DOI: 10.51634/2307-5201_2025_1_20
УДК 341:339.9
ГРНТИ 10.87.79

ADVANTAGES, RISKS, AND PROSPECTS OF KAZAKHSTAN'S ACCESSION TO THE MULTI-PARTY INTERIM APPEAL ARBITRATION ARRANGEMENT (MPIA)

L.P. SAYENKO,
2nd year Master's degree student educational programme 7M04212 - 'International Law' Maqsut Narikbayev University (Kazakhstan, Astana)
e-mail: l_sayenko@kazguu.kz

The paralysis of the Appellate Body has disrupted the appellate review process in Word Trade Organization (WTO) dispute settlement system, undermining the ability of the members to resolve trade disputes. In response, some members introduced appellate arbitration through the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) in 2020. Given Kazakhstan's participation in the WTO, this article *aims* to examine Kazakhstan's approach to the Appellate Body dysfunction and evaluate the procedural features, advantages, and limitations of appellate arbitration and its implications for Kazakhstan. To achieve this, the study employs general scientific, dogmatic, statistical, and legal interpretation methods to assess Kazakhstan's role in WTO dispute settlement and its potential engagement with the MPIA. The study focuses on Kazakhstan's stance on international trade disputes, particularly its engagement with the WTO's dispute settlement mechanism as a *subject*. As a key aspect of its *novelty*, this article offers a comprehensive analysis of Kazakhstan's position regarding the MPIA, emphasizing underexplored factors, considering its trade partnerships, historical participation in disputes, and broader economic strategy within the WTO framework.

The *conclusion* is that, while appellate arbitration offers a pathway to resolve disputes and enhance fairness in the WTO system, the analysis suggests that Kazakhstan has stronger reasons to refrain from the MPIA membership. Key factors include the absence of Kazakhstan's major trading partners – such as Russia and China – among the MPIA members and Kazakhstan's 'passive role' in WTO disputes, mainly presented as a third party. Additionally, Kazakhstan's transition out of 'special and differential treatment' eligibility diminishes the practical benefits of MPIA membership. Instead, the article argues that Kazakhstan could adopt a strategic approach by joining ad hoc appellate agreements only when the risk of being involved as a party to the dispute occurs, thereby protecting its interests.

Keywords: WTO, Appellate Body, dispute settlement, MPIA, international trade, reform, trade stability.

Introduction

For nearly a decade, the Republic of Kazakhstan has been actively navigating the complexities of international trade as a member of the World Trade Organization ('WTO'). Among the key challenges faced is ensuring effective participation in the WTO's dispute settlement mechanism, particularly regarding access to appellate review. This issue has become increasingly pronounced following the paralysis of the WTO Appellate Body – widely regarded as the "crown jewel" of the organization – since 10 December 2019 [2].

In response to this crisis, some WTO members introduced an alternative mechanism in 2020: appellate arbitration under the Multi-Party Interim Appeal Arbitration Arrangement ('MPIA') [2]. After the clash of the Appellate Body the European Community including Canada [3] and Norway [4], introduced the MPIA or appellate arbitration as a first aid to restore legal dispute resolution as a guarantee for international trade flow. This mechanism was designed as a temporary solution to provide appellate review for disputes among consenting WTO members, thereby addressing the gap left by the non-functional Appellate Body.

The MPIA, highly effective yet far from perfect, is based on Article 25 of the Understanding on Rules and Procedures Governing the Settlement of Disputes [2]. Article 25 provides parties with the option of resorting to alternative dispute resolution mechanisms through agreed procedures, including appeals. Previously, arbitration existed as an alternative to panel proceedings, and disputing parties could resort to it at any stage of the dispute. However, appellate arbitration represents a new practice for countries.

The MPIA marks a significant departure from the traditional WTO dispute resolution process. Under this agreement, participating countries follow a two-step procedure: first, they engage in arbitration to resolve the dispute at the appellate level, and second, they agree to comply with the decision of the arbitral panel [2]. The mechanism is temporary and will remain in effect until a long-term solution to the Appellate Body crisis is found. While the MPIA is not a permanent solution, it reflects the commitment of some WTO members to uphold the principles of international trade and resolve disputes within a rules-based system, even in the face of unprecedented challenges.

The MPIA, which was created as an 'emergency remedy', did not become a pillar for WTO crown jewellery. The participating Members, currently 54 out of the 164 WTO Members [13], stated that they intend to use arbitration under Article 25 of the DSU 'as long as the Appellate Body is not able to hear appeals of panel reports in disputes among them due to an insufficient number of Appellate Body members'. This means that the MPIA will function until the Appellate Body remains dysfunctional.

During the 13th Ministerial Conference WTO Members agreed to come to a solution by the end of 2024. However, no agreement was reached by that deadline and the MPIA remains in force. Although the interim decision was not universally well accepted by all WTO members and experts, the system functioned as intended: WTO members have an option to appeal the panel report.

Despite the operationalisation of appellate arbitration and its issuance of initial decisions, the Republic of Kazakhstan has yet to declare its position on joining this initiative. As a member state with growing involvement in international trade, Kazakhstan's decision on whether to engage with this alternative framework is of considerable significance. The choice will reflect its broader strategy in navigating the evolving landscape of global trade governance and safeguarding its national interests within the WTO framework. Nevertheless, the question remains as whether the rest WTO Members, including Kazakhstan, have benefit of joining the MPIA.

1 Prospects for Restoring the Functionality of the WTO Appellate Body

Like any initiative within the international community funded by the budgets of sovereign states, the WTO Appellate Body has not escaped criticism. Established in 1995 and initially regarded as the "crown jewel" of the WTO [1, p.2], the Appellate Body interrupted the automatic issuance of reports and introduced a mechanism for correcting legal errors in the interpretation and application of WTO Agreements [5, p. 45]. However, the U.S. raised complaints about the overreach of authority, delays in dispute resolution, issuance of advisory opinions unnecessary for dispute resolution, review of factual issues, and members continuing to serve beyond the expiration of their terms. While these allegations sparked criticism, some were subsequently clarified [5, p. 45]. For instance, delays were attributed to the complexity and intricacy of the disputes, the unintelligibility of parties' submissions, and ambiguities regarding the timing provisions in dispute resolution procedures [6, p. 2].

While the allegations sparked criticism, some were subsequently clarified. For instance, delays were attributed to the complexity and intricacy of the disputes, the unintelligibility of parties' submissions, and ambiguities regarding the timing provisions in dispute resolution procedures [5, p. 46, 48]. Former Chair of the Appellate Body, Peter Van den Bossche, who worked in the Secretariat of the WTO Appellate Body from 1997 to 2001 [7], refuted allegations of "*ultra vires*", abuse of power, actions, asserting that members consistently adjudicated cases within their mandated boundaries [8, p.14]. This perspective aligns with the stance of other former Appellate Body members, emphasizing adherence to the scope of authority prescribed under WTO agreements.

The problem also arises out of the lack the WTO members sharing their view on the problem. Some Members, including Kazakhstan, have avoided directly criticizing the practices of the Appellate Body and have refrained from articulating a clear stance on the matter. Instead, their response has been largely limited to advocating for the reinstatement of the Appellate Body [9]. These members argue that the

Appellate Body, as a mechanism established to ensure the fulfilment of obligations under WTO agreements, plays a critical role in maintaining the efficiency of the WTO. Its continued dysfunction not only undermines this efficiency but also casts doubt on the organisation's capacity to uphold an international trade system grounded in clear and predictable rules. The absence of a functioning appellate mechanism has increased the likelihood of unresolved appeals, discouraging parties from pursuing early resolution of disputes [10, p.5].

The ongoing efforts within the Molina's process to restore the functionality of the WTO Appellate Body, which are currently coordinated by Ms. Usha Dwarka-Canabady of Mauritius [11], have thus far been unsuccessful [10]. Extensive consultations and discussions involving representatives of various WTO member states have revealed profound disagreements among key trading partners. One of the primary challenges in the negotiations lays in the lack of a unified vision regarding the institutional reforms and procedural changes necessary for the Appellate Body's revival.

Given the nature of these disagreements and the continued inability to reach consensus on an appellate mechanism by the end of 2024 [12], it is unlikely that an agreement to reinstate the Appellate Body will be achieved in the near future. This, in turn, poses significant risks to the WTO dispute settlement system, which continues to operate in a diminished capacity, failing to fully protect the rights of member states. In this context, it is prudent to consider the advantages offered by an alternative – the MPIA.

This mechanism, established as a temporary measure, enables participants to resolve appellate disputes using procedures similar to those employed by the Appellate Body [13]. Participation in the MPIA provides an opportunity to maintain predictability and stability in dispute resolution despite the ongoing crisis resulting from the Appellate Body's dysfunction [14].

2 Advantages of the MPIA in the Context of the Republic of Kazakhstan

The aim of the MPIA was to create an 'experimental' mechanism that would help to find solutions to the problems [15] that caused the crisis [16]. These problems were identified in the reports of the US representatives [17], which are the preconditions for the suspension of the Appellate Body. Consequently, on 30 April 2020, the MPIA was established, open to accession by any interested WTO member. Pursuant to Article 25 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), 54 countries – excluding the Republic of Kazakhstan – have agreed to refer appeals to arbitration; 110 Members refrained [13].

This mechanism was initiated by the European Union, which is endeavouring to restore the Appellate Body. In 2019, when it became clear that the appointment of new judges was not to be expected, jointly with Norway [4] and Canada [3] the European Parliament has expressed its firm position against appealing to a dysfunctional institution and presented the Interim Appeal Arbitration Arrangement. In May, the European Commission was authorised to engage other WTO Members in establishing an interim appeal solution for dispute resolution. The Council endorsed the Commission's approach. The European Commission presented a draft joint communication, including the WTO interim appeal arbitration agreement, to the EU Trade Policy Committee. The proposal was then swiftly submitted to the EU Council for authorisation, demonstrating a coordinated effort to address the WTO Appellate Body crisis [15]. The background which led into the development of the MPIA as an experience, were the trade agreements concluded by the EU and its partners. For example, such arbitration mechanisms are included into Association Agreement with Georgia [20, p. 146], Partnership Agreement with Armenia [21, p. 111], Comprehensive Economic and Trade Agreement (CETA) with Canada [22] and Economic Partnership Agreement with Japan [23]. Nevertheless, these arbitration models differ from that one which was developed in the MPIA. For example, the procedural adaptability, including deadline extensions, which are to be discussed below, was not part of earlier agreements with Canada or Norway.

On the global level the interim measure was discussed first during the World Economic Forum in Davos, where 17 WTO Members pledged to work together in this direction [24]. On 30 April 2020, the WTO Secretariat, upon Member States' request, circulated the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), which took effect on the same date. The initiative was also supported by the qualified publicists with experience of working within WTO law and Appellate Body, including Peter Van den Bossche, former member and Chairman of the Appellate Body, and Thomas Cottier, current MPIA

arbitrator. They write about appellate arbitration as an opportunity to 'test' all available and emerging ideas. The best of them are supposed to be used theoretically to 'unfreeze the institution'.

Initially the interim measure had to be performed through the identical bilateral agreements, but later the parties agreed to the one document authorising the possibility of appeal in the arbitration process [25]. Although the MPIA is based on an arbitration model, it keeps the automatic binding nature of reports. Consequently, a few questions are raised about the legal nature of the MPIA. The main feature of the MPIA is that the agreement is not a new multilateral deal. On the contrary, the MPIA in accordance with its preamble operates directly within the multilateral DSU itself by authorising individual arbitrations.

The MPIA offers several advantages, including the ability for arbitrators to "streamline proceedings [1, para. 12]." For instance, arbitrators can reduce the maximum time for case review to 90 days if justified. Additionally, the mechanism allows for limitations on the word count for written submissions and the time allocated for oral statements during hearings. First, this restores the opportunity to appeal decisions. Second, it addresses an issue that frustrated members of the Appellate Body – unclear and overly lengthy submissions by parties. Third, decisions are reached promptly, minimizing uncertainty. Another important feature of the MPIA is the application of Articles 21 and 22 of the DSU *mutatis mutandis* to arbitral decisions [18]. Article 21 provides a mechanism for monitoring the timely implementation of recommendations and decisions. If recommendations are not implemented, Article 22 allows for compensation or the suspension of concessions. By opting for arbitration, parties retain the benefits offered by the WTO Dispute Settlement Body [19].

Scholars call the MPIA a 'novel, opt-in mechanism' that works procedurally and acts as an 'exclusionary club' offering benefits to members, though any country can join [26]. Unlike other proposed reforms that seek comprehensive changes to the WTO dispute settlement mechanism, as a temporary solution to the WTO Appellate Body crisis, aiming to preserve the two-tier dispute settlement system, the MPIA operates under Article 25 of the DSU. The MPIA allows ad hoc arbitration tailored to the needs of the disputing parties. The arbitration process itself is permitted by Article 25 [18]. It provides that parties may, if they wish, choose arbitration for WTO disputes. Since there is no express prohibition of appeal under the terms of this procedure, it is possible not only to review the decision but also to appeal.

The initiation of appellate arbitration begins well before a party expresses dissatisfaction with a ruling. To start the procedure both of the parties should be MPIA participants or, if a party is not a participant, it should claim its joining. This is prescribed in order not to influence the parties' decision to initiate the process and not to deprive the other party of the right to peal since the mutual consent is required [27, p.34]. When submitting a dispute to a panel, parties initiating the dispute must conclude an arbitration agreement [13]. A notable advantage of this process is that parties can nominate arbitrators from their own countries. This policy supports balancing the interests of developed and developing countries, fostering the training and preparation of skilled legal professionals and trade law experts in regions with varying levels of economic development. Such an approach prevents the monopolization of knowledge in high-income regions and promotes the integration and development of the least developed countries within the global trade system [29]. For Kazakhstan, a country with relatively recent WTO membership, this policy presents a valuable opportunity to build a pool of domestic legal professionals with substantial experience in trade dispute resolution.

The MPIA also introduced innovation which expresses in pool of arbitrators consisting of ten experts in international trade law with the option to later add more if all Members agree [2]. From the pool of ten, three arbitrators will be chosen for each trade dispute through a rotation system, meaning that the arbitrators are chosen in turn from the pool of available experts rather than having the same individuals chosen repeatedly to maintain fairness and ensure a long-term solution. The pool of arbitrators provides significant advantages over ad hoc arbitration. It fosters sustainable cooperation among WTO Members, ensuring a more consistent and cohesive approach to trade disputes. By establishing a permanent body of experts, the pool may help avoid the fragmentation, ensuring systematic treatment of disputes. This consistency may reduce the risk of arbitrary decisions and bolsters confidence among Members, reinforcing trust in the WTO's dispute resolution system.

After establishment of the panel the parties have 60 days to notify the panel of the their intention to use the MPIA appeal arbitration mechanism. For that purpose they have to fill the template provided

in Annex 1 to the MPIA no later than ten days before submitting the final report to other Members for familiarity as it allows time for translation into the WTO's three official languages in three weeks [28]. After receiving the request from the parties the panel will suspend the proceeding for maximum period of twelve months. When the panel 'pause' the proceedings, the deadline for the Notice of Appeal to be submitted to the WTO Secretariat by the parties is twenty days. However, the key advantage of the MPIA is that it allows flexibility in appeals. Arbitrators can suggest excluding insufficient claims under Article 11 of the DSU to meet deadlines. All parties have to give their consent though. The MPIA does not ban these claims but ensures cooperation to adjust timelines or simplify processes [2].

The MPIA encourages the involvement of non-participating states as third parties. This inclusive approach fosters cooperation and broadens engagement with the mechanism [13]. Given that Kazakhstan frequently acts as a third party in disputes, this opportunity is particularly beneficial. Non-MPIA WTO members are afforded the chance to "test" the mechanism, share ideas, experiences, and perspectives. Even if a WTO member has not formally joined the arrangement, it can make an ad hoc decision to engage in appellate arbitration for specific disputes under Article 25, applying some or all MPIA rules and selecting arbitrators from the panel (Case Turkey – Pharmaceutical Products) [13]. This flexibility enhances the potential for creating a more comprehensive and diverse forum for addressing common challenges, fostering cooperation, and advancing collective goals.

Considering a scenario where a WTO member receives an adverse panel ruling and disagrees with it, the member might lodge an appeal 'into the void' against Kazakhstan. This causes delaying the final resolution of a dispute where prompt clarity and outcomes are urgently needed. From a political perspective, a developing low-income country may experience pressure to accept an unfavourable international agreement, particularly in areas where practices are still emerging and norms remain underdeveloped, such as trade in digital services. E-commerce, investment, and domestic regulation of the services sector are critical issues for Kazakhstan [9]. Inability to defend its interests within an underperforming institution would not only affect Kazakhstan's position in the international community but also hinder the evolution of these issues within its national legal framework.

Another potential consequence of appeals 'into the void' is unilateral countermeasures. For instance, the European Union has addressed this issue through Regulation 2021/167, which empowers the EU to take retaliatory action without prior WTO authorization if another WTO member's appeal causes delays in the dispute resolution process [29]. Such measures could include imposing tariffs, setting quantitative import or export restrictions, or adopting policies related to government procurement – an important consideration for any nation's policy framework [29].

Appellate arbitration serves as a robust tool to address procedural and substantive deficiencies in dispute resolution, ensuring a fair and balanced review process [13]. Participation in mechanisms like the MPIA allows Kazakhstan to enhance its capacity to uphold national interests, foster confidence among trading partners, and contribute to the predictability and stability of international trade law. Moreover, it reinforces Kazakhstan's commitment to multilateral trade rules while providing an avenue for redress in complex disputes. From this point, embracing such frameworks not only strengthens Kazakhstan's trade position but also promotes transparency and equity in the resolution of disputes within the global trading system.

Nonetheless, all the aforementioned benefits of appellate arbitration will not incentivize a country to join, if it does not align with its interests. Representatives of Kazakhstan have not provided any official commentary on the MPIA. However, statements regarding the crisis of the Appellate Body have been made. During an informal meeting of trade ministers organized by the Swiss government, Bakhyt Sultanov, the Minister of Trade and Integration of Kazakhstan, emphasised the 'need for the full restoration of the WTO judicial body's activities and further improvement of the Appellate Body's operations' [9]. This statement reflects two key perspectives on the possibility of appeals. The first highlights the importance of improving the system. In this context, appellate arbitration presents an excellent opportunity to test ideas proposed by leading practitioners. By examining these concepts within the framework of a temporary alternative, informed conclusions can be drawn and applied to the Appellate Body. For instance, beyond the aforementioned procedural limits, the MPIA can serve as a platform to test the "reasonableness principle" proposed by Thomas Cottier, former Managing Director of the World Trade Institute in Bern [30, p. 524].

This principle aims to restrict the Appellate Body members to determining whether the panel's reasoning is appropriate and substantiated. It seeks to prevent the creation of de facto precedents, the issuance of advisory opinions not binding in dispute resolution, and the review of factual issues. Furthermore, Thomas Cottier has advocated revisiting the relationship between WTO rules and other branches of international law to mitigate the fragmentation of international law. He also suggests a review of governance and transparency within the trading system as a whole [30, p. 530].

As with other countries, Kazakhstan's joining to the MPIA with the option to withdraw at any time while maintaining its legal effect, as offered by the MPIA, carries distinct advantages. By joining, Kazakhstan would become a full-fledged participant, gaining all associated rights and obligations, including access to the international legal framework. This participation also facilitates the exchange of experience and resources, enabling the promotion of national interests. Additionally, it contributes to the development of international cooperation and the strengthening of international law.

Thus, temporary arbitration represents a unique venue for assessing and refining the Appellate Body's functionality, introducing innovations, and enhancing its effectiveness. Such an approach not only facilitates the restoration of the Appellate Body but also supports its development and the improvement of governance systems, ultimately contributing to higher operational quality. The second perspective clearly underscores Kazakhstan's commitment to a two-tier Dispute Settlement System with a stable appellate body at its core. Therefore, it is essential to transition to an analysis of the shortcomings of the MPIA.

3 Why Kazakhstan Does Not Need the MPIA

With an ambitious plan to restore the possibility of appeal in a short time 'as a matter of priority' [2], the rules were drafted very quickly – literally in two years [33]. It is difficult to determine whether this timeframe is sufficient for drafting such a document. The document would need to address and incorporate various criticisms of the Appellate Body. Ensuring comprehensive coverage of these concerns may require more time.

Unlike the Appellate Body, where appeals followed a standardised process, arbitration under the MPIA requires WTO members to negotiate a separate agreement for each dispute [13]. This process may entail additional efforts and create bureaucratic complexities, leading to a more complicated appellate process for WTO members. Given that appeal arbitration is funded from the WTO budget [17], this, *per se*, could generate disagreements among the WTO members. Like the MPIA arbitrators themselves, the staff are not paid by the disputing parties but from the WTO's regular budget. This is consistent with other arbitration procedures that have been conducted under Article 25 of the DSU [17]. Different views on resource allocation and the potential impact on the WTO's financial framework further exacerbate the issue. Some members argue that centralised funding for arbitration proceedings might result in a more efficient system, while others raise concerns about unequal burdens and the strain on the organisation's budget [17]. This divergence underscores the complexity and sensitivity of financial matters within international organizations like the WTO. It also highlights the difficulty in maintaining a delicate balance between collective decision-making and individual interests.

The organisation of the arbitration process is disclosed in para. 7 and assumes that administrative and legal support will be provided independently of the staff of the WTO Secretariat and its offices supporting the panels [2]. A special role is assigned to the Director General of the WTO in providing such support. The following questions arise: whether a new special unit of the Secretariat will be formed; whether the support will be provided entirely outside the Secretariat; and what exactly will be accountable to the arbitrators. In order to get a clear answer, it is necessary to turn to interpretation. In particular, clarify the meaning of the phrases 'as far as practicable' and 'independently of the WTO Secretariat'. Interpretation of rules in international law is carried out in accordance with Articles 31 and 32 of the 1969 Vienna Convention on Treaties [31]. The purpose of interpretation will be to determine the meaning of the support structure and the role of the Secretariat in that structure.

The ordinary meaning of the MPIA suggests that the WTO Secretariat will not provide support to the Appellate Arbitrators. This interpretation is derived by considering the full text of the agreement, including its purpose, preamble, and annexes. While the preamble offers no specific guidance, para. 5 clarifies that arbitrators will be informed of WTO settlement activities and receive relevant documents

[2]. However, this raises further questions, such as whether arbitrators are informed of all disputes or only those involving agreed appeals, and how they will obtain documents without Secretariat support. Additionally, ambiguity surrounds how arbitrators would coordinate on interpretation and procedure, particularly given the vague reference to acting 'as far as practicable' [2]. This leaves significant gaps in understanding how independence and procedural consistency will be maintained.

Para. 5 of the MPIA introduces ambiguity into the organizational process, particularly regarding the term 'practicable' [2]. It is unclear whether the arbitrators alone define what is practicable or whether assistance from the WTO Secretariat is required. Similarly, the principle of collegiality is vaguely defined, leaving questions about its practical implementation unanswered. The MPIA allows all members of the pool to access documents related to a case and discuss matters of interpretation and procedure. This level of collaboration is higher than in previous procedures. While WTO decisions often use terms like 'practicable,' they do not clarify their operational implications.

Further confusion arises when examining para. 7. Although the MPIA emphasises the independence of the appellate arbitration tribunal, para. 5 of Annex 1 links the Secretariat to the tribunal's work [2]. For instance, the Secretariat's role in receiving and transmitting the notice of appeal directly involves it in the process. This reliance on the Secretariat contradicts the tribunal's intended independence, raising concerns about the consistency and feasibility of the MPIA's procedural framework. The lack of subsequent practice detailing how arbitrators will interact and what "practicability" entails only deepens these uncertainties. The Working Procedures for Appeals could provide clarity by referring to other agreements related to the treaty [18]. Paragraphs 20-23 emphasise that the party must, at the same time as filing the Notice of Appeal, submit a written statement to the Secretariat. Moreover, pursuant to paragraphs 26-27, the Secretariat sends the parties to the dispute a timetable for consideration of the dispute. This underscores the significance of the support provided by the Secretariat. Given the lack of a definitive answer within the context and the absence of treaties adopted in relation to this agreement, the only available approach is to examine subsequent practice.

Subsequent practice in applying the MPIA reveals the WTO Secretariat's evolving role in appellate arbitration [19]. In the first appellate arbitration case, WT/DS591/ARB25 [32], arbitrators clarified that Secretariat staff provided logistical and procedural support. To uphold the independence of the mechanism, these staff members were not drawn from divisions like Legal Affairs or Rules, which assist first-instance panels, but from other Secretariat areas. For the duration of the arbitration, they were accountable only to the arbitrators regarding substantive matters. Reports from other WTO bodies, such as the Budget Commission, also confirm this arrangement [33]. This analysis results in a paradoxical conclusion. On the one hand, arbitrators are independent of the Secretariat's assistance in organising the process; on the other hand, they remain dependent on it.

According to article 32 of the Vienna Convention on the Law of Treaties, in such a case it is permissible to refer to the *travaux préparatoires* and the circumstances of the conclusion of the agreement when interpreting it. As part of the preparatory work, it is unfortunately not possible to cite specific wording from the discussion of the text of the MPIA. The information has not been published in the public domain. However, proponents of the MPIA nevertheless point out that appellate arbitration was originally conceived as part of Article 25 of the DSU [25]. Thus, it is not a new agreement or an entirely new mechanism, but rather a 'new reading' of existing possibilities. Unfortunately, this does not clarify the situation.

The circumstances surrounding the conclusion of the case highlight concerns with the WTO Secretariat's involvement in drafting Appellate Body reports [34], a point of contention particularly for the U.S. representatives. Three issues were raised: (1) the Secretariat's 'activist interpretation' exceeded its mandate, extending beyond the legal requirements of dispute resolution; (2) these analyses addressed matters not directly necessary for resolving the dispute; and (3) this approach shaped broader positions on legal issues for Appellate Body consideration [35, p. 619]. This involvement, encompassing the Rules, Legal, and Appellate Divisions, resulted in reports reflecting the influence of procedural dynamics on both the legal issues and the final decision. Such extensive participation was deemed to have a significant impact on outcomes, leading to criticisms aimed at excluding Secretariat influence [36]. In response, para. 7 of the MPIA explicitly addresses these concerns. It ensures that Secretariat staff are seconded from

non-legal divisions to assist with organisational matters, maintaining independence in drafting appellate judgements. Staff involvement is limited to logistical support, with arbitrators themselves managing substantive discussions on interpretation and related issues. This structure ensures that arbitrators maintain independence while responding to criticisms, such as those raised by the U.S. representatives, and clarifies that Secretariat personnel do not interfere with the judgement drafting process.

Another significant aspect is the ongoing debate among practitioners regarding the legality of the MPIA, as it does not constitute a new binding agreement for its members [17]. This issue is particularly relevant in the context of countries seeking temporary solutions to address the crisis in the WTO dispute settlement system. However, ambiguities in the wording of Article 25 create disagreements that complicate the development of uniform approaches to implementing the MPIA [18]. Nevertheless, under Article 25 of the DSU, MPIA arbitration decisions are immediately enforceable, added to WTO case law, and reported to the DSB and relevant bodies. MPIA rulings may have limited impact, raising concerns about creating two types of obligations: enforceable and non-enforceable [37].

Ongoing legal debates emphasize the need for clarity and consensus within the framework of the MPIA. Supporters of the MPIA view it as a pragmatic solution to the paralysis of the Appellate Body, enabling countries to continue resolving trade disputes within a rules-based system [17, 39]. Critics of the MPIA highlight the limitations of its temporary nature and its reliance on the political will of participants [40, 41, 42]. They stress the necessity for further negotiations within the WTO aimed at establishing lasting solutions to restore the functioning of the Appellate Body. This creates significant challenges for MPIA member states striving to ensure the predictability and legitimacy of this mechanism.

Another critics is addressed to the fact that the MPIA solves only several issues led to disjunction of the Appellate Body. The MPIA fails to address many of the concerns raised by the U.S. in its USTR report on the Appellate Body [43], such as the review of domestic law and issues of judicial overreach. By not resolving these concerns, the MPIA may face backlash in the future, especially with the U.S. already threatening to leave the WTO altogether. Under the Trump administration, the US criticised the MPIA as a 'China-EU arrangement'. In 2020, it claimed the MPIA worsened issues with the Appellate Body, overused precedent, and aimed to replace the AB. The US argued using WTO resources for it violated Article 25 DSU and said any extra support should be funded by members, not the WTO budget [44].

South Africa raised concerns that the MPIA could become the default method for appeals, undermining multilateral efforts to resolve the Appellate Body issue [27, p. 34]. The explanation was that it could divert attention from a solution supported by many WTO Members to fill the Appellate Body vacancies [27, p. 34]. In contrast, the U.S. opposed any solution that would extend the Appellate Body's flaws, criticising the MPIA for weakening deadlines, allowing review of factual findings, and encouraging the use of precedent, which the U.S. saw as prolonging the dysfunction rather than resolving the problem [36].

Does Kazakhstan really need to join an agreement that provides for appeals when, according to statistics, it is not an active party in trade disputes? Within the WTO dispute settlement system, Kazakhstan has participated only once as a respondent in a case initiated by Ukraine and has never acted as a complainant. Its primary role has been as a third party in 35 cases overall [47]. Moreover, a significant drawback of the MPIA is the absence of major trading powers among its members, including Kazakhstan's key trading partners. Countries like Russia, the United States, South Korea, and Turkey have refrained from joining. Given the current trend towards regional trade systems, states aim to address their unique needs and interests more effectively and establish flexible trade rules tailored to specific geographic regions. Such an approach may also expedite decision-making processes and foster deeper integrative cooperation among regional partners. Kazakhstan may benefit from examining the experiences of countries like Ukraine, Mexico, and Colombia, while also considering India's decision not to join [30]. Colombia, for instance, views appellate arbitration as a viable and well-functioning mechanism capable of temporarily replacing the Appellate Body while preserving the right to appeal [45]. However, these three countries are actively involved in trade disputes as both complainants and respondents [37], making the ability to appeal a critical aspect for them. In contrast, India chose to maintain its '*special and differential treatment*' status, special provisions that give developing countries special rights and allow them to be treated more favourably by other members [46], which it would forgo by joining the MPIA.

Meanwhile, the trade relations between Kazakhstan and Kyrgyzstan may remain a potential case for Appellate Body review [19]. The Ministry of Economy of Kyrgyzstan has asserted that the WTO Appellate Body could evaluate Kazakhstan's actions concerning the transit of goods from Kyrgyzstan. These measures were claimed to be hidden trade restrictions aimed at controlling goods flows from China to Russia. These concerns were raised during the General Council session held on 3 March 2020 and in February 2020, Kyrgyzstan filed a WTO complaint against Kazakhstan over delays in transit goods due to stricter inspections [48]. Unsuccessful attempts to resolve the issue through the Eurasian Economic Union (EAEU) proved led to no alternative but to escalate the matter to the WTO. The Ministry of Economy of Kyrgyzstan attributed decline in the number of trucks crossing the Kyrgyz-Kazakh border to trade barriers imposed by Kazakhstan since March 2019. On the other side, Kazakhstan claimed that Kyrgyzstan's complaint to the WTO is unsubstantiated, stating that these assertions fail to reflect the realities faced by Kyrgyz freight shippers [48]. Currently the other issue raised from the Kazakhstan's side is issuing 'grey' certificates in Kyrgyzstan [49]. The Kyrgyz Ministry of Economy criticized Kazakhstan's draft resolution to ban products certified in Kyrgyzstan, seeing it as a barrier to the Eurasian Economic Union's internal market. The proposed ban, effective 1 July 2024, could limit EAEU entrepreneurs' access to Kazakhstan's market and set a precedent for rejecting conformity assessment documents. While both countries signed a joint plan in March to combat 'grey certificates,' Kyrgyzstan plans to consult with the Eurasian Economic Commission and other EAEU members on the issue [52]. This issue may also be brought to the evidence of the WTO DSB and following that to the Appellate Body or MPIA, if both countries will join it.

The advantage of selecting arbitrators, previously highlighted as a key feature of appellate arbitration, loses significance in the context of Kazakhstan's potential engagement with the MPIA. The existing MPIA panel consists of only ten arbitrators [13], none of whom represents Kazakhstan. Due to temporary feature of the MPIA [13] it is expected that no opportunity for arbitrators from Kazakhstan to be appointed will be provided. This lack of representation diminishes Kazakhstan's ability to influence the appellate process and undermines the alignment of the mechanism with the country's trade policy priorities. Furthermore, the absence of a Kazakhstani arbitrator raises concerns about the equitable consideration of the state's interests in disputes, especially when critical trade partners such as Russia, and China are not the Members of the MPIA. Arbitrators from Kazakhstan could definitely bring an understanding of its trade policies, practices, and current challenges. This crucial for the dispute settlement process as it ensures that decisions are informed by relevant context and reduce the risk of misinterpretation. Moreover, participation by arbitrators enhances domestic expertise in international trade law that awaited may lead to creation of a pool of skilled professionals to address future disputes effectively. Such representation also affirms a country's active role in shaping global governance mechanisms, reinforcing its sovereignty and standing in the international community.

Currently, Ambassador Usha Dwarka-Canabady urged WTO members to adopt a practical and flexible approach in advancing the ongoing dispute settlement reform talks, emphasizing the goal of restoring the system's functionality rather than creating a new one [53]. Since October, significant progress has been made in areas such as appeal/review, accessibility, and previous work. However, challenges persist, particularly regarding appeal mechanisms [54]. A progress report highlights emerging consensus, with further discussions planned. This signals about the intention of the WTO Members to restore Appellate Body and continue the usual appellate process in the nearest future, meaning the end of the MPIA.

Conclusion

The dysfunctions resulted from repeated blocks of the U.S. representatives on the appointment of new members to the Appellate Body. Without a functioning appellate mechanism, WTO members have been deprived of a vital avenue to resolve trade disputes effectively. The deliberate stalling of the dispute resolution process through appeals to a non-functioning body has severely undermined the ability of members to safeguard their trade interests and causes reluctance to conclude new agreements within WTO in accordance with the U.S. report on the Appellate Body. This situation not only hampers the resolution of individual disputes but also weakens the integrity and credibility of the WTO as a forum for rules-based trade.

While appellate arbitration offers an alternative for dispute resolution, there are more compelling reasons for Kazakhstan to refrain from joining. The MPIA, as an interim solution to the WTO Appellate Body crisis, offers an experimental platform for arbitration reforms, but its success has been limited. While it helps stabilize the dispute resolution system and introduces innovations like a structured pool of arbitrators, it falls short of addressing the core issues. The MPIA's legal nature and limited participation undermine its long-term effectiveness, and its unclear legal status and flexibility may prevent sufficient practice development. This uncertainty highlights the need for clearer and more accessible appeal processes within the WTO's dispute settlement framework. While appellate arbitration under the *ad standum rectum* framework provides an "attractive" dispute resolution tool that allows for the review of panel decisions, seemingly enhancing fairness and stability within the WTO dispute settlement system, it is less advantageous for Kazakhstan.

First, unlike India, Kazakhstan has already transitioned out of its eligibility for "special and differential treatment" status, which grants additional opportunities and benefits to developing countries under the WTO framework. This limits its strategic advantages in joining the MPIA.

Second, the absence of Kazakhstan's key trading partners – such as Russia, China, and the European Union – among MPIA members also diminishes its strategic value. Additionally, Kazakhstan's limited involvement in WTO disputes, primarily as a third party, reduces the necessity of committing to this mechanism at present. At this stage, participating in the MPIA does not appear strategically justified, as it may impose additional obligations without delivering significant benefits in return. However, trade partner Kyrgyzstan, currently facing trade conflicts with Kazakhstan, may find the MPIA's appeal mechanism beneficial in addressing these issues, potentially leveraging its appeal ability to seek fair dispute resolution within the framework of the WTO.

Third, if Kazakhstan faces a WTO dispute, it remains feasible to join an ad hoc appellate agreement immediately before the panel begins deliberations on the merits of the case. This approach allows Kazakhstan to safeguard its right to appeal and protect its national interests without committing to MPIA obligations prematurely or unnecessarily.

In line with the statement of Kazakhstan's Minister of Trade and Integration, the country should continue to support and work towards the "revitalization" of the WTO Appellate Body. A stable institution with clear and established rules is essential for maintaining stability and predictability in international trade, which serve as the foundation for long-term economic security. Restoring the Appellate Body's full functionality would not only enhance trust among global trade participants but also foster the development of international legal order. Such advancements align with Kazakhstan's national interests by upholding order, security, and justice within the international community.

Consequently, participation in the MPIA appears to offer limited strategic value for Kazakhstan, given its specific trade dynamics and geopolitical considerations. Instead, alternative approaches, such as ad hoc appellate agreements tailored to address the particularities of specific disputes, may present a more pragmatic and effective means of safeguarding national interests while avoiding the imposition of unnecessary and potentially burdensome commitments.

Л.П. Саенко, 2-курс магистратура студент Білім беру бағдарламасы 7М04212 – «Халықаралық құқық» Maqsut Narikbayev University (Қазақстан Республикасы, Астана қ.):
Қазақстанның Көпжақты Уақытша Апелляциялық Арбитраж Келісіміне (MPIA) қосылуының артықшылықтары, тәуекелдері және перспективалары.

Апелляциялық органның қызметінің тоқтауы Дүниежүзілік сауда ұйымының (ДСҰ) дауларды шешу жүйесіндегі апелляциялық қарау процесіне елеулі әсер етті, бұл ДСҰ мүшелерінің сауда дауларын шешу. Осыған жауап ретінде кейбір мүшелер 2020 жылы Көпжақты уақытша апелляциялық арбитраж келісімін (MPIA) енгізді. Қазақстанның ДСҰ-ға мүшелігін ескере отырып, бұл мақала оның сауда саласындағы сын-қатерлерге деген көзқарасын талдайды, әсіресе Апелляциялық органның қызметінің тоқтауына баса назар аударады. Сондай-ақ, апелляциялық арбитраждың процедуралық ерекшеліктері, артықшылықтары мен шектеулері және оның Қазақстанға ықтимал әсері бағаланады. Осы мақсатқа жету үшін зерттеуде жалпы ғылыми, догматикалық, статистикалық және құқықтық интерпретация әдістері қолданылып, Қазақстанның ДСҰ дауларын шешу

жүйесіндегі рөлі және МРІА-ға ықтимал қатысуы талданады. Зерттеу Қазақстанның халықаралық сауда дауларындағы ұстанымына, әсіресе оның ДСҰ-ның дауларды шешу механизміне қатысуына бағытталған. Бұл мақаланың жаңашылдығы Қазақстанның МРІА-ға қатысты ұстанымын жан-жақты талдауында көрініс табады. Ол жеткілікті зерттелмеген факторларды, соның ішінде Қазақстанның сауда серіктестіктерін, дауларға қатысу тарихын және ДСҰ аясындағы кеңірек экономикалық стратегиясын қарастырады.

Қорытынды бойынша, апелляциялық арбитраж дауларды шешу және ДСҰ жүйесіндегі әділдікті арттыру тәсілі болғанымен, Қазақстанның МРІА-ға қосылмауы үшін маңызды себептер бар. Негізгі факторлар қатарына МРІА мүшелері арасында Қазақстанның ірі сауда серіктестері – Ресей мен Қытайдың болмауы, сондай-ақ Қазақстанның ДСҰ дауларында негізінен үшінші тарап ретінде пассивті рөл атқаруы кіреді. Сонымен қатар, Қазақстанның «арнайы және сараланған режим» мәртебесінен шығуы МРІА-ға мүшеліктің практикалық артықшылықтарын төмендетеді. Сондықтан мақалада Қазақстанға нақты дауға тарап ретінде қатысу қаупі туындаған жағдайда ғана ad hoc апелляциялық келісімдерге қосылу ұсынылады. Бұл оның ұлттық мүдделерін қорғауға мүмкіндік береді.

Түйінді сөздер: ДСҰ, Апелляциялық орган, дауларды шешу, МРІА, халықаралық сауда, реформа, сауда тұрақтылығы.

Л.П. Саенко, студент 2-го курса магистратуры Master's degree student образовательная программа 7М04212 - 'Международное право' Maqsut Narikbayev University (Республика Казахстан, г. Астана): **Преимущества, риски и перспективы присоединения Казахстана к Многостороннему временному апелляционному арбитражному соглашению (МРІА).**

Приостановление функционирования Апелляционного органа нарушило процесс апелляционного пересмотра в системе разрешения споров Всемирной торговой организации (ВТО), подорвав способность её членов эффективно урегулировать торговые споры. В ответ на это некоторые члены ВТО в 2020 году внедрили механизм апелляционного арбитража в рамках Временного многостороннего апелляционного арбитражного соглашения (МРІА).

Учитывая участие Казахстана в ВТО, *цель* настоящей статьи заключается в анализе его подхода к приостановлению функционирования Апелляционного органа и оценке процедурных особенностей, преимуществ и ограничений апелляционного арбитража, а также его возможные последствия для Казахстана. Для достижения этой цели в исследовании применяются общенаучные методы, догматический и статистический методы, а также метод юридического толкования, позволяющий проанализировать роль Казахстана в системе разрешения споров ВТО и его потенциальное участие в МРІА. В качестве объекта исследования выступает позиция Казахстана в международных торговых спорах, в частности, на его участии в механизме разрешения споров ВТО. В качестве ключевого аспекта *новизны* статья предлагает всесторонний анализ позиции Казахстана в отношении МРІА, акцентируя внимание на ранее недостаточно изученных факторах, включая торговые партнерства, историческое участие в спорах и более широкую экономическую стратегию страны в рамках ВТО.

Основным *выводом* является то, что, хотя апелляционный арбитраж представляет собой механизм разрешения споров и способствует укреплению справедливости в системе ВТО, анализ показывает, что у Казахстана есть более веские основания воздержаться от членства в МРІА. Основные факторы включают отсутствие среди участников МРІА его ключевых торговых партнёров, таких как Россия и Китай, а также пассивную роль Казахстана в спорах ВТО, где он, как правило, выступает третьей стороной. Кроме того, утрата Казахстаном права на «специальный и дифференцированный режим» снижает практическую ценность членства в МРІА. В статье предлагается альтернативный стратегический подход: Казахстану следует присоединяться к ad hoc апелляционным соглашениям только в тех случаях, когда существует реальный риск его вовлечения в спор, что позволит защитить его национальные интересы.

Ключевые слова: ВТО, Апелляционный орган, разрешение споров, МРІА, международная торговля, реформа, стабильность торговли.

References:

1. Davey W. J. WTO Dispute Settlement: Crown Jewel or Costume Jewelry? // World Trade Review. 2022. Vol. 21. No. 3. P. 1–10. URL: https://doi.org/10.1017/s1474745622000106 (13.02.2024).

2. Multi-Party Interim Appeal Arbitration Arrangement pursuant to Article 25 of the DSU: adopted and entered into force 30 March 2020 JOB/DSB/1/Add.12 20-3358 // World Trade Organization. 2020. URL: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/JOB/DSB1A12.pdf (13.02.2024).

3. Council of the European Union. EU – Canada Summit Joint Declaration, Montreal 17-18 July 2019 // Consilium. 18 July 2019. URL: https://www.consilium.europa.eu/en/press/press-releases/2019/07/18/eu-canada-summit-joint-declaration-montreal-17-18-july-2019/ (28.04.2022).

4. Communication of the Delegations of the European Union and Norway. Statement on A Mechanism for Developing, Documenting and Sharing Practices and Procedures in The Conduct of WTO Disputes: Interim Appeal Arbitration Pursuant to Article 25 of the DSU of 21 October 2019 // WTO. 2019. JOB/DSB/1/Add.11/Suppl.1.

5. Zhang Yuejiao. Protecting the WTO's crown jewel: Appellate body reform proposals // UN-iLibrary. 2019. P. 45–48. URL: https://doi.org/10.18356/d82e73ca-en (13.02.2024).

6. Zhou W. WTO Dispute Settlement Mechanism Without the Appellate Body: Some Observations on the US-China Trade Deal // SSRN Electronic Journal. 2020. URL: https://doi.org/10.2139/ssrn.3536543 (13.02.2024).

7. Appellate Body Members // Dispute Settlement: biography. World Trade Organization. 2023. URL: https://www.wto.org/english/tratop_e/dispu_e/ab_members_bio_e.htm (13.02.2024).

8. Van den Bossche P. The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication? // WTI Working Paper. 2021. URL: https://www.wti.org/media/filer_public/c2/ef/c2efc2de-ce85-45c7-9512-9286e14fca47/wti_working_paper_02_2021.pdf (13.02.2024).

9. Kazakhstan has identified key priorities of the 12th WTO Ministerial Conference // Ministry of Trade and Integration of the Republic of Kazakhstan. 2021. URL: https://www.gov.kz/memleket/entities/mti/press/news/details/153759?lang=en (13.02.2024).

10. Uri Dadush. The future of global value chains and the role of the WTO // WTO Working Papers. 2 August 2022. P. 5. URL: www.clauses-abusives.fr/colloque/swhittaker.htm (13.02.2024).

11. Members welcome appointment of facilitator for WTO dispute settlement reform talks // Dispute Settlement Body, WTO. 2024. URL: https://www.wto.org/english/news_e/news24_e/dsb_26apr24_e.htm (13.02.2024).

12. EU statements in the Dispute Settlement Body (DSB), 18 December 2024 // Permanent Mission of the European Union to the World Trade Organization (WTO). 2024. URL: https://www.eeas.europa.eu/delegations/world-trade-organization-wto/eu-statements-dispute-settlement-body-dsb-18-december-2024_en (13.02.2024).

13. Multi-Party Interim Appeal Arbitration Arrangement (MPIA). Geneva Trade Platform, 2024. URL: https://wtoplurilaterals.info/plural_initiative/the-mpia/ (13.02.2024).

14. Special and differential treatment. World Trade Organization, 2024. URL: https://www.wto.org/english/tratop_e/dda_e/status_e/sdt_e.htm (13.02.2024).

15. European Parliament. European Parliament Resolution of 28 November 2019 on the Crisis of the WTO Appellate Body // European Parliament. 2019. 2019/2918. URL: https://www.europarl.europa.eu/doceo/document/TA-9-2019-0080_EN.html (14.11.2024).

16. Van Luchene A. Digital Transformation: Challenges for IP and Competition Law // TTLF Working Paper No 90, Stanford-Vienna Transatlantic Technology Law Forum. September 2022. URL: https://law.stanford.edu/wp-content/uploads/2022/09/TTLF-WP-90-VanLuchene.pdf (14.11.2024).

17. Pauwelyn J. World Trade Organization's Multi-Party Interim Appeal Arbitration Arrangement (MPIA): What's New? // World Trade Review. 2023. Vol. 22, No. 5. pp. 693–701. URL: https://www.cambridge.org/core/journals/world-trade-review/article/wtos-multiparty-interim-appeal-arbitration-arrangement-mpia-whats-new/B279E8A106380A510AAA28F4E1A4130F (13.02.2024).

18. Understanding on the Rules and Procedures Governing the Settlement of Disputes (1994), Article 25.4. 33 I.L.M. 1226.

19. Choi B. Three Years of the Multi-Party Interim Appeal Arbitration Arrangement: An Interim Evaluation of Arbitration as a Means to Appeal WTO Panel Reports. Kluwer Arbitration Blog, 2023. URL: https://arbitrationblog.kluwerarbitration.com/2020/05/14/arbitration-in-the-wto-changing-regimes-under-the-new-multi-party-interim-appeal-arbitration-arrangement/ (13.02.2024).

20. Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part // OJ L 261. 2014. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014A0830(02)-20180601&from=EN (27.02.2023).

21. Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part // OJ L 23. 2018. URL: https://www.mfa.am/filemanager/eu/CEPA_ENG_1.pdf (27.02.2023).

22. Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part // OJ L 11. 2017. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22017A0114(01)#d1e8205-23-1 (22.03.2023).

23. EU-Japan Economic Partnership Agreement // Directorate-General for Trade. 2018. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018A1227(01)-20220201&from=EN (20.03.2023).

24. World Trade Organization. Trade Ministers Adopt Statement on Importance of Multilateral Trading System // WTO. 24 January 2020. URL: https://www.wto.org/english/news_e/news20_e/minis_24jan20_e.htm (28.04.2022).

25. Procedural Innovations in the MPIA: A Way to Strengthen the WTO Dispute Settlement Mechanism? // QIL QDI. 28 September 2020. URL: http://www.qil-qdi.org/procedural-innovations-in-the-mpia-a-way-to-strengthen-the-wto-dispute-settlement-mechanism/#_ftn83 (14.11.2024).

26. European Parliament. International Trade Dispute Settlement: World Trade Organisation Appellate Body Crisis and the Multi-Party Interim Appeal Arbitration Arrangement // European Parliament. 2024. URL: https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762342. (14.11.2024).

27. Van Luchene S. The MPIA: A Mere Interim Solution or the Pathway to Fixing the WTO? // Stanford Law School. 2022. URL: https://law.stanford.edu/publications/no-90-the-mpia-a-mere-interim-solution-or-the-pathway-to-fixing-the-wto/ (26.11.2024)

28. Clifford Chance. The WTO's Interim Appeal Arbitration Arrangement - A Bridge Over Troubled Waters? // Clifford Chance. 12 June 2020. URL: https://www.cliffordchance.com/briefings/2020/06/the-wto-s-interim-appeal-arbitration-arrangement---a-bridge-over.html (14.11.2024).

29. Regulation (EU) 2021/167 of the European Parliament and of the Council: adopted 12 February 2021, entered into force 10 February 2021. Official Journal of the European Union L 49, Document 32021R0167. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0167 (13.02.2024).

30. Cottier T. Recalibrating the WTO Dispute Settlement System: Towards New Standards of Appellate Review. Journal of International Economic Law, 24(3), pp. 515–533. URL: https://doi.org/10.1093/jiel/jgab024 (13.02.2024).

31. Vienna Convention on the Law of Treaties: adopted 23 May 1969, entered into force 27 January 1980. 1115 UNTS 331.

32. World Trade Organization. WTO 2024-2025 Budget Proposal // WTO. WT/BFA/W/643, 3 July 2023. URL: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/BFA/W643.pdf&Open=True (14.11.2024).

33. Pauwelyn J., Pelc K. Who Writes the Rulings of the World Trade Organization? A Critical Assessment of the Role of the Secretariat in WTO Dispute Settlement // SSRN. 2019. URL: https://doi.org/10.2139/ssrn.3458872 (14.11.2024).

34. Six Years on the Bench of the World Trade Court // J World Trade. 2002. Vol. 36. pp. 619-623. URL: http://www.qil-qdi.org/procedural-innovations-in-the-mpia-a-way-to-strengthen-the-wto-dispute-settlement-mechanism/#_ftn83 (14.11.2024).

35. United States Trade Representative. U.S. Views on the Functioning of the WTO Dispute Settlement System // USTR. February 2020. URL: https://ustr.gov/issue-areas/enforcement/us-views-functioning-wto-dispute-settlement-system (14.11.2024).

36. US Rejects EU-Led Interim Appeal Arbitration Arrangement // TWN Info Service on WTO and Trade Issues. 10 June 2020. URL: https://www.twn.my/title2/wto.info/2020/ti200608.htm (14.11.2024).

37. Mohan M. P., Raj V. Appellate Body Crisis at the World Trade Organization: View from India. Journal of World Trade, 2021, Vol. 55, No. 5. URL: https://doi.org/10.54648/trad2021035 (13.02.2024).

38. Балдина С., Андрейко Е. В., Сорокина Е. А., Тишина Е. В. Членство в ВТО и его влияние на экономическое развитие стран-членов. Экономика и управление: анализ тенденций и перспектив развития, 2013. URL: [https://cyberleninka.ru/article/jiel/jgab024. (13.02.2024).

39. Bartels L., Bickel F., Motoc I-V. WTO Dispute Settlement Update: Frozen Fries Put the MPIA to the Test. Freshfields Bruckhaus Deringer, 2 May 2023. URL: https://riskandcompliance.freshfields.com/post/102idx0/wto-dispute-settlement-update-frozen-fries-put-the-mpia-to-the-test (13.02.2024).

40. Rudjimin M. The Multi-Party Interim Appeal Arbitration Arrangement (MPIA): A Perspective on Developing Countries' Interests. LinkedIn, 10 July 2023. URL: https://www.linkedin.com/pulse/multi-party-interim-appeal-arbitration-arrangement-mpia-m-rudjimin (13.02.2024).

41. Kugler K., Morgan G. MPIA: A Viable Temporary Alternative? Afronomicslaw. URL: https://www.afronomicslaw.org/category/analysis/mpia-viable-temporary-alternative (13.02.2024).

42. Ahmed MSA et al. MPIA as Solution of Appellate Body Dilemma: An Overview of the Advantages of New Mechanism of WTO Dispute Settlement. International Journal of Scientific Research and Management (IJSRM), 2024, Vol. 12, No. 5, p. 473.

43. Office of the United States Trade Representative (USTR). Report on the Appellate Body of the World Trade Organization // USTR. 2020. 13. URL: https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf (20.06.2024).

44. United States Trade Representative. U.S. Letter on WTO Dispute Settlement // World Trade Law. URL: https://www.worldtradelaw.net/document.php?id=misc/USLetterJune5.pdf&mode=download (14.11.2024).

45. Singh Jaswant S. Arbitration in the WTO: Changing Regimes Under the New Multi-party Interim Appeal Arbitration Arrangement. Kluwer Arbitration Blog, 2020. URL: https://arbitrationblog.kluwerarbitration.com/2020/05/14/arbitration-in-the-wto-changing-regimes-under-the-new-multi-party-interim-appeal-arbitration-arrangement/ (13.02.2024).

46. Panels established to review EU complaints regarding Chinese trade measures. World Trade Organization, 2023. URL: https://www.wto.org/english/news_e/news23_e/dsb_27jan23_e.htm (13.02.2024).

47. Disputes by member. World Trade Organization, 2024. URL: https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm (13.02.2024).

48. WTO to examine Kazakhstan's hidden trade restrictions in struggle over goods flows from China to Russia. АКИpress. URL: https://m.akipress.com/news:636674 (13.02.2024).

49. Kyrgyz Republic Trade Barriers. Trade.gov. URL: https://www.trade.gov/country-commercial-guides/kyrgyz-republic-trade-barriers (13.02.2024).

50. Kazakhstan and Kyrgyzstan on Verge of Trade War // Orda.kz. 2024. URL: https://en.orda.kz/kazakhstan-and-kyrgyzstan-on-verge-of-trade-war-3210/ (13.02.2024).

51. Kazakhstan-Kyrgyzstan Trade Issues // ICE. 2024. URL: https://www.ice.it/it/news/notizie-dal-mondo/259224 (13.02.2024).

52. Kazakhstan Responds to Kyrgyzstan's Claims to WTO // Inform.kz. 2024. URL: https://en.inform.kz/news/kazakhstan-responds-to-kyrgyzstan-s-claims-to-wto_a3622212/ (13.02.2024).

53. World Trade Organization. Dispute Settlement Reform: Facilitator Urges Practicality and Flexibility as Talks Intensify // WTO. 22 November 2024. URL: https://www.wto.org/english/news_e/news24_e/refrm_22nov24_e.htm (22.11.2024).

54. World Trade Organization. Dispute Settlement Reform: Reports from Co-convenors and Facilitator on Progress // WTO. 11 October 2024. URL: https://www.wto.org/english/news_e/news24_e/dsr_11oct24_e.htm (11.10.2024).

55. Council of the European Union. WTO Appellate Body, 20 May 2019 // Council of the EU. 2019. 9506/19.

56. World Trade Organization. Dispute Settlement – DS591: Colombia - Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands // WTO. 21 December 2022. URL: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds591_e.htm (14.11.2024).

57. Interim appeal arrangement for WTO disputes becomes effective. Directorate-General for Trade, European Commission, 30 April 2020. URL: https://www.linkedin.com/pulse/multi-party-interim-appeal-arbitration-arrangement-mpia-m-rudjimin/ (13.02.2024).

58. Kazakhstan: dispute settlement news archive. World Trade Organization, 2023. URL: https://www.wto.org/english/news_e/archive_e/country_subj_arc_e.htm?country1=KAZ&subject1=DISP (3.02.2024).

59. Kuno A. Japan's Joining MPIA an Outside Chance to Boost Momentum for WTO Reform. East Asia Forum, 14 May 2023.

60. Kazakhstan Ratifies Agreement with Kyrgyz Republic on Checkpoints // Akorda.kz. 2024. URL: https://www.akorda.kz/ru/glavoy-gosudarstva-podpisan-zakon-respubliki-kazahstan-o-ratifikacii-soglasheniya-mezhdu-pravitelstvom-respubliki-kazahstan-i-kabinetom-ministrov-kyrgyzskoy-respubliki-punktov-propuska-karasu-i-ak-tilek-1883942 (13.02.2024).

61. Kazakhstan Ministry of Foreign Affairs News // Gov.kz. 2024. URL: https://www.gov.kz/memleket/entities/mfa/press/news/details/916369?lang=en (13.02.2024).

62. Menshikova A. M. Position of Joe Biden's Administration on the World Trade Organization // Herald of the Russian Academy of Sciences. 2022. Vol. 92(S6). P. S529–S533. URL: https://doi.org/10.1134/s1019331622120061 (13.02.2024).

63. Chang J., Shen W., Yu J. Explaining Kazakhstan's Accession to and Compliance with WTO, from a Neorealism and a Neoliberalism Approach // Atlantis Press. 24 December 2021. URL: https://doi.org/10.2991/assehr.k.211220.139 (13.02.2024).

64. Economic and Trade Agreement between the Government of the United States of America and the Government of the People's Republic of China: adopted 15 January 2020 and entered into force 14 February 2020 // United States Trade Representative. 2020.

65. Reflections on the Phase One Agreement // The China Business Review. 20 January 2022. URL: https://www.chinabusinessreview.com/reflections-on-the-phase-one-agreement/ (13.02.2024).

Для цитирования и библиографии: Sayenko L. P. Advantages, Risks, and Prospects of Kazakhstan's Accession to the Multi-Party Interim Appeal Arbitration Arrangement (MPIA)// Право и государство. № 1(106), 2025. – С. 20-34. DOI: 10.51634/2307-5201_2025_1_20

Материал поступил в редакцию 10.02.2025