

Dilemma and Optimization Path of the World Trade Organization Trade Dispute Settlement Mechanism

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Abstract. The paralysis of the World Trade Organization (WTO) Dispute Settlement Mechanism (DSM) has become a systemic crisis for the multilateral trading system. This paper uses literature review and case analysis to analyze the issue. It concludes that while the 2019 suspension of the Appellate Body was directly caused by US obstruction of appointments, its deeper roots lie in the conflict between the mechanism's inherent flaws and the restructuring of global economic power. Firstly, procedural delays result in an average case processing time far exceeding the 90-day limit stipulated in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). Secondly, the AB has had to deal with the issue of 'overreach in rulings,' including encroaching on the mandates of other WTO bodies and exceeding its authority in reviewing factual issues. Thirdly, the mechanism struggles to reconcile the shifting balance between unilateralism and multilateralism. To address the DSM's predicament, this paper proposes a dual-track optimization path: in the short term, establishing a "Multi-party Interim Appeal Arbitration Arrangement" (MPIA) in accordance with Article 25 of the DSU as a temporary substitute for the paralyzed AB; and in the long term, undertaking systemic restructuring of the mechanism. This includes introducing qualified majority voting to break the deadlock in judgement appointments, reasonably extending time limits to suitcase complexity, and drawing on the Regional Comprehensive Economic Partnership (RCEP) model to curb judicial overreach. B The paper aims to analyze the viability of this optimization path as an interim solution.

Keywords: WTO Dispute Settlement Mechanism, appellate body suspension, Multi-Party Interim Appeal Arrangement (MPIA)

1. Introduction

As the core of global trade rules, since its inception in 1995, the WTO dispute resolution mechanism has been a crucial component of the multilateral trading system [1]. It provides an authoritative framework for resolving international trade disputes and has effectively maintained the stability of the multilateral trading system. But since 2017, the US has consistently blocked the appointment of judges to the Appellate Body, citing "ultra vires ruling" and "procedural defects." Consequently, in December 2019, the AB suspended the hearing of appeals due to a lack of the minimum three members required for quorum. As of 2025, the WTO Dispute Settlement Mechanism Appellate Body has been in paralysis for over five years, leaving more than 30 trade disputes unresolved due

to the inability to pursue appeals, and the multilateral trading system is now facing severe challenges.

The paralysis of the WTO Dispute Settlement Mechanism not only exposes the deficiencies in the design of the WTO mechanism under the current international trade situation but also reflects the irreconcilable contradictions under the changing international power dynamics. On the one hand, the procedures are complex and lengthy, and a case can be delayed for several years after appeal, which greatly slows down the resolution efficiency of international trade disputes. On the other hand, prominent issues such as "ultra vires ruling" have become the main reason for the United States to block the member selection of the Appellate Body [1,2]. In addition, with the redistribution of international economic power, the mechanism finds it difficult to balance the waxing and waning contradictions between multilateralism and unilateralism, and it is difficult to adapt to the rapid development of emerging economies. As a result, some member states have lost trust in the Mechanism and thus seek bilateral or regional agreements to resolve trade disputes. Therefore, against the backdrop of a vibrant global economy fueled by emerging economies, the optimization and reform of the Mechanism is becoming increasingly imperative. In light of this, this paper employs the methods of case analysis and literature review to conduct an in-depth analysis of the existing problems within the WTO trade disputes mechanism. It seeks to methodically investigate the reasons for the mechanism's dilemma and works to offer theoretical justification for improving and restructuring the WTO's trade dispute resolution process, in order to support the multilateral trading system's improved operation.

2. Literature review

Current research identifies several perspectives on the causes of the predicament. A widely accepted view attributes the impasse directly to the United States' obstruction of AB member selection. However, the root cause of the U.S. obstruction of AB member selection lies in the inherent flaws of the Mechanism and shifts in global economic power.

The inherent defects within the mechanism constitute a core element contributing to the current dilemma. The WTO's "negative consensus" mechanism results in WTO members lacking effective means to constrain the AB, progressively creating a clash between judicial independence and member control [3]. In practice, this manifests as "judicial overreach" on the part of Members of the AB, which is the fundamental cause of the US's opposition to and criticism of the AB. The "Report on the Appellate Body of the World Trade Organization", released in 2020, detailed eight major accusations, according to the United States, including judgments exceeding the mandatory period, rulings on cases after the expiration of their terms, and overreach in reviewing factual issues [2]. Another perspective is that shifts in global economic power have rendered the Mechanism ill-equipped to handle today's rapidly changing global landscape [4].

In response to these issues, the academic community has proposed several potential solutions. Firstly, Article 25 of the "Understanding" calls for the establishment of the MPIA, intended as a temporary appeal mechanism. While this approach has garnered recognition from numerous member states, it is not considered a sustainable long-term solution [5]. Secondly, some argue that the authority of the WTO can be rebuilt, and the crisis of confidence in its Dispute Settlement Mechanism salvaged, by adjusting the overall architecture of international law. However, the system requiring adjustment, according to this view, is excessively complex, resulting in a high degree of risk. In addition, some scholars have proposed integration and innovation by drawing on the resolution mechanisms of international organizations with similar characteristics to the WTO, such

as the Regional Comprehensive Economic Partnership [6]. However, no effective, comprehensive solution has been proposed to date, and this remains a key area for further research.

3. DSM's history

3.1. How the WTO DSM was formed

The Mechanism is rooted in nearly half a century of Multilateral Trade Governance practice. Its formation was not an overnight achievement but evolved from long-term trial and error and institutional innovation in dispute settlement practices under the General Agreement on Tariffs and Trade (GATT), culminating in a systematic restructuring during the Uruguay Round negotiations. Although the GATT, established in 1947, lacked a dedicated dispute settlement body, Article 22 and Article 23 provided the legal foundation for dispute resolution. A significant step towards Quasi-judicialization was taken in 1955 when the GATT established the "Panel" procedure, under which independent third-party experts adjudicated cases. However, this mechanism suffered from a critical flaw: A losing party might veto the ruling's implementation because the Consensus of All Contracting Parties, or unanimous assent, was required to adopt the Panel's report. Thus, the Mechanism was revolutionarily established during the Uruguay Round negotiations, which were initiated in 1986. By guaranteeing the nearly automatic adoption of all panel findings, the "negative consensus" rule greatly improved the effectiveness and enforcement of decisions.

From a historical perspective, the 1980s, which saw the beginning of the Uruguay Round, were a time when economic globalization and multilateralism were globally prevalent. Traditional dispute resolution methods from the GATT era were no longer adequate for contemporary economic development needs, and the consensus-based approach had greatly reduced the efficiency of dispute resolution [3]. The Negative Consensus mechanism of the WTO, which endows rulings with mandatory and binding force, aligned with the characteristics and interests of that era. Consequently, the WTO trade dispute settlement mechanism came into being.

Since the WTO's establishment in 1995, the dispute settlement mechanism's practical application has quickly proven its revolutionary worth. It is undeniable that the Mechanism, characterized by its Compulsory Jurisdiction, Judicial Independence, and efficient enforcement, marks global trade governance's official entry into a Rule-based era.

3.2. How the WTO DSM works (before paralysis)

The Mechanism is mainly composed of two core components: the "Panel" and the "Appellate Body". WTO dispute resolution begins with the Mandatory Consultation stage between members, striving to resolve disputes through negotiation. The complaining party may ask the Dispute Settlement Body to create a Panel made up of impartial panelists if consultations are unsuccessful. The Panel looks at case facts and legal challenges, and issues a report containing the Ruling, generally completed within 6-9 months. Legal issues in the Panel report may be appealed by any party to the permanent Appellate Body, which has seven members. Three members will consider each appeal case. Instead of reexamining the case's facts, AB's job is to review the Panel's legal decisions.

The Appellate Body's Ruling is generally considered the final Ruling and has Legal Binding Force, obligating member states to Implementation. The Losing Party is subject to ongoing monitoring by the Dispute Settlement Body (DSB) on implementation and has a reasonable amount of time to bring its measures into compliance with World Trade Organization regulations.

3.3. Analysis of current problems in the WTO DSM

Since the beginning of the 21st century, shifts in global economic power have fueled the rise of unilateralism and regionalism, along with the gradual development of anti-globalization. Consequently, the WTO Dispute Settlement Mechanism, once well-suited to multilateralism and globalization, has come under scrutiny. Inherent flaws within the system itself further compound this. These factors fostered an environment of instability, culminating in the complete paralysis of the mechanism in 2019 due to the United States' obstruction of AB member selection, signaling the Mechanism's paralysis. Subsequently, in a 2020 report on the Appellate Body, the United States leveled eight specific charges, including “overrun trial” “following precedent” “facts and law” “advisory opinions” “overtime service” and “ultra vires adjudication” [7]. While the public generally believes that the U.S. openly obstructed the Appellate Body, leading to its paralysis, because the U.S. had lost many cases in the mechanism, the existence of problems within the Mechanism is undeniable [8]. Based on the operational procedures of the mechanism described above, the following section will elaborate on three major problems that fundamentally violate these procedures.

3.3.1. Exceeding time limits (the "90-day rule")

According to the “Understanding”, Article 17 stipulates that appellate the proceedings will not last longer than ninety days anyway. However, the AB gradually disregarded the DSU's clear stipulation that appeals should not exceed 90 days under any circumstances during its trial process. Over time, the Appellate Body increasingly failed to comply with this deadline. Statistics show that on average it took 118 days from the beginning of a request to have AB's report released. For instance, in the United States-Tyre (China) case in 2011, On May 24, 2011, China submitted a notice of appeal, and on September 5, 2011, the AB released its findings, the entire appeal period thus lasting 104 days, without any extension agreed upon through mutual consultation. This is due to the increased workload and the complexity of the cases [7].

3.3.2. The issue of “ultra vires adjudication”

Another serious problem with the Appellate Body is its ultra vires comments on matters pertaining to other World Trade Organization bodies. In line with the “Understanding”, the AB and the Panel are only mandated to assist member states in determining whether their implementing measures are consistent with rules. However, the AB has gone far beyond this responsibility, guiding other World Trade Organization bodies in fulfilling their responsibilities under the World Trade Organization Agreement [7]. In the U.S.-Large Civil Aircraft, the Appellate Body adjudicated on an issue that had already been delegated to other World Trade Organization bodies, thus exceeding its authority.

3.3.3. Issues of "review of questions of fact"

According to the “Understanding”, the AB's jurisdiction is to examine the Panel's legal decisions, not to reexamine the case's facts. However, in practice, the AB not only regularly reviews the factual findings of the Panel, but also reviews member states' domestic laws, treating them as legal issues. For example, in the case of DS495 Korea-Import Bans, and Testing and Certification Requirements for Radionuclides, the AB overturned the Panel's factual presumption that "Japanese products are unsafe," arguing that the risk foundation of the Korean measures had not been sufficiently evaluated by the Panel. This was considered a serious overreach of its review authority.

4. Optimization paths for the mechanism

Against the backdrop of profound restructuring of the global economic landscape and the persistent rise of trade protectionism, the Mechanism has revealed serious structural flaws. In the face of such a turbulent international trade climate, the current approach has proven to be insufficient and rigid. Therefore, the DSM must be optimized and reformed to adapt to the evolving circumstances, to swiftly restore its function of upholding the multilateral trading system and serving as an effective dispute resolution platform.

Previous studies show that while the DSM's predicament has been long-standing and a comprehensive governance plan has yet to be proposed, a breakthrough is still possible. Scholars and experts have offered various governance solutions from different angles. In summary, the reform paths can be categorized into two conceptual models. The first approach involves supplementing, rather than altering, the existing mechanism. This means refraining from changing the current system or restoring the paralysis Appellate Body and instead adding new mechanisms within the existing framework to revive its functions. This "patching" approach serves as a stopgap measure to alleviate DSM's difficulties. The second approach focuses on improving the current mechanism with the aim of completely restoring the function of the AB and resolving the current problems of the Mechanism once and for all, through measures such as invoking voting procedures and extending trial deadlines.

4.1. Building new mechanisms within the existing framework

4.1.1. MPIA

To address the paralysis of the AB, in April 2020, China, the European Union, and 17 other members notified the World Trade Organization of the MPIA. This notification represents the most significant progress in DSM optimization since the AB paralysis in 2019. The Appellate Body's traits are passed down to the MPIA, serves as an alternative and is effective among its participating members.

While a temporary solution is effective only within the participating members, the MPIA itself is innovative. Its innovations include limitations on the scope of review by the appellate arbitration tribunal, adherence to the 90-day Ruling deadline, and recommendations for excluding certain appellate matters. These features can significantly improve the efficiency of appellate arbitration, offering innovative guidance for resolving the issues within the Mechanism.

In practice, cases such as the "Turkey Pharmaceuticals case" and the "Colombia Frozen French Fries case" have been adjudicated under the Multi-Party Interim Appeal Arrangement, and their validity is beyond doubt, further highlighting its potential as a long-term solution [5,9].

4.1.2. Declaration of non-use of appellate procedure

Compared to the MPIA Arrangement, the declaration of non-use of the appellate procedure seems rather hasty. This approach entails the disputing parties jointly submitting a "Declaration of Non-use of Appellate Procedure" to prevent the case from entering the paralysis-stricken appellate system. While this circumvents the Appellate Body paralysis predicament, it also undermines the dispute resolution function of the DSM. Although such declarations may resolve individual cases, they do not constitute a viable long-term solution.

4.2. Fixing the core problems

4.2.1. Invoking voting tabulation

Early in the crisis, some scholars had already proposed invoking a voting tabulation mechanism to restore the Appellate Body member selection. However, this voting system conflicts with the WTO principle of consensus. Furthermore, because of the continued obstruction by the U.S, it would not agree to invoking the voting system, meaning it could not fundamentally solve the problem [10]. Nevertheless, as the WTO Dispute Settlement Mechanism's predicament has proven difficult to resolve and no better solution has emerged, invoking voting tabulation to restore the Appellate Body member selection now appears to be the optimal solution.

4.2.2. Extending the time limit for appellate body review

Despite criticism of its excessive trial volume, AB's workload has steadily increased in recent years. In 2013, the Appellate Body explained its workload, citing the following contributing factors: first, the increasing size of appealed disputes; second, allegations under Article 11 of the "Understanding," among other concerns that are increasingly raised on appeal; third, the rise in the quantity of parties and participants in appeals; Lastly, the average appeal's longer overall length of materials presented to the Appellate Body. Due to multiple reasons, including the complexity of disputes, the number of participants, and limited resources for handling disputes, the current Appellate Body finds it difficult to resolve appeals within 90 days. Therefore, the time limit for Appellate Body review could be appropriately extended to address the current complex situation [11].

4.2.3. Improving the mechanism by referring to advanced dispute resolution mechanisms of regional agreements

Comparative law is important because it can be used to enhance local laws by examining and incorporating the finest features of other nations' legal systems. This principle also applies to optimizing the Mechanism. In the current international landscape, numerous successful regional international organizations are emerging. Furthermore, given the ongoing crisis within the WTO Dispute Settlement Mechanism, many member states are now resorting to regional agreements for dispute resolution [12]. Some of these agreements offer dispute resolution mechanisms from which the WTO can draw valuable lessons. For instance, the Regional Comprehensive Economic Partnership (RCEP) does not establish a permanent Appellate Body. Instead, it enhances the effectiveness of the Panel to achieve an effect similar to "one-ruling finality" in arbitration. Disputes can be resolved directly through the Panel, and member states have confidence in the Panel's adjudicatory decisions. This approach can effectively prevent issues such as the Appellate Body "reviewing factual issues" or "exceeding its authority" during adjudication.

In summary, in the short term, the bridging role of the MPIA should be maximized to expand its scope and enhance its recognition. In the long run, fundamental adjustments to the DSM should still be made based on consultations among member states. Whether through voting, extending the review period, or referencing mechanisms from other regional agreements, these approaches essentially represent systematic adjustments to the DSM, and would constitute a more long-term reform plan.

5. Conclusion

Reviewing the entire process of the Mechanism crisis, the Appellate Body paralysis, while directly caused by the United States' obstruction, is fundamentally rooted in the mechanism's inherent issues: protracted procedures, the “ultra vires ruling” controversy, and the inability to effectively reconcile the increasingly divergent interests of member states amid the rise of emerging economies. Existing optimization paths are expedient measures but fall short of replacing the authoritative and permanent Appellate Body. Referring to regional agreements or restructuring the international law system are ideas fraught with complexity and high risks. Looking ahead, the reshaping of the Mechanism requires a two-pronged approach. To increase the wide recognition of its decisions, short-term efforts should concentrate on enhancing the MPIA arbitrator selection procedures and operational effectiveness. In the long term, the key lies in member states demonstrating political wisdom and, through thorough consultation, promoting a more sustainable institutional reform plan to bolster the multilateral trading system and provide a stable rules-based foundation for international trade governance.

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