



Constructing Alternative Discourse Power Amid the Paralysis of WTO Dispute Settlement Mechanism: A Case Analysis on the China International Commercial Court

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ARTICLE INFO	ABSTRACT
Received: 02 Jul 2025 Accepted: 15 Aug 2025	This review examines the paralysis of the World Trade Organization (WTO) Dispute Settlement Mechanism (DSM) and the corresponding emergence of the China International Commercial Court (CICC) as a possible alternative regulatory body in international economic law. The paper provides a critical analysis of how the institutional paralysis in WTO DSM, especially the failure of the Appellate Body, has undermined the trust in the multilateral system and has disproportionately hurt developing countries. Utilizing a qualitative research approach, the study is anchored in a Systematic Literature Review (SLR) methodology. A strict multiple-step methodology was applied with searches conducted in databases guided by keywords, an inclusion/exclusion analysis of search results, and thematic coding, leading to a comparative analysis of eight scholarly peer-reviewed articles. Regarding the theory of legal pluralism and the constructivist approach, the analysis points to the future that the CICC is not only a legal vehicle to address any dispute engendered by the Belt and Road Initiative (BRI)-related disputes, but also a legal weapon of Chinese legal diplomacy. CICC has established a hybrid framework consisting of domestic and international legal traditions and the hope of establishing alternative discourse power within international trade regulation. However, there remains an attempt at legitimacy, transparency, and fairness challenges. The paper also discusses how multipolar systems of law are gaining strong relevance in global reorganization of economic order. Keywords: WTO Dispute Settlement Mechanism, China International Commercial Court, Legal Pluralism, International Economic Law, Discourse Power.

INTRODUCTION

Background

The World Trade Organization (WTO) Dispute Settlement Mechanism (DSM) has long served as the foundation of the multilateral trading system, offering a rule-based process for resolving disputes among member states. The DSM has, however, been in an incapacitated position since December 2019. This institutional collapse, as Mollengarden (2019) highlighted, was largely caused by the fact that the U.S. had been refusing to approve new appointments to the Appellate Body, which meant that the quorum that would still enable appeals to be heard could no longer be maintained. As Petersmann (2018) emphasized, the collapse of the DSM cannot be treated merely as a procedural crisis but a challenge to the prerogative of global trade governance, captured in the framework of geopolitical rivalry and division. Hao (2025) also argued that this paralysis has revealed a weakness in the WTO dispute structure and reduced member confidence in its ability to both generate and adjudicate rules. The most prominent impact of this paralysis is the remarkable decline in the number of dispute cases brought before the WTO as states turn more frequently to unilateral retaliation or in regional and bilateral disputes settlement systems to settle trade challenges. Narlikar (2019) also argues that this action threatens to de-politicize

trade conflicts and to escalate the re-emergence of power imbalances that the WTO was supposed to ease. As Xiao (2022) notes, this has strongly disadvantaged the developing countries in particular, that may not have the legal or economic capabilities to experience or defend case in alternative forums. Zhou (2020) also indicated that loss of multilateral system has eroded the trust and predictability of world trade system.

As Jones and Zeng (2020) remarked, China, in its efforts to extend influence in international economic governance, has been attempting to establish mechanisms that ensure its increased legal and regulatory independence under the Belt and Road Initiative (BRI). In this wider geopolitical approach, the China International Commercial Court (CICC) was created in 2018 by the Supreme People's Court of China to hear cross-border commercial disputes especially those involving BRI projects. According to Zadi, Hameed, Chaudhary, and Hassan (2022), CICC is a dispute resolution platform that acts as a one-stop shop aimed at enhancing legal certainty and judicial cooperation within transnational relationships. Erie (2019) went further and claimed that CICC is not merely a tribunal of law, but also a form of Chinese legal diplomacy, designed to exert normative power and influence during the international legal discourse. However, the CICC has not gone without criticism. Hooijmaaijers (2021) asked whether the courts within the Chinese judicial system can credibly achieve neutrality in state-owned enterprise cases, and Yin (2019) considered issues such as transparency, acceptance by foreign powers and the independence of jurisdiction. Nevertheless, the CICC is a major institutional effort to address the unhealthiness of the WTO DSM, and it is partly an effort by China to develop alternative discourse power within international legal governance.

The paper examines the workings of the CICC as both a legal innovation and a discursive institution through which China is able to re-shape global legal norms. In more detail, it addresses the question of the extent to which CICC represents a viable alternative to the WTO DSM, especially to developing countries, and how it facilitates the emergence of a multipolar legal order. The value of this research rests in its capacity to situate the CICC within the broader geopolitical shift of the international law. Through examining the establishment, theoretical foundations, operational procedures, and symbolic roles, the study provides some insight into how China is trying to make a transition to being a rule-maker rather than a follower in the governance of global trade.

Problem Statement

The paralysis of the WTO Dispute Settlement Mechanism (DSM) recent particularly the non- operability of the Appellate Body since 2019, has created a crisis of legitimacy in global trade governance. The existence of this institutional gap has caused confusion and reduced confidence in the multilateral trade system (Zhou, 2020). As a reaction, new dispute resolution institutions, including the China International Commercial Court (CICC), have risen to provide new paradigms of dispute resolution. However, the rise of CICC raises critical issues about its legitimacy, efficacy, and the natural cause of power in other discourses of global economic governance (Zhu & Zheng, 2024). There is a need to critically examine whether CICC will be successful alternative to WTO DSM, and the effects that it will have on international legal standards, especially in the developing nations where Belt and Road Initiative projects are being developed.

Research Objectives

To analyze the limitations and current paralysis of the WTO Dispute Settlement Mechanism and its implications for global trade governance.

To examine the establishment and evolution of the China International Commercial Court (CICC) as a potential alternative dispute resolution forum.

To assess how the CICC contributes to constructing alternative discourse power in international economic law and dispute resolution, particularly for developing countries.

Research Questions

What are the limitations of the WTO Dispute Settlement Mechanism, and how has its current paralysis affected global trade governance?

How was the China International Commercial Court (CICC) established, and how has it evolved as a potential alternative forum for international dispute resolution?

In what ways does the CICC contribute to constructing alternative discourse power in international economic law and dispute resolution, particularly for developing countries?

Significance

The study provides valuable contributions because it sheds light into the evolving processes in global trade dispute settlement following the institutional stagnation of the WTO. The analysis of the CICC seeks to understand how emerging states such as China are creating alternate legal structures that are undermining the

traditional western-centred legal systems. It provides valuable lessons regarding the impact of such a shift on developing countries, the opportunities and dangers of participating in new legal processes modeled by different legal systems, governance regimes, and geopolitical interests.

THEORETICAL FRAMEWORK

This study employs four theoretical perspectives to examine how the China International Commercial Court (CICC) contributes to the construction of alternative discourse power in global trade governance: Discourse Power Theory, Legal Multipolarity, Structural Realism (Institutional Rivalry), and Institutional Constructivism.

Discourse Power Theory

First, Discourse Power Theory by Michel Foucault argues that discourse is not only linguistic, but it is also power that shapes the norms of institutions, legal reality, and political authority. Foucault assumed that the power to define concepts, procedures, and rules can influence worldwide behavior. This theory, in relation to international trade, will demonstrate the role of legal institutions, such as the CICC, as an instrument of exercising influence (Moosavinia, Racevskis & Talebi, 2019). By developing institutions such as the CICC, China is reshaping the paradigm of the international dispute settlement, providing developing countries with alternative legal discourses of sovereignty, flexibility, and cultural compatibility.

Legal Multipolarity Theory

Second, the Legal Multipolarity Theory captures the increasing fragmentation of global legal authority. The WTO and ICSID have traditionally been Western-centric legalistic centers. Nevertheless, new economies increasingly advocate regional or national dispute settlement forums corresponding to varying legal frameworks (Vlados, Chatzinikolaou & Iqbal, 2022). The CICC represents this transformation: it combines bilingual trials, foreign judges, and mediation-based procedure with Chinese judicial thinking. In contrast to the purely adversarial model of the WTO, the CICC is more about consensus and flexibility of procedures, which is a trend towards the diversification of legal hubs in international governance.

Structural Realism

Third, based on Structural Realism, the stagnation of the WTO DSM could be viewed as a consequence of the geopolitical rivalry. Cox (2019) posits that structural realists, such as Waltz, believe that the form of institutions is an indication of the interests of state parties within a global state of anarchy. Institutional self-preservation is epitomized by the United States blocking WTO appointments. The Chinese reaction, the formation of the CICC, not only symbolizes legal novelty but institutional power in the Global South. China is involved in an institutional rivalry that echoes larger global power struggles through the CICC.

Institutional Constructivism

Lastly, Institutional Constructivism believes that institutions are not neutral in that they contain embedded values, ideologies, and identities. Such institutions acquire their legitimacy through recognition and identification. When applied to the CICC, this theory highlights how, through judicial reform, China not only attempts to resolve disagreements but realign legal norms and international perceptions. When implementing Chinese legal rationality in cross-border adjudication, the CICC becomes a legal and normative actor, pivotal to the soft power approach in China within the BRI (Çolak, 2021).

Together, the theories provide a robust understanding through which to view the significance of CICC as a legal institution as well as a normative contested and experimental field in international economic law.

WTO DSM COLLAPSE AND ITS IMPACTS

International Trade Law

The World Trade Organization (WTO) Dispute Settlement Mechanism (DSM) has long been one of the most authoritative and orderly systems in international trade law. It offered a three-level framework comprising consultations, panel adjudication, and Appellate Body review, and was then enforced by the Dispute Settlement Body (DSB). The DSM was specifically commended due to its binding nature, mandatory jurisdiction, and accessibility to all member states (Petersmann, 2018). Nevertheless, since 2017 and reaching its peak in 2019, the system in question has fallen into a state of paralysis, which has severely impacted the credibility and effectiveness of global trade governance. Hao (2025) believes that paralysis was mostly because the United States did not accept any new judicial nominations to the Appellate Body of the WTO, citing judicial "institutional overreach"

and an imbalance between formalities. Consequently, by December 2019, the Appellate Body had no remaining panelists to hear the appeals, effectively bringing its operations to a standstill. As Xiao (2022) stressed, this procedural gridlock essentially nullified the binding appeal role of the DSM, making panel decisions unenforceable on appeal; a loophole that meant parties could effectively veto rulings because they could simply refer a case to appeal to become in effect unenforceable in the legal system, referred to as the appeal into the void. The effects of this crumbling have been monumental. As Narlikar (2019) highlighted, without a functioning DSM, nations have turned to unilateral trade action and counter-tariffs launching a power-based more than a rule-based system of international trade. This has eroded legal certainty and confidence in multilateral institutions. According to Baschuk (2023), the new requests made to WTO disputes have dropped sharply since 2019, indicating a more general crisis of confidence in the DSM.

In the case of developing countries, the paralysis has been particularly harmful. As Xiao (2022) noted, smaller economies that have historically enjoyed the neutrality of the DSM must deal with increased legal uncertainty and reduced opportunities to exercise remedial relief. According to Zhou (2020), this institutional deficit has contributed to increasing systemic imbalances because developing states tend not to have the political and economic leverage to agree to winning conditions without an objective adjudication process. Bahri (2019) continued to indicate that long-festered misgivings of judicial activism and an alleged bias perceived specifically against stronger states complicated the legitimacy of the DSM regardless of its collapse. Interim mechanisms like Multi-Party Interim Appeal Arbitration Arrangement (MPIA) under Article 25 of DSU have been established to fill this gap (Rane, 2021; Pauwelyn, 2023). Yet Petryshyn (2024) has argued that these mechanisms continue to be participation-restricted and provide no long-term or internationally-agreed alternative to a fully functioning appellate system. The DSM failure is therefore both a technical and symbolic break in the multilateralism edifice. This phase of institutional mal-functioning has catalyzed a multipolarization of law, with emerging powers like China attempting to create new forums of their own fashion that better mirror their legal cultures and strategic concerns. The case of the China International Commercial Court (CICC) serves as a prime manifestation of such a reaction, as the following section shall demonstrate; a court that was created to provide not only procedural novelty, but also discursive expertise in a dynamic international trading world.

ESTABLISHMENT AND INSTITUTIONAL DESIGN OF THE CICC

In June 2018, China established the China International Commercial Court (CICC) as an expansion of its approach toward the Belt and Road Initiative (BRI). Following the legal vacuum experienced internationally as a result of the stalling of the WTO Dispute Settlement Mechanism, in June 2018, China established the China International Commercial Court (CICC) as an expanded approach toward the Belt and Road Initiative (BRI). Yin (2019) explained that the CICC was established by the Supreme People's Court of China to arbitrate cross-border commercial disputes concerning BRI transactions. The need to create a legal infrastructure that would facilitate the successful resolution of disputes involving diverse jurisdictions with varied legal traditions and less vigorous rule-of-law regimes necessitated this institutional process. Yet the foundation of the CICC is in China, trying to globalise its courts without abdicating its national sovereignty. As it was seen by Mollelanden (2019), the court is a single-station dispute resolving institution where mediation, arbitration and judicial procedures can be managed under the same institutional roof. There are two branches of CICC, First, CICC in Shenzhen, and Second, CICC in Xi at the perfect positions to serve the vast economic corridors of China (Zadi et al., 2022). The CICC has a hybrid character that is evident in its organizational structure. According to Trakman (2023), the court can turn to a panel of Chinese and foreign legal experts, and it could work with both Chinese and international industry standards. It can also permit bilingual hearings, enforce both Chinese and foreign legal statutes as appropriate, and involve the utilization of certain technologies such as blockchain-based evidence to accommodate its efficiency and transparency.

International disputes related to commercial matters are within the jurisdiction of the CICC when they have a considerable nexus with China, or when an international agreement contract has made the CICC the contractual choice of court. This framework, as Mathias (2019) observed, is designed to be attractive to BRI stakeholders because it promises a predictable, but binding, legal procedure that is beyond the traditional Western channels. Also, the One-Stop Diversified Dispute Resolution Mechanism, which incorporates the CICC facilitates the alternate procedures between mediation to arbitration and litigation without conflict concerning jurisdiction as well as reflecting Chinese taste towards flexibility and harmony over legal solutions. However, CICC has received criticism on its neutrality and legitimacy. Hooijmaaijers (2021) also raised the question of whether that court could feasibly judge a case with the participation of state-owned enterprises and remain unbiased in the Chinese judicial system. Similarly, Bonino and Carota (2025) noted that despite procedural developments, CICC is not viewed as credible internationally because of a collection of concerns, such a lack of transparency and

acceptability within the international community. However, the CICC represents a landmark in Chinese attempts to institutionalise their reaction to the failings of the WTO DSM. In fact, Koopman, Hancock, Piermartini, and Bekkers (2020) contended that it helps fill a significant gap in the governance of international trade, delivering a platform that is not merely functional but also procedural, and respecting the specifics of law cultures of developing states. Mollengarden (2019) added that the CICC assists China in developing its own legal diplomacy, turning it into its norm-setter and not a participant in international dispute resolution.

CASE ANALYSIS OF CICC IN INTERNATIONAL DISPUTE RESOLUTION

An even greater number of disputes involving the BRI have been brought before the China International Commercial Court (CICC), which is not merely a point of adjudicator, but rather a discourse in which China introduces a counterpoint to western-dominated rules of law. The structure and procedures of the CICC is a meticulous mixture and match of international best practice and Chinese legal traditions, tailored to appeal to South countries of the Global South. Among the most striking cases is the *SPIC v. The Hohhot Investment* (2019) case, where the court extensively favored mediation to litigation; citing culturally-and strategically, the proximity of the Chinese to avoid an adversarial arbitration (Yin, 2019). It denotes this hybrid construction of CICC, where legal adjudication, arbitration, and conciliation are all placed under one roof to grant parties greater adapting and situation-specific dispute resolution mechanisms (Trakman, 2023). Rodriguez-Triocci (2024) explained that the CICC provides a platform within which non-Western legal traditions could be institutionalized and would offer a platform that was more accessible and ideologically desirable by Global South countries. The mechanisms of the CICC, flexible, multilingual, culturally sensitive, compared to formalistic methods that the WTO form is often perceived as rigid and procedure-bound, come forward as a workable alternative. Mollengarden (2019) noted that its one-stop model, which translates arbitration and litigation together, constitutes a procedural transformation consistent with the philosophy of Chinese judicial practice.

In practice, the CICC has integrated foreign legal advisors, bilingual proceedings, and cross-border enforcement mechanisms, all of which bolster its legitimacy among BRI partners (Zadi et al., 2022). In one infrastructure-related case involving China Railway Construction International, international principles were applied alongside Chinese contract law, reflecting the court's willingness to accommodate diverse legal expectations. Still, concerns persist. Duggan et al. (2022) argue that CICC (CICC) might not decentralize global legal authority, but merely shift it from West to East; thus substituting one hegemon for another. Bull and Aguilar-Støen (2019) similarly questioned whether such emerging forums can guarantee neutrality, transparency, and enforceability; the very principles they claim to improve upon. Symbolically, however, the CICC functions as a platform through which China challenges existing legal hegemony. Brosig (2019) observed that BRICS states, including China, seek to reshape global legal norms and reduce Western dominance by offering legal structures that reflect different political and normative priorities. Larionova and Shelepov (2022) further explained that courts like the CICC are embedded in China's broader soft power strategy, positioning it as a provider of legal public goods, especially to developing countries.

Ultimately, the CICC contributes to the diversification of legal venues available to states marginalized by WTO processes. While its long-term legitimacy and global recognition remain uncertain, its strategic positioning within the BRI ecosystem gives it growing practical and symbolic importance in the evolving landscape of global trade law.

Literature Gap

Although the deterioration of WTO dispute system and Chinese legal diplomacy under the BRI are the subjects of several works, there is a dearth of research linking the two trends to the wider change in economic normative power in the international legal realm. There are limited studies that critically evaluate the role of CICC in the reconfiguration of discourse power with reference to the viewpoint of developing nations in support of alternative legal agency.

RESEARCH METHODOLOGY

To explore the emergence of the China International Commercial Court (CICC) as a tool for constructing alternative discourse power in international economic law, particularly in the wake of the paralysis of the WTO Dispute Settlement Mechanism (DSM) this section outlines the research methodology employed in this review. The methodology encompasses the research method, research design, data collection strategies, data analysis approach, and ethical considerations, ensuring methodological rigor and academic integrity.

Research Method

This study adopted a qualitative research method, appropriate for examining complex institutional developments and normative shifts in global trade governance. As Skarbek (2020) posits, qualitative research is particularly suited to studies that seek to understand phenomena through the interpretation of textual, policy, and institutional sources. Since the study investigates the institutional void created by the WTO DSM's paralysis and how CICC fills or challenges that space, a qualitative approach enabled a comprehensive analysis of both formal legal developments and the underlying discursive strategies employed by China.

Mitchell (2023), stated that qualitative methodology allows the exploration of how legal narratives, norms, and practices are reshaped in global governance through institutional innovation. The method also facilitates the theoretical frameworks of the research, legal pluralism and constructivism because it helps to reveal the way alternative legal institutions are constructed and perceived.

Research Design

By employing a Systematic Literature Review (SLR) design, this study identified, synthesized, and critically analyzed the existing scholarly literature about the WTO DSM, CICC, and the overall discourse of alternative legal power in international economic law. SLRs provide transparent, replicable, and objective aggregation of literature (Kr The SLR involved a multi-step process) in Table 1.

Table 1. Systematic Literature Review (SLR) Process

SLR Step	Description
1. Formulation of Research Questions & Objectives	Defined key questions and goals to guide the scope and direction of the literature review.
2. Search Strategy Development	Created a keyword framework and applied Boolean operators to optimize search precision and relevance.
3. Database Selection & Literature Retrieval	Identified and accessed academic databases (e.g., Scopus, Google Scholar) to collect relevant studies.
4. Inclusion and Exclusion Criteria	Applied filters to retain only relevant, high-quality, and accessible literature.
5. Data Coding and Thematic Synthesis	Organized extracted data into codes and synthesized it into recurring themes aligned with objectives.

This design not only contextualized CICC within the broader international legal system but also enabled a critical review of whether CICC addresses the void left by the WTO and contributes to a multipolar or alternative legal order.

Data Collection

Secondary data collection was implemented through a rigorous literature search strategy. The process involved defining keyword categories, refining search expressions using Boolean operators, and selecting peer-reviewed academic databases.

Keyword Strategy

Keywords were carefully crafted based on the research objectives and organized into core thematic categories to ensure comprehensive literature retrieval in Table 2.

Table 2. Keywords and Categories

Category	Keywords	Related Terms/Synonyms
WTO DSM Issues	WTO dispute settlement, appellate body paralysis, WTO reform	WTO crisis, multilateral trade gridlock
Alternative Forums	CICC, Belt and Road court, Chinese international courts	BRI dispute resolution, alternative legal mechanisms
Discourse Power	Normative power, legal discourse, China legal diplomacy	Legal soft power, international legal norms
Governance and Law	Global trade governance, legal pluralism, legal order transformation	Global law fragmentation, hybrid legal institutions
Target Groups	Developing countries, Global South, legal agency	South-South cooperation, non-Western legal systems

Boolean Operators

Boolean expressions were employed to filter and expand search results as necessary (Table 3).

Table 3. Boolean Operators Used and Examples

Boolean Expression	Purpose	Sample Result
"WTO DSM" AND "Appellate Body paralysis"	Focus on paralysis of the WTO mechanism	Articles discussing implications of Appellate Body inoperability
"Belt and Road" AND "International Commercial Court"	Target literature on CICC	Sources explaining CICC's function and structure
"Dispute resolution" AND ("China" OR "BRI") AND "developing countries"	Find links between CICC and Global South	Studies examining CICC's reception in developing countries
"Legal pluralism" OR "constructivism" AND "international economic law"	Include theoretical perspectives	Works applying legal theory to global economic governance
"Alternative legal order" NOT "WTO-centric"	Exclude WTO-dominated narratives	Research on regional or unilateral legal mechanisms

Databases

The following databases were accessed to retrieve relevant and peer-reviewed academic literature in Figure 1.

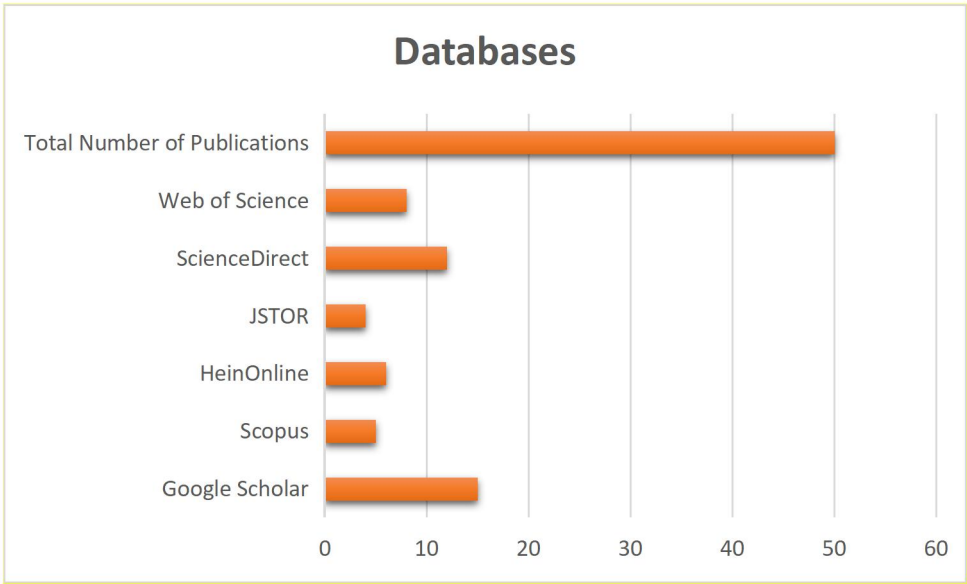


Figure 1. Database (Source: Author)

Grey literature such as policy briefs, institutional reports, and working papers from organizations like the WTO, UNCTAD, and Chinese legal think tanks were also consulted to supplement peer-reviewed data (Table 4).

Table 4. Inclusion and Exclusion Criteria

Criteria Type	Inclusion Criteria	Exclusion Criteria
Time frame	Articles published between 2015–2025	Articles published before 2015
Language	English-language sources	Non-English publications
Peer Review Status	Peer-reviewed journal articles, legal commentaries	Blog posts, unverified opinion pieces
Focus Area	WTO DSM, CICC, legal discourse power, developing countries	Studies not addressing global trade or dispute resolution
Accessibility	Full-text articles and institutional documents	Abstract-only entries or inaccessible full texts

Data Analysis

Data from selected sources were subjected to thematic analysis, this approach involved:

Familiarization: Initial reading and memo writing on selected texts.

Coding: Highlighting recurring concepts such as "norm diffusion," "institutional void," "legal sovereignty," and "multipolarity."

Theme Development: Grouping codes into larger themes: e.g., erosion of multilateralism, emergence of legal alternatives, strategic legal pluralism, and normative competition.

Refinement: Themes were cross-checked for consistency, saturation, and alignment with theoretical frameworks.

This helped in evaluating how CICC functions not only as a dispute settlement body but as a discursive tool to project China's legal philosophy into global economic law.

PRISMA Framework

To ensure transparency and systematic rigor, the PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses) framework was adopted. A four-phase flow diagram (Identification, Screening, Eligibility, Inclusion) was used to track the selection process (Figure 2).

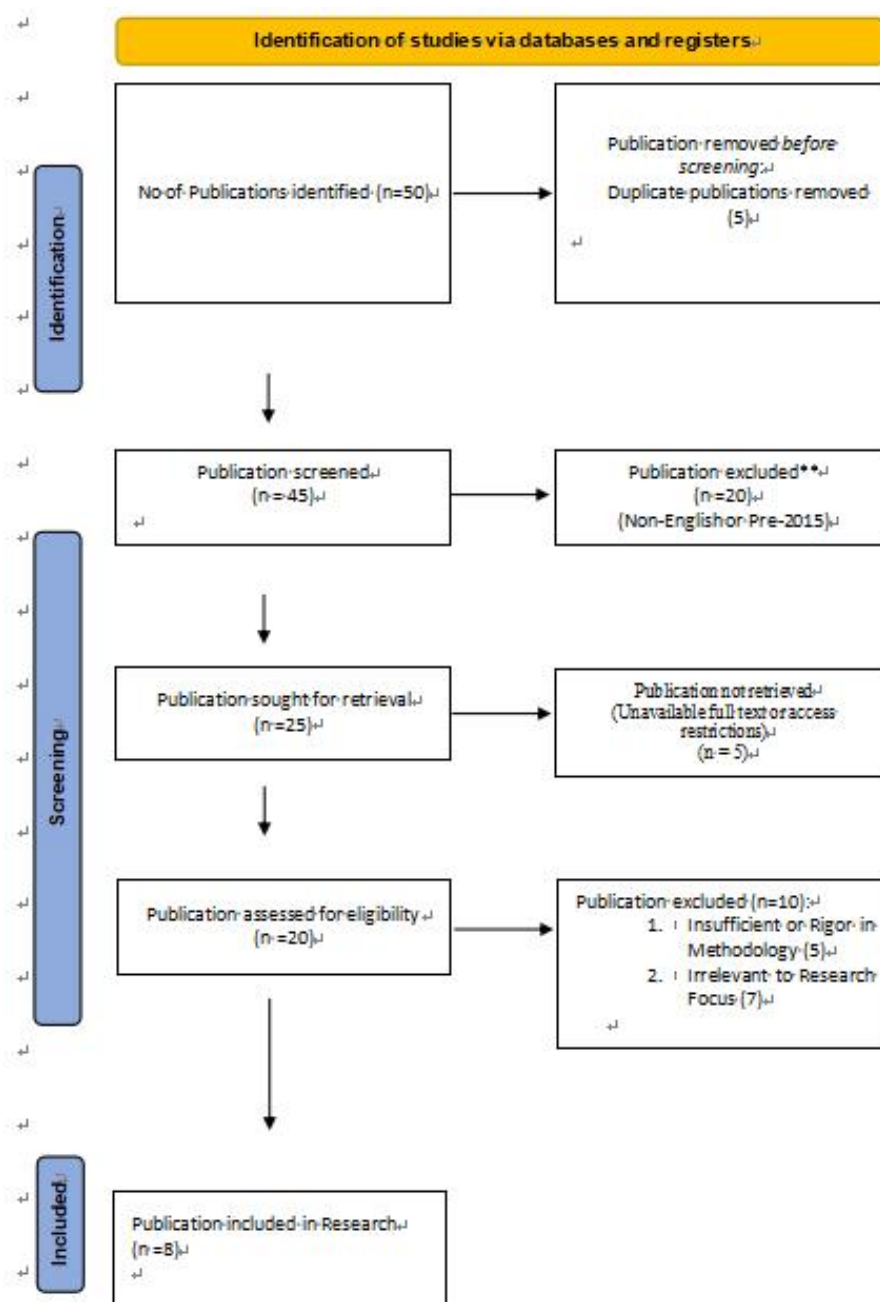


Figure 2. PRISMA Framework

Ethical Considerations

The study adhered strictly to academic ethical standards. All secondary data used was properly cited, ensuring respect for intellectual property. No personal or sensitive data was involved. The selection and interpretation of literature were done impartially to avoid confirmation bias. The findings were critically evaluated rather than selectively quoted, maintaining objectivity throughout the study.

DATA ANALYSIS

Overview

This section aims to critically analyze eight selected scholarly publications to identify key themes related to the WTO DSM's paralysis and the emergence of CICC. Through comparative thematic analysis, the section examines legal, institutional, and geopolitical dimensions shaping alternative dispute resolution and evolving discourse power in global trade governance. Some of the publications chosen for analysis are presented in Table 5.

Table 5. Publications Chosen for Analysis

Author(s)	Year	Objective	Keywords	Methodology	Findings
Hao, X.	2025	To analyze the causes and consequences of the WTO DSM paralysis and suggest systemic reform pathways.	WTO, DSM, reform, paralysis, multilateralism	Doctrinal analysis	Identifies structural weaknesses and proposes reforms for reviving WTO's dispute resolution credibility.
Xiao, R.	2022	To assess how the WTO DSM benefits or disadvantages developing countries.	WTO DSM, developing countries, equity	Critical review	Finds systemic bias against developing states and emphasizes power imbalances within WTO adjudication.
Rane, V. G.	2021	To examine the collapse of the WTO Appellate Body and recommend alternative legal frameworks.	WTO, Appellate Body, legal reform	Policy/legal commentary	Recommends multiparty interim solutions and stronger institutional independence.
Mollengarden, Z.	2019	To explore the CICC's model and its alignment with Chinese legal culture.	CICC, BRI, international courts, legal hub	Comparative legal study	Shows CICC as a strategic hybrid legal forum blending international and Chinese dispute resolution norms.
Holloway, D.	2020	To assess CICC's role in resolving BRI-related disputes and its global impact.	CICC, BRI, legal innovation, soft power	Case/legal institutional analysis	Highlights CICC's significance in shaping alternative legal norms, though transparency concerns remain.
Yin, W.	2019	To analyze challenges facing CICC in cross-border legal harmonization.	CICC, China, one-stop mechanism, legal culture	Doctrinal and policy analysis	Notes practical innovation but flags issues with impartiality and foreign acceptance.
Formici, G.	2019	To explore how BRICS states are building legal-political influence through cooperative legal networks.	BRICS, legal networks, global governance	Qualitative theoretical study	BRICS fosters legal multipolarity but lacks a coherent institutional alternative to Western-led systems.
Rodriguez-Triocci, E.	2024	To investigate how BRICS reshape global order through power politics and institutional creation.	BRICS, power politics, multipolarity		

The above analysis presented a thematic analysis of eight key scholarly publications to explore the shifting dynamics in global trade dispute resolution. Five core themes were developed: the paralysis of the WTO DSM, challenges for developing countries, CICC as a legal innovation, the role of BRICS in fostering legal pluralism, and China's legal diplomacy through CICC. Each theme compares two publications to highlight different methodological approaches, perspectives, and findings. The analysis reveals a growing move toward alternative legal frameworks, with CICC emerging as both a practical and symbolic institution reshaping discourse power in international economic law, particularly for the Global South.

Theme 1: WTO DSM Paralysis and Multilateral Crisis

The paralysis of the WTO Dispute Settlement Mechanism (DSM) is a central issue explored by Hao (2025) and Rane (2021). Both authors examine the causes and consequences of the breakdown, but from distinct angles; Hao takes a structural and reform-oriented approach, while Rane emphasizes practical alternatives. Hao argues that the DSM's crisis stems from systemic flaws within WTO governance, including the politicization of Appellate Body appointments and institutional rigidity. His doctrinal review provides insight on how procedural stalemate, specifically the American veto of judge appointment, has compromised confidence on multilateral trade adjudication.

As evidence of such a stance, Rane proposes feasible exits such as the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), created in Article 25 of the DSU. His policy-based mind indicates a solution to this policy of preserving the old system in favor of the innovative legal solution established in the remaining form. As Hao is concerned with the necessity of change in multilateralism, Rane is concerned with the emergence of interim mechanisms and legal pluralism as a reaction. The two merge in the idea that the paralysis has ushered both institutional innovation and calls into question the validity of WTO-centered legal authority, as presented in Table 6.

Table 6. Comparison: Hao (2025) vs. Rane (2021)

Aspect	Hao (2025)	Rane (2021)
Focus	Structural causes and systemic reform of WTO DSM	Policy alternatives to bypass DSM paralysis
Methodology	Doctrinal legal analysis	Legal and policy commentary
Perspective	Internal reform of WTO framework	Creation of external interim mechanisms
Solution Proposed	Strengthening Appellate Body and restoring functionality	Promoting MPIA and regional alternatives
View on Multilateralism	Advocates renewed multilateralism	Supports flexible legal pluralism as a supplement

Theme 2: Developing Countries and Equity in WTO Disputes

Issues of representation and treatment of developing countries in the WTO DSM have been addressed as one of the main concerns by both Xiao (2022) and Hao (2025). Both authors criticize the inequity of the system, but with a slightly different emphasis. Xiao offers a profound critique of the procedural and economic handicaps of the developing nations. His work documents the high costs of litigation, complexity of law and the propensity of decisions to favour larger economies. He highlights how smaller economies are sometimes not capable of participating in full or enforcing decisions resulting in the underuse of the system.

Hao also points to the vulnerability of the developing countries but also stresses how paralysis is systemic and impacts all WTO member countries. He considers growing nations as casualties of a wider institutional failure. Although equity is a concern, Hao focuses more on the universal implications of the DSM crisis.

Both authors agree that the DSM has failed to uphold fairness, but Xiao is more focused on accessibility and structural imbalance, while Hao leans toward system-wide paralysis and reform, shown in Table 7.

Table 7. Comparison: Xiao (2022) vs. Hao (2025)

Aspect	Xiao (2022)	Hao (2025)
Focus	Inequities faced by developing countries in DSM	Structural collapse of DSM affecting all members
Methodology	Critical literature review	Doctrinal and systemic legal analysis
Key Argument	DSM structurally favors powerful states	WTO system has universally failed due to procedural paralysis

Aspect	Xiao (2022)	Hao (2025)
Recommendations	Reform procedures to enhance accessibility for developing states	Rebuild Appellate Body and reinvigorate global trust in WTO
View on Equity	Central to critique	One component of a broader institutional failure

Theme 3: CICC as a Legal Innovation in Global Governance

The studies by Mollengarden (2019) and Holloway (2020) discuss the development of the China International Commercial Court (CICC) as a new framework that will transform the process of resolving international commercial disputes. Both view CICC as a hybrid case law innovation, just in slightly different ways. As Mollengarden points out, the one-stop dispute resolution model embraced by CICC is simply a Chinese attempt to establish a Chinese-style legal centre with mediation, arbitration, and judicial evaluation. He positions it as a legal framework in favor of the BRI to enhance its economic outlook.

Although Holloway agrees with the innovation of CICC, he strikes a more conservative note. He discusses the problem of legitimacy, transparency, and possible court bias toward Chinese interests, mainly state-owned enterprises. Holloway criticizes the obfuscation of the process of selecting judges and procedural norms. Although they both find CICC to be a revolutionary legal program, Mollengarden expresses hopeful sentiments that the program can shape dispute resolution beyond the Western paradigm, whereas Holloway emphasizes the likelihood of normative disarmament and low international confidence, as shown in Table 8.

Table 8. Comparison: Mollengarden (2019) vs. Holloway (2018)

Aspect	Mollengarden (2019)	Holloway (2018)
Focus	Innovation and hybrid structure of CICC	Institutional critique and transparency concerns
Methodology	Comparative legal study	Case/institutional legal analysis
Strength Highlighted	Integration of Chinese legal values and procedural efficiency	Structural uniqueness, but risk of bias and lack of impartiality
Primary Concern	Bridging gaps left by WTO and arbitration	Lack of openness and accountability in dispute resolution
Tone	Optimistic	Cautious/critical

Theme 4: Normative Power and Legal Pluralism in BRICS and CICC

Both Rodriguez-Triocci (2024) and Formici (2019) comment on BRICS as an alternative source of power in terms of legal discourse, yet they draw different conclusions. Rodriguez-Triocci employs a constructivist perspective in examining BRICS as a rival to western-controlled governance, which is characterized by power politics. She claims that BRICS organizations, such as CICC, can be used as an arena to reinterpret legal norms within the context of South-South cooperation. Formici, however, is more specific in its approach, addressing the legal networks within BRICS. She argues about how these new economies are jointly producing new institutional frameworks that do not need to conform to Western legal paradigm dependency. However, she is more cautious in assessing whether BRICS has the institutional maturity to offer viable legal alternatives.

Rodriguez-Triocci is broader in political scope, emphasizing normative reshaping, while Formici is more grounded in legal structure-building. Both, however, see BRICS as contributing to legal pluralism and a multipolar legal order, as presented in Table 9.

Table 9. Comparison: Rodriguez-Triocci (2024) vs. Formici (2019)

Aspect	Rodriguez-Triocci (2024)	Formici (2019)
Focus	BRICS in power politics and global legal narratives	Legal infrastructure building within BRICS
Methodology	Constructivist/IR approach	Qualitative legal network analysis
Normative Framing	BRICS as disruptor of Western legal norms	BRICS as builder of alternative legal institutions
Key Contribution	Institutional power and discourse transformation	Capacity-building for South-led legal collaboration
Tone	Assertive, transformative	Measured, cautiously optimistic

Theme 5: China's Legal Diplomacy through CICC and Its Soft Power Strategy

Yin (2019) and Mollengarden (2019) both focus on CICC as a symbol of Chinese legal diplomacy. While they agree that CICC serves China's broader Belt and Road Initiative goals, they diverge in focus: Yin emphasizes the challenges and implications of transplanting Chinese legal norms into international settings, while Mollengarden praises the procedural integration of multiple dispute resolution forms. Yin warns of foreign skepticism, arguing that CICC must address concerns about judicial independence, especially when involving Chinese SOEs. He also notes that cultural and legal differences may limit its wider acceptance.

Mollengarden, conversely, views CICC's innovation; multilingual proceedings, foreign advisors, and arbitration options as a showcase of China's effort to project soft legal power and build trust. He sees it as an effective counterweight to Western courts and arbitration centers. Together, these works illustrate the dual face of CICC: as a pragmatic legal tool and a strategic symbol of China's global legal outreach, as shown in Table 10.

Table 10. Comparison: Yin (2019) vs. Mollengarden (2019)

Aspect	Yin (2019)	Mollengarden (2019)
Focus	Challenges of CICC's cross-border legitimacy	CICC as legal and diplomatic innovation
Methodology	Doctrinal and policy analysis	Comparative legal study
Legal Diplomacy Angle	Concern over foreign trust and judicial impartiality	Emphasis on inclusiveness and global positioning
Contribution to BRI	Legal risk minimization	Legal hub for international commercial disputes
View on Soft Power	Cautious, conditional	Positive and strategic

DISCUSSION

As identified in the analysis, Hao (2025) and Rane (2021) agree that due to the structural stalemate in the WTO DSM, a new opening has been created where alternative legal fora have consistently tendered positions, such as interim setups like Multi-Party Interim Appeal Arbitration Arrangement (MPIA). This loss of trust is not procedural but a deeper crisis in the legitimacy of the WTO as a key pillar of international trade. According to Petersmann (2018), this failure of member states to agree on institutional reforms undermined the judicial role of the WTO and placed its dispute settlement in a political arena. Likewise, Narlikar (2019) claimed that without a successful DSM, member states, particularly large economies are most likely to seek unilateral or retaliatory trade actions, destabilizing global trade. The fact that fewer people start disputes, as mentioned by Baschuk (2023), further supports the notion that people have lost trust in the enforcement powers of the WTO. Whereas Rane (2021) advocated adaptive institutions such as the MPIA, Pauwelyn (2023) stressed that they remain a transitional arrangement, which does not cover all regimes, thereby creating a governance vacuum. This resulted in a paralysis of the DSM being both a legislative and a representational defeat that preconditioned the rise of institutional alternatives, such as CICC, to be considered as potential replacements or even supplements to traditional multilateralism.

This review found that the WTO DSM disadvantages the developing nations disproportionately because they face heavy legal thresholds that have led to their marginalization in the global trade system. Xiao (2022) highlighted how developing nations have to contend with structural inequalities, including resource limitations and enforcement issues, which constrain their access to justice within the framework of the WTO. Hao (2025) echoes this sentiment by observing that these nations are becoming collateral damage of the larger institutional malfunctioning. The results provided by Xiao support the findings according to Zhou (2020), who mentioned that developing economies cannot engage fully with DSM procedures owing to a paucity of legal and financial resources. Additionally, Bahri (2019) posited that the Appellate Body has at times been involved in legal interpretations that favor large economies, worsening their bias concerns. According to Erie, (2019), the strict formalism of Western dispute forums can make states that are less integrated into the legal system or those with limited resources feel alienated. The result is a rising skepticism on the part of Global South nations towards the old legal forums and, therefore, the growing attractiveness of other options such as CICC. According to the literature, inaccessibility and unfairness in the currently existing systems do not just hinder justice but also elevate world inequality. Hence, the critique of WTO DSM based on the developing world opinion elucidates a strong argument for examining new legal frameworks that are more participatory and context-appropriate.

Another discovery presented in this review indicates that CICC is not only an effective practical dispute resolution platform but also a strategic component of legal diplomacy practiced by China, particularly in

developing nations. Mollengarden (2019) commended the hybrid model of CICC, where arbitration is paired with mediation and judicial review, but this hybrid design was supposed to represent such pluralism in culture and procedure. However, Yin (2019) pointed to the risks of foreign suspicion, expressing caution regarding transparency and impartiality since CICC is a part of the Chinese judicial system. This division reflects a larger tendency described by Brosig (2019), who posited that legal power can no longer be limited to Western institutions, with newcomers such as China now actively adjusting international rules. Similarly, Larionova and Shelepov (2022) noted that such BRICS-led initiatives, as CICC, are indicative of a shift towards a multi-polar legal order in which Global South countries gain greater autonomy. Viewed through a constructivist lens, Ben-Itzhak (2024) argued that institutions such as CICC are part of larger identity-forming ventures intended to reimagine notions of fairness and collaboration outside Western contexts. Although critics like Duggan et al. (2022) caution that CICC might simply replace hegemony with another, its symbolic role as a non-Western legal institution cannot be passed over. This empirical and theoretical literature hence underscores the perception that CICC is not merely a law court but a ground of normative struggle and an expression of Chinese desire to shape international legal governance.

CONCLUSION

This review investigated what the paralysis of the WTO Dispute Settlement Mechanism (DSM) and the development of the China International Commercial Court (CICC) as a possible alternative suggest in relation to international economic law. It explored the role of institutional stagnation within global trade governance in facilitating the emergence of new legal forums; most remarkably, those dominating the emergent powers, such as China. The review revealed that the failure of the WTO DSM, particularly indefinitely suspending the operation of its Appellate Body, has severely undermined trust in multilateralism. This has affected significantly poor countries that do not have the legal or financial strength to solve trade disputes unilaterally or at the regional level. The consequent deficit of institutional trust has ushered in a degree of legal pluralism, with states seeking to research or originate mechanisms beyond the traditional Western-dominant structures. In this regard, CICC was discovered to play a dual role: both a legal institution regulating commercial conflicts related to BRI, and an instrument of legal and diplomatic strategy. Its hybrid nature, the marriage of national legal traditions to the international elements of multi-lingual hearings, foreign advisory panels and more prepares it uniquely in the global legal play. It aims to provide effective, cross-cultural dispute resolution and advance a model of legal authority that is alternative, especially to the Global South. Yet, there exist issues concerning its impartiality, transparency, and legitimacy outside the jurisdiction of China. Although CICC is innovative and receptive to addressing legal gaps, it has to overcome these challenges to become a widely acknowledged neutral and credible forum. In the end, this study asserts that CICC is a significant step in the diversification of international legal governance. With the global order shifting to multipolarity, institutions such as CICC could assume a more commanding place as long as they adapt to legitimacy, inclusivity, and equitable governance in international economic law.

Limitations

This study relies solely on secondary data and scholarly publications, lacking empirical input from CICC stakeholders or dispute participants. The scope is limited to eight core publications and may not capture the full range of evolving legal debates or state-specific experiences. Additionally, as CICC is still relatively new, long-term effectiveness and legitimacy trends are not fully measurable at this stage.

Future Research Directions

Future studies should explore empirical case analyses of CICC proceedings, involving interviews with litigants, arbitrators, and state officials. Comparative studies between CICC and regional legal bodies in Asia, Africa, and Latin America could also uncover how legal pluralism functions across diverse legal systems. As well, comparative analysis of the acceptance and application of CICC judgments in other jurisdictions would also be extremely valuable in informing the international legal status and prospects of the achievement of a multipolar legal order.

Recommendation

Reform and Revitalize the WTO DSM

As other frameworks, such as CICC, pick up strength, the paralysis of the WTO DSM requires urgent intervention on the part of its members. Transparent appointment processes, more explicit mandates, and greater access by developing countries should be part of the reforms.

Enhance CICC Transparency and Procedural Integrity

Institutional transparency is a factor that CICC needs to enhance to increase its international legitimacy on a larger scale. The publication of judgments, judicial panel diversity, and foreign legal expert participation will bolster the sense of fairness and impartiality.

Promote South-South Legal Capacity Building

China and member states should invest in legal education, training teams, and infrastructure to developing countries that implement BRI projects. This guarantees that these nations possess a level of legal acumen with which to compete with CICC, as well as influence emerging norms.

Foster Inter-Institutional Dialogue

A platform for dialogue between CICC, WTO DSM (when operational), ICSID, and regional courts should be developed. This would help avoid jurisdictional conflicts, ensure procedural harmony, and support global legal coherence while respecting pluralism.

Conduct Independent Performance Assessments of CICC

To build global trust, third-party institutions such as academic consortia or legal think tanks should be commissioned to periodically evaluate CICC's performance, focusing on fairness, case outcomes, participant diversity, and enforceability of decisions.

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ETHICAL DECLARATION

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