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# International Law, Power Politics, and the WTO Appellate Body Crisis: Reconfiguring the Rules-Based International Economic Order

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## ABSTRACT

*The paralysis of the World Trade Organization (WTO) Appellate Body since December 2019 represents one of the most significant challenges to the contemporary rules-based international trading system. Once regarded as the cornerstone of the WTO's dispute settlement mechanism, the Appellate Body ensured consistency, predictability, and legal certainty in interpreting and enforcing multilateral trade rules. Its inability to function has generated a profound institutional and normative crisis, raising fundamental questions regarding the relationship between international law, state sovereignty, and power politics in global economic governance. This work critically examines the causes and consequences of the WTO Appellate Body crisis within the broader context of the changing international economic order. It argues that the institutional paralysis extends beyond a procedural dispute over judicial appointments and reflects deeper tensions concerning treaty interpretation, judicial legitimacy, geopolitical rivalry, and the evolving balance of power among major trading nations. Drawing on Realism, Liberal Institutionalism, Legal Positivism, and Third World Approaches to International Law (TWAIL), the paper shows how competing conceptions of law and power shape the functioning and legitimacy of international adjudicatory institutions. It further analyses the legal and institutional consequences of the crisis, including the erosion of legal certainty, the resurgence of unilateral trade measures, and the growing fragmentation of the multilateral dispute settlement framework. Particular attention is devoted to the implications for developing countries, with a special focus on India, whose economic interests depend significantly on an effective, impartial, and enforceable rules-based trading system. The present work also evaluates recent reform initiatives, including the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), and proposes measures to restore the credibility, independence, and effectiveness of WTO dispute settlement. It concludes that the future of international economic law depends not merely on institutional restructuring but on renewed political commitment to multilateralism, respect for international legal obligations, and the*

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*preservation of a dispute settlement system capable of balancing state sovereignty with the rule of law in an increasingly multipolar world.*

***Keywords:*** *WTO Appellate Body, International Economic Law, WTO Dispute Settlement, Power Politics, Rules-Based International Order, Multilateralism*

## I. Introduction

The establishment of the World Trade Organization (WTO) in 1995 marked a significant transformation in international economic governance. Unlike its predecessor, the General Agreement on Tariffs and Trade (GATT) 1947, the WTO introduced a legally binding and highly institutionalised dispute settlement system that sought to replace diplomatic bargaining with adjudication based on agreed legal principles.[1] The creation of the Dispute Settlement Understanding (DSU) and the permanent Appellate Body represented a major advancement in the evolution of international law by strengthening the predictability, consistency, and enforceability of multilateral trade rules.[2] For more than two decades, the WTO dispute settlement mechanism was widely regarded as one of the most effective international adjudicatory systems, contributing significantly to the stability and legitimacy of the rules-based international trading order.[3]

This institutional success, however, has been severely challenged by the paralysis of the WTO Appellate Body since December 2019.[4] The United States' refusal to approve the appointments and reappointments of Appellate Body members resulted in the loss of the quorum required to hear appeals, effectively rendering the appellate stage of WTO dispute settlement inoperative.[5] Consequently, parties dissatisfied with panel reports can now appeal "into the void," preventing the adoption of panel decisions and weakening the enforceability of WTO obligations.[6] What initially appeared to be an institutional disagreement over procedural reforms has evolved into a profound constitutional crisis for the multilateral trading system, raising fundamental

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[1] *See* John H. Jackson, The World Trading System: Law and Policy of International Economic Relations (2d ed. 1997).

[2] Understanding on Rules and Procedures Governing the Settlement of Disputes arts. 3.2, 17.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401, https://www.wto.org/english/docs_e/legal_e/28-dsu.pdf [hereinafter DSU].

[3] *See* William J. Davey, *The WTO Dispute Settlement System: The First Ten Years*, 8 J. Int'l Econ. L. 17 (2005), https://doi.org/10.1093/jielaw/jgi003; *see also* Robert Howse, *The World Trade Organization 20 Years On: Global Governance by Judiciary*, 27 Eur. J. Int'l L. 9 (2016), https://doi.org/10.1093/ejil/chw011.

[4] World Trade Organization, *Dispute Settlement Activity: Some Figures*, https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm (last visited Nov. 5, 2026).

[5] Cosette D. Creamer, *From the WTO's Crown Jewel to Its Crown of Thorns*, 113 AJIL Unbound 51, 51 (2019), https://doi.org/10.1017/aju.2019.1; *see also* DSU, *supra* note 2, art. 17.1.

[6] Joost Pauwelyn, *WTO Dispute Settlement Post 2019: What to Expect?*, 22 J. Int'l Econ. L. 297 (2019), https://doi.org/10.1093/jiel/jgz024.

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questions about the effectiveness of international adjudication and the future of legal constraint in global economic governance.

The Appellate Body crisis is not merely an institutional malfunction; it reflects a deeper tension between international law and power politics. The post-Cold War expectation that international institutions could progressively constrain state behaviour through legal rules is increasingly contested in an era characterised by geopolitical rivalry, economic nationalism, and strategic competition among major powers. The inability of the WTO membership to resolve the dispute over the Appellate Body illustrates the limitations of international legal institutions when confronted with the political preferences of powerful states. As a result, the credibility of the WTO as the guardian of a rules-based trading system has been significantly undermined, while unilateral trade measures, retaliatory tariffs, and alternative dispute settlement arrangements have become increasingly prominent.[7]

This paper argues that the collapse of the WTO Appellate Body represents more than a procedural breakdown; it signifies a broader transformation in the relationship between international law and power within the international economic order. By examining the crisis through the analytical lenses of Realism, Liberal Institutionalism, Legal Positivism, and Third World Approaches to International Law (TWAIL), the paper demonstrates that the paralysis of the Appellate Body exposes both the strengths and structural limitations of the contemporary multilateral legal order. It further explores the legal and institutional consequences of the crisis, particularly for developing countries such as India, whose confidence in a predictable and impartial dispute settlement mechanism is closely linked to the protection of their trading interests. Finally, the paper evaluates ongoing reform proposals and argues that restoring the legitimacy of the WTO dispute settlement system requires not only institutional reform but also renewed political commitment to the foundational principle that international trade should be governed by law rather than by the relative power of states.

## II. Evolution of the WTO Dispute Settlement System

The evolution of the WTO dispute settlement system reflects the gradual transition from a diplomacy-oriented framework under GATT 1947 to a legalised and rules-based mechanism under the WTO.[8] During the GATT era, dispute settlement primarily relied on consultations and

[7] *See* Creamer, *supra* note 5, at 55 (U.S. national security tariffs on steel and aluminum imports); World Trade Organization, *DS558: China – Additional Duties on Certain Products from the United States*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds558_e.htm (last visited Nov. 5, 2026); *Dispute Settlement Activity*, *supra* note 4 (appeal arbitration under Article 25 of the DSU).

[8] *See* 1 Petros C. Mavroidis, The Regulation of International Trade: GATT ch. 1 (2016); *see also* Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter & Duncan Snidal, *The Concept of*

diplomatic negotiations, with panel reports requiring the consensus of all contracting parties, including the losing party, for adoption.[9] This "positive consensus" rule frequently allowed respondents to block the adoption of adverse rulings, thereby weakening the enforceability of trade obligations and undermining confidence in the multilateral trading system.[10]

Recognising these institutional deficiencies, the Uruguay Round negotiations (1986–1994) culminated in the adoption of the Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding or DSU), which entered into force with the establishment of the WTO on 1 January 1995.[11] The DSU fundamentally transformed international trade adjudication by introducing compulsory jurisdiction, fixed procedural timelines, and a two-tier dispute settlement process comprising panels and a standing Appellate Body.[12] Most importantly, it replaced the positive consensus rule with the principle of "negative consensus," under which panel reports (unless appealed) and Appellate Body reports are automatically adopted unless all WTO Members, including the successful complainant, agree otherwise.[13] This innovation substantially reduced political interference and enhanced the legal authority of WTO rulings.[14]

The Appellate Body, consisting of seven independent members serving four-year terms, became the cornerstone of the WTO's judicial architecture.[15] It ensured consistency, coherence, and predictability in the interpretation of WTO agreements by reviewing legal issues arising from panel reports.[16] Through landmark decisions in disputes involving subsidies, anti-dumping measures, safeguards, and environmental regulation, the Appellate Body significantly contributed to the development of international economic law and reinforced the credibility of the rules-based trading system.[17]

Consequently, the WTO dispute settlement mechanism came to be described as the "crown jewel" of the WTO.[18] Its effectiveness demonstrated that international law could successfully regulate trade relations among sovereign states through impartial adjudication rather than

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*Legalization*, 54 INT'L ORG. 401 (2000), https://doi.org/10.1162/002081800551271.

[9] *See* ROBERT E. HUDEC, ENFORCING INTERNATIONAL TRADE LAW: THE EVOLUTION OF THE MODERN GATT LEGAL SYSTEM (1993).

[10] *See* Hudec, *supra* note 9; Jackson, *The World Trading System*, *supra* note 1.

[11] *See* Jackson, *The World Trading System*, *supra* note 1.

[12] DSU, *supra* note 2, arts. 6.1, 17.1, 20, 23.

[13] DSU, *supra* note 2, arts. 16.4, 17.14; *see also* Creamer, *supra* note 5, at 51.

[14] *See* Creamer, *supra* note 5, at 51.

[15] DSU, *supra* note 2, arts. 17.1-17.3.

[16] DSU, *supra* note 2, arts. 3.2, 17.6.

[17] *See generally* WORLD TRADE ORGANIZATION, *WTO Dispute Settlement: One-Page Case Summaries 1995-2022* (2023 ed.), https://www.wto.org/english/res_e/booksp_e/dispu_settl_1995_2022_e.pdf; Howse, *Global Governance by Judiciary*, *supra* note 3.

[18] Creamer, *supra* note 5, at 51.

political bargaining. However, this institutional success also generated tensions regarding the appropriate balance between judicial interpretation and state sovereignty, ultimately laying the foundation for the contemporary crisis surrounding the Appellate Body.[19]

## III. Theoretical framework: competing perspectives on the WTO Appellate Body crisis

The paralysis of the WTO Appellate Body has generated intense scholarly debate regarding the relationship between international law, state sovereignty, and global economic governance. The crisis cannot be fully understood through a purely doctrinal analysis; rather, it requires engagement with competing theoretical perspectives that explain why states create, comply with, or challenge international legal institutions. Four prominent approaches, namely Realism, Liberal Institutionalism, Legal Positivism, and Third World Approaches to International Law (TWAIL), offer distinct yet complementary insights into the causes and implications of the Appellate Body's collapse.

### A. Realism

Realist theory views international relations as a system characterised by anarchy, where sovereign states pursue their national interests and security in the absence of a central authority.[20] International institutions, including the WTO, are considered instruments that reflect the distribution of power rather than autonomous legal actors capable of constraining powerful states.[21] From this perspective, the paralysis of the Appellate Body is not an institutional anomaly but a predictable consequence of shifting geopolitical realities.

The United States' decision to block appointments to the Appellate Body illustrates the realist proposition that major powers are willing to disregard institutional commitments when they perceive those institutions to be inconsistent with their strategic or economic interests. Concerns regarding judicial overreach, the interpretation of WTO agreements beyond negotiated texts, and limitations on domestic trade policy were viewed by the United States as undermining its sovereign policy space.[22] Consequently, the Appellate Body crisis demonstrates that international adjudication ultimately depends upon the continuing political support of powerful

[19] *See* John H. Jackson, Sovereignty, the WTO, and Changing Fundamentals of International Law (2006); Robert Howse, *The Legitimacy of the World Trade Organization*, in The Legitimacy of International Organizations 355 (Jean-Marc Coicaud & Veijo Heiskanen eds., 2001); Creamer, *supra* note 5, at 52-53.
[20] *See* John J. Mearsheimer, The Tragedy of Great Power Politics (2001).
[21] *See* Mearsheimer, *supra* note 20.
[22] Office of the U.S. Trade Representative, *Report on the Appellate Body of the World Trade Organization* 1-2 (Feb. 2020), https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf [hereinafter USTR Report].

states, reinforcing the realist argument that law remains subordinate to power in international relations.

### B. Liberal institutionalism

Liberal Institutionalism presents a contrasting understanding of international law by arguing that institutions facilitate cooperation, reduce transaction costs, increase transparency, and provide mechanisms for the peaceful resolution of disputes.[23] According to this perspective, the WTO dispute settlement system represented one of the most successful examples of institutionalised international cooperation because it transformed trade conflicts into legal disputes governed by agreed rules rather than unilateral retaliation.

The paralysis of the Appellate Body is therefore viewed as a significant setback for multilateralism. Without a functioning appellate mechanism, WTO Members face greater legal uncertainty, reduced confidence in treaty compliance, and an increased likelihood of unilateral trade measures. Liberal institutionalists contend that the current crisis does not signify the failure of international institutions themselves but rather reflects insufficient political commitment by Members to preserve and reform them. Accordingly, institutional reform, renewed dialogue, and collective action remain essential for restoring confidence in the multilateral trading system.

### C. Legal positivism

Legal Positivism emphasises that international law derives its authority from the explicit consent of states expressed through treaties and other recognised sources of law. The legitimacy of international adjudication therefore depends upon faithful interpretation of treaty provisions rather than judicial law-making. From a positivist perspective, much of the controversy surrounding the Appellate Body concerns allegations that it exceeded its interpretative mandate by creating obligations not expressly negotiated by WTO Members.[24]

The United States repeatedly criticised the Appellate Body for engaging in judicial overreach, particularly through expansive interpretations of WTO agreements and the treatment of previous reports as *de facto* precedent.[25] Whether these criticisms are fully justified remains contested, but the debate highlights an enduring tension between judicial interpretation and state

[23] *See* ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY (1984); *see also* ROBERT O. KEOHANE & JOSEPH S. NYE, POWER AND INTERDEPENDENCE (4th ed. 2012).
[24] USTR Report, *supra* note 22, at 1-2.
[25] USTR Report, *supra* note 22, at 1-2, 7.

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consent.[26] The Appellate Body crisis thus raises fundamental questions regarding the limits of adjudicatory authority and the constitutional balance between legal interpretation and political control within international organisations.[27]

### D. Third World Approaches to International Law (TWAIL)

TWAIL offers a critical perspective by examining how international legal institutions often reproduce historical inequalities between developed and developing countries.[28] Rather than viewing international law as politically neutral, TWAIL scholars argue that global economic governance has frequently reflected the interests and priorities of economically dominant states.[29]

From this perspective, the WTO dispute settlement system has produced both opportunities and constraints for developing countries. On one hand, the legalisation of dispute settlement enabled countries such as India, Brazil, and South Africa to challenge trade-restrictive measures adopted by economically powerful states through an impartial legal process.[30] On the other hand, persistent disparities in legal expertise, financial resources, and negotiating capacity continue to limit the effective participation of many developing countries.[31]

The collapse of the Appellate Body disproportionately affects developing economies because they rely more heavily on binding multilateral adjudication than on economic or political leverage. In the absence of a functioning appellate mechanism, powerful states possess greater capacity to influence trade relations through unilateral measures, negotiated settlements, or economic pressure. Consequently, the Appellate Body crisis reinforces TWAIL's central argument that the effectiveness of international law depends not only on formal legal equality but also on addressing structural inequalities embedded within the international economic order.[32]

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[26] *See* Creamer, *supra* note 5, at 52-53; *see generally* MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT (2005).

[27] *See* DEBORAH Z. CASS, THE CONSTITUTIONALIZATION OF THE WORLD TRADE ORGANIZATION: LEGITIMACY, DEMOCRACY, AND COMMUNITY IN THE INTERNATIONAL TRADING SYSTEM (2005).

[28] *See* B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT'L CMTY. L. REV. 3 (2006), https://doi.org/10.1163/187197306779173220.

[29] *See* Chimni, *supra* note 28.

[30] *See One-Page Case Summaries*, *supra* note 17, at 108 (*US – Upland Cotton*), 189 (*US – Carbon Steel (India)*); WORLD TRADE ORGANIZATION, *South Africa and the WTO*, https://www.wto.org/english/thewto_e/countries_e/south_africa_e.htm (last visited Nov. 5, 2026) (listing DS613 and DS624, complaints against the European Union).

[31] *See* Chimni, *supra* note 28, at 13; Creamer, *supra* note 5, at 54; WORLD TRADE ORGANIZATION, *Dispute Settlement System Training Module*, ch. 11.1, https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c11s1p1_e.htm (last visited Nov. 5, 2026) [hereinafter *WTO Training Module*].

[32] *See* Chimni, *supra* note 28.

Collectively, these four theoretical perspectives demonstrate that the WTO Appellate Body crisis extends beyond institutional dysfunction. It represents a deeper contest over the role of law, power, legitimacy, and equity in governing international trade, thereby reshaping contemporary debates on the future of the rules-based international economic system.

## IV. Causes of the WTO Appellate Body crisis

The paralysis of the WTO Appellate Body did not emerge from a single institutional failure but from the convergence of legal, political, and systemic factors that had accumulated over several years.[33] While the immediate trigger was the United States' refusal to approve the appointment of new Appellate Body members, the origins of the crisis lie in deeper disagreements over the role of international adjudication, the interpretation of WTO agreements, and the changing dynamics of global economic power.[34] The crisis therefore reflects not merely a procedural impasse but a broader conflict over the constitutional design of the multilateral trading system.

A central cause of the crisis was the persistent criticism by the United States that the Appellate Body had exceeded the authority conferred upon it by the DSU.[35] Article 3.2 of the DSU provides that the dispute settlement system serves to clarify the existing provisions of the covered agreements, and that the recommendations and rulings of the Dispute Settlement Body cannot add to or diminish the rights and obligations of Members.[36] Successive U.S. administrations argued that the Appellate Body had departed from this mandate by engaging in judicial activism, particularly through expansive interpretations of treaty provisions and by treating previous Appellate Body reports as *de facto* precedent.[37] From the U.S. perspective, such practices altered the negotiated balance of rights and obligations without the consent of WTO Members, thereby undermining state sovereignty and the treaty-based nature of the WTO legal system.[38]

Another significant concern related to procedural compliance. The United States repeatedly objected to the Appellate Body's failure to adhere to the 90-day deadline prescribed under Article 17.5 of the DSU for issuing appellate reports.[39] Although the complexity of disputes often made strict compliance difficult, the United States viewed these delays as evidence that

[33] *See* Creamer, *supra* note 5, at 51-52.
[34] Creamer, *supra* note 5, at 51-52.
[35] USTR Report, *supra* note 22, at 1-2.
[36] DSU, *supra* note 2, art. 3.2.
[37] USTR Report, *supra* note 22, at 2, 7; Creamer, *supra* note 5, at 52.
[38] USTR Report, *supra* note 22, at 1-2.
[39] DSU, *supra* note 2, art. 17.5; USTR Report, *supra* note 22, at 4-5.

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the Appellate Body was disregarding explicit procedural requirements.[40] The continued participation of Appellate Body members in pending appeals after the expiry of their terms, authorised under Rule 15 of the Working Procedures for Appellate Review, further intensified the controversy.[41] Critics argued that such practices lacked clear authorisation in the DSU and expanded the institutional autonomy of the Appellate Body beyond what Members had negotiated.[42]

The crisis was also shaped by broader geopolitical and economic transformations. The rise of China as a major trading power, increasing strategic rivalry between the United States and China, and growing dissatisfaction with the WTO's ability to address issues such as industrial subsidies, state-owned enterprises, digital trade, and technology transfer altered the political environment in which the dispute settlement system operated.[43] For many policymakers in the United States, the WTO framework was no longer adequately equipped to respond to twenty-first-century trade challenges.[44] Consequently, dissatisfaction with the Appellate Body became intertwined with wider concerns about the effectiveness of the WTO as an institution.

Institutional shortcomings within the WTO further aggravated the crisis. The consensus-based decision-making process made it virtually impossible to resolve disagreements once political trust among Members had deteriorated.[45] Despite repeated proposals by several WTO Members to reform the dispute settlement system and address U.S. concerns, consensus on the appointment of new Appellate Body members could not be achieved.[46] By December 2019, the terms of most members had expired, leaving fewer than the three members required to hear appeals and effectively bringing the appellate mechanism to a standstill.[47]

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[40] USTR Report, *supra* note 22, at 4-5.
[41] Working Procedures for Appellate Review r. 15, WTO Doc. WT/AB/WP/6 (Aug. 16, 2010), https://www.wto.org/english/tratop_e/dispu_e/ab_e.htm.
[42] USTR Report, *supra* note 22, at 5.
[43] *See* OFFICE OF THE U.S. TRADE REPRESENTATIVE, *2017 Report to Congress on China's WTO Compliance* 2 (Jan. 2018), https://ustr.gov/sites/default/files/files/Press/Reports/China%202017%20WTO%20Report.pdf [hereinafter USTR China Report]; *Joint Statement of the Trilateral Meeting of the Trade Ministers of the European Union, Japan and the United States* (Jan. 9, 2019), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/january/joint-statement-trilateral-meeting [hereinafter Trilateral Statement]; Creamer, *supra* note 5, at 55; USTR Report, *supra* note 22, at 2.
[44] *See* USTR China Report, *supra* note 43, at 2; Trilateral Statement, *supra* note 43; USTR Report, *supra* note 22, at 2-3.
[45] *See* DSU, *supra* note 2, art. 2.4; WORLD TRADE ORGANIZATION, *Annual Report 2024* 133 (2024), https://www.wto.org/english/res_e/booksp_e/anrep_e/ar24_chap3_e.pdf.
[46] *See* Communication from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore and Mexico to the General Council, WTO Doc. WT/GC/W/752 (Nov. 26, 2018), https://www.southcentre.int/wp-content/uploads/2018/12/EU-Proposal.pdf; WORLD TRADE ORGANIZATION, *Dispute Panel Established to Review Certain Tax Credits Under US Inflation Reduction Act* (Sept. 23, 2024), https://www.wto.org/english/news_e/news24_e/dsb_23sep24_e.htm (last visited Nov. 5, 2026); *Annual Report 2024*, *supra* note 45, at 133.
[47] DSU, *supra* note 2, art. 17.1; *Dispute Settlement Activity*, *supra* note 4.

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Ultimately, the Appellate Body crisis illustrates that international adjudicatory institutions derive their authority not only from legal rules but also from sustained political support. The collapse of the appellate mechanism was therefore the product of an interaction between contested legal interpretations, institutional design flaws, and shifting global power relations. It demonstrates the vulnerability of rules-based international institutions when legal legitimacy and political consensus diverge, raising fundamental questions about the future of multilateral economic governance.

## V. CONSEQUENCES FOR INTERNATIONAL LAW AND THE RULES-BASED INTERNATIONAL ECONOMIC ORDER

The paralysis of the WTO Appellate Body has had profound implications for the legitimacy of international law and the stability of the rules-based international economic order. For more than two decades, the WTO dispute settlement system was regarded as one of the most effective mechanisms of international adjudication, ensuring that trade disputes were resolved through legal reasoning rather than political bargaining.[48] Its inability to function has weakened confidence in the enforceability of WTO obligations and raised doubts about the capacity of international institutions to regulate the conduct of states effectively.

One of the most immediate consequences has been the erosion of legal certainty. Since appellate review is no longer available, a party dissatisfied with a panel report can file an appeal "into the void," preventing the report from being adopted by the Dispute Settlement Body.[49] As a result, disputes may remain unresolved indefinitely, reducing the practical value of panel proceedings and weakening compliance with WTO rules.[50] This development undermines the principle of predictability that has long been considered the cornerstone of the multilateral trading system.[51]

The crisis has also encouraged a gradual return to power-based diplomacy. In the absence of a fully operational dispute settlement mechanism, economically powerful states possess greater leverage to secure favourable outcomes through unilateral trade measures, retaliatory tariffs, or bilateral negotiations. This shift challenges the fundamental objective of the WTO, which was designed to replace economic coercion with impartial legal adjudication.[52] Consequently, the balance between law and politics has tilted in favour of political and economic power, particularly in disputes involving major trading nations.

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[48] *See* Davey, *supra* note 3; Howse, *Global Governance by Judiciary*, *supra* note 3.
[49] Pauwelyn, *supra* note 6; *see also* DSU, *supra* note 2, art. 16.4.
[50] *See Dispute Settlement Activity*, *supra* note 4.
[51] *See* DSU, *supra* note 2, art. 3.2.
[52] *See* DSU, *supra* note 2, art. 23.

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At the institutional level, the Appellate Body's collapse has prompted WTO Members to explore alternative arrangements, including the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) under Article 25 of the DSU.[53] While these initiatives demonstrate the continued commitment of many Members to preserving a rules-based system, they remain temporary and voluntary solutions that cannot fully substitute for a universally accepted appellate mechanism.[54] Their limited participation also creates the risk of fragmentation within the WTO dispute settlement framework.[55]

Ultimately, the Appellate Body crisis represents more than the failure of a single institution. It reflects a broader challenge to the authority of international law in an increasingly fragmented and geopolitically competitive world. Unless meaningful reforms restore both legal legitimacy and political confidence, the multilateral trading system risks evolving from a rules-based order towards one increasingly shaped by economic power and strategic interests rather than shared legal commitments.

## VI. Implications for Developing Countries and India

The paralysis of the WTO Appellate Body has created significant challenges for developing countries, which have traditionally relied on the WTO dispute settlement system as a means of securing equal treatment in international trade.[56] Unlike economically powerful states, developing countries often lack the political and economic leverage to resolve trade disputes through unilateral measures or reciprocal retaliation.[57] The binding and independent nature of the WTO dispute settlement mechanism therefore served as an important safeguard against arbitrary or discriminatory trade practices. Its current dysfunction has weakened this institutional protection and increased the vulnerability of developing economies within the global trading system.

The absence of an effective appellate mechanism disproportionately affects developing countries because it reduces the predictability and enforceability of WTO rules. Although panel proceedings continue, the possibility of an "appeal into the void" enables losing parties to prevent the adoption of panel reports, thereby delaying or avoiding compliance.[58] For many

[53] Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU, WTO Doc. JOB/DSB/1/Add.12 (Apr. 30, 2020), https://www.worldtradelaw.net/misc/DSB1A12.pdf.download [hereinafter MPIA]; DSU, *supra* note 2, art. 25.
[54] MPIA, *supra* note 53, para. 15.
[55] *See Annual Report 2024*, *supra* note 45, at 132; *Dispute Settlement Activity*, *supra* note 4.
[56] *See WTO Training Module*, *supra* note 31, ch. 11.1.
[57] *See* Chad P. Bown & Bernard M. Hoekman, *WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector*, 8 J. Int'l Econ. L. 861 (2005), https://doi.org/10.1093/jiel/jgi049.
[58] Pauwelyn, *supra* note 6.

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developing countries, prolonged litigation and legal uncertainty impose substantial financial and administrative burdens, discouraging them from initiating disputes even where legitimate violations of WTO obligations exist.[59] Consequently, the accessibility and effectiveness of the dispute settlement system have diminished.

India provides a compelling illustration of these challenges. As one of the most active developing-country participants in the WTO dispute settlement system, India has consistently relied on multilateral adjudication to protect its trade interests while also defending its domestic regulatory autonomy.[60] The country has appeared as both complainant and respondent in disputes concerning agricultural subsidies, quantitative restrictions, renewable energy measures, steel products, intellectual property, and export-related policies.[61] For India, the credibility of the WTO dispute settlement mechanism has been essential in ensuring that trade disagreements are resolved through legal principles rather than the economic influence of major trading powers.

The Appellate Body crisis therefore presents a strategic dilemma for India. On one hand, the weakening of multilateral adjudication limits India's ability to challenge trade-restrictive measures adopted by larger economies through a predictable legal process. On the other hand, it increases the likelihood that trade relations will be shaped by bilateral negotiations, regional trade agreements, or economic pressure, where disparities in bargaining power may become more pronounced. Consequently, India has consistently supported efforts to restore a fully functioning, independent, and rules-based dispute settlement mechanism while advocating reforms that preserve both judicial accountability and the rights of developing countries.[62]

## VII. Reforming WTO dispute settlement

Restoring confidence in the WTO dispute settlement system requires reforms that address the legitimate concerns of Members without compromising the independence and effectiveness of international adjudication. The objective should not merely be to revive the Appellate Body but

[59] *See* Bown & Hoekman, *supra* note 57; *WTO Training Module*, *supra* note 31, ch. 11.1.
[60] World Trade Organization, *India and the WTO*, https://www.wto.org/english/thewto_e/countries_e/india_e.htm (last visited Nov. 5, 2026) (listing India as complainant in 24 disputes and respondent in 34).
[61] *One-Page Case Summaries*, *supra* note 17, at 26 (*India – Patents (US)*), 40 (*India – Quantitative Restrictions*), 189 (*US – Carbon Steel (India)*), 199 (*India – Solar Cells*), 244 (*US – Renewable Energy (India)*), 245 (*India – Iron and Steel Products*), 251 (*India – Export Related Measures*), 258 (*India – Sugar and Sugarcane*).
[62] *See* WT/GC/W/752, *supra* note 46; Permanent Mission of India, Geneva, *Statement by India, General Council Meeting, Agenda Item 12: Strengthening the WTO to Promote Development and Inclusivity* (Dec. 16-18, 2020), https://pmindiaun.gov.in/statements/MjM3Mw (last visited Nov. 5, 2026); *India Calls for Revival of WTO's Appellate Body*, Onmanorama (Mar. 1, 2024), https://www.onmanorama.com/news/india/2024/03/01/india-calls-for-revival-of-wto-appellate-body.html.

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to strengthen the institutional legitimacy and long-term sustainability of the WTO's dispute settlement architecture.

A primary reform priority is the appointment of new Appellate Body members through a consensus-based political agreement among WTO Members. However, renewed appointments alone are unlikely to resolve the underlying disagreements that led to the crisis. Institutional reforms should therefore clarify the interpretative mandate of the Appellate Body by reaffirming that adjudicators must interpret WTO agreements in accordance with the customary rules of treaty interpretation reflected in the Vienna Convention on the Law of Treaties, without creating new rights or obligations beyond those negotiated by Members.[63] Such clarification could help address concerns regarding judicial overreach while preserving the integrity of legal interpretation.

Procedural improvements are equally important. Greater adherence to the 90-day deadline for appellate reports, enhanced transparency in appellate proceedings, and clearer rules governing the continuation of members after the expiry of their terms would improve institutional accountability.[64] At the same time, WTO Members should recognise that increasingly complex trade disputes may require limited procedural flexibility, provided that such flexibility is authorised collectively rather than developed through institutional practice alone.

Another important area of reform concerns the participation of developing countries. Expanding technical assistance, strengthening the Advisory Centre on WTO Law, and providing greater legal and financial support for least-developed and developing Members would improve access to dispute settlement and reinforce confidence in the multilateral system. Effective reform must therefore promote not only procedural efficiency but also substantive fairness and inclusiveness.

The MPIA has demonstrated that WTO Members remain committed to preserving appellate review despite the paralysis of the Appellate Body.[65] Nevertheless, the MPIA is a temporary and plurilateral mechanism that does not include all major trading nations and cannot substitute for a universally accepted appellate institution.[66] A durable solution requires comprehensive institutional reform supported by the collective political will of the WTO membership.

Ultimately, the future of the WTO dispute settlement system depends upon restoring the balance between legal authority and state consent. International adjudication cannot function without

[63] Vienna Convention on the Law of Treaties arts. 31-32, May 23, 1969, 1155 U.N.T.S. 331, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf; DSU, *supra* note 2, art. 3.2.
[64] DSU, *supra* note 2, art. 17.5; Working Procedures, *supra* note 41, r. 15; *see also* WT/GC/W/752, *supra* note 46.
[65] MPIA, *supra* note 53.
[66] MPIA, *supra* note 53, para. 15; *Annual Report 2024*, *supra* note 45, at 132.

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the confidence of Members, yet a rules-based trading system cannot survive if legal obligations become subordinate to political expediency. For developing countries, including India, the restoration of an effective, impartial, and accessible dispute settlement mechanism is not merely an institutional objective but a prerequisite for ensuring that international trade continues to be governed by law rather than by disparities in economic and political power. Such reforms are essential if the WTO is to retain its central role in preserving the legitimacy, predictability, and inclusiveness of the contemporary international economic order.

## VIII. CONCLUSION

The collapse of the WTO Appellate Body marks one of the most significant institutional crises in the history of the multilateral trading system. More than the suspension of an appellate mechanism, it represents a fundamental challenge to the credibility of the rules-based international economic order that has governed global trade since the establishment of the WTO in 1995. The inability of WTO Members to resolve disagreements over the functioning of the Appellate Body illustrates the complex relationship between international law and power politics, demonstrating that the effectiveness of legal institutions ultimately depends upon sustained political commitment by sovereign states.

This paper has argued that the Appellate Body crisis cannot be understood solely as a procedural or institutional failure. Rather, it reflects deeper tensions concerning state sovereignty, judicial authority, treaty interpretation, and the changing distribution of economic power in the international system. The competing perspectives of Realism, Liberal Institutionalism, Legal Positivism, and TWAIL reveal that the crisis embodies both legal and political dimensions. While Realism explains the growing influence of powerful states in shaping institutional outcomes, Liberal Institutionalism underscores the importance of preserving multilateral cooperation. Legal Positivism highlights debates over the limits of judicial interpretation, whereas TWAIL exposes the unequal consequences of institutional paralysis for developing countries.

For developing economies such as India, the weakening of the WTO dispute settlement system raises serious concerns regarding equal access to justice in international trade. In the absence of an effective appellate mechanism, smaller and economically weaker states may find it increasingly difficult to secure compliance with WTO obligations, thereby widening existing disparities in bargaining power. The continued reliance on temporary arrangements cannot replace a universally accepted and legally binding dispute settlement system.

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The future of the WTO therefore depends not only on restoring the Appellate Body but also on rebuilding confidence in multilateral institutions. Meaningful reform must reconcile judicial independence with Member-driven governance, improve institutional accountability, and ensure that the interests of both developed and developing countries are adequately represented. Ultimately, preserving a predictable and effective dispute settlement mechanism is indispensable for maintaining the legitimacy of international economic law. If the WTO is to remain the cornerstone of global trade governance, it must reaffirm the principle that international trade should be regulated through law, cooperation, and shared legal commitments rather than by unilateralism and the exercise of economic power alone.

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