Rule the Roost

US preventing vacancies from being filled in 7-member Appellate Body for 2 years



Cites disagreements with procedures & some of body's rulings

Move has affected the body's functioning even as disputes pile up

May 2016: USTR said it would block reappointment of South Korean member Seung Wha Chang

Objected to his role in decisions with which the US disagreed

"Appellate Body Held Hostage": Is Judicial Activism at Fair Trial?

(Forthcoming in Journal of World Trade (53.2) 2019)

Amrita Bahri Co-Chair for Mexico, WTO Chair Program; Assistant Professor of Law; ITAM

Agenda

- Importance of the WTO
- The Dispute Settlement Mechanism
- The problem: US holding AB hostage
- Why is US doing this?: An overview of the reasons
- Proposals on the table
- Our proposal



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Importance of the World Trade Organization

"In brief, the World Trade Organization (WTO) is the only international organization dealing with the global rules of trade. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible." (WTO)

- Trade negotiations
- Dispute settlement
- 164 members
- 98% of world trade



Tan

The Dispute Settlement Mechanism

acceptable decision

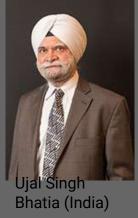
Consultations Ad hoc panel Appellate Body • A formal panel is Requested if a country DSM's uppermost \bullet • has reason to believe constituted on a caseadjudicatory body • 7 members, 3 to hear there is a violation of to-case basis WTO Law • 3 panelists hear the each case • Terms of 4 years, with Countries try to arrive dispute • to a mutually • Decision is binding a possible

unless appealed for

 Decision is final and binding (unless opposed by consensus of DSB)

reappointment

The problem: US holding AB hostage





Thomas R. Graham (United States)



Hong Zhao (China)



Peter Van den Bossche (Belgium)



Ricardo Ramírez-Hernández (México)



Hyun Chong Kir (Korea)



Shree Baboo Chekitan Servansing (Mauritius)

US Concern	Proposal
Judicial Activism	 The AB shall address all issues raised on appeal but need do so only to the extent necessary to resolve the dispute. (EU and others) Require an annual meeting of the AB and DSB at which any member could express views on adopted AB reports (EU)
Delay in 90-day deadline	 Parties could agree to exceed 90-day timeframe (EU) 70 to 9 members (EU) Full time appointment (EU) Extended legal and admin support (EU)
Automatic Reappointment	 Extend the term of an AB member from 4 years to 6 or 8 years (EU) No reappointment (EU)
Rule 15 (extension of tenure)	'Carry-over could be limited to those cases where the oral hearing (on the merits) has occurred or started.' (Georgetown University)
What if there is no AB	 Don't file an appeal (Steve Charnovitz) Majority voting and a new tribunal under a new DSM treaty (Jan Kuijper) DSU Art 25 Bilateral arbitration (Jan Kuijper) Good offices, conciliation and negotiation (Jan Kuijper) Resort to bilateral and regional mechanisms
National Sovereignty,	???????
Need for AB, threats and pressure games	ITam

US Concern Our Proposal The Paper proposes Judicial Activism Redesign the selection process of \bullet **Delay in 90-day deadline** AB members Listing Process, similar to Panel listing Automatic Indicative list of potential AB Reappointment members (ad-hoc, case-to-case basis) Rule 15 (extension of Members fit the requirement of Art. tenure) 17.3 of DSU What if there is no AB Nomination to be approved by DSB by consensus On appeal, AB Secretariat proposes, and appellant and appellee can National Sovereignty, accept or reject Need for AB, threats and DG has the final decision pressure games

Thank you!

