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World Trade Organization (WTO) Dispute Settlement Crisis (DSC): Legal Implications and Reform Proposals

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Abstract
The World Trade Organization's dispute settlement mechanism is currently facing a profound institutional crisis, primarily due to the paralysis of the Appellate Body. This paralysis stems from the sustained obstruction by the United States of the appointment of new members, resulting in the suspension of the Appellate Body's functions. Therefore, the legal credibility and enforceability of the WTO's dispute resolution framework have been significantly undermined, rendering it less binding and thereby eroding its authority. This impasse carries serious legal ramifications and threatens the structural integrity of the multilateral trading system. In response, various reform initiatives have been proposed, aimed at restoring functionality and legitimacy through enhanced political oversight, curtailing the interpretative scope of the Appellate Body, and strengthening the institutional capacity of the dispute settlement mechanism.
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1. Introduction

The World Trade Organization (WTO), headquartered in Geneva, Switzerland, functions as the principal intergovernmental body governing the global trading system. It is mandated to oversee the implementation and administration of multilateral trade agreements, facilitate negotiations among member states, and provide a formal mechanism for the adjudication and resolution of trade disputes (World Trade Organization, 2025). With membership exceeding 160 countries—collectively accounting for approximately 98% of global trade—the WTO continues to grow, as over 20 applicant states endeavor to align their domestic trade frameworks with WTO provisions and negotiate accession terms with existing members. Formally established on 1 January 1995 as a culmination of the Uruguay Round negotiations (1986–1994), the organization succeeded the General Agreement on Tariffs and Trade (GATT). The WTO Secretariat, composed of 623 staff members, operates under the leadership of Director-General Dr. Ngozi Okonjo-Iweala (World Trade Organization, 2025).

Central to the WTO's trade dispute effectiveness is the dispute settlement, which ensures that trade conflicts are addressed in a structured and legally binding manner. The WTO's dispute settlement system (DSS) is currently in a state of crisis, primarily due to the paralysis of its Appellate Body, which has been rendered non-operational following the United States continued blockage of new appointments (McDougall 2018; Payosova et al. 2018). This deadlock is rooted in concerns over judicial overreach, the lack of clarity in certain WTO rules, and the perceived authoritative weight of past Appellate Body decisions (Li 2024; Payosova et al. 2018). As a result, the legal integrity of the WTO's dispute resolution framework, particularly its compulsory and binding nature, has been significantly undermined (Vidigal 2019).

In response, several reform proposals have been put forward, including enhancing political oversight, limiting the adjudicative scope of the Appellate Body, and strengthening institutional capacities (McDougall 2018). Additionally, both bilateral and plurilateral initiatives have gained traction, most notably the use of pre-agreed mechanisms such as an 'appeal arbitrator' model as an interim alternative (Vidigal 2019). Ultimately, a durable solution to this impasse will depend on reconciling diverging views about the role of dispute settlement and possibly revising the WTO rulebook to reflect contemporary trade realities (Payosova et al. 2018).

2. BACKGROUND: THE WTO DISPUTE SETTLEMENT SYSTEM

One of the core functions of the World Trade Organization (WTO) is the resolution of trade disputes among its member states. Disputes typically arise when a member believes that another has breached a WTO agreement or failed to uphold its trade-related commitments. Over the years, the WTO has developed one of the most stable and active international dispute settlement systems, playing a central role in maintaining the stability and predictability of the global trading system. Since 1995, 638 disputes have been brought to the WTO, and over 350 rulings have been issued. Most of the rest have either been notified as settled "out of court" or remain in a prolonged consultation phase (World Trade Organization 2025).

The WTO Dispute Settlement Mechanism (DSM) was established with the adoption of the understanding of rules and procedures governing the settlement of disputes; it is widely regarded as the "*crown jewel*" of the international trading system. The DSM is designed to enforce the rules agreed upon by member states and to ensure that disputes arising under WTO agreements are handled efficiently, equitably, and consistently (Glauber and Xing 2020).

The DSM follows a procedure that entails the consultation phase, panel adjudication, and, where applicable, appeal to the Appellate Body. When a dispute arises, the first step involves consultations between the parties concerned, allowing them to resolve the matter amicably within 60 days. If consultations fail, the complainant may request the establishment of a panel, typically comprising three independent trade experts. The panel investigates the dispute, considers written and oral arguments, and issues a report with findings and recommendations, usually within six months (World Trade Organization 2025).

If a WTO member disagrees with the legal findings or reasoning of a dispute panel, they have the right to appeal the decision to the Appellate Body. This body was originally composed of seven members and tasked with reviewing legal aspects of panel reports and interpreting WTO agreements (World Trade Organization 2025). Despite the paralysis, the Appellate Body was once essentially able to occupy a significant position in the WTO dispute settlement process as its decisions were final and binding unless all WTO members agreed to reject them, which was nearly impossible due to the consensus rule (World Trade Organization 2025).

Once the WTO adopts a ruling, the losing party is expected to comply within a "reasonable period of time." If compliance is delayed or not achieved, the winning party can enter negotiations for compensation or, if necessary, impose retaliatory measures. These measures may include suspending trade benefits that had been previously granted, such as raising tariffs or withdrawing concessions (Hofmann and Kim 2020). Since the WTO Dispute Settlement Mechanism (DSM) began operating in 1995, it has earned praise for being one of the most active and effective systems in international law. According to the WTO, more than 598 disputes were brought to the organization by 2019. Of those, over 350 proceeded to the panel stage, and approximately 130 were taken to the Appellate Body. These numbers show that WTO members across the globe heavily relied on DSM to resolve trade disagreements.

One of DSM's biggest strengths lies in its ability to limit unilateral responses to trade conflicts. Before the WTO, under the General Agreement on Tariffs and Trade (GATT), countries often took matters into their own hands by imposing retaliatory tariffs or trade barriers. The WTO's more formal, rules-based, and binding approach brought much-needed structure and fairness to global trade, reducing the likelihood of trade wars between powerful economies (Davey, 2005).
Several important cases highlight the effectiveness of DSM. In the *EC – Bananas* case (DS27), for example, the United States challenged the European Union's (EU) banana import system, which the U.S. argued unfairly favored former European colonies in the Caribbean over Latin American exporters. The WTO panel and Appellate Body ruled in favour of the U.S., leading the EU to revise its policies, demonstrating the DSM's power to drive meaningful policy change even in sensitive and politically charged disputes (World Trade Organization 2025; Hofmann and Kim 2020).

Another influential case is *US– Steel Safeguards* (DS248), where the U.S. was found to have violated WTO rules by imposing safeguard measures on imported steel. The Appellate Body ruled that the U.S. failed to show that increased imports had caused serious harm to its domestic industry. This case was important because it reaffirmed the need for countries to meet clear legal and procedural standards when applying protective trade measures (World Trade Organization 2025).

In *China—Rare Earths* (DS431, DS432, DS433), the United States, the European Union, and Japan challenged China's restrictions on exports of rare earth elements, which are critical for producing high-tech goods. The WTO ruled that China's restrictions violated its trade obligations, reinforcing the principle of non-discrimination and the importance of transparent export practices. The decision ensured that these essential raw materials remained accessible to the global market, setting an important precedent for resource-related trade policies (WTO 2019). These cases collectively highlight the DSM's role in not only resolving trade disputes but also in shaping global trade norms and reinforcing the credibility of the multilateral trading system.

Moreover, DSM's neutrality and accessibility have enabled developing countries to participate in international dispute resolution. Although major trading powers like the U.S. and the EU are frequent users of the system, developing economies such as Brazil, India, and Mexico have also been active participants, both as complainants and respondents (Horn, Mavroidis & Nordström). Brazil's successful challenge to US cotton subsidies (DS267) stands out as a rare but impactful case in which a developing country prevailed over a developed nation's entrenched agricultural support system, eventually leading to a negotiated settlement and significant reforms.

Empirical evidence indicates a high degree of compliance with rulings issued by the WTO Dispute Settlement Body (DSB). Research suggests that approximately 90% of losing parties undertake corrective measures to align with DSB recommendations, whether through the amendment of domestic legislation or by engaging in negotiations to reach mutually acceptable compensatory arrangements (Shaffer). Overall, the WTO's Dispute Settlement Mechanism (DSM), characterized by its structured adjudicatory framework, procedural transparency, and emphasis on legal reasoning, has played a pivotal role in advancing rule-based trade governance. It has contributed significantly to curbing protectionist practices, enhancing predictability in international trade relations, and reinforcing the legitimacy and authority of the multilateral trading system.

2.1 *THE CRISIS: PARALYSIS OF THE APPELLATE BODY*

The ongoing crisis in the World Trade Organization's Dispute Settlement Mechanism (DSM) revolves particularly around the paralysis of its Appellate Body (AB). This crisis can be traced back to the United States' longstanding dissatisfaction with how the AB has functioned over the years. While the AB was created to provide an impartial and rules-based review of legal

findings in trade disputes, the U.S. has increasingly argued that it has exceeded its authority and deviated from its original mandate. The United States formalized its complaints against the Appellate Body on March 1, 2019, in the 2019 Trade Policy Agenda and 2018 Annual Report (Li 2024; Payosova et al. 2018)

A second major concern is the failure of the AB to meet procedural deadlines, particularly the 90-day limit for issuing appellate rulings as set out in the Dispute Settlement Understanding (DSU). Delays became a recurring problem, with many decisions taking several months longer than the stipulated time. For instance, in *India—Agricultural Products (DS430)*, the AB took 271 days to issue its report, far exceeding the expected time frame. The U.S. argues that such delays disrupt the timely resolution of disputes and diminish confidence in the dispute settlement system's efficiency.

Additionally, the Appellate Body's approach to precedent has been a source of contention. While WTO rules do not formally recognize precedent in the same way as common law systems, the AB has tended to rely heavily on its previous decisions. The U.S. sees this as a troubling development because it creates a de facto system of binding precedent, limiting the flexibility of future panels and members to interpret agreements differently. In *US–Stainless Steel (Mexico)* (DS344), the U.S. objected to the AB's insistence on following prior interpretations, arguing that each case should be treated on its unique legal and factual basis.

As a result of these frustrations, in 2018, the United States began blocking the appointment and reappointment of Appellate Body members. Since all new appointments must be agreed to by consensus, the U.S. used its veto power to prevent any progress. By December 2019, the situation had deteriorated to the point where only one Appellate Body member remained in office, far below the required minimum quorum of three to hear new appeals. This development effectively suspended the operation of the appellate stage of the WTO's dispute settlement system (Payosova et al. 2018).

2.2 IMPACT ON THE DISPUTE SETTLEMENT SYSTEM

The breakdown of the WTO Appellate Body has had serious consequences for the organization's legal system and its ability to resolve trade disputes fairly and effectively. One of the most immediate outcomes is the "appeals into the void," which occur when a country files an appeal against a panel decision, knowing that the Appellate Body cannot function due to a lack of appointed members and the appeal cannot be processed, thereby leaving the case effectively frozen with no decision that is being enforced, and the legal process comes to a standstill, as seen in the Qatar–Saudi Arabia case (DS567), where Saudi Arabia appealed a panel decision knowing that there was no functioning Appellate Body to hear the case. This situation has caused serious uncertainty in the global trading system. One of the main strengths of the WTO's dispute settlement mechanism was that its rulings were binding and enforceable. Now, without a functioning appellate body, the finality of panel decisions is in doubt. This weakens members' confidence in the DSS, especially for developing countries that depend on WTO rules to protect their trade interests. Without the guarantee of enforcement, they may be discouraged from pursuing valid claims.

An even more worrying outcome of the WTO DSC is the increase in unilateral trade actions in the international trade system because of the AB paralysis, where some countries have started to take matters into their own hands, bypassing WTO rules. The United States has increasingly used Section 301 of its Trade Act of 1974 to impose tariffs on countries it believes are engaging in unfair trade (Sheldon and Chow). This strategy avoids using the WTO's dispute resolution system and has drawn criticism for weakening the rules-based global trade order. A clear example is the ongoing trade conflict between the U.S. and China, where back-and-forth tariff measures have escalated tensions. These kinds of disputes show how trade disagreements can spiral into economic conflict when there's no effective legal system in place to manage them. This situation affects more than just the AB, as it challenges the WTO's overall credibility (World Trade Organization 2025; Sheldon and Chow 2025).

To fill the gap left by the collapse of the Appellate Body, some WTO members have come up with temporary solutions. One key example is the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), which was set up in 2020 by the EU and 25 other countries. The MPIA allows these members to handle appeals between themselves using arbitration, keeping the spirit of the dispute settlement process alive. While this is a smart and useful short-term fix, it has limitations. Major economies like the United States and China are not part of the MPIA, which means it can't serve as a full replacement for a universal and fully functional Appellate Body (European Commission).

3. LEGAL IMPLICATIONS OF THE CRISIS

The ongoing crisis in the World Trade Organization's (WTO) Dispute Settlement Mechanism (DSM), particularly the paralysis of the Appellate Body (AB), has profound legal implications that threaten the integrity of the global trading system. These implications affect the core of the legal proceedings of the international trade system.

Undermining the Rule of Law in International Trade

Since the number of sitting judges in the appellate body fell below the required quorum of three due to a persistent US veto of new appointments has significantly paralyzed the body. The U.S., under both the Trump and Biden administrations, has repeatedly blocked the appointment and reappointment of AB members, citing various concerns. This has dismantled the second-tier review process in WTO dispute resolution. As a result, members can now appeal panel rulings to a non-existent

body, effectively rendering such rulings unenforceable under WTO law. At least 23 cases have been appealed into the void as of 2024, including high-stakes disputes involving major economies such as China, the European Union, and the United States (WTO 2019). Contrary to this, Article 3.2 of the DSU emphasizes that the DSM "provides security and predictability to the multilateral trading system" by ensuring that trade disputes are resolved in a rules-based and impartial manner. Without a functioning appellate mechanism, this foundational principle is under threat. For instance, in a case involving the United States Countervailing Measures on Certain Products from China (DS437), the U.S. appealed the panel's ruling in 2019, but due to the paralysis of the AB, the case remains unresolved. This means that even though China won the initial panel ruling, it has no legal recourse to enforce the decision. The result is a de facto nullification of the legal remedy available to the complaining party.

Moreover, developing countries—typically lacking the economic leverage to implement retaliatory trade measures—are disproportionately affected by the weakening of the dispute settlement mechanism. For these states, the DSM has historically served as one of the few institutional avenues through which they could seek accountability from more economically dominant members. In the absence of a functioning enforcement mechanism, however, the legal remedies it provides risk becoming largely symbolic and ineffective.

The erosion of the appellate function has also caused a regression toward power-based diplomacy, reminiscent of the pre-WTO GATT era (1947–1994), where outcomes were often dictated by negotiation and coercion rather than legal process. Trade disputes now risk becoming matters of bilateral pressure rather than multilateral legality. An illustrative case is the ongoing U.S.–China trade conflict, where both countries have bypassed WTO channels to impose retaliatory tariffs. The U.S. imposed tariffs under Section 301 of the Trade Act of 1974, citing unfair trade practices by China (Sheldon and Chow 2025). While China challenged these actions at the WTO and won a panel ruling in its favour in 2020, the United States appealed, effectively nullifying the ruling by sending it into the void.

Potential Breach of International Legal Obligations

According to Article 17.1 of the WTO's Dispute Settlement Understanding (DSU), all member countries agreed to set up a permanent AB, made up of seven members, to hear appeals in trade disputes. This is not just a suggestion but a binding obligation. However, since the AB stopped working as a result, a key part of the WTO's dispute resolution process is no longer functioning, which means the organization is not meeting its legal responsibility under Article 17.1. This situation also goes against a fundamental principle in international law known as *pacta sunt servanda*, which means that treaties must be followed in good faith. This is clearly stated in Article 26 of the Vienna Convention on the Law of Treaties (1969). The continued blocking of appointments, despite the obligation to maintain the AB, raises serious concerns about whether certain WTO members are acting in good faith.

Additionally, under Article 3.2 of the DSU, WTO members promised to support a dispute system that provides "security and predictability" for global trade. But when the appeals system is not working, it creates exactly the opposite effect of uncertainty and instability. Countries can no longer be sure that trade rules will be applied fairly and consistently, which weakens the entire legal structure that the WTO was built on. This continued violation creates a dangerous precedent in international law, that is, if major powers can simply ignore their legal duties and shut down parts of international agreements without any real consequences, then other global institutions might face similar challenges. This doesn't just affect the integrity of the WTO, it threatens the overall trust and cooperation that treaty-based systems depend on.

Historically, the success of the WTO's DSM relied heavily on its binding nature and automaticity features that distinguished it from the weaker dispute mechanisms of the GATT era. The current crisis risks a regression to a pre-WTO era, where power politics and retaliation replaced structured legal adjudication. To bridge the legal vacuum, several WTO members, led by the European Union, have created the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) under Article 25 of the DSU, which allows parties to voluntarily settle disputes through arbitration. As of 2024, 53 WTO members, including the EU, China, and Brazil, have joined the MPIA (WTO 2019). However, this mechanism is non-binding for non-participants, such as the United States, and does not formally replace the AB. Though useful as a stopgap, the MPIA does not resolve the underlying legal inconsistency of failing to uphold Article 17.1, and it illustrates how fragmentation is emerging within the WTO legal framework.

From a U.S. perspective, the blockage has been justified on policy grounds, including complaints that the AB has engaged in "judicial activism" by exceeding its mandate. The Office of the United States Trade Representative (USTR), in its 2020 and 2022 annual reports, asserted that the AB had repeatedly made findings that the U.S. never agreed to in negotiations and failed to complete cases within the mandatory 90-day timeframe. However, these concerns, while substantive, do not grant any WTO member the legal right to unilaterally paralyze a treaty mechanism. The sustained paralysis of the WTO Appellate Body constitutes more than a procedural issue, it is a direct challenge to the integrity of international law.

Disproportionate Impact on Developing Countries

The collapse of the WTO's Appellate Body (AB) has disproportionately affected developing and least developed countries (LDCs), which historically relied on the WTO's rules-based dispute resolution system to defend their trade rights against more economically and politically powerful nations. One of the primary achievements of the WTO's Dispute Settlement Mechanism (DSM) was its ability to offer legal parity, giving all 164 members, regardless of size or wealth, equal standing under the rules. For many smaller economies that lack the leverage to retaliate through tariffs or influence through

geopolitical alliances, legal adjudication provides a path to justice.

A 2018 WTO report noted that over 60% of dispute settlement cases involve developing countries, either as complainants or respondents. Countries like Brazil, India, Indonesia, South Africa, and Argentina have actively used the DSM to challenge trade practices that they considered discriminatory or unlawful. In Brazil vs. United States (DS267), Brazil successfully challenged U.S. subsidies on cotton, leading to a significant WTO ruling in 2004 that reshaped global agricultural trade policy. Also, in India vs. U.S. (DS430), India contested a U.S. ban on its poultry products, winning the case and demonstrating the value of WTO processes for developing countries. Without a functioning AB, the finality of such legal victories is now in question, as powerful members can appeal rulings "into the void," making panel decisions unenforceable.

In contrast, developed countries can ignore or delay implementation without facing proportionate consequences. This puts developing countries at a systemic disadvantage, essentially reviving the power imbalances that the WTO was designed to overcome. Beyond the appeal crisis, access to legal expertise, translation services, and experienced counsel are ongoing challenges for many LDCs. Although the WTO provides technical assistance through the Advisory Centre on WTO Law (ACWL), many states remain underrepresented in legal disputes due to limited institutional capacity. According to the ACWL's 2023 report, while developed countries account for 35% of WTO membership, they initiate over 70% of dispute cases, a clear reflection of structural imbalance in the system.

The Appellate Body provided a predictable legal process, offering clarifications and consistency in rulings that smaller economies could rely on when forming trade policy. Its absence increases regulatory uncertainty, leaving developing nations unsure of how WTO rules will be interpreted or applied. The legal instability caused by the AB's collapse has led to growing frustration among developing countries, some of which are now seeking alternatives to the WTO framework. For instance, several African states and LDCs have begun to prioritize regional trade arrangements like the African Continental Free Trade Area (AfCFTA) over WTO-led trade enforcement. According to a 2023 UNCTAD policy report, over 47% of surveyed African trade officials believe that the WTO's dispute settlement paralysis diminishes the organization's credibility and relevance for developing economies.

Smaller WTO members, such as those from Caribbean and Pacific island nations, face vulnerabilities. These countries often have one or two major exports (such as sugar, bananas, or fisheries), and any trade barrier can have devastating effects on their economies. In the past, the AB ruled in favour of countries like Ecuador and St. Lucia in banana-related disputes with the EU. Without the AB's appellate protection, such countries are less likely to pursue legal challenges due to fears that unfavourable panel decisions may go unreviewed or powerful respondents might simply ignore rulings.

This systemic bias contradicts Sustainable Development Goal 10 (Reduce inequality within and among countries) and Goal 17 (Strengthen the means of implementation and revitalize the global partnership for sustainable development). A fair dispute resolution mechanism is essential for inclusive global trade and for ensuring that developing countries are not marginalized in the rule-making and rule-enforcing processes. It has not only weakened their ability to enforce trade rights but has also intensified global trade inequalities, undermining the credibility and legitimacy of the multilateral system (Payosova et al. 2018).

Rise of Unilateral Trade Measures

The collapse of the WTO Appellate Body (AB) and the wider dysfunction of the Dispute Settlement Mechanism (DSM) have prompted a concerning shift in global trade governance: the re-emergence of unilateral trade measures. With the absence of a credible and binding appeals process, some powerful member states, most notably the United States, have increasingly chosen to bypass WTO rules and take matters into their own hands (Sheldon and Chow 2025). This development fundamentally undermines the multilateral principles upon which the WTO was founded, escalating the risk of trade disputes devolving into unregulated economic retaliation.

A major instance of unilateralism is the USA's use of Section 301 of its Trade Act of 1974, which authorizes the U.S. Trade Representative (USTR) to investigate and take action against foreign trade practices deemed "unfair" or "discriminatory," even without first seeking a WTO ruling. While the U.S. is technically allowed to use this law under certain conditions, doing so outside the WTO framework violates the Dispute Settlement Understanding (DSU), particularly Articles 23.1 and 23.2(a), which explicitly require members to resolve trade conflicts only through WTO mechanisms and to refrain from unilateral determination of violations (WTO 2019).

The revival of Section 301 has been particularly evident in the U.S.–China trade war. In 2018, the U.S. imposed tariffs on Chinese imports, and China responded with tariffs of its own, leading to a tit-for-tat escalation that impacted over $360 billion in bilateral trade. In 2020, a WTO panel ruled (DS543) that the U.S. tariffs on Chinese goods violated international trade rules. However, the U.S. promptly appealed the ruling "into the void", exploiting the non-functioning Appellate Body to block final adjudication. As a result, the WTO's decision remains unenforceable, and the underlying dispute unresolved. This case illustrates how legal deadlock at the WTO enables countries to avoid accountability while setting dangerous precedents that undermine the credibility, consistency, and binding authority of the global trade system.

The U.S.–China conflict is not an isolated case. Other WTO members have begun adopting unilateral or quasi-unilateral measures in retaliation or self-defense, further straining the already fragile rules-based system. European Union—Digital

Services Tax (DST) Disputes: In response to European countries' implementation of DSTs, the U.S. threatened retaliatory tariffs under Section 301 investigations in 2020–2021, targeting French wine, Italian handbags, and other goods. Another example is seen in Turkey—steel tariffs, where in response to U.S. tariffs on steel and aluminum, Turkey imposed its own levies on American automobiles, cosmetics, and rice (Sheldon and Chow 2025). These instances reflect a trend toward bilateral retaliation and reduced reliance on WTO adjudication, which risks creating a chaotic and unstable international trade landscape.

While large economies may afford to impose or absorb unilateral tariffs, smaller and developing countries suffer disproportionately. Without a functioning multilateral system to appeal to, these countries have no effective mechanism to contest or resist trade coercion by more powerful states. For example, when Indonesia and Vietnam faced U.S. investigations under Section 301 in recent years, they had limited leverage to push back, as pursuing WTO litigation under current conditions offers no guarantee of enforcement. Similarly, African economies, many of which rely heavily on commodity exports and tariff preferences, face immense uncertainty when major trading partners sidestep multilateral rules. Unilateralism also fuels legal fragmentation, as countries begin to interpret trade rules through domestic lenses rather than harmonized international standards. This creates inconsistent norms, making it harder for businesses, regulators, and policymakers to navigate international trade law.

Unilateral trade actions not only conflict with the DSU but also undermine broader principles of public international law, particularly the doctrine of pacta sunt servanda, the idea that treaties must be observed in good faith. When countries take matters into their own hands, they disregard Article 3.2 of the DSU, which emphasizes the importance of preserving rights and obligations under WTO agreements and ensuring "security and predictability" in the multilateral trading system. To restore confidence in the multilateral system, many stakeholders, including the European Union, Canada, and developing country coalitions, have called for a binding commitment to reconstitute the Appellate Body, per Article 17.2 of the DSU. Clearer rules to prohibit abusive unilateral actions, ensuring that disputes must be settled through the WTO. As highlighted in the G20 Osaka Summit (2019) and G7 Leaders' Statement (2023), reforming the WTO's dispute settlement system is a global priority to avoid a full collapse into fragmented trade blocs and economic nationalism.

3.2 REFORM PROPOSALS

The dispute settlement crisis (DSC) has prompted wide-ranging proposals for reform. These proposals aim not only to restore the functioning of the DSM but also to improve its legitimacy, efficiency, and fairness. Reform efforts can be categorized into institutional, procedural, substantive, and alternative mechanisms.

Institutional Reforms

One of the most pressing reforms needed to revive the WTO's DSM's is the appointment of new Appellate Body (AB) members. Since 2017, the United States has blocked this process, arguing that the AB has overstepped its authority and failed to follow proper procedures (McDougall 2018). This obstruction has had a serious impact: by December 2019, the number of AB members dropped below the minimum quorum of three required to hear appeals, effectively shutting down the appellate system (WTO 2019). Reappointing AB members would not only restore the two-tier system but would also show that WTO members remain committed to upholding the rules-based international trading system.
However, reaching consensus in a body of over 160 countries has proven to be extremely difficult, especially when a single member, like the U.S., can block the entire process. To fix this, introducing a qualified majority voting system, instead of relying on full consensus, could make it easier to appoint new AB members. Similar systems are already used in organizations like the European Union (EU), where voting thresholds help prevent deadlock and improve efficiency. Legal scholars like Hillman believe such reforms would help depoliticize the appointment process and restore credibility to the WTO's appellate system (World Trade Organization 2025).

Procedural Reforms

In addition to institutional changes, the WTO has also faced criticism over procedural delays, especially in how long it takes the AB to deliver rulings. Article 17.5 of the Dispute Settlement Understanding (DSU) sets a 90-day deadline for appeal decisions, but in practice, many cases have taken much longer (Payosova et al. 2018). This has caused frustration among member states and reduced confidence in the system. To address these delays, reforms could include stricter time management rules, mandatory deadlines for written submissions, and better case scheduling. Some countries have even proposed that if the AB fails to rule within the deadline, the panel decision should automatically stand (World Trade Organization 2025).

Another issue that has generated debate is how the AB uses precedent. The United States has often argued that the AB treats its past rulings as binding precedents, even though WTO rules do not explicitly support this practice. While consistency in decisions is important, critics worry that over-reliance on precedent could lead to rigid interpretations of trade rules. As a compromise, the WTO could formally clarify that previous decisions are not binding but may be cited as guidance. This would allow for legal consistency without restricting flexibility. In fact, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) already includes a rule that limits the precedential value of its rulings, showing that reform in this area is both possible and practical (Pauwelyn 2023).

Substantive Reforms

Many of the DSM's challenges also stem from unclear or ambiguous language in WTO agreements. Terms like "public morals," "necessary," and "like products" have been interpreted differently across cases, creating uncertainty and inconsistent outcomes. To reduce this ambiguity, WTO members could initiate negotiations to clarify key parts of agreements like the General Agreement on Tariffs and Trade (GATT) and the Agreement on Subsidies and Countervailing Measures (ASCM). Clearer language would help guide panels and AB decisions, leading to more predictable and stable trade rulings (Clarke and Horlick 2005).

Transparency is another key area in need of reform. Critics argue that the decision-making process of the Appellate Body has been too secretive, making it hard for countries and the public to understand the reasoning behind rulings (Vidigal 2019). The WTO could fix this by requiring AB to put in writing more detailed decisions with legal reasoning regarding each of its conclusions and any dissenting opinions. Moreover, public access to hearings could be increased, and more voices could be welcomed from civil society and industry stakeholders as a result. Along with improving the legitimacy of the WTO dispute settlement system, such changes would also strengthen the trust within members (Delimatsis 2012).

Alternative Mechanisms

Although the formal reform of the WTO's Dispute Settlement Mechanism has been slow and politically difficult, some countries have already taken steps into their own hands and developed alternative systems. The most prominent one is the EU and 15 other countries, to which Brazil, Canada, and New Zealand are joined in this, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), launched in March 2020 (Payosova et al. 2018; European Parliament 2014; Vidigal 2019). Under Article 25 of the DSU, the MPIA is an alternative dispute settlement mechanism that leaves the matter to be decided by arbitration. While MPIA is voluntary and is only applicable to signatories, the function of the AB's appellate is intended to be replicated. Considering that it relies on retired WTO judges as arbitrators and relies on procedures very similar to that of the original AB with important improvements like shorter timelines and limited scope of precedent (European Parliament 2014). In 2023, the MPIA was used successfully in an EU-Colombia (DS591) dispute where interim solutions were shown to be both effective and credible (World Trade Organization 2025).

The MPIA is not a permanent solution, but it indicates that members are prepared to advance cooperative and creative means of upholding the principles of the WTO when formal mechanisms are blocked. At the same time, it offers a working model that could serve to motivate wider reform in the official dispute resolution system.

5. Conclusion

Overall, the ongoing crisis within the WTO's Dispute Settlement Mechanism (DSM), particularly the paralysis of the Appellate Body, presents a significant challenge to the credibility, functionality, and legitimacy of the multilateral trading system. The inability of the system to provide binding and impartial adjudication of trade disputes threatens not only legal certainty but also the trust of member states, especially smaller and developing economies, in the institutional capacity of the WTO to uphold the rules-based order. In response to this systemic breakdown, a range of reform proposals have emerged, encompassing institutional reforms (e.g., changes in appointment processes and oversight), procedural reforms (such as streamlining timelines and increasing transparency), and substantive reforms (clarifying the scope of appellate review and interpretative boundaries). Additionally, alternative mechanisms like the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), established under Article 25 of the Dispute Settlement Understanding (DSU), offer provisional solutions to maintain appellate functions among willing members. While the MPIA represents a constructive interim measure, its limited participation and informal status underscore the need for a comprehensive and universally accepted resolution.

The success of any reform initiative ultimately hinges on the collective political will and the spirit of compromise among WTO members. Without meaningful engagement—particularly from key players like the United States, the European Union, China, and emerging economies—the prospects for reviving a fully operational and authoritative dispute settlement mechanism remain uncertain.

Restoring a functional, equitable, and transparent dispute resolution system is not merely a procedural necessity; it is fundamental to the preservation of the rule of law in international trade. Such a system ensures that all members, regardless of their economic size or power, have access to impartial adjudication and legal recourse. This is especially vital for developing countries whose participation in the global trading system depends on predictable and enforceable rules. In this regard, the future of the WTO's dispute settlement function will serve as a critical litmus test for the resilience and adaptability of the multilateral trading system in a rapidly evolving geopolitical and economic landscape.

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