

# ***The Current Status and Future of the WTO Dispute Settlement Mechanism***

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**Abstract:** With the development of globalization, the WTO plays a crucial role in resolving international trade disputes. However, the current WTO Dispute Settlement Mechanism is unable to address the trust crisis caused by deglobalization, and issues with the procedures themselves have become increasingly prominent. This has ultimately led to a complete deadlock in the WTO dispute settlement mechanism, causing the WTO Appellate Body to cease operations. In this situation, many countries adopt political negotiations or regional settlement mechanisms instead of passing the WTO, which challenges global multilateral rules. Although major countries such as the United States and China, as well as international organizations such as the European Union, have proposed corresponding solutions, there is no systematic and effective solution to reverse the situation, which means that more comprehensive ways are still needed to promote the improvement of the WTO trade dispute settlement mechanism. The article aims to study the problems currently faced by the WTO dispute settlement mechanism and the solutions to solve them to promote the better international role of the WTO trade dispute settlement mechanism. In the short term, in response to the criticism of the Appellate Body by the United States and the procedural deficiencies of the Appellate Body itself, the WTO should standardize its authority to interpret WTO agreements, strictly select and term judges, and enhance the transparency of the Appellate Body. In the long term, the keynote should be on rebuilding political mutual trust, enhancing the trust of major powers in the WTO, and safeguarding the rights and interests of developing countries.

**Keywords:** WTO Dispute Settlement Mechanism, the Appellate Body, WTO reform

## **1. Introduction**

As the cornerstone of the global trading system, the World Trade Organization(WTO) Dispute Settlement Mechanism has been regarded as “jewel in the crown”. Its compulsory jurisdiction and final arbitration effect pioneer international dispute settlement and provide solid guarantees for the implementation of multilateral rules in the golden age of globalization. Currently, the WTO dispute settlement mechanism is deadlocked, with the most important reason being the paralysis of the Appellate Body[1].The appeal mechanism of the WTO is an important component of the WTO dispute settlement mechanism, whose main function is to review and appeal trade disputes between member countries. In 2017, the United States obstructed the appointment of new judges to the appellate body, and in December 2019, the final zero number of appellate body judge seats resulted in an "institutional shock" that led to 24 appeal cases being deadlocked, involving amounts exceeding

\$500 billion. The problem faced by the WTO appeal mechanism is that some member states challenge the scope of the appellate body's rulings, believing that it is interpreting WTO rules beyond its authority and exacerbating the legitimacy crisis of the mechanism. Additionally, the lengthy procedures and complex enforcement have led to member states' dissatisfaction. Particularly, the fairness and neutrality of the dispute settlement mechanism are frequently questioned in trade disputes between major powers[2]. The paralysis of the appeal mechanism has exposed a deep-seated governance crisis in the multilateral trading system, with member countries turning to regional trade agreements (such as USMCA) or unilateral measures (such as Section 301), and unilateralism is increasingly on the rise.

The current surge in global trade disputes stands in stark contrast to the paralysis of the WTO dispute settlement mechanism. According to statistics, the average time for member states to process complaints has extended from 374 days in 2016 to 862 days in 2023, with the frequency of unilateral measures increasing by 217% year-over-year. This structural contradiction is pushing the WTO to a historical turning point. On one hand, stalled reforms could lead to the disintegration of the multilateral trading system. On the other hand, institutional innovation may usher in a new era of global economic governance.

In the context of emerging issues such as digital trade and climate rules, if the WTO dispute settlement mechanism remains paralyzed for a long time, WTO may degenerate into a "toothless" forum. Global trade governance will become more dependent on power rather than rules, which is particularly detrimental to developing countries and small and medium-sized economies. The success or failure of future WTO reforms will be a crucial test of whether the international community can uphold a rule-based multilateral order. Reforming the WTO's dispute settlement mechanism is not only key to resolving international trade disputes but also helps promote globalization. The article primarily studies the current problems facing the WTO dispute settlement mechanism and explores future solutions, aiming to enhance the WTO positive role in maintaining effective global trade development amidst the interplay of international globalization and regionalization.

## **2. Problems with the WTO dispute settlement system**

### **2.1. Weakening of the functions and authority of the Appellate Body**

The Appellate Body is a core component of the WTO dispute settlement mechanism, responsible for reviewing legal aspects of panel reports to ensure uniform interpretation and application of WTO rules. Its decisions are binding and are referred to as the "Supreme Court" of international trade. The primary function of the Appellate Body is to review legal misinterpretations in panel reports during the second instance process, preventing fragmented rulings. Through the principle of "reverse consensus," which means that in multilateral meetings, a proposal can only be rejected if all member states unanimously agree not to adopt it; otherwise, if just one member agrees, the proposal should pass[3]. This ensures the efficiency and enforceability of dispute resolution, reflecting the authority of the Appellate Body.

But the WTO appellate mechanism is currently facing a crisis, and its authority and role gradually weakening. This weakening of the Appellate Body is directly due to the United States obstruction and the judge appointment crisis. Since 2017, the United States has blocked the WTO from initiating the selection process for Appellate Body members. By December 11, 2019, the WTO Appellate Body, which should have consisted of seven members, was reduced to just one member, unable to hear cases, leading to a paralysis of the Appellate Body. On November 30, 2020, the last remaining member of the Appellate Body officially completed their term and stepped down. The paralysis of the Appellate Body has affected the normal operation of the WTO dispute settlement mechanism, forcing appeal

cases to be resolved through Provisional Arbitration (MPIA). However, only some members have joined this mechanism, dealing a heavy blow to the multilateral trading system.

The main criticisms of the Appellate Body in the United States focus on three points. First, the "judicial activism" of the Appellate Body has exceeded its authority to interpret the WTO Agreement, such as the broad interpretation of the "public morals exception". Second, the adjudication process is lengthy, averaging around 152 days, far exceeding both the statutory period and the expectations of member states. Third, there is a subjective attitude from the United States, believing that some rulings favor American interests, like the anti-dumping and countervailing duty case between China and the U.S.

On June 30, 2024, the United States held its first regular dispute settlement meeting after the 12th Ministerial Conference (MC12) at the WTO [4]. It rejected a proposal to restart the appellate body selection process, and This is its 55th denial. The problem of the paralysis of the WTO appellate mechanism hasn't been properly resolved yet.

## **2.2. It cannot adapt to the development of anti-globalization and trust crisis**

The WTO dispute settlement mechanism has been the "cornerstone" of the multilateral trading system since its establishment, but it is increasingly facing a crisis of trust amid the wave of anti-globalization[5]. Anti-globalization is often manifested in some member states contracting foreign trade and strengthening domestic policies, with a greater emphasis on protecting their own interests. In contrast, many rules established by the WTO run counter to this trend. For example, the WTO Special and Differential Treatment (SDT) allows developing countries to make fewer trade concessions compared to developed countries. This treatment aims to help developing countries better adapt to the global trading environment and promote economic development. Such special treatment represents a concession of interests in the context of globalization, which has evolved as the economies of developing countries have improved, altering the balance of interests. However, under anti-globalization, countries are unwilling to relinquish policy autonomy and have become increasingly sensitive to the "supremacy of national judicial power" in dispute settlement mechanisms.

The trust crisis in the WTO dispute settlement mechanism is a clash between the logic of global cooperation and the logic of anti-globalization rights. This crisis not only stems from institutional flaws within the system but is also closely related to the ebb of globalization, intensified great power competition, and the impact of new trade issues. At its core, this problem lies in the contradiction between prioritizing national interests and weakening multilateral rules [6]. Disputes have led some member states to refrain from submitting trade disputes to the WTO, instead opting for political negotiations or regional mechanisms to resolve them.

If it fails to restore the trust of member states in multilateral rules, the WTO may degenerate into a "forum-style institution", global trade governance will fall into a "rule vacuum", and the "jungle law" dominated by power politics may return.

## **3. The future of WTO: the path to improve the WTO dispute settlement mechanism**

### **3.1. Current solutions and evaluation**

To effectively address the existing issues in the WTO dispute settlement mechanism, major countries and academic circles have made numerous efforts. In the case of the Appellate Body being paralyzed, a temporary substitute mechanism emerged, known as the Multi-Party Provisional Appeal Arrangement (MPIA). Some member states (such as the EU, China and 52 other countries) adopted the "Multi-Party Provisional Appeal Arbitration Arrangement," using the existing legal framework of the WTO, specifically Article 25 of the Dispute Settlement Understanding (DSU), to arbitrate international trade disputes, replacing the appeal process with arbitration procedures. This mechanism

temporarily maintains the WTO appellate function and avoids a void in dispute resolution. But this mechanism involves only some member states, with key parties like the United States and India absent, and relies on voluntary cooperation from members, which results in a lack of universal binding force in rulings, raising doubts about its long-term sustainability.

The United States has also put forward its own solution. The U.S. criticizes the appellate body for "exceeding its jurisdiction," calling for restrictions on judges terms, prohibiting over-term proceedings, and limiting the retroactive effect of rulings. Although, these measures directly target loopholes in the WTO trade dispute settlement mechanism, they clearly have a self-protective bias. On the other hand, the EU proposes a "two-step" plan. Temporarily, restore the appellate body and ease the judge appointment process, while long-term efforts aim to modernize the resolution mechanism. The EU's proposal highlights the obvious advantages of a flexible consensus, but it overly relies on U.S. compromise. If the U.S. forcefully denies further engagement, this plan will be difficult to implement in the short term.

As a developing country, China proposes the following suggestions. At first, WTO restores the appellate body, improves the selection mechanism for judges, eliminates unilateral obstruction of judge appointments by individual member states and establishes an automated judge selection system to promote multilateral consultations and reform proposals. Secondly, it's essential to enhance the participation capabilities of developing countries by setting up a "Dispute Settlement Fund for Developing Countries", allowing these countries to extend enforcement periods or obtain exemptions in specific cases. At the same time, optimizing procedural efficiency by promoting electronic case management systems, reducing procedural delays, introducing a "collective retaliation" mechanism, and permitting multiple member states to impose trade countermeasures on those that refuse to comply with rulings are also needed to be taken into account in the reform measures [7]. China's proposal is conducive to advancing multilateral consultations and reform proposals, strengthening the alignment between domestic law and WTO rules, but it also faces numerous challenges, such as whether the United States will cooperate, the limitations of the MPIA, and the dimensions of rule harmonization. The ultimate implementation of China's proposal still depends on whether it can bridge the rule differences with developed countries and gather more consensus among developing countries [8].

### 3.2. Improve the path

At present, the most important pain point of the WTO Dispute Settlement mechanism is to solve the paralysis of the appellate body. However, the reconstruction of the WTO trade dispute settlement mechanism is not only a technical repair, but also a process of "re-contracting" for global economy and trade. Therefore, in the short term, we can focus on restoring the function of the appellate body, while in the medium and long term, we should pay more attention to rebuilding political mutual trust.

In the short term, firstly, the WTO can limit judicial overreach by revising the Dispute Settlement Understanding to Respond to the concerns of the United States regarding the issue of "judicial activism" in the appellate body. This would clarify that the Appellate Body is only responsible for interpreting existing agreement provisions, standardizing the WTO authority to interpret agreements and prohibiting the creation of new rules [9]. Then, strict regulations should be imposed on the selection and term limits of judges. For example, an expert committee could be established to nominate judges for the Appellate Body, with final selection made by a vote from member states, ensuring fairness and transparency in the selection process. At the same time, the term of office for judges should be shortened, either to four non-renewable terms or two renewable terms, to prevent excessive power. Last but not least, the transparency of the Appellate Body should be enhanced, not only by improving the transparency of judge selection but also by making public the records of Appellate Body hearings and allowing non-disputing parties to submit amicus curiae briefs.

In the long term, rebuilding political trust is a crucial approach to resolving the WTO Dispute Settlement Mechanism and Appellate Body shutdown. This requires systematic reform, coordination among major countries, and empowerment of developing countries. Firstly, WTO members requesting national security exceptions must submit detailed technical justifications and undergo "necessity tests" by independent expert panels to prevent abuse. Additionally, a "High-Level Trade Consultative Committee" should be established, involving ministerial-level representatives from member states to engage in political dialogue on key issues such as industrial subsidies and technology regulation, reducing direct legal confrontations. However, for trade volumes below a certain threshold, simplified procedures should be set up to issue non-binding recommendations within 60 days, minimizing judicial resource consumption and attracting more member states to resolve disputes through the WTO. Secondly, the key area "sub-agreements" should take precedence. In areas with smaller differences, such as digital economy and investment facilitation, willing alliances should lead in reaching sub-agreements, attracting other members through "open accession" clauses, which will force multilateral frameworks to update and prevent member states from using unilateral measures [10]. Finally, WTO are expected to enhance the institutional voice of developing countries. Developed countries should contribute funds proportionally to support legal talent training and technical assistance for developing countries in dispute resolution, establishing a "Trade Capacity Building Fund". The WTO should also allow developing countries to participate. Developing countries are given a longer transition period to implement the award and can convert compensation into technical assistance projects for differentiated implementation [11].

#### 4. Conclusion

The WTO Dispute Settlement Mechanism has long been regarded as the "cornerstone" of the multilateral trading system since its establishment in 1995, establishing a rules-based international trade order. By 2023, the WTO Dispute Settlement Body had cumulatively handled over 600 dispute cases, with about 90% of rulings being upheld, significantly enhancing the predictability of international trade. The WTO Dispute Settlement Mechanism not only safeguards the rights of developing countries, enabling them to successfully challenge unfair measures by developed countries through the DSM, but also provides procedural conveniences and reduces litigation costs for developing countries under special and differential treatment provisions[12]. Moreover, it promotes market openness by ruling on hidden trade barriers, thereby advancing global trade liberalization. In the context of deglobalization, the WTO Dispute Settlement Mechanism currently faces severe challenges with its future direction fraught with uncertainty, and the current situation is characterized by institutional paralysis and reform deadlock.

The failure of the WTO trade dispute settlement mechanism has led to the fragmentation of international trade rules, forcing members to resort to partial or regional measures. Its survival is not only about trade rules, but also a litmus test for whether globalization can rebuild resilience in the face of turbulence. If it fails to restore reliable dispute resolution functions, the WTO may further marginalize itself, exacerbating instability in the global trading system, while the power of unilateralism will grow stronger. Reform of the Appellate Body requires continuous innovation, providing a new platform and mechanism to make trade disputes more equitable and transparent [13].

Current solutions are mostly stopgap measures. While temporary arrangements like the MPIA partially fill the appellate function, the long-term effectiveness of the WTO dispute settlement mechanism still hinges on members political will and ability to compromise. The WTO Dispute Settlement Mechanism remains the most mature international trade judicial framework, but its survival depends on whether member states can transcend geopolitical competition and reconstruct a new rule framework that balances efficiency, fairness, and adaptability. Reform must balance legal rigor with political reality while enhancing the voice of developing countries. Otherwise, the authority



of the multilateral trading system will continue to erode. In summary, the WTO trade dispute settlement mechanism needs further improvement to better maintain global trade equilibrium.

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