

Statement by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, November 22, 2019, Reconvened on December 3, 2019

7. PENDING APPEALS

A. STATEMENT BY THE CHAIRMAN

- The United States has significant concerns with the statements made by several Members that the Appellate Body should continue to breach the clear rules of the DSU and to “deem” as an Appellate Body member someone whose term of appointment has expired and thus is no longer an Appellate Body member.
- For nearly one year, Members have engaged in regular discussions on Rule 15 in the Informal Process. Repeatedly, the United States has posed to Members a key question: do Members agree that the Appellate Body does *not* have the authority to “deem” a person who is no longer an Appellate Body member to nonetheless continue to be a member and decide appeals?
- Today, we have heard that the answer to that question is “no” – that is, Members are not in agreement on this fundamental question.
- Rather, we have heard today statements actively encouraging the Appellate Body to continue to break the rules set out in the DSU. We disagree strongly with this approach and do not consider it to be constructive.
- It appears there will be no consensus between Members on how to proceed on the Appellate Body by December 10. That is disappointing given the tremendous efforts the United States has made over the past year to explain its concerns with persistent rule breaking by the Appellate Body.
- Some Members have engaged with those concerns, and we are grateful for that. But many others have simply denied that any problems exist.
- In the absence of any shared understanding of the underlying causes and of appropriate solutions, it will be for the parties to each dispute to engage with each other to determine an appropriate way forward, as some already have.