How the EU is shaping the WTO dispute settlement reform

Balázs Horváthy*

Abstract: The EU plays a pivotal role in shaping the reform of the WTO dispute settlement mechanism, especially in light of the current Appellate Body crisis since 2019. The paper examines these efforts made by the EU to maintain a rule-based multilateral trading system. The EU was already a key contributor to WTO dispute settlement reform efforts even in the Doha Round negotiations, launched in 2001 and aimed at agreeing also on improvements of the Dispute Settlement Understanding. The EU pushed for reforms that would address concerns related to the transparency and efficiency of the mechanism, specifically the length of disputes, access for developing countries, and the implementation of the decisions. Although the Doha Round ultimately stalled, the EU's contributions laid important basis for future reform discussions. In the current crisis, the EU's proposal has been originally based on the European Commission's 2018 concept paper on WTO modernization, in which dispute settlement reform has been a key focus. The EU proposal emphasizes the importance of maintaining the binding, two-tier dispute settlement system; calls to make the mechanism more efficient by speeding up the procedure, addressing the problems over the AB's 'judicial overreach' (as perceived by the US), and makes proposal for the appointment of judges. Moreover, the EU has actively promoted an interim mechanism and played major role in the negotiations on the Multi-Party Interim Appeal Arbitration Arrangement to temporarily bypass the Appellate Body's paralysis and maintain a rules-based dispute resolution framework. The paper concludes that the EU's approach to the WTO dispute settlement reform reflects its broader objective of strengthening global trade governance, fostering international cooperation, and ensuring that the WTO remains a central pillar of the global trading system.

Keywords: World Trade Organization, European Union, Dispute Settlement Body

* PhD; research fellow, HUN-REN Centre for Social Sciences, Institute for Legal Studies (Budapest, Hungary); Associate professor, Széchenyi István University, Deák Ferenc Faculty of Law and Political Sciences (Győr, Hungary). Email: horvb@ga.sze.hu
The chapter has been reviewed by László Milassin.

1. Introduction – The European Union and the WTO dispute settlement mechanism

The European Union (EU) has been committed for promoting the idea of a rules-based international trading system[1] since the very outset of the Uruguay round negotiations. In 1995, the new dispute settlement mechanism became the "crown jewel"[2] on the World Trade Organization (WTO), which ensured the predictability and fairness in global trade. The WTO is facing unprecedented institutional crisis, the dispute settlement mechanism is nearly defunct since December 2019, which threatens not only the effective implementation of the WTO law, but also the broader infrastructure of trade that has underpinned economic growth and development for decades. The EU's commitment to reforming this system has become pressing, and not surprisingly, the EU is vocal in addressing these challenges, as well as playing a significant role in the ongoing negotiations with the definite aim to restore confidence in the multilateral trading system.

This rules-based system and specifically, the predictable procedural framework for resolving disputes are existential for the European Union. Since the EU is one of the largest exporters in the world, the WTO's role in reducing tariffs and non-tariff barriers is essential for maintaining and expanding the access to the third countries' markets. More generally, this system helps ensuring that EU exports benefit from non-discriminatory treatment in foreign markets. The EU has been involved in numerous disputes at the WTO, using this platform to challenge unfair trade practices by other nations and showcasing its reliance on this mechanism to uphold its trade rights and interests.[3] It is important, however, that the mechanism is available for all members of the WTO, and in this way, even the EU's trade policy leeway is framed by this multilateral system. The

[1] Steve Woolcock, 'The Role of the European Union in the International Trade and Investment Order' (2019) *University of Adelaide Discussion Paper* No. 2019-02, 3.

[2] Heinz Hauser, Thomas A. Zimmermann, 'The Challenge of Reforming the WTO Dispute Settlement Understanding' (2003) *Intereconomics*, 38(5), 242; Matthias Oesch, 'Das Streitbeilegungsverfahren der WTO' (2004), *Recht – Zeitschrift für juristische Weiterbildung und Praxis*, 22(5), 192.

[3] As of end of September 2024, the EU has been involved directly or indirectly in more than 2/3 of the cases (426 out of 628). The EU participated as complainant in 112 cases; as respondent in 96 procedures, and as third party in 218 cases. WTO – Disputes by member <https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm>

main objective of this paper is to explain how the EU's reform contributions could bring these two aspects together. In doing so, the paper will highlight how the EU's proactive stance not only seeks to safeguard its own economic interests but also strives to reinforce a rules-based order that benefits all WTO member states.

Keeping in line with this objective, the paper analyses the EU's role in shaping the reforms by focusing on three questions. First, it will explore the EU's contribution to the reform process taken place during the Doha Round, which ultimately failed. Second, the paper sheds light on how the EU is responding to the current institutional crisis; and third, the chapter will delve into the possible pathways forward.

2. The WTO dispute settlement mechanism and the reform process in the Doha Round

Even the GATT 1947 encompassed certain provisions on dispute settlement, this framework was much limited in nature than the later negotiated WTO dispute settlement mechanism.[4] In 1995, the WTO reform replaced this less effective system by an institutionalised judicial mechanism, providing a more predictable nature for the future procedures between the WTO members. Implementing the rules-based approach into practice, the Dispute Settlement Understanding (DSU) codified the relevant rules and strengthened significantly the binding character of the mechanism. Even though the WTO dispute settlement mechanism has been still governed by consensus, but this principle has been reversed to so-called negative consensus for the establishment of a panel, the adoption of a report by a panel or the Appellate Body and the authorisation of the suspension of concessions and other obligations. In other terms, the consensus is needed not to block these proposals, which

[4] WTO: GATT Disputes – Procedural legal basis <https://gatt-disputes.wto.org/disputes/overview/legal-basis>; Marc L. Busch, 'Democracy, Consultation, and the Paneling of Disputes under GATT' (2000) *The Journal of Conflict Resolution*, 44(4), 425–446. For an overview of the GATT 1947 dispute settlement system, see William J. Davey, 'Dispute Settlement in GATT' (1987) *Fordham International Law Journal*, 11(1) 51–109.

means that this rule has led to the nearly automatic establishment of panels, the approval of their reports and the suspension of concessions.[5]

It was also a significant change, that the DSU introduced a two-instances procedure. The consultations were referred into the panel proceedings, whose rulings could be reviewed by the permanent Appellate Body (AB).[6] This institutional framework is based, apart from a very limited scope of exceptions, on the principle of compulsory and exclusive jurisdiction, which contributes to the WTO DSB becoming the main forum for trade disputes between states. Moreover, one of the key features of the procedure is its enforcement mechanism, which allows for retaliation if a Member State fails to comply with a decision. This aspect underscores the binding nature of decisions made under the mechanism and serves as a deterrent against non-compliance, thereby promoting adherence to WTO rules.

In addition to the institutional novelties, it is worth noting, that the increasing weight of the mechanism was ensured also by material changes in the WTO legal order. The extended scope of WTO law incorporated not only the GATT vis-à-vis the trade in goods, but laid down substantial provisions on trade in services (GATS) and the protection of intellectual property (TRIPs). If it comes to the effectiveness of the new system, comparing it to the GATT mechanism, it is important to stress, that unexpectedly high number of successfully handled disputes speaks in favour of the reputation and attractiveness of the WTO procedure. Although a few cases (e.g. EU and US disputes over bananas, or hormone-

[5] Claus-Dieter Ehlermann and Ehring Lothar, 'Decision-Making in the World Trade Organization: Is the Consensus Practice of the World Trade Organization Adequate for Making, Revising and Implementing Rules on International Trade?' (2005) *Journal of International Economic Law* 8(1), 51–75; James Tijmes-LHL, 'Consensus and majority voting in the WTO' (2009) *World Trade Review*, 8, 417–437; Robert Wolfe, 'The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor' (2009) *Journal of International Economic Law*, 12(4), 835–858.

[6] Norio Komuro, 'The WTO Dispute Settlement Mechanism — Coverage and Procedures of the WTO Understanding' (1995), *Journal of World Trade* 29(4), 5–96; Amelia Porges, 'The New Dispute Settlement: From the GATT to the WTO' (1995), *Leiden Journal of International Law*, 8(1) 115–133; Zoltán Víg, 'International economic and financial organizations' (2019), In: Zsuzsanna Fejes et. a. (eds.), *Interstate relations*, Szeged, Iurisperitus, 131–149.

treated meat) have led to tensions between the parties, the level of legal compliance is relatively high.[7]

Despite the forward-looking nature of the institutional framework, the need for reform was already expressed in the Doha Round, which was an ambitious reform attempt to establish a more equitable global trading system.[8] The negotiations were launched in November 2001 in Doha (Qatar) by adoption of the Doha Ministerial declaration, which gave an express mandate to open negotiations in order to improve and clarify the DSU.[9] The Member States commenced structured negotiations and introduced a special session of the DSB to elaborate proposals and draft texts to amend the Dispute Settlement Understanding. The meetings were chaired by ambassador Péter Balás (Hungary), the work of the body was progressed from a general exchange of views to a discussion of conceptual proposals put forward by Members.[10] The 'Chaiman's text' was compiled and circulated on the basis of the incoming proposals in 2003, which contained modifications to all stages of the dispute settlement.[11]

During the negotiations, Members submitted more than 60 documents covering reform proposals aimed at improving the effectiveness and efficiency of the dispute settlement mechanism. The contributions of the EU addressed major substantive, institutional and also procedural changes. The EU proposed to move from the ad hoc panel structure toward a permanent mechanism of setting up the panels. It was argued that changing the way panellists were selected and providing them a more permanent basis for their work was likely to lead to faster

[7] However, the level of compliance depends on the sectors involved, e.g. the compliance is lower (and also slower), if politically relevant industries are implied, see: Gabriele Spilke, 'Compliance with WTO Dispute' (2011), *NCCR Trade Regulation Working Paper* No 2011/25.

[8] Gábor Hajdu, 'A Doha Forduló célkitűzéseinek utóélete: befektetési és kereskedelmi implikációk' (2020) *Acta Universitatis Szegediensis: publicationes doctorandorum juridicorum*, 10, 63–77.

[9] Ministerial Declaration of 14 November 2001, WT/MIN(01)/ DEC/1, para. 30.

[10] Thomas A. Zimmermann, 'The DSU Review (1998-2004): Negotiations, Problems, and Perspectives' In: *Reform and Development of the WTO Dispute Settlement System*, Georgiev, Dencho and Kim Van Der Borght (eds.), London, Cameron May, 2006, 450.

[11] Chairman Balás left the most controversial proposals out of consideration, and integrated into the compromise text the less problematic submissions were integrated into a compromise text. See ibid 451

procedures and increase the quality of the panel reports. Moreover, a permanent system could enhance the legitimacy and credibility of the panel process, as the possibility of conflicts of interests would be eliminated and the independence of the panellists would be protected.[12] As another horizontal issue, the EU advocated for a balance transparency in the dispute settlement procedure. This included proposals to reconcile the interests of the parties to keep certain parts of the proceedings not accessible to the public, on the one hand, with the aim of a larger transparency, on the other hand. The former concern – restricting the transparency – could provide the adequate atmosphere to the negotiations and help to resolve the dispute. For this reason, the EU found acceptable to the restrict the transparency over certain procedural parts of the dispute settlement, e.g. consultations could remain confidential, but proposed to consider the access of the public to other phases of the procedures.[13] More transparency could enhance the accountability of the dispute settlement procedure and allow for greater scrutiny by stakeholders.

In addition the to this horizontal issues, the EU's contribution touched upon the "sequencing issue" in context with the implementation of the DSU, and suggested that the text of the DSU should be clarified in this regard,[14] and elaborated reform proposals to strengthen the compliance mechanisms, and specific provisions of the retaliation and other minor issues.[15]

[12] TN/DS/W/1 – Contribution of the European Communities and its Member States to the improvement of the WTO Dispute Settlement Understanding. Communication From The European Communities (13 March 2002), 2.

[13] Ibid, 2.

[14] Ibid, 4. The "sequencing" issue relates primarily to the procedural complexities that arise when implementing decisions regarding retaliation and compliance. The application of two rules of DSU raises questions here: article 21.5 DSU deals with the compliance phase of dispute resolution, and Article 22 DSU addresses retaliation measures. There is often a lack of clarity on whether a member can retaliate before a compliance determination has been made under Article 21.5 DSU, leading to procedural confusion and potential disputes over timing. See: Sergei Gorbylev and Milica Novaković, 'Retaliation under the WTO Agreement: The "Sequencing Problem"' (2013), *Estey Journal of International Law and Trade Policy*, 14(2), 118–132.

[15] E.g. in case of suspension of trade concessions, exempting goods *en route* from retaliation would be reasonable; the prohibiting so called 'carousel retaliation'; termination of retaliation; procedure for the withdrawal of consultation requests, ensuring compliance with mutually agreed solutions, an explicit time-frame for third party interest notification, full-time appointment for AB members etc, see TN/DS/W/1.

The final deadline set down by the mandate of the special session of the DSB was finally extended, therefore the negotiations continued even in 2004, but Members could never agree on a final text version. Later the whole Doha Round itself has been collapsed.

3. The EU and the current institutional crisis

In search of the roots of the current institutional crisis, we can go back to China's accession and look for the main conflicts primarily in the China-US trade relationship. The US originally supported China's accession to the WTO, but in the late 2000s, tensions have emerged specifically in context with actual dispute settlement procedures. The view began to arise that the promises expected by China's accession had not been delivered, growing scepticism was articulated about whether China's integration into the global trading system had achieved its intended goals. Therefore, during the Obama administration, concerns regarding China's membership emerged prominently. It was highlighted several issues that reflected broader apprehensions about China's compliance with WTO rules and the effectiveness of the DSB in addressing these challenges. The US expressed concerns that China was not fully adhering to its commitments under WTO agreements. This included issues related to subsidies, state-owned enterprises, and market access, where the U.S. argued that China's practices were inconsistent with its obligations, undermining fair competition in global markets.[16] There were significant worries about China's use of non-tariff barriers and other trade restrictions that limited U.S. exports. The US pointed to instances where China employed regulatory measures that disproportionately affected foreign companies, raising questions about the transparency and fairness of its trade practices. Moreover, it was held the China violated the intellectual property rights, its policies forced technology transfers, which not only harmed American businesses but also contradicted the principles of fair trade expected within the WTO framework.[17] Later these concerns were channelled into the ongoing disputes before the WTO DSB and it was

[16] Stuart S. Malawer, 'Obama, WTO Trade Enforcement, and China' (2016) *CWR – China & WTO Review*, 2016:2, 361–368.

[17] Bruna Bosi Moreira, 'Between Contention and Engagement: US response to China's rise in the Obama and Trump administrations' (2019), *Brazilian Journal of International Relations*, 8(3).

held, that WTO DSB was ineffective in addressing systemic issues posed by China. Although the U.S. had successfully filed numerous cases against China in the DSB, there were frustrations regarding the lengthy processes and perceived limitations in enforcing compliance with rulings.[18] Furthermore, China could win certain cases, which were crucial for the United States.[19] These concerns contributed to a broader discourse on reforming the WTO's dispute settlement system, particularly regarding how it could better address issues related to major economies like China. The Obama administration's criticisms highlighted a need for enhanced mechanisms within the DSB to ensure compliance with international trade rules and to adapt to challenges posed by state capitalism and non-market practices.

In the broader context of discussions over these issues, the key concerns of the US were slightly turned to the Appellate Body's institutional setting and practices and was held that the AB is committing 'judicial overreach' as a systemic problem. In other terms, it was criticised that the Appellate Body have exceeded their intended authority or have interpreted WTO rules in ways that extend beyond what Member States agreed upon during negotiations. This concept has become a focal point in debates about the functioning and legitimacy of the DSB.[20] The argument of 'judicial overreach' has condemned more aspects of the AB's practices. It was argued, that Appellate Body has engaged in judicial activism by interpreting WTO agreements in a manner that effectively creates new obligations for member states. This has led to claims that the Appellate Body is overstepping its role as an adjudicator and acting more like a legislator. But on the other hand, this extensive, authoritative interpretation led to a quasi precedent system, so that the AB rarely

[18] Malawer, ibid.

[19] See the "zeroing practices" and the „double remedies" by imposing antidumping and countervailing duties on the same product. Thomas J. Prusa and Luca Rubini, 'United States – Use of Zeroing in Anti-Dumping Measures Involving Products from Korea: It's déjà vu all over again' (2013), *Journal of World Trade*, 12(2), 409–425; Sungjoon Cho, Thomas H. Lee, 'Double Remedies in Double Courts' (2015), *European Journal of International Law*, 26(2), 519–535.

[20] See especially, Ernst-Ulrich Petersmann, 'Rule-of-law in international trade and investments? : between multilevel arbitration, adjudication and 'judicial overreach' (2020), *EUI Working Paper*, EUI LAW, 2020/10; Jeffrey J. Schott and Euijin Jung, 'The WTO's Existential Crisis: How to Salvage Its Ability to Settle Trade Disputes' (2019), *Policy Briefs* PB19-19, Peterson Institute for International Economics.

departs from its previous decisions.[21] Criticism has been voiced about the AB's 'obiter dicta' statements, which are not directly relevant to the dispute at hand, and the AB has also been criticized for frequently exceeding procedural deadlines.

During the Obama administration, China's alleged violations against the WTO law were still addressed in the WTO dispute settlement mechanism by filing complaints against China. Subsequently, the US has turned slightly to more assertive steps. In 2011, it was not really noticed that the US government refused to support the routine re-appointment of US Member of AB, giving no reasons for its decision.[22] But five years later, in 2016, immediately got the headlines that the US blocked the re-appointment of South Korean AB Member, arguing that he had failed to act within his mandate and his performance did not reflect the role assigned to the AB in the DSU.[23] The Trump government put the criticism over the AB in a much larger strategy to undermine the functionality of the WTO,[24] and continued to block the appointment of new AB members in

[21] For this debate, see: James Bacchus, and Simon Lester, 'The Rule of precedent and the role of the Appellate Body' (2020), *Journal of World Trade* 54(2), 183–198.; Timothy Meyer, 'How to treat the WTO's Problem with precedent' (2021), *Vanderbilt Journal of Transnational Law*, 54(3), 587–610; It is worth mentioning, that Palmeter and Mavroidis exposed the question of precedents in WTO law much earlier than the above debate has been triggered by the US. They gave an insight even into international law aspect of the problem, addressed also the status of the panel reports (including the non-adopted reports) from the GATT era, and introduced the concept of the 'non-binding precedents', pointing out that "[a]dopted reports have strong persuasive power and may be viewed as a form of nonbinding precedent, whose role is comparable to that played by *la jurisprudence* in the contemporary civil law of many countries, such as France, and that played by decisions of courts at the same level in the United States." David Palmeter, and Petros C. Mavroidis, 'The WTO Legal System: Sources of Law' (1998*), The American Journal of International Law*, 92(3), 398–413 (401).

[22] Kerremans highlights, that the roots of blocking AB members leads back much further. The US exerted pressure on Merit Janow, one of its nationals, not to apply for a reappointment already in 2007, and in 2011, Jennifer Hillman was not reappointed (also US national). But the first explicit blocking of an appointment showed up in 2013, when it was refused by the US the appointment of Kenyan candidate James Thuo Gathii. See, Bart Kerremans, 'Divergence Across the Atlantic? US Skepticism Meets the EU and the WTO's Appellate Body' (2022), *Politics and Governance*, 10(2), 208–218.

[23] Kerremans, ibid.

[24] Rachel Brewster, 'The Trump Administration and the Future of the WTO' (2018), *Yale Journal of International Law Online*, 44(6), 3; Richard H. Steinberg, 'The Impending

2018. [25] As a result, only 3 members remained in charge that time, but two of the Members' terms expired on 10th December 2019, therefore the AB lost its no quorum and became practically defunct. That day, the intense, decade long debates about the AB's shortcomings turned into a real, serious institutional crisis of the WTO.

How did the European Union react to the debates and the collapse of the dispute settlement mechanism of the WTO?[26] The negotiations on the WTO reform and modernisation have been formalized in 2018, which the European Commission joined by submitting a detailed reform proposal (concept paper).[27] The paper went beyond the DSB crisis and outlined a comprehensive approach to modernizing the WTO. The concept paper analysed the key challenges and formulated proposals with regard to three significant areas: the rulemaking, the transparency of the regular work, and the dispute settlement. Below we are focusing predominantly on the last item.

The point of departure of the EU's concept paper is the concerns regarding the dispute settlement mechanism put forward by the Trump administration in 2018.[28] Considering the US criticism, the concept paper laid down a comprehensive proposal to address the deadlock situation, and improve the functioning of dispute settlement mechanism. In doing so, the EU's proposal is divided into two phases. In a first stage, the most

Dejudicialization of the WTO Dispute Settlement System?' (2018), *Proceedings of the ASIL Annual Meeting*, 112, 316–321.

[25] For the US concerns of the Trump administration regarding the WTO dispute settlement, see United States Trade Representative, 'President's 2018 Trade Policy Agenda' (2018), <https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20I.pdf>, 22–28.

[26] This paper deals only with the reform proposals of the EU, but does not go into the EU's efforts to set up a mechanism for temporal replacement of the AB. This latter aim led a part of the Member States to negotiate and conclude the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) in May 2020. The MPIA, covering actually 54 WTO member states, has installed a specific procedure, which is in fact an alternative dispute resolution mechanism in sense of the Article 25 DSU and replaces temporally the AB procedure. See: Joost Pauwelyn, 'The WTO's Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What's New' (2023), *World Trade Review*, 22(5), 693–701.

[27] European Commission, 'EU Concept Paper on WTO Reform' (18 September 2018). The original document is not available on the Commissions homepage. The copy of the document published by the Washington International Trade Association (WITA) is accessible at <https://www.wita.org/atp-research/eu-concept-paper-on-wto-reform>.

[28] United States Trade Representative, ibid.

urgent proposals aim at unblocking the appointments, then in the second stage, substantive issues concerning the application of WTO rules can be considered. As far as the first stage is concerned, the paper formulating the EU's suggestions reflecting directly to the US concerns. Below we summarize the EU commitment structured by the major concerns put forward by the US government.

a) The 90-day deadline for appeals

The AB disregards the 90-day deadline for appeals, which raises the concerns of transparency, inconsistency with prompt settlement of disputes, and uncertainty regarding the validity of the report issued after 90 days. The proposes to change this 90-day rule by providing an enhanced transparency and consultation obligation for the AB. The 90-day timeframe could be extended by the parties, if the AB signalizes in advance, if it estimates that the report will be circulated outside 90 days. In addition to this, the concept paper has put forward other issues that would help increasing the efficiency of the AB: increasing the number of Appellate Body members from 7 to 9; providing that the AB membership of the is a full time job (currently, de jure, it is a part time job); and expansion of the resources of the AB Secretariat could also be considered as an accompanying measure.[29]

b) Continued service by persons who are no longer AB members

The US argued that under the DSU, the DSB and not the AB has the capacity to decide whether a person whose term of appointment has expired should continue serving. Responding this claim, the EU proposes transitional rules for outgoing AB members, e.g. the DSU could provide that an outgoing AB member shall complete the disposition of a pending appeal in which a hearing has already taken place during that member's term.[30]

c) 'Obiter dicta' statements

The US critics has focused also on the AB's practice to issue advisory opinions on questions not necessary to resolve a dispute. The EU concept paper proposes here make the related DSU provisions clearer in order to restrict the extent of the AB's decision on the issues, which are necessary for the resolution of the dispute.[31]

d) AB review of facts and Member's domestic law

[29] European Commission, 15–16.
[30] European Commission, 16.
[31] European Commission, ibid.

The US also criticised the AB's approach to reviewing facts. Under the DSU, appeals are limited to issues of law covered in the panel report and legal interpretations developed by the panel, but, as the US argued, the AB has consistently reviewed panel fact-finding under different legal standards, and has reached conclusions that are not based on panel factual findings or undisputed facts. In US' view, this is particularly the case for AB review of panel findings as to the meaning of domestic legislation, which should be an issue of fact. In this respect, the concept paper also tries to give a template to improve the provisions of the DSU. The EU would integrate a definition of the municipal law, in order to ensure that, issues of law covered in the panel report and legal interpretations developed by the panel do not include the meaning of the municipal measures.[32]

e) Precedents

As mentioned earlier, one of the most prominent issues raised by the US focused on the practice and interpretation of the AB. The US has taken the view that AB claims its reports are entitled to be treated as precedent, panels are to follow prior AB reports absent 'cogent reasons', which has no basis in the WTO rules. For solving this issue, the Commission proposed to strengthen the additional channels of communication between the WTO members and the AB.[33] For instance, annual meetings could provide for regular exchanges between the parties, which is in line with the right of the WTO members to express their views on an AB report stipulated expressly in the DSU.[34] This would open up the opportunity to voice concerns with regard to AB approaches. As the commission argued, this change would not be inconsistent with the independence of the AB members. Adequate transparency and framework provisions for these meetings could also be put in place, in order to avoid undue pressure on AB members.[35]

4. The path forward – Concluding remarks

The reform of the WTO dispute settlement mechanism is a critical issue that has received considerable attention in academic debates,

[32] European Commission, 16–17.
[33] European Commission, 17.
[34] Cf. with DSU Article 17.14, last sentence.
[35] European Commission, 17.

especially in light of the ongoing crisis that has rendered the AB inoperable since December 2019. As the above analysis has shown, the reform is not merely a technical adjustment; it is a fundamental necessity for the future of global trade governance. The EU has emerged as a prominent actor in this reform process, demonstrating a commitment to maintaining a rules-based multilateral trading system that underpins global trade.

The EU's involvement in WTO reforms, dating back to the Doha Round, showcases its proactive stance in addressing systemic challenges within the dispute resolution framework. The EU has consistently emphasized the need for transparency, efficiency, and accessibility for developing countries. Despite the failure of the Doha negotiations, the EU's contributions laid essential groundwork even for the ongoing reform discussions, emphasizing a need for a more permanent and independent panel structure that could expedite proceedings and improve the quality of rulings. These proposals are exposed by the European Commission's 2018 concept paper on the WTO modernization, which identifies the shortcomings of the system, based mostly on the arguments formulated by the US, which are then explicitly addressed by the solutions offered in the document.

As it was seen, the EU reform proposal advocates for maintaining a binding system while addressing perceived issues such as the lengthy procedures or the judicial overreach by the AB. Although the focus of the paper has been narrowed down to the EU position, it also shows, that these reform attempts go far beyond to the economic interests of the European Union. Reform of the WTO dispute settlement mechanism represents an opportunity to reinforce multilateralism at a time when unilateral actions threaten to undermine global trade stability. The EU's leadership in this process is essential, but not fully enough to solve the deadlock of the dispute settlement mechanism. The path forward will require collaboration among all WTO member states to create a resilient framework capable of addressing contemporary challenges while safeguarding the principles of international trade.

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Short biography of the author

Balázs Horváthy (PhD) is research fellow at HUN-REN CSS Institute for Legal Studies (Hungary, Budapest) and associate professor at Széchenyi Istvan University, Faculty of Law and Political Sciences, Department of International and European Law (Hungary, Győr). He obtained his PhD from ELTE University (Hungary, Budapest) in protective measures of the Common Commercial Policy in 2009. He teaches courses in EU public law and policies of the EU, international trade law; and his current research interests include social policy conflicts of EU and international trade law, 'Trade and Environment' issues.