

THE ROLE OF THE WORLD TRADE ORGANIZATION (WTO) AND THE DISPUTE SETTLEMENT SYSTEM IN INTERNATIONAL MULTILATERAL TRADE

Toni Vukušić, Master of Arts

Trade Officer at the Permanent Mission of the Republic of Croatia to the UN and WTO, Geneva, Switzerland

e-mail: vukusictoni@gmail.com

Vito Bobek, Full Professor,

University of Applied Sciences FH Joanneum, Graz, Austria

e-mail: vito.bobek@fh-joanneum.at

Borut Kodrič, Assistant Professor

University of Primorska, Faculty of Management, Koper, Slovenia

e-mail: borut.kodric@fm-kp.si

Abstract. The WTO Dispute Settlement System is one of the critical pillars of the WTO. With the cessation of the functioning of the Appellate Body at the end of 2020, the entire dispute settlement system entered a crisis that could cause drastic changes in the multilateral trading system as we know it today. This paper deals with this phenomenon with a restrained interpretive paradigm and uses an inductive research approach to establish new knowledge and conclusions based on the conducted qualitative research by in-depth interview and analysis of official documentation. The paper covers four different aspects of the practical problem, which include the reasons for the blockage of the Appellate Body, the consequences of this action on the dispute settlement system, and the organization itself. Furthermore, it includes proposals for possible solutions to this problem. The obtained results were categorized according to the mentioned categories and were combined to get a broad overview of the practical problem. The results of this research unite different perspectives within the multilateral trading system with a particular focus on the dispute settlement system and can serve as a basis for future research of a similar type.

Key words: World Trade Organization, Multilateral Trade System, Dispute Settlement System, Appellate Body, Dispute Settlement Body, Reform, European Union, China, United States.

РОЛЬ ВСЕМИРНОЙ ТОРГОВОЙ ОРГАНИЗАЦИИ (ВТО) И СИСТЕМЫ УРЕГУЛИРОВАНИЯ СПОРОВ В МЕЖДУНАРОДНОЙ МНОГОСТОРОННЕЙ ТОРГОВЛЕ

Тони Вукушич, магистр искусств, сотрудник по торговле

Постоянного представительства Республики Хорватия при ООН и ВТО, Женева, Швейцария

e-mail: vukusictoni@gmail.com

Вито Бобек, профессор,

Университет прикладных наук ФН Иоаннеум, Грац, Австрия

e-mail: vito.bobek@fh-joanneum.at

Борут Кодрич, доцент

Приморский университет, Факультет менеджмента, Копер, Словения

e-mail: borut.kodric@fm-kp.si

Аннотация. Система урегулирования споров ВТО является одним из важнейших столпов ВТО. С прекращением функционирования Апелляционного органа в конце 2020 года вся система урегулирования споров вступила в кризис, который может привести к радикальным изменениям в многосторонней торговой системе, какой мы ее знаем сегодня. В данной статье этот феномен рассматривается в рамках ограниченной интерпретационной парадигмы и используется индуктивный исследовательский подход для установления новых знаний и выводов на основе проведенного качественного исследования путем углубленного интервью и анализа официальной документации. В документе рассматриваются четыре различных аспекта практической проблемы, которые включают причины блокировки Апелляционного органа, последствия этого действия для системы урегулирования споров и самой организации. Кроме того, в нем содержатся предложения по возможным решениям этой проблемы. Полученные результаты были классифицированы в соответствии с указанными категориями и объединены, чтобы получить широкий обзор практической проблемы. Результаты этого исследования объединяют различные точки зрения в

рамках многосторонней торговой системы с особым упором на систему урегулирования споров и могут послужить основой для будущих исследований аналогичного типа.

Ключевые слова: Всемирная Торговая Организация, Многосторонняя Торговая Система, Система Урегулирования Споров, Апелляционный Орган, Орган по урегулированию Споров, Реформа, Европейский Союз, Китай, Соединенные Штаты.

Introduction

WTO agreements are important and deserving of the preservation and functioning of the multilateral trading system, but they would not have many purposes if they were not adhered to by member states. Therefore, in 1995, perhaps as the most important outcome of the Uruguay Round of negotiations, resolving disputes between member states was established. By ensuring compliance with the obligations arising from the WTO agreement, this system helps to prevent the adverse effects of unresolved international trade disputes and ensure a balance between "stronger" and "weaker" WTO members. All rules and procedures for resolving disputes are contained in the Dispute Settlement Understanding (DSU) document, which forms Annex 2 of all WTO agreements. The WTO body responsible for managing the DSU and overseeing the entire dispute resolution process is called the Dispute Resolution Body. This body is composed of representatives of WTO members, and decisions of the body must be made by consensus of all present. The body also has two branches, more precisely two sub-bodies. These are the Dispute Resolution Expert Panels and the Appeals Body.

The Panel of Experts is a quasi-judicial body competent to resolve disputes at first instance. It usually consists of three, exceptionally 5, experts selected for a specific case. They are not permanently employed in the WTO, but each panel is assembled separately depending on the dispute. A panelist can be any independent person who is sufficiently qualified. On the other hand, the Appellate Body is a permanent WTO body. It consists of 7 permanent arbitrators/members. The role of this body is significant in the dispute resolution process. The appellate body hears the panel's report and can change, reverse or confirm the panel's judgment. Once the DSB has adopted the Appellate Body's report, it must be confirmed by all parties to the dispute in order for the judgment to be legally binding. On December 10, 2019, a significant blow to the dispute resolution system occurred when the mandates of two of the three remaining members of the Appeals Body expired while at the same time WTO members failed to find consensus on new members of the Appeals Body. Thus the Appeals Body became dysfunctional and put the whole system for resolving disputes into a hitherto unprecedented crisis.

Research question, methods of work, and research approach

The WTO dispute resolution system is one of the essential functions of the WTO. However, with the cessation of the functioning of the Appeals Body, the entire dispute resolution system entered a crisis that could cause drastic changes in the multilateral trading system as we know it. The purpose of this paper is to investigate and analyze possible procedural, legal, political, and tactical causes of the Blockade of the Appellate Body to unify them and to point out the possible consequences of the Block of the Appellate Body on the entire multilateral trading system. This paper aims to look at the problem of the blockade of the Appellate Body through several dimensions and, based on the analysis of the causes and consequences of the blockade, to look at potential solutions for the continued normal functioning of the dispute resolution system and thus the entire WTO.

The research questions are as follows:

1. What are the possible causes of the blockade on the election of new members of the Appeals Body?
2. What are the consequences of the Appellate Body's termination of the WTO Dispute Resolution System?
3. What are the possible consequences of a dysfunctional WTO dispute settlement system on the overall work of the WTO and the role of the WTO in the global multilateral system?
4. What are the possible procedural and other solutions for the continued functioning of the dispute resolution system?

The assumptions for the research are as follows:

1. The blockade on the election of new members of the Appeals Body, and therefore its work, is procedurally justified, but the cause is political and is linked to the trade war between the United States and China.

2. The US approach to the blockade is part of their broader tactics and is comparable to similar developments in other international organizations.
3. The problem of the blockade of the Appellate Body affects and spills over to other bodies within the World Trade Organization.
4. Reform of the World Trade Organization can bring a solution to the problem.

In the first theoretical part, the approach will be based on the relevant literature with a particular focus on the official literature of the World Trade Organization and on the official WTO regulations. One part of the research, especially the one on the causes of the blockade, will be based on the available literature, while in the other empirical part of the research, authors will focus on interviews with experts combined with analysis of official documentation and other sources.

When conducting research and problem analysis, we intend to use the following methods:

- Description method
- Compilation method
- Comparison method
- Inductive and deductive method
- Method of analysis and synthesis
- Method of proof and rejection

For the empirical part of the research, we intend to use a qualitative approach using the in-depth interview method due to the specifics of the research problem and to collect better, describe, and interpret new knowledge without initial assumptions. We will use an in-depth interview with two respondents who have different functions and roles in the research problem and can offer insights from different perceptions. The questions will be open-ended and will not be formulated in such a way as to lead the respondent to answer so that the respondent has complete freedom to express his or her views. The interview will be conducted orally in the presence of the examiner.

The World Trade Organization bases its work and its internal processes on pre-determined rules. The first assumption is that the members respect the adopted rules and adhere to them, and this assumption will be the authors' basis for approaching the problem. Also, although delegates personally represent their country in the World Trade Organization, the views and positions expressed are not most often created in Geneva, on the spot, but in the competent capitals where the instructions come from. This sometimes makes it impossible to see more comprehensive information and makes it difficult to assess future events. Apart from the theoretical part, the authors will research the site itself - in the building of the World Trade Organization, if the circumstances allow it. Initial contact was made with a member of the WTO Secretariat and with an EU diplomat in charge of resolving disputes. The plan is to conduct interviews with these candidates. A limitation in this process is likely to be their request for anonymity, but this should not affect the content of the interview itself. An additional restriction to work itself is that of a temporal nature, i.e., time limits for submitting work. Namely, the selected research problem requires a broad approach and in-depth knowledge of the subject with the processing of a large volume of literature.

Dispute resolution within the WTO

Disputes within the WTO mainly relate to violations of the WTO Agreement, i.e., when one party considers that the other party is violating specific provisions of one or more WTO agreements, it can initiate a dispute against it. Annex 2 of the Marrakesh Agreement regulates the dispute resolution process, Understanding the rules and procedures for managing dispute resolution. Other countries may express their interest in a particular dispute and enjoy certain rights as a third party to the dispute. A similar procedure existed within the GATT, but the Uruguay Round brought several differences. Deadlines have been set for the maximum duration of each phase, and the manner of adopting the verdict has been changed. Before the Uruguay Round, the verdict had to be adopted by consensus of all members, leading to only one objection blocking the verdict. After the Uruguay Round, the verdict was adopted automatically unless there was a consensus to reject it. This meant that any WTO member that wanted to block the verdict had to convince all other members of its reasons.

The settlement of trade disputes within the World Trade Organization is dealt with by the Dispute Settlement Body when the WTO General Council meets in that form. The Dispute Settlement Body has the authority to establish dispute settlement panels, adopt reports of panels, arbitration, or the Appellate Body, oversee the implementation of recommendations and rulings from previous reports, and authorize facilities' revocation cases non-compliance with recommendations and rulings.

Consultations

When one or more WTO members decide to initiate a formal dispute against another WTO member, they enter a process consisting of several stages. The duration of each stage of the dispute is prescribed by the Agreement Understanding the Rules and Procedures on Dispute Resolution Management (DSU). The first stage of the dispute is consultation (Article 4 DSU). At this stage, members can talk to each other and try to resolve the dispute among themselves. They also have the option of involving the Director-General of the WTO in the process as a mediator or as some other form of assistance. This degree can last a maximum of 60 days. If the members fail to reach an agreement, the prosecuting member may request the establishment of a panel in the second instance, but the members may reach a mutually acceptable agreement in other stages of the dispute, regardless of the conclusion of the consultation. Most disputes are resolved at the consultation stage when a satisfactory solution is found or when the plaintiff member decides for other reasons not to continue the process. (WTO: The process - Stages in a typical WTO dispute settlement case).

Panel

If the consultations do not bear fruit within 60 days or if the defending member has not met the deadlines for responding to the request for consultations, the plaintiff may decide to launch a panel to adjudicate the dispute (Article 4.7 DSU). The initiation of this process allows the plaintiff member to retain her rights or protect her privileges under WTO agreements, while the accused member has the opportunity to defend the facts or interpretation of the plaintiff (WTO: The process - Stages in a typical WTO dispute settlement case: 6.3. : Page 1).

The panel's establishment is managed by the Dispute Settlement Body and does not require the consensus of other members, i.e., a "negative" consensus is needed to block the panel's establishment. The prosecutor and the defense counsel are parties to the dispute, but third parties may also participate in the panel. A third party is a member that has an exceptional commercial interest in the content of the dispute and may request to participate in the procedure as a third party by notifying the Dispute Settlement Body of its interest (Article 10.2 of the DSU). The third party thus realizes certain benefits. He has the right to be the first to receive written proposals within the panel and express his opinion orally during the panel's first meeting (Article 10.3 of the DSU). Once the panel is officially established, it is necessary to appoint panelists. Since there are no permanent panels or permanent panelists within the WTO, panels are assembled on an ad hoc basis for each dispute separately. Each panel can consist of three or five panelists. Panels are usually established with three panelists unless the parties to the dispute request otherwise within ten days of the panel being established. In this case, the panel may consist of five panelists (Article 8.5 of the DSU). The WTO Secretariat proposes panel candidates who must meet certain conditions.

Panelists must be sufficiently qualified and independent (Article 8.1 of the DSU) and may not come from any of the dispute members unless they agree otherwise (Article 8.3 of the DSU). Nominations for panelists are proposed by the Secretariat (Article 8.6 of the DSU). The Secretariat also assists the process by developing an indicative list of possible panelists according to their qualifications for a particular dispute. Members may propose new names for inclusion in that list (Article 8.4 of the DSU). If the members of the party cannot reach an agreement on the selection of panelists within 20 days from the moment the panel is initiated, they are appointed by the Director-General in consultation with the Chairman of the Dispute Settlement Body and the Chairman of the specific committee (Article 8.7 DSU). If the dispute is between a developed member and a developing member, at the request of a developing member, the panel must include at least one panelist from a country in development status (Article 8.10 of the DSU). After the verification process, the panel publishes the final report. The final part of the report is first sent to the dispute members and after three weeks to all other WTO members. The final report becomes legally binding only after the Dispute Settlement Body has adopted it. According to the DSU, the Dispute Settlement Body must adopt the report no earlier than 20 days and no later than 60 days from the date of circulation of the final report to all WTO members unless one of the parties to the dispute decides to initiate an appeal procedure or a negative consensus is reached. acceptance of the report.

Appeal process

If one of the dispute members is not satisfied with the final report and conclusions of the panel, it may file an appeal. Third parties to the dispute do not have this right (Article 16.4 of the DSU). An appeal must be lodged before the Dispute Settlement Body adopts the final report and no earlier than 20 days and no later

than 60 days after the report's circulation. In other words, the deadline for initiating an appeal is very similar to the one for adopting the report, and in practice, the appeal may be initiated on the same morning when the Dispute Settlement Body puts the adoption of the final report on the agenda. After the Dispute Settlement Body is notified of the initiation of the appeal, the appeal passes into the hands of the Appellate Body. The Appellate Body is a body established by the Dispute Resolution Body and is designated by Article 17 of the DSU. It should consist of seven members, three of whom should participate in the case with a rotation determined by the separate working procedures of the Appeals Body. The Dispute Settlement Body designates persons to serve on the Appeals Body for a term of four years, and each person may be re-elected only once.

According to Article 7.3 of the DSU, the members of the Appellate Body, i.e., the arbitrators, should be persons who have demonstrated expertise in law and international trade with knowledge of the subject matter of the WTO agreement and should not be associated with any government. They shall also not consider any dispute that may give rise to a direct or indirect conflict of interest. The expenses of the members of the Appellate Body must be reflected in the budget of the WTO and accordance with the criteria adopted by the General Council based on the recommendations of the Committee on Budget, Finance, and Administration. Namely, The budget plan is the internal control in the planning of budget resources (Horvat, 2017, p.165). The appeal itself must be limited to the legal aspects of the panel's final report and the legal interpretations of the panel (Article 17.6 of the DSU). The appellate body has the authority to uphold, modify or reverse the judgment, i.e., the legal conclusions of the panel, and present its conclusions in the form of a report. The Appellate Body report shall be adopted by the Dispute Settlement Body and accepted by the members of the dispute unless the Dispute Settlement Body adopts the report of the Appellate Body by consensus within 30 days of the publication of the report. The Appeals Chamber is currently unable to function in its capacity due to a lack of members or due to the expiration of the term of all seven members until new members are elected. The mandate of the last member, prof. Dr. Hong Zhao (China) expired on February 30, 2020. Before that, the mandates of the following members expired:

- March 5, 2020 - Thomas R. Graham (United States)
- May 28, 2019 - Peter Van den Bossche (Belgium)
- May 28, 2018 - Ricardo Ramírez-Hernández (Mexico)
- October 26, 2016 - Yuejiao Zhang (China)
- September 26, 2016 - Seung Wha Chang (Korea)
- January 22, 2014 - David Unterhalter (South Africa)

At the end of the term of office of the last active member of the Appeals Chamber, it ceased to function and thus led to a stalemate in the operation of the entire dispute resolution system.

Empirical research

An interpretive paradigm was chosen for the empirical part of the research in this paper. Following the previously mentioned characteristics of the research and concerning the qualitative form of the research, different methods were selected for this paper. In the answers to specific research questions and to reach the answer to the main research question, document analysis methods and the in-depth interview method were used. Collecting and analyzing data from the documentation helps set a cognitive framework for each specific research question. The compilation, comparison, description, and synthesis methods will also be used within this method. Also, the use of secondary data in such a way will contribute to more straightforward structuring and chronological explanation of already known facts. In order to ensure the validity and reliability of this research data, data from credible sources were used, referring to data from international organizations, professional literature, government offices, and other institutions. The in-depth interview technique was used to collect primary data and as a method of examination. The interview does not have a solid structure, but the examiner made sure that all topics were covered, paying attention to the natural course of the conversation. The interview technique was used to examine two respondents who were selected according to the following criteria: that the respondent is professional concerning the research topic and that his / her work or activities are related to the research topic; that the respondent can provide a deeper, professional insight into the research topic and that the respondent is willing to participate in the interview.

Both selected respondents meet the set criteria. Given the respondents' position and the fact that they represent their governments in the World Trade Organization as diplomats, respondents are guaranteed anonymity due to the possibility of the emergence of sensitive political views in the survey itself. The

interview was conducted face to face. The interview was recorded on a dictaphone with a written record of exciting events during the interview by the examiner. The conversations lasted an average of 30 minutes. After the interview, a detailed transcript of the same was made to ensure the validity of the data. Following the survey's ethical principles, both respondents gave their written consent to the interview and were promised the protection of confidential information and the principle of privacy.

Road to the blockade

From the beginning of 1995 to the end of 2020, 598 requests for consultations were initiated in the World Trade Organization. A total of 110 member states, out of 164 of the World Trade Organization today, participated in this process as one of the parties to the dispute or as a third party. Of the 598 requests for consultations mentioned, 242 were resolved through consultations. A panel was initiated for the other 356 disputes, while the panel's final report was published for 265 of those 356. The other 91 disputes were resolved by agreement of the members during the panel stage. Of the panel's 265 final reports, 174 were appealed (WTO: Dispute Settlement Activity, 2021). From the above figures, it is evident from the total number of initiated requests for consultations, which de facto means the same number of initiated disputes, almost 30% of them end up in the appeal procedure. Also, in a situation where the dispute once reaches the panel stage and the panel's final report is reached, almost 66% of these disputes go to the appeal stage. These figures somewhat outline the importance of the role of the appeals procedure as well as the Appellate Body itself in the dispute resolution system. However, the Appellate Body ceased to function at the end of 2019, when it could no longer form the 3-member assembly required to hear the appeal. On November 30, 2020, the term of office of the last member of the Appellate Body, Mr. Hong Zhao (China), expired, and the Appellate Body has not had a single member since.

In its working paper, the Peterson Institute for International Economics (2020) explores precisely the background causes of the blockade in the form of tariffs themselves and related appellate body rulings. They focus on so-called "trade remedies," i.e., exceptions allowed under the WTO agreement under certain circumstances. Trade remedies include anti-dumping duties that protect against cheap imported products, countervailing duties that protect against subsidized imports, and safeguard measures that may respond to excessive imports. Such mechanisms can serve governments in protecting their system from unhealthy competition. The European Union previously used the same method, but this practice was abolished immediately after the lost dispute with India (Peterson Institute for International Economics, 2020).

An additional aspect of the Appellate Body's blockade may lie in the trade conflict between the US and China, today the world's largest exporter. China joined the World Trade Organization in 2001, and in the accession process, at the request of the United States, a clause was built on the treatment of China as a non-market economy, which allowed members to facilitate the application of anti-dumping duties on exports from China. Later, in 2007, the United States decided to apply countervailing duties against Chinese exports, and by 2019, as much as 7% of Chinese exports to the United States were covered by these duties. It is also worth mentioning the decision of the Appellate Body from 2011 when it decided that all state-owned enterprises owned by China are not automatically counted as recipients of state aid. In these enterprises management of a company must establish a good business process structure in order to achieve its business objectives (Horvat and Mojzer, 2019, p.11).

What could have created some US dissatisfaction with the dispute resolution system is that the US has initiated 18 lawsuits against China over systemic concerns (state aid, protection of intellectual property rights) (Peterson Institute for International Economics, 2020). In its 2021 trade policy review, the EU detects the following problems as an indicator of crisis in all three WTO functions: the failure of various negotiations to modernize rules, a damaged dispute resolution system with a dysfunctional Appeals Body, and ineffective trade policy monitoring. The EU also states its view on the causes of that situation. After it acceded to the WTO, they consider that China failed to transform its economy according to market principles to be a fundamental cause. They believe that the level to which China has opened its markets does not correspond to its role in the global economy and uses the SDT without full rights (Trade Policy Review, 2021). The factor of China, i.e., the dissatisfaction of the USA with the systemic framework, is considered by both respondents to be the essential background factor for all US actions and has already been mentioned as a common position earlier in the text.

Thus, Respondent 1 states that: "One of the major causes, with certain shortcomings of the agreement at the technical level, is the geopolitical factor. The creation of the WTO and the relationship of key players is not the same as today, bearing in mind the development of China as a trade giant ... the creation of some new trade players like India who still enjoy certain benefits of this SDT treatment ... "while Respondent 2 further

explains how:" especially China, which joined in 2001, to commit itself to transform its economy from state capitalism to a market economy. What has happened, however, is that in the process ... developing countries, especially China, have not transformed ... WTO rules do not cover several economic policies, so let us say the rules concerning the role of SOEs, state-owned enterprises ... notification where in fact countries like China are not transparent enough and thus do not provide enough data for other countries like America to apply trade protection measures like these anti-dumping or countermeasures at all and on the other hand with their decisions, a series of decisions that have focused a lot more against America The appellate body went against the panel's decisions and little by little blew trade instruments into the United States. " Respondents agree that the issue itself is a considerable trade problem for the United States because the Appellate Body's judgments were directed against the tools the United States had at its disposal to combat the state's role in the market as it exists in China. Also, to take all factors into account, the approach of the President Trump administration towards international organizations and multilateral action should be mentioned. The respondents also acknowledge this aspect in the conducted research. They believe that this is not one of the most important aspects but also that the unilateral approach and the climate of a certain skepticism towards multilateralism have created favorable conditions for the blockade. Likewise, both respondents do not believe that at any point there was an intention to withdraw the US from the WTO.

Consequences of the blockade of the election of members of the Appeals Body on the dispute resolution system and the WTO

In the research conducted, both respondents offered similar answers on the topic of the consequences of the blockade of the Appellate Body on the dispute resolution system itself as well as on the organization. Both acknowledge the high importance of the Appellate Body for the system, and this is evident in the following statements of Respondent 1, who, speaking about the reasons for the blockade, acknowledges and justifies the existence of a different understanding of the Appellate Body from the literal one from the DSU. after some time, the WTO acquis is developed, i.e., trade law, with the Appellate Body at the top, i.e., the Appellate Body, which sets precedents, which influences the way the later panels behave. On the one hand, this makes sense because the whole point of having any dispute resolution system is to provide security and predictability, to allow states to resolve disputes but also to give some guidance to panels in future disputes that are similar ... ". Respondent 2, speaking about the consequences, focuses more on the broader aspect, on the aspect of WTO relevance: "What is important to mention may be the international significance of the WTO, wherein 1995 this new dispute settlement system was presented for a reason, as the crown jewel of then multilateral trade and today he is in some way disabled, in some way he has lost his top role. At the same time, knowing the problems of the WTO, a WTO that has not achieved significant negotiating success since the Uruguay Round ... so the WTO is somehow losing its relevance in the international environment. We have an increase in bilateral or regional trade agreements, and certainly, the blockade of the Appellate Body is not a good sign. It is not a good indicator of a brighter future for the WTO. " that it will leave a negative mark on the work of the WTO. Van den Bosche (2005) also discusses the importance of the Appeals Body. In his working document, he mentions the growth process of that body. As such, the Appellate Body was not the focal point of the dispute settlement system but once created, over the years, it became the most critical body of the dispute resolution system. Van den Bosche, therefore, refers to the Appellate Body as the World Trade Court and thus clearly reflects the opposite view of that body's role vis-à-vis the United States. Van den Bosche (2005, 70) further states that the significance of the Appellate Body lies in its contribution to the development of international trade law.

Nevertheless, perhaps an even more significant segment of the importance of the Appeals Body lies in the role of the body itself. The appellate body functions as an appeal mechanism against panel decisions, thus preventing one stage of the dispute resolution system from gaining excessive power, i.e., having the opportunity to correct the panel's report when necessary. EU VOX commentators (2020) also stress the importance of the Appeals Body and the negative consequences of its cessation. Thus, they state that the blockade of the Appeals Body can lead to loss of predictability and possible collapse of the Appeals Body, and such a situation could have severe consequences for the future of negotiations within the WTO because then the value of the outcome of negotiations would depend on monitoring the signatories. However, both respondents also offered a more pragmatic, narrower view of the consequences. Thus Respondent 1 states at one point: "... so the system still works in terms of monitoring, in terms of the negotiating function and even in terms of disputes. Because the system first-rate, with the panels, still works. After all, no one has to complain. No state is obliged to complain. ", While Respondent 2 adds:" In essence, one level, one level of dispute, i.e., interpretation of the evidentiary procedure has been removed, but this does not prevent

participation in the rights of two stages process - in consultations and panel. ". This narrow view, looking only at the provisions of the DSU, and bearing in mind some of the alternative proposals of the group of members that seek to overcome the blockade of the Appellate Body, has some basis in terms of technical functioning. It is also worth mentioning the subjectivity of the respondents and the fact that both respondents are related to the EU, which always tries to have a constructive approach to the WTO and in its communication to reduce the negative aspects to preserve the relevance of the organization. Nevertheless, here we return to the understanding of the role of the WTO in the multilateral trading system, and in this way, the Blockade of the Appellate Body can be felt in the long run because those unexplained parts of the agreement will not be able to evolve through the creation of case law. And not the creation of added value in terms of international trade law.

Proposals for a solution to the problem of the blockade of the Appellate Body

Regarding the solution of the problem of the blockade of the Appellate Body, both respondents gave complementary answers. Respondent 1 thus states that "reform is necessary because the WTO can survive but cannot progress without some deeper reform." Respondent 2 further clarified what forms of reforms would be a potential solution: "Of course, the possibilities for reform are self-evident. It may be a minor reform. A reform that would include only a dispute settlement system that would address all these issues and might more clearly define the role of the Appellate Body and their powers and further tighten these issues of compliance with existing rules. However, such proposals already exist. They came from other members, and we see that they were not adopted, so I do not know how realistic that option is. What is needed is a comprehensive reform of the WTO. " Respondent 2 noted that there is a possibility of a political agreement and thus unblocking the Appeals Body, but that he believes that such a possibility is minimal. On the issue of reform, it is essential to mention the different views of key members on this issue. The European Union has offered its view on the reform and the causes of this situation and has offered concrete solutions in the annex to the Trade Policy Review of 2021 (Trade Policy Review, 2021). According to the EU, part of the solution lies in restoring confidence in the WTO and achieving this by addressing pressing issues such as economic recovery and development and environmental and social sustainability in line with the UN's sustainable development goals.

Furthermore, the EU believes that a step in this direction would be completing negotiations on fishing aid and establishing a new approach to the MMF that would make more significant differentiation between developing countries. China, on the other hand, has a different view of reform. In its proposal (China's proposal on WTO Reform, 2020), China emphasizes development and non-discrimination. Thus, they believe that the reform must preserve the critical values of the multilateral trade system and preserve the development interests of developing countries. They believe that the development deficit in the existing WTO rules should be eliminated, and the problems with the integration of developing countries into economic globalization should be solved. They also note that the rule of consensus should be maintained in decision-making.

At a similar time when the EU published its views on problems within the WTO, they, like the EU, believe that the root of the problem lies in the actions of countries whose economies do not operate on market principles such as non-discrimination market access, fairness, and transparency. The US believes that the current rules do not allow members tools to combat such actions and see part of the solution in promoting market-oriented policies. The US also suggests further differentiation between developing countries and their use of SDTs. They proposed four criteria, of which any member that meets at least one would be prevented from using SDT. The United States states that China, and even countries such as India or South Africa, have certain advantages in such a system and that there is, therefore, almost no probability that they will give it up by agreeing to reform. Such an attitude is well summed up in Respondent 1's statement that "reform is necessary because the WTO can survive, but without some more profound reform it cannot progress, not in a significant way, but at the moment I do not see any way for reform to be possible. Because if consensus is required, if only one state can block any decision, I do not see anyone going against their interests at this point. Nor is there any interest in starting any reform at this time. " Both respondents also referred to MPIA when talking about solutions. MPIA (Multi-party Interim Appeal Arbitration Arrangement) is an agreement that was created at the suggestion of the EU and was adopted on April 15, 2020, at a session of the General Counsel. A plurilateral agreement allows members to use the Appeals Process under Article 25 of the DSU and uses the usual rules applicable to the appeal procedure. The difference is that appeals judges are selected from a pool of 10 judges, and that agreement is not changeable multilaterally. At the time of writing, the

signatories included 50 members, including the EU and China, Japan, Korea, Australia, Canada, New Zealand, Norway, Singapore, and Switzerland. In almost all of its statements related to the MPIA, the EU emphasized that this agreement was only a temporary solution that it was not intended to replace the Appellate Body. Both respondents have the same attitude. They emphasize that this is an interim agreement that cannot replace the Appellate Body. Respondent 1 states that this agreement intends to fill the gaps created by the blockade of the Appellate Body, while Respondent 2 adds that such a solution is not sustainable in the long run.

Research discussion

Assumption No. 1 "The blockade on the election of new members of the Appeals Body, and therefore its work, is procedurally justified, but the cause is political and is linked to the trade war between the United States and China" has been largely confirmed. The research results do not dispute the procedural and legal justification of the election blockade, and the background reason for the relationship between China and the United States is strongly emphasized. However, it would be more accurate to call it a systemic problem than a political one.

Assumption No. 2. "The US approach to the blockade is part of their broader tactics and is comparable to similar developments in other international organizations," it was largely rejected. There is very little evidence that this is part of a broader administration tactic and linked to events in other international organizations. Also, in one part of the research, the fact was pointed out that the climate of unilateralism was used to move the blockade in a certain way, but this is a claim without a strong basis in the documentation.

Assumption No. 3. "The problem of the blockade of the Appellate Body affects and spills over to other bodies within the World Trade Organization" was rejected. The problem of the blockade of the Appellate Body does not spill over to other bodies, and they continue to function smoothly. The results of the research show that the problem of blockage can, for the most part, affect the very relevance of the organization and direct the system for resolving disputes, but other bodies are not mentioned.

Assumption No. 4. "Reform of the World Trade Organization can bring a solution to the problem" was confirmed. The horizontal reform of the World Trade Organization or the reform of the dispute settlement system has emerged in the research as the leading potential solutions to the problem. It is also important to emphasize that the respondents' attitudes indicate a slight possibility of reaching a consensus for such a step.

The paper deals with the topic of the blockade of the Appellate Body. Also, broader aspects of the reasons for the blockade, the consequences of the blockade, and possible solutions for the blockade of the Appellate Body were discussed. Four research questions were conceived in the same way. Research questions were also a determinant of the in-depth interviews conducted with two experts whose work is closely related to dispute resolution issues within the WTO. An additional layer in establishing the facts and consolidating all aspects of the Appellate Body's blockade was obtained by analyzing the official documentation of the WTO, sources from the websites of the governments of the observed entities, and other sources. In response to the first research question about the possible causes of the blockade, specific findings were made. We can conclude that there are two levels of reasons for the blockade. The first level is the technical-legal reasons that the US communicated in its two published official documents. These are the following reasons: exceeding the 90-day deadline for deciding on an appeal; exceeding authority and taking on an advisory role; discrimination in the use of the zeroing method; setting precedents and thus creating new obligations or depriving members of already agreed rights; non-compliance with the rules on transition, i.e., the work of the members of the body on the appeal even after the expiration of the mandate; and the treatment of domestic law as a legal entity within the WTO. The second reason can also be called the cause. Respondents in the interviews and the US and the EU in their reform proposals note that this set of agreed rules does not correspond to the current balance of power in world trade, referring to China. Both respondents strongly emphasize this argument, who also consider it the most important reason for the US decision to block the Appeals Body. At the same time, no one can dispute the legality and legitimacy of the technical-legal reasons for the blockade.

The following two research questions dealt with the consequences of the blockade on the dispute resolution system, namely the WTO as an organization. The most obvious consequence is the deletion of one level of the dispute resolution process, the appellate one, which is a kind of return to the situation from the time before establishing the WTO. It was also emphasized that the dispute resolution system could function up to one limit without a level of appeal. As for the consequences for the organization itself, the results obtained indicate more consequences in the form of loss of relevance and added value provided by a

functioning dispute resolution system. No part of the research has found any indication of the US withdrawal from the WTO, nor is there any talk of a danger to the organization's functioning in the rest of its functions. What has been highlighted as a consequence is more a question of the same view of the role of the Appeals Body. Respondents and some authors take the view that the Appellate Body fills specific gaps in its judgments by providing advice and setting precedents that are not covered by major WTO agreements, thus creating the WTO *acquis* in the form of international trade law. Looking from this perspective, one can conclude that the blockade of the WTO Appeals Body loses the potential for a kind of evolution of the agreed agreements.

The last research question dealt with potential solutions to the blockade problem. The most obvious solution is to reform the WTO, which would include a dispute settlement system. Official reform proposals from all three key members of the WTO have been published on this topic: the United States, China, and the EU. Within these three proposals, there is significant disagreement in the same views on the problems of the WTO as well as the solutions offered. If we keep in mind the rule of consensus, then the conclusion is that the potential for accepting any or anyone's reform proposal is minimal. The EU and the US disagree on the role of the Appellate Body, while China, on the other hand, focuses its proposal on aspects of development and unique benefits without referring to its underdeveloped status, which is one of the root causes of the blockade. A temporary solution in the form of MPIA, an agreement that allows its signatories a kind of recreation of the rules of the appeal procedure, was also pointed out.

In conclusion, the authors believe that the WTO has a substantial role to play in trade. WTO rules cover an enormous scope of the trade itself and are an essential regulator of international trade relations. The WTO also has an additional role to play in monitoring the implementation of the signed agreements. However, the WTO's third function, resolving disputes between members, is currently in crisis and has lost the precedent value it has provided so far. On the other hand, such a role is not determined by the DSU, and the reasons for the US blockade are valid and well-founded, and the solution to the blockade looks pretty distant and uncertain. The WTO is not the cause of geopolitical developments, but we can see that the consequences of China-US relations are reflected in the work of the organization itself, and at the same time lies the solution to the problem.

Literature and sources

1. China's proposal on WTO Reform (2020). Retrieved on April 27, 2021, from https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?CatalogueIdList=254127&CurrentCatalogueIdIndex=0
2. Horvat, T. (2017) 'Auditing international controls in financing preschool public institutions: evidence from Slovenia', *The USV Annals of Economics and Public Administration*, Vol. 17, No. 26, pp.161–170.
3. Horvat, T. and Mojzer, J. (2019) 'Influence of company size on accounting information for decision-making of management', *Naše gospodarstvo/Our Economy*, Vol. 65, No. 2, pp.1–20. Doi: 10.2478/ngoe-2019-0007.
4. Peterson Institute for International Economics (2020). *Why Trump Shot the Sheriffs: The End of WTO Dispute Settlement 1.0*, Working paper 20-4
5. Peterson Institute for International Economics: Trade and Investment Policy: Why did Trump end WTO's Appellate Body? Tariffs. (2020). Retrieved on April 15, 2021, from <https://www.piie.com/blogs/trade-and-investment-policy-watch/why-did-trump-end-wtos-appellate-body-tariffs>
6. Peterson Institute for International Economics: WTO Judicial Appointments: Bad Omen for the Trading System (2011). Retrieved on May 12, 2021, from <https://www.piie.com/blogs/realtime-economic-issues-watch/wto-judicial-appointments-bad-omen-trading-system>
7. Van den Bosche, P. (2005). *From Afterthought to Centerpiece: The WTO Appellate Body and its Rise to Prominence in the World Trading System*, Maastricht Working Papers, Faculty of Law Maastricht
8. VOXeu: WTO Dispute Settlement and Appellate Body crisis (2020). Retrieved on April 10, 2021, from <https://voxeu.org/article/wto-dispute-settlement-and-appellate-body-crisis>
9. World Bank: The New Wave of Globalization and Its Economic Effects, (2013). Retrieved on March 29, 2021, from http://documents1.worldbank.org/curated/en/954071468778196576/310436360_20050007015044/additional/multi0page.pdf

- 10.WTO: Appellate Body Members (2021). Retrieved on April 13, 2021, from https://www.wto.org/english/tratop_e/dispu_e/ab_members_descrp_e.htm
- 11.WTO: Dispute Settlement Activity (2021). Retrieved on June 27, 2021, from https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm
- 12.WTO: The GATT years: from Havana to Marrakesh (2021). Retrieved on July 2, 2021, from https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm
- 13.WTO: The Uruguay Round (2021). Retrieved on June 15, 2021, from https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm
- 14.WTO: Marrakesh Agreement (2021). Retrieved on July 3, 2021, from https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm
- 15.WTO: The process — Stages in a typical WTO dispute settlement case (2021). Retrieved on April 10, 2021, from https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s2p1_e.htm
- 16.WTO: The process — Stages in a typical WTO dispute settlement case: 6.3. Panel stage: Page 1 (2021). Retrieved on June 27, 2021, from https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s3p1_e.htm
- 17.WTO: Understanding the WTO: Settling disputes (2021). Retrieved on May 22, 2021, from https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm
- 18.WTO: Overview (2021). Retrieved on May 14, 2021, from https://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm
- 19.WTO: Ministerial Conference (2021). Retrieved on March 27, 2021, from https://www.wto.org/english/thewto_e/minist_e/minist_e.htm
- 20.WTO: Members and Observers (2021). Retrieved on June 19, 2021, from https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm
- 21.WTO: Developing countries (2021). Retrieved on May 11, 2021, from https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm
- 22.Službeni dokumenti. https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx (Retrieved on 27 of May 2021):