

Chapter 12, Problem I:

As of fall 2023, the impasse over appointments to the Appellate Body continues, and the Appellate Body is no longer processing disputes. However, in early 2020, over twenty WTO members created an alternative appellate mechanism, the Multiparty Interim Appeal Arbitration Arrangement (MPIA).

The MPIA is created under article 25 of the DSU, which authorizes resort to arbitration as an alternative means of dispute settlement within the framework of the WTO dispute settlement system, and it applies to existing and future disputes between MPIA parties. The MPIA mirrors most of the WTO rules on appellate review; for example, appeals to the MPIA, like those to the Appellate Body, are limited to issues of law covered by the panel report and legal interpretations developed by the panel. MPIA appeals will be heard by a panel of three arbitrators, to be selected from a standing pool of ten arbitrators on the basis of rotation. It also provides that awards will be binding upon the parties: “The parties agree to abide by the arbitration award, which shall be final.” The MPIA issued its first award in December 2022, and as of fall 2023, more than 50 WTO members, including Australia, Brazil, the EU, China, and Japan were party to the MPIA. However, many large economies, including India, Korea, Russia, and the United States, are not parties and unlikely to join.

In June 2022, the 12th WTO Ministerial Conference adopted a document stating “[w]e acknowledge the challenges and concerns with respect to the dispute settlement system including those related to the Appellate Body . . . and commit to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024.” The U.S. circulated reform proposals to other WTO members during spring 2023. To date, however, progress in negotiations over reforming WTO dispute settlement has been halting at best, and many informed observers are doubtful that a consensus can be reached by 2024.