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## **THREE APPROACHES TO FIXING THE WORLD TRADE ORGANIZATION'S APPELLATE BODY: THE GOOD, THE BAD AND THE UGLY?**

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The basic rule book for international trade consists of the legal texts agreed to by the countries that set up the World Trade Organization (WTO) along with specific provisions of its predecessor, the General Agreement on Tariffs and Trade (GATT). At the heart of that rules-based system has been a dispute settlement process by which countries resolve any disputes they have about whether another country has violated those rules or otherwise negated the benefit of the bargain between countries. Now the very existence of that dispute settlement system is threatened by a decision of the Trump Administration to block the appointment of any new members to the dispute settlement system's highest court, its Appellate Body. Under the WTO rules, the Appellate Body is supposed to be comprised of seven people who serve a four-year term and who may be reappointed once to a second four-year term.<sup>1</sup> However, the Appellate Body is now

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down to just three members due to the United States' blockage of any process to replace those whose terms have expired—and three is the bare minimum number of members necessary to rule on an appeal. Moreover, the terms of two of those three remaining members will expire in December, 2019, leaving the Appellate Body unable to complete any appeals.<sup>2</sup>

In the absence of a functioning Appellate Body, the WTO's highly regarded dispute settlement system could grind to a halt. Under the rules of the Dispute Settlement Understanding (DSU), countries that win a case at the panel stage are not entitled to seek the rewards of that victory while an appeal is pending. As such, any country that loses a case could forestall any outcome by appealing the decision, knowing that the Appellate Body lacks the requisite quorum of three members to hear their appeal. It is hard to see why countries would be willing to wait in an endless queue for their appeal to be completed; instead most are likely to take matters into their own hands by engaging in unilateral retaliation, which will only invite further retaliation by the country that filed the appeal in the first place. As the Deputy Director General of the WTO, Alan Wolff put it, the United States' blockage of any process to appoint new members to the Appellate Body risks turning every individual trade dispute into a "mini-trade war."<sup>3</sup>

### **Context Matters**

In considering what needs to be done to fix the Appellate Body and when, the context in which this crisis is occurring is important.

First, it must be remembered that the United States' decision to join—and indeed to lead the effort to create—a binding dispute settlement system for the trading system occurred at a unique moment in history. The negotiations establishing the WTO and its dispute settlement system occurred in the late 1980s and early 1990s—arguably the high-water mark for multilateralism and multilateral rules.<sup>4</sup> It was created in the wake of the collapse of Communism and the building

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<sup>1</sup> Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Annex 2, Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 154, provides that the Appellate Body shall be "comprised of [seven] persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally"; and that each person shall serve on the Appellate Body "for a four-year term, and each person may be reappointed once."

<sup>2</sup> DSU Article 17.1 states that the Appellate Body "shall be composed of seven persons, three of whom shall serve on any one case." However, beginning in the spring of 2017, the United States objected to the commencement of the traditional process for selecting new members to replace those whose terms had expired, and in September 2018, objected to the reappointment of one other member, leaving the Appellate Body with only three members. While the Appellate Body will formally be without the required three members to hear appeals in December 2019, it may run short of members for specific appeals even sooner than that should any of the remaining three members become ill or have a conflict of interest or the appearance of a conflict based on their past experiences prior to joining the Appellate Body.

<sup>3</sup> Alan Wolff, Speech delivered to the Council on Foreign Relations, Washington, D.C., October 15, 2018, available at [https://www.wto.org/english/news\\_e/news18\\_e/ddgra\\_15oct18\\_e.htm](https://www.wto.org/english/news_e/news18_e/ddgra_15oct18_e.htm).

<sup>4</sup> During the late 1980s and 1990s, for example, the Maastricht and Amsterdam treaties formally binding together the countries of Europe into the European Union (EU) were completed in 1993 and 1997. The Montreal Protocol on Substances that Deplete the Ozone Layer—or chlorofluorocarbons, came into force on January 1, 1989. The International Convention on the Law of the Sea established its International Tribunal in 1996. International courts

of a united Europe, at a time of much work in the academic community, led by John Jackson and his critical 1990 book *Restructuring the GATT*, to provide the intellectual underpinnings for a trade organization with a binding set of rules and a system for adjudicating them at its central core.<sup>5</sup> Second, it was a time in the United States of considerable frustration among the trade insiders at the lack of an ability to hold countries—particularly those in the EU—to their commitments under the then existing General Agreement on Tariffs and Trade (GATT).<sup>6</sup> Under the rules of GATT, if a country did not want a particular dispute to be discussed at all, it could block the creation of a panel to consider it. If a country allowed the dispute to be heard but did not like the outcome, it could block the adoption of the panel report, thereby preventing the report from creating an obligation to comply. As a result, there was a clamoring among the trade cognoscenti for a more binding trade-rules system. Third, the WTO’s Dispute Settlement Understanding (DSU) was, in the end, rolled up into a much broader package of new texts (“Results of the Uruguay Round of Multilateral Trade Negotiations”) providing market access and rules on everything from trade in services, to agriculture to intellectual property that had never before been included, such that even those members of Congress who might otherwise be reluctant to agree to effectively submit the United States to the jurisdiction of an international “court” found their qualms about dispute settlement outweighed by the gains in market access and new disciplines elsewhere.<sup>7</sup> It is hard to imagine such a confluence of events and incentives coming together again for decades, if ever. Therefore, if the Appellate Body and with it the WTO’s binding, two-stage dispute settlement system, cannot be restored soon, it is not likely to come back.

Second, while there may be little support among many in Congress for the Trump Administration’s “national security” tariffs on steel and aluminum—and there will be downright opposition if tariffs are imposed on cars or car parts—there are very few champions in the US

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were flourishing too, with the UN creating a number of international tribunals, including the International Criminal Tribunal for the Former Yugoslavia, established in 1993, the International Criminal Tribunal for Rwanda, established in November 1994, the Special Court for Sierra Leone in January of 2002, followed by a joint UN-Cambodian government court, the Extraordinary Chamber of Cambodia in June 2003. The free-standing Caribbean Court of Justice got underway in 2001 while the African Court of Human and Peoples Rights protocol was adopted in 1998.

<sup>5</sup> See Robert Howse, *The House That Jackson Built: Restructuring the GATT System*, 20(2) Mich. J. Intl. L., 107 (1999), available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1407&context=mjil>.

<sup>6</sup> The U.S. believed that a directive of the European Communities to ban the use of hormones in livestock production and meat sold in the EU, was in violation of the Agreement on Technical Barriers to Trade (TBT Agreement). When the EU rejected the proposal to establish a Technical Expert Group to address questions of a technical nature, the U.S. suggested the establishment of a panel to determine if the EU was circumventing its obligations through the use of product and process methods rather than changing product characteristics. The EU rejected this proposal for establishment of a panel.

<sup>7</sup> Based on concerns over sovereignty, the United States has not submitted to the general jurisdiction of the International Court of Justice, or the Inter-American Court of Human Rights, or the International Tribunal for the Law of the Sea. Recently, National Security Adviser John Bolton stated that the United States will not join, co-operate or provide assistance to the International Criminal Court. See John Bolton Threatens ICC with US Sanctions, BBC News, September 11, 2018, available at <https://www.bbc.com/news/world-us-canada-45474864>.

Congress for the Appellate Body. If the Appellate Body crisis is to be solved, it is not likely to be at the behest of members of Congress or other political forces in Washington coming to the rescue.

Third, the United States' concerns over the functioning of the Appellate Body did not begin with election of Donald Trump and they will not end with Donald Trump.<sup>8</sup> Many of the current concerns have been raised for more than a decade with virtually no response in Geneva.<sup>9</sup> Any solution that is worked out is going to have to demonstrate that the rest of the world is hearing what the US is saying—even if they don't always agree with the US' claims.

What can be done to break the impasse? I suggest three options— borrowing the title from Sergio Leone's classic western movie, *The Good, the Bad and the Ugly*—but recognize at the outset that beauty is in the eyes of the beholder—so what I may call ugly may appear to be good to others. What is critical is not sorting out the best approach; rather, the imperative is to break the log-jam before it is too late.

### **The Good—A Separate System for Trade Remedies**

While no one knows for certain exactly what the United States seeks in terms of changes to the Appellate Body,<sup>10</sup> it is clear that the lion's share of its complaints stem from decisions by the

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<sup>8</sup> More than a decade ago, then USTR General Counsel Warren Maruyama noted in testimony before the Senate Finance Committee that the US Government had “publicly stated that the WTO's Appellate Body overreached in its ‘zeroing’ line of decisions, which in our view represent a misplaced case of judicial activism with no basis in the Uruguay Round Antidumping.” May 22, 2008, available at <https://www.finance.senate.gov/imo/media/doc/052208wmttest>. In its statement on the Appellate Body Report on US – Definitive safeguard measures on imports of circular welded carbon quality line pipe from Korea, the United States Representative stated, “the Appellate Body Report had disregarded the language of the covered agreements and applied standards of its own devising to evaluate the claims against the United States... The greatest concern of the United States was the Appellate Body's growing habit of creating its own rules,” World Trade Organization, Dispute Settlement Body—Minutes of the Meeting, WTO Doc. WT/DSB/M/121, ¶ 35, April 3, 2002. In its statement on the Appellate Body Report on US – Section 211 Appropriations Act, the United States representative stated, “The Appellate Body Report had not sufficiently distinguished between these factual and legal findings of a panel and thus risked encroaching on a panel's fact finding role.”, World Trade Organization, Dispute Settlement Body – Minutes of the Meeting, WTO Doc. WT/DSB/M/119, ¶ 5, February 27, 2011. See Terence Stewart, *Disputed Court: A Look at the Challenges to (and from) the WTO Dispute Settlement System*, Global Business Dialogue, December 20, 2017, available at <http://www.stewartlaw.com/Content/Documents/WTO%20Dispute%20Settlement%20System%20-%20Paper%20for%2012-20-17%20GBD.pdf>.

<sup>9</sup> Robert McDougall's excellent analysis of the long history of concerns over the WTO dispute settlement system in general and in particular Appellate Body determinations is set forth in *Crisis in the WTO: Restoring the WTO Dispute Settlement Function*, Centre for International Governance Innovation Paper no. 194, October, 2018, available at <https://www.cigionline.org/sites/default/files/documents/Paper%20no.194.pdf>.

<sup>10</sup> The U.S. Ambassador to the WTO, Dennis Shea, recently stated that there is nothing to negotiate or change with respect to the WTO Appellate Body, since all the US wants is for the Appellate Body to apply the rules as they were written when the WTO was created in 1995. Alternatively, Amb. Shea has said that the US concerns are those that have been articulated at recent meetings of the WTO's Dispute Settlement Body. As those meetings, the United States raised the following concerns:

1) that Appellate Body members should not be allowed to “hold-over” to finish an appeal they began working on before their term as an Appellate Body member expired, a practice which had been engaged in pursuant

Appellate Body relating to trade remedy decisions—challenges to anti-dumping, anti-subsidy or safeguard measures.<sup>11</sup> Whether it is the series of disputes in which the Appellate Body outlawed the previously long-standing practice of “zeroing” in the calculation of anti-dumping margins, or the decision to read into the WTO’s Safeguards Agreement a requirement that safeguards can only be imposed if there is evidence that the increase in imports occurred as a result of “unforeseen developments,” or the decision to determine that the entities that are capable of providing subsidies—“governments or public bodies” are only those entities which engage in “governmental functions”—it is clear that the decisions that are at the heart of the United States’ substantive concerns are those in the trade remedy arena.

In addition, developing country members have long-term concerns over the application of the trade remedy rules, including their perception that some countries resort to trade remedies as “tools to capture all.” As such, a separate process for appeals may satisfy their concerns as well.

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to Rule 15 of the Working Procedures of the Appellate Body established in 1996 (Statements by the United States at the Meeting of the WTO Dispute Settlement Body, November 22, 2017, available at [https://geneva.usmission.gov/wp-content/uploads/sites/290/Nov22.DSB\\_.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Nov22.DSB_.pdf));

2) that the Appellate Body was violating the rules by not issuing its decisions within the required 90-day time limit (Statements by the United States at the Meeting of the WTO Dispute Settlement Body, June 22, 2018, available at [https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB\\_.Stmt\\_.as-delivered.fin\\_.public.rev\\_.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_.Stmt_.as-delivered.fin_.public.rev_.pdf));

3) that the Appellate Body had erred in occasionally treating the panel’s findings with respect to the meaning of national laws under review as a legal matter that can be reviewed by the Appellate Body rather than as a matter of fact (as international law dictates) that cannot properly be reviewed by the Appellate Body consistent with DSU Rule 17.6 “Appeals shall be limited to legal issues of law covered in the panel report and legal interpretations developed by the panel.” (Statements by the United States at the Meeting of the WTO Dispute Settlement Body, August 27, 2018, available at [https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB\\_.Stmt\\_.as-delivered.fin\\_.public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB_.Stmt_.as-delivered.fin_.public.pdf)), and

4) most recently, that the Appellate Body was engaging in the issuance of advisory opinions (Statements by the United States at the Meeting of the WTO Dispute Settlement Body, October 29, 2018, available at [https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB\\_.Stmt\\_.as-delivered.fin\\_.rev\\_.public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB_.Stmt_.as-delivered.fin_.rev_.public.pdf)).

These four issues, along with a concern that the Appellate Body claims its reports are entitled to be treated as precedent, are the issues expressed at pp. 22-28 of the President’s 2018 Trade Policy Agenda, which Amb. Shea has stated form the basis for the United States’ blockage of Appellate Body appointments. <https://ustr.gov/sites/default/files/files/Press/Reports/2018/AR/2018%20Annual%20Report%20I.pdf>.

<sup>11</sup> See Terence P. Stewart and Elizabeth J. Drake, *How the WTO Undermines U.S. Trade Remedy Enforcement*, February, 2017, available at [http://s3-us-west-2.amazonaws.com/aamweb/uploads/research-pdf/WTOReport\\_R3.pdf](http://s3-us-west-2.amazonaws.com/aamweb/uploads/research-pdf/WTOReport_R3.pdf). See also, Appellate Body Report, United States — Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WTO Doc. WT/DS294/AB/ (adopted on May 9, 2006); Appellate Body Report, United States — Continued Existence and Application of Zeroing Methodology, WTO Doc. WT/DS350/AB/R (adopted on February 19, 2009), Appellate Body Report, United States — Measures Relating to Zeroing and Sunset Reviews, WTO Doc. WT/DS322/AB/R (adopted on January 23, 2007); Appellate Body Report, Final Dumping Determination on Softwood Lumber from Canada - Recourse to Article 21.5 of the DSU by Canada, WTO Doc. WT/DS264/AB/R (adopted on September 1, 2006); Appellate Body Report, Argentina- Safeguards Measures on Imports of Footwear, WTO Doc. WT/DS121/AB/R (adopted on January 12, 2009), Appellate Body Report, United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WTO Doc. WT/DS370/R (adopted on March 25, 2011). See Terence P. Stewart and Elizabeth J. Drake, *How the WTO Undermines U.S. Trade Remedy Enforcement*, February, 2017, available at [http://s3-us-west-2.amazonaws.com/aamweb/uploads/research-pdf/WTOReport\\_R3.pdf](http://s3-us-west-2.amazonaws.com/aamweb/uploads/research-pdf/WTOReport_R3.pdf).

Therefore, one approach might be to treat appeals of trade remedy decisions differently—either by creating a specialized Appellate Body chamber to hear them or by eliminating or at least temporarily freezing appeals from panel decisions in trade remedy cases.

#### A. Special Appellate Body for Trade Remedies

One option would be to create a special Appellate Body to hear only appeals of trade remedy decisions. This special appellate institution—call it the Rules Appellate Body-- could be made up of members chosen in large part because of a strong background in trade remedy law. The selection process for members and the procedures of this Rules Appellate Body could largely mirror those of the current Appellate Body—and given that about half of all WTO disputes have been over trade remedy matters, the workload of this Rules Appellate Body and of the existing Appellate Body would be about even, so having complimentary bodies of equal size would make sense. Having two bodies evenly splitting the work load would also assist both bodies to more readily complete their work in the 90-day time frame outlined for appeals in the DSU rules. The Rules Appellate Body could similarly be staffed by a secretariat that also has deep expertise in trade remedy law. Decisions coming from this Rules Appellate Body would be subject to the same reverse consensus process of adoption by the WTO’s Dispute Settlement Body (DSB) and compliance with the decisions would similarly be subject to the same oversight by the DSB as appeals under the current system (DSU Articles 21 and 22).

A variation on this theme could be to simply add two or four additional members to the existing Appellate Body who have deep trade remedy expertise and insist that any three-member division hearing an appeal of a trade remedy case would have to be made up of at least two of these trade-remedy expert Appellate Body members.

If this proposal is pursued formally, the Members would need to go through a negotiation process for amendment to the Dispute Settlement Understanding (DSU) (Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2 of the Multilateral Trade Agreements). According to Article X:8 of the Marrakesh Agreement Establishing the World Trade Organization (“WTO Agreement”), such an amendment needs to be decided by consensus.<sup>12</sup> As such, work would need to begin immediately to work out a package set of amendments to set up this new process and to seek appointments both to the Rules Appellate Body and to fill the four vacancies on the existing Appellate Body. Members may also be able to develop related practices on a voluntary basis, similar to the process launched by Canada in July 2016.<sup>13</sup> Members would also need to resolve whether appeals from “adverse effects” (as opposed to countervailing duty)

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<sup>12</sup> Article X:8 states that “Any Member of the WTO may initiate a proposal to amend the provisions [of the DSU] by submitting such proposal to the Ministerial Conference. The decision to approve [such amendments] shall be by consensus . . . and shall take effect for all Members upon approval by the Ministerial Conference.”

<sup>13</sup> Bridges Weekly: WTO Members Pursue Options to Improve Dispute Settlement Process, International Centre for Trade and Sustainable Development, July 27, 2017, available at <https://www.ictsd.org/bridges-news/bridges/news/wto-members-pursue-options-to-improve-dispute-settlement-process>.

cases challenging subsidies would be heard by the Rules Appellate Body or the existing Appellate Body.

#### B. Moratorium on Appeals from Trade Remedy Panel Decisions

A second approach to trade remedy disputes would be to establish a moratorium on appeals from panel decisions—or even just to amend the rules to make panel decisions on trade remedy matters final. The theory behind such an approach is two-fold. First, panels examining trade remedy decisions are already playing an appellate role and therefore don’t need a second or third level of review. Every trade remedy measure that comes before the WTO’s dispute settlement system must be based on an investigation conducted by the investigating authorities in each country—so there is already a factual record that has been compiled and an existing decision that applies the law—including the WTO rules—to those facts to reach a conclusion that trade remedies are justified in the particular case at issue. As such, it may be appropriate to allow the panel’s decision to sit in the shoes of an appellate report, and not subject such panel reports to further review.

The second reason for a “no appeals of trade remedy panel reports” approach is that most of the controversial decisions of the Appellate Body have been in the trade remedy area, so eliminating appeal rights in this limited arena may suggest a major enough change to break the current impasse over Appellate Body appointments. If so, it would allow the process to move forward, to keep the Appellate Body up and running for all non-trade remedy appeals and would maintain the current consensus-based approach to the appointment of Appellate Body members.

A temporary moratorium on appeals of trade remedy panel reports could be implemented through a DSB resolution noting that for the period of the moratorium, Article 17.1 of the DSU (“the Appellate Body shall hear appeals from panel cases”) is interpreted to put a hold on appeals from trade remedy panels. If the Members prefer a permanent end to trade remedy appeals, an amendment to Article 17.1 would most likely be necessary.<sup>14</sup>

Obviously, those who fundamentally disagree with the United States’ criticisms of the Appellate Body and its trade remedy decisions are more likely to put this approach into the category of bad

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<sup>14</sup> A less desirable option for implementing the “no appeals of trade remedy panels” might be for the Ministerial Conference and/or the General Council to adopt a definitive interpretation of Article 17.1 of the DSU, pursuant to Article IX.2 of the Agreement Establishing the World Trade Organization. The phrase “shall hear appeals” from DSU Article 17.1 would be found not to cover all appeals through an interpretation that “shall hear appeals” means “shall hear appeals from matters not claiming violations of the WTO’s Agreement on Safeguards, or the Agreement on Subsidies and Countervailing Measures or the Agreement Interpreting Article VI of the GATT (Anti-dumping Agreement).” As noted above, Members would have to determine whether all subsidy disputes would be subject to this “no appeal” approach, or only those involving countervailing duty investigations. Given that the rationale for staying or eliminating appeals in trade remedy cases is based on the existence of a factual and legal record developed by Investigating Authorities in each country, it is logical to limit the “no appeals” approach to countervailing duty investigations, as most countries do not have comparable investigative records for “adverse effects” subsidy claims.

or even ugly. But the reason it starts out as a “good” option is that it represents a significant enough departure from the current system to serve as a catalyst for breaking the gridlock.

### **The Bad: Arbitration under Article 25 of the DSU Instead of Appeals to the Appellate Body**

The second approach—The Bad—is to use the existing language in DSU Article 25 to effectively continue appeals using an arbitration process. Because this arbitration option is already in the rules, moving to arbitration in lieu of appeals to the Appellate Body may be the only option available to the Members that does not require a change to the DSU rules themselves or a consensus decision by the DSB. One approach that has been suggested to put Article 25 into action<sup>15</sup> would work as follows: 1) the parties to a dispute would agree before the panel ruling is known to arbitrate any appeal to that decision; 2) the arbitration could be conducted much like appeals are today—the parties could, for example, choose to adopt the Appellate Body Working Procedures as their own, and could ask to appoint current or former appellate body members to be their arbitrators; 3) the current secretariat of the Appellate Body could serve as the staff to the arbitration process, just as it does in providing support for arbitrations over the amount of time countries are given to comply with rulings (RPT) and the amount of retaliation that is permitted; 4) the arbitrators would apply the substantive and procedural rules of the WTO Agreements; 5) parties could agree to allow third parties in the panel proceedings to participate in an appeal-arbitration; 6) because an arbitration would not suspend the adoption of a panel report, the complainant would need to suspend the panel proceedings under DSU Article 12.12, so the panel report would not be adopted as such, but could be attached to and incorporated into the arbitrator’s award; and 7) the arbitrator’s award, including the final panel report, could be circulated to all WTO members as a WT/DS document.

The upside to this arbitration-appeal approach is that it is already in the rules and could be adopted without the need for consensus among WTO members.<sup>16</sup>

So why is it “bad”? First, going to Article 25 arbitration for all appeals means giving up on the Appellate Body. If this road is taken, it is highly unlikely that there will be sufficient will among WTO Members to restore the Appellate Body and with it, the notion of having a binding two-stage process. Unless the arbitration-appeal process proves overly cumbersome or unworkable, it will likely remain the only option for those willing to use it.

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<sup>15</sup> Scott Andersen, Todd Friedbacher, Christian Lau, Nicolas Lockhart, Jan Yves Remy, Iain Sandford, *Using Arbitration under Article 25 of the DSU to Ensure the Availability of Appeals*, CTEI Working Paper, Centre for Trade and Economic Integration, Graduate Institute, available at <https://repository.graduateinstitute.ch/record/295745/files/CTEI-2017-17-.pdf>.

<sup>16</sup> In *Saving the WTO’s Appeals Process*, Cato Institute, October 12, 2018, available at <https://www.cato.org/blog/saving-wtos-appeals-process>, former Appellate Body Chair James Bacchus similarly argues that arbitration under Art. 25 presents an opportunity for Members to engage in arbitration as a means of dispute settlement and allows significant leeway to Members to select arbitrators and procedures, including replicating the current DSU rules, albeit without US participation.



Second, it requires the agreement of the parties in each and every dispute to go to this arbitration-appeal process, so countries would have no guarantee that the United States (or others) would necessarily agree to an arbitration-appeal in a given dispute. Particularly for smaller countries, there is considerable concern about their ability to hold larger countries like the United States to their commitments in the absence of an Appellate Body. Moreover, the losing party in a given dispute could still file a notice of a formal appeal and thereby stall indefinitely the adoption of the panel report. As a result, it may not serve the most crucial need in the system—to stop all disputes from becoming mini-trade wars.

Third, the decisions of an arbitration panel would not be formally adopted by the DSB. While the approach outlined above would allow the attachment of a panel report to an arbitration award and would allow that package of the award plus the panel report to be circulated to all Members, it would not be formally adopted by the DSB. As such, the arbitration-appeals would always sit somewhat outside the binding dispute settlement system. While the rules provide that arbitration awards under Article 25 can be subject to the surveillance of the DSB (DSU Articles 21 and 22 apply *mutatis mutandis*), it is not certain exactly what the DSB can do to enforce an unadopted panel report/arbitration appeal.

### **The Ugly: Fix the Procedural Matters Readily Fixable, Run the Selection Process and then Appoint New Members by Vote**

The third approach—The Ugly—would be a multistep process that starts with fixing a number of the procedural or more fixable of the issues that the United States has been raising. All of these were discussed by scholars in some detail<sup>17</sup> and were addressed in a proposal recently put forward at the WTO by the European Union, joined by China, Canada, India, Norway, New Zealand, Switzerland, Australia, Korea, Iceland, Singapore, and Mexico.<sup>18</sup> The fixes in the EU paper include:

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<sup>17</sup> In addition to his recent paper *Crisis in the WTO: Restoring the WTO Dispute Settlement Function* (fn 9), see also Robert McDougall, *Search for Solutions to Save the WTO Appellate Body*, European Centre for International Political Economy – Bulletin No. 3/2017, December, 2017, available at <http://ecipe.org/app/uploads/2017/12/Bulletin-03.17.pdf>, arguing that any solution based on the isolation of the US' claims would be damaging to the international trade order; Institute of International Economic Law, *Transition on the WTO Appellate Body: A Pair of Reforms*, IIEL Issue Brief No. 2/2018, available at <https://georgetown.app.box.com/s/jwcvlz2thwtv3dhgdne0nkfk3vlpv3sf>, outlining a series of reforms including: (i) limiting carry-over to disputes where the hearing has begun, and (ii) outgoing members would continue to be AB members until they have been replaced; Giorgio Sacerdoti, *The WTO Dispute Settlement System and the Challenges to Multilateralism: Consolidating a 'Common Global Good* [need cite] and Giorgio Sacerdoti, *The Future of the WTO Dispute Settlement System: Confronting New Challenges to Consolidate a Success Story* in *Future of the Global Trade Order* (Braga et al., 2017); Tetyana Payosova, Gary Clyde Hufbauer and Jeffrey J. Schott, *The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures*, PIIE Policy Brief 18-5, March 2018, available at <https://piie.com/publications/policy-briefs/dispute-settlement-crisis-world-trade-organization-causes-and-cures>; Options for Breaking the WTO Appellate Body Deadlock, ICTSD, available at <https://www.ictsd.org/opinion/options-for-breaking-the-wto-appellate-body-deadlock>.

<sup>18</sup>World Trade Organization, Communication from the EU et al., to the General Council, WTO Doc. WT/GC/W/752, November 26, 2018, available at [http://trade.ec.europa.eu/doclib/docs/2018/november/tradoc\\_157514.pdf](http://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157514.pdf).

1) 90-days for appeals—the proposal would amend Art 17.5 of the DSU to require consultation between the parties and the Appellate Body to seek parties’ agreement on any extension of the 90 day period; in the absence of an agreement for a time extension, options to limit the scope of the appeal, or to put page limits on the submissions, or to limit the length of the Appellate Body Report would be worked out by the parties and the Appellate Body, along with the possibility of issuing the report in one of the three official languages of the WTO, with translation to be done outside the 90-day window;

2) clarifying and limiting the ability of outgoing Appellate Body members to hold over to finish an appeal that started before the expiration of their term to only those appeals in which the hearing has been completed;<sup>19</sup>

3) modifying or clarifying DSU Article 17.12 that requires the AB to “address” each issue raised on appeal to make it clear that “address” means addressing issues only to the extent necessary to resolve the dispute;

4) clarifying that municipal law is an issue of fact, not an issue of law, and therefore is not one of the issues that falls to the Appellate Body for interpretation; and

5) establishing an annual process for meetings between the Appellate Body and the WTO Members to allow Members to express concerns about any particular Appellate Body approaches, systemic issues or trends in the jurisprudence.

The hope would be that these could be fixed through a single amendment to Article 17 of the DSU, with the EU proposal calling for adoption of such an amendment by the General Council as soon as possible. Following the adoption of these changes (or any combination of them or other similar changes), Members should push for a swift process to appoint four new members of the Appellate Body and to begin shortly thereafter a process to replace the two AB members whose second/final term ends on December 10, 2019. If at that point the United States were to join the consensus to move forward, this plan would leapfrog over the bad and the good to become the beautiful. It would be a win-win for all. The United States could rightfully claim that its pressure resulted in significant changes to address each of the concerns it has raised at the DSB since the spring of 2017,<sup>20</sup> the other Members would benefit from changes that should make the dispute

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<sup>19</sup> An alternative fix to the “hold over/Rule 15” concern was set forth in a Georgetown Law paper, suggesting that the amendment to the holdover rule to appeals in which the hearing has been completed should be accompanied by incentives for the appointment process to proceed before vacancies occur. “TRANSITION ON THE WTO APPELLATE BODY: A PAIR OF REFORMS?” <https://georgetown.app.box.com/s/jwcvlz2thwtv3dhgdne0nkfk3vlpv3sf>

<sup>20</sup> See Annex A for a summary and links to all US statements to the DSB involving the AB selection process since 2017.

Statements by the United States at the Meeting of the WTO Dispute Settlement Body, August 27, 2018, available at [https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB\\_Stmt\\_as-delivered.fin\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug27.DSB_Stmt_as-delivered.fin_public.pdf). (relating to municipal law as a matter of fact); Statements by the United States at the Meeting of the WTO Dispute Settlement Body, October 29, 2018, available at [https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB\\_Stmt\\_as-delivered.fin\\_rev\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB_Stmt_as-delivered.fin_rev_public.pdf). (related to “advisory opinions” not necessary to resolve the dispute); Statements by the United States at the Meeting of the WTO Dispute Settlement

settlement system more efficient for all but done in a manner that does not detract from the rights of any Member, and the WTO's binding two-stage dispute settlement system would be back to working at full-speed.

If, however, the United States were not willing to move forward, despite having its concerns addressed through the changes noted above, then the Members would need to move to appoint Appellate Body members over the United States' objection. To do so, the Chair of the DSB should begin the normal consultation process for the selection of Appellate Body members, beginning with convening the Selection Committee—which consists of the Chair of the DSB, the Director General of the WTO, and the chairs of the General Council, Committee on Trade in Goods, Committee on Trade in Services and TRIPS Council.<sup>21</sup> All Members would be invited to interview the candidates themselves and to convey their preferences to the Selection Committee. Based on those preferences and its own interviews of the candidates, the Selection Committee would then recommend a slate of four members to fill the four vacancies on the Appellate Body.<sup>22</sup>

If at that point the United States blocks action on the recommended slate of nominees, then the time would have come for the Members to appoint the recommended slate, by vote if necessary. Failure to do so would effectively mean allowing one Member to deny all other Members their right of access to the already-agreed upon Appellate Body.

While the DSB rules state that *decisions* of the DSB shall be taken by consensus (DSU Article 2.4), the vote would be an *appointment* rather than a decision under Article 2 and would be done in furtherance of the requirement in Article 17.2 that the DSB “shall appoint persons to serve on the Appellate Body.”<sup>23</sup> The vote would be simply and solely to appoint the slate of recommended

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Body, June 22, 2018, available at [https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB\\_Stmt\\_as-delivered.fin\\_public.rev\\_.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_Stmt_as-delivered.fin_public.rev_.pdf); Statements by the United States at the Meeting of the WTO Dispute Settlement Body, November 22, 2017, [https://geneva.usmission.gov/wp-content/uploads/sites/290/Nov22.DSB\\_.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Nov22.DSB_.pdf). (concerning holdovers/Rule 15 of the Appellate Body Working Procedures).

<sup>21</sup> World Trade Organization, Establishment of the Appellate Body - Recommendations by the Preparatory Committee for the WTO approved by the Dispute Settlement Body on 10 February 1995, WTO Doc. WT/DSB/1. The selection process noted above, taken pursuant to recommendations of the WTO Preparatory Committee, have been followed over the entire life of the Appellate Body and used successfully to appoint each of the 27 present and former members of the Appellate Body. There is no reason to depart from this well-settled process.

<sup>22</sup> Note that at this point, nominations to fill the vacancies created by the expiration of the term of Ricardo Hernandez Ramirez (term expired June, 2017) and Peter van den Bossche (term expired December, 2017) have been submitted to the WTO. An additional process would likely be necessary for candidates to replace the terms of Hyun Chong Kim of South Korea (resigned August 1, 2018) and Shree Baboo Chekitan Servansing of Mauritius (first term expired September 30, 2018 with United States blocking reappointment for a second term).

<sup>23</sup> Professor Ernst-Ulrich Petersmann makes the point that the United States' unilateral blocking of a DSB consensus is inconsistent with the legal duty of all WTO members to maintain the Appellate Body as legally prescribed in Art. 17 of the DSU (“being ‘composed of seven persons’, with vacancies being ‘filled as they arise’”), is inconsistent with DSU Art 3.10 (good faith) and amounts to illegal *de facto amendments* to the DSU, thereby justifying—and legally requiring—majority decisions by the WTO Ministerial Conference or General Council to maintain the AB. Prof. Ernst – Ulrich Petersmann, Proposals by panel member, Conférence sur la réforme de l’OMC, November 15, 2018,

nominees. As such, it should not raise concerns that the WTO has departed from the consensus-based approach to decision making nor should it set a precedent for voting to make changes in the underlying rules of the WTO itself.<sup>24</sup> Moreover, a vote to appoint members to the Appellate Body should be seen as an action by the WTO Members to fulfill the obligation placed on them as members of the DSB under Article 17.2 –“the DSB *shall appoint* persons to serve on the Appellate Body. . . vacancies *shall be filled* as they arise.” In addition, the vote would only occur after efforts to improve the DSU while meeting the United States’ concerns were taken. As such, the good faith of the Members voting to ensure the continued operation of the two-stage binding dispute settlement system would be clear.

There is no doubt that going down the road of appointing members to the Appellate Body will be controversial. Already, the United States has signaled that it will take a “decision” of the DSB to launch the selection process and that it views appointments as “decisions” of the DSB,<sup>25</sup> which means, that for the United States, both the commencement of the selection process and the appointment itself are subject to the DSB’s consensus rule—“where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.” (DSU Article 2.4). There are no provisions in the DSU establishing a voting process. Instead, the rules regarding voting are contained in Article IX of the WTO Agreement, which provide that: 1) where a decision cannot be arrived at by consensus, the matter shall be decided by voting, 2) that each Member of the WTO has one vote, 3) that votes can be taken at meetings of the Ministerial Conference and the General Council, and 4) that matters (with some specific exceptions such as definitive interpretations of existing text) shall be decided by majority vote. (WTO Agreement Article IX.1).

It is important to note that in the 22 years of the WTO’s existence, the Members have never chosen to vote on any matter, preferring to stick with the GATT/WTO’s traditional consensus-based decision-making process. If and when such voting occurs, it will be done in a meeting of the General Council (or at a Ministerial Conference), not in the Dispute Settlement Body.<sup>26</sup> While all Members of the WTO are members of both the General Council and the Dispute Settlement Body, the General Council and the Dispute Settlement Body have different, but overlapping,

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available at <https://www.tresor.economie.gouv.fr/Articles/4c69c305-4f37-45f5-aa28-09a6aab19768/files/398e28fd-73d7-42bc-85fd-9267bb0289c5>.

<sup>24</sup> *Id.* As Professor Petersmann states “such majority decisions [to complete the Appellate Body selection process] necessary for preventing the illegal destruction of the WTO AB system do *not set a precedent* for future WTO majority voting on discretionary, political issues.”

<sup>25</sup> Statements by the United States at the Meeting of the WTO Dispute Settlement Body, October 29, 2018, p. 54, available at [https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB\\_.Stmt\\_.as-delivered\\_fin\\_rev\\_public.pdf](https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct29.DSB_.Stmt_.as-delivered_fin_rev_public.pdf).

<sup>26</sup> The General Council is the WTO’s highest-level decision-making body, meeting regularly to carry out the functions of the WTO. It has representatives (usually ambassadors or equivalent) from all member governments and has the authority to act on behalf of the ministerial conference which only meets about every two years. The General Council also meets, under different rules, as the Dispute Settlement Body and as the Trade Policy Review Body. [https://www.wto.org/english/thewto\\_e/gcounc\\_e/gcounc\\_e.htm](https://www.wto.org/english/thewto_e/gcounc_e/gcounc_e.htm).

mandates, with the General Council sitting as the Dispute Settlement Body when the matters before it fall under the rules of the Dispute Settlement Understanding.<sup>27</sup> This mandate has evolved into the Dispute Settlement Body sitting on its own, often with different Member representatives (typically its dispute settlement specialists).<sup>28</sup> There is, however, precedent for dispute settlement issues to come before the General Council.<sup>29</sup> And while most of the discussion over the blockage of the appointment process has occurred in the Dispute Settlement Body, China has raised concerns about the selection of new Appellate Body Members in the General Council.<sup>30</sup>

Moreover, as WTO Agreement Article XVI. 3 makes clear, to the extent that there is a conflict between the WTO Agreement rules (which do provide for voting) and the DSU rules (which do not provide for voting), the WTO Agreement rules prevail in the event of a conflict between the two.<sup>31</sup> Here, the conflict stems from the United States' use of the consensus rule in the DSU to unilaterally terminate the existence of the Appellate Body, thereby jeopardizing the functioning of the dispute settlement system, while the rules of the WTO Agreement mandate that "the WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes."<sup>32</sup> It is that responsibility to administer the rules of the DSU that gives the WTO and its Members the right to use the voting procedures in Article IX of the WTO Agreement if necessary to break the impasse over the appointment of members to the Appellate Body. In addition, the provisions in Article IX.2 (for authoritative interpretation by three-fourths majority vote) could be used if necessary to confirm the interpretation that there is a collective duty under Article 17.2 of the DSU ("the DSB shall appoint . . . Vacancies shall be filled as they arise") to fill the vacancies on the Appellate Body.

In addition, problems in simply getting the appointments on the agenda may add further complications. A simple proposal requesting a General Council decision (by vote if necessary) to appoint the recommended slate of nominees may face obstacles even at the step of placing the item on the agenda. According to the Rules of Procedure for Sessions of the Ministerial

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<sup>27</sup> Article IV of the WTO Agreement provides that the General Council (composed of representatives of all Members) shall meet in the intervals in between the Ministerial Conferences and shall carry out: 1) the functions of the Ministerial Conference, 2) the additional functions assigned to it by the WTO Agreement, and 3) shall convene to "discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding." Art. IV.3.

<sup>28</sup> WTO Agreement Article IV.3 provides that the DSB may have its own chairman and its rules of procedure.

<sup>29</sup> For example, the issue of the acceptance and treatment of amicus curiae submissions was debated in General Council in 2001. World Trade Organization, General Council – Minutes of the Meeting dated November 22, 2001, WTO Doc. WT/GC/M/60.

<sup>30</sup> China raised the Appellate Body selection process at the May 8, 2018 General Council meeting. World Trade Organization, General Council – Minutes of the Meeting dated May 8, 2018, WTO Doc. WT/GC/M/172.

<sup>31</sup> Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 154, art. XVI:3. Article XVI provides: "3. In the event of a conflict between a provision of this Agreement [WTO Agreement] and a provision of any of the Multilateral Trade Agreements [which includes the DSU as Annex 2], the provision of this Agreement shall prevail to the extent of the conflict."

<sup>32</sup> Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 154, art. III:3.

Conference and Meetings of the General Council (WT/L/161), any Member can propose items for inclusion in the provisional agenda in advance of the Ministerial Conference session or the General Council meeting. However, because the first item of business at each session shall be the consideration and approval of the agenda, even if a Member can place the appointment of Appellate Body members on the provisional agenda, there might not be consensus for the adoption of the agenda, raising further issues about whether Members would be willing to break another consensus rule—that agendas are set by consensus—in order to ensure the survival of the Appellate Body.<sup>33</sup>

Why is this potentially beautiful outcome considered “ugly”? If the process resulted in a vote to appoint Appellate Body Members, it will indeed be ugly, for at least the following reasons:

1) going to voting—even for the limited purpose of appointing Appellate Body members—puts Members in the difficult position of choosing between abandoning the preferred consensus approach versus the obligation to fill seats on the Appellate Body and potentially raises the concern that other more substantive issues will soon follow as matters subject to voting;

2) the United States may declare any Appellate Body members appointed by this process to be illegitimate and that it therefore refuses to participate in the appeals process or to abide by the decisions of the Appellate Body;

3) even though the vote would allow the Appellate Body and WTO’s two-stage dispute settlement system to remain in place, an Appellate Body that is not viewed as legitimate in the eyes of all Members would remain a diminished one.

### Conclusion

I put forward these good, bad and ugly options because I believe the situation is grave. I would regard any one of these options as preferable to doing nothing and letting the system die. So I urge everyone to rearrange these options according to your own sense of what is good and what is ugly—but understand that doing nothing is worse than even the most unsightly solution.

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<sup>33</sup> For example, India recently objected to including investment facilitation on agenda of the General Council meeting in 2017. As a result, the meeting was reconvened eight days later with a modified title on the item to emphasize that it is for informal dialogues on investment facilitation and not the launch of formal negotiations. This has often been the process in the past—to work out a consensus on a modified agenda. It is not clear whether such modifications would satisfy the United States if it remains opposed to any process that would lead to the appointment of members to the Appellate Body.

## Annex A

## Concerns Expressed before the WTO's Dispute Settlement Body by the United States Regarding the Function of the Appellate Body -- 2017 to Present

<b>Date of DSB Meeting</b>	<b>Block appointment or reappointment process</b>	<b>Concern/s Expressed by United States</b>	<b>Full text of US Statement</b>
25-Jan-17	No mention of AB appointments	No mention of AB appointments	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Jan25.DSB_.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Jan25.DSB_.pdf</a>
20-Feb-17	No mention of AB appointments	No mention of AB appointments	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb20.DSB_.Stmt_.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb20.DSB_.Stmt_.pdf</a>
21-Mar-17	US stated that it looks forward to consulting with the Chair and the Members on the appointments	No concern expressed on the AB or the relevant rules	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Mar21.DSB_.Stmt_.as-delivered.fin_.public.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Mar21.DSB_.Stmt_.as-delivered.fin_.public.pdf</a>
19-Apr-17	US stated that it looks forward to consulting with the Chair and the Members on the appointments	No concern expressed on the AB or the relevant rules	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Apr19.DSB_.Stmt_.as-delivered.fin_.public.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Apr19.DSB_.Stmt_.as-delivered.fin_.public.pdf</a>
22-May-17	US agreed to join the process for finding a replacement for Mr. Ramirez (position vacant on June 30, 2017) but did not agree to launch a process to replace Prof. Bossche (position vacant on December, 2017)	No concern expressed on the AB or the relevant rules	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/May22.DSB_.Stmt_.as-delivered.fin_.public.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/May22.DSB_.Stmt_.as-delivered.fin_.public.pdf</a>
19-Jun-17	Same position as the May 2017 statement	No concern expressed on the AB or the relevant rules	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/June19.DSB_.Stmt_.as-delivered.fin_.public.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/June19.DSB_.Stmt_.as-delivered.fin_.public.pdf</a>
20-Jul-17	Same position as the May 2017 statement	No concern expressed on the AB or the relevant rules	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/July20.DSB_.Stmt_.as-delivered.fin_.public.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/July20.DSB_.Stmt_.as-delivered.fin_.public.pdf</a>
31-Aug-17	No	holdover/Rule 15	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB_.Stmt_.as-delivered.fin_.public.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Aug31.DSB_.Stmt_.as-delivered.fin_.public.pdf</a>
23-Oct-17	Yes	holdover/Rule 15	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct.23.DSB_.Stmt_.as-delivered.fin2_.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Oct.23.DSB_.Stmt_.as-delivered.fin2_.pdf</a>
22-Nov-17	Yes	holdover/Rule 15	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Nov22.DSB_.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Nov22.DSB_.pdf</a>
22-Jan-18	Yes	holdover/Rule 15	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Jan22.DSB_.Stmt_.as-delivered.fin_.public-1.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Jan22.DSB_.Stmt_.as-delivered.fin_.public-1.pdf</a>
28-Feb-18	Yes	holdover/Rule 15	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB_.Stmt_.as-delivered.fin_.public-1.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB_.Stmt_.as-delivered.fin_.public-1.pdf</a>
27-Mar-18	Yes	holdover/Rule 15	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Mar27.DSB_.Stmt_.as-delivered.fin_.rev_-1.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Mar27.DSB_.Stmt_.as-delivered.fin_.rev_-1.pdf</a>
27-Apr-18	Yes	holdover/Rule 15	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Apr27.DSB_.Stmt_.as-deliv.fin_.public.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Apr27.DSB_.Stmt_.as-deliv.fin_.public.pdf</a>
28-May-18	Yes	holdover/Rule 15	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/May28.DSB_.Stmt_.as-deliv.fin_.public.Rev_.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/May28.DSB_.Stmt_.as-deliv.fin_.public.Rev_.pdf</a>
22-Jun-18	Yes	holdover/Rule 15 and the 90 day timeline	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_.Stmt_.as-delivered.fin_.public.rev_.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Jun22.DSB_.Stmt_.as-delivered.fin_.public.rev_.pdf</a>
20-Jul-18	Yes	holdover/Rule 15	<a href="https://geneva.usmission.gov/2018/07/20/statements-by-the-united-states-at-the-july-20-2018-dsb-meeting/">https://geneva.usmission.gov/2018/07/20/statements-by-the-united-states-at-the-july-20-2018-dsb-meeting/</a>
27-Aug-18	Yes	municipal law as an issue of fact, holdover/Rule 15	<a href="https://geneva.usmission.gov/2018/08/27/statements-by-the-united-states-at-the-august-27-2018-dsb-meeting/">https://geneva.usmission.gov/2018/08/27/statements-by-the-united-states-at-the-august-27-2018-dsb-meeting/</a>
26-Sep-18		municipal law as an issue of fact, holdover/Rule 15	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Sept26.DSB_.Stmt_.as-delivered.fin_.public.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Sept26.DSB_.Stmt_.as-delivered.fin_.public.pdf</a>
29-Oct-18	Yes	Advisory opinions, going beyond the text, 90 day timeline, holdover/Rule 15	<a href="https://geneva.usmission.gov/2018/10/30/statements-by-the-united-states-at-the-october-29-2018-dsb-meeting/">https://geneva.usmission.gov/2018/10/30/statements-by-the-united-states-at-the-october-29-2018-dsb-meeting/</a>
21-Nov-18	Yes	Advisory opinions, Rule 15, going beyond the text	<a href="https://geneva.usmission.gov/wp-content/uploads/sites/290/Nov21.DSB_.Stmt_.as-deliv.fin_.public.pdf">https://geneva.usmission.gov/wp-content/uploads/sites/290/Nov21.DSB_.Stmt_.as-deliv.fin_.public.pdf</a>