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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

DEFANGING THE APPELLATE BODY OF THE WTO

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ABSTRACT

International Trade Law has been making headlines in the United States of America (USA)and across the world in the past few years. As of December 2024, the USA was due to contribute about 22.7 million francs to the World Trade Organization (WTO), the payment for which was paused by the Trump Administration in an effort to reduce government spending[1]. This action of dethroning the jewel of the crown was not a novel action by the Trump administration. In 2019, the judge appointments to the WTO appellate court were blocked, leaving the Appellate Body toothless. This action outraged several developing and Least Developed Countries, as while the USA sees the WTO dispute resolution mechanism as litigious and infringing national sovereignty, the developing and least developed country views it as vital for fair trade.

In June of 2025, the Commerce and Industry Minister of India, Piyush Goyal, at an informal WTO Ministerial Meet stated that India prioritizes the restoration of the WTO Dispute Settlement Mechanism, which was weakened by the Trump Administration[2]. Consequently, at the outset, the paper analyses the significance of the Appellate Body and its procedure and working. Ultimately, the paper delves into the impasse caused by the USA by blocking the appointment of judges to the Appellate Body and the allegations put forth by the USA to substantiate its action, and subsequently analyses the reasons provided by the USA for disabling the WTO's Appellate Body.

Keywords: World Trade Organisation, Appellate Body, appointment of judges, United States of America.

[1] Economic Times, Saturday, March 29, 2025 7:03 AM UTC Economic Times, https://www.econotimes.com/US-Halts-WTO-Contributions-Amid-Trumps-Global-Spending-Review-1706013

[2] The Hindu, June 04, 2025 https://www.thehindu.com/news/national/india-calls-for-wto-action-on-non-tariff-barriers-ensuring-strong-dispute-resolution-mechanism/article69655498.ece#:~:text=India%20has%20called%20for%20action%20to%20curb%20non-tariff,Piyush%20Goyal%20said%20on%20Wednesday%20%28June%204%2C%202025%29.

1. Introduction

International Trade, once a powerhouse of international commerce, is now in a stalemate, largely due to the Appellate Body of the World Trade Organization (WTO) being left inoperative by the USA. This marks a sharp departure from the WTO that was envisioned on January 01, 1995, through the Marrakesh Agreement, where over 125 countries came together to establish the WTO. As of 2025, there are 164 members of WTO and accounting for 96.4% of the world trade[3].

The core reasons behind the establishment of WTO were for the negotiation of trade agreements among member nations, Dispute Resolution for disputes arising out of those agreements, implementation and monitoring of trade policies, and building trade capacities[4].

With the aid of the WTO, the members of WTO have negotiated a myriad of Agreements to regulate the world's trade based on the principles of fairness, reciprocity, and mutual consensus. When an issue arises on the enforcement or interpretation of such an agreement, the issue is brought before the Dispute Settlement Mechanism (DSM) of the WTO, which later came to be known as the crown jewel of the WTO due to its function in providing a stable and predictable form of multilateral trading[5], with over 620 disputes being put forth before it by its members[6]. Under the DSM, any WTO member can file a complaint against another member as per the mechanism established by the Dispute Settlement Understanding (DSU)[7] and procedures under Articles XXII and XXIII of GATT 1947.[8]

[3] World Trade Organisation, Handbook on Accession in Perspective https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c1s1p1_e.htm#fnt3 (accessed on July 14 2025)
[4] WTO Library, Understanding the WTO https://www.wto-ilibrary.org/content/books/9789287044662c001/read (accessed on July 14 2025)
[5] Bhumika Billa, 'Student Feature - Spotlight on the WTO and its Appellate Body Crisis' (E-International Relations, 08 September 2019) https://www.e-ir.info/2019/09/07/student-feature-spotlight-on-the-wto-and-its-appellate-body-crisis/ accessed on July 14 2025
[6] School of Law, University of International Business and Economics, https://wtochairs.org/sites/default/files/WTO%20Dispute%20Settlement%20Mechanism%202024-New.pdf#:~:text=As%20of%2031%20December%202023%2C%20WTO%20members%20referred,most%20active%20international%20adjudicatory%20systems%20in%20the%20world. (accessed on Jul 14 2025)
[7] Understanding the rules and procedures governing the settlement of disputes (hereinafter referred to as DSU)
[8] Article 3(1) DSU

One of the key functionaries of the DSM is the Appellate Body (AB) of the WTO, and as of December 2019, the United States of America had effectively defanged the AB. What had caused the deadlock, and what are the legal consequences in the world of trade now that there is no functioning AB?

2. Structural Flaws in AB members appointment

The WTO Dispute Settlement Body (DSB), as established under Article 2 of the DSU, is composed of representatives of all WTO Members, and is responsible for overseeing the dispute settlement proceedings of the WTO and includes crucial functions such as the adoption of the panel and AB reports and the appointment of AB members. The standing body of the AB consists of seven members, with three members required to review a case[9]. Usually, the DSB operates by consensus[10], which requires the unanimous support of all the members, which is the core reason for the present issue.

However, in circumstances relating to the adoption of panel and AB reports, the rule of negative consensus is followed (ie. the report is adopted unless there is a unanimous consensus against its adoption)[11]. Since the DSB operates strictly through consensus, the appointment of a member to the AB can be vetoed by a single member country's rejection (in this case being the USA). This is what has been happening to the WTO's Appellate Body since 2016.

3. US Obstruction of AB appointment

Currently, there are no members in the Appellate Body, and it is inactive due to the US's continuous objection to the reappointment and selection of new members to the AB[12]. The Obama Administration, in 2011, objected to the reappointment of Merit Janow and Jennifer A. Hillman, both belonging to the USA, for supposedly "failing to protect US interests in trade remedy disputes"[13].

[9]Article 17(1)(3) DSU
[10]Articles 2(4) DSU
[11] Articles 16(4) and 17(14) DSU
[12] WTO Trade Information https://www.wto.org/english/tratop_e/dispu_e/ab_members_descrp_e.htm
[13] Minutes of the DSB meeting of 21 April 2011 (WT/DSB/M/295), para 91

This is where the downfall of the AB of the WTO began. Subsequently, the USA had blocked the appointment of Professor James Gathii, a Kenyan candidate in 2014, who would have been the first black sub-Saharan African member of the AB if he had been appointed[14]. The US's reason for the objection was due to his opinions on the WTO supporting the rich and developed countries as against the developing countries[15]. Once again, in 2016, the USA had objected to the reappointment of Seung Wha Chang of South Korea by stating that "his service does not reflect the role assigned to the Appellate Body by WTO Members in the WTO agreements".[16]

In an unprecedented turn of events, the former members of the WTO, had communicated to the DSB regarding their concerns on the current reappointment process and had emphasised that the basis of reappointment must not be based on "doctrinal preference or the supposed independence or impartiality of a member" but strictly in accordance to Article 17.3[17] of the WTO Dispute Settlement Understanding[18].

During the Trump Administration, which began in 2017, the situation became significantly more complicated for the AB. The term of service of Mr Ricardo Ramirez-Hernandez and Mr Peter Van den Bossche was coming to an end, and Mr. Hyun Chong Kim of South Korea had tendered his resignation, thus leaving three spaces to be filled in the AB.

The European Union (EU) and a group of Latin American countries had put forth their proposals in the DSB Meeting for initiation of selection panel to replace the aforesaid members to which the USA replied "we cannot consider a decision launching a selection process when a person to be

[14]Gregory Shaffer, Manfred Elsig, Sergio Puig, 'The Extensive (Yet Fragile) Authority of WTO Appellate Body', Law & Contemporary Problems 79 (2016) 237, at 271 https://www.researchgate.net/publication/299596797_The_Extensive_But_Fragile_Authority_of_the_WTO_Appellate_Body

[15] See for instance, James T. Gathii, The High Stakes of WTO Reform, 104 MICH. L. REV. 1361 (2006) https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1517&context=mlr

[16] Meeting of the WTO Dispute Settlement Body, at 1 (May 23, 2016) https://gpa-mprod-mwp.s3.amazonaws.com/uploads/sites/25/2021/07/May23.DSB_.pdf

[17] The standard for appointment or reappointment is that the person must be "of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally."

[18] Communication to the Dispute Settlement Body from Former Appellate Body Members dated 31 MAY 2016, and 18 MAY 2016, enshrined in Appellate Body Annual Report for 2016 Annex 3 Pg 102-104 (WT/AB/27) https://vless.nitecore.com/english/tratop_e/dispu_e/ab_anrep_2016_e.pdf

replaced continues to serve and decide appeals after the expiry of their term"[19] and proceeded to state that "The DSB only had authority to appoint members whose term had expired under Article 17.2 of the DSU" and used this argument as a basis to further block the appointment of members to the AB, including Shree Baboo Chekitan Servansing from Mauritius in August of 2018.[20]

By December 10, 2019, after the expiry of the term of Ujal Singh Bhatia and Thomas R. Graham, the AB only had one member left instead of seven and the required three members for a quorum panel were left unfulfilled, thus leaving the AB paralysed and inoperative.

4. Reasons provided by the USA for defanging the AB and its analysis

In February of 2020, the Office of the United States Trade Representative (USTR) published the 2020 Trade Policy Agenda and 2019 Annual Report of the President of the United States on the Trade Agreements Program, which expressed the USA's view on the concerns surrounding the Appellate Body of the WTO[21]. This paper analyses the three main concerns expressed by the USA in the report, and its analysis as follows:

A) The Appellate Body had violated Article 17.2 of DSU and had repeatedly allowed members to decide cases even after the expiry of their term

During November of 2019, in the DSB Meeting, the USA, while rejecting a proposal for appointment of members to the AB, had stated that "The fundamental problem was that the Appellate Body was not respecting the current, clear language" of the Dispute Settlement Understanding (DSU)[22]. This was a reference to the repeated violation of Article 17.2 of the DSU which states that "*the DSB shall appoint persons to serve on the*

[19] Impasse over AB selection process lingers on, US again criticised Published in SUNS #8562 dated 27 October 2017; TWN Info Service on WTO and Trade Issues (Oct17/25)31 October 2017 https://www.twn.my/title2/wto.info/2017/ti171025.htm

[20] US Statement at DSB Meeting, August 27,2018 (WT/DSB/W/609/REV.4) https://ustr.gov/sites/default/files/2020_Trade_Policy_Agenda_and_2019_Annual_Report.pdf

[21] USTR's Report on the Appellate Body of the WTO https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf

[22] WTO, Minutes of Meeting, §§ 5.7–5.8, WTO Doc. WT/DSB/M/437 (Nov. 22, 2019) https://docs.wto.org/dol2fe/Pages/FE_Browse/FE_B_S005.aspx?MeetingId=164985&Language=1&StartDate=&EndDate=&SubjectId=2&BodyId=55&JobId=&SearchPage=FE_B_003&CatIdsHash=122368839&languageUIChanged=true#

Appellate Body for a four-year term and each person may be reappointed once…Vacancies shall be filled as they rise" thus reiterating that the appointment and reappointment shall be taken by the WTO members in a DSB Meeting.

However, the US criticised that this rule was overshadowed by the Appellate Body through a procedural rule adopted by the Appellate Body (Rule 15) which was framed under Article 17.9 of the DSU[23], which provided it the power to allow Appellate Body members whose terms had expired to complete the disposition of cases that were allotted to them while they were a member[24].

The USA's main criticism of Rule 15 is not with the rule in itself but that the members are ought to be appointed with the general positive consensus of the WTO members even in case of appointment of members under Rule 15[25] and this could be seen through the statements made by the USA in the DSB Meeting on August of 2017 where they stated that "it appreciated that the approach of Rule 15 could contribute to efficient completion of appeals."[26]

The AB, had responded to the concerns of the USA in a Background Note where they proceeded to state that according to the Vienna Convention on the Law of Treaties (VCLT), a statue is ought to be interpreted in good faith and in subsequent practice and application of the treaty.[27]

The AB then proceeded to explain that "Rule 15 had been applied eleven times in the previous more than 20 years without any objection from any member state" thus concluding that neither of the countries found that Rule 15 was in violation of the DSU and affirmed that since the AB does not have detailed statues like that of International Court of Justice(ICJ), "the procedural details which are lacking in the DSU are to be added not by

[23] "Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information."
[24] Rule 15 of the Working Procedures for Appellate Review (WT/AB/WP/1)
[25] Statements by the United States at the Meeting of the WTO Dispute Settlement Body, at 13 (Nov. 22, 2017) at 7 Pg 13"the DSB has a responsibility under the DSU to decide whether a person whose term of appointment has expired should continue serving," https://common.usembassy.gov/wp-content/uploads/sites/25/2017/11/Nov22.2017.DSB_.Stmt_.as-delivered.fin_.pdf
[26] Minutes of the DSB meeting of 31 August 2017 (WT/DSB/M/400), para. 5.5;
[27] Article 31(1) and 31(3) of VCLT

the WTO membership, but by the Appellate Body itself, through the adoption of working procedures."[28]

The concern of the USA on Rule 15 not obtaining the authorisation of the DSB can be easily solved by submitting a proposal for the amendment of the provisions of the DSU[29] for clarification on the issue, but the USA failed to take any steps to resolve the issue.

B) The "Judicial Overreach" of the WTO

One of the main contentions put forth by the USA is the alleged judicial overreach of the WTO. This argument is twofold. One is that by declaring that its decisions should be treated as a precedent and secondly, the Appellate Body violates Art. 17.6 of the DSU by reviewing not only panel findings of fact, but also panel findings of law.

i) Precedent value of AB Reports

The USA in the aforesaid report claimed that the AB had imposed precedents for its ruling, which is barred as there is no rule of stare decisis in the international realm and the panel is not obligated to follow the interpretations that it had followed in the previous cases[30].

Before delving into the arguments put forth by the USA, it is important to analyse the cases where the AB had considered a precedential effect. The main cases are the Japan – Alcoholic Beverages II (1996), and US – Stainless Steel (Mexico) (2008)[31].

In the Japan- Alcoholic Beverages II case, the panel had interpreted the word "subsequent practice" under Article 31(3)(b) of VCLT [32]and held that the repeated use of previous GATT reports by the countries indicate that those reports were used as a

[28] Background Note on Rule 15 of the Working Procedures for Appellate Body Review, Nov. 24, 2017. https://1library.net/article/rule-working-procedures-appellate-review.y989mpdz

[29] Rule 32 of the Working Procedures for Appellate Review (WT/AB/WP/1) refers back to the Paragraph 9 of Article 17 of the DSU.

[30] WTO Legal effect of panel and appellate body reports and DSB recommendations and rulings, https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c7s2p1_e.htm#fnt1

[31] Simon Lester and James Bacchus, Of Precedent and Persuasion: The Crucial Role of an Appeals Court in WTO Disputes, September 12,2019. https://www.cato.org/free-trade-bulletin/precedent-persuasion-crucial-role-appeals-court-wto-disputes (accessed on July 22,2025)

[32] any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

guide to interpret GATT provisions.[33] But this view was rejected by the AB with reliance on Article IX:2 of the WTO Agreement which provides the "exclusive authority for adaptation of interpretations" to the members of the WTO. This, read with Article 3.2 of DSU[34] states that any doubts regarding the provisions of WTO Agreement is to be interpreted in accordance with customary international law by the members[35].

However, the AB observed that "*Adopted panel reports are an important part of the GATT acquis…they create legitimate expectations among WTO Members, and, therefore, should be taken into account where they are relevant…*"[36]

The aforesaid view was also followed in the case of US Shrimp case[37]. This issue was extensively dealt with in the case of US – Stainless Steel (Mexico) (2008). In this case, the panel had not followed the rulings in the previous cases: US – Zeroing (EC) and US – Zeroing (Japan), where they had held that the practice of Zeroing was not in consonance with the WTO Anti-Dumping Agreement. Mexico, on appeal, had contended that the panel not following the previous decisions constituted a violation of the Panel's duties under Article 11 of the DSU[38] and it also violates Article 3.2 of the DSU[39].

The AB in this case held that "*the legal interpretation embodied in adopted panel and Appellate Body reports becomes part and parcel of the acquis of the WTO dispute settlement system. Ensuring "security and predictability" in the dispute settlement system as contemplated in Article 3.2 of the DSU, implies that, absent cogent reasons,*

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[33] Japan – Alcoholic Beverages II, para. 129 https://www.worldtradelaw.net/document.php?id=reports/wtopanels/japan-alcohol(panel).pdf&mode=download

[34] "The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law."

[35] Japan – Alcoholic Beverages II, pg 5 https://worldcourts.com/wto/eng/decisions/1996.10.04_Japan.pdf

[36] Japan – Alcoholic Beverages II, pg 14 https://worldcourts.com/wto/eng/decisions/1996.10.04_Japan.pdf

[37] US – Shrimp (Article 21.5 – Malaysia), para 108 pg. 30 The AB, while quoting the Japan Alcoholic Beverages case stated that "Adopted panel reports are an important part of the GATT acquis. They are often considered by subsequent panels. They create legitimate expectations among WTO Members, and, therefore, should be taken into account where they are relevant to any dispute".https://www.worldtradelaw.net/document.php?id=reports/wtoab/us-shrimp(ab)(21.5).pdf&mode=download

[38] "…Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements…"

[39] Supra 33

an adjudicatory body will resolve the same legal question in the same way in a subsequent case[40]"

Thus, with the above cases, the AB had established that even though the general rule of stare decisis is not applicable in international law, it still can be used to resolve certain disputes, and the subsequent panels must still follow well-established principles upheld by the previous panels.

The main argument put forth by the USA is that the task of interpretation of WTO agreements lies solely with the Ministerial Conference and the General Council and the decision to adopt the interpretation is made through a vote containing three-fourths of the votes of the members and that the AB has no role in interpreting the said agreements or setting precedents.

This view of the USA is harsh and not justifiable as there needs to be a settled jurisprudence in the field of international law for the countries to rely on and it prevents confusion on the interpretation of existing agreements. If the AB provides a different finding than the previous AB, it may create confusion in the interpretation of the agreement.

ii) Appellate Body violates Art. 17.6 of the DSU

The USA, in the DSB Meeting on 27 August, 2018 had stated that the AB time and over again had overreached its powers by reviewing not only panel finding of law, but also the panel findings of law and had reviewed and even effectively overruled panel findings of fact and had violated Article 17.6 of the DSU which explicitly provides that "an appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel."

To substantiate their criticism, the USA had quoted the EC – Measures Concerning Meat And Meat Products (Hormones) case[41], the European Union (EU) on appeal had claimed that the panel had distorted certain facts of the cases and thus is in violation of

[40] US – Shrimp (Article 21.5 – Malaysia), para 160 https://www.worldtradelaw.net/document.php?id=reports/wtoab/us-stainlessmexico(ab).pdf&mode=download

[41] Statements made by the USA at the DSB Meeting on 27 August 2018, Page 11 https://gpa-mprod-mwp.s3.amazonaws.com/uploads/sites/25/2021/07/Aug27.DSB_.Stmt_.as-delivered.fin_.rev_.public.pdf

Article 11 of the DSU[42], which provided the duty to the panel to make an objective assessment of the facts which the EU claims the panel had failed to do. The complainants, the USA and Canada, objected to this by stating that the AB did not have the power to review the facts of the case and was only limited to reviewing the law, as quoted in Article 17.6[43].

The AB had held that "*The consistency or inconsistency of a given fact or set of facts with the requirements of a given treaty provision is, however, a legal characterization issue. It is a legal question. Whether or not a panel has made an objective assessment of the facts before it, as required by Article 11 of the DSU, is also a legal question which, if properly raised on appeal, would fall within the scope of appellate review*."[44]

The USA, however, felt dissatisfied with the analysis of the AB and had criticised this by stating that the assessment of facts by the panel does not become a legal question just because a party objects to the facts presented by the panel and that examining any portion of it would still fall under "factual findings" and not an "issue of law[45]".

The USA's main contention was not with the power of the AB to analyse findings of law, but that the exercise of this authority was not done with the consensus of the members of the WTO. This can easily be resolved through adoption of the interpretation by the Ministerial Conference. But, the USA, unfortunately, does not provide for any solutions to resolve the aforesaid issue.

C) The Appellate Body violates the 90-day deadline of Article 17.5 of the DSU

Article 17.5 provides that "As a general rule, the proceedings shall not exceed 60 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report… When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the

[42] Supra 38
[43] EC – Measures Concerning Meat And Meat Products (Hormones) case, Page 24 https://worldcourts.com/wto/eng/decisions/1998.01.16_European_Communities.pdf
[44] EC – Measures Concerning Meat And Meat Products (Hormones) case para 132 pg.51 https://worldcourts.com/wto/eng/decisions/1998.01.16_European_Communities.pdf
[45] Statements made by the USA at the DSB Meeting on 27 August 2018, Page 13 https://gpa-mprod-mwp.s3.amazonaws.com/uploads/sites/25/2021/07/Aug27.DSB_.Stmt_.as-delivered.fin_.rev_.public.pdf

delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days."

The USA, with reference to Article 3 of the DSU [46]had contended that the 90-day deadline was a crucial element in this mechanism which promotes fast and efficient dispute resolution and this was blatantly ignored by the AB. The reasons for delay in the AB proceedings was addressed by the speech by Roberto Azevédo on 26 September 2014 where he stated that the AB was "experiencing an unprecedented volume of work in dispute settlement."[47]

To determine whether there indeed was an increase in the workload, one can see the number of cases the panel report was adopted and how many was appealed. There had been a surge from 2 cases in 1996 to 10 cases of panel report being adopted in 1999. Among the 10 cases, 7 cases were appealed. The year 2005 had the highest number of cases sent for panel report adoption, with 12 cases being appealed. And in 2014, the year when Roberto Azevédo gave the aforesaid speech, there were 15 cases in which the panel report was adopted, with 13 of those cases being appealed, which was the highest percentage of panel report of panel cases being appealed since the 1990s[48].

With the above statistics, it is adduced that there indeed has been an increase in the workload of the appellate body. But this is not to state that the criticism of the USA is unfound in law. But the main criticism is that the USA's report had identified various shortcomings of the AB without providing effective solutions to overcome them. The actions of the USA seem like a way that rich and developed countries use their power to bully other developing countries by paralyzing the body that makes developed countries accountable for their trade practices and deals with international agreements.

[46] "The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members."

[47] Speech by Roberto Azevédo on 26 September 2014 https://neccint.wordpress.com/2014/09/28/roberto-azevedo-success-of-wto-dispute-settlement-brings-urgent-challenges/

[48] WTO Dispute Settlement: Statistics https://www.wto.org/english/tratop_e/dispu_e/stats_e.htm

5. Conclusion

Thus, we can conclude that the criticisms of the USA on the workings of the Appellate Body were not with the procedure by itself, but that it was being exercised without the consensus of the members of the WTO. The USA indeed has the right to criticise the AB of the WTO, being a WTO member and a sovereign nation. However, defanging the WTO merely due to issues that could be resolved through the adoption of amendments in the DSU is unfair. The developing and least developed countries that rely on forums such as WTO for fair and unbiased interpretation and enforcement of international agreements are greatly disadvantaged due to the actions of the USA.

It is also pertinent to note that in the 255-page report of the USA stating the shortcomings of the AB, not a single page provided solutions to the issue at hand. A discussion must be held with the USA to discuss plausible solutions to resolve the issues. In the meantime, many countries have resorted to other forms of dispute resolution countries such as the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), which is an independent appeal process that temporarily takes the place of the AB of the WTO, till the AB is restored.