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GEHU LAW REVIEW

A Journal of Contemporary Legal Research

Volume & Issue:
Volume [I], Issue [I]

Publication Period:
June 2025

ISSN No: (ONLINE) - Applied for

Institutional Affiliation:
School of Law, GEHU Dehradun, Uttarakhand, India

LIST OF JOURNAL ARTICLES

UNILATERALISM, TRADE WARS, AND THE COLLAPSE OF THE WTO DISPUTE SETTLEMENT SYSTEM: A CRISIS IN THE MULTILATERAL TRADING ORDER

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Abstract: The global trading system, traditionally rooted in "the World Trade Organization" (WTO), is experiencing an unprecedented crisis, especially in its dispute settlement mechanism, as is evident in the water shedding trade war disagreement between the US and China. The incapacitation of the WTO Appellate Body, triggered by the United States' repeated blocking of appointments, has created doubts regarding the sustainability of multilateralism in the context of increasing unilateral trade measures and protectionism. This research paper explores the legal and systemic implications of this crisis within the broader context of the changing global order. It critically analyses how recent trade wars, most notably the US-China trade war, and the growing use of unilateral trade remedies are redefining the norms and architecture of international trade law. Through an in-depth examination of central legal instruments, case disputes, and reform initiatives, this doctrinal research measures the potential to re-envision a more durable and equitable system of dispute settlement. The research paper highlights the utmost urgency of recommending institutional reform and strengthened adherence to rules-based trade and examines the possibility of regional trade agreements as competing forums for the resolution of disputes.

Keywords- WTO Appellate Body, Dispute Settlement Mechanism, Unilateral Trade Measures, International Trade Law, Trade Wars and Multilateralism Crisis.

INTRODUCTION

Once praised as the cornerstone of world economic cooperation, the global trade system is today facing an institutional crisis never seen before. Established in 1995 with a goal of promoting free trade and offering a fair, rule-based forum for the resolution of global trade conflicts, '*the WTO'* is central to this system.[1] Over two decades, the '*WTO Dispute Settlement System (DSS)'* served as a consistent adjudicatory tool providing legal certainty, maintaining trade norm compliance, and discouraging arbitrary unilateral action.[2] But today, this system is at a crossroads, stopped by the fall of its apex body, the WTO Appellate Body, brought on by the United States' ongoing rejection of approval of new judicial nominees since 2017. This has rendered the system for dispute resolution useless since panel reports are not subject to legally enforced appellate review anymore.

Concurrent with this comeback of economic nationalism and protectionism, the WTO system's flaws have been exacerbated. Under '*Article XXI of the General Agreement on Tariffs and Trade (GATT)'*, states are turning more and more to unilateral tariffs, countermeasures, and the invocation of security exclusions, therefore compromising the multilateral ethos of world trade.[3] This trend is best shown by the continuous US-China trade war, which exposes a rising turn toward power-based bilateralism at the expense of cooperative multilateralism. Along with this change is the spread of bilateral and regional trade agreements with self-contained dispute resolution systems, therefore undermining the WTO's primacy as the main trade adjudication venue.[4]

Several scholars have underlined the reasons behind and consequences of this systematic collapse. Robert Howse, in *'The Appellate Body's Crisis: Why the United States is Wrong',* contends that American complaints of judicial overreach mirror more general political discontent with the rules-based system. In *'The Rule of Law in the WTO: Crisis and*

[1] Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154.
[2] John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations*, MIT Press, Cambridge, 2nd edn. (1997) at 116.
[3] Mona Pinchis-Paulsen, *Trade Multilateralism and U.S. National Security: The Making of the GATT Security Exception*, 113(4) *Am. J. Int'l L.* 627 (2019).
[4] Chad P. Bown, *The 2018 US-China Trade Conflict After 40 Years of Special Protection*, 18(2) *World Trade Rev.* 243 (2019).

Recalibration', Petros C. Mavroidis looks at institutional rigidity and the pressing need for structural reform. Joost Pauwelyn has observed in many works[5] the growing legal fragmentation and dangers of power politics overriding normative frameworks. Nonetheless, all these bodies of current research have not thoroughly investigated a comprehensive reform approach to increase the resilience and efficiency of international trade adjudication.

This research paper fills this legal gap by analysing the legal, institutional, and geopolitical margins of the WTO dispute settlement issue and suggesting reforms as one of the creative responses to augment conventional adjudication systems. Restoring the Appellate Body by a transparent, consensus-based selection procedure; improving procedural clarity and member trust by treaty modifications; and advancing legal infrastructure within the WTO, the research paper suggests a multi-pronged reform approach. It also assesses, as temporary or complementary options, the possibilities of the *Multi-Party Interim Appeal Arbitration Arrangement (MPIA), regional tribunals, and cross-institutional collaboration*.

Apart from addressing legal-ethical protections and responsibility issues, the paper puts forth suggestions for the WTO Secretariat and member states to investigate pilot projects for innovation in dispute screening, legal drafting, and decision assistance. This helps the WTO to be relevant once more and fit for modern global issues. Lastly, the paper argues that the fall of the Appellate Body reflects more general political disenchantment with multilateralism than an institutional flaw. Still, a finely calibrated mix of institutional reform and modernization offers a practical road forward.

The research work presents significant directions for future studies. Researching the normative compatibility of emerging technologies and legal frameworks with WTO legislation, evaluating their influence on developing country participation, and analysing how these reformed models might be included in other international adjudicatory organizations is desperately needed. This research work not only adds to the debate on WTO reform but also

[5] "The Role of Public International Law in the WTO: How Far Can We Go?", "Minority Rules: Precedent and Participation Before the WTO Appellate Body", "Legitimacy Crisis at the World Trade Organisation Appellate Body: Other Ways Than the MPIA"

helps to shape the changing junction of trade law and institutional innovation in the 21st century.

II. THE ROLE OF THE WTO IN THE MULTILATERAL TRADING ORDER

The WTO came into existence on January 1st, 1995, as a successor to the *General Agreement on Tariffs and Trade 1947*,[6] marking an important institutional innovation in global trade regulation. The WTO, as an international institution based on rules, serves as an important enabler of international trade, dispute settlement, and cooperation among its 164 members. The core mandate of the WTO is the facilitation of the predictable flow of global trade with transparency and legal certainty, goals that lie at the heart of the post-war economic order.

At the core of the WTO is a broad set of multilateral agreements, such as the GATT 1994, '*the General Agreement on Trade in Services (GATS), and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)*, among others. All these treaties are binding under international law and include key principles such as *Most Favoured Nation (MFN)*, *National Treatment, and tariff bindings*. All of them work together with the aim of preventing protectionism as well as unfair trade practices by institutionalizing homogeneous standards as well as commitments.

One of the signature features of the WTO that differentiates it from its predecessor GATT is its Dispute Settlement Understanding. It introduced a time-bound, formalized, and binding method of resolving disputes within the DSU that features a two-tier framework: first-stage adjudication by a panel, followed by review on appeal by the Appellate Body. It was hoped that institutional innovation in the DSU would render enforcement of trade obligations more efficient and curb violations by making members answerable to binding third-party adjudication. During the period between 1995 and 2019, the WTO system resolved over 500 cases, traditionally tallied as one of the busiest and most efficient mechanisms of international adjudication.[7]

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[6] Aiming to lower tariffs and other trade obstacles, a historic multilateral treaty laying the groundwork for the contemporary global trading system finally developed into the World Trade Organization (WTO) in 1995.

[7] Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization* (4th edn, Cambridge University Press 2017) 177.

Most of the legitimacy of the WTO system stems from its approach towards multilateralism and consensus decision-making. It gives states, irrespective of their economic strength, equal opportunity to promote their interests and bring others under their ambit of obligation under rules to which they have subscribed. It not only puts the developing countries on an equal platform but also ensures that the chances of the abuse of economic strength by states distorting trade relations are minimal.[8] The WTO system furthermore depoliticizes trade disputes by relocating them in the legal domain rather than allowing them to spill over into diplomatic and economic crises.

However, the credibility of the WTO as a multilateralism champion has come under more stress in recent years. One such repeated challenge is the consensus-style bargaining method of the organization, which has resulted in stagnation in a few of its major agenda items on agricultural subsidies, e-commerce, and fisheries subsidies.[9] The failure of the *Doha Development Round* exemplifies such institutional sluggishness. The Single Undertaking approach, requiring all deals to be accepted as a whole, has also generated negotiation fatigue, especially among the least developed and developing nations.

It is, however, the Appellate Body crisis that has had the most egregious impact on the WTO legal machinery. Since 2017, the US has prevented the appointment of new members in the Appellate Body under allegations of overreach by the judiciary, undue delay of proceedings, and lack of accountability.[10] By December 2019, the institution came to a standstill due to the inability to achieve a quorum because there were too few members in session. It effectively made the functioning of the appellate mechanism impossible. It created a legal vacuum in which panel decisions, on the occasion of an appeal, are placed on hold indefinitely, a phenomenon that came to be called the '*appeal into the void'*.[11]

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[8] Ernst-Ulrich Petersmann, 'The WTO Constitution and Human Rights' (2000) 3 Journal of International Economic Law 19, 25.
[9] Amrita Narlikar, *Deadlocks in Multilateral Negotiations: Causes and Solutions* (Cambridge University Press 2010) 103.
[10] Jennifer Hillman, 'Three Approaches to Fixing the World Trade Organization's Appellate Body' (2018) 52 *Journal of World Trade* 67, 70.
[11] Steve Charnovitz, 'How American Rejectionism Undermines International Economic Law' (2020) 114 *AJIL Unbound* 37.

The implications of such a freeze are manifold. It first weakens the enforcement of WTO disciplines and, hence, legal certainty and member trust. Second, it encourages unilateralism, in which powerful states will be able to opt out of WTO procedures and revert to local trade measures or retaliatory tariffs.[12] It amounts, therefore, to a clear violation of the WTO's fundamental principle of multilateral dispute settlement and equal legal standing. Third, the abolition of an effective appeals system creates fragmentation of the trade order since members turn towards regional or bilateral agreements with their specific legal architectures and dispute settlement mechanisms.

Finally, the WTO has served the important function of upholding a multilateral trading regime of legal rules and institutional accountability. However, its institutional deficiencies, most notably the breakdown of the DSU, have exposed weaknesses that threaten the very architecture of global trade regulation. Amidst an era of rising protectionism and global economic competition, the rejuvenation of the WTO is not necessarily a legal necessity but a geopolitical necessity.

III. THE COLLAPSE OF DISPUTE RESOLUTION AT THE WTO

The WTO Appellate Body was once considered the "crown jewel" of the multilateral trading system. Created to offer an independent and neutral appellate review of panel findings, it was instrumental in building the credibility, consistency, and predictability of WTO jurisprudence. Yet the Appellate Body has been inoperative since 11 December 2019, when the terms of two of its remaining three members ended, leaving it without the quorum necessary to hear appeals. This paralysis is not procedural as it attacks the very foundation of the rule-based global trading order and raises serious questions about the future of WTO dispute settlement.

The paralysis results from the US ongoing refusal to sign off on the appointment or reappointment of Appellate Body members since 2017. Since appointments require consensus, the U.S. has, in effect, wielded a unilateral veto on the grounds of concerns over the appellate body's overreach, inaction to produce reports within the 90-day deadline, and its habit of

[12] Simon Lester and Inu Manak, 'The Rise of Unilateralism in Trade: Lessons from History' (2019) 22 *Journal of International Economic Law* 1, 6.

imposing new legal obligations that do not exist within WTO agreements.[13] Although some of these criticisms are open to debate, the unilateral blockage has set in motion an institutional crisis undermining the very core of the WTO's legal system.

The Appellate Body was provided for in *Article 17 of the Dispute Settlement Understanding* as a permanent body of seven individuals, of whom three serve on any given appeal.[14] It has authority over legal interpretations from panel reports and can affirm, change, or reverse the legal conclusions and findings of panels. Since its founding up to 2019, the appellate body had examined more than 150 panel reports and constructed a vast corpus of case law that defined the outlines of WTO law.[15] Cases like US Shrimp[16] and EC Hormones[17] highlighted the willingness of the appellate body to reconcile trade obligations with health and environmental considerations and thereby cemented its independence as a court.

The discontent of the US with the Appellate Body goes back more than ten years. Issues arose regarding the appellate body's interpretations, particularly its liberal interpretation of provisions such as GATT *Article XX and the Anti-Dumping Agreement*.[18] The Obama administration questioned what it perceived to be the appellate body's activism, but the Trump administration took the criticism to an institutional blockade. Even during the Biden administration, the U.S. has stuck to its position, contending that systemic reform must occur before appointments resume.[19]

The implications of this paralysis are deep. Most significantly, it has resulted in the practice of '*appeal into the void*' where panel decisions are appealed to a non-functional body, suspending

[13] USTR, *Report on the Appellate Body of the World Trade Organization* (February 2020) https://ustr.gov accessed 01 April 2025.
[14] Understanding on Rules and Procedures Governing the Settlement of Disputes (1994) 1869 UNTS 401, art 17.
[15] Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization* (4th edn, Cambridge University Press 2017) 230.
[16] Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products* (1998) WT/DS58/AB/R.
[17]Appellate Body Report, *EC — Measures Concerning Meat and Meat Products (Hormones)* (1998) WT/DS26/AB/R.
[18] Raj Bhala, 'The Myth about Stare Decisis and International Trade Law (Part One of a Trilogy)' (1999) 14 *Am U Int'l L Rev* 845, 853.
[19] Simon Lester, 'Biden, Trade, and the WTO: Is There a Path Forward?' (2021) *International Economic Law and Policy Blog* https://worldtradelaw.typepad.com accessed 10 April 2025.

the resolution of disputes in perpetuity.[20] In the US Countervailing Measures on Softwood Lumber from Canada, the United States appealed the panel's report, which enabled it to sidestep compliance by taking advantage of the appellate body's non-functionality. This legal purgatory degrades the binding nature of WTO decisions and rewards defiance.[21] The collapse of the appellate process has also undermined the confidence of WTO members, especially developing countries that bank on the impartiality and enforcement functions of the system to protect their rights against more influential nations. Furthermore, with an inoperable appellate body, the WTO dispute system has lost its cohesion and hierarchy, possibly leading to legal fragmentation and varying panel interpretations.[22]

In reaction to the crisis, a coalition of WTO members, spearheaded by the European Union, established the MPIA pursuant to Article 25 of the DSU.[23] The MPIA is an interim arrangement that mimics the composition and operation of the Appellate Body with ad hoc arbitrators. As of early 2025, more than 50 WTO members, such as the EU, China, Brazil, and Canada, have subscribed to the MPIA. Although this effort maintains the right of appeal for signatories, it also represents a step toward a plurilateral as opposed to a multilateral solution, which could further solidify cleavages within the WTO.[24] Reform efforts have been intermittent. In 2021, the WTO General Council launched informal talks to reinstate the appellate body, but an agreement is still out of reach. Suggestions have been made to clarify the extent of appellate review, implement binding timetables, and increase transparency in AB member selection.[25] Institutional reform has remained deadlocked in the absence of U.S. cooperation. The 12th WTO Ministerial Conference in Geneva in 2022 recognized the imperative to revive the appellate body but did not offer a clear roadmap.[26]

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[20] Jennifer Hillman, 'A Reset of the WTO Appellate Body' (2020) 24 *Journal of International Economic Law* 39,46.
[21] Panel Report, *United States — Countervailing Measures on Softwood Lumber from Canada* (2019) WT/DS533/R.
[22] William J Davey, 'The WTO Dispute Settlement System: The First Ten Years' (2005) 8 *JIEL* 17,23.
[23] European Commission, *MPIA – Multi-Party Interim Appeal Arbitration Arrangement* (2020) https://trade.ec.europa.eu accessed 10 April 2025.
[24] Henry Gao, 'The WTO in Crisis: Exploring the Causes and Seeking Solutions' (2022) 56 *Journal of World Trade* 421, 427.
[25] WTO General Council, 'Procedures to Strengthen the Functioning of the Appellate Body' (JOB/DSB/1/Add.11, 2021).
[26] WTO Ministerial Conference, *Ministerial Declaration MC12* (2022) WT/MIN(22)/DEC.

Critics contend that the current crisis speaks to deeper tensions over sovereignty, legitimacy, and power-sharing in international economic law. The WTO's use of consensus, although based on sovereign equality, is ironically used by powerful members to stifle institutional life. As Robert Howse notices, the crisis is less about judicial overreach but about competing visions for global economic governance: one founded upon multilateralism and legalism, the other upon unilateralism and strategic autonomy.[27] Overall, the immobilization of the Appellate Body has revealed a structural vulnerability of the WTO legal order. It jeopardizes the enforceability of trade norms, invites non-compliance, and undermines the legitimacy of the multilateral trading system. Lacking a binding and autonomous appellate facility, the WTO can be transformed into a rhetorical forum of negotiation instead of genuine legal adjudication. The future of WTO governance of world trade, therefore, rests on the success of WTO members in restoring confidence, re-committing to norms of law, and implementing structural reforms that keep both the jurisdiction and the accountability of the settlement system intact.

IV. RISE OF UNILATERALISM AND TRADE NATIONALISM

The last 10 years have witnessed a growing wave of unilateralism and trade nationalism, a sudden divergence from post-war doctrine promoting rules-based multilateralism under the auspices of institutions such as the WTO.[28] The trend has most evidently manifested itself in major economies' foreign trade policies, that of the US and China, and has been prompted by the erosion of belief in the efficacy of multilateral institutions. Economic nationalism has prompted states to prioritize domestic interests before international commitment, usually leading them to employ coercive trade measures, the imposition of retaliatory tariffs, and broad security rationales in an effort to circumvent established legal principles.[29]

The US-China trade war that started in 2018 is a representation of the move towards unilateral economic coercion. Using the provisions of Section 301 of the US Trade Act of 1974, the US imposed tariffs on Chinese imports worth more than $360 billion on grounds of unfair trade

[27] Robert Howse, 'The Appellate Body's Crisis: A Symptom of deeper Malaise in the WTO' (2019) 113 *American Journal of International Law Unbound* 33, 35.
[28] Amrita Narlikar, *Poverty Narratives and Power Paradoxes in International Trade Negotiations and Beyond* (Cambridge University Press, 2020) 49.
[29] Dani Rodrik, 'Trading in Illusions' (2001) 123(3) *Foreign Policy* 55.

and intellectual property theft by China.[30] China, in retaliation, imposed counter-retaliatory measures with a tit-for-tat entry that affected global supply chains and market stability. Notably, these measures were outside of the WTO framework, reflecting a heightened disregard for multilateral mechanisms of dispute settlement.[31] Even as members of the WTO, they preferred resolving disputes through bilateral negotiation and counter-retaliation tariffs rather than through adjudication by law.

The application of the exceptions of *Article XXI of the GATT, 1994* has also weakened the legal restraint on what can be done unilaterally.[32] It has traditionally functioned as the self-judging provision, and *Article XXI* authorizes members of the organization to take measures that are necessary for the protection of their essential security interests. The US has relied on the exception with increasing frequency, as for instance in the US Steel and Aluminium Tariffs, when it imposed sweeping tariffs on numerous trading partners under the guise of national security.[33] The application of such a method weakens the predictability of the multilateral system by creating a loophole that provides scope for virtually any restriction of trade to be justified.

The *'WTO Panel Report on Russia Traffic in Transit'* was a landmark decision that shed light on the limits of *Article XXI*, finding that states enjoy discretion in exercising their national security but must pass a test of objective and good faith requirements.[34] But the judgment has had little deterrent effect. The judgment remains unenforceable as long as there is no Appellate Body to approve or revise it, extending the structural consequences of the WTO's institutional malaise.[35] Trade nationalism also becomes increasingly visible in the domestic industry policies of developed and emerging economies. Governments are reviving import substitution, reshoring production, and granting strategic subsidies for stimulating domestic production. The U.S. CHIPS and Science Act of 2022 and the Inflation Reduction Act, which grant sweeping

[30] United States Trade Representative (USTR), *Section 301 Investigation Report into China's Acts, Policies and Practices* (2018).
[31] Chad P Bown, 'The US-China Trade War and Phase One Agreement' (2021) 22(1) *Journal of Economic Perspectives* 45.
[32] General Agreement on Tariffs and Trade (GATT), 1994, art XXI.
[33] Jennifer Hillman, 'Legal Aspects of the US Tariffs on Steel and Aluminium' (2018) *Council on Foreign Relations*.
[34] WTO Panel Report, *Russia – Measures Concerning Traffic in Transit*, WT/DS512/R (5 April 2019).
[35] Steve Charnovitz, 'How the WTO Can Be Saved' (2020) 113(3) *AJIL Unbound* 70.

subsidies for high-tech and clean energy sectors, are a calculated effort to reduce foreign supply chain reliance, especially that of China.[36] They have been criticized as discriminating and probably infringing WTO subsidy disciplines by the European Union and other members of the WTO.[37] But with no functioning dispute mechanism, enforcement remains beyond the realm of possibility.

It is but part of a broader geo-economic turn, where trade policy becomes increasingly subordinated to security and strategic interests. The COVID-19 pandemic further accelerated this trend as states-imposed export controls on medical supplies and, subsequently, on vaccines, pushing the ideals of non-discrimination and freer trade.[38] The war in Ukraine and resulting sanctions on Russia have also expanded the tool kit of economic sanctions applied for geopolitical reasons, most of which fall outside of WTO discipline.[39] Unilateralism is not limited to the U.S.-China relationship. The European Union's proposed Carbon Border Adjustment Mechanism, imposing a carbon price on imports from less environmentally friendly nations, has stirred global controversy on its consistency with WTO undertakings, particularly under the National Treatment and MFN provisions.[40] While the EU asserts that CBAM is necessary for climate goals and accords with the provisions of exceptions under GATT, others perceive CBAM as a veiled protectionism instrument that could provoke retaliatory measures from developing nations.[41]

The rise of unilateralism and trade nationalism sparks deep legal implications. First, it jeopardizes the supremacy of consensus-based, rule-of-law adjudication in the settlement of trade disagreements. Secondly, it strains the stringency of WTO principles such as openness, non-discrimination, and reciprocity. Thirdly, it signals a deeper legitimacy crisis for international economic institutions, with states more frequently regarding multilateral

[36] The White House, *CHIPS and Science Act of 2022 Fact Sheet* (9 August 2022).
[37] European Commission, *Subsidy Control and Trade Policy Statement* (2023).
[38] Anirudh Burman, 'Trade and Pandemic: WTO and Beyond' (2021) 56(3) *Economic & Political Weekly* 12.
[39] Henry Gao, 'Weaponizing Trade: Economic Sanctions and WTO Law' (2023) 21(2) *World Trade Review* 215.
[40] Joost Pauwelyn, 'Carbon Border Adjustment and WTO Law' (2022) 56(1) *Journal of World Trade* 27.
[41] United Nations Conference on Trade and Development (UNCTAD), *CBAM: Implications for Developing Countries* (2022).

commitments as contravening state policy sovereignty.[42] Such experts have argued that such a trend signifies a divergence from embedded liberalism, the post-war settlement between domestic welfare and free markets, to a new model of strategic liberalism, where the instrument of trade policy serves the projection of power.[43] This runs the risk of a disintegrating global trade regime characterized by plurilateral coalitions, regional blocs, and variable geometry. The *'Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)'* and '*the Regional Comprehensive Economic Partnership' (RCEP)"* should be viewed as responses to such fragmentation but lack the enforcement authority and universality of the WTO regime.[44]

In total, the rise of unilateralism and trade nationalism forebodes a seismic change in global trade governance. At stake is not so much the technical regulation of tariffs and subsidies but the very normative structure of the international economic order. If the existing course of action continues, it could culminate in a multipolar or bifurcated trade regime, where legal norms depend on strategic interests and the function of law becomes further subordinated to politics.[45] Redressing faith in multilateral institutions will require legal reform as well as political will premised on a renewed commitment to cooperation, reciprocity, and the rule of law.

V. REGIONALISM AND PLURILATERALISM AS ALTERNATIVE DISPUTE MECHANISMS

With multilateral incapacitation, particularly of the WTO Appellate Body, states have increasingly turned towards regionalism and plurilateralism as substitute forums for trade regulation and dispute settlement. More flexible and swift rulemaking and enforcement are offered by these institutions but pose normative challenges of inclusiveness, fragmentation, and international trade law coherence. Regional Trade Agreements (RTAs) and Free Trade Agreements (FTAs) have proliferated over the last few decades. According to WTO figures, there are over 350 RTAs that are now in force, most of which have special chapters dedicated

[42] Robert Howse, 'The WTO System: Law, Politics and Legitimacy' (2007) 13(3) *European Journal of International Law* 743.
[43] John Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36(2) *International Organization* 379.
[44] Deborah Elms, 'Plurilateral Trade Agreements: Gateway or Pathway?' (2020) 19(4) *Global Policy* 511.
[45] Simon Lester and Inu Manak, 'A Path Forward for the WTO' (2023) *Cato Institute Policy Analysis* No. 938.

to dispute settlement.[46] Such mechanisms intend to give legal certainty when resolving trade disputes, typically using the WTO's two-tier approach but shunning its procedural impasses. For example, '*the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-South Korea FTA'* both have binding arbitration and enforceable awards.[47] These pacts, although they promote regional legal unification, exclude non-signatory states and therefore evoke fears of trade fragmentation and the erosion of the *'Most Favoured Nation (MFN) principle'*.[48]

Another strategic reason for multilateral stagnation is the rise of plurilateral agreements, whereby a subset of WTO members negotiate rules on specific subjects. One prime example is the MPIA under Article XXV of the Dispute Settlement Understanding. Initiated by *the European Union* and subsequently joined by more than 50 WTO members, the MPIA replicates the WTO Appellate Body's procedures and organization, providing an interim facility for appellate review.[49] Not a substitute for institutionalized reform, but an indication that members are in favour of rule-of-law adjudication and legal predictability in the interim while still failing to agree on Appellate Body reform.

Alongside formal treaties, regional tribunals such as '*the Court of Justice of the European Union' (CJEU)* and tribunals under investor-state dispute settlement mechanisms have stepped into the breach. While these forums vary by scope and subject matter, they demonstrate how legal pluralism is shaping global trade governance architecture. However, the use of multiple forums for dispute resolution has the concomitant risks of forum shopping and conflicts of jurisprudence that discredit the coherence of international trade law.[50] While functional alternatives in plurilateralism and regionalism have been created, they are not answers for a genuine multilateral framework. They have the potential for entrenching unbalanced power, especially if the agenda-setting function remains closed for developing and smaller economies.

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[46] WTO, *Regional Trade Agreements Database* https://rtais.wto.org accessed 06 April 2025.
[47] Comprehensive and Progressive Agreement for Trans-Pacific Partnership (signed 8 March 2018) art 28; Free Trade Agreement between the EU and the Republic of Korea (signed 6 October 2010) art 14.15.
[48] *General Agreement on Tariffs and Trade* 1994, art I.
[49] European Commission, *Multi-Party Interim Appeal Arbitration Arrangement (MPIA)* https://trade.ec.europa.eu accessed 09 April 2025.
[50] Joost Pauwelyn, 'Fragmentation of International Law: Is It Really that Bad?' (2009) 25 *Michigan Journal of International Law* 103, 108

As accurately commented by Robert Wolfe, plurilateralism without multilateralism is just a cartel.[51] The long-term aim, therefore, must be the restoration of the WTO settlement mechanism for assuring universal access, equity, and consistency in the interpretation of trade rules.

VI. COMPARATIVE PERSPECTIVE

Comparative analysis of international trade dispute settlement frameworks provides an essential understanding of different approaches towards addressing institutional hurdles, compliance-building, and maintaining legitimacy. While the WTO struggles with institutional gridlock, particularly in its Appellate Body, regional and bilateral frameworks such as the European Union, United States, Mexico. Canada Agreement (USMCA) and the '*Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*' are models of adaptability, procedural rapidity, and judicial enforceability.

The most advanced model of regional economic integration is the European Union, in which the *'Court of Justice of the European Union'* CJEU) provides a centralised and authoritative platform for the resolution of trade disputes. The CJEU ensures that there is a uniform interpretation of EU trade law, with preliminary ruling mechanisms bolstering the rule of law across the members.[52] Notably, the CJEU has also demonstrated that trade liberalization does not have to be pitted against other interests, such as environmental protection and fundamental rights.[53] Nevertheless, the model of the EU is sui generis and not easily transplantable into international or even plurilateral environments due to its strong supranational character.

In contrast, the USMCA expresses a workable model of dispute settlement that addresses numerous shortcomings of the earlier *'North American Free Trade Agreement'* (NAFTA). USMCA Chapter 31 reinstates the panel mechanism that had effectively been shut down under

[51] Robert Wolfe, 'Reforming WTO Dispute Settlement: Misguided Multilateralism?' (2023) 57 Journal of World Trade 225, 233.
[52] Court of Justice of the European Union, *Consolidated Version of the Treaty on the Functioning of the European Union* [2012] OJ C326/47, Art 267.
[53] *Case C-366/10 Air Transport Association of America v Secretary of State for Energy and Climate Change* [2011] ECR I-13755

NAFTA by blocking the appointment of panellists.[54] It further supplies tighter deadlines, transparency in procedures, and guarantees on panel composition, qualities that specifically satisfy some of the criticism that has come under the WTO Appellate Body.[55] This model expresses the value of legal design that blocks one-sided blocking techniques and enforces adherence to procedure.

The CPTPP, by contrast, has a more flexible model of arbitration. It includes consultations, mediation, and panel adjudication, but significantly does not have an appeals body.[56] While this provides for faster settlement and reduces institutional expenditure, the same could be criticized on the basis of consistency and legal certainty of interpretation. The model of the CPTPP would be such that the absence of an appeals tribunal could be a transitional measure but not a substitute for appeals reviews in intricate and precedent-dependent cases.

In the global South, overreliance on investor-state dispute Settlement under Bilateral Investment Treaties has revealed functional and structural weaknesses. The extravagant expense of proceedings, lack of transparency, and unbalanced rulings have led governments such as India and South Africa to revise or terminate their BITs.[57] All these indicate a growing necessity for equitable, inclusive mechanisms for settlement of disputes, particularly for Global South players outside multilateral platforms.

In comparison with it, the WTO regime remains unique in its provision of blanket coverage, formal sanctioning mechanisms, and equality of procedure for members. Yet its fixed consensus framework and vulnerability to blockage by the political serve to emphasize the necessity for institutional innovation. Through learning from regional and bilateral practice enforceability guarantees, open timetabling, and independent panel appointments, the WTO can enhance its dispute settlement mechanism without sacrificing its multilateral character.

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[54] *USMCA*, Chapter 31, Dispute Settlement; see also Kathleen Claussen, 'Revitalizing Dispute Settlement under the USMCA' (2021) 115 *AJIL Unbound* 87.
[55] Simon Lester and Inu Manak, 'A WTO for the Twenty-First Century: The USMCA as a Template?' (2020) 23 *Journal of International Economic Law* 65.
[56] *CPTPP*, Chapter 28, Dispute Settlement (signed 8 March 2018).
[57] UNCTAD, *World Investment Report 2020* https://unctad.org accessed 10 April 2025; see also Prabhash Ranjan, 'India and Bilateral Investment Treaties: A Changing Landscape' (2019) 60 *Indian Journal of International Law*.

Lastly, cross-comparison illustrates that no single model works, but they are each useful in aspects of legal and institutional innovation. One such hybrid model that combines the USMCA disciplinary approach, the flexibility of the CPTPP, and the inclusivity of the WTO could be a possible route for international trade dispute settlement in the future.

VII. CONCLUSION

The WTO-led worldwide multilateral trading system faces one of the most serious problems in its history. The inability of the Appellate Body to operate alongside stalled trade negotiations has caused a decline in faith that the WTO can deliver both rule-based dispute resolution and global free trade. Terms like regional agreements and plurilateral actions under decentralization policies work together to degrade the consistent operation of the global trade framework. This research paper insists that the WTO serves as an essential institution for establishing legal certainty alongside treatment equality and institutional impartiality in international trade operations. The USMCA, alongside CPTPP and the EU legal order, demonstrates potential paths for WTO reform that could accomplish effective deadlines and new issue responsiveness along with enhanced enforceability devices. The substitutes for the WTO do not have its general global acceptance and capacity to regulate international economic ties.

The required reform must implement a complex structure through legal advancements. Fundamental reform recommendations encompass reviving the Appellate Body while reinforcing its functioning along with implementing procedural enhancements and creating structural frameworks; accepting plurilateral agreements for moving forward on targeted issues; and using quantitative criteria for evaluating Special and Differential Treatment provisions; and lastly combining emerging topics including sustainability and digital trade into the existing WTO framework. The system requires higher transparency from policymakers, who also need to involve key stakeholders and show institutional sensitivity for people to regain trust in the system.

The reform of the WTO exists as both an institutional necessity and a geopolitical requirement. Global stability and equity depend on an inclusive multilateral trade system that functions in the connected yet economically nationalistic and geopolitically disputed world. And although the road ahead is complex and politically complicated, the WTO has to transform or face

extinction. With concerted action and new political will, the multilateral trading system can be renewed to serve the needs of the 21st century.

VII. REFORM RECOMMENDATIONS: REINVIGORATING THE GLOBAL TRADE ARCHITECTURE

To meet the institutional, procedural, and normative crises now threatening the multilateral trading system, a multi-faceted reform approach is required. The inability of the WTO Appellate Body to operate, the multiplication of unilateral trade measures, and the fragmentation engendered by regionalism all point towards an integrated and law-based recasting of international trade governance. The following recommendations are made for re-establishing legitimacy, making it functional, and aligning it with new economic realities.

1**. Reinstate the WTO Appellate Body by Procedural Compromise-** The immediate priority should be the reinstatement of the WTO Appellate Body, whose gridlock erodes the very essence of binding dispute settlement. Member countries, led by the United States, must come to an agreement on a reformed framework that calms fears of judicial overreach.

The proposed reforms are:

i. Clarifying the standard of review and the boundaries of treaty interpretation under '*Article 3.2 of the Dispute Settlement Understanding (DSU)'*.

ii. Streamlining delays by imposing strict timelines and limiting the length of Appellate Body reports.

iii. Enhancing transparency, including through public hearings and published dissenting opinions.

iv. A legally binding Ministerial Declaration could enshrine these procedural reforms, allowing the reappointment of Appellate Body members and restoring the legitimacy of the dispute system.

2. Institutionalise Plurilateralism in the WTO Framework- To reinvigorate WTO rulemaking, plurilateral agreements should be institutionally mainstreamed into the WTO's legal architecture. Projects like the Joint Statement Initiative (JSI) on E-Commerce show that

issue-based cooperation is not only possible but also useful. Another solution proposed is establishing a new Annex 4 Plurilateral Framework with transparent opt-in options, transparency obligations, and compatibility provisions to bridge the gaps with WTO law. This would allow coalitions of the willing to push reforms while preserving the multilateral character of the institution.

3. Implement Criteria-Based Special and Differential Treatment- The across-the-board application of Special and Differential Treatment (SDT) provisions has to be substituted with objective, graduated criteria based on indicators like GDP per capita, trade volumes, and technological capability. This would eliminate strategic self-designation and allow more focused capacity-building. At the same time, a legally binding review mechanism under the Committee on Trade and Development should be established to review SDT eligibility periodically.

4. Establish a Legal Framework for Digital and Sustainable Trade- The WTO should widen its normative remit to encompass emerging global interests:

1. There should be negotiated under the Marrakesh Agreement a Sustainable Trade Protocol that includes enforceable norms of carbon border charges, green subsidies, and circular economy conduct, with proper respect for GATT Article XX exceptions.
2. A Digital Trade Charter must be created to set rules on cross-border data flows, e-commerce taxation, digital services, and cybersecurity, building on current JSI talks.[8] These tools would address essential regulatory gaps while enhancing legal certainty in sectors where unilateralism now dominates.

5. Strengthen Institutional Legitimacy and Stakeholder Engagement- The legitimacy crisis of the WTO can be eased through institutional innovation:

i. Granting the Secretariat more agenda-setting authority and autonomous legal analysis capabilities.

ii. The introduction of parliamentary-style oversight, by a WTO Parliamentary Assembly, would promote political accountability.

iii. Engaging civil society and the private sector through formal consultations and amicus involvement in dispute proceedings.

iv. These reforms would democratize WTO processes and align with modern values of transparency and inclusiveness.

6. Legalizing Interim Mechanisms such as MPIA- Although temporary, the MPIA provides a credible stopgap measure. It needs to be legalized and institutionalized through a plurilateral agreement in WTO frameworks to enable greater participation, enhanced procedural norms, and official recognition of arbitral awards under DSU Article 25. This would provide continuity in the settlement of disputes even if a fully reconstituted Appellate Body is not possible.

7. Include artificial intelligence to support dispute settlement- The WTO should embrace AI to improve the accessibility and functionality of the dispute settlement mechanism, therefore complementing structural reform. By means of predictive legal analytics to foresee conflict outcomes based on precedent, AI can be a useful complement to human adjudication, thereby supporting legal strategy and conflict avoidance by:

i. Automating legal research and case comparisons will help panels and secretariats to be more consistent and to save time and effort.

ii. Improving procedural efficiency by means of summaries and disciplined arguments produced under supervision, therefore supporting drafting procedures.

iii. Creating databases supported by artificial intelligence that trace legal patterns, hence guiding uniform interpretation of WTO rules.

The WTO should start pilot projects, working with academic institutions and legal-tech partners, to operationalize this and build a legal-ethical framework guaranteeing human oversight, data protection, and responsibility in AI applications. Along with increasing the durability and efficiency of the dispute system, this invention can help to solve institutional stalemate.