COLUMN:
DEVELOPMENTS AROUND THE WTO APPELLATE BODY

1. BACKGROUND

The WTO's Appellate Body is a standing body established by the Dispute Settlement Body (DSB) "that hears appeals from panel cases" and is "composed of seven persons, three of whom serve on any one case" (Article 17.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)). However, members of the Appellate Body have finished their terms of office consecutively since June 2017, and there was only one member left as of December 2019, meaning the Appellate Body has been unable to hear appeals since then. Thereafter, the last remaining member's term ended in December 2020, leaving no members on the Appellate Body. Normally, the selection of a successor Appellate Body member is conducted before the end of the term of the leaving Appellate Body member. However, to date, the consensus required for the commencement of the selection process has yet to be reached at the DSB.

2. ISSUES POINTED OUT BY THE UNITED STATES ABOUT THE APPELLATE BODY

In "The President's Trade Policy Agenda" announced in March 2018, the United States stated that "[t]he most significant area of concern has been panels and the Appellate Body adding to or diminishing rights and obligations [of the WTO Members] under the WTO Agreement" and that "[i]t has been the longstanding position of the United States that panels and the Appellate Body are required to apply the rules of the WTO agreements in a manner that adheres strictly to the text of those agreements, as negotiated and agreed by its Members." The United States raised the following five points as specific examples of concerns: (1) disregard for the 90-day deadline for deciding appeals; (2) continued service by persons who are no longer Appellate Body members; (3) issuing of advisory opinions on issues not necessary to resolve a dispute; (4) Appellate Body review of a Member's domestic (municipal) law; and (5) claims by the Appellate Body that its reports are entitled to be treated as precedent (for details, See pages 1-2 of the Column: Issues Concerning The WTO Appellate Body in the 2024 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-).

Furthermore, the United States Trade Representative (USTR) published the "Report on the Appellate Body of the World Trade Organization" (174 pages in total) on February 11, 2020 and raised cases of the Appellate Body overstepping its authority in addition to the five points mentioned above: (6) failing to make the recommendation required in instances where a measure has expired; (7) overstepping its authority by opining on matters within the authority of other WTO bodies; and (8) acting inconsistently with the exclusive authority of the Ministerial Conference and General Council to make authoritative interpretations of the WTO Agreements. The report asserted that these cases of the Appellate Body overstepping its authority have resulted in the Appellate Body erroneously reading into the rights and obligations to which Members never agreed, narrowing Members' legitimate policy space, and subsequently lead to favor non-market economies. Specifically, the report provided examples of erroneous interpretation, such as the interpretation of the term "public body" (Article 1.1(a)(1) of the SCM Agreement) and zeroing (Article 2 of the AD Agreement) (for details, See pages 2-3 of the Column: Issues Concerning The WTO Appellate Body in the 2024 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-). Based on these, the USTR asserted that the Appellate Body's overstepping of its authority has undermined not only the WTO's dispute settlement system, but the effectiveness and functioning of the WTO more generally and that lasting and effective reform of the WTO dispute settlement system requires all Members to come to

terms with the failings of the Appellate Body.[1]

3. EFFORTS OF THE INDIVIDUAL MEMBERS

(1) THE WALKER PROCESS

Based on the issues raised under items (1) through (5) in Section 2 above, since assuming the position of facilitator in January 2019, Ambassador Walker of New Zealand (DSB Chair) has assisted efforts to find a workable solution to improving the functioning of the Appellate Body and to avoid an impasse of the Appellate Body, and has held informal meetings with several Members. A total of 12 proposals were submitted by the Members through this process.

At the General Council meetings held in February, May and July 2019, Ambassador Walker reported on the progress of the discussions so far, and he also made a proposal on matters for resolution, including the following matters, at the General Council meetings held in October and December of the same year: (i) 90-day deadline; (ii) scope of the Appellate Body review; (iii) continued service by persons who are no longer Appellate Body members; (iv) issuing advisory opinions on issues not necessary to resolve a dispute; (v) precedential value; (vi) overreach; and (vii) dialogue between the Appellate Body and the Members (for details, See pages 487-488 of the 2024 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-).

A great majority of the Members, including Japan, expressed their support for the decision of the General Council on Ambassador Walker's reform proposal and for resuming the selection process of Appellate Body members at the General Council. The United States, however, did not support the draft decisions, stating that there had been no discussions as to "why the Appellate Body has deviated from the rules" and on "the need to consider how to ensure that the Appellate Body will follow the rules," and the reform proposal as above was not adopted.

(2) WTO'S 12TH MINISTERIAL CONFERENCE (MC 12)

At the WTO's 12th Ministerial Conference (MC 12) held in June 2022, Members, including the United States, agreed to "commit to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024."

(3) THE INFORMAL PROCESS

In April 2022, the United States set up a forum for informal discussions among WTO Members on dispute settlement reform (the "DS Reform"). In the process, the WTO Members identified their interest related to the DS Reform, and a total of 230 or more interests were identified.

In February 2023, a new forum for informal discussions (the "Informal Process") was established, to be facilitated by Marco Molina, then deputy permanent representative of Guatemala, to move the discussion towards a more solution-oriented discussion based on the interests identified by the Members. From March 2023 to January 2024, the facilitator reported regularly to the DSB on the progress of the discussions in the Informal Process.

At the special meeting of the General Council held in February 2024, the facilitator reported to the DSB the Consolidated Text of over 40 pages summarizing the results of the discussions in the Informal Process. The Consolidated Text was drafted in the form of a proposal for Ministerial Conference decision

[1] Most recently, the USTR, in its "2024 Annual Report" and "World Trade Organization at Thirty report" published in March 2025, has asserted once again that both the panels and the Appellate Body have undermined U.S. interests and sovereignty by adding to or diminishing rights (of Members) stipulated in WTO agreements.

of texts concerning dispute settlement procedures, but was not resolved at WTO's 13th Ministerial Conference (MC 13), and was published as an attachment to the report of the DSB Chair and the facilitator at the above special meeting of the General Council.[2]The Consolidated Text addressed various discussion points (such as panel procedures, accessibility, etc.) that were not included in the United States' criticism on the Appellate Body or the proposal for a General Council resolution in the Walker Process. However, with respect to appeal/review, due to the wide divergence in opinions between Members, no text was drafted and the Consolidated Text merely states that work is in progress. The main points of the Consolidated Text are as follows:

Alternative Dispute Resolution Procedures (ADR)[3]

Model procedural rules and other rules are provided to promote the active use of good office, conciliation, mediation, and arbitration.

Panel Proceedings[4]

Rules to ensure the quality and diversity of the panelists, to streamline panel process, and to impose limits on the volume of the parties' submissions are provided.

Appeal/Review Mechanism[5]

* A heading titled "Appeal/Review Mechanism" was included, but the text only states "Work in Progress".

Compliance[6]

Provisions are provided that mandate or encourage consultation or ADR in compliance proceedings following the circulation and adoption of reports, and shortening of the compliance period.

Guidelines for Adjudicators[7]

Provisions regarding methods for treaty interpretation, focusing on what is necessary to resolve the dispute, and denying the precedential value of past reports are provided.

Procedures to Discuss Legal Interpretations[8]

Procedures to provide opportunities for Members to discuss and review legal interpretations examined by adjudicators are provided.

Secretariat Support[9]

Provisions are provided that require adjudicators to draft the conclusion sections of their rulings by themselves (rather than relying on the Secretariat) and that require the Secretariat's support for drafting other sections to be guided by written instructions from the adjudicators.

Transparency[10]

Provisions are provided that make written submissions and hearings publicly available (in principle,

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[2] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/GC/385.pdf&Open=True

[3] See Title I starting from page 8 of the Consolidated Text (fn.3).

[4] See Title II starting from page 20 of the Consolidated Text (fn.3).

[5] See Title III starting from page 29 of the Consolidated Text (fn.3).

[6] See Title IV starting from page 30 of the Consolidated Text (fn.3).

[7] See Title V starting from page 31 of the Consolidated Text (fn.3).

[8] See Title VI starting from page 32 of the Consolidated Text (fn.3).

[9] See Title VII starting from page 34 of the Consolidated Text (fn.3).

[10] See Title VIII starting from page 35 of the Consolidated Text (fn.3).

after a certain period following the circulation of the reports).

Accessibility (making the dispute settlement system more accessible)[11]

Provisions are made to enhance capacity building for developing Members and LDCs to use the dispute settlement system (such as training programs and internships) and to consider the possibility of establishing funds for service fees (such as legal fees pertaining to file for and proceed with dispute settlement procedures).

Accountability Mechanism[12]

Provisions are made to provide an opportunity to review the operation of the elements of the DS Reform (holding a DSB Meeting at the level of Head of Delegation every two years).

In response to this Consolidated Text, in February 2024, India, Indonesia, Egypt, Bangladesh and South Africa expressed concern that excessive changes were proposed in the Informal Process and submitted to the WTO the document calling for an immediate commencement of the formal discussions on DS Reform[13].

(4) WTO'S 13TH MINISTERIAL CONFERENCE (MC 13)

At the WTO's 13th Ministerial Conference (MC 13) held in February 2024, the following ministerial decision was announced on DS Reform:

- Recalling [the Ministers'] commitment made at [the 12th Ministerial Conference (MC12)] to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024, [the Ministers] take note of the work done thus far.
- [The Ministers] recognize the progress made through this work as a valuable contribution to fulfilling [the Ministers'] commitment. [The Ministers] welcome all submissions from Members that help advance [the Ministers'] work.
- [The Ministers] instruct officials to accelerate discussions in an inclusive and transparent manner, build on the progress already made, and work on unresolved issues regarding appeal/review and accessibility to achieve the objective by 2024 as [the Ministers] set forth at MC12.

(5) THE FORMAL PROCESS

In April 2024, based on the ministerial decision adopted at WTO's 13th Ministerial Conference (MC 13) mentioned above, the formal process was established to conduct discussions in an inclusive and transparent manner that allows all Members to participate (the "Formal Process"). The facilitator for this process was then Ambassador Usha Chandnee Dwarka-Canabady of Mauritius. In May 2024, the facilitator selected co-convenors to lead technical meetings at the working level, in accordance with the Members' vote. From May to December of 2024, a total of approximately 170 hours of discussions were held.

The results of the discussions in the Formal Process were reported by the Chairperson of the General Council at the General Council meeting in December 2024. It stated that while the DS reform was not realized by the end of 2024, draft texts were prepared for topics on which a trend toward convergence among the Members was observed, and tables summarizing the Members' opinions were compiled for

[11] See Title IX starting from page 37 of the Consolidated Text (fn.3).

[12] See Title X starting from page 38 of the Consolidated Text (fn.3).

[13] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/DSB/8.pdf&Open=True

topics on which a trend toward convergence was not observed, with respect to each of Appeals/Review and Accessibility. The draft texts and the tables were published as attachments to the Report of the Chairperson of the General Council[14] and their key details are as below.

Regarding the approach to discussions beyond 2025, the Chairperson of the General Council is expected to hold individual consultations with each Member for further consideration.

Appeal/Review

- As the discussions were gradually converging, provisional drafts were created for the following four topics.[15]

(i) Limit the scope of appeal/review to claims that have a material impact on the implementation obligations of the respondent;

(ii) Limit the scope of appeal/review of factual errors to egregious errors;

(iii) Limit the scope of appeal/review of factual errors to those that were requested to be reviewed at the interim review stage; and

(iv) Set the duration of the appeal proceedings up to 90 days, as a general rule

- As for other topics, since the trend toward convergence was not observed, reform ideas and opinions on these ideas submitted by Members were compiled in a table format.[16] Notably, for key issues that lays out in the foundation of the appeal/review system (such as the permanency of the appeal/review adjudicative body[17], the automatic access to appeals[18], and standard of review[19]), significant differences in opinions among Members remain, necessitating continued discussions. Note that the majority of the Members prefer to maintain the key features of the current system.

Accessibility

- After hearing the opinions of the Members, a provisional draft was created based on the relevant sections of the Consolidated Text regarding capacity building and technical assistance[20] (the main additional points are recognition of the special needs of developing and least-developed country Members and instruction to the Secretariat to undertake additional coordination activities and support, etc.).
- With respect to "Costs and Funding" (proposal of a fund for litigation costs, etc. and reimbursement of litigation costs), a table has been created[21] and discussions are ongoing, while there have been many negative opinions.

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[14] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/GCDSR/5.pdf&Open=True

[15] Annexes 1-4 under pages 45-49 of the Report of Chairperson of the General Council (fn. 14). The drafts are stated as "provisional" because the Members have not yet agreed on their content and they are still under negotiation. The beginning of the Appeal/Review table (page 19 of the Report) states that "[*t]he reform ideas that have been moved to drafting are those that, at this stage, show the most potential in terms of meeting the interests and concerns of Members in combination with other reform ideas. This should not be read as implying that consensus has been reached on any particular reform idea or that these reform ideas are necessarily exhaustive.*"

[16] Report of Chairperson of the General Council (fn. 14), pages 19-44

[17] See Report of Chairperson of the General Council (fn. 14), "C) Form of the mechanism", starting from page 26.

[18] See Report of Chairperson of the General Council (fn. 14), "F) Access to the mechanism", starting from page 43.

[19] See Report of Chairperson of the General Council (fn. 14), "B) Standard of review", pages 23-24 (where the Element is "Standard of review")

[20] See Report of Chairperson of the General Council (fn. 14), pages 8-10

[21] See Report of Chairperson of the General Council (Footnote 14), pages 11-16

"Works Done Thus Far" (the work product of the Informal Process)

- Regarding the Consolidated Text drafted during the Informal Process, information sessions were held within the Formal Process for all Members where a Q&A session was conducted, and opinions and new proposals from Members were presented.[22]

4. REACTIONS OF MEMBERS DURING THE IMPASSE OF THE APPELLATE BODY

(1) APPEALS INTO THE VOID AND STATUS OF USE OF THE DISPUTE SETTLEMENT SYSTEM BY MEMBERS

Since the Appellate Body was left with only one member and became unable to conduct hearings on December 10, 2019, appeals to the non-functioning Appellate Body ("Appeals into the Void") have been filed in a total of 26 cases until the end of March 2025. Among these, two cases were subsequently resolved through agreements between the parties, leading to the withdrawal of appeals or the termination of the proceedings. However, the appellate procedures for the remaining cases remain suspended. Furthermore, as of the end of March 2025, there are seven cases that were appealed prior to December 10, 2019, and remain unresolved due to the subsequent suspension of the Appellate Body's functions.

Under these circumstances, as shown in the table below, a comparison of the five-year periods from 2015 to 2019 and from 2020 to 2024 reveals changes in how Members have approached the dispute settlement system.

For example, the number of consultation requests significantly decreased from a total of 105 between 2015 and 2019 to 38 between 2020 and 2024. Similarly, the number of disputes covered by panels established dropped from 77 to 27. This demonstrates a notable decline in the overall use of the dispute settlement system.

On the other hand, the number of disputes resolved through MAS, etc.[23] increased from 11 to 20 during the 2020 to 2024 period. Additionally, while the number of disputes covered by panel reports adopted decreased from 44 to 13, it is worth noting that there are still a certain number of cases where panel reports were adopted even under the circumstances where it is possible to appeal into the void. Furthermore, as a new development that did not occur between 2015 and 2019, two arbitrations under Article 25 of the DSU were conducted in 2022, resulting in arbitration awards (through an MPIA appeal arbitration or an appeal arbitration based on MPIA procedures, as discussed below). These facts suggest that despite the impasse of the Appellate Body, Members continued to utilize the dispute settlement system while exploring alternative methods other than appealing into the void to definitely resolve disputes.[24]

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[22] See Report of Chairperson of the General Council (Footnote 14), pages 53-55

[23] In this column, "MAS, etc." refers to mutually agreed solutions, withdrawals, terminations and lapses of authority for establishment of the panel (Article 12.12 of DSU).

[24] Additionally, there have been new developments, such as consultations between the parties involved with the DSB Chairperson as the alternative dispute resolution (ADR) mechanism. These consultations took place in a case where the Appellate Body ceased functioning after the case was appealed (e.g., DS371 *Thailand -- Cigarettes*) and in a case where an appeal into the void was filed (e.g., DS578 *Morocco -- Definitive AD Measures on Exercise Books (Tunisia)*). For a more detailed account of both cases, See Tomohiko Kobayashi, "The Function of Non-Binding Alternative Dispute Resolution (ADR) Procedures in the WTO Dispute Settlement System: Focusing on Implementation During the GATT Era", *Financial Review*, Issue No. 1 of 2024, Series No. 155 (Ministry of Finance, Policy Research Institute, February 2024), p. 191.

Table: Comparison of Numbers in 2015-2019 and 2020-2024

	2015-2019	2020-2024
Requests for consultations	105	38
Disputes where a panel was established	77	27
Disputes where a panel report was adopted	44	13
Disputes where MAS, etc. [23] were made	11	20

* Created by METI based on data published by WTO[25].

* Excludes consultation requests/panel procedures in compliance procedures.

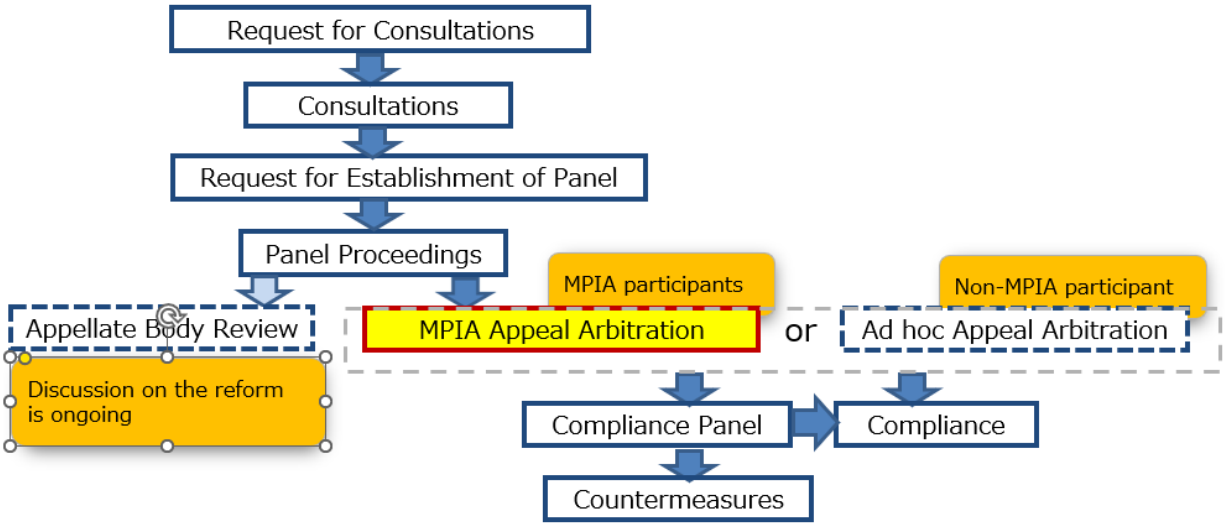
(2) MULTI-PARTY INTERIM APPEAL ARBITRATION ARRANGEMENT (MPIA)

(i) Outline and Background

Some Members, including the European Union, launched the Multi-Party Interim Appeal Arbitration Arrangement ("MPIA") in April 2020, and notified the DSB of the same. The MPIA is a gentlemen's agreement which sets forth that, only for the period until the Appellate Body becomes fully functioning, disputes between participating Members will be resolved by arbitration rather than by appeal to the non-functioning Appellate Body when a participating Member has an objection to the panel's decision. It is necessary to execute an arbitration agreement for each case with respect to disputes between participating Members and notify the DSB of the same.

As of the end of March 2025, there were 27 participating countries and regions (54 countries and regions including EU member states): Japan, Australia, Benin, Brazil, Canada, China, Chile, Colombia, Costa Rica, Ecuador, the European Union, Guatemala, Hong Kong, Iceland, Macau, Mexico, Montenegro, New Zealand, Nicaragua, Norway, Pakistan, Peru, Philippines (participated in May 2024), Singapore, Switzerland, Ukraine and Uruguay.

Figure : Flow of dispute settlement procedures while the Appellate Body is not functioning



(ii) Utilization of MPIA

As of the end of March 2025, there have been thirteen cases in which the parties have agreed to use the MPIA arbitration or arbitration based on MPIA procedures (five cases where proceedings have been closed through MAS, etc.[23], four cases where the panel report was adopted, two cases where panel

[25] https://www.wto.org/english/tratop_e/dispu_e/numbers_of_disputes_by_stage_e.xlsx

proceedings are pending, and two cases underwent appeal arbitration where an arbitral award was issued as described below). Of these cases, an arbitral award was issued for the DS591 case below in December 2022. In addition, although not the MPIA arbitration *per se*, an arbitration was conducted between the EU and Turkey using the procedural rules based on the MPIA procedures, and an arbitral award was issued in July 2022 (DS583 below). The outline of each case is as follows.

DS583 (*Turkey -- Pharmaceutical Products*) drew attention as the first case to use the arbitration proceedings under Article 25 of the DSU as an appeal process. Since Turkey, the appellant, was not an MPIA participant, arbitration proceedings were developed based on the MPIA. The arbitrators consisted of two arbitrators chosen from the pool of ten MPIA arbitrators and one chosen from among the former Appellate Body members. At the discretion of the arbitrators, in order to comply with the 90-day time-period, instructions were given regarding the maximum number of words in the submissions, the number of oral arguments and the time limit in the oral statements. The questions to be discussed at oral hearings were also sent in advance to the parties in dispute and to the third-party Members.[26]

In DS591 (*Colombia -- Frozen Fries*), which is the first MPIA arbitration case, since Colombia, the appellant, limited its claims in the appeal to four points, the arbitral award was issued within 90 days (76 days) after the notice of appeal. As a way of making the proceedings more efficient, guidelines were given regarding the maximum number of words in the submissions, as in the case of DS583, and a pre-hearing (held via virtual means) was conducted for the first time in an attempt to clarify the parties' interests to the arbitral tribunal before the oral arguments.[27]

(iii) Cases that were resolved without going through an appeal arbitration after an arbitration agreement was executed

As mentioned above, of the thirteen cases in which both parties agreed to use MPIA arbitration or arbitration based on MPIA, nine cases were resolved without undergoing appeal arbitration (five cases were resolved through MAS, etc.[23], and four cases where a panel report was adopted).

For example, regarding the case of DS601 (*China -- AD on Stainless Steel (Japan)*; See Part I "Anti-Dumping Measures" under Chapter 1 "China"), where Japan was the complainant and China was the respondent, Japan joined the MPIA in March 2023, approximately a year and half after the panel was established in September 2021, and in April 2023, the parties executed an appeal arbitration agreement. Subsequently, in June 2023, the panel issued a report finding China's measures to be inconsistent with WTO agreements. China did not seek appeal arbitration and agreed to adopt the panel report in July 2023 and eventually, withdrew the relevant measure in July 2024. This case demonstrates that concluding the MPIA arbitration agreement and winning in the panel process played a crucial role in resolving the dispute.[28]

DS598 (*China -- AD/CVD on Barley (Australia)*) and DS602 (*China -- AD/CVD on Wine (Australia)*), where Australia was the complainant and China the respondent, were the disputes over the measures

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[26] For details of this arbitral award, See Kunio Miyaoka, "Turkey- Pharmaceutical Products LCR", *Research Report on 2022 WTO Panel and Appellate Body Report* (https://www.meti.go.jp/policy/trade_policy/wto/3_dispute_settlement/33_panel_kenkyukai/2022/4_DS583.pdf).

[27] For details of this arbitral award, See Naoki Iwatsuki, "Columbia- Anti-Dumping Duties on Frozen Fries", *Research Report on 2023 WTO Panel Appellate Body Report* (https://www.meti.go.jp/policy/trade_policy/wto/3_dispute_settlement/33_panel_kenkyukai/6_DS591.pdf).

[28] As stated in Part I "Anti-Dumping Measures" under Chapter 1 "China" of this report, China's AD measures targeted not only Japanese stainless steel products, but also those from the EU, Indonesia, and South Korea. However, in the sunset review conducted in July 2024, only Japanese stainless steel products were excluded from the review and had the measures revoked.

suspected of economic coercion (for details, See page 3 of the Column: Cooperation among Like-minded Countries on Economic Coercion―Recent Developments― in the 2024 Report on Compliance by Major Trading Partners with Trade Agreements - WTO, FTA/EPA and IIA-). However, since both parties were MPIA participants, arbitration agreements were reached in July 2021 (DS598) and December 2021 (DS602). Subsequently, mutually agreed solutions were reached in August 2023 (DS598) and March 2024 (DS602), which were notified to the DSB. These cases also demonstrate that using the dispute settlement system and concluding the MPIA arbitration agreements contributed to resolving the disputes.

Furthermore, in the case of DS595 (*EU -- Safeguard Measures on Steel (Turkey)*), where Turkey was the complainant and the EU was the respondent, an arbitration agreement using procedural rules based on MPIA was reached in March 2022 (simultaneously with DS583 above). The panel report, circulated in April 2022, was adopted as is in May 2022. This case shows that even an ad hoc appellate arbitration agreement, not necessarily an agreement based on the MPIA *per se*, can play an important role in resolving disputes, as the MPIA did in DS601.

Considering these examples, this can be concluded: a consultation request or an establishment of panel themselves can put pressure on the responding Member to correct its measures; and even when an appeal arbitration is not actually conducted, the arbitration agreement itself can serve as a functional tool to facilitate dispute resolution.

(3) Legislation for Countermeasures against Appeals into the Void

(A) Efforts by the EU

The European Union announced a proposal for an amendment of the Regulation concerning the exercise of the European Union's rights for the application and enforcement of international trade rules in December 2019 in response to the impasse of the Appellate Body. Prior to the amendment to the EU Regulation, in order for the European Union to take countermeasures on trade, it had to complete the WTO dispute settlement procedures, including the Appellate Body proceedings. If, however, the opposite party appeals a panel report during the period in which the Appellate Body is not functioning, the party may be able to avoid receiving, and hence may be able to evade, binding recommendations. Therefore, the amendment to the EU Regulation was conducted to enable the European Union to take countermeasures in situations where the opposite party not participating in the MPIA is to avoid binding recommendations through the WTO dispute settlement (including the situation where the party does not agree to the recourse to an interim appeal arbitration arrangement). In February 2021, the amendment was enacted after a resolution of the European Parliament and of the European Council (EU Regulation 2021/167 (amending EU Regulation 2014/654)).

(B) Efforts by Brazil

In January 2022, Brazil also enacted an interim law aimed at taking countermeasures, as was the case with the amendment of the EU Regulation. Under this interim law, if the opposite party not participating in the MPIA does not agree to hold negotiations and files an Appeal into the Void, Brazil is able to take countermeasures 60 days after Brazil notifies such party of its intention to take such countermeasures. This interim law was subsequently approved by the Congress in May 2022 and became a permanent law.

5. Efforts by the Japanese government

In response to the concerns raised by the United States, Japan submitted a joint proposal together with Australia and Chile in May 2019, which included proposals such as: "[The Members] confirm that [the Appellate Body] shall (not review the panel's fact-finding, but shall) review issues of law," "[The Members] confirm that [recommendations and rulings of the DSB] cannot add to or diminish the rights

and obligations of Members," and "[The Members] confirm that [an interpretation by the Appellate Body of any WTO provision] does not constitute a binding precedent" with regard to a decision of the Appellate Body. Ambassador Walker's reform proposal (see 3 (1) above) was prepared based on the 12 proposals in total made by Members, including the Japan-Australia-Chile joint proposal.

The Japanese government has also committed itself to the target agreed upon at the WTO's 12th Ministerial Conference (MC 12) held in June 2022 (to "commit to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024"). Japan has also participated in and, contributed to the discussions initiated by the United States in April 2022 and the Informal Process launched in February 2023 by making various statements and proposals.

At the WTO's 13th Ministerial Conference (MC 13) held in February 2024, Mr. Kozuki, State Minister of Economy, Trade and Industry of Japan, stated that it is necessary to work towards resolving the remaining issues, including the treatment of two-tier system, in order to restore the dispute settlement function by 2024 while using the progress made so far as the basis for future discussions, and that the political will to make efforts towards the prompt and definitive resolutions of disputes until the dispute settlement function is fully restored is important. Japan has also participated in the Formal Process that began in April 2024 and has continued to contribute to the discussions.

At the same time, as an interim measure until the dispute settlement function is fully restored, on March 10, 2023, the Japanese Cabinet approved Japan's participation in the MPIA, and Japan notified the DSB to that effect. As described above, in DS601 in which an arbitration agreement was reached in April 2023, the panel report was adopted and the measures at issue were successfully withdrawn, thus resolving the dispute in a manner that alleviated Japan's concerns.

6. FUTURE CHALLENGES

The WTO dispute settlement procedure is a core pillar of the WTO that supports multilateral free-trade systems through resolving disputes between the Members. However, the Appellate Body, the final tier of review, has not had the quorum necessary for appellate reviews, which is a situation the WTO rules did not anticipate.

Since panel reports, if appealed, will be considered for adoption by the DSB only after completion of the appeal (see Article 16.4 of the DSU), the losing party would, by appealing panel reports, be able to block the DSB recommendations, thereby preventing definitive resolutions of disputes.

In order to achieve an early recovery of the functioning Appellate Body and to have the dispute settlement mechanism function as it should, all Members need to proactively participate in discussions toward a long-lasting solution. Japan has also been actively engaged in discussions, including the submission of proposals, and should continue to make efforts to reform the WTO dispute settlement system and contribute to seeking a solution to this problem. Furthermore, as interim measures until the dispute resolution function is restored, it is important to work on expanding the number of MPIA participants and to endeavor to resolve individual disputes using the various means provided under the DSU, such as MPIA arbitration, ad hoc arbitration under Article 25 of the DSU, consultations aimed at MAS, etc.[23] and the adoption of panel reports.