GNLU SRDC ADR
MAGAZINE
VOLUME V | ISSUE III

FROM STOP-GAP TO SOLUTION: THE MPIA AND THE FUTURE OF ARTICLE 25

AUTHORS

Ms. Charudhi V.G
V Year, Jindal Global Law School

Ms. Deepshikha Das
V Year, Jindal Global Law School

Introduction

The World Trade Organisation's ["**WTO**"] Appellate Body ["**AB**"], once central to the multilateral trading system, is now defunct because of a highly organised offensive launched by the United States of America ["**U.S.A**"]. This was primarily because U.S.A believed that the AB had failed to operate within the limits set by the Dispute Settlement Understanding ["**DSU**"] and had grossly overstepped its mandate. Without an appellate body, decisions which are made in relation to trade-restrictive measures risk becoming non-enforceable because countries are free to "*appeal into the void*", thereby indefinitely delaying finality in a dispute. To fill this void, multiple countries came together to form the Multi-Party Interim Appeal Arbitration Arrangement ["**MPIA**"], under Article 25 of the DSU to help preserve the functioning, and more importantly, the binding character of the dispute settlement system. It represented a political commitment to not appeal into the void.

While Article 25 is presently being utilised in a limited capacity through the MPIA, a bare reading of the provision indicates that it encompasses a significantly broader scope within which arbitration may be operationalised. Accordingly, arbitration under Article 25 has the potential to function as a lawful and effective alternative to the conventional process of dispute settlement employed by countries.

This paper accordingly seeks to demonstrate that Article 25 can serve as a viable and comprehensive substitute for the standard dispute resolution process. To that end, it will first analyse the procedural structure of the MPIA and the ways in which it represents an improvement upon the now defunct AB; second, it will assess the extent to which the MPIA replicates the AB's features and the criticisms associated therewith; and third, it will explore the potential of Article

25 to operate as a full-fledged dispute resolution mechanism, i.e., whether through an institutionalised framework or on an ad hoc basis.

MPIA—How does it Work?

Once a WTO member joins the MPIA, it must enter into a dispute-specific appeal arbitration agreement within 60 days of the establishment of a panel. Once a dispute arises between two MPIA participants, the appeal agreement defines procedures, timelines, and rules tailored to that case.[1] The procedural roadmap is clear: once a panel is established and proceedings begin, they follow the standard DSU timeline, including written submissions, hearings, and the issuance of an interim report. Before the final panel report is circulated to all WTO members, either party may request a suspension of the panel proceedings, a request the panel must grant under the terms of the appeal arbitration agreement. This triggers the MPIA appellate mechanism. The requesting party must then file a notice of appeal within 20 days, concurrently submitting its written appeal. This marks the start of a tightly managed 90-day appeal arbitration process.[2]

Arbitrators are selected from a standing pool of ten individuals, nominated and agreed upon by all MPIA participants. For each dispute, three arbitrators are randomly drawn from this pool, ensuring neutrality and procedural fairness; two nationals of the same member may not sit on the same case. Once the arbitration is underway, strict word and time limits govern the parties' submissions to streamline the process and avoid unnecessary procedural delays. The arbitration culminates in a binding award, which, under DSU Article 25(3),[3] must be respected by the parties and does not require formal adoption by the Dispute Settlement Body ["**DSB**"], thereby expediting finality and enforcement.[4]

The MPIA introduces several procedural and structural innovations intended to address the dysfunctions associated with the AB. Most notably, MPIA appeals are strictly limited to 90 days, an improvement over the Appellate Body's average of 360 days in its final years.[5] In the first MPIA dispute, *EU–Colombia: Frozen Fries*, the process concluded within 74 days, thereby demonstrating effective time management.[6] The support structure of the MPIA also ensures independence.

[1] Mohamed Salah Adawi Ahmed et al., 'MPIA as Solution to the WTO Appellate Body Dilemma: An Examination of the WTO Innovative Dispute Settlement Mechanism' (2024) 12 IJSRM 473.
[2] Joost Pauwelyn, 'The The WTO's Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What's New?' (2023) World Trade Rev. 693.
[3] Dispute Settlement Understanding 1994, art 25.
[4] Pauwelyn (n 2).
[5] ibid.
[6] Pauwelyn (n 2).

Arbitrators are assisted by WTO Secretariat staff who are not affiliated with divisions supporting first-instance panels. This unique arrangement, unlike the former AB Secretariat, maintains neutrality and distance from the WTO legal divisions.[7]

Though only one MPIA appeal has been concluded so far, the mechanism's broader influence is already evident. The mere existence of the MPIA appears to have a deterrent effect on protectionist behaviour among members.[8] Krzysztof Pelc shows that since 2020, MPIA members have imposed fewer harmful trade barriers and more liberalising measures against each other.[9] This behavioural shift suggests that the MPIA's function as a de facto enforcement mechanism, promoting discipline without the need for formal proceedings in every case, is working. This deterrent effect is tied to the MPIA's preservation of a binding two-tier dispute settlement structure, thereby offering members confidence in the system's enforceability. For instance, even in disputes where the MPIA was not ultimately used, such as *Canada–Wine* and *Costa Rica–Avocados*, the framework encouraged parties to settle or adopt panel reports without appealing into the void.[10] By ensuring access to an appeal process, discouraging protectionist retaliation, and preserving legal certainty, the MPIA not only fills the AB vacuum but also strengthens confidence in the multilateral trading system.

Gaps within the Stop-Gap Measure

However, the MPIA is not without its criticisms. There remain several procedural and substantive concerns.

i. *Voids in the Membership of the MPIA, A Potential Lack of Universal Applicability and Inclusivity.*

One of the essential features of MPIA is that it is a voluntary multilateral agreement, contingent upon the countries' willingness to undertake the arbitration appeal process. Several countries, including the U.S, India and Japan, are staunchly against the MPIA process and are non-members of the Agreement, and conversely the European Union ["**EU**"] and China are primary proponents of this system.[11] While China and the EU are keen on maintaining a multilateral trading system,

[7] Pauwelyn (n 2).
[8] Krzysztof Pelc, 'Have WTO Members Successfully Circumvented the US' Blockade of the Appellate Body? (and How Would We Know?)' (*EJIL:Talk!*, 13 February 2024) <https://www.ejiltalk.org/have-wto-members-successfully-circumvented-the-us-blockade-of-the-appellate-body-and-how-would-we-know/> accessed 8 June 2025.
[9] ibid.
[10] Pauwelyn (n 2).
[11] Al-Sadoon Fahad, 'The European Multi-Party Interim Appeal Arbitration Arrangement: A Convincing Solution to the Multilateralism Crisis at the WTO?' (*CILJ Blog,* 6 September 2020) < https://cilj.co.uk/2020/09/06/the-european-multi-party-interim-appeal-arbitration-arrangement-a-convincing-solution-to-the-multilateralism-crisis-at-the-wto/>.

and U.S.A favours bilateral trade, all countries are primarily concerned about protecting their economic nationalism.[12] This creates tensions which stem from geopolitical and trade policy differences between the countries. This lack of participation from major trade countries in MPIA prevents universal applicability as well as enforceability and risks fragmentation of WTO dispute resolution.

ii. *Legitimacy Concerns*

The MPIA arbitration process, involving the selection of a limited group of arbitrators by WTO MPIA members, proves to be comparatively opaque to the scrutiny of the DSB as the appellate body, which hinders its democratic accountability.[13] Given the limited number of participating members, the MPIA's operational scope remains narrower than what would be desirable for a mechanism seeking broader legitimacy within the multilateral trading system. Many WTO members have refrained from joining for precisely this reason, instead adopting a cautious wait-and-see approach to assess whether the mechanism proves effective and sustainable in practice.[14]

Although the MPIA Secretariat is vested with the authority to extend enhanced assistance to developing countries, thereby broadening access beyond what the original framework permitted,[15] the reliance on a fixed pool of arbitrators is likely to generate systemic challenges as participation among states increases. Such issues affect the legitimacy of the MPIA as an effective dispute resolution process.

iii. *An Alternative or Replication of the AB?*

The MPIA was, in essence, created as a replacement for the defunct appellate body, and the Agreement explicitly aims to retain the principles, functioning and procedure of the appellate body within the WTO framework while narrowly attempting to rectify the criticisms put forth by the U.S.[16] MPIA members have affirmed that the process of MPIA remains a temporary stop-gap measure, and they are still hopeful for the reinstatement of an appellate body.[17] Such a replacement risks the MPIA turning into a duplication of the erstwhile appellate body and facing identical issues. For instance, while the MPIA was expected to adopt a more restrained approach, its first award in *EU–Colombia: Frozen Fries* cited ten prior AB reports, a modest number compared to the AB's own

[12] Adarsh Sambhav, 'A Critical Review of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA)' (2025) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5243724>.
[13] ibid.
[14] Al-Sadoon (n 11).
15 Sambhav (n 12).
[16] Ahmed (n 1).
[17] 'Multi-Party Interim Appeal Arbitration Arrangement (MPIA)' (*Geneva Trade Platform*) <https://wtoplurilaterals.info/plural_initiative/the-mpia/> accessed 1 June 2025.

practice but nonetheless reflective of a continued reliance on AB jurisprudence.[18] This has raised concerns that the MPIA may gradually re-entrench a de facto doctrine of stare decisis, thereby replicating one of the very criticisms levelled against the appellate body itself.[19] This can be substantially interpreted from the U.S's continued and vehement opposition to the MPIA.

Moving Forward

The issue arises, therefore, when the MPIA is attempting to stick to the WTO framework of the appellate body. The process of arbitration under Article 25 of the DSU is the closest to the process of a traditional arbitration and can be used to resolve any issue that the panels face as well. This provision presents the potential of using arbitration as an alternative to the existing judicial settlement system[20] by inculcating essential facets of arbitration, such as party autonomy, efficiency and neutrality, mutual consent, and enforcement measures. Article 25, therefore, must be interpreted as a true arbitration provision to realise its potential as an independent dispute settlement avenue. Initially, arbitration under Article 25 did not include a two-step process, and there was no room for further negotiation. The arbitrators provided a legitimate and objective ruling, which was enforced, and there was no scope for appeal.[21] However, this reinterpretation transforms arbitration into an auxiliary appeal step, rather than a standalone method of dispute resolution.

While the MPIA has proven beneficial in light of the appellate body crisis, it must evolve into an alternative to the current procedures and actually attempt to resolve the integral issues with the current procedure. By merely replicating the function of the appellate body, it risks repeating the same mistakes. Therefore, it is suggested that Article 25 must take a form of its own by augmenting its tenets of arbitration, separate from existing procedure, to ensure that it does not repeat old mistakes.

Alternatively, where it proves difficult for WTO members to agree on an institutionalised system of arbitration, they may instead opt for an ad hoc arbitration mechanism between themselves when trade-related disputes arise. This approach would require mutual cooperation and the conclusion of dispute-specific arbitration agreements at the time the issue arises. Such a mechanism could take

[18] *Colombia – Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands,* WT/DS591/ARB25, Award (21 December 2022).
[19] Ahmed (n 1); Pauwelyn (n 2).
[20] David Jacyk, 'The Integration of Article 25 Arbitration in WTO Dispute Settlement: The Past, Present and Future' (2008) 15 Aust. Int'l. L. J 235.
[21] ibid.

the form of either a single-tier process or a two-tier structure with the possibility of appeal. Importantly, this arrangement would fall squarely within the scope of Article 25 of the DSU. Ad hoc arbitration offers greater procedural flexibility, allowing countries like U.S.A to tailor dispute settlement processes in a manner that aligns more closely with their preferences and perceived sovereign interests. Since each arbitration can be uniquely designed, it avoids the rigidity of institutionalised frameworks, which may be viewed by some members, particularly the U.S, as encroachments on their autonomy. This flexibility could incentivise broader participation in WTO dispute settlement and encourage re-engagement with rules-based adjudication.

The features of an ad-hoc arbitration are also included within the MPIA framework under Article 25. This can be seen in the first finalised dispute by the MPIA, i.e. the *EU–Turkey pharmaceuticals* dispute,[22] wherein Turkey was not an MPIA member and thereby initiated the arbitration agreement based on an ad-hoc arrangement under Article 25 DSU, within the MPIA framework.

While it remains to be seen if countries are willing to resolve disputes through ad hoc arbitration opting to do so would reflect a renewed openness to cooperative dispute resolution, a commitment to reducing trade barriers, and an alignment with the liberalising objectives of the multilateral trading system. Such a development could help restore trust in the WTO framework and provide momentum toward a more functional and inclusive global trade regime.

Conclusion

While the MPIA has made significant improvements to fill the void created by the AB crisis, to fulfil the promise of Article 25, countries must break out of pre-existing WTO frameworks of dispute resolution. The arbitration procedure under Article 25 of the Dispute Settlement Understanding is expansive in its scope and represents the tenets of arbitration procedures. It, therefore, provides a proficient stand-alone alternative to traditional judicial settlement methods in the WTO. Instead of considering arbitration as a mere appendage to a broken appellate process, Article 25 must be employed to function as a distinct and standalone mechanism, either through institutionalised frameworks or ad hoc agreements.

[22] *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products,* WT/DS583/ARB25, Award (25 July 2022).