexican goods and services on the international market.

As a rapidly-developing state, Mexico has been constantly involved in the processes in the Appellate Body, in particular, in 25 cases as a compliant and in 15 cases as a respondent [2]. It means that Mexico is interested in the Appellate Body as an instrument for maintaining the principles of free trade.

Worth mentioning, more than 75% of Mexican goods are exported to the United States of America [9]. With the modern orientation of the US government on economic protectionism and actions that disrupt the WTO’s harmonic performance, the example of Mexico as a developing state with an aim to secure the principles of free trade for its prosperity gains even greater significance.

### **Measures Taken by Mexico with an Aim to Tackle with the Problem**

First of all, back in December 2018, the Mexican delegation with several other delegations issued a document WT/GC/W/752/Rev.2 (18–7820), where they

proposed several amendments concerning the work of the Appellate Body. The proposed amendments included, in particular, the following:

1) A rule ensuring that “outgoing Appellate Body member shall complete the disposition of a pending appeal in which a hearing has already taken place during that member’s term”.

2) A possibility to extend the time limit of 90 days to solve the disputes in the frames of the Appellate Body.

Also, the document included a plea to all the members to fill all the vacancies of the Appellate Body in order to restore the Appellate Body’s ability to resolve the problems [1].

A new attempt to tackle with this problem was taken in April 2020, when Mexico together with 18 other members of WTO (including the EU, China, South Korea and Japan) created an interim body for settling trade disputes, called ‘Multi-party interim appeal arbitration arrangement’ (MPIA) (see document JOB/DSB/1/Add.12 (20–3358)). It is based on the usual WTO rules applicable to appeals, but also contains some novel elements to enhance procedural efficiency. As an example, it’s declared that the arbitrators, who are involved in proceeding an appeal “may discuss their decisions relating to the appeal with all of the other members of the pool of arbitrators”. The interim appeal arrangement was not intended to supplant the WTO’s Appellate Body, but as a temporary measure, which would be able to provide the member-states of this agreement with neutral and transparent investigations on the issues concerning international trade. The states, who signed this declaration, stated that “the MPIA will remain in effect only until the Appellate Body is again fully functional” [6].

The third attempt occurred in June 2020, when Mexico proposed a candidacy of Dr Jesús Seade Kuri, a Mexican economist and a Chief Negotiator of the Mexico – US – Canada trade agreement for a position of WTO Director-General. His program included such positions as handling frequent specialized conferences on the problems of the WTO as well as handling reforms in the WTO’s dispute settlement system processes [4; 5]. However, Dr Jesús Seade Kuri was not elected as a WTO Director-General and the implementation of these proposals hasn’t commenced.

### **Conclusion**

Mexico, as a developing country with a rapidly increasing range of trade partners, is interested in the increase of the WTO’s role in the international trade and the increase of the importance of the Appellate Body in resolving crises. The dependence of the Mexican economy on trade with the United States increases the importance of the measures taken by the Mexican officials, which aim is to restore the fruitful performance of the WTO constitutive bodies, namely, the Appellate Body.

Different approaches have already been used by the Mexican authorities; most of them concern the utilization of the legal frames of the WTO as well as cooperation

with the other states with an aim to provide the free trade with clear rules in the situations when they cannot be provided in the legal frameworks of the WTO.

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