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This exam consists of two parts.

Please note that you should spend approximately $\frac{3}{4}$ of your time on Part I and $\frac{1}{4}$ on Part II.

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PART I

One of the major members of the WTO has over the past years expressed dissatisfaction with the way in which the Appellate Body has functioned. Its criticism has focused on the Appellate Body's compliance with its mandate in several cases and the informal extension of the term of function of Appellate Body members in order to enable them to finalize cases they started to work on before their term expired. For these reasons, the WTO member has refused to accept the start-up of procedures to replace Appellate Body members as their terms expire. The WTO member argues that problems associated with the functioning of the Appellate Body should be resolved before new nomination processes are commenced.

At the moment, the Appellate Body is still functioning, but it will soon have too few members to be able to function according to the requirement that there must be three persons serving on a case according to article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

The Minister of Foreign Affairs in your country is very worried about the potential consequences of a dysfunctional Appellate Body. As the ministry's main legal expert on WTO law, you are asked to write a memorandum discussing the following three questions:

1. If the number of Appellate Body members is less than three: What will be the consequences for the resolution of cases where a panel report will be issued?
2. Do WTO members have a legal obligation to ensure that the Appellate Body remains functional, and is there any way in which a claim to this effect can be decided by a judicial body?
3. Would it be possible under the WTO Agreement to appoint new Appellate Body members by a majority vote?

1 Part I

Fill in your answer here

2 Part II

PART II

Discuss the reference to "sustainable development" in the preamble of the WTO Agreement from a legal perspective.

Fill in your answer here