

MULTI-PARTY INTERIM APPEAL ARBITRATION ARRANGEMENT (MPIA) AS A MECHANISM TO ADDRESS WTO APPELLATE BODY INACTIVITY

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ABSTRACT

The Multi-Party Interim Appeal Arbitration Arrangement (MPIA) emerged as a crucial temporary mechanism within the World Trade Organization (WTO) framework to address the paralysis of the WTO Appellate Body (AB) since December 2019. This research paper examines whether the MPIA can serve as a suitable substitute for the WTO AB, particularly its impact on developing countries. The methodology employed is a qualitative research method, integrating a juridical normative methodology, historical analysis, and descriptive analysis. Sources include WTO reports, academic literature, journal articles, and other related materials. The results indicate that while the MPIA ensures continuity of trade dispute resolutions, it cannot fully replace the AB. However, the MPIA's flexibility and practical approach offer significant benefits, such as faster dispute resolution and the potential to balance power asymmetries in international trade disputes. The study concludes that for the MPIA to function as a viable alternative, it requires broader adoption, continuous improvements, and alignment with WTO principles for equitable and accessible mechanisms for all WTO members, particularly developing countries. Policy recommendations are offered to enhance the inclusivity and effectiveness of the MPIA, alongside long-term solutions for resolving the WTO Appellate Body crisis. Ultimately, the MPIA serves as a crucial instrument in the ongoing reform efforts of the WTO dispute settlement mechanism. The significance of this study lies in its contribution to understanding the MPIA's role and the necessity of diplomatic efforts to restore a fully operational and universally accepted WTO dispute settlement system amidst current geopolitical challenges.

Keywords: MPIA; Developing Countries; WTO; Dispute Settlement; Appellate Body.

INTRODUCTION

In today's interconnected world, trade has become increasingly prevalent, driven by the forces of globalization (Shaukat, 2023). The seamless exchange of goods, services, and capital across borders has integrated economies and fostered economic growth. This evolving landscape necessitates the existence of an impartial international trade organization to ensure that trade flows smoothly, equitably, and predictably (Siddiqui, 2024). The World Trade Organization (WTO), notably, plays a

critical role in maintaining a level playing field, resolving disputes, and upholding the principles of fairness and transparency in global trade (Ahmed et al., 2024). They provide a robust framework for negotiating trade agreements and settling disputes, thereby facilitating orderly and fair international commerce (Lee, 2023). The sclerosis of the WTO Appellate Body (AB) has obstructed its function as the final authority of legal determination within the WTO Dispute Settlement Mechanism (DSM) (Miranda & Sánchez, 2023). The Multi-Party Interim Appeal Arbitration

Arrangement (MPIA) was presented as a solution to this dysfunction (Červinka, 2023). The United States, unable to exert global dominance and leverage through the MPIA, is a key player in the rejection of this arrangement (Borlini & Sacerdoti, 2023). The inability to fully resolve the issue is influenced by political considerations and international relations, particularly the challenges of multilateralism (Sacerdoti & Borlini, 2023). This research seeks to evaluate the efficacy and acceptance of the MPIA, specifically its influence on developing nations. The study will examine the reasons behind joining the MPIA, analyse its procedural advancements in comparison to the WTO Appellate Body, and assess its viability as a long-term resolution.

WORLD TRADE ORGANIZATION AND ITS DISPUTE SETTLEMENT MECHANISMS

The WTO, officially launched in 1995, emerged from the Uruguay Round negotiations of the GATT, primarily aiming to fortify its dispute settlement mechanisms and effect substantial enhancements in the overall WTO dispute resolution framework (Altemöller, 2021; Palmeter et al., 2022). This transition underscored a shift from a diplomacy-centric approach to a more adjudication-focused mechanism (Ehlermann, 2003). It operates under three principal mandates: firstly, to establish enforceable trade regulations; secondly, to serve as a dispute resolution body; and thirdly, to provide a platform for ongoing negotiations aimed at reducing trade barriers (Anyiwe & Ekhaton, 2013).

As of 30th August 2024, the WTO counts 166 member countries and observer nations (WTO, 2024). The WTO DSM serves as the WTO's judicial arm and enforcement mechanism. It sets out a procedure for resolving conflicts between member countries regarding suspected violations of WTO agreements (Howse, 2016). The Dispute Settlement

Understanding (DSU) serves as the legal foundation for the WTO's dispute settlement system, outlining the principles and processes by which members can submit their trade issues to the multilateral trade framework for resolution (Martinez, 2004). The Dispute Settlement Body (DSB), comprising all members of the WTO, oversees the process of resolving conflicts and holds regular meetings to review and assess reports on disputes at various stages of resolution.

The process commences with a consultation between the parties involved, and thereafter, an unbiased panel is established to evaluate the case and offer suggestions (Carmody, 2024). WTO AB stands as a cornerstone within the DSM (Lo et al., 2020). It is composed of seven members who serve four-year terms and can be reappointed. Disputes brought before the AB are decided by a panel of three members, which rotates regularly (Steger, 2017). Central to its function, Article 17.9 DSU safeguards the AB's independence by affording members the opportunity to challenge legal aspects of disputes and panel judgments deemed unsatisfactory (Mercurio, 2004; Fabri, 2016). Empirical data underscores the AB's significance, with approximately 65% of published Panel reports subject to appeal as of June 1, 2021. Furthermore, the AB modifies at least one of the Panel's conclusions in around 83% of cases, underscoring its pivotal role in dispute resolution and the considerable reliance placed upon it by WTO members (Pauwelyn 2019). The WTO's dispute settlement mechanisms bind Member States, with panel reports or Appellate Body findings adopted automatically unless a consensus dictates otherwise (Kalachyhin, 2021). Hence, any disruption to the operations of the AB poses a substantial risk to the stability of the entire Multilateral Trading System as a whole.

THE COLLAPSE OF WTO'S APPELLATE BODY (AB)

Since December 2019, the WTO dispute settlement procedure, specifically the Appellate Body (AB), has been mired in a crisis (Vidigal, 2019). Article 17.2 of the DSU obliges the DSB to appoint AB members when vacancies arise. However, pursuant to Article 2.4 of the DSU, such appointments are contingent upon consensus decision-making. This enables any single WTO Member to block the process. In practice, this institutional structure has allowed the United States to exercise a de facto veto over the appointment and reappointment of AB members by withholding its consent. The main source of the problem is the purposeful obstruction by the US delegation, which has stopped new members from being appointed to the Appellate Body and from being reappointed since 2011. The unrest began with the US refusing to re-appoint Merit Janow and Jennifer Hillman, and it continued with the veto of Seung Wha Chang's reappointment in 2016 and continued with Kim, Ramirez, and van den Bossche in 2017 (Condon, 2018; Bachand, 2020). Most recently, in September 2025, the United States opposed, for the 90th time, a proposal backed by over 130 WTO members to initiate the selection process for filling vacancies on the Appellate Body (WTO, 2025).

The US justified its refusal to reappoint WTO AB judges due to concerns about the AB's legal interpretations and judicial processes, its overreach in evaluating findings and domestic legislation, issuing unnecessary advisory opinions, treating reports as binding precedent, continued participation of former members through Rule 15 of the Working Procedures, and failure to adhere to the ninety-day appeals time limit in Article 17.5 of the Dispute Settlement Understanding (Hoekman & Mavroidis, 2019; Rajesh Babu, 2020). The dispute resolution system reached a critical turning point on December 10, 2019, when six Appellate Body positions were vacant, leaving only one member—insufficient to meet the required quorum of three members

for any appeal case (Pauwelyn, 2019; Pollack, 2023). Upon the expiry of Hong Zhao's term as the last remaining Appellate Body member on 30 November 2020, the Appellate Body ceased to have any sitting members (WTO, n.d.-a).

Consequently, the AB became non-operational. At present, although WTO members can appeal panel rulings, these appeals can – in some sense – be filed “into the void.” Although the WTO's dispute resolution mechanism still allows for panel stage dispute resolution, WTO Members are only required to abide by the conclusions of panel and Appellate Body reports once these reports are adopted and their conclusions become DSB rulings. However, since the Appellate Body has not been in operation since 2019, if an appeal is filed but cannot be heard, the panel's ruling is not adopted and does not have legal effect. Until the end of 2023, over 20 appeals were filed into the void, with many panel-stage conflicts such as DS581 India - Measures Concerning Sugar and Sugarcane (WTO, 2023), likely to face deliberate appeal-blocking until a resolution is achieved (Pauwelyn, 2019; Pollack, 2023). By late 2025, the total number of appeals had surpassed 30 (WTO, n.d.-b). With recent cases including DS616 European Union - Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia (WTO, 2025e), DS618 European Union - Countervailing Duties on Imports of Biodiesel from Indonesia (WTO, 2025g), and DS599 Panama - Measures Concerning the Importation of Certain Products from Costa Rica (WTO, 2025a).

EMERGENCE OF THE MULTI-PARTY INTERIM APPEAL ARBITRATION ARRANGEMENT

In order to overcome the standstill of the WTO AB, several attempts have been made by other WTO members since late 2018 (Liang, 2023). Multiple remedies and appellate reforms have been proposed in an attempt to settle the situation, with the main

focus being on issues brought up by the United States during WTO General Council meetings (Hunter Jr et al., 2023). Several WTO members, notably the EU, China, Iceland, Singapore, Mexico, New Zealand, Norway, Korea, Canada, and India, have taken the lead on these measures (WTO, 2018). After much compromise and debates, a Draft Decision on the Functioning of the Appellate Body was presented to the General Council as a consequence of these efforts (WTO, 2019). Among other things, the recommendations call for the AB's review authority to be more precisely defined, to be restricted to cases that are essential for settling conflicts, and to not include cases involving the interpretation of domestic laws (Palmer et al., 2022).

Furthermore, new DSU guidelines have been suggested to outline which cases departing AB members can continue to work on in order to finish the appeal process (Dhlamini, 2021). Another idea calls for holding yearly meetings between the AB and WTO members to candidly address systemic problems or emerging jurisprudential trends (Wagner, 2020). The United States has held firm to its position in the face of these many reform initiatives (WTO, 2019). Later, in March 2020, 47 countries of the WTO led the initiative to establish a provisional alternative dispute resolution system after the draft decision failed to gain momentum at the General Council, called the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) (Starshinova, 2021). The MPIA is a temporary mechanism within the WTO framework to handle appeals in trade disputes among participating WTO members (Ahmed et al., 2024). Established in response to the paralysis of the WTO AB, which has been unable to function since December 2019 due to the United States blocking new judge appointments, the MPIA aims to preserve the two-tier dispute resolution process envisioned in the WTO's DSU (Van der Loo, 2022).

LEGAL BASIS OF MPIA UNDER ARTICLE 25 OF THE DSU

An alternative kind of state-to-state conflict settlement called arbitration allows traders to resolve their differences more expedient, cost-effective, and equitable manner by using specifically appointed arbitrators (Rosenthal, 1946). As a neutral, and more efficient forum than traditional litigation, arbitration is a preferred means of settling both domestic and international disputes (Mattli, 2001). It is based on mutual consent and allows parties to choose expert arbitrators and tailor procedures to their particular needs (Born, 2021). The success of arbitration proceedings among disputants is largely due to their flexibility combined with the mandatory nature of the final decision (Bingham, 2004).

The formal introduction of dispute resolution through arbitration occurred during the Uruguay Round through the Montreal Package. This package included a provision that closely resembled what would later become Article 25 of the DSU (Zimmermann, 2006). Scott Andersen, Todd Friedbacher, Christian Lau, Nicolas Lockhart, Jan Yves Remy, and Iain Sandford were the first to propose probable features for the appeal arbitration system under the said Article in the DSU (Andersen et al., 2017). Similarly, the aforementioned rule forms the legal basis for the establishment of MPIA within the WTO framework as a temporary solution to the AB's sclerosis (Sharma, 2022; Pauwelyn, 2023).

Arbitral rulings are binding on the parties and would be enforced in the same way that adopted panel and AB report (Andersen et al., 2017). Article 25.4 of the DSU grants arbitration awards the same remedies as the suspension of concessions or other duties outlined in Articles 21 and 22 of the DSU. Article 25 is considered part of the "dispute settlement provisions" under Article 1.1 of the DSU, meaning it follows the DSU's established rules and procedures,

including any special or additional ones that apply. Article 3.5 of the DSU requires that any solutions or arbitration awards arising from disputes under these provisions must be consistent with the covered agreements and should not nullify or impair benefits provided by these agreements. Article 25 of DSU allows for the arbitration of a wide range of conflicts, as long as they involve concerns that are clearly specified by both parties (Lo, 2011).

This versatile wording allows arbitration to address a wide range of conflicts (Jacyk, 2008). When members of the WTO decide to use arbitration as outlined in Article 25, they must nonetheless comply with the norms and procedures of the DSU in order to meet their responsibility under Article 23 to adhere to the DSU framework (Pohl, 2018). To make use of Article 25 arbitration, two crucial conditions must be met: firstly, there must be two parties involved in the initial procedures, and secondly, these parties must have a clearly defined disagreement about specific topics (Andersen et al., 2017).

STRUCTURE AND FUNCTIONING OF THE MPIA

The MPIA provides a temporary yet effective solution for appellate review in international trade dispute between members, it will supersede the previous appeal processes and also apply to future disputes between members (Starshinova, 2021). The extent of a member's engagement is entirely contingent upon their own political dedication to utilise (Pelc, 2024). Instead of appealing without any effect, MPIA appeal arbitration is a form of open plurilateral arrangement that is available to any WTO member who is interested. The actual appeal process is performed bilaterally under the existing multilateral DSU framework (Wieseler, 2021). The system functions with a group of 10 arbitrators who have been carefully evaluated, possess extensive expertise, and are chosen by

agreement among the participating members to maintain the integrity and credibility of the dispute resolution process (Li, 2020). The official list of arbitrators, which was revealed on July 31, 2020, consists of, among others, Ms. Locknie Hsu, Mr. Mateo Diego-Fernández Andrade, Mr. José Alfredo Graça Lima, Mr. Guohua Yang (Hoekman et al., 2021). These arbitrators are tasked with hearing and resolving disputes that would otherwise have been handled by the WTO AB (Baroncini, 2020).

The procedural steps for arbitral disputes resolution through the MPIA system are currently undergoing changes, but they now exhibit a more defined framework, more like that of the AB. This has been especially clear in the wake of the first MPIA case involving Turkey - Pharmaceutical Products (DS583), where the appeal process starts with member's request for the suspension of panel proceedings prior to the circulation of the panel report (Červinka, 2023). The panel hearing proceeds as usual after the MPIA's arbitral agreement is concluded. This covers rounds of submissions, hearings, and reports that will be sent out—an interim report and a final report. Either party can request the panel to suspend its proceedings up to 10 days before the circulation of the final panel report to all WTO Members, paving the way for a potential MPIA appeal. During this 12-month period, the panel's ruling does not apply until the MPIA process has had a chance to run its course.

An MPIA appeal can be initiated by either party with a notice of appeal. Either party has 20 days from the time the panel suspends its proceedings at the request of the other party to file a notice of appeal. This notice, which is distributed to all WTO Members, includes the final panel report and initiates the 90-day clock for the MPIA award to be issued. The party shall simultaneously file its written appeal submission with the notice of appeal. After that, the opposing party has five days to file a notice of additional appeal, which needs to

contain the appeal filing. After these filings, the arbitration procedure for appeals is conducted.

Ten arbitrators make up the pool from which a panel of three is chosen at random to arbitrate the disagreement. Responses must be sent by 18 days following the date of the notice of appeal. Third parties in the dispute—who may or may not be MPIA participants—may submit a third-party contribution by the deadline of 21 days. Oral hearings occur between day thirty and day forty-five. The parties must receive the MPIA arbitrators' award by day 90, at the latest (Ahmed et al., 2024). The MPIA award will then be released, translated into the three WTO official languages, and will include the panel's undisputed findings as well as any arbitrators' rulings.

Following communication of the arbitral awards to the DSB, any Member may address questions regarding the Award. Nonetheless, as the parties have previously consented to abide by the final arbitral decision, the DSB's formal approval of the verdict is not required for it to have legal force on the parties. Article 25(4) of the DSU states that, subject to appropriate changes, arbitration awards are likewise subject to the regulations governing the application and enforcement of WTO panel or AB decisions. An authorised Panel or AB report is the same as an MPIA award when considered from that perspective (Geneva Trade Platform, 2024).

MPIA PARTICIPANT COUNTRIES

As of late 2025, a total of 57 member countries has joined the MPIA (WTO, n.d.-c), with Vietnam being the most recent addition (WTO, 2025f), following earlier acceding members that year, including the United Kingdom, Malaysia, and Paraguay (WTO, 2025b, c, d). These countries include both developed and developing nations such as Australia, Argentina, Brazil, Chile, China, India, Colombia, Nicaragua, Uruguay,

Singapore, Pakistan and Turkey. Most of these countries hold the same viewpoint as the European Union about the significance of upholding a legally enforceable procedure for resolving disputes. They also have a favourable opinion of the AB's contribution to establishing and safeguarding a stable, predictable, and rule-based international trade system (Furculiță, 2021). They highly appreciate the AB's capacity to render conclusions that are regarded by parties involved as legally obligatory and conclusive (Baroncini, 2020).

While MPIA seems to be gradually persuading different major actors of the multilateral trade system, however, there remained vast majority, being 2/3 out of the WTO Members, have not yet agreed to participate in the MPIA have been attempting to assess the effectiveness of the MPIA in meeting their interests (De Andrade, 2019). Some non-MPIA WTO Members often resort to appealing into the void to enforce the panel report like Korea — Stainless Steel Bars (DS553) and India — Iron and Steel Products (DS518) (WTO, 2019). Alternatively, they may choose to employ Article 25 DSU on a case-by-case basis (Khan & Wu, 2021).

POWER DYNAMICS IN INTERNATIONAL TRADE RELATIONS

While the WTO is a fundamentally a law-based organization grounded on principles of transparency, predictability, and fairness, it cannot fully escape the influence of economic and political power (Fabri, 2014). The dynamics of global trade often see powerful countries wielding significant influence over decision-making processes and outcomes (Hoekman & Kostecky, 2009). This reality is particularly evident in the context of AB crisis, where the United States has leveraged its dominant position to challenge and ultimately paralyse the WTO's dispute settlement mechanism.

Such power disparities are most apparent in the use of retaliatory measures by powerful countries, such as tariffs, sanctions, and other trade barriers, to coerce or punish weaker trading nations. The United States' has effectively weaponised the paralysis of the AB while simultaneously imposing tariffs on a global scale to advance its trade objectives. The US-China trade war, characterised by extensive tariffs on Chinese goods, exemplifies how economic might can be used to pressure another nation into compliance or negotiation (Fajgelbaum et al., 2021). In recent years, the US has also applied universal tariffs exceeding 10% on countries with trade deficits and intensified duties on wide range of products, including steel, automobiles, copper, lumber, timber, and related derivatives (McKibbin, Noland, & Shuetrim, 2025). Although other economic powers, such as European Union, have also used sanctions and trade barriers in response to perceived unfair trade practices or political disagreements (Meunier & Nicolaïdis, 2005), the systemic impact of US actions is particularly significant given its central role in the WTO dispute settlement system

For weaker countries, the threat or actual implementation of retaliatory measures by more powerful nations can be debilitating. These countries often lack the economic resilience required to withstand prolonged trade disputes or the imposition of substantial tariffs and sanctions (Walters, 2011). Consequently, their economies can suffer from reduced exports, job losses, and broader economic instability. This illustrates the dependence of developing nations on impartial dispute resolution mechanisms, like as the AB, to level the playing field against more advanced economies. These mechanisms ensure that trade disputes decided purely on the basis of law, without regard to political or economic might (WTO, 2017).

Historically, developing countries relied on the AB's decisions to level the playing field by ensuring that even powerful

nations adhere to international trade rules (Davis, 2003). The AB lends credibility and legitimacy to trade dispute outcomes, which is essential for developing countries to secure international support and compliance from influential trading partners (Bahri, 2018). Additionally, by resolving disputes within the multilateral framework of the WTO, developing countries can prevent unilateral retaliatory measures from more powerful nations, maintaining stability and predictability in international trade relations (Wood & Wu, 2020). Nevertheless, the lack of functioning of the WTO AB has significant ramifications for developing nations that depended on it. Through the implementation of MPIA, our objective is to evaluate whether MPIA can effectively replace the AB in protecting trade interests and preventing powerful nations, like the US, from disregarding international trade regulations without facing consequences.

MPIA AS SUBSTITUTION FOR THE WTO AB?

The MPIA has emerged as a temporary solution to the ongoing paralysis of the WTO AB. There are competing theories about the efficacy and sustainability of the MPIA (Hu & Wang, 2021; Sharma, 2022). Some experts view it as a necessary stopgap measure that maintains the integrity of international trade dispute resolution, while others argue it cannot fully replace the comprehensive and established framework of the WTO AB (Kalachyhin, 2021; Ahmed et al., 2024).

ADVANTAGES OF MPIA

The MPIA offers a crucial advantage in maintaining continuity of appellate review in international trade disputes amidst the WTO AB's current dysfunction. By providing a temporary substitute mechanism, the MPIA ensures that WTO members continue to have access to a structured appellate process for upholding the rule of law and maintaining predictability in the resolution of trade disputes (Van der Loo, 2022). This also

prevents parties from imposing protectionist measures, which negatively affects the development of international trade (Ahmed et al., 2024). Without a functioning appellate review, there would be significant uncertainties and potential for inconsistent interpretations of WTO agreements, which could undermine the credibility and effectiveness of the global trade regime. Evidently, the US, Saudi Arabia, Korea and the EU have already appealed seven disputes into the void and these disputes remain frozen until either the parties mutually acceptable solution or the AB becomes operational (WTO, 2020).

The MPIA provides for the possibility to review panels' decisions, which sometimes contain legal errors. For example, in Korea – Radionuclides (Japan), the AB reversed most of the panel's findings. The AB concluded that the panel failed to fulfil its mandate, considering that a number of claims were outside the panel's terms of reference. Moreover, the AB found several legal mistakes, which led to the conclusion that most of the measures claimed to be inconsistent with the WTO provisions were found to be in compliance with them, contrary to what had been found by the panel (Mavroidis, 2000).

One of the notable strengths of the MPIA lies in its flexibility and adaptability to the changing circumstances and needs of its participating members. Unlike the rigid structures and procedures of traditional international judicial bodies like the WTO AB, the MPIA allows for more nimble responses to emerging trade disputes and procedural challenges (De Andrade, 2019). Participants can, for instance, to refuse to appeal review to the panel report on the basis of Article 11 of the DSU or extend the deadlines for the appeal review (Starshinova, 2021). For instance, Indonesia and Vietnam agreed in their dispute on Indonesia's safeguard measures on certain steel products to forego their right to appeal. Parties may also agree to replace a possible appeal to the

AB by agreeing to use *ad hoc* arbitration, which the WTO provides for under Article 25 DSU, without the need to be party to the MPIA. Turkey – which is not an MPIA member – and the EU agreed to do this in their dispute on certain Turkish measures on pharmaceutical products (WTO, 2022). They can also adjust the operational aspects of the MPIA as necessary to ensure it remains effective and responsive in addressing new complexities in international trade law.

This adaptability is particularly valuable in a dynamic global economic environment where trade disputes can emerge from various issues such as technological advancements, regulatory changes, and geopolitical developments. For instance, with regard to the binding 90-day period to consider the appeals provided for in the DSU, which was not followed by the AB, the MPIA provides for the same period, allowing the arbitrators to take the necessary organizational measures to streamline procedures, such as page limits for submissions, time limits and deadline. At the same time, the MPIA provides for the possibility of extending the 90-day period if the parties so agree. (WTO, 2020).

The MPIA's flexibility also extends to its procedural rules and administrative arrangements, allowing them to be tailored to better suit the preferences and capabilities of participating members. This inclusivity encourages broader engagement and ownership among WTO members, potentially fostering greater trust and cooperation in dispute resolution Wieseler, A. M. (2021). By emphasizing adaptability alongside continuity, the MPIA not only addresses the immediate challenges posed by the AB crisis but also sets a precedent for innovative approaches to enhance the effectiveness and responsiveness of international trade dispute resolution mechanisms.

The EU's decision to base its interim arbitration solution on the existing

mechanism provided in Article 25 of the DSU, alongside the WTO Working Appellate Procedures and Rules of Conduct already in force, circumvents the contentious issue of selecting appropriate procedural rules to ensure WTO-compatible proceedings and awards (Baroncini, 2020). By emphasizing that the interim Article 25 arbitration must replicate as closely as possible all substantive and procedural aspects as well as the practice of Appellate Review pursuant to Article 17 of the DSU, and by explicitly stating that awards issued under this interim appeal arbitration procedure are to be deemed to constitute AB reports adopted by the DSB for the purposes of interpreting the covered agreements, the EU's interim arbitration arrangement preserves and reinforces the value and respect for the most esteemed WTO case-law. This approach supports its consistent and constructive development (Baroncini, 2019).

CHALLENGES AND CRITICISMS OF MPIA

Given various outstanding difficulties that could make participation impractical and provide unpredictable results, the MPIA's response to the AB situation is controversial (Starshinova, 2021). The MPIA's flexible approach to dispute resolution may introduce variability in procedural practices and outcomes, raising concerns about the predictability and fairness of dispute settlement outcomes. To put it another way, the MPIA does not address the issues raised by the United States concerning the AB (Howse, 2020). This does not resolve the issues raised by the US when arbitrators do not adhere to this limitation, leaving this concern unresolved. In its preamble, the MPIA emphasizes the principles of 'consistency and predictability'. Instead of 'consistency', the DSU emphasizes 'security and predictability'. The MPIA's 'consistency' appears to promote judicial precedent. All arbitrators can view dispute materials and discuss interpretation, practice,

and procedure under the MPIA. This means that arbitrators in fresh cases would follow the same rules as prior disputes, leading to similar decisions. These provisions endorse the precedential nature of awards, which has been strongly criticized by the US (Starshinova, 2021).

Due to voluntary membership and limited membership, the MPIA confronts considerable obstacles. The willingness of each WTO member to opt-in to the arrangement determines whether or not they must participate in the MPIA (Wolff, 2022). Since disagreements among MPIA participants make up only around 25% of all DSU cases, this voluntary approach raises questions regarding the arrangement's inclusivity and general applicability (Wolfe et al., 2020). These ad hoc agreements have the drawback that the other party need not consent to them, just like Saudi Arabia's rejection to Qatar's ad hoc arbitration offer regarding IP Rights (Gaver, 2022). The MPIA's founding membership included 53 countries, but sizable WTO members have not participated (Pomfret, 2024). Despite other WTO members' participation, the absence of the US and India undermines its legitimacy (Sinha, 2021). To date, there are just 12 cases in all that have used or are actively using the MPIA. Only three cases have been finalised which are Colombia — Frozen Fries (DS591), Turkey — Pharmaceutical Products (DS583) and most recently in 2025 China — Enforcement of Intellectual Property Rights (DS611). On top of this, there are currently nine ongoing disputes pending award by the MPIA with five involving China, one by Costa Rica, one by Australia and another by European Union. That said, however, there are instances where MPIA notification was submitted but were subsequently finalised, withdrawn, or settled. For instance, the Canada — Sale of Wine (DS537).

Moreover, the effectiveness of the MPIA is further undermined when key trading nations opt to pursue alternative

dispute resolution mechanisms or bilateral negotiations outside of the MPIA framework (Wieseler, 2021). Non-MPIA members are unlikely to be affected by MPIA verdicts with the geopolitical shifts from multilateral trading systems to regional blocs and strategic alliances (Rusi, 2021). Due to its use of alternative dispute resolution, the US has little incentive to reinstate the WTO AB. These strategies include independent domestic actions, starting conflicts under agreements like USMCA, and forming alliances like the Indo-Pacific Economic Framework for Prosperity with Asian countries, excluding China, to increase its influence (Fasulo, 2023; Reddy & Rajvanshi, 2024). Significantly, the United States has refrained from commencing consultations at the WTO since July 2019. Consequently, the DSM and even temporary fixes like the MPIA are now seen less vital or unnecessary. WTO legal fragmentation is another concern. WTO panel rulings are usually regarded part of the "WTO acquis," however MPIA awards may not be accepted, especially by non-participating WTO Members who oppose it.

This may lead WTO panels, especially in disputes involving non-participating parties, to avoid MPIA legal interpretations (Collins, 2024). In turn, the WTO DSM could lead to Members having divergent interpretations of WTO law, weakening the global trade system's consistency and predictability. DSM efficacy may suffer from division. However, traditional WTO tribunals may ignore MPIA and similar awards, complicating WTO legal decision alignment. Additionally, an MPIA award is less credible than an AB report. Only a few WTO Members choose MPIA arbitrators and parties agree to follow the final arbitration ruling under the MPIA. Article 25.3 of the DSU requires notifying the DSB and appropriate councils or committees of this award, but not adopting it. In contrast, the DSB adopted AB reports and report can only be rejected by all WTO Members under the 'negative consensus'

adoption process. The report was legitimised by WTO membership approval.

COMPARATIVE ANALYSIS OF THE MPIA AND THE WTO AB

The WTO AB traditionally served as the final arbiter in trade disputes, with broad jurisdictional authority over disputes arising from the covered agreements under the WTO. It had the power to uphold, modify, or reverse legal interpretations and rulings made by the lower panels, providing definitive and binding resolutions to trade conflicts. Its comprehensive scope allowed it to address a wide array of trade issues, ensuring consistency and predictability in the application of WTO law (Koopman et al., 2020). In contrast, the MPIA operates as an interim solution with jurisdiction only over disputes where the participating members have agreed to its use. While it aims to mirror the function of the AB, its jurisdiction is limited to those members who have signed onto the arrangement, thus lacking the universal applicability of the WTO AB. The MPIA's scope is also confined by its temporary nature, intended as a stopgap measure until a permanent resolution to the AB crisis is found (Starshinova, 2021).

Procedurally, the MPIA and the WTO AB share several similarities designed to ensure continuity and consistency in dispute resolution. Both mechanisms require the establishment of a panel of adjudicators to hear appeals, with the MPIA drawing from a pre-agreed pool of arbitrators. These arbitrators are selected for their expertise and impartiality, akin to the AB members. Both systems also follow similar timelines for the submission of briefs, oral hearings, and the issuance of rulings, striving to uphold the procedural rigor and standards expected within the WTO framework. However, there are notable procedural divergences. The MPIA, being a temporary arrangement, operates under a more flexible framework, allowing for adjustments and adaptations as needed by its participants (Ahmed et al.,

2024). This flexibility can be advantageous in responding to evolving trade issues and procedural bottlenecks

Additionally, while the WTO AB's decisions are automatically binding on all WTO members, the MPIA's rulings are binding only on its signatories, potentially leading to inconsistencies in the application of WTO law across different disputes. Furthermore, the MPIA emphasizes transparency and member engagement in its procedures, reflecting a collaborative approach to dispute resolution. This contrasts with some criticisms of the AB, which has been perceived as somewhat opaque and rigid in its operations (Ahn, 2021). The MPIA's adaptive and participatory nature may offer lessons for potential reforms in the permanent dispute resolution mechanisms of the WTO. MPIA's Annex 1 introduces strict guidelines aimed at meeting the 90-day deadline for issuing dispute reports under DSU Article 17.5. Unlike the AB's history of missing deadlines, MPIA arbitrators can only extend this timeline with mutual consent from the disputing parties (Wieseler, 2021).

Additionally, Annex 1 imposes page limits, deadlines, and restrictions on the number and length of hearings to ensure cases are managed efficiently within the stipulated timeframe. This contrasts with the AB's struggles with complex cases, suggesting MPIA's potential for more timely resolutions. MPIA's Annex 1 emphasizes limiting legal assessments to issues directly pertinent to resolving disputes, discouraging discussions akin to *obiter dicta*, which were a point of contention with the AB. This approach aims to streamline proceedings and focus on substantive issues essential to resolving disputes, thus enhancing clarity and efficiency. MPIA promotes judicial economy by allowing arbitrators to propose excluding certain claims if they are not crucial to resolving the dispute, aligning with efforts to adhere to the 90-day deadline. This contrasts with the AB's obligation to consider all raised issues under DSU Article 17.12,

potentially reducing unnecessary procedural delays (WTO, 2020).

IMPORTANCE OF MPIA ON DEVELOPING COUNTRIES

Developing nations consider the rise of emerging economies to be vital for the present state of the global economy (Patwa et al., 2021). These nations heavily rely on the WTO DSM, including the AB, as a safeguard to ensure fair treatment and protection within international trade norms, particularly in the era of economic globalisation (Song, 2022). Developing countries cannot afford to take the risk of not having an appellate body in trade disputes for several critical reasons, particularly when compared to developed countries which is why MPIA comes into play. By participating in the MPIA, developing countries can engage with other member states on trade issues, building alliances and partnerships that can strengthen their collective voice in the WTO. This collaborative approach can lead to more inclusive and representative decision-making in international trade (Van der Loo, 2022).

First of all, unlike developed countries, which have more diversified economies with significant contributions from the service sector, developing countries often rely heavily on trade, especially the export of manufacturing and agricultural goods, to drive their economic growth (Shahzad et al., 2020; Atkin & Donaldson, 2022). Manufacturing and trade constitute a significant portion of their GDP (Loayza et al., 2007). Hence, any disruption in their trade flows can have severe economic consequences, including loss of revenue, increased unemployment, and broader economic instability. In line with this, the MPIA offers a valuable alternative to the stalled WTO AB by providing a structured and binding arbitration process that can swiftly resolve disputes. This is particularly important for developing countries, where delays in resolving trade issues can have immediate and dire economic impacts

(Gulati et al., 2020). Evidently, the EU's ban on Malaysia's palm oil clearly impacts its economy, given Malaysia's status as one of the world's largest producers and exporters. It is undeniable that these regulations have already depreciated Malaysia's economy and will continue to do so in the long run if prompt measures are not taken (Litja, 2020). In this context, the MPIA's streamlined and expedited procedures facilitate prompt resolution of disputes for developing nations, as they are unable to bear the burden of prolonged trade disruptions. This facilitates trade connections and economic transactions, reducing significant financial expenses caused by delayed settlement of conflicts.

Additionally, developing nations lacking the necessary financial or administrative means to engage in lengthy legal conflicts will greatly profit from the MPIA's expedited dispute settlement method, which utilizes vetted, highly skilled arbitrators and simplifies procedures. The MPIA also contributes to the stability and predictability of the global trading system by ensuring that trade disputes are resolved based on established rules and precedents (Papaconstantinou & Pedreschi, 2022). Stability and predictability in trade can attract foreign investment, securing long-term trade agreements, and planning economic strategies (Stent, 2021). The absence of such an appellate body creates uncertainty, making it difficult for these countries to rely on consistent and fair outcomes in trade disputes.

Furthermore, the MPIA can assist in rectifying the imbalances in international trade disputes, given that developing countries are more susceptible to unjust trade practices and protectionist measures imposed by economically superior nations (Rodrik, 2021). In the absence of an appellate body, stronger economies may use their leverage to impose unfavourable conditions on weaker economies, like unfair tariffs, quotas, and anti-dumping measures, which can damage their economies. Such imbalances are regulated by the appellate body by

challenging and overturning such barriers to ensure that developing countries' access to international markets (Trebilcock, 2011). The MPIA's structured arbitration process further provides a neutral platform where disputes can be resolved based on legal merits rather than economic might (Ahmed et al., 2024).

Besides, developing countries generally have fewer resources and less legal expertise to navigate complex trade disputes. The appellate body helps level the playing field by providing a formal, rules-based process for resolving disputes. Without this mechanism, like the MPIA, developing countries may struggle to effectively contest trade issues and protect their interests against more legally and financially equipped developed nations. The MPIA fosters dialogue and cooperation among WTO members, including developing countries. By participating in the MPIA, developing countries can engage with other member states on trade issues, building alliances and partnerships that can strengthen their collective voice in the WTO. This collaborative approach can lead to more inclusive and representative decision-making in international trade.

CONCLUSION AND RECOMMENDATIONS

The MPIA emerges as a viable temporary substitute for the WTO's AB amid the current AB paralysis due to the U.S. block on appointments. Consequently, it presents a unique way to maintain the WTO's dispute settlement integrity and functionality during this period. A significant number of WTO countries have agreed to adopt this interim resolution, which offers a versatile and well-organized structure for resolving trade conflicts. The MPIA's design maintains the critical two-tiered dispute settlement process essential for developing countries reliant on a structured, credible system to protect their trade interests against more powerful nations. By closely replicating AB

substantive and procedural aspects, the MPIA ensure fairness and predictability in trade law, ensuring arbitral awards are respected and treated with AB-report-like legitimacy. Its voluntary involvement could result in inconsistent application of WTO rules and perhaps legal disarray. Korea's and the United States' absence as important members exacerbates this problem.

Furthermore, case law consistency may be impacted by depending on a small pool of arbitrators, which raises questions about prejudice and the breadth of legal thinking in comparison to the AB. Despite these drawbacks, MPIA's flexibility makes it a strength since it enables it to react quickly to changing global trade dynamics and complexity. It is accessible due to its inclusivity and procedural efficiency, which encourages greater member ownership and engagement from WTO members. This adaptability is essential for resolving fresh trade conflicts brought on by advancements in technology, modifications to regulations, and changes in geopolitics.

Ultimately, the MPIA cannot completely replace the AB, although it does offer a vital stopgap to guarantee the ongoing process of resolving trade disputes. It is a helpful instrument in current WTO dispute settlement mechanism reform efforts because of its adaptability and pragmatic approach. MPIA needs wider adoption, improvement, and conformity with WTO framework principles for a cohesive, efficient dispute resolution system in order to function as a viable alternative. The geopolitical obstacles of today emphasise the necessity of ongoing diplomatic efforts to reinstate a fully operational, widely recognised WTO dispute settlement mechanism.

To navigate these challenges and ensure a sustainable solution to the AB crisis, WTO members should prioritize efforts to reform and revitalize the AB through transparent selection processes, clearer

timelines, and enhanced accountability measures. Expanding participation in the MPIA among major trading nations would bolster its legitimacy and universality, mitigating issues related to voluntary membership. Exploring hybrid approaches that combine elements of the MPIA with efforts to restore the AB could offer flexibility while ensuring continuity in dispute resolution. Multilateral dialogue among WTO members is crucial to achieving consensus on necessary reforms and enhancing mutual understanding. Supporting broader WTO reform initiatives aimed at modernizing dispute settlement mechanisms and adapting to evolving trade dynamics will strengthen the overall effectiveness of the WTO in maintaining global trade stability and fairness.

ACKNOWLEDGEMENT

The authors received no financial support for the publication of this article

CONFLICT OF INTEREST

The authors declare that they have no conflict of interest to this study.

AUTHORS' CONTRIBUTION

All authors contributed to the final version and approved the submission.

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