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Populism, Backlash and the Ongoing Use of the World Trade Organization Dispute Settlement System: State Responses to the Appellate Body Crisis

IMOGEN SAUNDERS†

ABSTRACT

Since 2017, World Trade Organization (‘WTO’) Member States have been unable to reach a consensus on Appellate Body (‘AB’) appointments and reappointments. The United States is spearheading a populist backlash against procedural and substantive aspects of the dispute settlement system of the WTO. As a consequence of this, the AB is now facing an unprecedented crisis. The jewel in the crown of the WTO dispute settlement system will be missing: yet countries are still bringing complaints. This paper considers US actions through the framing of populism and backlash, and assesses responses from other countries.

I. INTRODUCTION

The World Trade Organization’s (‘WTO’) Appellate Body (‘AB’) was once considered the ‘jewel in the crown’ of the WTO dispute settlement system. The WTO came into being in 1995, almost 50 years after the ill-fated Havana Charter—intended to establish the International Trade Organization (‘ITO’)—failed to gain US Congressional Approval and subsequently never came into force.

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While the ITO floundered, the 1947 General Agreement on Tariffs and Trade (‘GATT’) did come into force: but without an institutional body overseeing it, or an agreed dispute settlement system, it operated in a quasi-legal, diplomatic fashion. Swathes of trade areas were excluded in practice from its purview, and disputes were managed by ad-hoc arbitration panels and governed by principles of consensus. A panel was only formed if all GATT members (including the State accused of breaching the treaty) agreed: and its findings only adopted on the same basis. By the time the Uruguay Round began in 1986, with the object of creating a new international trade institution, it was obvious that a more rigorous dispute settlement system was needed. The WTO dispute settlement system has two key differences from the GATT years.

First, rather than disputes being decided by an arbitral panel alone, a two-stage appellate process was adopted. Disputes are heard in the first instance by a WTO panel, formed on an ad-hoc basis for each dispute. From the panel decision there is an automatic right of appeal to the AB. The AB is a permanent body, intended to consist of seven members, three of which sit to hear any given appeal. While panel members do not need legal qualifications, AB members must be ‘a person of recognized authority, with demonstrated expertise in law, international trade and the subject-matter of the covered agreements generally’.

The permanence of the AB means there is consistency in the law; and the legal qualifications of its members has seen it acting more like a true international court than an ad-hoc arbitral panel more concerned with finding an outcome satisfactory to both parties than the rigorous application of the law. For example, although as in all international courts, precedence as understood in domestic systems does not apply, the AB nonetheless has made clear that it both expects WTO panels to follow previous AB reasoning where relevant, and that the AB itself will, in usual circumstances, follow its own previous reasoning.

Second, the model of consensus has been flipped. WTO panels are now automatically formed unless there is consensus not do so – including agreement from the State who has brought the dispute in the first place. Similarly, reports from the WTO Panels and the AB are automatically adopted, unless there is consensus not to adopt (including from the State who has ‘won’ the case). This essentially

ended the opt-out nature of dispute settlement during the *GATT* years, and created a compulsory dispute settlement system in its place.

For over twenty years this system worked fairly well – albeit with grumblings regarding delays, as the time taken for delivery of WTO Panel and AB reports routinely exceeded the (one could say overly optimistic) timelines set in the *Dispute Settlement Understanding*. In some ways, the dispute system was a victim of its own success: as the case load increased, the ability of the system to deal with matters in a timely fashion decreased. However, the situation facing the WTO dispute system today is wholly different. It is facing ‘unprecedented challenges’ – stripped of its intended seven members to only one, and unable to hear appeals. Crucially, as WTO panel reports are not binding if appealed, the crippling of the AB is in fact the crippling of the dispute settlement system as a whole. Without a functioning AB, there is no institutional capacity to provide binding dispute settlement results. Parties to a dispute may agree not to appeal (thus allowing the WTO panel report to be binding); or to go outside the system to alternative arbitration in lieu of appeal: but any such options cannot be compelled by either the WTO or other States. The compulsory and binding dispute resolution system established in 1994 has effectively been broken.

Much has been written on this issue, looking at causes (including the legitimacy of the US complaints) as well as potential solutions. This article instead focusses on understanding the current situation through the twin frameworks of populism and backlash, as well as interrogating what States have actually done in response to the crisis. To do so, the article will first briefly set out the events that have led to the incapacitation of the WTO AB. It will then consider the challenge

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through the lens of populism and against the context of backlashes to other international courts. It will finally engage in analysis of use of the AB during the relevant time period and consider why States continue to use the DSU.

II. Events Leading to Incapacitation

In May 2016, the US made waves when it did not support the reappointment of South Korean Judge Seung Wha Chang. The US had previously blocked appointments of US judges, but never the national of another country. The reasons given included that he served on appeals that included too much obiter dicta, engaged in abstract decisions, went beyond the arguments of the parties, and made a ‘problematic and erroneous approach to reviewing a Member’s domestic law’. This was met with international concern and condemnation from other States as well as the sitting and former AB members. Ultimately, Hyun Chong Kim was appointed to replace Seung Wha Chang on 23 November, along with Hong Zhao to replace Yuiejiao Zhang. It seemed the normal functioning of the Appellate Body appointment process had been restored.

This was, however, a short-lived respite. The US has adopted a policy of deliberately blocking new appointments and re-appointments from June 2017 – December 2019. On 30 June 2017, Ricardo Ramirez-Hernandez’s second term expired, and no replacement member was elected. On 1 August 2017 Hyun Chong Kim resigned to take up the position of Minister of Trade, Industry and Energy in the South Korean Government. No replacement member was elected to fill this vacancy. This was followed by the expiration of Peter Van den Bossche’s second term on 11 December 2017. Again, no replacement was appointed. On 3 September 2018, Shree Baboo Chekitan’s re-appointment was blocked: leaving three members left on the Appellate Body. This is the minimum number to function, and although the already burdensome workload increased with less members, the AB

5. The U.S. blocked the reappointment of Jennifer Hillman in 2011 and the proposed appointment of James Gathii in 2013.
7. Id. at 4.
8. Id. at 4-5.
9. Id. at 5.
continued its work.

However, at midnight on 10 December 2019, the terms of Ujal Singh Bhatia and Thomas R Graham expired, leaving Hong Zhao as the only remaining AB member. It seems unlikely any consensus will be reached to fill these vacancies — or indeed any of the six positions now vacant. The stated reasons for US actions in blocking appointments has changed very little since the blocking of Hyun Chong Kim in 2017. They were articulated in a July 2019 statement of the Office of the US Trade Representative on the Appellate Report on *China – Countervailing Duties*:

This report also illustrates the concerns the United States has been raising about the Appellate Body’s functioning, including adding to WTO Member obligations and diminishing their rights, exceeding the mandatory 90-day deadline for reports, permitting individuals to continue to serve on appeals past the end of their terms, engaging in fact-finding on appeal, and treating prior reports as precedent.\(^\text{11}\)

Although there is some suggestion that other countries share (at least some of) these concerns,\(^\text{12}\) there has been no public support for the US actions in blocking appointments from other WTO members.

### III. The AB Crisis Through the Lens of Populism

There are many differing definitions and conceptions of populism: different fields may have different understandings of the term, and discussions of populism may vary wildly as a result.\(^\text{13}\) In particular, there is a schism between thick and thin populism. Thick populism draws from historical practice and intrinsically links the term with certain political positions historically identified as populist.\(^\text{14}\) Thin populism, in contrast, divorces the term from the content of the political position and instead focuses on the *method*: populism as a ‘way of “doing politics”’.\(^\text{15}\) For both thick and thin conceptions of populism, certain elements can be pulled out to analyze the current AB

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14. *Id.* at 234.
A. Thick Populism: Producerism and Anti-Elitism

There are three central elements of populism over time: ‘producerism, religiosity, and anti-elitism’. Two of these – producerism and anti-elitism – are most directly relevant.

Populist producerism is the belief that “only those who created wealth in tangible, material ways (on and under the land, in workshops, on the sea) could be trusted to guard the nation’s piety and liberties.”

In contrast, elites are viewed as ‘everything that devout producers . . . were not: condescending, profligate, artificial, effete, manipulative, given to intellectual instead of practical thinking, and dependent on the labor of others.

With this in mind, we can consider a statement made by President Trump as he campaigned in 2016. Against the backdrop of a metals recycling facility (a producer), he stated:

So today I’m going to talk about how to make America wealthy again. We have to do it. With 30-miles from Steel City, Pittsburgh played a central role in building our nation. The legacy of Pennsylvania steelworkers lives in the bridges, railways and skyscrapers that make up our a great American landscape. [sic]

But our workers’ loyalty was repaid, you know it better than anybody, with total betrayal. Our politicians have aggressively pursued a policy of globalization, moving our jobs, our wealth and our factories to Mexico and overseas. Globalization has made the financial elite, who donate to politicians, very, very wealthy.

The message is clear: the producers have been betrayed by the elites – both financial and political. The same primacy of producers is evident in President Trump’s November 2019 speech at the Economic Club of New York, where he stated ‘We have ended the war on American workers, we have stopped the assault on American industry…’ The political elites are once again criticized: ‘They

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18. Id. at 15. See also, Graber, supra note 17, at 387-388.
20. Remarks by President Trump at the Economic Club of New York, White House
passed the disastrous trade deals that encouraged the shuttering of American plants and the offshoring of American jobs by the millions. In short, the failed political class sold out American workers, sold out American prosperity, and sold out the American Dream.\(^2\)

The background of current US trade policy then clearly resonates with two of the elements of thick populism. Some of the specific issues raised by the US as justifications for actions taken in blocking appointments to the AB can also be analyzed along these lines. Under this view of populism, populists are “anti-establishment; they are cynical of existing institutions such as … courts [and] prefer to put their faith in the wisdom and virtues of ordinary people.”\(^2\) The US has repeatedly criticized the doctrine of precedent that has developed at the AB. In July 2019, the US Ambassador to the WTO commented to the WTO General Council:

> With regard to precedent, the Facilitator’s Report highlights the widely divergent views among Members on the value of prior Appellate Body reports. The Report suggests agreement among Members that “precedent” is not created through WTO dispute settlement. Yet, time and again, some Members insist that a panel must adhere to the interpretation in past Appellate Body reports. And, time and again, the Appellate Body insists that panels must adhere to past reports absent undefined “cogent reasons”, a term that appears nowhere in the DSU. These assertions on the value of interpretations in prior reports are, as we have explained, directly contrary to the DSU and the WTO Agreement.\(^3\)

A rail against precedent can be understood through the lens of populism as an attempt to restrict the power and law-creating ability of a court – and not just any court, but an international one, even further removed from the ordinary American people. The same can be said for the US insistence on deference to domestic methods in trade remedy investigations, most notably the practice of zeroing in dumping investigations. The criticisms are about stripping power from an institution of elites and returning it (at least one step closer) to the

\(^{21}\)Id.


people.

B. Thin Populism: Differentiation, Fracture and Othering

Thin populism, as defined by Nijman and Werner, is a ‘thin-centered ideology that can be – and indeed has been – linked to different political agendas.’ What matters here is how politics is done, not the substantive agenda being sought. Nijman and Werner identify two ways of doing politics that align with populism. First, and overlapping with thick populism, a technique of ‘mutually constitutive’ opposition between the elite and the ordinary person, such that content is created primarily through ‘differentiation and fracture’ rather than particular substantive goals. Second, ‘a practice of ‘othering’ rather than that it aims to serve the health and cohesion of the civitas and polity as a whole’.

Just as with thick populism, the positioning of the US’s policies and tactics as anti-global elite is clear. The second feature of thin populism is also present: in that the US position is unashamedly positioned to serve (perceived) US interests no matter the cost to the wider international community as a whole. Although President Trump insisted at the World Economic Forum in 2018 that ‘American First does not mean America alone’, on the issue of blocking appointments to the AB, America is very much alone. At a meeting of the WTO Dispute Settlement Body (‘DSB’) on 18 December 2019, a proposal was circulated calling the launch of selection processes to fill all six vacancies. The proposal stresses the ‘urgency and importance of filling the vacancies in the Appellate Body’ and has the support of 91 WTO members including the EU, China and Russia.

28. Proposal by Afghanistan; Angola; Argentina; Australia; Benin; Plurinational State Of Bolivia; Botswana; Brazil; Burkina Faso; Burundi; Cabo Verde; Cameroon; Canada; Central African Republic; Chad; Chile; China; Colombia; Congo; Costa Rica; Côte D’ivoire; Cuba; Democratic Republic Of Congo; Djibouti; Dominican Republic; Ecuador; Egypt; El Salvador; Eswatini; The European Union; Gabon; The Gambia; Ghana; Guatemala; Guinea; Guinea-Bissau; Honduras; Hong Kong, China; Iceland; India; Indonesia; Israel; Kazakhstan; Kenya; Republic Of Korea; Lesotho; Liechtenstein; Madagascar; Malawi; Malaysia; Maldives; Mali; Mauritania; Mauritius; Mexico; Morocco; Mozambique; Namibia; New Zealand; Nicaragua; Niger; Nigeria; North Macedonia; Norway; Pakistan; Panama; Paraguay; Peru; Qatar; Russian Federation; Rwanda; Senegal; Seychelles; Sierra Leone; Singapore;
proposal in October had the support of 115 WTO members.\textsuperscript{29} No country has spoken out in support of the US actions. In contrast, the lack of appointments has been described as ‘deeply concerning’,\textsuperscript{30} ‘alarming’\textsuperscript{31} and the US actions as an ‘illegal blockage’.\textsuperscript{32}

IV. BACKLASHES TO INTERNATIONAL COURTS

It is clear then that the US actions can be viewed as stemming from a populist position. Can we also view them as a \textit{backlash} to the WTO? Just as with populism, definitions here are important. In the context of international courts, Madsen, Cebulak and Wiebusch differentiate between ‘push back’ and ‘backlash’:

We thus define \textit{pushback} as ordinary resistance occurring within the confines of the system but with the goal of reversing developments in law. We define \textit{backlash} as extraordinary resistance challenging the authority of an IC with the goal of not only reverting to an earlier situation of the law, but also transforming or closing the IC.\textsuperscript{33}

The actions of the US in blocking reappointments is more than mere pushback: it is not acting \textit{within} the system but is rather crippling the functionality of the system. It is seeking to transform the way that the AB operates. Although specific decisions and disagreement over substantive points of law have been singled out by the US, Madsen et al explain that a backlash can be triggered by a single decision: but are ‘energized by broader social and political cleavages, which also explain the choice of the extraordinary measures’.\textsuperscript{34} Caron and Shirlow offer a definition of backlash as ‘intense and sustained public disapproval of a system accompanied by aggressive steps to resist the system and to remove its legal force’.\textsuperscript{35} This is exactly what the US

\textsuperscript{29} See Dispute Settlement Body, \textit{Minutes of Meeting Held in the Centre William Rappard on 15 August 2019}, WTO Doc WT/DSB/M/433 (29 October 2019).
\textsuperscript{30} \textit{Id.} at ¶10.3.
\textsuperscript{31} \textit{Id.} at ¶10.30.
\textsuperscript{32} \textit{Id.} at ¶10.14.
\textsuperscript{34} \textit{Id.}
actions have done – by removing the avenue to appeal panel decisions, the legal force of the WTO dispute settlement system has been removed.

A backlash against international courts is not necessarily new – this has been written about in the human rights context with both the ‘Commonwealth Caribbean Backlash’;\(^\text{36}\) and international courts in West, East and Southern Africa.\(^\text{37}\) There are generally two types of ways that a country will express disapproval with an international court. The first way is threaten to leave the court system. Examples of countries that have followed through with this threat are Venezuela pulling out of the Inter-American Court of Human Rights, Rwanda leaving the African Court on Human and Peoples’ Rights and Burundi leaving the International Criminal Court.\(^\text{38}\) Such exits have mostly had very little impact on the court itself.

The second way is to interfere with the functioning of the Court – as is being done in the WTO. This has been seen before in the context of the South African Development Community Tribunal (‘SADCT’) – Zimbabwe’s action in blocking reappointments (along with withdrawing itself from the SADCT) had the end result of effectively terminating the SADCT.\(^\text{39}\) This example raises an interesting point of comparison because Zimbabwe was very open about wanting to end the SADCT. The US however is seeking reform of the WTO, not termination of the institution: yet its actions have effectively halted the functioning of part of it. Regardless, the actions certainly fit definitions of backlash generally and those specific to international courts. How then have countries reacted to the situation caused by the US backlash?

V. STATE RESPONSES

In his farewell speech to the WTO, former AB member Peter Van Den Bossche looked to the then future possibility that the AB would cease functioning:

One can predict with confidence that, once the Appellate Body is


\(^{38}\) Erik Voeten, Populism and Backlashes against International Courts, PERSPECTIVES ON POLITICS 1, 2 (2019).

\(^{39}\) Id.
paralyzed, the losing party will in most cases appeal the panel report and thus prevent it from becoming legally binding. Why would WTO members still engage in panel proceedings if panel reports are likely to remain unadopted and thus not legally binding?40

However, the breaking of the WTO AB has seemed inevitable for some time. Countries are nevertheless still initiating complaints within the dispute settlement system. As Ambassador Sunanta Kangvalkulki, the 2018 DSB chair noted:

The DSB is facing a unique situation, even contradictory. On the one hand, the ongoing impasse on the appointment of the vacant Appellate Body Members questions the survival of the dispute settlement system as we know it. On the other, dispute settlement activity has been on the rise, emphasizing the WTO Members’ reliance on the system. This somewhat contradictory situation has seen DSB activity significantly boosted during 2018.41

2018 was of course an extraordinary year. The US tariffs on steel and aluminum saw a massive number of cases lodged in protest. Retaliatory tariffs placed on US goods by countries were met with cases lodged by the US. But even taking 2018 as an outlier, case numbers show that the US blocking of AB appointments has not (yet) impacted use of the WTO dispute settlement system. Although there is a general downward trend in use (as seen in figure 1, below), this trend has not accelerated since 2017.


Figure 1: Number of WTO disputes by year

Three cases from 2017 (DS523, DS529 and DS534) and one from 2018 (DS541) have resulted in a panel report. No case brought in 2019 has reached the stage of a panel report yet. States must have known when bringing a case that – prior to 11 December 2019 – they were facing at least a two year wait until a report would be handed down, and longer than that for the appellate process to take place. Now the timeline is even more unsure. Yet States kept bringing requests for consultations from 2017 to the current day.

Some countries acknowledge this reality publicly. For example, the EU requested consultations with the United States regarding countervailing and antidumping duties the United States had imposed on Spanish olives on 29 January 2019. At the time, European

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Parliament briefing paper notes on the case recognised the difficulties facing the AB:

At the same time, owing to the blockage by the US of nominations of WTO Appellate Body members, the dispute settlement system itself is facing a severe backlog and risks becoming inoperable by the end of 2019.47

Other countries choose not to mention the impasse when bringing complaints. For example, Australia requested consultations with India over Indian sugarcane subsidies on 1 March 2019.48 A press release from Simon Birmingham, the Minister for Trade, stated:

Australia launched formal WTO consultations against India in February to seek the winding back of subsidies inconsistent with WTO rules. Australia strongly supports the multilateral trading system, with the WTO at its core.49

Why then are countries still using the WTO dispute settlement system – whether they acknowledge the difficulties the AB is facing or not? One reason could be the possible use of WTO consultations to pressure other countries to change their behavior, whether or not a panel is ever convened. For example, following the U.S. steel tariffs in 2018, Canada50 and Mexico51 initiated WTO complaints. Canada and Mexico were then able to get the United States to agree to drop the tariffs on Canadian and Mexican steel in May 2019, and their WTO complaints were subsequently withdrawn.52 However the success in negotiating the withdrawal of U.S. tariffs could also be attributed to counter tariffs that Canada and Mexico had placed on U.S. products – counter tariffs that were themselves subject to WTO complaints from


50. Request for Consultations by Canada, United States — Certain Measures on Steel and Aluminium Products, WTO Doc. WT/DS550/1 (June 1, 2018).

51. Request for Consultations by Mexico, United States — Certain Measures on Steel and Aluminium Products, WTO Doc. WT/DS551/1 (June 7, 2018).

Another reason for the ongoing use of the WTO system may be an attempt to preserve its functioning. To this end, the EU and Canada entered into an agreement for an alternate, interim appeal process on 25 July 2019. The preamble to the agreement makes it clear that the goal is to maintain the functioning of the WTO dispute settlement system:

Determined to preserve the essential principles and features of the WTO dispute settlement system which include its binding character and two levels of adjudication through an independent and impartial appellate review of panel reports...

The EU and Canada thus continue to use the WTO dispute settlement system for the panel stage. Under the agreement, if the AB is unable to hear appeals ‘due to an insufficient number of its members’ neither the EU nor Canada will appeal the panel report, but will instead take the matter to alternative arbitration. The alternative arbitration is designed to ‘to replicate as closely as possible all substantive and procedural aspects’ of the WTO AB and appellate process and its members are drawn from former AB members. In a joint statement, the EU and Canada reaffirmed their shared desire to preserve the WTO system:

An effective and binding dispute settlement system, which provides for the possibility of appealing panel reports, seeks to preserve the rights and obligations of WTO members.

This interim arrangement helps to preserve access to such a system, promoting security and predictability in the resolution of WTO disputes to ensure the stability of international trade.
In October 2019, the EU and Norway entered into an identical interim appeal agreement. The EU once again reaffirmed the primacy of the WTO dispute settlement system in a statement on the agreement:

The EU’s foremost priority remains to ensure an effective functioning of the existing WTO Appellate Body. The interim arrangement has however become necessary as a contingency measure given the long-standing blockage in the appointments of the Appellate Body members.

The EU’s actions in using the WTO dispute settlement system despite the crippling of the AB are a push back against the United States’ own backlash: acts to make the system functional and render the U.S. actions less powerful in their consequence.

VI. CONCLUSION

The U.S. backlash against the WTO AB can be understood as a populist response – and indeed, there is evidence that backlashes against international courts in general are more likely to be undertaken by governments with populist policies. It is impossible to predict now how the impasse will resolve. If there is a change of administration at the U.S. election in November 2020, will a newly elected President pursue the same AB tactics as the Trump administration has? If a non-populist President is elected, and the theory that backlash is caused by populist policies is correct, then it would follow that the United States will cease blocking appointments and allow the AB to function once again. There is precedent for countries reembracing international courts and reversing backlashes following the defeat of the populist government that initiated the backlash. Yet the U.S. position may not be quite so simple. Blocking of appointments did occur under the Obama administration, suggesting the U.S. frustration with the AB may be bipartisan. However, appointments were eventually made in all three cases – it is only under President Trump, and his appointed trade representative Robert Lighthizer that AB vacancies have not been filled. Nonetheless, the

62. See generally Voeten, supra note 39.
63. Id. at 12.
WTO is not popular with segments of U.S. voters, and even Democratic candidates may not wish to seem too pro-WTO.

If the current situation does continue – either because of a Trump victory in 2020 or a continuation of the policy by a new U.S. President – the question becomes how will other countries respond? The EU actions in simultaneously embracing the WTO panel system and providing an alternate means for appeal show one route where the consequences of backlash is deliberately minimized. It is possible that more countries will join the EU alternate system – just as Norway did in October 2019. It may reach a point where the AB alternative has enough membership to form a critical mass, causing other countries to join for fear of being left out. The United States is, after all, just one of the 164 members of the WTO. Although its economy and impact on global trade is huge, there is a legitimate question as to whether it would want to be a perpetual outsider to a system that contained the EU and, perhaps in the future, countries such as China, Brazil and India. While the current impasse means such countries cannot gain binding judgments from the WTO DSBD about US policies, this effect cuts both ways: the United States is no longer able to challenge Chinese tariffs on U.S. goods in the WTO and receive a binding decision. It should also be noted that the United States agreed to the formation of the current system during the Uruguay round – and although support for the AB was ‘lukewarm’64, the United States was committed in the early days of the WTO to ‘ensuring that the system worked’.65 A functioning WTO dispute settlement system was, until fairly recently, seen to be in the United States’ own interests.

In 1950, the allied powers decided there was no point in pursuing an International Trade Organization without U.S. involvement. 70 years on, the world economy is very different. Further, countries have had 25 years of experience with a binding trade dispute settlement system – an experience that countries have for the most part seen as positive – and it is not at all clear that WTO members will fall in line with the U.S. position this time. Far from causing a retreat from the WTO, the U.S. backlash has thus far been met with renewed embrace of the institution and its dispute settlement system from other WTO members. Ironically, the United States is not alone in its calls for WTO reform.66 However its choice to force the hand of other WTO members

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64. Gregory Shaffer et al., The Extensive (But Fragile) Authority of the WTO Appellate Body, 79 L. & CONT. PROBS. 237, 245 (2016).
65. Id. at 249.
by blocking AB appointments may mean it is ultimately left without a bargaining chip, as other countries continue to use the WTO dispute settlement system despite the U.S. actions.