

FMG Online Brainstorming on the WTO Appellate Body

02/11/2021



Invitation

The Friends of Multilateralism Group would like to invite you to an online brainstorming on the Appellate Body of the WTO.

Time: 14:30-16:00 (CET), Tuesday Nov.2nd

Venue: ZOOM---Join Zoom Meeting

<https://zoom.us/j/87297339505?pwd=b1NORIN3MmVlK0ZXWkpod04yWXlrUT09>

ID: 872 9733 9505

Passcode: 319083

Rules for participation:

Upon invitation only

Note:

FMG will open its sessions to related international organisations and think tanks. Such sessions will also be recorded and shared online unless otherwise specified in the invitations.

The Hosts



Friends of Multilateralism

The Friends of Multilateralism Group

Established in 2016 in Geneva, the Friends of Multilateralism Group (FMG) is a think tank of independent experts firmly committed to promoting multilateralism and shared growth within the multilateral trading system. They mainly include former senior trade diplomats, former senior staff of international organizations and renowned scholars. FMG endeavors to buttress efforts by Members, both delegations and capital officials, on WTO reform and other issues of importance to the multilateral trading system

and help them restore the centrality of the WTO for the governance of trade and investment. FMG will strive to provide high-quality, independent and expert advice through a series of activities and products, including researches, debates, consultations and policy advice, to help build a positive eco-system to inform and support potential compromises and landing zones for the sustainability of the multilateral trading system.

FMG is managed by a Board consisting of Alejandro JARA (Co-chair of Board) and Patrick LOW (Co-chair of Board), Xiankun LU (Chief Executive Officer), Mia MIKIC (Board Member), Stuart HARBINSON (Board Member), and Daniel CROSBY (Treasurer). Other FMG members include Mercedes ARAOZ, Richard BALDWIN, Clemens BOONEKAMP, Wendy CUTLER, Peter DRAPER, Deborah ELMS, Simon EVENETT, Jonathan T. FRIED, Bernard HOEKMAN, Eunice HUANG, Mohan KUMAR, Hamid MAMDOUH, Cecilia MALMSTRÖM, Sergio MARCHI, Mario MATUS, Evan ROGERSON, Sherry STEPHENSON, Hector TORRES, Thu-Lang TRAN WASESCHA, Peter UNGPHAKORN, Guillermo VALLES, Alan WOLFF, and Xinquan TU. FMG engages extensively external independent experts, as need be.

Some representatives of related international organizations and institutions are also invited in their personal capacity as “Friends of FMG” (FFMG), to enrich the discussions and bridge effective message-passing with such organizations. FFMG members are Sean DOHERTY (WEF), Sacha SILVA (ITC), Crispin CONROY (ICC), Olaf WIENTZEK (KAS), Andreas ESCHE (Bertelsmann Stiftung), Hajo LANZ (FES), and James ZHAN (UNCTAD).

Please find more information about FMG via its official website: <https://fmg-geneva.org>

Objectives

The Appellate Body (AB) is a key element of the Dispute Settlement System of the WTO, hearing appeals against the findings of the panel and ensuring the stability and predicability of the multilateral trading system. However, since 10th December 2019, the AB ceased to function because of the blockage by the US of the selection process of its members, plunging the whole dispute settlement system into crisis.

Resolving the AB crisis and bolstering the dispute settlement function is critical for the continued relevance of the WTO and the incoming MC12 is an important opportunity. What are potential solutions to this crisis? What outcomes, and in what format, can ministers achieve to restore the dispute settlement system by MC12 and beyond?

Background reading:

- ❖ **James Bacchus:**
 - a. *Might Unmakes Right: The American Assault on the Rule of Law in World Trade*
 - b. *Saving the WTO's Appeals Process* (<https://www.cato.org/blog/saving-wtos-appeals-process>)
- ❖ **Henry Gao:**
 - Finding a Rule-Based Solution to the Appellate Body Crisis: Looking Beyond the Multiparty Interim Appeal Arbitration Arrangement*
- ❖ **Jennifer Hillman:**
 - a. *Three Approaches to Fixing the World Trade Organization's Appellate Body: the Good, the Bad and the Ugly?*
 - b. *The United States Needs a Reformed WTO Now*
 - c. *A Reset of the World Trade Organization's Appellate Body*
 - d. *United States Senate Committee on Finance--Hearing on WTO Reform: Making Global Rules Work for Global Challenges--Questions for the Record for Jennifer Hillman*
- ❖ **Peter Van den Bossche:**
 - The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication?*

Speakers

Gabrielle Marceau



Gabrielle Marceau, PhD, is Senior Counsellor in the Research Division (ERSD) of the WTO Secretariat since 1 May 2020. In September 1994 Mrs Marceau joined the GATT Secretariat and for several years her main function was to advise panellists in WTO disputes, the Director-General's Office, the Secretariat and WTO Members on WTO-related matters. From September 2005 to January 2010, Mrs Marceau was legal advisor in the Cabinet of former WTO Director-General Pascal Lamy, and from September 2016 to January 2017, she was acting director, Officer in Charge for Legal Affairs Division.

Gabrielle Marceau is also Associate Professor at the Law Faculty of the University of Geneva; she has been Visiting Professor at the Graduate Institute in Geneva, the Sorbonne in Paris, Monash University in Melbourne, the World Trade Institute in Bern, and many other institutions. Professor Marceau is also involved with associations and groups promoting international (economic) law. Professor Marceau has published extensively in WTO law and international economic law.

Before joining the GATT Secretariat, Gabrielle Marceau, member of the Quebec/Canada Bar, worked in private practice in Quebec, Canada, mainly in labour, insurance law and civil law.



James Bacchus

James Bacchus is Distinguished University Professor of Global Affairs and Director of the Center for Global Economic and Environmental Opportunity of the University of Central Florida. He was a founding judge and was twice Chairman – the chief judge – of the Appellate Body of the World Trade Organization. He is a former Member of the Congress of the United States, from Florida, and a former US trade negotiator. He serves on the United States Leadership Council of the United Nations Sustainable Development Solutions Network, served on the High-Level Advisory Panel to the Conference of Parties of the United Nations Framework Convention on Climate Change, chaired the global council on governance for sustainability of the World Economic Forum, and chaired the Commission on Trade and Investment Policy of the International Chamber of Commerce. He is adjunct scholar for the Cato Institute in Washington, DC; global fellow of the Centre for International Governance Innovation in Canada; distinguished fellow of the European Institute for International Law and International Relations, and Pao Yue-Kong University Chair Professor of international law at Zhejiang University in Hangzhou, China. Professor Bacchus is the author of *Trade and Freedom* (London: Cameron May, 2004); *The Willing World: Shaping and Sharing a Sustainable Global Prosperity* (London: Cambridge University Press, 2018), named one of the “Best Books of the Year” by the Financial Times of London; and, with co-author Inu Manak, *The Development Dimension: Special and Differential Treatment in Trade* (London: Routledge Press, 2021). His new book, *Trade Links: New Rules for a New World*, will be published by Cambridge University Press in early 2022.



Prof. Henry Gao

Prof. Henry Gao is a tenured law professor at Singapore Management University and Dongfang Scholar Chair Professor at Shanghai Institute of Foreign Trade. With law degrees from three continents, he started his career as the first Chinese lawyer at the WTO Secretariat. Before moving to Singapore in 2007, he taught law at Hong Kong University, where he was also the Deputy Director of the East Asian International Economic Law and Policy Program.

Prof. Gao is widely published in major international journals, including the top three journals in trade law: *Journal of International Economic Law*, *World Trade Review*, and *Journal of World Trade*. He has also published many chapters in books published by some leading international publishers, including two dozen chapters in books published by Oxford University Press and Cambridge University Press.

An often-quoted expert in major international media such as the *Wall Street Journal*, *New York Times*, *Washington Post*, *Financial Times*, *the Economist*, *CNN*, *BBC*, *CNBC* and *Channel News Asia*, Prof. Gao has also been invited to speak at key international conferences in the field, including the annual meetings of the *American Society of International Law*, the *Asian Society of International Law* and the *Society of International Economic Law*, and the *World Trade Forum* organized by the *World Trade Institute* in Bern.

In addition to his scholarly work, Prof. Gao has been a consultant to many national governments and international organizations including the *WTO*, the *World Bank*, the *Asian Development Bank*, *Inter-American Development Bank* and *APEC*. Prof. Gao has extensive experience in conducting executive training programs for government officials. Over the past two decades, he has designed and delivered numerous training courses for the governments of *China*, *Hong Kong*, *Singapore*,

Canada, Australia, as well as major international donors such as EU, Asian Development Bank and ASEAN. He was the Academic Coordinator of the Regional Trade Policy Course for Asia Pacific when it was first launched and played an instrumental role in establishing the flagship WTO technical assistance program in the region.

Prof. Gao has been on the Advisory Board of the WTO Chairs Program since 2009, when it was established by the WTO Secretariat to promote research and teaching on WTO issues in leading universities around the world. He also sits on the Advisory Board of the Hinrich Foundation, a unique Asia-based philanthropic organization that works to advance mutually beneficial and sustainable global trade. He is also the Advisor on Trade Negotiations for the Asia-Pacific Research and Training Network (ARTNeT) of the UN Economic and Social Commission for Asia and the Pacific.

Henry is a member of editorial boards of the Journal of International Economic Law and Journal of Financial Regulation, both published by Oxford University Press. He also sits on the Academic Board of the John H. Jackson Moot Court Competition (formerly ELSA WTO Moot Court). At the invitation of the World Trade Institute, he's currently organizing the 2021 World Trade Forum with the theme "China & the WTO: 20 Years On", where the papers presented will be published in an edited volume by Cambridge University Press.



Jennifer Hillman

Jennifer Hillman is a senior fellow at the Council on Foreign Relations and a professor at the Georgetown University Law Center. Hillman has had a distinguished career in public service. In 2012, she completed her term as one of seven members serving on the WTO's highest court, its Appellate Body. As a commissioner at the U.S. International Trade Commission, she adjudicated trade remedy cases along with conducting trade-related economic studies.

Through her work as General Counsel at the Office of the United States Trade Representative (USTR), Hillman was involved in all litigation matters coming before panels of the NAFTA or the WTO. She negotiated bilateral agreements with forty-five countries while serving as USTR's ambassador and chief textiles negotiator. Before joining USTR, she was the legislative director for U.S. Senator Terry Sanford of North Carolina. Hillman was a partner in the law firm of Cassidy Levy Kent, a senior transatlantic fellow for the German Marshall Fund of the United States, and a member of the selection panel for the Harry Truman Scholarship Foundation. She serves on the board of visitors of the Sanford School of Public Policy at Duke University. She is a graduate of Harvard Law School and Duke University.



Prof. dr. Peter L.H. Van den Bossche, LL.M.

Peter Van den Bossche is Director of Studies of the World Trade Institute (WTI) and Professor of International Economic Law at the University of Bern, Switzerland. Since 2018, he serves as President of the Society of International Economic Law (SIEL). From 2009 to 2019, he was a Member of the Appellate Body of the World Trade Organization (WTO) and served as chairman of the Appellate Body in 2015. Van den Bossche is the author (with Werner Zdouc) of *The Law and Policy of the World Trade Organization*, 5th edition (Cambridge University Press, 2021), 1170 p.; and (with Denise Prévost) of *Essentials of WTO Law*, 2nd edition (Cambridge University Press, 2021), 350 p.



Alan Wm. Wolff

Alan Wm. Wolff is a distinguished visiting fellow at the Peterson Institute for International Economics. Until joining PIIE, he was Deputy Director-General of the World Trade Organization (WTO). At the WTO, Wolff was responsible for divisions dealing with accessions, agriculture, trade and the environment, standards, translation, and information technology support. He is a founder of the Trade for Peace (T4P) Initiative, which joins the WTO, the International Financial Institutions and the peace community in their efforts to provide assistance to fragile and conflict-affected countries. He served as chair of the WTO's Consultative Framework Mechanism for Cotton Development Assistance. During the six months ending on 1 March 2021, he was co-acting Director-General of the WTO. His numerous writings on current trade topics during his tenure at the WTO are available at WTO.org.

Prior to joining the WTO Secretariat, Wolff was a leading member of the trade bar pioneering a team approach of combining economics, law, and forensic analysis to address problems in international competition.

Wolff served as United States Deputy Special Representative for Trade Negotiations in the Carter administration and was general counsel of the Office in the Ford administration. He served as acting head of the US delegation during the Tokyo Round of Multilateral Trade Negotiations and was a principal draftsman of the basic US law creating a mandate for trade negotiations. As Deputy USTR he was a founder of the Organization for Economic Cooperation and Development (OECD) Steel Committee and its first chairman. He has served as a senior trade negotiator in, and advisor to, both Democratic and Republican administrations.

Prior to his service at USTR, he served in the US Treasury as staff attorney for the National Advisory

Committee on International Monetary and Financial Policy, participating in the work of the OECD Development Assistance Committee, reviewing lending policies in the IMF and the World Bank, and participating in the drafting of the Articles of Agreement of the African Development Fund. He was director of the Treasury's Office of Multilateral Trade Negotiations.

He is also a lifetime national associate of the National Academies, a member of the Council on Foreign Relations, and served on the E15 Initiative's Experts Group on Trade and Innovation.

He holds a JD degree from Columbia University and an AB degree from Harvard College.

Program

14:30-14:35	Opening Remarks Speaker: Xiankun Lu (FMG)
14:35-15:53	Presentations Moderator: Gabrielle Marceau
14:35-14:45	Speaker: James Bacchus
14:45-14:55	Speaker: Henry Gao
14:55-15:05	Speaker: Jennifer Hillman
15:05-15:15	Speaker: Peter Van den Bossche
15:15-15:23	Discussant: Alan Wolff (FMG)
15:23-16:00	Discussions Moderator: Gabrielle Marceau