JOURNAL OF CULTURAL ANALYSIS AND SOCIAL CHANGE

Journal of Cultural Analysis and Social Change,
2025, 10(2), 4606-4623
ISSN: 2589-1316

The Effectiveness of the Dispute Settlement System in the World Trade Organization More Than Three Decades After its Implementation

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Citation: Aribi, M. I. A., & Abousud, E. A. The Effectiveness of the Dispute Settlement System in the World Trade Organization More Than Three Decades After its Implementation. Journal of Cultural Analysis and Social Change, 10(2), 4606–4623. https://doi.org/10.64753/jcasc.v10i2.2312

Published: November 24, 2025

ABSTRACT

This research aims to study the effectiveness of the WTO dispute settlement system after more than three decades of its implementation, by analyzing its legal structure, procedural mechanisms, and practical practices. A comparative analytical approach was used to evaluate the system's performance in addressing international trade disputes between member states and its commitment to the principles of fairness, impartiality, and transparency. The research concluded that the system has effectively contributed to establishing stability in the multilateral trading system, but in recent years it has faced institutional and political challenges that have disrupted some of its basic functions, particularly the suspension of the Appellate Body since 2019. The importance of the research lies in highlighting the strengths and weaknesses of the current system and proposing reform visions that ensure its sustainability and future effectiveness.

Keywords: World Trade Organization (WTO), Dispute Settlement Body (DSB), Appellate Body, Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), panel proceedings; multilateral trade agreements.

INTRODUCTION

The World Trade Organization (WTO) is the most important framework for regulating multilateral trade relations. Since its establishment in 1995, it has supervised and regulated 28 agreements in various areas of trade.and, to be more precise, supervises all trade activities between countries, including trade in goods and services, as well as intellectual property rights, which have been included in the trade activities regulated by the WTO. The system for settling disputes that may arise between parties within an organized institutional framework is one of its fundamental pillars for ensuring compliance with the rules of international trade agreements. This system has evolved from flexible and non-binding procedures, as was the case under the General Agreement on Tariffs and Trade (GATT) of 1947, to a regulated legal mechanism based on a memorandum of understanding within the WTO. In this research, we highlight the legal basis of this system, the bodies that have been formed to carry out its work, the mechanism of the body's work, the cases that have been presented to the body and the stages through which they have passed, and examine the body's work in applying the rules on which it is based and their effectiveness. We also identify the usefulness and impact of the body in settling disputes that have arisen between multiple parties, examine the mechanism for enforcing the body's rulings, discuss the challenges facing the body's work, especially after the suspension of the appeal stage in December 2019, and provide a comprehensive assessment accompanied by recommendations for improvement.

Significance of the Topic

The topic of the research derives its importance from the fact that it represents an analytical study based on tracking the application of the provisions of the dispute settlement rules more than three decades after their adoption and implementation and examining and evaluating the mechanism of their application and their effectiveness in achieving the objectives set for them. The dispute settlement system is the cornerstone of ensuring compliance with international trade rules and reflects the extent to which states are committed to the rule of law. It is also important to identify the challenges facing the system today in light of the United States' renunciation of its commitment to free and multilateral trade, its pursuit of unilateral protectionist measures, its failure to respect the rule of law, and its obstruction of the appeal process.

METHODOLOGY

The research is based on a legal analytical approach, supported by real-life examples from international cases and institutional assessments, and a comparison between the stated objectives and the results achieved over three decades.

Research Problem

The research aims to analyze the legal framework of the system, review the most prominent issues it deals with, assess the challenges it faces, and pose a central problem centered on the following questions:

- How effective are the rules in achieving the objectives of the agreement more than three decades after its adoption?
- What is the impact of the suspension of the appeal phase on the work of the dispute settlement mechanism?

THEORETICAL FRAMEWORK OF THE DISPUTE SETTLEMENT SYSTEM

Origin and Development

The General Agreement on Tariffs and Trade (GATT) of 1947 provided the general framework governing trade between its 23 member states. Articles 22 and 23 of the agreement were devoted to the settlement of disputes arising from the application of the agreement and did not include mandatory rules for resolving disputes but relied on diplomatic procedures. As the various rounds continued, the agreement was expanded until it reached its peak in the Uruguay Round (1986-1993), which resulted in the signing of 28 agreements in various fields such as trade in goods, services, and intellectual property. The number of member states under the agreement also rose to 164 full members, representing horizontal expansion. Vertically, some rules were reviewed, clarified, and detailed[1] in light of the practical application of the 1947 GATT Agreement. GATT principles such as free competition, national treatment, and most-favored-nation treatment were established and deepened as fundamental principles underlying the GATT Agreement for the liberalization of world trade. It is important to note that the existence of principles, rights, and obligations of the parties alone is not sufficient to achieve the objectives for which GATT was established. It was necessary to have rules for settling disputes that may arise from the application of the provisions of the agreement, allowing the affected parties to protect their rights, thereby contributing to the stability of commercial transactions. This could only be achieved by developing the dispute settlement system that prevailed in GATT 1947 and addressing the shortcomings that became apparent through its long application from 1947 to 1993. Therefore, the dispute settlement mechanism that emerged from the Uruguay Round is considered one of the most important outcomes of the round. Its primary objective is to strengthen the multilateral system and create a state of complete stability in trade transactions between the parties. This mechanism is governed by a memorandum (Memorandum of Understanding on Rules and Procedures Governing the Settlement of Disputes). The Memorandum of Understanding consists of one article and four annexes and forms the comprehensive legal framework governing all aspects of the trade dispute settlement process between member states.

Legal Basis of the Dispute Settlement System

The legal basis of the dispute settlement system refers to the scope of application of these rules. In this regard, it can be said that the dispute settlement rules apply to all requests for settlement that are submitted. After the Agreement establishing the World Trade Organization entered into force in January 1995, requests submitted prior to that date are settled in accordance with the provisions of the 1947 GATT Agreement. In order to apply

(1) Commonwealth Secretariat, *Business Guide to the Uruguay Round* (London: Commonwealth Secretariat, 1995, p. 39.

the rules of understanding to a multilateral agreement, the parties to the agreement must adopt a decision clarifying the conditions for applying the rules of understanding to the agreement in question. When a dispute arises concerning one of the agreements covered by the WTO, the dispute is dealt with in accordance with the specific provisions of that agreement. If there are no such provisions, we resort to the rules for the settlement of disputes or the Agreement Establishing the World Trade Organization[2]. Knowing the rules applicable in the event of a dispute is of paramount importance, as it is the first step towards reaching an acceptable settlement to resolve the dispute. [3]example, in the event of a dispute that requires the application of rules and procedures from more than one agreement, or in the event of a conflict between the rules and procedures under consideration, or if the parties to the dispute fail to agree on the rules and procedures to be applied within 20 days of the formation of the arbitration panel, in such cases the chair of the body may apply the principle of special before general Annex 2 to the Memorandum of Understanding on Dispute Settlement lists the agreements that contain special or additional rules and procedures, as well as the articles that must be taken into account when considering any dispute. For example, the Trade Agreement on Financial Services states: "In the event of a dispute in the field of financial services, an expert in financial matters with experience in banking procedures shall be consulted." This provision shall apply when forming any panel to consider a dispute relating to financial services, and the procedures for forming the panel shall be completed in accordance with the general provisions of the settlement procedures. We conclude from the above that if there is a conflict between the provisions of the Understanding on Rules and Procedures for Dispute Settlement and the additional or special provisions for dispute settlement in any other covered agreement, the special or additional provisions in the covered agreement shall prevail to the extent necessary to resolve the conflict between the special and general provisions.

Basic Principles of the System

The dispute settlement system is based on several fundamental principles, namely:
a) The principle of the rule of law: All disputes are subject to the rules and procedures set out in the Memorandum of Understanding[4].
b) Principle of bindingness: The decisions of the dispute settlement body are binding on all parties[5].
c) The principle of comprehensiveness: The system covers all WTO agreements without exception[6].
d) Principle of Graduation: The system follows a graduated process, beginning with consultations and ending with enforcement[7].

Institutional Structure of the System

Dispute Settlement Body

The WTO Agreement established a system for managing the dispute settlement mechanism, which in turn oversees disputes arising between contracting parties as a result of the application of mutual obligations contained in the agreements covered. This represents an important qualitative shift in the regulation of world trade, as it delegates the authority of states to an agreed international court to settle trade disputes through various stages. The General Council of the Organization supervises the administration of agreements when it meets as the Dispute Settlement Body (DSB). The body has the right to appoint its chair and establish the necessary rules of procedure to carry out its work as necessary. Dispute settlement panels are formed under the supervision of the DSB[8].

The Secretariat of the Dispute Settlement Body

The General Secretariat of the World Trade Organization is a central body in the dispute settlement system, playing a key role in providing legal, procedural, and technical support to special panels and committees considering trade disputes. This is particularly evident in the provision of impartial legal experts to developing countries upon request, enabling them to defend their interests within a framework that ensures impartiality and fairness and promotes the principle of equality among members in accessing the international judicial system. The Secretariat also seeks to empower developing countries by organizing customized training programs aimed at improving the competence of national cadres and enhancing their understanding of the legal procedures and skills necessary for the management of trade disputes. The support provided includes free legal advice, institutional capacity building, and preferential treatment, such as extending the time periods granted for the implementation of judgments and taking into account the economic circumstances of developing countries.

(4) See: Article 1(1) of the DSU (Understanding on Rules and Procedures Governing the Settlement of Disputes) 1994.
(5) See: Article 1(2) of the DSU (Understanding on Rules and Procedures Governing the Settlement of Disputes) 1994.
(4) Pauwelyn, Joost (2003). "Conflict of Norms in Public International Law". Cambridge University Press.
(5) Davey, William J. (2005). "The WTO Dispute Settlement System: The First Ten Years". Journal of International Economic Law, 8(1), 17-50.
(6) Matsushita, Mitsuo et al. (2015). "The World Trade Organization: Law, Practice, and Policy". Oxford University Press
(7) Steger, Debra P. (2002). "The World Trade Organization: A New Constitution for International Trade." Cameron May
(8) See: Article 3(3) of the Agreement Establishing the World Trade Organization (WTO)1994

Practical experience has proven the effectiveness of this role, as in the case of Ecuador with the European Union regarding banana tariffs[9], where legal support played a decisive role in modifying European policies, or in the case of Vietnam, which benefited from training programs to strengthen its legal presence in the multilateral trading system. However, some challenges continue to undermine the full utilization of the Secretariat's services, including weak institutional coordination, limited knowledge of the legal system, a shortage of qualified local experts, and political pressures that may prevent developing countries from pursuing disputes to their final stages.Accordingly, the effectiveness of the support tools provided by the Secretariat is not absolute, but rather linked to the extent to which developing countries are prepared to use these tools and invest in developing their institutional capacities, enabling them to achieve more equitable and effective participation within the global trading system[10].

Objectives of the Dispute Settlement Body (DSB)

The Dispute Settlement Body aims to contribute to the stability of trade transactions between the contracting parties to the agreements covered by compelling them to fulfill their obligations and protect their rights guaranteed by the agreements. This is achieved by removing any breach of a covered agreement by one of the parties, thereby removing the damage to the interests of the member.If it is not possible to withdraw the measure that constitutes a breach, the dispute settlement body shall have the right to impose appropriate compensation on the offending parties, provided that this measure is temporary, as soon as the body is able to compel the offending party to remove the measures that violate any of the covered agreements.

Jurisdiction of the Dispute Settlement Body

The dispute settlement body shall have the following functions:

1. Administering the rules and procedures, consultations, and dispute settlement provisions[11] contained in the covered agreements.
2. The Dispute Settlement Body shall establish bodies and specialized teams to achieve its objectives, such as forming arbitration teams and an appeals body, and approving the reports prepared by these teams.
3. The body supervises the implementation of decisions and recommendations submitted to it by the teams and committees it forms, and grants the disputing parties the necessary licenses to suspend mutual concessions between the parties, thereby enabling it to follow up on decisions and recommendations in order to fulfill its function of achieving stability in commercial transactions between countries.
4. The body shall inform the specialized councils and committees of the World Trade Organization of the development of any dispute relating to the provisions of a covered agreement.
5. The body shall meet whenever necessary and shall take its decisions by consensus. A decision shall be considered to have been taken by consensus if no member present at the meeting objects to the proposed decision[12].
6. The Dispute Settlement Body shall establish an Appellate Body, whose members shall serve for a term of four years and may be reappointed once[13].

Arbitration Panels

Arbitration panels shall be composed of three qualified experts, selected from a list of experts from different member states. These panels shall examine the disputes submitted to them and issue reports containing their findings and recommendations.

Appeal Body

The Appeals Body consisted of seven members elected for a four-year term, renewable once. The Appeals Body ceased to function in December 2019 because its members' appointments were not renewed, creating a crisis in the system.

(9) World Trade Organization (WTO), Dispute Settlement Case WT/DS27, 12 April 1999

(10) Ben Drees, Halima. "The Specificity of International Trade Arbitration Within the WTO and the Extent to Which Developing Countries Are Led by It: A Study in the Provisions of the Memorandum of Understanding on Dispute Settlement." *Journal of Legal Studies and Research,* vol. 7, no. 2, 2022, p. 367.

(11) World Trade Organization, *Dispute Settlement Body statistics: Over 625 cases reviewed, with 40–45% involving developing countries*, July 2025 (Geneva: WTO Secretariat) https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm

(12) See: Articles 2(3) and 2(4) of the 1995 DSU (Understanding on Rules and Procedures Governing the Settlement of Disputes) 1994.

(13) See: Article 17(2) of the DSU (Understanding on Rules and Procedures Governing the Settlement of Disputes) 1994.

MECHANISM OF THE DISPUTE SETTLEMENT SYSTEM

Time Frame of the System

Perhaps the most important feature that distinguishes the dispute settlement mechanism in the World Trade Organization from the mechanism that was in place in the 1947 GATT is the existence of clear working procedures, whereby the time periods for the dispute to be fully resolved before the settlement body are specified, from the consultation stage to the implementation of recommendations and decisions. The drafters of the mechanism took advantage of the obvious shortcomings of the 1947 GATT mechanism, where lengthy procedures were a hallmark of disputes brought before the competent authorities, and we know that business requires speed in all stages of the process. Therefore, we find that this mechanism has been precise in defining the procedures and even more precise in setting deadlines for each procedure, the completion of the arbitration teams' work, and the submission of final reports. This has been set out in clear and binding legal texts that may only be violated in exceptional cases.

The procedures are set out in Annex 3[14] of the Memorandum of Understanding on the Rules and Procedures Governing the Settlement of Disputes and are detailed in 12 articles, as follows: "In accordance with the mechanism of the dispute settlement body, any dispute relating to one of the agreements covered by the steps set out in the memorandum of understanding, namely consultations, good offices, conciliation, mediation, and then the submission of a request for the formation of an arbitration panel," these procedures are set out in Articles (4, 5, 9, and 12) of the DSU. It should be noted that there is no conflict between the procedures set out in the above articles and those set out in the working procedures in Annex 3, as they complement each other. The deliberations of the panel concerning the dispute shall be closed and attended only by those invited by the panel. The deliberations of the panel and the documents presented to it shall be confidential with regard to information and documents submitted by one of the disputing parties on the basis that they are confidential. However, the other party shall have the right to request the provider of confidential information to provide a non-confidential summary of such information or documents that may be disclosed, so that it may review and study them. The parties to the dispute shall submit the facts and their supporting arguments in writing to the panel responsible for considering the dispute. At the first hearing, the panel shall hear the complainant and its arguments and then hear the other parties[15]. At the second meeting of the panel responsible for the parties to the dispute, it shall hear the responses of the parties to the allegations of the other party, beginning with the party against whom the complaint is made, followed by the complainant. In the event that any oral statements are made, a written copy thereof shall be provided and made available to all parties to the dispute[16]. These proceedings shall be recorded in full in the panel's work, allowing all parties to the dispute to be fully aware of the allegations, defenses, documents, and evidence relied upon by each party to support its case.

In addition to the above procedures, Article (12) of the Memorandum of Understanding included a timetable showing the stages of the dispute before the dispute settlement body and the proposed time frame for each procedure.

Table 1. Shows the stages of the dispute and the time period for each stage.

Time in weeks	**Procedures**	
3-6 weeks 2-3 weeks	Receipt of first written submissions of the parties (1) complaining Party (1) complaining Party	A
1-2 weeks	Date, time, and place of first substantive meeting with the parties; third-party session:	B
2-3 weeks	Receipt of written rebuttals from the parties	C
1-2 weeks	Date, time, and place of second substantive meeting with the parties:	D
2-4 weeks	Issuance of descriptive part of the report to the parties	E
2 weeks	Receipt of comments by the parties on the descriptive part of the report:	F
2-4 weeks	Issuance of the interim report, including the findings and conclusions, to the parties	G
1 week	Deadline for party to request review of part(s) of report	H
2 weeks	Period of review by panel, including possible additional meeting with parties:	I
2 weeks	Issuance of final report to parties to dispute	J
3 weeks	Circulation of the final report to the Members	k

The duration of the dispute is 9 months if the panel report is not appealed and 12 months if the panel report is appealed, unless the parties agree to extend the specified period. In the event of an extension, the agreed

(14) **GATT Secretariat.** *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts. Annex 3, Article 1*. Geneva: GATT Secretariat, 1994.

(15) See: Articles 3(2), 4, and 7(5) of the DSU (Understanding on Rules and Procedures Governing the Settlement of Disputes) 1994

(16) See: Articles 8, 9, and 10 of the DSU (Understanding on Rules and Procedures Governing the Settlement of Disputes) 1994.

extension period shall be added to the periods specified for the adoption of the report by the body[17]. This is an appropriate period given the nature of the disputes. We will review some of the disputes that have been brought before the body, focusing on the time taken for each dispute and its procedural stages, until the panel's decision is adopted by the dispute settlement body, in order to clarify the extent to which the panels formed by the body comply with the timetable set out in the memorandum of understanding.

For example, the dispute between Canada and Brazil took a year to reach the appeal stage. The dispute between the United States and India took a year and seven months to reach the appeal stage and for the report to be adopted by the Dispute Settlement Body. The dispute between India and Turkey took a year and five months to reach the appeal stage. The dispute between Chile, the European Union, and Korea took nearly two years. The dispute between the European Union and Argentina took nine months. The dispute between the European Community and Canada took a year and two months to reach the appeal stage. The dispute between the United States and Australia took seven months, and the dispute between the United States and the European Union took three months[18]. We conclude from the above that some disputes were resolved within the time limit set by the mechanism, while others exceeded it. Perhaps this is due to the complex nature of international trade disputes. Compared to the previous mechanism, we can say that this mechanism has made progress in terms of regulating procedures and time periods. However, we look forward to the time period being shorter than it is now, especially in disputes where one of the parties is a developing country, or where the subject matter is goods that are perishable over time, which creates double damage for developing countries that lack the expertise and have an urgent need for the goods that are the subject of the dispute.

Stages of Dispute Settlement

The WTO dispute settlement mechanism seeks to achieve positive solutions to disputes arising between contracting parties, thereby contributing to the achievement of the organization's objectives and the consolidation of its principles. To achieve this goal, it has established different stages of settlement and surrounds each stage with many controls and procedures to ensure its success and effectiveness, which can be reviewed in the following sections:

Consultations

Good offices, conciliation, and mediation.

Team procedures.

Appeal stage

Implementation stage

Consultations

The Memorandum of Understanding initiated the stages of dispute settlement through consultations[19], which represent an initial stage of settlement that is amicable, preserves the rights and obligations between the parties, and quickly removes damages in accordance with the nature of the business. The MoU granted the right to request consultations to any party that considers itself aggrieved by the conduct of another party, but it imposed certain restrictions on that right to reflect the seriousness of the parties, in terms of specifying the reasons for requesting consultations, the measures that caused the damage, and the legal basis for the complaint. The member to whom the request for consultations is addressed is obliged to respond to the request within ten days of receiving it and to enter into consultation within 30 days of receiving the request, in good faith, in order to reach a solution acceptable to both parties. If the member to whom the request for consultations was made does not respond within ten days or does not enter into consultations within 30 days of the date of receipt of the request, the party that requested the consultations shall be entitled to proceed directly to the establishment of an arbitration panel. In urgent cases, such as those involving perishable goods, the parties shall enter into consultations within no more than ten days of the date of the request, and if the consultations fail within 20 days of the date of the request, the complaining party may request the establishment of an arbitration panel. In all cases of urgent disputes, the parties to the dispute, the panels, the arbitration panels, and the Appellate Body shall make every effort to expedite the proceedings to the maximum extent possible[20].

(17) See: Article 20 of the DSU (Understanding on Rules and Procedures Governing the Settlement of Disputes
(18) http://www.wto.org/disputes World Trade Organization (WTO). *Annual Report*, 1996 and 2000. Available at
(19) See Article(4)(3)(2)(1) (DSU). Understanding on Rules and Procedures Governing the Settlement of Disputes 1994
(20) See Article 4(8)(9) (DSU). Understanding on Rules and Procedures Governing the Settlement of Disputes.

The number of requests for consultations submitted reached 631 during the period from January 1, 1995, the date of entry into force of the WTO Agreement, to December 31, 2024. It is estimated that 40% of cases were resolved through consultations without the need to establish panels[21].

We review some of them to reflect the practical aspect of the controls and procedures contained in the memorandum of understanding and their effectiveness in achieving the objectives for which they were established. In the case of Mexico v. Guatemala[22]. Mexico submitted a request on January 5, 1999, to hold consultations with Guatemala under Article 4 of the DSU and Article 3/17 of the Agreement on the Implementation of Article 6 of the GATT 1994, in order to discuss the dumping measures applied by Guatemala to imports of cement from Gruz Azul in Mexico. Consultations between the two parties were held on February 23, 1999, for one day, but no solution to the dispute was reached[23].

In the case of the European Union v. Japan[24] concerning the internal tax on alcohol imposed under the Liquor Tax Law by the Japanese authorities, the European Union requested consultations in June 1995. It was concluded that the Japanese law violated Article 2(3) of the 1947 GATT Agreement, and Japan amended the law to bring it into line with the GATT Agreement.

By reviewing the dispute cases, which began with requests for consultations, it can be said that most or all of the disputes that were subsequently submitted to the dispute settlement body went through the consultation stage, with teams being formed to adjudicate them. The consultation stage requires the parties to have a strong will to reach a mutually satisfactory solution. Therefore, we believe that it is important to activate the role of consultations in the settlement of commercial disputes so that the parties can settle their differences amicably. This is achieved when the parties to the dispute enter into consultations with a sincere desire to settle the dispute. This has been confirmed by the contracting parties at the theoretical level, as they have committed themselves to improving and activating the consultation phase, but we do not see that this has been done. It is clear to us that resolving the dispute at the consultation stage reduces the losses that may occur if it continues to the next stage, and it also preserves trust between the consulting parties, which is the basis of commercial transactions. Members are committed to swift negotiations during the consultation phase, and the consultations should not prejudice the rights of any party to the dispute in any subsequent proceedings, meaning that the admissions and evidence provided by the parties during the consultations may not be used against them in any subsequent proceedings to settle the dispute, should the consultations fail. The complaining party may request the establishment of an arbitration panel if the consultations fail to reach a satisfactory solution within 60 days of the date of the request[25].

Good Offices, Conciliation, and Mediation

If consultations between the parties to the dispute fail, the Director-General of the Organization or any other party may intervene between the disputing parties by offering good offices, conciliation, and mediation to find a solution to the dispute. These measures shall be taken voluntarily and with the consent of the parties to the dispute[26]. Any party to the dispute may request conciliation, good offices, or mediation at any stage of the dispute. It is worth noting that, based on the practical experience of the dispute settlement mechanism, this stage is rarely resorted to[27]. Since the establishment of the World Trade Organization, there has been only one case that ended in mediation, involving the European Community, the Philippines, and Thailand between September and December 2002. The organization has also seen only two cases that ended in good offices, one of which was the long-running banana dispute between the European Union, Colombia, and other Latin American countries from November 2007 to December[28] (2009). It may begin and end at any time, The parties must initiate good offices, conciliation, and mediation within 60 days of the date of delivery of their submission, and the complaining party may not request the establishment of an arbitration panel during this period unless the parties to the dispute consider that the efforts have failed to reach a mutually satisfactory solution. Good offices, conciliation, and mediation may continue at the same time as the panel proceedings if the parties to the dispute agree to this[29]. This meaning is reflected in paragraph (5) of the Dispute Settlement Understanding (DSU). It is clear from the text that the rules aim in all cases to reach solutions satisfactory to the parties to the dispute,

(21) WTO | dispute settlement - Dispute settlement activity — some figures.

(22) htt://www.wto.org/disputes (WTO/DS 156) 24 October 2000.

(23) http://www.wto.org/disputes(WT/DS 121R) 25, June 1999.

(24) Annual Report, WTO, 1996. P. 133.

(25) See Article 4(8) (DSU). Understanding on Rules and Procedures Governing the Settlement of Disputes

(26) See Article 5(1)(6) (DSU). Understanding on Rules and Procedures Governing the Settlement of Disputes

(27) Peter Van den Bossche, *The Uncertain Future of WTO Dispute Settlement: An Appraisal of the February 2024 Consolidated Text Resulting from the Molina Process on Dispute Settlement Reform,* WTI Working Paper no. 2/2024, p. 6.

(28) Lee, J. (2025). *Long-term relationship over litigation: Mediation in WTO dispute settlement proceedings. World Trade Review, 24*(1), 50–74. https://doi.org/10.1017/S1474745624000417

(29) See Article 5 (5) of the DSU. Understanding on Rules and Procedures Governing the Settlement of Disputes

which can only be achieved through conciliation and mediation without resorting to adjudication, and arbitration panels formed by the Dispute Settlement Body. Therefore, we find that the article allows for the continuation of conciliation, mediation, and good offices alongside the work of the panels, and requires the consent of the parties to do so. In practical terms, I do not believe that this is easy, because conciliation procedures require good faith, concessions and acknowledgements, and guarantee that they will not be used in arbitration or judicial proceedings, which is not the case in such circumstances, and it is inconceivable that the parties would agree to this. This text corresponds to Article 14 of the UNCITRAL Conciliation Rules[30], which states the following: The parties undertake not to initiate, during the conciliation proceedings, any judicial or arbitration proceedings in respect of a dispute that is the subject of the conciliation proceedings. However, either party may initiate judicial or arbitration proceedings where, in its opinion, such proceedings are necessary to preserve its rights."

In my opinion, the wording of Article 16 is preferable from a practical standpoint, as it obliges the parties to the dispute not to engage in proceedings that require the initiation of arbitration proceedings, which often leads to the automatic suspension of conciliation proceedings. A good example of the interest that any of the parties wishes to preserve is the lapse of the claimant's right to bring an action during the conciliation proceedings. If one of the parties considers that proceeding with the conciliation proceedings could lead to the expiry of the period during which it is entitled to file a claim to initiate judicial or arbitration proceedings, If the rules do not guarantee this right, the party will actively participate in the conciliation proceedings. The parties to the dispute may agree to extend the limitation period. The Sudanese Civil Procedure Act of 1983[31], consistent with this procedure. The dispute may be referred to as conciliation by the judge whenever he deems it possible and appropriate or at the request of the parties. In the event of a prior agreement on conciliation, the court may order the suspension of the proceedings and refer them to conciliation. It is clear from this that Sudanese law does not adopt a system of concurrent litigation, arbitration, and conciliation[32].

Procedures for the Formation and Operation of Panels

If the parties to the dispute fail to reach a satisfactory solution during the previous stages, any party may submit a request to the Dispute Settlement Body (DSB) for the formation of a panel of arbitrators to settle the dispute. The request shall be submitted in writing, explaining the legal basis of the complaint, the specific procedures, and the subject matter of the dispute. whether consultations have already been held on the same dispute, and the results of those consultations. If the complainant wishes the panel's terms of reference to be different from the usual terms of reference, the request must include the proposed terms of reference.

Upon receipt of the request, the Dispute Settlement Body shall establish the panel, unless the Body decides by consensus not to establish the panel. The body may convene a meeting for the purpose of forming the panel if the complainant so requests within 15 days of submitting the request, provided that there is prior notice of the meeting at least 10 days in advance**.** Expert panels have been formed to consider more than 350 cases[33]. The percentage of cases settled at the panel stage reached 45% of the disputes submitted to the body. On July 29, 2021, Saudi Arabia submitted a request to form a panel in its case against the European Union because the European Union had imposed countervailing duties on imports of PET. Saudi Arabia argued that this was contrary to the Anti-Subsidy Agreement and the GATT Agreement. Indeed, the arbitration panel was formed on March 28,[34] 2022. As for the European Union's case against China, which concerned China imposing restrictions on patent holders that prevent them from resorting to courts outside China to protect their rights, especially in the technology sector, which is contrary to the TRIPS Agreement, the request to form an arbitration panel was submitted on February 18, 2022, and the panel was formed on December 20, 2022[35]. In the case of the United States v. Mexico, the subject of the dispute was Mexico's gradual ban on genetically modified corn, which the United States considered a violation of the Agreement on Agriculture and the Agreement on Sanitary and Phytosanitary Measures. A request for the formation of a panel was submitted on 17/8/2023, and the panel was formed on 26/10/2023[36]. In the dispute between Canada and China, the subject of the dispute was that China imposed sanitary restrictions on Canadian canola imports, alleging the presence of pests. Canada considered this to be scientifically unjustified. The request was submitted on June 6, 2023, and the panel was formed on September 20, 2023[37]. In the case of the United States v. China, the subject of the dispute was that China imposed restrictions on the export of rare metals used in technological industries, such as gallium and

(30) See Article 14: United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Conciliation Rules (1980).*

(31) See: Article 139(3)(2) of the Sudanese Civil Procedure Act, 1983.

(32) See: Article 154(1)(2) of the Sudanese Civil Procedure Act, 1983.

(33) WTO | Dispute settlement gateway

(36) WTO | dispute settlement - the disputes - DS606: European Union — Provisional Anti-Dumping Duty on Mono- Ethylene Glycol from Saudi Arabia

(37) WTO | dispute settlement - the disputes - DS611: China – Enforcement of Intellectual Property Rights 35

(36) WTO | dispute settlement - the disputes - DS616: European Union – Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia

(37) WTO | dispute settlement - the disputes - DS618: European Union - Countervailing Duties on Imports of Biodiesel from Indonesia

germanium, which the United States considered a violation of the principle of non-discrimination and freedom of trade. The request was submitted on 11/12/2023 and the panel was established on 22/2/2024[38]. It is important to note that Article 6.1 of the agreement allows for the prevention of the formation of the panel at the specified time, under which the respondent may prevent the establishment of a special panel when the request is first discussed in the dispute settlement body, because the decision then requires the unanimous consent of the members. The panel is only established at the second meeting, where the decision is taken according to the "reverse unanimity" rule[39], which prevents the respondent from objecting. In most previous disputes, the respondent has used this right to delay the establishment of the panel, prolonging the dispute settlement process. The consolidated text (i.e., the text submitted by Molina to address the dispute settlement system) proposes that members agree not to use this right, meaning that the panel would be established at the first meeting at which the request is raised.Although this proposal is not new, it faces opposition from some members, including the BEIIS[40], which believes that this measure "restricts the flexibility of members to seek amicable solutions to disputes"and effectively reduces the time available to the respondent, which "negatively affects the ability of developing countries, including the least developed, to access the system." Regarding the first point, there is no strong evidence that members have actually benefited from the period between meetings to reach solutions. As for the second point, it is clear that delaying the establishment of the panel gives the respondent additional time to prepare, which is beneficial to developing countries, but this can be compensated for during subsequent proceedings[41].

Selection of Arbitrators

The procedure for selecting arbitrators varies depending on the type of arbitration chosen. In the case of institutional arbitration, which is conducted by a body that maintains a list of experts and specialists in various fields, a group of them is selected to conduct the arbitration in accordance with its agreed rules and procedures. The parties to the dispute are free to choose whomever they wish from the list to settle the dispute, and they also have the right to choose experts from outside the list[42]. Arbitration is part of the institutional dispute settlement system, and arbitration panels are composed of qualified governmental or non-governmental members. The Secretariat of the Organization maintains a list of qualified persons[43] who meet the required qualifications. Teams are selected as necessary and in proportion to each dispute. Arbitrators must be natural persons with full legal capacity. Members may periodically propose the names of government and non-government individuals to be included in the list of the body, after providing sufficient information about their experience and knowledge of international trade, the agreements covered, and their subjects[44]. The dispute settlement body shall form a team of three members, which may be increased to five if the members agree, within ten days of the date of the team's establishment. The members shall be informed of the composition of the panel as soon as it is finalized. Before announcing the names of the panel members, the body shall present its nominations to the parties to the dispute, which may object to the body's nominations only for strong and convincing reasons. If the body and the parties to the dispute fail to reach agreement on the composition of the team within 20 days of its establishment, the Director-General of the Organization shall, at the request of one of the parties to the dispute, intervene to assist in the formation of the team. The Director-General shall undertake this task in consultation with the chair of the body and the chair of the relevant council or committee. and shall select those he considers most suitable, guided by the special or additional rules and procedures relevant to the agreement in question, after consulting with the parties to the dispute. The Director-General shall then inform the President of the Agency of the formation of the team in this manner within a period not exceeding 10 days after receiving the request to form the team[45]. In all cases, the members of the team shall be selected in such a way as to ensure independence, diversity of experience, and breadth of capabilities[46]. Members whose governments are parties or third parties to the dispute may not be appointed to the panel, unless the parties to the dispute agree to allow this. This rule shall apply even

(38) WTO | dispute settlement - chronological list of disputes cases

(39) The principle of "reverse consensus" is one of the unique features that distinguishes the dispute settlement mechanism within the WTO. It is considered among the most important legal safeguards that confer strength and effectiveness to the system. Reverse consensus means that a decision is deemed adopted unless all WTO Members oppose it unanimously. When a report is issued by a panel or the Appellate Body in a trade dispute, it is automatically adopted unless every Member of the Organization—including the prevailing party in the dispute—objects to it unanimously.

(40) The acronym "BEIIS" refers to a group of countries: Bangladesh, Egypt, Indonesia, India, and South Africa).

(41) Peter Van den Bossche, *The Uncertain Future of WTO Dispute Settlement: An Appraisal of the February 2024 Consolidated Text Resulting from the Molina Process on Dispute Settlement Reform,* WTI Working Paper no. 2/2024, p. 9.

(42) Sami, Fawzi Mohamed. *International Commercial Arbitration,* vol 5 (Dar Al-Thaqafa Publishing and Distribution, Amman 1997) P137

(43) Example of qualifications required for team membership: A team member may, for instance, have taught international trade law; published research or scholarly writings on trade and trade policy; served within the WTO Secretariat; held senior responsibilities for trade policy in a WTO Member government; previously served as a panelist in a dispute or presented a case before a panel; represented a Member in the Council or a committee under a covered agreement; or possess any other expertise or qualifications relevant to the work of panels in the field of international trade.

(44) See Article 8(1)(4) (DSU) Understanding on Rules and Procedures Governing the Settlement of Disputes

(45) See Article 8(7) of the (DSU) Understanding on Rules and Procedures Governing the Settlement of Disputes

(46) See Article 8(2)(3) of the Understanding on Rules and Procedures Governing the Settlement of Disputes

if one of the parties to the dispute is a customs union or common market (the European Community), which requires the exclusion from the panel of any member belonging to the group or union. Team members shall act in their personal capacity, not as representatives of their governments or any organization. Members shall allow their citizens and employees to serve as members of these teams and shall refrain from issuing any instructions or attempting to influence them in matters before them. To reinforce the principle of the independence of the panels and the entitlements of their members, they are covered by the budget of the WTO[47]. In cases where one of the parties to the dispute is a developing country, the Director-General may request the Dispute Settlement Body to include a member from a developing country in the panel considering the dispute.

Function and Powers of Panels

The function of the panels established by the Dispute Settlement Body is primarily to assist the Body in reaching solutions that are satisfactory to the parties to the dispute. Arbitration panels must therefore assess the dispute before them objectively in terms of the facts and the applicability of the relevant provisions of the agreements concerned. To this end, the members of the panel shall consult regularly with the parties to the dispute and, at the end of their work, shall reach conclusions and recommendations that will assist the Dispute Settlement Body in proposing the appropriate recommendations provided for in the agreements relevant to the dispute[48]. The parties to the dispute have the right to determine the terms of reference of the panel considering the dispute and must do so within 20 days of the date of the announcement of the panel's formation. Otherwise, the terms of reference set out in Article 7 of the Memorandum of Understanding shall be considered the terms of reference of the panel working on the dispute before the panel. and the body may delegate the chair of the panel to establish the terms of reference if they are presented to all members[49]. The panel shall examine the subject matter of the dispute, and examine the relevant agreements relied upon by the parties and discuss the relevant provisions in their memoranda and reach conclusions on the basis of which it shall submit recommendations and decisions to the dispute settlement body derived from the provisions set forth in the relevant agreements[50].

Appeal Stage

With the aim of ensuring more equitable and effective decisions, a new stage in the settlement of commercial disputes was created, namely the appeal stage for decisions issued by the competent panels to resolve disputes. The Appeals Body plays a decisive role in the settlement of disputes, as it is often resorted to before the decisions of the expert panels become final.More than two-thirds of the decisions of the expert panels were appealed before the body was suspended in December 2019[51], and the percentage of cases settled at the appeal stage reached 15%.

Jurisdiction And Functioning of the Appeals Body

The appeal stage is one of the new stages in the dispute settlement mechanism, as the previous dispute settlement mechanism in the 1947 Convention or even other systems that were in place for the settlement of commercial disputes did not include an appeal against decisions issued by arbitration committees or teams entrusted with dispute settlement. It is a very important stage in reaching a decision that is acceptable and convincing to the parties to the dispute. The appeal stage allows the party affected by the decision issued by the team responsible for examining the dispute to appeal to the appeal body as a second stage of dispute resolution. The memorandum of understanding included the establishment of an appeals body and explained how it would be formed[52]. The appeals body receives appeals from the parties to the dispute. Third parties are not entitled to file appeals directly against the teams' reports, but they are entitled to submit written memoranda or be given the opportunity to speak before the Appellate Body if they have a substantial interest in the decision[53]. According to WTO data, **more than 150 cases** were **considered at the appeal stage** between the establishment of the Appellate Body in 1995 and its suspension in December 2019, with final decisions issued and recourse to a

(47) See Article 8(10) of the Understanding on Rules and Procedures Governing the Settlement of Disputes
(48) See Article 7(11) of the DSU Understanding on Rules and Procedures Governing the Settlement of Disputes
(49) See Article 7(1)(3) of the (DSU) Understanding on Rules and Procedures Governing the Settlement of Disputes
(50) See Article 7(2) of the Understanding on Rules and Procedures Governing the Settlement of Disputes
(51) Kristen Hopewell, *Unravelling of the Trade Legal Order: Enforcement, Defection and the Crisis of the WTO Dispute Settlement System* (Oxford: University of Oxford, 2022). p1104
(52) In its first month of operation, the Dispute Settlement Body (DSB) established the Appellate Mechanism. In November 1995, the Appellate Body was constituted with seven members nominated by WTO Members to serve a four-year term. These individuals were recognized experts in law and international trade and were not affiliated with any government. In May 1996, the DSB adopted the first Appellate Body report, issued in the dispute brought by Venezuela and Brazil against the United States concerning gasoline regulations. See: WTO, *Annual Report 1996,* p. 132
(53) See Article 17(4)(DSU) Understanding on Rules and Procedures Governing the Settlement of Disputes

temporary alternative mechanism (MPIA) Multi-Party Interim Appeal Arbitration Arrangement by some countries, but the number of cases considered through this mechanism ranges from 3-5 cases until mid-2025[54].

When requesting an appeal, the parties to the dispute are limited to the legal issues contained in the report or to the legal interpretations of the texts contained in the final report. The organization's secretariat has included an annex to any final report to the parties, stating the parties that have the right to appeal and the subjects that may be appealed.The parties to the appeal are also required not to address the facts and substantive aspects of the dispute or the weight of the evidence presented, but rather to leave it to the appeal body to interpret or correctly understand the legal texts and determine the extent to which they are properly applied to the facts of the dispute before it[55].

The memorandum of understanding has set the period of work of the appeal body during the consideration of the dispute at 60 days, which must not exceed 90 days under any circumstances. In urgent cases, the body must complete its work as quickly as possible. The Appeals Body shall initiate its proceedings in consultation with the Chair of the Dispute Settlement Body and the Director-General of the Organization and shall notify the members thereof. The proceedings of the Appeals Body shall be confidential, and it shall prepare its reports without the presence of the parties to the dispute, based on the information and data submitted to it.

At the end of its work, the Appeals Body shall submit a report confirming, modifying, or overturning the decision reached by the previous panel. No party to the dispute shall communicate privately with the Appeals Body, which is considering the matter to which it is a party, and shall treat the submissions made by the parties to the Appeals Body as confidential, allowing the other party to have access to them. However, information provided by any party that is designated as confidential shall be treated as such, and the other party shall have the right to request that the party providing the confidential information submit a non-confidential supplement thereto[56].

The above represents the theoretical situation of the rules established to regulate the appeal procedures for decisions taken by the various teams. In practice, since its establishment until its suspension in 2019, the Appeals Body has received more than 150 requests for review. We will review a number of these to understand the practical application of the procedures that regulate the work of the body: In the case of Canada v. Brazil[57] concerning the parallel price of exported aircraft, the panel found that Brazil was providing prohibited export subsidies for its aircraft, within the meaning of the Agreement on[58] (SCM) and Article 3.1(a) of that Agreement. The panel also determined that Brazil had failed to comply with the provisions of Article 27.4 of the SCM Agreement, particularly with regard to Brazil's increase in the rate of support, and that it must reduce and eliminate export subsidies within eight years of the date of entry into force of the WTO Agreement.The panel recommended that Brazil withdraw export subsidies within 90 days. On May 3, 1999, Brazil notified the Dispute Settlement Body (DSB) of its desire to appeal certain legal points and interpretations adopted by the panel in its report. Canada also appealed certain legal issues contained in the report.The Appellate Body modified the panel's interpretation of the term "material advantage" in Annex 1 of the SCM Agreement and upheld the panel's finding that a claim involving a violation of Article 3.1(a) of the SCM Agreement, and that this claim is against a developing country, the complaining member must prove that the developing country has not complied with the requirements of Article 27.4 of the SCM Agreement. In this regard, the Appellate Body upheld the Panel's finding that Brazil had not complied with the requirements of Article 27.4 of the SCM Agreement. The Appellate Body also upheld the Panel's finding that Brazil had failed to comply with the requirements of Article 27.4 relating to the reduction of export subsidies. The Appellate Body concluded that Brazil should withdraw its support measures within 90 days. The Appellate Body's report was distributed on August 2, 1999, and was adopted by the Dispute Settlement Body together with the panel's report, after being amended by the Appellate Body on August 20, 1999.In the case of the United States of America v. European Union[59] concerning the customs tariffs applied to local area networks (LANs), personal computers, and multimedia capability devices, a panel was formed to examine the dispute. The United States of America claimed that Ireland and the United Kingdom had agreed that the customs treatment of personal computers and certain multimedia devices in LANs to be lower than that specified in the European Union's commitment schedules contained in the Marrakesh Agreement of the World Trade Organization, in accordance with Schedule LXXX. This contravenes the European Union's commitment under Article 2 of the General Agreement on Tariffs and Trade 1994. The panel concluded its work and distributed its report to the members on February 5, 1998, in which it concluded that the European Union had failed to prove that it had imported LAN devices with benefits greater than those specified

(54) It is an alternative mechanism established by a group of WTO Members in 2020 with the aim of preserving the possibility of appeal in trade dispute settlement, following the cessation of the Appellate Body's functioning due to the failure to appoint new members.
(55) See (Annual Report WTO)1996.p.65
(56) See Article 18(1)(2) DSU Understanding on Rules and Procedures Governing the Settlement of Disputes
(57) See Article 17(14) DSU Understanding on Rules and Procedures Governing the Settlement of Disputes
(58) Annual Report (WTO)p>57(WT/DS/46)
(59) http://www.wto.org.disputes (WT/DS 62/AB/R) (WT/DS/67/AB/R) WT/DS/68ABR 5. June 1998

in its commitments under Articles 84/71 and 84/73 and Schedule LXXX, and contrary to Article 2 of GATT 1994.

The panel recommended that the Dispute Settlement Body request the European Union to bring its customs tariffs on LANs into conformity with its obligations under the GATT.The European Union notified the Dispute Settlement Body on 24/3/1998 of its desire to appeal certain legal points and interpretations contained in the panel report, in accordance with Article 16/4 of the On April 20, 1998, the European Union prepared its appeal brief, while the United States prepared a counter-appeal brief and Japan prepared a third-party brief. On April 27, 1998, the parties to the appeal were heard in accordance with Article 27 of the panel's rules of procedure. During the hearing, each party presented its arguments and responded to questions from the members of the appellate body. In its appeal brief, the European Union requested a review of several legal and interpretative errors in the panel's report, arguing that the panel had erred in law when it rejected the European Union's procedural objections, which were that the United States' request to establish the panel did not specify the subject matter of the dispute and the measures that gave rise to the dispute, and the standards that had been violated, thereby preventing the parties from presenting their defense, which constitutes a violation of Article 2.6 of the DSU. The United States' response to the appeal was that the panel's recommendation was correct and that the United States' request to establish the panel was clear and specific. Regardless of whether the Appellate Body accepted the panel's interpretations, the EU's policies had nullified and impaired the interests of the United States, which was contrary to Article 2 of the 1994 GATT Agreement. Japan (the third party) stated that the panel's report was sound and that the EU had violated its obligations under the GATT agreements to clarify the products and taxes imposed on them. The appeal upheld the panel's finding that the US request was valid.

In the case of China v. United States[60], the issue was that the United States imposed customs duties on Chinese exports of steel and aluminum for reasons related to national security.The dispute was heard in 2019 and a decision was issued, but the appeal body was unable to issue a final decision due to its suspension, which led to the suspension of the implementation of the first decision. The Appellate Body was also unable to issue a ruling on the dispute between the United States and India over agricultural subsidies due to its suspension[61]. It is not possible to consider the dispute through the MPIA arbitration mechanism because India and the United States are not parties to it. This issue has sparked widespread debate about the fairness of agricultural trade rules. The United States believes that India's subsidies flood global markets with cheap rice, harming American farmers and distorting competition. This may be the approach taken by the United States to serve its commercial interests by pursuing the issues that sparked controversy and concerns in the United States, we find that dumping issues are at the forefront. The United States adopted a different approach to calculating dumping for all countries and concluded that the Appellate Body's interpretations were erroneous and undermined the ability of WTO members to defend their companies and workers against dumping[62]. Hence, the United States began planning to disrupt the Appellate Body and impose solutions to its trade disputes through mechanisms it deems appropriate, foremost among which are political pressure and the application of unilateral punitive measures on exports from various countries to the United States.This prompted most countries to impose reciprocal customs duties on US imports in order to protect their exports, which contributed to instability in global trade transactions.

Decision Implementation Phase

This stage is particularly important, as it represents the spearhead of the settlement system. It is the stage that tests the credibility and effectiveness of the system and is eagerly awaited by the parties in order to enforce the decisions reached by the panels, preserve rights, and contribute to the stability of the multilateral global trading system. The success of this stage supports the effectiveness of the settlement system. The implementation process is regulated in accordance with paragraph 21 of Annex 3 of the Understanding, which states that "the Member concerned shall notify the Dispute Settlement Body of its intention to implement the recommendations or rulings. If immediate implementation is not possible, the Member shall notify the Body of the reasonable period of time it needs to implement the decision. "If no agreement is reached on the time frame, arbitration shall be resorted to, or the implementing party shall propose a time frame that shall be deemed acceptable if no objection is raised. In practice, we see that there are a number of practices for implementing decisions, including.

Direct voluntary implementation. Most member states seek to implement decisions voluntarily as soon as the report of the special group or the Appellate Body is adopted, and measures that violate the organization's agreements are amended or repealed without the need for additional procedures. In the case of China and the European Union concerning raw materials, voluntary implementation took place after the decision was issued without the need for compensation or retaliation.

(60) WT/DS544 – United States — Certain Measures on Steel and Aluminium Products
(61) WT/DS430 – India — Measures Concerning the Importation of Certain Agricultural Products
(62) International Trade Council, *Progress Made in WTO Dispute Settlement Reform Talks, Finish Line in Sight* (News Article, December 2023) <https://tradecouncil.org/progress-made-in-wto-dispute-settlement-reform-talks-finish-line-in-sight/> accessed 27 September 2025.P.3

Setting a "reasonable period of time" for implementation: If immediate implementation is not possible, the member is given a reasonable period of time to implement the decision. This period is determined by agreement between the parties or by resorting to arbitration in accordance with paragraph 21 of the Memorandum of Understanding.

Periodic monitoring by the dispute settlement body: The body shall monitor implementation through periodic meetings. The State concerned shall be required to submit reports on the progress made in implementation.

Negotiate temporary compensation: If implementation is not possible, the affected party may negotiate temporary commercial compensation (such as reduced fees or concessions). This compensation is not mandatory but is used as a compromise to avoid escalation.

Trade retaliation If implementation does not occur within the specified period, the aggrieved party may request authorization to impose countermeasures (such as additional tariffs). These measures must be proportionate to the damage and approved by the Dispute Settlement Body. In the EU v. US case concerning subsidies to Boeing, delayed implementation led to the imposition of countermeasures[63].

EFFECTS OF THE SUSPENSION OF THE APPELLATE BODY ON THE DISPUTE SETTLEMENT MECHANISM

The United States began to obstruct the work of the Appellate Body by refusing to appoint judges to replace those whose terms had expired. In 2011, the United States refused to reappoint a member of the Appellate Body for a second term on the grounds that the WTO had failed to protect US interests.The US Trade Representative did not provide a reason for the refusal, but it is likely that the reason was the United States' dissatisfaction with the decisions of the Appellate Body. The hostile campaign against the Appellate Body began in 2016 when the United States blocked the reappointment of a South Korean member of the Appellate Body due to US concerns that the Appellate Body was overstepping its judicial authority[64]. The Appellate Body ceased to function completely in December 2019 because the remaining number of judges was insufficient to hear the disputes that had been appealed. The body ceased to function completely in December 2019 because the remaining number of judges was insufficient to hear the disputes that had been appealed. As a result, the decisions issued by the expert panels are not final and enforceable once they are appealed in a vacuum by one of the parties to the dispute. In reality, the losing party to the dispute resorts to appealing the decision, knowing that the body is not functioning, in order to prevent enforcement.

In response to this deliberate action, at least 130 member states of the organization condemned the United States' move and demanded that the obstruction of the appointment of appeal judges be lifted, but to no avail or response. Attempts were also made to reach negotiated solutions with the United States, but all attempts failed. In fact, the United States showed no interest in the appeals court resuming its work[65]. We believe that the rules for dispute settlement need to be reviewed, as the United States alone was able to disrupt the work of the settlement body by taking advantage of the provisions of Article 17(2), which grants the dispute settlement body the authority to appoint members of the Appeals Body, read in conjunction with Article 2(4), which states that decisions of the dispute settlement body shall be taken by consensus-i.e., by consensus. If one member objects, the decision is not valid, and this is what the United States resorted to in light of the rejection of most member states. Other countries may resort to this when they want to renegotiate their obligations with the contracting parties. We believe that this paragraph needs to be revised in a way that ensures the public interest and preserves the gains achieved through the dispute settlement rules. I propose that decisions be taken by a majority vote rather than by consensus. The absence of an appeals body in the World Trade Organization has created a fundamental flaw in the trade dispute settlement system and has directly affected the credibility of the organization and its ability to enforce its rules. Among the most notable effects are[66]:

1. When an arbitration panel issues a ruling in a trade dispute, the losing party has the right to appeal. However, since the Appellate Body ceased functioning in December 2019, it has been impossible to appeal these rulings, prompting some countries to refuse to implement them on the grounds that the case is "pending," which has completely paralyzed the implementation of rulings. Furthermore, the provisional arbitration mechanism (MPIA) is only binding on the parties involved.
2. The absence of an appeal stage encourages countries and companies to circumvent rules and agreements or impose unilateral fees such as customs duties without fear of punishment, due to the prior knowledge that there are no guarantees that disputes will be resolved definitively and fairly.

(63) Qadri Tarik. The mechanism for implementing the decisions & recommendations of the dispute settlement body of the World Trade Organization. Revue Académique de la Recherche Juridique,. Volume 12, Number 1, Pages 416-430, 2021-06-08

(64) International Trade Council, *Progress Made in WTO Dispute Settlement Reform Talks, Finish Line in Sight* (News Article, December 2023) <https://tradecouncil.org/progress-made-in-wto-dispute-settlement-reform-talks-finish-line-in-sight/> accessed 27 September 2025.P.3

(75) KRISTEN HOPEWEL. Unravelling of the trade legal order: enforcement, defection and the crisis of the WTO dispute settlement system.p 1105

(66) KRISTEN HOPEWEL. Unravelling of the trade legal order: enforcement, defection and the crisis of the WTO dispute settlement system.p 110 6

3. Countries have begun to resort to bilateral or regional agreements instead of the World Trade Organization, which is a sign of declining confidence in the multilateral trading system, weakening its role as a global umbrella for regulating world trade.This has led to the emergence of temporary alternative arrangements, such as the establishment of a temporary arbitration mechanism known as MPIA, which includes 19 countries, including China and the European Union, but does not include India and the United States, making it incomplete and limited in its impact.
4. The absence of an appealing body has made developing countries less able to protect their interests and has weakened the principle of "rules-based multilateralism" on which the organization is based. These countries rely on the appeals body to ensure that major countries do not impose arbitrary trade measures.
1. 5.The absence of an appeal stage in the WTO dispute settlement mechanism has led to the suspension of the implementation of decisions, which has contributed to increased trade tensions. Many countries have been affected by this situation. For example, the European Union has been unable to appeal decisions relating to tariffs imposed by the United States on steel and aluminum on the pretext of national security, The case remains pending, allowing the United States to continue imposing tariffs without penalty.
5. China faced US tariffs as part of the trade war and filed complaints with the organization but was unable to appeal the decisions due to the suspension of the body. The result was an undermining of China's ability to defend its exports, particularly in the technology and metals sectors. In another example, Brazil was involved in disputes related to support for agricultural industries but lost the ability to appeal certain rulings or enforce their implementation. As a result, it resorted to temporary arrangements such as the MPIA, but these remain limited in their effectiveness.

Efforts to Reform the Dispute Settlement System

In June 2022, after thirty months of worsening crisis in the WTO dispute settlement system, the WTO Ministerial Conference recognized the importance of addressing the challenges and concerns related to the system and committed to discussions aimed at achieving a fully functional and efficient system available to all members by 20[67].

In the months leading up to and following this commitment, the United States, which had previously shown no interest in reviving the system, held a number of bilateral meetings with the aim of "understanding members' expectations regarding the operation of the dispute settlement system." During these meetings, members discussed more than 230 different concerns based on that. In February 2023, at the request of a number of key members, Mr. Marco Molina, then Deputy Permanent Representative of Guatemala to the WTO, took the initiative to launch informal discussions on reforming the dispute settlement system, in what became known as the "Molina Process"[68]. It should be noted that Molina did not have a formal mandate from the Dispute Settlement Body to facilitate these discussions or organize related meetings. However, he reported regularly every two months to the Body, and many members expressed their great appreciation for this process and praised Molina's outstanding leadership. In response to Molina's call for ideas and conceptual approaches to address the concerns raised, members submitted more than 70 proposals, which served as the basis for interest-based talks among dispute settlement experts in Geneva. From February 2023 to February 2024, Molina organized more than 350 meetings, including 110 plenary sessions open to all members of the organization, as well as numerous bilateral and mini meetings. Of the organization's 164 members, 145 participated in these meetings. Although Molina asserted that "members had ample opportunity to present their views," not all members agreed. In July 2023, the African Group expressed concern about the pace of meetings and called for the launch of an effective and inclusive multilateral process to reform the system, allowing for the participation of developing and least developed countries, including delegations with limited resources. In September 2023, Indonesia expressed similar concerns, noting that many developing countries do not have a dedicated representative for this issue, making it difficult for them to participate effectively in informal discussions. In November 2023, Egypt, India, and South Africa expressed additional concerns about the pace and format of the meetings. Attached to Molina's report to the General Council on February 14, 2024, two weeks before the 13th Ministerial Conference in Abu Dhabi, was the seventh revised version of the consolidated text of the draft ministerial decision on dispute settlement. In his report, Molina noted that "significant progress has been made" and that the seventh version "reflects the collective understanding and expectations of members regarding the operation of the system." However, this statement suggests a consensus that is not accurate.

On February 12, 2024, two days before the report was presented, the BEIIS group[69], expressed concern that the proposed "radical changes" would "fundamentally alter the nature of the organization's dispute settlement

(67) Ngozi Okonjo-Iweala, "The WTO's Contribution to the Challenges of Global Commons," *Journal of International Economic Law* 26 (2023): 12–16. DOI: https://doi.org/10.1093/jiel/jgad005.

(68) Peter Van den Bossche, *The Uncertain Future of WTO Dispute Settlement: An Appraisal of the February 2024 Consolidated Text Resulting from the Molina Process on Dispute Settlement Reform*, WTI Working Paper no. 2/2024, p. 2.

(71) (The acronym "BEIIS" refers to a group of countries: Bangladesh, Egypt, Indonesia, India, and South Africa)

system" and undermine the interests of developing countries, including the least developed, which they consider essential to a reformed system." The group also noted that "the reservations we expressed during the discussions were not recorded" and that the consolidated text "gives a misleading impression of consensus on most issues".

Although the consolidated text does not reflect consensus among members, its most significant weakness is that it ignores the issue that caused the current crisis, namely the work of the Appellate Body. While Molina noted "significant progress," he explained that "conceptual differences among members on the appeal or review mechanism" prevented agreement, and therefore other issues were prioritized. The consolidated text contains a provisional title, "Appeal/Review Mechanism," with the phrase [work in progress]. The consolidated text reflects that the dispute settlement mechanism and even the WTO agreement need serious review. This trend is highlighted by Molina's efforts during long sessions, during which he did not reach a recommendation to address the main point of contention that prompted him to take action and work hard on other aspects of the system that represented future points of contention[70]. The BEIIS group also pointed out that the central concern that prompted members to participate in this informal exercise, namely the restoration of the Appellate Body, was not addressed. Nevertheless, it can be said that the consolidated text represents, as Molina described in his report, the best possible balance of interests to date in most of the areas addressed. At the 13th Ministerial Conference in Abu Dhabi, members acknowledged the progress made through the Molina process and considered it a valuable contribution to fulfilling our commitment to establish an efficient and accessible dispute settlement system for all members by 2024. Despite the lack of consensus, it is expected that the ongoing reform process will be based on the amendments proposed in the consolidated text, making it worthy of attention and critical evaluation, alongside the objections raised by the BEIIS group[71].

The Molina process and the consolidated text of the draft ministerial decision on dispute settlement, issued in February 2024, have not succeeded in resolving the crisis facing the WTO dispute settlement system. This is primarily due to the failure to reach agreement on the nature and scope of the appeal mechanism, the issue that caused the current crisis. Furthermore, many of the amendments proposed in the consolidated text do not enjoy the support suggested by the Molina report. The BEIIS group, which includes influential developing countries, has expressed its opposition to deep concern about many of these amendments[72]. Looking at the consolidated text presented by Molina, we find that it includes a number of proposed amendments to address the dispute settlement system, some of which are positive, necessary, and long-awaited. These include the establishment of dispute settlement panels at the first meeting of the body. There is no doubt that this measure, if adopted, will greatly contribute to speeding up the settlement process. We have provided examples of cases and the stages of establishing panels in them. One of the proposed and necessary amendments is to improve the list of arbitrators, which is perhaps one of the factors that hastened the suspension of the appeals system. The improvement must include the number of arbitrators, their terms of office, their extension, and their working conditions. The amendments also include specifying the periods and sequences for submitting briefs, which will contribute positively to speeding up and controlling the proceedings and enhancing the parties' compliance with the proceedings in a timely manner. The proposal to regulate the drafting and word count of briefs will also encourage the parties to highlight the points of dispute and the evidence on which each party relies, without resorting to unnecessary verbosity. Among the proposed amendments that are considered positive are that the work of the panels be completely transparent, that model and simplified rules for arbitration be adopted, and that an accountability mechanism be established.On the other hand, the consolidated text included a number of proposed amendments that we believe represent the position of the United States of America, which are arguments that it has raised from time to time in defense of its interests from its point of view, and which are not unanimously supported by the other members of the organization[73], but rather contributed significantly to disrupting the work of the appellate body. These include the adoption of guidelines for arbitrators on the interpretation of treaties when considering disputes brought before them, as the United States considers it important to limit arbitrators in their interpretation of the texts of agreements, and none of the contracting parties followed suit. A proposed amendment was also made not to rely on previous judicial rulings issued by panels formed in accordance with the system and to be guided by them in considering disputes brought before them. The United States has taken this approach, which is contrary to an established legal principle in all judicial systems and is perhaps one of the sources of interpretation of laws. Another proposed amendment seeks to define the role of the organization's secretariat in organizing, conducting, and supervising disputes with mandatory provisions that cannot be violated. This amendment may seem good on the surface, but it may

(70) International Trade Council, *Progress Made in WTO Dispute Settlement Reform Talks, Finish Line in Sight* (News Article, December 2023) <https://tradecouncil.org/progress-made-in-wto-dispute-settlement-reform-talks-finish-line-in-sight/> accessed 27 September 2025.

(71) Peter Van den Bossche, *The Uncertain Future of WTO Dispute Settlement: An Appraisal of the February 2024 Consolidated Text Resulting from the Molina Process on Dispute Settlement Reform,* WTI Working Paper no. 2/2024, p. 10.

(72) Available at TWN Article Third World Network (SUNS #9951, Feb 2024). *Guatemala recalls its facilitator on DSS reform before MC13*

(73) Horseman, C. (2024, May 31). *WTO dispute settlement: All options still open as formal negotiations begin.* Borderlex. https://borderlex.net/2024/05/31/wto-dispute-settlement-all-options-still-open-as-formal-negotiations-begin/

become restrictive and hinder the work of the secretariat in some cases. The proposed amendments tend to defame arbitrators who exceed the specified timelines for proceedings. It is important to adhere to the proposed timeline for the dispute and not exceed it, but sometimes circumstances may arise that necessitate exceeding the time period. However, this must be done with complete transparency and with the knowledge of the Secretariat and the parties to the dispute, away from defamation that leads to negative effects on the arbitrators. The biggest challenge remains that the geo-economic and geo-political reality of the region may lead to disputes arising from the implementation of the agreement, which may lead to the need for arbitration. and the parties to the dispute, away from defamation, which leads to negative effects on arbitrators. The biggest challenge remains that the geo-economic and geo-political reality of the 21st century is radically different from that which prevailed when the current system was established at the end of the 20th century. Therefore, the dispute settlement system needs to be modified based on more than three decades of practical experience and application, taking into account the practical difficulties that have hindered its progress and led to the suspension of the appeals mechanism since 2019.

At the Organization's 13th Ministerial Conference, held in Abu Dhabi in February/March 2024, members took note of the work accomplished so far in reforming the dispute settlement system and directed their officials to accelerate discussions in a comprehensive and transparent manner, build on the progress made, and work on outstanding issues, while adhering to the deadline set for the end of 2024.At the Dispute Settlement Body meeting in April 2024, the reform process was formalized, and Ambassador Oshawa Dwakakanapadi of Mauritius was appointed as facilitator of the process, along with six co-facilitators to follow up on specific issues. Member State experts continue their technical work, and ambassadors meet monthly to follow up on progress[74]. At the July 2024 meeting, the coordinators overseeing the appeal announced that they would present a preliminary document in September 2024 that is expected to be useful in organizing future discussions. Ambassador Duwaka-Kanabadi tactfully commented that the appeal process may take a little longer and noted that a permanent appeals body may not be the only way to achieve legitimacy. Many diplomatic efforts seek to persuade the United States to return to the dispute settlement mechanism and, to achieve this, focus on addressing Washington's concerns about transparency and impartiality, with the aim of re-engaging it in the judicial system. Without US approval, it is difficult to effectively restart the mechanism. The biggest challenge to restoring the appeals process remains reconciling the interests of major powers and developing countries, as each side views the system from a different perspective. Major powers want greater flexibility, while developing countries seek to ensure protection from arbitrary measures.

Conclusion

The study concluded that the WTO dispute settlement system has been a unique experiment in the legal history of international trade, as it has succeeded in giving legal character to global economic relations and reducing political disputes in this area. However, its continued effectiveness requires fundamental reforms to restore its institutional balance, particularly with regard to the Appellate Body and strengthening member states' confidence in it. This system remains one of the most important pillars maintaining the unity of the multilateral trading system, provided that it is developed in line with global economic changes and contemporary legal challenges.

FINDINGS

1. The research has shown that the WTO dispute settlement system has effectively contributed to the stability of trade transactions and strengthened confidence in the multilateral trading system, making it a fundamental pillar in protecting the legal discipline of international trade relations.
2. Since the system came into force in 1995, more than 600 cases between members have been considered, and it has successfully settled about 85% of them, reflecting its procedural efficiency and ability to address disputes in various areas of trade agreements.
3. The system is characterized by an effective enforcement mechanism, with approximately 90% of decisions actually enforced, reflecting member states' commitment to its provisions and its binding nature compared to other international systems[75].
4. The Appellate Body has played a fundamental role in establishing justice and ensuring consistency in rulings, but its disruption since 2019 has negatively affected the effectiveness of the system and weakened confidence in its legal mechanisms.

(74) https://www.wto.org/mc13/document
(75) WTO Dispute Settlement Visual Reports

5. It has become clear that the decision-making mechanism under Article 2(4) of the Memorandum of Understanding has hampered the appointment and renewal of appeal judges, leading to an institutional imbalance that requires urgent attention to restore balance to the system.
6. The study concluded that attempts to reform the dispute settlement system face complex political and economic challenges that can only be overcome through comprehensive reforms that achieve consensus among member states, taking into account the balance between the interests of major and developing economies.

RECOMMENDATIONS

1. The dispute settlement system must be reformed to preserve the positive achievements it has made since its inception, while introducing structural and procedural changes that take into account the contemporary challenges facing the global trading system and establish a more effective and independent mechanism.
2. Emphasizing the importance of reactivating the Appellate Body as an essential step towards achieving justice between the parties, drawing on previous experiences, reviewing the reasons that led to its suspension, and putting in place institutional safeguards to prevent a recurrence in the future.
3. Call for a review of the decision-making mechanism set out in paragraph (2/4) of the Memorandum of Understanding, replacing the unanimity requirement with a proportional voting system (e.g., 75%) to overcome institutional deadlock and enable the regular and transparent appointment of judges.
4. Establish clear and transparent criteria for selecting arbitrators and members of the body, including legal competence, technical expertise, and integrity, in order to enhance confidence in the arbitration mechanism and give the system greater credibility among member states.
5. Emphasizing that the body's rulings must be binding and enforceable within specific time frames, while developing effective mechanisms to monitor the implementation of decisions and ensure their respect by all disputing parties.
6. Strengthening the stage of friendly consultations in the settlement of trade disputes, so that they are conducted in a spirit of good faith and cooperation between the parties, with the aim of reducing disputes referring to arbitration and establishing a culture of peaceful settlement of disputes within the multilateral trading system.

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