



MAIN REASONS AND CONSEQUENCES OF THE SUSPENSION OF THE ACTIVITIES OF THE WTO APPELLATE BODY

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ABOUT ARTICLE

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Abstract: This article analyzes the suspension of the WTO Appellate Body from December 10, 2019, which had a serious impact on the global trade dispute resolution system, as an institutional crisis occurred due to criticism by the US regarding precedent creation, and obiter dicta practices. The work examines the political, institutional, and technical causes of this crisis, based on WTO documents and analysis by scientists. As a result, delays in dispute resolution, uniform application of law have weakened, and difficulties for developing countries have increased. The study emphasizes the need for reforms to restore the effectiveness of the WTO dispute resolution system.

JSTNING APELLATSIYA ORGANI FAOLIYATINI TO'XTATIB TURISHNING ASOSIY SABABLARI VA OQIBATLARI

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MAQOLA HAQIDA

Kalit so'zlar: JST Appellatsiya organi, nizolarni hal qilish, xalqaro savdo, pretsedent, obiter dicta, rivojlanayotgan davlatlar, institutsional inqiroz, savdo nizolari.

Annotatsiya: Ushbu tadqiqot 2019-yil 10-dekabrda boshlab JST Appellatsiya organining faoliyati to'xtatilishini tahlil qiladi, bu global savdo nizolarini hal qilish tizimiga jiddiy ta'sir ko'rsatdi, chunki AQShning pretsedent yaratish va obiter dicta amaliyotlari bo'yicha tanqidlari tufayli institutsional

inqiroz yuzaga keldi. Ish JST hujjatlari va olimlarning tahlillariga asoslangan holda, ushbu inqirozning siyosiy, institutsional va texnik sabablarini o'rganadi. Natijada, nizolar hal etilishining kechikishi, huquqning bir xil qo'llanilishi zaiflashdi va rivojlanayotgan davlatlar uchun qiyinchiliklar kuchaydi. Tadqiqot JST nizolarini hal qilish tizimining samaradorligini tiklash uchun islohotlar zarurligini ta'kidlaydi.

ОСНОВНЫЕ ПРИЧИНЫ И ПОСЛЕДСТВИЯ ПРИОСТАНОВЛЕНИЯ ДЕЯТЕЛЬНОСТИ АПЕЛЛЯЦИОННОГО ОРГАНА ВТО

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О СТАТЬЕ

Ключевые слова: Апелляционный орган ВТО, разрешение споров, международная торговля, прецедент, obiter dicta, развивающиеся страны, институциональный кризис, торговые споры.

Аннотация: В данном исследовании анализируется приостановление деятельности Апелляционного органа ВТО с 10 декабря 2019 года, что серьезно повлияло на систему разрешения глобальных торговых споров, поскольку возник институциональный кризис из-за критики США в отношении Creating Precedence и Obiter Dicta. Работа исследует политические, институциональные и технические причины этого кризиса, основываясь на документах ВТО и анализе ученых. В результате задержки разрешения споров и единообразного применения права ослабли, а трудности для развивающихся стран усилились. Исследование подчеркивает необходимость реформ для восстановления эффективности системы разрешения споров ВТО.

Introduction

Over time, critical views and criticisms of the activities of the Appellate Body began to emerge. The suspension of the activities of the World Trade Organization's (WTO) Appellate Body is a global event that has led to serious changes in the international trade system. This situation has affected the stable functioning of the appeals mechanism, which is an important element of the WTO dispute resolution system. Dispute resolution is a central pillar of the international trade system and a unique contribution of the WTO to the stability of the global economy. However,

from December 10, 2019, the WTO Appeals body was forced to suspend its activities, which led to a serious crisis in the international trading system.

This event marked a turning point in the history of the world trading system, as the mechanism that had been legally resolving disputes and disagreements for nearly 25 years "lost its crown jewel." The reasons for the suspension of the appellate body are complex and multifaceted, including both political, institutional, and technical procedural factors. The consequences of this crisis were equally extensive, affecting everything from the reliability of the WTO legal system to international trade flows, from the interests of developing countries to the stability of the entire institutional system.

Methods

This study examines the suspension of the activities of the WTO Appeals Authority through a qualitative analysis. In this case, institutional, procedural, and geopolitical factors leading to the crisis are investigated using primary and secondary sources, such as WTO documents, scientific articles, and expert analyses. Criticisms raised by the U.S. during the data collection process, in particular, issues related to Rule 15, precedent-setting practices, and obiter dicta, were systematically reviewed based on reports and statements from 2011 to 2025. The study also took into account the opinions of leading scientists, such as Vaibhavi Guruprasad and Jennifer Hillman, and assessed their impact on developing countries and the global trading system. The research methodology is aimed at summarizing these results to assess the interaction of technical, legal, and political aspects in the paralysis of the appellate body.

Results and discussion

This criticism didn't appear suddenly. For nearly a decade, the United States has openly criticized a number of practices of the Court of Appeal and vetoed some appointments as early as 2011. Specifically, the Obama administration's refusal to support the regular reappointment of US citizen Jennifer Hillman, without providing any justification, caused a stir at the time (the WTO appellate body crisis a way forward). In 2016, the Obama administration obstructed the reappointment of South Korean Appeals Council member Seung Wha Chang for six months. The reason for this was the suspension of the appeal body due to its evasion of responsibility. In 2018, it again rejected the joint invitation of WTO members, as members of the Appeals Body continued to serve on the board, even though 5 months had passed since its expiration (WTO, 2017), but this practice reinforces Rule 15 of the Working Rules for the Consideration of Appeals, which allows members to serve until the completion of the consideration of the appeal (WTO Appellate Body, 2010). However, the United States refused to recognize this rule and refused to support the reappointment of the resigning member Sri Babu Chekitan Serbansing on the same grounds.

Vaibhavi Guruprasad (Vaibhavi Guruprasad, 2021, p.3) noted in his study that in 2018, former US President Trump threatened to withdraw from the WTO. He emphasizes that the WTO has no benefit for the US and only allows other countries to access US markets (Gregory Korte, 2018). On the one hand, it's ridiculous, because even though the US has been a defendant or plaintiff in the dispute for 25 years, the US won 85.7% of the disputes, or 84.4% overall (Amrita Bahri, 2019). After Trump's words, it becomes clear that the US has begun its efforts to stop reappointments, that is, we can understand the plan to block the election of members of the Appellate Body. The US has been protesting against the WTO for ten years. Despite beginning to suspend appointments in 2016, the U.S., as a plaintiff or defendant, has submitted for consideration another 35 disputes since January 2017 as of 2025 (WTO Statistics, 2025).

Vaibhavi Guruprasad divides the reasons for blocking into 2 groups. Firstly, on technical procedural issues; The second is issues related to the activities of the Court (Vaibhavi Guruprasad, 2021, p.3).

Regarding technical procedural matters, firstly, Rule 15 of the Working Procedures allows a member of the Appellate Body whose term of office expires to continue appeals pending review after receiving confirmation from the Appellate Body and notification to the Dispute Resolution Body (DSB). This rule saves time for replacing a retired member and familiarizing a new member with the work. The US criticized this rule for infringing on the State Tax Committee's right to reassignment (Statement by US, WTO, 2017). Secondly, according to Rule 14.2, he must be notified 90 days before resigning. However, in 2017, one member did not follow this rule, which left a negative impression (Amrita Bahri, 2019). He also noted that the appellate body no longer requests the consent of interested parties before the extension of the deadline (Yang Guohua, 2019, p. 2) or gives the State Tax Committee an approximate deadline for submitting its report (Robert Lighthizer, 2017). The third issue relates to reappointment in accordance with Article 17.2 of the Dispute Resolution Agreement. In the opinion of the US, this is an assessment of work efficiency and should not become a tradition of "almost automatic reassignment." Another issue is related to the non-implementation of the 60-90 day allowance for reviewing appeals. This period has become an exception to the norm, and appeals are considered on average within a year (Amrita Bahri, 2019). In addition, he criticized the U.S. Court of Appeal for allowing several members to continue to work on appeals and make decisions even after their term has expired (Payasova, Hufbauer and Schott, 2018, p.4). The US stated that the appeals body should not allow leaving members to work on appeals under consideration or under review after the expiration of their term (Philippe De Baere, 2017 p.14), as this violates the DSB's absolute authority to reappoint members for a second term (Statement by US, 2017).

In matters related to judicial activity, the US has filed objections with the Appeals Authority regarding the introduction of new principles contrary to the principles of the Moroccan Agreement and the infringement of the legislative powers of the WTO Dispute Resolution Body (DSB) through judicial activity. Thus, this issue can be divided into two: the first are decisions that form the doctrine of precedent, and the second are decisions that create obiter dicta (additional opinions).

First, regarding the doctrine of precedent, in the U.S.-Shrimp(WT/DS58/AB/RW case, 2001) case, the Appeals Authority approved the Panel's decision to rely on the previous Appeals Report, clearly indicating that future panels must adhere to the considerations contained in the Appeals Reports. In the case of US-Stainless Steel (Case WT/DS344/AB/R, 2008), the "No Serious Grounds" principle was developed to consider the controversial method of calculating the anti-dumping duty used by the US, known as the "zero-sum method." 16 disputes (DS179; DS264; DS322; DS335, DS343; DS344, DS350; DS382, DS383, DS402, DS404, DS420, DS424, DS429 and DS471) have arisen in the appellate body regarding the "method of zeroing out" of anti-dumping calculations, and this decision creates the possibility of similarly resolving cases with the same legal issues.

The US considers this problematic, as the Court of Appeal barely deviates from its previous decisions. In this emerging system of precedent, a report issued by a permanent body may have a long-term impact on subsequent disputes. Due to the lack of a mechanism to challenge the appellate body's report, the US is concerned that strict adherence to precedent will reinforce decisions that it considers misinterpretation of the law. The principle of adherence to previous decisions in similar situations, i.e., "stare decisis," is not provided for in the DSU (Clifford Chance, 2019).

Obiter Dicta is widespread in general jurisprudence, it is a judge's observation of the principle of law (Henry Campbell Black, 2018), but not necessary in the resolution of a court case, the US states that the Appeals Authority expresses its opinion on issues not raised by the parties, in the case of "Canada-Periodicals" (WT/DS31/AB/R, 1997) the Appeals Authority recognized some parts of the panel report as obiter dicta, and in the case of "Argentina-Financial Services"(WT/DS453/AB/R) it deeply analyzed controversial concepts, in the opinion of the Appeals Authority, this hinders the quick resolution of disputes, the US states that the Appeals Authority is not an academic body, so it should refrain from making observations that are simply unnecessary out of interest(Vaibhavi Guruprasad, 2021, p.3).

Aditya Rathor and Ashutosh Bajpai argue that the crisis began to emerge from the Appeals Committee because the US opposed the Appeals Committee's appointment of a new member due to the Trump administration's protectionist policies (Aditya and Ashutosh, 2020).

Abhinandan Ashok Neeralgi notes in his research (Neeralgi Abhinandan Ashok, 2024, p. 2) that he has been criticizing the U.S. Court of Appeals for many years. The US refused to support the World Trade Organization (WTO) after receiving three unfavorable controversial decisions (Bown and Keynes, 2020). WTO Deputy Director-General Alan Wolff and Senator Robert Dole's advisor Robert Lighthizer jointly complained that the panelists lacked sufficient competence, that they were not properly vetted for objectivity, and that they were being manipulated by other officials seeking to implement their agenda. They said that holding secret meetings would lead to a series of events that would lead to a review of US laws, including the powers of Congress, its two chambers, and the incumbent president (US Senate, 2000). As the WTO repeatedly condemned the use of US trade protection measures, negative attitudes toward the WTO in the USA grew (Neeralgi Abhinandan Ashok, 2024, p. 2).

Abhinandan Ashok Neeralgi, meanwhile, prevented the reappointment of Merit Janow and Jennifer Hillman, who were U.S.-born members of the Appeals during their tenure in the Trump administration, and asked them to decline an offer for a second term. They were unable to fully protect the interests of the United States during their membership. Therefore, the US was not satisfied with them. However, this position of the USA contradicted one of the requirements for members of the State Tax Committee and the Appeals Committee, namely, the rule that it should not be related to any government. Subsequently, the U.S. Court of Appeals created an artificial barrier to the appointment of a Kenyan citizen, James Gathi, to replace the member, David Unterhalter. The US cited Gathi's bias and inequality in supporting developed countries against developing countries in the World Trade Organization as the reason for this (Neeralgi Abhinandan Ashok, 2024, p. 2).

As a result of the blocking of the activities of the appellate body, a total of about thirty Panel reports on disputes were considered during 2020-2024. In addition, in December 2019, there were disputes that were not resolved immediately after the decision of the Appellate Body. For example, the USA - a subsidy for cork wood, or India - works on pipelines (Technical note, 2025). As a result, we can understand that due to the crisis of the Appellate Body, the WTO's dispute resolution procedure became closer to what it was during the original GATT period. In case of disagreement, the party can postpone the issuance of the final decision indefinitely, which indicates the nullification of the system's binding power.

Jennifer Hillman noted that the World Trade Organization (WTO) and the rule-based trading system are under serious threat due to the suspension of the Donald J. Trump administration's appointment of members to the WTO's Supreme Court - the Appellate Body. By December 2019, due to the lack of sufficient members in the Appellate Body to consider cases, the pending appeals remained suspended. This creates the risk that in the future any trade dispute will turn into a small-

scale trade war(Hillman, 2020). In this case, if the legal method of dispute resolution does not work, the affected state may resort to unilateral measures to protect its trade interests, i.e., countermeasures, which can lead to a chain reaction. Therefore, the crisis of the appellate body has caused serious discussion among WTO member states and has become a pressing issue over the past 5 years. In February 2019, negotiations within the framework of the WTO began under the leadership of New Zealand expert David Volker, which began efforts to overcome the US objections (WTO Plurilaterals, 2025).

The collapse of the WTO's Appellate Body resulted in several consequences. Just as the heartbeat has stopped, the implementation of decisions on disputes within the WTO system remains uncertain. For example, after the consideration of the dispute, after encountering the disagreement of the parties, it is appealed to the appellate body. As a result, taking into account that the decision issued by the Panel is not yet legally binding, it does not create any obligations. The reason is that the consideration of the dispute is not yet fully and officially completed. This creates problems specifically for developing countries. The reason is that even if a developing country wins the dispute, it files a complaint against the decision on the resolution of the dispute by the developed state, which is the other party to the dispute, and this issue can be dragged on for years. As a result, developing countries will not be able to achieve the expected result of protecting their rights within the framework of the WTO.

One of the second consequences is that the void of the decisions of the Appellate Body threatens the unified and uniform application of law, which is one of the main functions of the WTO Dispute Resolution Mechanism. If the appellate body operated from 1995 to 2019, its decisions are considered as an official interpretation of WTO legal norms in an alternative sense. That is, depending on the previous approaches adopted by the Appellate Body, the panels subsequently formed their work accordingly. Now, there is no body to review the Panel's conclusion, that is, an appeals body. This leads to the tendency of each panel to interpret it as it sees fit. However, as mentioned above, if this conclusion or decision is appealed, it will not enter into legal force. As a result of the blockade of the WTO Appellate Body, this situation is observed not only theoretically, but also practically. At the same time, in disputes involving the state, that is, the USA, which is the reason for the blocking of the appellate body, the Panel has been trying to misinterpret or reinterpret the norms previously interpreted by the Appeal. The US, however, is trying to strengthen its position by taking advantage of the current lack of an Appeal.

The third consequence is that without the Appeals Authority, the State Tax Service has significantly slowed down, and the dispute resolution process is delayed or stopped altogether. Previously, the panel and appeal stages had to be completed sequentially within a certain period. Currently, no disputes are being considered without an appellate body, and there are many disputes

that have been "hanging" since 2019. This situation led to disillusionment with the resolution of multilateral trade disputes. Disputes have not significantly decreased since the blockade of the Appellate Body, there has always been and will always be a dispute in international trade, but the conflicting parties consider the WTO Dispute Resolution System ineffective. The parties to the dispute are looking for ways to resolve alternative disputes. For example, they have been using such types as mutual negotiations, arbitration, or mediation.

David Walker's efforts to restore the function of the Appeals Authority and reduce US objections continue to this day. However, for now, there are still disagreements between the US and other countries. The US opposes the reinstatement of the Court of Appeal and demands a reform of its functions. However, despite the fact that this problem has been blocked by the Appellate Body for almost six years, there is no clear prospect.

Conclusion

The suspension of the WTO Appellate Body represents a serious institutional collapse in the international trade legal system. As a result of this situation, disruptions occurred in the legal settlement of international trade disputes, especially disputes claimed after 2019, which remained unresolved and limited the ability to protect the interests of developing countries. The reason for this is the United States' long-standing critical attitude towards the activities of the Appeals Authority under geopolitical pressure. The criticism mainly focused on two aspects of the Appellate Body: technical, procedural, and legal aspects. However, based on the analysis, this situation in the WTO system is not only due to the decision of one member state, but also as a result of the weakness of the institution's mechanism of legal clarity and accountability.

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