



# Geneva WATCH

An overview of the bilateral, plurilateral and multilateral trade negotiations

Charles Akande, Editor

## Heated Debates at the WTO Over Next Steps

### Two days of intense discussions took place at the World Trade Organization (WTO) on April 7-8.

Monday April 7<sup>th</sup> was devoted to an informal head of delegations where the full Membership debated, among other things, the recent trade tensions as well as the status of the negotiations and the way forward in some of the negotiating groups.

The April 8<sup>th</sup> General Council gathering targeted China's concerns over the U.S.'s recent trade actions, with sections 232 and 301, as well of the continuous blockage of the selection of new Appellate Body (AB) Members.

#### Head of Delegations

Virtually all Members expressed concerns with respect to the rising trade tensions and the blockage in the selection of AB judges. On the first issue, Azevêdo warned of the risk of a serious escalation. "We must do all we can to avoid going down this path and taking measures that are difficult to reverse," he told the full Membership.

Azevêdo refrained from naming the U.S., which has been in the middle of the trade tensions by unilaterally imposing tariffs on steel and aluminum. Azevêdo said he talked to key protagonists concerning this issue and urged them to be very cautious in how they proceed. He noted that some have seized on the WTO's Dispute Settlement Body (DSB) to challenge the U.S.'s tariff proclamation. This is the case with China, the EU, and India, who have all requested consultations with the U.S.

"The system was built to resolve these problems in a way that prevents further escalation – and so it is right that members are using it," Azevêdo noted, adding that the most important thing is that Members engage with one another to try to find solutions.

Speaking of the DSB, Azevêdo stressed that "it is also of utmost importance that members work to resolve the impasse regarding nominations for the Appellate Body," or run the risk of "severely compromising the whole multilateral trading system."

The U.S. has opposed launching the selection process to nominate new AB Members, claiming that the body has been reshaping the DSU rules without Members' consent. The U.S. said that it wants Rule 15 of the Working Procedure for the Appellate Review – which allows former AB Members to continue working on cases even though their mandates have expired – to be resolved first before moving forward on the selection process. The USTR raised the issue in the U.S. President's 2018 Trade Policy Agenda. This dysfunction in the system has led some Members to think that they can get what they wish through litigations rather than the negotiations, the U.S. claimed.

The chair of the AB, former Indian ambassador to the WTO, Mr. Ujal Singh Bhatia, disagreed with the U.S. on this very issue, "the suggestions that weakening the WTO's dispute settlement arm would help revitalize its negotiating function."

"The prospect of agreeing on new multilateral trade rules would lose much of its traction if the negotiating Members were not confident as to the principled and effective enforcement of those rules. Hence, the paralysis of the Appellate Body would cast a long and deep shadow on the continued operation of the multilateral trading system as a whole," Bhatia said in a speech at the annual update on WTO dispute settlement held on May 3<sup>rd</sup>.

AB Members are down to four and since February 2017 and the U.S. has refused to initiate the appointment process for three new Appellate Body judges; this despite a joint call by more than 60 WTO Members to launch the process. Since then, eight new appeals were filed in and the WTO secretariat anticipates over ten panel reports to be issued this year, Bhatia said.

"Unless WTO Members take swift and robust action to remedy this situation, there may soon come a time when divisions of three Appellate Body members can no longer be formed, thereby effectively paralyzing appellate proceedings," the AB chair added.

## Negotiating Groups

Members also touched on the status of various negotiating groups. On this, there were sharp divergences among them, particularly on the issue of development. Members noted the unequal progress in the negotiating groups and, while all agreed to move forward with the fisheries subsidies with the view to reach a deal by MC12, other groups face a more uncertain path forward.

This is the case of the agriculture negotiating group which met without a clear path forward as some still advocate to base the talks on the Doha Development Agenda while others are opposed. It's not quite clear how things will develop here, one source said.

The chair of the group – Guyana's Ambassador to the WTO, Ambassador, John Deep Ford, who was appointed on April 9, 2018, in replacement of Kenya's Ambassador, Stephen Karau – has floated six questions for Members to brainstorm.

These include:

- How to best proceed with the agriculture negotiations taking into account the lessons learned from the MC11?
- The timeline and how quickly Members should get started?
- Which issues Members consider a priority and how to address the question of development along with the need for increased verification/notification?

New U.S. ambassador to the WTO, Denis Shea, said he heard the importance Members attached to the U.S. leadership and remains committed to engaging with others to advance work, particularly in Agriculture and the e-commerce discussions.

However, the WTO is in a critical state as there are several things the organization needs to improve, such as the development discussion which he described as “disturbing”. The U.S., he added, is opposed to the self-designation system – whereby a given country will designate itself as a developing country and benefit from the S&D treatments attached to it. The likelihood of a multilateral outcome remains slim if the self-designation question is not properly addressed, Shea said.

Many Members took the floor to reiterate their commitment to the multilateral trading system and the need to resolve the AB impasse. Most of them (including Canada and 40 others) endorsed a joint statement delivered by Switzerland warning against the rise of trade tensions and the “risks of escalating protectionism”, the difficulties with concluding negotiations, and the divergence of positions on trade and development. The group encouraged “Members to resolve their differences through dialogue and cooperation, including through WTO bodies and, as appropriate, recourse to WTO dispute settlement.” They also look to “fill all current and future vacancies on the Appellate Body without delay.”

“We are still in early stages of our work after Buenos Aires, but I think it is very positive to see Members meeting and engaging,” Azevêdo told the full Membership of the ongoing work in the negotiating groups, urging Members to maintain a sense of urgency, particularly in areas such as fisheries subsidies and others like public stockholding for food security purposes.

**Geneva Watch is published by Dairy Farmers of Canada, Chicken Farmers of Canada, Egg Farmers of Canada, Turkey Farmers of Canada and Canadian Hatching Egg Producers to report on the various events occurring in Geneva, particularly on the WTO negotiations on agriculture.**

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