

UNIBO-MAECI Project

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

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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.

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