

Members Agreement Ensures That WTO Dispute Settlement Continues to Operate Smoothly

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Key Points

- A group of 46 WTO members representing over half of world trade have brought into operation an agreement to ensure that WTO dispute settlement continues to operate smoothly until the standing Appellate Body is recomposed.
- With the entry into operation of the agreement, these WTO members have reinstated their right to appeal WTO panel rulings and have also strengthened the enforceability of panel rulings.
- The agreement is open to all WTO members, and it is expected that more WTO members will join the arrangement in the coming weeks.

On April 30, 2020, a group of key World Trade Organization (WTO) members announced the entry into operation of an agreement that will reinforce the WTO dispute settlement mechanism by ensuring that parties can exercise their right of appeal of first-instance panel rulings and that panel findings against market access barriers remain fully enforceable.

The Multiparty Interim Appeal-Arbitration Agreement (MPIA) has been signed by Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, Guatemala, Hong Kong, China, Iceland, Mexico, New Zealand, Norway, Pakistan, Singapore, Switzerland, Uruguay and the European Union (and its 27 member states plus the United Kingdom temporarily). Together, these WTO members represent half of global merchandise trade. They are also among the most frequent users of the WTO dispute settlement mechanism. Other WTO members are expected to join the agreement in the coming weeks.

WTO members that are parties to the agreement will use arbitration procedures currently contemplated in the WTO's Dispute Settlement Understanding (DSU) to pursue any appeals of the findings of WTO panels. Appeals are expedited with a maximum 90-day deadline to complete them. The findings of panels and the appeal arbitrators will be enforceable under the DSU's procedures. Parties found to have adopted laws, regulations or administrative decisions that are inconsistent with their WTO obligations will be subject to trade retaliation if they do not promptly bring

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themselves into compliance with their treaty obligations. Importantly, the WTO members that are parties to the agreement commit not to appeal panel findings to the standing Appellate Body while it remains non-operational.

With the entry into operation of the MPIA, these WTO members overcome the challenges facing the WTO's standing Appellate Body until the full WTO membership recomposes it. For these parties, their right to appeal panel rulings to a functional appeal mechanism has been reinstated. Moreover, the parties have ensured that disputes between them are not left in limbo by removing the possibility of launching appeals to a non-functional Appellate Body.

Some of the parties of the MPIA have cautioned that they will take a more assertive stance against countries that refuse to join the agreement and that try to game the system by appealing panel findings to the inoperative Appellate Body.

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