
BRIDGING LEGAL REGIMES: THE CONVERGENCE AND CONFLICT BETWEEN WTO DISPUTE SETTLEMENT AND INVESTOR-STATE ARBITRATION

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ABSTRACT

As trade and investment rules collide, can a state protect its people without risking legal blowback? This paper explores the rising tensions between WTO dispute settlement and investor state arbitration. Though built on similar principles like National Treatment and MFN, the two regimes often produce conflicting outcomes. Case studies from Philip Morris to Argentina's crisis show how investors exploit gaps to challenge public interest policies. The result is legal uncertainty and policy paralysis. This paper calls for treaty reform, joint interpretations, and a unified appellate structure to turn fragmentation into coherence and restore balance between investor rights and sovereign policy space.

I. INTRODUCTION

"Can a nation be penalized for protecting its citizens?"

This rhetorical question is central to an escalating legal dilemma in international economic law. As states implement policies to protect public health, the environment, or national security, they often come across legal disputes, not just at the World Trade Organization (WTO) but also under Bilateral Investment Treaties (BITs). What formerly seemed as complimentary legal frameworks, trade liberalization and investment protection, now increasingly clash with each other.

The WTO dispute settlement mechanism and Investor-State Dispute Settlement (ISDS) both seek to provide legal certainty and discourage protectionism while promoting economic liberalisation.¹ Nonetheless, they differ considerably in form, intent, and remedies. The WTO system is multilateral, transparent, and emphasizes state-to-state settlement with compliance-oriented results. ISDS is, however, fragmented driven by investors, and frequently culminates in enforceable settlements against governments. When analogous legal standards—such as National Treatment, Most-Favoured Nation clauses, or indirect expropriation—are construed divergently in other forums, governments encounter the risk of being drawn in conflicting legal directions. This distinction facilitates forum shopping, leads to contradictory jurisprudence, and deters valid regulatory measures, especially for developing nations striving for policy autonomy in social and environmental objectives.

This paper contends that, while the WTO and ISDS have convergent legal standards, their procedural and institutional fragmentation exacerbates systemic concerns, requiring coordinated transition. The paper incorporates comparative methods and significant case studies, such as BITs with India, the Philip Morris arbitration, and Argentina's financial crisis, to push for systemic coherence through interpretative alignment and structural transformation.²

II. HISTORICAL DEVELOPMENT AND LEGAL FRAGMENTATION

A. Evolution of the WTO Dispute Settlement System

¹ Siqing Li, 'The Convergence of WTO Dispute Settlement and Investor-State Arbitration: A Closer Look at Umbrella Clauses' (2018) 19(1) *Chicago Journal of International Law* 254.

² Siqing Li, 'The Convergence of WTO Dispute Settlement and Investor-State Arbitration: A Closer Look at Umbrella Clauses' (2018) 19(1) *Chicago Journal of International Law* 254.

The WTO dispute settlement system demonstrates the steady shifts in trade dispute resolution beginning with the General Agreement on Tariffs and Trade (GATT) established in 1947. Under the GATT, dispute resolution was predominantly diplomatic, with panels formed on an ad hoc basis and panel recommendations need consensus approval, even from the losing party, to have binding status. This procedural defect considerably compromised the system's efficacy.

The Uruguay Round talks (1986-1994) represented a pivotal point, converting this diplomatic method into a more judicialized framework through the Dispute Settlement Understanding (DSU).³ The DSU implemented numerous groundbreaking features: automatic panel formation, the establishment of a permanent Appellate Body for legal review, reverse consensus for report adoption (indicating reports are accepted unless there is consensus opposing adoption), and enhanced enforcement mechanisms.

The "crown jewel" of the multilateral trade system is currently experiencing a significant crisis, most notably illustrated by the United States' obstruction of Appellate Body member appointments since 2017, which has essentially crippled the appellate function.⁴ This has prompted several reform attempts, notably the Multi-party Interim Appeal Arbitration Arrangement (MPIA) created by some WTO members as a temporary remedy.⁵

B. Development of Investor-State Dispute Settlement (ISDS)

Investor-state arbitration originated from a different historical trajectory. Historically, foreign investors depended on diplomatic protection from their home countries or contractual dispute settlement methods with host nations.⁶ The watershed development happened in the 1965 ICSID Convention, which established an institutional framework for direct investor-state arbitration.

The surge of bilateral investment treaties (BITs) in the 1990s and early 2000s, exceeding 2,500

³ World Trade Organization, *Understanding on Rules and Procedures Governing the Settlement of Disputes* (1994) < https://www.wto.org/english/docs_e/legal_e/ursum_e.htm > accessed 8 May 2025.

⁴ Moushami Joshi, 'And Then There Were None...The Dismantling of the Appellate Body and the Future of International Trade Dispute Settlement' (2021) 33(2) *National Law School of India Review* art 1 <<https://repository.nls.ac.in/nlsir/vol33/iss2/1> > accessed 8 May 2025.

⁵ World Trade Organization, 'The Multi-Party Interim Appeal Arbitration Arrangement (MPIA)' (WTO Plurilaterals) https://wtoplurilaterals.info/plural_initiative/the-mpia/ accessed 8 May 2025.

⁶ Gus Van Harten, *Investment Treaty Arbitration and Public Law* (Oxford University Press 2007)

in total, significantly enhanced investors' access to this framework.⁷ These accords often offer extensive substantive safeguards for foreign investors and permit arbitration, enabling investors to bypass local courts and directly pursue international arbitration against host nations for purported treaty infringements.

Investment provisions in free trade agreements (FTAs), including NAFTA Chapter 11 (now USMCA Chapter 14) and the Energy Charter Treaty, have significantly broadened the scope of Investor-State Dispute Settlement (ISDS).⁸ In contrast to the hierarchical, institutional framework of WTO dispute resolution, investor-state arbitration functions through ad hoc courts established under diverse institutional regulations (ICSID, UNCITRAL, SCC, etc.), with restrictive methods for maintaining consistency or resolving legal inaccuracies.

C. Comparative Institutional Analysis

Key structural differences between the regimes include:

1. **Legal basis:** The WTO operates under a singular global framework, whereas ISDS is founded on several distinct bilateral and multilateral agreements.
2. **Jurisdiction *ratione personae*:** WTO conflicts only include state-to-state claims, but ISDS allows private parties (investors) to sue states directly.
3. **Institutional structure:** The WTO is a coherent entity with professional staff and standing bodies, whereas ISDS works through decentralized, ad hoc courts.
4. **Appellate review:** The WTO's Appellate Body (when functional) allows for a systematic assessment of legal interpretations, but most investment arbitrations lack adequate appellate alternatives.
5. **Enforcement:** The WTO depends on granted retaliation by the winning state, whereas investment awards may usually be enforced directly against state assets.

⁷ UNCTAD, *Investor-State Disputes Arising from Investment Treaties: A Review* (UNCTAD Series on International Investment Policies for Development 2005) https://unctad.org/system/files/official-document/webiteiia20069_en.pdf accessed 8 May 2025.

⁸ Siqing Li, 'The Convergence of WTO Dispute Settlement and Investor-State Arbitration: A Closer Look at Umbrella Clauses' (2018) 19(1) *Chicago Journal of International Law* 254.

D. Legal Fragmentation

Historically, both of these systems did not significantly overlap in the outset. Nevertheless, the development of free trade agreements (FTAs) and comprehensive economic accords (e.g., NAFTA, CETA, RCEP) has resulted in the presence of similar norms such as national treatment (NT) and most-favoured-nation (MFN) in both frameworks, hence developing different interpretations.⁹

For example, national treatment under GATT Article III is confined to "like products," supported by significant WTO law on the matter (*Japan – Alcoholic Beverages*).¹⁰ On the contrary, NT under BITs sometimes encompasses a wider range of "like circumstances," a more lenient criterion as defined by ad hoc courts.¹¹ Similarly the Most favoured Nation (MFN) principle in trade law (GATT Art. I)¹² emphasizes tariff parity, whereas in investment law, MFN is sometimes employed to include more advantageous dispute resolution processes or substantive provisions from third-party treaties (*Maffezini v. Spain, ICSID*).¹³ Consequently, creating a doctrinal fragmentation.

III. JURISDICTIONAL OVERLAPS AND SUBSTANTIVE CONVERGENCE

A. National Treatment and Most Favoured Nation

The principles of National Treatment (NT) and Most-Favoured Nation (MFN) are essential to both BITs and World Trade Organization (WTO) laws. National Treatment requires that foreigners receive treatment at least as favourable as that of domestic investors, while Most-Favoured-Nation stipulates that any advantages conferred to one foreign investor must be provided to all others. In WTO law, NT is applied to products to guarantee that imported goods are not treated unfairly in comparison to domestic products, with an emphasis on market competitiveness. In contrast, under ISDS, NT governs the treatment of investors and investments, which often requires advanced assessment of regulatory purpose and the impacts of policies on foreign firms. Similarly, MFN at the WTO assures non-discriminatory treatment

⁹ Siqing Li, 'The Convergence of WTO Dispute Settlement and Investor-State Arbitration: A Closer Look at Umbrella Clauses' (2018) 19(1) *Chicago Journal of International Law* 254.

¹⁰ World Trade Organization, 'National Treatment on Internal Taxation and Regulation (Article III GATT 1994)' (WTO Dispute Settlement Repertory) < https://www.wto.org/english/tratop_e/dispu_e/repertory_e/n1_e.htm > accessed 8 May 2025.

¹¹ India-Mexico BIT (2007), Article 3

¹² General Agreement on Tariffs and Trade (GATT) 1947, Art I.

¹³ *Maffezini v. Spain* (2001) ICSID Case No ARB/97/7

of trading partners and is automatically extended to all members. However, in ISDS, MFN clauses are routinely used to import more advantageous treaty provisions—including procedural benefits—from third-party BITs, raising concerns about treaty "cherry-picking."¹⁴ These sections create potential inconsistencies between WTO regulations and BITs, particularly when a government imposes limitations that favour domestic investors while harming foreign ones, resulting in divergent interpretations under the two regimes.

- 1. India-Germany BIT (now suspended):** The India-Germany BIT represents as a prime example how there can be potential conflicts between these provisions and WTO legislation.¹⁵ The BIT grants German investors the advantages of MFN and NT provisions, providing them with safeguards that surpass those available to investors from other WTO members.¹⁶ If India implements rules, such as environmental legislation or limitations on foreign direct investment (FDI), German investors may exploit the MFN clause to get more advantageous treatment than other WTO members. This may lead to forum shopping, when investors prefer to bring complaints to ISDS tribunals instead of the WTO Dispute Settlement Mechanism (DSM), regardless of the laws' justifiability under GATT Article XX.¹⁷

Example: If India implements restrictions on tobacco advertising to safeguard public health, German investors in the tobacco industry may contest these laws through ISDS, claiming they infringe against NT and MFN obligations under the BIT, notwithstanding the fact that these measures are justifiable under WTO norms.

- 2. India-UK BIT (renegotiated):** The India-UK BIT similarly has MFN terms that allow British investors to get preferential treatment.¹⁸ If India implement trade-related laws, like new tariffs or health standards, British investors may apply the MFN provision to utilize a more advantageous dispute settlement mechanism (such as ISDS), bypassing WTO legislation. The possibility of forum shopping generates substantial apprehensions over the fragmentation of international law.

¹⁴ Prabhash Ranjan, *India and Bilateral Investment Treaties* (Oxford University Press 2019) Chapter 4: Mapping the Acceptance—I

¹⁵ India-Germany BIT (1995), Article 4.

¹⁶ Prabhash Ranjan, *India and Bilateral Investment Treaties: Refusal, Acceptance, Backlash* (Oxford University Press 2019).

¹⁷ General Agreement on Tariffs and Trade (GATT) 1947, Art XX.

¹⁸ India-UK BIT (1994), Article 4.

Example: If India enacts a carbon tax that adversely affects international businesses, British investors may argue that they are being treated less favourably than investors from nations with lower carbon prices, citing Most-Favoured-Nation status to pursue redress through the Investor-State Dispute Settlement mechanism rather than through WTO channels.

B. Expropriation measures

Expropriation clauses in Bilateral Investment Treaties safeguard foreign investors by enabling them to claim compensation if their interests are negatively impacted by governmental restrictions.¹⁹ Expropriation, although not explicitly covered by WTO legislation, may occur indirectly when trade-restrictive policies are cloaked as protectionism. In contrast, ISDS frameworks clearly encompass both direct and indirect expropriation, including regulatory measures, and generally mandate compensation under the majority of BITs.²⁰ These regulations may generate problems with WTO rules, particularly when nations enact measures impacting foreign investments for legitimate public objectives, such as public health or environmental protection.

- 1. India-Germany BIT:** When India enacts environmental laws or other public policy measures that affect foreign investments, such as restricting water consumption or carbon emissions, German investors may allege that these policies constitute indirect expropriation under the India-Germany BIT. However, these laws might be justified under GATT Article XX, which allows for exceptions for measures that preserve public health and the environment.²¹ This might result in a dispute between the BIT and WTO frameworks, with the ISDS tribunal ruling with the investor despite the WTO providing justification for such actions under its exceptions clause.
- 2. India-UK BIT:** Similarly, the India-UK BIT might safeguard British investors against regulatory actions like land expropriation or new taxation rules that affect their assets. Such measures might be challenged under the BIT's expropriation provision, even if they fall within India's WTO rights, where restrictions may be ruled reasonable under GATT Article XX. **Example:** If India enacts stringent environmental laws affecting

¹⁹ J.M. Cox, *Expropriation in Investment Treaty Arbitration* (Oxford University Press 2019).

²⁰ San Martin Isabel, 'Expropriation' (edited by Dr. Willcocks Andrew, Jus Mundi, 2023) <https://jusmundi.com/en/document/publication/en-expropriation> accessed 11 May 2025.

²¹ General Agreement on Tariffs and Trade (GATT) 1947, Art XX.

industries such as mining, British investors in this sector can bring expropriation claims under the India-UK BIT to seek compensation for potential losses, even if these measures are justified under the WTO's public policy exceptions.

IV. CASE STUDIES ANALYSIS

A. Philip Morris International v. Uruguay (ISDS)

The Philip Morris case demonstrates the conflict between trade and investment protection laws. The controversy occurred when Philip Morris contested Uruguay's tobacco control laws under the Switzerland-Uruguay BIT²², which included graphic health warnings and stringent packaging standards. Philip Morris claimed that the rules amounted to expropriation and breached the FET criterion.²³ Simultaneously, similar tobacco packaging measures were examined under the WTO's Technical Barriers to Trade (TBT) Agreement, particularly in Australia - Tobacco Plain Packaging, where panels recognized states' rights to pursue public health objectives in accordance with TBT Articles 2.1 and 2.2.²⁴ Although Uruguay's regulations were also challenged under the WTO's Technical Barriers to Trade Agreement, the ISDS procedure enabled Philip Morris to circumvent the WTO DSM and seek compensation.

The ISDS panel ruled in Uruguay's favour, acknowledging its legitimate interest in preserving public health.²⁵ The decision stressed the proportionality of Uruguay's actions and reaffirmed the notion that public health rules might trump commercial interests. This decision prompted worries about ISDS overreach, in which a tribunal may overturn national boundaries that were otherwise compliant with WTO law.

Implication: This case exemplifies the prospect of forum shopping—although Philip Morris, as a private company, lacked the capacity to commence proceedings under the WTO DSM, it provided legal arguments in Investor-State Dispute Settlement that closely resembled WTO-style reasoning in seeking a more advantageous result.²⁶ Scholars like Cho and Kurtz have observed that this disparity leads to a state of “*disintegrated pluralism*,” wherein trade and

²² Switzerland - Uruguay BIT (1988)

²³ Stefanie Schacherer, 'Philip Morris v. Uruguay' (ITN, 18 October 2018).

²⁴ A Mitchell and SM Wurzberger, 'Boxed In? Australia's Plain Tobacco Packaging Initiative and International Investment Law' (2011) 27 *Arbitration International*.

²⁵ T Voon and A Mitchell, 'Philip Morris v Uruguay: An Affirmation of "Police Powers" and "Regulatory Power in the Public Interest" in International Investment Law' (2016) 31 *ICSID Review*.

²⁶ Siqing Li, 'The Convergence of WTO Dispute Settlement and Investor-State Arbitration: A Closer Look at Umbrella Clauses' (2018) 19(1) *Chicago Journal of International Law*.

investment tribunals function in independent silos with minimal cooperation.²⁷ The case further emphasizes the necessity to improve transparency and to achieve an adequate equilibrium between legitimate public health goals and the safeguarding of foreign investments.

B. Argentina's Financial Crisis Measures (ISDS)

In response to Argentina's 2001–2002 financial crisis, the government implemented emergency measures, such as currency depreciation and funds freeze, to mitigate economic collapse.²⁸ Foreign investors, including CMS Gas, LG&E, and Sempra, filed lawsuits under ISDS provisions of BITs, claiming indirect expropriation and violations of Fair and Equitable Treatment (FET).²⁹ Argentina asserted necessity and invoked GATT Article XXI, which allows for emergency actions under WTO rules.³⁰ Nonetheless, ISDS tribunals predominantly dismissed Argentina's claim and granted significant compensation to investors, prioritizing legal certainty and investment protection over Argentina's regulatory sovereignty.

Implications: This case highlights the significant contrast between WTO flexibility and ISDS rigidity. While WTO law permits nations to respond to crises without violating commitments, ISDS courts frequently seek compensation regardless of the situation. The findings show how BITs can limit sovereign policy responses in ways that WTO norms do not, emphasizing fragmentation, regulatory chill concerns, and the importance of harmonizing emergency exclusions across legal regimes.

V. PROCEDURAL AND SYSTEMIC DIVERGENCES

The procedural structures of the WTO Dispute Settlement Mechanism (DSM) and Investor-State Dispute Settlement (ISDS) show substantial differences that influence access to justice, transparency, enforcement, and international economic law coherence. These variations cause systemic pressure and limit state regulatory authority, particularly in developing countries.

²⁷ Cho S and Kurtz J, 'Convergence and Divergence in International Economic Law and Politics' (2018) 29(1) European Journal of International Law.

²⁸ Guido Sandleris, 'Economic Challenges Are a Barrier to Argentina's Prosperity' (Atlantic Council, 27 February 2024) <https://www.atlanticcouncil.org/in-depth-research-reports/books/economic-challenges-are-a-barrier-to-argentinas-prosperity/> accessed 12 May 2025.

²⁹ Federico Lavopa, 'Crisis, Emergency Measures and the Failure of the ISDS System: The Case of Argentina' (South Centre Investment Policy Brief No 2, July 2015) https://www.southcentre.int/wp-content/uploads/2015/07/IPB2_Crisis-Emergency-Measures-and-the-Failure-of-the-ISDS-System-The-Case-of-Argentina.pdf accessed 12 May 2025.

³⁰ General Agreement on Tariffs and Trade (GATT) 1947, Art XXI.

1. Access to Justice and standing

The WTO Dispute Settlement Mechanism restricts standing to member states, making it a state-to-state mechanism that might disadvantage smaller economic entities and dependent exporters.³¹ On the contrary, ISDS distinctly grants foreign investors direct access to international arbitration, regardless of their home state's participation. This depoliticizes claims and guarantees investor access, but also creates asymmetry: only investors can initiate procedures, depriving host states and impacted third parties of analogous rights. This unilateral dynamic results in legitimacy issues and exacerbates arguments over the disparity of procedural rights.

2. Remedies and Enforcement

WTO decisions are forward-looking, with an emphasis on fulfilling obligations. If a breach is found, the recommended remedy is the withdrawal or adjustment of the incompatible measure; compensation or retaliation (by suspension of concessions) are uncommon and prospective. ISDS awards, on the other hand, are generally compensatory in nature, awarding damages—often including calculated potential profits—for past state misconduct. These verdicts are enforceable under the ICSID or New York Convention, making ISDS a more effective enforcement weapon than the WTO's use of reciprocal trade sanctions.³² The financial weight and enforceability of ISDS verdicts generate sovereignty and fiscal issues among responding authorities. Therefore, the companies end up choosing ICSID over WTO due to procedural advantages.

3. Jurisprudential Inconsistency

Before its stagnation, the WTO Appellate Body established a de facto precedent system by consistently referencing past verdicts. This fostered legal certainty and logical consistency. In contrast, ISDS does not have an institutional appellate procedure, and tribunals are ad hoc and frequently inconsistently constituted. Consequently, analogous treaty provisions—such as “fair and equitable treatment” or “national treatment”—may be construed in inconsistent or

³¹ J Lockhart, 'The Advisory Centre on WTO Law: Levelling the Playing Field' (2010) 2 International Trade Forum.

³² A van Aaken, 'Fragmentation of International Law: The Case of International Investment Protection' (2008) 17 Finnish Yearbook of International Law.

conflicting manners across various circumstances. This contradiction weakens predictability, creates normative fragmentation and legal uncertainty in international economic law.

4. Regulatory Chill on policy autonomy

The combined effect of WTO and ISDS regimes further limits nations' power to regulate in the public interest, particularly in sensitive sectors including as health, the environment, and financial stability.³³ The simultaneous exposure to trade and investment lawsuits, each with its own set of legal standards and remedies, drives governments to pre-emptively amend or abandon policies in order to prevent negative verdicts. This tendency disproportionately impacts poor nations, because insufficient institutional capacity heightens legal ambiguity and risk aversion. The requirement to balance commitments across regimes may result in defensive governance, in which policy formulation is influenced by legal exposure rather than democratic or developmental objectives.

VI. TOWARDS A COHERENT REGIME: PROPOSALS FOR REFORMS

The convergence of trade and investment regimes has revealed systemic inconsistencies, especially in dispute settlement. To maintain legal predictability, regulatory space, and consistency, reform initiatives must be multifaceted, addressing institutions, treaty design, and jurisprudential norms.

A. Institutional coordination and Procedural Innovation

A vital approach for attaining systemic coherence between the WTO and ISDS is the creation of cooperative interpretation processes inside comprehensive trade and investment agreements.³⁴ The mechanisms, previously indicated in agreements like the Comprehensive Economic and Trade Agreement (CETA) and the United States-Mexico-Canada Agreement (USMCA), would facilitate the issuance of authoritative interpretations regarding overlapping legal provisions, including National Treatment (NT), Most-favoured Nation (MFN), and

³³ K Tienhaara, 'Regulatory Chill and the Threat of Arbitration: A View from Political Science' in C Brown and K Miles (eds), *Evolution in Investment Treaty Law and Arbitration* (Cambridge University Press 2011) 606.

³⁴ Brooks E Allen and Tommaso Soave, 'Jurisdictional Overlap in WTO Dispute Settlement and Investment Arbitration' (6 June 2014) 30 *Arbitration International* 1 <https://ssrn.com/abstract=2446806> accessed 12 May 2025.

expropriation.³⁵ Joint interpretative bodies would be essential in directing tribunals on the consistent interpretation of joint responsibilities, so fostering jurisprudential harmony among regimes and reducing conflicting verdicts.

The establishment of a consolidated appellate system for adjudicating trade and investment disputes might further augment consistency and credibility. Influenced by the WTO's Appellate Body, this mechanism would facilitate coordinated appellate supervision in cases with overlapping concerns, therefore reducing conflicting interpretations and enhancing legal certainty. However, implementing such a mechanism necessitates significant institutional coordination among WTO members and the ISDS community, especially stakeholders associated with ICSID and UNCITRAL, to ensure that its design incorporates the distinctive procedural and substantive features of each regime.

B. Doctrinal Alignment and Treaty Innovation

A crucial path to coherence is the alignment of treaty provisions within trade and investment frameworks. Recent accords such as the CPTPP and RCEP demonstrate an increasing effort to include references to WTO law inside investment chapters and vice versa, establishing a framework for doctrinal harmonization.³⁶ Harmonizing terminology and legal standards for principles such as National Treatment, Most-Favoured Nation, and expropriation helps mitigate interpretation fragmentation. Simultaneously, tribunals can promote uniformity by engaging in judicial dialogue, citing one another's jurisprudence, and utilizing concepts such as comity and the margin of appreciation.³⁷ The coordinated application of necessity and proportionality criteria across both systems might provide more predictable and equitable outcomes.

However, a WTO-style appellate review system for ISDS is promising, but it would require modifications to investment treaties and ICSID Convention revision to permit a binding appeals procedure. Article 11 of the WTO Dispute Settlement Understanding (DSU) mandates

³⁵ Niyati Ahuja, 'USMCA: An Analysis of the Proposed ISDS Mechanism' (Kluwer Arbitration Blog, 26 November 2019) <https://arbitrationblog.kluwerarbitration.com/2019/11/26/usmca-an-analysis-of-the-proposed-isds-mechanism/> accessed 12 May 2025.

³⁶ Michelle Q Zang, 'Talking Across the Boundaries: Engagement between the WTO and ISDS Adjudicators' (Society of International Economic Law (SIEL) Sixth Biennial Global Conference, PluriCourts Research Paper No 18-02, July 2018) <https://ssrn.com/abstract=3209607> accessed 12 May 2025.

³⁷ Brooks E Allen and Tommaso Soave, 'Jurisdictional Overlap in WTO Dispute Settlement and Investment Arbitration' (6 June 2014) 30 *Arbitration International* 1 <https://ssrn.com/abstract=2446806> accessed 12 May 2025.

panels to objectively analyse the facts, which might be used to improve procedural coordination amongst regimes.³⁸ A similar approach in ISDS might improve transparent rigor and institutional coherence in trade and investment adjudication.

VII. CONCLUSION

As the boundaries between global trade and investment regimes become increasingly blurred, the conflict between the WTO dispute settlement system and investor-state arbitration raises fundamental concerns about legitimacy, coherence, and accountability in international economic governance. This legal dualism, previously tolerated as functional pluralism, now threatens to undermine the predictability that both systems were intended to preserve. Case studies such as *Philip Morris v. Uruguay* and Argentina's crisis-era conflicts highlight the structural fault pointing where the investor rights and sovereign regulatory space intersect. To bridge these regimes, future changes must go beyond institutional tinkering and reconsider how justice, transparency, and public interest are incorporated into the very fabric of conflict resolution. A new architecture that promotes conversation across regimes rather than isolation and has the potential to turn fragmentation into synergy and conflict into convergence.

³⁸ WTO Dispute Settlement Understanding 1994, Art 11.