

# **UNIBO-MAECI Project**

## **The WTO as Major Driver of Sustainable Development and its Reform Process**

**Bologna, Tuesday 15 April 2025**

Davide Grespan: Legal Advisor EU Permanent Mission to the WTO.

The information and views set out are those of the author and do not necessarily reflect the official opinion of any EU Institution

# U.S. Concerns with the WTO Appellate Body (USTR paper)

- Judicial overreach and law making: zeroing, advisory opinions
- Procedural Violations: Ignored 90-day deadline
- Precedent “Cogent reasons” doctrine
- Unauthorized Service: members to decide cases beyond their terms

# The Walker Process

Restore WTO Appellate Body Functioning & Address U.S. Concerns (2019)

- **1. 90-Day Rule Compliance**
- **2. Prohibition of Advisory Opinions**
- **3. No Judicial Overreach**
- **4. Precedent is Not Binding**
- **5. Domestic Law as Fact**
- **6. Limits on AB Member Tenure**
- **Appellate Body non-functional as of December 11, 2019,**  
when it lacked the minimum number of members (3) to hear new appeals.

# The MPIA

**Iterim mechanism to preserve binding, two-tier dispute settlement (2020)**

- **Appeal arbitration** grounded on **Article 25** of the DSU, which provides for binding **arbitration by mutual agreement** as an alternative means to settle disputes
- **From 47 to 54 Members**
- **Political commitment to conclude appeal arbitration**
- **Standard arbitration procedures modelled on AB with efficiency enhancements to ensure respect of 90 days**
- **Standing pool of 10 Arbitrators**
- **Binding arbitration awards**
- **1 MPIA appeal and 1 MPIA like appeal so far**
- **Disputes among MPIA members settled (panel report adopted, MAS)**

# MC 12 - Molina Process

(GC Chair Report, Feb 2024)

- **CONSOLIDATED TEXT (CT)** - JOB/DSB/385 - **package of reforms**
- **ADR**: Expanded and standardized procedures for good offices, conciliation, mediation and **Arbitration**: model rules, no appeal;
- **Streamlining panel proceedings**: words and time limits, sequential filings, default one hearing;
- **Panel composition**: meaningful indicative list, regularly updated, default 3rd parties citizens eligible, upgraded appointment mechanism by DG;
- **Guidelines for adjudicators**: VCLT, no precedent, focus on what necessary;
- **Compliance**: standard RPT, incentive to use ADR, max RPT 15 months;
- **Accessibility**: Enhanced technical assistance and capacity building;
- **Review & Accountability**: Institutionalized periodic review of the system's functioning, discussion of legal interpretations by Members
- **NO CONSENSUS** - BEIS paper.

# MC 13 - Formal Process

(GC Chair Report, Dec 2024)

- Appeal/Review
  - Six sub-topics several reforms ideas some « sent to drafting »
- Accessibility
  - Enhanced capacity-building and legal assistance under Article 27 of the DSU
  - Costs & Funding: DS Fund (litigation, training, legal advice) + litigation cost reimbursement model—awards legal costs to successful developing Members in disputes with developed Members
- Works done thus far: recall the content of the what was done during the Molina process (essentially CT and BEIS paper)

# What's next

- GC Chair Report of Dec 2024: hold consultations with interested delegations to hear views on how to build on progress
- USTR: mixed messages –
  - WTO Members continue to have vastly different perspectives on the role of WTO dispute settlement ... The United States will reflect on the extent to which it is possible to achieve a reformed WTO dispute settlement system that advances U.S. interests while preserving U.S. sovereignty.
  - The United States remains committed to working towards a fundamentally reformed and improved system.

# References

- USTR Report on the Appellate Body of the WTO (FEB 2020)  
[https://ustr.gov/sites/default/files/Report\\_on\\_the\\_Appellate\\_Body\\_of\\_the\\_World\\_Trade\\_Organization.pdf](https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf)
- Molina process and Consolidated Text: JOB/GC/385
- Formal Process: JOB/GC/DSR/5
- Pauwelyn, J. (2023). The WTO'S multi-party interim appeal arbitration arrangement (MPIA): What's new?. *World Trade Review*, 22(5), 693-701
- Baroncini, E. The EU and the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) - A Contingency Tool to Save the WTO Appellate Stage, in Bruno Barel, Andrea Gattini (a cura di), *Le prospettive dell'export italiano in tempi di sfide e crisi globali. Rischi e opportunità*, Giappichelli, Torino, 2021, pp. 85-122
- Van den Bossche, P. (2024). Can the wto Dispute Settlement System Be Revived?. In *Constitutionalism and Transnational Governance failure*, p. 308, World Trade Institute Advanced Studies, Brill/Nijhoof
- Sacerdoti and de Stefano, The WTO and its dispute settlement system in 2023-2024: Navigating the crisis, engaging in reform, addressing trade and climate change
- Sacerdoti and „, *International Trade and Investment Dispute Settlement. From Rise to Crisis and Reform*, Routledge 2025, Chapter 8;
- Van Den Bossche, *The Uncertain Future of WTO Dispute Settlement: An Appraisal of the February 2024 Consolidated Text Resulting from the Molina Process on Dispute Settlement Reform*, World Trade Institute, WP No. 2/2024, available at [www.wti.org/research/publications/1443/the-uncertain-future-of-wto-dispute-settlement-an-appraisal-of-the-february-2024-consolidated-text-resulting-from-the-molina-process-on-dispute-settlement-reform/](http://www.wti.org/research/publications/1443/the-uncertain-future-of-wto-dispute-settlement-an-appraisal-of-the-february-2024-consolidated-text-resulting-from-the-molina-process-on-dispute-settlement-reform/).
- Davey WJ. WTO Dispute Settlement: Crown Jewel or Costume Jewelry? *World Trade Review*. 2022;21(3):291-300. doi:10.1017/S1474745622000106