

## MPIA as a Stopgap Measure: Tackling the Stagnation in the WTO Dispute Settlement System

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### Abstract

The paralysis of the World Trade Organization's (WTO) Appellate Body (AB) in 2019 created a significant gap in the organization's Dispute Settlement Mechanism (DSM), undermining its ability to enforce fair and timely resolutions for trade disputes. In response, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) emerged as a temporary, voluntary solution for WTO members seeking an alternative appellate mechanism. This paper explores the structure, processes, and implications of the MPIA, comparing it to the AB system to assess whether it offers a viable, efficient substitute. The study examines how MPIA's arbitration-based approach and voluntary membership differ from AB's mandatory, judicial review framework. Findings suggest that while MPIA provides flexibility, timeliness, and procedural efficiency, its limited membership and provisional nature present challenges to achieving consistency in dispute resolution. As WTO members continue to negotiate a path forward for the DSM, the MPIA serves as a testament to multilateral adaptability and highlights the potential role of arbitration in global trade governance. This analysis contributes to the ongoing discourse on WTO reform, emphasizing the need for a durable, balanced mechanism that meets both current efficiency demands and long-term objectives for fairness and consistency in international trade.

**Keywords:** MPIA; WTO; DSM.

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### Introduction

As an international trade organization with a Multilateral Trading System ("MTS"),<sup>1</sup> the World Trade Organization ("WTO") has long been the cornerstone of global trade regulation with its Dispute Settlement Mechanism ("DSM") serving as a critical pillar for resolving trade disputes among member countries. The DSM itself is regulated in Annex 2 of the Marrakesh Agreement Establishing the World Trade Organization (Marrakesh Agreement), the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU").

Early on, the DSU played an important role in guaranteeing a fair two-tier adjudication process in WTO dispute settlement. However, since December 2019, the WTO's Appellate Body ("AB"), the highest authority within the DSM, has been rendered ineffective due to taking a series of actions that violated the provisions of the DSU and gradually reduced WTO member countries' rights and added obligations under WTO agreements. The AB has acted outside of the limits given

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<sup>1</sup> Thomas H. Oatley, *International Political Economy*, 6th edn (New York: London: Routledge, 2019).

in the DSU.<sup>2</sup> This impasse has led to a significant stagnation in the DSM, undermining the WTO's ability to effectively adjudicate disputes and maintain the rule-based trading system.

Some examples of these actions include: i) the AB frequently disregards the timeframes set out in the DSU for completing the appeals process; ii) the AB tend to unilaterally extends its term of office; iii) the AB frequently reviews factual aspects in panel reports whereas it should only review legal aspects; and iv) the AB wants panels to treat AB interpretations in AB reports of previous disputes as binding precedent.<sup>3</sup> Some of the AB's activities have forced the United States ("US") to reject all AB appointments, both new and reappointments.<sup>4</sup> The denial is intended to encourage WTO members to swiftly address dispute settlement reform, including the revision of the AB's authority. According to the US, the AB's actions impede the WTO's progress,<sup>5</sup> and establish precedents in its reports, such as international courts or courts in a country that are judge-made law, which should be regulated by WTO members rather than the AB.<sup>6</sup> The DSU requires that each appeal be processed by three AB members,<sup>7</sup> however, following the US rejection, there are only three AB members left, and the last member's tenure expires in November 2020. No new members have been nominated yet, which has caused delays in the appeal of conflicts due to a lack of needed AB members.

This action is counterproductive and complicates the settlement of ongoing disputes at the WTO, especially those under appeal to the AB. Based on data reported on the WTO website, there are 24 dispute cases in appeal status or panel reports under appeal that have not yet reached the AB stage or the issuance of a decision by the AB. The large number of unresolved cases shows the need for solutions to resolve the problems that arise in the AB, in order to create the principle of equitable, fast, effective, and mutually acceptable in dispute

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<sup>2</sup> United States Trade Representative, *Report on the Appellate Body of the World Trade Organization* (Washington DC, 2020).

<sup>3</sup> United States Trade Representative.

<sup>4</sup> 'United States Continues to Block New Appellate Body Members for the World Trade Organization, Risking the Collapse of the Appellate Process', *American Journal of International Law*, 113.4 (2019), 822–31 <<https://doi.org/10.1017/ajil.2019.59>>.

<sup>5</sup> Robert McDougall, 'Crisis in the WTO: Restoring the Dispute Settlement Function', *CIGI Papers*, 194, 2018, 1–20 <<https://www.cigionline.org/publications/crisis-wto-restoring-dispute-settlement-function/>>.

<sup>6</sup> Geraldo Vidigal, 'Living Without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis', *The Journal of World Investment & Trade*, 20.6 (2019), 862–90 <<https://doi.org/10.1163/22119000-12340160>>.

<sup>7</sup> World Trade Organization, 'World Trade Organization, Marrakesh Agreement Establishing the World Trade Organization', *World Trade Organization*, 20204 <[https://www.wto.org/english/docs\\_e/legal\\_e/dsu\\_e.htm](https://www.wto.org/english/docs_e/legal_e/dsu_e.htm)>.

settlement at the WTO as it should be.<sup>8</sup>

The problem is that while the AB is not in operation, the panel report cannot directly bind the parties involved. This is because a panel report (as well as an AB report) is only legally binding if it has been adopted by the Dispute Settlement Body (“DSB”). According to Article 16.4 of the DSU, if a party to a dispute notifies the DSB of their intention to appeal a panel report, the DSB cannot approve the report until the appeal procedure is concluded. Without AB members, the dispute settlement process would be stagnating and subject to abuse by the losing country at the panel stage, such as blocking the acceptance of the panel report or “appeal into the void.”<sup>9</sup> As a result, the panel report’s recommendations have no legal ramifications for the disputing parties. Non-compliant parties cannot be subjected to retaliatory actions because they are still in the appeal stage, not the implementation stage, both legally and procedurally.<sup>10</sup>

The crisis in the WTO’s dispute settlement mechanism has the potential to significantly undermine MTS stability. One of them is the likelihood of increased unilateral and protectionist measures by WTO members.<sup>11</sup> In response to this, on 30 April 2020, the EU and 18 other WTO members reached an agreement known as the Multi-Party Interim Appeal Arbitration Arrangement (“MPIA”), which was formed based on Article 25 of the DSU on arbitration.<sup>12</sup> The MPIA seeks to provide an interim solution that preserves the right to appeal in trade disputes, ensuring that the principles of fairness and legal integrity are upheld in the absence of a functioning AB.<sup>13</sup>

## Research Problems

In order to address this gap in WTO dispute resolution, a novel approach is required, which include the examination of the arbitration forum as a potential replacement for the AB in WTO member countries’ international trade disputes that are presently undergoing the appellate review phase. Thus, this article

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<sup>8</sup> Mrs. Koesrianti, ‘WTO Dispute Settlement: Indonesia’s Perspective in International Trading System’, *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 27.2 (2015), 300–311 <<https://doi.org/10.22146/jmh.15889>>.

<sup>9</sup> Joost Pauwelyn, ‘WTO Dispute Settlement Post 2019: What to Expect?’, *Journal of International Economic Law*, 22.3 (2019), 297–321 <<https://doi.org/10.1093/jiel/jgz024>>.

<sup>10</sup> Vidigal.

<sup>11</sup> Robert Wolfe and others, ‘WTO Dispute Settlement and the Appellate Body Crisis: Insider Perceptions and Members’ Revealed Preferences’, *VoxEU*, 2019 <<https://cepr.org/voxeu/columns/wto-dispute-settlement-and-appellate-body-crisis-insider-perceptions-and-members>>.

<sup>12</sup> Wolfe and others.

<sup>13</sup> Simon Lester, ‘Can Interim Appeal Arbitration Preserve the WTO Dispute System?’, *CATO Institute Free Trade Bulletin*, 77, 2020, 1–6 <<https://ssrn.com/abstract=3694753>>.

proposes a comprehensive analysis of the MPIA, assessing its structure, implementation, and performance in comparison to the traditional AB mechanism. By evaluating case studies of disputes resolved under the MPIA, the article aims to: i) identify the position of the MPIA in the WTO dispute settlement system; and ii) the differences between MPIA and AB arrangements in the WTO dispute settlement system.

## Research Methods

This research is classified as normative juridical research as it relies solely on secondary data sources such as laws and regulations, court decisions, legal theories, and legal expert opinions.<sup>14</sup> It examines legal concepts and doctrines to characterize the MPIA's position in the WTO dispute settlement system, as well as the distinctions between the MPIA and AB's dispute settlement systems. The research employs conceptual approaches: the conceptual approach explores various perspectives and theories created in legal research.<sup>15</sup> It relies on primary legal materials from the research subject and secondary materials, including interpretations, expert opinions, and relevant publication,<sup>16</sup> all gathered through library research.<sup>17</sup>

## Discussion

### 1. The Postion of the MPIA in the WTO Dispute Settlement System

AB was established in 1995 under Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). In response to the shutdown of the WTO Appellate Body in 2019, a subset of WTO Members entered into the Multi-Party Interim Appeal Arbitration Arrangement known as MPIA.<sup>18</sup> MPIA has been in effect since 30 April 2020 at the request of the Delegations of Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, the European Union, Guatemala, Hong Kong, Iceland, Mexico, New Zealand, Norway, Pakistan, Singapore, Switzerland, Ukraine, and Uruguay. Article 25 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (“DSU”) is the only provision that enables WTO Members to use arbitration as an independent means

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<sup>14</sup> Soejono and H. Abdurrahman, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2003).

<sup>15</sup> Soejono and Abdurrahman.

<sup>16</sup> Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana Prenada Media Group, 2018).

<sup>17</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2017).

<sup>18</sup> Bowon Choi, ‘Three Years of the Multi-Party Interim Appeal Arbitration Arrangement: An Interim Evaluation of Arbitration as a Means to Appeal WTO Panel Reports’, *Kluwer Arbitration Blog*, 2023 <<https://arbitrationblog.kluwerarbitration.com/2023/08/11/three-years-of-the-multi-party-interim-appeal-arbitration-arrangement-an-interim-evaluation-of-arbitration-as-a-means-to-appeal-wto-panel-reports/>>.

of dispute settlement. After two and a half years of its creation, MPIA finally produced its first appellate award. The paralysis of the AB poses a severe threat to the credibility and functionality of the WTO DSM.<sup>19</sup> Without a functioning appeal mechanism, the enforceability of panel decisions is weakened, potentially leading to increased unilateralism and trade tensions among WTO members.<sup>20</sup> The MPIA, while innovative, raises questions about its efficacy, legal standing, and potential as a long-term solution to the crisis facing the WTO DSM. As stated before on the introduction, the existence of MPIA is based on Article 25 of the DSU, which allows for arbitration as an alternative means of dispute resolution. Furthermore, Article 25 states that, “*expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.*” This provision provides the legal foundation for the MPIA, enabling WTO members to utilize arbitration for appellate review in the absence of a functioning AB. To make this first analysis more concise and to the point, the author will divide the explanation into: 1) The Mechanism and Structure of MPIA; and 2) Effectivity and Challenges.

### 1.1 The Mechanism and Structure of MPIA

The MPIA is a voluntary arrangement among participating WTO members.<sup>21</sup> MPIA aims to preserve the substantive and procedural aspects of WTO’s appeal arbitration procedure, emphasizing independence and impartiality while enhancing efficiency.<sup>22</sup> Any WTO member can join the MPIA by notifying the DSB. When MPIA parties are involved in a dispute, they must submit a joint notification to invoke the MPIA to resolve the conflict at the appellate stage.<sup>23</sup> Voluntary participation means that decisions made under the MPIA may not be recognized or accepted by non-participants, leading to inconsistencies in the application and interpretation of WTO rules and potentially undermining the uniformity that the WTO aims to maintain across global trade rules.<sup>24</sup> Voluntary nature of the MPIA is seen as

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<sup>19</sup> Giorgio Sacerdoti and others, ‘The WTO Dispute Settlement System in 2020: Facing the Appellate Body Paralysis’, *SSRN Electronic Journal*, 3794327, 2021, 1–34 <<https://doi.org/10.2139/ssrn.3794327>>.

<sup>20</sup> Wolfe and others.

<sup>21</sup> Anna-Marie Wieseler, ‘The Appellate Body Deadlock at the WTO: An Analysis of Alternative Ad Hoc Arbitral Tribunals Under Article 25 DSU in Form of the Plurilateral MPIA (2020)—The United States and China’ (University of Twente, 2021) <<https://purl.utwente.nl/essays/88211>>.

<sup>22</sup> Mohamed Salah Adawi Ahmed and others, ‘MPIA as Solution of Appellate Body Dilemma: An Overview of the Advantages of New Mechanism of WTO Dispute Settlement’, *International Journal of Scientific Research and Management (IJSRM)*, 12.05 (2024), 473–96 <<https://doi.org/10.18535/ijssrm/v12i05.11a01>>.

<sup>23</sup> Bernard Hoekman and Charles Sabel, *Open Plurilateral Agreements, Global Spillovers and the Multilateral Trading System*, Bertelsmann Stiftung, Bertelsmann Stiftung Working Papers, 2020 <<https://hdl.handle.net/1814/70200>>.

<sup>24</sup> Ahmed and others.

advantageous, as it allows countries to participate based on their assessments of the benefits relative to their trade and legal strategies.<sup>25</sup> the arrangement outlines procedural rules that closely mirror those of the AB, ensuring consistency and predictability in appellate review. The MPIA employs arbitrators from a pre-agreed pool, who are selected based on their expertise and independence, similar to the appointment of AB members.<sup>26</sup>

In the context of functionality and structure, MPIA is designed to replicate the appellate function of the AB as closely as possible.<sup>27</sup> First element of the MPIA suggests that it acts as a soft law communication, showing that its members plan to use arbitration as a temporary appeal process under Article 25 DSU. In general, MPIA is considered lawful and consistent with the DSU's principles in terms of its legal nature. It functions similarly to "agreements not to appeal", where a party has the option to appeal a panel report under Article 16.4 and 17.4 of the DSU. However, the AB acknowledges that members can waive their procedural rights under the DCU as long as they follow its rules and procedures. WTO Members have used ad hoc agreements to bypass appeals when the AB is not functioning at the start of a dispute.<sup>28</sup> MPIA provides for the arbitration of appeals from panel reports, ensuring that the rights and obligations of WTO members are maintained. Olga Starshinova also argues that the MPIA is a useful solution to the crisis, as it allows WTO members to continue to resolve disputes through a rules-based system.<sup>29</sup>

## **1.2 Effectivity and Challenges**

By doing so, MPIAs contribute to a more stable and predictable international trading and investment environment, ultimately benefiting businesses, economies, and the global community. Moreover, the effectiveness of MPIA in addressing the WTO dispute settlement crisis has been subject to scrutiny.

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<sup>25</sup> Ahmed and others.

<sup>26</sup> Jiaxiang Hu and Dapo Wang, 'To Be or Not to Be? The Implementation of the MPIA from the Perspective of the WTO Dispute Settlement', *China and WTO Review*, 7.2 (2021), 239–68 <<https://doi.org/10.14330/cwr.2021.7.2.01>>.

<sup>27</sup> Holger Hestermeyer, 'Saving Appeals in WTO Dispute Settlement: The Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU', *EULaw Live*, 2020, 1–4 <[https://kclpure.kcl.ac.uk/portal/en/publications/saving-appeals-in-wto-dispute-settlement-the-multi-party-interim-#:~:text=Hestermeyer%2C H. %282020%29. Saving Appeals in WTO Dispute,25 of the DSU. EULaw Live. Hestermeyer%2C Holger.>](https://kclpure.kcl.ac.uk/portal/en/publications/saving-appeals-in-wto-dispute-settlement-the-multi-party-interim-#:~:text=Hestermeyer%2C%20H.%282020%29.Saving%20Appeals%20in%20WTO%20Dispute,25%20of%20the%20DSU.EULaw%20Live.Hestermeyer%2C%20Holger.>)>.

<sup>28</sup> Hestermeyer.

<sup>29</sup> Olga Starshinova, 'Is the MPIA a Solution to the WTO Appellate Body Crisis?', *Journal of World Trade*, 55:5 (2021), 787–803 <<https://doi.org/10.54648/TRAD2021033>>.

The several factors that contribute to its effectiveness can be summarized in the following context

a. Maintaining Dispute Resolution Continuity

By providing an interim appellate mechanism and following the deadlock of AB, the MPIA represents a significant departure from the traditional WTO dispute resolution process, which participating countries agree to follow a two-stage process, including (i) engage in arbitration to resolve the dispute at the appellate level; and (ii) agree to abide by the arbitration panel's decision. But importantly, this mechanism is meant to be temporary and will remain in operation until a lasting solution to the AB crisis is found.<sup>30</sup>

The significance of retaining this two-stage dispute settlement system is that it enhances transparency and consistency in applying WTO rules and helps maintain the integrity of the global trading system. Thus, the two-stage dispute settlement process remains a fundamental component of the WTO's dispute resolution mechanism, and efforts are being made to address the challenges it has faced in recent years.<sup>31</sup>

b. Encouraging Participation

The voluntary nature of the MPIA allows WTO members to opt-in, providing a flexible solution that can adapt to the needs of different members. The MPIA's flexible and adaptable structure is key to its appeal. This flexibility allows the arrangement to accommodate the specific needs and concerns of its participating members. For example, the MPIA can be adjusted to address emerging issues or improve its functionality over time. This adaptability makes it an attractive option for WTO members seeking a dispute resolution mechanism that can evolve with changing circumstances.

Furthermore, the arrangement can be adjusted to address emerging issues or to improve its functionality over time. This adaptability makes the MPIA a more attractive option for members seeking a dispute resolution mechanism that can evolve with changing

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<sup>30</sup> Marie Van Luchene, *The MPIA: A Mere Interim Solution or the Pathway to Fixing the WTO?*, TTLF Working Papers, 2022 <<https://law.stanford.edu/publications/no-90-the-mpia-a-mere-interim-solution-or-the-pathway-to-fixing-the-wto/>>.

<sup>31</sup> Ahmed and others.

circumstances. The participation of major economies adds credibility to the arrangement and encourages other members to join.

c. Preserving Legal Certainty

MPIA offers a unique and innovative approach to dispute settlement where these arrangements bring together multiple parties to resolve disputes through arbitration, providing several advantages and significant value.<sup>32</sup> According to Article 3.2 of the DSU, it states that, “[T]he dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system,” means that MPIA has the ability to promote consistency and coherence in international dispute resolution. This body creates a unified platform where arbitrators can develop coherent jurisprudence and establish precedents that guide future cases.<sup>33</sup> Consistent with the Article above, MPIA maintains the legal certainty and predictability that are hallmarks of the WTO dispute settlement system. By adhering to established procedural norms, it ensures that members can rely on a consistent and fair appellate review process.

Despite its effectiveness, the MPIA faces significant challenges. The legal status of the MPIA is a subject to debate and varying interpretations. Some WTO Members believe it aligns with the WTO’s DSU, while others argue that it diverges from the WTO’s standard dispute resolution processes.<sup>34</sup> Legal character of the MPIA is a matter of debate. One of the main issues is its limited membership. Not all WTO members have joined the MPIA, which restricts its applicability. In addition, the temporary nature and uncertainty are also one of the reasons. The MPIA is designed as a temporary solution until the AB is restored. This provisional nature creates uncertainty about its long-term viability. Members might be hesitant to fully commit resources and rely on a mechanism perceived as a stopgap, potentially leading to instability in trade dispute resolutions.

Furthermore, when parties agree to resolve disputes through arbitration, they are permitted to depart from the standard procedures outlined in the DSU and may adopt procedures they deem appropriate for

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<sup>32</sup> Mariana De Andrade, ‘Procedural Innovations in the MPIA: A Way to Strengthen the WTO Dispute Settlement Mechanism?’, *QIL*, 63 (2019), 121–49 <[https://www.qil-qdi.org/wp-content/uploads/2020/09/07\\_WTO-Future\\_DE-ANDRADE\\_FIN.pdf](https://www.qil-qdi.org/wp-content/uploads/2020/09/07_WTO-Future_DE-ANDRADE_FIN.pdf)>.

<sup>33</sup> Ahmed and others.

<sup>34</sup> Lester.

arbitration, including the selection of arbitrators.<sup>35</sup> This grants the disputing parties considerable autonomy to determine their procedural framework within the arbitration process. No restrictions apply to the method of selecting arbitrators, the presentation of evidence, the conduct of hearings, or other relevant procedural aspects.<sup>36</sup>

Article 25 of the DSU, as the legal basis for the establishment of MPIA offers certain advantages, such as flexibility and a voluntary nature—as it stated before, distinguishing it from the appellate process before the AB. Arbitration promotes quicker and more objective dispute resolution through negotiation rather than formal litigation. This approach also reduces reliance on the appeals process, thereby allowing disputes to be resolved more efficiently.<sup>37</sup> The flexibility of Article 25 of the DSU also allows for the correction of legal errors without creating binding jurisprudence within the WTO system. Under Article IX:2 of the Marrakesh Agreement, WTO members may override AB interpretations by adopting official interpretations of WTO agreement provisions. However, in practice, this rarely occurs, gradually eroding the flexibility needed to balance the legal and political constituents of the system.

Nonetheless, despite its flexibility, the MPIA is unlikely to serve as a permanent substitute for the AB in fulfilling the appellate function. This is because the arbitration mechanism in the article in question is not designed as an appellate alternative but rather as an alternative to the entire litigation process prescribed by the WTO, including both panel proceedings and appeals.

## 2. The Differences Between MPIA and AB Arrangements in the WTO Dispute Settlement System

In alignment with Article 25 of the DSU, it is worth noting that, prior to the WTO disputes being resolved through the MPIA under this provision, arbitration had only been employed once—namely, in the DS165, where the US and EC agreed to use arbitration under Article 25 DSU to determine the level of nullification or

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<sup>35</sup> World Trade Organization, 'Dispute Settlement without Recourse to Panels and the Appellate Body', *World Trade Organization*, 2022 <[https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_settlement\\_cbt\\_e/c8s2p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c8s2p1_e.htm)>.

<sup>36</sup> Bashar H. Malkawi, 'Can Article 25 Arbitration Serve as a Temporary Alternative to WTO Dispute Settlement Process?', *Kluwer Arbitration Blog*, 2019 <<https://arbitrationblog.kluwerarbitration.com/2019/01/05/can-article-25-arbitration-serve-as-a-temporary-alternative-to-wto-dispute-settlement-process/>>.

<sup>37</sup> Joost Pauwelyn and Krzysztof Pelc, 'Who Guards the "Guardians of the System"? The Role of the Secretariat in WTO Dispute Settlement', *American Journal of International Law*, 116.3 (2022), 534–66 <<https://doi.org/10.1017/ajil.2022.20>>.

impairment of benefits suffered by the EU due to the actions of the US. Further, as developments progressed, on July 31, 2020, MPIA participants formally appointed 10 arbitrators to a pool tasked with handling appeals related to panel reports in disputes involving these parties.<sup>38</sup>

The MPIA uses a pool of 10 arbitrators chosen by consensus among participants, ensuring impartiality and objectivity.<sup>39</sup> Arbitrators for each case are randomly selected from this pool, forming a three-member panel to bring diverse perspectives and enhance the quality of the arbitration.<sup>40</sup> Decisions must be issued within 90 days from the notice of appeal, expediting resolution while maintaining fairness. The MPIA appeal arbitration process is a structured and efficient mechanism for resolving disputes among multiple parties.<sup>41</sup> It emphasizes fairness, impartiality, and timeliness, ensuring that all parties have a voice in the process and receive a timely resolution to their dispute. MPIA aims to provide a robust framework for dispute resolution in complex multiparty situations by involving a pool of arbitrators, random panel selection, and clear timelines.<sup>42</sup> In practice, to ensure impartiality and objectivity throughout the proceedings, the selection of a panel of arbitrators in MPIA is done randomly by selecting three arbitrators in the panel. And in delivering decisions, MPIA incorporates a commitment to deliver decisions within a strict timeline of 90 days, to address the delays that often occur in AB proceedings. This aims not only to rectify the delays experienced under the AB, but also to implement streamlined procedures and maintain strict deadlines, thereby enhancing the overall efficiency of dispute resolution among its members.

MPIA arbitrations also emphasize transparency and public access, which enhances credibility. Its decisions, binding and final, mirror the authority of WTO AB rulings. The MPIA's flexible membership is open to all WTO members, and participants voluntarily agree to its rules, committing to stable dispute resolution despite the AB's dysfunction. Unlike the fixed AB, the MPIA operates through an ad hoc mechanism, ensuring a timely alternative in WTO disputes.

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<sup>38</sup> Daniel Hohnstein and Greg Tereposky, 'Pool of Ten Appeal Arbitrators Established for the WTO Multi-Party Interim Appeal Arbitration Arrangement (MPIA)', *Tereposky & DeRose LLP*, 2020 <<https://tradeisds.com/10-appeal-arbitrators-for-wto-mpia/>>.

<sup>39</sup> Ahmed and others.

<sup>40</sup> World Trade Organization, 'Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU', 2020, pp. 1-7 <<https://tradeisds.com/wp-content/uploads/2020/05/1A12.pdf>>.

<sup>41</sup> De Andrade.

<sup>42</sup> Guillaume Van der Loo, *Getting the WTO's Dispute Settlement and Negotiating Function Back on Track: Reform Proposals and Recent Developments*, Leuven Centre for Global Governance Studies Working Paper Series, 2022 <<https://www.egmontinstitute.be/app/uploads/2022/10/WP232-VanderLoo.pdf?type=pdf>>.

However, as noted by Henry GAO, merely giving nominal support to WTO dispute settlement provisions and procedures does not inherently legitimize the initiative. Moreover, the language in Article 25 is terse, leaving many aspects of the arbitration mechanism vague. The only clear point is that it is intended as a voluntary process, with both the decision to enter arbitration and the acceptance of the final award requiring mutual consent from the parties involved. This voluntary nature is reiterated in Article 15 of the Agreed Procedures for the MPIA, which specifies that arbitral awards, while mutually agreed upon, are only to be “be notified to, but not adopted by, the DSB”. This approach differs significantly from the compulsory nature of the standard WTO dispute settlement system, where panel and AB reports receive the endorsement of all WTO members through their adoption by the DSB. By contrast, an MPIA arbitral award is only binding between the specific parties in a particular case and has no effect on other WTO members or even the same parties in future disputes. In many ways, it resembles a mutually agreed solution (“MAS”) in WTO disputes, which, given the checkered history of MAS, does not bode well for the future of the MPIA as a suitable DSM.<sup>43</sup>

As for the MPIA’s long-term role, while it has demonstrated some potential and introduced procedural innovations that might inspire future reforms,<sup>44</sup> it is largely viewed as a temporary fix rather than a permanent solution. The international trade community regards the MPIA as an essential stop-gap measure while efforts continue toward a comprehensive reform of the WTO’s dispute settlement mechanism to restore its full functionality and credibility. Although the MPIA can serve as a testing ground for improving efficiency and aligning dispute settlement with WTO members’ interests, the ultimate aim remains to reestablish a fully functional, enduring appellate mechanism within the WTO. Thus, the MPIA serves as a creative yet temporary arrangement until that objective is achieved.

## Conclusion

In conclusion, the MPIA addresses the WTO AB deadlock by providing a temporary two-stage appellate mechanism that upholds dispute resolution continuity, adaptability, and legal certainty. It maintains transparency, consistency in WTO rule application, and the integrity of the global trading system. Its voluntary nature offers flexibility, allowing WTO members to opt-in and adapt MPIA rules to emerging issues, making it an appealing interim solution. Additionally, the MPIA enhances predictability and coherence in dispute

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<sup>43</sup> Henry S. Gao, ‘A Rule-Based Solution to the Appellate Body Crisis, and Why the MPIA Would Not Work’, *SSRN Electronic Journal*, 2020, 1–18 <<https://doi.org/10.2139/ssrn.3767926>>.

<sup>44</sup> Choi.

resolution through its structured arbitration approach, ensuring that members can rely on a fair appellate review process.

However, the MPIA faces notable challenges, including limitations in Article 25 of the DSU, which lacks flexibility for tailored procedural agreements, and overlap between MPIA rules and the DSU's appeals procedures. Additionally, while the MPIA is functional as an interim arrangement, lasting reform of the WTO settlement system will require more than AB restoration; it will necessitate a revitalized approach for WTO members to achieve definitive agreements on the system's structure and processes.

To address these challenges, it is recommended that WTO members reengage in inclusive, transparent negotiations to form a common understanding of the dispute settlement mechanism's role, framework, and desired outcomes. This collective approach will help ensure a robust and sustainable dispute resolution system aligned with members' evolving needs.

## Suggestion

To address the challenges facing the WTO dispute settlement mechanism, it is essential for members to reopen dialogue and foster an inclusive, transparent negotiation environment. By encouraging all members, regardless of their economic standing, to actively participate, this approach builds trust and promotes equitable contributions to shaping a balanced and sustainable framework. Additionally, members should work toward establishing a shared vision for the dispute settlement system by defining its proper form, role, and desired outputs. A collective understanding of its objectives—such as ensuring predictability, fairness, and efficiency—will enable members to develop a coherent and unified framework that aligns with the evolving dynamics of global trade and addresses emerging challenges effectively.

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