

In the case where a report has been adopted the parties to the dispute could have joined in the adoption, abstained from the decision to adopt or not blocked the adoption. This approach could enable the government which has to implement the changes to be associated with the adoption process. By participating in the decision, the government may have a clearer basis on which to implement the Panel's recommendations.

D) Appellate Mechanism

In rare cases where a party to a dispute considered, despite the review by the panel and consideration by the Council, that a report was so fundamentally flawed that it should not be adopted, that party could refer the report to an appellate body. The intent would not be to have appellate review become a quasi-automatic step in the dispute settlement process. Rather in those cases where a party to a dispute considered that the panel had made a grave error in interpretation of rights and obligations, that party could ask for appellate review. Decisions of the Appellate Body would be final.

There are a range of practical questions to answer to the satisfaction of all contracting parties before a decision can be taken to institute an appellate mechanism, including: 1) what exactly would be the grounds for appellate review; 2) who would constitute the members of the appellate mechanism; 3) who would service the appellate mechanism; 4) would third parties be able to participate in the appellate process; and 5) how long would the appellate process take? The following could serve as a basis for discussion.

-Either party to the dispute could bring precise issues arising from specific aspects of the panel report before the appellate mechanism. The Appellate Body would examine the interpretation of the rights and obligations in the report arising from the precise concerns brought to its attention.

-The Appellate Body would be a permanent standing body made up of a limited number of eminent GATT experts appointed by the contracting parties for a specific period of time.

-The Appellate Body would need a small secretariat of its own, since the same members of the GATT secretariat who have provided advice to the initial panel would not be well placed to carry out that same function for an appellate mechanism.

-The Appellate Body could be free to consider arguments from any party to the agreements involved.