



WTO's Dispute Settlement Mechanism: A Study of Its Effectiveness in Promoting International Trade

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ABSTRACT

The WTO is an important institution in global trade relationships and is especially important through its DSM component. Recognizing the WTO's role as overseer of fair international trade relations by enforcing rules of trade treaties and by handling disputes involving member countries, which total 164, this study seeks to evaluate the WTO's effectiveness in the aforementioned capacity. Thus, the DSM deals with various sins of trade that include tariffs to complicated issues to do with intellectual property that enhances competition. As much as the mechanism has increased world trade stability, there has not been a lack of problems, the most recent being the putting on hold of the WTO Appellate Body since 2019 has delayed appeals, hence leaving the organization's credibility in the cold. This research evaluates DSM's architecture, efficiency, and capacity for new trade issues, including digital trade, trade and climate, and geopolitical trade tensions, especially with the US-China trade war. The work also discusses WTO legal restrictions on the opportunity of developing countries, stressing the need for greater assistance. Others among the reform suggestions are the restoration of the Appellate Body, the handling of simplistic cases with or without a law degree and technical assistance to developing member nations, and the incorporation of rules governing digital and environmental trade disputes. The author has proposed multilateralism as a policy of the DSM because it is tremendously useful in discouraging protectionism and ensuring openness in world trade relations. Accordingly, this study calls for an enhancement of the WTO's DSM mechanism to enhance its core elements, enrich its legitimacy by ensuring its relevancy within current trading system trends, and sustain global order by promoting economic cooperation.

Keywords: WTO, Trade Governance, Appellate Body, Dispute Resolution, Digital Trade, Trade Conflict, Protectionism

1. Introduction

The WTO is the chief organization responsible for overseeing the global economic system through regulating the system of world trade. International trade governance refers to the framework of rules they agree on to provide a proper channel through which commodities, services, and/or investments can be exported and imported across borders. The WTO assumed the place of GATT, which was originally aimed at promoting trade liberalization and dealing with the trade friction among countries. Arguably, in exploring the role of the WTO, the primary role is the settlement of a dispute as a result of an alleged violation of the trade rules. This mechanism is crucial for negotiating the balance and stability of different countries and preventing the violation of the principles of fair competition rules resulting in discrimination. The WTO has a dispute procedure, which means partners in an international trade agreement must adhere to those agreements. The WTO dispute settlement mechanism creates confidence and coordination among trading partners, which in the end is instrumental in the efficiency of the international trading system.¹

International trade governance is the set of rules, norms, or standards and the system of agreements that regulate global commerce. These rules are formulated to ensure more equal competition, to avoid such approaches as protectionism, and to make sure that everyone gets something from globalization, even if they are the small players in the global market. The concept of trade governance is very relevant in today's world, where nations rely on one another for goods and services, technology, and markets. In this context, the General Agreement on Tariff and Trade (GATT) established in 1995 has developed into a global trade management organization, with 164 member countries comprising nearly 98 percent of the world trade. Primarily, the organizations' objectives entail acting as a negotiation platform for trade agreements as well as ensuring compliance and, in cases of disagreements, providing the platform for dispute resolution.

Historically, the WTO is the follower of the principled system of regulating relations between countries based on non-discrimination, reciprocity, and transparency. These features are now enshrined in the WTO's four central texts, primarily the GATT, the GATS, and the TRIPS. From figuring out rules and standards, the WTO makes sure that members are involved in trade practices without any controversies, for example, without bemused, discriminatory trade from other counterparts. However, given these agreements, trade disagreements are bound to occur not only because of the multi-

¹ Harsha Menon, "Dispute Settlement in WTO Trade Agreements", 11 *Journal of International Trade Law* 131 (2020).

faceted economy and policies of the participant countries. This is where the dispute settlement understanding under the WTO serves to encourage the governance of international trade.

It is worth stressing that international trade could not do without the dispute resolution mechanism. During this study, the relations between trade disputes the potential escalation of trade wars, and the effects of a lack of stability on the international trading system will have been made clear. The WTO offers a well-outlined framework through which this type of disagreement can be addressed as a means of avoiding their development into more general conflicts. In doing so, the mechanism supports the credibility of the international trading system by eliminating bias in the settlement of disputes and ensuring compliance with trade obligations. It also has the effect of preventing member states from taking a particular course of action that may be unpardonably disruptive to world trade. In this sense, while the WTO dispute resolution mechanism is an effective way of addressing individual specific cases, it is also a way of achieving the general objective of maintaining international order in the trading system.

Specifically, this article aims to critically assess the contribution of the WTO dispute resolution mechanism to international trade governance. In more detail, the article will discuss how the mechanism guarantees compliance with the trade agreements and avoids the worsening of the trade disputes among the countries, as well as the cooperation between the member states. The critique of the structure and function of the mechanism will also be considered, including scepticism about the efficacy and objectivity of the system as well as the ability of lesser developed or emerging powers to engage with it effectively. Moreover, the article will explain the dynamic character of the implementation of the mechanism, including the most recent changes that occurred in the WTO, such as the refusal of the United States to allow the appointment of new members of the Appellate Body.²

For this article, it may be necessary to divide the structure of the article into several sections. After this introduction, the second section will present a discussion on the WTO Dispute Settlement Understanding, its main legal sources, its major steps, and the principal actors.

The rules of international trade have not remained constant due to factors such as globalization, technological developments, and intervening economic interconnections. Warm hostilities of trade liberalization, through these advancements, have led to complex commercial arguments that go beyond tariff barriers, subsidization, intellectual property, and service markets. Under these conditions, the requirement for an objective and effective method of dispute settlement becomes highly important for the sustainability of the international trading system. Even when bilateral or regional first methods are available, they lack comprehensive solutions for global trade disputes most of the time. Usually, they reflect certain political relations and power relations concerning certain advantages, first of all in those situations when the countries with a small economy are in one way or another opposed to more significant and powerful countries. These mechanisms may also not capture other systemic trade issues that do not fit the geographical nature of RTAs, such as digital trade, trade and environment, and trade and development for developing countries.

These doubts were expected to be countered by the WTO's Dispute Settlement Understanding (DSU), which was to act as a system of Dispute Settlement Mechanism. It brings an ordered and multcentred mechanism of settling disputes through legal tender rather than force. This also makes sure even small economic regions have a voice, and their complaints and disputes have to be solved fairly. However, the system has shortcomings that limit its ability to effectively address the complexity that accompanies trade dispute resolution. For example, one of the cases such as "*United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Service*"³ reveals how complicated and even tend to be sectoral trade matters can be. Here the panel and appellate body were also called upon to apply not only WTO law but also the relationship of that law with other domestic laws regulating gambling services. This case, among other things, illustrates the rationale for constant adjustment of the mechanism to maintain its effectiveness in the global economy.⁴

Notwithstanding the numerous works that have been done on the WTO dispute resolution system, this study seeks to contribute to the literature by examining the effectiveness of the WTO dispute resolution system in advancing the principles of international trade governance in the changing world order and the negative impacts of multilateralism. The Doha Development Round, which was intended to address concerns identified by the developing countries in global trade, has remained frozen, with most of the proposed initiatives unimplemented. This stagnation has given rise to several bilateral and regional trading arrangements, which in several ways are helpful but are outside the WTO multilateral process. As a consequence, it has become debated whether the WTO indeed remains the primary moderator and enforcer of international trade.

While a clear strength of the DSM as SCRM is that it is highly legalized and transparent, there is limited scholarship on how well the DSM/SCRM is fit for the post-Doha Round realities where new issues such as e-commerce, climate change-related trade measures, and increasing protectionism are seen in the 'US-China Trade War'. Furthermore, recent unilateral measures and the freezing of the WTO's Appellate Body for lack of judges nominated by certain member countries suggest that the functioning of the system in the new conditions should be assessed. However, there is a lack of research on the consequences of this situation on the WTO's legitimacy and the future of the international trade regime at large.⁵

1.2 Theoretical Framework of International Trade Governance

International trade governance means the regime of rules and institutions that govern the international trade in goods and services. In its essence, it aims to promote an organized and structured setting that creates ease of trading by eliminating factors that include tariffs, quotas, and non-tariff barriers. The

² Jayanta Bagchi and H.R. Khan, *World Trade Organization – An Indian Perspective* 317 (Eastern Law House, Kolkata, 2nd edn., 2023).

³ WT/DS285.

⁴ Craig VanGrasstek, *The History and Future of the World Trade Organization* 523 (World Trade Organization, Geneva, 1st edn., 2013).

⁵ Mitsuo Matsushita, *The World Trade Organization: Law, Practice, and Policy* 672 (Oxford International Law Library, Oxford, 3rd edn., 2015)

extent of international trade governance includes laying down rules, regulation standards, and structures for regulating and enforcing compliance with trade laws, rules, and regulations and settling trade disparities. This governance structure enables countries to bring forward common economic concerns with a view to promoting the national agenda and turning trade into a win-win process.

The concept of international trade governance is linked to that of interdependence, which has steadily grown since the Second World War. Nevertheless, the more formal organization, such as the General Agreement on Tariffs and Trade (GATT), which appears later as the Global World Trade Organization (WTO), paves the way for more order in the control of international trade relations. One of the aspects of this governance is understanding the fact that all countries are different in terms of economic and political realities; however, all must subscribe to a certain set of rules so that no party can gain an unfair advantage during trading activities. These rules are meant to keep protectionism and to encourage free trade, and these are seen as key to economic liberalization across the world.

There is a section that has discussed the necessity and efficiency of international trade governance, various theories having been advanced for the two concepts. For example, liberalism will posit that trade has positive gains for the trading partners and that cooperation in institutions such as the WTO will output the gains due to minimized conflicts. The theory asserts that since countries need each other through trade, they will not fight since their economies are now intertwined. Realism, however, is more cynical regarding international cooperation and emphasizes the competitive state. From this perspective, international institutions are only legitimate where they advance the power of states of the core. Last, institutionalism connects these views, asserting that states, especially powerful ones, pursue their best interests, while international institutions can establish a set of rules that ensure actors' consistent predetermined behavior and thus increase their cooperation. areas of Governance in International Trading of rules, agreements, and institutions that regulate the exchange of goods and services across national borders. At its core, it seeks to establish an orderly and fair system that facilitates trade by creating predictability and reducing barriers such as tariffs, quotas, and non-tariff barriers. The scope of international trade governance includes the establishment of norms, procedures, and mechanisms that ensure compliance with trade agreements, provide a platform for resolving disputes, and promote cooperation among countries. This governance framework allows nations to collaborate on shared economic interests while protecting their national priorities, ensuring that trade becomes a mutually beneficial activity.⁶

The definition of international trade governance is closely tied to the notion of global interdependence, which has significantly expanded in the post-World War II era. The development of institutions like the General Agreement on Tariffs and Trade (GATT) and later the World Trade Organization (WTO) has provided a more structured approach to managing global trade relations. A key component of this governance is the recognition that countries have diverse economic and political systems yet must operate under a set of mutually agreed-upon rules to ensure fairness in trade relations. These rules are designed to prevent protectionist practices and promote free trade, which are viewed as central to global economic growth and development.

Various theories have been proposed to explain the need for and the effectiveness of international trade governance. Liberalism, for instance, argues that trade leads to mutual benefits and that international cooperation through institutions like the WTO can ensure these benefits are maximized by reducing conflicts. The theory posits that by encouraging interdependence through trade, countries are less likely to engage in conflict as their economic interests are aligned. Realism, on the other hand, is more sceptical of international cooperation and focuses on the competitive nature of states. In this view, international institutions are only effective insofar as they serve the interests of the most powerful states. Finally, institutionalism bridges these perspectives by arguing that while states act in their interests, international institutions can create a framework of rules that bind even the most powerful states to behave predictably, thus enhancing cooperation and reducing conflicts.

1.2.1 Governance Structures in International Trade

The regulation of international trade is performed through several institutions with the WTO as the center of gravity. Other substantial organizations are the United Nations Conference on Trade and Development, commonly known as UNCTAD, the International Monetary Fund (IMF), and the World Bank; every one of them possesses cooperative functions as the regulators of particular aspects of global commerce and finance. The WTO is still the main organization that oversees the rules of the current, post-war trading system. It is to assist the international business community in achieving the highest, most consistent, and most optimized level of convenience in trading with partners by making sure that global trade partners adhere to their commitments, negotiating on their behalf newer trade relations, and resolving conflicts between them.⁷

The WTO system is composed of some key organization institutions, for instance, the Ministerial Conference, the General Council, and subordinate organs that deal with particular areas of trade, for instance, products, services, and property rights on the intellectual. At the heart of the WTO's order is the "Dispute Settlement Body" (DSB), which settles all issues that may prevent the smooth running of business among the member nations. The decisions of the DSB are final, while its working rules are stipulated in the "Understanding on Rules and Procedures Governing the Settlement of Disputes"—known as DSU. The WTO's system of settling disputes has received great appraisal due to such factors as bias independence, transparency, and capacity to handle simple tariff disputes, complicated disputes on issues like intellectual property rights, and subsidies, among others, and complex matters to do with trade. The disputes that are addressed by the DSB range from the *Export Financing Programme for Aircraft between Brazil*⁸ to

⁶ Xavier Philippe, "The Dispute Resolution Mechanism of the World Trade Organization Five Years After Its Implementation", 15 *South African Public Law Journal* 221 (2000).

⁷ John H. Jackson, "The Role and Effectiveness of the WTO Dispute Settlement Mechanism", 2000 *Brookings Trade Forum* 179 (2000).

⁸ WT/DS46.

*Measures Affecting Asbestos and Asbestos-Containing Products between the European Communities*⁹. It shows that it is responsible for hearing and addressing complaints from both developing and developed nations.

This is so because the nature of the relationship between national policies and international trade governance is symbiotic but can also be rather hostile. While national governments control their trade policies, this has to be done in a manner that does not violate WTO agreements. This can create tension when national policies, particularly ones having tones with tariffs, subsidies, or different regulatory standards, are questioned by other WTO member nations. For instance, the case “*India-Agricultural Product*”¹⁰ described the conflict between national health standards and trade rules. In this case, India was found to have acted in violation of WTO regulations by placing a ban on the importation of some agricultural produce from the US. Measures Scholarship: As per WTO, this was because the measures were taken under the provisions of the “Agreement on Sanitary and Phytosanitary Measures.” This particular case illustrates the fact that no matter what the field is, national policies must conform to international legal requirements regarding trade.

1.2.2 Role of International Law in Trade Governance

International law occupies an important place in the regulation of international trade. The WTO legal systems are the foundation of a distinct governing system for settling disputes, compliance with trade laws and regulations, negotiation, etc. These frameworks are to make certain that trade between countries is mutual and open. These agreements are legally binding; the parties that signed them – the member states – are under legal duty to observe their engagements. Whenever there is a dispute, the WTO has a legal framework dispute settlement mechanism whose authority is operationalized based on international laws.

Even in WTO trade governance, it is clear that international law plays the following roles, starting with the WTO dispute resolution system. The issue of disputing falls under the DSU with extensive legal provisions regarding the process of the resolution of the disputes. It means that the disputes can be ended through the rules instead of reaching a power-based settlement. It involves largely the appointment of consensus talks between the disputing parties and the creation of a panel if consensus fails. The panel’s decision may be appealed in the Appellate Body, which examines the legislation of the case. The binding character of the rulings means that countries get to bare their teeth to countries that violate their trade obligations, which can be viewed under “*United States—Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China*.”¹¹

The mix between law and governance is also important in the formation of the trade policies of the world. Trade laws provide a framework within which individual country trade policies have to function, and this way there is a provision of liberalization, yet at the same time, respect for the sovereignty of countries. WTO laws aim at providing stringent coordination of trading policies in member nations without restricting their policy space to pursue lawful national interests, such as environmental conservation or health. This is captured in the letter by the “*Shrimp-Turtle case*”¹², whereby the WTO gave its stamp to the fact that environmental consideration can be used to justify restrictions to trade—something that can only be done on a non-discriminatory basis and in compliance with trade laws.

1.3 The WTO Dispute Resolution Mechanism

The WTO’s Dispute Settlement Understanding is often recognized as being one of the most sophisticated trade regimes for the resolution of disputes under international trade law. Its emergence from the GATT dispute resolution system has been a definite enhancement in the way trade disputes are solved. It is important to note that before the Uruguay Round of the GATT was signed in 1994, there was no permanent, legal, or compulsory system for the settlement of disputes. In the GATT era, controversies were settled by negotiations and diplomatic conferences, with panels convened occasionally to make recommendations. However, the panel findings were non-binding, and therefore its recommendations could only be acted on if the disputing countries agreed to do so. Furthermore, any member state could block panel reports—making this approach very ineffable, especially when strong players were in question.¹³

The controversies of the GATT system of settling contractual disputes were not well felt until international trade became more dynamic through the increase in the number of trade barriers and through the intensification of global business interactions by the identification of new issues. To appreciate these novelties, the rules were put into a more formalized form by the Marrakesh Agreement of 1994, culminating in the establishment of the WTO in 1995. An important component of this understanding was the establishment of the Dispute Settlement Body (DSB), a rule-based and legal dispute settlement process for trading disputes. They, in contrast, marked a quantum leap forward from the GATT-era system as they offered enforceable rules embedded in compliance with undertakings in trade—a rules-based system that exhibited a clear, balanced, and judicial process. The procedures of DSB are spelled out in the ‘Understanding of Rules and Procedures Governing the Settlement of Disputes’ (DSU), which captures the various phases of the dispute settlement process, consultation, panel proceedings, and appeal.

⁹ WT/DS135.

¹⁰ WT/DS430.

¹¹ WT/DS422.

¹² WT/DS58.

¹³ Jingxia Shi, “The Quest for the Future of the WTO: From the Perspective of World Order”, available at: <https://www.yjil.yale.edu/the-quest-for-the-future-of-the-wto/> (last visited on October 20, 2024).

Since the setting up of the DSB by the Marrakesh Agreement, there have been positive adjustments to the implementation of international trade laws. One of the strengths of the WTO is that the dispute resolution system is obligatory to observe for all the members, so superpowers are not beyond the law. This has been crucial in realizing equity and the non-discrimination principle in trading, which is the core of WTO operation. Unlike GATT, any member country of the WTO can reject panel rulings; under WTO rules, panel reports are accepted unless unanimously rejected. This is a preventer that bars large and powerful countries from vindictively controlling the system while protecting the rule of law in international business transactions.

1.3.1 Key Components of the WTO Dispute Settlement Mechanism

The WTO Dispute Settlement brings with it some key principles that guarantee that disputes are settled systematically and also fairly. It is claimed that panels and the Appellate Body play a vital role in resolving the disputes of the system. When a trade dispute emerges, it is followed by party consultations to find a diplomatic resolution. If these consultations do not work out, a panel is set for the case, and it gives out its recommendations. IC panels comprise individuals who are experts in international trade law, and they must assess facts and then analyze them using WTO rules of law. For its part, after the report is released, the sides have the right to appeal this decision to the Appellate Body, which examines legal questions and factual interpretations of WTO law.¹⁴

As a panel of the DSU, the Appellate Body reviews legal issues following an initial ruling concerning the DSU by a lower WTO panel, and its decision is final. It has an important role in scrutinizing panel reports to help uphold the WTO law as well as intervening in the panels' decisions to correspond to WTO agreements and decided cases. The whole process, from consultation to the making of decisions to their implementation, is intended to be equitable so that every member state of the organization can approach and establish a fair dispute settlement process regardless of their economic strength or might. As soon as a decision is made, the inspected party will need to conform to the decision given, meaning that they need to abolish the measure in question or pay compensation to the reporting party. If non-cooperation is the case, then the WTO encourages the complaining party to apply trade sanctions or retaliatory measures, which can be observed in the *United States—Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China*¹⁵.

Another interesting element of the WTO DSM is special treatment for the developing country members. Because developed nations possess better resources, right down to the legal capacities of their lawyers, the WTO offers longer time limits and technical assistance to developing nations in claims. This is because the developed nations would want the developed nations to get a fair chance at defending their trade interests, as the developing nations are being given the same chance. For example, the case *India—Quantitative Restrictions* showed that such provisions did play a crucial role in the WTO. In this case, a developing nation, India, was able to counter the trade-restrictive measures of a developed nation, namely the United States, through the WTO channel, and the verdict went in India's favour.

1.3.2 Successes and Challenges

The WTO has provided a framework for the panel and appellate body to resolve a few of the most contentious trade disputes between the members. A great success story of the WTO dispute system is the ongoing "*Boeing v. Airbus*," also referred to as "*United States—Measures Affecting Trade in Large Civil Aircraft*"¹⁶. The main facts of this dispute were in a claim of the European Union that the United States had provided Boeing with unauthorized subsidies that greatly damaged Airbus's interests. Thus, after several years of legal proceedings, the WTO concluded that both the US and EU members violate WTO norms relative to the subsidization of aircraft makers. The case also established how the WTO assists in dealing with the conflict that might otherwise turn into unadulterated trade wars.

However, the WTO DRS has had its share of problems despite its achievements and potential. One of the most crucial factors is that there are more delays in the process of the ASX's dispute resolution. Even though the provisions of the DSU are meant to facilitate the settlement of disputes within certain time horizons, the disputing parties deal with increasingly sophisticated controversies, and the number of cases brought to the WTO dispute settlement system is vast; there is a huge backlog of cases. This has been particularly so in the Appellate Body, whereby delays have likely hindered the investigations of appeals. In addition, more recently, the Appellate Body has been struggling worse in the form of no existence since the US has failed to okay the appointment of new judges to this organ. Consequently, this has culminated in the paralysis of the Appellate Body while worrying over the future efficiency of the dispute resolution.

The other issue is that some people believe that the WTO's dispute settlement body is biased toward the trading powers. Critics of the system argue that since the system is designated to be somewhat neutral, economic and political powers like the United States and the European Union dominate the process. This criticism has been perpetrated especially where the country in contention is a small developing country that may not afford to invest sufficient effort in the legal processes of the WTO. However, the persistence of power asymmetry in the international trade context remains a problem in the way the WTO's dispute settlement interface works, particularly when providing for the special status of developing countries.

¹⁴ Dispute Settlement Mechanism under WTO, available at: <https://blog.ipleaders.in/dispute-settlement-mechanism-under-wto/> (last visited on October 15, 2024).

¹⁵ WT/DS422.

¹⁶ WT/DS353.

1.4 Promotion of International Trade Governance through the WTO Dispute Resolution Mechanism

The dispute resolution mechanism in the WTO acts as the support system to effectively enforce rule-based trade in the interstate system, which is an essential premise for trade governance. Because the mechanism establishes a legal relationship between member states and provides relief for people when the states are not living up to their commitments made under various WTO agreements, including the “General Agreement on Tariffs and Trade” (GATT), the “General Agreement on Trade in Services” (GATS), as well as the “Agreement on Trade-Related Aspects of Intellectual Property Rights,” also known as TRIPS. This mechanism is particularly crucial in ensuring that no country disregards trade rules or goes for protectionism, hence eliminating practices that distort global trade practices. The application of trade rules is advocated strongly in the WTO; this is part of its governance structure that ensures the required fairness and predictability in trade relations. The Dispute Settlement Understanding strengthens these principles by providing mechanisms to resolve a conflict and placing pressure on the nation to conform to the set and expected norms of international trade.¹⁷

The WTO dispute system increases the legalism of trade in several ways, including providing a forum for the settlement of disputes without reference to the power of economics or politics. This puts all the members within the trading bloc on an equal footing to protect their industries against the larger economic powers. For example, in “*India—Quantitative Restrictions*”¹⁸, which the United States brought forward, India was accused of using quantitative restrictions on imports. The WTO found India guilty because of the GATT dispute settlement ruling because the restrictions were not warranted. Yet India is still considered a developing country; it was under the obligation to adhere to this ruling, showing how the WTO’s dispute setup promotes fairness across all of its members. They consider this form of enforcement to be impartial, and because of that characteristic, it plays an important role in keeping the credibility of the international trading system in check because instead of power regulating trade, there is law.

Similarly, where the WTO recourse mechanism can render legally enforceable decisions, there is added enforcement of international trade laws. After a decision has been made, member states are bound to the ruling or, otherwise, risk being penalized with trade measures. This legal certainty is important for demonstrating trust between the partners involved in exchanging goods; if there are proper legal frameworks that will govern the exchanges, then the trade relations are not just wishy-washy promises but actual obligations of the partners. The threat of coercion maintains the significance of a rule-based trade system as well as helps to create a favourable environment for all WTO member nations.

1.4.1 Deterrence of Unilateral Actions

Another important function of the WTO Dispute Settlement System is to prevent the WTO member countries from adopting protectionist measures that can be taken without any consent on the side of the other country. If there is no multilateral agency, it means a giant state could use unilateral measures such as sanctions, tariffs, or restrictions that can lead to trade wars and economic chaos. The actual system of disagreeing serves as an anti-check against certain actions, as the independent system of dealing with complaints is provided. This has the effect of avoiding the frequent arising of all trade disputes so that disagreements are settled within the purview of the law instead of being settled by imposing penalties with proportional consequences.¹⁹

The case is the WTO’s way of preventing a specific behavior done unilaterally, which is the case of “*United States—Import Prohibition of Certain Shrimp and Shrimp Products*”²⁰. The Americans snatched the ban on shrimp imports from countries that did not use turtle-excluder devices while catching shrimp, claiming ecological reasons. India, with other countries, took a WTO case over the measure, stating it was an unjustified trade restriction. On the conservation measures, the WTO said the US was right to take actions to protect endangered species under Article XX, but that mode of putting the ban was wrong because it was discriminative and lacked multilateral consultation. I would like to conclude with this case that the WTO has precluded the United States from protectionism in the name of environmentalism and forced the nation to take an internationally reasonable approach that is permitted by the trade laws.

In the same way, it discourages protectionism, the WTO system also serves as a focal point that creates a clear set of ropes eligible members can follow to challenge protectionist policies. The fact that there exists a procedure for solving a dispute can help prevent countries from putting in place measures that infringe on trade laws. Hence, the WTO dispute proceedings help to eliminate conflicts among nations by providing a legal way to solve problems instead of the country going for self-help. The effects of the decision are beneficial in maintaining healthy standing in the trading industry as well as re-establishing the WTO’s basics on cooperation and multilateralism.

1.4.2 Providing Legal Certainty and Transparency

The WTO dispute resolution mechanism is also credited for having provided the legal certainty and/or the legal clarity to leading and governing international trade. As the certainty of law is an indispensable element of the international trade system, its purpose is to provide businesses,

¹⁷ IIASA Policy on WTO Reform, available at: https://www.g20.in/content/dam/gtwenty/gtwenty_new/document/review-docs/IIASA_policy_on_WTO_reform.pdf (last visited on October 15, 2024).

¹⁸ WT/DS90.

¹⁹ Using the Dispute Settlement Mechanism (DSM) as an Indicator for the Participation of Developing Nations in the WTO, available at: <https://nmbu.brage.unit.no/nmbu-xmlui/bitstream/handle/11250/2721441/Using%20the%20dispute%20settlement%20mechanism%20%28DSM%29%20as%20an%20indicator%20for%20the%20participation%20of%20developing%20nation%20in%20WTO..pdf?sequence=3&isAllowed=y> (last visited on October 15, 2024).

²⁰ WT/DS58.

governments, and other actors with legally stable and predictable rules of openness. The WTO's dispute system provides legal certainty where trade disputes are resolved under a clear structure, one that follows an agreed set of rules. It will also eliminate uncertainty that may otherwise characterize the international trade relations to enhance certainty concerning the WTO agreements and their implementation.

For instance, in *"European Communities—Measures Affecting Asbestos and Asbestos-Containing Products,"*²¹ there was a controversy over the ban on products containing asbestos by the European Union. Canada, of course, did not stand by this ban, stating it was an extra non-essential trade restraint. The WTO stood with the EU by maintaining the ban under the WTO's 'Agreement on Technical Barriers to Trade' (TBT) and the 'GATT Article XX(b)' that provides justified ground for restricting trade for human health reasons. This is a landmark ruling in as much as it helped to clear the otherwise cloudy waters as to when health and safety regulations were valid and therefore would pass WTO ordinances or laws, the appeals process on the WTO laws. That is why such cases personally prove how the process of the settlement of the dispute assists in the clarification of difficult problems of the legal legislation and strengthens the foundations on which the stability and predictability of international trade law are based.

Another important element that is characteristic of the WTO dispute resolution system is transparency. The system makes sure that all the decisions, panel reports, and findings made by the Appellate Body are available to the public to enable the stakeholders to be informed of why certain rulings have been made and how the trade rules are being implemented. This process is important in the sense that it will build confidence in the international trade system since countries cannot be seen to manipulate it with secret or obscure decision-making. The publication of rulings also enables other member countries to undertake relevant changes within their domestic legislation based on the jurisprudence of WTO law and increase the legal certainty throughout the global trading system.²²

Moreover, through the making of provisions of the provisions of the dispute settlement system public, there is principally the reflection of the accountability of the WTO members. Through the system of making rulings public, the WTO awards different nations the responsibility of making their trade policies and practices acceptable to the WTO. This public accountability is helpful when it comes to the case of good governance in the international trade system, and it is also important for international trade practices to be aligned with the legal frameworks of international law. By promoting both the legal security and the openness of the trading regime, the WTO dispute upstream mechanism is a continued critical pillar of the legality of the international trade of the rule and of the international trade relation governance.

1.5 Current Challenges Faced by the WTO Dispute Resolution System

Arguably the single biggest problem for the WTO DR mechanism at present is the inactivation of the Appellate Body since 2019. The Appellate Body plays a critical role in the WTO, as it simply provides the ultimate determination of legal questions and helps maintain uniformity in the interpretation of WTO provisions in trade disputes. However, the Appellate Body that has formed the backbone of the WTO has not functioned effectively since December 2019 due to the US blocking of new appointments, which has for years protested the working of the body and some or most of its decisions as going out of its docket. DSU also addresses that the Appellate Body must have at least three members for appeals, but currently, it has no functional members.²³

The loss of the Appellate Body has no doubt had several negative implications for the WTO, particularly its Dispute Settlement System. Due to the limitation of the right of appeal on the rulings made by the panels, the member states tend to have little ways of solving the trading disputes, and this causes legal risks for longer times. For example, if a member country is dissatisfied with a panel's decision, it can now potentially prevent the conclusion of such a dispute by appealing 'into the void' as there is no functioning appellate body to process such an appeal. This strategy is anti-LTE trade and prejudicial to the comprehensive probe of disputes as it avails countries time and enables such countries to ignore panel decisions. Therefore, the current suspension of the Appellate Body puts the foundation of the WTO's Dispute Settlement Understanding at vast risk, as predictability and fairness are basic to this system.

Furthermore, the non-selection and operation of a fully capable appellate body pose a serious question mark at the sustainability of the current multilateral trading system. The situation that has prevailed after the Appellate Body crisis threatens the disconnect of WTO trade rules enforcement, with a growing risk of countries opting for the use of unilateral measures to address their grievances instead of the multilateral mechanisms at their disposal in the WTO. This is especially important given the tendency towards protectionism and trade friction since the lack of a strong framework for settling disputes could blur relations between large trading partners.

1.5.1 Global Trade Tensions and Political Challenges

A further setback has emerged in the WTO dispute resolution system emanating from the increased protectionism and trade tensions around the globe. One of the most vivid examples of such a tendency is the US-China trade conflict, which undoubtedly influenced the world economy and the work of the WTO to some extent. The trade war started in 2018 when America started to put tariffs on many products from China on grounds of unfair dealing,

²¹ WT/DS135.

²² Panos Delimitasis, "Transparency in the WTO's Decision-Making", 27 *Leiden Journal of International Law* 701 (2014).

²³ Challenges and Remedies to WTO Dispute Settlement, available at: <https://articles.manupatra.com/article-details/Challenges-and-Remedies-to-WTO-Dispute-Settlement> (last visited on October 15, 2024).

theft of intellectual property, and access to markets. In return, China levied equal reciprocal tariffs on U.S. products, and this led to an aggravation of further rounds of protectionism measures that distorted the global supply chain.

The greatest direct influence of the bilateral trade relations between the two countries has been on the WTO dispute settlement mechanism because both the US and China have presented their claims to the WTO, where they have accused each other of violating WTO trade rules by levying the tariffs. However, because the Appellate Body never became operational, these disputes remain ongoing, and the WTO's role as a forum for settling trade disputes is increasingly in question. The trade war has also revealed the inability of the WTO's rules to handle modern problems at the core of the war: state subsidies, protection of intellectual property rights, and forced technology transfer. These problems are not addressed by the current WTO acquis of measures, and therefore such challenges cannot be easily solved by the dispute settlement.

It was also disclosed that political tensions not only in bilateral relations between the United States and China contributed to the dysfunction of the WTO dispute resolution. In recent years, state security and economic nationalism have played a significant role in cooperation in international trade relations, which increases the likelihood that trade disputes become politically charged. For example, trade barriers applied under the so-called "national security" with the recent example of section 232 of the Trade Expansion Act of 1962, when the United States applied tariffs on steel and Aluminum imports, have been addressed to the WTO. Nevertheless, the use of national security justification for trade measures adds a new layer to the complexity of the dispute setup because it inevitably brings about the interrogation of the boundaries of WTO jurisdiction, especially in politically and security-sensitive issues.²⁴

1.5.2 Developing Country Participation and Access

Yet another of the critical questions that have to do with the WTO Dispute Settlement System is that of developing country utilization or access to it. However, despite special arrangements and support in the form of technical cooperation for the developing members of the WTO, the systems remain extremely difficult for most of the developing countries to access and use effectively. These barriers are the absence of legal capability, capital, and organizational ability to participate in lengthy, costly, and legal processes that involve combative procedures.

This implies that the developed nations possess all the might that is used to command the natural resources in the developing nations, hence enshrining contested laws. Litigation can be expensive and cumbersome depending on the skill and financial might of the participants, and here developed country members of the WTO have an advantage over their developing counterparts. This is clear, as in the case of "*Brazil—Export Financing Programme for Aircraft*"²⁵, it was difficult for a developing nation such as Brazil to defend its export subsidy program from complaints by the United States. Although the case was taken to a WTO favourable to Brazil, the legal and amount of money spent were high. This shows the challenges that developing countries encounter when defending their trade rights at the WTO.

Moreover, there are always increased difficulties in collecting awards or enforcing decisions, even if the developing countries are fortunate enough to have regional panels to rule in their favour. The WTO uses dispute settlement mechanisms and therefore depends on the willingness of the member states to implement the decision results; powerful countries may pose an easier challenge for the developing countries to force their compliance. For instance, in the "*Mexico—Soft Drinks*"²⁶ case, Mexico, which emerged as the winner of the dispute over the taxes on soft drinks containing high fructose syrup, could not recover adequate compensation due to the non-compliance of the United States.

Subsequently, the challenges highlighted here have given rise to debates on the need to reform the WTO dispute resolution mechanism to afford developing countries an appropriate ticket into the institutionalized trading system. Toward this end, there are suggestions to strengthen the technical cooperation and training activities, simplify the expense of dispute settlement, and develop measures that will help improve compliance with the panel ruling. The kind of reforms are necessary for the WTO dispute settlement to be fair to all members, rich and poor, so all have an equal seat at the table.

1.6 Conclusion

The WTO dispute settlement system is a critical element of the GATT/WTO framework of rules governing international trade and is enforceable and stable. The deliberate and systematic nature of the organization facilitates legal rationality to advance expectation, reciprocity, and obligation among the member states. However, the system is not without some form of difficulty. This explains why the Appellate Body has been paralyzed since 2019 by new members from developed countries, the escalation of trade tensions globally, and the challenges faced by developing nations to get access to dispute resolution systems. This argues that reforming the mechanism as proposed will have to consider factors such as replenishing the Appellate Body, addressing procedural issues in the use of dispute settlement, and addressing issues related to digital trade and environmental issues. Additionally, it is concerning that enhancing the voice of emerging and developing countries and improving the architecture of the existing order is essential for maintaining the core principles of fairness, representativeness, and effectiveness. The continuation and sustenance of the Dispute Settlement Mechanism, or DSM, in the WTO, depends on this organization's capacity for evolution or innovative adaptation to meet contemporary trade dilemmas that concern fair trade and legitimate certainty in global commerce.

²⁴ *Supra* note 23.

²⁵ WT/DS46.

²⁶ WT/DS308.

1.7 Suggestion

The difficulties surrounding the WTO Dispute Resolution Mechanism (DRM) call for operational interventions to strengthen the organization of international trade. Solving these concerns requires specific changes and shifts in the structure to make the mechanism more fair, effective, and stable. The suggestions below aim to tackle the main problems associated with the DRM:

- The suspension of the operation of the Appellate Body weakened the dispute settlement system.. In an attempt to bring back some functionality the following objectives should be met: vacancies in judges should be filled, appropriate term of service should be set and there should be efficient procedure to select a judge. Debates on judicial activism may be alleviated by defining principles for case determination and establishing code of conduct for its members hence removing skepticism that the body is bias.
- The current system can be slow because of intricate issues and many cases which are under consideration.. More simplified cases should be processed faster while other options such as mediation can be used to clear other cases faster. The points could be addressed by creating a list of IELP panelists that would be available on a fully dedicated basis rather than gradually building panels, further helping to advance the development of international trade law.
- To make the balance, WTO should increase political intervention and legal aid to developing countries.. The Advisory Centre on WTO Law can be made more able to serve the needs of smaller economies more adequately if it is provided with more funding and a wider range of services. Also, the creation of a financial aid fund that would help developing nations meet the costs of litigation would help them further their own trade agendas effectively.
- Because global trade is changing, the DRM should be able to address issues that include digital trade, environmental effects and data privacy.. It is imperative that the WTO objectively clarify these areas and come up with separate provisions and rules that would introduce key legal concepts into the practices of relations settling. Such adjustment could entail incorporating new provisions in the already existing agreements concerning e-commerce, data localization and trade related environmentalism.
- To enhance the multilateralism of the trade regime, the DRM must persuade countries to settle their disputes through the WTO not through the bi-lateral undertakings.. The above can be done by providing carrots for countries to abide to multilateral decisions and sticks by punishing countries for taking unilateral measures outside the WTO. This maybe done thru direct submissions of third parties on how the issues of dispute possibly affect the international trade system.
- Allowing the publication of panel and Appellate Body decisions promotes the development of clarity and confidence.. The public should be given frequent update information in case summaries, legal argumentation and enforcement results. Such openness will enable members to well interpret the rules and relate these findings to their existing domestic trade policies.
- To sustain integrity, it is essential to enhance the preservation of the decision on a dispute.. The DRM should provide for shorter periods for compliance and indicate that noncompliance with a given ruling will result in a transfer to the sanctions phase automatically. It can also be equally effective to develop a system for tracking and implementing the post-ruling obligation to supranational judicature to guarantee that countries stay accountable.
- The DRM should address the issue of imbalance of revenue levels among states in the region.. There are proposed reforms that include protracted proportionality mechanism that takes into account the economic effect of the trade disputes and scale the remedies, fines or sanctions in relation to the sizes of the economies. Thirdly, when political preferences and other power imbalances are especially apparent, requiring independent mediators should prevent unfair decisions.

The following suggestions have been made with a view to make WTO Dispute Resolution Mechanism sustainable and responsive to new generation trade issues and more reliable by doing away with procedural vices and being more inclusive.