ADAPTATION OF LEVER EFFECT THEORY TO THE NEW CONTEXT: A RE-EXAMINATION OF THE RELATIONSHIP BETWEEN AGRICULTURE DISPUTE SETTLEMENT AND NEGOTIATION IN THE WTO

Hui Chen*

ABSTRACT

Among the theories related to dispute settlement and negotiation in the World Trade Organization (hereinafter "WTO"), Lever Effect Theory stands out as it concentrates on analyzing the relationship between agriculture dispute settlement and multilateral agriculture negotiation. However, due to the paralysis of the Appellate Body (hereinafter "AB") and the fragmentation of trade rulemaking, the original patterns of dispute settlement and multilateral negotiation in the WTO are facing serious challenges. This article attempts to demonstrate the limitation of agriculture dispute settlement and its impact on the Lever Effect, while accommodating the Lever Effect Theory to the AB's paralysis. First, it argues that the respondents would take advantage of the limitation of agriculture dispute settlement and employ litigation strategies to counter the Lever Effect. Second, the Lever Effect would be hampered without a full-fledged dispute settlement system since the consistency of WTO jurisprudence and the original "checks and balances" in the WTO have been severely affected.

* Post-doctoral Fellow of Department of Law, Faculty of Law, University of Hong Kong. The author can be reached at: chenm3312@gmail.com.

臺灣大學學術期刊資料庫

KEYWORDS: *Lever Effect, agriculture dispute settlement, Agreement on Agriculture, multilateral agriculture negotiation*

臺灣大學學術期刊資料庫

I. INTRODUCTION

Professor Josling and Professor Tangermann argued in their case study that the previous General Agreement on Tariffs and Trade (hereinafter "GATT") negotiation experience (particularly in the Kennedy, Tokyo, and Uruguay Rounds) reflects a Lever Effect of agriculture dispute settlement on facilitating the negotiation process.[1] Professor Petersmann further indicates that the Lever Effect of agriculture dispute settlement continues to exist in the World Trade Organization (hereinafter "WTO").[2] However, the prior case study related to Lever Effect Theory was conducted over a decade ago and was not necessarily designed to take into account the paralysis of the Appellate Body (hereinafter "AB") and the progress of agriculture negotiation. Thus, this article re-examines the theory and makes accommodation of the theory to the emerging issues related to dispute settlement and negotiation in the agriculture sector.

The WTO rule framework of agriculture trade consists of Agreement on Agriculture (hereinafter "AoA"), Schedules of Concessions of the Members, the declarations and decisions made in the General Council and Ministerial Conference, and other related agreements and legal documents. Among them all, AoA is the backbone of the WTO trade regime in the agriculture sector. However, some provisions of AoA are either ambiguous (e.g., Annex 2—the standard of non-distorting agricultural subsidies) or outdated (e.g., Article 13—the peace clause).[3] Export subsidies have been agreed by the WTO Members to be eliminated, but relevant provisions on export subsidies (e.g., Articles 8, 9, and 10) have yet been revised for implementation. In addition, the restraint on the trade-distorting measures is considered outdated, as it only provides a reference price to calculate distortion degree dated back to the period of 1986-88.[4] Meanwhile, a temporary peace clause on Public Stockholding Programmes (Annex 2 of AoA) was agreed upon by all Members in the Bali Ministerial Conference.[5]

---

[1] Timothy Josling & Stefan Tangermann, *Production and Export Subsidies in Agriculture: Lessons from GATT and WTO Disputes Involving the US and the EC*, *in* TRANSATLANTIC ECONOMIC DISPUTES: THE EU, THE US, AND THE WTO 207, 225 (Ernst-Ulrich Petersmann & Mark A. Pollack eds., 2003).

[2] *See generally* Ernst-Ulrich Petersmann, *Strategic Use of WTO Dispute Settlement Proceedings for Advancing WTO Negotiations on Agriculture*, *in* REFORMING THE WORLD TRADING SYSTEM: LEGITIMACY, EFFICIENCY, AND DEMOCRATIC GOVERNANCE 127 (Ernst-Ulrich Petersmann & James Harrison eds., 2005).

[3] *See* Lorand Bartels, *The Relationship Between the WTO Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures* 10-12 (Univ. Cambridge Fac. L., Legal Studies Research Paper Series, Paper No. 38, 2015).

[4] Panos Konandreas & George Mermigkas, *WTO Domestic Support Disciplines: Options for Alleviating Constrains to Stockholding in Developing Countries in the Follow-Up to Bali* 10 (FAO Commodity & Trade Pol'y Rsch., Working Paper No. 45, 2014).

[5] World Trade Organization, Ministerial Decision of 7 December 2013, WTO Doc. WT/MIN(13)/38, WT/L/913 (Dec. 7, 2013).

臺灣大學學術期刊資料庫

The constructive ambiguity of AoA provisions is essential for bridging the gap between the GATT Contracting Parties during the Uruguay Round, although it poses an obstacle for legal interpretation in adjudication.[6] The Members have been challenging the legal interpretation constituted "overreach" by the panel and the AB in some agriculture cases, e.g., the challenge raised by the United State (hereinafter "US") in *US — FSC*, *US — Wheat Gluten*, and *US — Lamb*.[7] In addition, the US has repeatedly stressed its opposition to the judicial overreach of the AB, indicating the judges "adding or diminishing the rights and obligations" of Members through legal interpretation.[8] The failure to reach consensus between the Members over the path of preserving the dispute settlement system further led to the AB crisis, which went beyond the debate of "judicial overreach" and reflected the systematic imbalance between legislative and judicial functions of the WTO.[9]

Revolving around the application and accommodation of Lever Effect Theory in the new context, the article is organized as follows. After the introduction, Part II re-examines the Lever Effect Theory and the development of Lever Effect Theory. Part III elaborates the limitation of dispute settlement system that affects the application of Lever Effect Theory. Part IV lays out the accommodation of Lever Effect Theory to the emerging issues in the new context. Part V then concludes this article.

II. RE-EXAMINATION OF LEVER EFFECT THEORY

A. The Impact of Lever Effect on Multilateral Agriculture Negotiation and AoA

Professor Timothy Josling and Professor Stefan Tangermann argued in their case study that the dispute settlement on agriculture subsidies, including domestic support and export subsidies, would create momentum for agricultural concessions in GATT and WTO multilateral negotiations.[10] On this basis, Professor Ernst-Ulrich Petersmann further developed the Lever Effect Theory. He argues that the WTO Members resort to the quasi-

[6] RESEARCH HANDBOOK ON THE WTO AGRICULTURE AGREEMENT: NEW AND EMERGING ISSUES IN INTERNATIONAL AGRICULTURAL TRADE LAW 218 (Joseph A. McMahon & Melaku Geboye Desta eds., 2012).
[7] Terence Stewart, *Disputed Court: A Look at the Challenges to (and from) the WTO Dispute Settlement System*, GLOB. BUS. DIALOGUE 7 (2017), http://www.gbdinc.org/wp-content/uploads/2017/12/Terence_Stewart_at_GBD_Disputed_Court_12-20-2017.pdf.
[8] U.S. MISSION TO INT'L ORG. IN GENEVA, STATEMENTS BY THE UNITED STATES AT THE WTO GENERAL COUNCIL MEETING (2019), https://geneva.usmission.gov/2019/10/15/statements-by-the-united-states-at-the-wto-general-council-meeting/.
[9] Weihuan Zhou & Henry Gao, *Overreaching or Overreacting? Reflections on the Judicial Function and Approaches of WTO Appellate Body*, 53(6) J. WORLD TRADE 951, 970-73 (2019).
[10] *See* Josling & Tangermann, *supra* note 1, at 214, 225.

臺灣大學學術期刊資料庫

judicial proceedings in agriculture cases not just for resolving trade conflicts, but also for employing the rule clarification (provided by the panel and the AB) as leverage in future negotiations.[11] In other words, the well-planned strategies to file lawsuits, e.g., the timing to bring lawsuits and the selection of targeted trade-distorting measures, would contribute to the binding clarification on the contested measures and strengthen the bargaining positions of the complainants to achieve further trade liberalization in agriculture negotiations.[12]

To cope with the negotiation deadlock and the struggling of dispute settlement system, Josling argues that these two problems are co-related in the agriculture sector, and suggests that "healthy tension" between agriculture dispute settlement and multilateral agriculture negotiation should be maintained to provide positive momentum.[13] On the one hand, the settlement of disputes arise out of the ambiguous AoA provisions, particularly on the application of trade-distorting agricultural subsidies, rely as much on the adjudication as on multilateral negotiation among the Members.[14] On the other hand, dispute settlement system is regarded as the last resort to provide definition and interpretation of non-distorting or distorting agricultural subsidies, while preserving the balance of advantage in agriculture negotiations.[15] In this regard, Lever Effect Theory demonstrates the impact of agriculture dispute settlement on multilateral agriculture negotiation and AoA, as specified in the following three aspects.

First, the panel (in both GATT and WTO eras) and the AB (in the WTO dispute settlement system) provide legal clarification on agriculture trade rules, which would discourage deliberate manipulation of ambiguous provisions for applying trade-distorting subsidies. The rule interpretation on trade-distorting subsidies stimulates further discussions on the contested issues among the interested countries. For example, agricultural domestic subsidies (i.e., domestic support stipulated in AoA) were allowed as exceptions to national treatment as per Article III:8(b) of GATT 1947, but that does not mean the subsiding countries could use the trade disruptive subsidies without precautions. The GATT panels in *Canned Fruit* (1981-85), *Oilseed* (1988-93) and *Wine* (1985-86) clarified the restrictions of applying agricultural subsidies (Article XVI of GATT 1947), which include notification obligation for increasing exports and not causing "serious prejudice" to the trade interests of other countries.[16] Given the abuse of

[11] Petersmann, *supra* note 2, at 142.
[12] *Id.* at 139-41.
[13] Timothy Josling et al., *Implications of WTO Litigation for the WTO Agricultural Negotiations*, 19 IPC ISSUE BRIEF 1-4, (Mar., 2006), https://www.researchgate.net/publication/252210753_Implications_of_WTO_Litigation_for_the_WTO_Agricultural_Negotiations.
[14] *Id.* at 14, 18-19.
[15] *Id.* at 19-20.
[16] *See* Josling & Tangermann, *supra* note 1, at 210-14.

臺灣大學學術期刊資料庫

agricultural domestic subsidies is not shielded from legal challenges, the discipline of domestic support has been one of the major topics in multilateral negotiation in GATT and the WTO, which was further developed into Annex 2 (Domestic Support: The Basis for Exemption from the Reduction Commitments) and Annex 3 (Domestic Support: Calculation of Aggregate Measurement of Support) of the AoA.[17]

Second, the agriculture dispute settlement process provides incentives for bilateral negotiation between the disputants, and a successful settlement through the conclusion of bilateral agreements would pave the way for further concessions in multilateral agriculture negotiation. In addition, agriculture dispute settlement would affect the direction of domestic policy reform. The policy changes of the subsidizing countries further create momentum for bilateral and multilateral concessions in the agriculture sector. For example, in *Canned Fruit* (1981-85) dispute between the US and the Europe Communities (hereinafter "EC") led to the conclusion of the 1985 Canned Fruit Agreement by both disputants, in which the EC committed to cut the subsidies on canned pears and peaches. The settlement on *Oilseed* (1988-93) dispute also contributed to the reform of Common Agricultural Policy (CAP) and the compromise reached in the Blair House Accord, which further provides a solid foundation for the conclusion of AoA in the WTO.[18] However, it is manifested that the timing of *Oilseed* case helps to expand its significance on facilitating agriculture negotiation, as the Uruguay Round stalled on the concessions of agriculture subsidies when the Blair House Accord coincidently addressed the pending issues on the disciplines of using trade disruptive subsidies.[19] If the timing of the case (the economic and political environment) is not right, such as *Poultry* (1982-86) dispute, then agriculture dispute settlement (primarily in the form of consultation) may be stagnated due to the protracting strategy employed by the disputants.

Third, the persistent legal challenges on agricultural subsidies would raise the diplomatic cost of the subsidizing countries, and the Members with common trade interests could put pressure on the respondents over the contested measures. Although not all agriculture cases have been successfully resolved, agriculture dispute settlement stands out as a legitimate tool to defend trade interests as an alternative to bilateral negotiation and unilateral retaliation. More importantly, agriculture dispute settlement provides a platform to raise most-concerned issues from the complainants in the form of legal challenges, which would gain support from

[17] *Id.* at 223-25.
[18] STEPHEN HEALY ET AL., THE IMPLICATION OF THE URUGUAY ROUND AGREEMENT ON AGRICULTURE FOR DEVELOPING COUNTRIES ch. 1.2.5 (1998), https://www.fao.org/3/w7814e/W7814E04.htm.
[19] *See* Josling & Tangermann, *supra* note 1, at 213-14.

臺灣大學學術期刊資料庫

other interested countries to fight against the trade disruptive subsidies.[20] For example, in *Sugar* (1982) dispute, the US challenged the EC on its export subsidies to suppress the world market price of sugar products and thus joining Australia and Brazil as an alliance to force the EC to sign the International Sugar Agreement. Although the *Sugar* case does not directly contribute to progress in multilateral negotiation, the EC started to feel the diplomatic pressure from the use of export subsidies in the Uruguay Round. The momentum on restricting the use of export subsidies was carried over to *Pasta* (1982-87), as the EC agreed to limit its export subsidies on pasta products and then accepted the texts under Article 10 of AoA (i.e., Prevention of Circumvention of Export Subsidy Commitments).[21] However, it is noteworthy that an exemption was also required by the EC, which allows the use of export subsidies on the incorporated agricultural products for compensating the higher costs of primary products (Article 11 of AoA).

B. The Variation of Lever Effect in the WTO

Professor Petersmann refined the Lever Effect Theory and provided further evidence to demonstrate the following functions of agriculture dispute settlement on facilitating negotiation.[22] First, agriculture dispute settlement would help identify the pending issues in AoA that need further discussion among the Members through the adoption of binding rulings.[23] Second, the well-planned litigation strategies would improve the bargaining positions of the complainants, through either the binding clarifications on the contested disciplines after the adoption of the rulings, or the diplomatic/legal pressures on the respondents from the conduct of persistent legal challenges.[24] Third, the agriculture cases brought by various Members against the commonly contested measures or the same respondent would encourage other Members with collective interests to engage in the dispute settlement (as third parties) and further raise the contested measures as systematic concerns in multilateral negotiation.[25]

---

[20] *Id.* at 220.
[21] *Id.* at 217-18.
[22] *See generally* Petersmann, *supra* note 2.
[23] For example, the Appellate Body of *EC — Export Subsidies on Sugar* provides a specific cross-subsidization standard and new rule clarification on the subsidy disciplines in Articles 9 and 10 of AoA. *Id.* at 138, 142.
[24] According to Professor Petersmann, Brazil strengthened its bargaining power through the adjudication of *US — Upland Cotton* (DS267). The dispute settlement process of upland cotton case facilitated the negotiation over subsidy reduction on cotton products and establishment of sub-committee on cotton under the Agriculture Committee of the WTO. *Id.* at 137-38.
[25] *EC — Export Subsidies on Sugar* has been filed by three different Members (i.e., Australia in DS265, Brazil in DS266, and Thailand in DS268) against the export subsidies employed by the EC on its sugar products, and attracted twenty-five Members to join the dispute settlement as third parties. The cross-subsidization standard was further raised as a systemic concern in the agriculture trade regime in relation to the disciplines of domestic support (Articles 6 and 7 of AoA) and export

臺灣大學學術期刊資料庫

According to the case study of Professor Petersmann, Lever Effect is also reflected in the WTO.[26] One significant example of the Lever Effect in the WTO is *US — Upland Cotton*, which is filed by Brazil to challenge the US agriculture subsidies on upland cotton products. The panel ruled against the US, and found that the measures at issue constitute a monetary incentive to cotton producers, thus limiting the production choice of producers and causing trade distortion.[27] In addition, the targeted domestic support measures were mislabelled by the US, and should be restricted due to the trade-distorting effect on production.[28] The panel ruled that the measures at issue were not shielded by the Peace Clause as per Article 13(b)(ii) of AoA.[29] Similar to the *US — EC oilseeds* dispute, *US — Upland Cotton* was brought up due to the lack of progress in the agriculture negotiation. The ruling of *US — Upland Cotton* sent a strong signal to the key players in the WTO (particularly the US and EU), as the Peace Clause can no longer justify the excessive use of distorting agriculture subsidies. With more agriculture cases filed against the US and the EU, the developing countries have been piling on the pressure to curtain trade-distorting agriculture subsidies.[30] In addition, the settlement of *US — Upland Cotton* contributes to the special treatment of cotton products, as a sub-committee on cotton was established under the WTO Agriculture Committee.[31]

However, the function of the dispute settlement system has been restricted after the AB paralysis, and Lever Effect Theory should be re-considered in the new context. With the absence of the AB, the Members can simply "appeal the case into the void" or leave the panel proceedings "floating" without the adoption of the ruling.[32] Thus, the limitation of the dispute settlement system with the AB paralyzed should be taken into account in the re-examination and accommodation of Lever Effect Theory.

With the AB paralyzed and fragmented trade rulemaking, the significance of applying the Lever Effect Theory is to explore what should be the relationship between agriculture dispute settlement and multilateral negotiation (the legislative process) in response to the emerging problems, e.g., the role of dispute settlement system (the debate of judicial activism) and the approaches of agriculture trade liberalization in the new context. The

---

subsidies (Articles 9 and 10 of AoA). *Id.* at 138.

[26] *Id.* at 135-41.

[27] Panel Report, *United States — Subsidies on Upland Cotton*, ¶¶ 7.1207, 7.1212, 7.1306-.1308, WTO Doc. WT/DS267/R (adopted Mar. 21, 2005).

[28] *Id*. ¶ 8.3.

[29] Darren Hudson et al., *The WTO Cotton Case and US Domestic Policy*, 20 CHOICES 143, 143 (2005), https://www.choicesmagazine.org/2005-2/wto/2005-2-10.pdf.

[30] *See* Petersmann, *supra* note 2, at 140.

[31] *Sub-committee Set Up on Cotton*, WTO (Nov. 19, 2004), https://www.wto.org/english/news_e/news04_e/sub_committee_19nov04_e.htm.

[32] Joost Pauwelyn, WTO Dispute Settlement Post 2019: What to Expect? What Choice to Make?, 7-13, 18-19 (July 7, 2019) (unpublished manuscript) (on file with author) .

臺灣大學學術期刊資料庫

Lever Effect Theory introduces the role of quasi-judicial proceedings in the "checks and balances" of the WTO, which refers to the separation of powers between quasi-judiciary (dispute settlement system), the legislature (the ruling-making process through the Members' multilateral negotiation) and executive (domestic policy changes implemented by the Member's governments).[33] In this vein, Professor Petersmann indicates that agriculture dispute settlement and multilateral negotiation should be maintained in a consistent relationship to facilitate trade liberalization.[34]

The following section will discuss related theories on dispute settlement and agriculture trade liberalization. The study on different forms of (e.g., unilateral, bilateral, regional and multilateral) trade liberalization is to explore whether the WTO's "checks and balances" (between quasi-judicial proceedings, multilateral negotiation and domestic policy reform), as elaborated in the Lever Effect Theory, are affected by the new emerging issues, such as the AB crisis and the prevalence of regional trade negotiation. The common objective of re-examining Lever Effect Theory and other related theories is to analyze the approaches for preserving dispute settlement system and restoring the balance between legislative powers and quasi-judicial proceedings in the new context.[35]

C. Theories on Dispute Settlement and Agriculture Trade Liberalization

The debate over the judicial overreach (or activism) of the AB revolves around how to draw the boundary between the judicial power (of the AB) and the legislative power (of the Members) in the WTO.[36] According to Fuad Zarbiyev, the major concerns on judicial activism of international tribunals lie in their judicial power to reshape the international commitments of countries through legal interpretation.[37] Although the judicial power is excised according to the international treaties, the judicial boundary of the tribunals is hard to draw due to the constructive ambiguity of international treaties and the widely involved interests of countries.[38] The procedural concerns on the AB raised by the US (e.g., notice in advance before the AB judges resign) could be addressed by simply introducing clarification or amendments to Dispute Settlement Understanding (hereinafter "DSU") provisions,[39] but the systematic concerns (e.g., judicial overreach) is beyond

[33] *See* Petersmann, *supra* note 2, at 141-44.
[34] *Id*. at 139.
[35] *See* Zhou & Gao, *supra* note 9, at 970-77.
[36] *See id*. at 956.
[37] Fuad Zarbiyev, *Judicial Activism in International Law—A Conceptual Framework for Analysis*, 3(2) J. INT'L DISP. SETTLEMENT 247, 248 (2012).
[38] *Id.* at 260.
[39] The General Council, *Communication from the European Union, China, Canada, India, Norway,*

臺灣大學學術期刊資料庫

the debate of "judicial activism or self-restraint," which involves the political compromise between the WTO Members. In this regard, the US is utilizing the AB crisis as leverage to force other Members to accept its proposals for the WTO reform.[40]

Some scholars ascribe the non-compliance issues of the AB to a series of reasons from legal and practical perspectives, such as the constructive ambiguity of WTO agreements,[41] the heavy workload of the AB,[42] and the duty of the AB to constrain trade protectionist measures.[43] It is also noted that the frequent challenges towards the AB, particularly by the US, represent the political considerations to remove the restrictions by the AB on the application of trade defense instruments.[44] Although the duties to discipline protectionist measures and clarify ambiguous rules may justify the conduct of the AB in some cases, the "overreach" challenges and the AB crisis still reflect the structural defects of the WTO.

Despite the non-compliance issues raised by the Members, the quasi-judicial proceedings cannot and shall not supplant the function of negotiation. First of all, the quasi-judicial proceedings shall not replace the function of negotiation according to the existing WTO rules agreed by the Members. For example, the binding rulings or rule interpretations rendered by the panel and the AB cannot "add to or diminish the rights and obligations agreed by the Members" (DSU Article 19). In addition, the quasi-judicial proceedings shall be conducted according to the existing substantive and procedural rules as stipulated in the DSU, and the judicial review scope is restricted to the extent of resolving the conflict (Article 1.2 of DSU). By comparison, the rule-making or the negotiation process conducted between the Members are

---

New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore and Mexico to the General Council, WTO Doc. WT/GC/W/752 (Nov. 26, 2018).

[40] Amrita Bahri, *Appellate Body Held Hostage: Is Judicial Activism at Fair Trial?*, 53(2) J. WORLD TRADE 293, 313 (2019).

[41] The line between "norm creation" and "norm clarification" is deemed to be blurry and hard to define in the judicial practice of the Appellate Body [hereinafter AB] due to the ambiguities of WTO rules. *See* Tetyana Payosova et al., *The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures*, PIIE POL'Y BRIEF 8-9 (2018), https://www.piie.com/system/files/documents/pb18-5.pdf; *see also* Stewart, *supra* note 7, at 2.

[42] The United State [hereinafter US] criticized that the AB process frequently exceeds the 90-day timeframe, thus violating Article 17.5 of the Dispute Settlement Understanding (DSU). However, Vidigal indicated that the heavy workload of the AB, e.g., dealing with many cases at the same period, highly complex nature of some cases, the obligation to respond to each issue raised by the parties, and the translation requirement, leads to the delay of working process. *See* Geraldo Vidigal, *Living Without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis*, 20 J. WORLD INV. & TRADE 862, 868-69 (2019).

[43] Zhou and Gao contend that the AB has been making efforts to strike an appropriate balance between constraining the protectionist measures and maintaining regulatory autonomy. *See* Zhou & Gao, *supra* note 9, at 962-70.

[44] Elvire Fabry & Erik Tate, *Saving the WTO Appellate Body or Returning to The Wild West of Trade?* 4-18 (Jacaques Delors Inst., Policy Paper No. 225, 2018), https://institutdelors.eu/wp-content/uploads/2018/05/SavingtheWTOAppellateBody-FabryTate-June2018.pdf.

臺灣大學學術期刊資料庫

not restricted to these procedural and substantive rules, and they can revise or even formulate new rules either by reaching consensus or through a majority votes (either simple majority or special majority depending on the nature of the issue).[45] Secondly, the quasi-judicial proceedings cannot supplant the function of negotiation judging from the practice of rule-making in the WTO. As a Member-driven organization, negotiation is the legitimate platform for the Members to discuss and formulate trade rules in the WTO. In the agriculture sector, the proposal to eliminate the application of export subsidies should be submitted to the Ministerial Conference for discussion,[46] and in practice, it takes the consensus decision by the Members to decide the issue in the Nairobi Ministerial Conference.[47] In comparison, the judicial approach of dispute settlement system has not been conferred with the power to decide the timeframe for the elimination of export subsidies. In the context of the AB paralysis, the power and credibility of the judicial branch have been weakened in the practice of dispute settlement, and the blockage of the reappointment of the AB judges further reminds the international community that the WTO is driven by the Members instead of the quasi-judicial bodies.[48]

Since the debate over the judicial overreach of the AB (or the debate over "self-restraint and judicial activism" of the AB judges) involves both legal and political considerations,[49] it is argued that the solution to the AB crisis should echo both the legal concerns and political demands from the WTO Members.[50] Although the self-restraint of international tribunals could be guided through the principles of reciprocity and mutual recognition, the exercise of judicial discretion involves the case-by-case calibration of norms application (e.g., proportionality) [51] and the integration of conflict social and political values.[52] Thus, the relationship between "self-restraint" and

[45] According to Article IX(2) of Marrakesh Agreement Establishing the World Trade Organization, the decision to adopt an authoritative interpretation shall be taken by a three-fourths majority of the Members. The amendments to the WTO agreements (with some exceptions where the amendments call for the consensus decision) shall take effect only for the Members that have accepted them with two-thirds majority votes, as per Article X of the Marrakesh Agreement. *See* Marrakesh Agreement Establishing the World Trade Organization arts. IX(2), X, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter Marrakesh Agreement].

[46] Article IV(1) of Marrakesh Agreement Establishing the World Trade Organization stipulates that the Ministerial Conference shall have the authority to make decisions on all matters under any of the Multilateral Trade Agreements. *See* Marrakesh Agreement, art. IV(1).

[47] World Trade Organization, Ministerial Decision of 19 December 2015, WTO Doc. WT/MIN(15)/45, WT/L/980 (Dec. 21, 2015) [hereinafter World Trade Organization, Ministerial Decision of 19 December 2015].

[48] *See* Zhou & Gao, *supra* note 9, at 976-77.

[49] James Bacchus & Simon Lester, *The Rule of Precedent and the Role of the Appellate Body*, 54(2) J. WORLD TRADE 183, 194 (2020).

[50] *See* Zhou & Gao, *supra* note 9, at 973-76.

[51] Gareth Davies, *Activism Relocated. The Self-Restraint of the European Court of Justice in Its National Context*, 19(1) J. EUR. PUB. POL'Y 76, 76-83 (2012).

[52] *See generally* Edward McWhinney, *The International Court of Justice and International Law-making: The Judicial Activism/Self-Restraint Antinomy*, 5(1) CHINESE J. INT'L L. 3 (2006).

臺灣大學學術期刊資料庫

"judicial activism" should be considered in the specific legal context and political environment of the international community, in which no fixed lines could be drawn for the two extremes of a continuum.[53] In the same vein, Matthew Dunne argued that both the judicial and political orientations co-exist in the international organizations, and its evolving relationship is similar to "the pendulum swinging between two extremes."[54] In the context of the WTO, the bottom line to address the AB crisis is to preserve the fundamental function of dispute settlement system,[55] while restoring the balance between legislative powers (held by the Members) and the judicial functions.[56] This objective, however, calls for targeted adjustments to stimulate benign interactions between judicial proceedings (dispute settlement process) and legislative development (multilateral negotiation), rather than the separate efforts of judicial bodies and the Members.

Unilateral trade liberalization is regarded to be one of the major approaches to enhance international cooperation and facilitate the establishment of global trading order.[57] Remy contended that unilateral trade liberalization (unilateral tariff reduction) is preferred for the large country in the model of bilateral trade, as an inverse relationship was observed between the large country's monopoly power and its optimal tariff reduction.[58] As for developing countries, unilateral trade liberalization accounts for nearly two-thirds of tariff reduction from 1983 to 2003, according to the 2005 report of the World Bank.[59] Considering the significant number of exports from developing countries to developed countries, it is argued that developing countries would also gain more economic benefits in unilateral trade liberalization than waiting for the progress made in the multilateral negotiation.[60] Even in the context of the COVID-19 pandemic and the fragmentation of trade policy-making, unilateral liberalization, as reflected in the case of New Zealand, would still facilitate the process of multilateral agriculture negotiation.[61]

---

[53] AHARON BARAK, THE JUDGE IN A DEMOCRACY 263 (2006).
[54] Matthew S. Dunne II, *Redefining Power Orientation: A Reassessment of Jackson's Paradigm in Light of Asymmetries of Power, Negotiation, and Compliance in the GATT/WTO Dispute Settlement System*, 34 L. & POL'Y INT'L BUS. 277, 335 (2002).
[55] *See* Zhou & Gao, *supra* note 9, at 960.
[56] *See id.* at 977.
[57] Bonapas Francis Onguglo, *Developing Countries and Trade Preferences*, *in* TRADE RULES IN THE MAKING: CHALLENGES IN REGIONAL AND MULTILATERAL NEGOTIATIONS 109, 109-10 (Miguel Rodriguez Mendoza et al. eds., 1999).
[58] *See* Rodney Ludema & Daniel E. Coates, *Unilateral Trade Liberalization as Leadership in Trade Negotiations*, INT'L TRADE 2-33 (1998).
[59] *Global Economic Prospects, Trade, Regionalism, and Development*, WORLD BANK, xv-xvi (2005), https://openknowledge.worldbank.org/bitstream/handle/10986/14783/9780821357477.pdf.
[60] Julio Nogues, *The Choice Between Unilateral and Multilateral Trade Liberalization Strategy*, 13(1) WORLD ECON. 15, 25 (2008).
[61] *See* Daniel Griswold & Donald Boudreaux, *A Fresh Start for US Trade Policy: Unilateral Trade Liberalization Through a Tariff Reform Commission*, MERCATUS CTR., 15 (2020),

臺灣大學學術期刊資料庫

However, states may have different attitudes towards unilateral trade liberalization, since some countries (e.g., Canada and the UK) concentrate on the market access of industrial goods instead of the agriculture sector.[62] In addition, it is indicated that unilateral trade liberalization receives more support from individuals working in non-agriculture sectors, and those working in the agriculture sector prefer protective policies or reciprocal provisions for trade liberalization.[63] More importantly, the unilateral tariff reduction would further reduce the opportunities to conclude multilateral concession in market access, while leaving less policy space for the Members to negotiate on the disciplines of agricultural subsidies.[64]

Due to the deadlock at the multilateral level, the focus of major WTO Members has turned to bilateral and regional trade negotiation.[65] The multilateral agriculture negotiation has been moving quite slowly after the deadlock of the Doha Round, while the agriculture subsidies have increased steadily over the past decades.[66] Drache and Froese argued that the golden era of multilateralism has come to an end with regionalism on the rise.[67] In the agriculture sector, the Regional Trade Agreement (hereinafter "RTA") has emerged as an alternative to AoA, which promoted trade liberalization and contributed to further concessions on market access.[68]

This article concentrates on the application and accommodation of Lever Effect Theory, and the reasons are three folds. First of all, among the theories related to dispute settlement and negotiation in the WTO, Lever Effect Theory stands out in the agriculture sector, as it concentrates on analyzing the relationship between agriculture dispute settlement and multilateral agriculture negotiation. Lever Effect Theory relates the process of agriculture dispute settlement to the development of agriculture rule-making in the WTO and domestic policy reform of the Members. In this sense, the emerging issues in the WTO, such as the AB crisis and the prevalence of RTAs negotiation, would have a substantial impact on the application of the Lever Effect Theory.

---

https://www.mercatus.org/system/%20files/griswold-trade-liberalization-mercatus-research-v1.pdf.

[62] *See id.* at 15-16.

[63] Banri Ito et al., *Trade Policy Preferences and Cross-Regional Differences: Evidence from Individual-Level Data of Japan*, 51 J. JAPANESE & INT'L ECON. 99, 108 (2019).

[64] Christophe Bellmann & Jonathan Hepburn, *The Decline of Commodity Prices and Global Agricultural Trade Negotiations: A Game Changer?*, 8(1) INT'L DEV. POL'Y ¶¶ 45-47 (2017), http://journals.openedition.org/poldev/2384.

[65] *See* U.N. Conf. on Trade and Dev., *Negotiating Liberalization of Trade in Agriculture for Development*, at 12, UN Doc. UNCTAD/DITC/TNCD/2019/3 (2020), https://unctad.org/system/files/official-document/ditctncd2019d3_en.pdf.

[66] DANIEL DRACHE & MARC D. FROESE, DEADLOCK IN THE DOHA ROUND: THE LONG DECLINE OF TRADE MULTILATERALISM 5, 7 (2007).

[67] *Id.* at 28-33.

[68] Linda Fulponi, *Regional Trade Agreements and Agriculture*, OECD-ILIBRARY 23-26 (Mar. 1, 2015), https://www.oecd-ilibrary.org/docserver/5js4kg5xjvvf-en.pdf?expires=1662880150&id=id&accname=guest&checksum=E2E7B8B00BC34D4ABB17A16FDC3D27F0.

臺灣大學學術期刊資料庫

Second, the disciplines of agriculture subsidies have only been discussed at the multilateral level, although the theories (or negotiation approaches) of "unilateralism," "bilateralism", and "plurilateralism" are favored by some major players in the WTO.[69] Lever Effect Theory does not minimize the function of bilateral and regional negotiation but stresses their unique contribution to facilitate dispute settlement and multilateral negotiation in the agriculture sector. The accommodation of Lever Effect Theory helps to identify the pending issues of agriculture dispute settlement and negotiation in the new context, such as the ambiguous and obsolete provisions in AoA, circumvention of rules through domestic policy reform, and rule conflicts between RTAs provisions and the WTO agreements in agriculture cases.

Last but not least, Lever Effect Theory examines the problems embodied in agriculture dispute settlement and negotiation in a coherent manner. Instead of splitting the pending issues raised out of agriculture dispute settlement and agriculture negotiation into two separate tracks, Lever Effect Theory focuses on how to build a mutually reinforcing relationship between the two tracks. As it is found that the progress of multilateral agriculture negotiation has been closely related to agriculture dispute settlement,[70] the accommodation of Lever Effect Theory would contribute to the theoretical basis for facilitating agriculture negotiation in the new context.

III. LIMITATION OF DISPUTE SETTLEMENT SYSTEM AND ITS IMPACT ON LEVER EFFECT

A. The Limitation of Dispute Settlement System in Agriculture Cases

The enhanced decision-making mechanism in the Dispute Settlement Body (hereinafter "DSB") demonstrates an evolution from power orientation towards rule orientation in the WTO dispute settlement system.[71] In the agriculture sector, AoA sets the boundary for the application of trade-distorting agricultural subsidies, while the expiration of the Peace Clause (Article 13 of AoA) allows more legal challenges to the trade-distorting measures. Admittedly, the "negative consensus" rule and the "compliance pull" of the WTO community have enhanced the effectiveness of dispute settlement system.[72] However, the WTO dispute settlement system still has some limitations in addressing agriculture trade conflicts as reflected in the following aspects.

---

[69] Valbona Muzaka & Matthew Bishop, *Doha Stalemate: The End of Trade Multilateralism?*, 41 REV. INT'L STUD. 383, 385 (2015).
[70] *See* Petersmann, *supra* note 2, at 139-41.
[71] John H. Jackson, *The Crumbling Institutions of the Liberal Trade System*, 12(2) J. WORLD TRADE 93, 99 (1978).
[72] Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CALIF. L. REV. 1823, 1869-71 (2002).

臺灣大學學術期刊資料庫

Firstly, the majority of agriculture cases have not been addressed through quasi-judicial proceedings. According to the statistics of agriculture cases filed to the DSB (see Figure I), only 35 (23.6%) out of 148 agriculture cases have been resolved through quasi-judicial proceedings. 54 cases (36.5%) have stagnated or are under the process of consultation. In fact, the majority of these 54 cases have been inactive (suspended at the consultation stage) for years, while some cases (e.g., DS387, DS388 and DS390) addressed through the mutually agreed solutions (hereinafter "MAS").[73] In addition, 5 cases are undergoing quasi-judicial proceedings (DS579, DS580, and DS581 in panel proceedings; DS475 and DS484 in compliance proceedings).[74] 5 cases (DS579, DS580, DS581, DS475, and DS484) have been suspended for years according to the official notified status, while three cases (DS228, DS240, and DS356) were terminated due to certain reasons.[75] In addition, 3 cases (DS291, DS430 and DS478) have entered into the proceedings of trade remedies, i.e., the request for arbitration as per Article 22.6 of DSU.[76] As for the cases resolved through diplomatic approaches, 43 cases (29%) have been settled in the form of MAS, which have been notified to the DSB. It is also noted that some of these MAS are notified without available details on the WTO official websites (e.g., DS35, DS387, DS388 and DS390).[77]

---

[73] *See, e.g.*, *United States Wins End to China's "Famous Brand" Subsidies After Challenge at WTO; Agreement Levels Playing Field for American Workers in Every Manufacturing Sector*, OFF. OF U.S. TRADE REPRESENTATIVE (Dec. 18, 2009), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2009/december/united-states-wins-end-china%E2%80%99s-%E2%80%9Cfamous-brand%E2%80%9D-sub.

[74] *DS579: India — Sugar and Sugarcane (Brazil)*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds579_e.htm; *DS580: India — Sugar and Sugarcane (Australia)*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds580_e.htm (last visited Jan. 27, 2022); *DS581: India — Sugar and Sugarcane (Guatemala)*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds581_e.htm (last visited Jan. 27, 2022); *DS475: Russia — Pigs (EU)*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds475_e.htm (last visited Jan. 27, 2022); *DS484: Indonesia — Chicken*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds484_e.htm (last visited Jan. 27, 2022).

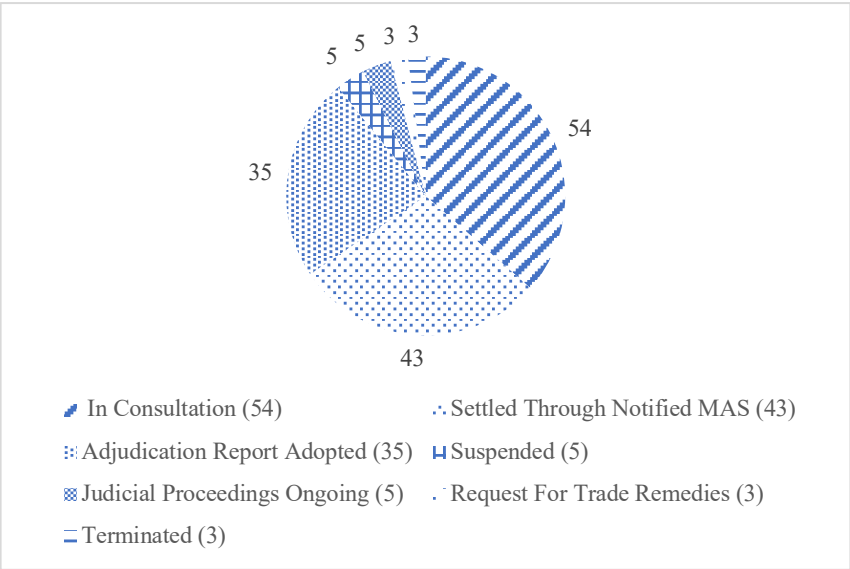
[75] *DS228: Chile — Safeguard Measures on Sugar*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds228_e.htm (last visited Jan. 27, 2022); *DS230: Chile — Safeguard Measures and Modification of Schedules Regarding Sugar*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds230_e.htm (last visited Jan. 27, 2022); *DS240: Romania — Import Prohibition on Wheat and Wheat Flour*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds240_e.htm (last visited Jan. 27, 2022); *DS356: Chile — Milk Safeguards,* WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds356_e.htm (last visited Jan. 27, 2022) (DS228 was terminated as it was replaced by DS230. DS240 was terminated since the respondent abrogated its domestic law at issue. DS356 was terminated due to panel proceedings lapsed).

[76] *DS291: EC — Approval and Marketing of Biotech Products*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds291_e.htm (last visited Jan. 27, 2022); *DS430: India — Agricultural Products*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds430_e.htm; *DS478: Indonesia — Import Licensing Regimes*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds4 78_e.htm (last visited Jan. 27, 2022).

[77] *DS35: Hungary — Agricultural Products*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds35_e.htm (last visited Jan. 22, 2022).

臺灣大學學術期刊資料庫

FIGURE I: Status of All Agriculture Cases Filed to the DSB



SOURCE: Collating by the Author According to the Information from WTO.org.

Secondly, the WTO Members cannot reach a consensus on how to draw the boundary of legal interpretation in quasi-judicial proceedings. One of the major duties of the panel and the AB is to provide legal (rule) interpretation in adjudication. However, the competence of the panel and the AB is restricted by the "terms of reference" (Article 7 of DSU) and "working procedures" (Article 17.12 of DSU). Although legal interpretation shall be provided to the extent of resolving the dispute, it is argued that the Members may pursue the legal interpretation that favored themselves for improving the bargaining positions in multilateral negotiation.[78] More importantly, the rulings shall not "add or diminish the rights and obligations provided in the covered agreements" (Article 3.2 of DSU). Otherwise, the legal interpretation could be challenged by the Members as "judicial overreach", since it may set a precedent that some Members do not agree upon.[79] The legal interpretations rendered by the AB have been frequently challenged by the WTO Members as "judicial overreach," and the agriculture sector is one

[78] *See* Petersmann, *supra* note 2, at 136.
[79] U.S. MISSION TO INTERNATIONAL ORGANIZATION IN GENEVA, STATEMENTS BY THE UNITED STATES AT THE MEETING OF THE WTO DISPUTE SETTLEMENT BODY GENEVA, at 12 (Feb. 25, 2019), https://perma.cc/W4JF-Z4TN.

臺灣大學學術期刊資料庫

of the major battlefields.[80] For example, in *US — FSC* (DS108), the AB ruled that the tax exemption for Foreign Sales Corporations (hereinafter "FSC") constituted an export subsidy, which is prohibited in AoA. The US viewed that its FSC tax exemption was established as an adaptation to the authoritative interpretation of "1981 Understanding of GATT Council" (hereinafter "the Understanding")[81] to avoid double taxation, as per footnote 2 of the Tokyo Round Subsidies Code's Illustrative List.[82] However, the AB rejected the argument that the Understanding constituted authoritative interpretation, and indicated that the Understanding was only binding to the disputants in the Tax Legislation Cases (four GATT disputes that are related to 1979 *Tokyo Round Subsidies Code and 1981 Understanding*).[83] In other words, the Understanding was not a general binding rule to all GATT Contracting Parties.[84] In addition, similar challenges on the judicial overreach of the AB could be witnessed in other agriculture cases, such as *US — Wheat Gluten* (DS166),[85] *US — Lamb* (DS177 and DS178),[86] *Chile — PBS* (DS207),[87] and *Japan — Apples* (DS245).[88]

Thirdly, the application of dispute settlement system is driven by the political intention of the complaints. The WTO Members may exercise discretion when filing a case, although dispute settlement system has compulsory jurisdiction over issues under the WTO agreements.[89] In other words, the Members have the discretion to file a case based on the prescribed causes of action, as per Article XXIII of GATT and other relevant provisions.[90] It is noted that the share of agriculture cases in all the WTO disputes is much larger than that of agricultural exporting volume. By the end of 2019, the number of agriculture cases that filed to dispute settlement system has accumulated to 149, which takes account for 25.4% of all the 586

---

[80] *See* Terence Stewart, *Disputed Court: A Look at the Challenges to (and from) the WTO Dispute Settlement System*, GLOB. BUS. DIALOGUE 4-8 (2017), http://www.gbdinc.org/wp-content/up loads/2017/12/Terence_Stewart_at_GBD_Disputed_Court_12-20-2017.pdf.

[81] Appellate Body Report, *United States — Tax Treatment for "Foreign Sales Corporations"*, WTO Doc. WT/DS108/AB/R (adopted Mar. 20, 2000).

[82] *Id*. ¶ 20.

[83] *Id*. ¶ 109.

[84] *Id*. ¶ 112.

[85] Dispute Settlement Body*, Minutes of The Meeting Held in the Centre William Rappard on 19 January 2001*, WTO Doc. WT/DSB/M/97 (Feb. 27, 2001).

[86] *Id*.

[87] Dispute Settlement Body*, Minutes of The Meeting Held in the Centre William Rappard on 23 October 2002*, WTO Doc. WT/DSB/M/134 (Jan. 29, 2003).

[88] Dispute Settlement Body*, Minutes of The Meeting Held in the Centre William Rappard on 10 December 2003*, WTO Doc. WT/DSB/M/160 (Jan. 27, 2004).

[89] Debra Steger, *The WTO Dispute Settlement System: Jurisdiction, Interpretation and Remedies*, *in* AGREEING AND IMPLEMENTING THE DOHA ROUND OF THE WTO 294, 294-95 (Harald Hohmann ed., 2008).

[90] *A Handbook on the WTO Dispute Settlement System*, WTO, https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c4s2p1_e.htm (last visited Jan. 22, 2022).

臺灣大學學術期刊資料庫

cases.[91] Compared with the contribution of agriculture trade to global GDP, the case ratio of the agriculture sector in dispute settlement system is a relatively large number. [92] The continuous disproportion of agriculture cases is led by multiple factors, including the ambiguous and obsolete provisions of AoA, the politically sensitive nature of agriculture trade conflicts, and the slow progress of multilateral agriculture negotiation. [93] In addition, the Members tend to rely more on dispute settlement system to address agriculture trade concerns after the collapse of the Doha Round.[94]

Fourthly, the implementation of the rulings adopted by the DSB requires political acceptance from the respondents.[95] After the adoption of the panel reports, the losing parties could deliberately protract implementation of the rulings. The infinite delay of policy changes from the losing parties, whether due to the domestic bureaucratic procedures or political pressures, would be detrimental to rule enforcement and the effectiveness of the dispute settlement system.[96] Since the rulings against trade-distorting subsidies call for the reform of domestic farm policy, it is argued that political acceptance from the respondents would be necessary to carry out more restrictive farm policies. [97] Admittedly, dispute settlement system provides temporary measures (e.g., compensation and retaliation) for the prevailing parties to take actions against the failed implementation. However, the effectiveness of temporary measures in practice, either as a deterrent or compensatory effect, would be limited by the political and economic powers of the respondents. If the respondents refuse to implement the ruling, the complainants may resort to Article 22.6 of DSB to initiate countermeasures. In this regard, poor countries may be discouraged from taking countermeasures against rich countries due to the political and economic costs, such as the loss of trade aids and preferential treatments from rich countries. [98] Even for emerging economies, the employment of countermeasures against more powerful countries is also not an easy task. For example, in the implementation of *US — Upland Cotton*, Brazil announced to impose $829.3 million valued countermeasures against the US, but later suspended the countermeasures due to the bilateral negotiation with

---

[91] *Index of Disputes Issues*, WTO, https://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm (last visited Jan. 22, 2022).
[92] *Agriculture, Forestry, and Fishing, Value Added (% of GDP)*, WORLD BANK, https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?most_recent_year_desc=true (last visited Jan. 22, 2022).
[93] Tim Josling, *Agricultural Trade Disputes in the WTO*, *in* TRADE DISPUTES AND THE DISPUTE SETTLEMENT UNDERSTANDING OF THE WTO: AN INTERDISCIPLINARY ASSESSMENT 245, 245-46 (James C. Hartigan ed., 2009).
[94] *Id.*
[95] *See* Josling & Tangermann, *supra* note 1, at 222.
[96] *Id.*
[97] *Id*.
[98] Arie Reich, *The Effectiveness of the WTO Dispute Settlement System: A Statistical Analysis* 11 (Eur. Univ. Inst., Working Paper No. 11, 2017).

臺灣大學學術期刊資料庫

the US.[99] Ultimately, Brazil agreed not to apply countermeasures against the US, since both parties reached a mutually agreed compensation (valued at $300 million) in 2014.[100] The complicated and time-consuming implementation of *US — Upland Cotton* indicates that the implementation process is dominated by the diplomatic activities between both parties. The effectiveness of the dispute settlement system on forcing the policy changes is quite limited since the reform of domestic farm policy is ultimately determined by the political acceptance of the respondents.

B. Impact of Limited Agriculture Dispute Settlement on Lever Effect

Although the Lever Effect theory indicates a consistent relationship with agriculture negotiation in the WTO, it does not clarify the impact from the limitations of agriculture dispute settlement on the theory application, which includes the respondents' litigation strategies to counter the Lever Effect.

Compared with the complainants that seek the benefits of the Lever Effect, e.g. improving bargaining power and promoting subsidies reduction at the multilateral level, the respondents in agriculture dispute settlement would pay the price of the Lever Effect, e.g., diplomatic pressures, policy changes and unilateral trade liberalization.[101] The respondents may choose to implement the unfavorable rulings for fear of losing their international reputation or for securing the reciprocal terms.[102] However, some Members can still manage to maintain their agriculture subsidies after losing the cases, or by transferring the subsidies into rule-consistent ones without paying too much price, which leads to some trade-distorting measures "living in the shadow of law."[103]

Only 23.6% (see Figure I) of agriculture cases resolved through quasi-judicial proceedings reflect the heavy reliance on diplomatic approaches in agriculture dispute settlement. In addition, the large ratio of stagnated cases in consultation or implementation stages further indicates the "countermeasures" or "responding strategies" from the Members to (at least partially) counter the Lever Effect. For example, the initiation of *US — Poultry* involves tit-for-tat litigation strategies between the US and China.[104]

---

[99] On June 17, 2010, Brazil and US reached Framework for a Mutually Agreed Solution to settle the upland cotton case. The US agreed to pay Brazil $147.3 million annually as compensation for Brazil to suspend its retaliation, while the cotton programs would be re-evaluated before a new farm bill released. *See* Randy Schnepf, *Brazil's WTO Case Against the U.S. Cotton Program*, CONGR. RSCH. SERV. 27-29 (2011), https://www.everycrsreport.com/reports/RL32571.html.

[100] Notification of a Mutually Agreed Solution, *United States — Subsidies on Upland Cotton*, WTO Doc. WT/DS267/46 (Oct. 23, 2014).

[101] *See* Josling & Tangermann, *supra* note 1, at 210, 220; Petersmann, *supra* note 2, at 136.

[102] Guzman, *supra* note 72, at 1869-71.

[103] *See* Josling et al., *supra* note 13, at 4, 18.

[104] *See* Thomas J. Prusa & Edwin Vermulst, China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*: How the Chickens Came Home to Roost*, 14(2)

臺灣大學學術期刊資料庫

Ten days after the US imposed safeguard duties on vehicles and tires imported from China, China initiated the Antidumping and Countervailing Duties (hereinafter "AD/CVD") investigations into the broiler products from the US.[105] However, the purpose to push for the removal of tariffs was not well served after the cases were settled, since the US maintained tariffs on chicken products and a high level of AD/CVD duties on tyre products from China.[106] The agriculture dispute settlement without substantial concessions led to the escalation of trade conflicts, with more legal lawsuits brought against each other.[107] More importantly, the tit-for-tat litigation strategies between the US and China have not contributed to the progress of multilateral agriculture negotiation or the concessions made by both Members.

Although the Lever Effect theory could be employed even without finishing the conduct of quasi-judicial proceedings, the Lever Effect based on the application of diplomatic approaches (e.g., consultation, bilateral negotiation and conciliation) is restricted. In the context of negotiation deadlock, the Members would file lawsuits for the identifications and rulings over the trade-distorting measures, which would put diplomatic and legal pressures on the respondents to negotiate on the contested measures according to the theory of Lever Effect. However, with more and more agriculture cases infinitely stagnating at the stages of consultation or implementation, the legal pressures on the respondents were gradually taken away, while the diplomatic pressures could be countered through the lawsuits brought against each other. In other words, the respondents could apply litigation strategies to protract the agriculture dispute settlement for alleviating the legal pressures from adverse judgments, then counter the Lever Effect by filing lawsuits against the complainants.

The best-case scenario is that both the complainant and respondent make significant concessions after bringing lawsuits against each other. The example of the *US — EC Blair House Accord* mirrors the best-case scenario, which resolves the oilseed disputes and contributes to the multilateral agreement in agriculture (i.e., AoA). Considering the limitations of agriculture dispute settlement and the status of all the agriculture cases (Figure I), "countering the Lever Effect" may also lead to more stagnated cases, protracted implementation, or even escalate into trade wars, since the significant concessions (in the example of the *US — EC Blair House Accord*)

WORLD TRADE REV. 287, 332 (2015).

[105] *Id*.

[106] Weihuan Zhou & Shu Zhang, *Anti-Dumping Practices and China's Implementation of WTO Rulings*, 230 CHINA Q. 512, 519-20 (2017).

[107] For example, after the initiation of *U.S. — Poultry*, the US filed *China — Broiler Products* to the Dispute Settlement Body (DSB) to challenge the AD/CVD measures on the US chicken products. In addition, the US brought successive legal actions against China in *China — Agricultural Producers* and *China — TRQs*.

臺灣大學學術期刊資料庫

made by both disputants are extremely difficult to be witnessed in most agriculture cases.

As indicated from the Lever Effect theory, the impact of Lever Effect is associated with the timing of bringing legal lawsuits.[108] Since the multilateral negotiation strategy has been significantly adjusted after the Doha deadlock, the litigation strategies (whether driven by the motivation of countering the Lever Effect or not) on agricultural subsidies would have to be considered in the new context. The Bali Ministerial Conference adopted a multilateral negotiation strategy to focus on the "low-hanging fruits" (i.e., less ambitious and achievable outcomes), instead of the Single Undertaking Strategy from the Doha Round.[109] As the Members could not reach a consensus on new disciplines of price support on staple food (i.e., "Public Stockholding for Food Security Purposes" in Annex 2 of AoA), the Members agreed to an "interim mechanism" to refrain from legal challenges against the price support from the developing countries, which shall be valid until a permanent solution is found.[110] The "interim mechanism," or the new peace clause (after the expiration of Article 13 of AoA), would further deteriorate the Lever Effect since the Members can no longer resort to litigation strategies to break the negotiation deadlock over such measures.

IV. ACCOMMODATION OF LEVER EFFECT THEORY TO THE NEW CONTEXT

A. Lever Effect Before the Appellate Body Paralysis

The limited role of the dispute settlement system does not necessarily mean that Lever Effect no longer exists in multilateral agriculture negotiation. Instead, the Lever Effect of agriculture dispute settlement on facilitating negotiation is still embodied in the WTO for the following reasons. First, the legal challenges brought against trade-distorting subsidies would force the respondents to negotiate the contested measures (e.g., *US — Upland Cotton*), which is beneficial to break the deadlock in multilateral negotiation. Second, the adjudication would identify the pending issues that call for further discussion, which stimulates the Members with common interests over the contested measures to further negotiate new restrictive and specified rules (e.g., *Canada — Dairy*). Third, the binding rulings and legal clarifications would contribute to consistent WTO jurisprudence (e.g., *Korea*

[108] *See* Josling & Tangermann, *supra* note 1, at 213; Petersmann, *supra* note 2, at 135, 139.
[109] *Azevêdo: "The WTO Needs America, and America Needs the WTO"*, WTO (Mar. 8, 2014), https://www.wto.org/english/news_e/spra_e/spra9_e.htm.
[110] World Trade Organization, Ministerial Decision of 7 December 2013, WTO Doc. WT/MIN(13)/38, WT/L/913 (Dec. 11, 2013) [hereinafter World Trade Organization, Ministerial Decision of 7 December 2013]; World Trade Organization, Ministerial Decision of 19 December 2015, WTO Doc. WT/MIN (15)/44, WT/L/979 (Dec. 21, 2015).

臺灣大學學術期刊資料庫

— *Various Measures on Beef* and *China — Agricultural Producers*), which brings far-reaching legal bases for the consideration of future agriculture disputes and negotiation. Admittedly, limited progress was witnessed in the multilateral agriculture negotiations. However, agriculture dispute settlement still somehow contributes to the positive momentum for pursuing the elimination of export subsidies and the interim mechanism of "Public Stockholding Programmes for Food Security".

Specifically, as a first agriculture case concerning the classification of domestic support (the standard for non-distorting or exempted subsidies), the adjudication of *US — Upland Cotton* was employed as a lever to put pressure on the US to negotiate domestic subsidies in the Doha Round, and further led to the establishment of Cotton Sub-Committee under the administration of Agriculture Committee.[111] The adjudication of *US — Upland Cotton* put pressure on the US on its utilization of trade-distorting agriculture subsidies after the expiration of the Peace Clause and created momentum for negotiation on domestic support.[112]

Canada — Dairy is the first case ruled by the panel and the Appellate Body on the export subsidies applied to dairy products. The adjudication of *Canada — Dairy* identify the need for negotiation over the excessive use of export subsidies in agricultural products and provides legal interpretation on the restrictive rules (e.g., Articles 3 and 8 of AoA) to apply export subsidies for the reference of future cases. The ruling of *Canada — Dairy* indicates that the implicit export subsidies under the Farm Bill of the US could also be challenged by other WTO Members, and contributes to further discussions on the export subsidies of the US in agriculture trade.[113] As affected by the adjudications of *Canada — Dairy* and other cases with similar concerns, the negotiation over the elimination of export subsidies has been extended from the Doha Round to the Nairobi Ministerial Conference, where the consensus on the elimination of export subsidies was reached.[114]

The ruling of *Korea — Various Measures on Beef* stresses the importance of making legal clarification on the provisions governing the calculation methodology of the trade-distorting degree of agricultural subsidies.[115] The major contested issues in *Korea — Various Measures on*

[111] *See Sub-committee Set Up on Cotton*, *supra* note 31.
[112] Randy Schnepf & Jasper Womach, *Potential Challenges to U.S. Farm Subsidies in the WTO: A Brief Overview*, CONGR. RSCH. SERV. 9 (2006), https://www.everycrsreport.com/reports/RS22522.html.
[113] Colin A. Carter, *Some Trade Implications of the 2014 Agricultural Act*, 29(3) AGRIC. & APPLIED ECON. ASS'N 1, 3 (2014), https://www.choicesmagazine.org/UserFiles/file/cmsarticle_387.pdf.
[114] *See* World Trade Organization, Ministerial Decision of 19 December 2015, *supra* note 47, at 2.
[115] Appellate Body Report, *Korea — Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WTO Doc. WT/DS161/AB/R, WT/DS169/AB/R (adopted Jan. 10, 2001) [hereinafter Appellate Body Report, *Korea — Various Measures on Beef*]; Panel Report, *Korea — Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WTO Doc. WT/DS161/R, WT/DS169/R (adopted Jan. 10, 2001) [hereinafter Panel Report, *Korea — Various Measures on Beef*].

臺灣大學學術期刊資料庫

Beef revolve around the calculation methodology of trade-distorting subsidies on agricultural products (Annex 3 of AoA), including the identification of "eligible products" and "base period", the Panel of *Korea — Various Measures on Beef* ruled against Korea in the identification of eligible products, and emphasized that "eligible products" should equal to the total production of beef instead of the beef purchased at the target price.[116] On the calculation of current trade distortion for beef products, the AB indicated that the calculation methodology specified in the Member's Commitment Schedule shall take precedence over Annex 3 of AoA. The AB reversed the finding of the panel on the clarification of Base Period, as the Base Period of 1986-88 (stipulated in Annex 3 of AoA) should be generally applied except committed otherwise by the Member.[117]

The calculation methodology of trade-distorting subsidies on agricultural products (Annex 3 of AoA), which was reviewed and discussed in the adjudication of *Korea — Various Measures on Beef*, exerts significant influence on agriculture dispute settlement and negotiation over similar concerns. For example, in *China — Agricultural Producers*, China referred to *Korea — Various Measures on Beef* on its selection of the base period, and argued that the base period provided in its commitment schedule should be adopted for the calculation of trade distortion from price support.[118]

In addition, the continuous discussions over the disciplines on trade-distorting domestic support in the Bali and Nairobi Ministerial Conference give rise to an interim mechanism agreed by the Members on Public Stockholding Programmes. [119] The ruling of *Korea — Various Measures on Beef* stresses that the WTO Members are not free to set their own reference prices for market price support unless it is agreed at the multilateral level. Against this backdrop, the G-33 group raised concerns over the existing rules on the calculation methodology of price support and their potential legal risks for breaching AoA commitments.[120] They claimed that AoA does not provide sufficient policy space for the developing countries to ensure food security with an outdated base period (1986-88) and inflexible calculation methodology of trade-distorting subsidies, particularly considering their shortage of food resources and the galloping inflation of food price.[121] As the Members could not reach a consensus on new disciplines of price support during the Bali and Nairobi Ministerial Conferences, an "interim mechanism" was agreed to refrain the Members from bringing legal lawsuits against the

[116] Panel Report, *Korea — Various Measures on Beef*, *supra* note 115.
[117] Appellate Body Report, *Korea — Various Measures on Beef*, *supra* note 115.
[118] Communication from China, WTO Doc. WT/ACC/CHN/38/Rev.3 (July 19, 2001); Panel Report, *China — Domestic Support for Agricultural Producers Report of the Panel*, ¶¶ 7.149-.150, WTO Doc. WT/DS511/R (adopted Apr. 26, 2019).
[119] *See* World Trade Organization, Ministerial Decision of 7 December 2013, *supra* note 110.
[120] Konandreas & Mermigkas, *supra* note 4, at 10.
[121] *Id.*

臺灣大學學術期刊資料庫

price support from developing countries until a permanent solution is found.[122]

B. The Impact of the Appellate Body Paralysis on Lever Effect

After the AB was paralyzed, the Members could take advantage of the systemic concern to block the dissatisfied rulings of any agriculture cases. Specifically, the disputants in agriculture dispute settlement could resort to Article 16.4 of DSU to appeal the case when being dissatisfied with the ruling of the panel. If the case is appealed to the AB, it will be filed into the void with no available AB judges to conduct the legal review. In other words, the disputants of agriculture cases could use the right under DSU to block the adoption of any dissatisfied judgments, which mirrors the situation of the GATT dispute settlement system. The AB paralysis would lead to three major impacts on the Lever Effect theory, which refer to the "lack of persistent legal challenges filed to the DSB", "obstruction to the checks and balances of the WTO," and "fragmentation of ruling making".

First of all, the AB paralysis would erode the credibility of the dispute settlement system and discourage the Members from filing legal lawsuits against trade disruptive measures. Without persistent legal challenges against the trade-distorting subsidies, the Lever Effect would be further restricted in the context of negotiation deadlock.

According to the Lever Effect theory, the litigation strategies to improve the bargaining positions do not necessarily call for the rulings and the binding rule clarification to be rendered.[123] Alternatively, the claims to bring legal challenges, the preparatory work to file lawsuits and the conduct of consultation in dispute settlement would all contribute to the diplomatic and legal pressures on the respondents. Professor Petersmann indicates that such pressures would force the respondents to concentrate on the trade-distorting measures in future negotiations.[124] If the Members fail to conclude new restrictive rules through multilateral negotiation, then new lawsuits would be brought to the DSB to challenge the legitimacy of the contested measures, particularly after the expiration of the Peace Clause (Article 13 of AoA). To the extent of forcing the respondents to negotiate on the contested measures (e.g., through identifying and proving the trade disruptive nature of the measures and gaining support from interested Members), the preparation and the conduct of agriculture dispute settlement would strengthen the Lever Effect with the persistent legal challenges.

However, the AB paralysis would lead to the lack of persistent legal challenges filed to the DSB, thus deteriorating the Lever Effect. The ratio for

[122] *See* World Trade Organization, Ministerial Decision of 7 December 2013, *supra* note 110.
[123] *See* Petersmann, *supra* note 2, at 130.
[124] *Id.*

臺灣大學學術期刊資料庫

agriculture cases filed to the DSB would to some extent reflect the variation of Lever Effect in the WTO. Although the increased agriculture cases would not necessarily indicate the strengthening Lever Effect, the falling ratio of agriculture cases would manifest the erosion of credibility of dispute settlement system and the effectiveness of Lever Effect, particularly in the context of negotiation deadlock. According to the statistics of GATT disputes, 43.0% of the cases involved agricultural products and 2.9% involved both agricultural and non-agricultural products.[125] By the end of 2019, the number of agriculture cases that filed to dispute settlement system has accumulated to 149, which takes account for 25.4% of all the 586 cases.[126] Since the AB was paralyzed (due to insufficient members to serve its function) in Dec. 2019, two agriculture cases have been initiated, i.e. *Panama — Import Measures* (*Costa Rica*)[127] and *China — AD/CVD on Barley (Australia)*,[128] out of all the twelve cases filed to the DSB (by Aug. 2021). The agricultural case ratio witnessed a significant decrease compared with that of the non-agricultural sector in less than two years. Given it takes eighteen years for the agricultural case ratio to decrease 17.6% (from 43.0% in the GATT era to 25.4% in 2019), this downward trend of the agricultural case ratio has been intensified by the AB crisis. Admittedly, the limited scale of the data sample may cause the analysis incomplete or biased. Nevertheless, the absence of an operational AB constitutes a serious erosion of the credibility of dispute settlement system, with a particular impact on the agriculture sector. Before the AB paralysis, the strengthened WTO dispute settlement system, the slow progress in multilateral agriculture negotiation and the ambiguous agricultural rule framework collectively encouraged the Members to consistently file agriculture lawsuits in the dispute settlement system.[129] However, the AB paralysis dramatically changed the situation. The intensified downward trend of the agricultural case ratio indicates that the AB paralysis brings a more significant impact on the agriculture sector than the non-agriculture sector. Although it lacks sufficient evidence to argue that the AB paralysis is the only factor that leads to this situation, it somehow exacerbates the decline of the case ratio in the agriculture sector. Given it calls for persistent legal challenges filed to the DSB to exert Lever Effect, the WTO members may have reduced their reliance on the DSB to resolve

[125] WTO, GATT DISPUTES: 1948-1995, OVERVIEW AND ONE-PAGE CASE SUMMARIES 25 (2019), https://www.wto.org/english/res_e/booksp_e/gatt4895vol1_e.pdf.
[126] *See Index of Disputes Issues*, *supra* note 91.
[127] *DS599: Panama — Measures Concerning the Importation of Certain Products from Costa Rica*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds599_e.htm#:~:text=On%2011%20J%20anuary%202021%2C%20Costa,pineapple%2C%20and%20plantains%20and%20bananas (last visited Jan. 29, 2022).
[128] *DS598: China — Anti-Dumping and Countervailing Duty Measures on Barley from Australia*, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds598_e.htm (last visited Jan. 29, 2022).
[129] Josling, *supra* note 93, at 245.

臺灣大學學術期刊資料庫

agricultural disputes after the AB paralysis, thereby further weakening the Lever Effect.

Secondly, the Lever Effect theory is established with the premise of a full-fledged dispute settlement system, which could render consistent WTO jurisprudence (through binding rule clarification and rulings against illegal measures) to promote trade liberalization. After the AB was paralyzed, the lack of an operational quasi-judicial body would affect the consistency of WTO jurisprudence refined through the binding rule clarification and judgments, and would further obstruct the original checks and balances in the WTO.

The quasi-judicial proceedings (coordinated by the panel and the AB) contribute to not only a channel for resolving bilateral trade conflicts but also an essential component of the checks and balances in the WTO. As mentioned previously, the checks and balances refer to the separation of powers between quasi-judicial proceedings conducted by the panel and the AB, legislative powers by the Members, and executive powers by the Member's governments.[130] On the one hand, the panel and the AB invoke the WTO rules agreed by the Members to render binding rule clarifications and rulings against trade disruptive measures, while the adoption of judgments initiates the implementation procedures for policy changes from the respondents and facilitates trade liberalization on a case-by-case basis. On the other hand, the Members would challenge the rule clarification rendered by the panel and the AB in the DSB meetings, and all the interested Members could further discuss whether the rule clarification constitutes overreaching in the adjudication. For example, in the DSB meetings to discuss the adjudication of *Canada — Dairy,* the Members challenged the legal interpretation provided by the Appellate Body regarding its definition of "payment" to the farmers in determining the nature of subsidies.[131]

Before the AB paralysis, the Members could utilize the well-planned litigation strategies in agriculture cases to identify the pending issues in AoA that need further discussion. The binding legal clarification rendered by the panel and the AB would encourage other Members with collective interest to engage in the negotiations on the contested measures. More importantly, the critical statements brought against the panel and the AB represent the supervisory mechanism on their quasi-judicial powers, which also stimulate further discussions in the DSB meetings over the contested measures and the ambiguous provisions.

Some scholars indicate that the insufficient political oversight over the adjudication in the WTO and the failure to update relevant rules by the WTO legislature (all the Members) collectively contribute to the paralysis of the

[130] *See* Petersmann, *supra* note 2, at 141.
[131] *Id.*

臺灣大學學術期刊資料庫

AB.[132] For example, McDougall argues that the WTO Members cannot exercise their collective authority to interpret their commitments and WTO rules, and the AB is effectively not subject to any checks and balances.[133] Zhou and Gao further indicate that it applies a negative consensus rule to automatically adopt the ruling by the panel and the AB, while a positive consensus or a special majority vote is required to overturn the binding rule interpretation.[134] Due to the failure to reach consensus over how to address the systemic concerns raised by the US, the blockage of the AB judges' reappointment ultimately leads to the shutdown of the AB. In this regard, the defective supervisory mechanism, or insufficient political oversight, on the quasi-judicial power of the AB is one of the reasons that lead to its paralysis. However, this systemic concern itself is originated from the protracted or even stagnated rule-making process by the Members.

After the AB ceased to function, Lever Effect is further weakened with the "dialectic checks and balances" sabotaged, since the AB could no longer provide binding rule interpretation as incentives or directions for the Members to fine-tune the existing rules or negotiate new rules. In other words, the AB paralysis exacerbates the systemic concern (i.e., the lack of political oversight over judicial power) and makes it even more difficult to restore the checks and balances, since the eradication of the adjudicative bodies would not fill the gap of the outdated and ambiguous rules in the WTO. Meanwhile, the sabotaged "checks and balances" would not be conducive to the establishment of a new supervisory mechanism to overturn judicial decisions. Although the Members could continue to supervise the adjudication of the panel, the opportunities to further discuss the contested measures and new disciplines for applying agricultural subsidies are expected to be reduced. The Members would either pay prior attention to the reform of the dispute settlement system for resolving the non-compliance issues of the AB or feel trapped to encounter the suspension of panel reports by the dissatisfied disputants (through the appeal). In this vein, the original balance between quasi-judiciary, legislature and executive has been broken, and the operation of powers in the WTO is dominated by the diplomatic activities of the Members. Thus, the AB paralysis would cost the Members opportunities and platforms to further discuss the contested measures in agriculture cases, let alone the loss of binding rule clarification rendered through the AB review.

Thirdly, the paralysis of the AB would lead to another wave of fragmented rulemaking among the WTO Members, thus hampering the

---

[132] *See generally* Robert McDougall, *Crisis in the WTO: Restoring the WTO Dispute Settlement Function*, CTR. FOR INT'L GOV'T INNOVATION (Oct. 16, 2018), https://www.cigionline.org/publications/crisis-wto-restoring-dispute-settlement-function/; Zhou & Gao, *supra* note 9, at 972-73.
[133] *Id*.; Petersmann, *supra* note 2.
[134] Zhou & Gao, *supra* note 9, at 971.

臺灣大學學術期刊資料庫

application of Lever Effect in facilitating multilateral agriculture negotiation.

The solution to the AB crisis is extremely difficult to be found at the multilateral level due primarily to the changed position of the US in the WTO. The US was the supporter of the WTO dispute settlement system when it was established, as the US envisaged the automatic adoption of binding rulings could more effectively facilitate the implementation of WTO commitments.[135] In fact, the US filed the most cases (fifty-five cases) to dispute settlement system, while receiving the most legal challenges (thirty cases) by other Members from 1996 to 2017.[136] Despite that its win-loss ratio has no major difference compared with other Members, the US only won two out of twenty-nine anti-dumping cases, which is believed to be the major concern that prompts the US to block the reappointment of the AB judges.[137] In addition, a plurilateral agreement—Multiparty Interim Appeal-Arbitration Arrangement (hereinafter "MPIA")—was initiated by nineteen WTO Members (including the EU and China) to alleviate the AB crisis.[138] Although the MPIA is regarded as an interim approach for addressing the AB crisis, it is only available to the signatory parties without the participation of some major players, particularly the US. The paralysis of the AB further diminishes the opportunities for agriculture dispute settlement on facilitating multilateral negotiation, while the MPIA does not provide an effective substitute for the AB in dispute settlement system.[139]

Since the "centralizing authority" of the AB does not satisfy the US, the major players may resort to the RTA provisions instead of the WTO dispute settlement system to address trade conflicts.[140] The prevalence of RTAs would intensify the legal conflicts between the RTAs and the WTO agreements in agriculture dispute settlement, which provide more opportunities for further discussions over the pending legal-technical issues. For example, the adjudication of *Peru — Agricultural Products* indicates that the RTA provisions shall not be employed as a shield to set aside WTO law.[141] The AB stated that the RTA provisions shall not justify Peru to apply the contested measures, which is inconsistent with the WTO rules.[142] Thus, the legal conflicts between RTAs and WTO law may lead to *de facto*

[135] JOHN H. BARTON ET AL., THE EVOLUTION OF THE TRADE REGIME 70 (2010).
[136] Fabry & Tate, *supra* note 44, at 6.
[137] *Id.*
[138] *Interim Appeal Arrangement for WTO Disputes Becomes Effective*, EUR. COMM'N (Apr. 30, 2020), https://trade.ec.europa.eu/doclib/press/index.cfm?id=2143.
[139] Simon Lester, *Can Interim Appeal Arbitration Preserve the WTO Dispute System?*, 77 CATO INST. FREE TRADE BULL. 1, 1-2 (2020), https://www.cato.org/sites/cato.org/files/2020-08/FTB-77. pdf.
[140] *Id.* at 3.
[141] Yovana Reyes Tagle & Roberto Claros, *The Law of Regional Trade Agreements in The WTO Dispute Settlement System: Lessons from the Peru-Agricultural Products Case* 43 (World Trade Inst., Working Paper No. 4, 2016).
[142] Appellate Body Report, *Peru — Additional Duty on Imports of Certain Agricultural Products*, ¶ 5.117, WTO Doc. WT/DS457/AB/R (adopted July 31, 2015).

臺灣大學學術期刊資料庫

invalidation of RTA provisions under the WTO jurisprudence.[143] The Members may further discuss the pending legal issues, and scrutinize whether the AB overreached in the review of RTA provisions.[144]

However, with the AB paralyzed, the legal conflicts between RTAs and the WTO agreements may not be adequately addressed through agriculture dispute settlement. In this regard, the Members may choose not to file lawsuits against the RTA-related measures to the DSB. As shown in the statistics mentioned previously, the agriculture case ratio has dropped from 25.4% to 16.7%.[145] Due to the less reliance on dispute settlement system and the decreased legal challenges, the Members would have fewer opportunities to discuss the legal-technical issues in the DSB meetings, which should have been raised from the adjudication of agriculture cases.

C. Remaining Lever Effect After the Appellate Body Paralysis

As mentioned in Section II(A), the Lever Effect is reflected in mainly three aspects throughout GATT and the WTO eras, which respectively reply upon the binding rule interpretation, diplomatic approaches of dispute settlement and imposing diplomatic pressures on the respondents. The three aspects of the Lever Effect would be affected by the AB paralysis to varying degrees. For the first aspect of Lever Effect, i.e., quasi-judicial rule clarification or interpretation to facilitate negotiation over the contested measures, the AB paralysis has caused significant restrictions, but the adverse impact is primarily directed to the cases where the panel's ruling is blocked deliberately by the respondent. In other words, for the agriculture cases that still manage to adopt the panel report, the Lever Effect exerted from quasi-judicial proceedings would not be eliminated by the AB paralysis.

The Lever Effect theory was raised based on the case study of agriculture cases from both GATT and the WTO eras, and the GATT dispute settlement system does not provide a channel for the Contracting Parties to appeal the case, which means that the existence of Lever Effect does not rely upon the establishment of the AB according to the Lever Effect theory. Admittedly, the AB contributes to an enhanced Lever Effect in the WTO era with its contribution to rule interpretation and clarification, the panel can still play the role of rule interpreter to discourage rule circumvention. In other words, the rule interpretation rendered by the panel still lays a legal basis for the Members to further negotiate the contested or ambiguous rules, as it is how the Lever Effect works in the GATT era. The AB paralysis would restrict the Lever Effect to the extent that in some cases the panel report may not be adopted and applied as the basis for further negotiation. Nonetheless, for the

[143] *See* Tagle & Claros, *supra* note 141, at 31.
[144] *Id.*
[145] *See Index of Disputes Issues*, *supra* note 91.

臺灣大學學術期刊資料庫

agriculture cases that adopt the panel report, the binding ruling and clarification over the contested issues can still exert influence on further discussions and negotiations among the Members.

The second aspect of Lever Effect, i.e., taking advantage of the diplomatic means in agriculture dispute settlement to facilitate multilateral concessions, receives less adverse impact compared with the first one, since the WTO agriculture dispute settlement can still be utilized as a bilateral negotiation platform for the Members to focus on their contested issues on a case-by-case basis while dealing with the trade conflict. As indicated from the Lever Effect theory, the second aspect of Lever Effect relates closely to the timing of bringing lawsuits, as exemplified by the *Oilseed* case between the US and the EC.[146] In this regard, the second aspect of Lever Effect may not be directly affected by the AB paralysis (when compared with the first aspect of Lever Effect), as it relates more to the diplomatic nature of dispute settlement system than the quasi-judicial proceedings. With the absence of the AB, the dispute settlement system still provides diplomatic approaches, e.g., the application of consultation, good offices, conciliation and bilateral negotiation, for the disputants to address the trade conflicts.

However, it is noteworthy that the AB paralysis would accelerate the fragmentation of trade rule-making, thus de-centralizing the WTO and discouraging the application of diplomatic approaches of the dispute settlement system. The US is not satisfied with the "centralizing authority" of the AB and the Members still cannot reach a consensus over the WTO reform direction to fix the problem. In such as context, more and more countries would turn to RTA provisions instead of the DSU to resolve agriculture disputes.[147] With more major players of the WTO resorting to RTAs for trade rule-making and dispute settlement, the Members would rely less on the diplomatic approaches of the WTO dispute settlement system, thus weakening the second aspect of Lever Effect.

Although the absence of the AB would discourage some Members from persistently filing lawsuits, the third aspect of Lever Effect, i.e., imposing diplomatic pressures on the respondents to make concessions in negotiation, would continue to exist in the cases where the Members resort to agriculture dispute settlement as a channel to manifest their positions and raise other Members' awareness against the trade-distorting measures.

The diplomatic pressures derived from legal challenges are described as the "compliance pull" in the international community, which forces the WTO Members to comply with the rules either for fear of losing their international reputation or for securing the reciprocal terms.[148] However, the diplomatic pressures are not merely derived from the unfavorable adjudicative decisions

[146] *See* Josling & Tangermann, *supra* note 1, at 213.
[147] *See* Lester, *supra* note 139, at 3.
[148] Guzman, *supra* note 72, at 1869-71.

臺灣大學學術期刊資料庫

or rule clarifications rendered by the panel or the AB. The conduct of legal challenge itself demonstrates the confrontational attitude from the complainant towards the contested measure and applies diplomatic pressures on the respondent by "putting the fish on the table," which also draws the attention from other Members with common interests to collaboratively fight against the trade-distorting measures.[149] In this sense, the set-up of Lever Effect to impose diplomatic pressures does not necessarily call for a successful settlement of the case or completion of quasi-judicial proceedings. The complainants can still apply dispute settlement system as a platform to raise the contested issues in the form of legal challenges after the AB paralysis.

It is admitted that the paralysis of the AB would discourage the WTO Members from consistently bringing lawsuits since the respondents could easily leave the panel proceedings "floating" by just appealing the case.[150] However, the different purposes of the Members to file lawsuits in dispute settlement system would lead to different circumstances, and the purposes may include, e.g., relying on the quasi-judicial proceedings to provide binding rulings and identify the violation of trade rules, or raising the concerns to a platform to increase the exposure of the contested issues. The legal challenges driven by the former motivation would probably witness a significant decrease due to AB paralysis, while the Members with the latter purpose would be less distracted. In this regard, the adverse impact is primarily directed to the group of Members with the purpose to apply the quasi-judicial proceedings to challenge the contested measures, while the third aspect of Lever Effect would not be seriously affected in the cases where the Members regard the conduct of bringing lawsuits as a strategic approach to put diplomatic pressures on the respondents.

V. CONCLUSION

Lever Effect of agriculture dispute settlement on facilitating multilateral agriculture negotiation has been seriously affected by the AB crisis and the slow progress of agricultural ruling-making in the WTO. However, Lever Effect theory does not elaborate the limited role of agriculture dispute settlement in facilitating multilateral negotiation, and the paralysis of the AB provides a new context for the theory application.

This article demonstrates the limitation of agriculture dispute settlement and its impact on the Lever Effect. The comparatively less proportion of agriculture cases resolved through quasi-judicial proceedings reflect the heavy reliance on diplomatic approaches in agriculture dispute settlement.

[149] *Id.*
[150] Pauwelyn, *supra* note 32, at 7-9.

臺灣大學學術期刊資料庫

In addition, the large ratio of stagnated cases in consultation or implementation stages further indicates that the respondents would take advantage of the limitation of agriculture dispute settlement and employ litigation strategies to counter the Lever Effect, which could lead to more stagnated cases and escalation of trade conflicts.

Since the Lever Effect theory is established with the premise of a full-fledged dispute settlement system, the AB paralysis would erode the credibility of the dispute settlement system and discourage the Members from filing legal lawsuits against trade disruptive measures. Without persistent legal challenges against the trade-distorting subsidies, the Lever Effect would be further restricted in the context of negotiation deadlock. The lack of an operational quasi-judicial body would affect the consistency of WTO jurisprudence refined through the binding rule clarification and judgments, and would further obstruct the original checks and balances in the WTO. In addition, the paralysis of the AB would lead to another wave of fragmented rulemaking among the WTO Members, thus hampering the application of Lever Effect in facilitating multilateral agriculture negotiation. with the AB paralyzed, the legal conflicts between RTAs and the WTO agreements may not be adequately addressed through agriculture dispute settlement. In this regard, the Members may choose not to file lawsuits against the RTA-related measures to the DSB. The prevalence of RTAs would lead to less reliance on multilateral agriculture negotiation to restrict the use of trade disruptive measures, thus hindering the application of the Lever Effect.

臺灣大學學術期刊資料庫

REFERENCES

Books

BARAK, AHARON (2006), THE JUDGE IN A DEMOCRACY.

BARTON, JOHN H. ET AL. (2010), THE EVOLUTION OF THE TRADE REGIME.

DRACHE, FROESE (2007), DEADLOCK IN THE DOHA ROUND: THE LONG DECLINE OF TRADE MULTILATERALISM.

McMahon, Joseph A. & Melaku Geboye Desta (eds.) (2012), RESEARCH HANDBOOK ON THE WTO AGRICULTURE AGREEMENT: NEW AND EMERGING ISSUES IN INTERNATIONAL AGRICULTURAL TRADE LAW.

Articles

Bacchus, James & Simon Lester (2020), *The Rule of Precedent and the Role of the Appellate Body*, 54(2) JOURNAL OF WORLD TRADE 183.

Bahri, Amrita (2019), *Appellate Body Held Hostage: Is Judicial Activism at Fair Trial?*, 53(2) JOURNAL OF WORLD TRADE 293.

Davies, Gareth (2012), *Activism Relocated. The Self-Restraint of the European Court of Justice in Its National Context*, 19(1) JOURNAL OF EUROPEAN PUBLIC POLICY 76.

Dunne, Matthew S. II (2002), *Redefining Power Orientation: A Reassessment of Jackson's Paradigm in Light of Asymmetries of Power, Negotiation, and Compliance in the GATT/WTO Dispute Settlement System*, 34 LAW AND POLICY IN INTERNATIONAL BUSINESS 277.

Guzman, Andrew T. (2002), *A Compliance-Based Theory of International Law*, 90 CALIFORNIA LAW REVIEW 1823.

Ito, Banri et al. (2019), *Trade Policy Preferences and Cross-Regional Differences: Evidence from Individual-Level Data of Japan*, 51 JOURNAL OF THE JAPANESE AND INTERNATIONAL ECONOMIES 99.

Jackson, John H. (1978), *The Crumbling Institutions of the Liberal Trade System*, 12(2) JOURNAL OF WORLD TRADE 93.

Josling, Tim (2009), *Agricultural Trade Disputes in the WTO*, *in* TRADE DISPUTES AND THE DISPUTE SETTLEMENT UNDERSTANDING OF THE WTO: AN INTERDISCIPLINARY ASSESSMENT 245 (James C. Hartigan ed.).

Josling, Timothy & Stefan Tangermann (2003), *Production and Export Subsidies in Agriculture: Lessons from GATT and WTO Disputes Involving the US and the EC*, *in* TRANSATLANTIC ECONOMIC DISPUTES: THE EU, THE US, AND THE WTO 207 (Ernst-Ulrich Petersmann & Mark A. Pollack eds.).

Ludema, Rodney & Daniel E. Coates (1998), *Unilateral Trade Liberalization as Leadership in Trade Negotiations*, INTERNATIONAL TRADE 2.

McWhinney, Edward (2006), *The International Court of Justice and*

臺灣大學學術期刊資料庫

International Law-Making: The Judicial Activism/Self-Restraint Antinomy, 5(1) CHINESE JOURNAL OF INTERNATIONAL LAW 3.

Muzaka, Valbona & Matthew Bishop (2015), *Doha Stalemate: The End of Trade Multilateralism?*, 41 REVIEW OF INTERNATIONAL STUDIES 383.

Nogues, Julio (2008), *The Choice Between Unilateral and Multilateral Trade Liberalization Strategy*, 13(1) THE WORLD ECONOMY 15.

Onguglo, Bonapas Francis (1999), *Developing Countries and Trade Preferences*, *in* TRADE RULES IN THE MAKING: CHALLENGES IN REGIONAL AND MULTILATERAL NEGOTIATIONS 109 (Miguel Rodriguez Mendoza et al. eds.).

Petersmann, Ernst-Ulrich (2005), *Strategic Use of WTO Dispute Settlement Proceedings for Advancing WTO Negotiations on Agriculture*, *in* REFORMING THE WORLD TRADING SYSTEM: LEGITIMACY, EFFICIENCY, AND DEMOCRATIC GOVERNANCE 127 (Ernst-Ulrich Petersmann & James Harrison eds.).

Prusa, Thomas J. & Edwin Vermulst (2015), China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*: How the Chickens Came Home to Roost*, 14(2) WORLD TRADE REVIEW 287.

Steger, Debra (2008), *The WTO Dispute Settlement System: Jurisdiction, Interpretation and Remedies*, *in* AGREEING AND IMPLEMENTING THE DOHA ROUND OF THE WTO 294 (Harald Hohmann ed.).

Vidigal, Geraldo (2019), *Living Without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis*, 20 THE JOURNAL OF WORLD INVESTMENT & TRADE 862.

Zarbiyev, Fuad (2012), *Judicial Activism in International Law—A Conceptual Framework for Analysis*, 3(2) JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT 247.

Zhou, Weihuan & Henry Gao (2019), *Overreaching or Overreacting? Reflections on the Judicial Function and Approaches of WTO Appellate Body*, 53 JOURNAL OF WORLD TRADE 951.

Zhou, Weihuan & Shu Zhang (2017), *Anti-Dumping Practices and China's Implementation of WTO Rulings*, 230 THE CHINA QUARTERLY 512.

WTO Cases

Appellate Body Report, *Korea — Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WTO Doc. WT/DS161/AB/R, WT/DS169/AB/R (adopted January 10, 2001).

Appellate Body Report, *Peru — Additional Duty on Imports of Certain Agricultural Products*, WTO Doc. WT/DS457/AB/R (adopted July 31, 2015).

Appellate Body Report, *United States — Tax Treatment for "Foreign Sales Corporations"*, WTO Doc. WT/DS108/AB/R (adopted March 20, 2000).

臺灣大學學術期刊資料庫

Panel Report, *China — Domestic Support for Agricultural Producers Report of the Panel*, WTO Doc. WT/DS511/R (adopted April 26, 2019).
Panel Report, *Korea — Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WTO Doc. WT/DS161/R, WT/DS169/R (adopted January 10, 2001).
Panel Report, *United States — Subsidies on Upland Cotton*, WTO Doc. WT/DS267/R (adopted March 21, 2005).

WTO-related Documents

Communication from China, WTO Doc. WT/ACC/CHN/38/Rev.3 (July 19, 2001).
Dispute Settlement Body, *Minutes of The Meeting Held in the Centre William Rappard on 19 January 2001*, WTO Doc. WT/DSB/M/97 (February 27, 2001).
Dispute Settlement Body, *Minutes of The Meeting Held in the Centre William Rappard on 23 October 2002*, WTO Doc. WT/DSB/M/134 (January 29, 2003).
Dispute Settlement Body, *Minutes of The Meeting Held in the Centre William Rappard on 10 December 2003*, WTO Doc. WT/DSB/M/160 (January 27, 2004).
Marrakesh Agreement Establishing the World Trade Organization, April 15, 1994, 1867 U.N.T.S. 154.
Notification of a Mutually Agreed Solution, *United States — Subsidies on Upland Cotton*, WTO Doc. WT/DS267/46 (October 23, 2014).
The General Council, *Communication from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore and Mexico to the General Council*, WTO Doc. WT/GC/W/752 (November 26, 2018).
World Trade Organization, Ministerial Decision of 19 December 2015, WTO Doc. WT/MIN(15)/45, WT/L/980 (December 21, 2015).
World Trade Organization, Ministerial Decision of 19 December 2015, WTO Doc. WT/MIN (15)/44, WT/L/979 (December 21, 2015).
World Trade Organization, Ministerial Decision of 7 December 2013, WTO Doc. WT/MIN(13)/38, WT/L/913 (December 11, 2013).
World Trade Organization, Ministerial Decision of 7 December 2013, WTO Doc. WT/MIN(13)/38, WT/L/913 (December 7, 2013).

Internet Sources

A Handbook on the WTO Dispute Settlement System, WORLD TRADE ORGANIZATION, http: //www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c4s2p1_e.htm.
Agriculture, Forestry, and Fishing, Value Added (% of GDP), WORLD BANK, https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?most_recent_

臺灣大學學術期刊資料庫

year_desc=true.

Azevêdo: "The WTO Needs America, and America Needs the WTO", WORLD TRADE ORGANIZATION (March 8, 2014), https://www.wto.org/english/news_e/spra_e/spra9_e.htm.

Bellmann, Christophe & Jonathan Hepburn (2017), *The Decline of Commodity Prices and Global Agricultural Trade Negotiations: A Game Changer?*, 8(1) INTERNATIONAL DEVELOPMENT POLICY, http://journals.ope nedition.org/poldev/2384.

Carter, Colin A. (2014), *Some Trade Implications of the 2014 Agricultural Act*, 29(3) AGRICULTURAL AND APPLIED ECONOMICS ASSOCIATION 1, https://www.choicesmagazine.org/UserFiles/file/c msarticle_387.pdf.

DS228: Chile — Safeguard Measures on Sugar, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds228_e.htm.

DS230: Chile — Safeguard Measures and Modification of Schedules Regarding Sugar, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds230_e.htm.

DS240: Romania — Import Prohibition on Wheat and Wheat Flour, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/d ispu_e/cases_e/ds240_e.htm.

DS291: EC — Approval and Marketing of Biotech Products, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/c ases_e/ds291_e.htm.

DS35: Hungary — Agricultural Products, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds35_e.htm.

DS356: Chile — Milk Safeguards, WTO, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds356_e.htm.

DS430: India — Agricultural Products, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds430_e.htm.

DS475: Russia — Pigs (EU), WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds475_e.htm.

DS478: Indonesia — Import Licensing Regimes, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds4 78_e.htm.

DS484: Indonesia — Chicken, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/ dispu_e/cases_e/ds484_e.htm.

DS579: India — Sugar and Sugarcane (Brazil), WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds579_e.htm.

DS580: India — Sugar and Sugarcane (Australia), WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds580_e.htm.

DS581: India — Sugar and Sugarcane (Guatemala), WORLD TRADE

臺灣大學學術期刊資料庫

ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds581_e.htm.

DS598: China — Anti-Dumping and Countervailing Duty Measures on Barley from Australia, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds598_e.htm.

DS599: Panama — Measures Concerning the Importation of Certain Products from Costa Rica, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds599_e.htm#:~:text=On%2011%20January%202021%2C%20Costa,pineapple%2C%20and%20plantains%20and%20bananas.

Fulponi, Linda, *Regional Trade Agreements and Agriculture*, O ECONOMIC CD-ILIBRARY (March 1, 2015), https://www.oecd-ilibrary.org/ docserver/5js4kg5xjvvf-en.pdf?expires=1662880150&id=id&accname=guest&checksum=E2E7B8B00BC34D4ABB17A16FDC3D27F0OECD.

Global Economic Prospects, Trade, Regionalism, and Development, WORLD BANK (2005), https://openknowledge.worldbank.org/bitstream/handle/10986/14783/9780821357477.pdf.

Griswold, Daniel & Donald Boudreaux (2020), *A Fresh Start for US Trade Policy: Unilateral Trade Liberalization Through a Tariff Reform Commission*, MERCATUS CENTER, https://www.mercatus.org/system/files/griswold-trade-liberalization-mercatus-research-v1.pdf.

HEALY, STEPHEN ET AL. (1998), THE IMPLICATION OF THE URUGUAY ROUND AGREEMENT ON AGRICULTURE FOR DEVELOPING COUNTRIES, https://www.fao.org/3/w7814e/W78 14E04.htm.

Hudson, Darren et al. (2005), *The WTO Cotton Case and US Domestic Policy*, 20 CHOICES 143, https://www.choicesmagazine.org/2005-2/wto/2005-2-10.pdf.

Index of Disputes Issues, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm.

Interim Appeal Arrangement for WTO Disputes Becomes Effective, EUROPEAN COMMISSION (April 30, 2020), https://trade.ec.europa.eu/doclib/press/index.cfm?id=2143.

Josling, Timothy et al., *Implications of WTO Litigation for the WTO Agricultural Negotiations*, 19 IPC ISSUE BRIEF, (March, 2006), https://www.researchgate.net/publication/252210753_Implications_of_WTO_Litigation_for_the_WTO_Agricultural_Negotiations.

Lester, Simon (2020), *Can Interim Appeal Arbitration Preserve the WTO Dispute System?*, 77 CATO INSTITUTE FREE TRADE BULLETIN 1, https://www.cato.org/sites/cato.org/files/2020-08/FTB-77. pdf.

McDougall, Robert, *Crisis in the WTO: Restoring the WTO Dispute Settlement Function*, CENTRE FOR INTERNATIONAL GOVERNANCE INNOVATION (October 16, 2018), https://www.cigionline.org/publications/crisis-wto-restoring-dispute-settlement-function/.

臺灣大學學術期刊資料庫

Payosova, Tetyana et al. (2018), *The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures*, PIIE POLICY BRIEF, https://www.piie.com/system/files/documents/pb18-5.pdf.

Schnepf, Randy (2011), *Brazil's WTO Case Against the U.S. Cotton Program*, CONGRESSIONAL RESEARCH SERVICE, https://www.everycrsreport.com/reports/RL32571.html.

Schnepf, Randy & Jasper Womach (2006), *Potential Challenges to U.S. Farm Subsidies in the WTO: A Brief Overview*, CONGRESSIONAL RESEARCH SERVICE, https://www.everycrsreport.com/reports/RS22522.html.

Stewart, Terence, *Disputed Court: A Look at the Challenges to (and from) the WTO Dispute Settlement System*, GLOBAL BUSINESS DIALOGUE (2017), http://www.gbdinc.org/wp-content/uploads/2017/12/Terence_Stewart_at_GBD_Disputed_Court_12-20-2017.pdf.

Sub-committee Set Up on Cotton, WORLD TRADE ORGANIZATION (November 19, 2004), https://www.wto.org/english/news_e/news04_e/sub_committee_19nov04_e.htm.

United States Wins End to China's "Famous Brand" Subsidies After Challenge at WTO; Agreement Levels Playing Field for American Workers in Every Manufacturing Sector, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE (December 18, 2009), https://ustr.gov/ about-us/policy-offices/press-office/press-releases/2009/december/united-states-wins-end-china%E2%80%99s-%E2%80%9Cfamous-brand%E2%80%9D-sub.

US MISSION TO INTERNATIONAL ORGANIZATIONS IN GENEVA, STATEMENTS BY THE UNITED STATES AT THE MEETING OF THE WTO DISPUTE SETTLEMENT BODY GENEVA, (February 25, 2019), https://perma.cc/W4JF-Z4TN.

US MISSION TO INTERNATIONAL ORGANIZATIONS IN GENEVA, STATEMENTS BY THE UNITED STATES AT THE WTO GENERAL COUNCIL MEETING (2019), https://geneva.usmission.gov/2019/10/15/statements-by-the-united-states-at-the-wto-general-council-meeting/.

WORLD TRADE ORGANIZATION, GATT DISPUTES: 1948-1995, OVERVIEW AND ONE-PAGE CASE SUMMARIES (2019), https://www.wto.org/english/res_e/booksp_e/gatt4895vol1_e.pdf.

Working Papers, and Other Sources

Bartels, Lorand (2015), *The Relationship Between the WTO Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures* (University of Cambridge Faculty of Law, Legal Studies Research Paper Series, Paper No. 38).

Fabry, Elvire & Erik Tate (2018), *Saving the WTO Appellate Body or Returning to The Wild West of Trade?* (Jacaques Delors Institute, Policy

臺灣大學學術期刊資料庫

Paper No. 225), https://institutdelors.eu/wp-content/uploads/2018/05/SavingtheWTOAppellateBody-FabryTate-June2018.pdf.

Konandreas, Panos & George Mermigkas (2014), *WTO Domestic Support Disciplines: Options for Alleviating Constrains to Stockholding in Developing Countries in the Follow-Up to Bali* 10 (FAO Commodity and Trade Policy Research, Working Paper No. 45).

Pauwelyn, Joost, WTO Dispute Settlement Post 2019: What to Expect? What Choice to Make? (July 7, 2019) (unpublished manuscript) (on file with author).

Reich, Arie (2017), *The Effectiveness of the WTO Dispute Settlement System: A Statistical Analysis* (European University Institute, Working Paper No. 11).

Tagle, Yovana Reyes & Roberto Claros (2016), *The Law of Regional Trade Agreements in The WTO Dispute Settlement System: Lessons from the Peru-Agricultural Products Case* (World Trade Institute, Working Paper No. 4).

United Nations Conference on Trade and Development, *Negotiating Liberalization of Trade in Agriculture for Development*, U.N. Doc. UNCTAD/DITC/TNCD/2019/3 (2020), https://unctad.org/system/files/official-document/ditctncd2019d3_en.pdf.

臺灣大學學術期刊資料庫

臺灣大學學術期刊資料庫