

**General Council Meeting  
March 3, 2020**

\*\*

**Statement by India - Delivered by Ambassador & PR to the  
WTO**

***US' statement on the USTR Report on the WTO's Appellate  
Body***

We thank the US for their statement highlighting key points of the USTR report on the WTO Appellate Body.

2. As a major user of the WTO's dispute settlement system, India is gravely concerned about the continuing crisis in the Appellate Body. With four appeals to which we are party stuck in limbo, this paralysis is a concrete example of nullification of our negotiated rights under the WTO agreements. We believe that the resolution of the crisis in the AB deserves utmost priority and must precede other reforms. Any interim arrangement that is not multilateral in nature and does not ensure the same standards of impartiality and automaticity as the Appellate Body system, is vastly inferior to the restoration of the Appellate Body as envisioned in the DSU.

3. We are disappointed that the conclusion in the recently issued USTR report on the Appellate Body states, and I quote, '*the purpose of this Report is **not to propose solutions** to the problems facing the WTO's dispute settlement system but to have an honest and candid dialogue about **how and why** the WTO arrived at the current situation.*'

4. India believes that the WTO Membership has, in fact, been engaging on the 'why' question. We do not agree with the assertion that, and I quote, the Membership has so far not touched upon 'why' the Appellate Body digressed from the clear text of the DSU, unquote. Our comprehensive discussions, over a year, as part of the Informal Process did consider the 'why' question. For example; under the Walker process :

- i. Members agreed that the increase in the frequency and the complexity of appeals was the main reason for the AB not being able to deliver its report within the 90-day period. The solutions suggested in the Walker Report are based on the identification of this problem;

- ii. Regarding transitional Rule 15, it was noted that the reason why the AB's Working Procedures were used to fill-in this gap was because the DSU was silent on how to ensure an orderly transition of AB members, and the WTO Membership had not stepped in to make rules regarding this. The draft GC decision proposes a solution which would ensure that the right to appoint AB members rests only with the WTO Membership.

5. Therefore, it is clear that when the Walker Process suggested solutions to the issues the US had raised, it was based on the identification of the problem and its cause - the 'why' of it. In other words, the 'how' or the solution proposed, was based on an understanding of the 'why' or the cause of the problem. Thus the 'why' and how questions are not divorced and the 'how' embraces the 'why'.

6. India remains committed to ensuring an effective, multilateral resolution of the Appellate Body crisis and we assert that this needs to be done before MC12. To this end, we are willing to further discuss the 'why' question provided that there is a definite scope to it, a solution-focus, and the discussion does not devolve into an unending conversation to fill the time from now until MC12.

7. Finally, any negotiated solution to the Appellate Body crisis must preserve the essential features of a two-tier dispute settlement system, negative consensus and independence of the appellate mechanism.

8. I thank you, Chair !

\*\*\*