Institutional Innovation in Response to Backlash: How Members Are Circumventing the WTO Impasse

Krzysztof Pelc[†]

Abstract

In response to the impasse caused by the US' blockade of the World Trade Organization's dispute settlement body, 52 Member-states have converged on a voluntary, binding judicial workaround: the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). This article asks two questions related to this singular, yet overlooked innovation in global governance: first, what determines who joins a novel enforcement mechanism in the midst of a global "backlash" against trade liberalization? Secondly, does the MPIA work? Examining countries' trade policy in the run-up to the MPIA's creation suggests that the main motivation for MPIA participation is the possibility to challenge trade partners' measures; vulnerability to others' challenges, conversely, does not deter joining. The same analysis can be used to predict subsequent MPIA entrants, in ways that match anecdotal evidence. A corollary finding is that insofar as the US reasons similarly to other countries, its trade profile suggests it does *not* stand to gain much from more credible enforcement, which may explain its lack of zeal during WTO reform negotiations. Secondly, looking at dyadic trade measures over time, we offer evidence that even at this early stage, the MPIA generates deterrence among its members, and this effect is growing. From an institutional standpoint, the experiment appears to be working: the MPIA is not only an interim solution, but also a prototype for institutional innovation in the face of backlash.

[†]Department of Politics and International Relations, Oxford University. Oxford, UK. krzysztof.pelc@politics.ox.ac.uk. Wolfgang Alschner, Mona Paulsen, Joost Pauwelyn, Lauge Poulsen, Manfred Elsig, and the participants of seminars at IELAP and the World Trade Institute in Bern for most helpful comments, and Arianna Bondi for excellent research assistance. All remaining errors are my own.

1 Introduction

The architecture of global governance is undergoing a period of intense transformation. One of the primary sites of this transformation is the stalemate within the World Trade Organization's (WTO) dispute settlement body. The United States' move against Appellate Body (AB) adjudicators has rendered the trade regime's enforcement body inoperative since late 2019. As a result, 166 member-states have been deprived of the mechanism they relied on to uphold trade rules for the last quarter century. In response to this standoff instigated by the tribunal's principal architect, 16 WTO members came together in 2020 to form the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), a stop-gap solution to circumvent the impasse. A number of countries have since joined this institutional workaround, which now counts a total of 56 member-states, representing a majority of world trade.[1]

The MPIA has been largely overlooked by international relations scholars. Yet consider what an unprecedented development it represents: in the face of one of the most significant clawbacks of power against an international tribunal since WWII, a diverse subset of member states agreed among themselves to establish a parallel judicial process that would mirror the paralyzed AB. They did so by harnessing a practically unused arbitration provision, Article 25 of the DSU,[2] in a way that renders binding rulings, without requiring a vote by the rest of the membership. And while the MPIA is designed to mirror the paralyzed Appellate Body, it also modifies several of its procedures in ways that address criticisms of the old system. The MPIA has thus taken on an experimental function, and may yet provide a blueprint for future reforms of the dispute settlements system, without much input from the US. Indeed, the most recent draft text from ongoing WTO reform talks appears to draw on several features of the MPIA, such as its time and word limits.[3] Can a global institution be successful without its founding member? And can it be effective once it relies entirely on voluntary commitments? To find out, this article conducts a series of empirical tests.

First, we ask, who joins a voluntary initiative for trade policy enforcement in 2020, and why? The initiative was spearheaded by the EU; unsurprisingly, the US contested the MPIA's legitimacy from day one. Yet apart from the US, there are "several other prominent WTO members that seem reluctant to join" (Lester, 2022). Some, like Argentina and India, appear "rather keen on preserving the dysfunctional status quo" (Fahad, 2020). China joined early on, but so did smaller

[1] Counting the 27 EU member-states. See empirical section for calculations of trade volume.

[2] Article 25 was only invoked once before, to settle a factual matter in *US—Copyright*, but never as a means of adjudicating a dispute.

[3] See Special Meeting of the General Council, 16 February 2024. WTO doc JOB/GC/385.

countries like Benin, despite never having participated as a litigant in dispute settlement.[4] Japan initially stayed out, which led to considerable domestic criticism, until it joined in 2023. What explains why some countries committed to a parallel enforcement body in the face of a generalized pushback against global governance, while others balked? Research into the drivers of WTO membership (Goldstein, Rivers and Tomz, 2007) lost some of its thrust once all but the entire globe joined. Yet the membership question takes on renewed sense in the case of the MPIA, allowing for novel theoretical insight into what explains the delegation of power to third-party adjudication by sovereign states, especially once the enthusiasm for international cooperation has cooled.

We argue that beyond common-sense factors like institutional capacity and dispute settlement experience, states run through a cost-benefit analysis of what they could gain or lose as a result of stronger enforcement. If so, then the decision to join should reflect a country's defensive vulnerability, and its offensive potential. That is, the greater the number of distortionary trade measures a country has imposed on others, the more it stands to lose from an enforcement mechanism. Conversely, the greater the number of distortionary trade measures others imposed on it, the more it has to gain from a credible enforcement mechanism.

The twist is that both this vulnerability and the offensive potential are limited to the MPIA membership. That is, MPIA members only benefit from the additional certainty provided by the parallel procedures with regards to other MPIA members. We thus estimate the odds of joining by looking at every WTO member's relative trade policy position vis-à-vis every other member, controlling for both material and non-material considerations. The results are revealing: what matters most significantly for countries' decision to join, beyond the expected effects of capacity and past dispute settlement experience, is *offensive* potential. By comparison, countries do not seem to be negatively swayed by their defensive vulnerability.

We then apply our model to assess the hypothetical scenario of the US joining an initiative akin to the MPIA, abstracting from the current impasse. Here, too, the findings are insightful. Insofar as the US evaluates the trade-offs of enforcement similarly to other WTO participants, its present trade policy profile does not align with the characteristics of countries most inclined to join the MPIA. Meanwhile, the model's predictions for potential future MPIA members do align with observable trends. Notably, Japan emerges as the country with the highest probability of joining as of 2020—which is corroborated by Japan's actual accession in 2023.

[4]Benin joined as a third party in one dispute, *US-Upland Cotton* (DS267), but has never been a litigant.

The second question the article takes up concerns the benefits of MPIA membership. This amounts to asking, does the MPIA *work*? And how might we know? It would seem early to assess effectiveness; the MPIA has only ruled on one case.[5] And while this was seen as proof of the new system working procedurally, it does not provide much of a jurisprudential record to go by. Yet there is ample theory to suggest that no effective judicial body can wait until the ruling stage to exert its primary impact. If the MPIA is to have an effect, it is first and foremost by affecting behavior in the run-up to dispute settlement, rather than by producing compliance following formal rulings. Effective enforcement works primarily through deterrence, rather than by striking down specific measures. Accordingly, we ask whether the MPIA has had an observable effect on shaping trade policy among MPIA members, compared to non-MPIA members. Here, too, the empirical record offers a nuanced answer. The MPIA appears to deter offensive measures among MPIA members, and encourage liberalizing measures. These effects appear to grow over time, in both magnitude and significance.

The results contribute to the growing literature on institutional membership, clubs, and plurilateralism.[6] In a recent comprehensive treatment, Davis (2023) considers the importance of geopolitical alignment in the formation of a number of international organizations. Others have pointed out that originally, the WTO itself was such a discriminatory club (Gowa and Kim, 2005); this might explain why the trade regime was once an engine of international lawmaking, and why it no longer is (Lamp, 2016). Hoekman and Sabel (2019) argue that "open plurilateralism" may be a means of regenerating the WTO from within, without the inefficiencies inherent to the exclusionary aspect of PTAs. Similar claims have been made in the issue-areas of migration (Oelgemöller, 2011), climate change (Brandi, Berger and Bruhn, 2015), non-proliferation (Moret, 2016), and security alliances (Kupchan and Kupchan, 2017), with others warning once more against the exclusionary aspect of such arrangements (Popescu et al., 2021). The findings suggest that informal plurilateral agreements such as the MPIA can indeed affect country behavior, and thus exert pressure on non-members to either join, or accept reforms to existing multilateral arrangements.

The results also speak to the literature on the backlash against the Liberal International Order (Lake, Martin and Risse, 2021), and possible responses to it. Given the spectacular nature of the US' attack on the WTO Appellate Body, the MPIA is of special interest as a study of an institutional workaround in the face of hegemonic obstruction. The closest analogue to the MPIA's

[5] In another case brought against Turkey by the EU, the parties agreed to *ad hoc* Article 25 arbitration.

[6] As pointed out in the next section, opinions differ about whether the MPIA is technically a plurilateral agreement, or simply an informal collective commitment—this may be seen as part of its ingenuity.

attempt at circumventing the actions of a spoiler may be another initiative by the EU, following the collapse of the Iran Nuclear Deal (JCPOA). After the Trump Administration withdrew from the JCPOA in 2018, it reinstated unilateral sanctions, which included cutting Iran off from the SWIFT payment system. In an effort to maintain the deal, the EU developed a special purpose vehicle, the Instrument in Support of Trade Exchanges (INSTEX), a parallel payments system designed to allow trade with Iran, by relying on a barter system that did not deal directly with US dollars. INSTEX was another coordinated response that attempted to protect an international agreement against the actions of a spoiler state. By most accounts, it has proven a failure, largely because European banks feared provoking the US (Farrell and Newman, 2023).

In this article, we examine whether the MPIA has fared better. The answer appears to be yes: the MPIA, whose membership now covers most of global trade, can be effective without the DSU's principal architect. It may also exert growing pressure on the US to engage in negotiations over reform. The US has been dragging its feet in this respect, yet recent developments suggest the odds of an agreement are growing.[7]

2 The MPIA, or How to Circumvent a Spoiler

The United States is largely credited with pushing for the creation of the WTO's dispute settlement mechanism in the passage from the GATT to the WTO in 1995 (Elsig, 2017). The quasi-judicial institution that resulted—one with binding rulings, high rates of compliance, and a jurisprudence of its own—is often portrayed as having been the intent all along (Pelc, 2022). According to these accounts, farsighted governments knowingly tied the hands of an acquiescent US Congress, so that it would not give into pressure from domestic protectionist interest groups (Thompson, 2007). What became known as the "jewel in the crown" of the WTO and the "workhorse" of the trade regime grew into the textbook example of the progressive legalization (Goldstein et al., 2000; Goldstein and Martin, 2000) and judicialization (Alter, Hafner-Burton and Helfer, 2019) of global governance, exemplifying the Pareto improvements envisioned by institutional theory. Here was a hegemon strategically tying its own hands through international institutions (Ikenberry, 1998).

Thus, while the tribunal never technically became a "court" and its adjudicators never became "judges", the difference grew thin, and legal scholars often pushed for the *de jure* recognition of a *de facto* shift.[8] AB adjudicators themselves took to referring to the tribunal as the "World

[7] See supra, fn 3.

[8] "The failure to call a court a court diminishes the external legitimacy of the WTO in general and the Appellate

Trade Court".[9] The expectation was the DSU's growth into a full-fledged international court was all but guaranteed.

Hegemonic Backlash This expectation proved premature. The US Congress has long been resistant to international tribunals second-guessing US policy through judicial review. Such concerns were already present during the Uruguay Round negotiations leading up to the creation of the DSU in 1995.[10] By the end of the WTO's first decade, dispute settlement grew increasingly politicized. Legal challenges increasingly targeted sensitive points of domestic regulation, rulings grew longer and more complex. In response, WTO members, and the US especially, increasingly tried to exert pressure on AB adjudicators, both during the appointment process and once members were appointed (Elsig and Pollack, 2014). US concerns intensified following a series of controversial rulings where the AB's interpretations appeared to overreach by effectively creating new rights and obligations, in contravention of DSU Article 3.2.[11] The situation escalated when the US blocked the reappointment of the South Korean AB member in 2016, and then all subsequent reappointments. Notably, this pushback began not during the Trump administration, but under President Obama, underscoring the deep-rooted and bipartisan nature of these concerns (Goldstein and Gulotty, 2021). The trend has continued under the Biden administration, which has thus far resisted international pressure to reboot the WTO's judicial arm.[12]

As a result of the US blockade, the tribunal was rendered inoperable on December 10th, 2019. Some countries continued to file cases, albeit at a reduced rate. Following a first-instance panel ruling, the dispute could be appealed "into the void," effectively ensuring that it would never be resolved. As the African Group laid out in the Dispute Settlement Body, "existing rules [became] unenforceable and discussions or negotiations on new rules [became] redundant."[13] Since then, 18

Body more specifically" (Weiler, 2001, 342).

[9] See, inter alia, Van den Bossche (2005): "The Appellate Body is now, in all but name, the World Trade Court." Or Ehlermann (2002), by another AB member, and his account of "Six Years on the Bench of the 'World Trade Court'."

[10] See, e.g. the testimony to Congress of Allan Wolff, former Deputy USTR in 1995: "this WTO system has no checks and balances. Yes, there is an appellate review panel, but if a panel goes off the tracks and it is not corrected by the appellate body, it is going to be nearly impossible to get the members of the WTO to correct it". May 10, 1995. S Hrg 104-124.

[11] DSU Article 3.2 provides that "Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements."

[12] In a first sign of possible interest, in January 2023, the US tabled a set of explicit demands, and made claims to wanting a "fully functioning (dispute system) by 2024". See comment by Deputy United States Trade Representative Maria Pagan. `https://www.reuters.com/markets/us-wants-world-trade-organization-dispute-system-fixed-by-2024-2023-01-26/`.

[13] Appellate Body Impasse Communication From The African Group. WT/GC/W/776.

cases have been appealed into the void; eight of these by the US.[14] The implication is that all complainants face the prospect of their challenges being suspended indefinitely; firms who rely on such challenges thus have little reason to think they will be effective.

The US' attack on the WTO's AB undoubtedly represents the greatest pushback against the trade regime since the 1970s period of "aggressive unilateralism", during which the US resorted to a domestic decision-making process to go after perceived violations by its trade partners (Thomas and Elliott, 1992; Pelc, 2010). Paradoxically, that spate of unilateralism paved the way for the creation of the DSU in the first place, leading some to suggest that the US stance at the time could be read as "justified disobedience" (Hudec, 1990), on the grounds that there was no other way to progress in the deadlocked institution. As we suggest below, the same could now be said of the way in which the EU has combined the MPIA initiative with a threat of unilateral (and WTO-illegal) retaliation.

In February 2020, the US Trade Representative released what one observer aptly described as its "casus belli" (Gao, 2021): a 174-page report systematically outlining US grievances against the WTO's tribunal. The main accusations boil down to: (i) the AB overstepped its mandate by writing decisions that extend beyond clarification of existing rules; and (ii) this overly activist stance, together with an emphasis on consensus opinions, and a tendency to add unnecessary *obiter dicta*, caused considerable delays in the process, beyond the timelines provided in the DSU.

Response to the Crisis In response to the US blockade, a group led by the EU met informally during the 2019 World Trade Forum in Davos, and proposed the MPIA as a temporary solution. The MPIA was designed to mirror the paralyzed appellate mechanism. As the EU explained to the Dispute Settlement Body, this "appeal arbitration procedure could, for all practical purposes, replicate all substantive and procedural aspects of appellate review".[15]

The ingenuity of this initiative was that it imported the authority and binding power of the existing agreement into a novel, informal, opt-in mechanism. To do so, the MPIA's creators inscribed it within an unused arbitration provision, DSU Article 25.[16] Crucially, the result of this process would be legally binding on the litigants without the DSB needing to formally adopt the arbitration award.[17]

The WTO's arbitration provision in Article 25 is vague enough that it could be "filled" with

[14] Kuno, Arata. https://www.eastasiaforum.org/2023/05/14/japans-joining-mpia-an-outside-chance-to-boost-momentum-f
[15] WT/DSB/M/446.
[16] Supra, fn 1.
[17] As DSU Article 25.3 states, "parties to the proceeding shall agree to abide by the arbitration award."

an entirely new procedure, as long as the litigants agreed on this content. The MPIA arrangement thus details its own process for (re)appointing arbitrators, new timelines for deliberations, entirely novel word limits on party submissions and awards, and explicit limits over the scope of the adjudicators' mandate.[18] An earlier version of the MPIA even attempted to imbue the MPIA rulings with something akin to precedential effect;[19] interestingly, this provision was later removed from the founding MPIA document (Gao, 2021). This adjustment, as well as the stricter timelines and word limits on awards, were arguably made in response to, or anticipation of, US criticism. On the other hand, the MPIA Agreement mentions how arbitrators are to discuss among themselves "matters of interpretation", in "order to promote consistency and coherence in decision-making", in ways that suggest great reliance on the principle of collegiality as a means of ensuring consistency with prior decisions.[20]

In light of its hybrid institutional design, opinions differ as to what exactly the MPIA *is*. Some insist that because the MPIA inscribes itself within the existing provision of Article 25, it is technically not a plurilateral agreement, but only "a political commitment" (Pauwelyn, 2023), by which states signal that they will use the arbitration provision in an agreed-upon way, rather than appealing disputes "into the void". In this sense, the MPIA is a strictly diplomatic act; it amounts to a one-sentence notification to the Dispute Settlement Body.[21] Accordingly, the passage of the MPIA requires neither a change to WTO rules (or vote by the WTO General Council), nor an amendment to national legislation (or ratification by domestic legislatures). Finally, by grafting a novel adjudication process onto an existing arbitration provision, the EU has successfully argued that the adjudicators selected by MPIA members according to their own selection rules can nonetheless be paid out of the WTO's budget, and benefit from the assistance of its Secretariat.

An opposing view holds that the MPIA wedges a detailed set of agreed-upon procedures which mirror, but also modify, the AB process into an arbitration provision that was not designed for this purpose. Indeed, at no point in the WTO negotiations was Article 25 envisioned as an

[18] On the latter point, see para 13 of the MPIA Agreed Procedures: "the arbitrators may also propose substantive measures to the parties, such as an exclusion of claims based on the alleged lack of an objective assessment of the facts." This was a way of preventing "Article 11 claims" under which parties appeal factual, rather than legal panel findings. See also:Pauwelyn (2023).

[19] The initial language provided that MPIA awards "shall be deemed to constitute Appellate Body reports adopted by the DSB for the purposes of interpretation of the covered agreements" (para 8 of the Agreed Procedures between the EU and Canada).

[20] Similarly, the wording in the MPIA Agreement's Preamble states: "Re-affirming that consistency and predictability in the interpretation of rights and obligations under the covered agreements is of significant value...". This is a notable variant of DSU Article 3.2, which speaks instead of "security and predictability". The change suggests further affirmation of the need for consistency, in the very paragraph that goes on to acknowledge how "arbitration awards cannot add to or diminish the rights and obligations provided in the covered agreements".

[21] See, e.g. Benin's notification in 2020. JOB/DSB/1/Add.12/Suppl.3

appeal provision. It was seen as an alternative to the regular dispute settlement process, which would be followed by litigants from the start of the dispute, rather than being triggered by an appeal to a (paralyzed) AB. For these reasons, some former WTO negotiators have been cited as claiming that the MPIA "not only amends Article 25, but changes the very character of the DSU."[22] If so, then the mechanism *would* need approval from the membership as a whole, as laid out in Article X of the WTO Agreement. Some observers have thus claimed that "the MPIA, purportedly an exercise invoking Art. 25 of the DSU, is in fact a new entity for dispute settlement among its participants, one that would be an amendment of the DSU, needing unanimity."[23]

Contestation of Legitimacy The US has regarded the MPIA with "scepticism and even outright hostility since it came into being" (Gao, 2021). Indeed, the US wasted no time responding to the EU's attempt to circumvent its blockade of the AB, describing the MPIA as an "ersatz Appellate Body", the "real goal" of which is to "serve as a model for any future WTO Appellate Body."[24] On this basis, the US sought to contest the legitimacy of the MPIA, claiming that it "seeks to clothe itself with faux Appellate Body authority while impinging on the rights of non-participating Members."[25] Channeling prevalent anti-China sentiment within the US, it repeatedly referred to the MPIA as "the China-EU arrangement".[26] The US complained to the Dispute Settlement Body that "rather than seeking to understand why the Appellate Body had departed from what Members had agreed, [MPIA members] had redirected the focus and energies of the Membership to pursue an arrangement that would, at best, perpetuate the failings of the Appellate Body".[27] In particular, the US—which happens to be the largest contributor to the WTO budget—objected to the notion that the arbitrators selected by MPIA members would be paid out of that budget, and benefit from the assistance of WTO Secretariat staff.[28]

In response, the EU has insisted on the temporary nature of the MPIA as "an interim

[22] Chakravarthi Raghavan. "A Witch's Brew at the WTO". 19 May 2020 Third World Network.

[23] ibid. South Africa made an analogous claim to the DSB: "South Africa believed that the MPIA was yet another plurilateral agreement, which would fragment and disrupt larger multilateral processes and consensus in this Organization." WT/DSB/M/442.

[24] DSB meeting. WT/DSB/M/442.

[25] Letter from Dennis C. Shea to the WTO Director General, June 5, 2020.

[26] Ibid. In the same open letter, the US even (erroneously) suggested that China played a primary role: "the arrangement put forth by China, the European Union and some other Members seeks to imbue itself with WTO authority, which it does not have."

[27] WT/DSB/M/446

[28] As the US Ambassador to the WTO put it in an open letter to the WTO DG, "the United States also objects to the use of WTO budget funds for a process that is clearly far more than a simple Article 25 arbitration. That open letter concluded, "the United States opposes both the establishment of what appears to be a new WTO Division for the benefit of participants in the China-EU arrangement and the allocation of staff for the exclusive use of those participants." Supra fn 25.

arrangement" that is "open to all WTO members to join". It has repeatedly held that "the MPIA will remain in effect only until the Appellate Body is again fully functional." In a possible attempt to circumscribe its precedential impact, the MPIA founding document also highlights that the arrangement was taken "in view of these extraordinary circumstances".[29]

Yet the EU has simultaneously backed up this "open," consent-based mechanism with real, coercive economic power. In December 2019, it amended its domestic legislation to allow the Commission to take immediate countermeasures against any country that did not subscribe to the MPIA, and that appealed a case brought by the EU "into the void".[30] There is little doubt that such retaliation would itself be a violation of WTO rules,[31] since it would implement countermeasures without waiting for WTO authorization. Though it has drawn far less attention, the EU's move is not without resemblance to the widely-condemned Section 301 mechanism that the US relied on in the 1970s to unilaterally retaliate against foreign measures it deemed in breach of trade rules.[32] Both instances feature a superpower using the threat of an extra-legal mechanism to enforce what it argues are agreed-upon multilateral trade rules. Moreover, the EU's adoption of a unilateral retaliatory mechanism against "appeals into the void" has not stopped it from doing just that vis-à-vis non-MPIA members: in August 2020, the EU appealed the panel findings in a case filed by Russia, knowing this would stall the dispute indefinitely.[33] The result of the EU's policy is a two-track system: MPIA members benefit from internal cooperation that is not extended to non-MPIA members. The question, which we explore below, is whether this cooperation among MPIA members is observable on average.

One common goal of plurilateralism, based on the club model, is to increase pressure on non-members to join, or enact analogous reforms. Such efforts by existing MPIA members have sometimes been explicit: as Canada openly proselytized, "Canada invited all WTO Members to consider joining the MPIA to safeguard their dispute settlement rights to the greatest extent possible [...] Canada remained available to discuss the MPIA with any interested Member."[34] The pressure on non-members to join grows together with any plurilateral initiative's membership

[29] The EU also systematically insists on how "the EU's priority is finding a lasting multilateral solution to the Appellate Body situation" WT/TPR/G/442.

[30] See: Regulation (Eu) 2021/167 Of The European Parliament And Of The Council of 10 February 2021 amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules. `https://eur-lex.europa.eu/eli/reg/2021/167/oj`.

[31] "Clearly, the EU is going to take unilateral measures prohibited under the WTO agreements..." (Tsuyoshi, 2019).

[32] See supra.

[33] In response, Russia claimed that "[t]he EU was seeking to escape its obligations by not trying to resolve the dispute." Meeting of the Dispute Settlement Body on 28 August, 2020. `https://www.wto.org/english/news_e/news20_e/dsb_28aug20_e.htm`.

[34] WT/DSB/M/446. para 9.16.

(Hoekman and Sabel, 2021). As a trade commentator noted when Japan finally joined in 2023, "Japan's membership may increase pressure on wavering potential members, like the United Kingdom and South Korea."[35] As of now, the MPIA membership already represents a majority of world trade.[36]

In the end, US contestation has remained rhetorical. It did not seek to constrain the budget of the MPIA as aggressively as it could have done in the WTO Budget Committee.[37] The result is that the MPIA has been able to pay adjudicators out of the WTO budget, and rely on the Secretariat's (significant) assistance. Some outside observers have expressed concerns that this could yet change if the US changes its mind, to the detriment of developing countries.[38]

3 Theoretical Expectations

Can a plurilateral enforcement mechanism created in response to backlash by a hegemon be effective? To get at this broad question, we ask two specific ones: (i) looking at the MPIA membership, what seems to account for states' choice to participate in this judicial workaround? And (ii) has the MPIA affected state behavior? The two questions are related. Countries will only join if they believe others will abide by a voluntary arrangement that requires each party to re-iterate its consent at the start of every dispute. Yet if they do believe in the additional constraining power of the MPIA, member states should internalize the associated costs and benefits, in a way that ought to be observable not only in the midst of actual disputes, but also in their trade policy decisions. We develop these two expectations in turn.

3.1 Who Joins, and Why?

Opinions are split as to the purpose that the MPIA really serves, and what motivates countries to join it. One view is that the MPIA is a largely performative gesture, a symbolic stand against US unilateralism. As a recent assessment concludes, "the MPIA is more appropriate to be regarded as a political declaration of its participants" (Starshinova, 2021). If so, then we would expect the decision to be mainly based on ideological positions: those most eager to take a stand against the US might join the MPIA as a strong public statement of their position. In our empirical analysis,

[35] `https://www.reuters.com/business/alternative-wto-trade-arbitration-gains-steam-japan-joins-2023-03-10/`.

[36] Author calculation using dyadic import data, post imputation. See Section 4.2 below.

[37] See the latest WTO Budget Proposal by the WTO Committee on Budget, Finance and Administration. 3 July 2023. WT/BFA/W/643.

[38] "Although WTO Members have agreed to fund the MPIA from the WTO's budget, the Members who were against it could change their minds and deprive it of funding." (Kugler and Morgan, 2023).

we proxy for this expectation by testing for the importance of states' ideal point in UN voting, and their distance from the US.

Cost-Benefit: Who Gains from More Predictability, and Who Loses? By contrast to the view that the MPIA is mostly grandstanding, we propose that countries' motivation to join comes down to material interests. Specifically, countries should assess the costs and benefits of joining the MPIA by considering, on the one hand, how their trade partners' policies offer grounds for legal challenge, and on the other, how their own trade policy makes them vulnerable to foreign challenges. Indeed, enforcement is a two-way street: it can help aggrieved countries obtain reparation, but it can also cost serial violators, by exposing them to politically costly challenges.

This calculation is evident in national discussions around membership. In the case of Japan, which wavered for three years before joining, Japanese legal scholars advocating for the MPIA pointed out that "in the past, the number of appeals filed against Japan was significantly lower than those it filed" (Tsuyoshi, 2019), suggesting that on balance, the gains from a strengthened offensive potential would more than outweigh losses from increased vulnerability to challenges. Conversely, the reluctance of countries like India to join has been explained by their vulnerability to challenges of their recent subsidies and tariffs on information technology goods (Fahad, 2020).

Importantly, however, the enforcement provided by the MPIA only applies to other MPIA members. That is, joining the MPIA does not help e.g. challenge US trade measures, because the US is not an MPIA member, and is unlikely to ever become one. Similarly, the vulnerability that comes with membership does not extend to challenges from non-members. Of course, non-members may one day join the MPIA, as Japan eventually did. Existing members have no way of blocking this, since countries join unilaterally. Additionally, non-MPIA members can also agree to abide by MPIA-like procedures on an *ad hoc* basis. In *Turkey—Pharmaceutical Products*, brought by the EU, involved a non-member, Turkey, which agreed to an ad hoc arbitration process that mimics the MPIA, within 60 days of the formation of the panel.

These considerations yield a set of empirical expectations that can be summarized in the 2X2 matrix in Figure 1. The more MPIA membership offers country i in the way of potential challenges of harmful measures by country j, and the less i is vulnerable to potential challenges by j, the more likely i should be to join. Country i should perform this calculation for every trade partner j, depending on j's MPIA status. When j is a non-member, the effects of vulnerability and offensive potential should remain directionally the same, but considerably attenuated, since they

are made conditional on j eventually joining in turn. Aggregating these offensive potential and defensive vulnerability scores vis-à-vis each trade partner j should reflect i's likelihood of joining.

	j MPIA member	j non-MPIA member
Country i's vulnerability to challenges from j	$--$	$-$
Country i's offensive potential to challenge j	$++$	$+$

Table 1: Theoretical Expectations Over Effect of j's Status on i's MPIA Entry

In formulating these expectations, the assumption is that all countries decide simultaneously, knowing what every other country will decide. Several aspects of the lead-up to the MPIA make this a plausible premise. The creation of the MPIA was a process lasting several months. The WTO remains a largely diplomatic organization, with well-established backchannels in Geneva. Between the start of the talks in December 2019 and the formal announcement in April 2020, all potential members likely knew who all the other potential members were.

Other Factors We are mostly interested in testing whether countries' trade policy profiles, as measured in terms of their vulnerability to challenges, and their offensive potential to challenge trade partners' violations, affect their willingness to bind themselves through the MPIA provision. Yet a number of other country characteristics may also play a role in this decision. While these are less directly tied to the theory, we want to ensure that they are not confounding the analysis. Two such factors are a country's dispute settlement history, and its existing preferential trade agreements (PTAs).

In the first instance, there is some evidence that states' experience with dispute settlement affects the design of subsequent dispute settlement provisions. Past experiences with adjudication can matter in at least two ways. The first is through learning. Existing work shows that past experiences lead countries to become more active in dispute settlement (Davis and Bermeo, 2009). This holds even when such experience is acquired by being a defendant. These countries build legal capacity out of necessity, which they then rely on when filing cases of their own. If so, we might expect experience as both complainant and defendant to make countries more willing to tie themselves through the MPIA, in exchange for greater predictability.

But past experiences can also lead to backlash against international adjudication as a whole. As the costs and benefits of signing on to a dispute settlement system become clearer, states and their domestic audiences may update their beliefs about the legitimacy, or desirability of, third party enforcement. This has been especially observed in the case of investor-state dispute

settlement, where countries that have been on the receiving end of more claims by investors become less likely of signing onto new agreements, and more likely to either radically reform, or exit existing arrangements (Haftel and Thompson, 2018; Puig and Shaffer, 2018; Roberts, 2018). By analogy, we might expect that governments that have been repeatedly challenged in WTO dispute settlement may hold a more negative view of binding adjudication than those that have mostly been primarily on the complainant side. A quick look at the frequency of filings suggests wide disparities in this regard: China has been a respondent twice in twice as many disputes as it has filed itself; conversely, Brazil has been a complainant in twice as many disputes as it has been targeted in.[39] If being disproportionately targeted leads to growing reticence, we might expect a country like China, all else equal, to be less willing to commit to an workaround enforcement device like the MPIA than a country like Brazil. As it happens, both countries are signatories.

It is also worth remembering that the WTO is not the only game in town: states have signed onto a great number of preferential trade agreements, and these have increasingly included dispute settlement provisions of their own. How do existing PTA arrangements influence a country's willingness to sign onto the MPIA? One can imagine symmetrically opposite expectations. On the one hand, the relationship between the MPIA and other PTAs might be one of substitution: after all, if states can fall back on their regional arrangements, then perhaps the MPIA offers little additional value in terms of predictability: states could always challenge trade partners' measures through regional fora. At least one regional case, involving the EU's request for consultations with Ukraine under the European Union-Ukraine Association Agreement (EU- Ukraine FTA) over export restrictions on wood products, appears to have been directly motivated by the blockade of the WTO's Appellate Body (Pogoretskyy, Ohanyan and Fernandez, 2022). At the time the dispute was initiated, Ukraine had not yet joined the MPIA—it has since done so.

On the other hand, the relationship between existing PTAs and the odds of signing onto the MPIA may be one of complementarity: it is likely that the type of country that is a signatory to numerous PTAs is also the type of country that may be more likely to tie itself to sign onto international agreements of all types. In this sense, PTA ties may be the ideal proxy for all the unobservables that determine countries' willingness to bind themselves through international adjudication—from a country's legal culture to its experience with supranational courts, like in the case of the EU (accordingly, the EU is party to many more PTAs than the United States, for instance). This makes the inclusion of the PTA count potentially problematic from a methodolog-

[39] Both counts take into account multiple complainant disputes.

ical standpoint, if it leads to overfitting, in ways that could distort the effects of other explanatory variables. This risk is further compounded if PTAs themselves are influenced by factors that also drive the likelihood of joining the MPIA, or if PTAs have an effect on those factors, since there is good reason to believe that PTAs reduce the incidence of harmful barriers, and the need for legal enforcement in the first place (Mavroidis and Sapir, 2015).

For these reasons, we remain largely agnostic in regards to whether PTAs are substitutes or complements to the MPIA. Yet there are several reasons to think these would not be perfect substitutes. First, most PTAs do not offer the same coverage as the WTO: several measures, like trade remedies (including antidumping duties, countervailing duties, and safeguards), "would mostly not be covered" by PTAs (Pauwelyn, 2019). This is especially relevant insofar as nearly half of all disputes filed in recent years have been over trade remedies. Secondly, the dispute settlement provisions of PTAs have traditionally been underused (Vidigal, 2017). There are a number of reasons for this, but one of them is that countries have come to rely on the expertise of the WTO's Secretariat (Pauwelyn and Pelc, 2022). This, too, is relevant to the analysis, since the Secretariat continues to assist MPIA adjudicators, and thus its input may be an additional reason why a country may join the MPIA despite having alternative access to dispute settlement through its network of PTAs. And although there has been a slight increase in recent years in the frequency of states bringing challenges under regional PTAs' dispute settlement provisions, the total number of such cases remains very small, and largely concentrated in a handful of longstanding regional agreements, like the NAFTA/USMCA treaty. Nonetheless, we control for each country's PTAs in our analysis. In order to home in on the type of PTA that is most likely to serve as a substitute to the MPIA, we count those agreements that have a binding dispute resolution provision.

In the analysis, we also control for some additional factors that may explain countries' willingness to sign onto the MPIA. Among these are each country's GDP and GDP per capita at the time of the decision. The ability of countries to participate in WTO dispute settlement is known to depend a great deal on legal capacity (Busch, Reinhardt and Shaffer, 2009), which is imperfectly correlated with wealth. Since the MPIA is a novel agreement, navigating it may may place greater demands on a country's legal capacity, which is thus an important potential conflating variable to control for.

MPIA Chronology One thing is certain: the decision to join the MPIA appears highly calculated. Consider the initial selection of countries into the MPIA. At every meeting of the DSB since

mid-2017, a group of 121 countries has co-sponsored a proposal to restart the AB nominations, which the US has voted against every time.[40] Of these 121, a smaller subset of 34 countries met with the US during the Davos World Trade Forum in January 2020. Of these, 17 countries then joined a statement issued later that day, announcing "contingency measures that would allow for appeals of WTO panel reports in disputes among ourselves".[41] Even among the signatories to that statement, some, like South Korea and Panama, ultimately decided not to join the MPIA, which counted an initial group of 16 members,[42] which quickly began adding new entrants. The current membership includes 56 WTO members, counting the 27 individual EU member-states.

Among countries that initially stayed out, the decision often led to active domestic discussion, as in the aforementioned case of Japan. In another instance, the UK made waves when it joined the Ottawa Group working towards reform of the dispute settlement mechanism, which was greeted as a signal that the UK positioned itself "alongside the European Union and others in the pro-reform camp"—and tacitly against the US.[43] Yet the UK remains a conspicuous non-member of the MPIA. Various domestic groups have pushed it to join.[44] The government of Scotland, which relies on exports to a greater extent than the rest of the country, has explicitly done so.[45]

3.2 Does the MPIA work?

Among legal scholars, some have argued that the initiative is likely to prove ineffective because it lacks the "compulsory nature of the normal WTO dispute settlement process," based as it is on a strictly voluntary commitment (Gao, 2021). Since arbitration awards are not adopted by the membership, they lack the institutional weight of past WTO rulings, which is likely to affect compliance. Yet looking at GATT history suggests that even a system that relies heavily on state consent can lead to high levels of compliance (Busch and Reinhardt, 2003).

Others have welcomed the initiative as an innovative means of tackling the stalemate, one that has already proven its effectiveness. As Pauwelyn (2023) puts it, "the answer to the question

[40] `https://www.wto.org/english/news_e/news19_e/dsb_18dec19_e.htm`.

[41] "We, the Ministers of Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, European Union, Guatemala, Republic of Korea, Mexico, New Zealand, Norway, Panama, Singapore, Switzerland, Uruguay..." Statement by Ministers, Davos, Switzerland, 24 January 2020.

[42] "Further to the Davos statement of 24 January 2020, we, the Ministers of Australia; Brazil; Canada; China; Chile; Colombia; Costa Rica; European Union; Guatemala; Hong Kong, China; Mexico; New Zealand; Norway; Singapore; Switzerland; and Uruguay, have decided to put in place a Multi-party Interim Appeal Arbitration Arrangement (MPIA) ..." (WTO doc JOB/DSB/1/Add.12).

[43] Chris Horseman. "United Kingdom finds its role as 'critical friend' of World Trade Organization". Borderlex.

[44] See, for instance, the written submission to the International Trade Committee Inquiry on Trade and Foreign Policy by the UK Trade Policy Observatory. `https://committees.parliament.uk/writtenevidence/43757/pdf/`. See also Collins (2024).

[45] `https://www.gov.scot/publications/scottish-government-vision-trade/pages/6/`.

of whether 'it works' is clear: Yes, the MPIA worked." That is, in all 11 cases where a panel was established, the litigants formally notified the WTO of their intent to follow MPIA procedures, and they did so within the 60-day limit provided for in the MPIA Agreement. In the one case that the MPIA has heard thus far, the resulting award was roundly touted as concise and well-written, introducing a number of sensible procedural innovations.[46]

Yet the question remains whether the MPIA has had any impact beyond settling one dispute. In this respect, Pauwelyn (2023) points out, "the mere existence of the MPIA" may have contributed to litigants reaching a settlement, or agreeing not to appeal the panel findings.[47] It is this type of internalization by members that we seek evidence for below.

4 Empirical Analysis: Who Joins, and Does it Matter?

For both of our research questions, we rely on the Global Trade Alert (GTA) database to analyze in countries' trade policy activity. This dataset has become the principal repository of trade measures since the 2008 Great Recession. The GTA records a wide range of both harmful and liberalizing measures, including tariff and non-tariff barriers, trade remedies, export restrictions, subsidies, investment measures, health and safety standards, and technical barriers to trade.[48] Each event records the type of measure, the implementing and affected countries, dates of implementation, and industry concerned. The sample covers 132 countries, counting the EU as one.[49]

Our full data cover 122,415 harmful measures, and 51,370 liberalizing measures *by* and *against* WTO members, from 2008 to 2022.[50] Figure 1 shows the number of harmful measures imposed by WTO members on other WTO members across time: the figure records these on a *dyadic* basis, and thus weighs coverage heavily: a measure that is imposed on the entire membership gets counted separately for every WTO member; a bilateral measure gets recorded once. As expected, the upshot is that countries have dramatically increased their reliance on protectionist measures since the Great Recession.

To be clear, these measures do not necessarily constitute violations of WTO rules. The

[46] "WTO Issues First Award Under MPIA and Tackles Standard of Review in Anti-Dumping Disputes".

[47] See *Canada—Wine* for an example of the first case, and *Costa-Rica—Avocados* for an example of the second.

[48] On the case of subsidies specifically, we only include those that the GTA database labels as "red" measures, to come as close as possible to the WTO's own treatment of subsidies.

[49] As of January 2024, there were 164 WTO member states. Counting the EU as one reduces this to 136 members. Four of these have never implemented any measure recorded by GTA, and thus do not enter the sample.

[50] For the purpose of the analysis, we consider the UK to be part of the EU, since it officially leaves the EU at the start of 2020, after the start of MPIA talks. There are also no meaningful data on barriers the UK imposed, or that were imposed on it, for prior years.

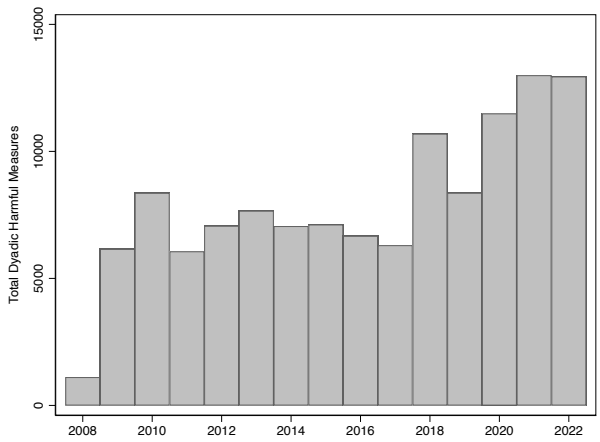

Figure 1: Harmful Measures Over Time, Dyadic Level
Figure shows number of harmful trade measures imposed on a dyadic basis (GTA data).

deciding factor for inclusion of a trade barrier into the GTA database is not its legal status, but whether it is imposes "meaningful change" on trade partners.[51] Of these, we focus on those coded as "harmful". Legality is a matter of contention—it is what dispute settlement exists to adjudicate. Yet the GTA criteria for specific measures are a good proxy for legality: thus the data do not include all forms of state aid and subsidies, but only those that affect trade competitiveness, which is an apt, if imperfect proxy for WTO legality of subsidies. Overall harm is in itself an apt criterion; after all, WTO members can file so-called "non-violation" complaints, which allege harm without breach of the rules. For these reasons, we use the GTA's list of harmful and liberalizing measures as the basis for our defensive vulnerability and offensive potential measures.

4.1 Findings: (i) Who Joins?

In addressing our first question about membership decisions, we use data from 2019 to produce a snapshot of each country's trade policy in the run-up to the MPIA decision in 2020. Our theoretical expectations rest on two sets of two variables: we calculate Defensive Vulnerability by summing the number of "harmful" measures that each country i has imposed on MPIA members vs non-MPIA members. These represent measures that a country j could challenge under MPIA rules, conditional on being itself an MPIA member. We then calculate Offensive Potential by summing the number of "harmful measures" by all MPIA members vs non-MPIA members, that country i is affected by. These represent measures that country i could challenge country j on, conditional on j being an MPIA member.

[51] See the GTA Handbook, by Evenett and Fritz (2022).

While the small size of the cross-sectional sample demands a parsimonious model, we also add control variables for the most likely confounders. Chief among these are proxies for capacity—GDP and GDP per capita. Capacity has been shown to matter significantly for countries' ability to avail themselves of trade enforcement (Busch, Reinhardt and Shaffer, 2009). In addition, we control for each country's foreign policy ideological position as per UNGA voting, by calculating the absolute distance to the US' ideal point (Bailey, Strezhnev and Voeten, 2017).[52] If relative country positions matter, then the expectation would be that those farthest away from the US would most value taking a stand against the US by joining. Finally, we control for past experience with dispute settlement, on the premise that countries that have been in the complainant role more often would value MPIA membership most highly, while those that have often been on the respondent side may be more reticent to join.

Table 2 shows the results. It lists estimates from a probit regression, where the dependent variable is MPIA membership status in 2020. Japan, which only joined in 2023, is thus coded as a non-member. The immediate take-away is that Offensive Potential is highly positively related to the decision to join, while Defensive Vulnerability offers no comparable traction over countries' decision. Figure Figure 2 shows the relative magnitude of these effects. Both variables turn out to be highly correlated between MPIA and non-MPIA country groups. This is largely because most harmful measures imposed by WTO members do affect the entire membership. For this reason, we include these pairs of variables separately in our estimations. And despite the high bivariate correlation, the effects differ systematically, and the expected pattern emerges: the offensive potential vis-à-vis both MPIA members and non-MPIA members is statistically significant, yet the former appears to explain far more of the variation than the latter.

There may be good reason for the asymmetry between Offensive Potential and Defensive Vulnerability. Firms that suffer on a continuous basis from trade barriers abroad may be most aware of such barriers, and most active in lobbying their government to challenge them. By contrast, firms that benefit from trade barriers may either be less aware of such barriers, or less farsighted in preventing challenges to them. If so, then firms affected by existing barriers may have lobbied for a more reliable enforcement mechanism, while those benefiting from measures that could potentially be challenged under such a mechanism may not have been activated by this latent threat. Stated more generally, firms may be more likely to take action to address current, ongoing losses than to take action to prevent future losses of existing benefits.[53] Another reason

[52] Following best practices, we only use this variable in the cross-sectional setting to avoid cross-time comparisons.

[53] This formulation also highlights how in both cases involve means of addressing with losses. Prospect theory thus

might be that for bureaucratic policy reasons, trade ministries have more to gain from challenging existing barriers abroad than they have to lose from their trade partners' challenges, which can be justified to domestic firms as being out of the trade ministry's hands. If so, then a more credible enforcement mechanism that would have an equal effect on both sides of the equation, increasing offensive potential as much as defensive vulnerability, would be seen as a net gain. While these accounts appears prima facie plausible, and consistent with the evidence, they remain necessarily speculative.

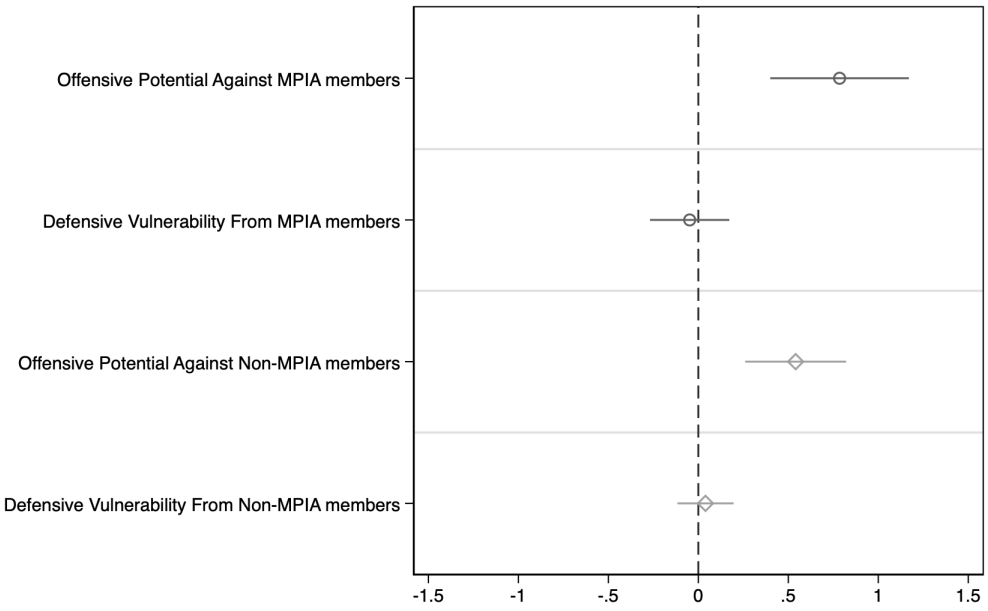

Figure 2: Drivers of MPIA Membership: Offensive Potential vs. Defensive Vulnerability
Figure shows coefficient estimates from Model 1 and 2 in Table 2

Other control variables largely follow expectations: capacity, as reflected by GDP per capita, is positively related to joining. Past complainant experience is positively related, while past defendant is negatively related. These fall just short of significance, though they become highly significant in a bivariate regression. The number of PTAs featuring a dispute settlement provision that a country is a member to is positively and significantly related to the odds of joining the MPIA. This argues in favor the MPIA and PTAs being seen as complementary, rather than as a substitution for one another. That is, insofar as there is any substitution between the additional predictability offered by the MPIA in terms of the ability to challenge violations, and the analogous predictability offered through existing PTAs, this substitution effect is dominated by the various

offers little traction on the matter. Rather, the difference may come down to the greater uncertainty over how the adoption of strengthened enforcement affects challenges by Foreign vs. challenges by Home.

Table 2: Drivers of MPIA Membership

	(1)	(2)	(3)	(4)	(5)
Offensive Potential Against MPIA members	0.785***		0.727***		0.646**
	(0.197)		(0.267)		(0.278)
Defensive Vulnerability From MPIA members	-0.048		0.017		0.062
	(0.112)		(0.148)		(0.161)
Offensive Potential Against Non-MPIA members		0.541***		0.462**	
		(0.143)		(0.224)	
Defensive Vulnerability From Non-MPIA members		0.040		0.053	
		(0.080)		(0.108)	
GDP(log)			-0.078	-0.061	-0.093
			(0.110)	(0.145)	(0.118)
GDP/cap(log)			0.230*	0.269**	0.330**
			(0.128)	(0.131)	(0.143)
Past DS Experience (Complainant)			0.037	0.040	0.030
			(0.031)	(0.031)	(0.034)
Past DS Experience (Defendant)			-0.034	-0.032	-0.031
			(0.024)	(0.025)	(0.026)
Ideological Distance to US (UNGA Voting)			-0.118	-0.089	-0.107
			(0.181)	(0.180)	(0.191)
Count of PTAs with Dispute Settlement Provision					0.015**
					(0.008)
Observations	132	132	132	132	132

Note: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$. Dependent variable is country decision to join the MPIA in April 2020. Probit model with robust standard errors clustered by country in parentheses.

ways in which PTAs are likely to be a close proxy for countries' willingness to join onto a voluntary enforcement initiative such as the MPIA. Finally, countries' foreign policy ideological positions seem to offer no traction on the cross-country variation.

In sum, countries' material considerations appear to have an uneven relation to their decision to join. Those countries that stand to challenge harmful policies are significantly more likely to sign up for additional enforcement; yet those who risk being challenged are not significantly deterred.

MPIA membership remains rare across the WTO, which suggests the possibility of rare event bias. In the Appendix, we thus show estimates from a rare event logit model (King and Zeng, 2001). The estimation offers high fit for the data, as per Figure 5 in the Appendix. It correctly predicts 84.8% of cases (based on a 50% threshold). Yet the near-misses may be most interesting. Figure 3 shows the predicted probability of non-MPIA members to join, starting from the most likely. At the top, by a fair margin, is Japan. As we know, Japan was in fact the next country to join the MPIA, in 2023. The next most likely member is South Korea, which was among the co-signatories of the initial MPIA announcement, and has been described as "wavering". Comparing these results to anecdotal evidence thus suggests that the model, parsimonious though it is, offers good traction on cross-country variation.

Of equal interest is the US' own predicted odds: it is not among the ten most likely non-MPIA members to join, and is far beneath the 50% threshold. In other words, applying the same drivers

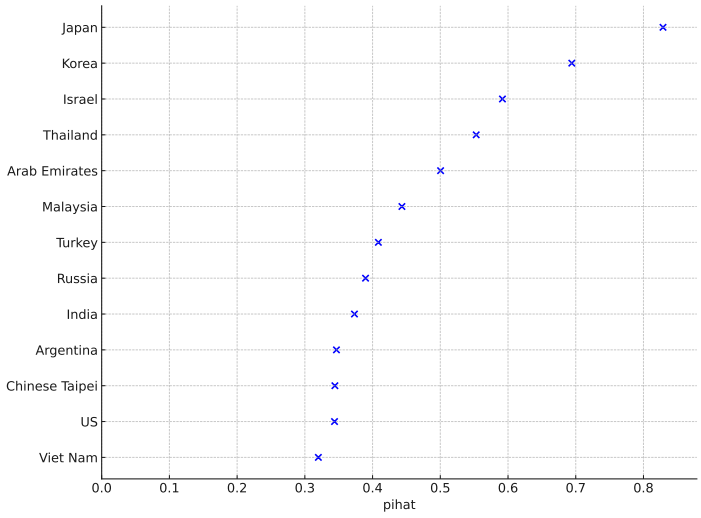

Figure 3: Predicted Odds of Joining the MPIA
Figure shows countries with highest odds of joining, among non-MPIA members, as of April 2020.

by which other countries seem to decide whether to join a strengthened enforcement mechanism, the US does not appear especially likely to sign up. This goes against the conventional wisdom according to which the hegemon benefits the most from global governance; yet it is consistent with more recent historical treatments (Goldstein and Gulotty, 2021). The deciding factor may be what the hegemon stands to gain or lose, given its changing domestic politics and trade policy profile. These may explain why the US has been dragging its feet during negotiations over DSU reform.

4.2 Findings: (ii) Does it Work?

Looking at the MPIA's record so far suggests the initiative is working procedurally; yet one case is little to go by. The more probing question is whether countries themselves internalize the existence of the MPIA, the potential challenges that might arise, and the way that the MPIA would render them more enforceable, when devising their own trade policy.

To address this question, we look for signs that the MPIA deters harmful policies, and/or compels liberalizing measures. We rely on cross-sectional time series dyadic data for the full available period of the data, from 2008 to 2022. This amounts to asking, do MPIA members treat one another better than non-members, once they become members?

The relevant sample is made up of any $\{i, j\}$ dyad that saw a trade measure imposed during the relevant period. It is a balanced sample insofar as it covers all years for all included dyads;

it remains purposefully unbalanced insofar as a dyad with no measures recorded by GTA is not included. The total usable sample contains 101,970 observations, which drop as a result of missing dyadic trade data. To preempt possible missing data bias, following best practice, we impute the missing data and compare it to the results using listwise deletion (Pepinsky, 2018).

The two dependent variables of interest are the total number of (i) harmful measures and (ii) liberalizing measures, imposed by country i against country j in each year t. Our main explanatory variable is a binary measure coded as 1 if both countries in the dyad are MPIA members, and 0 otherwise. We include the same set of controls as in the first analysis, for both country i and j in each dyad, and add three relevant variables: a measure of rule of law for i and j (from the World Bank's WDI); a measure of i's success in dispute settlement outcomes against j in all WTO disputes between the two; and a measure of logged exports and imports from i to j. We also control for PTA ties as above, this time at the dyadic level: Dyadic PTA Ties is a count of PTA agreements at the dyad level. It averages 0.81, and varies from 0 to 9. Because of concerns over multicollinearity (PTA ties at the dyadic level strong "predict" MPIA dyads), we show the estimates with the PTA control separately. We include year fixed effects throughout, and cluster robust standard errors on the dyad.

The findings are shown in Table 3. The first four columns rely on available data and listwise deletion; the last two columns show estimates following multiple imputation to address missing trade data. The results are consistent: MPIA membership is associated with reduced reliance on harmful measures, and an increased implementation of liberalizing measures. It is worth noting that the count of harmful and liberalizing measures is highly positively correlated (ρ=0.43). This makes the opposite sign on the MPIA Dyad variable all the more striking. Yet it may also explain why higher trade volumes, and greater DS experience, is associated with a higher number of both harmful and liberalizing measures. The one exception in this respect is experience as a defendant, which is associated with a smaller number of both harmful and liberalizing measures.

The dyadic history of dispute settlement appears to be associated with the *volume* of trade measures, rather than their type. That is, dyads with more past dispute settlement dealings tend to feature both harmful and liberalizing measures to a greater degree. Overall litigation experience as a complainant is associated with a greater number of both harmful and liberalizing measures; conversely, more country experience as a respondent in WTO disputes is associated with a smaller number of either. In models (3) and (4), we also add a count of PTA ties in the dyad, with the aforementioned caveat about multicollinearity. These appear to have a strong negative effect on

Table 3: Effects of MPIA Membership

	(1)	(2)	(3)	(4)	(5)	(6)
	Harmful	Liberalizing	Harmful	Liberalizing	Harmful	Liberalizing
MPIA Dyad	-0.904***	0.512***	-0.647**	0.580***	-0.723**	0.508***
	(0.325)	(0.175)	(0.321)	(0.175)	(0.314)	(0.175)
GDP_i (log)	-0.042	0.185***	-0.131***	0.137***	-0.157***	0.188***
	(0.045)	(0.012)	(0.041)	(0.009)	(0.058)	(0.013)
GDP_j (log)	0.516***	0.130***	0.393***	0.105***	0.434***	0.132***
	(0.053)	(0.010)	(0.038)	(0.007)	(0.047)	(0.010)
GDP/cap_i(log)	0.057	-0.091***	0.102***	-0.052***	0.074	-0.092***
	(0.044)	(0.017)	(0.038)	(0.015)	(0.046)	(0.017)
GDP/cap_j (log)	-0.049	-0.064***	-0.059	-0.068***	-0.050	-0.064***
	(0.069)	(0.013)	(0.057)	(0.011)	(0.069)	(0.013)
Rule of Law_i	-0.020	-0.025	-0.099**	-0.055***	-0.070	-0.023
	(0.056)	(0.022)	(0.049)	(0.019)	(0.058)	(0.022)
Rule of Law_j	0.208*	0.098***	0.202**	0.092***	0.170	0.099***
	(0.121)	(0.021)	(0.103)	(0.018)	(0.122)	(0.021)
Past DS Experience (Complainant)	0.112***	0.012***	0.113***	0.013***	0.115***	0.012***
	(0.012)	(0.001)	(0.011)	(0.001)	(0.012)	(0.001)
Past DS Experience (Defendant)	-0.033***	-0.004***	-0.027***	-0.003***	-0.033***	-0.004***
	(0.005)	(0.001)	(0.004)	(0.001)	(0.005)	(0.001)
WTO Disputes_ij	1.885***	0.319***	2.140***	0.359***	1.892***	0.318***
	(0.609)	(0.100)	(0.492)	(0.075)	(0.610)	(0.100)
Average DS Win	4.839	0.559	3.169	0.686*	4.933	0.556
	(3.592)	(0.473)	(2.993)	(0.408)	(3.582)	(0.473)
Exports_ij (logged)	0.056***	0.029***	0.050***	0.028***	0.101***	0.028***
	(0.014)	(0.003)	(0.010)	(0.003)	(0.017)	(0.004)
Imports_ij (logged)	0.029*	0.032***	0.033***	0.022***	0.063***	0.032***
	(0.016)	(0.004)	(0.011)	(0.003)	(0.016)	(0.004)
Dyadic PTA ties					-0.275***	0.007
					(0.058)	(0.011)
Observations	83245	83245	101970	101970	83245	83245

Note: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$. OLS panel regression with fixed effects on year, and robust standard errors clustered on country dyad in parentheses. Dependent variable is the number of {harmful, liberalizing} trade measures imposed by country i on j. Columns 1-2 and 5-6 rely on available trade data and use listwise deletion. Columns 3 and 4 rely on multiple imputation for missing data.

harmful measures, as per the expectations of Mavroidis and Sapir (2015). And while PTAs are also positively related to liberalizing measures, this effect falls short of significance.

The internalization of institutional constraints does not happen overnight, and neither do adjustments to trade policy. In this respect, the first thing to note is that the analysis only considers *new* trade measures implemented in a given year. In other words, the expectation is not so much that countries would rapidly dismantle legacy trade barriers, but rather that MPIA members might avoid putting new ones in place that would target other MPIA members. Yet it may nonetheless be naive to expect MPIA countries to rapidly amend their treatment of other MPIA members, especially since the MPIA was only formalized in April 2020 (though the informal announcement was made in December 2019). To account for the possibility of an adjustment period, we run the same estimation separately for every post-MPIA year: 2020, 2021, and 2022. In each case, we include all pre-MPIA years, and a single post-MPIA year, in what amounts to a before/after test. Figure 4 shows the coefficient on MPIA Dyad for each of these separate estimations (see

the Appendix for full estimation tables). Here, too, the takeaway is clear: for both harmful and liberalizing measures, the observed MPIA relationship grows over time. For harmful measures, especially, the effect for 2020 is insignificant; it only becomes negative in 2021, and substantively important in 2022. The exact inverse pattern is observable for liberalizing measures.

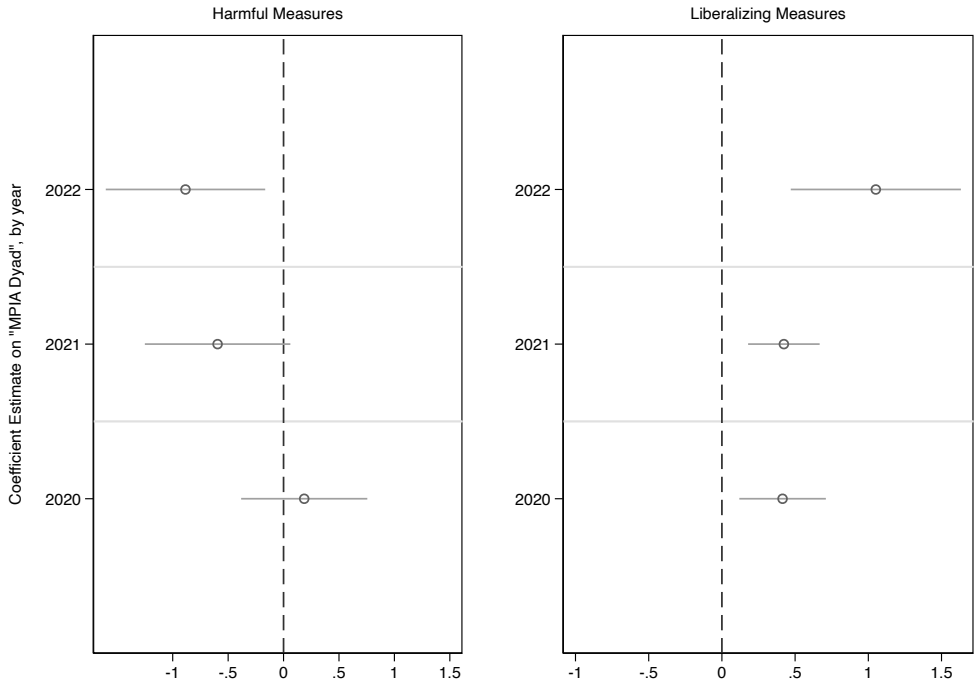

Figure 4: MPIA Membership Effects Through Time
Coefficient on MPIA Dyad for specific post-MPIA years, using full pre-MPIA period for comparison.

The implication is that as within-MPIA cooperation has increased, so too has the pressure on non-members to join. This is indeed an exclusionary enforcement club, insofar as membership gets countries different treatment; but it is an exclusionary club that any country can join.

5 Conclusion

Amidst generalized pessimism over global governance, a set of countries now covering the majority of world trade have engaged in a bold experiment in institutional design. They have devised and committed to a distinct trade enforcement body, which they have inscribed within existing trade rules. Since this initiative by design excludes the country that was the architect of the original dispute settlement system, and since it rests entirely on a voluntary, political commitment, the question is, can it be effective?

The US, against which this initiative arose, has roundly condemned the MPIA as illegitimate, claiming that it lacks the authority of the institution it attempts to emulate. Some governments, as well as a number of legal scholars, agree, suggesting that the MPIA distracts from actual reform, and that given its voluntary status, it is likely to prove ineffective.

The findings in this article suggest otherwise. First, we show that countries who decided to join the MPIA appear to have had a specific motivation: beyond hortatory statements about the need to preserve the rule of law, they appear motivated by offensive opportunities: the more grounds for legal challenge against other MPIA members a given country has, the more likely it is to join. By contrast, states appear undeterred by the heightened defensive vulnerability that comes with strengthened enforcement. This difference may be explained by more active lobbying by firms affected by existing barriers, as compared to lobbying activity by firms benefiting from barriers that have yet to be challenged. At a time when trade violations are rampant (see Figure 1 above), countries seem to trust in the MPIA's ability to challenge harmful trade measures, and this, rather than symbolic politics, appears to be the dominant motive in the decision to join.

What is equally striking is that this trust appears to have real consequences on country behavior. We demonstrate that MPIA membership is associated with deterrence of harmful measures, and an increase in liberalizing measures, across MPIA dyads. Moreover, this effect appears to be growing over time, in a way that may exert increasing pressure on non-MPIA members to either join the initiative, or to push through reform of dispute settlement in the face of the US' blockade. In sum, while defensive vulnerability does not appear to play much of a role in deterring countries away from the MPIA, countries do seem to act on that vulnerability once they have joined, by adjusting their trade policies towards other MPIA members in ways that decrease such vulnerability.

The MPIA is a striking example of the potential for cooperation at the international level in a time and setting that seem especially inhospitable to it. Resting on voluntary commitments alone, a group of countries have proven that agreement remains possible, that innovation persists, and that the resulting institutions can effectively rein in non-cooperative behavior.

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6 Appendix

Table 4: Summary Statistics: Who Joins? (Monadic)

	Mean	SD	Min	Max
MPIA member	.1818182	.3871639	0	1
Offensive Potential Against Non-MPIA members	3.203556	1.252157	1.098612	5.587249
Defensive Vulnerability From Non-MPIA members	1.24113	1.789863	0	7.779467
GDP(log)	24.44229	2.279053	20.05394	30.69352
GDP/cap(log)	8.494013	1.358206	5.384371	11.34003
Past DS Experience (Complainant)	4.734848	15.80697	0	124
Past DS Experience (Defendant)	4.734848	19.2258	0	168
Ideological Distance to US (UNGA Voting)	2.616402	.8309068	.1148201	4.331582
Count of PTA ties (DESTA)	37.41667	22.09626	1	141
Observations	132			

Table 5: Summary Statistics: Effects of MPIA Membership (Dyadic)

	Mean	SD	Min	Max
Harmful Measures (GTA)	1.329281	7.497858	0	216
Liberalizing Measures (GTA)	0.5419064	1.721487	0	46
MPIA Dyad	0.0148117	0.1207994	0	1
$GDP_i(log)$	26.16008	2.142504	19.94279	30.86824
$GDP_j(log)$	25.22777	2.297518	19.55972	30.86824
$GDP/cap_i(log)$	8.963505	1.361285	5.276637	11.57261
$GDP/cap_j(log)$	8.666962	1.422446	5.276637	11.57261
Rule of Law_i	0.1206482	0.9319852	-1.9225	2.024378
Rule of Law_j	-0.0531026	0.9050278	-1.9225	2.024378
WTO $Disputes_{ij}$	0.0861193	0.8706503	0	35
Average DS Win	0.0074401	0.0803326	0	1
$Exports_{ij}$ (logged)	10.07383	3.522671	0	20.01982
$Imports_{ij}$ (logged)	10.12421	3.682074	0.0009995	19.97347
Dyadic PTA ties	0.8064629	1.441243	0	9
Year	2014.978	4.317169	2008	2022
Observations	83245			

Table 6: Drivers of MPIA Membership (Rare-Events Logit)

	(1)	(2)	(3)	(4)
Offensive Potential Against MPIA members	1.301***		1.100**	
	(0.346)		(0.444)	
Defensive Vulnerability From MPIA members	-0.087		0.031	
	(0.190)		(0.255)	
Offensive Potential Against Non-MPIA members		0.942***		0.762**
		(0.265)		(0.387)
Defensive Vulnerability From Non-MPIA members		0.061		0.084
		(0.127)		(0.177)
GDP(log)			-0.109	-0.108
			(0.183)	(0.258)
GDP/cap (log)			0.417*	0.463*
			(0.229)	(0.239)
Past DS Experience (Complainant)			0.044	0.049
			(0.050)	(0.050)
Past DS Experience (Defendant)			-0.041	-0.037
			(0.040)	(0.040)
Ideological Distance to US (UNGA Voting)			-0.204	-0.146
			(0.326)	(0.325)
Observations	132	132	132	132

Note: * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$. Dependent variable is country decision to join the MPIA in 2020. Rare events logit model with standard errors clustered by country in parentheses.

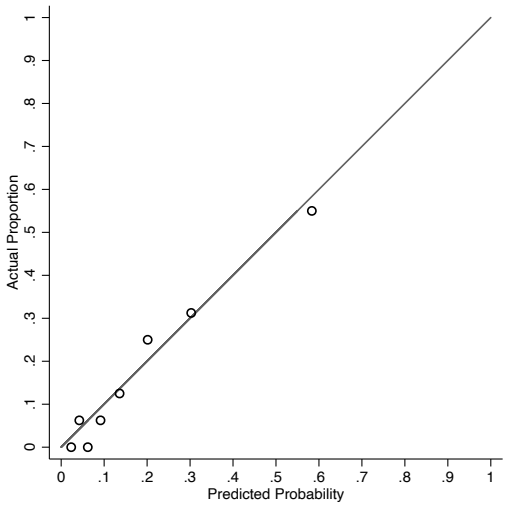

Figure 5: Predicted vs Actual Probability in Rare-events Logit from Table 6.