LEGAL EFFECTS AND ENFORCEMENT LIMITS OF THE WTO DISPUTE SETTLEMENT RULINGS IN THE EUROPEAN UNION

MARIKA TURAVA

Abstract: In the global regime of international trade law, the dispute settlement system of the World Trade Organization plays a central role in ensuring compliance with multilateral trade rules. Nonetheless, the legal effects of WTO dispute settlement rulings within domestic legal orders remain inherently limited. This article examines the interaction between WTO law and EU law, focusing on the enforcement limits of WTO rulings, as well as the structural tension between external trade obligations and the autonomy of the EU legal order. The article explores the normative framework of the WTO dispute settlement system and analyzes the scope of trade-restrictive remedies as envisaged by the Dispute Settlement Understanding (DSU). The article also examines the EU Customs Union as an exception under Article XXIV GATT and its legal implications for WTO compliance. In addition, the article explores the jurisprudence of the Court of Justice of EU concerning the direct and indirect effect of WTO law. Moreover, it evaluates the consequences of the limited enforceability of WTO rulings in the context of trade protectionism and regionalism, focusing on the ongoing crisis of the Appellate Body of WTO.

Keywords: international trade law; World Trade Organization (WTO); dispute settlement body; protectionism; regional trade agreement; EU Customs Union; enforcement

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1. INTRODUCTION

International trade law has become an essential part of the contemporary international legal order in last decades, structuring economic relations among states and shaping the conditions of global trade. Through a dense network of multilateral and regional trade agreements,[1] international trade law seeks to promote market access, non-discrimination in trade and legal predictability, while balancing economic integration with national regulatory autonomy.[2] As global economic interdependence has deepened over the last decades, the effectiveness and credibility of international

[1] WTO. RTAs in force. In: *Regional Trade Agreements: Database* [online]. [cit. 2026-03-10]. Available at: https://rtais.wto.org/UI/PublicAllRTAList.aspx; see also *World Trade Report: The WTO and Preferential Trade Agreements: From Co-Existence to Coherence*. World Trade Organization, 2011, pp. 52–53.

[2] See Preamble to the Marrakesh Agreement Establishing the World Trade Organization. 1995.

trade rules have increasingly depended on mechanisms for the resolution of trade disputes between economic partners.[3] The evolution of diplomacy-driven trade relations to a rule-based system has been closely linked to the institutionalization of dispute settlement procedures in international trade law.[4] The existence of reliable mechanisms are indispensable for ensuring compliance with international trade obligations and for preventing unilateral and retaliatory trade measures. In this context, the establishment of the World Trade Organization (WTO) represented a significant milestone.[5] The introduction of its quasi-judicial dispute settlement system enabled WTO to advance legalization of international trade relations and strengthen the enforceability of multilateral trade commitments within its legal framework.[6]

By establishing a system of binding dispute settlement rulings, coupled with the possibility of authorizing trade-restrictive remedies, the WTO's system is designed to induce effective compliance with multilateral trade rules while preserving a balance between normative constraint and political discretion. However, despite its importance in global trade, the WTO dispute settlement system lacks mechanisms of direct coercive enforcement comparable to those exercised by the domestic courts. Instead, compliance in international trade law is often promoted through instruments such as the authorized suspension of trade concessions,[7] which operates indirectly as it does not compel the respondent state to remove the WTO-inconsistent measure, but merely allows the prevailing member to withdraw trade concessions in order to exert economic pressure and encourage compliance. This enforcement model raises fundamental questions regarding the domestic effects of WTO rulings. Although the WTO establishes binding obligations at the international level, their reception within domestic legal orders varies. In most jurisdictions, WTO rulings do not create direct legal effects for private parties and cannot be invoked before domestic courts.[8] This question must be distinguished from the issue of whether WTO law itself may have direct effect within domestic legal systems. While many states deny such effect, some jurisdictions (such as Mexico, Argentina) allow, by law, the direct effect of WTO provisions and confer on private persons the right to challenge domestic measures based on that basis.[9] This divergence between international adjudication and domestic enforceability illustrates the structural tension

[3] Article 3 para. 2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

[4] See REICH, A. From Diplomacy to Law: The Juridicization of International Trade Relations. *Northwestern Journal of International Law & Business* [online]. 1996, Vol. 17, No. 1, pp. 778–780, 798–799, 806–809 [cit. 2026-03-16]. Available at: https://scholarlycommons.law.northwestern.edu/njilb/vol17/iss1/23/.

[5] See *World Trade Report: Factors Shaping the Future of World Trade*. World Trade Organization, 2013, p. 52; Marrakesh Agreement Establishing the World Trade Organization.

[6] See GOLDSTEIN, J. – MARTIN, L. L. Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note. *International Organization*. 2000, Vol. 54, No. 3, pp. 604, 620–622.

[7] Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

[8] See FABRI, H. R. Is There a Case – Legally and Politically – for Direct Effect of WTO Obligations? *The European Journal of International Law* [online]. 2014, Vol. 25, No. 1, p. 155 [cit. 2026-03-16]. Available at: https://doi.org/10.1093/ejil/chu014.

[9] OLIVEIRA, M. A. *International Trade Agreements Before Domestic Courts: Lessons from the Brazilian Experience* [online]. SIEL Working Paper No. 2014/04. Society of International Economic Law, 2014, pp. 30–31 [cit. 2026-03-16]. Available at: https://ssrn.com/abstract=2448445.

between the intergovernmental nature of current international trade law and domestic constitutional systems.

In this context, the European Union (EU) provides a particularly instructive setting in which to examine these tensions. As one of the world's leading trading actors and a frequent participant in WTO dispute settlement proceedings, the EU is deeply embedded in the multilateral trading system of WTO.[10] Simultaneously, the legal order of EU is characterized by a pronounced degree of constitutionalization, grounded in principles of autonomy, supremacy, and effective judicial protection.[11] Therefore, the interaction between WTO law and EU law has been marked by persistent legal friction in the last years. The Court of Justice of the European Union (CJEU) has consistently refused to recognize the direct effect of WTO agreements and WTO dispute settlement rulings within the EU's legal order.[12] Nevertheless, the Court has accepted more nuanced forms of indirect effect, allowing WTO law to influence the interpretation and review of EU trade measures in limited circumstances.[13] These judicial choices have significant implications for the enforcement of WTO rulings within the EU. They reflect not only constitutional concerns specific to EU's legal order, but also the broader normative structure of WTO law itself.

The enforcement mechanism of WTO rulings relies on the authorization of trade-restrictive remedies under the Dispute Settlement Understanding (DSU), in response to violations under "covered agreements", including the General Agreement on Tariffs and Trade 1994 (GATT 1994). Such remedies are subject to strict legal limitations under the DSU and operate on the temporary basis until compliance is achieved. As noted in the literature, *"there is no reference to a punitive objective in the DSU; the regime is concerned with redress for aggrieved members, rather than sanctioning respondents"*.[14]

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[10] See REICH, A. *The Effectiveness of the WTO Dispute Settlement System: A Statistical Analysis* [online]. EUI Department of Law Research Paper No. 2017/11, Bar Ilan University Faculty of Law Research Paper No. 18-01. 2017, p. 5 [cit. 2026-03-16]. Available at: http://dx.doi.org/10.2139/ssrn.2997094; see HOEKMAN, B. M. – MAVROIDIS, P. C. WTO Dispute Settlement, Transparency and Surveillance. *The World Economy*. 2000, Vol. 23, No. 4, p. 528.

[11] See Court of Justice of the European Communities (ECJ), Judgment of 15 July 1964, *Flaminio Costa v. E.N.E.L.*, Case No. 6/64, ECLI:EU:C:1964:66; Court of Justice of the European Communities (ECJ), Judgment of 23 April 1986, *Parti écologiste "Les Verts" v. European Parliament*, Case No. 294/83, ECLI:EU:C:1986:166; see also Court of Justice of the European Communities, Opinion 1/91 of 14 December 1991 on Delivered Pursuant to the Second Subparagraph of Article 228(1) of the Treaty, ECLI:EU:C:1991:490.

[12] See Court of Justice of the European Communities (ECJ), Judgment of 23 November 1999, *Portuguese Republic v. Council of the European Union*, Case No. C-149/96, ECLI:EU:C:1999:574; Court of Justice of the European Communities (ECJ), Grand Chamber, Judgment of 9 September 2008, *Fabbrica italiana accumulatori motocarri Montecchio (FIAMM) and others v. Council of the European Union and Commission of the European Communities*, Joined Cases C-120/06 P and C-121/06 P, ECLI:EU:C:2008:476.

[13] See Court of Justice of the European Communities (ECJ), Judgment of 22 June 1989, *EEC Seed Crushers' and Oil Processors' Federation (FEDIOL) v. Commission of the European Communities*, Case No. 70/87, ECLI:EU:C:1989:254; Court of Justice of the European Communities (ECJ), Judgment of 7 May 1991, *Nakajima All Precision Co. Ltd v. Commission of the European Communities*, Case No. C-69/89, ECLI:EU:C:1991:186.

[14] See LEE, J. – WITTGENSTEIN, T. *Weak vs. Strong Ties: Explaining Early Settlement in WTO Disputes*. ILE Working Paper Series, No. 7. Hamburg: University of Hamburg, 2017, p. 11.

Nevertheless, remedies such as the suspension of concessions may in practice produce punitive effects, as retaliatory trade measures impose economic costs on the non-complying member.

The current enforcement design of the WTO dispute settlement system, which relies on state-to-state retaliation rather than direct judicial enforcement, limits the capacity of WTO rulings to generate immediate legal consequences at the domestic level and thereby shapes the role of domestic courts. These structural features are significant in the context of the EU, which operates as a customs union within the meaning of Article XXIV GATT 1994. While customs unions constitute permitted derogations from core WTO obligations, by allowing preferential trade arrangements among their members, the centralized framework of trade governance of the EU means that compliance with WTO rulings must be achieved through the EU legal order rather than through the individual legal systems of its member states. As a result, the implementation of WTO dispute settlement outcomes depends on the decisions taken at the EU institutional level, which may in practice complicate and delay the translation of WTO obligations into concrete legal measures.

Against this background, this article examines the legal effects and enforcement limits of WTO dispute settlement rulings within the EU. It analyses the normative framework of the WTO dispute settlement body (DSB), as well as the scope of trade-restrictive remedies under the DSU for violation of substantive obligations of WTO agreements, and the legal status of the EU customs union under Article XXIV GATT. It further examines the jurisprudence of the Court of Justice of the EU on the direct and indirect effect of WTO law. Moreover, the article explores the limited enforceability of WTO law and the related broader implications in the context of international trade law issues such as protectionism, regionalism, and fragmentation. These issues are addressed against the backdrop of the ongoing crisis of the WTO dispute settlement system, namely, the paralysis of the Appellate Body due to continued blockage of judicial appointments by the United States.[15] As a result, WTO's appellate review mechanism has ceased to function, preventing the completion of dispute settlement proceedings in cases where parties choose to appeal panel reports. Nevertheless, disputes may still reach the final stage of adjudication, for example, where the panel reports are adopted without appeal or where participating members use alternative arrangements such as the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) based on Article 25 DSU.[16] Despite these options, the paralysis of the Appellate Body of WTO has significantly weakened legal certainty within the WTO regime and reduced the effectiveness of the WTO dispute settlement system, calling into question the proper functioning and overall credibility of the multilateral trading system. In the absence of a functioning appellate mechanism the coherence and consistent interpretation of WTO law risk being undermined.

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[15] See VIDIGAL, G. Living Without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis. *Journal of World Investment & Trade* [online]. 2019, Vol. 20, pp. 863–864 [cit. 2026-03-16]. Available at: https://doi.org/10.1163/22119000-12340160.

[16] Article 16 para. 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU); see *Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU*, WTO, 30 April 2020 (JOB/DSB/1/Add.12).

2. DISPUTE SETTLEMENT AND ENFORCEMENT MECHANISMS UNDER WTO LAW

The governance of international trade reflects the tension between sovereign regulatory autonomy and the need for collectively agreed legal constraints that ensure stability in cross-border economic relations. To limit risks of unilateral action and power-based bargaining, international trade law has evolved towards an institutionalized and legally structured dispute resolution. WTO's legal order rests on the premise that binding trade obligations require effective institutional mechanisms capable of addressing violations, consistent with legal certainty and multilateral principles. Accordingly, WTO law channels trade disputes into a compulsory and rules-based dispute settlement framework agreed by all members.

The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) constitutes the central procedural framework governing dispute settlement within the WTO.[17] The Dispute Settlement Body (DSB) operates as the principal institutional body that is responsible for the administration of dispute settlement proceedings within the WTO. The DSB is vested with the authority to establish panels, adopt panel and Appellate Body reports, oversee implementation of adopted WTO rulings, and, in cases of persistent non-compliance, authorize the suspension of trade concessions and other obligations under WTO law.[18] The WTO dispute settlement system is designed in a quasi-judicial manner, whereby, following consultations with the opposing party, proceedings commence with a complaint brought before a panel which may, upon appeal by one of the disputing parties, proceed to the Appellate Body, and ultimately conclude – after these two stages – with the supervision and implementation of adopted rulings.[19]

The WTO's dispute settlement system, which is structured to oversee trade policy and to improve enforcement of international trade law,[20] constitutes the core mechanism for ensuring security and predictability in the multilateral trading system.[21] In this context, it is essential that all dispute settlement solutions achieved by disputing parties remain compatible with WTO law and do not nullify or impair trade benefits or objectives under the covered agreements.[22] To ensure transparency and effective review of com-

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[17] Annex 2 to the Marrakesh Agreement Establishing the World Trade Organization (in force since 1 January 1995).

[18] See Article 2 para. 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

[19] See WEISS, W. – OHLER, C. – BUNGENBERG, M. *Welthandelsrecht*. 3. Aufl. München: C. H. Beck, 2022, p. 110, para. 251.

[20] Ibid., para. 252.

[21] See Article 3 para. 2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

[22] Article 3 para. 7 DSU; see also Report of the Appellate Body, WTO, *Peru – Additional Duty on Imports of Certain Agricultural Products*, 20/07/2015 (WT/DS457/AB/R), para. 5.25; Panel Report, WTO, *European Communities – Regime for the Importation, Sale and Distribution of Banana*s, 22/05/1997 (WT/DS27/RW/USA), para. 7.118; Appellate Body Report, WTO, *EC – Regime for the Importation, Sale and Distribution of Banana*s, 9 September 1997, WT/DS27/AB/R, para. 249.

patibility with WTO law, mutually agreed solutions raised under the consultation and dispute settlement provisions of relevant WTO agreements, shall be notified to DSB.[23] Moreover, WTO members are obliged to resolve disputes exclusively in accordance with the rules and procedures of DSU, thereby precluding application of other dispute settlement mechanisms,[24] which reflects the nature of WTO law as a self-contained regime that exhaustively regulates the legal consequences of its violations.[25] At the same time, WTO members may apply dispute settlement mechanisms under regional trade agreements (RTAs) for trade obligations stemming from those agreements.[26] However, such coexistence may create jurisdictional and normative tensions if the specific measure implicates both WTO and RTA obligations, particularly, if countermeasures adopted under an RTA result in conduct inconsistent with WTO law.

The WTO's dispute settlement system is distinct in comparison with other mechanisms in international law, as it is not primarily oriented towards binding decisions by dispute settlement bodies.[27] Instead, the WTO prioritizes dispute settlement through amicable resolutions between disputing parties, while panel proceedings are envisaged as a measure of last resort (ultima ratio) within WTO framework, reflecting the politically sensitive character of trade disputes and mutual interest of states in achieving negotiated and mutually acceptable solutions.[28] DSB proceedings unfold in four stages: consultation phase between disputing parties, panel establishment, the adoption of panel or Appellate body reports, and implementation.[29] A request for panel establishment may be made only after at least an attempt to initiate consultations has been undertaken.[30] If consultations do not lead to a resolution within sixty days, or if responding party refuses to engage, complaining member may request DSB to establish a panel.[31] Compulsory

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[23] Article 3 para. 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU); see also PETERSMANN, E. U. Dispute Settlement System of the World Trade Organization and the Evolution of the GATT Dispute Settlement System Since 1948. *Common Market Law Review* [online]. 1994, Vol. 31, No. 6, pp. 1208 [cit. 2026-03-16]. Available at: https://doi.org/10.54648/cola1994058.

[24] Article 23 para. 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU); see Panel Report, WTO, *US – Sections 301–310 of the Trade Act of 1974*, WT/DS152/R, para. 7.43; Panel Report, WTO, *US – Certain EC Products*, WT/DS165/R, para. 6.37; Appellate Body Report, WTO, WT/DS165/AB/R, para. 111.

[25] WEISS – OHLER – BUNGENBERG, *c. d.*, p. 112, para. 256.

[26] See, for example, Report of the Appellate Body, WTO, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/AB/R, 06/03/2006, paras. 56, 78.

[27] LOESEWITZ, M. Das WTO Dispute Settlement System in der Krise. In: TIETJE, C. – KRAFT, G. – KUMPAN, C. (eds.). *Beiträge zum Transnationalen Wirtschaftsrecht No. 165* [online]. Halle: Martin-Luther-Universität Halle-Wittenberg, Institut für Wirtschaftsrecht, Forschungsstelle für Transnationales Wirtschaftsrecht, 2019, p. 6 [cit. 2026-03-16]. Available at: http://dx.doi.org/10.25673/78416.

[28] Ibid., p. 7.

[29] See SHIN, W. – AHN, D. Trade Gains from Legal Rulings in the WTO Dispute Settlement System. *World Trade Review* [online]. 2019, Vol. 18, No. 1, p. 5 [cit. 2026-03-16]. Available at: https://doi.org/10.1017/S1474745617000544.

[30] Article 4 para. 3 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

[31] Article 4 para. 7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

and quasi-automatic character of WTO dispute settlement is reflected in procedural rules of WTO, which dispenses with any requirement for complaining members to show specific legal interest or concrete negative trade effects.[32] A breach of obligations of a covered WTO agreement gives rise, *prima facie*, to nullification or impairment, thereby creating a rebuttable presumption that the benefits enjoyed by other parties of the relevant agreement have been adversely impacted, which the responding member must rebut in the dispute.[33] Moreover, the responding member is obligated to accept the jurisdiction of the WTO dispute settlement system in case of a dispute.[34]

The dispute settlement mechanism of WTO seeks the positive resolution of disputes,[35] with clear priority accorded to an amicable (out of court) solution mutually acceptable to parties and consistent with covered agreements.[36] Where mutually agreed solution cannot be achieved, the primary objective of the dispute settlement mechanism is to ensure withdrawal (modification) of the measures inconsistent with WTO law.[37] In cases where the withdrawal (modification) of the challenged measure is impracticable either immediately or within a reasonable time, DSU envisages recourse to a compensation,[38] which operates as a temporary arrangement pending withdrawal (modification) of the inconsistent measure, however, compensation does not substitute the need for the elimination of the violation.[39] Compensation is voluntary, meaning that, the complaining member is free to reject it as a temporary remedy,[40] moreover, it is forward-looking and only concerns nullification or the impairment (harm) that will be suffered in future by the relevant party.[41] The second temporary remedy for breach of WTO law is the suspension of concessions, which could be applied as means of pressure to bring the parties to agree promptly on compensation.[42] Suspension of concessions or other (non-tariff) obligations by DSB with respect to the offending party, often referred to as

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32 See MARCEAU, G. Z. The Primacy of the WTO Dispute Settlement System. *Questions of International Law* [online]. 2015, Vol. 23, p. 4 [cit. 2026-03-16]. Available at: https://archive-ouverte.unige.ch/unige:96218; WEISS – OHLER – BUNGENBERG, *c. d.*, p. 119, para. 278.

33 See Article 3 para. 8 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

34 See Article 23 para. 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU); see VAN DEN BOSSCHE, P. – ZDOUC, W. *The Law and Policy of the World Trade Organization*. 5th ed. Cambridge: Cambridge University Press, 2022, p. 177.

35 Ibid., p. 200; Article 3 para. 7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

36 WEISS – OHLER – BUNGENBERG, *c. d.*, p. 113, para. 258.

37 Article 3 para. 7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

38 Article 22 para. 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

39 WEISS – OHLER – BUNGENBERG, *c. d.*, p. 113, para. 259.

40 Article 22 para. 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

41 VAN DEN BOSSCHE – ZDOUC, *c. d.*, p. 216.

42 Article 22 para. 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU); WEISS – OHLER – BUNGENBERG, *c. d.*, p. 113, para. 259.

"retaliation", is considered as a measure of last resort for DSB, when reasonable time for implementation has expired and the compensation has not been agreed.[43] The level of the suspension of tariff concessions or other (non-tariff) obligations authorized by the DSB must be equivalent to the level of specific nullification or impairment.[44] Moreover, the suspension of a concession as an enforcement measure must be terminated as soon as the offending member brings its conduct into conformity with WTO law.[45] In practice, retaliation often takes form of drastic increase of customs duties (e.g. 100 per cent increase *ad valorem*) on specific products of export interest to the offending party or the non-protection of intellectual property rights of products originating from the offending country.[46]

Within the WTO dispute settlement system, there is a functional division between a political institution such the DSB and the quasi-judicial bodies, namely, the ad-hoc panels and the standing Appellate Body of WTO.[47] The General Council of WTO, composed of representatives of all WTO members, convenes as the DSB when administering the WTO dispute settlement system.[48] DSB establishes panels, adopts panel and Appellate Body reports, oversees the implementation of WTO rulings and authorizes suspension of concessions and other obligations under covered agreements.[49] Where DSU rules require decision-making, the DSB acts generally by consensus,[50] except when establishing panels, adopting reports, and authorizing suspension of concessions, in which case it operates under a negative consensus, which means that unless there is consensus among WTO members not to make a decision, the decision will automatically be adopted.[51]

The actual adjudication is carried out at first-instance level by panels, that are ad-hoc tribunals established for a particular dispute, entrusted with the task to conduct an objective assessment of the facts of the case and to evaluate conformity of the challenged measure with WTO law.[52] Panel rulings may be reviewed by the Appellate Body, a permanent organ of the WTO, whose jurisdiction is limited to the examination of the questions of law covered in the panel report,[53] not assessment of facts (unlike

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43 VAN DEN BOSSCHE – ZDOUC, *c. d.*, p. 216.

44 Article 22 para. 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

45 MATSUSHITA, M. – SCHOENBAUM, T. J. – MAVROIDIS, P. C. – HAHN, M. *The World Trade Organization: Law, Practice, and Policy*. 3rd ed. Oxford: Oxford University Press, 2015, p. 220.

46 VAN DEN BOSSCHE – ZDOUC, *c. d.*, p. 230.

47 Ibid., p. 224.

48 Article IV paras. 2–3 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).

49 See Article 2 para. 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

50 WEISS – OHLER – BUNGENBERG, *c. d.*, p. 114, para. 261.

51 See Article 6 para. 1, Article 16 para. 4, Article 17 para. 14, and Article 22 para. 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

52 Ibid., Article 11 and Article 19 para. 1.

53 See MARCEAU, G. Z. – HAMAOUI, J. A. Implementation of Recommendations and Rulings in the WTO System. In: BOISSON DE CHAZOURNES, L. et al. (eds.). *Diplomatic and Judicial Means of Dispute*

panels), however, it may decide to examine the assessment of facts made by the panel, where necessary, to ensure fairness and due process and to protect against arbitrariness or deliberate misinterpretation of presented evidence.[54] The Appellate Body may uphold, modify or reverse panel findings.[55] Panel and Appellate Body rulings require to be adopted by DSB to become legally effective, however, these decisions are only binding for the particular case and do not create any legal effects for other WTO members, nor do they have precedential value in subsequent trade disputes.[56] Although there is no strict *stare decisis* in WTO, panels try to follow earlier holdings of the Appellate body in order not to undermine development of coherent jurisprudence in WTO.[57]

Following the adoption of reports, in which inconsistency of the measure with WTO law has been concluded, prompt compliance is essential to achieve effective dispute resolution.[58] The recommendation is to bring inconsistent measure into compliance with WTO law,[59] which can be achieved by withdrawing measure completely or by modifying it according to WTO law.[60] If immediate compliance is impracticable, reasonable implementation time will be determined either by DSB (at proposal of concerned member), directly by parties or through binding arbitration.[61] DSB exercises surveillance over implementation until compliance is achieved.[62] However, WTO lacks capacity to directly enforce its binding decisions on its members.[63]

If the responding party fails to comply within the reasonable period of time and does not bring the measure in conformity with WTO law, compensation and suspension of concessions (or other obligations) are available as temporary remedies against the breach of WTO law.[64] However, where a disagreement arises as to whether measures taken by the responding member achieve compliance with the recommendations and rulings, the matter may be referred to compliance proceedings under Article 21.5. DSU, whereby a panel determines whether the respondent has effectively implemented the rulings.[65] If non-compliance persists and the parties fail to agree on a satisfactory compensation, the complaining party may request DSB to authorize the suspension of tariff concessions and other non-tariff obligations in relation to the respondent that arise from

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Settlement [online]. Leiden: Nijhoff, 2013, p. 194 [cit. 2026-03-16]. Available at: https://archive-ouverte.unige.ch/unige:36882.

54 WEISS – OHLER – BUNGENBERG, *c. d.*, pp. 125–126, paras. 298, 299.

55 Article 17 para. 13 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

56 MATSUSHITA – SCHOENBAUM – MAVROIDIS – HAHN, *c. d.*, p. 89.

57 Ibid.

58 Article 21 para. 1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

59 MARCEAU – HAMAOUI, *c. d.*, p. 194.

60 WEISS – OHLER – BUNGENBERG, *c. d.*, p. 127, para. 305.

61 MATSUSHITA – SCHOENBAUM – MAVROIDIS – HAHN, *c. d.*, p. 94.

62 Article 21 para. 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

63 See WEISS – OHLER – BUNGENBERG, *c. d.*, p. 128, para. 308.

64 Article 22 paras. 1, 2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

65 Ibid., Article 21 para. 5.

relevant WTO agreements – a remedy referred to as *"retaliation"* by some authors.[66] Pursuant to Article 22.3(a) DSU, *"the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment"*. This is referred to in literature as *"parallel retaliation"*.[67] Under Article 22.3(b) and (c) DSU cross-sector (concessions in different sector) and cross-agreement retaliation (concessions under different agreements) are possible, if parallel retaliation *"is not practicable or effective"*.[68] The targeted member can object to the proposed level of suspension, claiming that it is not equivalent to the level of nullification or impairment, moreover, it can contend that the principles and procedures governing the choice between the three types of retaliation under Article 22.3 DSU have not been respected.[69] In such cases, the matter may be referred to arbitration,[70] the outcome of which is final and binding.[71] Authorized suspension of concessions is only temporary and must be terminated once compliance with WTO law is achieved or mutually satisfactory solution is reached between parties, with implementation remaining under supervision of DSB.[72]

In practice, however, compliance with WTO rulings may be delayed. Notable examples include the cases *EC-Bananas III* and *EC-Hormones*,[73] where the European Communities (EC) did not immediately bring the contested measures into conformity with WTO obligations, resulting in prolonged disputes and the authorization of retaliatory measures by the complaining members.[74] While the EU has generally sought to comply with WTO rulings over time,[75] these disputes demonstrate that implementation may be gradual and involve complex legislative and policy adjustments within legal orders such as the European Union.

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66 VAN DEN BOSSCHE – ZDOUC, *c. d.*, p. 310.

67 SPADANO, L. E. F. A. Cross-Agreement Retaliation in the WTO Dispute Settlement System: An Important Enforcement Mechanism for Developing Countries? *World Trade Review* [online]. 2008, Vol. 7, No. 3, p. 523 [cit. 2026-03-16]. Available at: https://doi.org/10.1017/S1474745608003960.

68 Article 22 para. 3 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU); see also MATSUSHITA – SCHOENBAUM – MAVROIDIS – HAHN, *c. d.*, p. 96.

69 Article 22 para. 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

70 See MARCEAU – HAMAOUI, *c. d.*, p. 200.

71 Article 22 paras. 6, 7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

72 See WEISS – OHLER – BUNGENBERG, *c. d.*, p. 134, para. 323.

73 Report of Appellate Body, WTO, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, 09/09/1997 (WT/DS27/AB/R); Report of the Appellate Body, WTO, *European Communities – EC Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R; WT/DS48/AB/R, 16/01/1998.

74 O'CONNOR, B. Remedies in the World Trade Organization Dispute Settlement System – The Bananas and Hormones Case. *Journal of World Trade*. 2004, Vol. 38, No. 2, pp. 245–266.

75 See YOUNG, A. R. *Supplying Compliance with Trade Rules: Explaining the EU's Responses to Adverse WTO Rulings*. Oxford: Oxford University Press, 2021, pp. 172–174.

3. REGIONAL INTEGRATION IN WTO: ARTICLE XXIV GATT AND THE EUROPEAN UNION

The principle of non-discrimination constitutes a central element of the multilateral trade regime and is primarily embodied in the Most-Favored Nation (MFN) and National Treatment principles under General Agreement on Tariffs and Trade (GATT).[76] While National Treatment obliges all WTO members to treat imported goods no less favorably than "like" domestic products, prohibiting discrimination against foreign goods in internal taxation/regulation, the MFN principle requires WTO members to extend any trade advantage/privilege granted to one trading partner equally to all other WTO members to ensure non-discriminatory treatment among foreign trading partners.[77] At the same time WTO law recognizes that certain policy objectives and forms of economic integration may justify departures from these obligations.[78]

Among such exceptions, derogations from the MFN principle are particularly significant in the context of EU as a customs union, since such unions inherently involve preferential treatment among participating states. The Treaty on the Functioning of the EU establishes that EU shall comprise a customs union covering all trade in goods, entailing the abolition of customs duties and charges with equivalent effect between member states, alongside the adoption of a common customs tariff in relation to third countries.[79] Thus, the customs union of the EU exemplifies a form of economic integration that necessitates differential treatment towards non-member states, thereby underscoring the importance of MFN exceptions within WTO's legal framework. One of the most significant GATT exceptions to MFN principle is set out in Article XXIV, which permits contracting parties to maintain existing, or to establish new, customs unions or free trade areas. By their nature, such trade arrangements confer preferential treatment on participating states that is not extended to other WTO members, thereby constituting a departure from the general MFN obligation.[80] Article XXIV accommodates this departure by allowing contracting parties to reduce or eliminate tariffs within the framework of a customs union or a free trade area, without being required to extend same concessions to all WTO members.[81] Furthermore, GATT imposes no obligation on members benefiting from a reduction of duties consequent upon the formation of a customs union to provide a compensatory adjustment to its constituents.[82]

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76 See Articles I and III of the General Agreement on Tariffs and Trade (GATT 1994).

77 See MATSUSHITA, M. Basic Principles of the WTO and the Role of Competition Policy. *Washington University Global Studies Law Review* [online]. 2004, Vol. 3, No. 2, pp. 366–367 [cit. 2026-03-16]. Available at: https://openscholarship.wustl.edu/law_globalstudies/vol3/iss2/10/.

78 For example, see the exceptions in Articles XX and XXI of the General Agreement on Tariffs and Trade (GATT 1994).

79 See Article 28 para. 1 of the Treaty on the Functioning of the European Union (TFEU).

80 See MCRAE, D. MFN in the GATT and the WTO. *Asian Journal of WTO and International Health Law and Policy* [online]. 2012, Vol. 7, No. 1, p. 5 [cit. 2026-03-16]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2117781.

81 Ibid.

82 Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, para. 6.

WTO jurisprudence has played a significant role in clarifying scope and limits of the MFN exceptions, particularly under Article XXIV GATT. In *Turkey-Textiles*, the Appellate Body held that Article XXIV does not constitute an autonomous or self-judging justification for measures otherwise inconsistent with GATT, but may operate as a defense only where such measures are necessary for the formation of a customs union.[83] The Appellate Body further emphasized that Article XXIV cannot be relied upon to introduce higher or additional trade barriers affecting third-country WTO members, and that compliance with substantive requirements of the provision must be established in each case.[84] This restrictive interpretation was also reflected in *EC-Bananas III*, where the Appellate Body rejected the attempt of the European Communities to justify discriminatory import regimes by reference to preferential arrangements, reaffirming that regional trade agreements must remain compatible with fundamental principles of WTO law.[85] Subsequent jurisprudence has consolidated this line of reasoning. In *Canada-Autos*, Appellate Body reaffirmed that preferential treatment linked to regional trade arrangements remains subject to MFN scrutiny and cannot be justified in the absence of full compliance with legal conditions of invoked exception.[86] Similarly, in *Peru-Agricultural Products* case, Appellate Body underscored that bilateral or regional trade agreements cannot override WTO obligations unless the requirements of Article XXIV are fulfilled, thereby reaffirming primacy of the multilateral trading system over preferential trade arrangements.[87]

Against this background, position of EU within the framework of WTO warrants consideration. EU constitutes a customs union within the meaning of Article XXIV, reflecting an advanced degree of regional economic integration among member states and establishment of a common external trade and tariff regime.[88] Due to its status as a single customs territory for goods, the EU maintains a unified schedule of concession under the GATT, reflecting its common external tariff and consolidated tariff bindings.[89] In respect of trade in goods, EU acts externally as a single WTO member for purposes of tariff commitments and market access obligations.[90] At the same time, EU is a WTO member, alongside its member states, resulting in a distinctive system of *"parallel membership"*.[91] The European Communities (EC) became an original member of the

[83] Report of the Appellate Body, WTO, *Turkey – Restrictions on Imports of Textile and Clothing Products*, 22/10/1999 (WT/DS34/AB/R), paras. 45–46.

[84] Ibid., paras. 58–61.

[85] Report of Appellate Body, WTO, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, 09/09/1997 (WT/DS27/AB/R), paras. 191–194.

[86] See Report of the Appellate Body, WTO, *Canada – Certain Measures Affecting the Automotive Industry*, 31/05/2000 (WT/DS139/AB/R; WT/DS142/AB/R), paras. 84–86.

[87] See Report of the Appellate Body, WTO, *Peru – Additional Duty on Imports of Certain Agricultural Products*, 20/07/2015 (WT/DS457/AB/R), paras. 5.100–5.114.

[88] See Article 28 para. 1 of the Treaty on the Functioning of the European Union (TFEU).

[89] See Article II of the General Agreement on Tariffs and Trade (GATT 1994); Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).

[90] See Articles 28–31 of the Treaty on the Functioning of the European Union (TFEU); see also Article XI of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).

[91] See HERRMANN, C. – STREINZ, T. Die EU als Mitglied der WTO. In: VON ARNAULD, A. – BUNGENBERG, M. (eds.). *Europäische Außenbeziehungen* [online]. Enzyklopädie Europarecht, Band 12.

WTO upon the entry into force of the WTO agreement.[92] Individual membership of EU member states remains necessary until today due to the fact that, despite expansion of EU competences following the Treaty of Lisbon, exclusive EU competence in the field of external trade still does not cover all areas, which are part of multilateral trade agreements.[93] The EU holds exclusive competence also with respect to trade in services,[94] with the exception of transport services and areas where the harmonization capacity of EU is limited (such as services in the field of culture, education, human health).[95]

In general, each WTO member has one vote, but when the EU exercises its right to vote within the WTO, it has a number of votes equal to the number of its member states, which are also members of WTO.[96] Irrespective of the precise division of competences between the EU and its members, it is the European Commission that represents both the EU and its members states within the WTO and exercises their voting rights, on the basis of positions agreed in advance with the members.[97] In practice, formal voting in the strict sense does rarely take place within the WTO (although prescribed by law), instead, most decisions are made through a negative consensus, meaning that a decision is adopted, if no WTO member present at the meeting formally objects the proposal.[98]

The parallel WTO membership of EU and its member states is of particular significance in the context of WTO dispute settlement, as it affects questions of external representation, attribution of conduct and allocation of responsibility for WTO-inconsistent practices. It further influences the identification of the appropriate respondent in proceedings and the way adverse rulings can be implemented within the legal order of EU. Although the allocation of competences between the EU and its member states is prescribed by EU law, this internal division is not decisive within the legal order of WTO, where these entities are recognized as distinct members with separate rights and obligations under the covered agreements.[99] WTO dispute settlement bodies do not ordinarily engage with the internal division of competences when determining responsibility, but assess compliance at the level of the WTO member before them.[100] In practice, WTO panels have held the EU responsible for ensuring compliance with WTO obligations,

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Baden-Baden: Nomos, 2022, pp. 903, 907, paras. 77, 88 [cit. 2026-03-16]. Available at: https://doi.org/10.5771/9783845299471-853.

92 Article XI para. 1 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).

93 See WEISS – OHLER – BUNGENBERG, *c. d.*, p. 56, para. 116.

94 Article 3 para. 1 and Article 207 para. 1 of the Treaty on the Functioning of the European Union (TFEU).

95 WEISS – OHLER – BUNGENBERG, *c. d.*, p. 60, para. 123.

96 Article IX para. 1 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).

97 WEISS – OHLER – BUNGENBERG, *c. d.*, p. 61, para. 124.

98 HILPOLD, P. – SENTI, R. *WTO: System und Funktionsweise der Welthandelsordnung*. 3. Aufl. Baden Baden, Zürich, Wien: Nomos, Schulthess, facultas, 2025, p. 134, paras. 361–362; Article IX of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement).

99 See CHATHÁIN, C. N. The European Community and the Member States in the Dispute Settlement Understanding of the WTO: United or Divided? *European Law Journal* [online]. 1999, Vol. 5, No. 4, pp. 462–463 [cit. 2026-03-16]. Available at: https://doi.org/10.1111/1468-0386.00091.

100 Ibid., pp. 463–464.

including where the contested measure is implemented at member state level.[101] At the same time, attempts by third countries to bring proceedings also against individual member states, even when the issue clearly falls within EU's competence,[102] illustrate the tensions inherent in the parallel WTO membership of the EU and the principle of formal equality among WTO members.[103]

This institutional configuration originates in the constitutional framework governing EU's participation in the WTO. In Opinion 1/94, the Court of Justice examined whether the European Community possessed the exclusive competence to conclude the WTO agreements.[104] The Court held that the Community had exclusive competence with respect to the multilateral agreements on trade in goods, but that competence concerning the General Agreement on Trade in Services (GATS) and the Agreement on Trade-related aspects of Intellectual Property Rights (TRIPS) was shared by the Community and its member states, consequently, the WTO agreement had to be concluded as a mixed agreement by both the Community and its members,[105] thereby giving rise to their parallel participation in the WTO system. The Court further emphasized that this mixed competence required cooperation between the Community institutions and the member states in the implementation of WTO obligations, deriving such cooperation from the *"requirement of unity in the international representation of the Community"*,[106] thereby establishing a duty of cooperation between the Community and the members states, the implications of which for their participation in the dispute settlement of WTO and the extent of their coordination in such proceedings remain uncertain in the literature.[107]

The subsequent developments in EU primary law have modified the scope of the common commercial policy. As noted in literature, the Treaty of Nice extended Article 133 of the EC-Treaty to cover the negotiation and conclusion of the agreements relating to trade in services and commercial aspects of intellectual property rights,[108] although this extension did not encompass the *"autonomous dimension of the policy"* and did not fully eliminate the possibility of shared competences in certain fields.[109]

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[101] See WTO Panel Report, *EC – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, WT/DS290/R, 15/03/2005, para. 7.148; WTO Panel Report, *EC – Selected Customs Matters*, WT/DS315/R, 16/06/2006, paras. 7.141, 7.156.

[102] See WEISS – OHLER – BUNGENBERG, *c. d.*, p. 56, para. 117.

[103] See Article XI para. 1 of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement); see also CHATHÁIN, *c. d.*, pp. 464–465.

[104] Court of Justice of the European Communities (ECJ), Opinion 1/94 of 15 November 1994 on *Competence of the Community to Conclude International Agreements Concerning Services and the Protection of Intellectual Property – Article 228 (6) of the EC Treaty*, ECLI:ECLI:EU:C:1994:384.

[105] See HILF, M. The ECJ's Opinion 1/94 on the WTO – No Surprise, but Wise? *European Journal of International Law* [online]. 1995, Vol. 6, No. 2, pp. 245–246, 251 [cit. 2026-03-16]. Available at: https://doi.org/10.1093/oxfordjournals.ejil.a035918.

[106] See para. 108 of the Opinion 1/94 the European Court Justice of 15 November 1994 on *Competence of the Community to Conclude International Agreements Concerning Services and the Protection of Intellectual Property – Article 228 (6) of the EC Treaty*, ECLI:ECLI:EU:C:1994:384.

[107] CHATHÁIN, *c. d.*, pp. 465–466.

[108] See Article 133 para. 5 of the Treaty Establishing the European Community.

[109] See HELISKOSKI, J. Opinion 1/94. In: *Max Planck Encyclopedias of International Law*. Max Planck Institute for Comparative Public Law and International Law, 2007, para. 10. In: *Oxford*

Following the expansion of the common commercial policy by the Treaty of Lisbon through the introduction of Article 207 TFEU, it has been suggested in literature that the subsequent case law of the Court of Justice, notably the case *Daiichi Sankyo*,[110] confirms that the whole field of TRIPS, and potentially also the trade in services under GATS, falls within the scope of that provision.[111] These developments illustrate how the evolving allocation of competences within EU continues to shape its participation in the WTO system and the manner in which WTO dispute settlement outcomes are implemented within the legal order of the Union.

4. ENFORCEMENT MECHANISMS OF INTERNATIONAL TRADE OBLIGATIONS IN THE EU

The enforcement of WTO obligations within the EU is structured by the constitutional framework of the Treaties and by secondary legislation adopted under the common commercial policy. Pursuant to Article 3(1)(e) TFEU, the common commercial policy falls within the exclusive competence of the EU. Article 207 TFEU further provides that the EU shall conduct that policy within the framework of its external action. Accordingly, the responsibility for implementing WTO obligations is primarily exercised at the EU level. Internally, compliance with international trade commitments requires legislative or executive adaptation within the EU legal order. Measures necessary to implement trade obligations are adopted based on Article 207(2) TFEU.[112] Where the implementation involves member states, the principle of sincere cooperation under Article 4(3) TFEU obliges them to ensure fulfillment of obligations arising from EU law. Failure to do so may trigger infringement proceedings under Article 258–260 TFEU.[113] Thus, compliance with WTO-related commitments is integrated into the broader constitutional system of EU accountability.

The enforcement of WTO obligations within the EU operates through the institutional framework of EU. The exercise of the Union's rights in response to the breaches of international trade rules is governed by Regulation (EU) No. 654/2014,[114] commonly

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Public International Law [online]. [cit. 2026-03-16]. Available at: https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1696.

[110] Court of Justice of the European Communities (ECJ), Grand Chamber, Judgment of 18 July 2013, *Daiichi Sankyo Co Ltd. and Sanofi-Aventis Deutschland GmbH ("Sanofi-Aventis") v. DEMO Anonimos Viomikhaniki kai Emporiki Etairia Farmakon*, European Court of Justice, Case No. C-414/11, ECLI:EU:C:2013:520, paras. 52, 54–55.

[111] ROSAS, A. EU External Relations: Exclusive Competence Revisited. *Fordham International Law Journal*. 2015, Vol. 38, No. 4, pp. 1094–1095.

[112] Article 207(2) TFEU: *"The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy."*

[113] See Articles 258–260 of the Treaty on the Functioning of the European Union (TFEU).

[114] Regulation (EU) No. 654/2014 of the European Parliament and of the Council of 15 May 2014.

referred to as the Trade Enforcement Regulation (TER),[115] as amended by the Regulation (EU) 2021/167 (Amendment).[116] The background of the amendment of the Trade Enforcement Regulation was the Appellate Body crisis of the WTO, caused by the blockage of new appointments by the United States, rendering the appellate level of the dispute settlement system of the WTO ineffective.[117] The Trade Enforcement Regulation establishes conditions under which the EU may adopt commercial policy measures to exercise its rights under international trade agreements, including those under WTO agreements. The Regulation applies both to situations when the EU's interests are harmed by third countries violating international trade rules, and to situations involving measures lawful measures under those rules to which the EU is nevertheless permitted to respond.[118]

The Trade Enforcement Regulation defines the circumstances in which enforcement measures may be adopted and the procedures governing their adoption. Article 3 of the Regulation sets out the situations in which the Union may exercise its enforcement powers, including cases where a trading partner fails to comply with obligations under an international trade agreement or where dispute settlement proceedings confirm the existence of a violation.[119] As trade-restrictive measures available in response to the breaches of international trade obligations, the Regulation encompasses the suspension of tariff concessions, the imposition of additional customs duties, the quantitative restrictions on imports or exports of goods, and restrictions affecting services or public procurement access (*"commercial policy measures"*).[120] Prior to 2021, the Commission lacked the authority to impose countermeasures in the field of intellectual property and services and could therefore address violations in these areas only by implementing permissible measures related to trade in goods, relying on the possibility of cross-retaliation in another sector.[121] It is important to note that before the adoption of the Trade Enforcement Regulation in 2014, the EU enforced its rights under international trade agreements case-by-case through specific Council regulations, adopted on the basis of the

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[115] WEIß, W. – FURCULITA, C. The Amended Trade Enforcement Regulation: Addressing Dispute Settlement Blockages. *Open Strategic Autonomy in EU Trade Policy: Assessing the Turn to Stronger Enforcement and More Robust Interest Representation, Cambridge Studies in European Law and Policy*. Cambridge: Cambridge University Press, 2024, p. 165.

[116] Regulation (EU) No. 654/2014 *Concerning the Exercise of The Union's Rights for The Application and Enforcement of International Trade Rule*s, as amended by Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021.

[117] GRAAFSMA, F. The Revised Enforcement Regulation (No 2021/167) and Some Possible Effects on EU Trade Disputes. *Global Trade and Customs Journal.* 2022, Vol. 17, No. 7/8, p. 289.

[118] See Article 1 of the Regulation (EU) No. 654/2014 (Trade Enforcement Regulation); WEIß, W. – FURCULITA, C. The EU in Search for Stronger Enforcement Rules: Assessing the Proposed Amendments to Trade Enforcement Regulation 654/2014. *Journal of International Economic Law* [online]. 2020, Vol. 23, No. 4, p. 868 [cit. 2026-03-16]. Available at: https://doi.org/10.1093/jiel/jgaa033.

[119] Article 3 of the Regulation (EU) No. 654/2014 Concerning the Exercise of The Union's Rights for The Application and Enforcement of International Trade Rules, as amended by Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021.

[120] Ibid., Article 5.

[121] See WEIß – FURCULITA, *The Amended Trade Enforcement Regulation…*, p. 167.

Union's common commercial policy competence under Article 207 TFEU, following the proposals by the Commission.[122]

When determining which commercial policy measure to adopt (within the meaning of Article 5 of the Regulation), the Commission must take into account the criteria laid down in Article 4(3) of the Trade Enforcement Regulation. In particular, the measures must be assessed in light of the available information and the Union's general interest.[123] The Regulation requires consideration of the effectiveness of the measures in inducing the third countries to comply with international trade rules, their potential to provide relief to Union's economic operators affected by third-country measures, and the availability of alternative sources of supply in order to minimize negative impact on downstream industries, contracting authorities and final consumers within the Union.[124] The Commission must also avoid disproportionate administrative complexity and costs in the application of measure and take into account any specific criteria established in relevant international trade agreements.[125]

Trade enforcement acts, as part of the common commercial policy of the EU, are adopted by the European Commission through the implementing acts adopted in accordance with the examination procedure laid down in Regulation No. 182/2011, which ensures participation of member states through a specific committee procedure and provides effective oversight of the Commission's exercise of implementing powers.[126] Under the examination procedure, the Commission submits a draft implementing act to a committee composed of the representatives of member states,[127] which delivers its opinion by qualified majority voting, as provided in Article 5(1) of the Regulation No. 182/2011. If the committee delivers a positive opinion, the Commission must adopt the proposed implementing act.[128] But if the committee delivers a negative opinion, the Commission may not adopt the measure.[129] Where the committee delivers no opinion, the Commission may adopt the proposed act unless the basic legislative act provides otherwise.[130] This institutional arrangement reflects the politically sensitive nature of trade countermeasures. It allows EU member states to exercise oversight over the

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[122] See, for example, Council Regulation (EC) No 673/2005 of 25 April 2005 Establishing Additional Customs Duties on Imports of Certain Products Originating in the United States of America, as well as Council Regulation (EC) No 2193/2003 of 8 December 2003 Establishing Additional Customs Duties on Imports of Certain Products Originating in the United States of America.

[123] Article 4 para. 3 of the 654/2014 Concerning the Exercise of The Union's Rights for The Application and Enforcement of International Trade Rules, as amended by Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021.

[124] Ibid., Article 4 para. 3 (a)–(c).

[125] Ibid., Article 4 para. 3 (d)–(e).

[126] Ibid., Article 4 and Article 8; see also Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 Laying Down the Rules and General Principles Concerning Mechanisms for Control by Member States of the Commission's Exercise of Implementing Powers.

[127] Article 3 of the Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 Laying Down the Rules and General Principles Concerning Mechanisms for Control by Member States of the Commission's Exercise of Implementing Powers.

[128] Ibid., Article 5 para. 2.

[129] Ibid., Article 5 para. 3.

[130] Ibid., Article 5 para. 4.

Commission's implementing powers while ensuring that the enforcement measures are adopted centrally at EU level. Consequently, this examination procedure ensures both the unity of the Union's external commercial policy and the participation of member states in decisions concerning adoption of trade countermeasures.

Recent developments in EU law further consolidate the EU's role in WTO litigation and the enforcement of international trade obligations. In response to the Appellate Body's paralysis,[131] the EU has amended its Trade Enforcement Regulation in 2021, thereby enhancing its capacity to adopt specific commercial countermeasures in cases where international dispute settlement mechanisms are blocked or rendered ineffective.[132] This amendment signals a more centralized and autonomous approach to the enforcement of WTO obligations and reflects the EU's attempt to ensure the practical enforceability of its rights under international trade agreements when the completion of dispute settlement proceedings cannot be guaranteed. The Amendment of 2021 has significantly expanded the scope of the enforcement mechanism established under the Trade Enforcement Regulation in 2014. Initially, under Article 3 of the Trade Enforcement Regulation, enforcement measures could be adopted only following the successful completion of dispute settlement proceedings and the authorization to suspend concessions under international trade agreements, however, the revised Regulation now allows the Union to adopt enforcement measures not only following the conclusion of the dispute settlement proceedings under international agreements, but also where dispute settlement mechanisms are rendered ineffective or fail to produce a binding outcome.[133] In particular, the newly introduced Article 3(aa) enables the EU to act following the circulation of the WTO panel report, upholding the Union's claims where an appeal procedure cannot be completed due to the non-functioning of the WTO Appellate Body and where the responding member has not agreed to the interim appeal arbitration under Article 25 DSU.[134] This provision was introduced to address the practice of *"appeals into the void"*, whereby a WTO member can prevent the adoption of a panel report by filing an appeal in the absence of a functioning Appellate body.[135] The amendment also extends the Regulation to situations in which dispute settlement mechanisms under bilateral or regional trade agreements concluded by the EU are obstructed.[136] Where a trading partner blocks dispute settlement procedures under such agreements and thereby prevents the dispute from reaching a binding resolution, the EU may adopt concrete enforcement measures in order to safeguard the effectiveness of its rights under those agreements.[137]

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131 GRAAFSMA, *c. d.*, p. 289.

132 See the Regulation (EU) 654/2014 Concerning the Exercise of The Union's Rights for the Application and Enforcement of International Trade Rules, as amended by Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021, Preamble, paras. 3–7.

133 Ibid., Article 3.

134 Ibid., Article 3(aa); see also Article 25 DSU.

135 See WEIß – FURCULITA, *The Amended Trade Enforcement Regulation…*, pp. 168–169.

136 See Article 3(ba) of the Regulation (EU) 654/2014 Concerning the Exercise of the Union's Rights for The Application and Enforcement of International Trade Rules, as amended by Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021.

137 See WEIß – FURCULITA, *The Amended Trade Enforcement Regulation…*, pp. 169–170.

In addition, the 2021 reform expanded the types of commercial policy measures available to the Union. Article 5(1) of the Regulation continues to govern the measures affecting trade in goods, including the suspension of tariff concession, the imposition of additional customs duties and quantitative restrictions. However, the Amendment introduced new provisions to regulate measures relating to trade in services and trade-related aspects of intellectual property rights.[138] In relation to services, the Commission may suspend obligations or impose restrictions on trade in services, while the measures relating to intellectual property rights may concern the suspension of obligations affecting the protection or the commercial exploitation of intellectual property rights granted by Union institutions and valid throughout the Union, particularly with respect to the right-holders originating from the third country concerned.[139] The amended framework also establishes procedural conditions governing the adoption of such measures. Article 5(1a) introduced the hierarchy of steps that the Commission must follow when adopting enforcement measures relating to services, while Article 5(1b) sets out general requirements applicable to measures affecting services and intellectual property rights, which include the proportionality requirements and a monitoring mechanism, whereby such measures must be subject to an evaluation report after termination, assessing their effectiveness and operation on the basis of, inter alia, stakeholder input, to draw possible conclusions for future measures.[140]

Taken together, these amendments enhance the EU's capacity to respond to violations of international trade obligations. By enabling the Union to adopt countermeasures not only after completion of dispute settlement proceedings but also where such procedures are blocked or rendered ineffective, the amended Regulation establishes a more flexible framework for the enforcement of international trade rules within the EU legal order, while also reflecting a broader shift towards a more assertive enforcement mechanism of the Union's trade rights.[141] The Amendment strengthens the Union's capacity to ensure practical effectiveness of its trade rights, including in situations of institutional blockage at the international level. At the same time, it reinforces the executive character of enforcement with the EU framework. Judicial review of enforcement measures remains available under Article 263 TFEU.[142] Individuals and member states may challenge the implementing acts adopted by the Commission under the Regulation, thereby ensuring effective compliance with constitutional principles such as proportionality and legal certainty. However, the WTO law itself does not operate as an autonomous standard of review; its internal relevance depends on the legislative implementation and institutional choice within the EU legal order. The enforcement model is therefore

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[138] See Articles 5(1ba) and 5(1bb) of the Regulation (EU) 654/2014 Concerning the Exercise of The Union's Rights for The Application and Enforcement of International Trade Rules, as amended by Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021.

[139] Ibid.; see WEIß – FURCULITA, *The Amended Trade Enforcement Regulation…*, pp. 170–171.

[140] See Article 5(1b)–(c) and Article 9(1a) of the Regulation (EU) 654/2014 Concerning the Exercise of The Union's Rights for The Application and Enforcement of International Trade Rules, as amended by Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021.

[141] See WEIß – FURCULITA, *The Amended Trade Enforcement Regulation…*, p. 172.

[142] See Article 263 of the Treaty on the Functioning of the European Union (TFEU).

indirect and institutionally mediated. While WTO obligations bind the Union internationally, their internal effect depends on legislative adaptation and executive action under EU law. The amended Trade Enforcement Regulation enhances EU's capacity to exercise its external trade rights, yet it does not transform WTO norms into directly enforceable standards withing the EU's legal order. The enforcement within EU remains centralized, executive-driven, and constitutionally controlled through the mechanisms of EU primary and secondary law.

5. DIRECT AND INDIRECT EFFECT OF WTO LAW WITHIN THE EUROPEAN UNION

The advanced regional integration level of the European Union, together with the distinctive system of its parallel membership in WTO, raises significant questions concerning the legal effects and enforcement issues of multilateral trade obligations and binding rulings of WTO adjudicatory bodies within the legal order of the EU, as well as their implications for both the European Union and its member states in terms of trade policy and competition. WTO law forms an integral part of the EU legal order,[143] and the member states of the EU are bound by the multilateral trade regime of WTO not only under rules of international law by virtue of their WTO membership, but also under EU law pursuant to the Treaty on the Functioning of EU.[144] In the hierarchy of norms, WTO law falling within EU competence is situated between EU primary law and EU secondary law, and, as a binding component of EU's international obligations, it requires both the institutions of the EU and member states to observe it, consequently, the secondary legislation of EU, as well as the national laws of EU member must to be interpreted, as much as possible, in conformity with those obligations, including the multilateral legal regime of WTO.[145]

International trade law, more specifically the WTO law, does not regulate the domestic legal effects of its norms, insofar as neither GATT nor other agreements within the WTO framework contain specific provisions governing direct applicability or judicial enforceability of WTO rules within national legal orders of members.[146] This absence of regulation cannot be understood as merely a deficiency or an oversight in drafting, instead, it reflects a deliberate choice by the WTO members aimed at accommodating diverse constitutional traditions and legal systems involved in the multilateral trading system.[147] By consciously refraining from prescribing precisely how WTO obligations

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[143] See HERRMANN – STREINZ, *c. d.*, p. 917, para. 111.

[144] See Article 216 para. 2 of the Treaty on the Functioning of the European Union (TFEU); WEISS – OHLER – BUNGENBERG, *c. d.*, p. 61, para. 125.

[145] See Court of Justice of the European Communities (ECJ), Judgment of 14 December 2000, *Parfums Christian Dior SA vs. Tuk Consultancy BV*, Joined Cases C-300/98 and C-392/98, ECLI:EU:C:2000:688, para. 47; see also WEISS – OHLER – BUNGENBERG, *c. d.*, p. 62, paras. 126, 128.

[146] See Panel Report, WTO, *USA – Sections 301–310 of the Trade Act 1974*, 22/12/1999 (WT/DS152/R), para. 7.72.

[147] See COTTIER, T. – OESCH, M. Die Unmittelbare Anwendbarkeit von GATT/WTO-Recht in der Schweiz. *Swiss Review of International and European Law*. 2004, Vol. 14, No. 2, pp. 128–129.

are ranked or enforced within various domestic legal orders, the legal regime of WTO preserves the constitutional autonomy of its member states in determining the status and effect of international trade law, in particular that of WTO law, in national legal systems.[148] WTO does not establish a legal order producing direct effect for individuals comparable to that of the EU, it rather remains primarily as a intergovernmental system of reciprocal trade obligations between sovereign actors, notwithstanding its increasing normativity and legislation in the field of international trade law, as well as existence of a sophisticated dispute settlement system.[149] Therefore, the binding force of WTO law operates principally on the concept of international responsibility, rather than through the conferral of enforceable rights upon private parties within domestic legal systems.[150] This understanding was expressly confirmed in *US – Section 301 Trade Act*, where the Panel rejected the characterization of WTO law as a self-contained legal order comparable to EU law and emphasized that WTO norms do not, as such, confer rights on individuals.[151] Panel clarified that WTO law does not create a legal system the subjects of which include private persons alongside states, and that any internal legal effects of WTO obligations depend exclusively on domestic constitutional orders.[152] This finding is particularly relevant in EU context, as it confirms that questions concerning the direct and indirect effect of WTO law must be resolved at level of EU constitutional law, rather than by reference to WTO norms themselves.

Divergent domestic reception of WTO law among members is traditionally explained through the distinction between monist and dualist approaches in international law.[153] Under the monist approach, international law forms part of the domestic legal order upon ratification and may, in principle, be directly applied by the courts.[154] By contrast, the dualist systems require legislative transformation before international norms may produce internal legal effects, emphasizing the separation between the international and domestic legal spheres.[155] WTO law accommodates both approaches by deliberately refraining from fixing a uniform model of domestic reception.[156] While this approach has facilitated the broad participation of states with diverse constitutional traditions, it has also led to fragmentation in the domestic enforcement of WTO obligations.[157]

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[148] See COTTIER, T. – SCHEFER, K. N. The Relationship Between World Trade Organization Law, National and Regional Law. *Journal of International Economic Law*. 1998, Vol. 1, No. 1, pp. 102, 111–112.

[149] See FABRI, *c. d.*, pp. 152–153.

[150] COTTIER – OESCH, *c. d.*, pp. 122–123.

[151] Panel Report, WTO, *USA – Sections 301–310 of the Trade Act 1974*, 22/12/1999 (WT/DS152/R), para. 7.72.

[152] See FABRI, *c. d.*, pp. 154–155.

[153] HERRMANN – STREINZ, *c. d.*, p. 919, para. 116.

[154] See GARG, S. Monist vs. Dualist Theory of International Law. *International Journal of Legal Science and Innovation* [online]. 2023, Vol. 5, No. 2, p. 61 [cit. 2026-03-16]. Available at: https://doij.org/10.10000/IJLSI.111584; COTTIER – SCHEFER, *c. d.*, pp. 116–117.

[155] See THÜRER, D. Völkerrecht und Landesrecht. *Schweizerische Zeitschrift für internationales und europäisches Recht*. 1999, Jhrg. 9, Nr. 3, pp. 217–218.

[156] FABRI, *c. d.*, p. 154.

[157] See COTTIER – OESCH, *c. d.*, pp. 126–127.

Within the legal system of the European Union, however, the monist-dualist dichotomy does not apply in a straightforward manner.[158] The EU constitutes an autonomous legal order with its own constitutional principles governing the legal reception, hierarchy and judicial enforceability of international law.[159] Although WTO agreements concluded by EU are binding upon the Union at international level, this binding legal force does not automatically translate into corresponding judicial enforceability within the EU legal order.[160] The Court of Justice of the European Union (CJEU) has consistently drawn a principled distinction between the existence of an international obligation and its capacity to operate as a standard of judicial review or as a source of individual rights.[161] WTO law holds an intermediate position within EU law: it is binding and legally relevant, yet generally excluded from serving as a benchmark for reviewing the legality of EU measures.[162]

The foundations of the restrictive approach of the European Union to the domestic effects of GATT and WTO law were laid in the case *International Fruit Company*, where the European Court of Justice was confronted with the question whether provisions of the GATT 1947 could be relied upon by the individuals to challenge Community measures.[163] The *International Fruit Company* case arose from national proceedings concerning the validity of Community rules on fruit import licenses, which were alleged to be incompatible with GATT obligations.[164] While the Court confirmed that GATT, as an agreement, was binding upon the Community at the international level, it held that its provisions could not be invoked by individuals before EU courts.[165] The Court based its conclusion on the systematic characteristics of GATT, emphasizing its flexibility, the existence of safeguard clauses, the possibility of negotiated derogations, and the predominance of diplomatic dispute settlements.[166] It further stressed that compliance with GATT obligations was subject to reciprocal arrangements and political assessment by contracting parties.[167] On that basis, Court concluded that GATT provisions lacked

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[158] See KLABBERS, J. A. M. The Reception of International Law in The EU Legal Order. In: SCHÜTZE, R. – TRIDIMAS, T. (eds). *Oxford Principles of European Union Law: Volume I* [online]. Oxford University Press, 2018, pp. 1210–1211 [cit. 2026-03-16]. Available at: https://doi.org/10.1093/oso/9780199533770.003.0043.

[159] See LENAERTS, K. L'autonomie de l'ordre juridique de l'Union. In: BARRETT, G. – RAGEADE, J. P. – WALLIS, D. – WEIL, H. (eds.). *The Future of Legal Europe: Will We Trust in It?* Cham: Springer, 2021, pp. 551–552.

[160] See Article 216 para. 2 of the Treaty on the Functioning of the European Union (TFEU); KLABBERS, *c. d.*, pp. 1217–1218.

[161] See LENAERTS, *c. d.*, p. 561; KLABBERS, *c. d.*, pp. 1221–1223.

[162] See WEISS – OHLER – BUNGENBERG, *c. d.*, p. 62, paras. 128–129; HERRMANN – STREINZ, *c. d.*, p. 919, para. 117.

[163] See MENDEZ, M. *The Legal Effects of EU Agreements.* Oxford: Oxford University Press, 2013, p. 175.

[164] Court of Justice of the European Communities (ECJ), Judgment of 12 December 1972, *International Fruit Company NV and others v. Produktschap voor Groenten en Fruit*, Joined cases 21-24/72, ECLI:EU:C:1972:115.

[165] Ibid., paras. 10–11, 27.

[166] Ibid., paras. 21–24.

[167] Ibid., paras. 21–22.

the precision and unconditionality required to confer enforceable rights,[168] thereby establishing the core doctrine denying direct effect to GATT law.

This legal reasoning was reaffirmed in *Germany v. Council*, which concerned an action brought by Germany against the common organization of the banana market, where it was argued that the EU banana import regime was incompatible with the GATT obligations and should therefore be annulled.[169] The Court rejected this argument, holding that the GATT provisions could not be relied upon as a standard of legality in the annulment proceedings, even when invoked by an EU member state.[170] It reiterated that the inherent flexibility of the GATT system and the discretion retained by the contracting parties precluded judicial enforcement within the legal order of the EU.[171] This judgement is significant in that it confirms that denial of direct effect is not confined to private parties, but applies equally to EU member states acting before the Court,[172] thereby underscoring the constitutional nature of the doctrine.

Following the establishment of WTO and the strengthening of its dispute settlement mechanisms, the European Court of Justice was invited to reconsider its earlier case law in *Portugal v. Council*, which concerned an annulment action against the Council decision concluding WTO agreements, where Portugal argued that the increased legislation of WTO system justified recognizing its direct effect.[173] This contention was rejected by Court, which acknowledged, on the one hand, that WTO dispute settlement system had enhanced legal certainty, but on the other hand, it held that WTO legal order nevertheless retained sufficient flexibility to preclude direct effect.[174] In particular, the Court emphasized the discretion afforded to the WTO members under DSU with respect to implementation, including negotiated solutions, compensation and temporary suspension of concessions.[175] It further relied on considerations of reciprocity, warning that the unilateral recognition of direct effect would risk placing the EU at a structural disadvantage vis-à-vis other members of the WTO.[176] This judgment systematized post-WTO doctrine and confirmed that WTO law generally cannot serve as benchmark for judicial review in EU courts.[177]

The openness of the Court of Justice to a more limited role for WTO law was illustrated in *Dior*, which arose from national litigation concerning trademark protection and raised questions about the interpretation of EU law in light of the TRIPS Agreement.[178]

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[168] Ibid., para. 27.

[169] Court of Justice of the European Communities (ECJ), Judgment of 5 October 1994, *Federal Republic of Germany v. Council of the European Union*, Case No. C-280/93, ECLI:EU:C:1994:367.

[170] Ibid., paras. 106–109.

[171] Ibid., paras. 106–108.

[172] Ibid., paras. 108–110.

[173] Court of Justice of the European Communities (ECJ), Judgment of 23 November 1999, *Portuguese Republic v. Council of the European Union*, Case No. C-149/96, ECLI:EU:C:1999:574.

[174] Ibid., paras. 36, 41.

[175] Ibid., paras. 37–38.

[176] Ibid., paras. 42–44, 46.

[177] Ibid., paras. 47–48.

[178] Court of Justice of the European Communities (ECJ), Judgment of 14 December 2000, *Parfums Christian Dior SA vs. Tuk Consultancy BV*, Joined Cases C-300/98 and C-392/98, ECLI:EU:C:2000:688.

While the Court denied a direct effect to the TRIPS provisions,[179] it held that the EU law must, as far as possible, be interpreted consistently with WTO obligations.[180] Importantly, the Court stressed that the absence of direct effect does not preclude all legal relevance to WTO law, but limits its role to one of interpretative guidance.[181] Thus, the *Dior* case established the principle of indirect effect of WTO law while preserving the general exclusion of direct enforceability. The limits of this indirect openness were clarified in the case *Van Parys*, which concerned reliance on WTO dispute settlement rulings in national proceedings relating to banana imports after the expiry of the reasonable period of implementation.[182] The Court held that WTO rulings do not acquire direct effect in EU's legal order, even after the implementation deadline has passed.[183] It emphasized that WTO dispute settlement rulings remain instruments governing inter-state responsibility and do not confer right upon individuals.[184] Moreover, the Court determined that expiry of the implementation period does not justify judicial review of EU measures, as it may undermine ability of the EU to pursue a mutually acceptable solution under WTO system.[185] Thus, this judgment confirms that neither binding nature of WTO rulings nor passage of time alters the non-direct-effect doctrine.

A similar line of reasoning underpinned the judgment in the case *Biret*, which involved claims for non-contractual liability against the EU for a damage allegedly caused by WTO-inconsistent measures adopted in the *EC-Hormones* dispute.[186] The Court rejected the claims, holding that the WTO obligations do not confer individual rights capable of grounding liability under EU law.[187] It further highlighted that recognizing liability would undermine the political discretion inherent in WTO compliance mechanisms and disturb the balance between adjudication and negotiated solutions provided for under the WTO dispute settlement system.[188] The Court also made it clear that neither the adoption of a WTO ruling not the expiry of the reasonable implementation period could alter that conclusion.[189] The argumentation of the *Biret* case was subsequently confirmed and consolidated in *FIAMM*, where the Court definitively excluded EU's non-contractual liability for losses arising from WTO-authorized retaliation.[190] Furthermore, the Court underlined that the WTO dispute settlement system is based

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[179] Ibid., paras. 43–44.

[180] Ibid., paras. 46–47.

[181] Ibid., paras. 45–47.

[182] Court of Justice of the European Communities (ECJ), Grand Chamber, Judgment of 1 March 2005, *Léon Van Parys NV v. Belgisch Interventie- en Restitutiebureau (BIRB)*, Case No. C-377/02, ECLI:EU:C:2005:121.

[183] Ibid., paras. 38–39.

[184] Ibid., para. 54.

[185] Ibid., paras. 50–51.

[186] Court of Justice of the European Communities (ECJ), Judgment of 30 September 2003, *Biret International SA v. Council of the European Union*, Case No. C-93/02 P, ECLI:EU:C:2003:517.

[187] Ibid., paras. 70–72.

[188] Ibid., paras. 64–67.

[189] Ibid., paras. 65–67, 76.

[190] Court of Justice of the European Communities (ECJ), Grand Chamber, Judgment of 9 September 2008, *Fabbrica italiana accumulatori motocarri Montecchio (FIAMM) and others v. Council of the European Union and Commission of the European Communities*, Joined Cases C-120/06 P and C-121/06 P, ECLI:EU:C:2008:476.

on inter-state responsibility and negotiated compliance, within which members retain discretion as to means and timing of implementation, including the acceptance of retaliation.[191] It also stressed that recognizing liability and allowing compensation claims in such circumstances would distort the freedom of action of the EU in its external trade relations and, at the same time, disrupt the institutional balance underlying the WTO system.[192]

Notwithstanding the generally restrictive approach to domestic effects of WTO law, the Court of Justice has recognized narrowly circumscribed exceptions in which WTO norms may influence judicial review within the EU legal order.[193] These exceptions do not amount to the recognition of the direct effect of WTO law, but are instead grounded in the voluntary self-binding of the EU legislature.[194] In this respect, the decisive factor is not the intrinsic legal nature of WTO rules, but whether the EU institutions have expressly or implicitly manifested an intention to give effect to specific WTO obligations through secondary legislation.[195] Such an exception was first recognized in *Fediol*, which concerned judicial review of a Commission decision adopted under EU trade legislation that expressly referred to relevant GATT provisions.[196] In that context, the Court allowed a reliance on those provisions based on the argument that EU legislature had deliberately incorporated them into EU law, thereby accepting their application as a standard for reviewing the legality of the contested measure.[197] Therefore, judicial review was permitted not because the GATT rules possessed a direct effect in general, but because the EU legislature had chosen to limit its own discretion by reference to specific international commitments, namely, WTO law.[198]

A related, though distinct, exception was developed in *Nakajima*, which arose in the context of anti-dumping measures adopted to implement particular obligations under the Anti-dumping Code of GATT 1947.[199] Court held that where the EU legislation is intended to give effect to specific WTO obligations, its legality may be reviewed in the light of those obligations.[200] Basis for judicial review here lay again in the legislative intent to implement international commitments, rather than in any autonomous

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[191] Ibid., paras. 129–131, 171–173.

[192] Ibid., paras. 108–115, 176–179.

[193] See MENDEZ, *c. d.*, pp. 197–199.

[194] Court of Justice of the European Communities (ECJ), Judgment of 22 June 1989, *EEC Seed Crushers' and Oil Processors' Federation (FEDIOL) v. Commission of the European Communities*, Case No. 70/87, ECLI:EU:C:1989:25454, paras. 28–30; Court of Justice of the European Communities (ECJ), Judgment of 7 May 1991, *Nakajima All Precision Co. Ltd v. Commission of the European Communities*, Case No. C-69/89, ECLI:EU:C:1991:186, paras. 31–36.

[195] Court of Justice of the European Communities (ECJ), Judgment of 23 November 1999, *Portuguese Republic v. Council of the European Union*, Case No. C-149/96, ECLI:EU:C:1999:574, para. 49.

[196] Court of Justice of the European Communities (ECJ), Judgment of 22 June 1989, *EEC Seed Crushers' and Oil Processors' Federation (FEDIOL) v. Commission of the European Communities*, Case No. 70/87, ECLI:EU:C:1989:254.

[197] Ibid., paras. 19–22, 28–30.

[198] Ibid., paras. 30–33.

[199] Court of Justice of the European Communities (ECJ), Judgment of 7 May 1991, *Nakajima All Precision Co. Ltd v. Commission of the European Communities*, Case No. C-69/89, ECLI:EU:C:1991:186.

[200] Ibid., paras. 31–36.

enforceability of international trade law within the legal order of EU.[201] The subsequent case law has consistently interpreted these exceptions restrictively.[202] The European Court has made it clear that a general intention to comply with international trade law is insufficient to trigger judicial review, the relevant secondary legislation itself must rather disclose a clear and specific implementation intent.[203] Moreover, Court has refused to extend the *Fediol* and *Nakajima* exceptions to EU measures adopted for the purpose of implementing WTO dispute settlement rulings, even in fields such as anti-dumping law, where those doctrines initially emerged.[204]

The case-law of the Court of Justice of the European Union discloses a coherent constitutional strategy governing the role of WTO law within the EU legal order. WTO obligations bind the European Union, as well as its member states, at the international level and may, at the same time, guide the interpretation of EU law, yet they are generally excluded from functioning as a standard of judicial review or as a source of individual rights.[205] Judicial enforceability of WTO law remains strictly exceptional in most cases and is contingent upon the clear manifestation of legislative self-binding, thereby ensuring that the core mechanisms of WTO compliance, i.e., negotiation, reciprocity and political discretion, are not displaced by judicial intervention within the EU legal order.[206] This restrictive approach highlights the structural tension between the effectiveness of WTO dispute settlement rulings and the autonomy of the EU legal system, which lies at the center of the debate on the legal effects and enforcement limits of WTO law in the EU.

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[201] Ibid., paras. 37–41.

[202] HERRMANN – STREINZ, *c. d.*, p. 927, para. 132.

[203] Court of Justice of the European Communities (ECJ), Judgment of 5 October 1994, *Federal Republic of Germany v. Council of the European Union*, Case No. C-280/93, ECLI:EU:C:1994:367, paras. 106–110; Court of Justice of EU (CJEU) Judgment of 16 July 2015, Court of Justice of the European Union (CJEU), Judgment of 16 July 2015, *European Commission v. Rusal Armenal ZAO*, Case No. C-21/14 P, ECLI:EU:C:2015:494, paras. 46, 50–54.

[204] Court of Justice of the European Communities (ECJ), Grand Chamber, Judgment of 1 March 2005, *Léon Van Parys NV v. Belgisch Interventie- en Restitutiebureau (BIRB)*, Case No. C-377/02, ECLI:EU:C:2005:121, paras. 39–40, 52–55; Court of Justice of the European Communities (ECJ), Grand Chamber, Judgment of 9 September 2008, *Fabbrica italiana accumulatori motocarri Montecchio (FIAMM) and others v. Council of the European Union and Commission of the European Communities*, Joined Cases C-120/06 P and C-121/06 P, ECLI:EU:C:2008:476, paras. 176–179.

[205] Court of Justice of the European Communities (ECJ), Judgment of 12 December 1972, *International Fruit Company NV and others v. Produktschap voor Groenten en Fruit*, Joined cases 21-24/72, ECLI:EU:C:1972:115, paras. 21–27; Court of Justice of the European Communities (ECJ), Judgment of 23 November 1999, *Portuguese Republic v. Council of the European Union*, Case No. C-149/96, ECLI:EU:C:1999:574, paras. 41–45.

[206] Court of Justice of the European Communities (ECJ), Grand Chamber, Judgment of 1 March 2005, *Léon Van Parys NV v. Belgisch Interventie- en Restitutiebureau (BIRB)*, Case No. C-377/02, ECLI:EU:C:2005:121, paras. 52–55; Court of Justice of the European Communities (ECJ), Grand Chamber, Judgment of 9 September 2008, *Fabbrica italiana accumulatori motocarri Montecchio (FIAMM) and others v. Council of the European Union and Commission of the European Communities*, Joined Cases C-120/06 P and C-121/06 P, ECLI:EU:C:2008:476, paras. 171–179.

6. IMPLICATIONS OF THE LIMITED ENFORCEABILITY OF WTO LAW AND DISPUTE SETTLEMENT RULINGS FOR THE MULTILATERAL TRADE REGIME

The legal framework of WTO and its dispute settlement system constitute a fundamental part of the modern international trading order. As a result, the limited enforceability of the WTO principles, particularly the principle of non-discrimination, as well as the insufficient effectiveness of the dispute settlement rulings of the WTO, can have significant legal, economic and political implications, affecting both the integrity and the proper functioning of the multilateral trading regime, and the economic development and the trade policy decisions of the countries engaged in international trade relations at regional and global levels. Effective enforcement is an essential feature of any rules-based system. Within the framework of WTO, the dispute settlement system serves as a mechanism to ensure that the rights and obligations of members, as established in WTO law, operate as legally binding commitments rather than merely political arrangements or voluntary undertakings.[207] The institutionalized compulsory mechanism for the settlement of trade disputes within WTO[208] functions to restrain protectionist unilateral conduct in trade and to substitute power-driven negotiations with predictable rules-based procedures based on multilateral consent of states.[209] Hence, the effectiveness of this mechanism is essential to safeguarding the rule-based character and credibility of the multilateral trading system.[210]

Where the enforceability of the WTO obligations and dispute settlement rulings is limited, the capacity of the international legal order to ensure the legal certainty and predictability in trade relations is substantially weakened.[211] Under such circumstances, member states may no longer be able to rely on the consistent interpretation and application of WTO rules when determining their trade policies or when assessing the legality of trade-restrictive measures. As a result, the erosion of legal certainty affects not only the relations between states as economic partners, but also the confidence in the stability and reliability of the multilateral trading system.[212] Moreover, limited enforceability diminishes compliance with the WTO obligations. The dispute settlement system of

[207] See LAMY, P. The Place of the WTO and Its Law in the International Legal Order. *European Journal of International Law* [online]. 2006, Vol. 17, No. 5, p. 976 [cit. 2026-03-16]. Available at: https://doi.org/10.1093/ejil/chl035.

[208] Ibid., p. 982.

[209] See ZIMMERMANN, T. A. *Negotiating the Review of the WTO Dispute Settlement Understanding* [online]. MPRA Paper No. 4498. Munich Personal RePEc Archive, 2006, pp. 37–39 [cit. 2026-03-16]. Available at: https://mpra.ub.uni-muenchen.de/4498/.

[210] Ibid., pp. 70–71.

[211] See GEORGOPOULOS, A. – MAVROIDIS. P. C. The WTO DSU 2.0: How Can We Go Back to the Future? In: BUCHAN, R. – FRANCHINI, D. – TSAGOURIAS, N. (eds.). *The Changing Character of International Dispute Settlement: Challenges and Prospects* [online]. Cambridge: Cambridge University Press, 2023, pp. 284–285, 290 [cit. 2026-03-16]. Available at: https://doi.org/10.1017/9781009076296.017; see Article 3 para. 2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

[212] See MESQUITA, P. E. Litigation and Negotiation in the WTO. Is Litigation the Continuation of Negotiation by other Means? In: AMARAL JÚNIOR, A. et al. (eds.). *The WTO Dispute*

WTO is designed to discipline unilateral trade measures by making a legal alternative to retaliation available.[213] In the absence of an effective enforcement, compliance depends more and more on political discretion rather than on a legal obligation.[214] As a result, the normative force and credibility of WTO law weakens.[215] This dynamic may also facilitate the persistence of protectionist measures, especially in the sectors where there are strong political pressures, that outweigh perceived costs of non-compliance.[216] Over time, such developments may undermine the integrity of the multilateral trading system. Besides, weak enforcement may also contribute to the gradual shift from a rules-based governance system towards power-based relations.[217] In general, economically strong member states are in a better position to deal with adverse rulings of WTO or to delay compliance, while the smaller and developing countries usually have limited capacity when it comes to securing effective redress.[218] Such imbalances may affect the equality of states and weaken the trust in fairness and neutrality of the multilateral trade order.

Consequences of ineffective enforcement of WTO law are also closely connected to broader developments in current international trade governance, namely, the increased protectionism, regionalization and fragmentation.[219] Where enforcement mechanisms lack effectiveness, the disciplining force of WTO principles is negatively affected, reducing constraints on unilateral trade measures and thereby facilitating the emergence of protectionist practices in trade relations, meaning that, member states apply measures designed to shield domestic industries from foreign competition as opposed to policies aimed at promoting free trade.[220] At the same time, diminished confidence in WTO's capacity to ensure compliance encourages states to turn to regional and preferential trade agreements as alternative governance frameworks that may offer more reliable and

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Settlement Mechanism [online]. Cham: Springer, 2019, p. 203 [cit. 2026-03-16]. Available at: https://doi.org/10.1007/978-3-030-03263-0_11.

213 Article 3 para. 2 and Article 23 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

214 See ZIMMERMANN, *c. d.*, pp. 37–39.

215 See MCDOUGALL, R. *Crisis in the WTO Restoring the WTO Dispute Settlement Function*. CIGI Papers No. 194. Centre for International Governance Innovation, 2018, pp. 1–2.

216 See ZIMMERMANN, *c. d.*, pp. 38–39.

217 SACERDOTI, G. – BORLINI, L. Systemic Changes in the Politicization of the International Trade Relations and the Decline of the Multilateral Trading System. *German Law Journal* [online]. 2023, Vol. 24, Special Issue 1, p. 28 [cit. 2026-03-16]. Available at: https://doi.org/10.1017/glj.2023.10.

218 See BOWN, C. P. – HOEKMAN, B. M. *Developing Countries and Enforcement of Trade Agreements: Why Dispute Settlement Is Not Enough*. World Bank Policy Research Working Paper No. 4450. Washington, DC: World Bank, 2016, pp. 10–11, 13 [cit. 2026-03-16]. Available at: http://documents.worldbank.org/curated/en/885521468158709803.

219 See SUNGJOON, C. Defragmenting World Trade. *Northwestern Journal of International Law & Business* [online]. 2006, Vol. 27, No. 1, pp. 40–42 [cit. 2026-03-16]. Available at: https://scholarlycommons.law.northwestern.edu/njilb/vol27/iss1/6/; SACERDOTI – BORLINI, *c. d.*, pp. 18–20.

220 See WEEDE, E. Protektionismus statt Freihandel gefährdet unsere Zukunft. *Jahrbuch für die Ordnung von Wirtschaft und Gesellschaft* [online]. 2017, Jhrg. 68, Nr. 1, pp. 96–97 [cit. 2026-03-16]. Available at: https://doi.org/10.1515/ordo-2018-0005; SCHLEMBACH, C. *Welthandel und Globalisierung Ausgehandelt? – Wie offen ist die Weltgesellschaft?* Paderborn: Brill Fink, 2024, pp. 49–50; SACERDOTI – BORLINI, *c. d.*, pp. 27–28.

less complex dispute resolution and enforcement mechanisms.[221] However, the growing reliance on such agreements and subsequent increased regionalism have produced a complex network of competing legal regimes characterized by divergent regulatory standards and enforcement mechanisms in international trade law, which creates a phenomenon described as the *"spaghetti bowl effect"*.[222] While regional trade agreements may enhance legal certainty and predictability within specific economic regimes, their broad expansion undermines the universality and effectiveness of core WTO principles, particularly, the MFN and National Treatment requirements, and contributes to a deep fragmentation of international trade law.[223]

These dynamics are particularly evident in the EU, which, as a highly integrated customs union and a major global trading actor, operates simultaneously within the multilateral framework of the WTO and an extensive network of preferential trade agreements.[224] The internal order of EU and regional trade instruments may provide more effective mechanisms for ensuring compliance than the WTO dispute settlement system, but, at the same time, the increasing reliance on such regional arrangements reinforces the fragmentation of global trade governance and makes the incoherence within the existing network of preferential trade agreements even more complex.[225]

Implications of limited enforceability of WTO law and its dispute settlement rulings come into sharp focus in the context of the current crisis of the Appellate Body of the WTO. Established as a standing adjudicatory body to ensure coherence and legal certainty in the interpretation of WTO agreements, the Appellate Body is essential to the authority and predictability of the WTO dispute settlement.[226] However, since 2019 the Appellate Body has been inoperative due to the continued blockage of new appointments of its members, most notably by the United States.[227] This paralysis has enabled a practice of *"appeals into the void"*, allowing losing parties to prevent the adoption and enforcement of panel reports indefinitely and thereby weakening the binding force of the dispute settlement outcomes of WTO.[228] In response, a group of WTO members, including EU, has tried to mitigate the enforcement gap through the establishment of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), which aims to preserve

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[221] See POMFRET, R. 'Regionalism' and the Global Trade System. *The World Economy* [online]. 2021, Vol. 44, No. 9, pp. 2501–2503 [cit. 2026-03-16]. Available at: https://doi.org/10.1111/twec.13155; SUNGJOON, *c. d.*, pp. 53–54.

[222] KLOEWER, B. The Spaghetti Bowl of Preferential Trade Agreements and the Declining Relevance of the WTO. *Denver Journal of International Law and Policy* [online]. 2016, Vol. 44, No. 3, pp. 429 [cit. 2026-03-16]. Available at: https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1045&context=djilp.

[223] See BALDWIN, R. – CARPENTER, T. Regionalism: Moving from Fragmentation Towards Coherence. In: COTTIER, T. – DELIMATSIS, P. (eds.). *The Prospects of International Trade Regulation*. Cambridge: Cambridge University Press, 2011, pp. 138, 148.

[224] See SUNGJOON, *c. d.*, pp. 52, 70–71; POMFRET, *c. d.*, p. 2507.

[225] See BALDWIN – CARPENTER, *c. d.*, pp. 136–138; POMFRET, *c. d.*, pp. 2497–2498.

[226] See WEISS – OHLER – BUNGENBERG, *c. d.*, p. 115, para. 266; SACERDOTI – BORLINI, *c. d.*, p. 36.

[227] See VIDIGAL, *c. d.*, pp. 863–864.

[228] See SACERDOTI – BORLINI, *c. d.*, p. 28.

appellate review in international trade disputes on a provisional basis.[229] While the MPIA reflects the commitment of participating states to uphold the rules-based character of WTO dispute settlement,[230] its limited membership number and interim nature underscore asymmetry and fragmentation of the current system.[231] Against this background, the Appellate Body crisis has undermined WTO jurisprudence, reinforced enforcement disparities between the economically strong and weaker states and accelerated structural shifts towards protectionism, regionalism and fragmentation, thereby calling into question credibility and long-term viability of the multilateral trade system.

7. CONCLUSION

International trade law represents an essential component of the contemporary international legal order, shaping free trade, market access and competition in a global economic system that has become increasingly interdependent in the last decades. By establishing common rules and institutional mechanisms for cooperation, it seeks to reduce trade barriers and promote stability in cross-border economic relations. In this context, WTO plays a central role by determining the normative framework for international trade obligations and providing a structured mechanism for resolving trade disputes. Effectiveness of this framework depends on enforceability. WTO dispute settlement system is designed to give legal force to multilateral trade obligations through compulsory adjudication and authorized remedies. However, enforcement under WTO law remains structurally indirect relying on member-driven implementation, political oversight within DSB and temporary retaliatory measures rather than coercive mechanisms comparable to those in domestic legal systems. As a result, effectiveness of the outcomes of WTO adjudication depends greatly on the interaction between international rulings and domestic legal orders.

These dynamics are demonstrated particularly well in the context of EU. As a major participant in global trade and a frequent user of the WTO dispute settlement system, the EU is deeply integrated in the multilateral trading regime while also functioning within a highly constitutionalized internal legal order. Consistent refusal of the Court of Justice of the EU to acknowledge a direct effect of WTO agreements and dispute settlement rulings, reflects constitutional considerations, as well as the normative structure of WTO compliance, which preserves certain discretion for negotiated implementation and temporary remedies. At the same time, relevance of WTO law has been expressly

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[229] Ibid., p. 29; PAUWELYN, J. The WTO's Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What's New? *World Trade Review* [online]. 2023, Vol. 22, No. 5, p. 694 [cit. 2026-03-16]. Available at: https://doi.org/10.1017/S1474745623000204.

[230] See the Preamble of the *Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU*, WTO, 30 April 2020 (JOB/DSB/1/Add.12).

[231] See ZHOU, W. – CROCHET, V. Confronting Fragmentation: A Quest for a Plurilateral Appellate Mechanism Under the WTO. *Journal of World Investment & Trade* [online]. 2025, Vol. 26, pp. 276–278, 291–292 [cit. 2026-03-16]. Available at: https://doi.org/10.1163/22119000-12340359; WEISS – OHLER – BUNGENBERG, *c. d.*, p. 126, para. 298.

recognized by the legal order of the EU through interpretative consistency and limited forms of legislative self-binding, resulting in a limited and differentiated model of internal effect.

Limited enforceability also creates broader systemic consequences within multilateral trade system. Weak enforcement capacities of WTO undermine legal certainty and predictability. Moreover, they diminish confidence in the uniform application of WTO rules and reduce the disciplining effect of international trade principles on unilateral trade measures. These effects are usually distributed unevenly, as economically powerful members are better positioned to carry the financial burdens of deficient compliance, while smaller countries often face structural barriers to securing effective redress against trade violations. Such asymmetries risk reinforcing power-based dynamics in place of a formalized system committed to rules-based governance. These tensions are intensified by the ongoing paralysis of WTO's appellate function, which weakness the binding force of its dispute settlement outcomes and threatens the coherence, credibility, and stability of the multilateral trading system.

Considering these structural limitations, proposals to strengthen enforcement warrant careful consideration. Recognition of direct effect of WTO provisions would enhance their practical effectiveness by enabling domestic judicial review of inconsistent national trade measures and reducing reliance on inter-state retaliation. However, such development appears highly unlikely within the current state-centered architecture of the WTO, which preserves negotiated flexibility and member-controlled remedies. While regional trade agreements and MPIA offer pragmatic responses to the paralysis of Appellate Body, they remain limited in scope and do not fully restore universality and systemic coherence of the multilateral dispute settlement regime. Consequently, effectiveness of WTO law continues to depend largely on political commitment and the relative economic capacity of its members. In this context, the European Union provides a particularly illustrative example of how a highly developed legal order accommodates international trade obligations within its constitutional structure while also preserving internal regulatory autonomy. Ultimately the interaction the WTO dispute settlement and domestic legal systems will remain a decisive factor for the credibility and practical effectiveness of the multilateral trading system.

Marika Turava, LL.M.
Ivane Javakhishvili Tbilisi State University, Faculty of Law
Heidelberg University, Faculty of Law
marika.turava@tsu.ge
ORCID: 0009-0009-3976-989X