INTERIM ARBITRATION UNDER DSU ARTICLE 25: EVALUATING ITS ROLE IN THE WTO APPELLATE BODY PARALYSIS

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ABSTRACT:

The Appellate Body of the World Trade Organization has been non-functional since 2019, primarily due to the ongoing veto of the United States on the appointment of the adjudicators for this Body. Consequently, some of the WTO members proposed the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) under the Dispute Settlement Understanding (DSU) Article 25. The MPIA is an interim mechanism for mandatory appeal reviews among MPIA members until the Appellate Body comes into functionality. This paper examines whether Article 25 arbitration, especially under the MPIA arrangement, is a legally valid and alternative to the Appellate Body or merely a temporary measure. Through doctrinal legal research and a case study approach, this paper examines the DS583(EU-Turkey) case, which is the first full application of Article 25 appeal arbitration. The dispute shows the scope and limitations of the interim appeal mechanism. While the arbitration award could be binding and effective in enforcement, its legitimacy was the result of voluntary cooperation and not within the WTO framework. While DSU Article 25 is procedurally flexible and can lead to potential legal decisions, is not systemic in consistency, legally predictable, and extensively participated in to be a full institutional replacement for the Appellate Body. The MPIA, however, has been an important tool for continuing the appeal function for participating members and facilitating procedural innovation. This paper recommends broader measures of MPIA that use institutionalized processes, greater transparency, and more certain standards of enforcement. At the same time, it emphasizes continuing the need to reform and re-establish the WTO Appellate Body for maintaining the predictability, inclusiveness and rule-based integrity of the international trading system.

Keywords: WTO, DSU Article 25, Interim Arbitration, MPIA, Appellate Body Crisis.

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1. Introduction

Background of the WTO Appellate Body Crisis

The World Trade Organization (WTO) was established in 1995.[2] It plays a significant role in facilitating a stable and predictable rules-based system of international trade.[3] Among its bodies, one of the most important is its two-stage/tier dispute resolution mechanism, including the nonfunctional Appellate Body (AB). The Appellate Body of the World Trade Organization (WTO) has been non-functional since December 2019 after the United States of America vetoed the appointment of new adjudicators for this body.[4] For nearly two decades, the USA has been claiming that AB had been interpreting the Agreements of the WTO beyond its scope. As a consequence, the USA refused to appoint the nominee-judges in 2017, stating that this blockade would continue until the body was reformed.[5] The U.S.A. claims that the AB has acted beyond the WTO Agreements/norms, providing decisions that either expand or contract the rights and obligations of the members in violation of the Dispute Settlement Understanding (DSU) (pp. 4, 9-11).[6] The AB acted ultra vires by treating its previous rulings as 'binding precedent', resulting in non-consensual obligations among members (pp. 4,7, 16). Additionally, the AB has also been accused of exceeding the required 90-day period for completing the appeal procedures under Article 17.5 of the DSU (pp. 26-28) and permitting former members to continue deciding on cases, undermining procedural legitimacy (pp. 14–15). The Body has been criticized for rendering advisory opinions on issues that are unnecessary for dispute resolution (Pp 47, 52) and failing to make adequate recommendations under Article 19.1 of DSU, where the measures challenged had expired (p. 64). The United States also argued that the Appellate Body overstepped into the domain of other WTO institutions, such as the Ministerial Conference and General Council (p. 8), and misinterpreted fundamental WTO agreements such as those on anti-dumping, subsidies, etc.(p 12). These interpretations undermined the ability of Members to address unfair trade practices (P. 5), especially those related to non-market economies (Pp. 9-12) and state-owned enterprises. (Pp 2, 82, 109) etc.[7]

[2] World Trade Organization, Understanding the WTO - What Is the World Trade Organization?, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm
[3] Robert Koopman et al., The Value of the WTO, 42 J. POL'Y MODELING 829 (2020).
[4] William J. Davey, WTO Dispute Settlement: Crown Jewel or Costume Jewelry?, 21 WORLD TRADE REV. 291 (2022).
[5] Id.
[6] Office of the United States Trade Representative, Report on the Appellate Body of the World Trade Organization (2020).
[7] Id, USTR

This non-functionality of the Appellate Body later opened the way for the WTO members to propose a mechanism in March 2020 called the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) under Article 25 of the Dispute Settlement Understanding.[8] However, the Challenge remained regarding the mandatory appeal Arbitration under the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) for a non-participant. In the case of the DS583- EU vs Turkey under DSU Article 25[9] where Turkey was not a member of the MPIA and had not signed it to date, and therefore, going for an appeal arbitration was not mandatory for Turkey. Although Turkey voluntarily implemented the award. Thus, going for arbitration under the MPIA DSU Article 25 is not mandatory for a non-MPIA member, though the right to invoke the DSU Article 25 for arbitration is preserved.[10]

Despite the increasing reliance on Article 25 appellate arbitration, there is limited scholarly work on its potential to serve as a coherent alternative to the Appellate Body, especially in the context of its application in DS583. This paper endeavours to bridge this gap and sets two central questions to answer:

1. Can interim Arbitration under DSU Article 25 serve as a permanent solution to a dysfunctional WTO Appellate Body?

2. To what extent does arbitration under DSU Article 25, as demonstrated in the DS583(EU-Turkey) dispute, constitute a viable and legally coherent alternative to the WTO Appellate Body?

To address these questions this paper examines various existing scholarly literature and evaluates whether interim Arbitration could be an alternative solution in place of the Appellate Body or merely a temporary arrangement until the Appellate Body comes into function.

2. Literature Review

Academics have broadly debated on the DSU Article 25 and its role against the WTO Appellate Body crisis. Most scholars argued that ‘Article 25 serves only as an interim or temporary

[8] Davey, supra note 4 , pt. 3.2.
[9] World Trade Organization, WTO | Dispute Settlement - DS583: Turkey - Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds583_e.htm
[10] Joost Pauwelyn, The WTO's Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What's New?, 22 WORLD TRADE REV. 693 (2023).

solution'.

Some authors emphasize that this provision was brought into effect as a temporary solution, not as a long-term replacement for the Appellate Body. For instance, Krzysztof Pelc describes that MPIA membership is optional, and major economies such as the USA, India, and South Africa are not members. He stated that such an option for membership may lead to issues in the dispute settlement procedure.[11] Similarly, author Xiaoling argued that Article 25 relies on the agreement of both parties in the dispute, and it is challenging to determine the same appeal process for all WTO members. It is on this basis that the mechanism is a temporary solution to maintain appeals for those willing to participate.[12] However, it is crucial to note that some scholars also argue that this provision is a way of procedural reformation focusing on the flexibility and adaptability of that provision and mentioned that this flexibility is its strength. Pauwelyn refers to it as a 'laboratory' for reform, pointing out that this provision (DSU Art. 25) allows parties to design the appeal processes with a more flexible scope, shorter time frames, and arbitrators of their choice.[13] Additionally, Reinsch et al. describes in support that Article 25 preserves the two-tier system and may reduce delays, but only between participating parties.[14] For a better understanding of the effectiveness and limitations of this provision, existing arguments on the case studies, coupled with Article 25, need to be observed.

Several studies examined individual disputes to show how effective Article 25 is. Zhou, Weihuan, and Victor Crochet identify that DS583 (EU–Turkey), the first complete appeal arbitration under Article 25, and explored that it issued a binding decision which Turkey decided to uphold.[15] Hirami stated that DS583 established key guidelines, like time limits and award format, influencing subsequent MPIA cases.[16] The case of DS591 (EU–Colombia frozen fries), listed in WTO reports as well as by Pauwelyn, demonstrates how parties can settle

[11] Krzysztof Pelc, Institutional Innovation in Response to Backlash: How Members Are Circumventing the WTO Impasse, REV. INT'L ORGS. (Dec. 20, 2024).
[12] Xiaoling Li, DSU Article 25 Appeal Arbitration: A Viable Interim Alternative to the WTO Appellate Body?, 15 GLOBAL TRADE & CUSTOMS J. 461 (2020).
[13] Pauwelyn, supra note 9.
[14] William Alan Reinsch et al., Article 25: An Effective Way to Avert the WTO Crisis? (Ctr. for Strategic & Int'l Studies 2019).
[15]Weihuan Zhou & Victor Crochet, Confronting Fragmentation: A Quest for a Plurilateral Appellate Mechanism Under the WTO, 26 J. WORLD INV. & TRADE 275 (2025).
[16]Kenta Hirami, RIETI - [WTO Case Review Series No. 40] Turkey – Pharmaceutical Products (EU) (DS583): The First Use of the DSU Article 25 Appeal Arbitration Mechanism in the Context of the Dysfunction of the WTO Appellate Body (2024), https://www.rieti.go.jp/en/publications/summary/22120006.html

appeals without recourse to the Appellate Body.[17]

Beyond the technical assessment of Article 25, some academics and professionals relate the discussion to more extensive institutional change. Jennifer Hillman, for instance, explains that while Article 25 is helpful in the short term, the result must be the restoration of a fully functional Appellate Body.[18] She also stated in her writing that the former Chair of the Dispute Settlement Body(DSB), David Walker, attempted[19] to resolve the USA's concerns regarding the Appellate Body's functions, and Mr. David Walker received support from some member countries as well, although the USA felt this attempt was inadequate to address its concerns.[20] Authors such as Vidigal [21] and Zhou, and Crochet pointed out the idea of plurilateral or mixed appellate arrangements and propose that MPIA mechanism can be used to inform future reform of the WTO dispute settlement system, especially regarding the non-functional Appellate Body. [22] While these viewpoints contribute to the debate of reformation, they also reinforce the fact that Article 25 is generally seen as a stopgap measure rather than a long-term solution, which raises significant questions that this study seeks to answer.

2.1 Literature Gap

Existing research examined how Article 25 arbitration is organised, how flexible it is procedurally, and political boundaries/limitations, as well as its early applications in MPIA and non-MPIA contexts. Nevertheless, as noted in the introduction to this paper, few papers have examined whether the application of DSU Article 25 appeal arbitration in combination with the MPIA mechanism can function as an alternative to the Appellate Body in practice. Specifically, there is not much detailed examination of how the system operates in a high-profile case such as DS583 (EU–Turkey), particularly its legal justification, how enforceable it would be, and what implications it would have for developing countries.

This paper fills this gap by taking DS583 as a case study to test whether Article 25 can be a

[17] Pauwelyn, supra note 9.
[18] Simon Lester, Jennifer Hillman: Three Approaches to Fixing the Appellate Body, International Economic Law and Policy Blog (Dec. 2018), https://ielp.worldtradelaw.net/2018/12/jennifer-hillman-three-approaches-to-fixing-the-world-trade-organizations-appellate-body.html.
[19] World Trade Organization, Informal Process on Matters Related to the Functioning of the Appellate Body: Report by the Facilitator, H.E. Dr. David Walker (New Zealand), JOB/GC/222 (Oct. 15, 2019).
[20] Lester, supra note 17
[21] Geraldo Vidigal, Living Without the Appellate Body: Multilateral, Bilateral and Plurilateral Solutions to the WTO Dispute Settlement Crisis, 20 J. WORLD INV. & TRADE 862 (2019).
[22] Zhou & Crochet, supra note 14.

real alternative or merely a stopgap measure within the WTO system. For the purpose of addressing the gap and to examine the systematic relevance of Article 25, this study adopts a case study-based approach as a methodology, as outlined below.

3. Data and Methodology

Method and Scope

This Study employed a qualitative, doctrinal legal research method based on a case study approach, the MPIA Arbitration in DS583-Turkey vs EU/ (Turkey- Pharmaceutical Products). The DS583 Case is used as an example to examine the enforcement/implementation of Article 25 of the Dispute Settlement Understanding (DSU) for Appeal Arbitration and analyze its effectiveness as an alternative interim means of dispute settlement in place of the Appellate Body.

The primary sources are WTO legal Documents and arbitration-based precedents/disputes such as the EU-Colombia frozen fries dispute (DS591) and other forthcoming disputes to date, such as DS610- European Union (Complainant) vs. China (Respondent) and DS607 – European Union (Respondent) vs. Brazil (Complainant), etc, along with the disputes which were finalised without appeal arbitration. Secondary Sources/ data have been used from the scholarly writings/documents or papers.

4. Overview of DSU Article 25 Arbitration, MPIA and Alternatives

Before diving into the case study, it is essential to see DSU Article 25 Arbitration and arguments on it. Along with that, it is also necessary to explain the MPIA arrangement and alternative tools of arbitration, such as conciliation and mediation.

4.1 Article 25 of the DSU: Arbitration

Arbitration, traditionally considered a speedy and peaceful dispute settlement mechanism, is central to this study. The potential of deciding on the appointment of the adjudicators and agreeing on the determination of the rules to be applied and the assurance of a binding award to terminate the controversy made arbitration proceedings a success among the disputants due to their flexibility and the mandatory nature of the final decision.[23] Arbitration is also found in

[23]Yoshifumi Tanaka, The Peaceful Settlement of International Disputes 105–27 (Cambridge Univ. Press 2018).

Article 25 of the Dispute Settlement Understanding. Article 25 is the tool for the alternative means of dispute settlement, aiming to make the settlement procedure speedier[24] based on the specific issues raised by the disputing parties.[25] Additionally, the disputing parties must agree upon the ground that arbitration is the last resort to resolve the dispute and shall also agree upon the procedure of the arbitration, and if agreed, all WTO members would be notified before the actual process of the arbitration starts.[26] 3rd party members/countries[27] have the opportunity to join that process, securing the consent of the disputing parties. Once the award is announced, any member may raise relevant concerns regarding the Award within the Dispute Settlement Body and the Council or relevant Committee.[28]

Lastly, it states that the WTO provisions for enforcement laid down in Articles 21 and 22 of the same Document are applicable to Article 25 Awards of Arbitration with the necessary adjustments/modifications (mutatis mutandis).[29] The broader flexibility laid down in that provision might be vague. Article 25 has ambiguous language because it provides a vast scope for deciding the matters of dispute, which the parties are willing to settle through arbitration.[30] While Article 25 is a formal system of Arbitration, it was never intended to be a standing or institutional alternative to the Appellate Body.[31] Article 25 is a voluntary and ad hoc, contingent on the agreement of disputing parties, and for this reason, necessarily limited by scope and systematic reliability. Also, the absence of a standing body and procedure undermines its ability to provide a uniform interpretation of WTO rules.[32] However, the intention of introducing Article 25 was beneficial, for the appellate stage or the automatic bindingness of the dispute

[24] Termed as expeditious Arbitration
[25] Understanding on Rules and Procedures Governing the Settlement of Disputes, art. 25, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401
[26] Id. art. 25.2.
[27] World Trade Organization, WTO | Dispute Settlement - DS583: Turkey - Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds583_e.htm (discussing members termed as "other members" and addressing third-party members' participation); see also Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products: Report of the Panel, Addendum, Annex A-1, WT/DS583/12/Add.1 (Mar. 28, 2022), https://www.wto.org/english/tratop_e/dispu_e/583-12a1_e.pdf.
[28] DSU art. 25.3, supra note 24, (third parties do not accept the award; in doing that, they need to become parties to the dispute)
[29] Id. art. 25.4.
see also World Trade Organization, Dispute Settlement System Training Module: Chapter 8.2 - Dispute Settlement Without Recourse to Panels and the Appellate Body - Arbitration Pursuant to Article 25 of the DSU (Page 1).
[30] Reinsch et al., supra note 13.
[31] Id.
[32] Id.

rulings.[33]

4.2 MPIA: Multi-Party Interim Appeal Arbitration Arrangement

The MPIA could alternatively be called an interim appellate procedure for some specific members[34] to establish a binding alternative appeal mechanism, basically fulfilling the function of the WTO's Appellate Body.[35] Now, MPIA contains 57 member countries of the WTO.[36] The intention of the member countries in establishing MPIA was not to replace the Appellate Body of the WTO fully. Instead, they utilized DSU Article 25 as an interim mechanism.[37] For instance, the MPIA Framework (interim nature), Para 1 and 15 clearly mention this Arbitration as interim as long as the Appellate Body gets functional. [38]

4.2.1 Procedural Features of MPIA

Structurally, the MPIA closely follows the procedural characteristics of the Appellate Body. It has a dispute settlement system for a two-tier process, such as appellate review of panel reports, standards of evidence, and the issuance of binding decisions. The MPIA codifies procedural rules for the arbitrators' credentials, terms of service, and the criteria of independence with the aim of maintaining the legitimacy that the Appellate Body used to have in its institutional framework.[39] Moreover, a standing pool of ten arbitrators[40] and benches of three members to decide each appeal are also similar.[41] Nevertheless, MPIA brings significant advancements given its ad hoc arbitration nature. One major addition is procedural flexibility; parties retain the ability to design arbitration terms and timelines, allowing for a more efficient and responsive dispute resolution process than the usually protracted formal AB proceedings. This approach enables the MPIA to function as a laboratory for reform, testing procedural

[33] Joost Pauwelyn, WTO Dispute Settlement Post 2019: What to Expect?, 22 J. INT'L ECON. L. 297 (2019).
[34] Indicating those WTO members who have signed this Agreement
[35] Yining Yang, Crisis and Reform Direction of WTO Appellate Body, in ADVANCES IN SOC. SCI., EDUC. & HUMAN. RES. (2021).
[36] Directorate-General for Trade and Economic Security, Multilateral Trading Order Strengthened as UK Joins Interim Appeals System (June 26, 2025), https://policy.trade.ec.europa.eu/news/multilateral-trading-order-strengthened-uk-joins-interim-appeals-system-2025-06-26_en.
[37] Peter Van Den Bossche, Can The WTO Dispute Settlement System Be Revived?, in BRILL | NIJHOFF EBOOKS 308 (2024).
[38] World Trade Organization, Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU, JOB/DSB/1/Add.12 (Apr. 30, 2020).
[39] Zhou & Crochet, supra note 14.
[40] World Trade Organization, Statement on the Partial Re-composition of the Pool of Standing Arbitrators under the Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU, JOB/DSB/1/Add.12/Suppl.14 (May 28, 2025).
[41] Pauwelyn, supra note 9, at 696.

modifications with the potential for future incorporation into a reformed WTO DSM.[42] However, the key procedural differences could be the timeframe modification/adjustments for submitting reports, streamlined briefs of appeal, and the arbitral panel's flexibility in composition. MPIA's case-by-case flexibility to include adjustments brings in flexibility that would be hard to achieve under the formalized procedure of the current WTO dispute settlement regulations.[43]

4.2.2 Participation and Concerns

Regarding the developing countries, some are supporters of the MPIA framework, such as Brazil, Mexico, Colombia, China, etc.[44] On the other hand, some are still dissenters of the MPIA, such as India, Argentina, South Africa, etc. and developed countries like the U.S. Some of the reasons could be the fear of the permanency of the interim arbitration instead of the AB.[45] For example, South Africa is concerned about it. Countries like India are not joining for multiple reasons, but one of the reasons could be that it has the most trade disputes with the USA, and the USA is not a party to the MPIA. In the short term, signing the MPIA will not bring any fruit to India. Other fears for developing countries, primarily raised by South Africa, are power disparities with developed countries, implementation of the arbitration award within a maximum of fifteen months' timeframe, which could be a burden for developing countries, and a lack of capacity, resources, funding, and representation are also very relevant factors.[46]

4.3 DSU Article 5: Good Offices, Conciliation and Mediation

Beyond arbitration, alternative methods to resolve a dispute are also available in the Dispute Settlement Understanding. Article 5 could be a good example of that. Before Arbitration, if the disputing parties wish to adopt the procedures of conciliation/Mediation, upon the agreement of the disputing parties, they may adopt these methods with the facilitation of the Good Offices, keeping the parties' positions confidential.[47] Any party may at any time request the Good Offices for such procedures, and flexibly enough, the party/ies reserve the right to terminate the procedure/s requested, and may request a panel to be established under Article

[42] Id.
[43] Id.
[44] Avantika Mehndiratta et al., Viability of Article 25 DSU to Solve the Appellate Body Crisis (unpublished thesis, National Law University Jodhpur 2021).
[45] Id.
[46] Id., PP. 53-55
[47] DSU art. 5.1-.2, Apr. 15, 1994, 1869 U.N.T.S. 401.

6.[48] Suppose the parties utilize the facilitation of the Good Offices, Conciliation, or Mediation within 60 days of receiving the consultation request. In that case, they must wait 60 days before requesting a panel, unless they agree that the process has failed.[49] Even after the official panel process has been initiated, such ad hoc procedures can still be followed if there is a consensus among the parties.[50] And finally, Article 5 specifies the role of the Director General of the WTO, that the DG may, at his discretion, assist the parties in bringing the dispute to an end by such informal means.[51] Having described the arbitration under DSU Art. 25 and MPIA arrangements, as well as alternative approaches under the DSU, the forthcoming section turns to the first full arbitration as well as a major case, DS583, that tested Article 25 in practice.

5. Case Study: DS583 (Turkey- Pharmaceutical Products)

The primary case study for this paper is the DS583(EU-Turkey)[52] case, which is the first comprehensive test of DSU Article 25 appeal arbitration.

5.1Background of DS583

The EU initiated the DS583 dispute between the EU and Turkey in April 2019 against Turkey's domestic pharmaceutical policy, mainly the localization requirement, the ban on importing localized products and domestic over the imported drugs because they breached Articles III:4, X:1 and XI:1 of GATT 1994, among other WTO provisions.[53] After a panel report was circulated, maintaining confidentiality in November 2021, the EU and Turkey Jointly requested the panel to suspend its work, acknowledging the deadlock of the Appellate Body. Consequently, they notified the DSB regarding their agreement in March 2022 to arbitration under DSU Article 25, adopting procedures closely following the MPIA.[54]

5.1.1 Overview of the Dispute

The European Union had protested Turkey's drug policies in the World Trade Organization,

[48] Id., art. 5.3
[49] Id., art. 5.4
[50] Id., art. 5.5
[51]Id., art. 5.6
[52] DS583/WT/DS583/ARB25
[53] Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products: Report of the Panel, Addendum, WT/DS583/12/Add.1 (Mar. 28, 2022).
[54] Weihuan Zhou, Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products, WT/DS583/ARB25, 117 AM. J. INT'L L. 322 (2023).

claiming that Turkey imposed on foreign manufacturers a localization requirement that forced them to manufacture certain medicines in Turkey. Foreign producers will not have their products entered into the national reimbursement scheme if they fail to follow it or if their commitments are refused, and this scheme covers most of the outpatient pharmaceutical purchases. This puts imported drugs at a disadvantage, thus giving domestic products a more competitive edge.[55]

The EU argued that this practice violated WTO principles on national treatment and trade-related investment measures/rules. The defence of Turkey was grounded in government procurement and 'public health exceptions (Protectionist measures for the public health)', but the Arbitrators refused both. The arbitrators ruled that Turkey's Social Security Institution had not exercised adequate control over the products to qualify as a procuring agency, and the public health rationale lacked evidence of an actual or imminent threat. Thus, Turkey's actions were not in conformity with WTO commitments.[56] This ruling not just compelled Turkey to revise its pharmaceutical policies but also offered the first indication of how Article 25 Appeal Arbitration could function in practice under the MPIA Framework.

5.1.2 Impact of the Ruling

Following the Award, Turkey formally informed the Dispute Settlement Body that it had taken the necessary measures to comply with the ruling of the Arbitration on 25 April 2023, and also brought to the attention of the DSB that on 12 May 2023, Turkey published the New Alternative Drug Reimbursement Regulation.[57] The decision had a significant impact on Turkey since it forced the country to abandon its localization and priority policies, which damaged its industrial policy and exposed its regulatory approach to criticism from around the world. The case also established the boundaries of application of public health justifications in support of protectionist measures and was a landmark case in WTO arbitration under Article 25.[58]

5.2 The First Full Use of Appeal Arbitration under DSU Article 25

Turkey used DSU Article 25, invoking it for Arbitration on April 25, 2022, for appeal review,

[55] Turkey – Pharmaceutical Products, supra note 53
[56] Id.
[57] Id. (discussing Implementation of Arbitral Award: "WTO | Dispute Settlement - DS583")
[58] Zhou, supra note 54

creating the first example of full Appeal Arbitration under that provision.[59] The processes Turkey adopted, such as choosing Arbitration under DSU Article 25,[60] timelines for the procedures,[61] and utilizing Articles 21 and 22, mutatis mutandis,[62] align with the framework of the MPIA. The arbitration award was declared in favour of the EU, and the Arbitration panel directed Turkey to comply with and adopt the WTO rules and obligations, amending its existing measures. This was the first decision like the AB in well over two years, showing that Article 25Arbitration can provide legally binding results that are just as effective as those of the AB.[63]

5.3 Legal and Institutional Implications

This particular alternative dispute mechanism tool is not just a procedural simulation of the AB; it could also mean that the appellate role will become more limited and focused.[64] It is observed that the award avoided broad interpretive rulings, opting instead for a disciplined assessment of the Panel's legal reasoning, potentially indicating a trend toward specialization other than expansion. Under DSU Articles 21 and 22, compliance monitoring remains. Preserving incentives for the implementation of rulings, Turkey provided a status report in April 2023 confirming amendments to its Drug Reimbursement Regulation by August 2022.[65]

5.4 Lessons and Future Prospects

The DS583 sets a fundamental procedural and substantive precedent by determining the timing milestones, procedural stringency, and award format. It has thus become the working model for subsequent MPIA proceedings. Also, this example shows asymmetric participation; Turkey's involvement but not membership in the MPIA shows the voluntary and selective nature of involvement with the mechanisms laid down in Article 25.[66] This selective choice of participation can limit systemic coherence unless institutional participation is extended, and it is also an indication of the departure from the traditional judicial style that AB has pursued to date.[67]

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[59] WTO, Dispute Settlement - DS583, supra note 53
[60] Invoking Article 25 of DSU for Arbitration, Para 1, Annex I, 'MPIA Framework.'
[61]Id. paras 12, 14,
[62] Id. para 17
[63] Zhou, supra note 54
[64] Kenta, supra note 15
[65] Id.
[66] Pauwelyn, supra note 9, at 696.
[67] Bernard Hoekman & Petros C. Mavroidis, Preventing the Bad from Getting Worse: The End of the World (Trade Organization) As We Know It?, Working Paper No. RSCAS 2020/06 (Eur. Univ. Inst. 2020).

6. Article 25: A Functional Alternative or Temporary Solution?

This section, based on the case study of DS583, assesses whether DSU Article 25 can function as a functional substitute for the Appellate Body or remains only as a stopgap measure.

6.1 Strength of Article 25 Appellate Arbitration

Earlier in this writing, it was mentioned that DSU Article 25 was incorporated as a tool for speedy dispute resolution. It is upon the disputing parties. Suppose they agree that they need to file an appeal. In that case, they may proceed with the Interim Arbitration procedure, and based on the agreement, the award would be binding on the parties under Article 25.3 of the Dispute Settlement Understanding. Articles 21 and 22 are applicable with necessary modifications (mutatis mutandis).[68] Accordingly, Article 25 can follow the two-tier, "binding character" of WTO adjudication. There is a first-stage panel and a second-stage (Arbitration) review at an optional level. This flexibility was not commonly utilized before 2020 but has assumed significance since the Appellate Body (AB) became non-functional. Recent experience through Article 25 appeal arbitration shows that it can provide clear-cut decisions in appeals. For example, in the first-ever appeal award under the Multi-Party Interim Appeal Arbitration (MPIA) mechanism, three arbitrators reviewed and decided upon a panel report in the case of EU-Colombia frozen fries (DS591). The arbitrators reversed one of the decisions but affirmed three of the panel's findings. The parties consensually applied for the award. Notably, authorisation at the WTO level was not required; under DSU Article 25.3, the award was merely notified to the Dispute Settlement Body (DSB). Colombia signaled during the DSB session that it intends to implement the arbitrator's award in a manner that respects WTO obligations.[69] The MPIA process allowed the completion of the dispute without blockage, thus maintaining the system's binding character and two levels of adjudication. In other MPIA cases to date, parties have negotiated bilateral appeal understandings. In several instances, parties dropped appeals rather than appeal into the void. As such, Article 25 arbitration has proven to have attained finality where the Appellate Body was struggling.[70]

6.2 Limitations of Article 25 Appellate Arbitration

Despite these successes or advances, WTO members and observers are likely to see Article 25

[68] Id. pt. 4.1
[69] Pauwelyn, supra note 9.
[70] Id.

as an interim measure and not a long-term substitute for the AB. The Official Statements in the DSB and all disputes alike refer to Article 25 Arbitration as an interim measure/mechanism. For instance, in the EU-Colombia dispute, Colombia itself appreciated the MPIA as a viable and well-functioning interim mechanism that can replace, on a temporary basis, the Appellate Body.[71] The temporary nature of that provision. He observed that the communications of the WTO described the MPIA as a stopgap solution to the deadlock situation of AB. Even though the number of members has increased in the MPIA, it was created as a stopgap solution against the non-functional Appellate Body. [72] Article 25 needs consent at each step, like both parties to a dispute must suspend the proceedings of the Panel and agree together upon the fact that they both want arbitration. Other members can only join based on agreement.[73] It cannot, therefore, unilaterally impose a complete AB replacement in practice. In practice, a number of major trading powers, for example, the United States, have refused MPIA-type arrangements, and others like India, Argentina, etc. appear rather keen on preserving the dysfunctional status quo rather than acceding to it.[74] This viable participation means that Article 25 Arbitration operates only between willing parties, while dissents are struck in the deadlock. For these reasons, Article 25 Arbitration is, at best, a short-term solution.[75]

6.3 Opportunities for Reform and Innovation through Appellate Arbitration

The DSU Article 25 has been surprisingly durable and can play a longer-term function. In contrast to that inflexible Appellate Body, Article 25 Arbitral review is expressly adaptable: parties may agree on the procedures to utilize. MPIA members have taken advantage of this by designing efficient rules (for example, confining page limits, strict deadlines, narrow scope of review, etc.) to render appeals more efficient. Article 25 Arbitration can serve as a laboratory for creating procedural innovation. [76] The MPIA has become not only a temporary solution but also a prototype for institutional innovation in the WTO. Some of these WTO reform proposals already take MPIA characteristics for granted; for example, reform drafts utilise MPIA's time and word limits for appeals. [77] In this view, Article 25 has a function beyond immediate relief: it maintains the possibility of appellate review. It gives participants the power to launch system

[71] Id.
[72] Pelc, supra note 10
[73] Pauwelyn, supra note 9.
[74] Pelc, supra note 10.
[75] Li, supra note 11.
[76] Pauwelyn, supra note 9
[77] Pelc, Supra note 10, Abstract

improvements in the absence of the Appellate Body. Despite some negative perceptions, Article 25 refers to some silver linings, mostly its flexibility, speed, and ability to reduce the backlog in dispute adjudication. It recognizes the EU-proposed Multi-Party Interim Appeal Arbitration Arrangement (MPIA) under Article 25 as a creative response to the Appellate Body paralysis. It, however, points out that this mechanism is only temporary and piecemeal and not a panacea for the broader dispute settlement crisis.[78]

Finally, Arbitration under Article 25 has shown its potential to bring back an effective two-tier system of adjudication and yield binding appellate results among interested members. However, it is still dependent on political will and is generally seen as ad hoc. Literature and the member state practice suggest that Article 25 must be construed as an ad hoc measure, a temporary and flexible tool to keep the system's binding character and two levels of adjudication in place until the Appellate Body is no longer able to act.[79] Whether it could evolve into a solid permanent option would depend on broader readiness to formalize it, for example, by expanding MPIA membership or creating an ad hoc system of appeal, which is still unclear. While the case DS583 shows the example of the practical application of Art. 25, forthcoming cases demonstrate the evolution of this provision in the MPIA framework.

6.4 Emerging Disputes and Recent Developments Under the MPIA Framework

6.4.1 Pending and Emerging Disputes under MPIA

Along with finalised Arbitral awards such as DS583 (EU–Turkey) and DS591 (EU-Colombia), and recently finalised DS611(EU-China: Enforcement of Intellectual Property Rights), of which the Award came in July 2025, two ongoing or imminent WTO disputes under the MPIA framework reflect the continued use and potential expansion of appeal arbitration of Article 25 of the DSU. DS607 – European Union (Respondent) vs. Brazil (Complainant) is still at the consultation stage only. Brazil initiated consultations with the EU on 8 November 2021; however, to date, no Article 25 notice has been issued, and consequently, no panel or arbitration under the MPIA system has been initiated.[80] The second one is , DS610- European Union vs

[78] Reinsch et al, supra note 13
[79] Pauwelyn, supra note 9
[80]World Trade Organization, WTO | Dispute Settlement - DS607: European Union - Measures Concerning the Importation of Certain Poultry Meat Preparations from Brazil, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds607_e.htm
Also See: Summary: WT/DS607 – Measures Concerning the Importation of Certain Poultry Meat Preparations from Brazil, https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-

China, which was initiated on 27th January 2022, when the European Union requested consultations into China's discriminatory trade treatment of EU goods and services, with Specific reference to those involving Lithuania. Following the EU's request submitted on December 7, 2022, the Dispute Settlement Body (DSB) established a panel on 27th January 2023. On 4th July 2023, the parties notified DSB of their consent to pursue Arbitration procedures following Article 25 of the Dispute Settlement Understanding (DSU). While no final award has yet been issued, panel hearings have been under two suspensions requested by the EU, first on 25 January 2024, and then on 27 January 2025 under DSU Article 12.12, with the latter suspension having been formally circulated to the DSB on 30 January 2025.[81] The two ongoing cases, one of which has not moved beyond the consultation phase, and the other is in the panel stage. Despite this, they both reflect the utilisation of the MPIA as well as the probable utilisation of the same in the WTO's future disputes.

Other than those mentioned above, there are eight disputes which were finalised without MPIA Appeal Arbitration, withdrawn or settled. They are - DS522(Brazil vs Canada-Aircraft Subsidies)[82], DS524(Mexico v. Costa Rica- Fresh Avocados)[83], DS537 (Australia v. Canada – Wine Sales)[84], DS589 (Canada v. China – Canola Seeds)[85], DS598 (Australia – China – Barley Duties)[86], DS601 (Japan – China – Stainless Steel Products)[87], DS602 (Australia v. China – Wine Duties)[88], DS603 (China v. Australia- Anti-Dumping and Countervailing Duties on

settlement/wto-disputes-cases-involving-eu/wtds607-measures-concerning-importation-certain-poultry-meat-preparations-brazil_en (July 14, 2023).

[81] "World Trade Organization, WTO | Dispute Settlement - DS610: China - Measures Concerning Trade in Goods and Services, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds610_e.htm
Also see: European Commission, WT/DS610 – China – Measures Concerning Trade in Goods and Services, https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-settlement/wto-disputes-cases-involving-eu/wtds610-china-measures-concerning-trade-goods-and-services_en (n.d.).

[82] World Trade Organization, WTO | Dispute Settlement - DS522: Canada - Measures Concerning Trade in Commercial Aircraft, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds522_e.htm

[83] World Trade Organization, WTO | Dispute Settlement - DS524: Costa Rica - Measures Concerning the Importation of Fresh Avocados from Mexico, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds524_e.htm (2017).

[84] World Trade Organization, WTO | Dispute Settlement - DS537: Canada - Measures Governing the Sale of Wine, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds537_e.htm

[85]World Trade Organization, WTO | Dispute Settlement - DS589: China - Measures Concerning the Importation of Canola Seed from Canada, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds589_e.htm (2019).

[86] World Trade Organization, WTO | Dispute Settlement - DS598: China - Anti-Dumping and Countervailing Duty Measures on Barley from Australia, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds598_e.htm

[87] World Trade Organization, WTO | Dispute Settlement - DS601: China - Anti-Dumping Measures on Stainless Steel Products from Japan, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds601_e.htm

[88] World Trade Organization, WTO | Dispute Settlement - DS602: China - Anti-Dumping and Countervailing Duty Measures on Wine from Australia, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds602_e.htm (2022).

Certain Products).[89]

All the disputes demonstrate the evolving, yet incomplete, role of the MPIA framework, opening the window of policy considerations for future viability.

7. Policy Considerations and Conclusion

7.1 Policy Recommendations

The discussion/analysis made above in this paper has tried to show that arbitration under DSU Article 25 offers an interim remedy to the WTO Appellate Body, that is, in the form of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). Nevertheless, certain gaps remain persistent. Based on the DS583 (EU-Turkey) case and scholarly literature, the following policy suggestions could be taken into consideration.

Promoting more/broader participation in the MPIA and focusing on the Developing Countries' interests.

Not all 166 WTO members[90] are members of the MPIA since it covers only fifty-seven till now. Additionally, the DSU Article 25 appeal arbitration only applies with mutual consent, as reflected in DS583 and other disputes. This limited participation of the WTO members in the MPIA framework may not offer a uniform appellate mechanism. The optional involvement may have an impact on the system's coherence. WTO members must participate in diplomatic efforts to expand MPIA coverage, since more participation would increase the legitimacy and utility of this mechanism.

Moreover, the interests of the developing countries should be given priority so that they can enjoy meaningful participation in the MPIA process. Apart from providing for the flexible timeframes of arbitration awards to be enforced, provisions should be made to deal with their insufficient institutional capacity to participate actively under the rigorous procedural timeframes of MPIA arbitration. Such issues include a rigid timeframe, restrictions on written submissions, and the absence of provisions for support, such as Article 12.10 of the DSU, which

[89] World Trade Organization, WTO | Dispute Settlement - DS603: Australia - Anti-Dumping and Countervailing Duty Measures on Certain Products from China, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds603_e.htm

[90] World Trade Organization, WTO Members and Observers (2024), https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (indicating 166 member states as of 2024).

allows for extended timeframes for preparation and submissions. Providing procedural flexibility and technical support to developing countries is essential to make MPIA a more inclusive and fair process.

Introducing Model Procedures for DSU Article 25.

While discretion under Article 25 is to be preferred, there remains room for inconsistencies in the absence of prescribed procedures. Establishing fundamental procedural guidelines, such as those pertaining to timeliness, arbitrator credentials, and award structure, would encourage uniformity while permitting flexibility or adjustments to fit each party's unique requirements. These models could be used as a model for future arbitrators, increasing predictability and decreasing procedural uncertainty.

Improving Clarity/Transparency and Public Access to Awards.

Limited public access to arbitration hearings and awards limits their usefulness for widespread legal evolution. Greater openness can increase the legitimacy and legal-educational value of Article 25 arbitration. To end this, the WTO members and the WTO secretariat could establish a dedicated repository or a Hybrid Appeal Registry for recording final awards and, where applicable, notable procedural elements. This effort would better incorporate Article 25 arbitration into the current practices of the WTO dispute settlement.

Determining the Legal Status and Enforcement of the Awards.

In the Case of MPIA members, the binding nature of Article 25 awards is contingent on the party's agreement alone. In DS583, Turkey voluntarily complied with the award, but one cannot expect that in every instance. A clarification by the General Council to that effect that Article 25 Award, on notification to the Dispute Settlement Body (DSB), is enforceable under Articles 21 and 22 of the Dispute Settlement Understanding (DSU) may enhance the legal certainty and promote implementation.

Continuing the Parallel Efforts to Reform the Appellate Body.

Article 25 was never intended to be a permanent replacement of the Appellate Body. Its current use is the result of an ad hoc necessity and not a general solution. Members of the WTO should thus continue proposing the structured reformation of the Appellate Body, considering

proposals like those presented by Ambassador David Walker. However, it is also crucial to recognize the fact that in 2023, a US-led reform discussion was essentially formalized when a draft consolidated text was attached to the report of the General Council Chair. This initiative has not been progressed since 2024. Therefore, reviving these initiatives may improve the prospects of restoring a reformed and functional Appellate Body. Thus, the DS583 case offers an essential base for deciding whether Article 25 Arbitration is merely an interim solution or an effective long-term one. Overall, these proposals underscore that while Article 25 Arbitration may provide a short-term solution to the appellate function, more comprehensive institutional reform is necessary to ensure long-term stability in the multilateral trading system. This understanding leads to the following concluding remarks.

7.2 Conclusion

The paralysis of the WTO Appellate Body since 2019 has gathered significant concern for the robustness of the multilateral trading system. Consequently, arbitration under DSU Article 25 has become a valid, though restricted, alternative to Appellate Body review. This paper examined the implementation of the DSU Article 25 with the DS583(EU-Turkey) case in focus, especially. The case showed that Article 25 arbitration can result in legally binding awards and solid outcomes. However, it also showed the limitations of this mechanism, for instance, its reliance on agreement/ mutual consent, non-universal applicability, and limited consistency in procedures. This shows conflicting views of the temporary and selective nature of Article 25 and simultaneously, be a basis for procedural reform. This analysis suggests both views hold merits; arbitration under Article 25 has been successful in some instances; however, its overall relevance is still uncertain. It is taken to maintain the two-tier system of WTO dispute settlement for interested parties. Lacking broader participation, formalized procedures, and certainty of law, however, its role within the multilateral system will be limited.

This paper concludes with the suggestion that in the future, the WTO members should preserve and strengthen Article 25 arbitration where necessary and reaffirm the broader objective of restoring a fully functioning Appellate Body. Sustaining both tracks will be significantly important to provide speedy, legal certainty and trust in the WTO's system of dispute settlement.

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