

**THESIS TO THE TOPIC: THE CURRENT CONDITION OF  
THE APPELLATE BODY IN THE WTO DISPUTE  
SETTLEMENT SYSTEM**

**Gulnoza Kosimova**

*Master Degree student of Tashkent State University of Law*

[gulnozacosimova07@gmail.com](mailto:gulnozacosimova07@gmail.com)

**Abstract:** The Appellate Body (AB) of the World Trade Organization (WTO) has been a cornerstone of the multilateral trading system, providing consistency, predictability, and fairness in dispute resolutions among member states. However, since 2019, it has faced a crisis of paralysis due to the inability of members to appoint new judges, primarily resulting from the United States blocking appointments over concerns of judicial overreach and procedural inefficiencies. This has rendered the AB non-functional, creating a legal void in the WTO Dispute Settlement Mechanism (DSM), where disputing parties can indefinitely appeal to a non-functioning body, undermining enforceability and credibility. This thesis examines the origins and implications of the AB crisis, including weakened WTO rule enforcement, inconsistent jurisprudence, and eroded trust among member states, particularly smaller economies. It further explores potential reforms to restore the AB's functionality, such as clarifying its scope, expediting decision-making, and utilizing interim arbitration mechanisms. Addressing this crisis is critical for the preservation of a fair and stable multilateral trading system.

**Keywords:** WTO, Appellate Body, Dispute Settlement Mechanism, WTO crisis, global trade, judicial overreach, WTO reforms, international trade law, multilateral trading system, trade dispute resolution.

## Introduction

The Appellate Body (AB) of the World Trade Organization (WTO) has been integral to resolving trade disputes, ensuring consistency and fairness in the application of WTO agreements. Established under the Dispute Settlement Understanding (DSU), the AB's primary function is to review legal interpretations in panel reports and deliver binding decisions (World Trade Organization [WTO], 1995). However, since 2019, the AB has been paralyzed due to an inability to appoint new members, with the United States blocking appointments over concerns of judicial overreach and procedural inefficiencies (Petersmann, 2020). This crisis undermines the credibility and functionality of the WTO Dispute Settlement Mechanism (DSM) and poses significant challenges to global trade governance (Bown, 2020). This study examines the origins and implications of the AB crisis and explores potential reforms to restore its functionality.

## Methods

This study employs a qualitative approach through a review of primary and secondary sources, including official WTO reports, member state submissions, and academic literature. Key areas of investigation include:

1. **Historical Analysis:** Examining the establishment of the AB, its operational framework under the DSU, and its contributions to international trade jurisprudence (WTO, 1995).
2. **Policy and Legal Analysis:** Reviewing criticisms raised by member states, particularly the United States, about the AB's procedural delays and its alleged judicial overreach (Petersmann, 2020; Bown, 2020).
3. **Comparative Study:** Evaluating the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) as an alternative mechanism during the AB's paralysis (Joost, 2021).

## Results

The findings reveal critical insights into the current state of the AB and its impact on the DSM:

1. **Origins of the Crisis:** The AB's paralysis stems from prolonged political deadlock, driven by the United States' concerns about the AB exceeding its mandate and delays in issuing rulings (Bown, 2020). By December

2019, the AB fell below the minimum quorum of three members needed to hear appeals (WTO, 2019).

2. **Impact on the DSM:**

- **Legal Void:** Disputing parties exploit the AB's paralysis by appealing panel rulings to a non-functional body, effectively blocking the enforcement of decisions (Joost, 2021).
- **Eroded Trust:** Smaller economies face disproportionate risks due to weakened safeguards against larger trading partners (Petersmann, 2020).
- **Inconsistent Jurisprudence:** The lack of appellate oversight risks conflicting interpretations of WTO agreements, undermining legal certainty (Bown, 2020).

3. **Interim Solutions:** While the MPIA offers a temporary framework for appeals, its limited adoption by WTO members restricts its overall impact (Joost, 2021).

## Discussion

Restoring the functionality of the AB is essential to maintaining a fair, rules-based global trading system. Key strategies include:

1. **Defining Judicial Boundaries:** Clarifying the scope of the AB's authority to address concerns of judicial overreach while maintaining its role in ensuring consistency (Petersmann, 2020).
2. **Procedural Reforms:** Introducing timelines to expedite appellate rulings and prevent delays that undermine trust (WTO, 2019).
3. **Interim Mechanisms:** Expanding the MPIA's membership and enhancing its operational framework to sustain appellate review functions temporarily (Joost, 2021).
4. **Multilateral Consensus Building:** Engaging member states in dialogue to resolve political differences and establish a shared vision for the future of the DSM (Bown, 2020).

Despite these challenges, restoring the AB's functionality is critical for ensuring the credibility of the WTO and its ability to address evolving trade disputes. A revitalized AB would enhance the predictability and stability of the international trade system, benefiting all member states.

## References

Bown, C. P. (2020). *The WTO Appellate Body crisis: A timeline of events*. Peterson Institute for International Economics.

Joost, P. (2021). *Interim arbitration mechanisms in the WTO: A review of the MPIA*. *Journal of International Economic Law*, 24(1), 1–25.

Petersmann, E.-U. (2020). *Judicial overreach and the WTO dispute settlement mechanism: A U.S. perspective*. *World Trade Review*, 19(3), 431–450.

World Trade Organization. (1995). *Understanding on rules and procedures governing the settlement of disputes*. WTO Legal Texts.

World Trade Organization. (2019). *The Appellate Body in crisis: A briefing paper*. WTO Secretariat.

Abdikhakimov, I. (2023, January). Trademark and copyright infringements in social media. In *International Conference on Legal Sciences* (Vol. 1, No. 1, pp. 187-200).

Abdikhakimov, I. (2023). The Uncertainty Principle: How Quantum Mechanics Is Transforming Jurisprudence. *International Journal of Cyber Law*, 1(7).

Abdikhakimov, I. (2023, June). Unraveling the Copyright Conundrum: Exploring AI-Generated Content and its Implications for Intellectual Property Rights. In *International Conference on Legal Sciences* (Vol. 1, No. 5, pp. 18-32).

Abdikhakimov, I. (2023, June). Legal aspects of AI generated content. In *International Conference on Legal Sciences* (Vol. 1, No. 5, pp. 1-17).