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“FUTURE OF WTO DISPUTE SETTLEMENT AND TRANSITION WITH SPECIAL REFERENCE TO US STEEL ALUMINUM TARIFF CASE AND RUSSIA- TRANSIT CASE”

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INTRODUCTION

We have known WTO has the governing body for international trade and if we talk about, Dispute settlement, DSM¹ The WTO is a mechanism for member nations to address and resolve trade disagreements. The Mechanism designed by the world trade organization to resolve trade disputes is now facing major crisis and uncertainty as the USA started blocking appointments to the Appellate Body². Such a crisis and mounting global economic tensions like the controversies over US Steel and Aluminium tariffs and challenges seen in the Russia Transit dispute has brought the future of the WTO DSU to a pivotal moment.

This paper offers a rigorous analysis for the future of DSU focusing on the recent case and the hurdles involved. The major crisis began in 2016, when the USA decided to block the appointments to the AB. This move by the USA quickly undermined the credibility system for the consistent and timely rulings.

At the heart of many recent controversies are sensitive national security exceptions and important questions about the WTO's legal authority, all of which fuel the debate about how best to adapt and revitalize the dispute settlement mechanism. The following study evaluates these landmark disputes within the wider landscape of ongoing reform, offering insight into the forces likely to shape the DSM's future.

The WTO's ability to resolve trade conflicts has never been under more strain. With the appellate body no longer able to perform its review duties, member countries and observers alike are facing a period of deep uncertainty about the institution's future direction³.

At the core of the turmoil are debates about WTO's Authority, the reach of national security justifications. The halting of AB has also halted trade agreements and raised the risk that trade disagreements will spiral or be handled unevenly by parties with differing levels of influence. Instead of predictable outcomes, there is now greater risk of fragmentation, with some members relying on alternative interim tools while others push for foundational change. This institutional paralysis has invited not only apprehension from smaller economies, but also reminded the world that cooperation—and trust in collective institutions—is never guaranteed.

The debates now underway will determine if the DSM can be modernized to accommodate

21st century realities, balancing concerns over sovereignty with the persistent need for stable and reliable dispute resolution in an increasingly complex global environment.⁴

RESEARCH DESIGN

Objective:

The aim is to examine the current challenges and future prospects of the WTO dispute settlement system, focusing on significant cases such as the US steel and aluminum tariffs and the Russia transit dispute. The study will explore how ongoing reforms and institutional dynamics influence the mechanism's development in future.

Research Questions:

1. What has been the impact of the Appellate Body's paralysis on dispute resolution effectiveness at the WTO?
2. How do the cases involving US tariffs under Section 232 and Russia's transit restrictions challenge the existing WTO legal framework?
3. What reform efforts, particularly those emerging from the Molina Process, seek to address these challenges?
4. How viable are alternative dispute resolution methods in maintaining dispute settlement amid institutional blockades?
5. How do the positions of various WTO members, especially developed and developing countries, affect reform negotiations and consensus-building?

SCOPE OF STUDY-

This research focuses on the World Trade Organization's Dispute Settlement Mechanism (DSM), examining its current challenges, reform efforts, and future prospects. The study specifically centers on two emblematic cases: the US steel and aluminum tariff dispute under Section 232 of the Trade Expansion Act and the Russia transit case involving national security exceptions under GATT Article XXI⁵. These cases are critical as they highlight the legal, political, and institutional complexities confronting the DSM amid heightened global trade tensions and evolving security considerations.

The study covers the historical evolution and structural framework of the WTO DSM, with attention to the innovative design of the Appellate Body and its current paralysis resulting from

the US blocking appointments since 2016⁶. The scope extends to analyzing the impacts of this institutional deadlock on dispute resolution efficacy and WTO credibility at large.

Additionally, the research scrutinizes ongoing reform initiatives, particularly the Molina Process and its February 2024 Consolidated Text, which propose procedural and substantive reforms aimed at revitalizing the DSM. Member dynamics, competing interests between developed and developing countries, and key contentious issues such as transparency, special and differential treatment, and the future of the Appellate Body are integral to this examination. Alternative dispute resolution mechanisms, including arbitration and mediation as interim or complementary tools during Appellate Body paralysis, fall within the study's ambit. The research assesses their feasibility, acceptability, and potential role in the WTO dispute landscape.

The scope is primarily doctrinal and qualitative, relying on official WTO documents, panel and Appellate Body reports, academic literature, and statements from WTO members and trade experts. While the study focuses on legal and policy dimensions, it acknowledges the political economy aspects underpinning reform negotiations.

This comprehensive scope provides a nuanced understanding of the WTO DSM's present challenges and prospective pathways, aiming to inform policymakers, scholars, and practitioners engaged in sustaining and reforming the multilateral trade dispute regime.

RESEARCH METHODOLOGY-

This study adopts a qualitative and doctrinal research approach to explore the challenges and future trajectories of the WTO Dispute Settlement Mechanism (DSM). It analyzes primary WTO legal instruments such as the Dispute Settlement Understanding and key decisions concerning the US steel and aluminum tariffs and the Russia transit dispute. These cases are examined to understand the intersection of legal rulings and geopolitical factors affecting the DSM's operations.

The research also reviews ongoing reform proposals, particularly from the Molina Process, through analysis of official WTO documents and member statements. A qualitative content review is employed to capture political dynamics and divergent member interests influencing negotiation outcomes. Comparative insights from other international trade dispute frameworks

are included to evaluate alternative resolution methods such as arbitration and mediation, proposed in light of the Appellate Body's paralysis.

Data sources include WTO rulings, academic articles, policy briefs, and public negotiation records. Limitations include restricted access to confidential member negotiations and rapidly evolving reform discussions. This methodology facilitates a nuanced understanding of the DSM's complex legal and political landscape.

2. BACKGROUND AND HISTORY OF WTO -

The World Trade Organization's process for settling disputes was fundamentally framed by the Dispute Settlement Understanding (DSU), which came into force in 1994 as part of the outcome of the Uruguay Round of trade negotiations⁷. This development marked the first time that member nations agreed to a comprehensive and compulsory system, one that provided binding determinations and enforceable deadlines. Disputes arising under the WTO's core agreements—including those related to goods, services, and intellectual property—could, for the first time, be addressed through a formal process where legal obligations took priority over political maneuver or economic power⁸.

The DSM operates in multiple steps, all designed to promote transparency and fairness. Initially, countries in conflict are required to pursue consultations, giving them a chance to negotiate a settlement informally. If this phase does not yield an agreement, the complaining party may request the creation of an independent panel. This panel, usually composed of three trade law specialists unconnected to the parties, receives both written and oral submissions before rendering its findings and recommendations. Critically, the panel's report does not become binding unless adopted by the Dispute Settlement Body (DSB)—which includes representatives of all WTO members and oversees the mechanism as a whole⁹.

Perhaps the most innovative feature of the system is its provision for a second level of review. The Appellate Body—a standing group of seven experts serving staggered terms—was established to provide legal oversight, ensuring uniform interpretation and application of WTO law¹⁰. Parties dissatisfied with the panel's rulings could appeal to this body, which would address only questions of law or legal interpretation. Decisions of the Appellate Body, upon adoption by the DSB, are final and must be implemented by the losing party. This appellate stage introduced legal certainty and greater predictability to international trade relations,

marking a significant advance over the dispute-handling procedures under the earlier General Agreement on Tariffs and Trade (GATT)¹¹.

However, from 2016 onward, the smooth functioning of this innovative system came under strain. The United States, citing a range of grievances—including allegations of "judicial activism," claims that the Appellate Body exceeded its mandate, and broader worries about sovereignty—began blocking consensus on the appointment of new Appellate Body members as existing terms expired. By December 2019, the body was left without the minimum number of members required to hear new cases, creating a de facto suspension of appellate review. With appeals unable to progress, legally binding resolutions for ongoing disputes were rendered impossible under the WTO framework.

This breakdown has deeply unsettled the trading system. Without an operative appeals mechanism, legal certainty has eroded, and member countries have grown more hesitant to rely on the DSM for dispute resolution. The absence of a unified appellate process has pushed frustrated nations to experiment with alternative methods, such as provisional arbitration or drawing up bilateral arrangements outside the WTO structure¹². As a consequence, what was once a centralized and predictable system has become increasingly fragmented, raising concerns about long-term stability, consistency, and the authority of the multilateral trade regime¹³.

3. US STEEL AND ALUMINIUM TARIFF CASE (SECTION 232 OF US TRADE EXPANSION ACT) -

In 2018, the United States government, under President Trump, invoked its domestic law, Section 232 of the Trade Expansion Act of 1962, to impose new tariffs on imported steel and aluminum products¹⁴. The stated justification for these measures was the safeguarding of national security, with government officials arguing that an overreliance on foreign metal imports posed a risk to the nation's industrial base in times of military or other emergencies¹⁵. The decision immediately triggered significant international controversy, as key trading partners, including Canada, the European Union, China, and several others—were subject to the new duties and viewed them as a violation of established trade norms¹⁶.

A host of affected WTO members brought formal complaints before the organization's Dispute

Settlement Body (DSB). The heart of the legal dispute turned on Article XXI of the General Agreement on Tariffs and Trade (GATT), which allows countries, under limited circumstances, to take measures that would otherwise breach WTO commitments if they are necessary for the protection of essential security interests. Traditionally, this security exception was considered to grant broad latitude to states, and many assumed its invocation was not subject to judicial review by WTO adjudicators. However, the panels established to assess these complaints adopted a more searching approach, analyzing whether the United States had sufficiently demonstrated the necessity and context for its security claim¹⁷.

In December 2022, the WTO panels issued their findings, concluding that the American duties on steel and aluminum imports did not satisfy the requirements for the national security exception under Article XXI¹⁸. The panels noted that the context in which the tariffs were adopted did not amount to an emergency in international relations—a threshold necessary for invoking the provision legitimately¹⁹. They also determined that the United States had not provided evidence that importing the contested metals posed a direct security threat sufficient to override the obligations to trade partners under the WTO system²⁰.

However, the rulings of the WTO panels did not mark the end of the story. The Appellate Body, which typically serves as the final arbiter in trade disputes²¹, could not review the cases because it remained paralyzed due to an ongoing block on new appointments, a dispute largely instigated by the United States itself²². As a result, although the panels decided that the US tariffs violated international trade rules and recommended their withdrawal, the appeals process could not move forward, leaving the case in procedural limbo²³.

Despite these legal setbacks, the United States maintained its tariff regime and made clear its position that national security matters are inherently sovereign and not subject to WTO scrutiny²⁴. American officials emphasized their belief that only a country itself can determine what constitutes a security threat and rejected the notion of submitting such judgments to multilateral review by trade adjudicators. This persistent divide between national policy prerogatives and the framework of rules-based trade brought into sharp relief ongoing tensions about the legitimacy and reach of WTO oversight, and the broader contest between unilateralism and multilateral discipline in world commerce²⁵. The Section 232 experience thus stands as a landmark case—one that underscores the fragility of the current dispute settlement regime and the need for renewed dialogue on reconciling trade obligations with security

claims²⁶.

4.THE RUSSIA TRANSIT CASE - NATIONAL SECURITY EXCEPTION AND FREEDOM OF TRANSIT -

In a pivotal case before the World Trade Organization (WTO), Ukraine brought a complaint challenging Russia's restrictive measures on the transit of goods through Russian territory to destinations in Central Asia. These obstacles, which affected Ukrainian exports bound for countries like Kazakhstan and Kyrgyzstan, were introduced by Russia amidst simmering political and military tensions following the events of 2014, notably the annexation of Crimea. Ukraine's main grievance rested on the claim that Russia's actions violated several provisions of the General Agreement on Tariffs and Trade (GATT), particularly the rules concerning freedom of transit under Article V²⁷.

Russia defended its conduct by invoking Article XXI(b)(iii) of GATT²⁸, an important clause allowing members to implement measures they consider necessary for the protection of their "essential security interests," especially in times of war or other urgent diplomatic crises. Russia argued that the continuing hostilities and breakdown in relations with Ukraine amounted to such an emergency, granting Russia broad discretion to act as it saw fit²⁹. According to Russia, its assertion of national security needs should exempt it from WTO review and oversight, essentially making the invocation of Article XXI entirely self-judging³⁰.

This argument set up a fundamental legal question³¹. Historically, there had been uncertainty as to whether WTO panels were empowered to scrutinize a member's declaration of a security exception, or if that decision lay entirely within each country's sovereign domain³². In its ruling, the WTO panel broke new ground by declaring that the security exception is not beyond review; rather, panels have the jurisdiction to examine whether the circumstances cited—an emergency in this case—truly fit the criteria outlined in GATT Article XX³³I.

The panel undertook an objective analysis of the facts, carefully assessing the situation between Russia and Ukraine³⁴. It concluded that there was, in fact, an "emergency in international relations" sufficient to trigger Article XXI(b)(iii). However, the panel also clarified that, while members have considerable leeway in determining their own security interests, their actions must remain within the boundaries established by the multilateral trading system. In this

particular situation, the panel did not find Russia's transit restrictions incompatible with its WTO obligations—largely because the security environment had genuinely and significantly changed since 2014³⁵.

Despite finding in Russia's favor, the panel's report has substantial systemic impact. For the first time in WTO history, a dispute settlement body articulated that countries cannot wield the security exception as an unassailable shield; instead, the invocation of national security must pass an objective threshold and be substantiated by genuine emergencies in international affairs. The decision thus balances respect for national autonomy with the need to prevent the abuse of broad "security" claims as a pretext for protectionist trade barriers³⁶.

Ultimately, the Russia Transit dispute establishes an important precedent in WTO jurisprudence, offering a template for evaluating similar national security defenses in future cases. The ruling signals a move towards greater scrutiny of such exceptions, reflecting the WTO's ongoing struggle to reconcile the integrity of the trading system with the legitimate security concerns of its members³⁷.

5.RECENT WTO REFORMS AND MOLINA PROCESS -

Since 2022, efforts to reform the World Trade Organization's dispute settlement system have intensified, spearheaded by Guatemala's Marco Molina in an informal dialogue process now widely known as the "Molina Process."³⁸ This initiative emerged as WTO members recognized the urgent need to revive a fully operational and accessible dispute resolution framework by 2024, after years of stagnation stemming primarily from the Appellate Body's paralysis. Molina's role has been pivotal, facilitating extensive consultations with members in Geneva to broker consensus around potential reforms addressing the multiple challenges facing the DSM³⁹. In February 2024, a significant milestone was reached with the presentation of a "Consolidated Text", a comprehensive draft Ministerial Decision outlining proposed reforms across the dispute settlement system⁴⁰. The text contains numerous proposals intended to modernize and streamline processes, enhance procedural integrity, and better balance the interests of developing and developed countries⁴¹. Key reforms include formalizing mechanisms for alternative dispute resolution, such as mediation, conciliation, and arbitration, which would be available before formal consultations commence. This innovation aims to encourage earlier, less adversarial dispute settlement options and reduce the caseload burden on panels⁴².

The draft also seeks to expedite panel proceedings by introducing strict timelines and limiting the length of written submissions to make processes more predictable and efficient. Measures to improve the composition and conduct of panels are introduced, including mechanisms to monitor adjudicator behavior and impose sanctions on panellists involved in repeated delays or other breaches of procedure⁴³. These steps are designed to enhance accountability and address long-standing concerns about fairness and timeliness within the DSM⁴⁴.

Another noteworthy but controversial element of the text is the increased confidentiality of proceedings. While proponents argue that confidentiality may encourage more candid discussions and facilitate settlement, critics caution that reducing transparency could undermine the system's legitimacy and the wider community's understanding of WTO jurisprudence. In addition, the draft proposes a reduction in special and differential treatment provisions for developing countries during dispute proceedings, a move that has sparked opposition from several emerging economies that fear diminished procedural protections and marginalization in decision-making⁴⁵.

Despite these proposed improvements, the central and most politically sensitive issue remains the future of the Appellate Body⁴⁶. The Consolidated Text leaves the body's restoration unresolved, a reflection of the persistent disagreement among members, especially the United States, which insists on major institutional reforms before agreeing to reactivate appellate adjudication. The result is an ongoing stalemate that continues to hinder the full restoration of the WTO's dispute resolution function⁴⁷.

Reaction to the Molina Process has been mixed⁴⁸. Many WTO members commend its inclusivity and the breadth of discussion it has generated but express frustration over its informal nature and lack of a formal mandate, which hinder swift decision-making. Several key developing countries have vocally opposed elements they view as constraining their rights and participation in dispute settlement. As such, while the Consolidated Text represents the most comprehensive blueprint for reform to date, it nonetheless faces significant political and procedural hurdles before it can be adopted and implemented.

Moving forward, the WTO's ability to achieve meaningful reform depends on the willingness of its diverse membership to compromise on the balance between efficiency, fairness, transparency, and respect for sovereignty. The Molina Process has reinvigorated debate and

maintained momentum, but the path to a fully functioning, universally accepted dispute settlement mechanism remains fraught with challenges as the organization approaches critical deadlines set for 2024 and beyond⁴⁹

6.FUTURE OF WTO DSM -

The restoration of the WTO's Appellate Body remains at an impasse, prompting members to increasingly rely on alternative dispute resolution methods and arbitration options outlined within Article 25 of the Dispute Settlement Understanding (DSU). Notably, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) has emerged as a provisional substitute, providing a limited appellate process for those members who have chosen to participate⁵⁰. However, the MPIA lacks universal acceptance across the WTO membership, thus restricting its effectiveness as a comprehensive solution. Recent reform discussions have placed significant emphasis on formalizing such alternative mechanisms, seeking to maintain dispute resolution capabilities even amid the ongoing institutional paralysis of the WTO's traditional appellate function⁵¹.

One of the primary challenges complicating reform efforts is the political sensitivity surrounding the invocation of national security exceptions, as exemplified by the U.S. Section 232 steel and aluminum tariffs dispute and the Russia transit case⁵². The United States has strongly defended its sovereign right to unilaterally determine what constitutes a legitimate security concern, resisting any WTO interference in these decisions⁵³. This stance clashes with the position taken by WTO panels, which have affirmed the organization's authority to review and assess the legitimacy of such security claims. The resulting divergence threatens to fragment the legal coherence of the dispute settlement mechanism and diminish the uniformity of WTO jurisprudence⁵⁴.

Looking ahead, the WTO's dispute settlement system is likely to evolve into a hybrid model that combines several dispute resolution tools. Binding arbitration, mediation, and limited appellate review could complement the existing panel procedures, allowing members to tailor approaches to the nature and complexity of individual disputes⁵⁵. This diversification aims to provide flexibility while preserving the rule of law and predictability vital to global trade governance.

Nevertheless, crucial challenges remain. These include reconciling broad and divergent interests within the WTO membership, especially the need to ensure that developing countries have equitable access and can participate meaningfully in dispute resolution processes. Restoring credibility and systemic integrity will require striking a delicate balance between respect for national sovereignty and the enforcement of multilateral trade commitments⁵⁶. Ultimately, the WTO's ability to rejuvenate its dispute settlement mechanism is critical for safeguarding the organization's central role in the international trade system and maintaining confidence in the rules-based trading order in an increasingly complex global environment.

7. CONCLUSION

The WTO dispute settlement mechanism currently finds itself at a critical crossroads, confronting a complex mix of institutional paralysis, politically sensitive disputes invoking national security concerns, and ambitious reform proposals. Landmark cases such as the U.S. tariffs on steel and aluminum and the restrictions imposed by Russia on transit of goods vividly illustrate the deep tensions between national policy priorities and the WTO's rules-based framework. These disputes not only highlight the legal and political pressures narrowing the system's effectiveness but also underscore the broader challenges that the DSM faces in balancing sovereign interests with multilateral obligations.

Efforts to reform and revitalize the dispute settlement process have gained momentum, notably through initiatives like the Molina Process, which aim to broker consensus on practical improvements and restore confidence in the system. Additionally, the adoption of alternative mechanisms—such as binding arbitration and interim appellate arrangements—provides some interim relief and demonstrates creative approaches to preserving dispute resolution functionality in the face of Appellate Body deadlock. Nevertheless, the core impasse over whether and how to reinstate a fully operational Appellate Body remains unresolved, representing the most formidable barrier to systemic renewal.

Reviving and modernizing the WTO dispute settlement system is not simply about addressing procedural glitches; it is central to maintaining the WTO's legitimacy and relevance as the cornerstone of global trade governance. The diverse interests of WTO members, varying levels of economic development, and geopolitical dynamics make forging common ground difficult. Yet, without progress on dispute settlement, the WTO risks erosion of trust and authority, creating openings for unilateral actions and fragmentation in the international trade order.

In the near term, the WTO must navigate this challenging terrain with pragmatism and inclusivity, fostering dialogue that respects sovereignty while reinforcing legal certainty. The path forward demands compromises and innovative solutions that accommodate the complex realities of 21st-century trade. Ultimately, the sustainability of the rules-based multilateral trade system hinges on the successful restoration of a credible, impartial, and effective dispute resolution mechanism that can command broad acceptance among all members.

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