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ABSTRACT

Established in 1995, the World Trade Organization's (WTO) Dispute Settlement System (DSS) is used to resolve trade-related disputes between WTO member states. It has received over 500 complaints since its inception, and utilises both political negotiation and adjudication for dispute resolution. Today the DSS faces an unprecedented crisis due to US obstruction, which may render the system effectively dysfunctional by late 2019. It is likely that any solution to the ongoing crisis would require the negotiation of wide-reaching institutional and structural reforms between WTO member states. In this context, it is both timely and useful to evaluate India's experience with the DSS. This paper provides an overview of India's disputes before the DSS, and examines the various procedural and substantive issues encountered by member states over the years. It analyses recommendations for reform that will be important from India's perspective as a developing country.

(This paper is part of ORF's series, 'India and Global Governance'. Find other research in the series here: https://www.orfonline.org/series/india-and-global-governance/)

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INTRODUCTION

The multilateral trading system is facing unprecedented challenges on multiple fronts. The trade and tariff war is digressing from the established rules of trade, and is escalating in the backdrop of a complex set of factors. These include the emerging economic rivalry between the US and China, the surge in protectionist measures, and the deadlock between developed and developing countries regarding the future of trade negotiations.

A major, and perhaps the most perilous threat is being targeted towards the so-called "crown jewel" of the World Trade Organization (WTO), i.e., the Dispute Settlement System (DSS). The DSS is a mechanism to resolve trade disputes between member states, and utilises both political negotiation and adjudication for dispute resolution. The US is actively blocking the appointment of new members to the WTO's Appellate Body (AB), a seven-member permanent organ that adjudicates appeals within the DSS.[1] Should these vacancies remain unfilled, the AB will be left with only one member by late 2019, leaving the DSS virtually dysfunctional.[2] In a speech in November 2018, WTO Director-General Robert Azevêdo emphasised that the "most urgent issue facing us" is the crisis in the DSS, particularly "the impasse in appointments to the AB".[3] It is not difficult to hypothesise that with a dysfunctional DSS, countries may resort to unilateral measures to protect their trade interests; this threatens the entire rules-based trading regime.

Established in 1995, the DSS' journey has been unparalleled in terms of the sheer numbers and variety of cases it has had to adjudicate. However, over the years, member states have expressed concerns regarding various procedural and substantive aspects of the DSS. These include, inter alia, the term of appointments of the AB members, the acceptable standards of review in disputes, and the need to streamline the appellate procedure. Some of these concerns are shared uniformly among member states and can be rectified if countries can reach the

critical threshold of consensus for decision-making.

The US has been the only country to challenge the DSS in a manner that effectively disrupts its functioning. The US' 2018 Trade Policy Agenda enumerates its issues with the DSS, which are more or less aligned with the concerns raised by other countries mentioned above.[4] This begs the question of whether the US has any other deep-seated concern with the DSS. A 2005 US proposal (reiterated in 2007, and again in the 2018 Trade report) puts forth an unconventional set of reforms that aim to increase the control of member states over DSS decisions, thereby allowing them to bilaterally modify, review and delete parts of the rulings.[5] The US' grievances can be further understood in the context of US President Donald Trump's statement – though contested by scholars[6] – alleging that the US "loses almost all of the lawsuits in the WTO."[7] Should these reforms be accepted, it will undermine the rule-oriented nature of the DSS and give way to an unequal, power-oriented system. It remains to be seen whether the US' true agenda is to push for these specific proposals or to incapacitate the WTO and coerce countries to abandon it.

It is difficult to predict how the ongoing crisis will be resolved, if at all. What can be posited is that the only lifeline for an institution in crisis is the possibility of negotiating a package of mutually acceptable, institutional and structural reforms.

What should be India's position in this regard? As one of the most active participants of the DSS, India has stakes in the ongoing crisis at the WTO. It not only needs to ensure that the DSS continues to survive, but also make efforts to preserve the interests of developing countries and least developed countries (LDCs). It is therefore both timely and useful to evaluate India's experience with the DSS, and identify areas for reform to enable the DSS to function effectively and efficiently.

The paper first gives a brief description of the DSS process. It provides a broad, statistical overview of India's disputes and analyses the trade

measures, industries and countries with which India frequently has disputes with. The second part of the paper will look at suggestions and recommendations for reform, which will enable the DSS to function in a manner that fulfills its mandate and meets the expectations of its member states.

THE DSS: AN OVERVIEW

The WTO was set up in 1995, with the purpose of opening trade, establishing a platform for trade negotiations and providing a venue for dispute settlement. The eight-year-long Uruguay Round negotiations (1986-1994) also resulted in the creation of the DSS and the adoption of the Dispute Settlement Understanding (DSU)[8] to govern trade disputes between member states. The DSU embodies important principles for the functioning of the DSS, that is, to provide "stability and predictability to the multilateral trading system"[9] and to establish a "fast, efficient, dependable and rule-oriented system to resolve disputes"[10]. The DSU not only provides a forum for an aggrieved state to ensure its rights, but also enables a respondent state to defend its claims and to interpret, clarify and correctly apply the rights and obligations provided under the WTO agreements.

Prior to the DSU, trade-related dispute resolution was governed by the provisions of the 1947 General Agreement on Tariffs and Trade (GATT 1947) and the 1979 Dispute Settlement Understanding. While the erstwhile dispute settlement mechanism provided a platform for settlement of trade disputes, it suffered from various weaknesses. The rules were inconsistent, there was no right to appeal and no teeth to enforce rulings, and it effectively allowed member states to pick and choose which decisions to adopt.[11] The 1995 DSS aimed to address these shortcomings, and introduced a slew of reforms such as the nearly automatic adoption of DSS rulings, the right to a panel, the option of retaliation in cases of non-compliance, and stricter timelines.[12]

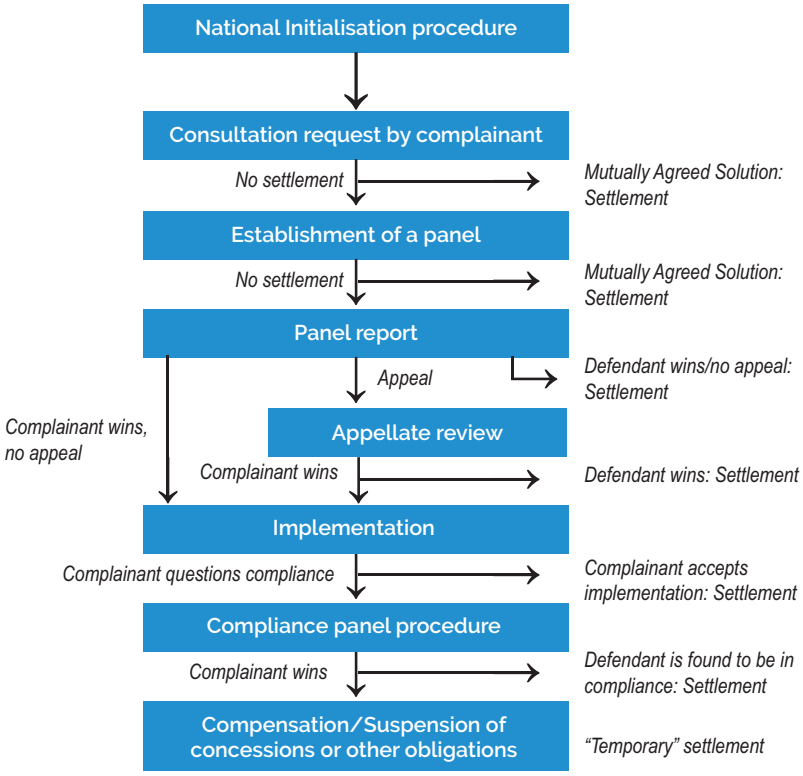
These reforms were crucial for developing countries and LDCs as they helped establish a rule-oriented system, as opposed to a power-oriented one. For instance, it replaced the consensus-based procedure with the "negative consensus mechanism" for establishing panels, and adopting panel and AB reports. This means that any decision is automatically adopted (and considered binding) unless there is a consensus *against* it. Since negative consensus is largely a theoretical possibility,[13] it ensured the nearly automatic adoption of DSS rulings and recommendations.

In the 24 years of its functioning, the DSS has received 586 complaints,[14] issued over 350 rulings,[15] and has seen a compliance rate of around 90 percent in its cases.[16] This is a large number of cases in comparison with other major international adjudicatory bodies, such as the International Court of Justice (established in 1945), the International Tribunal for the Law of the Sea (1982), and the International Criminal Court (2002), which have received only 177,[17] 27,[18] and 27[19] cases, respectively. The former GATT 1947 dispute settlement mechanism in its 48 years of existence had received only 127 complaints.[20] Given the drawbacks of the GATT 1947 dispute settlement mechanism, India was likewise not an active participant and was involved in only three disputes—against Pakistan (1948),[21] the US (1981),[22] and Japan (1984).[23]

The high frequency with which the DSS is invoked indicates the confidence in the mechanism to resolve trade disputes, and protect the rights and obligations of member states.

The DSS process comprises three stages: (1) consultations between parties; (2) adjudication by panels, or the Appellate Body (if appealed); and (3) implementation of the ruling, including the possibility of countermeasures if the losing party does not implement the ruling.[24] (See Fig. 1.)

Fig 1. An overview of the WTO DSS



Source: Thomas A. Zimmerman, "WTO Dispute Settlement: General Appreciation of the Role of India" in WTO and Dispute Resolution, ed. K. Padmaja, (Hyderabad: The Ifcai University Press, 2007), 151.

The WTO's jurisdiction over disputes is compulsory and all members are subject to it by virtue of having signed and ratified the agreement. A dispute arises when a member state adopts a trade policy that one or more members consider to be inconsistent with the obligations set out in WTO trade agreements. In such a case, a member state is entitled to challenge the policy measure by invoking the procedure of the dispute settlement system.

Stage 1: Consultations

In the consultation stage (60 days) parties are given an opportunity to meet bilaterally and arrive at a mutually agreed solution. The WTO DSS

gives priority to a mutually acceptable solution and encourages parties to arrive at the same at any stage of the dispute.[25]

A majority of disputes do not go beyond the consultation stage, either because parties reach a mutually satisfactory solution or because the complainant decides against pursuing the matter for other reasons.[26] Thus, consultations are an important feature of the DSS and enable parties to clarify facts, understand claims of the complainant and dispel any misunderstandings as to the actual nature of the measure at issue.[27]

Stage 2: Adjudication by Panel and the Appellate Body

If no solution is reached, the complainant may request the establishment of a panel to adjudicate the dispute. After hearing the parties, the panel makes an objective assessment of the complainant's claim and issues its decision in a report. If the report is appealed, the dispute will go to appellate proceedings.

An appeal is only limited to legal questions, and cannot examine new facts or evidence.[28] The AB may uphold, modify or reverse legal findings and conclusions of the panel.[29] The Dispute Settlement Body (DSB) must adopt, and the parties unconditionally accept, the AB report through the negative consensus mechanism.

Stage 3: Implementation and Countermeasures

If the proceedings before the DSS end against the respondent, it is likely that the Panel or the AB will recommend the respondent member state to bring its "measures in conformity with the relevant WTO Agreement".[30] If it is impracticable to do so immediately, the parties may determine a "reasonable period of time" for implementation through arbitration proceedings.[31]

If implementation is non-satisfactory, a "compliance panel" (Article 21.5 procedures) will be established to scrutinise whether the implementing measure complies with the ruling, and if it is consistent with the covered agreement.[32]

In case of non-implementation, the prevailing complainant can also resort to temporary measures, i.e. (1) compensation[33] or (2) suspension of WTO obligations.[34] Suspension comprises retaliatory trade sanctions and requires the authorisation of the DSB and must be "equivalent to the level of nullification or impairment caused by non-compliance". If a dispute arises regarding the form or the manner of suspension of concessions invoked, it can be referred to arbitration to the original panel.[35]

The DSB continues surveillance – even where compensation has been agreed to or obligations have been suspended – as long as recommendation to bring trade measures into conformity has not been implemented.[36]

The following are some other elements of DSS which are important to the proceedings:

Dispute Settlement Body (DSB)

The General Council (WTO's highest decision-making body) comprises representation (ambassadors or equivalent) from member states and also meets as the Dispute Settlement Body (DSB).[37] The DSB is essentially a political body and is established to administer rules and procedure of the DSU and has been tasked with fulfilling various functions.[38] The DSB has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorise suspension of concessions and other obligations under the covered agreements.[39] The DSB's decision with respect to establishing panels, adopting panel and appellate body reports, and authorising retaliation, is taken by the "negative" or

"reverse" consensus method.

All other decisions, such as the appointment of panel or appellate body (AB) members, are taken through the positive consensus mechanism.

Appellate Body (AB)

The AB is a permanent body of seven members who are appointed by the DSB for four-year terms. A panel for appeals comprises three from the seven-member AB. As per the DSU, the Appellate Body members shall be persons of recognised authority with demonstrated expertise in law, international trade and the subject matter of the WTO agreements.[40] Most AB members have been university professors, practicing lawyers, past government officials and senior judges.[41]

Special and Differential treatment for Developing Countries and LDCs

Given that developing and least developed countries (LDCs) can face legal, financial and political constraints in bringing cases, the WTO makes provisions for "special and differential treatment" for these countries, to provide them with a level playing ground. These include, for instance, "special attention" to particular problems and interests of developing countries,[42] according sufficient time to prepare and present its defence,[43] and provision for accelerated DSS procedure on their request.[44]

Developing country members and LDCs can also take the assistance of the Advisory Centre on WTO Law (ACWL), a Geneva-based legal aid centre for assistance in dispute settlement, legal advice, legal services and training.[45] While legal advice and training at the ACWL are provided free of charge, assistance in the dispute settlement process are chargeable at a discounted rate. Though these rates are subsidised, they are still prohibitive for developing countries and LDCs. Since the

establishment of the ACWL in 2001, India has so far taken its support in only four cases, all against the US.[46]

INDIA AT THE DISPUTE SETTLEMENT SYSTEM

In 1994, the initial reactions to India's participation in the WTO and the DSS were pessimistic; there was apprehension that such participation could affect India's sovereignty and only deepen poverty.[47] This was a natural reaction given the form and nature of India's trade policy: it imposed a system of high tariffs, import licensing and quota restrictions, and was inward-looking and protectionist. This changed in 1991 when India adopted Liberalization, Privatization and Globalization (LPG) reforms. However, in some sectors, India continued to impose quantitative restrictions until late 1996.

These apprehensions did not deter India from participating in the DSS. Since 1995, out of the 164[48] member states India has been the 5th most active participant in cases before the DSS. India has been a complainant in 24 cases and a respondent in 31 cases, and has participated as a third party in 160 cases. (See Table 1.)

Table 1: Top 10 Most Active users of WTO DSS

Country	Complainant	Respondent	Total	Third Party
United States	124	154	278	151
European Union	102	85	187	200
China	20	43	63	173
Canada	39	23	62	147
India	***24***	***31***	***55***	***160***
Brazil	33	16	49	141
Argentina	21	22	43	62
Japan	26	15	41	205
Mexico	25	15	40	105
Korea	20	18	38	126

Source: Author's compilation from "Disputes by Member", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm

Out of the top 10 users, four are categorised as developed countries i.e., US, EU, Japan and Canada, while the rest are developing countries.[49] The US and the EU, however, are the leading users of the DSS, and are involved in four to five times as many cases as any other country. Current research points out that though developed countries account for only 25 percent of the WTO membership, they have initiated the DSS process in nearly 60 percent of the disputes.[50] Furthermore, the figures on participation are worse for LDCs; they represent one-fifth of the membership of the WTO, but constitute less than one percent of participation in the DSS.[51]

The low participation by developing countries and LDCs may be attributed to various barriers: legal and administrative costs associated with pursuing a dispute ("participation cost"); possibility of creating friction in relations with respondent country ("political costs"); and lack of capacity or knowledge of trade rules ("legal capacity cost").[52] Similar issues are also faced by India in filing disputes before the WTO, viz. inadequate domestic legal capacity, lack of coordination between trade officials, legal experts and policy representatives, and doubtful litigation strategies.[53]

As a complainant, India has filed a majority of its disputes against trade restrictive measures in textiles and clothing (9), followed by pharmaceuticals (4), steel (3) and the fisheries & marine sector (2). India also has the distinction of challenging immigration laws, for the first time, by bringing a dispute against the US on new visa rules on H-1B and L-1 visas.[54] (See Table 2). As a respondent, India has faced a majority of complaints in relation to its measures on agricultural products (15); out of these, 6 disputes challenged India's erstwhile quantitative restriction measures in agriculture, as well as textiles and industrial products. The remaining disputes are in relation to automobiles (2), pharmaceuticals (2) and information & communications technology equipment (2). (See Table 3).

Table 2: India's disputes as a complainant

Respondent	Year	Case name	Sector concerned
Argentina	2001	Measures Affecting the Import of Pharmaceutical Products (DS233)	Pharmaceuticals
Brazil	2001	Anti-Dumping Duties on Jute Bags from India (DS229)	Textiles and Clothing
European Union (formerly EC)	1998	Restrictions on Certain Import Duties on Rice (DS134)	Agriculture
	1998	Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India (DS140)	Textiles and Clothing
	1998	Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India (DS141)	Textiles and Clothing
	2002	Conditions for the Granting of Tariff Preferences to Developing Countries (DS246)	Textiles and Clothing
	2004	Anti-Dumping Duties on Certain Flat Rolled Iron or Non-Alloy Steel Products from India (DS313)	Steel
	2008	Expiry Reviews of Anti-dumping and Countervailing Duties Imposed on Imports of PET from India (DS385)	Chemicals and Plastics
	2010	Seizure of Generic Drugs in Transit (DS408)	Pharmaceuticals
Netherlands	2010	Seizure of Generic Drugs in Transit (DS408)	Pharmaceuticals
Poland	1995	Import Regime for Automobiles (DS19)	Automobiles
South Africa	1999	Anti-Dumping Duties on Certain Pharmaceutical Products from India (DS168)	Pharmaceuticals

Respondent	Year	Case name	Sector concerned
Turkey	1996	Restrictions on Imports of Textile and Clothing Products (DS34)	Textiles and Clothing
	2012	Safeguard measures on imports of cotton yarn (other than sewing thread) (DS428)	Textiles and Clothing
United States	1996	Measures Affecting Imports of Women's and Girls' Wool Coats (DS32)	Textiles and Clothing
	1996	Measures Affecting Imports of Woven Wool Shirts and Blouses from India (DS33)	Textiles and Clothing
	1996	Import Prohibition of Certain Shrimp and Shrimp Products (DS58)	Fisheries/Marine
	2000	Anti-Dumping and Countervailing Measures on Steel Plate from India (DS206)	Steel
	2000	Continued Dumping and Subsidy Offset Act of 2000 (DS217)	n/a*
	2002	Rules of Origin for Textiles and Apparel Products (DS243)	Textiles and Clothing
	2006	Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties (DS345)	Fisheries/Marine
	2012	Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)	Steel
	2016	Measures Concerning Non-Immigrant Visas (DS503)	Services
	2016	Certain Measures Relating to the Renewable Energy Sector (DS510)	Renewable energy equipment
	2018	Certain Measures on Steel and Aluminium Products (DS547)	Steel and Aluminium

n/a: Multiple sectors affected*

Source: Compiled by the author from "Disputes by member", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm. Column D from James J. Nedumpara, "'Naming, Shaming and Filing': Harnessing Indian Capacity for WTO Dispute Settlement", Trade Law and Development 5, no. 1, (2013): 68-108.

Table 3: India's disputes as a respondent

Complainant	Year	Case name	Sector concerned
Australia	1997	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products (DS91)	Agricultural, Textiles and Industrial Products
	2019	Measures Concerning Sugar and Sugarcane (DS580)	Agriculture
Bangladesh	2004	Anti-Dumping Measure on Batteries from Bangladesh (DS306)	Chemicals
Brazil	2019	Measures Concerning Sugar and Sugarcane (DS579)	Agriculture
Canada	1997	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products (DS92)	Agricultural, Textiles and Industrial Products
European Union (EC)	1997	Patent Protection for Pharmaceutical and Agricultural Chemical Products (DS79)	Pharmaceutical and Chemicals
	1997	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products (DS96)	Agricultural, Textiles and Industrial Products
	1998	Measures Affecting Export of Certain Commodities (DS120)	Agriculture, Leather
	1998	Measures Affecting the Automotive Sector (DS146)	Automobile
	1998	Import Restrictions (DS149)	n/a*
	1998	Measures Affecting Customs Duties (DS150)	n/a*
	2002	Import Restrictions Maintained Under the Export and Import Policy 2002-2007 (DS279)	Agriculture and Chemicals
	2003	Anti-Dumping Measures on Imports of Certain Products from the European Communities (DS304)	n/a*
	2006	Measures Affecting the Importation and Sale of Wines and Spirits from the European Communities (DS352)	Agriculture/ Wines and Spirits
	2008	Certain Taxes and Other Measures on Imported Wines and Spirits (DS380)	Agriculture/ Wines and Spirits
	2019	Tariff Treatment on Certain Goods in the Information and Communications Technology Sector (DS582)	Information and Communications Technology equipment

Complainant	Year	Case name	Sector concerned
Guatemala	2019	Measures Concerning Sugar and Sugarcane (DS581)	Agriculture
Japan	2016	Certain Measures on Imports of Iron and Steel Products (DS518)	Steel
	2019	Tariff Treatment on Certain Goods (DS584)	Information and Communications Technology equipment
New Zealand	1997	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products (DS93)	Agricultural, Textiles and Industrial Products
Switzerland	1997	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products (DS94)	Agricultural, Textiles and Industrial Products
Chinese Taipei	2004	Anti-Dumping Measures on Certain Products from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (DS318)	n/a*
	2015	Anti-Dumping Duties on USB Flash Drives from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (DS498)	USB Flash Drives
United States	1996	Patent Protection for Pharmaceutical and Agricultural Chemical Products (DS50)	Pharmaceutical and Chemicals
	1997	Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products (DS90)	Agricultural, Textiles and Industrial Products
	1999	Measures Affecting Trade and Investment in the Motor Vehicle Sector (DS175)	Automobile
	2007	Additional and Extra-Additional Duties on Imports from the United States (DS360)	Agriculture/ Wines and Spirits
	2012	Measures Concerning the Importation of Certain Agricultural Products (DS430)	Agriculture
	2013	Certain Measures Relating to Solar Cells and Solar Modules (DS456)	Renewable Energy equipment
	2018	Export Related Measures (DS541)	n/a*
	2019	Additional duties on certain products from the United States (DS585)	n/a*

n/a: multiple sectors affected*
Source: Compiled by the author from "Disputes by member", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm. Column D from James J. Nedumpara, "'Naming, Shaming and Filing': Harnessing Indian Capacity for WTO Dispute Settlement", Trade Law and Development 5, no. 1, (2013): 68-108.

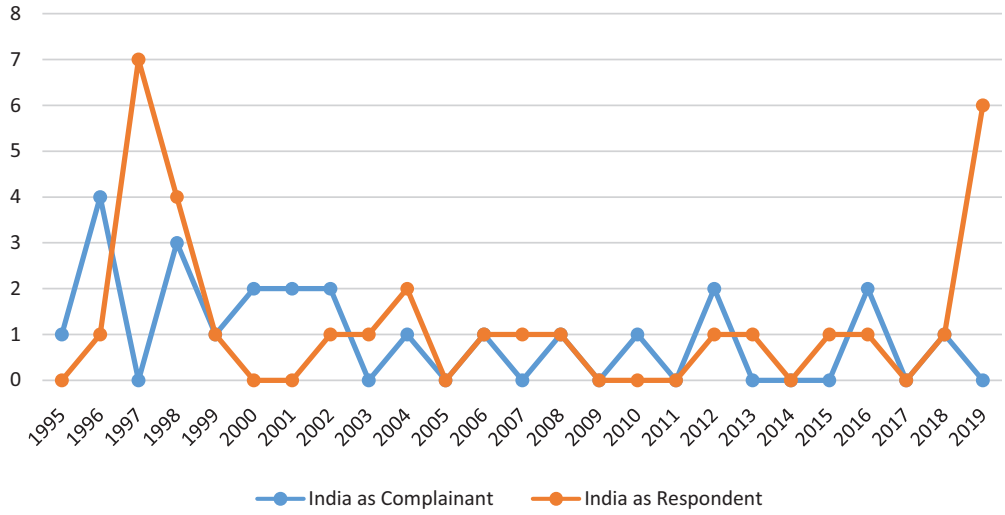
India has lost some important initial cases, leading to far-reaching law and policy reforms. It lost the "mail box" patents case[55] (DS 79 and DS 50), for instance, following which India enacted the Patents Amendment Act (1999) to set up a legal basis for treatment of mailbox applications and for grant of exclusive marketing rights.[56] The decision against India in the *India - Quantitative Restrictions case*[57] was far-reaching and India had to bring several reforms in its trade policies.

These losses resulted in public outcry and condemnation of India's decision to join the WTO.[58] They have, in turn, enabled India to increase its human and institutional capacity, enhance involvement of industry stakeholders and strengthen preparation of cases before the WTO.[59] Some losses have enabled India to become a more proactive litigant. For example, after its defeat in *India — Solar Cells,*[60] India complained and won against the US in a similar matter[61] pertaining to domestic content requirement in the renewable energy sector.

At the same time, India has initiated and won several important cases before the WTO, which have helped lay down important jurisprudential principles for international trade law. These include the *US — Shrimp,*[62] the *EC — Bed Linen,*[63] and the *EC — Tariff Preferences.*[64] For instance, in the *EC — Tariff Preferences* the panel's findings established some important principles regarding the non-discriminatory application of the Generalized System of Preferences (GSP). The principles enunciated in this dispute may be useful, if India decides to challenge the US decision to terminate India's designation as a "beneficiary developing country" under its own GSP programme.[65] However, not all victories have necessarily led to good outcomes in terms of the legal interpretation and reasoning adopted. In *US — Shrimp,* it is argued that the findings of the panel and the AB "not only tramples upon the sovereign rights of states to have their own environmental protection regimes, but also goes a long way to legitimise green protectionism."[66]

Fig. 2 provides the distribution of India's cases (as a complainant and respondent) from 1995 to 2019.

Fig. 2: Distribution of India's cases: 1995 - 2019



Source: Author's calculation from "Disputes by member", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm

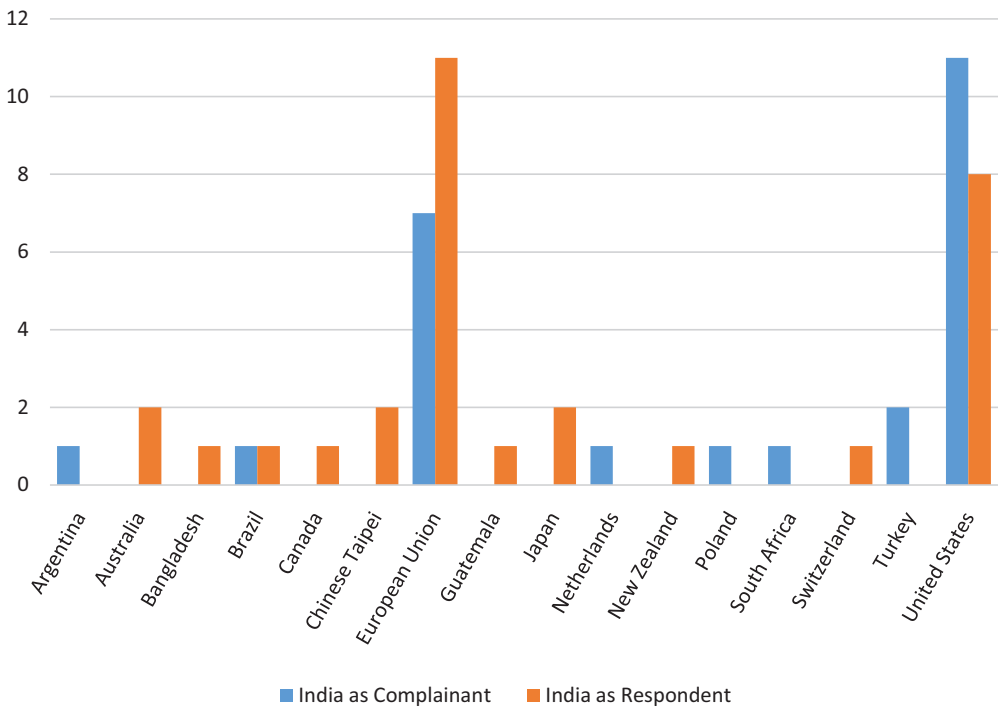
India faced the highest number of disputes in 1997 as a result of the quantitative measures it maintained to cope with a balance of payments crisis.[67] India also filed a high number of complaints in the years 1996 and 1998 where it challenged trade barriers to its important export products, such as textiles & clothing, and agriculture. A reason for the high number of cases in its initial years is that many disputes were put on hold as member states awaited the setting up of the DSS in 1995. Once the system was established, many of these complaints were filed, thereby leading to a surge of cases.[68] It is noteworthy that the declining pattern in India's distribution of disputes over the years mirrors the drop in DSS disputes overall. From receiving an average of 37 complaints in a year (1995-98), the numbers declined to an average of 15 in a year (2015-16).[69] More recently, however, as the trade and tariff war brewed between various member states, as many as 39 disputes were filed before the DSS in 2018.[70]

Following 1998, India's average dropped to two or three cases per year. So far this year, India is facing its highest number of complaints

since 1997. India's sugarcane subsidies, such as the fair and remunerative price mechanism, is being challenged at the DSS by Brazil, Guatemala and Australia. Additionally, India's import duties on products like mobile phones, base stations and routers under the "Make in India" initiative have been the subject of complaints from Japan, the EU and the US.

Out of the total 55 cases before the WTO, the US and EU have either been a complainant or respondent in 37 cases. (See Figure 3.) There can be several reasons for this: first, it underscores the trading stakes that India has with these countries and, second, it can also indicate India's desire to ensure that any issue with the biggest participants of global trade is settled through a rules-based system. Moreover, both the EU and the US have greater resources, administrative capacity and legal

Fig. 3: India's cases by country



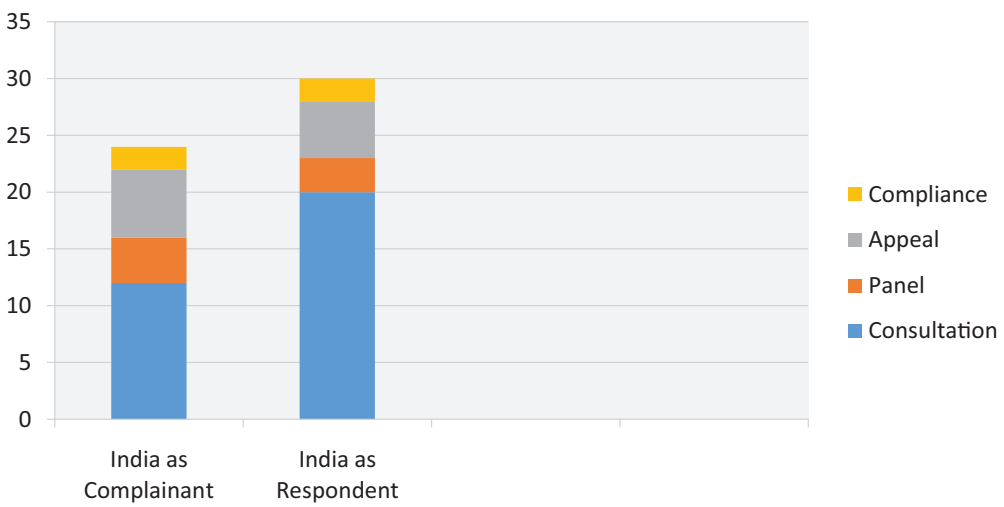
Source: Author's calculation from "Disputes by member", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm.

expertise that allow them to litigate more than other countries at the DSS.

A few of India's complaints against WTO member states are not necessarily due to an underlying trade dispute between them. For instance, India's complaint against Argentina[71] in 2001 was mainly motivated by information discovery. Indian pharmaceutical producers were keen to explore market opportunities in Argentina, particularly in generic medicines. India's request for consultation was particularly useful in receiving vital information on the comprehensive legal regime applicable to the sector.[72]

As discussed earlier, the DSS process is spread over various stages i.e., consultations, panel hearings, appellate proceedings and compliance proceedings. Out of 55 cases, the disputes reached the panel stage and beyond in only 22. (See Figure 4.) Majority of India's cases do not go further than the consultation stage, and are either mutually settled, terminated or withdrawn.

Fig. 4: Stages reached in disputes



Source: Author's calculation from "Disputes by member", World Trade Organization, accessed July 4, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm

In cases where India is a respondent, there appears to be a higher propensity to settle through a mutually agreed solution or to withdraw/terminate proceedings. On the contrary, in cases where India is a complainant more cases reach the panel, appellate and compliance stages. In both categories of disputes, India's cases with the US and the EU are likely to reach panel, appellate and compliance proceedings. For instance, seven out of eight cases of India as a respondent against the US reached the appellate stage.

The average time taken at each stage of the process is much longer than the statutory deadline given in the DSU. (See Table 4.) Both consultations and panel proceedings take an additional 200-300 days on average to complete. Compliance proceedings also take longer, and in two cases with India as a respondent, i.e. *India — Agricultural Products,*[73] and *India — Solar Cells,*[74] compliance proceedings have been ongoing since 2017 and 2018, respectively.

The delays experienced at various stages of the DSS are not unique to India and have been a feature of other WTO disputes as well. In a statistical analysis of disputes from 1995-2010,[75] the average time taken to complete consultations, panel proceedings, AB proceedings and compliance proceedings, were 164.6 days, 444.9 days, 90.3 days and 296.8 days, respectively. A 2017 study provides a wider temporal analysis and states that from 1995-1999 the DSS completed most of its proceedings in one or two years, but from 2007-2011, it took two or three years to complete cases even though it was working with a comparatively smaller workload.[76] Various reasons have been given for these delays, such as the lack of availability of experienced lawyers at the secretariat, unavailability of panelists, and delays in translating the reports to WTO languages.[77]

The 1994 General Agreement on Tariffs and Trade (GATT) has been the most frequently invoked agreement before the DSS. (See Figure 5.) GATT contains the basic principles of free trade and market access, such as most favoured nation treatment, anti-dumping and subsidies.

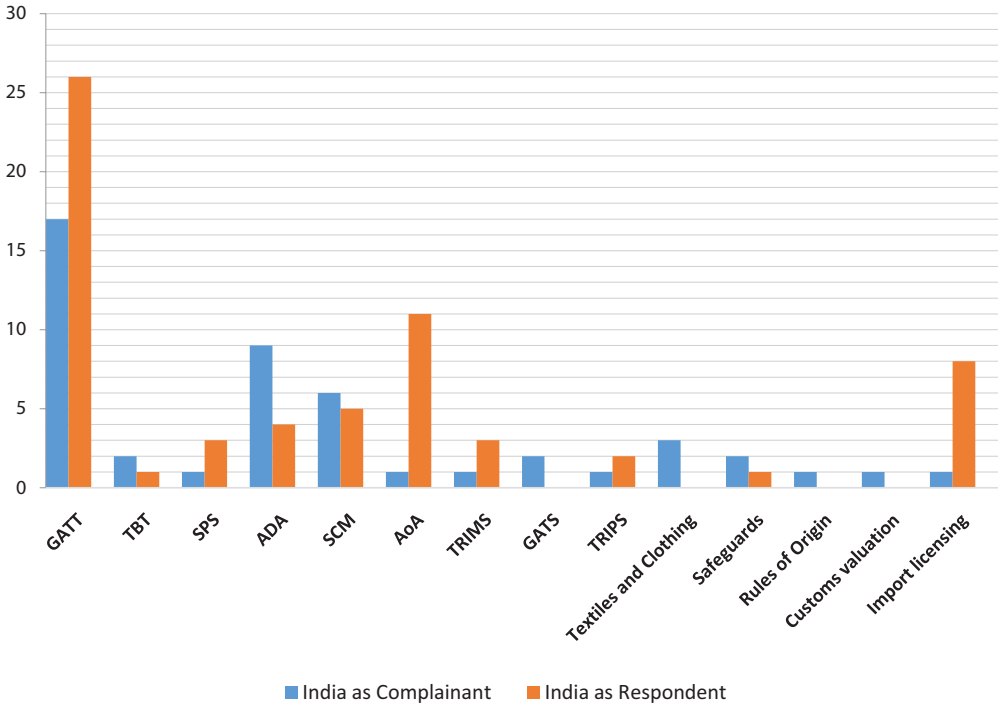
Table 4: Average time taken at each stage of dispute

Process	Statutory Deadline (in days)	Explanation	Average Length of Process (in days)	
			Complainant	Respondent
Consultations leading to establishment of panel	60	From date of request of consultations to date that panel was established, or until mutually agreed solution reached.	254	242.3
Consultations leading to settlement or termination of proceedings			166.7	361.8
Panel proceedings	180	From date that panel was established to the date of circulation of Panel report.	450.5	493.9
Appellate Body proceedings	60	From date of notice of appeal until date of circulation of AB report	89.6	89
Compliance Panel	90	From date of request to establish first compliance panel until circulation of compliance panel report	356.5	Currently ongoing in 2 cases, and have not been completed.

Source: Author's calculation from "Disputes by member", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm

Several WTO Agreements are derived from or expand upon these basic principles. For instance, the Anti-Dumping Agreement ("ADA") expands on Article VI of GATT, which relates to the application of Anti-Dumping and Countervailing duties.[78] While Article VI GATT lays down the basic definitions and principles for imposing anti-dumping duties, the ADA sets forth detailed provisions relating to determination, investigation and imposition of anti-dumping duties.

Fig. 5: WTO Agreements subject to litigation



Source: Author's calculation from "Disputes by member", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm

KEY			
GATT	General Agreement on Tariffs and Trade 1994	**SCM**	Agreement on Subsidies and Countervailing Measures
ADA	Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)	**TRIPS**	Agreement on Trade Related Aspects of Intellectual Property Rights
TBT	Agreement on Technical Barriers to Trade	**TRIMS**	Agreement on Trade Related Investment Measures
SPS	Agreement on Sanitary and Phytosanitary Measures	**Safeguards**	Agreement on Safeguards
AoA	Agreement on Agriculture	**Import Licensing**	Agreement on Import Licensing Procedures
GATS	General Agreement on Trade in Services	**Customs Valuation**	Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement)
Rules of Origin	Agreement on Rules of Origin	**Textiles and Clothing**	Agreement on Textiles and Clothing

As a complainant, India has invoked the Anti-Dumping Agreement (ADA) in its cases, along with the Subsidies and Countervailing Measures (SCM) agreement, and the Textiles and Clothing agreement. As a respondent, India has faced multiple challenges under the Agreement on Agriculture (AoA), the Import licensing agreement, Subsidies and Countervailing Measures (SCM) agreement and Anti-Dumping Agreement (ADA). Coincidentally, GATT, ADA, SCM and the AoA are the most frequently invoked agreements across all DSS disputes.[79]

Since GATT is invoked in nearly 80 percent of India's cases, it will be useful to determine which of its provisions are most frequently invoked before the DSS. Tables 5.1 and 5.2 show the frequency with which specific provisions are invoked in India's cases. As a complainant (Table 5.1), India has frequently invoked GATT provisions related to Most Favoured Nation status, anti-dumping, quantitative restrictions and national treatment. India has also frequently complained against violation of Article X of GATT which relates to prompt publishing and non-discriminatory administration of trade regulations. This indicates the need for improving one of the more elemental requirements of trade rules, i.e. guaranteeing transparency and understanding through information sharing and improving the notification record of member states. Providing incentives for better notification can enable informed policy dialogue, and mitigate the temptation to take trade-distorting measures and diffuse potential trade disputes.[80]

As a respondent (Table 5.2), India's trade measures have been challenged on the provisions on quantitative restrictions, national treatment, schedule of concessions and most-favoured nation treatment. In comparison with all WTO disputes (1995-2010), the most frequently invoked GATT provisions are National Treatment (Article III, GATT), Most favoured nation treatment (Article I, GATT) and Quantitative Restrictions (Article XI, GATT).[81]

Table 5: Frequency of GATT provisions subject to dispute

Table 5.1: India as a Complainant

Provision	Article number	Frequency
General Most-Favoured-Nation Treatment	I	10
Anti-dumping and Countervailing Duties	IV	7
Publication and Administration of Trade Regulations	X	4
General Elimination of Quantitative Restrictions	XI	4
National Treatment on Internal Taxation and Regulation	III	3
Schedule of Concessions	II	3
Emergency Action in Imports of Particular Products	XIX	2
Territorial Application - Frontier Traffic - Customs Unions and Free-trade Areas	XXIV	2
Freedom of Transit	V	1
Marks of origin	IX	1
Fees and formalities connected with Importation and Exportation	VIII	1

Overall, India has been an active participant and, like any other litigant, has faced some noteworthy wins and losses. It has been involved in a number of cases with the biggest players in trade—the US and the EU—demonstrating the importance of this mechanism for providing a rules-based resolution to trade disputes given the existence of power asymmetries between developed and developing countries. The agreements and GATT provisions that are frequently invoked in India's cases are similar to the pattern observed in all WTO disputes. India has also settled or withdrawn a majority of its disputes during the consultation stage, thereby exhibiting its readiness to work on negotiated settlements if the ideal conditions exist. The above numbers indicate that the biggest hurdle faced by India and other member countries, is the (1) increasing delays in dispute settlement, and (2) factors contributing to lower participation rate of developing countries and LDCs.

Table 5.2: India as a Respondent

Provisions	Article number	Frequency
General Elimination of Quantitative Restrictions	XI	15
National Treatment on Internal Taxation and Regulation	III	9
Governmental Assistance to Economic Development	XVIII	6
Schedule of Concessions	II	6
General Most-Favoured-Nation Treatment	I	4
Publication and Administration of Trade Regulations	X	3
Anti-dumping and Countervailing Duties	IV	3
State Trading Enterprises	XVII	3
Emergency Action on Imports of Particular Products	XIX	1
General Exceptions	XX	1

Source: Author's calculation from "Disputes by member", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm

THE DSS CRISIS AND NEED FOR REFORMS

The DSS is currently facing a crisis due to the US' obstruction to the appointment of Appellate Body members. It has been withholding approval of AB appointments, which requires consensus or agreement of all WTO member states.[82] By December 2019, two of the remaining three members of the AB will retire. With only one member, it will be impossible to constitute the required three-member panels to hear appeals. The situation is aggravated by the increasing number of pending disputes before the AB. The combined impact of these two factors is already being felt in WTO disputes. For instance, India's 2018 appeal in *India — Iron and Steel Products (DS 518)* has been held up due to the AB's "inability" to staff the panel because of the growing "backlog of appeals".[83]

Until the US' objections are adequately addressed, it will continue holding the DSS at ransom. US concerns, as enumerated in the 2018 Trade Policy Agenda, include: (1) the continued service of persons who are no longer members of the AB; (2) issuing advisory opinions not necessary to resolve the dispute; (3) reviewing facts and domestic law; and (4) treating its decisions as precedent.[84] These concerns are shared by several member states and proposals for their reform have been ongoing at the WTO. Barring a few exceptions, the proposed reforms are similar. If countries can agree on the exact specificities, it should be relatively easier to reach the threshold of consensus for decision-making.

A bigger concern has been the AB's judicial overreach in its reports, for which it has been frequently criticised by member states. There is no doubt that reforms are necessary to streamline the appellate process at the WTO. It is also important, however, to recognise that the fault does not lie with the AB alone. Firstly, many provisions of WTO Agreements are vague and contain gaps, unclear definitions and contradictory elements. Member states argue that only the Ministerial Conference or the General Council, and not the AB, has the authority to adopt interpretations of WTO agreements.[85] While this may be true, the process for doing so is complex and time-consuming. As a result, the AB frequently finds itself walking a tightrope between interpreting and clarifying 25-year-old WTO provisions in modern disputes, while trying to not add or diminish the rights and obligations of member states. Secondly, the DSU only has two provisions (Article 16 and 17) to govern appellate proceedings. In the absence of a legally settled framework, the AB designed its own working procedures[86] which contain a "gap filling rule" that allows it to "adopt additional procedure" should the need arise.[87] Similarly, lacking clear and definite rules and standards of review, the AB unwittingly trespasses into the realm of law making, which is reserved for member states.

Therefore, the judicial overreach of the AB is hardly malicious; rather it arises from the absence of clear and cogent rules for procedure. The US endorses the need for political "checks and balances"[88] over adjudication so that member states can ostensibly ensure that decisions based on a "bad" law are not adopted. Few have supported the US' proposals, given that it will politicise the DSS.[89]

India's position on reforms should aim to fulfill two objectives: the first is to maintain the stability and predictability of the multilateral trading system by reiterating the objectives of the DSS; and the second is that any reform should be designed to protect the interests of developing countries and LDCs by continuing to be a rules-oriented system as opposed to a power-oriented one. Table 6 summarises the issues and solutions for the concerns presently facing the DSS, and the stakes for developing countries and LDCs in resolving them.

More recently, new challenges have come before the DSS in the form of complex cases arising at the intersection of trade obligations and human health, environment, sustainable development and technology on trade and commerce. India itself has earlier faced some of these challenges in cases such as the *India – Solar Cells* (DS 456) and the *India – Agricultural Products* (DS 430). Absent any clarity regarding the application of trade rules to these areas, the AB's decisions may occasionally overreach their mandate. This calls for the need to frame new rules or issue authoritative interpretations to adapt trade rules to apply to these challenges.

Table 6: Issues and Reform Proposals

APPOINTMENTS AND EXTENSIONS OF AB MEMBERS				
Issue	Description	Proposed Solutions	Implication and manner of adoption	Stakes for countries
Appointment of AB members	Appointment takes place through consensus[90], i.e. all member states need to agree upon the appointment. Easy for one member state (US, in this case) to block appointments indefinitely.	***Appoint by majority voting, and not consensus:*** A WTO provision says that where matter cannot be decided by consensus, it can be done so by majority voting.[91] ***Additional reforms to mitigate this crisis:*** Increasing the number of AB members from 7 to 9.[94] Changing the term of AB members from a 4-year renewable term, to a single term of 6-8 years.[95] Automatic launch of AB selection process no later than 6 months[96] or 3 months[97] before the expiry of their term of office.	Bypassing consensus to decide by majority voting will provide a speedy resolution to the stalemate. But it can further alienate the US, and it may renew threats of its withdrawal.[92] Additionally, this move is criticized for not being legally tenable.[93] Additional reforms would require an amendment of the DSU, which can only be made by consensus.[98]	In interest of all member states of the WTO, expeditious appointment of AB members is required. However, consensus based decision should be preserved. The solution for bringing the US on board lies in the diplomatic realm. It is easier to argue for additional reforms mentioned here. Similar provisions are present in the ICJ and the ICC.

AB members serving beyond their term to complete duties of appeal	Under the Working Procedures, the decision to grant such extension resides with the AB.[99] The improper manner of making this decision has been contested by the US twice.[100]	***Providing transitional rules for outgoing AB members:*** They will continue their duties until their places have been filled, but for no longer than 2 years following the expiry of their term.[101] ***Grant of extension by Member states:*** Power to give extensions to be given to the Ministerial Conference or the DSB.[102] ***No new appeals to outgoing members:*** Outgoing members to not be assigned new appeals later than 60 days before final date of appointment.[103]	The first two proposals will require an amendment of the DSU through consensus. The last proposal requires an amendment of the Working Procedures, which can be done by the AB itself in consultation with chair of DSB and the WTO Director General.	Transitional rules will be a welcome addition and will reduce disruptions in AB process. Granting power to Ministerial Conference or DSB may figuratively restore the position of member states in the WTO hierarchy. But it may also lead to further delays, by adding another layer of complex procedure in a simple decision. Not assigning appeals to outgoing members will help address the present controversy. But if the present stalemate in appointments were to happen again (where few members are left in the AB), this provision will prevent the AB from assigning cases to its few, remaining members.
PROCEDURAL ISSUES				
Issue	Description	Proposed solutions	Implication and manner of adoption	Stakes for countries
AB treats its decisions as precedent	Decisions are treated as precedent that panels are to follow absent "cogent reasons". Some countries have contested this, as there is no legal provision that allows the AB to do so.[104]	***Introduce an explicit provision*** to clarify that the AB cannot treat its decisions as precedent.	Will require an amendment to the DSU. It is true that no legal provision says that the AB can treat its decisions as precedent. But panels and AB cannot operate in a vacuum. Referring to prior reports can help in clarifying the application of WTO law to future disputes.	Parties also refer to prior reports to develop their arguments. A better approach would be to allow the AB to consider the extent to which prior reports can be relevant and useful to the dispute, and furnish reasons in their reports for doing so.[105]

AB exceeds its judicial mandate	The AB practice of issuing an obiter dictum (general opinion, remarks and statements that are unnecessary to the resolution of the dispute[106]) has been criticized as it may affect the rights and obligations of Members.[107] AB's jurisdiction is limited to reviewing "issues of law" and "legal interpretations developed by the panel".[111] AB sometimes goes into factual questions, and this has been criticized.	***Mandatory judicial economy:*** AB should exercise "judicial economy" and limit itself to issues raised by parties and under no circumstance pronounce on issues not raised by parties to dispute.[108] ***Clarify standard of review*** to be used by AB through new rules.[112] DSU can be modified to provide an explicit standard of review in this regard. ***Adopt a remand procedure:*** if AB finds that facts are insufficient it can remand the case to the original panel to make factual findings to complete legal analysis.[113] Honduras has proposed a ***possible external review mechanism*** to consider whether the AB has overstepped its mandate.[114]	Will require a DSU amendment, through consensus. The provisions can help check judicial overreach of the AB, and set clear and cogent rules for AB's mandate.	Sometimes it may be difficult to separate necessary findings from unnecessary findings in a decision. To ensure that the AB does not overstep its mandate and adopts clear reasoning in its decisions, the AB can explicitly include why it considers particular findings (not raised by parties) as necessary for the resolution of appeal.[109] Additionally, unlike panel proceedings[110] the AB has no directive or standard of review under the DSU. Introducing a standard of review provision will provide the necessary guidance to the AB.
Quasi-automatic adoption of panel and AB reports	DSB decision on adoption of panel and AB reports is taken through "negative consensus mechanism". That is, the decision is adopted unless there is consensus against it. This guarantees its quasi-automatic nature.	***US proposal to increase flexibility and member state control:*** includes mechanism for member states to review AB decisions, delete parts of a decision through mutual agreement, or only partially adopt a decision.[115] ***Proposal of a blocking minority:*** If at least 1/3rd of member states, representing at least 1/4th of the total trade among WTO members, register opposition to a decision, it shall be set aside—blocked.[116]	The provisions would require a DSU Amendment. But it is unlikely that they may garner support from member states due to their controversial nature.	US' proposal will transform the system from a rule-oriented system to a power-oriented system. It is in the interests of developed and developing countries to preserve the automaticity of adoption of panel and AB reports. Barring accusations of judicial overreach – which can be rectified through other measures mentioned here, the AB has been a politically impartial, rules based body and does not require political oversight over its decisions.

SYSTEMIC ISSUES				
Issue	Description	Proposed Solutions	Implication and manner of adoption	Stakes for countries
Delays in the DSS procedure	Despite overall decrease in DSS workload, the average time taken to complete disputes has steadily increased.	Various steps can be taken to resolve this issue, i.e. hiring more secretariat lawyers, streamlining translation process, reducing the length of panel and AB reports (which average 200 pages), and limiting the time given to parties for their submissions.	These measures are administrative and regulatory in nature, and can be readily introduced by the WTO.	An efficient dispute resolution system will help with speedy resolution of disputes, and reduce the economic harm that can be suffered by complainant states during pendency of cases.
Developing countries and LDCs' access to the DSS	The DSS has overall witnessed lesser participation from developing countries and LDCs.	Since most cases settle early and fuller concessions are available in early settlement, there is a need to give assistance to developing countries and LDCs in the negotiation stage.[117] The Africa Group has proposed the **setting up of fund,** out of regular WTO budget for developing countries and LDCs.[118]	The ACWL can be mobilized to give assistance to countries during negotiations and consultations. A proposal to set up a fund for developing countries and LDCs, would require a DSU amendment and clarity on (1) eligibility criteria and (2) priority for need based for funding.	Exploring mechanisms to improve access for countries will enhance the credibility of the DSS. Additionally, with increasing complexity of disputes and aging trade rules, it will beneficial to use alternative mechanisms under the DSU like: (1) consultation process,[119] (2) Good offices, conciliation and mediation procedure[120], (3) arbitration[121].
No formal mechanism for regular dialogue between members and adjudicative bodies of the DSB.	Without a formal mechanism, there is no available forum for member states to raise and discuss new issues in the DSS. A formal mechanism will provide a channel of communication, where concerns regarding AB approaches, systemic issues or trends in jurisprudence can be voiced.[122]	Proposal for initiating **annual meetings** between DSB and AB.[123]	This is an administrative measure, and can be introduced quickly. But there is a need for adequate transparency and ground rules for such proceedings, to avoid undue pressure on AB members.[124]	It will help resolve underlying issues and give due regard to member states' concerns.

Source: Author's compilation and analysis from various sources.

CONCLUSION

In May 2019, the Chair of the Appellate Body, Ujal Singh Bhatia said that "if good solutions are to be found, the right questions must be asked. Members should carefully think about what kind of system they want, what its role and reach should be, and what core principles should govern its operation."[125] This is the most important question facing WTO member states today. Fundamental differences have materialised between developed and developing countries regarding the role of the WTO, and the future of the Doha round of trade negotiations.[126] More worryingly, countries have conflated "economic sovereignty" with "national sovereignty", questioning the benefits of the rules-based trading system and the DSS. However, in today's globalised era, countries trade frequently and trade as a percentage of global GDP amounts to as much as 58 percent.[127] Without a DSS to resolve trade disputes, what recourse will be left for states to resolve their bilateral and multilateral trade disputes? While there can be negotiations, to what extent can they resolve trades disputes if they fail to reach a common ground? Again, will platforms like negotiations and informal mechanisms yield equitable results for developing countries and LDCs?

It is also important to appreciate that the WTO and the DSS was part of a broad package of agreements following the Uruguay round of negotiations. It was widely regarded as a historic event, with countries coming together following the collapse of Communism and displaying a high watermark for multilateralism and multilateral rules.[128] It may be a nearly impossible task for a similar confluence of events and incentives to occur again for decades. There is a real concern that if the DSS is not restored soon, it is not likely to come back again.[129]

If the DSS is demolished, it will be difficult for smaller countries to hold larger countries accountable to their trade obligations. Moreover, the rules-based multilateral trading system will collapse with no institutional mechanism available to enforce it. The relevance of the WTO as a multilateral organisation will be lost, as countries will begin

to question the utility of concluding trade negotiations under its aegis. And last, but certainly not the least, uncertainty in resolution of trade disputes will lead to uncertainty in trade policy which will directly impact farmers, manufacturers, industries and businesses.

The first priority would be for countries to emphasise that they will not abandon the DSS or the AB. In this regard, the utility of *ad hoc* remedies such as the EU-Canada interim appellate arrangement[130] must be viewed because of its possible long-term impact on seeking an immediate resolution to this crisis. While on one hand, *ad hoc* arrangements may provide temporary respite, on the other, countries may no longer feel the urgency to negotiate solutions at the WTO. Nonetheless, the EU and Canada have emphasised their intention to work on the challenges facing the WTO and the DSS; likewise, other countries also need to be consistent and focused in their approach towards pushing for a resolution to the DSS crisis. Any negotiation or discussion should mention the need to resurrect the DSS and the AB. The recent complaint by the US against India[131] before the DSS – though symptomatic of worsening trade relations between the two countries – can perhaps indicate that the US still has some faith is the system. As the current crisis escalates, member states of the WTO will need to come together to acknowledge concerns that are being raised and indicate the willingness to work together to find mutually agreeable solutions.[132]

All this is more important for India, as the DSS provides an impartial, rules-oriented system for trade-related dispute resolution. As the fifth most active participant of the DSS, India has recognised the impasse in AB member appointments with concern and aims to support reforms of the WTO.[133] With India facing its highest number of complaints in 2019, the revival of the DSS is essential to a swift resolution to these trade disputes. While it is agreed that the DSS needs improvement, India acknowledges that it constitutes an effective system for the peaceful resolution of disputes.

India, as a responsible member state, should help initiate the process of DSS reforms through negotiations, diplomacy and engagement with all stakeholders. At the same time, it should ensure that the interests of developing countries and LDCs are not compromised and the DSS as an institution retains its original purpose, which is to provide stability and security to the multilateral trading system.

ENDNOTES

1 Aarshi Tirkey, "Trade wars: Can the WTO strike back?", *Observer Research Foundation*, October 5, 2018, https://www.orfonline.org/expert-speak/trade-wars-can-wto-strike-back-44709/.

2 Robert McDougall, "Crisis in the WTO: Restoring the Dispute Settlement Function", *Centre for International Governance and Innovation*, CIGI Papers No. 194, October 16, 2018, 1, https://www.cigionline.org/publications/crisis-wto-restoring-dispute-settlement-function.

3 "DG Azevêdo: we must turn the crisis of multilateralism into an opportunity to strengthen it", World Trade Organization, November 16, 2018, https://www.wto.org/english/news_e/spra_e/spra246_e.htm.

4 2018 Trade Policy Agenda and 2017 Annual Report of the President of the United States on the Trade Agreements Program, Office of the United States Trade Representative, https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20FINAL.PDF.

5 "Further Contribution of the United States on Improving Flexibility and Member Control in WTO Dispute Settlement - Communication from the United States", World Trade Organization, 24 October 2005, TN/DS/W/82, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=67682,51129,106302,70544&CurrentCatalogueIdIndex=3&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True; "Flexibility And Member Control - Communication from Chile and the United States", World Trade Organization, May 31, 2007, TN/DS/W/89, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=63478,67682,51129,106302,70544,15104,46381&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True; 2018 Trade Policy Agenda and 2017 Annual Report of the President of the United States

on the Trade Agreements Program, Office of the United States Trade Representative, 90, https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20FINAL.PDF.

6 Jeffrey J. Schott and Euijin Jung, "In US-China Trade Disputes, the WTO Usually Sides with the United States", *Peterson Institute for International Economics*, March 12, 2019, https://www.piie.com/blogs/trade-and-investment-policy-watch/us-china-trade-disputes-wto-usually-sides-united-states.

7 Andrew Walker, "Is Trump the WTO's biggest threat?", *BBC News*, December 8, 2017, https://www.bbc.com/news/business-42200390.

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

9 Article 3.2, Dispute Settlement Understanding.

10 World Trade Organization Secretariat, *A Handbook on the WTO Dispute Settlement System*, (Cambridge: Cambridge University Press, 2017), 2. [WTO Handbook]

11 Marc L. Busch and Eric Reinhardt, "Developing Countries and General Agreement on Tariffs and Trade/World Trade Organization Dispute Settlement", *Journal of World Trade* 37, no. 4 (2003): 721, https://pdfs.semanticscholar.org/064d/f744a9ba3fbf52eb30212320e27c6e25081e.pdf.

12 James J. Nedumpara, "'Naming, Shaming and Filing': Harnessing Indian Capacity for WTO Dispute Settlement", *Trade Law and Development* 5, no. 1, (2013): 78; Also See, Busch and Reinhardt, *Ibid*.

13 WTO Handbook, pg. 18.

14 "Chronological list of disputes cases", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

15 "Dispute settlement", World Trade Organization, accessed July 4, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm.

16 "Speech by H.E. Mr Shahid BASHIR (Chairperson of the DSB 2012-2013): WTO Dispute Settlement Body developments in 2012", World Trade Organization, accessed July 4, 2019, https://www.wto.org/english/tratop_e/dispu_e/bashir_13_e.htm.

17 "Cases", International Court of Justice, accessed August 12, 2019, https://www.icj-cij.org/en/cases.

18 "List of All Cases", International Tribunal for the Law of the Sea, accessed August 12, 2019, https://www.itlos.org/cases/list-of-cases/.

19 "List of cases", International Criminal Court, accessed August 12, 2019, https://www.icc-cpi.int/Pages/cases.aspx.

20 "Dispute settlement reports within the framework of GATT 1947", World Trade Organization, accessed July 4, 2019, https://www.wto.org/english/tratop_e/dispu_e/gt47ds_e.htm.

21 Ruling by the Chairman, Application of Article I:I to Rebates on Internal Taxes, GATT B.I.S.D. II/12, Aug. 24, 1948, https://www.wto.org/english/tratop_e/dispu_e/gatt_e/48taxexp.pdf.

22 Report of the Panel, United States Countervailing Duty Without Injury Finding, GATT L/5192 - 28S/113, September 30, 1981, https://www.wto.org/english/tratop_e/dispu_e/gatt_e/80cvd.pdf.

23 Complaint by India under special Article XXIII procedure for developing countries, Japanese Import Restrictions on Leather, GATT Document L/5623, March 2, 1984, https://www.wto.org/english/tratop_e/dispu_e/gatt_e/83leathr.pdf; Also see, James J. Nedumpara, 'Naming, Shaming and Filing': Harnessing Indian Capacity for WTO Dispute Settlement, *Trade Law and Development* 5, no. 1, (2013): 75.

24 WTO Handbook, Pg. 43.

25 Article 3.7 and Article 11, Dispute Settlement Understanding.

26 "The process — Stages in a typical WTO dispute settlement case", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s2p1_e.htm.

27 WTO Handbook, pages 44-45.

28 Article 17.6, Dispute Settlement Understanding.

29 Article 17.13, Dispute Settlement Understanding.

30 Article 19.9, Dispute Settlement Understanding.

31 Article 21.3, Dispute Settlement Understanding.

32 WTO Handbook, pg. 79-80.

33 Article 22.1, Dispute Settlement Understanding.

34 Article 22.2, Dispute Settlement Understanding.

35 Article 22.6, Dispute Settlement Understanding.

36 Article 22.8, Dispute Settlement Understanding.

37 "WTO Organizational Structure & Decision Making", International Trade Law Research Guide, Georgetown Law Library, accessed August 12, 2019, https://guides.ll.georgetown.edu/c.php?g=363556&p=4154931.

38 Article 2, Dispute Settlement Understanding.

39 Article 2, Dispute Settlement Understanding.

40 Sebastiano Nessi and Simon Demaurex, "WTO appellate body: can arbitration break the current deadlock?" *Thomson Reuters*, February 14, 2018, http://arbitrationblog.practicallaw.com/wto-appellate-body-can-arbitration-break-the-current-deadlock/.

41 WTO Handbook, pg. 23.

42 Article 4.10, Dispute Settlement Understanding.

43 Article 12.10, Dispute Settlement Understanding.

44 Decision of 5 April 1966 on procedures under Article XXIII, BISD 14S/18, World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/a2s1p1_e.htm.

45 "The ACWL's Mission", Advisory Centre on WTO Law, accessed August 12, 2019, https://www.acwl.ch/acwl-mission/.

46 "Report on Operations 2017", Advisory Centre on WTO Law, http://www.acwl.ch/download/general_assembly_mmeting_documents/11.07.2018_meeting/Final_Report_on_Operations_2017_-website.pdf.

47 James J. Nedumpara, 'Naming, Shaming and Filing': Harnessing Indian Capacity for WTO Dispute Settlement, *Trade Law and Development* 5, no. 1, (2013): 71.

48 "Members and Observers", World Trade Organization, accessed July 4, 2019, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

49 There are no WTO definitions of "developed" and "developing" countries. Members announce for themselves whether they are "developed" or "developing" countries. However, other members can challenge the decision of a member to make use of provisions available to developing countries. See, "Who are the developing countries in the WTO?", World Trade Organization, accessed July 4, 2019, https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm.

50 Arie Reich, "The effectiveness of the WTO dispute settlement system: A statistical analysis", European University Institute Working Paper LAW 2017/11, November, 2011, 6, http://cadmus.eui.eu/bitstream/handle/1814/47045/LAW_2017_11.pdf?sequence=1.

51 Shamrin J. Tania, "Least Developed Countries in the WTO Dispute Settlement System", *Netherlands International Law Review* 60, (2013): 375-409.

52 Arie Reich, "The effectiveness of the WTO dispute settlement system: A statistical analysis", European University Institute Working Paper

LAW 2017/11, November, 2011, 10-11, http://cadmus.eui.eu/bitstream/handle/1814/47045/LAW_2017_11.pdf?sequence=1.

53 Abhijit Das and James J. Nedumpara, "Introduction: WTO Dispute Settlement at Twenty: Insiders' Reflections on India's Participation" in *WTO Dispute Settlement at Twenty: Insider's reflections on India's participation* eds. Abhijit Das and James J. Nedumpara, (Singapore: Springer, 2016), 2.

54 Edward Alden, "India's Landmark WTO Challenge to the United States", *Council on Foreign Relations*, March 15, 2016, https://www.cfr.org/blog/indias-landmark-wto-challenge-united-states.

55 India - Patent Protection for Pharmaceutical and Agricultural Chemical Products (DS79), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds79_e.htm; India - Patent Protection for Pharmaceutical and Agricultural Chemical Products (DS50), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds50_e.htm.

56 Scott D. Anderson and Deepak Raju, "India's initial WTO disputes – An Analysis in Restrospect", in *WTO Dispute Settlement at Twenty: Insider's reflections on India's participation* eds. Abhijit Das and James J. Nedumpara, (Singapore: Springer, 2016), 54.

57 A series of cases titled India – Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products, World Trade Organization,(DS 90, 91, 92, 93, 94, 95 and 96). See, "Disputes by Respondent", World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm.

58 James J. Nedumpara, 'Naming, Shaming and Filing': Harnessing Indian Capacity for WTO Dispute Settlement, *Trade Law and Development* 5, no. 1, (2013): 70-71.

59 *Ibid.,* 93.

60 India — Certain Measures Relating to Solar Cells and Solar Modules (DS456), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm.

61 United States — Certain Measures Relating to the Renewable Energy Sector (DS 510), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds510_e.htm.

62 United States — Import Prohibition of Certain Shrimp and Shrimp Products (DS58), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm.

63 European Communities — Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India (DS141), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds141_e.htm.

64 European Communities — Conditions for the Granting of Tariff Preferences to Developing Countries (DS 246), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds246_e.htm.

65 Srividhya Ragavan, "U.S. is shooting itself in the foot on GSP", *The Hindu*, June 9, 2019, https://www.thehindu.com/business/us-is-shooting-itself-in-the-foot-on-gsp/article27699020.ece.

66 B.S. Chimni, "WTO and Environment: Legitimisation of Unilateral Trade Sanctions", *Economic and Political Weekly* 37, No. 02, (2002): 133-138.

67 Abhijit Das and James J. Nedumpara, "Introduction: WTO Dispute Settlement at Twenty: Insiders' Reflections on India's Participation" in *WTO Dispute Settlement at Twenty: Insider's reflections on India's participation* eds. Abhijit Das and James J. Nedumpara, (Singapore: Springer, 2016), 4.

68 William J. Davey "The First Years of WTO Dispute Settlement: Dealing with Controversy and Building Confidence", in *A History of Law and Lawyers in the GATT/WTO*, ed. Gabrielle Marceau (Cambridge: Cambridge University Press, 2015), 351.

69 Kara Leitner and Simon Lester, "WTO Dispute Settlement 1995–2016—A Statistical Analysis", *Journal of International Economic Law* 20, no. 1, (2017): 171–182.

70 "Chronological list of disputes cases", World Trade Organization, accessed July 4, 2019, https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

71 Argentina — Measures Affecting the Import of Pharmaceutical Products (DS 233), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds233_e.htm.

72 Abhijit Das and James J. Nedumpara, "Introduction: WTO Dispute Settlement at Twenty: Insiders' Reflections on India's Participation" in *WTO Dispute Settlement at Twenty: Insider's reflections on India's participation* eds. Abhijit Das and James J. Nedumpara, (Singapore: Springer, 2016), 6-7.

73 India — Measures Concerning the Importation of Certain Agricultural Products (DS430), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds430_e.htm.

74 India — Certain Measures Relating to Solar Cells and Solar Modules (DS456), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm.

75 Henrik Horn, Louise Johannesson and Petros C. Mavroidis, "The WTO Dispute Settlement System 1995-2010: Some Descriptive Statistics," *Research Institute of Industrial Economics (IFN)*, IFN Working Paper No. 891, November 16, 2011, 34, http://www.ifn.se/wfiles/wp/wp891.pdf.

76 Arie Reich, "The effectiveness of the WTO dispute settlement system: A statistical analysis", European University Institute Working Paper LAW 2017/11, November, 2011, 21-26, http://cadmus.eui.eu/bitstream/handle/1814/47045/LAW_2017_11.pdf?sequence=1.

77 Ibid., 24-25.

78 "Technical Information on anti-dumping", World Trade Organization, accessed July 4, 2019, https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.

79 Henrik Horn, Louise Johannesson and Petros C. Mavroidis, "The WTO Dispute Settlement System 1995-2010: Some Descriptive Statistics",

Research Institute of Industrial Economics (IFN), IFN Working Paper No. 891, November 16, 2011, Table 7, http://www.ifn.se/wfiles/wp/wp891.pdf.

80 "Strengthening And Modernizing The WTO: Discussion Paper", Communication From Canada, World Trade Organization, September 21, 2018, JOB/GC/201, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=248327&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

81 Henrik Horn, Louise Johannesson and Petros C. Mavroidis, "The WTO Dispute Settlement System 1995-2010: Some Descriptive Statistics", *Research Institute of Industrial Economics (IFN)*, IFN Working Paper No. 891, November 16, 2011, Table 8, http://www.ifn.se/wfiles/wp/wp891.pdf.

82 Joseph W. Glauber, David Laborde and Marie Parent, "The WTO Dispute Settlement procedure is on the verge of crisis", *International Food Policy Research Institute,* June 19, 2019, http://www.ifpri.org/blog/wto-dispute-settlement-procedure-verge-crisis.

83 India – Iron and Steel Products (DS 518), World Trade Organization, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds518_e.htm.

84 2018 Trade Policy Agenda and 2017 Annual Report of the President of the United States on the Trade Agreements Program, Office of the United States Trade Representative, 22-28, https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20FINAL.PDF.

85 Marrakesh Agreement Establishing the World Trade Organization, Article IX, 1867 U.N.T.S. 154, April 15, 1994, https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm.

86 Working procedures for appellate review, WT/AB/WP/6, https://www.wto.org/english/tratop_e/dispu_e/ab_e.htm.

87 The process — Stages in a typical WTO dispute settlement case, Dispute Settlement System Training Module, World Trade Organization, accessed August 12, 2019, https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s5p1_e.htm.

88 Robert McDougall, "Crisis in the WTO: Restoring the Dispute Settlement Function", *Centre for International Governance and Innovation*, CIGI Papers No. 194, October 16, 2018, 1, https://www.cigionline.org/publications/crisis-wto-restoring-dispute-settlement-function.

89 Ibid.

90 Article 2.4, Dispute Settlement Understanding.

91 Pieter Jan Kuijper, "What to do about the US Attack on the Appellate Body?", *International Economic Law and Policy Blog*, November 15, 2017, https://worldtradelaw.typepad.com/ielpblog/2017/11/guest-post-from-pieter-jan-kuiper-professor-of-the-law-of-international-economic-organizations-at-the-faculty-of-law-of-th.html; Marrakesh Agreement Establishing the World Trade Organization, Article IX:1, 1867 U.N.T.S. 154, April 15, 1994, https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm.

92 "US to Withdraw from the WTO?", *The Hindu BusinessLine*, August 31, 2018, https://www.thehindubusinessline.com/news/world/us-to-withdraw-from-wto/article24827433.ece.

93 Marrakesh Agreement Establishing the World Trade Organization, Footnote 3, 1867 U.N.T.S. 154, April 15, 1994, https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm.

94 "Communication From The European Union, China And India To The General Council", World Trade Organization, 26 November 2018, WT/GC/W/753, https://docsonline.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=249937,249918,249919,249678,249534,249527,249457,249426,249402,249403&CurrentCatalogueIdIndex=2&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False; "Communication From The European Union,

China, India And Montenegro To The General Council", World Trade Organization, 11 December 2018, WT/GC/W/753/Rev.1, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/250347/q/WT/GC/W753R1.pdf; "Communication from the African Group", World Trade Organization, June 6, 2019, WT/GC/W/776, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/255199/q/WT/GC/W776.pdf.

95 "Communication From The European Union, China And India To The General Council", World Trade Organization, 26 November 2018, WT/GC/W/753, https://docsonline.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=249937,249918,249919,249678,249534,249527,249457,249426,249402,249403&CurrentCatalogueIdIndex=2&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False; "Communication From The European Union, China, India And Montenegro To The General Council", World Trade Organization, 11 December 2018, WT/GC/W/753/Rev.1, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/250347/q/WT/GC/W753R1.pdf.

96 "Communication From The European Union, China And India To The General Council", World Trade Organization, 26 November 2018, WT/GC/W/753, https://docsonline.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=249937,249918,249919,249678,249534,249527,249457,249426,249402,249403&CurrentCatalogueIdIndex=2&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False; "Communication From The European Union, China, India And Montenegro To The General Council", World Trade Organization, 11 December 2018, WT/GC/W/753/Rev.1, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/250347/q/WT/GC/W753R1.pdf.

97 "Communication from the African Group", World Trade Organization, June 6, 2019, WT/GC/W/776, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/255199/q/WT/GC/W776.pdf; "Guidelines For The Work Of Panels And The Appellate Body, Communication From Brazil, Paraguay And Uruguay", World Trade Organization, April 25, 2019, WT/GC/W/767/Rev.1, https://docs.

wto.org/dol2fe/Pages/FE_Search/DDFDocuments/253653/q/WT/GC/W767R1.pdf.

98 Tetyana Payosova, Gary Clyde Hufbauer, and Jeffrey J. Schott, "The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures", *Policy Brief 18-5*, *Peterson Institute for International Economics*, March 2018, see Table, https://www.piie.com/system/files/documents/pb18-5.pdf; Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 154, April 15, 1994, Article X:8 Marrakesh, https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm.

99 Working procedures for appellate review, WT/AB/WP/6, Rule 15, https://www.wto.org/english/tratop_e/dispu_e/ab_e.htm.

100 Akhil Raina, "Meditations In An Emergency: The Appellate Body Deadlock – What It Is, Why It Is A Problem, And What To Do About It", Working Paper No. 199, *Leuven Centre for Global Governance Studies*, March 2018, 7, https://ghum.kuleuven.be/ggs/publications/working_papers/2018/199raina.

101 "Communication From The European Union, China And India To The General Council", World Trade Organization, 26 November 2018, WT/GC/W/753, https://docsonline.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=249937,249918,249919,249678,249534,249527,249457,249426,249402,249403&CurrentCatalogueIdIndex=2&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False; "Communication From The European Union, China, India And Montenegro To The General Council", World Trade Organization, 11 December 2018, WT/GC/W/753/Rev.1, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/250347/q/WT/GC/W753R1.pdf; "Communication From The European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic Of Korea, Iceland, Singapore And Mexico To The General Council", World Trade Organization, November 23, 2018, WT/GC/W/752, https://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157514.pdf.

102 "Guidelines For The Work Of Panels And The Appellate Body -

Communication from Brazil, Paraguay and Uruguay", World Trade Organization, April 25, 2019, WT/GC/W/767/Rev.1, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/253653/q/WT/GC/W767R1.pdf.

103 Tetyana Payosova, Gary Clyde Hufbauer, and Jeffrey J. Schott, "The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures", *Policy Brief 18-5*, *Peterson Institute for International Economics*, March 2018, see Table, https://www.piie.com/system/files/documents/pb18-5.pdf.

104 "Communication From The European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic Of Korea, Iceland, Singapore And Mexico To The General Council", World Trade Organization, November 23, 2018, WT/GC/W/752, https://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157514.pdf.

105 "General Council Decision On The Dispute Settlement System Of WTO - Communication From Thailand", World Trade Organization, April 25, 2019, WT/GC/W/769, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/253684/q/WT/GC/W769.pdf.

106 "Fostering A Discussion On The Functioning Of The Appellate Body: Addressing The Issue Of Alleged Judicial Activism By The Appellate Body Communication From Honduras", World Trade Organization, January 28, 2019, WT/GC/W/760, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/251141/q/WT/GC/W760.pdf.

107 2018 Trade Policy Agenda and 2017Annual Report of the President of the United States on the Trade Agreements Program, Office of the united States Trade Representative, https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20FINAL.PDF; "Appellate Body Impasse Communication From The African Group", World Trade Organization, June 25, 2019, WT/GC/W/776, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/255199/q/WT/GC/W776.pdf.

108 "Appellate Body Impasse Communication From The African Group", World Trade Organization, June 25, 2019, WT/GC/W/776, https://

docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/255199/q/WT/GC/W776.pdf; "Fostering A Discussion On The Functioning Of The Appellate Body - Communication From Honduras", World Trade Organization, January 18, 2019, WT/GC/W/758, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/251004/q/WT/GC/W758.pdf; "Fostering A Discussion On The Functioning Of The Appellate Body: Addressing The Issue Of Alleged Judicial Activism By The Appellate Body Communication From Honduras", World Trade Organization, January 28, 2019, WT/GC/W/760, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/251141/q/WT/GC/W760.pdf; "Communication From The European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic Of Korea, Iceland, Singapore And Mexico To The General Council", World Trade Organization, November 23, 2018, WT/GC/W/752, https://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157514.pdf.

109 "General Council Decision On The Dispute Settlement System Of WTO - Communication From Thailand", World Trade Organization, April 25, 2019, WT/GC/W/769, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/253684/q/WT/GC/W769.pdf.

110 Article 11, Dispute Settlement Understanding.

111 Article 17.6, Dispute Settlement Understanding.

112 "Strengthening And Modernizing The WTO: Discussion Paper - Communication From Canada", World Trade Organization, September 21, 2018, JOB/GC/201, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=248327&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

113 Arie Reich, "The effectiveness of the WTO dispute settlement system: A statistical analysis", European University Institute Working Paper LAW 2017/11, November, 2011, 26, http://cadmus.eui.eu/bitstream/handle/1814/47045/LAW_2017_11.pdf?sequence=1.

114 "Fostering A Discussion On The Functioning Of The Appellate Body: Addressing The Issue Of Alleged Judicial Activism By The Appellate Body Communication From Honduras", World Trade Organization, January 28, 2019, WT/GC/W/760, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/251141/q/WT/GC/W760.pdf.

115 "Further Contribution of the United States on Improving Flexibility and Member Control in WTO Dispute Settlement - Communication from the United States", World Trade Organization, October 24, 2005, TN/DS/W/82, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=67682,51129,106302,70544&CurrentCatalogueIdIndex=3&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

116 "Emerging Constitutional Problems and Substantive Deficiencies" in *Free Trade, Sovereignty, Democracy: Future of the World Trade Organization*, Claude E. Barfield, (Washington: The AEI Press, 2001), 48, http://www.tulane.edu/~dnelson/PEReformConf/Barfield.pdf.

117 Marc L. Busch and Eric Reinhardt, "Developing Countries and General Agreement on Tariffs and Trade/World Trade Organization Dispute Settlement", *Journal of World Trade* 37, no. 4 (2003): 733, https://pdfs.semanticscholar.org/064d/f744a9ba3fbf52eb30212320e27c6e25081e.pdf.

118 Edwini Kessie and Kofi Addo, "African Countries and the WTO Negotiations on the Dispute Settlement Understanding", *International Centre for Trade and Sustainable Development*, 30, accessed July 4, 2019, https://www.ictsd.org/sites/default/files/downloads/2008/05/african-countries-and-the-wto-negotiations-on-the-dispute-settlement-understanding.pdf

119 Article 4, Dispute Settlement Understanding.

120 Article 5, Dispute Settlement Understanding.

121 Article 25, Dispute Settlement Understanding.

122 "Communication From The European Union, China, Canada, India,

Norway, New Zealand, Switzerland, Australia, Republic Of Korea, Iceland, Singapore And Mexico To The General Council", World Trade Organization, November 23, 2018, WT/GC/W/752, https://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157514.pdf.

123 *Ibid*.

124 "Communication From The European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic Of Korea, Iceland, Singapore And Mexico To The General Council", World Trade Organization, November 23, 2018, WT/GC/W/752, https://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157514.pdf; "General Council Decision On The Dispute Settlement System Of WTO - Communication From Thailand", World Trade Organization, April 25, 2019, WT/GC/W/769, https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/253684/q/WT/GC/W769.pdf.

125 "Launch Of The WTO Appellate Body's Annual Report For 2018: Address By Ambassador Ujal Singh Bhatia (2018 Chair Of The Appellate Body)", World Trade Organization, May 28, 2019, 3,

https://www.wto.org/english/news_e/news19_e/ab_29may19_e.pdf.

126 Aarshi Tirkey, "United Nations and the World Trade Organization" in "Looking Back and Looking Ahead: Indian Foreign Policy in Transition Under Modi", eds. Harsh V Pant and Kabir Taneja, ORF Special Report No. 93, July 2019, Observer Research Foundation, https://www.orfonline.org/wp-content/uploads/2019/07/ORF_SpecialReport_93_ForeignPolicy-Modi_NEW25July.pdf.

127 Trade (% of GDP), The World Bank, accessed July 4, 2019, https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS.

128 Jennifer Hillman, "Three Approaches To Fixing The World Trade Organization's Appellate Body: The Good, The Bad And The Ugly?", *Institute of International Economic Law (Georgetown University Law Center)*, 2, accessed July 4, 2019, https://www.law.georgetown.edu/wp-content/uploads/2018/12/Hillman-Good-Bad-Ugly-Fix-to-WTO-AB.pdf.

129 *Ibid*. 3.

130 "Joint Statement by the European Union and Canada on an Interim Appeal Arbitration Arrangement", European Commission Press Release, July 25, 2019, https://europa.eu/rapid/press-release_STATEMENT-19-4709_en.htm.

131 "US drags India to WTO over duty hike on 28 American goods", *The Economic Times*, July 5, 2019, https://economictimes.indiatimes.com/news/economy/foreign-trade/us-drags-india-to-wto-over-duty-hike-on-28-american-goods/articleshow/70082420.cms?from=mdr.

132 "Strengthening And Modernizing The WTO: Discussion Paper - Communication From Canada", World Trade Organization, September 21, 2018, JOB/GC/201, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=248327&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

133 "WTO Issues and Challenges", Ministry of Commerce & Industry (Government of India), Press Information Bureau, February 4, 2019, http://www.pib.nic.in/Pressreleaseshare.aspx?PRID=1562519.

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