

Fate of export schemes at risk as WTO body to lapse

Mechanism will break down as top appellate body goes defunct on Dec 10

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With the highest dispute settlement authority at the World Trade Organization (WTO) soon to be defunct, the fate of multiple critical trade disputes being fought by India, including a ruling that abolished most of its export promotion schemes, hangs in the balance.

The seven-member appellate body of the WTO, which acts as the top court for international trade disputes, is set to become useless from December. This has thrown into confusion the fate of at least six major trade disputes that the government is fighting is actively engaged in.

"Consistent pressure from the Donald Trump administration has resulted in the body dwindling down to only three judges. As each case requires at least three sitting members for hearings, the body is on the verge of collapse," an official said.

The lack of appellate body judges has become a serious concern since it is the principal body tasked with arbitration between nations on trade disputes. As of now, cases take more than a year to be heard, officials said.

On December 10, two of the three current appellate body members, Ujay Singh Bhatia from India and Thomas R Graham from the US, will retire.

Dispute settlement is regarded by the WTO as the central pillar of the multilateral trading system, and as the organisation's "unique contribution to the stability of the global economy".

Challenges ahead

On October 31, the WTO's dispute settlement body ruled the majority of India's export promotion schemes as illegal and ordered them to be stopped in the next four months. It also said the SEZ scheme should be closed in the next six months.

'Prohibited subsidies' under the export-oriented units (EOU), electronics hardware technology park (EOT), bio-technology parks (BTP) scheme, Export Promotion for Capital Goods (EPCG) scheme, and the Merchandise Exports from India Scheme (MEIS) were ordered to be shut down.

While the government is yet to file an appeal against the ruling, there is wide consensus among experts that India has to exercise the option if only to stall for more time. "In the absence of the appellate body,

**AT STAKE:
INDIA'S
MAJOR
PENDING
CASES AT
WTO**

AS COMPLAINANT

- Against US concerning steel and aluminium imports
- Against US regarding its domestic content requirements in the energy sector

AS DEFENDANT

- Case by Brazil against domestic support for sugarcane and sugar producers
- Case by Japan against tariffs on information and communications technology goods

the earlier ruling will not be implementable while India can't appeal against it. This will result in complete chaos," senior trade policy expert and Jawaharlal Nehru University professor Biswajit Dhar said. As a result, economies such as China, which have repeatedly circumvented trade norms to push non-tariff barriers, will not be held accountable and may simply refuse to abide by global rules anymore, Dhar warned.

The US has also cornered India at the multilateral platform, stating WTO rules prohibit middle-income nations from providing market distorting export subsidies at all.

"The US is playing a far larger game, whereby it is on one hand petitioning the dispute settlement body while also single-handedly and consistently blocking the appointment of judges to destabilise the WTO," India's former ambassador to the WTO, Jayanta Dasgupta, said.

In another move, Washington DC last week threatened to block the institution's biennial budget and effectively halt its work beginning January 1 next year, after China secured the WTO's go-ahead to impose \$3.6 billion in sanctions against the US.

Confusion reigns

Other major WTO economies such as

Canada and the European Union have planned ahead by deciding on an interim arrangement. However, the idea to set up arbitration panels to resolve disputes bilaterally have been opposed by India.

"There is a reason why the WTO has a dispute settlement process in place. Smaller nations will never get their due in a one-on-one fight and will be susceptible to arm twisting by richer economies," a senior commerce department official said.

On the most vocal critics of the latest developments, India has on multiple occasions called for the quick appointment of judges. Apart from voicing its concerns at international fora, the government also organised a mini-ministerial of WTO nations on the issue earlier this year.

"The idea was to create a coalition of major economies to pressure the US to change its position. The meet in New Delhi was backed by the WTO secretariat, and WTO Director General Roberto Azevedo called it a deep crisis and warned business as usual is not possible anymore," the official said.

Till now, India has been a regular user of the WTO's dispute settlement process, having lodged complaints on 24 occasions against other nations, and defending itself on 32 instances. It has also been a third party in a whopping 162 cases.

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