

What's Next for the WTO?

In the wake of President Trump's combative approach to trade, and with major negotiations stalled, the future of global trade rules is in doubt



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Summary

- The WTO is the principal body governing international trade, serving as a forum for negotiations, an arbiter, and a monitor of the implementation of trade agreements.

- **The Trump administration harshly criticized the WTO, claiming it failed to curb China's alleged unfair trade practices. President Biden says he will renew the U.S. commitment to the body.**
- **As major WTO negotiations have stalled in recent years, many countries have turned to bilateral or plurilateral trade agreements.**

Introduction

The World Trade Organization (WTO) is the principal forum for setting the rules of international trade. In its two and a half decades, it has helped reduce barriers to trade of both goods and services and created a dispute resolution system that supporters say reduced the threat of trade wars.

However, the institution is under considerable pressure. Negotiations on a comprehensive development agenda have foundered due to disagreements over agricultural subsidies and intellectual property rights, while members have increasingly turned to separate bilateral and regional free trade agreements to advance their trade interests. More recently, the COVID-19 pandemic has caused a sharp decline in international trade and created uncertainty about the future of global supply chains.

Former U.S. President Donald J. Trump criticized the WTO for what he saw as its weakness in confronting China's trade abuses and constraints on U.S. sovereignty. His administration intentionally crippled the organization's appeals body, ensuring that its decisions cannot be enforced and placing the future of global trade rules into doubt. President Joe Biden has signaled that he will take a less combative approach to

reforming the WTO, though there are concerns about the trade body on both sides of the aisle.

The WTO is responsible for overseeing the rules of international trade. It facilitates trade negotiations among its 164 members, up from 123 in 1994. The organization also monitors the implementation of trade agreements, produces research on global trade and economic policy, and serves as a forum for settling trade disputes between countries.

Established in 1995 and based in Geneva, Switzerland, the WTO is the successor to the General Agreement on Tariffs and Trade (GATT), a group founded in 1948 whose rules created the modern multilateral trading system. WTO decision-making happens at the Ministerial Conference, generally held every two years. There have been eleven such meetings since the inaugural conference in Singapore in 1996; the twelfth was scheduled to take place in June 2020 in Kazakhstan, but has been postponed due to the pandemic. With a few exceptions, agreements reached at these conferences are made by consensus, meaning that all members must agree, and decisions are binding. WTO rules are enforced by individual members, who can impose retaliatory trade sanctions on states that break them.

While the specifics of the WTO's trade rules are hashed out in negotiations, the organization is based on several founding principles. The most basic is a commitment to openness, meaning reducing tariffs as well as limiting quotas, subsidies, and other barriers to trade. Another central plank is nondiscrimination, in which WTO members must treat trade with all other members equally. The WTO also seeks transparency

and predictability in trade-related regulations and promotes international standards to give citizens, companies, and investors stability. Additionally, the organization is committed, in principle, to giving less-developed countries greater flexibility and accommodations to help them adjust to new rules.

The WTO director general is the organization's administrative head, overseeing the WTO secretariat and its roughly seven hundred staff. While the director general helps set the tone and direction of the organization, the office "traditionally has wielded little power over matters of policy" because of the WTO's consensus process, writes CFR's Jennifer Hillman.

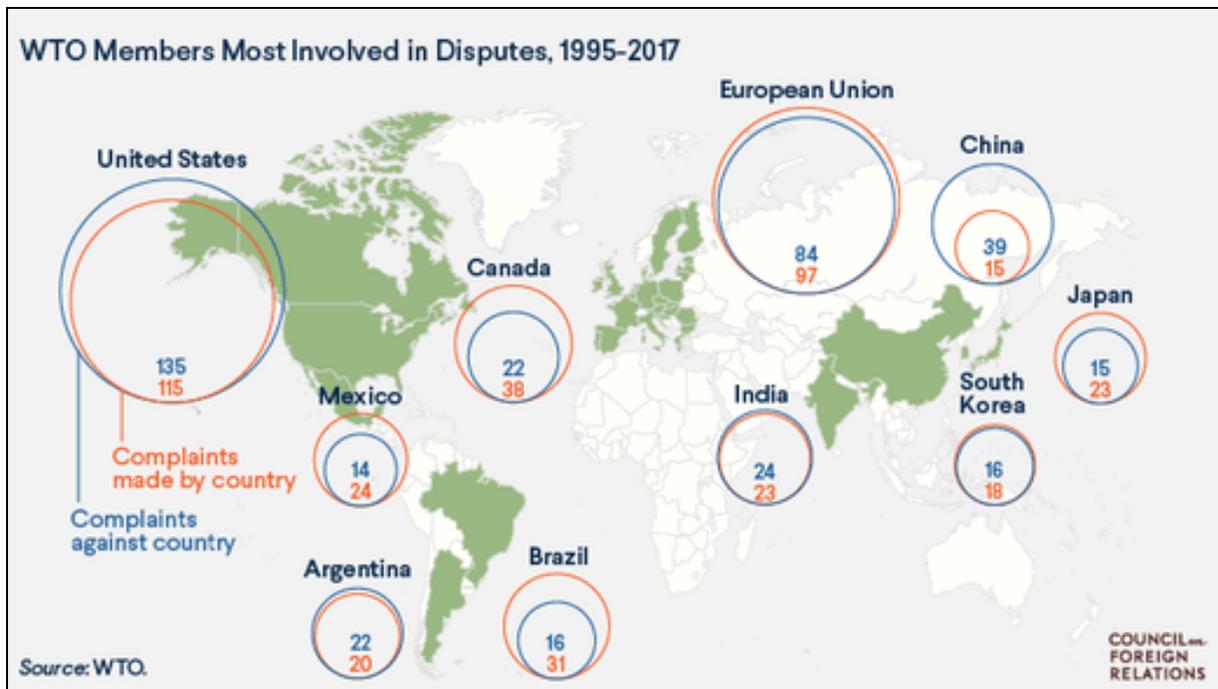
In February 2021, WTO members confirmed Ngozi Okonjo-Iweala of Nigeria as director general following a protracted selection process. She is the first woman and first African to lead the organization. While the majority of WTO members backed Okonjo-Iweala, the Trump administration threw its support behind South Korean candidate Yoo Myung-hee, blocking a consensus pick. After Trump left office, Yoo withdrew from the race for director general, and the Biden administration announced its support for Okonjo-Iweala.

How does the WTO deal with conflicts?

The WTO's trade dispute mechanism has been used extensively over the past two decades, helping to avoid unilateral responses to disputes and potential trade wars. Since 1995, members have filed more than five hundred disputes with the WTO. Most of these are settled in consultations or by agreement before advancing to litigation.

Upon joining, all members agree to a dispute settlement mechanism, in which WTO-appointed trade experts can render binding judgments. When one member files a complaint against another, the countries must first attempt to resolve the issue through consultation, and only if that fails is a panel chosen by the WTO's Dispute Settlement Body to hear the case. A panel's recommendations, if not overturned on appeal, must be implemented by the offending country. If the country fails to respond, the plaintiff can then take targeted retaliatory measures, such as blocking imports or raising tariffs.

The United States is the most active participant in the system, having filed 124 complaints and served as defendant in 156 cases. China has become a particular target for U.S. policymakers, who have increasingly used the WTO process to challenge Chinese government support for domestic industries, restrictions on imports, abuse of intellectual property, and other state-led trade policies. Between 2009 and 2017, under President Barack Obama, the United States brought twenty-five cases to the WTO, more than any other country in that period; sixteen of those targeted China. The Obama administration won seven of its WTO cases against China, including ones that challenged Chinese agricultural and aircraft subsidies and steel import duties; several others are ongoing.



President Trump denounced China's trade practices, and his administration's 2018 report on trade with China [PDF] maintained that the WTO is incapable of dealing with the problem. So, Trump sidestepped the WTO system. He applied tariffs targeting overproduction of steel and aluminum by China and other countries based on a little-used national security law, and took further measures to retaliate against China, imposing tariffs on hundreds of billions of dollars worth of Chinese goods. CFR's Edward Alden called Trump's willingness to bypass the WTO the death of the institution.

The appeals system is now at a breaking point after years of U.S. pressure. The Obama administration drew criticism from many members for a May 2016 decision to block the reappointment of a South Korean judge to the WTO's Appellate Body, the first time any country blocked the appointment of another country's judge. Trump continued to block new appointments, and on December 10, 2019, the Appellate Body became unable to hear appeals since the terms of two more judges expired and the

number of active judges fell to one. Seven judges normally serve on the body and a minimum of three is required to review new appeals. The Biden administration has so far maintained the block on new appointments, citing the presidential transition.

The United States had long expressed dissatisfaction with the Appellate Body's claim that it may establish legally binding precedents through its rulings, which critics charge exceeds the WTO's original mandate and infringes on U.S. sovereignty. "The Appellate Body routinely issued rulings that made it harder for states to combat unfair trade practices and safeguard jobs," former U.S. Trade Representative Robert Lighthizer wrote in *Foreign Affairs*. For Trump, the hope was that by crippling the body, Washington would be able to directly challenge Beijing and others allegedly engaged in unfair trade practices.

What is the Doha Development Agenda?

At the 2001 ministerial conference in Doha, Qatar, WTO members agreed to a new round of negotiations that promised to put developing countries at the center. This became known as the Doha Development Agenda, or the Doha Round.

Liberalizing global agricultural trade was the linchpin of the agenda. Many of the world's poorest nations depend on exporting basic agricultural products but struggle to compete against richer nations that support their farmers with subsidies. The Organization for Economic Cooperation and Development (OECD) estimates that these subsidies total nearly \$300 billion annually. Analysts say that agricultural lobbies in the United States, Europe, and Japan have consistently exercised their considerable political clout to convince lawmakers to maintain such subsidies.

Liberalizing global agricultural trade was the linchpin of the Doha development agenda.

The Doha agenda also sought to further reduce barriers to trade in services, such as business and finance, and nonagricultural goods. However, by 2008, negotiations collapsed due to disagreement over agricultural subsidies and a proposed “special safeguard mechanism,” which would allow developing countries to temporarily raise tariffs to protect their farmers.

What is the status of the Doha Round?

Negotiations continued after the 2008 global financial crisis with low expectations. But the 2013 ministerial in Bali, Indonesia, delivered a significant achievement: the first multilateral agreement since the creation of the WTO. This was the Trade Facilitation Agreement (TFA), which aims to speed up customs procedures and make trade easier, faster, and cheaper. The WTO estimated in 2015 [PDF] that this could increase global trade by some \$1 trillion. The talks also reached an interim agreement on “public stockholding,” continuing exceptions that allow developing countries to stockpile agricultural products to protect against food shortages.

The TFA was only a small slice of the larger Doha agenda, but the successful deal was a cause for optimism: former Director General Roberto Azevedo proclaimed that the WTO was “back in business.” In Nairobi in 2015, members made progress on a number of issues, including the phasing out of agriculture export subsidies and an agreement among some members to cut tariffs on information technology (IT) products.

However, for many observers, Nairobi signaled the end of the Doha talks, a sentiment that intensified after the 2016 election of Trump. At the 2017 ministerial in Buenos Aires, members failed to find any agreement, with India blocking an attempt to reduce fishing subsidies. With members unable to agree even on a final statement, EU Trade Commissioner Cecilia Malmstrom labeled the meeting a failure, while Lighthizer called for a “fresh start.”

What are the criticisms of the WTO?

Criticisms of the organization vary. Farmers and labor groups accuse the WTO of focusing too narrowly on corporate interests, environmentalists worry about deregulation, and U.S. policymakers allege that the institution has failed to handle Chinese abuses. The primary concerns include:

Intellectual property. The WTO’s intellectual property agreement, Trade-Related Aspects of Intellectual Property Rights (TRIPS), draws criticism from experts who have argued that WTO rules on drug patents have limited access to medicines in poorer countries. The WTO says that enforcing patent protections is central to expanding global trade. A group of emerging economies, led by India and South Africa, have proposed TRIPS waivers for COVID-19 vaccines and treatments, but the move is opposed by some wealthier countries, including the United States.

Sovereignty and regulation. Other critics say WTO rules overrule national sovereignty, and in doing so erode environmental and labor protections. Environmental

groups have criticized WTO decisions on genetically modified foods, as well as recent rulings against what the WTO considers discriminatory environmental labeling, as in the case of U.S. dolphin-safe labeling. Labor unions in the United States argue that the WTO is inadequate for protecting U.S. wages from being undercut by unfair labor practices abroad, alleging, for instance, that China violates basic workers' rights to lower the cost of its exports. Developing countries counter that attempts to address labor standards at the WTO are a form of protectionism in disguise.

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Import competition. Some economists argue that by promoting imports and encouraging firms to move their operations abroad, WTO-led tariff reductions hurt U.S. jobs and wages. The Economic Policy Institute's Robert E. Scott and Will Kimball estimated in 2014 that China's entrance into the WTO in 2001 led to the loss of more than three million U.S. jobs, as U.S. firms were forced to compete with China's much cheaper imports. Other estimates find [PDF] a smaller but still substantial loss of around two million jobs, though some experts contend that technological changes, not China, were responsible for those losses. Trade proponents including Dartmouth College economist Douglas Irwin say that increased trade with China benefited the U.S. economy by lowering prices, increasing productivity, and expanding exports. Some analysts claim that most of the consumer benefits that came with China's accession went to poor and middle-class Americans.

Response to China. Trump was a vociferous critic of Chinese state-led development policy, arguing that while the United States has adhered to global trade rules, other countries—primarily China—have gained an advantage by ignoring them. CFR’s Alden says that Washington and its allies “did too little for too long,” failing to confront China’s abuses at the WTO. Biden has also called for an “aggressive” response to Chinese trade practices, but has also pledged to take a more multilateral approach by working with traditional U.S. allies including the European Union and Japan.

What are the alternatives to the WTO system?

Even with Doha stalled, WTO talks have continued through what are known as plurilateral negotiations, or agreements among subsets of WTO members. Plurilateral deals are easier to negotiate, as they are narrower in focus and not all members are bound by their terms.

At the 2015 Nairobi talks, for instance, fifty-three WTO members concluded an expansion of the Information Technology Agreement, or ITA, which reduces trade tariffs on a raft of IT products. The agreement means that more than 97 percent of all global IT trade is now covered by WTO rules. A major plurilateral agreement in progress is the Trade in Services Agreement (TiSA), under negotiation since 2013 [PDF] among twenty-three members, including the United States and European Union (EU) but excluding China. TiSA’s backers hope to use the talks to further the

WTO's liberalization of the global services trade, the rules for which haven't been updated since 1995.

In 2012, nineteen members agreed to update the Government Procurement Agreement (GPA), which seeks to further open government procurement markets. And in 2014, fourteen members, including the United States, China, the EU, and Japan, opened negotiations on a proposed Environmental Goods Agreement (EGA), which would liberalize trade in environmental products, such as wind turbines and solar panels. In 2019, a group of more than seventy countries, including those in the EGA negotiations, launched talks for an agreement on e-commerce, an increasingly important trade issue.

Many countries have also turned to bilateral free trade agreements (FTAs) or larger regional ones. The Obama administration pushed for so-called megaregional deals, such as the Trans-Pacific Partnership (TPP) and the U.S.-EU Transatlantic Trade and Investment Partnership (TTIP). But Trump voiced deep skepticism about multilateralism, preferring to deal with trading partners on a bilateral basis. He withdrew from the TPP immediately upon taking office, and the remaining members completed the deal without the United States. As U.S. allies advanced FTAs without him, Trump pursued unilateral measures to confront China and other countries on trade, raising serious doubts about the future of the WTO.

CFR's Hillman says that one of the immediate tasks facing Biden is salvaging a WTO that is in crisis, beginning with its Appellate Body impasse. The Biden administration, Hillman predicts, "will at least make an effort to try to bring about a reformed, revitalized, reinvigorated World Trade Organization."

