Proceedings of the 4th International Conference on Global Politics and Socio-Humanities
DOI: 10.54254/2753-7048/2026.33836

Predicament and Outlet of WTO Dispute Settlement Mechanism Reform from the Perspective of Multilateralism

Zihan Wang

Shengxiang Business School, Shanghai Sanda University, Shanghai, China
outlook_AD86CF8799F164E2@outlook.com

Abstract. Multilateralism is the cornerstone of the global economic governance system, but the WTO dispute settlement mechanism, one of its important components, has been paralyzed by the suspension of the Appellate Body since 2019. From the perspective of multilateralism, this study analyzes the deep-seated reasons for the paralysis of World Trade Organization (WTO) dispute settlement mechanism. It owns for America's strategy of maintaining its global economic and trade hegemony. And the dilemma of reform is the difficulties and limitations of existing programs. It is found that the core path to breaking the deadlock in reform lies in returning to and reshaping the core values of multilateralism. China should actively unite with the EU and the developing countries. Enhancing the right to speak and influence in WTO reform negotiations. Repairing and optimizing the dispute settlement mechanism and maintaining the global multilateral economic and trade order. This article provides a reference for the reform of WTO dispute settlement mechanism.

Keywords: WTO, multiparty interim appeal arbitration arrangement, dispute settlement body, reform, China

1. Introduction

Multilateralism is the cornerstone of today's global economic governance system. As an important part, the Dispute Settlement Body (DSB) of the WTO has been paralyzed since the Appellate Body stopped at the end of 2019 because the United States continued to obstruct the selection of new judges. Encountered the biggest crisis since its establishment. This institutional paralysis was reflected in the US 301 tariff case (WT/DS543/R) in 2020. Although the expert group has made a ruling report, it cannot take effect because the losing party filed an appeal. The dilemma of "appealing to the void" is exposed. This makes the global trade community clearly realize that an appellate body that can't function normally may make any award shelved indefinitely by the losing party through "appealing to the void". This case profoundly reveals that the reform and repair of this core mechanism has become the most urgent issue to maintain the multilateral trading system at the moment when unilateralism and protectionism are on the rise.

However, the current reform process of WTO dispute settlement mechanism is in multiple difficulties. On the one hand, it is the core institutional paralysis. The suspension of the Appellate Body led to the suspension of appeals in 29 cases, which caused fatal loopholes in the dispute settlement procedure. The losing party can prevent the award from taking effect through arbitrary

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appeal, and the WTO system of two trials and final adjudication is ineffective. On the other hand, there are significant differences in positions among the main members. China and the European Union are committed to restoring a complete and binding appeal mechanism. The United States, on the other hand, questioned the mechanism itself as "judicial ultra vires" and considered it as "ultra vires ruling" and "overdue trial". And all parties have successively introduced alternatives. For example, some members spontaneously set up multiparty interim appeal arbitration arrangement (MPIA). Although it is an expedient measure, its participation is limited and the ruling lacks precedent effect. It is difficult to replace the authority and universality of the original mechanism.

Based on this, this study will clarify the functional relationship between the principle of multilateralism and the WTO dispute settlement mechanism from the perspective of multilateralism. Systematically analyze the core dilemma faced by reform and explore feasible reform paths and programs under the framework of multilateralism. And put forward suggestions on China's constructive role in this round of reform.

2. Literature review

William J. Davey pointed out that the core of the crisis lies in the deep dissatisfaction of the United States with the ultra vires behavior of the Appellate Body (AB) and its fundamental discomfort with the binding international dispute settlement mechanism [1]. Kristen Hopewell further added that the action of the United States was not accidental, but out of strategic considerations [2]. The purpose is to get rid of external legal constraints and promote protectionist policies, which leads to the popularization of the phenomenon of "appeal to vanity" [2]. It has accelerated the disintegration of the global rules-based trade order and warned that the WTO may become an "institutional zombie" [2].

In response to this crisis, Dr. Guillaume Van der Loo suggested making progress within the WTO through an "open and inclusive" plurilateral agreement, which was considered as an effective way to bypass the deadlock in traditional multilateral negotiations [3]. Although the plurilateral agreement proposed by Van der Loo provides flexibility and the possibility of "partial progress", its legitimacy and effectiveness are highly dependent on the true implementation of the principle of "openness and inclusiveness" [3]. More importantly, plurilateral agreements themselves cannot make up for the fundamental lack of fragmentation of the legal authority of the multilateral trading system. In essence, they are a compromise to the principle of multilateralism, not a reconstruction of its core values. It may even lead to the "two obligations" situation warned by Davey, further aggravating the complexity and unfairness of the rule system. Jaemin Lee, on the other hand, advocates alternative dispute resolution (ADR), especially Mediation [4]. The WTO dispute settlement process is introduced to give priority to the long-term relations between member countries, rather than just solving disputes through confrontational litigation [4]. The mediation mechanism advocated by Jaemin Lee is unable to cope with the powerful members like the United States who strategically evade the rules. For those countries that aim to implement protectionist or unilateralist policies, mediation lacks enforcement. It is impossible to stop its violation of WTO rules.

The existing research shows that it is not feasible to rely on the United States to actively return to multilateralism. In the current geopolitical context, it may be a strategic misjudgment. Therefore, it is the main direction of this study to explore the feasible reform path and scheme that is free from the interference of American unilateralism, and how China can play a constructive role in this round of reform. Respond to the core contradiction that cannot be effectively solved in the above literature, that is, how to rebuild and maintain the effectiveness and legitimacy of global trade governance when major powers no longer support the existing rules system.

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3. Historical evolution of WTO dispute settlement mechanism and legal analysis of the "lockout" crisis

3.1. System design and the value of multilateralism

The design of WTO dispute settlement mechanism reflects the principle of multilateralism. Under the framework of Understanding on Dispute Settlement Rules and Procedures, this mechanism has established a set of mandatory, two-trial structures and the award can be passed automatically. Its goal is to solve international trade conflicts according to rules rather than unilateral forces. Article 23 of DSU stipulates that members shall not take unilateral measures, and disputes shall be handled through DSU procedures. This provision points to replacing unilateral actions and hegemonic logic with collective procedures and common rules. The key of WTO dispute settlement mechanism is that it can ensure that the rules are observed and provide a platform for members to solve trade disputes fairly. This is very important for maintaining the global trade order, and it represents the peak of multilateral cooperation and the spirit of the rule of law [5].

3.2. The direct cause and deep logic of the "lockout" of the appellate body

The Appellate Body ceased to operate at the end of 2019.The direct reason is that the United States continues to obstruct the judge selection process, resulting in the number of members not reaching the minimum number required to hear cases. The criticism of the United States on the operation of the Appellate Body constitutes the basis for its obstruction:

One is the trial period. The United States pointed out that the trial time of the Appellate Body in some cases exceeded the 90-day period stipulated in Article 17.5 of DSU. For example, the appeal procedure of US v. EU aviation subsidy case (DS353) took 18 months. This situation makes some members think that the appellate body is inefficient in performing its duties and the trade dispute settlement process is delayed. This has an impact on business decisions and market expectations.

The second is the dispute over the scope of the ruling. The Appellate Body overturned the panel's ruling in some cases. The United States defines this as the intervention of the Appellate Body in the sovereign decision-making space of the members. It transcends the boundary of judicial review and touches on the domestic policy-making power and sovereignty in sensitive policy areas of members.

However, the above dispute is only a superficial excuse for the United States to obstruct the selection of judges and paralyze the appellate body. The root of the crisis of the Appellate Body lies in the political position of the United States, rather than the serious problems existing in the mechanism itself [6]. The core problem of WTO dispute settlement mechanism lies in the suspension of appellate body. The United States weakened the legal binding force of the multilateral trading system by paralyzing the Appellate Body in order to gain freedom in international trade actions. The purpose of this behavior is to push the WTO reform in a direction that is beneficial to itself. It can safeguard its global economic and trade hegemony and resist the interpretation and application of international rules that it does not agree with.

4. Difficulties and limitations of the existing reform scheme of WTO dispute settlement mechanism

4.1. The dilemma of structural reform and non-structural adjustment scheme

Discussions on the reform of WTO dispute settlement mechanism can be roughly divided into two paths: structural reform and non-structural adjustment.

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The structural reform plan advocates fundamental modification of DSU. It involves redefining the terms of reference of the Appellate Body, changing the mechanism of judge selection and term of office, and adjusting the automatic passage system of Article 23 of DSU. The unstructured adjustment scheme is based on the existing DSU framework, seeking program optimization and behavioral norms. The contents include formulating trial guidelines, requiring appellate bodies to abide by the trial time limit, introducing alternative procedures, and clarifying the support and supervision functions of the secretariat in dispute settlement. The secretariat plays a vital role in the WTO dispute settlement mechanism. The transparency of its role and the strengthening of accountability mechanism will not only damage the judicial legitimacy of DSM but also be a necessary condition for its survival and credibility [7, 8]. Such measures are non-structural adjustments.

Both schemes face resistance. Structural reform involves the core interests and sovereignty of members. Under the WTO consensus decision-making rules, it is difficult to reach an agreement. Non-structural adjustment is not difficult to advance, but its ability to deal with the suspension of the Appellate Body is still uncertain. More importantly, the deep logic of American obstruction lies in the power game. Simple program optimization may not be able to change its obstructionist position.

4.2. MPIA practice and limitations

The suspension of the appellate body made the appeal procedure impossible. In 2020, the EU and several trading partners (including China) initiated a multi-party temporary appeal arbitration arrangement.

MPIA was established on the basis of Article 25 arbitration clause of DSU as a temporary alternative mechanism after the suspension of the Appellate Body. Participants agreed by agreement that in the event of disputes between them, the arbitration tribunal will replace the appellate body for appeal hearing. Arbitrators are selected from the list provided by the WTO Secretariat and usually consist of three experts. The trial period is set at 90 days. The award is only binding on the parties involved in the arbitration and does not constitute a precedent under DSU. The arbitration tribunal refers to the substantive and procedural rules of DSU in order to maintain consistency with the WTO rules system.

Under the background of the paralysis of WTO Appellate Body, MPIA provides a legal and binding dispute settlement path for participating members. It has avoided the long-term deadlock of trade conflicts and maintained the trade order among some members [9]. MPIA can maintain the legal certainty and predictability of the multilateral trading system, but its limitations are as follows:

Participation is limited. Major trading powers such as the United States and India have not yet joined MPIA. When the dispute involves non-participants, MPIA procedure is not applicable.

The award has no precedent effect. The MPIA ruling only binds the parties and does not have the precedent effect of the DSU Appellate Body ruling. This means that different arbitral tribunals may make different interpretations on similar legal issues, and the unity of rules interpretation cannot be guaranteed.

Execution depends on the parties. Although MPIA award is legally binding on the participants, it lacks enforcement mechanism such as cross retaliation as stipulated in Article 22 of DSU. The degree of implementation of the award depends on the willingness of the participants to abide by it.

Therefore, although MPIA is an expedient measure, it cannot fundamentally repair the system loopholes caused by the suspension of the appellate body. Nor can it completely replace the core position of the original mechanism in maintaining the multilateral trading system.

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5. The "China plan" and practical path of maintaining the multilateral trading system

5.1. Advocating multilateralism and opposing unilateral acts

China has always adhered to multilateralism as the fundamental way to meet global challenges and achieve common development. China's position in the crisis of WTO dispute settlement mechanism is to maintain multilateralism and oppose unilateralism and hegemonism. In view of the United States' obstruction of the selection of judges of the Appellate Body, which paralyzes the mechanism and tries to influence the system of international trade rules, China raised clear opposition.

The multilateralism advocated by China emphasizes the principles of openness, inclusiveness, transparency and non-discrimination. The formulation and implementation of rules should be jointly participated by members, not dominated by a few members. The reform of WTO should be based on extensive consultation and seeking a plan that conforms to the interests of most members.

5.2. China's core appeal and allies construction in WTO reform negotiations

China is an important participant in the WTO dispute settlement mechanism. According to official data up to 2024, China participated in more than 80 disputes, with a winning ratio of 75%. This data fully proves China's respect for rules and its willingness to resolve trade disputes through multilateral mechanisms.

In the WTO reform negotiations, China's core demands include: Maintain the authority of the multilateral trading system and promote the normal operation of the appellate body. Opposing unilateral measures on the grounds of judicial ultra vires and unilateral trade restrictions without DSU authorization. Safeguarding the rights and interests of developing countries in dispute settlement. China is well aware that a sound dispute settlement mechanism is particularly important for developing countries with weak economic strength, which can provide them with legal tools to fight trade bullying [10]. The reform should fully consider the special situation and development needs of developing members and ensure that they are in a fair position in dispute settlement [10].

China's position in the global economy gives it a unique advantage in the WTO reform negotiations. China can rely on the advantages of super-large-scale market to enhance its voice and influence in WTO reform negotiations.

Enhance China's influence in the global trading system by continuously expanding imports and actively promoting negotiations on free trade agreements. Thereby indirectly increasing its right to speak in the WTO reform. For member countries that actively cooperate with WTO reforms and support the principles of multilateralism, China can provide trade facilitation incentives and expand market access. Form a positive excitation. For those countries that obstruct the reform process and pursue unilateralism. China can take targeted countermeasures according to WTO rules. For example, by adjusting tariff structure, restricting imports or taking other trade remedy measures in line with WTO principles. So as to safeguard their legitimate rights and interests and urge them to return to the track of multilateral cooperation.

In order to promote the process of WTO reform, China should actively unite with the EU and the developing countries. Jointly unite the consensus on reform to form a stronger multilateral force:

Establish a tripartite consultation mechanism between China, Europe and -WTO for developing countries. Convene reform seminars and working group meetings regularly. Coordinate each other's positions and jointly examine the reform proposals. This kind of alliance can effectively resist the pressure of unilateralism and enhance the overall strength of the reform camp. It can form a more convincing collective voice and jointly promote the reform agenda.

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Put forward a "development-oriented" reform proposal. Concerned about the weak position of developing countries in dispute settlement. For example, providing more legal aid in procedures, extending the response period or simplifying procedures. And provide more policy space for developing members at the level of substantive law. So as to win the broad support of developing countries for China's reform plan.

Based on MPIA's practical experience, people will promote the three parties to jointly propose an upgrade plan for the "multilateral temporary appeal mechanism". Based on the existing framework of MPIA, the program should gradually expand the scope of participation and strive for more members to join through more attractive terms design. And explore ways to enhance its authority through more binding arrangements. For example, introduce a clearer enforcement mechanism or incorporate the interpretation of the arbitral tribunal into a broader WTO rules interpretation system. The goal is to lay the foundation for the restoration of a permanent and fully operational appellate body through this upgraded temporary mechanism. Or gradually replace the existing temporary arrangements when necessary and become the core component of the future WTO dispute settlement mechanism.

6. Conclusion

The suspension of the WTO dispute settlement mechanism is essentially a profound game between the rise of unilateralism and the multilateral order in the field of international economic governance. The existing coping strategies-whether it is the unstructured adjustment entangled in the details of the rules or the temporary alternative with only partial effect like MPIA-cannot fundamentally fill the institutional loophole of "appeal to vanity". It is also impossible to reverse the loss of trust in the judicial authority of the WTO among the international community. The only way to break the current deadlock is to return to and reshape the core values of multilateralism. Reform cannot be compromised by unilateral hegemony but must be systematically innovated. This requires the international community to re-examine and optimize the principle of "consensus" at the legal level to prevent it from being alienated into a "one-vote veto" for a few countries to paralyze multilateral mechanisms. Clarify the jurisdiction boundary at the procedural level to improve the transparency and efficiency of the mechanism operation.

In this historical process, China, as a staunch defender of the multilateral trading system, should go beyond the passive role of rule receiver. China should not only refute the fallacy of politicization of economic and trade disputes in theory but also unite with the EU and developing countries in practice. Based on MPIA's operating experience, people will promote the construction of a "China program" that takes into account fairness and efficiency.

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