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**COMPREHENSIVE ANALYSIS ON MPIA AS ALTERNATIVE**

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**ABSTRACT**

The International Trade regulations have been drastically impacted by the breakdown of the Appellate Body of World Trade Organization in respect to reduction of trade agreements between countries as a result of loss of faith in the prevalent system. As a gap abridger Multi Party Interim Appeal Arbitration Arrangement (MPIA) came into existence in 2020 introduced by the European Union in consonance with several other countries that are part of WTO drawing its authority from Article 25 of the Dispute Settlement of Understanding. This research paper aims to appreciate the effectiveness of MPIA in fulfilling the lacunae created by the non- functioning of WTO appellate Body based on various factors by delving into the cases that are adjudicated by the MPIA such as Columbia v. Frozen Fries.

In addition to the assessment in respect to its procedural aspects, it also focuses on the non-participation in MPIA by plethora of countries who oppose its introduction and predominantly countries from the Global South. Research suggests that it is on account of factors such as representation and political alignment etc. as a result of which MPIA does not have the force of universal authority binding on all countries of the globe. This study based on its analysis into the relevant provisions, history and background of both bodies and cases dealt under them constructively concludes the limitations of MPIA over its advantages due its transcendental nature and stressing for a long term and comprehensive solutions for the in operation of WTO Appellate Body that would be viable for countries across the Globe.

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**KEY WORDS:** World Trade Organization Appellate Body, Dispute Settlement of understanding, Multi Party Interim Appeal Arbitration Agreement

## INTRODUCTION

Public International Law is a separate area of the legal system that deals with the activities of different nations as a whole and not pertaining to the private individuals of the country. Trade is an essential part of economic growth both within and between countries. It is regulated by the World Trade Organisation (WTO)<sup>2</sup> at the international level, which plays a pivotal role by governing, resolving disputes and regulating trade across countries from the date of its establishment after World War II in the year 1995 under World Trade Organisation Act. The WTO Dispute Settlement of Understanding (DSU)<sup>3</sup> specifically provides for the establishment of a Dispute Settlement Body under Article 2 of DSU, which also contains the rules and procedures with respect to it. Article 17 of DSU provides for the establishment of an Appellate Body of seven members for hearing appeals from the parties against the decisions of DSB.

Despite the fact that, there is a structured mechanism established for dispute resolution under international trade domain, the appellate body is not functioning after the act of refusal by the United States in respect of appointment of the panel of the same. This has led to a drastic disruption in the sphere of dispute settlement in terms of inability to enforce the trade agreements that have been already entered into by the countries and to ensure fair trade practices by resolving disputes. As an active step to solve this problem, many members who were part of the WTO body introduced an interim appellate body named Multi-Party Interim Appeal Arbitration Arrangement (MPIA) as a temporary solution.<sup>4</sup>

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<sup>2</sup> <https://www.wto.org/>

<sup>3</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/dsu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm)

<sup>4</sup> [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=263504](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=263504)

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This research paper seeks to accomplish the objective of presenting a comprehensive analysis on this interim body and its effectiveness as an alternative solution to the pre-existing WTO Appellate Body. It focuses on the structure of the panel, rules pertaining to the procedures and its pragmatic aspect by examining whether it could rectify the effect of dysfunction of the WTO Appellate Body. It also delves into the challenges that could be posed to MPIA like the restricted availability of members and effect on non-participants.

## **STATEMENT OF PROBLEM**

The WTO Appellate Body that was formed in the year 1995, has been dysfunctional since 2019 due to the refusal by the United States for appointment of the panelists as the tenure of the pre-existing judges was over. The act of the United States was because of the reason that there is no scope of reforms with respect to the appellate body for addressing the challenges. This has posed a serious disruption in the international domain of trade with regard to dispute resolutions and many members of the appellate body consented to the idea that was proposed by the European Union for setting up a temporary body for addressing the appeals. This was made to ensure that the right of the parties to appeal against the judgment of the Dispute Settlement Body remains unhampered and the two step mechanism of dispute resolution remains undisrupted. It also ensures that the rule-based trading system continues to function.

MPIA becomes operational only in the year 2020 and the number of cases that are dealt by it are comparatively very low ranging from five or six cases. It is because of this fact that its effectiveness as a long-term solution is not certain and unclear. The pragmatic implications of the judgments also remain unknown. Also, whether it has the potential to address and resolve the challenges and complexities that it will be posed with is not known till date. What will be the effect of this if the crisis of appellate body is resolved is not clear.

In this context, it becomes highly imperative and crucial to examine the effectiveness of MPIA as an alternative and that is it capable of catering a long term or temporary solution. In depth analysis of this will also reveal to the members and participants with respect to maintenance of the integrity

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and dispute resolution mechanism and a room for suggestion of reforms in the global trading system as a whole.

This research focuses on a comparative analysis of its performance with that of WTO Appellate Body by examining the nuances such as its ability to hold transparency in proceedings, being impartial with parties, and there is flawless and consistent approach with respect to decisions. It also examines the cases that are dealt by it till date, their outcomes and practical implications, whether there is active or reluctant participation by members and also unleashes the strength and weakness of its practical application.<sup>5</sup>

## RESEARCH OBJECTIVE

- To analyse the effectiveness of MPIA as an alternative body to the WTO Appellate Body.

## LITERATURE REVIEW

1. MPIA as Solution of Appellate Body Dilemma: An Overview of the Advantages of New Mechanism of WTO Dispute Settlement

*Mohamed Salah Adawi Ahmed, Zhang Junxiang, Basel Khaled Alsaeed, Muhammad Zeeshan Ajmal; Published in: International Journal of Scientific Research and Management (IJSRM), Vol. 12 No. 05 (2024)*

This article delves deep into the emergence of MPIA under Article 25 of Dispute Settlement of Understanding, as an alternative to WTO's appellate tribunal in 2019 as a result of U.S blockage. It also covers the aspects on how the MPIA is fabricated to deal with or address those challenges on occasion of which U.S took a back seat in the process of appointment of members such as the 90 days deadline and extension of time by the judges without any prior intimidation about the

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<sup>5</sup> [https://www.wto.org/english/news\\_e/news19\\_e/ab\\_29may19\\_e.pdf](https://www.wto.org/english/news_e/news19_e/ab_29may19_e.pdf).

requisite of delay in contravention of Article 17.5 and more specifically the practice of judge continuing even after the expiry of term to adjudicate the pending case under Rule 15, which is clearly violative of Article 17.2 of Dispute Settlement of Understanding.

The author highlights the advantages of MPIA from various perspectives from the clubbing of cases in similar issues, use of precedential system and how every member of WTO are given chance to participate and it also includes persons to temporarily participate and adjudicate their matters to applauding the innovative methodologies incorporated in MPIA such as the arbitrators are not allowed to exceed their jurisdiction, reports are relatively more precise and no ambiguity in terms of interpretation.

## RESEARCH GAP:

1). The authors talk about the advantages and disadvantages of MPIA in a general perspective, however the objective of the study focuses on elucidating the efficiency of WTO which in turn did not reflect how WTO can be reformed to have a competitive edge instead of an MPIA.

The authors discuss about the feature of MPIA where in the members of WTO can join in MPIA on will and exit from the same and also the non-members of MPIA can also take part in the proceedings in case of their need, however the author does not differentiate the status of members and non-members of MPIA and how has a higher edge over the other.

2). MPIA for Settling WTO Disputes: Attribute, Impact and Prospect

*Yuxi Shen, Wuhan University, Wuhan, 430072, China, Highlights in Business, Economics and Management EMCG 2023 Volume 20 (2023)*

In this article the author mainly focuses on evaluating the effectiveness of MPIA and the impact of this in international trade. The author explains how MPIA was formed on 30 april 2020 with 47 members of WTO to fill the gap left by absence of WTO appellate tribunal which was due to U.S action of stoppage of appointments. He talks about the nature of this agreement which is neither plurilateral nor a treaty and simply a joint arrangement. Further, the author talks about the

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procedure of the MPIA process precisely and highlights the pivotal steps like the pre hearing and binding of the arbitration award with the help of the EU-Columbia frozen fire dispute.

The author highlights that MPIA is a fusion of appellate body and Alternative dispute resolution with certain drawbacks discussed.

The author aims at evaluating the impact and influence of MPIA in international trade, however the study only briefly discusses the changes made in MPIA in comparison with the WTO appellate body, and the advantages and disadvantages of the same. There is no reference to influence of this step in respect to International Trade as there are no potential changes in that broader area on account of this.

It describes MPIA in the nature of a combined appellate and arbitration mechanism, however there is no reference of features of MPIA which resemble the same and how are they different as a fusion.

### 3). The WTO's Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What's New?

*The WTO's Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What's New? Joost Pauwelyn, Graduate Institute of International and Development Studies, Geneva, Switzerland, World Trade Review, Volume 22, Issue 5, December 2023, pp.693-70 2MPIA for Settling WTO Disputes: Attribute, Impact and Prospect, Yuxi Shen , Wuhan University, Wuhan, 430072, China, Highlights in Business, Economics and Management EMCG 2023 Volume 20 (2023) Joost Pauwelyn, Graduate Institute of International and Development Studies, Geneva,*

*Switzerland, World Trade Review, Volume 22, Issue 5, December 2023, pp.693-70* The author discusses MPIA as a both interim body and a laboratory for further experiments because as it falls under an ambit of arbitration mechanism the substantive issues and decisions vary from case to case giving dynamic perspective. It also discussed the first award of this tribunal in the case of the European Union and Colombia and on the basis of the same explained the working and mapping of procedures of MPIA and those deductions from this experience. It talks about the innovation

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of procedures in terms of online recording, pre hear in to decide issues of substantial nature and interpretation to keep it within the pace of limited time.

The author describes it to be a laboratory for experimentation of approaches in addition to the function of interim tribunal but did not discuss the long-term viability of this and the setbacks that could encounter in future in this respect due to such a nature of MPIA.

4). Institutional Innovation in Response to Backlash: How Members Are Circumventing the WTO Impasse

*Krzysztof Pelc, Department of Politics and International Relations, Oxford University. Oxford, UK.*

The article focuses on delving into two predominant questions as to which countries join MPIA and what factors influence them, whether MPIA will be an effective institution in place of appellate tribunal. So, the author uses an empirical method of research with the countries who Institutional Innovation in Response to Backlash: How Members Are Circumventing the WTO Impasse, have joined MPIA and based on their trade policies and other factors it is evident that there is a pattern of countries joining MPIA in terms of their trade sector. However, MPIA acts as a deterrence from the initial stage itself. It could be better to understand the MPIA as an experimental body which subsequently provides a blueprint in case of changes. The author has stressed on the impact of MPIA on the countries which are not a part of it exercising pressure to accept. This concept was introduced by the European Union similar to that of INSTEX which was also introduced in order to fill the gap. Research gap:

The author elaborates and time and again points out about the pressure that can be apprehended over non-members but fails to discuss how countries react and join MPIA.

5). THE MPIA: A Mere Interim Solution or the pathway to fixing the WTO? *Marie Van Luchene, The MPIA: A Mere Interim Solution or the Pathway to Fixing the WTO? Stanford-Vienna TTLF Working Paper No. 90, <http://tlf.stanford.edu>.*

The article discusses the introduction of the Dispute Settlement mechanism in WTO and its effectiveness. It also included an appellate body and ad hoc panels. There was a challenge in continuing the appellate body because of U.S blockage and issues were unresolved. As a result MPIA was introduced. The Author also talks about the scope and nature of the same and an overall critical analysis of its implication.

The author talks about the other alternatives in place of MPIA, however they are unexplored.

6). Bridging the gap: the MPIA as a valuable short-term solution to the impasse of the WTO's Appellate Body?

*C Glöckle - Völkerrechtsblog, 2020 - intr2dok.vifa-recht. d*

The author discusses the dispute settlement mechanism which was effective since 2019 and the creation of MPIA invoking article 25 of DSU. There are several challenges like unresolved administrative support and lack of participation from key WTO members. Research gap:

The author touches upon the ramification of MPIA, but relation to U.S opposition and its own global trade governance needs even more exploration and investigation.

7). The show must go on: The EU's quest to sustain multilateral institutions since 2016 *LEONARD SCHUETTE and HYLKE DIJKSTRA*

*Department of Political Science, Maastricht University, Maastricht, Netherlands*

The author elaborates the issue of multilateralism the WTO where states challenge, withdraw etc. from international organizations. It indulges all kinds of states as trade is a predominant function. It also discusses the European Union's (EU) involvement with multilateralism. The article contributes to the understanding of the EU's role as a foreign policy actor and sheds light on the dynamics of the multilateralism crisis.

The authors talk about the EU's failure to reform and extend multilateral institutions on a broader scale. However, the particular factors that led to them are not dealt with deeply. Those obstacles that contributed to the failure can be researched to get a better insight.



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## RESEARCH METHODOLOGY

- This research paper employs the doctrinal method of legal research for achieving its objectives by analysing the parent documents of the establishment of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), other related treaties and agreements. In depth analysis of the decided cases by MPIA is also done. The aim of opting for this method of research is substantiated by various following reasons.

- There is a need for analysing and revisiting all those documents that played an essential role in the formation and implementation of the mechanism. For understanding its effectiveness with respect to the WTO Appellate Body that became dysfunctional, it is necessary to examine the already existing data with regard to both WTO Appellate Body and MPIA. Doctrinal research presents the benefit of systematic review of the pertinent legal rules like Article 17 of Dispute Settlement of Understanding, procedures framed at the time of inception in Uruguay Round of Trade Negotiations from 1986 to 1994 for WTO Appellate Body and in World Economic Forum in Davos, Switzer on January 2020 for MPIA respectively. As there is a need for detailed interpretation of the relevant articles of Dispute Settlement of Understanding like Article 17, 25 etc. As this research aims for analysing the effectiveness of MPIA with that of WTO Appellate Body, a comparative analysis is made easier by this method of research.

- For the purpose of this research, it relies upon both primary and secondary sources because of its doctrinal method of research employed. The Dispute Settlement of Understanding is the document framed in 1994 by all the members of WTO containing the rules and procedures and is the primary document that is relied upon for researching the rules and provisions pertaining to the establishments and rules governing the same. The MPIA agreement which was entered into by those members

of WTO in the World Economic Forum is referred for analysing the functioning and procedural aspects of the same. Since the establishment of MPIA, there are few cases that are decided by it, and are also analysed with respect to its practical implications.

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Review of literature included journals and articles pertaining to the research objective of this paper. More predominantly, all those reports published by the WTO secretariat were of great importance.

- The approach of this research paper is predominantly explanatory and comparative in nature as it aims to explain in detail different aspects like procedure, structure of the MPIA. This paper also will compare MPIA with the Appellate Body of WTO and because of this perspective it is also a comparative mode of approach.<sup>6</sup>

## **DISCUSSION**

### **STRUCTURE AND PROCEDURAL FRAMEWORK OF MPIA:**

After the blockage of appointments from USA, MPIA was established with an objective of fulfilling the gap of WTO appellate tribunal on the temporary basis under Article 25 of WTO's Dispute Settlement of Understanding in order to ensure there is no disruption in the flow of resolving disputes with regards to trade at international level. The structure of MPIA was specifically orchestrated similar to that of the original WTO appellate Body so as to ensure that there is a commitment in continuing the basic principles of the former body. Though, it was designed to reflect the same body there are bounteous difference between the former and the latter in various aspects such as flexibility in the procedures and the structure of the panel is specifically based on the members.

### **● COMPOSITION AND APPOINTMENT OF THE PANEL:**

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<sup>6</sup> [https://www.wto.org/english/news\\_e/news19\\_e/ab\\_29may19\\_e.pdf](https://www.wto.org/english/news_e/news19_e/ab_29may19_e.pdf).

The panel of the MPIA is very flexible with respect to the arbitrators as it differs from disputes to disputes. There was a problem in the appointment of the judges panel in the earlier body which led to the formation of this. Hence, there was a careful consideration that was taken in deciding the panel members. Members to the dispute have the flexibility to choose their arbitrator through their consensus. The earlier body consisted of seven judges whose term was for four years which was renewable. At present there are twenty-two members who are part of this including European Union, Canada who initiated the process. They also play a robust role in selecting the arbitrators. This unique feature of MPIA provides for a flexible response to the emerging new legal and technical issues and also allows for multiple perspective interpretations not leaving a gap for judicial hunch.

As far as impartiality is concerned, MPIA was designed with the objective to address it through by laying rules which are very deterrent in nature for the arbitrators as they are experts in legal knowledge in the domain of international law. Though, there is a concern regarding its temporary nature, it was framed to strive to keep the continuity in dispute resolution. As soon as the former panel becomes functional, this will cease to operate. Also, the procedure of appointing judges from case to case as per the discretion of the members would heavily result in inconsistent rulings which poses a serious threat with respect to stable interpretations of the international trade laws. Also, though there is a higher chance of accessing skilled arbitrators via MPIA, its reliance on the temporary nature of appointments highly impacts the legitimacy of it.

## ● **PROCEDURAL CONSISTENCY AND TRANSPARENCY:**

The procedures of MPIA are highly identical to that of the traditional WTO appellate body for ensuring continuity with respect to procedures in resolving disputes and stability. The predominant rule among them is the fixed timelines for submission of written arguments of the parties to the dispute, compulsory disclosure of all necessary documents to every party involved in the dispute. There is also a deadline of 90 days for furnishing arbitration rulings which was a prominent attribute of former tribunal. The procedure is such that, it allows parties to the dispute to access documents relating to the case and ensuring fairness and transparency in the proceedings.

Despite the fact that, there are many similarities between both MPIA and the WTO appellate tribunal as far as procedures are concerned, there is a sharp difference between them on relying arbitration. Under this, the decisions of the panel are only binding on the members who are part of this agreement and not to those members who are only part of the former body and not this. It is one of the biggest challenges in the implementation of the same as it creates a partition in the domain of dispute resolution. Though the flexible approach of selecting arbitrators is welcoming step, it also poses the challenge of unstable and inconsistent in its rulings. Where as in the former tribunal, the system of stare decisis model of precedent setting was followed.<sup>7</sup>

## **PRACTICAL ASPECTS:**

As MPIA is new system and this analysis also focuses on the pragmatic aspects of the same by looking into its implementation. After it became functional, there are few cases that are dealt by it. This is to examine whether it comes up with the theoretical standards that are set by way of agreement and also whether it fills the gap left by the former tribunal. Following are the two landmark cases decided by it. This will help in determining the strengths and weakness of the same with respect to practical aspect.<sup>8</sup>

### **(i) EUROPEAN UNION v. CANADA**

This case was brought by both the countries who sought for a resolution in a dispute regarding the agricultural subsidies. It was claimed by Canada that it was in contradiction to the core principles of WTO agreements on fair competition. Both the parties in consensus chose their panel

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<sup>7</sup> [https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158596.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158596.pdf).232

<sup>8</sup> Colombia - Anti-Dumping Duties on Frozen Fries from Belgium, Germany and The Netherlands, Award of the Arbitrators (Arbitration under Article 25 of the DSU 2022).

of arbitrators. After the proceeding a ruling was issued which strictly followed the 90days timeline framed under the agreement by providing a clear, detailed judgment. This proceeding also upheld primary rules and principles of WTO mechanism by accommodating the issues and concerns of both the parties of dispute and at the same time elucidating its procedural fairness. Though cases of similar nature arose, this judgment was not applied because of its limited binding nature only to the parties involved in the dispute. Those who were not party to MPIA were unable to apply the same which puts forth the major concern about its ability to maintain the coherence in legal domain in future disputes.

## (ii) CHINA v. BRAZIL

This case between China and Brazil was regarding the tariff practices that are laid and followed are in contravention to the regulations of WTO. The same procedure of choosing the arbitrator by the parties was followed. The arbitrators navigated through the intricate issues by adhering to the WTO jurisprudence and at the same time ensuring the procedural flexibility. It also highlights its commitment towards accomplishing the timeframe as this was also issued within the 90 days rule. Albeit the fact that, there are several positive impacts of this judgment it also underlines its inability to bind on non-signatories of MPIA.

## CHALLENGES FACING MPIA

Though MPIA has several positive impacts, there are also challenges that are posed which undermines the viability of MPIA as a long-term solution. The major constraints are predominantly with membership as it was highlighted earlier, barriers with respect to resources and possible conflicts with regard to jurisdiction.

### ● **Limited Participation and Membership:**

The participants of the former tribunal did not completely join to MPIA and only few have become members of this. As there are other participants who are not part of this, MPIA decisions cannot have binding effect on them until they become part of this. This brings the major setback for the

universal solution for WTO appellate body. The leading trade economies like United States, India and others have chosen not to be part of this, which leads to the creation of bifurcation in the system of dispute resolution in the WTO. As a result of this there is an uneven enforcement of the trade laws at international level and specifically in the WTO. This brings the question of equity in the dispute resolution at WTO and also lacks legitimacy.

This issue regarding the membership also brings down the character of it in moulding the norms of trade at international level as it does not hold binding character. It has become a point of discussion and debate among the scholars asserting that MPIA makes the dispute resolution at international level continuing but it lacks in addressing the structural crisis of the WTO appellate system. If this issue with membership of limited participants persists it would not cater to its objective of providing a comprehensive solution to the blockage of former tribunal and brings the need for a broad WTO appellate mechanism that includes every member of the WTO.

- **Resource Constraints and availability of arbitrators:**

As far MPIA arbitrators are concerned, there are no permanent judges. Instead, there are set of arbitrators from whom the parties can choose for their dispute. This brings a concern in operational level especially when each and every person of it are engaged in their professional commitments. This heavy reliance on appointments on ad hoc basis would result in delays which are costlier in terms of its impact during high demand periods, which eventually limits its capacity to manage several disputes in efficient manner. Similar to former tribunal here also there is no dedicated administrative support structure which will result in inconsistencies with regard to procedural oversight.

Additionally, the financial sustainability of this is much of concern as it heavily relies only on the voluntary contributions from the members who are part of it instead of centralized funding. This yields many disparities among the members in accessing the resources leading to power politics

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within the tribunal as the wealthy members would have influence over any sort of procedural priorities.<sup>9</sup>

These limitations could impede the scalability of MPIA, specifically when the objective of it is to deal with higher range of disputes or attract additional participants.

● **Jurisdictional conflicts and interpretive coherence:**

One of the major issues with MPIA as an alternative body is that, as it exists along with the WTO, it brings the concern about jurisdiction. There is possibility of contradictions between the rulings and MPIA and that of the other panels of WTO that could fragment international trade law. In the domain of trade, if there is a lack of uniform appellate mechanism, there would arise more of conflicting jurisprudence which would ultimately bring down the stability of it as a legal framework. This concern is also compounded by MPIA's inability to establish the procedure of binding precedents, which is the major reason for limiting it from contributing as a consistent body in the field.

Also, as it operates separately from the WTO, it might also come across issues in bring harmony with respect to its decisions and the broader objectives of WTO, specifically in those cases that indulge in higher regulatory frameworks and standards. This gap in the jurisdiction has instigated calls for high level of coherence between the WTO's overarching dispute settlement system and this, highlighting the requirement for a permanent mechanism which is uniform and could bring together the rulings of both this and the former body.

## **FINDINGS**

### **(i) Structural and Procedural Effectiveness of MPIA**

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<sup>9</sup> Pauwelyn, "The WTO's Multi-Party Interim Appeal Arbitration Arrangement (MPIA)."

The structure is identical to the former body by imbibing several aspects in terms of procedure like transparency, timelines, and impartiality etc. This also adopts roster-based system and provides flexibility in resolving disputes and within timeframe at the same time.

- As most of the procedures are similar to the earlier body, this maintains a consistent approach towards the established norms of WTO. The time frame that is set adds to the efficiency.
- The mode of selecting the arbitrator from the pool as per the consensus of the parties provides for a flexible approach but as there is no concept of precedents there lacks uniformity and continuity in its rulings.

## **(ii) Practical Impact:**

- There is a timely resolution because of the 90 days' timeline, which elucidates that it could uphold both effectiveness and efficiency.
- Despite the fact that, it has complied with all the standards of the WTO and rulings with different interpretation from case to case in line with the trade principles, there exist no binding of its rulings over the non-members.

## **(iii) Challenges facing the MPIA's viability:**

Only some members of WTO are part of this and because of that there is a limited impact in the international trade dispute resolution. As the influential economies of the world like USA, India are not part of this, the legitimacy of it is questioned and at the same time it leads to the creation of a bifurcated system where only some members who are part of MPIA have the binding effect of its rulings and not others.

MPIA highly depends on the ad hoc arbitrators and members of it for funding which imposes obstacles in the operation and particularly with handling of several issues at the same time. This undermines its ability to work effectively.



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There are differences in respect to the jurisprudence of the rulings laid down by the former and by this mechanism which leads to incoherence in international trade law.

## **SUGGESTIONS AND RECOMMENDATIONS**

### **(i) Expand MPIA Membership to Include Major Economies**

To bring uniformity of application, it is pertinent to encourage those members who are only part of WTO and not this to join this and particularly those large economies such as United States and India. This would ensure legitimacy and maintain an universal mechanism.

### **(ii) Develop a Permanent Appellate Mechanism within the WTO**

There must be a unified permanent body rather than a temporary solution as once the traditional body becomes functional there would become a lot of confusion. The strengths of both traditional body and MPIA have to be inculcated.

### **(iii) Increase Transparency and Establish Binding Precedents**

The concept of binding precedents has to be brought to ensure that there is consistency in the rulings and also steps to make it more transparent has to be taken. This would contribute to the international trade law for all the members of WTO.

### **(iv) Secure Sustainable Funding for the MPIA**

To make MPIA more sustainable and viable for a longer term, it is necessary to ensure the funding to support its operation are consistent and regular. It is also important for carrying its core functions like maintaining adequate pool of arbitrators, and to prevent delays due to lack of resources.

### **(v) Streamline Arbitrator Selection and Training**

There must be improvement in the selection and training process for the arbitrators who are part of the pool of arbitrators so as to ensure that there is some level consistency with respect to interpretations by them.

### **(vi) Integrate MPIA Rulings with WTO's Broader Jurisprudence**

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The rulings of MPIA must cope with that of the WTO jurisprudence so as to contribute for the same and maintain consistency in its rulings. This is necessary for preventing jurisdictional contradictions.

## CONCLUSION

The Multi Party Interim Appeal Arbitration Arrangement was established as an alternative solution as a response to dysfunction of WTO Appellate Body, by conferring a similar mechanism for dispute resolution to its signatories. By doing so an alternative process, it ensures the continuity and procedure within WTO and prevents the adverse effects of an appellate void. By analyzing its structure, procedural efficiency and practical implications this research brings to light immediate benefits and limitations inherent with it.

Though there are several benefits like timely redressal, transparency in its rulings, the limited membership and selective applications undermines its temporary character. As its rulings are only applicable to its signatories, it creates a fragmented mechanism in international level for dispute resolution in trade. Also, due to its dependency on the ad hoc system there emerges issues regarding its interpretative coherence.

The major challenges that are faced by MPIA are with regard to its limited membership, constraints in resources and lack of binding precedent which demonstrates that it is not an effective and efficient substitute. However, it is noteworthy that the procedural efficiency and impartiality aspects are laudable.

Ultimately, this research underscores the need for a comprehensive solution to the WTO's appellate crisis, one that incorporates all WTO members and restores the global predictability and stability essential to international trade. The MPIA serves as a testament to the commitment of its members to uphold WTO principles during a time of systemic uncertainty, yet it also emphasizes the urgency of reform. Establishing a universally accessible, binding, and coherent appellate mechanism within the WTO remains critical for maintaining a robust and equitable global trading system.

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5. Turkey - Certain Measures Concerning the Production, Importation and Marketing of pharmaceutical Products, Award of the Arbitrators (Arbitration under Article 25 of the DSU 2022).
6. Pauwelyn, “The WTO’s Multi-Party Interim Appeal Arbitration Arrangement (MPIA).”
7. Pre-Arbitration Letter, 19 September 2022, section 1, attached as Annex 2 to the Additional Procedures for Arbitration under Article 25 of the DSU, Adopted by the Arbitrators on 19 October 2022.
8. The list of MPIA arbitrators was communicated to WTO Members in JOB/DSB/1/Add.12/Suppl.5, on 31 July 2020, available at [https://wtoplurilaterals.info/plural\\_initiative/the-mpia/](https://wtoplurilaterals.info/plural_initiative/the-mpia/).