



ARTICLE

Ministerial Conferences as Law-Making Forums: Has the WTO shifted from rule-based adjudication to negotiation-driven governance?

Akhilesh Kakade* & Sumedha Ghuse**

Abstract

The World Trade Organization (WTO) was established with the intention of a rule-based multilateral trading system based on binding treaty obligations and mandatory settlement of disputes, and adjudication that was intended to provide security, predictability and equality among Members. Since December 2019, however, the inability of the Appellate institution as a result of the sustained boycott of judicial appointments has had a fundamental impact on this architecture resulting in the phenomenon of "appeals into the void" and a weakening of the enforceability and legitimacy of WTO law. This paper focuses on how the erosion of rule-based adjudication has led to functional redesign of the governance of the WTO in favor of negotiation-driven mechanisms. It examines the growing institutional significance of Ministerial Conferences, Joint Statement Initiatives, as well as other plurilateral processes that do not fit into the traditional Single Undertaking framework but are increasingly playing a role in the rule-making process through setting expectations, coordinating Member conduct, and managing legal uncertainty in the absence of any authoritative judicial interpretation. Against this background, the paper examines WTO Ministerial Conference 14 ex ante as an institutional culmination of the post-Appellate Body governance trends, and as having little significance in terms of prospective substantive outcomes, but as a focal point in a negotiation-centric process of rule formation in a fragmented and geopolitically constrained trading system. Particular attention is given to strategic developments such as China's declaration not to avail new Special and Differential Treatment while retaining developing country status, as examples of broader recalibrations of participation, legitimacy, and burdens of sharing within the WTO. Adopting a doctrinal and institutional approach based on the interpretation of legal texts, rules of dispute settlement and ministerial instruments, the paper concludes that while the negotiation-driven approach to governance has allowed institutional adaptation in the face of adjudicatory paralysis, its ability to preserve rule-based multilateralism depends on the successful incorporation of plurilateral outcomes into the formal WTO framework as well as a renewed commitment in the enforcement of legal disciplines that are enforceable.

Keywords – World Trade Organisation, Appellate Body Crisis, Rule-Based Multilateralism, Ministerial Conferences, Negotiation-Driven Governance

*Legal Associate, Great Mission Group Consultancy, Pune

**5th Year B.A.LLB., Marathwada Mitramandal's Shankarrao Chavan Law College, Pune

I. INTRODUCTION

The World Trade Organization (WTO) was created in 1995 as a system based on rules for international trade, replacing the older General Agreement on Tariffs and Trade (GATT), which relied more on diplomacy and power. The Marrakesh Agreement, signed on April 15, 1994, established the WTO and brought many trade rules under one organization and legal structure - a definitive move towards legalized multilateralism, based on binding treaty obligations and enforceable disputes settlement.⁴⁷¹

Central to this design was the WTO's Dispute Settlement Understanding (DSU) which included compulsory jurisdiction, appellate review and near automatic adoption of rulings. The dispute settlement system was designed to establish security, predictability and equality among Members by containing unilateralism and substituting legal adjudication for power-based bargaining.⁴⁷² Scholars have consistently called this mechanism the "crown jewel" of the WTO, both necessary and essential to its credibility as a rules-based institution.⁴⁷³

In addition to handling disputes, the WTO Agreement established the Ministerial Conference as the Organization's top decision-making body. This conference is required to meet at least once every two years to provide political guidance and monitor the multilateral trading system.⁴⁷⁴ Although the Ministerial Conferences do not formally legislate as treaty amendment procedures do, the outcomes of these Conferences, especially Ministerial Declarations and Decisions, have historically guided negotiations, clarified priorities and coordinated collective action within the WTO framework.⁴⁷⁵

STATEMENT OF PROBLEM

Since December 2019, the WTO's rule-based dispute settlement system has been so disrupted that the Appellate Body is no longer-functioning properly, due to the ongoing blockage by the United States.⁴⁷⁶ Losing parties will therefore be able to appeal panel reports to a defunct appellate tier, a situation commonly referred to as an "appeal into the void". This practice has meant that panel reports have never had legal finality and that the force of the WTO law finding is undermined.⁴⁷⁷ The adjudicatory paralysis has led to what many commentators have called a legal lapse, undermining confidence in the WTO's dispute settlement system and weakening its rule-based legitimacy.⁴⁷⁸

The United States, in its justification, has alleged judicial overreach, namely that adjudication has moved away from negotiations and that the Appellate Body has created new obligations rather than simply interpreting existing ones.⁴⁷⁹ This criticism reflects a general institutional tension between adjudication and negotiation in the WTO.⁴⁸⁰

⁴⁷¹ Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154

⁴⁷² Understanding on Rules and Procedures Governing the Settlement of Disputes arts. 3, 17, Apr. 15, 1994

⁴⁷³ Rachel Brewster, Rule-Based Dispute Resolution in International Trade Law, 92 Va. L. Rev. 251 (2006)

⁴⁷⁴ Marrakesh Agreement, *supra* note 1, art. IV.

⁴⁷⁵ South Centre, Ministerial-Level Meetings and Their Outcomes as Legal Instruments, Analytical Note SC/TADP/AN/IG/2 (2003)

⁴⁷⁶ Gisela Grieger, WTO Appellate Body Crisis and the MPIA, Eur. Parl. Res. Serv. (2024)

⁴⁷⁷ *Id.*

⁴⁷⁸ Tommaso Soave, Who Controls WTO Dispute Settlement?, 29 Ital. Y.B. Int'l L. 13 (2019)

⁴⁷⁹ Chang-fa Lo, Junji Nakagawa & Tsai-fang Chen eds., The Appellate Body of the WTO and Its Reform (2020)

⁴⁸⁰ Giorgio Sacerdoti, Editorial, 22 J. World Inv. & Trade 335 (2021)

In light of this crisis, a group of WTO Members created the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) under Article 25 of the DSU as a temporary stop-gap mechanism to maintain access to a two-tier review process.⁴⁸¹ While innovative, the MPIA is limited in its membership and highlights the disorganization of WTO dispute settlement.⁴⁸²

Simultaneously, there has been a growing move towards negotiation-based models of governance within the WTO. The failure for many years of the Doha Development Agenda has prompted Members to move away from the "Single Undertaking" approach towards more incremental and plurilateral outcomes.⁴⁸³ This was reflected in the increase of Joint Initiatives (JIs) and "structured discussions" on an array of issues, including e-commerce, investment facilitation and digital trade, which function outside traditional multilateral consensus requirements.⁴⁸⁴

In this changing context Ministerial Conferences have taken on new functional importance as fora where negotiated results and political compromises and informal standards are brought together in declarations and decisions. Although frequently placed in the soft law category, such instruments create significant normative expectations and prescribe courses of action for Members, in effect determining in the absence of judicial clarification the way in which WTO law is to be operated.⁴⁸⁵

This transformation is especially evident in the lead-up to WTO Ministerial Conference 14, which is due to be convened in Yaounde, Cameroon, on 26 and 27 March 2026, against the backdrop of unresolved crisis of dispute settlement reform and growing geopolitical fragmentation, and an increasing reliance on informal and negotiation-based governance mechanisms within the multilateral trading system.⁴⁸⁶

RESEARCH OBJECTIVES

1. To examine how the lapse of the Appellate Body has altered the role of rule-based adjudication at the WTO.
2. To analyze whether Ministerial Conferences have assumed a rule-formative role in the absence of effective adjudication.
3. To assess the institutional significance of WTO Ministerial Conference 14 as a forum for negotiation-driven rule formation in the post-Appellate Body era.

RESEARCH QUESTIONS

1. How has the Appellate Body lapse affected the functioning of rule-based adjudication in the WTO?
2. To what extent do Ministerial Conferences perform rule-formative functions within the WTO legal framework?
3. How can WTO Ministerial Conference 14 be institutionally assessed as a culmination of negotiation-driven governance in the absence of effective adjudication?

⁴⁸¹ Mohamed Salah Adawi Ahmed et al., MPIA as Solution to the WTO Appellate Body Dilemma, 12 Int'l J. Sci. Res. & Mgmt. 473 (2024)

⁴⁸² Igwe-Ebi Vivian Nnenna, WTO Trade Dispute Mechanism Is More Power-Based than Rule-Based (2023)

⁴⁸³ Maarten Smeets, The WTO Multilateral Trading System in a Globalizing World (2017) (Ph.D. thesis, Maastricht Univ.)

⁴⁸⁴ Ana Peres, The Role of Joint Initiatives in Reforming WTO Negotiations, 23 World Trade Rev. 385 (2024)

⁴⁸⁵ Joost Pauwelyn, Rule-Based Trade 2.0?, 17 J. INT'L ECON. L. 739 (2014)

⁴⁸⁶ World Trade Organization, The WTO's 14th Ministerial Conference (MC14)

RESEARCH METHODOLOGY

This paper takes a doctrinal and institutional methodology to analyze the transformation of governance in the World Trade Organization, in the post-Appellate Body period. The analysis is confined to the interpretation of the WTO Agreement, the Dispute Settlement Understanding and the legal instruments resulting from Ministerial Conferences, such as the Ministerial Declarations and Decisions, from the point of view of their formal authority and their legal character, as well as their forms of rule formation, in the multilateral trading system. In parallel, the paper conducts institutional evaluation of how these legal structures work in practice in the absence of effective appellate adjudication with focus on functional reallocation of norm-clarification and rule-development from dispute settlement bodies to negotiated ministerial processes. WTO Ministerial Conference 14 is scrutinized *ex ante* as an institutional point of concentration in this framework, not in an effort to anticipate its substantive results, but to assess its position as a culmination of existing trends in governance driven by adjudicatory paralysis, negotiated accommodation, and rule formation by consensus.

II. RULE BASED ADJUDICATION IN WTO FRAMEWORK

A. Objectives and Design of WTO Dispute Settlement

The main goal of the WTO dispute settlement system is to ensure safety and consistency in the international trading system.⁴⁸⁷ This objective is achieved through a compulsory and unified system of adjudication governed by the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which is Annex 2 of the Marrakesh Agreement Establishing the WTO.⁴⁸⁸ Unlike the dispute settlement mechanism under GATT 1947, where the adoption of panel reports could be blocked by the objection of a single contracting party, the WTO system operates on the principle of negative consensus.⁴⁸⁹ Unlike the dispute settlement mechanism under GATT 1947 wherein the adoption of reports could be blocked by a single contracting party, the WTO system operates on the principle of negative consensus. Under this principle, the creation of panels, the approval of reports by the panels and the Appellate Body, and the permission to take retaliatory measures happen automatically, unless all the Members agree to stop these actions.⁴⁹⁰

By acceding to the WTO, Members consent in advance to the mandatory jurisdiction of the dispute settlement system, to ensure that no responding party could unilaterally avoid adjudication.⁴⁹¹ The institutional design of the DSU also prioritizes the early settlement of disputes, prescribing specific timelines for each of the stages of the process, from consultations to implementation.⁴⁹² This emphasis on timeliness is aimed at limiting the trade disruptive effects

⁴⁸⁷ khansadique3108, International Trade Law Notes 38-48 (Scribd)

⁴⁸⁸ Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

⁴⁸⁹ A Handbook on the WTO Dispute Settlement System 11–13 (WTO Secretariat 2004)

⁴⁹⁰ DSU, *supra* note 18, arts. 6.1, 16.4, 17.14, 22.6.

⁴⁹¹ Mitsuo Matsushita et al., Enforcement of WTO Obligations: Remedies and Compliance, in *The World Trade Organization: Law, Practice, and Policy* (3d ed. 2015)

⁴⁹² DSU, *supra* note 18, arts. 4-21.

of unresolved disputes, and serves to reinforce confidence in the stability of the multilateral trading order.⁴⁹³

B. Role of Panels and the Appellate Body in Rule Clarification

The WTO has a two-level process for making decisions. It includes temporary panels and a permanent Appellate Body. The panels are responsible for looking at the case fairly, deciding what actually happened, and explaining how the WTO rules apply to the situation.⁴⁹⁴ When performing this task, panels and the Appellate Body are authorized to interpret the existing rules of the covered agreements in line with the standard ways of understanding international law, as outlined in Articles 31, 32, and 33 of the Vienna Convention on the Law of Treaties.⁴⁹⁵

The Appellate Body is a second-tier review mechanism with only the power to review matters of law and legal interpretation developed by panels.⁴⁹⁶ A big rule that limits the panels and the Appellate Body is that they can't change the rights and duties of member countries in the agreements in a way that weakens the balance of rights and responsibilities that was agreed upon in the WTO treaties.⁴⁹⁷ Notwithstanding this limitation, the Appellate Body has, through consistent reasoning, contributed to the creation of legitimate expectations as to the meaning and application of WTO rules for the purpose of greater coherence and predictability of the multilateral trading system.⁴⁹⁸

C. Adjudication as the Cornerstone of Rule-Based Multilateralism

The WTO dispute settlement mechanism has been determined as the "crown jewel" or "backbone" of the WTO legal order.⁴⁹⁹ It constitutes a structural transition from a power-based model of trade relations to a rule-based system, where legal merits win out over economic or political clout.⁵⁰⁰ This change has been of particular importance to smaller and developing countries as it allows them to challenge the trade measures of major economies on an equal legal footing.⁵⁰¹

By not allowing unilateral determinations of inconsistency with WTO rules and requiring Members to pursue redress only through multilateral adjudication, the DSU avoids the risk of retaliatory escalation and risk of trade conflicts.⁵⁰² Adjudication contributes to the effective functioning of negotiated trade liberalization by ensuring that negotiated commitments are enforceable and inconsistent measures are withdrawn or made consistent.⁵⁰³ The effective

⁴⁹³ Atul Kaushik, *Dispute Settlement and Efficacy of the Multilateral Trading System*, 59 *Econ. & Pol. Wkly.* (2024)

⁴⁹⁴ DSU, *supra* note 18, art. 11.

⁴⁹⁵ *Id.* art. 3.2; Vienna Convention on the Law of Treaties arts. 31–33, May 23, 1969, 1155 U.N.T.S. 331.

⁴⁹⁶ DSU, *supra* note 18, art. 17.6.

⁴⁹⁷ *Id.* art. 3.2.

⁴⁹⁸ James Bacchus & Simon Lester, *The Rule of Precedent and the Role of the Appellate Body*, 54 *J. World Trade* 183 (2020)

⁴⁹⁹ Giorgio Sacerdoti, *The WTO Dispute Settlement System and the Challenge to Multilateralism: Is the Rule of Law in Peril?*, Bocconi Legal Stud. Res. Paper Series No. 3343455 (2018)

⁵⁰⁰ Igwe-Ebi Vivian Nnenna, *WTO Trade Dispute Mechanism Is More Power-Based than Rule-Based* (2023)

⁵⁰¹ Faisal A.S.A. Al Bashar, *The WTO Dispute Settlement Mechanism and the Reform of Third Party Rights* (2009) (Ph.D. thesis, Univ. of Portsmouth)

⁵⁰² DSU, *supra* note 18, art. 23.

⁵⁰³ Weihuan Zhou & Henry Gao, *Overreaching or Overreacting?*, 53 *J. World Trade* 951 (2019)

functioning of this adjudicatory machinery is therefore widely considered a global public good, vital to the integrity, credibility and rule-based nature of the international trading regime.⁵⁰⁴

III. THE APPELLATE BODY CRISIS AND ITS SYSTEMIC IMPACT

A. Causes and Nature of the Appellate Body Paralysis

The current inability of the WTO dispute settlement system to function is because of a long-term U.S. policy aimed at stopping the appointment and reappointment of members to the Appellate Body. Even though the rules say the Appellate Body needs seven members, it can still hold and decide appeals with at least three members present.⁵⁰⁵ Since 2017, the United States has used the positive consensus requirement for membership to veto all proposed candidates for the Appellate Body, a stance that has persisted through the leadership of successive administrations.⁵⁰⁶ As of 11 December 2019, the total number of serving members of the Appellate Body has dwindled to one, leaving the court without a working quorum, resulting in what has been dubbed a "court without judges."⁵⁰⁷

The nature of this paralysis goes back to long-standing United States objections about what it describes as judicial overreach by the Appellate Body. In particular, the United States has alleged that the Appellate Body surpassed its mandate by creating new rights and obligations through broad readings of treaty provisions, thus doing around the exclusive power of Members to amend WTO law by negotiation.⁵⁰⁸ Additional procedural criticisms include that the Appellate Body has failed to comply frequently with the ninety-day time limit imposed for issuing reports, issued advisory opinions beyond what was a prerequisite to resolve the dispute, reviewed determinative factual findings and domestic law contrary to its limited mandate, and developed a de facto system of binding precedent which limits the discretion of future panels.⁵⁰⁹ Collectively, these concerns point to a more fundamental institutional conflict between the appropriate balance between adjudication and negotiated rule-making in the WTO framework.⁵¹⁰

B. Legal Consequences of Appeals into the Void

The biggest legal effect of the Appellate Body being unable to function is called "appealing into the void." According to Article 16.4 of the Dispute Settlement Understanding, the Dispute Settlement Body can't approve a panel report if one of the parties says they want to appeal.⁵¹¹

⁵⁰⁴ Gisela Grieger, International Trade Dispute Settlement: WTO Appellate Body Crisis and the MPIA, Eur. Parl. Res. Serv. (2024)

⁵⁰⁵ Peter Van den Bossche, The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication?, World Trade Inst. Working Paper No. 02/2021, at 3–4 (2021)

⁵⁰⁶ Office of the United States Trade Representative, Report on the Appellate Body of the World Trade Organization 1-4 (2020)

⁵⁰⁷ Grieger, *supra* note 34, at 4–5.

⁵⁰⁸ Zhou & Gao, *supra* note 33, at 954-58.

⁵⁰⁹ Bacchus & Lester, *supra* note 28, at 187–92.

⁵¹⁰ Daria Boklan & Amrita Bahri, The WTO's Collapsing Judicial and Legislative Wings: Is "Consensus" the Real Elephant in the Room? 6-9 (2021).

⁵¹¹ Understanding on Rules and Procedures Governing the Settlement of Disputes art. 16.4, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

Without a functioning Appellate Body, appeals cannot be completed, with the result that panel reports remain indefinitely suspended from adoption.⁵¹²

This procedural lapse provides the losing party a chance to veto the final adoption and enforceability of an adverse panel ruling merely by filing a notice of appeal to a non-existent second tier.⁵¹³ The winning party is therefore denied access to compliance proceedings or authorization to suspend concessions as such remedies are dependent on the adoption of reports under the DSU.⁵¹⁴ The result is an "indefinite legal limbo" in which WTO-inconsistent measures may continue to exist without consequence.⁵¹⁵ As of late 2024, some thirty-two reports of panels have been appealed into the void, including the disputes over United States Section 232 steel and aluminum tariffs and large agricultural subsidy programmes.⁵¹⁶ This practice destroys the finality of dispute settlement and negates the enforcement function that distinguishes the WTO system from its GATT predecessor.⁵¹⁷

C. EROSION OF ENFORCEABILITY, PREDICTABILITY, AND LEGAL CERTAINTY

The demise of appellate review has led to a serious loss of the enforceability, predictability and legal certainty that characterized the WTO's rule-based multilateral trading system. The institution of dispute settlement, usually referred to as the "crown jewel" of the WTO, can no longer do its job as an objective and all-knowing arbiter in trade disputes.⁵¹⁸ Empirical indicators show a significant reduction in the number of initiated trade disputes, as Members' incentives to seek recourse to a system where rulings can be neutralized through procedural manoeuvres are decreasing.⁵¹⁹

At a systemic level, the paralysis of adjudication portends a reply to the power-based logic of the GATT 1947 period in which compliance was secured mainly by economic and political rather than legal power.⁵²⁰ This change works against the interests of smaller and developing countries, which have less capacity to negotiate bilateral settlements or to deploy unilateral retaliation appropriately.⁵²¹ In the absence of a credible enforcement mechanism, the legal remedies offered by the WTO law runs the risk of becoming symbolic rather than effective, with the result that unilateralism and retaliatory trade practices have become incentives for trade practices that threaten the organizational integrity and legitimacy of the multilateral trading system.⁵²²

⁵¹² Gisela Grieger, *supra* 34, at 3-4.

⁵¹³ Rodrigo Polanco & Sean Stacy, *Process Failure: What Does the Lack of Appellate Review Mean for Due Process of Law in WTO Disputes?*, 2024 ZEuS 539, 546-49 (2024)

⁵¹⁴ DSU, *supra* note 18, arts. 22.6, 23.

⁵¹⁵ Johan Stigenberg, *The Appellate Body Crisis: Issues of the DSU and the Question of Legitimacy Behind the Obstruction* 18-21 (Spring 2025) (Bachelor Thesis, Lund Univ.)

⁵¹⁶ Gisela Grieger, *supra* note 34, at 4-5

⁵¹⁷ Eduardo Bianchi, *Food Products, the WTO Dispute Settlement System and Trade Remedies* 42-44 (2019).

⁵¹⁸ Sacerdoti, *supra* note 29, at 10-12.

⁵¹⁹ Dr. Sijuola Atanda-Lawal, *World Trade Organization (WTO) Dispute Settlement Crisis: Legal Implications and Reform Proposals*, 148 J. L. Pol'y & Globalization 59, 63-65 (2025)

⁵²⁰ Igwe-Ebi Vivian Nnenna, *supra* note 12, at 9-12.

⁵²¹ Al Bashar, *supra* note 31, at 112-15.

⁵²² Gisela Grieger, *supra* note 34, at 6-7.

IV. MINISTERIAL CONFERENCES AND NEGOTIATION-DRIVEN RULE FORMATION

A. Legal Status of Ministerial Conferences under the WTO Agreement

The Ministerial Conference is the top most decision-making authority of the World Trade Organization and it derives its authority directly from Article IV of the Marrakesh Agreement Establishing the WTO.⁵²³ According to Article IV:1, the Ministerial Conference has the power to carry out the obligations of the WTO and to take the necessary steps to further its objectives.⁵²⁴ It is composed of representatives of all Members and is required to meet at least once every two years, therefore it is the apex political forum within the WTO's institutional structure.⁵²⁵ From a formal legal standpoint, the Ministerial Conference does not have the autonomous legislative power equivalent to treaty amendment, which is still governed by the stringent procedures provided by Article X of the WTO Agreement.⁵²⁶ Its decisions are thus not treaties in themselves, nor do they necessarily change the rights and obligations of Members to the covered agreements. However, Article IV:1 gives the Ministerial Conference very broad functional competence to give authoritative direction, make decisions and mandate negotiations, and places it in the center of WTO governance.⁵²⁷ This dual character, formally non-legislative but institutionally authoritative, lies at the core of the increasing importance of Ministerial Conferences in the post-adjudicatory world.

B. Ministerial Declarations and Decisions as Soft Law Instruments

Ministerial outcomes are usually in the form of Ministerial Declarations and Ministerial Decisions which are generally considered instruments of soft law.⁵²⁸ Although these instruments do not have the same binding force as treaty amendments, they have considerable normative force in the WTO system. Ministerial Declarations state common understandings, set the agenda for negotiations, signal common political commitments, and direct expected behavior of the Members in the future.⁵²⁹ Ministerial Decisions, although sometimes more specific, can suspend obligations, provide waivers, or create institutional mechanisms with often concrete operational consequences.⁵³⁰

The legal relevance of these instruments does not lie in their position as formal instruments, but rather in their functional effects. WTO panels and Members often rely on ministerial texts as authoritative contextual information to interpret WTO obligations, or to determine the extent of negotiated commitments.⁵³¹ Further, the repeated renewal of ministerial decisions, such as moratoria on customs duties on electronic transmissions, gives evidence of how soft law instruments can produce a level of continuity, stability and reliance that is equivalent to that of

⁵²³ Marrakesh Agreement, *supra* note 1, art. IV.

⁵²⁴ *Id.* art. IV:1.

⁵²⁵ *Id.*

⁵²⁶ *Id.* art. X.

⁵²⁷ South Centre, *supra* note 5, at 2-4.

⁵²⁸ *Id.* at 4-6.

⁵²⁹ Giorgio Sacerdoti, The Challenges of Countering Politicization of Trade Relations and Revitalizing the Multilateral Rule-Based System, 22 J. World Inv. & Trade 335, 339-41 (2021).

⁵³⁰ Marrakesh Agreement, *supra* note 1, art. IX.

⁵³¹ South Centre, *supra* note 5, at 7-9.

hard law rules.⁵³² As a result, Ministerial Declarations and Decisions are increasingly operating as normative reference points within the WTO legal order, in spite of their formally non-binding character.⁵³³

C. Functional Shift from Adjudicatory Rule Clarification to Negotiated Rule Formation

The rise of Ministerial Conferences has to be viewed with reference to the paralysis of the Appellate Body and the consequent erosion of adjudicatory rule clarification. Without a fully functional dispute settlement system, the ability of panels and appellate review to authoritatively interpret WTO law has been considerably undermined.⁵³⁴ This institutional vacuum has made negotiated outcomes as a means of dealing with legal uncertainty and updating trade rules more important than ever.⁵³⁵

Ministerial Conferences have also become the sites of negotiated accommodation, through which Members resolve controversial issues through political accommodation rather than judicial interpretation. This shift may be seen in the multiplication of joint initiatives, structured discussions and issue specific mandates endorsed in ministerial meetings, many times outside the traditional single undertaking arrangement.⁵³⁶ While these processes do not replace the mandate of formal adjudication they do a compensatory governance function in terms of facilitating incremental rule formation, and ensuring the relevance of the WTO in a fragmented trade environment.⁵³⁷

Taken together, these developments suggest a functional redistribution of rule-making and rule-clarification powers in the WTO. Although adjudication still remains at the center stage in principle, negotiations-based processes, based on Ministerial Conferences, have taken an ever more prominent role in the evolution of WTO norms. This transformation does not entail the overthrow of rule-based multilateralism, but rather its reconfiguration by means of softer and politically mediated forms of collective decision-making.⁵³⁸

V. WTO MINISTERIAL CONFERENCE 14 IN INSTITUTIONAL PERSPECTIVE

A. MC 14 as a Continuation of Post-Appellate Body Governance Trends

The Fourteenth World Trade Organization (WTO) Ministerial Conference (MC 14), to be held in Yaoundé, Cameroon, in March 2026 marks an important moment, in time and institutional terms, in the development of the multilateral trading system. From an institutional perspective, MC 14 is a consolidation of governance trends that have surfaced as a result of the protracted paralysis of the Appellate Body that had been non-operational with the sustained blockage of judicial

⁵³² Pauwelyn, *supra* note 10, at 748-50.

⁵³³ *Id.* at 750-52.

⁵³⁴ Grieger, *supra* note 34, at 3-5.

⁵³⁵ Tommaso Soave, Who Controls WTO Dispute Settlement? Socio-Professional Practices and the Crisis of the Appellate Body, 29 *Ital. Y.B. Int'l L.* 13, 24-27 (2019).

⁵³⁶ Ana Peres, Transience of (In)Formality: The Role of the Joint Initiatives in Reforming the WTO Negotiations, 23 *World Trade Rev.* 385, 390-94 (2024).

⁵³⁷ Pauwelyn, *supra* note 10, at 754-58.

⁵³⁸ Sacerdoti, *supra* note 29, at 14-16.

appointments.⁵³⁹ This paralysis has radically changed the incentive structures of WTO membership, shifting institutional reliance away from third-party adjudication towards negotiated and politically mediated forms of collective decision-making.⁵⁴⁰

In this post-Appellate Body context, Ministerial Conferences have taken on enhanced importance as the main sites for Members to try and ensure the relevance and functionality of the WTO. MC 14 is embedded in a trajectory characterized by increasing use of plurilateral and variable geometry frameworks, Joint Statement Initiatives (JSIs), for example, which bypass the traditional single undertaking approach and dilute the veto power inherent in consensus-based multilateralism.⁵⁴¹ Negotiations in the area of electronic commerce, investment facilitation and services domestic regulation are examples of this trend, as pragmatic instruments of legislative relevance within an institution otherwise hamstrung by adjudicatory dysfunction.⁵⁴²

B. Agenda Setting and Negotiation as Substitutes for Adjudication

Devoid of a functional appellate mechanism in a position to provide authoritative interpretations of WTO law, agenda-setting and negotiation have become, in ever greater degree, functional substitutes for adjudication. Rather than depend on ex post judicial clarification, Members have started to "front-load" legal certainty through negotiated commitments, ministerial mandates and incremental rule development.⁵⁴³ Ministerial Conferences thus play a compensatory governance function in providing political coordination and normative guidance in areas where otherwise legal uncertainty may lead to systemic conflict.⁵⁴⁴

This substitution effect is reflected in MC 14's anticipated agenda. Issues such as digital trade facilitation, sustainability-linked disciplines in fisheries and regulatory cooperation are addressed more through negotiation than litigation.⁵⁴⁵ This does not imply that there is agreement on the interpretation of the law, but it shifts the management of such disagreement from adjudicatory bodies to negotiated forums that are organized on the basis of critical mass participation rather than universal consent.⁵⁴⁶ As a result, negotiation-driven processes are becoming dominant in the evolution of WTO norms in practice even without formal treaty amendment.⁵⁴⁷

C. MC 14 as an Ex Ante Test Case for Negotiation-Driven Multilateral Law Making

Although MC 14 has not occurred yet, it can be assessed ex ante as an institutional test case for negotiation-driven multilateral law making in the WTO. The Conference offers an occasion to determine the extent to which negotiated outcomes can successfully serve rule-formative

⁵³⁹ Liao Shiping & Petros C. Mavroidis, China, the European Union, and the WTO Dispute Settlement Crisis, in *Rebooting Multilateral Trade Cooperation: Perspectives from China and Europe* 61, 63–66 (Bernard Hoekman, Tu Xinquan & Wang Dong eds., 2021).

⁵⁴⁰ Tu Xinquan & Robert Wolfe, Reviving the Negotiation Function of the WTO: Why the Onus Falls on the Three Major Powers, in *Rebooting Multilateral Trade Cooperation: Perspectives from China and Europe* 29, 31–34 (Bernard Hoekman, Tu Xinquan & Wang Dong eds., 2021).

⁵⁴¹ Bernard Hoekman, Tu Xinquan & Wang Dong, Introduction, in *Rebooting Multilateral Trade Cooperation: Perspectives from China and Europe* 7, 9–11 (Bernard Hoekman, Tu Xinquan & Wang Dong eds., 2021).

⁵⁴² *Id.* at 11–13.

⁵⁴³ Pauwelyn, *supra* note 10, at 748–50.

⁵⁴⁴ Lora Anne Viola, The Quest for Leadership in Multilateral Institutions: Great Power Rivalries and Middle Powers in the WTO, 46 *Contemp. Sec. Pol'y* 98, 103–06 (2025)

⁵⁴⁵ Tu Xinquan & Robert Wolfe, *supra* note 70, at 35–37

⁵⁴⁶ Bernard Hoekman et al., *supra* note 71, at 13–15.

⁵⁴⁷ Pauwelyn, *supra* note 10, at 754–58.

functions that are traditionally seen as part of adjudication such as stabilizing expectations, coordination of Member conduct, and guidance of future legal development.⁵⁴⁸ This dynamic is especially illustrated by the People's Republic of China's recent strategic determination to voluntarily forego claims to new Special and Differential Treatment (SDT), while formally maintaining its status as developing country.⁵⁴⁹

China's move to calibrate what it sees as extra SDT entitlements reflects an effort to re-brand itself as a responsible stakeholder and deflect complaints of free-riding in the multilateral system.⁵⁵⁰ This move is also an attempt to build up political capital for more general institutional reforms, including restoring dispute settlement, while enabling progress on rule modernization through critical mass negotiation.⁵⁵¹ The move reflects a general reorientation of trade diplomacy towards negotiation-centric governance, where legitimacy and effectiveness are increasingly based on thresholds of participation and not universal compliance.⁵⁵²

Ultimately, however, the institutional importance of MC 14 is not the result of the development of formally binding obligations, but rather in its ability to convert the symbolic political signals into a credible, evidence-based rule development. Be it the ability of ministerial processes to produce enforceable commitments and ensure systemic coherence in an era of renewed geopolitical rivalry, or the lack of effective adjudication, negotiation-driven governance to preserve the integrity of rule-based multilateralism is still conditional upon the ability of states to commit to rules and obligations.⁵⁵³

VI. CONCLUSION

The transformation of World Trade Organisation (WTO) governance is part of a fundamental change from the rigid logic of the Single Undertaking to a more pragmatic, negotiation-centred framework of variable geometry. The paralysis of the Appellate Body for too many months, caused mainly by the continuing impasse of judicial appointments, has affected the adjudicatory heart of the WTO and forced a reconfiguration of its institutional architecture. In this changed environment, agenda-setting, ministerial negotiation, and Joint Statement Initiatives have become more subliminal substitutes for third-party adjudication which allow Members to deal with legal uncertainty in the absence of authoritative appellate review. Rather than using the ex post judicial interpretation as the solution to legal uncertainty, the Members have been increasingly resorting to front-loading that legal certainty through negotiated commitments and plurilateral tracks.

China's 2025 strategic move to voluntarily waive claims to new Special and Differential Treatment and retain its formal developing country status is an example of this change and a catalyst for negotiation-based governance. This is a move in the direction of reestablishing institutional legitimacy by making obligations closer to current economic capacity, as well as a

⁵⁴⁸ Van den Bossche, *supra* note 35, at 12-14.

⁵⁴⁹ Zhang Monan, *China Rejects New Special Treatment in WTO*, China-US Focus (Oct. 8, 2025).

⁵⁵⁰ Clara Brandi & Axel Berger, *China Foregoes Special and Differential Treatment at the WTO – Real Game-Changer or Geopolitical Symbolism?*, Sustainable Futures (Sept. 29, 2025).

⁵⁵¹ Vineet Hegde & Jan Wouters, *Special and Differential Treatment under the World Trade Organization: A Legal Typology*, Working Paper No. 227, at 18–22 (2020).

⁵⁵² Lora Anne Viola, *supra* note 74, at 108-11.

⁵⁵³ Whalesbook News Team, *China Renounces WTO Special Benefits; India Must Reassess Global Trade Strategy*, Whalesbook News (Sept. 30, 2025).

reaction to long-standing criticisms of asymmetrical burden-sharing. At the same time, the ensuing differentiation of participation, as illustrated by arrangements such as the Multi-Party Interim Appeal Arbitration Arrangement, at the risk of shredding the multilateral system to fragments of rights and obligations. Such fragmentation is threatening the universality of the rule-based order and may entrench a system characterized by appeals into the void and a renewed power-based bargaining. The future viability of rule-based multilateral trade law therefore depends on whether plurilateral initiatives can be effectively integrated into the formal WTO framework: this should also be accompanied by a comprehensive reassessment of foundational imbalances relating to agriculture, industrial subsidies and the objective determination of developmental status.