

**The Surprise Return of Development Policy Space in the Multilateral Trading System:  
What the WTO Appellate Body Blockage Means for the Developmental State**

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The relationship between the WTO and development has been a major focus of international political economy literature. Critical IPE scholars have long argued that the WTO's rules have disadvantaged developing countries—impeding, rather than facilitating, development for most low-income countries and perpetuating entrenched asymmetries in the global economy (Porter 2005; Scott and Wilkinson 2020; Singh 2017). During the Uruguay Round of trade negotiations (1986-1994) that created the WTO, the US and other advanced-industrialized states used substantial economic and political coercion to compel developing countries to participate in a set of rules that many viewed as against their interests (Muzaka and Bishop 2014; Narlikar 2013; Steinberg 2002). A key criticism has been that the WTO's rules have constrained development policy space, restricting the capacity of states to deploy effective development policies and achieve upward mobility in the international economy (Gallagher 2008; Rodrik 2001; Shadlen 2005; Wade 2003). The WTO erected significant obstacles to development that earlier developers did not face, outlawing many of the common development strategies used to nurture infant industries, upgrade industrial and technological capacity, and move up the value chain into higher value-added activities. Moreover, thanks to the binding nature of its dispute settlement mechanism, not only do “the WTO's rules have teeth” but unusually “sharp teeth” (Shadlen, 2005: 756).

In recent years, however, the US—the chief architect of the WTO’s rules and its powerful dispute settlement system—has become increasingly dissatisfied with the functioning of the multilateral trading system. Since the Trump administration, and continuing under President Biden, the US has been blatantly violating the rules and principles of the WTO by unilaterally imposing tariffs on all major trading partners and launching a trade war with China. In addition, the US has disabled the WTO’s dispute settlement mechanism by blocking appointments to the Appellate Body, which acts effectively as a supreme court for global trade. The WTO’s dispute settlement mechanism is considered the “crown jewel” of the multilateral trading system. The Appellate Body is one of the most powerful courts in the international system, and it has made the WTO one of the world’s most powerful international institutions (Zaccaria, 2022). The Appellate Body hears appeals of decisions by WTO dispute panels and is therefore critical to the institution’s two-tiered system of independent judicial review. However, the US blockage has left the Appellate Body with no judges to adjudicate disputes, making it possible for the losing state in a WTO dispute to block the panel ruling simply by filing an appeal.

In this article, I argue that the trade and development landscape has now changed fundamentally: WTO rules, once seen as a powerful constraint on development policy space, are no longer legally enforceable. As a result, we are witnessing the surprise return of development policy space in the multilateral trading system. Less than 30 years after it was created, the WTO’s enforcement mechanism has collapsed—sabotaged by its own principal architect, the US. Frustrated with how the WTO was limiting its ability to respond to China’s rise as a potential hegemonic challenger, the US sought to reassert its sovereignty and enhance its scope to deviate from WTO rules by dismantling the Appellate Body (Hopewell 2021a; Scott and Wilkinson 2020). However, in seeking to restore its own sovereignty in the realm of trade and

industrial policy, the US has also, unintentionally, restored the policy space of developing countries. Ironically, thanks to the recent actions of the US—which has historically been the leading opponent of development policy space in the trade regime—developing countries have now effectively been released from the constraints of WTO rules. If their developmental policies are successfully challenged at the WTO, they can simply block the ruling by filing an appeal to the now-defunct Appellate Body. By rendering the WTO’s Appellate Body inoperable, the US has thus re-opened the space for developing countries to pursue developmental trade and industrial policies.

As this article will show, developing countries are seizing the opportunity created by the Appellate Body blockage. The article analyzes two landmark recent WTO disputes, the first concerning Indonesia’s export restrictions on nickel and the second involving India’s export subsidies provided through its special economic zones. Both are cases where a powerful advanced-industrialized state challenged an emerging economy’s industrial policies. Both involved common development strategies that have historically been widely used by developing countries seeking to improve their position in the international division of labour by fostering industrialization and moving up the value chain into the production of higher value-added goods. In each case, the policies were successfully challenged at the WTO and found to be in violation of WTO rules. However, in each case, the developing country in question has been able to block the ruling by filing an appeal to the now-defunct Appellate Body. Without a functional Appellate Body, there is no way to enforce WTO rules or punish non-compliance. The Appellate Body blockage therefore requires that we revisit our understanding of the contemporary relationship between the WTO and development.