TOWARDS AN OPERATIVE SOLUTION TO THE APPELLATE BODY CRISIS UNDER THE WTO

Abhijit D Vasmatkar [1], Dr. Bindu Ronald[2]

[1] Assistant Professor, Symbiosis Law School, Pune, Symbiosis International

[2] Professor, Symbiosis Law School, Pune, Symbiosis International

ABSTRACT

The World Trade Organization is promoting a conducive model of good governance for International Trade. It assures that all participating members shall have equitable share for the economic development. In recent past, WTO has been facing identity crisis because of the pessimism of some of the World's powerful members for their justified nationalism. One of such instance is U.S. decision in exercising veto for stopping appointment of members at appellate body at the WTO. It resulted in institutional void and keeping panel reports in suspended animation. There are many solutions that are drawn to remove this void from the WTO, however, without feasibility check of each of those solutions, it would result in a bigger void. Mainly, would build pessimism and negativism towards the governance of the WTO. The present research is carried out in finding a viable solution for the sustenance of the WTO.

Keywords-

Appellate Body Crisis, DSB, MPIA, Arbitration, WTO identity Crisis

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Introduction

The confluence between good governance principles and institutionalism has had a great impact on international trade in early 20th Century. It changed the colour of the fabric of international trade by reinforcing values in ensuring equality, transparency, accountability, fairness, predictability, participatory decision making and the like. It succeeded in placing interstate trade transactions on more fair, rational and inclusive lines with the understanding that trade is one of those means that can ensure economic prosperity. By incubating rules and regulations under institutional umbrella, a new ray of hope was provided for those economies who were devastated as a result of the 'trinity of instance'[1].

An initiative for encompassing multilateralism under the institutional regulatory governance was not an 'international hegemonic imperative', rather it was an answer to the call of the nations, in taking measures to offset the effect of global slow down. This common understanding led to 'the Britton Woods Institutions' and the General Agreement on Tariff and Trade, 1947 to ensure systematic internal and external growth of economies. Nonetheless, demise of the International Trade Organization (ITO) had a great setback to the development of a full fledge multilateral trading system in 1947.[2]

Failure of the International Trade Organization (ITO) and creation of the GATT, 1947 has left countries with limited options in using this multilateral platform to regulate only 'trade in goods'. The entire gamut of rules, regulations, agreements, understandings, determinations, perception, problem-solving was designed around this single trading area. Though in its own limited ways, but, GATT, 1947 succeeded in laying few foundational rules for the governance of international trade, one of them being 'joint actions to resolve the problems of the common characters'[3]. The dispute settlement mechanism adopted was to ensure effective implementation and enforcement of the trade rules. Thereby providing security, predictability and certainty to multilateral trade. With the expansion of trade through multilateral trade negotiation rounds, many limitations of the dispute settlement mechanism in settling the disputes of complex nature had come to the forefront.[4] Owing to its limitation it was criticized to be an inefficient and 'diplomacy based mode' of dispute settlement mechanism.[5]

With the advent of the WTO, a new philosophy of 'member driven and consensus based' decision making is advocated and thereby participation of each member at every cadre under its structure is ensured with *consensus ad idem* of all members while taking policy decisions. This new regime has overcome the obvious flaws of the dispute

settlement mechanism of GATT, 1947 and offered a bouquet of modes including 'Panel Proceedings (Appellate Mechanism as well), Consultation, Arbitration, Good-offices, Conciliation and Mediation' to be used for resolution of disputes covered under the umbrella of the WTO. The Dispute settlement mechanism of the WTO is also a considerable improvement over the dispute settlement mechanism of GATT, 1947 in terms of modes, processes, timelines, effectiveness and even monitoring the implementation of the decisions pronounced by the respective forums.

Of late, this dispute settlement mechanism is in crisis with the collapse of the appellate body under the WTO as a result of *veto* power exercised by the US in blocking appointment of the members. There are justifications provided by the US for this *veto* including procedural *ultra vires*[6] This unilateral move has created a *void* in the system and the irony is, other members with their 'positive vote' are not able to remove this 'clot' from the 'arteries' of the WTO. This has once again put the entire trade governance of the WTO and its effectiveness in question. Along with other, the most affected domain is the 'rights of the member countries in having fair and equitable access to the dispute settlement mechanism' of all member countries. The member countries have been trying to propose different solutions to this pressing issue, but without an assessment of each proposed solution and more importantly its potential to replace a set 'appellate mechanism' would be an error. Thus, this research is carried out with an objective to study this *void* and its impacts on the rights of the members of the WTO. Secondly, its short term and long term ramifications on the dispute settlement mechanism and the WTO as a whole. Thirdly, a feasibility study of the alternatives provided to this *void* from outside or within the framework of the WTO.

Institutionalism, Good Governance and Dispute Settlement Mechanism:

'Institution can sustain only with good governance'. This hypothesis establishes a strong link between good governance and institutional sustenance, as absence of good governance builds a strong repulsive forces amongst those who are (mis)governed. The repulsive forces under an institution are connected to 'right to egress', whereas centripetal forces are to do with 'right to ingress'. The exercise of the 'right to ingress or egress' depends upon how strong 'pull and push factors' work under an institutional governance. Scholars across the world have identified aspects of good governance that can act as a strong adhesive force which binds the governed towards the institution and helps in building institutional loyalty. The concept of good governance is confined to certain regulatory norms that include participation of all in decision making, accountability, transparency, rule of law, consensus building, effectiveness and efficiency, responsiveness, inclusiveness and equity.[7] Good governance requires presence of 'legitimacy, whereby the government has the consent of the governed, accountability that ensures transparency and answerability for actions, respect for law and protection of human rights, and competence, which consists of effective policy making, policy implementation, and service delivery.'[8] Even building institutional culture to use its capacity and potential to its fullest also comes within the framework of good governance.[9] The dispute settlement mechanism is one of the important aspects under the WTO and is striving hard to provide a conducive environment to its member countries for their growth. However, the rudimentary system of dispute settlement governance as advocated under the GATT, 1947 had extensors in the form of obvious defects.[10] One of them being 'the possibility of resolving disputes by disputing parties themselves through consultations'.[11] Accordingly the disputes used to be resolved with the ruling of the Chairman of the GATT Council. The entire system was standing on two founding pillars i.e. Article XXII and Article XXIII of GATT, 1947. This elementary mode has also undergone a change with dynamics in trade environment, growing complexities and all round demand for an effective dispute resolution. The Uruguay round (1986 to 1994) has revamped and redesigned the entire dispute settlement mechanism but even during the earlier rounds of MTNR (Multilateral Trade Negotiation Rounds) 'many progressive decisions'[12] were taken in giving present shape to the dispute settlement mechanism. Thus, the present dispute settlement mechanism under the WTO is not a sudden change that got realized during Uruguay Round but is an outcome of the conscious efforts of the international trading community over the eight rounds of negotiation and deliberations. And accordingly their commitment towards Article

XXII and XXIII under the GATT, 1947 is reaffirmed.

The present system of the WTO in settling disputes between the member countries, arising out of the covered agreements, is facilitated through different modes that include consultation,[13] appointment of the panel,[14] appellate panel[15], good offices,[16] conciliation[17] or mediation[18] and Arbitration[19]. As highlighted earlier, the dispute settlement mechanism is one of those areas that are very vital to the overall governance of the WTO and the same has been acknowledged by the WTO under Article 3.2 of the Understanding on the Rules and Procedures Governing the Settlement of the Disputes, 1994 (hereinafter referred to as DSU). It understood between the member countries of the WTO that 'security and predictability' to the multilateral trading system can only be provided with an 'effective dispute settlement mechanism'. In this context, there is a glaring question as to what comes within the contours of 'effective dispute settlement mechanism'? Is this requirement guide all modes provided under the WTO and at all stages? When one of the modes loses its effectiveness or credibility or encounter disability then, can some other mode be used as a remedial mode in restoring effectiveness of the entire system? But before we find answers to these questions it is necessary to understand the source of the problem that is attributed to 'institutional subservience' to the dominant political forces. Some of the unprecedented moves of the member countries are threatening the very existence of the WTO and utility of its model. In this context, it is relevant to assess 'power to *veto*' under 'consensus based decision making' whose motto shall ideally be to stall institutional decisions that does not result in 'common good' of the member countries.

Consensual Decision Making and 'Veto Power':

Article VIII of the Marrakesh Agreement, 1994 conferred a 'legal personality' on the WTO and capacitated to exercise its functions as assigned under the agreement. This provision with use of 'shall' has created an imperative for members to provide all round support to the WTO in exercising its functions. Along with the other functions that are enlisted under Article III, the WTO is expected to administer the Understanding on the Rules and Procedures Governing the Settlement of the Dispute as provided under Annex 2 of the Marrakesh Agreement, 1994. In this legislative context, it is expected from member countries to provide a full-fledged support in implementing and enforcing the rules of dispute settlement understanding and refrain from creating barriers that would hinder implementation of the functions of the WTO.

The WTO ensures that every member shall get an opportunity to participate in decision making at every level and as a matter of general rule expects every outcome to be on the basis of an accord between the members. There is an alternative being provided, if consensus cannot be arrived at, the decisions shall be taken by majority.[20] This requirement of consensus based decision making extends to adopting decisions under the dispute settlement body of the WTO by virtue of Article 2(4) of the DSU. It also expects members under Article 23 to abide by rules and procedures in resolving conflicts arising out of covered agreements and thereby strengthen the multilateral system. These rules can be encompassed under the 'legitimate expectations' the WTO has from its members in not only strengthening the system of governance but work towards its sustenance. Any authority/decision/power when exercised by the members, it is expected to be going in line with the legitimate expectation of the WTO.

According to Oxford Dictionary *veto* means, "an official power or right to refuse to accept or allow something."[21] The *veto* is a power to push a multidimensional and multilateral bargaining into a unidimensional space.[22] Each member under the WTO has a right to exercise '*veto'*, that can be used in blocking a decision from being taken, at different levels. There is no specific guideline provided under the WTO that can substantiate in which circumstances it can be used and more importantly how 'sparingly' shall that be used? In absence of the enumerated standards under the WTO, some unremunerated regulatory norms are getting developed mainly in relation to dispute settlement provisions of the WTO. Powerful members are using it during appointment of members to appellate body to ensure that they are not exceedingly activists, biased or expansive law makers.[23] As discussed earlier, every move and every '*vote'* shall be exercised by member countries in taking the zeal of the WTO forward in ensuring welfare of all the members. At the same time, not to use the same in blocking benefits

flowing to members under agreements covered by the WTO.

In case of an apprehension to a member that the WTO is not promoting a good model of governance under any of its cadre, then it can use other recognized means in 'correcting'[24] or controlling the *virus* just to overcome that disability. Else, is free to exercise its 'right to egress' as provided by the WTO under Article XV.1 of the Marrakesh Agreement of 1994. This research does not promote 'right to egress' as a solution as it would weaken the institution of the WTO and would defeat the purpose for which it is created. If majority of the members adopt this route for marginal discontents, then it would lead to the collapse of the WTO. But at the same time, hegemonic and oppressive forces shall also be curbed through legislative means because it would also build strong centrifugal forces for other members.

Right to 'Institutional Remedy' and Appellate Body Crisis:

The WTO has succeeded in creating a multilevel, versatile, time bound, automated dispute settlement mechanism. At macro level, this development has long term ramifications on the member countries mainly in protecting their claim/rights arising out of covered agreements under the WTO. The nature and scope of protection to the rights of member countries primarily encompass the measures taken by other member countries which results in nullification and impairment of the benefits and not otherwise. Acknowledging the fact that there is a 'dependency of the rights on the means for its enforcement', the scope of rights shall further be extended to include 'right to have a fair access to the forums' available under the WTO. Without a fair access to dispute settlement mechanism other substantive rights will become infructuous as it is said that, 'without pure means, pure ends cannot be achieved'[25]. Going by Hohfeldian model[26], rights, once recognized, would impose equal amount of duties on others to respect those rights. Also the conduct of all other members shall be such that it does not touch the sphere that has been demarcated to rights. There will be a duty bestowed not only on the WTO to have 'extended interpretation to the rights of the members' to facilitate 'access to all modes for the dispute settlement' by adopting suitable changes to the multilateral rules but members are also duty bound 'to provide adequate support in adopting a solution' to this *void*. Moreover, it shall be read as a part of 'substantive right' of the member countries and not merely a 'procedural requirement'. The prompt settlement of dispute between the members will help in maintaining a fine balance between the rights and obligations of the members as declared by Article 3.3 of the DSU. It is an imperative for the WTO now to take urgent measures to maintain a fine balance between the rights and duties of the of the member countries through a full-fledged dispute settlement mechanism, which would be functioning with its full capacity and strength.

In the light of this extended interpretation, many other questions are required to be answered by the entire trading community who had shown a commitment towards multilateralism in attaining common goals and handling present crisis, like_ what shall be the future of those cases where the panel has prepared a report and parties are expecting a second review though higher adjudicatory body? Will all those cases go in suspended animation as the appellate body is in abeyance? How would this reflect on the good governance model of the WTO where efficiency in settling disputes is taken to the core? Should the WTO and its functionalities, under the ruling doctrine of 'consensus based decision making', succumb to the whims of the dominant hegemonic forces? If yes, then what about the application of Benthamian principle of 'greatest happiness of the greatest number'? Does that allow neglect of the least[27]?

When one forum is blocked from being approached then should the entire system observe paralytic immobility? Does the legal framework under the WTO allow this artificial gap to be bridged 'through a process of self-healing' by adopting any one of those existing modes in replacing appellate body, as a remedial measure? If some mode is identified to be replacing appellate body mechanism then, should that be a permanent or a temporary solution to the issue? Few scholars have proposed Arbitration under Article 25 of Understanding on the Rules and Procedures Governing the Settlement of the Disputes, 1994 to be one of the solutions to this issue'.[28] Since the inception of the WTO, there has been indiscriminate use of the modes between the panel proceedings (including appellate body rulings) and other modes including arbitration. As

per statistics published by the WTO, from 1995 till the end of 2020, more than 445 panel reports were circulated to advance the settlement of the 598 disputes referred to the DSB by WTO members.[29] However, arbitration has been used only once in US-Section 110(5) of the U. S. Copyright Act- Recourse to Arbitration under Article 25 of DSU, WT/DS 160/ARB 25/1, Nov. 9, 2001.[30] In such a scenario how effective would it be to consider arbitration under Article 25 as a solution, which has not passed the test of time? Or should a solution be drawn from outside the structure of the WTO?

There are further questions as to the efficacy of the arbitration in replacing the appellate body mechanism because the very foundation of the arbitration is the requirement of an agreement between the two member countries in submitting the dispute to arbitrators and placing it away from appellate mechanism. Permanently replacing appellate mechanism with arbitration would call for a multilateral agreement, which is a distant possibility under the WTO. Individual members can also resort to an agreement, may be on plurilateral lines, but again it's a short to a multilateral remedy as it may also require approval from all other WTO members. And lastly, if the member countries negotiate such plurilateral agreements outside the umbrella of the WTO, then there will be a creation of another *void* in enforcing rights arising out of agreements covered by the WTO though external rules and *fora*.

Thus, a careful, all round, interactive, coherent investigation is desired in finding a solution to the current issue either from within the WTO or outside the framework of the WTO so that the faith of the member countries in the governance of the WTO is uncompromised and the commitment towards multilateralism is unaffected. The preceding part will check the fitment of the other internal modes to the appellate body crisis.

Internal Fitment Through Other Modes of Dispute Settlement:

The guarantee of perpetuity and immutability for any institution and its model of governance is a challenge, as multiple forces with varied objectives are getting germinated in Global Political Economy and are challenging the very basis and foundation of the institutional creation and sustenance. The institutional sustenance depends mainly upon how effectively it succeeds in building counter forces in supressing the centrifugal tendencies. While preparing an antidote of counter forces, the institution shall provide priority to internal solution in handling situation and, only on failure, it must look for an external aid. The reason behind giving primacy to the internal solution over the external one, goes back to the very objectives with which an institutional structure is built and processes are installed. The processes involved may be mutually exclusive but their fitment shall not pose additional challenges, since all are created under the same law with same objectives. More importantly, they are working under the common roof and handling issues and problems of the common characters.

Under the present structure of the WTO, statistics reveals[31] that primacy is given by member countries to the panel proceedings and appellate mechanism, it being a mainstream third party adjudicatory mechanism, for the resolution of the disputes. However, there are other modes like consultation, that are created to prevent cases from reaching panel and appellate stage. Additionally, other modes (arbitration, conciliation, mediation and good offices) that are placed parallel to it so as to avoid a 'bottle neck' and uncompromised substantive and procedural justice is imparted to the member countries. It is desirous to check feasibility and the capacity of each of the modes in filling the vacuum created presently.

Consultation, Good Offices, Conciliation and Mediation:

The standards governing consultation, to be used as one of the modes of dispute settlement under the WTO for the resolution of the dispute between member countries, are regulated by Article 4 of the DSU. Article 4(7) when read in the light of Article 6(2) of DSU, states that the request for the establishment of a panel can be made by a complaining party, only if the dispute is not settled within 60 days from the date of the receipt of the request for consultation. A measure that is not a part of the consultation cannot be considered by the panel.[32] Also, the panel can evaluate measures only under the provisions covered in the term of reference.[33] In EEC-Quantitative Restrictions Against Imports of Certain products from Hong Kong [GATT, BISD, 30S/129 (1983)]; Canada- Administration of Foreign Investment Review Act [GATT, BISD, 30S/140 (1983)]; the

United States- Denial of Most Favoured nations Treatment as to non-rubber Footwear from Brazil [GATT, BISD, 39S/128 (1991)] are some of those examples where the improper drafting of term of reference has affected the interest of the countries. The legislative designing and supportive interpretation considers consultation to be a primary mode for the resolution of the dispute and panel proceedings can only be taken recourse of on the failure of the consultations. A dispute where parties are not happy with the panel determination and looking for a higher judicial mind to be applied on it, considering consultation would be a infructuous remedy. The overall objective would be vitiated as intention of the parties is to have third party independent review of the decision that has been given by the panel.

An appraisal of other modes provided under Article 5 of the DSU i.e. Good Offices, Conciliation and mediation, will provide an understanding as to its feasibility in replacing appellate body review. These modes have an obvious advantage over the consultation since they can be exhausted at any time and be terminated at any stage of the proceedings. Secondly, these modes can be exhausted with the consent of both the parties, whereas in case of consultation one party has to request for the consultation. Thirdly, by virtue of Article 5.5, these modes can simultaneously be used during panel proceedings with the agreement between the parties. This highlights the fact that exhaustion of these modes 'during panel proceedings' indicates that 'once a report is submitted by the panel', usage of these modes become irrelevant. Hence, option of considering these modes to be an alternative to appellate mechanism is not appropriate taking into consideration the objectives which they are expected to achieve.

Since these modes are based on the consent of the member countries, then an 'agreement to not appeal panel reports'[34] be a solution? This question has come into mainstream discussion because in 2019, Indonesia and Vietnam, and US and South Korea had entered into such agreement, through which they have bound themselves in considering the decision of the panel as final and not to appeal against the determination of rights and obligations done by the panel. These types of agreements would violate basic tenets of law i.e. right to remedy. As discussed earlier, rights without remedy gives frustrating effects. One may argue that, right to remedy is intact through other forums that are provided under Article 5 of DSU. So the question of violating 'right to remedy' may not occur, however, none of those modes provide for second review at appellate stage for a dispute that has been decided by a forum placed below in hierarchy. So these agreements and the *ouster*[35] provided under those agreements are *void* and violate basic tenets of law in seeking legitimate remedy. Even if, these agreements are considered as valid, in the eyes of law, there is a big danger associated with this *ouster* i.e. getting wrong decisions of the panel implemented and the same being enforced. Statistics reveal that, till date more than 67% of the determinations made by panel are appealed at.[36] It shows that most of the member states of the WTO expects a higher judicial mind to be applied on a dispute in determining their claim and taking away this remedy through these agreements would frustrate the very object of the membership of the WTO. Thus, finding other solution to this current appellate body crisis is an imperative and not by refraining parties from approaching the forum. This imply that drawing an inside solution to the issue is left with only one option of 'Arbitration' under Article 25 of the Dispute Settlement Understanding. The Arbitral proceedings has one major commonality with the appellate review mechanism is that both involves third party assessment of the rights and duties but, the difference lies in the fact that appellate review is limited to 'issue of law covered in the panel report and legal interpretations developed by the panel'[37] while arbitration may revisit the issue afresh. The succeeding part would analyse feasibility of arbitration in replacing the appellate review mechanism.

Can Arbitration stand as an Operative Solution to the Present Appellate Body Crisis?

The possibility of exhausting Arbitration as one of the modes of dispute settlement mechanism under the WTO is seen at different levels including the one under Article 21 and 22 of DSU. However, in the current scenario, its utility and feasibility under Article 25 of the DSU can be assessed as it offers arbitration to be one of the independent modes of dispute settlement.

According to Article 25(2) of DSU, basis to submit a dispute to the arbitration is an 'agreement' between parties. If the intention is to utilize arbitration in supplanting appellate

mechanism, then there will be a requirement on the part of the member countries to have a 'special arbitration clause' in restricting scope of authority to ascertain 'question of law' and not in a routine way to consider the matter *de novo*. There is a difference between arbitration to be used as the first mode (before the dispute is heard through any other mode) and in replacing a body that would hear at appellate stage. On fair assessment of the provisions governing arbitration implies that, the champions of the multilateralism during Uruguay Round expected this mode to be used as the forum of first instance in resolving disputes and accordingly designed the provisions under the DSU understanding. Thus having 'special ouster clause' cannot be a permanent solution to the problem since it's a 'bilateral remedy' to a multilateral problem. Moreover, the scope of the authority of the arbitrators in dealing a matter at an appellate shall be well regulated including powers, functions and mainly legal scope of the authority. Since these rules would be subjected to bilateral understanding between the parties, at operational level, it would create an 'Spaghetti Bowl Effect'[38] which Dr. Jagdish Bhagwati has quoted in the context of regionalism. If powers and discretion of the arbitrators is not regulated properly, the decisional outcome may get hit by non-application of mind, extraneous considerations or importantly bias. This bias mainly be a 'pre-decisional bias' i.e. towards the decision that has already given by the panel and would subvert the very intention behind having a second review. If bilateral arbitrations agreements seem to be problematic, then can a plurilateral or multilateral arbitration provide a remedy is a moot question.

On 8th April 2020, a total of 16 WTO members brought into action 'Multi-party Interim Arbitration Agreement' (MPIA), to use arbitration under article 25, as a stop gap arrangement.[39] This can be seen as an antidote to the 'agreements not to appeal panel reports' as advocated by US with an intention to paralyze the established appellate mechanism. The members[40] advocating MPIA are substantially those who conceived the idea of multilateralism in the first half of 19th century and others who got substantially benefited by the multilateral system of governance. The MPIA has acknowledged that 'independent and impartial appellate mechanism shall continue to be one of the essential functions of the dispute settlement system under the WTO'.[41] These members, though are suggesting an alternative solution, but still considering this to be an 'interim' relief and determined to work with all WTO members to start appointing members to the appellate body of the WTO. Additionally, they are agreeing to go by the binding resolution of disputes at panel stage, if no party wants to take recourse under MPIA.

The MPIA is preventing an appeal under Article 16.4 and 17 of the DSU, however, placing the appellate arbitration on the similar lines of the procedure prescribed for the appellate body under Article 17 of the DSU with additional measures as provided under Annex 1. One of the very significant contribution is in making limited adjustments to panel procedures in allowing appeal to the 'appellate arbitration' in case MPIA parties decides to refer a dispute. And if the decision of the parties is not to appeal to appellate arbitration then the panel report shall be circulated to be adopted by the DSB. In order to address this void, the MPIA has extended its scope to the pending disputes also where an interim report has not been issued by the panel.

Thus, the MPIA has provided a temporary solution but still it is providing a limited insight to this problem. This move is seen to be hit by pessimism as not even 20% of the total members of the WTO haven taken this to be a solution to the current crisis. This power pocketing and cocooned solutions are creating more problems for the WTO than the stall of the appellate body mechanism. It is reflecting negatively on the overall governance of the WTO and mainly in the core area of resolving conflicting interests.

Conclusion

The WTO and creation of a multilateral institutional regulatory frame work was a ray of hope for most of the developing and least-developed countries. The dream which was seen in early 19th century for the creation of ITO was seen to be realized after about 50 years. There were many expectations and aspirations that this institution and its governance would disperse benefits systematically and through predesigned rules. And also with a guarantee that timely will be available in those cases and against those who are creating barriers in getting these benefits percolated to all members.

The action of US in blocking appointment of the members to the appellate body was an unexpected

move since US was one of those initiators of the multilateralism after the World War II. This move of one of the super powers of the world has questioned the entire governance of the WTO. It exposed the weakness of the WTO in controlling counter forces that are trying to shadow justice with selfish motives. Since a considerable period of time, many member countries and the interest groups are trying to provide a solution to this void either from inside processes or outside of the WTO. Drawing a solution from outside of the WTO has lots of challenges mainly in relation to its fitment. In making those modes compatible through provisions and integrating them in to the mainstream dispute settlement processes would attract multiple policy changes. Thus, finding inside remedy to the crisis was an imperative.

Amongst all other modes that are available under the WTO consultation cannot replace appellate mechanism, since it's a primary mode that needs to be exhausted and after exhausting such mode countries can advance to the panel proceedings. That would amount exhaustion of remedy twice from the same forum. The DSU also additionally provide for conciliation, mediation, good offices as modes, which could be exhausted in providing an amicable remedy to a dispute between parties. It is observed that these remedies can be observed till the determination is done by the panel and not after that. So the question of considering these as viable options to remove this deadlock, doesn't provide workable solution. In the meantime, few countries have moved towards concluding 'disabling agreements' whereby they were refraining themselves from appealing further against the decision of the panel and the finality was given to the panel determination. This is being taken to be a flawed move since it was taking 'right to remedy' away from the members of the WTO. This tragic situation has forced the curators with only one option of considering arbitration under article 25 of the DSU. Initially, the arbitration was considered as a bilateral remedy but was proven to be short of precision. The MPIA was identified to be a subtle and temporary solution to this deadlock. On assessment, it is found out that it would serve a temporal solution. However, it seems to be a plurilateral remedy though MPIA is kept open for members to join. Many other bigger market economies like India have kept themselves away from MPIA, which is a mystery in itself. Pressure on US will build to regularize the appointment of the members to appellate body only when more countries would resort remedy under MIPA. Thus, it is required for the WTO to depict a good governance model by taking multilateral initiatives to remove the voices of dysfunction through constructive talks.

Some measures are required in making WTO a 'self-healing body' may be by considering some of the measures. Firstly, the powers and functions of the Trade Policy Review Body need to be redesigned in incentivizing multilateral solutions to multilateral problems instead of bringing bilateral or plurilateral solutions before the forum. Secondly, when right to free 'ingress and egress' is provided to the members of the WTO, expanding its scope to a 'right to expel' a member in the general interest of all other members is to be provided with greater safeguards. Thirdly, MPIA to be escalated from multi-partite to multilateral agreement in providing an urgent solution to this issue. Lastly, power to *veto* shall be reconsidered with suitable safeguards. Without an effective and full-fledged dispute settlement system in place the dream of the WTO in providing global economic justice to all member countries of the world will not get realized.

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