

Shock and Reaction: The Dilemma and Solution of WTO Appellate Body

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ABSTRACT

The Appellate Body of the World Trade Organization (WTO) is an important part of the dispute settlement mechanism of the WTO, which is very important for the handling of dispute cases and the normal operation of multilateral trade. However, due to the defects of WTO mechanism and the fact that the number of members of the Appellate Body is too small, the Appellate Body cannot operate at present. In order to solve the crisis as soon as possible, the EU, the United States, China and other important subjects of international economic law have put forward various solutions individually or jointly. But so far, there is no consensus plan for the reform of the Appellate Body. On the basis of integrating different national programs, this paper proposes another reform plan for the appellate body, which includes increasing the number of members of the appellate body, setting up a transition period and establishing a special enforcement and supervision body. Meanwhile, it is proposed to establish a new dispute settlement mechanism integrating "litigation arbitration and mediation enforcement" in order to replace the original mechanism and better promote the stable and long-term development of world economy and trade.

OVERVIEW OF APPELLATE BODY

The Concept and Development of Appellate Body

The World Trade Organization, developed from the General Agreement on Tariffs and Trade (GATT), has the status of an international organization in international law and is the youngest of the major intergovernmental international organizations in the world. It achieves its goal of ensuring free trade and providing a stable and predictable international trade environment for Member States by reducing tariffs and other trade barriers and eliminating discriminatory treatment in the relationship with international trade organizations. WTO members manage domestic and international trade through domestic laws based on the rules of the WTO Agreement. The WTO Appellate Body is developed from the relevant provisions of the General Agreement on Tariffs and Trade (GATT). The provisions of the GATT on how to adjudicate trade disputes are few and

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have low enforcement. The government that has lost the dispute settlement can also refuse to accept the Panel's adjudication report submitted by GATT members.

With the increasing number of disputes, establishing a more effective dispute settlement mechanism is one of the demands of various parties in the Uruguay Round. The original purpose of the Appellate Body is to review the adjudications made by the Panel and ensure the correctness of GATT laws. Because the appeal review can delay time and may overturn the original decision, it is used more and more frequently. The Appellate Body consists of seven judges who are not affiliated with any government. The judges of the Appellate Body shall be appointed by the Dispute Settlement Body (DSB) for a term of four years and may be re-elected once. The Appellate Body shall review the legal issues involved in the report of the Panel and the legal interpretations made by the Panel, and may overturn, modify or revoke the findings and conclusions of the Panel. It shall not participate in any appeal negotiations that may lead to direct or indirect conflicts of interest. Only the parties to the dispute can appeal the report of the expert panel. The Appellate Body only reviews the legal issues involved in the report of the expert panel and the legal interpretations made by the expert panel. In principle, the Appellate Body will not review the expert panel's Judgment on facts, nor will it make decisions on "new facts". The Appellate Body may uphold, modify or reverse the Panel's legal findings and conclusions (Article 17 (13) of the DSU), but it has no authority to remand the dispute case to the Panel for retrial. It is precisely because the expert panel's opinion is a precondition for starting the review procedure of the Appellate Body, so when the appeal claiming to violate a WTO article without the expert panel's explanation, arrives at the Appellate Body, the Appellate Body may keep the pending status of the dispute unchanged, or choose to continue to complete legal analysis to give an adjudication.

The Current Dilemma of the Appellate Body

First of all, the Appellate Body, which exists in name only, is difficult to operate effectively and faced with the dilemma of suspension. The judges of the Appellate Body shall be appointed by the Dispute Settlement Body and elected by the Selection Committee from among the candidates nominated by WTO members. The Selection Committee is composed of the Presidents of the General Council, DSB, the Council for Trade in Goods, the Council for Trade in Services, the TRIPs Council and the Director General of the WTO. In May 2016, the United States blocked the selection and re-election of the members of the Appellate Body for the first time on the ground that the Appellate Body exceeded its authority to issue an advisory opinion on an issue that was not necessary to resolve a dispute. In 2016, the Obama administration disagreed with the reappointment of Zhang Shenghe, a member of the Appellate Body from South Korea; When the selection of the members of the Appellate Body should start in July 2017, as the Trump administration refused to select the two vacant positions of the members of the Appellate Body of Belgian and Mexican nationality at the same time after the expiration of their terms of office, the selection process for the new members of the two vacant positions did not start; Since 2016, the issue of the election of the members of the

Appellate Body has been discussed many times at the meetings of the Dispute Settlement Body. However, due to the opposition of the United States to a variety of solutions, no consensus was reached on this issue. In the end, the number of members of the institution was seriously insufficient and could not operate normally, which directly led to the suspension of the Appellate Body. In addition, some cases heard by the Appellate Body exceeded the hearing period specified in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). For example, Canada filed an appeal against the case of "Canada v. the United States on the use of differential pricing methods in anti-dumping measures against Canadian softwood".

Secondly, the boundaries of the rights of the members of the Appellate Body in the interpretation of specific cases are not clear. It can be seen from the responsibilities and functions of the Appellate Body mentioned above that the Appellate Body can judge the consistency between the trade measures taken by the WTO members in dispute and their obligations under the WTO Agreement. The text or terms of the WTO Agreement are not clear in some aspects or are repetitive or conflicting. If the Appellate Body wants to clarify the meaning of such vague clauses in specific cases, it must interpret and apply some of the language of the clauses or agreements. It is not easy to distinguish whether its treaty interpretation is to "clarify" the provisions of the treaty, or whether its ultra vires interpretation leads to the so-called "expansionary rulemaking", thus eroding the exclusive authority of WTO members to interpret the covered agreements. This is one of the concrete manifestations of the unclear boundary of its interpretation and legislative rights, and the controversy caused by this may make some rights of the Appellate Body illegal.

A NECESSITY ANALYSIS OF SOLVING THE DILEMMA OF THE APPELLATE BODY

Key Member States Believe that the Appellate Body is Defective

First of all, since 2012, China has filed a complaint with the WTO on the countervailing duties imposed by the United States on some Chinese products. In 2018, the WTO's high-level dispute mediation court ruled that the US tariff violated WTO principles. In January 2022, the World Trade Organization issued an 87-page ruling on the case of China v. the United States for countervailing measures, which lasted for 10 years. It was determined that China could impose retaliatory tariffs on US \$645 million worth of goods annually in the field of goods trade because the United States failed to comply with the WTO's effective ruling. The relevant departments of the United States expressed strong dissatisfaction with this and made comments on the necessity of reforming the WTO rules and dispute settlement mechanism, showing the intention of reforming the WTO dispute settlement mechanism and the Appellate Body. Since the beginning of the 21st century, the United States has begun to take measures to block the appointment of some members of the Appellate Body. The Trump administration even

said that it would oppose the appointment of all members of the Appellate Body unless its concerns about the Appellate Body were resolved.

At the same time, in the context of the rapid changes in the world economic pattern, challenges and setbacks encountered by economic globalization, and the important role played by the WTO, China formally submitted China's Proposal Document on WTO Reform to the World Trade Organization in 2019. The document thoroughly analyzed the Unprecedented Existential Crisis of the WTO and put forward 12 targeted reform proposals, covering four areas: "resolving the crucial and urgent issues threatening the existence of the WTO", "increasing WTO's relevance in global economic governance", "improving the operational efficiency of the WTO" and "strengthening the inclusiveness of the multilateral trading system".

In addition, whether the Appellate Body has the issue of law making and whether the law making is legitimate is still controversial. The discussion on the "law making" behavior of WTO dispute settlement bodies in domestic and foreign literature is often related to the following of precedents, legal interpretation, judicial ultra vires or judicial activism. At present, most scholars believe that the WTO Appellate Body has a certain degree of law-making behavior, but whether this behavior is reasonable has been controversial. Some scholars who support its legitimacy believe that because the rules of the WTO itself are not perfect, it is legitimate for the Appellate Body to make laws in the actual trial process, and this act of making laws is conducive to stabilizing the status of the WTO in international economy and trade and giving full play to the role of the WTO Appellate Body in dispute settlement cases. There are also some scholars who oppose the Appellate Body to make laws based on the reasons that the judicial making of the WTO dispute settlement body may lead to excessive justice, and that the making of laws is not the function of the WTO Appellate Body.

There are Institutional Defects in WTO Itself

First, the voting mechanism of the "reverse consensus principle" has defects. The "reverse consensus principle" means that the report of the panel or the Appellate Body can be rejected only when all members of the Dispute Settlement Body disagree. It is evolved from the "consensus" principle in GATT, which in fact strengthens the binding force of the dispute settlement mechanism and is highly efficient. But there are also some shortcomings. First of all, this principle is not scientific in the actual operation of the WTO dispute settlement mechanism. The use of the "reverse consensus principle" has reduced the review and supervision of the panel report and greatly improved its passing rate, which is not conducive to the reduction of defects in the report and the interception of problematic reports. Secondly, this principle is detrimental to the reasonable use of member states' litigation rights. To some extent, the application of the "reverse consensus principle" in practical operation means that as long as any WTO member submits an application in accordance with the procedures specified in the DSU, the expert group must be established. This actually increases the workload of the expert panel and the Appeal Body, which is not beneficial to the balance of the rights of various bodies in the appeal process. Finally, the application of this principle may lead to

difficulties in the enforcement of awards. In the case where the principle of consensus was originally used to resolve disputes, because the award has been recognized by the losing party, the losing party will usually voluntarily implement the relevant measures in the award. However, the "reverse consensus principle" will ignore the opinions of the losing party in most cases, thus breeding their dissatisfaction. Also, because there is no body in the Appellate Body and other dispute settlement bodies of the WTO that can force the losing party to implement the award and supervise its implementation process, the losing party may refuse to implement or cause it to express its opposition by constantly taking measures to obstruct the implementation process. For example, the EC Banana Case directly challenges the implementation of the dispute settlement mechanism. Although there has always been a dispute about the implementation of the recommendations and rulings of the WTO expert panel and the Appellate Body (that is, the parties to the dispute can choose not to implement the recommendations and rulings put forward in the report of the Appellate Body adopted by the DSB) and the actual implementation theory (that is, the parties to the dispute, especially the losing party, should actually implement the recommendations and rulings in the report of the expert panel and the Appellate Body adopted by the DSB). However, the theory of actual performance is more consistent with the purposes of WTO and the development trend of international trade. Under the framework of the current WTO dispute settlement mechanism, if the losing party fails to implement the DSB report, it will only face the termination obligation of the winning party. Although this system has a certain deterrent, its role in urging the losing party to consciously and timely implement the DSB report is still very limited.

Second, the procedure for the establishment of the expert panel is flawed. The Expert Group is a non-permanent organ for WTO dispute settlement and plays an important role together with the Appellate Body in dispute settlement. Within 60 days of the issuance of the Panel's report, any party to the dispute may appeal to the Appellate Body. The reasonableness of the panel's composition and the quality of its report an important impact on the appeal process. However, the current expert panel procedure has the following problems. First of all, it is not easy to determine the members of the expert group. Although the parties to the dispute can determine the members of the expert panel through consensus or nomination by the secretariat, in practice, the determination of the members of the expert panel is a difficult process. The parties often reject the nomination initially proposed by the WTO Secretariat—they do not have many legitimate reasons except that they believe the proposed members of the expert panel may hold views that are contrary to their wishes. Members of expert panel are usually finally determined by the Director General of the WTO or nominated through the Secretariat from those who have the ability to serve as members of the expert panel. Secondly, many scholars also believe that the expert group procedure has lot of problems, such as limited evidence handling, defective mid-term review procedure, and lack of transparency in the meeting.

RESEARCH ON THE WAY TO SOLVE THE DILEMMA OF THE APPELLATE BODY

Reform on the Basis of the Original WTO Appellate Body

EUROPEAN UNION

The EU is one of the member states that put forward the idea of the reform of the Appellate Body most quickly. In the Concept paper on WTO modernization issued by the European Commission in September 2018, three aspects of reform of the appellate body were proposed: Reasonably adjust the procedural deficiencies in the operation of the Appellate Body; Appoint the personnel of the Appellate Body in a reasonable manner; Take measures to solve many substantive problems in the appeal procedure.

The EU, China, India and other member states put forward proposals on the reform of the Appellate Body, which is also known as the EU China Inca Joint Program. Its main contents include: The Appellate Body Increases the number of Appellate Body members from 7 to 9; The Appellate Body provides for one single but longer (6-8 years) term for Appellate Body members; The Appellate Body shall not review municipal laws; Outgoing Appellate Body members shall complete the disposition of a pending appeal in which a hearing has already taken place during that member's term; The Appellate Body can only explain the issues that must be dealt with in order to settle the dispute; The Appellate Body may consult with the parties to the dispute on the appeal cases that are about to exceed the hearing period to determine a solution.

In addition, the EU has also jointly proposed reform plans with China, India, Montenegro and other countries. The plans mainly include: (1) The term of office of the members of the Appellate Body is 6-8 years, and the non-renewable provision is deleted; (2) The number of members of the Appellate Body is changed from 7 to 9; (3) A transitional period of no more than two years shall be established after the term of office of an appellate Body judge expires; (4) The Appellate Body strengthen the full-time level of the judges in the appeal body, who cannot be affiliated to any government or engage in other professions.

THE UNITED STATES

The United States believes that there are serious problems in the appeal mechanism of the WTO, so it adopts measures to disrupt the normal operation of the appeal mechanism, thereby threatening the WTO and hoping to make it carry out reforms that maximize the interests of the United States. The United States do not provide a detailed reform plan, but it can be seen that the United States hopes that the reform policy of the WTO will show the following tendencies, through official documents such as The President's 2018 Trade Policy Agenda and 2017 Annual Report issued by the U.S. government.

First, the United States hopes to establish an appeal mechanism that emphasizes consensus over rules. With the increasing number of disputes brought to the WTO and

the progress of several rounds of negotiations, the WTO's dispute settlement mechanism, especially the appeal mechanism, has become increasingly perfect, which can better balance the interests of all parties. However, this is not in line with the United States' consistent principle of "the United States first", which is vividly reflected in the United States' implementation of the "301" investigation of trade protection measures. Successive US governments are optimistic about the success rate of their negotiations, because in the process of bilateral negotiations, the United States can better use its comprehensive national strength and international status to exert pressure on the negotiators and force them to make concessions. Therefore, the United States hopes to establish a dispute settlement mechanism that weakens the binding force of rules.

Second, the United States hopes that the whole operation process of the appeal mechanism will be more transparent, simple and efficient. The United States believes that the current dispute settlement procedure is so complex and cumbersome that it will lead to waste of resources and make the trial deadline system useless. Although the WTO has stipulated a clear time limit for each link in the dispute settlement procedure, due to the non- mandatory provisions and the failure to fully consider practical difficulties, the trial time of some cases is far more than the ideal time limit set by the WTO, which is 18 months. At the same time, the US government believes that the transparency of the WTO dispute settlement mechanism is not high, which is mainly reflected in the fact that the parties to the dispute, the panel of experts and the Appellate Body did not disclose the written documents involved in the trial to the public, and also reflected in the narrow participation of the Appellate Body in the trial process. Therefore, the United States hopes that the relevant departments of the WTO dispute settlement mechanism will open some important trial processes and written documents to improve transparency. In addition, in terms of the attitude towards "amicus curiae", the United States also disagrees with the current practice of the WTO and advocates strengthening its role in the trial of cases.

CHINA

In addition to actively cooperating with other countries to put forward reform proposals, China has also issued two separate documents to elaborate its attitude towards the reform of the appellate body. The first document is China's Position Paper on WTO Reform. In this document, the Ministry of Commerce of the People's Republic of China made a strategic statement on China's position on the reform of the WTO at the macro level, which is also reflected in China's attitude towards the reform of the WTO Appellate Body. In this document, the Ministry of Commerce of the People's Republic of China proposed three basic principles on WTO reform: The WTO reform shall preserve the core values of the multilateral trading system; The WTO reform shall safeguard the development interests of developing members; The WTO reform shall follow the practice of decision-making by consensus. At the same time, the Ministry of Commerce also put forward five suggestions: "The WTO reform should uphold the primacy of the multilateral trading system. China is firmly opposed to attempts that Some members are trying to introduce 'new concepts' or 'new terminologies' into the reform agenda that

could undermine the authority of the multilateral trading system in a disguised way or trying to set up a separate kitchen", "The priority of the reform is to address the existential problems faced by the WTO", "The reform should address the imbalance of trade rules and respond to the latest developments of our time", "The reform should safeguard the special and differential treatment for developing members", and "The reform should respect members' development models." In addition, the Ministry of Commerce also clarified China's attitude towards reform through consensus based on mutual respect and equal dialogue. The second document is China's proposal on WTO reform, which is a proposal document formulated on the basis of China's position document. The document put forward specific reform proposals for WTO after in-depth analysis of the background of WTO reform. The contents related to the reform of the Appellate Body are mainly as follows: (1) The problem and manifestation of the impasse in the selection of the Appellate Body: If the blockage of the appointment process of Appellate Body members is to continue, there will be only one Appellate Body member left in office by December 2019. (2) Objectives and task to break the deadlock in the selection of members of the Appellate Body: The appointment process of Appellate Body members should be initiated without delay to fill the vacancies. (3) Action and Proposal for breaking the deadlock in the selection of members of the Appellate Body: China, together with some other WTO Members, submits joint proposals on the Appellate Body reform that suggest member states should actively discuss and consult on the content of the text.

WTO GENERAL COUNCIL

In early 2019, New Zealand Ambassador to the WTO David Walker was appointed by the WTO General Council as the Special Mediator of the Appellate Body. After Ambassador Walker took office, he organized relevant experts to discuss, submitted the draft decision functioning of the appellate body to the General Council on December 9, 2019, he also submitted another five research and reform plan reports on relevant issues to the General Council between February and December 2019.

The core content of the draft is to summarize the suggestions and key issues put forward by the major member states. On the whole, it is consistent with the reform plan jointly proposed by the EU, China and other major member states, but there are also differences. This is mainly reflected in two points. First, the draft indicates that if a member of the Appellate Body has held a hearing in the case appealed before the end of his term of office, he can continue to complete the hearing of the case. This is different from the previous proposal on the transitional principle in the joint reform plan of member states that "the trial of this case should continue to be completed." Second, it is proposed to establish a regular dialogue mechanism between WTO members and the Appellate Body, which shall be conducted in an informal meeting at least once a year and hosted by the Chair of DSB.

EVALUATION AND ANALYSIS OF THE ABOVE-MENTIONED MEASURES TO REFORM THE APPELLATE BODY

Although the reform proposal proposed by the EU have shortcomings such as focusing on parts over the whole, focusing on procedures over entities, and urgently catering to the problems raised by the United States, the reform plan jointly proposed by the EU and China still has lots of merits. First, the plan is more systematic and detailed than that of the United States. Secondly the plan clearly recognizes the importance of joint action by major WTO members. The EU, China and other major WTO members have held many meetings and plans and submitted the EU India China Plan and other reform ideas to promote the early completion of the reform of the specific WTO mechanism. Third, the plan promotes the development and improvement of the WTO appellate arbitration mechanism. The EU, together with China and other member states, promoted the construction of the WTO appeal arbitration mechanism, notified the DSB of the Multi-Party Interim Appeal Arbitration Arrangement in accordance with Article 25 of the DSU, and called on more countries to join, providing another possibility for the solution of the dilemma of the appeal body.

The second document submitted by China mentioned above listed the reform of the Appellate Body as the first issue in the WTO reform, which was sufficient to reflect China's understanding of its importance. However, after careful analysis of the document, it is not difficult to find that China did not put forward specific opinions on the reform of the Appellate Body separately but took this part of the content as an integral part of other joint proposals. From this point, we can see China's implementation of the principle of consensus. In addition, in the two separate documents, China did not propose reform measures completely in response to the problems raised by the United States, but constantly emphasized the role of consensus and multilateralism, which reflected China's clear understanding of the current international situation and deep understanding and implementation of the principles of international law, and also showed China's prudent attitude towards the reform of the Appellate Body.

The most outstanding feature of the Council draft mentioned above is the creative proposal of the "regular dialogue mechanism", which not only implements the principle of consensus in dispute settlement, but also improves the timeliness of the settlement of relevant issues. In addition, although this mechanism retains the existing appeal mechanism, it is not limited to the procedural repair of the original appeal mechanism. Objectively, it, together with the interim appeal arbitration mechanism, illustrates the possibility of establishing a mechanism for dispute settlement.

In addition, the author proposes a new plan for the reform of the appellate body:

Number of members: 7 members are fixed in daily situations, and 2–5 members can be selected to join during the hearing.

Term of office of the members: the term of office of the members of the Appellate Body shall be at least two and at most four, with each term of five years.

After the members of the Appellate Body retire, a transitional period shall be set up to enable them to complete the outstanding cases during their term of office. The

transition period is limited to the completion of the settlement of the last case for which the member is responsible during his term of office.

If there are organizations in other specialized economic fields in the field involved in the dispute, the Appellate Body may ask the dispute party for advice on whether to transfer the case to the organization in that specialized economic field for trial. With the voluntary consent of both parties, the Appellate Body may transfer the case to the organization in the specialized economic field for trial.

When the appeal case is about to exceed the trial period, the Appellate Body may initiate a dialogue mechanism with the disputing State to discuss solutions. Members of the Appellate Body and the disputing party may also discuss the extension of the hearing period. The longest extension of the hearing period shall not exceed 12 months.

The Appellate Body publicized the key documents during the trial process without a publicity period and made the key trial sites public by combining on-site audit and official webcast.

Some non-governmental organizations are allowed to participate in the proceedings of the Appellate Body as "friends of the court". They make suggestions in writing to play a supporting role in the decisions of the Appellate Body.

According to the setting of the UN Security Council, an executive body is set up in the WTO to implement and supervise the implementation of the report of the expert panel and the Appeal Body adopted by the DSB. At the same time, WTO should further improve the relevant enforcement provisions to promote the parties to fulfill their obligations under treaty law and international law.

Exploration on Establishing a New Dispute Settlement Mechanism

In the research on the dilemma and reform plan of WTO dispute settlement mechanism, some scholars put forward the idea of creating a new dispute settlement mechanism in some fields or among some countries. For example, Kong Qingjiang proposed to establish a super large dispute settlement mechanism in parallel with the existing dispute settlement mechanism outside the WTO framework. Another example is Jennifer Hillman, a law professor at Georgetown University and a former member of the WTO Appellate Body, who proposed that a separate dispute settlement system could be considered for trade remedy cases. However, there are some problems that need to be paid attention to in the specific practice of this idea. Here, take the "the Belt and Road" dispute settlement mechanism as an example to make a more detailed explanation.

Since China put forward the "the Belt and Road" initiative in 2013, economic exchanges between China and relevant countries have become more frequent. While the total volume of trade is increasing, the number of various trade disputes that need to be solved is also rising. It is more important to build a dispute settlement mechanism with Chinese characteristics. Against this background, the "the Belt and Road" dispute settlement mechanism came into being. In the process of building and improving the mechanism, the following two issues deserve special attention.

The first point is the determination of jurisdiction. The determination of jurisdiction here is, to a large extent, to determine which international economic and trade

organization handles economic and trade disputes in accordance with which dispute settlement methods and procedures. This includes court decisions, arbitral awards or the ability to resolve disputes through mediation. Some countries along "the Belt and Road" have not joined the International Economic and Trade Organization, and some countries have participated in several international economic and trade organizations. This leads to the question of which organization the disputing parties will resort to for dispute settlement, which is one of the specific manifestations of the jurisdictional conflict. If we want to make the dispute settlement mechanism under the "the Belt and Road" framework operate in a lasting and efficient manner, we must take appropriate measures to solve this problem.

The second point is the application of law. The laws involved in the settlement of international economic and trade disputes are complex and scattered, and different countries have different provisions on the same issue. If different countries are too demanding to apply the same legal norms, it will reduce the enthusiasm of countries to participate in transnational economic cooperation. If the choice of legal norms is not regulated, it may lead to confusion in the application, which is not conducive to the orderly development of economic and trade cooperation between countries. Therefore, it is particularly important to find the balance point between different laws.

Based on the above analysis, this paper puts forward the idea of building a new dispute settlement mechanism. The core of the influence of the international commercial dispute settlement mechanism lies in its credibility, fairness, flexible procedures and the enforcement of judgments (rulings). Based on this, we can also build a one-stop dispute settlement mechanism integrating litigation arbitration and mediation execution. The consultation procedure and expert panel procedure in the WTO dispute settlement mechanism shall be retained. The disputing country shall transfer the report of the expert panel to be appealed to the mediation institution for mediation. The mediation procedure shall be mandatory. If the mediation fails, the case shall be transferred to the arbitration institution for arbitration. In the process of arbitration, it is not necessary to follow the precedent in fact. Before the end of the arbitration period, the arbitrators can negotiate with the disputing parties to extend the arbitration period. The arbitration institution has the right to send the case back to the expert panel for retrial, but the basis for sending the case back for retrial can only be the legal issues in the expert panel report or the legal issues in the case facts to be resolved in the expert panel report. In addition, in the arbitration procedure, the arbitrator has the right to choose the written proposal made by other non-governmental organizations on the case as the reason for decision. In addition, some WTO organizations responsible for drafting treaties can convene WTO member states to establish a treaty on the implementation plan for discussion. Such a dispute mechanism is allowed to have enforcement power in the treaty, and the implementation of expert panel reports, mediation results and arbitration results is implemented and supervised by specialized enforcement agencies. At the same time, the enforcement agency also has the right to take countermeasures against the party who has an interest in enforcement. During the trial of a case, the right of one party to a dispute to claim compensation from the other party for the losses suffered during the trial should be protected by the dispute settlement mechanism.

CONCLUSION

The Appellate Body is an important part of the WTO dispute settlement mechanism. The suspension of the Appellate Body will, to a certain extent, lead to the paralysis of the WTO dispute settlement mechanism, thus posing a great threat to the normal trade between countries around the world, and also causing damage to the WTO legal system. To this end, different subjects of international economic law have put forward different reform plans, such as adding dialogue mechanisms and improving the full-time level of members of the Appellate Body. Although most of the proposals have a number of merits, we should seriously consider the position of the proposer in international economy and trade and its judgment on the international situation, and objectively and rationally analyze and judge different proposals. Based on the analysis, this paper puts forward new proposals, including further increasing the number of members of the appeal body, adjusting the term of office of the members, setting up a transitional period to hear outstanding cases, including some specialized economic organizations in the appeal mechanism to consider and use network means to improve the transparency of the appeal process. In addition, the establishment of a new dispute settlement mechanism is also a method that can be taken, such as the existing temporary appeal arbitration mechanism of a certain scale and the dispute settlement mechanism of the "the Belt and Road" under construction and development. In the process of building these mechanisms, there is still room for improvement and progress due to the existence of jurisdiction, application of law and other issues, and relevant countries need to continue to propose solutions for consultation. This paper proposes to establish a new dispute settlement mechanism that integrates litigation, arbitration, mediation and enforcement, replace the appellate body with an arbitration institution and grant it the right to send back the expert panel for retrial, insert a mediation procedure between the expert panel procedure and the arbitration procedure, and set up a special enforcement agency after the arbitration procedure to supervise the implementation of the arbitration results by the parties to the dispute.

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