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DISPUTE SETTLEMENT IN THE WTO: LEGAL EFFECTIVENESS AND REFORM PROPOSALS

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Abstract
The World Trade Organization's Dispute Settlement Understanding (DSU) established a unique, compulsory, rule-based system of inter-state commercial dispute resolution. Over three decades the system-building yielded rich jurisprudence, high measured compliance and broad usage by both developed and developing Members. Since 2017-2019, however, the system has been subjected to deep structural stress: long delays in time-consuming cases, doctrinal drift in the Appellate Body (AB) as Members perceive it, and de facto paralysis of the AB since December 2019. These tendencies catalysed alternative modalities (such as the Multi-Party Interim Appeal Arbitration — MPIA) and political showdown over substantive judicial powers. This paper assesses legal effectiveness by combining empirical numbers with leading jurisprudence and analysis of doctrine and then proposes legally-possible reforms that are politically-viable. The analysis takes special consideration of accession candidates and middle income Members (with Uzbekistan as an illustrative domestic-law comparator), and concludes by sketching a prioritised reform agenda addressing appellate review, procedural promptness, compliance entitlements and capacity enhancement.

Keywords: WTO; DSU; Appellate Body; MPIA; compliance; Uzbekistan; dispute settlement; reform.

Introduction

The WTO dispute settlement system (DSS) was designed in the Uruguay Round to replace an ad hoc GATT custom and to provide predictable, binding resolution of Members' disputes over trade. The DSU sets out a two-tier adjudicative process — panel scrutiny and then appeals review — with binding outcomes agreed by the Dispute Settlement Body (DSB) by negative consensus. For nearly twenty-five years this design made the WTO one of the busiest and most important international adjudicatory systems; by conventional metrics hundreds of disputes had been brought and dozens of Appellate Body reports produced a de facto interpretative code of law invoked routinely by national regulators and courts. But since 2017-2019 significant strains on this design appeared: (i) protracted timing in many sophisticated disputes in relation to DSU standards; (ii) mounting political grievances over the mode of decision-making of the AB and alleged "overreach"; and (iii) the inability of the AB to accept new appeals after late 2019 since Members could not agree on new members — an outcome that has severed appellate review and forced Members to resort to interim or unilateral redress. Against this context the present

study asks: how effective is the WTO DSS in enforcing rules and delivering predictable redress; what are its principal architectural vulnerabilities; and what reforms are legally plausible and politically possible to reinvigorate effectiveness and preserve integrity? The rest of this article responds to these questions through evidence, doctrinal analysis and policy prescriptions.

WTO Dispute Settlement System: Caseload, Timelines, and Effectiveness. From 1995 to the end of 2024 WTO figures indicate that 631 disputes had been referred to the DSB (consultations sought and formal requests) — a caseload overshadowing most other international courts and confirming the system's busy usage; half went on to panel reports and a considerable minority to appeals in front of the AB's lethargy [1]. The timeframes in the DSU are idealistic: nine months from the creation of a panel to the release of the panel report (twelve months in cases involving an appeal) and 60–90 days on the report of the AB [2]. Historical data indicate, however, these targets were routinely overrun in practice. Studies by Horn and Mavroidis (and subsequent opinion surveys using their dataset) indicate that, pre-AB crisis, the usual dispute running through all the procedures took an average of some 20–26 months from consultation through to final adoption of an Appellate Body report and adoption by the DSB; meanwhile the panel stage alone would oftentimes drag on to over 12 months in challenging cases (not uncommonly 13–18 months), and appeals tended to overrun the statutory 60-day limit if parties sought extensions or multiple points were in issue [3,4]. The gap here between idealistic timeframes and reality has two consequences: (i) it causes delays to complainants in pursuit of swift market redress; and (ii) it causes greater disincentives to politically powerful parties to seek alternative and swift modes of dispute resolution (e.g. regional forums or unilateral action) if multilateral adjudication appears slow-moving.

Effectiveness must be measured by more than timeliness. Two other parameters apply: (a) outcome predictability (the coherence and authority of panel and AB jurisprudence), and (b) compliance (actual decision implementation). On predictability, traditionally the Appellate Body held the prime position: from 1996 through to the late 2010s it produced many canonical reports interpreting treaty terminology (e.g., "like products", "necessity" in GATT Article XX, or the contours of TRIPS obligations) and establishing jurisprudence-constante on which market actors and domestic courts could rely [5]. On compliance, WTO Secretariat reporting and academic estimates converge on a high long-run implementation rate: some 80–90% of accepted decisions were followed by either implemented remedies or mutually agreed settlements within an acceptable time frame (with dispersion depending on types of disputes) [6,7]. That is, despite issues with timing, the DSU traditionally produced outcomes accepted and implemented by parties in the great bulk of cases — an observation meriting reasons why scholars referred to the DSS as the "jewel in the crown" of the WTO.

Appellate Body Paralysis and Interim Measures. But the AB's freeze since December 2019 — caused by collapses in the appointment process and adamant political refusal to acquiesce in perceived AB procedures — disabled the operation of the two-tier system. The United States, since 2017, repeatedly vetoed AB appointments on reasons of fears about AB procedure and jurisprudence; by December 2019 the AB no longer had the necessary minimum three members

to hear appeals and has therefore been de facto incapable of receiving appeals since December 2019 [8]. That freeze produced immediate legal and practical effects: panels continued to issue reports in first instance but appeals "into the void" left final authoritative resolution in many cases incapable of being achieved through the institutional DSU channel. Members improvised interim remedies — the largest is the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) agreed in March 2020 using DSU Article 25 (consensual arbitration), by mid-2025 employed by several score participating Members including the EU, China, Brazil and, more recently (June 2025) the United Kingdom [9,10]. The MPIA reveals Members to be able to fashion pragmatic interim fixes; but the arrangement is voluntary and creates a fractured appellate world (Members participating in MPIA are obliged to accept processes and procedures therein; non-participating Members are outside it), and associated legal fragmentation and uncertainties over stare decisis in the two streams.

Disparities and Challenges for Members, Including Small Economies. The system's effectiveness betrays considerable cross-sectional disparity. Large Members (EU, US) utilize the system extensively and effectively — as complainants and as parties — while many small or least-developed Members (LDCs) rarely initiate proceedings. Statistical analyses have concluded that about two-thirds of former panel reports were appealed to the AB (a very high percentage of appeals the DSU did not necessarily envisage), and that complainants win in a very high percentage of important cases where cases go to panel and appeal [11,12]. A related empirical finding is that cases involving trade remedy disputes (anti-dumping, countervailing duties, safeguards) have made up an ever-increasing percentage of cases in the 2000s and 2010s because application of these instruments has been politicized. Sectoral shifts such as these affect the character of legal interpretations panels and (previously) the AB made; highly specialized trade remedy law therefore necessitates specialized capacity lacking in many small Members.

Compliance with decisions is a significant effectiveness measure. The DSU contemplates implementation surveillance and — if necessary — approval of retaliation to achieve compliance. Experience looks to a significant bulk (estimates cluster in the 80-90% range) of decisions being implemented or settled on a voluntary basis and without apparent significant retaliation; but particulars matter. Time to implement varies significantly: straightforward tariff reductions are implemented quickly; fundamental regulatory system reforms (e.g., restructuring of domestic subsidy programs or public procurement law) may take several years and often entail negotiated transition timetables. For smaller Members the litigation cost and political risk of litigation relative to a key partner may deter disputes or lead to negotiated settlements less than full rule-of-law affirmation. This disparity in ability is then less procedural than distributional.

Looking to legal doctrine, several of the jurisprudential evolutions warrant emphasis. The AB's early jurisprudence (1996–2006) spawned important interpretive doctrines (e.g., the "weighing and balancing" approach in Article XX necessity cases and nuanced tests of product likeness). As time went on some Members argued that AB panels were "making law" by interpreting treaty provisions in way or to degree transcending textual restraint. The U.S. criticism — in formal USTR reports and comments in the DSB — highlighted alleged AB deviations from

DSU timeframes, creation of "additional obligations" other than express treaty wording, and abiding precedent of expansive nature [13] in derogation of state sovereignty over domestic regulation. Whether these points of criticism are analytically merited is argued in the literature; but politically they became germane and worked to induce deadlock in appointments.

The AB paralysis thus created a structural trade-off: eliminating or prohibiting AB procedures disliked by certain Members would require institutional change, but the absence of an agreed upon worldwide accepted appellate forum jeopardizes legal uniformity and loss of multilateral adjudicative authority. The MPIA mitigates to a degree this risk among participants (it replicates many of the AB roles under Article 25 arbitration) but cannot become universal or possess the same institutional protections governing a standing AB. Moreover, the voluntary nature of MPIA means non-parties to the agreement — such as the United States until recently and some developing Members — may be negatively affected in an unequal fashion by the developing appellate case law.

Implications for Accession Candidates and Domestic Legal Reform: The Case of Uzbekistan. For accession candidates and Members updating domestic law, these strengths and weaknesses become concrete practical guidance. Recent domestic legal reforms in Uzbekistan are exemplary. The Republic has embraced a new Law on International Treaties (LRU-518, 6 February 2019) clarifying treaty conclusion, publication and internal hierarchy of international agreements to expressly state such treaty primacy where so provided and to establish technical rules on implementation and monitoring [14]. Independently, Uzbekistan's Economic Procedure Code (adopted 2018, entered into force 2018–2019) enhanced litigation standards in commercial and economic disputes, advanced procedures on recognition and enforcement of foreign arbitral awards and established special judicial competency on economic litigation [15]. These statutorily-modernizing provisions create domestic base compliant with WTO obligations: permitting the state to treat binding international adjudicatory determinations as domestic-court-enforceable to ease implementation of trade rulings and provide institutional foundations to administrative compliance. However, statute is inadequate by itself: Uzbekistan (as other acceding Members) needs sustained legal capacity (learned litigators, economic analysts and procedural and operational institutional guides on consultations and on expedited response to trade measures) to effectively exploit the DSU and negotiate accession commitments in coherence with existing region FTAs and domestic developmental objectives. This diagnosis inexorably foretells reform proposals viable within existing instruments of the WTO alongside ones requiring political consensus. Revival first of a widely agreed appellate function is required. Pragmatically, re-establishment of the AB is viable through a package consisting of key U.S. criticism abatement while ensuring independence of the judiciary: (i) tighter guidance on the interpretive approach of the AB (to reduce "overreach" feelings), (ii) enhanced procedures on appointing the members (with open vetting and term-fixed appointments), and (iii) tighter time discipline and accountability provisions for the members of the AB. The DSU already has the legal basis underlying such reforms, but political sustainability requires Members' compromise — specifically on the scope of permitted precedent and on institution-building behavior of the AB [16].

Secondly, agreeing at the panel stage on timing and predictability will reduce reliance on appeals and speed remedies. Possible procedural reforms include expanding the roster and pool of available panellists (while keeping independence and standards intact), stricter enforcement of DSU timetable targets with extensions allowed only for complex technical reasons, and greater use of digital hearings and written submissions to shorten proceedings. These are procedural (not treaty-amending) and could be adopted through DSB or General Council decisions. They would significantly reduce average adjudication time (empirical studies confirm time savings are possible with administrative improvements) and make the DSU more usable for parties facing urgent trade barriers.

Third, compliance incentives need fine-tuning. The DSU remedy — suspension of concessions — is effective in many cases but blunt and favors economies with strong retaliation capacity. Two reforms could address this imbalance: creating an expedited compensation fund (financed by assessed contributions or voluntary donors) to provide provisional payments where immediate compliance is not possible, and expanding mediation linked to compliance monitoring. These measures would deliver fairer remedies for small economies and reduce pressure to resort to unilateral measures.

Fourth, capacity building remains essential. The WTO Advisory Centre on WTO Law (ACWL) and other donor programs should be expanded and better targeted to provide litigation support, economic expertise for remedy assessments, and training for negotiators in accession countries. Evidence shows that building legal capacity improves results: countries like Brazil, Korea, and Vietnam created specialized units and achieved stronger participation in high-quality disputes and better strategies during accession and implementation [17].

Fifth, consensual arbitration (MPIA) should be used as an interim but converging tool. The MPIA preserves appellate review among its Members; WTO policy should encourage wider participation to reduce fragmentation and set norms for publishing MPIA awards and treating them as persuasive precedent. Over time, MPIA practice could guide formal DSU reform to restore a universally acceptable AB under agreed limits.

Finally, accession candidates must integrate DSU realities into domestic planning. For Uzbekistan, practical steps include: (i) centralizing DSU tasks in a dedicated Ministry unit with fast response lines to customs and regulators; (ii) amending national procedural codes where needed to ensure quick enforcement of international rulings (the Law on International Treaties provides a basis but requires procedural strengthening); (iii) negotiating accession timetables with focus on enforceability and transitional periods; and (iv) aligning regional FTAs so they complement rather than conflict with expected WTO obligations.

Conclusion.

The WTO dispute settlement process remains, despite recent crises, an unparalleled institutional innovation: it offers binding adjudication, fosters a code of consistent trade law, and achieves high long-term compliance. Its strains now—timing malperformance, political row over the Appellate Body, and capacity deficiencies for smaller Members—are severe but not unsolvable. The remedy is a coordinated program of (a) institutional renaissance of an appropriate appellate instance within negotiated confines; (b) procedural up-dating to reduce delays; (c) balanced

compliance instruments and payment facilities; and (d) selective capacity building in developing and accession Members. These steps are legally conceivable by exploiting the WTO's established framework and politically possible if Members embrace the alternative: escalation of recourse to regional dispute procedures, unilateral counter-measures, and devolution of multilateral rule-based management of trade. For Uzbekistan and other candidates for accession, crafting domestic law reforms to recognize and enact international adjudicatory determinations, capitalizing on litigation and economic capacity-building, and negotiating accession commitments with credible transition time-frames will be crucial in exploiting the DSU's protective might while mastering its practical burden.

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