

Center for Strategic and International Studies (Oct. 23, 2018).

WTO Reform: The Beginning of the End or the End of the Beginning?

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Members of the World Trade Organization (WTO) have become increasingly frustrated with all three of its main functions: monitoring member states' trade policies, providing a forum to negotiate new trade agreements, and arbitrating trade disputes. In recent months, this has triggered an effort to reform the WTO—what U.S. ambassador to the WTO Dennis Shea termed “the Autumn of WTO reform.” On October 24-25, Canada will host a meeting of 12 other trade ministers, including those from Brazil, the European Union, and Japan, to discuss possible reforms to the WTO. The United States and China have not been invited to the meeting in Ottawa but are expected to join the process “at a later date” to update the WTO’s policies and processes to better suit twenty-first-century trade challenges.

Q1: Why are countries calling for WTO reform?

A1: For several years, WTO members have voiced frustrations with the institution, generally relating to three major issues. First, two-thirds of the WTO’s 164 member states continue to claim “developing country” status, a designation that allows them to take advantage of certain benefits and exemptions to obligations not granted to advanced economies. However, economic realities suggest that many of these countries have the capacity to take on fuller obligations. For example, 10 Group of Twenty (G20) members claim developing country status at the WTO. Since the WTO allows for self-classification, there is no universal definition for developed or developing status.

Second, the WTO’s negotiating arm is atrophying. At the root of the degrading negotiating function is the difficulty for WTO members to reach a full consensus, which is required to agree to new agreements, obligations, and rule changes. The failure of many countries, including major economies like China, to comply with notification and transparency obligations has made negotiating new rules and agreements even more difficult. The United States, the European Union, and others have called for rules that would punish members for not complying with their transparency obligations. The consensus requirement, however, will likely present a formidable roadblock to such rules being agreed to. Certain members, including China, have taken advantage of the overall impasse at the WTO and continue to

maintain discriminatory barriers against imports, intervene in markets to support state-owned enterprises, and fail to report subsidies to the WTO accurately.

Third, **some countries (but primarily the United States) have concerns with the WTO Dispute Settlement System**, the main process to resolve trade conflicts between members. Specifically, **the United States is concerned the Appellate Body**, which permits countries to appeal against adverse rulings, has exercised decisionmaking and arbitration **power beyond its original mandate**. Successive U.S. administrations have claimed that the Appellate Body, through its rulings, adds or diminishes to the rights of WTO members by **reinterpreting WTO agreements**, despite WTO members having never agreed to those interpretations. While desire for reform is broadly shared across the WTO community, member states' opinions and proposals on how to proceed vary significantly.

Q2: What reform proposals are being suggested?

A2: Several countries have tabled WTO reform proposals. In September, Canada released a white paper outlining discussion points for the upcoming October meeting. The broad objectives suggested a general focus on improving the “efficiency and effectiveness” of the WTO’s ability to monitor member states, “safeguarding and strengthening the Dispute Settlement System,” and updating trade rules and regulations to ensure the WTO’s relevance for modern trade issues. This paper is primarily designed for shaping future conversations rather than suggesting specific policy proposals.

In early September, the European Union published a more specific and prescriptive "**concept paper**." These proposals aspire to level the playing field between member states by creating stronger rules and definitions governing state-owned enterprises and “market-distorting subsidies.” The EU paper also calls for improving transparency and subsidy notifications from member states, removing investment barriers in service industries, and adopting specific rules to discourage forced technology transfers. These recommendations encourage stronger punitive measures against repetitive or intentional non-compliance from member states.

Regarding the Dispute Settlement System, the concept paper recommends expanding the Appellate Body panel from seven to nine judges, redefining membership of the Appellate Body from part-time to full-time, and allotting more resources to the Appellate Body Secretariat. This paper attempts to actively insert EU reform ideas into the negotiations, whereas the Canadian paper seeks a more bottom-up approach to WTO reform discussions.

In addition to these two proposals, the United States, the European Union, and Japan have begun trilateral negotiations on new trade and investment rules to better address non-market practices. On September 25, the three governments issued a **trilateral statement** calling for reporting and monitoring reforms and updated rules governing self-classification of developing country status. The statement also shared concerns regarding coercive technology transfers, industrial subsidies and state-owned enterprises, and other “non-market-oriented policies and practices of third countries.” The trilateral exercise is largely

aimed at negotiating new rules to address China's state-driven economic policies but could have some spillover into WTO reform discussions.

Q3: Do these proposals have any chance of success? What are countries' objections?

A3: Since the WTO is consensus-based, reaching an agreement on reforms among all 164 members is extremely difficult. The Doha Round of negotiations, launched in 2001 to lower trade barriers and codify rules, has stalled despite numerous attempts to revive it. Many developing countries resolutely oppose calls to narrow the parameters of developing country status. Any number of developing countries and their self-proclaimed champions, including China and India, could spoil reforms that would limit their rights, as they have done in the past. Beijing has already dismissed many of the proposed reforms, releasing a paper this summer arguing it has abided by its WTO obligations—a claim Washington has rejected.

There are also major divisions among advanced economies that limit the chances for reform. While the European Union suggests expanding and strengthening the Appellate Body's jurisdiction, the United States has repeatedly said the Appellate Body must be held more accountable and remain within a limited purview, a longstanding concern.

Considering this broad disagreement between the United States, China, the European Union, and others, the chances that all WTO members reach consensus on actionable reforms are slim.

Q4: What happens if the WTO cannot agree on reform proposals?

A4: Should reform proposals fail to satisfy member states' demands, the divisions could lead to the disintegration of key pillars of the organization. The Trump administration has blocked vacant Appellate Body seats from being filled and has stopped the reappointment of one its members, leaving the appeals panel with just three judges—the minimum for it to function. Two additional judges' terms expire in 2019, and if they are not replaced or reappointed the Appellate Body will no longer be able to function. That would render the WTO unable to fully resolve trade conflicts between member states, one of its founding mandates. This could result in more bilateral trade disputes as individual states take it upon themselves to resolve conflicts through retaliation.

The **consensus rule** will not only diminish chances of Appellate Body reform but also reduce the likelihood that the entire WTO membership will agree on new trade liberalizing agreements. One possibility moving forward could be a plurilateral agreement with a group of like-minded countries on a new set of rules that serve as an addendum to the broader WTO. The advantage of this form of arrangement is that a U.S.-led group of countries could attempt to establish a standard set of rules and create incentives for outside nations to adopt the plurilateral measures to enjoy their benefits. Of course, this approach could also work in reverse, allowing other nations to construct a plurilateral system that excludes the United States. However constructed, **plurilateral agreements** also have their limits. For example, neither the United States nor the European Union can effectively resolve issues pertaining to the Dispute Settlement System using a plurilateral agreement, because any agreement on it

would need to address the WTO mechanism itself. Even if a group of like-minded countries were able to reach a plurilateral agreement, excluding major economies would threaten the multilateralism of the WTO. Additionally, developing countries have voiced opposition to WTO Secretariat resources being devoted to plurilateral negotiations that they are not party to.

Without reforms, one or more major economies could leave the WTO, as President Trump has threatened. This would cripple the other two pillars of the WTO—its negotiating and monitoring arms—which are already atrophying. The absence of the WTO could potentially lead to a proliferation of bilateral and regional trade agreements that may better address member states' complaints on a case-by-case basis. However, a bitter disintegration of the WTO could come with a Hobbesian erosion of trust between states. Governments may opt for self-sufficiency and isolation, rather than engagement and integration. An erosion of the WTO could lead to the return of more trade barriers, loss of predictability and certainty for multinational companies and governments alike, and the absence of a credible venue to mediate trade disputes and serve binding decisions. Those developments could extract a high cost on the global economy and severely diminish global growth and economic stability for years, if not decades.