

# USTR NEWS

## UNITED STATES TRADE REPRESENTATIVE

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### **U.S. Proposes WTO Appellate Body Reforms**

WASHINGTON – U.S. Trade Representative Susan C. Schwab announced today that the United States has formally tabled a proposal to re-structure the World Trade Organization Appellate Body to ensure that it is able to attract a broader pool of high-quality candidates and to provide Appellate Body members more resources to assist Members in resolving trade disputes.

“I am pleased to announce this initiative today by the United States to assist in the vital work of the WTO Appellate Body. It is time for WTO Members to act upon the lessons gained from the experience of the past 14 years,” Ambassador Schwab said. “Especially in light of the demands that are placed on the seven Appellate Body members to resolve disputes of crucial economic and systemic concern, we need to be sure that the Appellate Body is structured in a way that attracts the most highly qualified candidates and gives them the appropriate resources to serve the WTO membership.”

The proposal announced today has three main elements. It would recognize what has been obvious for some time – that although Appellate Body positions are formally considered to be part-time, Appellate Body members are working a full-time job. The proposal would also provide each Appellate Body member with a law clerk devoted to that member, and it would establish a more formal supporting mechanism of WTO Members to ensure that Appellate Body members have access to ongoing professional development.

#### Background

When the Appellate Body was established in 1995, the WTO Dispute Settlement Body (DSB) initially treated the position of Appellate Body member as a part-time position, in the belief that this would attract a wider range of candidates than if the position were full-time. However, the DSB also stated that this arrangement would be kept under review to determine whether “a move to full-time employment was warranted.” Members’ experience in attempting to recruit high-caliber candidates has shown that the part-time arrangement has constrained rather than encouraged the range of possible candidates. During the most recent selection process, only nine candidates were nominated by WTO Members for four vacancies, including two each by the United States and China. In addition, Appellate Body members have been working at a full-time

pace, while being paid on a part-time basis and deprived of full health insurance and retirement benefits. Formally giving Appellate Body members full-time status will recognize the workload that they have been carrying and encourage a wider range of candidates.

In addition, the Appellate Body is currently served by a common pool of staff in the Appellate Body Secretariat. While the Secretariat has worked hard to meet the needs of each of the Appellate Body members, those members would benefit from having, in addition, a staff person selected by each Appellate Body member and assigned to that member. This system has worked well in the United States and other countries where judges currently have individual law clerks assigned to them. It will also create a broader worldwide pool of WTO legal experts.

Finally, it is common for professionals to have access to ongoing opportunities for professional development. The proposal would establish a committee of WTO Members to organize professional development activities for Appellate Body members, including opportunities to become more familiar with the various legal systems of WTO Members and the process of negotiations that produces the WTO agreements.

The WTO is undertaking another selection process for Appellate Body members. The proposal tabled today is designed to ensure a strong pool of highly qualified candidates for Appellate Body vacancies.

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