

**General Council Meeting
July 23-24, 2019**

Statement by India

Agenda Item 5: Informal Process on Appellate Body Matters

A. Communication from The African Group (WT/GC/W/776)

- We thank the African Group for their communication on the Appellate Body impasse as contained in document WT/GC/776. We share their concern that, unless prompt steps are taken to unblock the launch of the vacancies to the Appellate Body, come 10 December 2019 there will be no credible mechanism to enforce the rules of the rules-based multilateral trading system. This would also diminish the appetite for negotiating new rules.
- We also fully support the stand taken by the African Group that the resolution of the crisis in the AB should not be used as a leverage to extract concessions in others areas of the WTO's functioning, especially by linking this to the broader WTO reform agenda.
- We note the concerns raised by the African Group regarding the difficulties faced by developing Members in accessing the complex and technical WTO dispute settlement system. We have ourselves faced the challenges of financial and technical capacity constraints when bringing or defending a dispute at the WTO. The difference in the levels of development of WTO Members and their consequent ability to access the multilateral trading system, is the very reason, that an independent Appellate Body is indispensable for ensuring that the rules are enforced in a fair and even-handed manner.
- In terms of their substantive proposals, we find the communication from the African Group to be complementary to the concrete proposals put forth by the EU, India and other Members' in documents WT/GC/752 and 753.

B. Report by the Facilitator

- We would like to thank Ambassador Walker for providing us a report on the state of play in the informal process on the Appellate Body matters, and his assessment of the areas in which there is a convergence of Members' views. As always, we are open to discussing this. However, the important thing to see is whether the Member blocking the appointments to the Appellate Body has any new comments or reactions to the report.
- We now have 12 proposals on the table to address the concerns raised by the Member blocking the appointments. In the last 6 months, we have had 4 open-ended and 9 small group meetings under the informal process on Appellate Body matters, with an issue by issue discussion of all the proposals on the table. And yet, we are no closer to a solution than we were at the beginning of the year. This is a very dire situation.

- All Members have a treaty obligation, under Articles 17.1 and 17.2 of the DSU, to ensure the maintenance of a standing Appellate Body. We therefore call on all Members, and in particular the Member who has raised the concerns in the first place, to engage. And engagement means moving beyond general critiques of the Appellate Body's past behaviour.
- The focus should remain on solution-oriented approaches that explore ways in which the concerns with the functioning of the Appellate Body can be addressed in a manner that accommodates the interests of the entire Membership and preserves the essential features of the system.
- Most WTO Members do not want international trade without rules, or to be more precise, international trade where the rules are whatever the strongest party to a dispute says the rules are. Most Members have a strong interest in an effective rules-based dispute settlement system, evidenced in the serious efforts by several Members to address the concerns raised. Such an overwhelming show of good faith and willingness to engage should not be squandered away. With less than 5 months to go before the impending paralysis of the Appellate Body, we hope to see real engagement from the United States.
