

# Challenges of WTO Appellate Body and China's Solutions in Perspective of Belt and Road Initiative

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## Abstract

America's blocking of appointment of World Trade Organization (hereinafter "WTO") appellate body members is not conducted in good faith. WTO dispute resolution mechanism is experiencing tough period, but have bright future with its spirit of rule-of-law and multilateralism. Voting procedure could be launched to resolve the impasse according to rules of WTO, but lack of experience and political concerns constitute obstacles. Apart from compulsory dispute resolutions, conciliation and arbitration should not be neglected. Professional conciliation committee ought to be established, and more attention ought to be paid on procedural issues of trade disputes arbitration. From China's perspective, it is necessary to have more direct resolutions in its proposals for appointment of WTO appellate body members. Under Belt and Road Initiative, the dispute resolution centre instituted by China should be the outcome of cooperation between China and foreign famous institutions, based on the reputation of foreign arbitration institutions and characters of Belt and Road Initiative. The centre aims at sustaining multilateralism and rule-of-law principle, instead of replacing WTO dispute settlement body.

## Keywords

WTO Dispute Resolution Mechanism, WTO Appellate Body, Voting Procedure, Conciliation, Arbitration, Belt and Road Initiative

## 1. Introduction

Government of United States of America has taken measures to block the appointment of WTO appellate body members. Meanwhile, President of America, Donald Trump, announced that if WTO dispute resolution mechanism could not be reformed, America would quit WTO. However, America has not put forward formal proposals on reforming WTO. Other members of WTO, including Europe, Australia, Canada, China, etc., have jointly proposed to overcome difficulties that appellate body of WTO is confronted with. The problems of WTO should not be neglected when a powerful member shows apparent negative attitude towards the organization. Furthermore, China's Belt and Road Initiative has built close trade relationships between countries that have participated in the initiative. This article will analyze the problems of WTO dispute resolution mechanism, and try to find appropriate approaches to resolve international trade

disputes, in perspective of China's Belt and Road Initiative.

For structure of this research, it could be divided into three parts. This research will first analyze the current situation of WTO, evaluating the essence of America's conduct and the trend of WTO dispute resolution mechanism. Based on the evaluation, this research will compare different measures in resolving impasse of WTO appellate body, including voting procedure and optional approaches. Then, this research will propose China's approaches within WTO mechanism and approaches under Belt and Road Initiative.

## 2. Current Situation of WTO Appellate Body

Among all the problems with WTO appellate body, the most urgent issue is recovering appointment of WTO appellate members to ensure normal operation of WTO. In order to resolve the problem, it is necessary to clarify the essence of America's conduct. Meanwhile, trend of WTO

dispute resolution mechanism should also be evaluated.

### **2.1. America's Bad Faith in Blocking Appointment of WTO Appellate Body Members**

The main reason why America keep blocking the appointment of WTO appellate body members is its dissatisfaction with operation of WTO appellate body. Its dissatisfaction can be summarized as followed: authority of members of WTO appellate body after expiration [1]; litigation-focused and less attention on negotiation [2]; broad scope of review in WTO appellate body; period of appellate procedure more than 90 days; reviewing members' domestic measures as a matter of law [1]. Under such circumstance, many countries have put forward proposals to coordinate the differences in reform of WTO appellate body. However, America has rejected the joint proposal from Europe, Australia, Canada, China, etc. Deputy U.S. Trade Representative Dennis Shea held that the proposal does not effectively address the concerns of America.

Some researchers maintain that America is abusing its right with a bad faith [3]. It is reasonable for the following reasons: First, Art. 17.1 of Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter "DSU") stipulates that "vacancies shall be filled as they rise". America always blocks the appointment of WTO appellate body members till now, which is detrimental to normal operation of WTO appellate body, and the whole WTO dispute resolution mechanism. In contrast, disputes should be settled by good faith to make WTO operate efficiently. Second, there is no sufficient connection between America's dissatisfaction with WTO appellate body and rejecting appointment of WTO appellate body members. If a country would like to reject the appointment, it should illustrate inappropriateness of the candidate. However, America's blocking of appointment does not aim at certain person. Third, America responded to other countries' proposal carelessly. The joint proposal from Europe, Australia, Canada, China, etc. has addressed America's concern, but America rejected the proposal arbitrarily and did not present any proposals [4], which indicates that it would not like to cooperate with other members to resolve the concerns that it has raised.

Actually, except dissatisfaction with WTO appellate body, America is not satisfied with substantive issues of WTO, such as imbalance of trade. In such case, reform in dispute resolution mechanism of WTO is not sufficient for America. Nevertheless, blocking appointment of WTO appellate body members has a huge impact on the whole WTO system. America actually forces other WTO members to reform WTO according to its will. However, America's concerns over the problems with WTO are not always fair to other WTO members. In fact, America's won-lost percentage in WTO cases is similar to the average [5]. If all reforms of WTO were carried according to America's will, the WTO dispute resolution mechanism would go back to the power-oriented era, which is detrimental to other WTO members' interest. Meanwhile, America's decision of blocking makes more and

more countries strive for their own interests without considering common interests [6], which poses negative influence for international cooperation. America often takes unilateral measures to resolve trade disputes, which is not welcomed within WTO framework. If these unilateral measures could not be prevented, more trade war could be launched against WTO rules.

### **2.2. WTO Dispute Resolution Mechanism's Tough Period with Bright Future**

Faced with blocking appointment of WTO appellate body members, some researchers show pessimism towards the future of WTO dispute resolution mechanism. They believe that the value of WTO as a platform of dispute resolution would be weakened, if the rule-of-law system of WTO had not been adhere to. This is because WTO does not have the power to resist unilateralism, and many other countries will follow to violate WTO rules if the rules are conflict with their interests [6]. Some commentators maintain that America is trying to keep away from multilateralism and will lead into bilateral treaties with other countries [7]. Some researchers hold that it is more inconvenient to cooperate between certain countries, because there is an increasing number of WTO members that have gained discourse power in international trade, and coordination of interests has become more difficult [8]. Under such circumstance, America tends to maintain its domination with unilateral measures [9]. Nevertheless, some researchers are optimistic about the future of WTO. They argue that although America has taken some unilateral measures, it is not doomed to shed its multilateral orientation because of economic interests, power tradition and outside pressure [10]. Some researchers illustrate that majoring trading powers including Europe could uphold a framework of plurilateral regulations under WTO system, which could overcome challenges from unilateral measures [11]. Some lawyers also point out that WTO could still live even America quit WTO, because globalization could not be returned. In such case, America would be isolated and might try to be re-enrolled in WTO [12].

From this research's point of view, WTO dispute resolution mechanism will experience tough period in next few years, but will not be replaced. WTO dispute resolution mechanism will not be abandoned, because it has undergone the period for more than half a century and it is proved to be a global-recognized mechanism through practice. Although WTO system does not possess the mechanism that could ban unilateralism, it has successfully operated until 2016. There is no other global institution that has acquired reputation in resolving international trade disputes. The successful history of WTO dispute resolution mechanism has proved that the trend of rule-of-law and multilateralism in international trade dispute resolution cannot be resisted. Furthermore, even if WTO appellate body would face huge difficulties, the panels of WTO dispute resolution body could also issue reports, which constitute important guidance over resolving disputes. The implement of WTO panel reports or WTO appellate body reports does not rely on compulsory measures, such as

retaliation. Negotiation and conciliation are also very significant in each stage of dispute resolution, which promote parties to perform obligations actively. Apart from negotiation and conciliation, WTO dispute resolution mechanism also includes arbitration procedure. Therefore, blocking appointment of WTO appellate body members will not destroy the overall function of WTO dispute resolution mechanism.

### **3. Measures in Resolving Impasse of WTO Appellate Body**

Many scholars have raised suggestions to resolving impasse of WTO appellate body. These measures can be divided into two categories. One is the compulsory measure stipulated in DSU, i.e. voting procedure; the other is optional measure, which is flexible. This research will evaluate these measures separately.

#### **3.1. Voting Procedure's Significance in Resolving Impasse**

The fact that America has chosen to block the appointment of members of WTO appellate body closely relates to Art. 2.4 of DSU. According to this article, dispute settlement body of WTO makes decisions by consensus. Meanwhile, the footnote of Art 2.4 of DSU stipulates that it should be deemed to reach consensus unless members formally oppose. Appointment of WTO appellate body members should follow the rules of decision by consensus. However, by referring to these provisions, it cannot be concluded that the decision of dispute settlement body of WTO is valid only if all members agree. This is because decision by consensus is different from decision by consistency. Decision by consensus focuses on wide-range discussion, negotiation and coordination all along the process of decision [13]. Decision by consistency is a decision mode without any objection, which only suitable to fundamental decision, such as Most Favored Nations. If each decision is carried out by consistency, it would be much difficult to resolve disputes. Discussion, negotiation and coordination over disputes are of great importance, but these amicable measures are not mandatory. Art. 9 of Marrakesh Agreement Establishing the World Trade Organization (hereinafter "Marrakesh Agreement") provides with an alternative approach, voting, for reaching consensus. Therefore, the problems of appointment of WTO appellate members can be resolved by voting, from perspective of level of existing rules.

Researchers have put forward some measures for the impasse. Some researchers suggest that special appellate body for trade remedies ought to be created to work parallel with the original appellate body of WTO. The suggestion focuses on America's dissatisfaction with long-time period in practice of WTO appellate procedure. This approach can allocate different kinds of tasks to the parallel appellate bodies, one of which can concentrate on issues concerning trade remedies. This arrangement can reduce burden of appellate body and

promote efficiency [14]. It is worth noting that this approach needs huge amendment of DSU. If no consensus has been researched, voting procedure cannot be avoided. Some researchers propose to draft interpretations of DSU to reform issues that America desire to amend [4]. This is an approach that could balance different members' interest without fundamental amendments of DSU. However, from perspective of substantive issues, it is much difficult to coordinate interests between America and other countries, especially competitive countries or regions, like China, Europe, etc. It is possible that America and other members of WTO could reach agreements concerning reform of WTO appellate body, but that could not be relied upon. WTO appellate body will replace two members in December 2019, and there is not much time left. After the end of 2019, the president of American might be changed through election, and the policy of next American government is unpredictable. It is also hard to predict whether members of WTO could reach an agreement through negotiation and conciliation within the framework of WTO. If no agreement could be reached, each member of WTO has to be faced with voting process.

The reason why researchers are afraid of voting is lack of experience. Voting has not been used until now since the foundation of WTO. During the General Agreement on Tariffs and Trade (hereinafter "GATT") period, failed parties could block reports of panels from validating, and decision by consistency was stipulated in GATT documents. Nevertheless, considering that America does not conduct in good faith and agreements could not be reached, more attention ought to be paid on voting procedure. Members of WTO have reached the consensus that WTO really needs reform, and trying to initiate some procedures that has not been used before. Some researchers argue that decision by consensus will keep WTO from reform, and will result in inefficiency of the dispute resolution mechanism [15]. For feasibility, some researchers hold that there is a conflict between Art. 2.4 of DSU and Art. 9 of Marrakesh Agreement [14]. In fact, it is not a conflict because although Art. 2.4 of DSU does not prescribe voting procedure, it does not preclude voting either. From perspective of interpretation by purpose, Art. 2.4 of DSU ought to be interpreted as that the procedure of voting has been included in Art. 9 of Marrakesh Agreement.

#### **3.2. Voting Procedure's Drawbacks in Resolving Impasse**

Although voting procedure plays an important role in resolving impasse of WTO appellate body, its drawbacks should not be neglected. Art. 9 of Marrakesh Agreement stipulates the following processes of voting. First, the prerequisite of voting is the situation that decision cannot be made through consensus. Second, each WTO member has one vote, no matter trade volume of the country. Third, voting should be arranged at the Ministerial Conference and the General Council. Fourth, appointment of WTO appellate body members does not belong to interpretation of agreements and waiving of obligation, so the voting should be decided by more than half votes. If more than 1/2 of WTO members

would agree with the appointment of WTO appellate body, the impasse of WTO could be resolved to some extent. This seems to be not very difficult to implement the voting. However, the obstacle might be the launch of agenda. According to Rule 6 of Rules of Procedure for Meetings of the General Council (hereinafter "General Council Rules") and Rule 5 of Rules of Procedure for Sessions of the Ministerial Conference (hereinafter "Ministerial Conference Rules"), the voting should be proposed to the agenda of Ministerial Conference or General Council. Whether the agenda of voting could be absorbed into Ministerial Conference or General Council depends on decision by consensus. If members of WTO could not reach consensus to add the voting agenda, the voting procedure could not be launched. Meanwhile, Art. 34 of General Council Rules and Art. 29 of Ministerial Conference Rules stipulate that more than half of qualified members should vote. If less than half of qualified members participate the voting, the procedure cannot be completed either. Therefore, lack of experience of voting results in uncertainty of the procedure in practice.

The reason why voting procedure has not been initiated is not only lack of experience, but also political reasons for the future of WTO with impact from America. Some researchers argue that voting would cause serious political side effects. If voting for appointment could be implemented, many members of WTO would fear that it sets a precedent for other votes [4]. At the same time, countries are afraid of losing the voting, especially for big countries. America has already showed dissatisfaction with the operation of WTO dispute settlement body. If other countries proposed to vote for this issue, America might strongly oppose the normal operation of WTO dispute settlement body, and the aim of WTO "coherence and consensus" would probably not be achieved, which is not beneficial to effective reform of WTO dispute settlement body. The purpose of blocking appointment of WTO appellate body members by America is to promoting the reform of WTO to satisfy interests of America. Meanwhile, many countries also hold that WTO dispute settlement body should be reformed to suit the development of international trade. Some researchers argue that the trade mode nowadays is different from that decades ago, because international structure has changed from unilateralism to multilateralism [16], and WTO dispute settlement body ought to be reformed to meet new requirements of resolving disputes between members of WTO in new era. Therefore, only voting is not sufficient and not appropriate to resolve the problems with WTO and its dispute resolution mechanism, and reform of WTO is inevitable.

### **3.3. Optional Dispute Resolution Measures in Resolving Impasse**

Considering the significance and drawbacks of voting procedure of WTO, diversification of trade dispute resolution is vital. Without compulsory dispute resolution mechanism, such as WTO panel and appellate body, other dispute resolution mechanisms would be weakened. If a mechanism had only one dispute resolution approach, it would be fragile because it is easy to be attacked by unilateral measures.

Reforms ought to be carried out to strengthen stability of WTO dispute resolution mechanism. The core of WTO dispute resolution mechanism is multilateralism and rule-of-law spirit. Other approaches inside or outside WTO framework that implement rule-of-law spirit can contribute to improvement of international trade dispute mechanism as well.

The procedure of negotiation and conciliation should be reformed to meet higher requirements of WTO. In practice of WTO, the negotiation procedure is not fully utilized, and conciliation procedure is seldom used to resolve disputes. In contrast, negotiation and conciliation should be given priority in dispute resolution, which is not just a prerequisite procedure of WTO panel body. Some researchers believe that alternative dispute resolution (ADR) should not be regulated by standard institutions, in order to guarantee the freedom of this kind of dispute resolution [17]. However, due to lack of experience, if negotiation and conciliation could be guided by standard rules, political concerns of dispute resolution could be reduced. One of America's dissatisfactions with WTO dispute resolution mechanism is that negotiation is being replaced by litigation in WTO appellate body. Appellate body has not laid much emphasis on negotiation between members of WTO [2]. Similarly, other countries have also questioned the way the WTO Appellate Body interprets. Some countries hold that WTO Appellate Body does not respect agreements of parties and interprets provisions by referring a word from dictionaries for explanation [18]. One of the reasons why many disputes could not be resolved with WTO appellate body is lack of effective negotiation and conciliation. Some researchers propose that conciliation by director general is not sufficient for amicable dispute resolution, and conciliation committee ought to be established [19]. This proposal is of great significance to reform WTO conciliation system. Conciliation could not be efficient to contribute to WTO dispute resolution without professional institutions and experienced experts.

Arbitration in WTO has seldom been used in practice. Arbitration in WTO contains different kinds of arbitral proceedings, many of which are supplement of dispute settlement body. This research focuses on the independent arbitration procedure relating to WTO, mainly Art. 25 of DSU. According to Art. 25.2 of DSU, the main difference between arbitration in WTO and WTO panel or appellate procedure is that the former is based on parties' agreement, and reaching agreement is not obliged. Arbitration in WTO is different from commercial arbitration in the aspect that arbitration clauses are usually included into main contracts before disputes arise. For arbitration in WTO, it is much more difficult for members of WTO to lead into agreements after the disputes, which could not be resolved through negotiation or conciliation. If arbitration procedure could overcome shortcomings of WTO panel and appellate body, arbitration would be more attractive to members of WTO. For promoting efficiency, some countries propose that time limit should be set to avoid too much delay in arbitration procedure [20]. However, some researchers maintain that the arbitration ought to include appellate procedure [14]. This research holds that balance

should be maintained between efficiency and justice. In essential, arbitration in WTO is different from WTO panel or appellate body, and the function of WTO panel or appellate body should not be replaced by arbitration. Furthermore, predictability ought to be well addressed during reform of arbitration in WTO. Considering huge differences between arbitration for trade disputes and arbitration for commercial issues, members of WTO can propose specific rules of arbitration in WTO, including jurisdiction, arbitrability, appointment of arbitrators, applicable laws, third parties' right, confidentiality, etc. It is not sufficient to pay attention to substantive issues of arbitration, and procedure rules are more important to ensure smoothness of arbitration [21]. Last but not least, enforcement of arbitral awards is one of the most significant issues. Members of WTO should learn from execution of reports of WTO panel of appellate body, facilitating enforcement of arbitral awards of WTO arbitration.

#### **4. China's Approaches to Coping with Challenges of WTO Dispute Resolution Mechanism**

China's approaches to coping with challenges of WTO Dispute resolution mechanism should include reform inside WTO system and improvement outside WTO mechanism. With joint efforts, quality of international trade disputes resolutions can be enhanced.

##### **4.1. China's Approaches Within WTO Mechanism**

China has submitted many proposals in resolving the problems with WTO. Apart from the joint proposals with other countries, China has proposed detailed suggestions of WTO reform on May 13, 2019 [22]. The proposal includes suggestions for breaking impasse of appointment appellate body members, increasing WTO's relevance in global economic governance, improving efficiency of WTO, and strengthening inclusiveness of the multilateralism. The proposal addresses urgent crisis as well as substantive problems of WTO.

The urgent crisis and substantive problems of WTO have close relationship. In terms of resolutions for crisis of WTO, the proposal addresses the concern of America, such as period of appellate procedure. Although America's blocking appointment of WTO appellate body members is conducted in bad faith, it does reflect some problems with WTO. If these problems could be resolved to some extent, America's resistance to WTO would be reduced. Meanwhile, WTO dispute resolution mechanism is a neutral system and needs to balance interests of different members, which should not only meet every demand of America. If most substantive issues are resolved but America government continues to block appointment, its bad faith would be more apparent, which is not probable to obtain other members' support. Under such circumstance, it is more easier to reach consensus in

appointment of WTO appellate body members.

Although urgent crisis and substantive problems of WTO have close relationship, they are independent issues, and more emphasis should be laid on direct resolutions for appointment of WTO appellate body members. This proposal puts forward many suggestions for substantive problems of WTO, but has less advise on appointment of WTO appellate body members. According to Art. 2.4 of the proposal, it only states that independence and impartiality of WTO appellate body should be preserved, and the appointment of WTO appellate body members ought to be initiated without delay. These measures are just principles and do not have binding effects. Actually, more specific measures are necessary to cope with impasse of WTO appellate body. For example, it is necessary to formulate standard of voting procedure for appointment of WTO appellate body members, i.e. the requirements of adding voting procedure to agenda. With specific and binding rules, the impasse of WTO appellate body can be resolved as soon as possible. It is also in conformity with the rule-of-law spirit of WTO dispute resolution mechanism. In the near future, China can provide more concrete measures for resolving the impasse, taking into consideration of other countries' opinions.

##### **4.2. China's Approaches Under Belt and Road Initiative**

China's approaches within WTO mechanism need other WTO members' support. Implementation of proposals also needs time, and it is uncertain whether the proposals would be successful. If China could improve its own capacity to resolve international disputes, China could be more active in international disputes resolution, including trade disputes resolution. China's Belt and Road Initiative has huge impact on the globalization, and international trade is being influenced with Belt and Road Initiative. China's approach to resolving challenges of WTO should not be discussed without considering Belt and Road Initiative. There are 65 countries along the "Belt and Road", 15 countries of which are not members of WTO. In such case, even WTO dispute settlement body could operate well, it would be not sufficient to resolve disputes between countries along the "Belt and Road". In general, the most direct approach would be the construction of dispute resolution mechanism of Belt and Road Initiative, initiated by China. Nevertheless, the dispute resolution mechanism could not be constructed in a short period. The plan of the construction should be handled carefully, together with the existing dispute resolution mechanism.

International disputes, except criminal and political disputes, could be characterized into 3 types as followed: civil and commercial disputes between individuals, international investment disputes between host countries and individuals, and trade disputes between countries. These types of international disputes are essentially different, but share much connection with each other. All of these disputes could be settled by negotiation and conciliation amicably, and a neutral authority is necessary for resolving disputes conclusively. The more independent the neutral authority is, the better reputation it will obtain. For example, commercial arbitration is more

frequently used than litigation in civil and commercial disputes, because parties tend to believe in arbitral tribunals, compared with national courts that might have interests relating to the disputes. It is feasible to draw experiences from operation of other kinds of dispute resolution mechanism. Although these experiences might not directly address the trade disputes between countries, it will promote comprehensive capacity of a country to resolve international disputes.

It is recommended that China could reach agreements with famous foreign arbitration institutions. Professor Yongping Xiao of Wuhan University maintains that it is better to use bilateral or regional agreements to construct "Belt and Road" dispute resolution centre, which is more realistic and beneficial to "international legal community" [23]. It could be established to promote cooperation between "Belt and Road" countries. However, during the initial stage of the centre, its reputation has not been built and few countries might participate in the construction. If China could cooperate with well-known arbitration institutions, neutrality would not be questioned, which is extremely important in construction of the dispute resolution centre. In order to improve participation of countries along "Belt and Road", the arbitrators could be selected mainly from "Belt and Road" countries, and parties could freely choose arbitrators outside arbitrator list. For trade disputes, it is allowed for WTO members to take "mutually agreed solutions" [21], such as arbitration, outside WTO dispute resolution mechanism. In such case, the dispute resolution centre could enact different kinds of arbitration rules, including commercial arbitration rules, investment arbitration rules, and trade disputes arbitration rules. There is no arbitration rules for trade disputes, so the trade disputes arbitration rules would be creative rules, which will improve influence of the dispute resolution centre.

Apart from arbitration, conciliation should not be neglected when establishing dispute resolution centre. Some researchers believe that the system of resolving trade disputes will come back to the power-based system. In GATT period, there was no compulsory trade dispute resolution mechanism. The dispute resolution method was filled with political negotiation, rather than legal decision [24]. This seems to be a regressing. However, even in WTO dispute resolution mechanism, negotiation and conciliation are basic approaches to resolving trade disputes. In such circumstance, no matter the impasse of WTO appellate body could be resolved or not, negotiation and conciliation would still be prevailing in trade dispute settlement. Successful negotiation and conciliation can prevent trade war, and are more cost-efficient than arbitration. The difference between negotiation and conciliation lies in whether the third party joints dispute resolution. Conciliation is well known as "Eastern Experience". The proverb "peace is the most precious" is usually ancient China's proposition. The Belt and Road Initiative also adheres to the spirit of "peace, development, cooperation and double win", and the use of conciliation can help maximize the overall economic interests with less hostility and less cost. Some famous arbitration institutions, like International Chamber of Commerce, have

mediation rules. In the field of international investment disputes, negotiation and conciliation have gathered more attention because of the strike towards sovereignty and regress of nationalism [32]. For trade disputes, the demand for effective conciliation in trade disputes is more than that in international investment disputes. Meanwhile, countries along Belt and Road share different legal backgrounds and have various political positions. If China's Belt and Road dispute resolution centre mainly focused on compulsory dispute resolution mechanism, it would not be much attractive to other countries. Therefore, it is necessary for China to build a conciliation department to resolve trade disputes between countries to meet requirements of the new era. In order to improve professionalism of conciliation, conciliators for trade disputes can be selected from retired WTO panel of appellate members. In addition, members of WTO should be allowed to use the conciliation department to resolve their disputes, even the WTO panel or appellate procedure has already been launched. In such case, the conciliation department also contributes to operation of WTO disputes resolution mechanism.

Last but not least, it is necessary to clarify that China's construction of dispute resolution centre is not a means to replace WTO dispute resolution mechanism, but an alternative to WTO dispute resolution mechanism. Both China's construction of dispute resolution centre and WTO dispute resolution mechanism are means to adhere to multilateralism and rule-of-law dispute resolution system. The reason why China should establish the dispute resolution centre is not only the instability of WTO dispute resolution mechanism, but also the needs of construction of Belt and Road Initiative. With more alternatives of dispute resolution bodies, the resolution of trade disputes could achieve new progress.

## 5. Conclusion

America is not satisfied with WTO appellate body as well as substantive issues, but its blocking of appointment of WTO appellate body members is conducted in bad faith. WTO dispute resolution mechanism is experiencing tough period. Nevertheless, WTO dispute resolution mechanism will not be abandoned, because spirit of rule-of-law and multilateralism in international trade dispute resolution cannot be resisted.

Decision by consensus is different from decision by consistency. Voting procedure plays an significant role in resolving the impasse. Other approaches could not live without voting, because voting is other approaches' guarantee. However, lack of experience and political reasons constitute challenge of voting procedure. In such case, diversification of trade dispute resolution is of great significance. The procedure of negotiation and conciliation should be reformed and utilized.

China's approaches to coping with challenges of WTO Dispute resolution mechanism ought to include proposals within WTO mechanism and improvement in China's own capacity of dispute resolution under Belt and Road Initiative. For approaches within WTO Mechanism, it is necessary to

have more direct resolutions for appointment of WTO appellate body members, especially the voting procedure. For approaches under Belt and Road Initiative, China could reach into agreements with foreign arbitration institutions to establish international dispute resolution centre, and lay more emphasis on conciliation for resolving trade disputes.

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