

The Rule of Law at the WTO: The Appellate Body Crisis and the Limits of Multilateral Adjudication

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ABSTRACT

One of the most significant institutional crises in multilateral trade adjudication has been the paralysis of the World Trade Organization (WTO) Appellate Body since 10 December 2019. The crisis has not stopped WTO dispute settlement entirely, but it has removed the second and final tier of adjudication and altered the balance between adjudication, treaty interpretation, and Member control. Panel reports can now be appealed "into the void," and Members' reliance on the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), concluded under Article 25 of the Dispute Settlement Understanding (DSU), has grown steadily. This article argues that the crisis is neither a terminal event for WTO legality nor merely a transitional period awaiting automatic restoration, but a deeper contest over the boundaries of international judicial power. Updating and substantially revising an earlier doctrinal treatment of these issues against developments through 2026, the article adds an original quantitative analysis of WTO dispute settlement activity from 1995 to the present, compiled from official WTO statistics, WTO Appellate Body annual reports, and recent secondary sources, and presents this data in three figures. The analysis shows a marked decline in new litigation activity since 2019 alongside steady, though still partial, growth in MPIA membership and caseload. The article concludes that the international rule of law in trade depends less on the uninterrupted operation of a standing tribunal than on the durability of institutionalized expectations of adjudication and compliance among Members, and that the crisis represents a constitutional moment in which those expectations are being renegotiated rather than abandoned.

Keywords: *WTO, Appellate Body, dispute settlement, rule of law, judicialization, MPIA,*

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I. Introduction

The World Trade Organization's Appellate Body reached an institutional breaking point on 10 December 2019. On that date the terms of two of its three remaining members, Ujal Singh Bhatia and Thomas R. Graham, expired, leaving the Appellate Body without the minimum of three members required under its working procedures to hear a new appeal (World Trade Organization) [WTO], "Collapse" is nonetheless too strong a word for what followed. WTO dispute settlement did not disappear: panels have continued to hear disputes, Members have continued to invoke the DSU, and the underlying legal framework has remained formally in force. What was suspended was specifically the appellate layer of a system designed to secure consistency, finality, and legal predictability in the interpretation of WTO obligations.

The persistence of this deadlock across successive United States administrations, and across repeated attempts to negotiate a way forward, suggests that the crisis cannot be reduced to a mere failure to fill vacancies. United States officials have instead framed the dispute as one about the scope and exercise of adjudicative authority: whether panels and the Appellate Body respected the procedural timelines to which Members had agreed, and whether their interpretations added to or diminished the rights and obligations that Members had actually negotiated (Office of the United States Trade Representative [USTR], 2020). The disagreement is thus constitutional as much as institutional: it concerns not only whether appellate review should exist, but what limits Members are willing to place on the power of international adjudicators who exercise it.

The deeper question this article addresses is how resilient the rule of law in international trade actually is. A multi-year absence of the institution charged with producing authoritative, coherent legal interpretation might be expected to erode legal commitment across the system as a whole. The evidence assembled here suggests a more differentiated picture. WTO Members have continued to litigate before panels, to negotiate reform proposals, and, in a growing number of cases, to construct and use the MPIA as an alternative avenue for appellate review under Article 25 of the DSU (WTO, 2020a). This suggests adaptation rather than abandonment of the underlying commitment to adjudicated trade law.

This article advances three connected propositions, each developed and, where possible, tested against data later in the article. First, the international rule of law in trade rests on judicial independence and continued political acceptance of that independence in combination, not on either alone. Second, the MPIA's institutional flexibility, though real, is not a full substitute for a universal appellate mechanism, and it has produced a differentiated rather than a unified dispute settlement system. Third, any durable reform will need to address precedent, procedural timelines, treatment of domestic law, and the scope of appellate reasoning together, rather than treating the crisis as resolvable through personnel appointments alone. In support of these propositions, this article contributes an original compilation and visual presentation of WTO dispute settlement statistics spanning the pre-crisis and post-crisis periods, drawn from the WTO Secretariat's official figures, Appellate Body annual reports, and recent parliamentary and academic sources, which has not, to the author's knowledge, been assembled in this combined form in the literature responding directly to the 2019 crisis.

The article proceeds in eight further parts. Part II reconstructs the legal architecture of WTO adjudication and the Appellate Body's institutional design. Part III analyzes the origins of Appellate Body paralysis. Part IV examines the doctrinal consequences of appellate paralysis for panel litigation. Part V presents the quantitative analysis at the center of this revision, compiling and charting WTO dispute settlement activity from 1995 to the present. Part VI analyzes the MPIA as a mechanism of institutional adaptation. Part VII reviews ongoing reform debates. Part VIII situates the crisis comparatively and theoretically, and Part IX concludes.

II. Background: The Architecture of WTO Adjudication

2.1 From GATT 1947 to the WTO, 1995

WTO dispute settlement represents a substantial evolution from the GATT 1947 system, under which panel reports required adoption by consensus among the Contracting Parties, including the losing party, a rule that allowed a single objecting party to block legal consequences. The Uruguay Round's Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) replaced this with a negative-consensus system:

under Article 16.4, a panel report must be adopted unless the Dispute Settlement Body (DSB) decides by consensus not to adopt it, or unless a party appeal (DSU, 1994, art. 16.4). This inversion made panel and Appellate Body reports far harder to block and pushed WTO dispute settlement decisively toward legalization and judicial predictability (DSU, 1994, art. 3.2; Steinberg, 2004).

2.2 The Appellate Body's Institutional Design

Article 17.1 of the DSU created a permanent, seven-member Appellate Body, with appeals heard by rotating divisions of three. Members served four-year terms, renewable once, and were required under Article 17.3 to demonstrate recognized authority and expertise in law, international trade, and the subject matter of the covered agreements (DSU, 1994, art. 17.1-17.3). Jurisdiction was deliberately narrow: Article 17.6 confined appeals to issues of law addressed in the panel report and legal interpretations developed by the panel, and Article 17.5 required completion of appellate proceedings within sixty days, and in no case more than ninety, absent notice to the DSB (DSU, 1994, art. 17.5-17.6). The interpretive mandate in Article 3.2 reinforced this limited role: adjudicators were to clarify the covered agreements in accordance with customary rules of treaty interpretation, and were expressly barred from adding to or diminishing Members' rights and obligations, a mandate closely tied to the interpretive methodology of Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT, 1969, arts. 31-32; DSU, 1994, art. 3.2).

2.3 Adjudication, Precedent, and Judicialization

The Appellate Body's practical significance exceeded simple dispute resolution: across two decades it built a substantial body of interpretive reasoning on non-discrimination, subsidies, safeguards, and general exceptions. Although the DSU contains no formal doctrine of *stare decisis*, and Article 3.2 explicitly bars the creation of new rights or obligations, Appellate Body reasoning nonetheless acquired strong *de facto* authority, as panels and litigants relied on prior interpretations to minimize uncertainty and preserve equal treatment across similarly situated disputes (Pauwelyn, 2016). This produced what is better described as a practice of persuasive, rather than binding, precedent, but one whose predictive value was still central to the "security and predictability" that Article 3.2 identifies as an object of the dispute settlement system (DSU, 1994, art. 3.2). This development also generated a lasting debate about the proper degree of judicialization at the WTO. Proponents emphasized that interpretive consistency was essential to a genuinely rules-based system; critics warned that increasingly elaborate jurisprudence risked shading into judicial lawmaking beyond the authority WTO Members had actually conferred (Steinberg, 2004). Dunoff and Pollack (2017) capture the underlying structural problem through their concept of a "judicial trilemma": international tribunals, including the WTO Appellate Body, cannot simultaneously maximize judicial independence, accountability, and transparency, and must instead trade off among them. The Appellate Body's design, an independent standing body with broad interpretive latitude but comparatively weak formal accountability mechanisms, placed it in a particular position within that trilemma, one that proved politically sustainable for two decades but not indefinitely.

2.4 Interpretive Method as a Site of Contest

Much of the subsequent controversy traces back to how the Appellate Body applied the VCLT's interpretive framework in practice rather than to that framework itself. Article 31 directs an interpreter to the ordinary meaning of treaty terms in their context and in light of the treaty's object and purpose, while Article 32 permits recourse to supplementary means of interpretation, including negotiating history, only to confirm a meaning already reached or to resolve genuine ambiguity (VCLT, 1969, arts. 31-32). Because many WTO obligations are drafted at a high level of generality, for example the public morals and general exceptions language in GATT Article XX and GATS Article XIV, faithful application of this interpretive method still leaves substantial room for adjudicative judgment about how broadly or narrowly a given exception should be read, and about how a challenged measure's stated objective should be weighed against its actual design and application. WTO jurisprudence on public morals exceptions, for instance, developed a structured inquiry into the relationship between a measure and its stated regulatory objective, an inquiry that affords Members considerable discretion in principle but that nonetheless permits an adjudicator to assess independently whether

a given measure is no more trade-restrictive than necessary. For the United States, the objection was less that this methodology departed from Articles 31 and 32 than that its application, case after case, tended to narrow the practical latitude available to Members applying their own trade-remedy and public-interest measures, a cumulative effect that formal fidelity to the VCLT's text does not by itself foreclose.

III. The Causes of Appellate Body Paralysis

3.1 Long-Standing United States Grievances, 1996-2016

United States dissatisfaction with WTO adjudication predates the 2019 crisis by two decades and has centered on whether adjudicators were interpreting, or effectively rewriting, the agreements Members negotiated (USTR, 2020). Trade-remedy disputes were a recurring flashpoint. In *United States - Measures Relating to Zeroing and Sunset Reviews* (WT/DS322), the Appellate Body found aspects of the United States' zeroing methodology inconsistent with the Anti-Dumping Agreement and GATT 1994 (WTO, 2007). Related findings recurred in *United States - Anti-Dumping and Countervailing Measures on Certain Products from China* (WT/DS464), where the Appellate Body found that the weighted-average-to-transaction methodology used in that investigation was inconsistent with Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement (WTO, 2016). For the United States, the recurring theme was that Appellate Body reasoning was progressively constraining the domestic administration of trade-remedy law, an outcome Congress and successive administrations viewed as exceeding the interpretive mandate of Article 3.2.

3.2 The 2015 Trade Priorities and Accountability Act

These concerns acquired a formal domestic-law expression in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, which made dispute settlement reform an explicit negotiating objective, emphasizing prompt, transparent, and textually faithful adjudication, respect for the findings of national investigating authorities, and constraints on the informal precedential effect of prior reports (Congress, 2015). These statutory benchmarks later supplied the vocabulary the Trump administration used to justify withholding consensus on new Appellate Body appointments.

3.3 The Trump Administration's Institutional Critique, 2017-2020

The 2017 Trade Policy Agenda made these traditional grievances the basis of an explicit institutional strategy, tying future support for Appellate Body appointments to resolution of what the United States characterized as systemic interpretive overreach (USTR, 2017). As members' terms expired without replacement, the Appellate Body's capacity to constitute divisions eroded by attrition rather than through any formal withdrawal from the DSU. The United States has not left the WTO, nor formally repudiated the DSU; it has instead withheld the consensus required to staff an adjudicative body it considered institutionally flawed, which is precisely what makes the episode a critique of institutional design rather than a rejection of adjudication as such.

3.4 A Typology of Doctrinal Objections

The United States' criticisms cohere around six recurring objections, catalogued in its own submissions to the DSB (USTR, 2018) and its 2020 Report on the Appellate Body (USTR, 2020): first, a separation-of-powers concern that adjudicators were effectively legislating rather than interpreting; second, the treatment of prior reports as a *de facto* system of binding precedent despite the absence of *stare decisis* in the DSU; third, appellate findings that were seen as reaching into the assessment of domestic law itself, rather than merely its WTO-consistency; fourth, routine disregard of the ninety-day deadline in Article 17.5 without corresponding institutional consequence; fifth, the issuance of findings not strictly necessary to resolve the dispute at hand, viewed as an unauthorized expansion of appellate jurisdiction; and sixth, more diffuse concerns about advisory-opinion-like reasoning. Taken together, these objections target the institutional limits of adjudication, not its existence.

3.5 The Political and Economic Driver

The doctrinal critique was reinforced by concrete trade-policy stakes concentrated in antidumping, countervailing duties, safeguards, and subsidies disciplines, precisely the instruments Congress had flagged in 2015 (Congress, 2015). Concerns about agricultural subsidies litigation and, increasingly, about the WTO's capacity to discipline state-led, non-market economic practices associated with China sharpened this dimension; the USTR's 2022 statement on the countervailing-duty arbitration involving Chinese measures explicitly framed Appellate Body-era interpretations as constraining Members' ability to respond to such practices (USTR, 2022).

This economic dimension also explains why the crisis proved resistant to the kind of narrow technical fix, such as clarifying a single disputed provision, that had resolved earlier WTO disagreements. Trade-remedy measures generate concentrated, well-organized domestic constituencies in ways that many other WTO disciplines do not, and repeated adverse rulings in this area accordingly carried a political salience disproportionate to their number. The zeroing disputes discussed above are illustrative: although they concerned a comparatively technical question of antidumping-margin calculation methodology, the cumulative effect of successive adverse Appellate Body findings across multiple proceedings was to constrain a tool that domestic industries and their congressional representatives regarded as a core trade-defense instrument, converting a series of individually narrow legal rulings into a sustained source of institutional grievance.

3.6 Continuity Across the Trump and Biden Administrations

The Appellate Body was not restored following the change of administration in 2021. While the Biden administration adopted a more multilateralist rhetorical posture, its substantive critique of Appellate Body-era reasoning, particularly in disputes concerning Chinese trade-distorting subsidies, remained largely unchanged (USTR, 2022). This continuity across administrations of different political orientation is analytically significant: it indicates that the critique had become institutionalized within the U.S. trade-policy establishment rather than resting on the preferences of a single administration.

3.7 A Structural, Not Partisan, Legitimacy Contest

Read together, the evidence supports characterizing the crisis as a structural legitimacy contest rather than a partisan rupture. Congressional concerns predated the Trump administration, the USTR's institutional critique elaborated on those concerns in considerable doctrinal detail, and successive administrations of both parties sustained the same basic position. The dispute concerns the allocation of interpretive authority between WTO Members and WTO adjudicators, and its resolution accordingly requires institutional redesign rather than a change in personnel or in the party controlling the U.S. executive branch.

IV. The Doctrinal Consequences of Appellate Paralysis

4.1 Panel Reports Suspended in Adoption Limbo

The most immediate doctrinal consequence of Appellate Body paralysis is the breakdown of the balance the DSU struck between automatic adoption and appellate quality control. Under Article 16.4, adoption follows automatically unless the DSB reaches negative consensus against it or a party appeal; before 2019, an appeal simply triggered a second-stage review that produced a final, adopted outcome. Without a functioning Appellate Body, an appeal instead stalls adoption indefinitely, since there is no body left to decide it. A losing party can, in effect, appeal a panel report "into the void," defeating the automaticity that had been the hallmark of the post-1995 system (DSU, 1994, art. 16.4).

4.2 A Procedural Paradox in Litigation Strategy

This shift has paradoxically altered incentives to litigate. A complainant who wins before a panel may hesitate to invest further in a case that cannot be rendered final; a losing respondent, conversely, retains every incentive to appeal precisely because no appeal will ever be decided, transforming the appeal from a corrective mechanism into a tool of indefinite delay. Some Members have responded by shifting toward the MPIA or other Article 25 arbitration to preserve two-tier review; disputes among non-participating Members remain fully exposed to the appeals-into-the-void dynamic (WTO, 2020a; WTO, 2020b).

4.3 Predictability Costs and Doctrinal Fragmentation

Article 3.2 identifies "security and predictability" as a central object of WTO dispute settlement, a goal the Appellate Body's collegial, corrective function was specifically designed to serve. Without that corrective layer, individual panels retain full discretion to depart from earlier reasoning, and there is no institutional mechanism to reconcile divergent interpretations across panels. This is not necessarily an indictment of any individual panel's reasoning; the loss is institutional rather than conceptual, arising from the absence of a body positioned to consolidate interpretation once panels diverge. Whether such divergence has in fact become widespread across specific provisions remains an empirical question requiring systematic comparison of pre- and post-2019 panel reports, one this article flags as a priority for future doctrinal research rather than one it purports to resolve.

4.4 Distributive Effects Across the Membership

The costs of doctrinal fragmentation are unlikely to fall evenly. Members with substantial in-house legal capacity can track divergent panel reasoning across cases and adjust litigation strategy accordingly; many smaller and developing-country Members cannot do so as easily, and rely disproportionately on the predictive value that consolidated, appellate-level interpretation once provided. The loss of that consolidating function accordingly raises equity concerns that go beyond the outcome of any single dispute.

4.5 A Typology of Functions Lost

The paralysis can usefully be decomposed into five reduced or lost functions: doctrinal coherence, achieved through systematic application of the VCLT's interpretive methodology across cases; quality control, the correction of panel-level legal error prior to adoption; docket discipline, the capacity of a limited-jurisdiction tribunal to bound the interpretive questions requiring resolution; norm generation through persuasive, if not binding, precedent; and the legitimating function of a reasoned second-instance review before a dispute becomes final. None of these functions has been eliminated from the WTO system as a whole; each has instead been redistributed, unevenly, toward panels acting alone or toward alternative fora such as the MPIA.

V. Quantitative Analysis: WTO Dispute Settlement Activity, 1995 to the Present

This part compiles and visualizes original quantitative evidence on WTO dispute settlement activity across the full 1995-2026 period, drawing on the WTO Secretariat's official dispute settlement statistics, WTO Appellate Body annual reports, and a 2024 European Parliamentary Research Service briefing that extends the WTO's own figures into the post-2019 period (European Parliamentary Research Service [EPRS], 2024; WTO, n.d.-b). The purpose is to move the analysis in Parts III and IV from qualitative description to a quantitative baseline against which claims about decline, adaptation, and fragmentation can be assessed.

5.1 The Volume and Composition of WTO Adjudication, 1995-2018

Between 1 January 1995 and 31 December 2018, WTO Members circulated 573 requests for consultations, the formal step that initiates a dispute. A panel was established in 336 of these disputes (nearly 60%), producing 249 panel reports; 166 of those panel reports, or 67% of all panel reports circulated in original proceedings, were subsequently appealed (WTO, n.d.-b). Over the same period, 51 Members had initiated at least one dispute, 60 had been respondents, and a further 88 had participated as third parties, for a total of 109 Members active in dispute settlement in some capacity (WTO, n.d.-b). More than 400 panel, Appellate Body, and arbitral reports or awards were circulated in total. Table 1 (visualized in Figure 1) reports the official breakdown by report type.

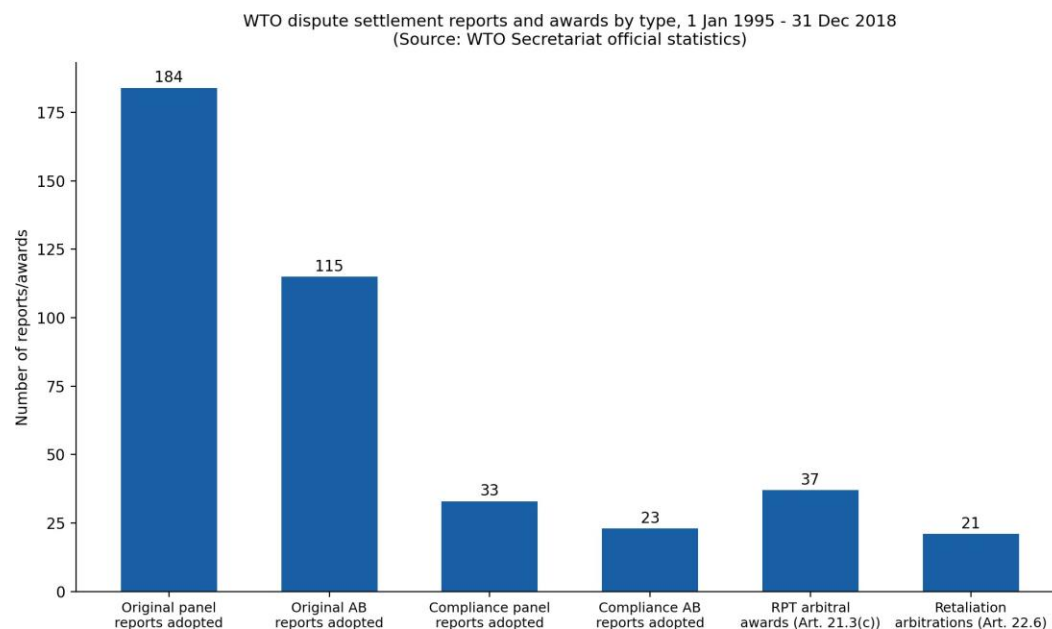


Figure 1. WTO dispute settlement reports and awards by type, 1 January 1995 - 31 December 2018. Source: WTO Secretariat official statistics (WTO, n.d.-b).

This distribution is informative in its own right: original panel reports (184) substantially outnumber original Appellate Body reports (115), confirming that a meaningful share of disputes was resolved or abandoned without reaching appellate review even before 2019. The appeal rate of 67% of circulated panel reports nonetheless indicates that appellate review was, prior to the crisis, the modal outcome for panel reports that were in fact circulated, which is precisely why its removal after 2019 has had disproportionate systemic effect relative to the volume of Appellate Body reports alone.

5.2 The Post-2019 Decline in New Litigation Activity

WTO Appellate Body annual reports document that the Body was still actively working through a backlog as the crisis unfolded: during 2019 and the first half of 2020, eight panel reports concerning seven matters were newly appealed, and a further thirteen appeals were carried over from preceding periods, for a total of twenty-one appeals before the Appellate Body in that window (WTO, 2020c). The last Appellate Body reports were adopted in 2020, after which the Body issued none (EPRS, 2024).

Subsequent years show a marked decline in new litigation activity of the kind the Appellate Body would previously have reviewed. Annual requests for consultations, which peaked at 50 in 1997, fell to just 6 in 2023, compared with 20 in 2019 (EPRS, 2024). Panels composed per year fell from a peak of 29 in 2018 to just 3 in 2023, and panel reports adopted fell from an all-time high of 15 in 2000 to only 2 in 2023 (EPRS, 2024). Figure 2 presents these three indicators side by side, comparing each series' historical peak year with 2023.

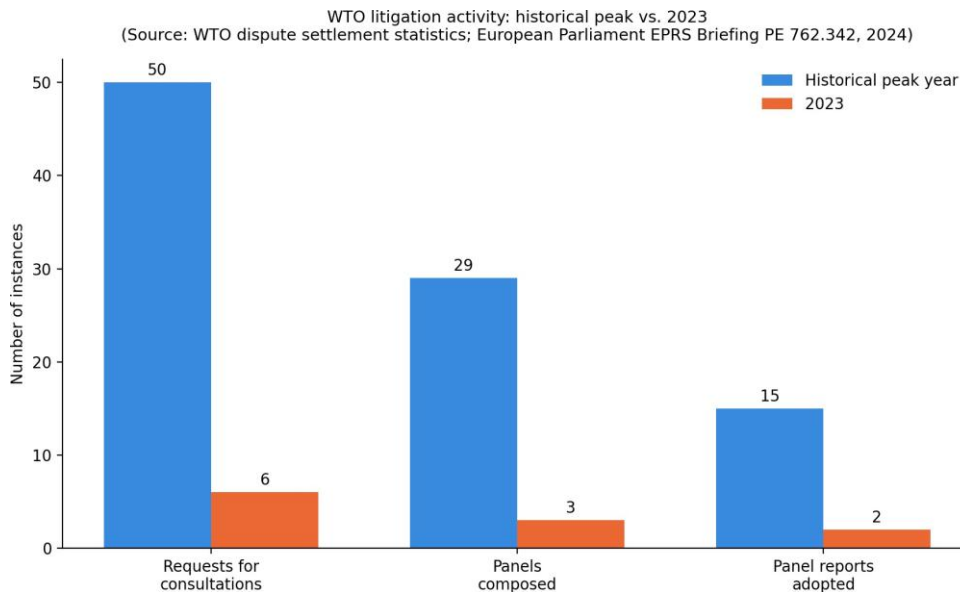


Figure 2. WTO litigation activity: historical peak year versus 2023. Sources: WTO dispute settlement statistics (WTO, n.d.-b); European Parliamentary Research Service Briefing PE 762.342 (EPRS, 2024).

This decline should be interpreted cautiously. It is consistent with, but does not by itself prove, a chilling effect attributable to the Appellate Body's paralysis; it may also reflect independent factors such as changes in global trade volumes, the diversion of trade disputes toward unilateral or plurilateral instruments outside the WTO, or a general secular decline in new WTO litigation that predates 2019. What the data does establish unambiguously is that the volume of new WTO adjudicative activity across all three indicators fell substantially in the years immediately following the Appellate Body's paralysis, a pattern consistent with the procedural paradox described in Part IV, in which the unavailability of a final appellate ruling reduces the practical value of initiating new litigation.

It is also worth noting what this decline does not show. A fall in new consultations and panel activity is not the same as a fall in the underlying volume of trade friction among Members; it may equally reflect a shift toward resolving disagreements through direct bilateral negotiation, through domestic trade-remedy proceedings insulated from WTO review, or through regional and plurilateral trade agreements with their own dispute settlement provisions, none of which would appear in WTO dispute settlement statistics at all. Distinguishing between a genuine reduction in trade disputes and a diversion of those disputes to fora outside the WTO's own data collection would require evidence, such as filings under regional trade agreements or domestic trade-remedy caseloads, that lies beyond the scope of the WTO's own dispute settlement statistics and is accordingly flagged here as a further avenue for future empirical research rather than resolved by the figures compiled in this article.

5.3 Cumulative Dispute Settlement Activity Through 2026

Notwithstanding this decline in new activity, the WTO dispute settlement system as a whole has continued to accumulate cases. As of the end of 2024, WTO Members had submitted 631 requests for consultations since 1995 (WTO, n.d.-c); by April 2026, the cumulative total of disputes assigned a distinct DS number had reached 645 (List of WTO dispute settlement cases, n.d.). Separately, a Japanese research institute's compilation, based on WTO case-status data, reported that 630 disputes had reached resolution as of November 2024, of which 511, or more than 80%, were resolved through the respondent's compliance with adopted recommendations rather than through continued litigation or authorized retaliation (Mitsui & Co. Global Strategic Studies Institute, 2025). This suggests that voluntary compliance, rather than appellate enforcement as such, has remained the dominant mechanism through which WTO rulings take practical effect, a point directly relevant to this article's broader argument that the rule of law in trade rests on compliance expectations that are logically prior to, even if reinforced by, the existence of a standing appellate tribunal.

5.4 Interpreting the Quantitative Record

Three inferences follow from this data. First, the pre-2019 system was not merely formally judicialized but functionally so: a 67% appeal rate meant that, for the majority of panel reports actually reaching circulation, appellate review was the expected next step, which is why its removal has had systemic rather than marginal significance. Second, the sharp decline in new consultations, panels, and panel reports after 2019, most visible by 2023, is consistent with a genuine reduction in Members' willingness to initiate litigation destined for a legal void, though it cannot be fully disentangled from other contemporaneous causes on the basis of the aggregate figures compiled here. Third, the persistence of a large stock of resolved disputes, and the continued predominance of voluntary compliance among them, indicates that the WTO's underlying compliance culture has not collapsed alongside the Appellate Body, a point developed further in Part VI in relation to the MPIA and in Part VIII in relation to the theoretical literature on international rule of law.

VI. The MPIA and the Fragmentation of Appellate Review

6.1 Structural Origin

Rather than abandon appellate review, a subset of WTO Members constructed the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), formally notified to the DSB in April 2020 and grounded in Article 25 of the DSU, which allows Members to submit disputes to arbitration as an alternative to the ordinary panel-and-appeal process (WTO, 2020a). The MPIA draws on a standing pool of ten arbitrators, first announced on 31 July 2020, and is expressly designed to replicate the substantive and procedural features of Article 17 appellate review, including independence, impartiality, and procedural efficiency, without amending the DSU itself (WTO Plurilaterals, 2026; WTO, 2020a).

6.2 Growth in Participation

MPIA membership has grown substantially since 2020. The arrangement began with nineteen original signatories in April 2020 (Pauwelyn, 2023) and had grown to twenty-six Members, out of a total WTO membership of 136 at the time, by the point of Pauwelyn's 2023 assessment. By March 2026, a detailed participant list associated with the arrangement recorded sixty-one participating Members and customs territories, including the European Union, China, Japan, Canada, Brazil, and Pakistan, though notably not the United States (WTO, 2026a, as reproduced in secondary compilations). Figure 3 presents this growth trajectory alongside the arrangement's case output.

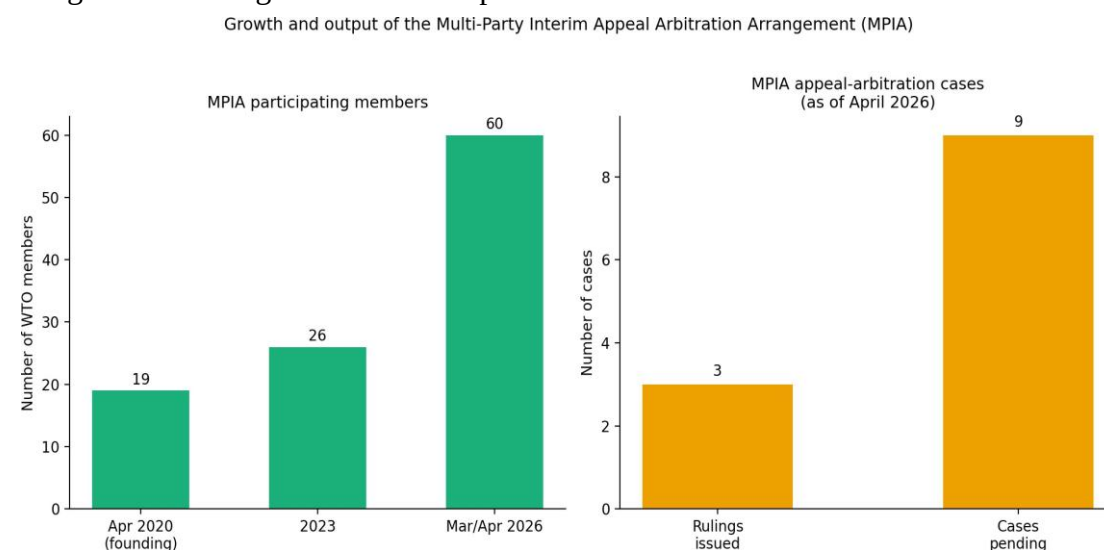


Figure 3. Growth and output of the Multi-Party Interim Appeal Arbitration Arrangement. Left panel: participating Members over time. Right panel: MPIA appeal-arbitration cases by outcome, as of April 2026. Sources: Pauwelyn (2023); WTO Plurilaterals (2026); Wikipedia compilation of WTO Secretariat communications (Appellate Body, n.d.), used here for the most recent data point only and cross-checked against the participant list in WTO (2026a).

6.3 Case Output

The MPIA's first completed appeal-arbitration award was issued on 21 December 2022 in Colombia - Anti-Dumping Duties on Frozen Fries (DS591), a dispute between Colombia and the European Union in which the

arbitrators reversed one panel finding and confirmed three others (Pauwelyn, 2023). Additional Article 25 notifications under the MPIA followed in disputes involving China, including matters concerning anti-dumping measures on stainless steel, canola seed, barley, and wine, as well as a dispute involving Australian anti-dumping and countervailing duty measures (Kluwer Arbitration Blog, 2023). By April 2026, secondary compilations indicate that the MPIA had issued three rulings in total, with nine further cases pending decision (Appellate Body, n.d.). This case volume remains modest relative to the historical caseload of the standing Appellate Body, but the trend is one of steady, if slow, institutional consolidation rather than disuse.

6.4 What the MPIA Does Not Achieve

The MPIA's central limitation is participation: its procedures bind only disputes in which both parties are MPIA Members, leaving disputes involving non-participants, most significantly the United States, fully exposed to the appeals-into-the-void dynamic (WTO Plurilaterals, 2026). Its second limitation is legitimacy. The United States has stated that it has no objection in principle to Article 25 arbitration but considers that the MPIA has incorporated, and in some respects aggravated, the very interpretive practices it criticized in Appellate Body jurisprudence (WTO, 2020a). A mechanism that resolves appeals for its own participants while failing to address the objections of the WTO's largest litigant cannot, on its own, constitute a systemic solution to the crisis; its significance lies in demonstrating that appellate-style review can be structurally separated from the institution of the Appellate Body itself, not in resolving the underlying legitimacy contest described in Part III.

6.5 Assessing the MPIA: Output, Fidelity, and Reform Potential

The MPIA is best assessed against three benchmarks: the volume and substantive difficulty of the cases it resolves, discussed above; procedural fidelity, meaning whether its arbitrators can deliver the predictability and error-correction benefits of appellate review without the specific practices the United States identified as objectionable, including expansive precedent, lax adherence to the ninety-day timeline, and unnecessary obiter findings; and its value as a template for eventual reform of Article 17 itself. On the first benchmark the record remains thin but growing; the second requires closer empirical study of arbitral reasoning than existing secondary literature has yet undertaken; and the third depends on whether Members treat the MPIA's accumulated practice as a genuine source of lessons for a future permanent mechanism, or instead allow it to harden into a permanent two-tier system in which participating and non-participating Members litigate under structurally different rules.

VII. Reform Debates and the Future of WTO Adjudication

7.1 The Infrastructure of Reform

Since the commitments made at the WTO's Twelfth and Thirteenth Ministerial Conferences, an informal, Member-driven reform process, initially facilitated by Ambassador Marco Molina and later by Ambassador Usha Dwarka-Canabady, has generated more than seventy discrete proposals addressing appeal and review functions and broader access to dispute settlement (WTO, 2024). The absence of agreement on a restored appellate mechanism by the process's original informal target indicates that consensus on first-order institutional principles, rather than on technical drafting, remains the binding constraint.

7.2 Recurring Reform Themes

Reform proposals converge on several recurring themes. On precedent, the challenge is to preserve the predictive value of consistent interpretation without recreating a *de facto* binding-precedent system; the Appellate Body's own practice of requiring "cogent reasons" before panels departed from earlier interpretations effectively created such a system despite the absence of formal *stare decisis* (Ishihara, 2023). On timeliness, proposals seek stricter enforcement of the ninety-day deadline in Article 17.5, treating repeated overruns as a question of institutional accountability rather than mere administrative delay. On domestic law, the concern is to prevent adjudicators from effectively substituting their own characterization of a Member's municipal law for that of the Member's own courts and authorities, an issue foregrounded in the 2019 Walker process (Howse,

2021). Further proposals address transparency, judicial economy, and limiting appellate reasoning to what is strictly necessary to resolve the dispute at hand.

7.3 The Walker Principles as a Starting Point

Ambassador David Walker's 2019 informal process produced the clearest existing articulation of possible common ground: respect for Members' own domestic legal determinations, limits on advisory findings, adherence to the ninety-day deadline, prompt departure of members whose terms have expired, and express recognition that prior reports should not carry the effect of binding precedent (Howse, 2021). Howse (2021) cautions against treating these principles as a resolved settlement; they are better understood as a structured starting point for negotiation than as a substitute for the underlying political bargain that reform will ultimately require.

7.4 The Political Economy of Reform

The reform debate is also a contest among differing conceptions of appropriate risk allocation. The United States remains primarily concerned with preserving domestic latitude over trade-remedy measures and limiting the precedential reach of appellate reasoning; the European Union has tended to prioritize coherence and predictability, partly out of concern that excessive deference to individual panels would reproduce the fragmentation problem described in Part IV; developing-country Members, with comparatively limited in-house legal capacity, have particular reason to value simple, low-cost, and predictable procedures; and China's continued participation in the MPIA reflects an interest among major trading powers in preserving some form of appellate mechanism notwithstanding unresolved disagreement over its design (Gao, 2021).

These differing priorities are not simply matters of negotiating posture; they reflect genuinely different assessments of where the greater institutional risk lies. Members concerned chiefly with over-judicialization will tend to favor design features, narrower jurisdiction, stricter timelines, explicit rejection of binding precedent, that constrain adjudicative discretion even at some cost to predictability. Members concerned chiefly with under-enforcement or fragmentation will tend to favor the opposite: a comparatively empowered appellate body capable of imposing doctrinal discipline on divergent panels, even at some cost to Member control. Because the 2019 crisis has left both risks simultaneously salient, doctrinal fragmentation from the loss of appellate consolidation, discussed in Part IV, and continued concern about interpretive overreach, discussed in Part III, any reform package will need to manage both concerns at once rather than trading one off cleanly against the other.

7.5 Alternative Scenarios and Institutional Architectures

Three broad architectures for the post-Appellate-Body system remain plausible. The first is sustained paralysis, in which panel-level adjudication continues but appeals into the void persist indefinitely, preserving some dispute settlement capacity while entrenching legal uncertainty. The second is continued expansion of MPIA-style arbitration without formal multilateral agreement, which is pragmatic and already underway, as Part VI documents, but risks normalizing a permanently differentiated system in which a member's access to genuine two-tier review depends on which other Members it happens to be litigating against. The third is comprehensive reform restoring or restructuring a universal appellate mechanism, which offers the strongest claim to a single predictable system but requires consensus on precisely the questions, precedent, timeliness, domestic law, and the scope of appellate reasoning, that produced the original impasse. Hoekman and Mavroidis (2021) argue that avoiding further erosion of the system requires Members to treat these design questions as inseparable from any restoration of standing appellate review, rather than resolving the personnel question first and the substantive questions later, an ordering that in the authors' view was itself a contributing cause of the original crisis.

VIII. Comparative and Theoretical Reflections

8.1 Comparison with Other International Tribunals

The WTO's institutional predicament is clarified by comparison with other international adjudicative bodies. The International Court of Justice depends on state consent through compromisers clauses, optional-clause

declarations, or special agreements, a jurisdictional basis considerably more contingent than the WTO's near-automatic jurisdiction over disputes among Members (Pauwelyn, 2019). The International Tribunal for the Law of the Sea likewise operates within a consent-based framework under the UN Convention on the Law of the Sea, and over a narrower subject-matter range than WTO dispute settlement's near-total coverage of trade regulation. Investor-state arbitration under instruments such as the ICSID Convention differs still further, since it allows private investors, rather than only states, to initiate claims, altering the underlying political dynamics of adjudication entirely. The WTO's combination of near-compulsory jurisdiction, negative-consensus adoption, and legally consequential remedies across a membership of more than 160 economies is comparatively unusual, and helps explain why disputes over the proper scope of WTO judicial authority carry such high political stakes relative to other international courts and tribunals.

8.2 What the Comparison Shows

This comparison suggests that the WTO's adjudicative model combines an unusually "obligatory and consequential" character: Members cannot easily evade the jurisdiction of the system once a dispute is properly initiated, and rulings can reach directly into sensitive instruments of domestic economic policy, including trade remedies, subsidies, and safeguards. Institutional reform is accordingly not simply a question of court design in the abstract; it is a question of how much authority over domestic economic policy WTO Members are collectively prepared to entrust to an international adjudicative body, a question with no clear analogue at the ICJ, ITLOS, or in investor-state arbitration.

A further point of comparison concerns enforcement. Unlike investor-state arbitration, where an award can often be enforced directly against state assets under instruments such as the ICSID Convention or the New York Convention, WTO rulings are enforced principally through the authorized suspension of concessions by the winning party, a self-help remedy that is costly to exercise and that tends to favor economically larger Members able to absorb the trade consequences of retaliation. This structural feature means that the WTO's rule-of-law claims have always rested as much on voluntary compliance, documented in Part V as the outcome in the large majority of resolved disputes, as on the formal availability of adjudicated remedies, reinforcing this article's broader argument that institutionalized compliance expectations, rather than the adjudicative body alone, carry the principal weight of the system's legitimacy.

8.3 Theoretical Lenses

Several theoretical traditions illuminate different facets of the crisis. Neoliberal institutionalism emphasizes that adjudicated dispute settlement lowers uncertainty and transaction costs and thereby facilitates cooperation among states engaged in repeated economic interaction under imperfect information (Keohane, 1984); on this view, the loss of appellate review raises the costs of assessing WTO-consistency and thereby weakens exactly the cooperative function dispute settlement was designed to serve. A constructivist perspective, by contrast, emphasizes that institutional legitimacy depends on intersubjective acceptance of how an institution ought to behave, not merely on the existence of formal rules; the erosion of United States confidence in the Appellate Body's interpretive practices reflects, on this account, a breakdown in shared understandings of appropriate judicial behavior rather than a purely mechanical vacancy problem (Finnemore & Sikkink, 1998). Historical institutionalism highlights path dependence: two decades of accumulated Appellate Body practice generated durable expectations, favorable to some Members and objectionable to others, that are now difficult to unwind even where flawed, which helps explain why the MPIA has emerged as an incremental adaptation rather than a wholesale institutional redesign. Finally, a realist perspective situates the dispute within the distribution of state power, noting that the United States' objections are inseparable from its concern that expansive appellate review could constrain its capacity to respond to economically significant rivals, particularly China, through trade-remedy instruments; this does not render the doctrinal debate insincere, but it explains why doctrinal disagreements of this kind become especially difficult to resolve once they touch materially significant economic interests.

8.4 The Rule of Law at the International Level

The Appellate Body crisis ultimately complicates any simple equation of the rule of law with the existence of a standing tribunal. What the quantitative record in Part V shows is that WTO adjudication has continued, in reduced volume, through panels and through the MPIA, and that the large majority of resolved disputes historically have depended on voluntary compliance rather than on continued litigation or authorized retaliation. This suggests that the rule of law in this domain is better understood as a property of institutionalized expectations, expectations of adjudication, reasoned decision-making, and compliance, then as a property of any single tribunal's uninterrupted operation. The Appellate Body's absence has degraded finality and doctrinal consistency, real and measurable costs documented above, but it has not by itself dissolved the underlying legal order.

IX. Conclusion

The central lesson of the Appellate Body crisis is not that the rule of law at the WTO has collapsed, but that it was always more institutional and political than the existence of a standing tribunal alone could guarantee. The quantitative record compiled in this article shows a system whose new litigation activity has fallen sharply since 2019, from a peak of 50 annual requests for consultations in 1997 to just 6 in 2023, and from 29 panels composed in 2018 to just 3 in 2023, alongside a Multi-Party Interim Appeal Arbitration Arrangement that has grown from nineteen to roughly sixty participating Members and has, as of April 2026, issued three rulings with nine more pending. Neither figure supports a claim of total institutional collapse; both support a claim of significant, uneven, and still unresolved institutional recalibration.

This recalibration is best understood as a constitutional moment in which Members are renegotiating the appropriate balance between judicial authority, interpretive consistency, and state control, rather than as evidence that WTO legality itself has failed. The stakes of that renegotiation extend well beyond the parties to any single dispute: predictable adjudication lowers the cost of anticipating how trade obligations will be interpreted, a function of particular importance to developing and smaller economies with comparatively limited capacity to litigate or to track divergent panel reasoning across cases. The credibility of the commitments Members negotiates, and thus their practical value in organizing cross-border trade, depends on the durability of exactly these expectations.

Three further implications follow for how the crisis should be studied going forward. First, the quantitative baseline assembled in Part V should be extended and refined as more post-2019 data accumulates, particularly once a larger sample of MPIA awards becomes available for systematic comparison against pre-2019 Appellate Body reasoning on procedural fidelity, precedent, and adherence to the ninety-day timeline. Second, the distributive question raised in Part IV, whether doctrinal fragmentation burdens smaller and developing-country Members disproportionately, warrants dedicated empirical study rather than the provisional treatment it necessarily receives here. Third, comparative institutional analysis of the kind undertaken in Part VIII should continue to inform WTO reform design, since the WTO's unusual combination of near-compulsory jurisdiction and direct reach into domestic economic policy has no precise analogue among other international courts and tribunals from which a ready-made institutional template could simply be transplanted.

The historical trajectory is instructive. The GATT 1947 system offered a partial, politically conditional rule of law; the WTO's 1995 reforms introduced compulsory jurisdiction, negative consensus, and appellate review as a considerably more legalized alternative. The Appellate Body's paralysis raises the question whether that legal order depends on a specific standing judicial body or on more fundamental, renewable expectations of compliance, adjudication, and judicial restraint among Members. The evidence assembled here points toward the latter. Whether the WTO ultimately restores a universal appellate mechanism, formalizes the MPIA as a permanent plurilateral alternative, or arrives at some hybrid of the two, the durability of the rule of law in international trade will depend less on replicating the pre-2019 institutional form than on whether Members can agree on a system whose legitimacy, precisely because its interpretive limits are clear and broadly accepted, no longer depends on the contested question of how much judicial power any single Member is willing to tolerate.

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Ethical Statement

Ethical approval was not required because this study is based exclusively on publicly available legal documents, judicial decisions, treaties, and published literature and did not involve human participants, animals, or confidential data.

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