

# Reimagining WTO Dispute Settlement

## **A case for business-government collaboration on mediation**

### **Executive summary**

Businesses face persistent trade irritants that have real commercial consequences. But many of these irritants are never challenged through formal World Trade Organization (WTO) dispute settlement. Instead, they linger unaddressed, highlighting the need for more flexible ways to resolve trade concerns.

The WTO Dispute Settlement Understanding (DSU), in addition to providing for formal dispute settlement, also allows alternative means of dispute resolution (ADR), including good offices, conciliation and mediation. However, these tools have not been used in practice, largely due to a lack of procedural clarity. That gap is now receiving renewed attention. As part of the ongoing WTO dispute settlement reform process, WTO Members are now discussing more detailed procedural rules to make mediation and conciliation a practical and usable option.

If operationalised, WTO mediation could offer a fast, low-cost way to resolve such trade irritants in a non-adversarial setting — while also helping to build trust and strengthen cooperation between trading partners. For developing and least developed countries, mediation and conciliation could open a door to the WTO dispute system that has long felt out of reach. Business has a key role to play in identifying trade concerns and encouraging governments to use mediation to deliver practical solutions.

### **The challenge: The unresolved trade concerns**

The WTO's dispute settlement system has long been essential to enforcing global trade rules. But many trade irritants fall below the threshold for a formal WTO dispute — even though they disrupt trade and fall within the scope of WTO rules. Some are too economically insignificant to justify the cost, time or diplomatic strain of a formal dispute. Others are too politically sensitive to escalate.

WTO Members regularly raise trade concerns in WTO committees—such as those on Technical Barriers to Trade (TBT), Sanitary and Phytosanitary Measures (SPS) and Market Access — often flagging specific measures that may restrict trade or create uncertainty for exporters. While this

process promotes transparency and dialogue, it does not offer a structured path to resolution. For many concerns, particularly those not pursued through formal dispute settlement, the discussion ends there.

Over time, the accumulation of unresolved issues can fuel frustration, especially in the business community, and erode confidence in the rules-based trading system. This contributes to growing strain in trading relationships, where trust between governments is already under pressure.

## **An untapped tool: Mediation under Article 5 DSU**

The DSU is the WTO rulebook that governs how Members resolve trade disputes. The formal dispute settlement process begins with consultations — a mandatory step where the parties are required to meet and try to resolve the issue bilaterally. If consultations fail, the complainant can request the establishment of a panel, which will adjudicate the dispute. Panel rulings can be subsequently appealed to the Appellate Body, though it has not been functional since 2019.

While this system provides binding decisions, it is complex, legalistic and often takes years to complete a proceeding. Many trade concerns never reach this stage, especially when the economic stakes may not be perceived as justifying the cost and complexity of litigation – or when the issues are time-sensitive or politically sensitive.

Article 5 of the DSU offers an alternative complementary to formal litigation: it allows Members to engage in good offices, conciliation and mediation — voluntary processes intended to help parties resolve trade issues collaboratively, outside of litigation. But these tools have gone unused due to the absence of procedural detail, among other reasons.

That may now be changing. As part of the ongoing WTO dispute settlement reform process in Geneva, a consolidated draft text<sup>1</sup> has been circulated proposing clear procedural rules to make the WTO ADR operational. WTO Members can engage in mediation and conciliation at any stage, including before formal consultations are initiated. In practice, this means that mediation and conciliation could provide a flexible opportunity to resolve disputes in a pragmatic and confidential way – without the need to initiate formal legal proceedings or setting a legal precedent.

## **How mediation works**

Mediation is a voluntary process between two parties facilitated by a neutral third party — the mediator. The mediator helps parties engage in structured dialogue, identify areas of convergence and work toward a mutually agreed solution. Unlike a panel, the mediator makes no legal determination and imposes no binding outcome. In the context of the DSU, it is generally understood that the mediator may offer advice or propose solutions for the parties to consider.

The process is non-adversarial, confidential, and flexible, allowing Members to maintain control while exploring options outside formal litigation. Mediation also creates space for compromise and trust-building by allowing issues to be addressed constructively and without escalation.

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<sup>1</sup>[JOB/GC/385](#)

## How mediation differs from the formal WTO process

Formal WTO Dispute Settlement	WTO Mediation
Mandatory legal process	Voluntary and party-driven
Begins with formal consultations	Can start any time — even before formal consultations
Involves panel rulings and legal reasoning	Facilitated dialogue, no rulings
Adversarial, legalistic	Collaborative and informal
Binding outcome (in principle)	Non-binding outcome agreed by parties
Multi-year timelines	Quick resolution possible
Limited flexibility	Process tailored to each case and taking into account the specific features (cultural, linguistic and legal background) of the parties

### Why this matters for business

Business is directly affected by unresolved trade frictions—especially those that do not rise to the level of formal disputes. Issues such as technical barriers, licensing delays, or discriminatory procedures often disrupt trade but remain unresolved.

Mediation offers a more accessible pathway to resolve such trade frictions. While only governments can initiate WTO mediation proceedings, companies can play a constructive role by raising specific concerns and encouraging their governments to explore the use of mediation. The approach is faster, lower-cost and less likely to strain commercial relationships than pursuing a formal WTO dispute. For many businesses, this could make the difference between a concern left lingering and one resolved constructively.

### Why this matters for governments

Not every issue is suited to litigation. Mediation offers governments a trusted, lower-risk channel to address trade concerns, manage sensitive trade relations, and resolve disputes that are not easily handled through formal WTO dispute settlement.

For developing and least developed countries, mediation can lower the bar to meaningful participation in the WTO dispute system. It does not require extensive legal resources, and the process is easier to navigate than full-scale litigation. It also gives Members more control over the process and outcome, rather than submitting to third-party rulings.

Just as importantly, mediation can support trust-building between Members, offering a constructive, rules-based forum for resolving disagreements without confrontation. It can also help governments build trust with domestic industries by demonstrating that trade concerns are being heard and acted upon.

By piloting mediation now, Members can make practical progress on reform and reinforce confidence in the trading system.

### Why use WTO Mediation?

- Enables early, informal resolution of trade concerns
- Reduces time, cost, and legal burden
- Promotes cooperation—not confrontation
- Flexible and confidential process
- No imposed ruling—outcomes are mutually agreed

### ICC's role and experience

The International Chamber of Commerce (ICC) is a global leader in ADR. Through its International Centre for ADR and ICC Mediation Rules, ICC has facilitated hundreds of cross-border mediations, including commercial, investment and public-sector disputes.

ICC brings technical expertise and real-world experience to the WTO reform conversation. We are actively seeking to identify potential pilot cases and to support the practical design and use of WTO mediation at the WTO.

### What needs to happen next?

For WTO mediation to become a viable option, governments must be willing to use it and businesses must help identify the right cases.

ICC encourages companies to speak with their governments about their unresolved trade concerns that could benefit from mediation. Governments could demonstrate best practice and take advantage of the draft procedural framework to pilot the WTO mediation procedure — without the need to wait for formal reform of the dispute settlement system, and in doing so, help deliver practical solutions to real-world trade concerns.

### Additional resources

- Tetyana Payosova, [Building a case for ADR at the WTO, ICC Trade and Investment Policy Commission Expert Discussion](#), 28 January 2025
- Geneva Trade Law, [Accessible and Inclusive Dispute Resolution](#), May 2024
- [Towards Sustainable and Inclusive Dispute Resolution: Mediation as an Alternative to Expensive and Inconclusive Litigation](#), Panel Discussion, WTO Public Forum, 27 September 2022
- Tetyana Payosova, 'Re-Designing the WTO Mediation Mechanism', in M. Elsig et al., *International Economic Dispute Settlement: Demise or Transformation?* (CUP, 2021), 98 (can be provided upon request)

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## Contact

To explore the possibility of a WTO mediation pilot case or for further information, please contact:

**Valerie Picard**

ICC Head of Trade

[Valerie.Picard@iccwbo.org](mailto:Valerie.Picard@iccwbo.org)

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33-43 avenue du Président Wilson, 75116 Paris, France

T +33 (0)1 49 53 28 28 E [icc@iccwbo.org](mailto:icc@iccwbo.org)

[www.iccwbo.org](http://www.iccwbo.org) [@iccwbo](https://www.instagram.com/iccwbo)