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Reforming WTO Dispute Settlement System: Substantive Work Needed Beyond 14th Ministerial Conference

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Abstract: The dispute settlement mechanism has been called the 'crown jewel' of the WTO, as it ensures a secure and predictable multilateral trading system. The mechanism has been under review since 1998, but without any results. Its Appellate Body has been dysfunctional since 2019. MPIA, an interim arrangement set up by some WTO members does not offer a permanent solution. The most recent draft texts for a review of the mechanism are also far from being a good basis for a negotiated outcome. Hence, in the run up to MC14 and beyond, developing countries must continue to engage in the ongoing work with the understanding that closely following the discussion and participating actively in it is necessary to protect their interests. This requires a collective voice of the Global South to call for an inclusive process for the discussions after MC14.

Keywords: International Trade, WTO, Dispute Settlement, MPIA, WTO Ministerial Conference

1. Introduction

In the Uruguay Round of trade negotiations, the United States (US) was one of the most prominent demandeurs of a dispute settlement mechanism (DSM) that is effective, timely, transparent, equitable and reasoned. The resulting mechanism captured these elements and established an automatic two-tiered binding dispute resolution mechanism with strong enforcement provisions. Later, however, the US criticised the Appellate Body (AB), the appeal stage of the mechanism, stating that it was practicing judicial overreach, including by insisting that panels follow its precedents, deciding issues not necessary to resolve the dispute, and interpreting municipal laws/action rather than treating them as factual matters.[1] Eventually, the US started blocking appointments to the AB from 2016, rendering it dysfunctional by December 2019.

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Majority of the WTO membership made various efforts[2] to address US concerns, including a draft General Council decision suggested through an informal process by New Zealand Ambassador David Walker after discussing with Members, available on the WTO website as an Annex to JOB/GC/222 dated 15 October 2019. However, there was no consensus on it due to objections by the US. In the meanwhile, WTO Members have been requesting the Dispute Settlement Body (DSB) of the WTO to initiate the selection process of AB members every month for six years now. However, the US has continued to block it. For the latest publicly available such request, see minutes of the December 2025 DSB meeting in document WT/DSB/M/507.

During the last two WTO Ministerial Conferences (MCs), trade ministers have instructed their officials to conduct discussions on Dispute Settlement (DS) reform with the view to having a fully functional dispute settlement system accessible to all Members. Although the discussion was to conclude by 2024, it did not happen. During the December 2025 meeting of the General Council (GC) of the WTO, the Facilitator for WTO reform informed that many Members believe that deeper institutional reforms of the WTO will have limited value without a functional dispute settlement system. The chairperson of GC also stated that he heard Members loud and clear that a reformed WTO is a WTO with a reformed dispute settlement mechanism. The chairperson of DSB stated that while there is broad recognition of the difficult context surrounding DS reform, many Members support the resumption of this work after MC14 when the time is right, and all Members are ready.[3]

This chapter discusses the background and current state-of-play on DS reform in the run up to MC14 and the way forward beyond it.

2. History

The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) of the World Trade Organization (WTO) lays down principles and procedures[4] for settlement of disputes, and includes an Appellate Body (AB) that hears appeals from panels, which are the first stage of adjudication. AB comprises of seven members appointed by

the WTO membership, of which three sit in a division constituted for hearing a particular appeal.

The binding dispute settlement mechanism enshrined in the DSU was aptly referred to as the 'crown jewel' of the WTO. However, signatories were aware that the new system may need to be reviewed after seeing it in practice. Therefore, along with the results of the Uruguay Round, trade ministers also invited the Ministerial Conference to complete full review of the DSU within four years and decide whether to continue, modify or terminate it. That time came and went as Members could not agree to any recommendations by the MC3 at Seattle in 1999, which in any case failed to bring any results in any areas. In MC4 at Doha in 2001, the discussion was revived by establishing a negotiating agenda on improvement and clarification of DSU as part of the Doha Development Agenda (DDA) (Box 1). Based on the proposals received

Box 1: The 12 Thematic Issues Under DDA

1. (Improving the possibility of) mutually agreed solutions,
2. (Enhancing) third party rights,
3. (Addressing procedures regarding sharing of) strictly confidential information,
4. (Addressing a gap in procedures for compliance and retaliation by) sequencing,
5. (Ensuring compliance by) post-retaliation procedures,
6. (Opening up the WTO to the public by) transparency and amicus curiae briefs,
7. (Adjusting) timeframes,
8. (Exploring the possibility of) remand,
9. (Addressing concerns regarding) panel composition,
10. (As a member-driven organisation, improving) flexibility and member control,
11. (Ensuring) effective compliance, and
12. (Addressing) developing country interests, including special and differential treatment

from Members, the negotiations were undertaken under twelve thematic areas.[5]

Even though the dispute settlement negotiations were outside the single undertaking, as the Doha Round stumbled, these negotiations also could not progress. The DSB in a Special Session continues to exist as a forum, but it is not effectively functional. In the meanwhile, since the AB became dysfunctional, the membership has been focusing on the broader foundational principles of the WTO, with an effective dispute settlement mechanism, rather than focus only on improvement and clarification of the DSU. So, during these long DDA years, positions of Members did not change.

In April 2022, the US commenced an 'interest based' rather than 'position based' discussion on DS reform outside the WTO. These discussions have gradually been formalised in the WTO by facilitators reporting them in the DSB and the GC. Eventually the Ministers recognised them as part of the efforts towards having a fully functional DSM. These discussions have resulted in two set of texts (a) the Draft Consolidated Text (hereafter, the Text) available in WTO Document JOB/GC/385 that contains textual suggestions for a Ministerial Decision on DS reform on several issues but not accessibility and special and differential treatment (S&DT) for developing countries, and the appeal/review mechanism, and (b) Progress Report of Technical Work (hereafter, the Progress Report) contained in WTO Document JOB/GC/DSR/5 that has a collection of reform proposals and some textual suggestions on these remaining issues.

Thus, DS reform has been on the table in the WTO since its inception as a standalone issue; several useful improvements and clarifications have been suggested by Members, some of them having organisation-wide acceptance. However, the issue has also been embroiled in the broader effort to rebalance issues in favour of developing countries, and to re-ignite the negotiating function of the WTO, with Members leveraging various reform issues and other demands for a balance they consider necessary for a way forward.

3. Current Draft Texts

3.1. The Process

The initial exercise by the US that began in April 2022 was largely bilateral, to elicit Members' expectations regarding the operation of the DSM, which gradually evolved into collective discussions on interests of Members. Although the discussions were not based on any mandate from the DSB, 232 specific interests expressed by Members were converted into 70 proposals. These discussions were later, from February 2023, steered by the Deputy Chief of Mission of Guatemala Ambassador Marco Molina as Facilitator, who on his own responsibility started preparing a text based on these proposals and discussions. Several Members (mostly developing countries, including the African Group, Bangladesh, Egypt, India, Indonesia, and South Africa) expressed discomfiture at the pace, participation, and inclusivity of these discussions and the summarisation of the sense of the house by the facilitator. They also expressed the view that their concerns and reservations (including on S&DT) had not been recorded in the text. Also, issues relating to appeal and accessibility were not addressed in the text except by keeping a placeholder.

Nevertheless, the seventh iteration of this Text was presented at the GC meeting held just before MC13. Post MC13, the process got formalised by the GC appointing Ambassador Usha Chandnee Dwarka-Canabady of Mauritius as Facilitator in April 2024. She focused the discussions on the two remaining issues: appeal and accessibility. The Progress Report annexed to the GC Chair's statement at the December 2024 meeting contains the results of these discussions in the form of tables containing reform ideas and observations on them. Not much has happened since then, except informal discussions organised by the DSB Chairperson.

3.2. Legal Form

The text is presented in the form of a Ministerial Decision. Those proposals in the text which can be characterised as an authoritative interpretation of existing DSU provisions by the Members can be

approved under Article IX:2 of the Marrakesh Agreement Establishing the WTO (WTO Agreement). However, several proposals in the text amount to amendments of DSU provisions. They would require a consensus[6] decision in consonance with the amendment provisions in Article X of the WTO Agreement. Still other proposals in the text may not require either an authoritative interpretation or an amendment, and could be considered as procedural improvements that can be approved by the DSB. The procedural improvements in the appeal process that may graduate from the tables in the Progress Report to a treaty text may be decided by the GC/DSB or, as the case may be, by the Appellate Body in consultation with DSB Chair and DG, WTO.

So, legitimate tools are available to legalise any reforms that Members may agree to by consensus. These reforms do not require formal acceptance by Members and can start applying immediately upon approval by the Ministerial Conference.[7]

3.3. Implications of Text and Report by the Facilitators

A Title-wise examination of the Text and the Progress Report is at Annex. The Draft Consolidated Text is a long 37-page document that elaborates in detail what would constitute the procedures for dispute settlement, primarily focusing on alternative means of dispute settlement through good offices, conciliation and mediation; elaborating panel procedures in greater detail than in the current DSU and working procedures; and some elements of built-in review of reports of the panels and their consequences on the way trade is conducted. The Progress Report is a 52-page document that deals with two elements: accessibility and cost of funding, and appeal/review mechanism. It contains a set of reform ideas, their objectives and observations gleaned from the views expressed by Members. While there is no text suggested for accessibility except a text recognising the need for accessibility and considerations for it, on appeal/review four draft texts are appended, dealing with scope and standard of review, reducing incentives to appeal and expectations of members from adjudicators. The sense that one gets by reading through the two documents is that there is a movement towards:

(a) elaborating procedures in greater detail;
(b) increasing member-control including through multiple stages where parties can take control of the flow of procedures towards a mutually acceptable outcome; and
(c) wide divergence of interests in relation to S&DT and reimbursement of litigation costs; and the need for and type of appeal mechanism required, including narrowing the scope of flexibility with the appeal adjudicators for use of principles of treaty interpretation.

3.4. A Brief Literature Review

The two documents are of recent origin; February and December 2024. Therefore, not much literature has emerged examining them in detail. However, in available literature, views vary from lack of much added value to existing provisions, procedures and practices on the one hand, to making procedures more cumbersome and making unimplementable suggestions on the other. One commentator has called the Text a mixed bag of good, ill-conceived, futile and unnecessary changes.[8] While much space is devoted in the Text to alternate dispute settlement mechanisms, it is noteworthy that not much use has been made of even the existing provisions.[9]

On the issue of appeal, addressing the US concerns is key to find a way forward. Clearly, the Walker text does not pass muster, otherwise a solution could have been found back in 2019. Literature has examples of the dilemma faced by experts who examine the role of the AB. Although the AB has strictly adhered to the requirement of interpretating treaty terms in accordance with Articles 31-33 of the Vienna Convention on Law of Treaties, there are unanswered questions on its role emanating from the treaty terms themselves. For example, the extent to which an appeal adjudicator should weigh in on the 'objective assessment' principle enshrined in Article 11 DSU that was taken from the pre-WTO days when a single stage dispute settlement mechanism prevailed. Its applicability in a two-stage mechanism may, therefore, require review.

Similarly, there is a blurring of the issues of fact and law in arriving at a resolution of the matter, thus raising questions about the competence

of appeal adjudicators to examine factual matters, particularly interpretation of municipal laws and action.[10] Further, in a critique of the Sutherland Report, a view has been expressed that substantive gap-filling by adjudicators is a cause for concern. DSU Article 3.2 provides adjudicators the mandate to 'clarify' existing provisions in the WTO agreements in accordance with customary rules of interpretation of public international law. The unanswered question is whether it gives them the authority to supplement WTO treaty provisions with other sources of international law.[11] Thus, while WTO members may wish to clarify treaty terms as per their understanding either through an authoritative interpretation or a broader DS reform, that responsibility may not be handed over to appeal adjudicators. Either way, they cannot, and should not, undermine the foundational principles on which the WTO is based.

Perhaps, it is in keeping with these thoughts that the proponents of MPIA offered a solution that retains all the foundational principles of the WTO while providing for a process to continue the appeal option in the absence of a functional AB.

4. MPIA

Initiated under the leadership of the EU when the AB became dysfunctional, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) was formally notified to the WTO in April 2020 by 47 WTO Members, counting the 27 EU Members individually, even though they contest disputes collectively. At present, it has 57 signatories. It is presented as an interim procedure for hearing appeals in the absence of a functional AB, closely following the provisions in DSU Article 25 that deals with arbitration. Its signatories agree not to pursue appeal procedures in DSU and instead to resort to MPIA arbitration. The arrangement closely follows DSU Article 17 and Rule 6 (2) of the Working Procedures for Appellate Review. The initial MPIA parties selected 10 adjudicators in 2020; three of whom have been replaced in 2025.

In a case, parties may decide to agree to invoke MPIA appeal procedures within 60 days of panel establishment by the DSB, or notify such agreement when the panel issues interim report to the parties.

Before the final panel report issue date, parties write to the panel to suspend the issuance of the report and MPIA appeal process is invoked. Three adjudicators constitute a 'Division' to address an appeal, and the collegiality among all 10 adjudicators is to be practiced similar to the 7-member AB. The award of MPIA adjudicators is final and binding on parties, and enforcement procedures follow the DSU provisions *mutatis mutandis*.

Only two cases have been decided through the MPIA procedures among the MPIA parties so far; a third was between a MPIA party and a non-party. In two ongoing disputes among MPIA parties, in one case, panel has been established but suspended, and in the other case, consultations commenced in 2021 but no Article 25 notification has been filed yet. MPIA notification were filed in eight other cases, but they got withdrawn, settled or lapsed, so ended without a MPIA appeal (Box 2).

While the MPIA is functional for its parties, it may also be noted that some of the parties like EU, Brazil and UK have erected domestic legislations/regulations to take corrective/retaliatory action against appeals into the void. EU has established an Enforcement Regulation[12], and Brazil, a law[13].The United Kingdom (UK) has a similar option available in its existing law, as amended[14]. Japan has also recommended steps to concretize countermeasures in the event of an appeal into the void[15]. Another option chosen by some WTO Members has been to avoid such unilateral action by bilaterally deciding, during the pendency of a dispute, to agree not to appeal panel decisions.[16]

Since the MPIA is an interim arrangement, it is difficult to envisage it as a permanent solution replacing the AB. Thus, even in the event of restoration of AB being unlikely in the WTO in the near future, several WTO Members may not join the MPIA and give credence to a temporary arrangement and making restoration of the AB even more difficult. Also, they may decide on a case-by-case basis whether to resort to Article 25 arbitration and use the MPIA procedures for an appeal, like Turkiye did in their dispute with the EU on the measures taken on pharmaceutical products. Turkiye used the Article 25 arbitration procedures and appointed two of the arbitrators from the MPIA pool (WT/DS583).

Box 2: Key Facts about MPIA and Its Parties

1. It provides for abandonment of the MPIA procedures in the event that the AB is revived.
2. Withdrawal from MPIA is possible simply by a notification to the DSB.
3. Third parties can participate only if the parties agree.
4. Broader member control has a diminished role as DSB does not adopt MPIA awards.
5. It is unclear whether the non-appealed recommendations of the underlying panel will have any legal effect if they are not addressed in the award.
6. It is unclear whether and what precedential or persuasive value an MPIA award has.
7. Application of provisions relating to determination of reasonable period of time, level of nullification or impairment of rights by infringing measures and other compliance related procedures in Articles 21 and 22 of DSU has been seen to be invoked in the first dispute where an MPIA award has been notified to the DSB, even though not adopted, putting into question the legal certainty of these procedures.
8. Non-MPIA parties can enter into an MPIA like agreement at any time, and there is no clarity whether non-MPIA adjudicators can also be a part of the Division. In one case, a non-MPIA party accessed the procedures in a dispute, where only two of the adjudicators were from the MPIA list, and a third was chosen from outside. This brings flexibility of operation to the system.
9. If any WTO Member joins MPIA now, it does not appear to have any recourse to select MPIA adjudicators.

The literature analysing the pros and cons of MPIA is even more scarce than that for the outputs of the DS reform discussions in the WTO. The Geneva Trade Platform[17] has a website providing the facts and procedures for MPIA appeal mechanism as well as links to some literature. The range of views on MPIA therein is instructive. On the one hand, Krzysztof Pelc,[18] Lester B. Pearson Professor International

Relations at Oxford University says that the ingenuity of MPIA consists in importing the authority of the existing agreement into an informal opt-in mechanism. On the other hand, Henry Gao of the Singapore Management University says that with its many constitutional and practical defects, MPIA would probably create more problems than it sought to remedy, with the main ones being the creation of a bad precedent of an extra-WTO appeal framework, as well as a false hope that deflates the political will among WTO Members to find a proper solution.[19]

MPIA is a result primarily of the US intransigence in restoring a functional AB. However, it stated that the MPIA incorporates and exacerbates some of the worst aspects of the Appellate Body's practices.[20] However, it is to be noted that the US was initially opposed to the use of WTO infrastructure or personnel for MPIA proceedings, but appears to have withdrawn that opposition. The MPIA arbitrators in their first ever award took a stand that appears to be deferential to the US position on the interpretation Article 17.6 (ii) of the Anti-Dumping Agreement of the WTO, but there has been criticism that it has been interpreted without either party invoking it or questioning the panel's ruling on the basis of the provision.

The MPIA arbitrators, in the second award they issued appear to have been even more innovative. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) makes it clear that intellectual property rights (IPRs) have territorial application. This means that each WTO Member grants IPRs based on their national laws, which are mandated by the agreement to follow certain minimum thresholds. TRIPS Agreement Article 1.1 starts with 'Members shall give effect to the provisions of this Agreement', which earlier WTO panels have interpreted to mean that it does not imply that it imposes obligations vis-à-vis another Member's implementation of the agreement. The MPIA arbitrators have, however, interpreted it to mean that it seeks to establish "national systems" for the effective and adequate protection of intellectual property rights in "each and every Member".

Alan Yanovich, a former Counsellor at the AB Secretariat, among others has expressed the view that the MPIA has indulged in the same

interpretative activism that the AB has been accused of by the US. Brian McGarry and Nasim Zargarinejad were prescient in concluding three years back that MPIA has carried along the alleged defects of the AB.[21] In sum, adopting the MPIA appears to be, at best, a Hobson's Choice for the WTO Members.

5. Another Option before Developing Countries

Several variables inform not only the ability but also the inclination of WTO Members to use DSU procedures to settle disputes. Political culture may inform whether a Member would resort to litigation or conciliation. The mercantilist character of trade relations can change cultural inhibitions, like China changed from its cultural primacy of mediation over litigation in general to increased litigation within the WTO. The African countries have a similar hesitation to litigate, but they also have capacity constraints as an added challenge when they wish to choose to litigate. However, even when capacity constraints are overcome through external assistance, as in the case of the Advisory Centre on WTO Law (ACWL)[22], the magnitude of the economic interests in the society and business of a country may determine the choice of conciliation over litigation. Thus, even the larger African countries like Egypt, Ghana and Nigeria have not filed a complaint under the DSU procedures, while South Africa filed its first complaint only in 2024.

At the same time, it is clear that developing country Members wanting to avail themselves of the benefits of the dispute settlement system face considerable burdens. For example, developing countries, especially the smaller ones, often do not have a sufficient number of specialized human resources who are experts in the intricacies of the substance of WTO law or the dispute settlement procedure.[23] Although the formal dispute settlement mechanism of the WTO is an essential element of the multilateral rules-based international trading system, experience of both developed and developing countries shows that litigation is not an optimal solution for addressing most trade concerns. This is evident from the fact that only a few of the trade concerns raised by Members in the WTO Committee on Trade in Goods and specific trade concerns

raised in other WTO committees do not result in formal disputes. Where such trade concerns are important from economic value or trade policy point of view or involve critical economic sectors, but may not justify investing resources in a formal trade dispute, Members may be advised to sort them out bilaterally or use alternate dispute settlement mechanisms in a non-adversarial manner without triggering the formal, adversarial and legalistic litigation process before the DSB.

This option is available in the current procedures by use of good offices, mediation and conciliation under DSU Article 5, but that has rarely been used. The reason is that as currently structured, the mechanism can be triggered only once mind is made up to launch a formal dispute.[24] The Text follows the same design, in so far as even though alternate dispute settlement procedures have been elaborated into meticulous procedures, they are expected to be invoked only after the formal request has been made to trigger the DSU procedures for litigation.

An interesting suggestion came from a group of experts at MC13 that characterised these alternate procedures as 'complementary', rather than 'alternate'.[25] They suggest hosting a Conciliation and Mediation Facility (CMF) within the WTO like the Enhanced Integrated Framework and Standards and Trade Development Facility which can be approached by Members before they formalise the dispute through a request for consultation. They suggest a large roster of seasoned trade diplomats with experience in and knowledge of the region, or subject matter experts, or eminent persons to undertake conciliation/mediation through this facility. This is a proposition worth pursuing by the membership, particularly for addressing those concern relating to access of developing countries and LDCs to the dispute procedures, where the parties would resort to conciliation rather than litigation.

6. The Way Forward for DS Reform

The Text and the Progress Report are far from a stage where they could become a good basis for a negotiated outcome on DS Reforms. Nevertheless, developing countries including India must continue to engage in the ongoing work with the understanding that closely

following the discussion and participating actively is necessary to protect their interests as the texts and reform proposals evolve into their next stages. This requires a collective voice of the Global South to call for an inclusive process for the discussions after MC14; recognition of the scarce resources in their Geneva based Missions as well as capitals and deciding meeting schedules accordingly, and giving the deserved credence to the developing country concerns in the evolving texts. Similarly, MPIA is not a permanent solution, and cannot replace a legally binding process of the kind the WTO Members have benefitted from during the last 30 years of its existence.

Endnotes

1 For a detailed account of the US concerns, see Robert E. Lighthizer (2020); Report on the Appellate Body of the WTO; available at https://ustr.gov/issue-areas/enforcement/us-views-functioning-wto-dispute-settlement-system, accessed 2 February 2026.

2 The DSU has a built-in review process through a Uruguay Round decision which would have enabled Members to address such concerns through negotiations, but the review was not concluded, including through a fresh mandate in the Doha Development Agenda. These efforts were also complicated by Members leveraging the review for the broader WTO reforms.

3 See the news on the subject on the WTO website at https://www.wto.org/english/news_e/news25_e/gc_16dec25_255_e.htm, accessed 10 February 2026.

4 The dispute procedures are a part of the DSU, contained in Annex 2 of the Marrakesh Agreement Establishing the World Trade Organization that came into effect in 1995, and are available at <wto.org/english/docs_e/legal_e/dsu_e.htm>, accessed 13 February 2026.

5 These issues are mentioned on the WTO website at https://www.wto.org/english/tratop_e/dispu_e/dispu_negs_e.htm, accessed 13 February 2026.

6 The Ministerial Conference can decide by two-thirds or three-fourths votes to amend several other agreements of the WTO, but not DSU

7 Amendments to agreements on trade in goods, TRIPS, and certain parts of GATS can take effect only after respective Members accept them as they alter rights and obligations.

8 Peter Van den Bossche (2024); The Uncertain Future of WTO Dispute Settlement; WTI Working Paper No. 2/2024.

[9] Peter Van den Bossche and Werner Zdouc (2021); The Law and Policy of the World Trade Organization: Text, Cases, and Materials; Cambridge University Press

[10] For example, see Simon Lester (2012); The Development of Standards of Appellate Review for Factual, Legal and Law Application Questions in WTO Dispute Settlement; 4(1) Trade, Law and Development, Vol. IV, No.1. See also Holger Spamann (2004); Standard of Review for World Trade Organization Panels in Trade Remedy Cases: A Critical Analysis; Journal of World Trade, 38 (3)

[11] Movsesian, Mark L., "The Sutherland Report and Dispute Settlement" (2005). Faculty Publications. 103. https://scholarship.law.stjohns.edu/faculty_publications/103

[12] Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules, <https://ec.europa.eu/commission/presscorner/detail/en/IP_21_601>, accessed 20 August 2025.

[13] Law No. 14,353/2022, which allows for the suspension of concessions and other obligations for Members that have appealed panel reports in which Brazil is a complainant to an inoperative AB. See WT/TPR/G/432 19 October 2022 p19, <wto.org/english/tratop_e/tpr_e/g432_e.pdf>, accessed 20 August 2025.

[14] UK amended the Taxation (Cross-Border Trade) Act 2018 s15 through Finance Act 2020, s 97, to allow unilateral retaliation in case a party appeals into the void against the UK, as indicated in the report on the 39th Session of the UK Parliament <https://publications.parliament.uk/pa/cm5801/cmselect/cmeuleg/229-xxxiv/22904.htm> p 2.6.

[15] Special Task Force of the Ministry of Economy, Trade and Industry on Policy Response to the Non-functioning of the WTO Appellate Body Interim Report, <meti.go.jp/english/report/pdf/0802_InterimReport.pdf>accessed 20 August 2025.

[16] An early example was in a dispute between Indonesia and the Chinese Taipei. WTO Document WT/DS490/13 dated 15 April 2019

[17] See https://wtoplurilaterals.info/plural_initiative/the-mpia/

[18] See his blog of the European Journal of International law, available at https://www.ejiltalk.org/author/kpelc/

[19] GAO, Henry (2021); A rule-based solution to the Appellate body crisis and why the MPIA would not work; Legal Issues of Economic Integration; Available at: https://ink.library.smu.edu.sg/sol_research/3279

[20] See letter dated 5 June 2020 by the US Ambassador to the WTO addressed to the WTO Director General.

[21] Brian McGarry and Nasim Zargarinejad (2023); Tracing the Powers of WTO MIPA Arbitrators; McGill Journal of Dispute Resolution, Vol. 8, No. 2

[22] It may be noted that the ACWL has advised developing countries 73 times in WTO disputes, but not a single case was from African countries; they are all from Latin American and Asian countries. See https://www.acwl.ch/wto-disputes/, accessed 19 February 2026.

[23] Training module for developing countries developed by the WTO Secretariat on dispute settlement, available at https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c11s1p1_e.htm#:~:text=At%20the%20same%20time%2C%20it,or%20the%20dispute%20settlement%20procedure., accessed 16 February 2026

[24] A formal dispute is triggered by a request for consultation (DSU Article 4), and DSU Article 5.4 provides that a complaining party in a request for consultation must allow a certain period (60 days) before triggering the next step, i.e., requesting the establishment of a panel. This shows by design these informal bilateral procedures are expected to be invoked only after a formal dispute has been initiated.

[25] See Document Accessible and Inclusive Dispute Resolution: Opertionalising the Results of MC13 through a Complementary Conciliation and Mediation Facility within the WTO, available at https://genevatradelaw.com/wp-content/uploads/2024/05/WTO-MC13-Toward-Inclusive-and-Accessible-WTO-Dispute-Resolution-1.pdf, accessed on 16 February 2026.

[26] Since placeholders have been kept in the Text for issues addressed in the Progress Report, the summary from the Progress Report has been added at those placeholders

[27] Peter Sutherland et al (2004); The Future of the WTO: Addressing Institutional Challenges in the New Millennium; WTO Publication

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Annexure

Annexure 1: Title-wise Examination of the Draft Consolidated Text and the Progress Report[26]

Title	Title Name	Title Description
I	Alternate Dispute Resolution Procedures and Arbitration	In respect of alternate dispute resolution mechanisms, the provisions relating to good offices, conciliation and mediation broadly follow the existing principles in Articles 5 of DSU and lay down elaborate procedures and timelines. However, unlike the understanding based on the sequencing of provision in the DSU, a consultation request need not precede their use. The roles of mediators and conciliators are reversed compared with what is the commonly understood role in common law practice, and while a conciliator may facilitate and assist dialogue between the parties, a mediator may also offer advice and propose solutions. It also suggests simplified arbitration proceedings pursuant to Article 25 of DSU, wherein the arbitrator shall conclude the process within 90 days, something not prescribed in the current DSU, and leaves open the question as to what happens if the deadline is missed. It also leaves open the option whether third parties shall or shall not be accepted in these proceedings.

II	Panel Proceedings	Several changes to the current rules, procedures and practices regarding the panel process have been suggested. Importantly, (i) Members are being asked to commit not to object to panel establishment in the first instance. This is not beneficial to developing country respondents as they will get less time to prepare their legal case after realising that consultations have not resulted in a compromise. (ii) Persons nominated to the Indicative List must possess significant relevant experience, have ethical standards and be a good communicator. Parties may suggest up to 30 names for a case to the DG, who may select a panel based on overlaps. Geographical spread, legal systems, and levels of development represented by the nominees are not mentioned; a point made by developing countries against the proposal. (iii) Some of the procedural practices that streamline the panel process already are being codified, such as submitting all evidence in the First Written Submission, sequential rather than simultaneous Second Written Submission, a single oral hearing rather than current two, and codifying the practice of panels to ask written questions in advance of the meeting. It is proposed to fix word- and time-limits for written and oral submissions keeping the complexity of the case in view, and similar time limits for panel report based on complexity, and admonition of erring panellists. Flexibility can be given to panels both on word and time limits and complexity, but that may take it out of the hands of the parties. Indicative thresholds may, therefore, work better. Admonition of panellists is not a good idea; it will deter honest experts from agreeing to become panellists.

III	Appeal/ Review Mechanism	This is completely missing in the Text, but contours of the various suggested solutions have become visible in the Progress Report. An elaborate Table with several issues relating to handling the appeal/review process, with or without a two-tier standing appeal mechanism like the AB, have been suggested with equally numerous observations on each of them suggesting a clear lack of any emerging consensus. Appended to the Table are four draft negotiating texts: (a) scope of review (addressing only those claims that have a material impact on implementation), (b) a higher standard of review (only egregious errors in factual matters can be appealed), (c) enhancing the interim review at panel stage, and (d) adherence to timeframes. Two things merit mention about this Title. Firstly, the differences of approaches to a resolution of the current impasse in appeal/review process are very wide and unlikely to be bridged easily. The US has made it clear even in the December 2024 DSB meeting that it was not working towards a restoration of the Appellate Body as it was (See paragraph 7.4 of WTO Document WT/ DSB/M/495) – and that the calls for the restoration of the AB undermined Members' collective efforts for reform. Even then, several Members support the DS reform discussions, including those who are co-sponsors of the proposal to restart AB selection process.
IV	Compliance	Determination of a Reasonable Period of Time (RPT) has been made subject to a political/diplomatic process by introducing consultation at Ministerial level in the absence of which the RPT will be restricted to 6 months. This is prone to pressures from stronger trading nations.

V	Guidelines for Adjudicators	This Title repeats several elements of the Walker Text, which found large acceptance among the WTO membership back in 2019 but was opposed by the US. The proposal now introduces two elements increasing member-control and restricting the ability of adjudicators to deliver complete justice: (a) unnecessary emphasis on supplementary means of interpretation (which, as per VCLT, is to be resorted to only if the good faith interpretation leaves the meaning ambiguous or obscure, or leads to manifestly absurd or unreasonable results), and (b) ignoring the legitimate expectations of WTO members for a secure and predictable multilateral trading system. These two elements may upset the fine balance in the extant rules between member-control and predictability of a legal system.
VI	Procedures to Discuss Legal Interpretation	Enabling discussion on a legal interpretation by adjudicators in the relevant Councils/Committees of the WTO, including DSB, is possible even now. This proposal adds two elements: a) it formalises a procedure for discussing technical and policy implications of the provisions interpreted in an adopted panel/appeal report in the relevant subsidiary bodies of the WTO, but without going into the specific facts in the dispute in question or implementation of the recommendations in the report, and b) it establishes an Advisory Working Group under the aegis of the DSB, without any power to relitigate disputes, but with the possibility of recommending an authoritative interpretation of the provision by Members in accordance with Article IX:2 of the Marrakesh Agreement. This new Title supports what the Report by the Consultative Board on The Future of the WTO[27] established by DG Supachai came up with to increase member-control.

VII	Secretariat Support	The Title elaborates that Secretariat staff must have domain expertise, which is understandable and something that is already the case, as it is they, who bring in the legal/domain expertise to support the work of panellists. However, an element is added that the staff must obtain written instructions from the adjudicators if they draft any part of the report. In any case, the conclusion of the report must be drafted by the adjudicators themselves; staff can only provide editorial support. An additional restriction on the staff is not to provide any 'issue papers' to the adjudicators before the parties' submissions are received. Further details add some restrictions on the adjudicators relying too much on the staff, and curiously, the staff shall be responsive parties' submissions (in addition to the requests of the adjudicators).
VIII	Transparency	Suggested transparency provisions include open access to panel/appeal timelines, parties' submissions and oral hearings through the Secretariat. These suggestions amount to an amendment to the existing DSU provisions and hence cannot be implemented through a Ministerial Decision. Also, they are contrary to the stated positions of most of the developing country Members. While suggestions regarding transparency where parties agree may be acceptable, the rest, particularly giving the right to the Secretariat to release statements and hearings could be called into question.
IX	Accessibility with respect to Technical Assistance, Capacity Building and Legal Advice	S&DT provisions suggested in the Text are limited to increasing training programmes and experts for legal advice. The language is also best endeavour and subject to further discussion, and has no mention of litigation costs, a key demand of developing countries. The Progress Report adds an Annex elaborating procedures for widening the training bases and better selection criteria for increasing participants, but does not address the basic issue of converting best endeavour language into concrete, meaning full language. On litigation costs, the Progress Report has two proposals: a percentage of WTO General Budget to be earmarked, and use the Fish Fund model.

X	Accountability Mechanism	The accountability mechanism suggested in the Text is a review process to discuss to what extent the suggested reforms have worked, and which further decisions by WTO Members may address any reforms that have not worked. However, experience from the DSU review in the Uruguay Round built-in-agenda suggests that these kinds of decisions get connected with the larger WTO reforms and Members seek to leverage them for a solution beneficial to them in totality. Ultimately, it may boil down to agreeing on a slate of wider WTO reforms through the single undertaking process.

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