

The Present and Future of the WTO Dispute Settlement System

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Abstract: The World Trade Organization (WTO) faces challenges and needs to undergo necessary reforms. However, the WTO dispute settlement is still working, and its function has become even more important in the current trade wars, with 8 cases brought to the WTO in the first half of 2025, 130 members have continued to request the resumption of the Appellate Body 85 times in the past years and 56 members have made appeal arbitration arrangements since 2020 with 3 cases reviewed under the interim system. All these efforts justify the existence of a well-functioning dispute settlement system, although innovation is needed to address new challenges.

Keywords: Functioning of the Dispute Settlement, Resumption of the Appellate Body, Appeal Arbitration

On April 23, 2025, in the C. Peter McColough Series on International Economics with Ngozi Okonjo-Iweala, presided by the President Michael Froman of the Council on Foreign Relations, Ngozi Okonjo-Iweala, Director-General of the World Trade Organization, said that, “We hear people say that the WTO dispute settlement system is paralyzed. No, it is not. We have 47 ongoing disputes. It is the Appellate Body that is paralyzed. So when people say the dispute settlement system is paralyzed, I often smile because it is actually working”.

When asked by my friends: is the WTO dead? or is the WTO closed? as the Director-General, I often smile and always tell them about the dispute settlement: the WTO is still hearing cases. I myself, as one of the ten standing appeal arbitrators, heard one case in 2022, and two other cases have been

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decided by other arbitrators.

It is true. I often add that the WTO is facing huge challenges,¹ but it will not die or close because a globalized world needs trade rules and such an organization to implement the rules. I believe we will see a new WTO in the future, led by countries reforming it, such as the European Union (EU) and China.

1 See Paragraph 4 of the Declaration for the 13th Ministerial Conference on March 2, 2024, for some of the reform issues: We reaffirm our commitment made at our Twelfth Session to work towards necessary reform of the WTO to improve all its functions and acknowledge the progress made in this regard. We note and value the work done to date to improve the daily functioning of WTO Councils, Committees and Negotiating Groups with a view to enhancing the WTO's efficiency, effectiveness, and facilitation of members' participation in WTO work. We instruct the General Council and its subsidiary bodies to continue to conduct this work and report progress as appropriate to the next Ministerial Conference, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN24/DEC.pdf&Open=True> (Last Visited on July 14, 2025). See the Ministerial Decision on Dispute Settlement: Recalling our commitment made at our Twelfth Session to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN24/37.pdf&Open=True> (Last Visited on July 14, 2025). See also 2024 G7 Leaders' Communiqué on trade for further concerns by some members: We underscore the need to reform the WTO's monitoring, deliberative, and negotiating functions and remain committed to conducting discussions with a view to having a fully and well-functioning dispute settlement system accessible to all members by the end of 2024. We call on relevant countries to refrain from claiming special and differential treatment in the WTO, commensurate with their economic weight and role in the global trading system; Multilateral cooperation must be underpinned by fair competition, predictability, and sustainability. In this regard, we reaffirm our attachment to transparency, to coordination, and to the respect of WTO rules in our respective policies. We will step up our efforts towards a global level playing field and reiterate our commitment to keep our economies open and competitive. We will also tackle non-market policies and practices, such as harmful subsidies, including those by State Owned Enterprises (SOEs) and forced technology transfers, notably when these policies and practices are used to target sectors for dominance. We commit to effectively using our trade tools, including new ones, as appropriate, to identify, challenge, and counter these practices, and to promote stronger international rules and norms, together with partners; We acknowledge that our trade policies, as well as public and private investments in the industries of the future, both at home and around the world, will play a major role in achieving the common goals of addressing the climate crisis and accelerating the global clean energy transition. We also acknowledge that further cooperation is necessary to fill the investment gap for the clean energy transition to lower the cost of the energy transition worldwide. In this context, we stress that, in driving the clean energy economy of the future, we will cooperate openly and transparently in a coordinated manner, reflecting our joint commitment not to act at each other's expense; We will continue to promote inclusive trade recognizing the unique challenges that underrepresented groups, including women and indigenous peoples, face, and their role in ensuring sustainable economic growth, <https://g7g20-documents.org/database/document/2024-g7-italy-leaders-leaders-language-apulia-g7-leaders-communique> (Last Visited on June 15, 2025).

I. 8 NEW CASES IN 2025

With the return of Donald Trump as president of the United States in 2025,² the WTO is under more pressure, as increasing tariffs,³ imposing countermeasures,⁴ and even reaching bilateral agreements⁵ are all challenging the rules of the WTO.⁶

However, to prove the significance of trade rules and the functioning of the WTO, 8 cases have been brought before the WTO.

A. DS632: *China — Worldwide Licensing Terms for Standard Essential Patents*⁷

On January 20, 2025, the EU requested consultations with China with respect to a measure that allegedly adversely affects the protection and enforcement of intellectual property rights with respect to worldwide licensing terms for portfolios of standard essential patents (SEPs).

2 Donald Trump was inaugurated as the 47th president of the United States of America on January 20, 2025, <https://www.whitehouse.gov/remarks/2025/01/the-inaugural-address/> (Last Visited on July 14, 2025).

3 Donald Trump increased rounds of tariffs since inauguration, especially on April 2. See Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits, <https://www.whitehouse.gov/presidential-actions/2025/04/regulating-imports-with-a-reciprocal-tariff-to-rectify-trade-practices-that-contribute-to-large-and-persistent-annual-united-states-goods-trade-deficits/> (Last Visited on July 14, 2025).

4 Many countries, especially China, imposed countermeasures against the US tariffs. See China to Impose Additional 34% Tariffs on All US Imports Starting on April 10, 2025, http://english.scio.gov.cn/pressroom/2025-04/05/content_117807122.html (Last Visited on July 14, 2025).

5 See General Terms of a New Trade Deal between the UK and US Agreed on May 8, 2025, <https://www.gov.uk/government/publications/us-uk-economic-prosperity-deal-epd> (Last Visited on July 14, 2025); Joint Statement on US-China Economic and Trade Meeting in Geneva, <https://www.whitehouse.gov/briefings-statements/2025/05/joint-statement-on-u-s-china-economic-and-trade-meeting-in-geneva/> (Last Visited on July 14, 2025).

6 For the increasing tariffs, imposing countermeasures and reaching bilateral agreements, consistency with Article II of GATT (tariff binding), Article I of GATT (most favored treatment) and other rules is widely raised. See details in the following cases: DS633: *United States – Additional Tariff Measures on Goods from China*; DS634: *United States – Additional Import Duties on Goods from Canada*; DS635: *United States – Additional Import Duties on Steel and Aluminium Articles from Canada*; DS636: *China – Additional Import Duties on Certain Agricultural and Fishery Products from Canada*; DS637: *United States – Additional Duties on Imports of Automobiles and Automobile Parts from Canada*; DS638: *United States – Universal and Country-specific Additional Duties on Imports from China*.

7 The case summary is from the WTO website, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds632_e.htm (Last Visited on July 14, 2025).

The EU claimed that the challenged measure appears to be inconsistent with Article 4 *bis* of the Paris Convention, as incorporated into the TRIPS Agreement by virtue of Article 2.1 of the TRIPS Agreement and Articles 1.1, first sentence, 28.1, 28.2, and 44 of the TRIPS Agreement.

The EU also claimed that China's response to a request for information about a judicial decision, which concerns patent licence terms, is inconsistent with its obligations under the second sentence of Article 63.3 of the TRIPS Agreement.

B. DS633: *United States — Additional Tariff Measures on Goods from China*⁸

On February 4, 2025, China requested consultations with the United States (US) with respect to tariff measures, consisting of a 10% additional tariff on goods originating in China.

China claimed that the challenged measures appear to be inconsistent with Articles I:1, II:1(a) and II:1(b) of the GATT 1994.

On February 14, 2025, the US requested the Chair of the DSB to circulate to members a communication where it indicated that the US accepted China's request to enter into consultations, without prejudice to the US view that the actions cited by China were issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, or whether each of the items in China's request for consultations constituted a "measure" within the meaning of Article 4 of the DSU.

On March 4, 2025, China requested additional consultations that supplemented its request for consultations on February 4, 2025. China indicated that it was requesting consultations with the US with respect to measures that increased the additional tariffs on goods originating in China from 10% to 20%, which appeared to be inconsistent with Articles I:1, II:1(a) and II:1(b) of the GATT 1994.

On March 14, 2025, the US requested the Chair of the DSB to circulate to members a communication where it indicated that the US accepted China's

⁸ The case summary is from the WTO website, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds633_e.htm (Last Visited on July 14, 2025).

request to enter into consultations, without prejudice to the US view that the actions cited in China's request for consultations were issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, or whether each of the items in China's request for consultations constituted a "measure" within the meaning of Article 4 of the DSU.

C. DS634: *United States — Additional Import Duties on Goods from Canada*⁹

On March 4, 2025, Canada requested consultations with the US with respect to measures imposing a 25% *ad valorem* rate of import duty on Canadian non-energy goods and a 10% *ad valorem* rate of import duty on Canadian energy goods entering the US. These import duties were in addition to any duties imposed by the US pursuant to its tariff commitments under the GATT 1994 Schedule of Concessions.

Canada claimed that the challenged measures appear to be inconsistent with Articles I:1, II:1(a), II:1(b), and V:3 of the GATT 1994, and Article 7.8.2(d) of the Trade Facilitation Agreement.

On March 14, 2025, the US requested the Chair of the DSB to circulate to members a communication where it indicated that the US accepted Canada's request to enter into consultations, without prejudice to the US view that the actions cited by Canada were issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, or whether each of the items in Canada's request for consultations constituted a "measure" within the meaning of Article 4 of the DSU.

D. DS635: *United States — Additional Import Duties on Steel and Aluminium Articles from Canada*¹⁰

On March 12, 2025, Canada requested consultations with the US with respect to measures imposing *ad valorem* rates of import duty on certain steel and aluminium articles. These rates of import duty were in addition to any other

⁹ The case summary is from the WTO website, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds634_e.htm (Last Visited on July 14, 2025).

¹⁰ The case summary is from the WTO website, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds635_e.htm (Last Visited on July 14, 2025).

duties applicable to such articles.

Canada claimed that the challenged measures appeared to be inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994.

On March 21, 2025, the US requested the Chair of the DSB to circulate to members a communication where it indicated that the US accepted Canada's request to enter into consultations, without prejudice to the US view that the challenged tariffs were issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, or whether each of the items in Canada's request for consultations constituted a "measure" within the meaning of Article 4 of the DSU.

*E. DS636: China — Additional Import Duties on Certain Agricultural and Fishery Products from Canada*¹¹

On March 20, 2025, Canada requested consultations with China with respect to measures taken under a domestic "anti-discrimination investigation" to impose a 100% *ad valorem* rate of import duty on certain canola seed oil, oil residue cake and peas from Canada, and a 25% *ad valorem* rate of import duty on certain seafood and pork products from Canada. These import duties were in addition to any duties imposed by China pursuant to its tariff commitments as set out in its GATT 1994 Schedule of Concessions.

Canada claimed that the challenged measures appeared to be inconsistent with Articles 23.1, 23.2(a), and 23.2(c) of the DSU and Articles I:1, II:1(a), and II:1(b) of the GATT 1994.

*F. DS637: United States — Additional Duties on Imports of Automobiles and Automobile Parts from Canada*¹²

On April 3, 2025, Canada requested consultations with the US with respect to measures imposing 25% tariffs on automobiles and automobile parts. These tariffs were in addition to any other duties, fees, exactions, and charges imposed by the US.

¹¹ The case summary is from the WTO website, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds636_e.htm (Last Visited on July 14, 2025).

¹² The case summary is from the WTO website, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds637_e.htm (Last Visited on July 14, 2025).

Canada claimed that the challenged measures appeared to be inconsistent with Articles II:1(a), II:1(b), and VIII: 3 of the GATT 1994.

On April 11, 2025, the US requested the Chair of the DSB to circulate to members a communication where it indicated that the US accepted Canada's request to enter into consultations, without prejudice to the US view that the challenged tariffs were issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, or whether each of the items in Canada's request for consultations constituted a "measure" within the meaning of Article 4 of the DSU.

*G. DS638: United States — Universal and Country-specific Additional Duties on Imports from China*¹³

On April 4, 2025, China requested consultations with the US with respect to measures that imposed universal and country-specific additional duties on imports from China. These additional duties were imposed in addition to any other duties or charges applicable to the imported products, including the US' bound rates in its GATT 1994 Schedule of Concessions.

China claimed that the challenged measures appear to be inconsistent with Articles I:1, II:1(a), II:1(b), VII:1, VII:2(a), VII:2(b), VII:2(c), and X:3(a) of the GATT 1994, Articles 1.1, 8, the relevant interpretative Notes in Annex I of the Customs Valuation Agreement, paragraphs 1 and 2 of the General Introductory Commentary, and Articles 3.1 and 3.2 of the SCM Agreement.

On April 9 and 11, 2025, China requested additional consultations supplementing, but not replacing, its request for consultations of April 4, 2025. China indicated that it was requesting further consultations with respect to measures that further increased the additional duties on imported products from China.

On April 14, 2025, the US requested the Chair of the DSB to circulate to members a communication where it indicated that the US accepted China's request of April 4, 2025 to enter into consultations, without prejudice to the US view that the actions cited by China were issues of national security not

¹³ The case summary is from the WTO website, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds638_e.htm (Last Visited on July 14, 2025).

susceptible to review or capable of resolution by WTO dispute settlement, or whether each of the items in China's letters constituted a "measure" within the meaning of Article 4 of the DSU. On April 17, 2025, the US made similar requests to the Chair of the DSB with respect to the additional consultations requested by China on April 9 and 11, 2025.

H. DS639: *European Union and Its Member States — Carbon Border Adjustment Mechanism*¹⁴

On May 12, 2025, the Russian Federation requested consultations with the EU and its member states with respect to measures concerning the EU's Carbon Border Adjustment Mechanism (the CBAM Package), and with respect to an export subsidy that the EU allegedly provides under the Scheme for Greenhouse Gas Emission Allowances Trading.

The Russian Federation claimed that the CBAM Package appears to be inconsistent with: Articles I:1, II:1(a), II:1(b), III:1, III:2, III:4, X:3(a), and XI:1 of the GATT 1994; Paragraph 2, second sentence, of Bulgaria's Protocol of Accession and General Council Decision of October 2, 1996, in conjunction with paragraphs 25 and 92 of the Working Party Report on Bulgaria's accession to the WTO; Paragraph 2, second sentence, of Latvia's Protocol of Accession and General Council Decision of October 14, 1998, in conjunction with paragraphs 40 and 131 of the Working Party Report on Latvia's accession to the WTO; Paragraph 2, second sentence, of Estonia's Protocol of Accession and General Council Decision of May 21, 1999, in conjunction with paragraphs 41 and 141 of the Working Party Report on Estonia's accession to the WTO; Paragraph 2, second sentence, of Croatia's Protocol of Accession and General Council Decision of July 17, 2000, in conjunction with paragraphs 47 and 225 of the Working Party Report on Croatia's accession to the WTO; Paragraph 2, second sentence, of Lithuania's Protocol of Accession and General Council Decision of December 8, 2000, in conjunction with paragraphs 42 and 189 of the Working Party Report on Lithuania's accession to the WTO; and Articles 1.2, 1.3 and 3.2 of the Import Licensing Agreement.

¹⁴ The case summary is from the WTO website, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds639_e.htm (Last Visited on July 14, 2025).

In addition, the Russian Federation claimed that the alleged subsidy appears to be inconsistent with: Articles 1.1(a) (1) (i), 1.1(a) (1) (ii), 1.1(a)(1) (iii), and 3.1(a) on their own and read together with Annexes I(a), I(f), I(g), and I(1) of the SCM Agreement; and Articles VI and XVI of the GATT 1994.

Yes, some of these cases do not have a future: the cases against the US, i.e., DS633, 634, 635, 637 and 638, might be “appealed into the void”, even though the panels decided that the relevant measures are not consistent with the WTO rules.¹⁵

But it is fair to say that the existence of the cases themselves means the significance of a dispute settlement system to solve problems between members. Countries need it, and in a time of turbulence, they need it more urgently. I will come back to this conclusion again at the end of the piece by saying that this is the driving force behind and existential reason for an organization like the WTO.

II. 99% WANTS APPELLATE BODY

In the above-mentioned interview, the Director-General said that “99 or 95 percent of our members still want to see the Appellate Body restored”.

I would have a different calculation if she referred to the numbers of members who collectively requested the resumption of the Appellate Body every month at the Dispute Settle Body (DSB) meeting in the past years, 85 times already. My formula is as follows: $130/166=78\%$, which means 130 out of 166 WTO members jointly put this request on the agenda of DSB.¹⁶

However, her number must be more accurate, because no member, except for the US, challenges the existence of the Appellate Body and the silence of the 30 some members can also mean support. At the end of 2019, due to the objection of the US, the Appellate Body did not have the necessary 3 persons to hear a case, but it is still the only objection without support from any other

15 For “appeal into the void”, see the last paragraph of “III. 56 MEMBERS ON APPEAL ARBITRATION” and respective footnotes.

16 Colombia, speaking on behalf of 130 members, introduced for the 85th time the group’s proposal to start the selection processes for filling vacancies on the Appellate Body. See Appellate Body Appointments: https://www.wto.org/english/news_e/news25_e/dsb_24mar25_e.htm (Last Visited on July 14, 2025).

members.¹⁷ This also says something which I will come back at the end by suggesting that the US cannot be waited any more, at least on the resumption of the Appellate Body.

III. 56 MEMBERS ON APPEAL ARBITRATION

It is unfair to say that all the members are waiting for the US. 56 members, or almost 1/3 members have established an appeal arbitration arrangement while calling for the resumption of the Appellate Body.

The idea of an appeal arbitration started with bilateral arrangements between EU and Canada¹⁸ and later between EU and Norway,¹⁹ and finally arrives at a Multi-Party Interim Appeal Arbitration Arrangement (MPIA).²⁰

Currently, 2 cases have been decided,²¹ and the third case is under review,²² proving the well-functioning of the arrangement. It explains the increasing of the MPIA members with the recent accession of Paraguay and Malaysia.²³

The benefit of becoming an MPIA member is not only reflected in the possible cases to be heard and decided, but also in the “chilling effect” of the arrangement. The parties will accept the binding force of the panel’s reports

17 For the criticism by the United States, see Report on the Appellate Body of the World Trade Organization, https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf (Last Visited on July 14, 2025).

18 See WTO document: JOB/DSB/1/Add.11, July 25, 2019.

19 See WTO document: JOB/DSB/1/Add.11/Suppl.1, October 21, 2019.

20 MPIA members are: Australia, Colombia, Iceland, Nicaragua, Ukraine, Benin, Costa Rica, Japan, Norway, Uruguay, Brazil, Ecuador, Norway, Macao (China), Pakistan, Canada, European Union, Mexico, Peru, China, Guatemala, Montenegro, Singapore, Chile, Hong Kong (China), New Zealand, Switzerland, Paraguay, Malaysia. For MIPA, see WTO documents: JOB/DSB/1/Add.12/Suppl.1-14; See also Multi-Party Interim Appeal Arbitration Arrangement (MPIA), https://wtoplurilaterals.info/plural_initiative/the-mpia/ (Last Visited on July 14, 2025).

21 DS583: *Turkey – Certain Measures concerning the Production, Importation and Marketing of Pharmaceutical Products*; Arbitrators: Mateo Diego-fernández Andrade (Chairperson), Seung Wha Chang, Guohua Yang. See https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds583_e.htm (Last Visited on July 14, 2025). DS591: *Colombia – Anti-dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands*; Arbitrators: José Alfredo Graça Lima (Chairperson), Alejandro Jara, Joost Pauwelyn. See https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds591_e.htm (Last Visited on July 14, 2025).

22 DS611: *China – Enforcement of Intellectual Property Rights*; Arbitrators: Penelope Ridings (Chairperson), Claudia Orozco, Mateo Diego-fernández Andrade. See https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds611_e.htm (Last Visited on July 14, 2025).

23 See WTO documents: JOB/DSB/1/Add.12/Suppl.12; JOB/DSB/1/Add.12/Suppl.13.

and disputes are successfully settled at the panel stage without going to appeal. Recent China cases with Japan and Australia are perfect examples,²⁴ and comparing other cases which were “appealed into the void”, the benefit is even more obvious.²⁵

IV. EVERYTHING WILL BE ALL RIGHT

The WTO is a member-driven organization, which means the members will decide the fate of the WTO and its function in dispute settlement. With 8 dispute cases raised in the first half of 2025, 130 members’ 85 requests for the resumption of the Appellate Body in the past years, and the establishment by 56 members of the appeal arbitration system, we can see that members need the WTO, especially during this unprecedented period of trade wars. This reminds us of the consensus among all the members reflected in the following excerpts from the basic documents:

Ministers affirm that the establishment of the World Trade Organization (WTO) ushers in a new era of global economic cooperation, reacting the widespread desire to operate in a fairer and more open multilateral trading system for the benefit and welfare of their peoples. Ministers express their determination to resist protectionist pressures of all kinds. They believe that the trade liberalization and strengthened rules achieved in the Uruguay Round will lead to a progressively more open world trading environment. Ministers undertake, with immediate effect and until the entry into force of the WTO, not to take any trade measures that would undermine or adversely affect the results of the Uruguay Round negotiations or their implementation (Marrakesh Declaration of April 15, 1994).

Resolved, therefore, to develop an integrated, more viable and durable

24 The following cases were decided at the panel stage: DS602: *China – Anti-dumping and Countervailing Duty Measures on Wine from Australia*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds602_e.htm (Last Visited on July 14, 2025), DS598: *China – Anti-dumping and Countervailing Duty Measures on Barley from Australia*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds598_e.htm (Last Visited on July 14, 2025), DS601: *China – Anti-dumping Measures on Stainless Steel Products from Japan*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds601_e.htm (Last Visited on July 14, 2025).

25 24 cases have been “appealed into the void”, i.e., the panel reports were appealed to the non-existent Appellate Body, only to make the panel reports non-binding. See Current Notified Appeals, https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm (Last Visited on July 14, 2025).

multilateral trading system. (Marrakesh Agreement Establishing the World Trade Organization)

The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. 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... 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 (Article 3, Understanding on Rules and Procedures Governing the Settlement of Disputes).

With confirmation of the consensus by the actions of majority members, we have full confidence in a bright future of the world trading system, in which the role of dispute settlement is “a central element in providing security and predictability” to the WTO.

During this time, it seems that more consensus is forming, including that an alternative solution needs to be found with the legitimate membership of the US, which used to be a leading member in the establishment and functioning of the WTO and has behaved very destructively in recent years.²⁶ Since Donald Trump first took office as president in 2017, the US has expressed itself very clearly to all the other members: I DON'T LIKE IT ANY MORE. What can the other 165 members do besides the above actions, i.e., filing cases, requesting Appellate Body resumption and establishing MPIA by some members? Yes, decision by consensus is a tradition in the WTO and the voting clause is never invoked.²⁷ However, the WTO is under an unprecedented and existential

26 The United States was the original party of GATT in 1947 and member of WTO in 1995. As a matter of fact, GATT and WTO were “constructed” under the leadership of the United States. However, the United States, under the presidency of Donald Trump since 2017, began to “destruct” the WTO by objection to the selection of Appellate Body members and never filing any cases to the WTO since 2020 and ignoring all the panel reports against it by appealing into the void.

27 Article IX (Decision-making), Marrakesh Agreement Establishing the World Trade Organization: the WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.

challenge, and voting and/or other solutions need to be considered.

Finally, at this critical moment, leadership has become even more important, and most members once again turn their attention to the EU and China. Back in 2020, when the Appellate Body was in crisis, the EU and China cooperated to establish the MPIA, which has become an effective appeal mechanism. The wisdom of both members is highly expected at this moment.

(Edited by Yunhan Wang)