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RESEARCH ARTICLE

The WTO Appellate Body Impasse: Dispute Resolution in Crisis and the Path to Reform

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Abstract

The Appellate Body of the World Trade Organization (WTO), once dubbed the "crown jewel" of the multilateral trading system, is now at a standstill since it went without two members needed for appeals to be heard following the expiration of their terms on Dec. 11, 2019. The paralysis was less a coincidence than the result of a concerted American campaign against the tribunal that relied on objections to the practice of the 'overstaying members' under Rule 15, the perceived 'overreach' in Article 17(6) of the Dispute Settlement Understanding, and persistent failure to abide by the ninety day decision rule. This paper will review the historical evolution of dispute settlement under the GATT, from the diplomatic veto of that era to the innovation of the negative consensus of the DSU, and then discuss the impact of the Appellate Body Blockage has had on the system: appeals "into the void," the loss of binding rulings and the structural imbalance between the powerful economies and smaller trading partners. A special focus is placed on the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), a non-universal, voluntary, and now thirty-four-members strong EU-Colombia frozen chicken cuts ruling, which illustrates an example of a well-functioning appellate mechanism. The paper also evaluates the uneven burden developing countries have suffered as they have traditionally depended on binding adjudication as a counterweight to geopolitical leverage. Based on the Ministerial Conferences promises made at MC12/MC13 and scholarly recommendations for reform, the paper suggests that no single solution – be it DSU amendment, MPIA consolidation or building capacity among developing countries – will do the job of rebuilding systemic confidence. Rather, there is a need for a three-pronged strategy consisting of specific procedural changes, multilateralization of appellate mechanisms and renewed political will in the main economies. The paper concludes that the Appellate Body crisis is in fact a stress test of multilateralism itself, to see if powerful states will adhere to rules-based binding adjudication of sovereign trade behaviour, instead of simple economic leverage. THE WTO APPELLATE BODY IMPASSE: DISPUTE RESOLUTION IN CRISIS AND THE PATH TO REFORM

The World Trade Organization's dispute settlement mechanism has long been celebrated as one of the most sophisticated and effective instruments of international economic governance. Emerging from the ruins of the General Agreement on Tariffs and Trade (GATT) era, the Dispute Settlement Understanding (DSU),² which entered into force on January 1, 1995, enshrined a compulsory, rules-based, two-tier adjudicatory process that transformed the resolution of trade conflicts from a purely diplomatic exercise into a quasi-judicial one. Central to this architecture is the Appellate Body (AB) — a standing tribunal of seven members empowered under Articles 17 and 19 of the DSU to hear appeals from first-instance panel reports on questions of law. For over two decades, the AB served as what many scholars and trade diplomats reverentially called the "crown jewel" of the multilateral trading system — a body that imposed discipline upon sovereign states through the rule of law rather than the rule of power.

Yet since December 11, 2019, the Appellate Body has been unable to hear a single appeal. On that date, the terms of two of its three remaining members expired, leaving it without the minimum quorum of three required to constitute a division and hear cases. This paralysis was not a sudden institutional failure but the culmination of a sustained campaign by the United States — first under the Obama administration and later, far more aggressively, under the Trump and subsequent administrations — to block new appointments to the AB, citing grievances about judicial overreach, the practice of "overstaying" members, and broader concerns over American trade sovereignty.³ The consequences have been profound. Losing parties routinely appeal panel decisions "into the void,"⁴ effectively stymieing enforcement and leaving disputes in a state of indeterminate legal limbo.⁵ The resulting fragmentation of the multilateral trade order, the proliferation of workaround mechanisms, and the rising tide of unilateralism all raise a fundamental question: can the WTO's dispute settlement system survive, and if so, in what form?

This article undertakes a comprehensive examination of the Appellate Body crisis — its historical origins, structural and political causes, institutional consequences, the emergency mechanisms devised in response, the structural reforms proposed, and the implications for developing nations — before offering a set of actionable recommendations for a renewed and inclusive dispute settlement architecture. The analysis proceeds in five chapters and concludes with a forward-looking prescription for the rehabilitation of the world's most consequential trade tribunal⁶.

1.2 RESEARCH QUESTIONS

Has the WTO Appellate Body crisis weakened dispute settlement?

Can the MPIA replace the Appellate Body effectively?

How has the impasse affected developing countries?

1.3 HYPOTHESIS

The WTO Appellate Body crisis reveals a deeper clash between sovereign prerogatives and the rules-based multilateral order: powerful states resisting binding appellate oversight have hollowed out a core enforcement mechanism. The MPIA demonstrates creative interim cooperation under Article 25 but remains voluntary, non-universal, and limited in precedential effect, so it cannot fully replace a permanent AB. A durable remedy

requires targeted DSU amendments addressing legitimate procedural concerns, political commitment from major economies to renounce unilateral blockage tactics, and institutional consolidation of plurilateral appellate arrangements with safeguards for developing members' access. Only this combined approach can restore credible, inclusive, and enforceable WTO adjudication

CHAPTER I: HISTORICAL ARCHITECTURE OF THE WTO DISPUTE SETTLEMENT SYSTEM

To understand the depth of the present crisis, one must first appreciate the institutional ambition embedded in the WTO's dispute settlement framework at its founding. The Uruguay Round negotiations that culminated in the Marrakesh Agreement of 1994 produced the DSU as a comprehensive overhaul of the ad hoc and largely ineffective GATT dispute resolution mechanism. Under GATT⁷, any contracting party could block the adoption of a panel report by withholding consensus — a diplomatic veto that rendered adverse rulings largely advisory in character. The DSU corrected this fundamental deficiency by adopting the principle of "negative consensus," under which a panel or AB report stands adopted unless every WTO member, including the party in whose favor the ruling was made, agrees to reject it. This structural innovation gave the dispute settlement system genuine teeth: for the first time in the history of international economic law, trade rulings would be binding, appeals would be heard by a standing appellate tribunal, and compliance would be backed by the threat of authorized countermeasures.

The Appellate Body itself was constituted as a standing body of seven members serving four-year terms, with the possibility of one renewal. Its founding jurisprudence established landmark precedents — from the Shrimp-Turtle cases that interpreted Article XX environmental exceptions,⁸ to EC — Bananas that tested the depth of the system's enforceability — that gave it the character of a genuine international appellate court rather than a mere reviewing tribunal. The DSU also enshrined strict timelines: panels were to report within six months, and the AB was to render its decision within sixty to ninety days of an appeal being filed.⁹ These provisions were designed to ensure that the dispute settlement process would be faster, more predictable, and more rule-consistent than the GATT era. The entire system was predicated on a shared commitment among WTO members that the compulsory jurisdiction of the dispute settlement mechanism was the price of membership in the most comprehensive trade regime in history. That shared commitment began to unravel not suddenly, but gradually, through a widening fault line between the United States and the rest of the membership regarding the proper scope of appellate review¹⁰.

CHAPTER II: ANATOMY OF THE APPELLATE BODY BLOCKAGE

The origins of the present impasse lie in American dissatisfaction with the AB's interpretation of its own mandate. The United States, regardless of the party in power, has articulated a consistent set of objections to the manner in which the Appellate Body has conducted its business. Three grievances stand out.¹¹ First, the U.S. objected to the practice of "Rule 15" — a procedure whereby AB members whose terms have expired continue to participate in appeals that were initiated before their terms ended, a practice the U.S. characterized as unauthorized judicial overhang inconsistent with the DSU's fixed term structure.¹² Second, the U.S. complained repeatedly that the AB routinely exceeded its mandate under Article 17(6) of the DSU, which limits its jurisdiction to "issues of law covered in the panel report and legal

interpretations developed by the panel." In the American view, the AB had drifted into pronouncing on matters not strictly necessary for the resolution of the dispute, effectively creating binding precedents that accumulated into a body of quasi-legislative jurisprudence that constrained future U.S. trade policy space. Third, the United States expressed deep frustration with what it perceived as the AB's failure to comply with the ninety-day rule for rendering decisions — a procedural discipline that, in the U.S. view, had been routinely sacrificed in favor of comprehensive legal opinions that functioned more as policy documents than adjudicatory judgments¹³.

Beginning in 2017, the Trump administration escalated these objections into a systematic blockade of all appointments to fill AB vacancies. As sitting members completed their terms, the body shrank from seven members to three by 2019 — the bare minimum quorum — and then, with the expiry of two remaining members' terms on December 10, 2019, to one, rendering the tribunal constitutionally dysfunctional. Efforts by successive WTO Director-Generals to broker compromise appointment packages, including the "Walker Process" in 2019, failed to obtain American consent¹⁴. The Biden administration, despite adopting a more multilateral posture in trade relations, did not reverse the appointment block, leaving the system effectively frozen.¹⁵ Parties that lost before first-instance panels found themselves facing a Hobson's choice: accept an adverse ruling against which the DSU guarantees a right of appeal, or appeal a report that no tribunal could hear, leaving the dispute unresolved indefinitely. The systematic use of the appeal "into the void" became a perverse but rational litigation strategy, exploited particularly in disputes involving large economies with deep political incentives to delay adverse trade law findings. The result was a dramatic reduction in the number of new disputes filed — reflecting not a decline in trade friction but a rational assessment by members that investing in expensive litigation with no enforceable outcome was poor legal strategy¹⁶.

CHAPTER III: THE MULTI-PARTY INTERIM APPEAL ARBITRATION ARRANGEMENT — A STOP-GAP UNDER SCRUTINY.

In April 2020, the European Union and a coalition of WTO members — initially nineteen in number — launched the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), invoking Article 25 of the DSU¹⁷, which permits WTO members to agree by mutual consent to use arbitration as an alternative means of settling disputes. The MPIA was designed explicitly as a bridge mechanism to preserve the two-stage character of WTO dispute settlement in the absence of a functioning Appellate Body. Under the arrangement, parties that are both MPIA members and that are engaged in a dispute before a WTO panel agree, in advance, that any appeal of the panel report will be heard by a three-member tribunal drawn from a standing pool of ten arbitrators appointed by the MPIA parties themselves. As of May 2026, the MPIA has grown to thirty-four members (counting the EU and its twenty-seven member states as one unit), with Malaysia, Paraguay, Viet Nam, the United Kingdom, Moldova, Liechtenstein, and Barbados joining between 2024 and 2026.¹⁸

The MPIA's institutional design reflects both creativity and caution.¹⁹ The arrangement preserves the essential features of appellate review — independence, deliberative procedure, legal reasoning grounded in WTO law — while allowing parties to customize certain procedural elements of each appeal arbitration agreement. The first substantive appeal decided under the MPIA involved the EU-Colombia trade dispute concerning frozen boneless chicken cuts, and the arbitral award was rendered in a manner broadly consistent with prior

AB jurisprudence. This precedent was important: it demonstrated that Article 25 arbitration could function as a credible substitute for AB review, at least among consenting parties, without rupturing the coherence of WTO law. However, the MPIA's limitations are as significant as its achievements. Its voluntary nature means it binds only those members who have explicitly joined it; the United States, India, and several other major trading powers remain outside the arrangement, meaning that disputes involving these economies — which account for a disproportionate share of global trade volume and WTO litigation — cannot be resolved through the MPIA. Moreover, MPIA arbitral awards technically lack the formal legal status of AB reports, raising questions about their precedential weight in future panel or AB proceedings. The MPIA is ultimately a sophisticated workaround rather than a structural solution, and its architects have consistently acknowledged this²⁰.

CHAPTER IV: CONSEQUENCES FOR GLOBAL TRADE ORDER AND DEVELOPING NATIONS

The paralysis of the Appellate Body has generated a cascade of consequences that extend far beyond procedural inconvenience. At the systemic level, the absence of a functioning appellate review mechanism has weakened the enforceability architecture of international trade law. The appeal-into-the-void strategy, when deployed by powerful economies, effectively neutralizes adverse panel decisions without any penalty under WTO law — since the DSU's authorization of countermeasures is conditioned upon the adoption of a final ruling, which never occurs when a "live" appeal is pending before a non-functioning tribunal. This creates a structural asymmetry of legal power: large economies with the resources to litigate and the political leverage to exploit procedural ambiguities can use the impasse strategically, while smaller and medium economies — for whom the WTO's legally binding dispute resolution was precisely the institutional equalizer that made membership worthwhile — bear the cost of unenforced rights.²¹

The implications for developing and least-developed country members are particularly severe. Developing nations have historically been among the most vigorous users of the WTO dispute settlement system, bringing cases against EU agricultural subsidies, U.S. cotton support programs, and discriminatory trade remedies precisely because the binding, rules-based character of the DSU gave them a legal forum in which legal merit, rather than geopolitical weight, was the deciding factor²². With the AB paralyzed and the MPIA available only to a subset of members, developing countries face diminished recourse. Bilateral "solutions" to trade disputes — one of the default alternatives that WTO members have increasingly resorted to in the post-2019 environment — are inherently tilted toward the stronger party. Smaller economies that would once have relied on multilateral adjudication to secure compliance with trade obligations now find themselves confronting the very power asymmetries that the DSU was designed to overcome. The shift toward bilateralism also risks fragmenting the multilateral trading system into a network of overlapping and potentially inconsistent bilateral arrangements — a development inimical to the systemic coherence and nondiscrimination principles upon which the WTO was built. Furthermore,²³ the growing resort to unilateral trade measures — Section 232 tariffs on steel and aluminum, Section 301 investigations, and industrial policy measures of dubious WTO legality — in a context where the enforcement mechanism is disabled represents a structural regression toward the mercantilist trade conflicts of the interwar period that the GATT and WTO were expressly created to prevent²⁴.

CHAPTER V: PROPOSALS FOR REFORM AND THE FUTURE OF WTO DISPUTE SETTLEMENT

The WTO membership has not been passive in the face of this crisis. A succession of formal and informal reform proposals has been advanced — at Ministerial Conferences, in the Dispute Settlement Body, and through academic and policy literature — each seeking to address the impasse in different ways and to different degrees of comprehensiveness. At the Twelfth Ministerial Conference (MC12) in Geneva in June 2022²⁵, WTO members committed to work toward a "fully and well-functioning dispute settlement system accessible to all members" by the end of 2024 — an ambitious self-imposed deadline that reflects the political urgency of the issue.²⁶ At MC13, held in Abu Dhabi in February 2024²⁷, ministers acknowledged the progress made in reform negotiations and reaffirmed the commitment to restoring a functional appellate mechanism, though no breakthrough agreement was reached²⁸.

The substantive reform proposals under consideration span a spectrum from minimal adjustments to comprehensive institutional redesign. One school of thought advocates targeted amendments to the DSU — clarifying the scope of appellate review under Article 17(6)²⁹, codifying strict compliance with the ninety-day rule, formalizing the termination of service upon expiry of a member's term, and establishing clear procedures for filling vacancies — as a means of addressing the U.S. objections while preserving the AB's essential institutional structure. A second, more ambitious proposal calls for the creation of a reformed permanent appellate mechanism with a broader mandate — possibly incorporating a mediation track for non-legal aspects of disputes, an expedited procedure for urgent matters, and a developmental track providing enhanced support to developing country members. The ICC International Centre for ADR has advanced the case for integrating mediation more systematically into WTO dispute settlement, noting that WTO rules already provide for mediation but that the absence of clear procedural rules has deterred its use.³⁰ A third line of thinking, informed by the MPIA experience, treats the Article 25 arbitration framework as the foundation for a permanent plurilateral appellate arbitration arrangement that can function independently of consensus among all 166 WTO members — effectively institutionalizing the MPIA as a durable second-tier review mechanism for willing members while leaving the door open for U.S. participation on reformed terms. Finally, some scholars have proposed creating a "two-speed" WTO³¹, in which a coalition of rule-compliant members with a functioning dispute settlement system reinforces the multilateral trading system while isolated holdouts — primarily the U.S. — face reputational and economic pressure to rejoin³².

CHAPTER VI: RECOMMENDATIONS

The rehabilitation of the WTO dispute settlement system is not merely a technical legal project but a profound act of political will — one that requires the world's largest trading powers, and above all the United States, to recommit to the foundational bargain of the multilateral trading system: that sovereign states can accept binding adjudication of trade disputes precisely because the rules are made and administered collectively, with the consent of all members. Drawing upon the foregoing analysis, the following recommendations are advanced.

The most urgent priority is the negotiation of a framework of DSU amendments specifically designed to address the legitimate concerns of the United States while preserving the integrity of appellate review as a binding, independent, and legally coherent process. Such amendments should codify a strict reading of the Appellate Body's jurisdiction under Article 17(6), explicitly prohibit AB members from serving beyond the expiry of their terms in any circumstance, and impose enforceable timelines for both the appointment of new members and the rendering of appeals decisions. These modifications, if carefully drafted, would remove the principal stated objections of the United States without compromising the AB's capacity to develop principled, consistent WTO jurisprudence. The negotiating forum for these reforms should be a dedicated working group within the DSB with a time-bounded mandate, reporting directly to the General Council, and backed by a political commitment from the membership's most influential trading powers to reach agreement within a defined period of two years.

Simultaneously, the MPIA should be deliberately expanded and institutionally consolidated as a parallel appellate mechanism under Article 25, with the goal of gradually converting it from an interim stopgap into a permanent plurilateral appellate arbitration arrangement. The legal architecture for such a consolidation already exists: Article 25 of the DSU is a permissive provision that allows WTO members to design arbitration procedures of their choosing, and the MPIA's existing pool of arbitrators, procedural rules, and institutional memory provide a foundation upon which a more permanent structure can be built. The arrangement's membership should be actively expanded through diplomatic engagement — particularly toward India, which as one of the world's largest trading economies and a major user of the WTO dispute settlement system has much to gain from a functioning appellate review mechanism and has thus far remained outside the MPIA for reasons that merit serious reconsideration in light of its growing trade interests. The creation of a permanent secretariat function for the MPIA — whether housed within the WTO Secretariat or as a standalone support unit — would enhance institutional continuity and reduce the procedural overhead that currently burdens each individual appeal arbitration agreement.

The dimension of developing country access deserves particular policy attention and institutional investment. The Advisory Centre on WTO Law (ACWL), which provides subsidized legal support to developing and least-developed country members in WTO dispute settlement, should be substantially strengthened — in terms of both funding and mandate — to enable developing countries to participate effectively not only in first-instance panel proceedings but in MPIA arbitrations and any future reformed appellate mechanism. Procedural innovations that reduce the cost and complexity of WTO litigation — including standing mediation facilities with professionally trained neutrals, expedited procedures for disputes involving measures with particularly time-sensitive trade impacts, and enhanced amicus participation rules — should be incorporated into a reformed DSU to democratize access to the system. The experience of the MPIA as a "laboratory of experimentation," as Pauwelyn famously described it, should be harnessed to pilot and evaluate these innovations on a consensual, opt-in basis before they are formalized into binding DSU amendments.^{[12][2]}

At the deepest structural level, the WTO membership must confront the foundational tension that the Appellate Body crisis has laid bare: the tension between the sovereignty concerns of powerful states and the systemic need for compulsory, binding dispute resolution that is the very essence of the multilateral trading system. No reform of the dispute settlement system will be durable if it does not resolve this tension in a principled and politically sustainable

way. The reform process should therefore engage directly with the United States — and any other member with comparable objections — in a structured dialogue about the proper scope of international adjudication in the trade context, the legitimate boundaries of AB lawmaking, and the design of a renewed appellate mechanism that commands the support of all major trading powers. The 2024 deadline set at MC12 may have passed without a comprehensive solution, but the commitment it embodied must be renewed with greater political urgency and institutional ambition. The WTO's dispute settlement system, for all its current dysfunction, remains the indispensable institutional infrastructure for a rules-based global trading order. Without it, the architecture of international economic law is not merely damaged — it is existentially imperiled, and the consequences for global economic stability, for developing country welfare, and for the principle of the rule of law in international relations would be profound and lasting.

CHAPTER VII: CONCLUSION

The crisis engulfing the WTO Appellate Body is, at its core, a crisis of multilateralism itself — a stress test of whether sovereign states, particularly the most powerful among them, remain willing to subject their trade conduct to binding international adjudication governed by collectively agreed rules rather than by raw economic leverage. The Appellate Body was never a perfect institution. Its critics raised legitimate concerns about judicial overreach, procedural delays, and the creeping transformation of a reviewing tribunal into a quasi-legislative authority. However, the appropriate response to institutional imperfection is principled reform, not the strategic dismantlement of an adjudicatory architecture that took decades of painstaking multilateral negotiation to construct. The United States' systematic blockade of appointments, whatever its domestic political logic, has inflicted damage upon the rules-based trading order that extends far beyond American interests and far beyond the bilateral disputes that the U.S. sought to insulate from adverse appellate rulings.

The emergence of the Multi-Party Interim Appeal Arbitration Arrangement reflects the resilience and ingenuity of the WTO membership in the face of institutional paralysis. The MPIA demonstrates conclusively that the legal infrastructure of Article 25 of the DSU can sustain a credible appellate review mechanism — one capable of producing legally reasoned, procedurally fair, and substantively coherent rulings even in the absence of a functioning Appellate Body. However, the MPIA is by design and by admission a temporary construction, a bridge rather than a destination. Its voluntary character, its exclusion of the world's largest trading powers, and its uncertain precedential standing in the broader WTO legal order mean that it cannot, on its own, restore the systemic confidence and legal certainty that the dispute settlement mechanism once provided. The path forward demands simultaneous action on multiple fronts: targeted and politically realistic amendments to the DSU that address U.S. objections in good faith; the consolidation and expansion of the MPIA into a permanent plurilateral appellate mechanism with an expanded membership; the strengthening of developing country access through enhanced ACWL funding and procedural innovations; and, most fundamentally, a renewed diplomatic compact among the world's major trading powers to recommit to the binding, rules-based dispute settlement system as the non-negotiable foundation of the multilateral trading order. The failure to act is not a neutral choice. Every month in which the Appellate Body remains paralyzed is a month in which the strategic advantages of non-compliance outweigh the legal costs of violating WTO obligations — a perverse incentive structure that corrodes the normative fabric of international trade law

from within. The WTO was built on the revolutionary premise that international economic relations could be governed by law rather than power. Restoring the Appellate Body to functionality is not merely a procedural reform — it is an act of fidelity to that founding premise, and to the vision of a world in which even the most powerful states are answerable to the rules they helped create.

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