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World Trade Organization: Overview and Future Direction

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SUMMARY

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World Trade Organization: Overview and Future Direction

Historically, the United States' leadership of the global trading system has ensured the U.S. a seat at the table to shape the international trade agenda in ways that both advance and defend U.S. interests. The evolution of U.S. leadership and the global trade agenda remain of interest to Congress, which holds constitutional authority over foreign commerce and establishes trade negotiating objectives and principles through legislation. Congress has recognized the World Trade Organization (WTO) as the "foundation of the global trading system," within trade promotion authority (TPA), and plays a direct legislative and oversight role over WTO agreements. The statutory basis for U.S. WTO membership is the Uruguay Round Agreements Act (P.L. 103-465), and U.S. priorities and objectives for the General Agreement on Tariffs and Trade (GATT)/WTO have been reflected in various TPA legislation since 1974. Congress also has oversight of the U.S. Trade Representative and other agencies that participate in WTO meetings and enforce WTO commitments.

The WTO is a 164-member international organization that was created to oversee and administer multilateral trade rules, serve as a forum for trade liberalization negotiations, and resolve trade disputes. The United States was a major force behind the establishment of the WTO in 1995, and the rules and agreements resulting from multilateral trade negotiations. The WTO encompassed and succeeded the GATT, established in 1947 among the United States and 22 other countries. Through the GATT and WTO, the United States, with other countries, sought to establish a more open, rules-based trading system in the post-war era, with the goal of fostering international economic cooperation and raising economic prosperity worldwide. Today, 98% of global trade is among WTO members.

The WTO is a consensus and member-driven organization. Its core principles include nondiscrimination (most favored nation treatment and national treatment), freer trade, fair competition, transparency, and encouraging development. These are enshrined in a series of WTO trade agreements covering goods, agriculture, services, intellectual property rights, and trade facilitation, among other issues. Some countries, including China, have been motivated to join the WTO not just to expand access to foreign markets but to spur domestic economic reforms, help transition to market economies, and promote the rule of law.

The WTO Dispute Settlement Understanding (DSU) provides an enforceable means for members to resolve disputes over WTO commitments and obligations. The WTO has processed more than 500 disputes, and the United States has been an active user of the dispute settlement system. Supporters of the multilateral trading system consider the dispute settlement mechanism an important success of the system. At the same time, some members, including the United States, contend it has procedural shortcomings and has exceeded its mandate in deciding cases.

Many observers are concerned that the effectiveness of the WTO has diminished since the collapse of the Doha Round of multilateral trade negotiations, which began in 2001, and believe the WTO needs to adopt reforms to continue its role as the foundation of the global trading system. To date, WTO members have been unable to reach consensus for a new comprehensive multilateral agreement on trade liberalization and rules. While global supply chains and technology have transformed international trade and investment, global trade rules have not kept up with the pace of change. Many countries have turned to negotiating free trade agreements (FTAs) outside the WTO as well as plurilateral agreements involving subsets of WTO members rather than all members.

At the latest WTO Ministerial conference in December 2017, no major deliverables were announced. Several members committed to make progress on ongoing talks, such as fisheries subsidies and e-commerce, while other areas remain stalled. While many were disappointed by the limited progress, in the U.S. view, the outcome signaled that "the impasse at the WTO was broken," paving the way for groups of like-minded countries to pursue new work in other key areas.

Certain WTO members have begun to explore aspects of reform and future negotiations. Potential reforms concern the administration of the organization, its procedures and practices, and attempts to address the inability of WTO members to conclude new agreements. Proposed DS reforms also attempt to improve the working of the dispute settlement system, particularly the Appellate Body—the seven-member body that reviews appeals by WTO members of a panel's findings in a dispute case.

Some U.S. frustrations with the WTO are not new and many are shared by other trading partners, such as the European Union. At the same time, the Administration's overall approach has spurred new questions regarding the future of U.S. leadership and U.S. priorities for improving the multilateral trading system. Concerns have emphasized that the Administration's recent actions to unilaterally raise tariffs under U.S. trade laws and to possibly impede the functioning of the dispute settlement system might undermine the credibility of the WTO system. A growing question of some observers is whether the WTO would flounder for lack of U.S. leadership, or whether other WTO members like the EU and China taking on larger roles would continue to make it a meaningful actor in the global trade environment.

The growing debate over the role and future direction of the WTO may be of interest to Congress. Important issues it may address include how current and future WTO agreements affect the U.S. economy, the value of U.S. membership and leadership in the WTO, whether new U.S. negotiating objectives or oversight hearings are needed to address prospects for new WTO reforms and rulemaking, and the relevant authorities and impact of potential U.S. withdrawal from the WTO on U.S. economic and foreign policy interests.

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Introduction

The World Trade Organization (WTO) is an international organization that administers the trade rules and agreements negotiated by its 164 members to eliminate trade barriers and create nondiscriminatory rules to govern trade. It also serves as an important forum for resolving trade disputes. The United States was a major force behind the establishment of the WTO in 1995 and the rules and agreements that resulted from the Uruguay Round of multilateral trade negotiations (1986-1994). The WTO encompassed and expanded on the commitments and institutional functions of the General Agreement on Tariffs and Trade (GATT), which was established in 1947 by the United States and 22 other nations. Through the GATT and WTO, the United States and other countries sought to establish a more open, rules-based trading system in the post-war era, with the goal of fostering international economic cooperation, stability, and prosperity worldwide. Today, the vast majority of world trade, approximately 98%, takes place among WTO members.

The evolution of U.S. leadership in the WTO and the institution's future agenda has been of interest to Congress. The terms set by the WTO agreements govern the majority of U.S. trading relationships. Some 65% of U.S. global trade is with countries that do not have free trade agreements (FTAs) with the United States, including China, the European Union (EU), India, and Japan, and thus rely on the terms of WTO agreements. Congress has recognized the WTO as the "foundation of the global trading system," within U.S. trade legislation and plays a direct legislative and oversight role over WTO agreements.[1] U.S. FTAs also build on core WTO agreements. While the U.S. Trade Representative (USTR) represents the United States at the WTO, Congress holds constitutional authority over foreign commerce and establishes U.S. trade negotiating objectives and principles and implements U.S. trade agreements through legislation. U.S. priorities and objectives for the GATT/WTO are reflected in trade promotion authority (TPA) legislation since 1974. Congress also has oversight of the USTR and other executive branch agencies that participate in WTO meetings and enforce WTO commitments.

The WTO's effectiveness as a negotiating body for broad-based trade liberalization has come under intensified scrutiny, as has its role in resolving trade disputes. The WTO has often struggled to reach consensus over issues that can place developed against developing country members (such as agricultural subsidies, industrial goods tariffs, and intellectual property rights protection). It has also struggled to address newer trade barriers, such as digital trade restrictions and the role of state-owned enterprises (SOEs) in international commerce, which have become more prominent in the years since the WTO was established. Global supply chains and advances in technology have transformed global commerce, but trade rules have failed to keep up with the pace of change; since 1995 WTO members have been unable to reach consensus for a new comprehensive multilateral agreement. As a result, many countries have turned to negotiating FTAs with one another outside the WTO to build on core WTO agreements and advance trade liberalization and new rules. Plurilateral negotiations, involving subsets of WTO members rather than all members, are also becoming a more popular forum for tackling newer issues on the global trade agenda.

The most recent round of WTO negotiations, the Doha Round, began in November 2001, but concluded with no clear path forward, leaving multiple unresolved issues after the 10th Ministerial conference in 2015. Efforts to build on current WTO agreements outside of the Doha agenda continue. While WTO members have made some progress toward determining future work plans,

[1] Section 102(b)(13) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Title I, P.L. 114-26), which reauthorized trade promotion authority (TPA).

no major deliverables or negotiated outcomes were announced at the 11th Ministerial conference in December 2017 and no consensus Ministerial Declaration was released.

Many have concerns that the growing use of protectionist trade policies by developed and developing countries, recent U.S. tariff actions and counterretaliation, and escalating trade disputes between major economies, may further strain the multilateral trading system. The WTO is faced with resolving several significant pending disputes, which involve the United States, and resolving debates about the role and procedures of its Appellate Body, which reviews appeals of dispute cases.

In a break from past administrations' approaches, U.S. officials have recently expressed doubt over the value of the WTO institution to the U.S. economy and questioned whether leadership in the organization is a benefit or cost to the United States. While USTR Robert Lighthizer acknowledged at the most recent Ministerial that the WTO is an "important institution" that does an "enormous amount of good," the Trump Administration has expressed deep skepticism toward multilateral trade deals, including those negotiated within the WTO. In remarks to the Asia-Pacific Economic Cooperation (APEC) forum in November 2017, President Trump stated: "Simply put, we have not been treated fairly by the World Trade Organization...What we will no longer do is enter into large agreements that tie our hands, surrender our sovereignty, and make meaningful enforcement practically impossible."[2] President Trump has also at times threatened to withdraw the United States from the WTO. In addition, amid concerns about "judicial overreach" in WTO dispute findings, the Administration is currently withholding approval for judge appointments to the WTO Appellate Body—a practice that began under the Obama Administration. While many of the U.S. concerns are not new and shared by other trading partners, questions remain about U.S. priorities for improving the system.

With growing debate over the role and future direction of the WTO, a number of issues may be of interest to Congress, including the value of U.S. membership and leadership in the WTO, whether new U.S. negotiating objectives or oversight hearings are needed to address prospects for new WTO reforms and rulemaking, and the relevant authorities and the impact of potential WTO withdrawal on U.S. economic and foreign policy interests.

This report provides background history of the WTO, its organization, and current status of negotiations. The report also explores concerns some have regarding the WTO's future direction and key policy issues for Congress.

Background

Following World War II, nations throughout the world, led by the United States and several other developed countries, sought to establish a more open and nondiscriminatory trading system with the goal of raising the economic well-being of all countries. Aware of the role of tit-for-tat trade barriers resulting from the U.S. Smoot-Hawley tariffs in exacerbating the economic depression in the 1930s, including severe drops in world trade, global production, and employment, the countries that met to discuss the new trading system considered open trade as essential for peace and economic stability.[3]

[2] White House, "Remarks by President Trump at APEC CEO Summit," Da Nang, Vietnam, November 10, 2017, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-apec-ceo-summit-da-nang-vietnam/

[3] Barry Eichengreen and Douglas A. Irwin, "The Slide to Protectionism in the Great Depression: Who Succumbed and Why?" *The Journal of Economic History*, vol. 70, no. 4 (December 2010), pp. 871-897.

The intent of these negotiators was to establish an International Trade Organization (ITO) to address not only trade barriers but other issues indirectly related to trade, including employment, investment, restrictive business practices, and commodity agreements. Unable to secure approval for such a comprehensive agreement, however, they reached a provisional agreement on tariffs and trade rules, known as the GATT, which went into effect in 1948.[4] This provisional agreement became the principal set of rules governing international trade for the next 47 years, until the establishment of the WTO.

General Agreement on Tariffs and Trade (GATT)

The GATT was neither a formal treaty nor an international organization, but an agreement between governments, to which they were contracting parties. The GATT parties established a secretariat based in Geneva, but it remained relatively small, especially compared to the staffs of international economic institutions created by the post-war Bretton Woods conference—the International Monetary Fund and World Bank. Based on a mission to promote trade liberalization, the GATT became the principal set of rules and disciplines governing international trade.

GATT/WTO Principles of Nondiscrimination

Most-favored nation (MFN) treatment (also called *normal trade relations* by the United States). Requires each member country to grant each other member country treatment at least as favorable as it grants to its most-favored trade partner.

National treatment. Obligates each country not to discriminate between domestic and foreign products; once an imported product has entered a country, the product must be treated no less favorably than a "like" product produced domestically.

The core principles and articles of the GATT (which were carried over to the WTO) committed the original 23 members, including the United States, to lower tariffs on a range of industrial goods and to apply tariffs in a nondiscriminatory manner—the so-called most-favored nation or MFN principle (see **text box**). By having to extend the same benefits and concessions to members, the economic gains from trade liberalization were magnified. Exceptions to the MFN principle are allowed however, including for preferential trade agreements outside the GATT/WTO covering "substantially" all trade among members and for nonreciprocal preferences for developing countries.[5] GATT members also agreed to provide "national treatment" for imports from other members. For example, countries could not establish one set of health and safety regulations on domestic products while imposing more stringent regulations on imports.

Although the GATT mechanism for the enforcement of these rules or principles was generally viewed as largely ineffective, the agreement nonetheless brought about a substantial reduction of tariffs and other trade barriers.[6] The eight "negotiating rounds" of the GATT succeeded in reducing average tariffs on industrial products from between 20-30% to just below 4%, facilitating a 14-fold increase in world trade over its 47-year history (see **Table 1**).[7] When the first round concluded in 1947, 23 nations had participated, which accounted for a majority of global

[4] One major reason the ITO lost momentum was the U.S. government's announcement in 1950 that it would no longer seek congressional ratification of the ITO Charter, due to opposition in the U.S. Congress. WTO, "The GATT years: from Havana to Marrakesh," https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm.

[5] GATT Article XXIV. For more information see CRS Report R45198, *Bilateral and Regional Trade Agreements: Issues for Congress*, by Brock R. Williams.

[6] For more detail on perceived shortcomings of GATT dispute settlement, see "Historic development of the WTO dispute settlement system," https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c2s1p1_e.htm.

[7] WTO, *World Trade Report 2007*, pp. 201-209.

trade at the time. When the Uruguay Round establishing the WTO concluded in 1994, 123 countries had participated and the amount of trade affected was nearly $3.7 trillion. As of the end of 2018, there are 164 WTO members, and trade flows totaled $22.6 trillion in 2017.[8]

Table 1. Summary of GATT Negotiating Rounds

Round (Year: Location)	Negotiating Countries (#)	Major Accomplishments
1947: Geneva, Switzerland	23	• GATT established • Tariff reduction of about 20% negotiated
1949: Annecy, France	13	• Accession of 11 new contracting parties • Tariff reduction of about 2%
1950-51: Torquay, UK	38	• Accession of 7 new contracting parties • Tariff reduction of about 3%
1955-56: Geneva	26	• Tariff reduction of about 2.5%
1960-61: Geneva (Dillon)	26	• Tariff reduction of about 4% and negotiations involving the external tariff of the European Community
1964-67: Geneva (Kennedy)	62	• Tariff reduction of about 35% • Negotiation of antidumping measures
1973-79: Geneva (Tokyo)	102	• Tariff reduction of about 33% • Five nontariff barrier codes negotiated, including subsidies and government procurement
1986-1994: Geneva (Uruguay)	123	• WTO created with new dispute settlement system • Liberalization of agriculture, textiles and apparel • Rules adopted in new areas such as services, investment, and intellectual property

Source: Douglas A. Irwin, *Free Trade Under Fire,* p. 225, and Stephen D. Cohen, et al., *Fundamentals of U.S. Foreign Trade Policy*, p. 185.

During the first trade round held in Geneva in 1947, members negotiated a 20% reciprocal tariff reduction on industrial products, and made further cuts in subsequent rounds. The Tokyo Round represented the first attempt to reform the trade rules that had existed unchanged since 1947 by including issues and policies that could distort international trade. As a result, Tokyo Round negotiators established several plurilateral codes dealing with nontariff issues such as antidumping, subsidies, technical barriers to trade, import licensing, customs valuation, and government procurement.[9] Countries could choose which, if any, of these codes they wished to adopt. While the United States agreed to all of the codes, the majority of GATT signatories, including most developing countries, chose not to sign the codes.[10]

The Uruguay Round, which took eight years to negotiate (1986-1994), proved to be the most comprehensive GATT trade round. This round further lowered tariffs in industrial goods and liberalized trade in areas that had eluded previous negotiators, notably agriculture and textiles and apparel. It also extended rules to new areas such as services, trade-related investment measures,

[8] WTO, *World Trade Statistical Review 2018*, https://www.wto.org/english/res_e/statis_e/wts2018_e/wts2018_e.pdf.

[9] WTO, "Pre-WTO legal texts," https://www.wto.org/english/docs_e/legal_e/prewto_legal_e.htm.

[10] Douglas A. Irwin, *Free Trade Under Fire*, Princeton University Press, 2009, p. 226.

and intellectual property rights. It created a trade policy review mechanism, which periodically examines each member's trade policies and practices. Significantly, the Uruguay Round created the WTO as a legal international organization charged with administering a revised and stronger dispute settlement mechanism—a principal U.S. negotiating objective (see **text box**)—as well as many new trade agreements adopted during the long negotiation. For the most part, the Uruguay Round agreements were accepted as a *single package* or *single undertaking*, meaning that all participants and future WTO members were required to subscribe to all of the agreements.[11]

U.S. Trade Negotiating Objectives for Uruguay Round

U.S. trade negotiating objectives for the Uruguay Round, as set out by Congress in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418), included:

- **Market access.** Obtain more open, equitable and reciprocal market access in other countries; reduced tariffs and nontariff barriers; and more effective system of international trade disciplines.
- **Dispute settlement.** Adopt more effective and expeditious dispute settlement mechanisms and procedures, and enable better enforcement of U.S. rights.
- **Transparency.** Ensure broader application of the principle of transparency and clarification of the costs and benefits of other countries' trade policy actions.
- **Development.** Ensure developing countries promote the "fullest possible measure of responsibility" for maintaining an open trading system by providing reciprocal benefits and assuming equal obligations.
- **Agriculture.** Obtain more open and fair conditions of trade in agriculture, and increase U.S. exports by reducing barriers to trade and production subsidies.
- **Unfair trade practices.** Discourage use of trade-distorting practices, nontariff measures, and other unfair trading practices, such as subsidies in several sectors.
- **Services.** Develop international rules in trade in services and reduce or eliminate barriers.
- **Intellectual property.** Establish GATT obligations on adequate protection and effective enforcement for IP, including copyrights, patents, and trade secrets.
- **Foreign direct investment.** Reduce trade-distorting barriers to FDI, expand principle of national treatment, and develop internationally agreed rules.
- **Worker rights.** Promote respect for worker rights.

World Trade Organization

The WTO succeeded the GATT in 1995. In contrast to the GATT, the WTO was created as a permanent organization. But as with the GATT, the WTO secretariat and support staff is small by international standards and lacks independent power. The power to write rules and negotiate future trade liberalization resides specifically with the member countries, and not the WTO director-general (DG) or staff. Thus, the WTO is referred to as a member-driven organization.[12]

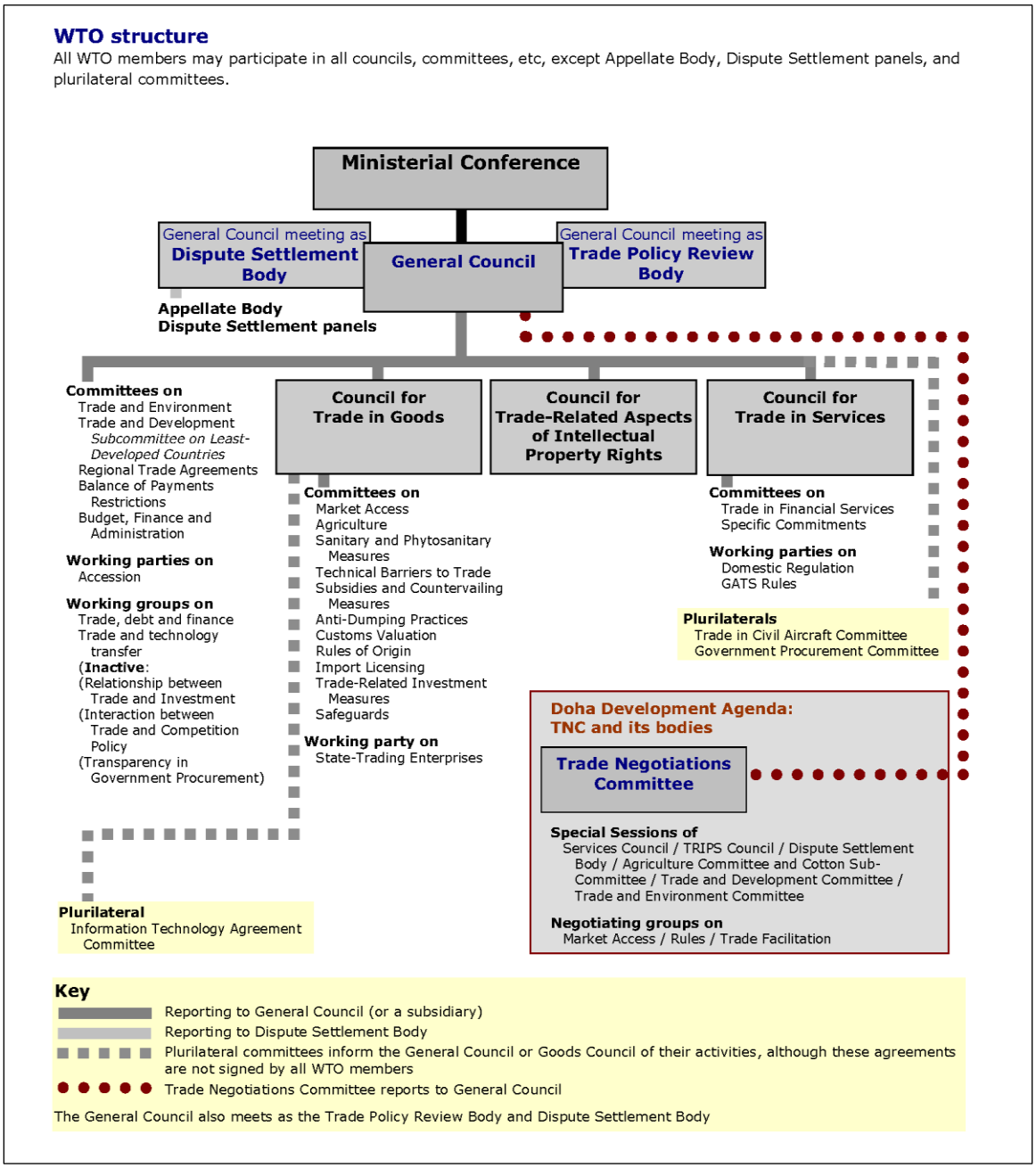
Decisions within the WTO are made by consensus, although majority voting can be used in limited circumstances. The highest-level body in the WTO is the Ministerial Conference, which is the body of political representatives (trade ministers) from each member country (**Figure 1**). The body that oversees the day-to-day operations of the WTO is the General Council, which consists of a representative from each member country. Many other councils and committees deal with particular issues, and members of these bodies are also national representatives.

[11] Ibid, p. 231. The Agreement on Government Procurement remained a plurilateral agreement—only applicable to GPA signatories and not all WTO members.

[12] Ibid, p. 239.

In general, the WTO has three broad functions: administering the rules of the trading system; establishing new rules through negotiations; and resolving disputes between member states.

Figure 1. WTO Structure



Source: WTO, 2006, https://www.wto.org/english/thewto_e/whatis_e/tif_e/organigram_e.pdf.

Administering Trade Rules

The WTO administers the global rules and principles negotiated and signed by its members. The main purpose of the rules is "to ensure that trade flows as smoothly, predictably, and freely as

possible."[13] WTO rules and agreements are essentially contracts that bind governments to keep their trade policies within agreed limits. A number of fundamental principles guide WTO rules.

In general, as with the GATT, these key principles are nondiscrimination and the notion that freer trade through the gradual reduction of trade barriers strengthens the world economy and increases prosperity. The WTO agreements apply the GATT principles of nondiscrimination as discussed above: MFN treatment and national treatment. The trade barriers concerned include tariffs, quotas, and a growing range of nontariff measures, such as product standards, food safety measures, subsidies, and discriminatory domestic regulations. The fundamental principle of reciprocity is also behind members' aim of "entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations."[14]

Transparency is another key principle of the WTO, which aims to reduce information asymmetry in markets, ensure trust and, therefore, greater stability in the global trading system. Transparency commitments are incorporated into individual WTO agreements. Active participation in various WTO committees also aims to ensure that agreements are monitored and that members are held accountable for their actions. For example, members are required to publish their trade practices and policies and notify new or amended regulations to WTO committees. Regular trade policy reviews of each member's trade policies and practices provide a deeper dive into an economy's implementation of its commitments—see "Trade Policy Review Mechanism (Annex 3)."[15] In addition, the WTO's annual trade monitoring report takes stock of trade-restrictive and trade-facilitating measures of the collective body of WTO members.

While opening markets can encourage competition, innovation, and growth, it can also entail adjustments for workers and firms. Trade liberalization can also be more difficult for the least-developed countries (LDCs) and countries transitioning to market economies. WTO agreements thus allow countries to lower trade barriers gradually. Developing countries and sensitive sectors in particular are usually given longer transition periods to fulfill their obligations; developing countries make up about two-thirds of the WTO membership—WTO members self-designate developing country status.[16] The WTO also supplements this so-called "special and differential" treatment (SDT) for developing countries with trade capacity-building measures to provide technical assistance and help implement WTO obligations, and with permissions for countries to extend nonreciprocal, trade preference programs.

In WTO parlance, when countries agree to open their markets further to foreign goods and services, they "bind" their commitments or agree not to raise them. For goods, these bindings amount to ceilings on tariff rates. A country can change its bindings, but only after negotiating with its trading partners, which could entail compensating them for loss of trade. As shown in **Figure 2**, one of the achievements of the Uruguay Round was to increase the amount of trade under binding commitments. Bound tariff rates are not necessarily the rates WTO members apply in practice to imports from trading partners; so-called applied MFN rates can be lower than bound rates, as reflected in tariff reductions under the GATT. **Figure 3** shows average applied MFN tariffs worldwide. In 2017, the United States simple average MFN tariff was 3.4%.

[13] "The WTO," https://www.wto.org/english/thewto_e/thewto_e.htm.

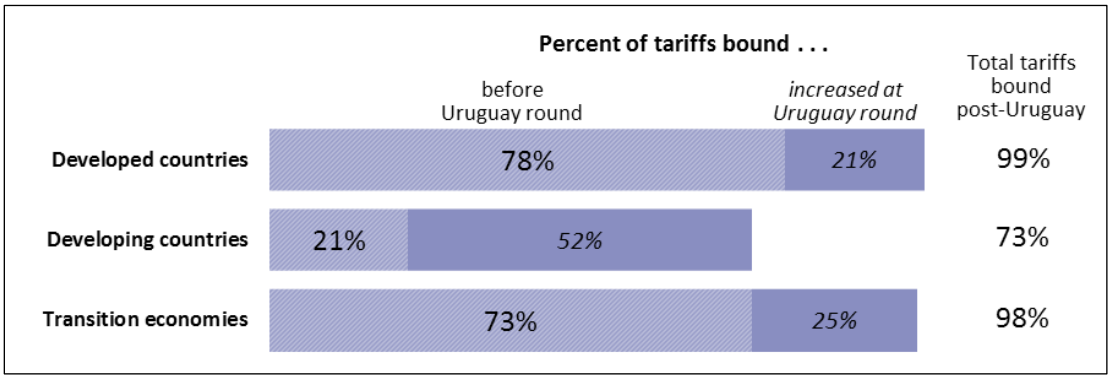
[14] Preamble to the Marrakesh Agreement Establishing the World Trade Organization, https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm.

[15] For more information, see https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm11_e.htm.

[16] The WTO does not specify criteria for "developing" country status, though a sub-group, least-developed countries, are defined under United Nations criteria. See, "Who are the developing countries in the WTO?" https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm.

A key issue in the Doha Round for the United States was lowering major developing countries' relatively high bound tariffs to below their applied rates in practice to achieve commercially meaningful new market access.

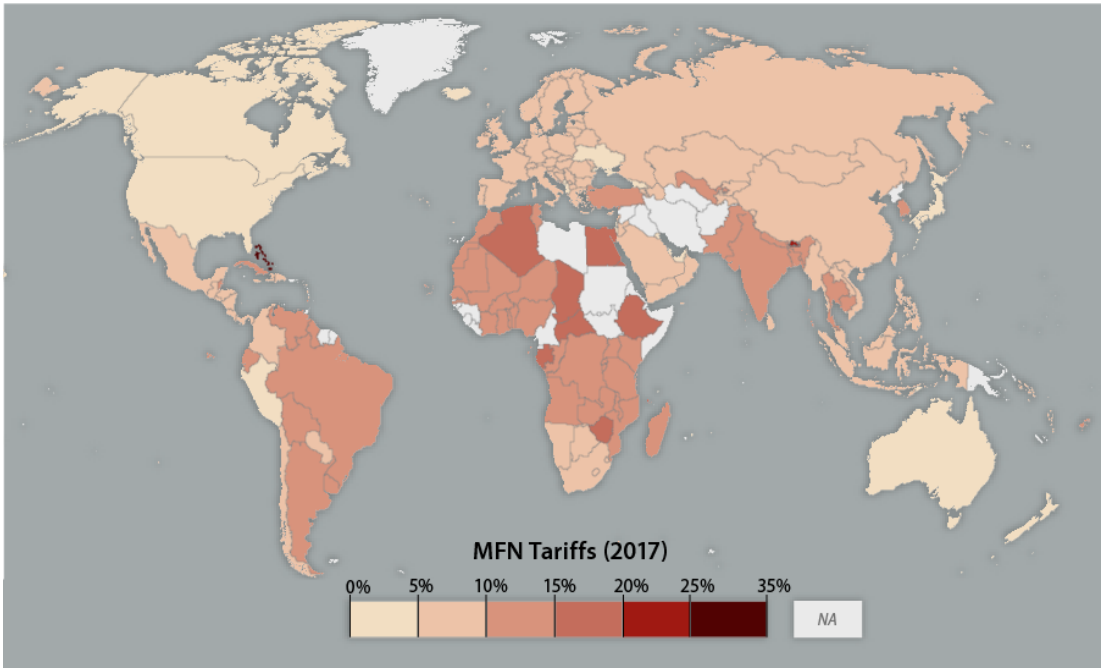
Figure 2. Uruguay Round Impact on Tariff Bindings



Source: Data from WTO, *Understanding the WTO: Basics*, http://www.wto.org. Created by CRS.

Notes: Percentages reflect shares of total tariff lines, but are not trade-weighted. The Uruguay Round was conducted from 1986 to 1994.

Figure 3. Average Applied Most-Favored Nation (MFN) Tariffs



Source: WTO, 2017, https://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm. Created by CRS.

Promising not to raise a trade barrier can have a significant economic effect because the promise provides traders and investors certainty and predictability in the commercial environment. A growing body of economic literature suggests certainty in the stability of tariff rates may be just as important for increasing global trade as reduction in trade barriers.[17] This proved particularly

[17] See for example, Kyle Handley and Nuno Limao, "Policy Uncertainty, Trade, and Welfare: Theory and Evidence for China and the United States," *American Economic Review*, vol. 107, no. 9 (2017).

important during the 2009 global economic downturn. Unlike in the 1930s, when countries reacted to slumping world demand by raising tariffs and other trade barriers, the WTO reported that its 153 members (at the time), accounting for 90% of world trade, by and large did not resort to protectionist measures in response to the crisis.[18]

The promotion of fair and undistorted competition is another important principle of the WTO. While the WTO is often described as a "free trade" organization, numerous rules are concerned with ensuring transparent and non-distorted competition. In addition to nondiscrimination, MFN treatment and national treatment concepts aim to promote "fair" conditions of trade. WTO rules on subsidies and antidumping in particular aim to promote fair competition in trade through recourse to trade remedies, or temporary restriction of imports, in response to alleged unfair trade practices—see "Trade Remedies."[19] For example, when a foreign company receives a prohibited subsidy for exporting as defined in WTO agreements, WTO rules allow governments to impose duties to offset any unfair advantage found to cause injury to their domestic industries.

The scope of the WTO is broader than the GATT because, in addition to goods, it administers multilateral agreements on agriculture, services, intellectual property, and certain trade-related investment measures. These newer rules in particular are forcing the WTO and its dispute settlement system to deal with complex issues that go beyond tariff border measures.

Establishing New Rules and Trade Liberalization through Negotiations

As the GATT did for 47 years, the WTO provides a negotiating forum where members reduce barriers and try to sort out their trade problems. Negotiations can involve a few countries, many countries, or all members. As part of the post-Uruguay Round agenda, negotiations covering basic telecommunications and financial services were completed under the auspices of the WTO in 1997. Selected WTO members also negotiated deals to eliminate tariffs on certain information technology products and improve rules and procedures for government procurement. A recent significant accomplishment was the WTO Trade Facilitation Agreement in 2017, addressing customs and logistics barriers.

The latest round of multilateral negotiations, the Doha Development Agenda (DDA), or Doha Round, launched in 2001, has achieved limited progress to date, as the agenda proved difficult and contentious. Despite a lack of consensus on its future, many view the round as effectively over.[20] The negotiations stalled over issues such as reducing domestic subsidies and opening markets further in agriculture, industrial tariffs, nontariff barriers, services, intellectual property rights, and SDT for developing countries. The negotiations exposed fissures between developed countries, led by the United States and the EU, on the one hand, and developing countries, led by China, Brazil and India, on the other hand, who have come to play a more prominent role in global trade.

The inability of countries to achieve the objectives of the Doha Round prompted many to question the utility of the WTO as a negotiating forum, as well as the practicality of conducting a large-scale negotiation involving 164 participants with consensus and the single undertaking as guiding principles. At the same time, many proposals have been advanced for moving forward

[18] WTO, "Overview of Developments in the International Trading Environment," WT/TPR/OV/12, November 18, 2009, p. 4.

[19] WTO, "Anti-dumping, subsidies, safeguards: contingencies, etc." https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm.

[20] For example, see "The Doha round finally dies a merciful death," *Financial Times*, December 21, 2015.

from Doha and making the WTO a stronger forum for negotiations in the future.[21] (See "Policy Issues and Future Direction").

The WTO arguably has been more successful in the negotiation of discrete items to which not all parties must agree or be bound (see "Plurilateral Agreements (Annex 4)"). Some view these plurilaterals as a more promising negotiating approach for the WTO moving forward given their flexibility, as they can involve subsets of more "like-minded" partners and advance parts of the global trade agenda. Some experts have raised concerns, however, that this approach could lead to "free riders"—those who benefit from the agreement but do not make commitments—for agreements on an MFN basis, or otherwise, could isolate some countries who do not participate and may face new trade restrictions or disadvantages as a result. Others argue that only though the single undertaking approach to negotiations can there be tradeoffs that are sufficient to bring all members on board.

Resolving Disputes

The third function of the WTO is to provide a mechanism to enforce its rules and settle trade disputes. A central goal of the United States during the Uruguay Round negotiations was to strengthen the dispute settlement mechanism that existed under the GATT. While the GATT's process for settling disputes between member countries was informal, ad hoc, and voluntary, the WTO dispute settlement process is more formalized and enforceable.[22] Under the GATT, panel proceedings could take years to complete; any defending party could block an unfavorable ruling; failure to implement a ruling carried no consequence; and the process did not cover all the agreements. Under the WTO, there are strict timetables—though not always followed—for panel proceedings; the defending party cannot block rulings; there is one comprehensive dispute settlement process covering all the agreements; and the rulings are enforceable. WTO adjudicative bodies can authorize retaliation if a member fails to implement a ruling or provide compensation. Yet, under both systems, considerable emphasis is placed on having the member countries attempt to resolve disputes through consultations and negotiations, rather than relying on formal panel rulings. See "Dispute Settlement Understanding (DSU)" for more detail on WTO procedures and dispute trends.

The United States and the WTO

The statutory basis for U.S. membership in the WTO is the Uruguay Round Agreements Act (URAA, P.L. 103-465), which approved the trade agreements resulting from the Uruguay Round. The legislation contained general provisions on:

- approval and entry into force of the Uruguay Round Agreements, and the relationship of the agreements to U.S. laws (section 101 of the Act);
- authorities to implement the results of current and future tariff negotiations (section 111 of the Act);
- oversight of activities of the WTO (sections 121-130 of the Act);

[21] See, for example, CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by Ian F. Fergusson; and CRS Report RS22927, *WTO Doha Round: Implications for U.S. Agriculture*, by Randy Schnepf.

[22] This stronger dispute settlement system was created, in part, as a result of demands from Congress based on concerns that the GATT approach was ineffective in eliminating barriers to U.S. exports. In fact, it was first principal trade negotiating objective set out in the Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418, Sec. 1101(b)(1), 19 U.S.C. 2901(b)(1).

- procedures regarding implementation of dispute settlement proceedings affecting the United States (section 123 of the Act);
- objectives regarding extended Uruguay Round negotiations;
- statutory modifications to implement specific agreements, including:
  - Antidumping Agreement;
  - Agreement on Subsidies and Countervailing Measures (ASCM);
  - Safeguards Agreement;
  - Agreement on Government Procurement (GPA);
  - Technical Barriers to Trade (TBT) (product standards);
  - Agreement on Agriculture; and
  - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

U.S. priorities and objectives for the GATT/WTO have been reflected in various trade promotion authority (TPA) legislation since 1974. For example, the Omnibus Trade and Competitiveness Act of 1988 specifically contained provisions directing U.S. negotiators to negotiate disciplines on agriculture, dispute settlement, intellectual property, trade in services, and safeguards, among others, that resulted in WTO agreements in the Uruguay Round (see **text box** above). The Trade Act of 2002 provided U.S. objectives for the Doha Round, including seeking to expand commitments on e-commerce and clarifications to the WTO dispute settlement system. The 2015 TPA, perhaps reflecting the impasse of the Doha Round, was more muted, seeking full implementation of existing agreements, enhanced compliance by members with their WTO obligations, and new negotiations to extend commitments to new areas.[23]

Sec. 125(b) of the URAA sets procedures for congressional disapproval of WTO participation. It specifies that Congress's approval of the WTO agreement shall cease to be effective "if and only if" Congress enacts a joint resolution calling for withdrawal. Congress may vote every five years on withdrawal; resolutions were introduced in 2000 and 2005, however neither passed.[24]

WTO Agreements

The WTO member-led body negotiates, administers, and settles disputes for agreements that cover goods, agriculture, services, certain trade-related investment measures, and intellectual property rights, among other issues. The WTO core principles are enshrined in a series of trade agreements that include rules and commitments specific to each agreement, subject to various exceptions. The GATT/WTO system of agreements has expanded rulemaking to several areas of international trade, but does not extensively cover some key areas, including multilateral investment rules, trade-related labor or environment issues, and emerging issues like digital trade or the commercial role of state-owned enterprises.

Marrakesh Agreement Establishing the World Trade Organization

The Marrakesh Agreement is the umbrella agreement under which the various agreements, annexes, commitment schedules, and understandings reside. The Marrakesh Agreement itself

[23] See CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Christopher M. Davis.

[24] For the 2000 and 2005 resolutions, see https://www.congress.gov/bill/106th-congress/house-joint-resolution/90/actions and https://www.congress.gov/bill/109th-congress/house-joint-resolution/27/actions.

created the WTO as a legal international organization and sets forth its functions, structure, secretariat, budget procedures, decisionmaking, accession, entry-into-force, withdrawal, and other provisions. The Agreement contains four annexes. The three major substantive areas of commitments undertaken by the members are contained in Annex 1.

Multilateral Agreement on Trade in Goods (Annex 1A)

The Multilateral Agreement on Trade in Goods establishes the rules for trade in goods through a series of sectoral or issue-specific agreements (see **Table 2**). Its core is the GATT 1994, which includes GATT 1947, the amendments, understanding, protocols, and decisions of the GATT from 1947-1994, cumulatively known as the GATT-*acquis,* as well as six Understandings on Articles of the GATT 1947 negotiated in the Uruguay Round. In addition to clarifying the core WTO principles, each agreement contains sector or issue specific rules and principles. The schedule of commitments identifies each member's specific binding commitments on tariffs for goods in general, and combinations of tariffs and quotas for some agricultural goods. Through a series of negotiating rounds, members agreed to the current level of trade liberalization (see **Figure 2** above).

Table 2. Marrakesh Protocol to the GATT 1994

Agreement on Agriculture	Agreement on Implementation of Article VI (Anti-dumping)	Agreement on Import Licensing Procedures	Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)	Agreement on Implementation of Article VII (Customs Valuation)	Agreement on Subsidies and Countervailing Measures	Understanding on Rules and Procedures Governing the Settlement of Disputes
Agreement on Technical Barriers to Trade (TBT)	Agreement on Preshipment Inspection	Agreement on Safeguards	Agreement on Trade in Civil Aircraft
Agreement on Trade-Related Investment Measures (TRIMS)	Agreement on Rules of Origin (ROO)	General Agreement on Trade in Services (GATS)	Agreement on Government Procurement

Source: CRS based on WTO.

In the last four rounds of negotiations, WTO members aimed to expand international trade rules beyond tariff reductions to tackle barriers in other areas. For example, agreements on technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures aim to protect a country's

rights to implement domestic regulations and standards, while ensuring they do not discriminate against trading partners or unnecessarily restrict trade.[25]

Agreement on Agriculture (AoA)

The Agreement on Agriculture (AoA) includes rules and commitments on market access and disciplines on certain domestic agricultural support programs and export subsidies. Its objective was to provide a framework for WTO members to reform certain aspects of agricultural trade and domestic farm policies to facilitate more market-oriented and open trade.[26] Regarding market access, members agreed not to restrict agricultural imports by quotas or other nontariff measures, converting them to tariff-equivalent levels of protection, such as tariff-rate quotas—a process called "tariffication." Developed countries committed to cut tariffs (or out-of-quota tariffs, those tariffs applied to any imports above the agreed quota threshold) by an average of 36% in equal increments over six years; developed countries committed to 24% tariff cuts over 10 years. Special safeguards to temporarily restrict imports were permitted in certain events, such as falling prices or surges of imports.

The AoA also categorizes and restricts agricultural domestic support programs according to their potential to distort trade. Members agreed to limit and reduce the most distortive forms of domestic subsidies over six to ten years, referred to as "amber box" subsidies and measured by the Aggregate Measure of Support (AMS) index.[27] Subsidies considered to cause minimal distortion on production and trade were not subject to spending limits and exempted from obligations as "green box" and "blue box" subsidies or under *de minimis* (below a certain threshold) or SDT provisions. In addition, export subsidies were to be capped and subject to incremental reductions, both by value and quantity of exports covered. A so-called "peace" clause protected members using subsidies that comply with the agreement from being challenged under other WTO agreements, such as through use of countervailing duties; the clause expired after nine years in 2003. Members are required to regularly submit notifications on the implementation of AoA commitments—though some countries, including the United States have raised concerns that these requirements aren't abided by in a consistent fashion.

Further agricultural trade reform was a major priority under the Doha Round, but negotiations have seen limited progress to date (see "Ongoing WTO Negotiations"). However, in 2015, members reached an agreement to fully eliminate export subsidies for agriculture.

Trade-Related Investment Measures (TRIMS)

The framework of the GATT did not address the growing linkages between trade and investment. During the Uruguay Round, the Agreement on Trade-Related Investment Measures (TRIMS) was drafted to address certain investment measures that may restrict and distort trade. The agreement did not address the regulation or protection of foreign investment, but focused on investment measures that may violate basic GATT disciplines on trade in goods, such as nondiscrimination. Specifically, members committed not to apply any TRIM that is inconsistent with provisions on national treatment or a prohibition of quantitative restrictions on imports or exports. TRIMS includes an annex with an illustrative list of prohibited measures, such as local content requirements—requirements to purchase or use products of domestic origin. The agreement also

[25] TBT refers to technical regulations, standards and certification and conformity assessment procedures; while SPS refers to food safety and animal and plant health measures.

[26] WTO, "Agriculture: fairer markets for farmers," https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm.

[27] The United States committed to spend no more than $1.9 billion annually on amber box programs. For more detail, see CRS Report R45305, *Agriculture in the WTO: Rules and Limits on U.S. Domestic Support*, by Randy Schnepf.

includes a safeguard measure for balance of payment difficulties, which permits developing countries to temporarily suspend TRIMS obligations.

While TRIMS and other WTO agreements, such as the GATS (see below), include some provisions pertaining to investment, the lack of comprehensive multilateral rules on investment led to several efforts under the Doha Round to consider proposals, which to date have been unfruitful (see "Future Negotiations"). In December 2017, 70 WTO members announced plans to begin new discussions on developing a multilateral framework on investment facilitation, in part to complement the successful negotiation of rules on trade facilitation

General Agreement on Trade in Services (GATS) (Annex 1B)

The GATT agreements focused solely on trade in goods, excluding services. Services were eventually covered in the GATS as a result of the Uruguay Round agreements.[28] The GATS provides the first and only multilateral framework of principles and rules for government policies and regulations affecting trade in services. It has served as the foundation on which rules in other trade agreements on services are based.

The services trade agenda is complex due to the characteristics of the sector. "Services" refers to a growing range of economic activities, such as audiovisual, construction, computer and related services, express delivery, e-commerce, financial, professional (e.g., accounting and legal services), retail and wholesaling, transportation, tourism, and telecommunications. Advances in information technology and the growth of global supply chains have reduced barriers to trade in services, expanding the services tradable across national borders. But liberalizing trade in services can be more complex than for goods, since the impediments faced by service providers occur largely within the importing country, as so-called "behind the border" barriers, some in the form of government regulations. While the right of governments to regulate service industries is widely recognized as prudent and necessary to protect consumers from harmful or unqualified providers, a main focus of WTO members is whether these regulations are applied to foreign service providers in a discriminatory and unnecessarily trade restrictive manner that limits market access.

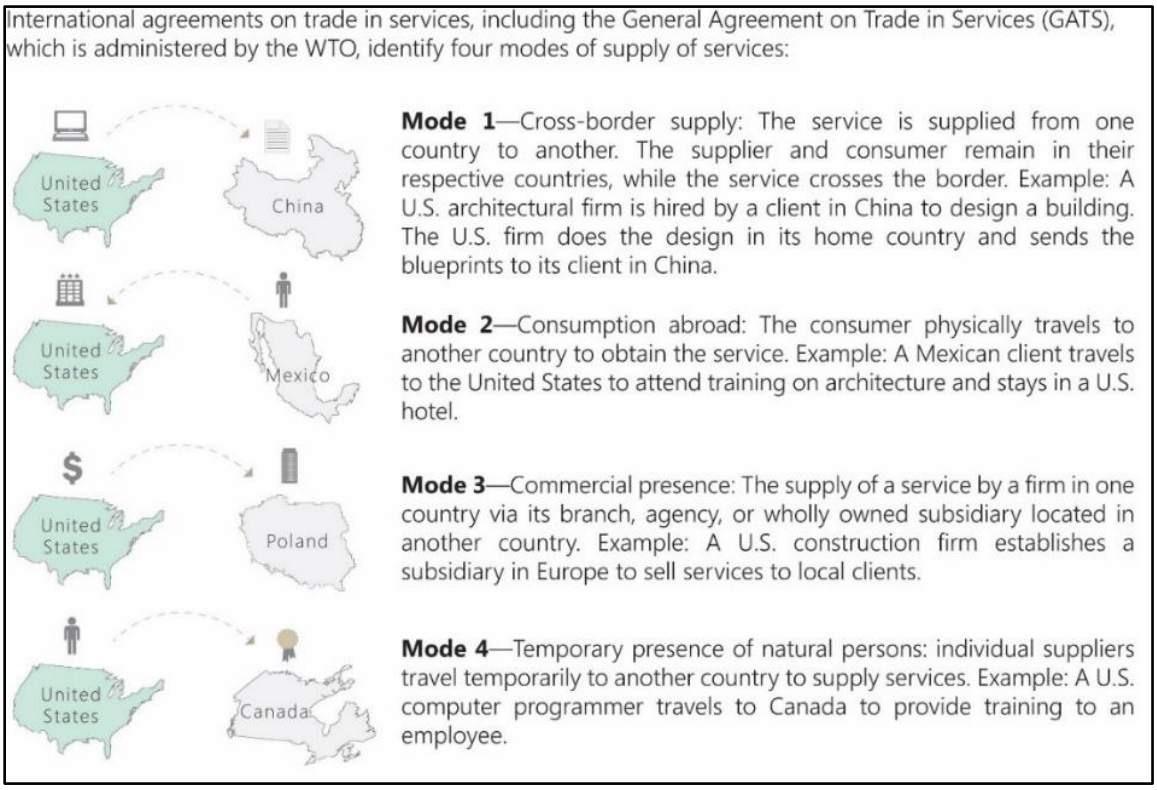
The GATS contains multiple parts, including: definition of scope (excluding government-provided services); principles and obligations, including MFN treatment and transparency; market access and national treatment obligations; annexes listing exceptions that members take to MFN treatment; as well as various technical elements. Members negotiated GATS on a positive list basis, which means that the commitments only apply to those services and modes of delivery listed in each member's schedule of commitments.[29] WTO members adopted a system of classifying four modes of delivery for services to measure trade in services and classify government measures that affect trade in services, including: cross-border supply, consumption abroad, commercial presence, and temporary presence of natural persons (**Figure 4**). Under GATS, unless a member country has specifically committed to open its market to suppliers in a particular service, the national treatment and market access obligations do not apply.

In addition to the GATS, some members made specific sectoral commitments in financial services and telecommunications. Negotiations to expand these commitments were later folded into the broader services negotiations.

[28] For more analysis, see CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer.

[29] Within U.S. FTAs, the United States has sought a more comprehensive negative list approach, in which obligations are to apply to all types of services, unless explicitly excluded by a country in its list of nonconforming measures.

Figure 4. Four Modes of Service Delivery and Hypothetical Examples



Source: CRS based on WTO.

WTO members aimed to update GATS provisions and market access commitments as part of the Doha Round. Several WTO members have since submitted revised offers of services liberalization, but in the view of the United States and others the talks have not yielded adequate offers of improved market access (see "Future Negotiations"). Given the lack of progress, in 2013, 23 WTO members, including the United States, representing approximately 70% of global services trade, launched negotiations of a services-specific plurilateral agreement.[30] Although outside of the WTO structure, participants designed the Trade in Services Agreement (TiSA) negotiations in a way that would not preclude a concluded agreement from someday being brought into the WTO. TiSA talks were initially led by Australia and the United States, but have since stalled; the Trump Administration has not stated a formal position on TiSA.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Annex 1C)

The TRIPS Agreement marked the first time multilateral trade rules incorporated intellectual property rights (IPR)—legal, private, enforceable rights that governments grant to inventors and artists to encourage innovation and creative output.[31] Like the GATS, TRIPS was negotiated as part of the Uruguay Round and was a major U.S. objective for the round.

[30] See CRS In Focus IF10311, *Trade in Services Agreement (TiSA) Negotiations*, by Rachel F. Fefer.

[31] For more detail, see CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

The TRIPS Agreement sets minimum standards of protection and enforcement for IPR. Much of the agreement sets out the extent of coverage of the various types of intellectual property, including patents, copyrights, trademarks, trade secrets and geographical indications. TRIPS includes provisions on nondiscrimination and on enforcement measures, such as civil and administrative procedures and remedies. IPR disputes under the agreement are also subject to the WTO dispute settlement mechanism.

The TRIPS Agreement's newly placed requirements on many developing countries elevated the debate over the relationship between IPR and development. At issue is the balance of rights and obligations between protecting private right holders and securing broader public benefits, such as access to medicines and the free flow of data, especially in developing countries. TRIPS includes flexibilities for developing countries allowing longer phase-in periods for implementing obligations and, separately, for pharmaceutical patent obligations—these were subsequently extended for LDCs until January 2033 or until they no longer qualify as LDCs, whichever is earlier.[32] The 2001 WTO "Doha Declaration" committed members to interpret and implement TRIPS obligations in a way that supports public health and access to medicines.[33] In 2005, members agreed to amend TRIPS to allow developing and LDC members that lack production capacity to import generic medicines from third country producers under "compulsory licensing" arrangements.[34] The amendment entered into force in January 2017.[35]

Trade Remedies

While WTO agreements uphold MFN principles, they also allow exceptions to binding tariffs in certain circumstances. The WTO Agreement on Subsidies and Countervailing Measures (ASCM), Agreement on Safeguards, and articles in the GATT, commonly known as the Antidumping Agreement, allow for trade remedies in the form of temporary measures (e.g., primarily duties or quotas) to mitigate the adverse impact of various trade practices on domestic industries and workers. These include actions taken against dumping (selling at an unfairly low price) or to counter certain government subsidies, and emergency measures to limit "fairly"-traded imports temporarily, designed to "safeguard" domestic industries.

Supporters of trade remedies view them as necessary to shield domestic industries and workers from unfair competition and to level the playing field. Other domestic constituents, including some importers and downstream consuming industries, voice concern that antidumping (AD) and countervailing duty (CVD) actions can serve as disguised protectionism and create inefficiencies in the world trading system by raising prices on imported goods. How trade remedies are applied to imports has become a major source of disputes under the WTO (see below).

The United States has enacted trade remedy laws that conform to the WTO rules:[36]

- U.S. antidumping laws (19 U.S.C. §1673 et seq.) provide relief to domestic industries that have been, or are threatened with, the adverse impact of imports

[32] WTO, "Intellectual property: protection and enforcement," https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm.

[33] Declaration on the TRIPS Agreement and Public Health, (WT/MIN(01)/DEC/2), November 14, 2001, http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm. For more on TRIPS, see CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

[34] WTO, "WTO IP rules amended to ease poor countries' access to affordable medicines," January 23, 2017, https://www.wto.org/english/news_e/news17_e/trip_23jan17_e.htm.

[35] Notably, this marked the first time that a WTO agreement was amended since the WTO's inception (WTO 2017).

[36] For more detail, see CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*, by Vivian C. Jones, and CRS In Focus IF10786, *Safeguards: Section 201 of the Trade Act of 1974*, by Vivian C. Jones.

sold in the U.S. market at prices that are shown to be less than fair market value. The relief provided is an additional import duty placed on the dumped imports.

- U.S. countervailing duty laws (19 U.S.C. §1671 et seq.) give similar relief to domestic industries that have been, or are threatened with, the adverse impact of imported goods that have been subsidized by a foreign government or public entity, and can therefore be sold at lower prices than U.S.-produced goods. The relief provided is a duty placed on the subsidized imports.
- U.S. safeguard laws give domestic industries relief from import surges of goods; no allegation of "unfair" practices is needed to launch a safeguard investigation. Although used less frequently than AD/CVD laws, Section 201 of the Trade Act of 1974 (19 U.S.C. §2251 et seq.), is designed to give domestic industry the opportunity to adjust to import competition and remain competitive. The relief provided is generally a temporary import duty and/or quota. Unlike AD/CVD, safeguard laws require presidential action for relief to be put into effect.

Dispute Settlement Understanding (DSU) (Annex 2)

The dispute settlement system, often called the "crown jewel" of the WTO, has been considered by some observers to be one of the most important successes of the multilateral trading system.[37] WTO agreements contain provisions that are either binding or nonbinding. The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes—Dispute Settlement Understanding or DSU—provides an enforceable means for WTO members to resolve disputes arising under the binding provisions.[38] The DSU commits members not to determine violations of WTO obligations or impose penalties unilaterally, but to settle complaints about alleged violations under DSU rules and procedures.

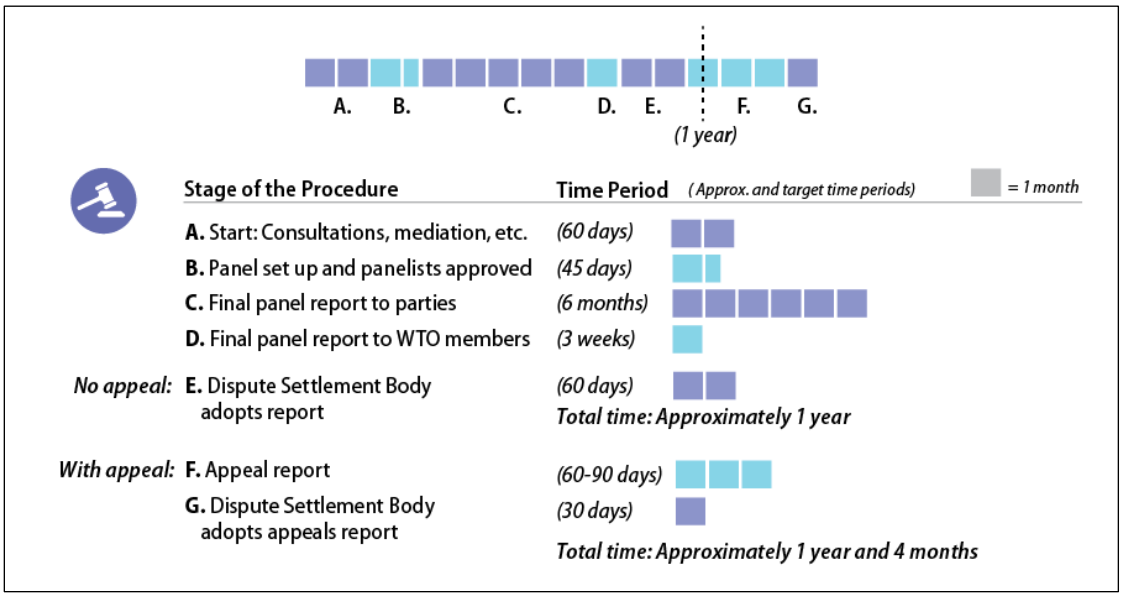
The Dispute Settlement Body (DSB) is a plenary committee of the WTO, which oversees the panels and adopts the recommendation of a dispute settlement panel or Appellate Body (AB) panel. Panels are composed of three (or five in complex cases) panelists—not citizens of the members involved—chosen through a roster of "well qualified governmental and/or non-governmental individuals" maintained by the Secretariat. WTO members must first attempt to settle a dispute through consultations, but if these fail, a member seeking to initiate a dispute may request that a panel examine and report on its complaint. A respondent party is able to block the establishment of a panel at the DSB once, but if the complainant requests its establishment again at a subsequent meeting of the DSB, a panel is established. At its conclusion, the panel recommends a decision to the DSB that it will adopt unless all parties agree to block the recommendation. The DSU sets out a timeline of one year for the initial resolution of disputes (see **Figure 5**); however, cases are rarely resolved in this timeframe.

[37] WTO, "The Place of the WTO in the International Legal Order," Speeches—DG Pascal Lamy, June 15, 2008, https://www.wto.org/english/news_e/sppl_e/sppl94_e.htm.

[38] For more information, see CRS In Focus IF10436, *Dispute Settlement in the World Trade Organization: Key Legal Concepts*, by Brandon J. Murrill.

Figure 5. WTO Dispute Settlement Procedure

Stages and Time Periods



Source: Created by CRS. Based on information from Madhur Jha, Samantha Amerasinghe, and Philippe Dauba-Pantanacce, *Global trade: Trade first! (Avoiding an own goal)*, Standard Chartered, 2017, p. 17.

Notes: Alternating colors indicate a different stage of the procedure. Time periods displayed are approximate. The WTO establishes timelines for each stage with one year total for the initial resolution of disputes; however, in practice, cases are rarely resolved within this timeframe.

The DSU also provides for AB review of panel reports in the event a panel decision is appealed. The AB is composed of seven rotating panelists serving four-year terms, with the possibility of a one-term reappointment. According to the DSU, appeals are to be limited to questions of law or legal interpretation developed by the panel in the case (Article 17.6). The AB is to make a recommendation and the DSB is to ratify that recommendation within 120 days of the ratification of the initial panel report, but again, such timely resolution rarely occurs. The United States has raised several issues regarding the practices of the AB and has blocked the appointments of several judges—for more on the current debate, see "Proposed Institutional Reforms."

Following the adoption of a panel or appellate report, the DSB oversees the implementation of the findings. The losing party is then to propose how it is to bring itself into compliance "within a reasonable period of time" with the DSB-adopted findings. A reasonable period of time is determined by mutual agreement with the DSB, among the parties, or through arbitration. If a dispute arises over the manner of implementation, the DSB may form a panel to judge compliance. If a party declines to comply, the parties negotiate over compensation pending full implementation. If there is still no agreement, the DSB may authorize retaliation in the amount of the determined cost of the offending party's measure to the aggrieved party's economy. There have been some calls for reform of the dispute settlement system to deal with the procedural delays and new strains on the system, including the growing volume and complexity of cases.

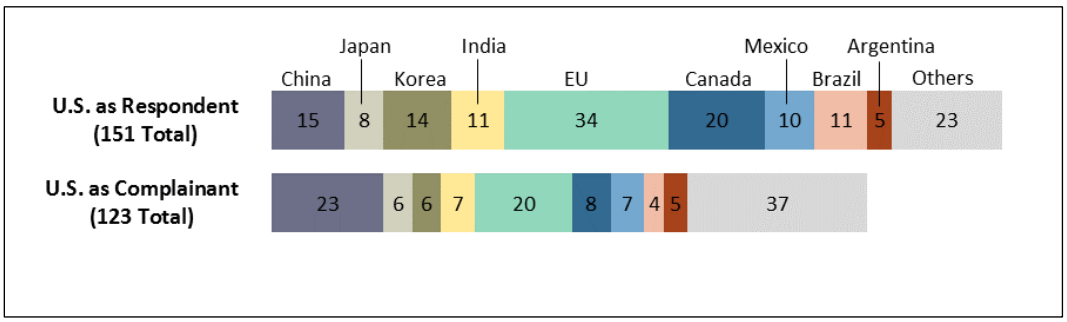
Filing a dispute settlement case provides a way for countries to resolve disputes through a legal process and to do so publicly, signaling to domestic and international constituents the need to address outstanding issues. Dispute settlement procedures can serve as a deterrent for countries considering not abiding by WTO agreements, and rulings can help build a body of case law to inform countries when they implement new regulatory regimes or interpret WTO agreements.

That said, WTO agreements and decisions of panels are not self-executing and cannot directly modify U.S. law. If a case is brought against the United States and the panel renders an adverse decision, the United States would be expected to remove the offending measure, within a reasonable period of time, or face the possibility of either paying compensation to the complaining member or becoming subject to sanctions, often in the form of higher tariffs on imports of certain U.S. products.

As of November 2018, the WTO has initiated about 570 disputes on behalf of its members and issued more than 350 rulings, with 2017 marking its most active year to date.[39] Nearly two-thirds of WTO members have participated in the dispute settlement system. Not all complaints result in formal panel proceedings; about half were resolved during consultations. The complainants usually win their cases, in large part because they initiate disputes that they have a high chance of winning. In the words of WTO Director-General (DG) Roberto Azevêdo, the widespread use of the DS system is evidence it "enjoys tremendous confidence among the membership, who value it as fair, effective, efficient mechanism to solve trade problems."[40]

The United States is an active user of the DS system. Among WTO members, the United States has been a complainant in the most dispute cases since the system was established in 1995, initiating 123 disputes, followed by the EU with 99 disputes.[41] The two largest targets of complaints initiated by the United States involve China and the EU, which, combined, account for more than one-third (**Figure 6**). The latest summary by USTR reports that among WTO disputes through 2015 the United States largely prevailed on "core issues" in 46 of its complaints and lost in 4.[42] Since the report was released, additional cases have been ruled in favor of the United States, including disputes over India's solar energy policies and Indonesia's import licensing requirements. The majority of disputes initiated by the United States between 2016 and 2018 remain in consultation or panel stages and have not been decided.

Figure 6. WTO Disputes Involving the United States



Source: WTO, https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm. Created by CRS.

Notes: Does not include cases with U.S. participation as a third party. Dispute count as of November 2018.

As a respondent in 151 dispute cases since 1995, the United States has also had the most disputes filed against it by other WTO members, followed by the EU (85 disputes) and China (43 disputes). The EU is the largest source of disputes filed against the United States, followed by

[39] WTO, *Annual Report 2018*, May 2018.

[40] WTO, "WTO disputes reach 500 mark," November 10, 2015, https://www.wto.org/english/news_e/news15_e/ds500rfc_10nov15_e.htm.

[41] Dispute count as of November 2018. WTO, https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm.

[42] USTR, *Snapshot of WTO Cases Involving the United States*, December 5, 2015, https://ustr.gov/sites/default/files/enforcement/spanshot/Snapshot%20Dec9%20fin.pdf.

Canada, China, South Korea, Brazil, and India. A large number of complaints concern U.S. trade remedies, in particular the methodologies used for calculating and imposing antidumping duties on U.S. imports. The latest summary by USTR reports that as a respondent, the United States won on "core issues" in 17 cases and lost in 57 cases through 2015.[43] More recently, in late 2016 the WTO ruled against the United States on parts of South Korean and Chinese complaints in separate cases regarding U.S. trade remedies.[44] In December 2017, a panel ruled in U.S. favor in a case brought by Indonesia over U.S. duties on coated paper imports.[45]

Several pending WTO disputes are of significance to the United States. One involves China's complaints over U.S. and EU failure to grant China market economy status (see "China's Accession and Membership"). Other cases involve challenges to the tariff measures imposed by the Trump Administration under U.S. trade laws, including Section 201 (safeguards), Section 232 (national security), and Section 301 ("unfair" trading practices) (**Table 3**). Nine WTO members, including China, the EU, Canada, and Mexico, requested separate WTO consultations with the United States, based on allegations that U.S. Section 232 tariffs on steel and aluminum imports are inconsistent with WTO rules. By early November, all of the countries had requested establishment of a panel, the next stage in the dispute settlement process; on November 21, 2018 panels were established in seven of the cases.[46] Most countries notified their requests pursuant to the Agreement on Safeguards, though some countries also allege that U.S. tariff measures and related exemptions are contrary to U.S. obligations under several provisions of the GATT. Several other WTO members have requested to join the disputes as third parties.

On July 16, 2018, the United States filed its own WTO complaints over retaliatory tariffs imposed by five countries (Canada, China, EU, Mexico, and Turkey) in response to U.S. actions, and in late August, it filed a similar case against Russia.[47] The United States has invoked the so-called national security exception (GATT Article XXI) in defense of the tariffs (see "Key Exceptions under GATT/WTO"), and states that the tariffs are not safeguards as claimed by other countries. In late November, four cases proceeded to the panel stage.

Table 3. WTO Challenges to Tariff Measures Imposed by Trump Administration Under U.S. Trade Laws

Issue	Complainant country	Dispute number	Date Filed / Status
SECTION 201			
U.S. safeguard measure on crystalline silicon photovoltaic products	South Korea	DS545	5/14/18 consultations requested; 9/26 panel established
	China	DS562	8/14/18 consultations requested
U.S. safeguard measure on large residential washers imports	South Korea	DS546	5/14/18 consultations requested; 9/26 panel established

[43] Ibid.

[44] Doug Palmer, "U.S. loses bulk of WTO appeal in South Korea washers case," *Politico Pro*, September 7, 2016; Tom Miles, "China scores WTO victories against some U.S. anti-dumping methods," *Reuters*, October 19, 2016.

[45] Megan Cassella, "WTO sides with U.S. in paper case brought by Indonesia," *Politico Pro*, December 6, 2017.

[46] "Countries escalate Section 232 tariff disputes at the WTO; U.S. follows suit," *Inside U.S. Trade*, November 21, 2018.

[47] USTR, "United States Challenges Five WTO Members Imposing Illegal Tariffs Against U.S. Products," press release, July 2018, https://go.usa.gov/xPftA.

Issue	Complainant country	Dispute number	Date Filed / Status
SECTION 232			
U.S. tariffs on steel and aluminum imports	China	DS544	4/05/18 consultations requested; 11/21 panel established
	India	DS547	5/18/18 consultations requested; 11/8 panel requested
	EU	DS548	6/01/18 consultations requested; 11/21 panel established
	Canada	DS550	6/01/18 consultations requested; 11/21 panel established
	Mexico	DS551	6/05/18 consultations requested; 11/21 panel established
	Norway	DS552	6/12/18 consultations requested; 11/21 panel established
	Russia	DS554	6/29/18 consultations requested; 11/21 panel established
	Switzerland	DS556	7/09/18 consultations requested; 11/8 panel requested
	Turkey	DS564	8/15/18 consultations requested; 11/21 panel established
SECTION 301			
U.S. tariffs on certain Chinese imports	China	DS543	4/04/18 consultations requested
	China	DS565	8/23/18 consultations requested

Source: WTO, https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

Notes: Status as of November 2018.

Trade Policy Review Mechanism (Annex 3)

Annex 3 sets out the procedures for the regular trade policy reviews that are conducted by the Secretariat to report on the trade policies of the membership. These reviews are carried out by the Trade Policy Review Body and are conducted periodically with the largest economies (United States, EU, Japan, and China) evaluated every 3 years, the next 16 largest economies every 5 years, and remaining economies every 7 years. These reviews are meant to increase transparency of a country's trade policy and enable a multilateral assessment of the effect of policies on the trading system. These reviews also allow each member country to question specific practices of other members, and may serve as a forum to flag, and possibly avoid, future disputes.

One of the most recent trade policy reviews was for China in July 2018.[48] During the review members noted and commended some recent initiatives of China to open market access and liberalize its foreign investment regime. Several concerns were also raised, including "the preponderant role of the State in general, and of state-owned enterprises in particular," and

[48] For the text of the report, see https://www.wto.org/english/tratop_e/tpr_e/tp475_e.htm.

"China's support and subsidy policies and local content requirements, including those that may be part of the 2025 [Made in China] plan."[49] The most recent review for the United States was conducted in December 2016, with a forthcoming review to be released in December 2018.

Plurilateral Agreements (Annex 4)

Most WTO agreements in force have been negotiated on a multilateral basis, meaning the entire body of WTO members subscribes to them. By contrast, plurilateral agreements are negotiated by a subset of WTO members and often focus on a specific sector. A handful of such agreements supplement the main WTO agreements discussed previously.[50]

Within the WTO, members have two ways to negotiate on a plurilateral basis, also known as "variable geometry."[51] A group of countries can negotiate with one another provided that the group extends the benefits to all other WTO members on an MFN basis—the foundational nondiscrimination principle of the GATT/WTO. Because the benefits of the agreement are to be shared among all WTO members and not just the participants, the negotiating group likely would include those members forming a critical mass of world trade in the product or sector covered by the negotiation in order to avoid the problem of free riders—those countries that receive trade benefits without committing to liberalization. An example of this type of plurilateral agreement granting unconditional MFN is the Information Technology Agreement (ITA), in which tariffs on selected information technology goods were lowered to zero, as negotiated by WTO members comprising more than 90% of world trade in these goods (see below).

A second type of WTO plurilateral is the non-MFN agreement, often referred to as "conditional-MFN." In this type, participants undertake additional obligations among themselves, but do not extend the benefits to other WTO members, unless they directly participate in the agreement. Also known as the "club" approach, non-MFN plurilaterals allow for willing members to address policy issues not covered by WTO disciplines. However, these types of agreements require a waiver from the entire WTO membership to commence negotiations. Some countries are reluctant even to allow other countries to negotiate for fear of being left out, even while not being ready to commit themselves to new disciplines. Yet, according to one commentator, these members are "simply outsmarting themselves" by encouraging more ambitious members to take negotiations out of the WTO altogether, such as the proposed expansion of the GATS through the plurilateral (and outside the WTO) TiSA.[52]

Government Procurement Agreement

The Government Procurement Agreement (GPA) is an early example of a plurilateral agreement with limited WTO membership—first developed as a code in the 1979 Tokyo Round. As of the end of 2018, 47 WTO members (including the 28 EU member countries and United States)

[49] WTO, "Trade Policy Review: China: Concluding remarks by the Chairperson," July 11 and 13, 2018, https://www.wto.org/english/tratop_e/tpr_e/tp475_crc_e.htm.

[50] One example is the Agreement on Trade in Civil Aircraft, which entered into force in 1980 between 32 WTO members, including the United States. The agreement eliminates import duties on all aircraft, other than military aircraft, and other specified products. See https://www.wto.org/english/tratop_e/civair_e/civair_e.htm.

[51] Peter Sutherland et al., "The Future of the WTO: Addressing institutional challenges in the new millennium," World Trade Organization, 2004, p. 64.

[52] James Bacchus, "Was Buenos Aires the Beginning of the End or End of the Beginning: The Future of the World Trade Organization," CATO Institute, *Policy Analysis* No. 841, May 8, 2018.

participate in the GPA; non-GPA signatories do not enjoy rights under the GPA.[53] The GPA provides market access for various nondefense government projects to contractors of its signatories.[54] Each member specifies government entities and goods and services (with thresholds and limitations) that are open to procurement bids by foreign firms of the other GPA members. For example, the U.S. GPA market access schedules of commitments cover 85 federal-level entities and voluntary commitments by 37 states.[55]

Negotiations to expand the GPA were concluded in March 2012, and a revised GPA entered into force on April 6, 2014. Several countries, including China—which committed to pursuing GPA participation in its 2001 WTO accession process—are in long-pending negotiations to accede to the GPA. South Korea, Moldova and Ukraine were the latest WTO members to join the GPA in 2016. According to estimates by the U.S. Government Accountability Office (GAO), from 2008-2012, 8% of total global government expenditures, and approximately one-third of U.S. federal government procurement, was covered by the GPA or similar commitments in U.S. FTAs.[56]

Information Technology Agreement

Unlike the GPA, the Information Technology Agreement (ITA) is a plurilateral agreement that is applied on an unconditional MFN basis. In other words, all WTO members benefit from the tariff reductions enacted by parties to the ITA regardless of their own participation.[57] Originally concluded in 1996 by a subset of WTO members, the ITA provides tariff-free treatment for covered IT products; however, the agreement does not cover services or digital products like software. In December 2015, a group of 51 WTO members, including the United States, negotiated an expanded agreement to cover an additional 201 products and technologies, valued at over $1 trillion in annual global exports.[58] Members committed to reduce the majority of tariffs by 2019. In June 2016, the United States initiated the ITA tariff cuts. China began its cuts in mid-September 2016 with plans to reduce tariffs over five to seven years. ITA members are expected to review the agreement's scope in 2018 to determine if additional product coverage is needed.

Trade Facilitation Agreement (TFA)

The Trade Facilitation Agreement (TFA) is the newest WTO multilateral trade agreement, entering into force on February 22, 2017, and perhaps the lasting legacy of the Doha Round, since it is the only major concluded component of the negotiations.[59] The TFA aims to address multiple trade barriers confronted by exporters and importers and reduce trade costs by streamlining, modernizing, and speeding up the customs processes for cross border trade, as well as making it more transparent. Some analysts view the TFA as evidence that achieving new multilateral

[53] In late November 2018, WTO members approved in principle the UK's market access offer to continue GPA membership as a separate member, following its pending withdrawal from the EU. See WTO, https://www.wto.org/english/news_e/news18_e/gpro_28nov18_e.htm.

[54] For more information on the GPA, see https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm.

[55] For the U.S. GPA schedule, see https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=UnitedStates&AnnexNo=1&ContentCulture=en.

[56] U.S. GAO, *United States Reported Opening More Opportunities to Foreign Firms Than Other Countries, but Better Data Are Needed*, GAO-17-168, February 9, 2017, p. 10.

[57] For more information on the ITA, see https://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm and https://www.wto.org/english/tratop_e/inftec_e/itaintro_e.htm.

[58] USTR, "U.S. and WTO Partners Announce Final Agreement on Landmark Expansion of Information Technology Agreement," December 2015, https://go.usa.gov/xPftt.

[59] See CRS Report R44777, *WTO Trade Facilitation Agreement*, by Rachel F. Fefer and Vivian C. Jones.

agreements is possible and that the design, including special and differential treatment provisions, could serve as a template for future agreements.

The TFA has three sections. The first is the heart of the agreement, containing the main provisions, of which many, but not all, are binding and enforceable. Mandatory articles include requiring members to: publish information, including publishing certain items online; issue advance rulings in a reasonable amount of time; and provide for appeals or reviews, if requested.

The second section provides for SDT for developing country and LDC members, allowing them more time and assistance to implement the agreement. The TFA is the first WTO agreement in which members determine their own implementation schedules and in which progress in implementation is explicitly linked to technical and financial capacity. The TFA requires that "donor members," including the United States, provide the needed capacity building and support. Finally, the third section sets institutional arrangements for administering the TFA.

Impact of the WTO Trade Facilitation Agreement

According to WTO estimates, global export gains from full implementation of the TFA could range from $750 billion to more than $3.6 trillion dollars per year and, for the 2015-2030 time period, could increase world export growth by 2.7% a year and world GDP growth by over 0.5% a year.

The Organization for Economic Cooperation and Development (OECD) estimates that TFA implementation could lower the costs of doing trade as much as 12.5%-17.5% globally.

Key Exceptions under GATT/WTO

Under WTO agreements, members generally cannot discriminate among trading partners, though specific market access commitments can vary significantly by agreement and by member. WTO rules permit some broad exceptions, which allow members to adopt trade policies and practices that may be inconsistent with WTO disciplines and principles such as MFN treatment, granting special preferences to certain countries, and restricting trade in certain sectors, provided certain conditions are met. Some of the key exceptions follow.

General exceptions. GATT Article XX grants WTO members the right to take certain measures necessary to protect human, animal or plant life or health, or to conserve exhaustible natural resources, among other aims. The measures, however, must not entail "arbitrary" or "unjustifiable" discrimination between countries where the same conditions prevail, or serve as "disguised restriction on international trade." GATS Article XIV provides for similar exceptions for trade in services.

National security exception. GATT Article XXI protects the right of members to take any action it considers "necessary for the protection of essential national security interests" as related to (i) fissionable materials; (ii) traffic in arms, ammunition and implements of war, and such traffic in other goods and materials carried out to supply a military establishment; and (iii) taken in time of war or other emergency in international relations. Similar exceptions relate to trade in services (GATS Article XIV bis) and intellectual property rights (TRIPS Article 73).

More favorable treatment to developing countries. The so-called "enabling clause" of the GATT—called the "Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries" of 1979—enables developed country members to grant differential and more favorable treatment to developing countries that is not extended to other members. For example, this permits granting unilateral and nonreciprocal trade preferences to developing countries under special programs, such as the U.S. Generalized System of Preferences (GSP), and also relates to regional trade agreements outside the WTO (see below).

Exceptions for regional trade agreements (RTAs). WTO countries are permitted to depart from the MFN principle and grant each other more favorable treatment in trade agreements outside the WTO, provided certain conditions are met. Three sets of rules generally apply. GATT Article XXIV applies to goods trade, and allows the formation of free trade areas and customs unions (areas with common external tariffs). These provisions require that RTAs be notified to the other WTO members, cover "substantially all trade," and do not effectively raise barriers on imports from third parties. GATS Article V allows for economic integration agreements related to services trade, provided they entail "substantial sectoral coverage," eliminate "substantially all discrimination," and do not "raise the overall level of barriers to trade in services" on members outside the agreement. Paragraph 2(c) of the "enabling clause," which deals with special and differential treatment, allows for RTAs among developing countries in goods trade, based on the "mutual reduction or elimination of tariffs." RTA provisions in the GATS also allow greater flexibility in sectoral coverage within services agreements that include developing countries.

Joining the WTO: The Accession Process

There are currently 164 members of the WTO. Another 22 countries are seeking to become members.[60] Joining the WTO means taking on the commitments and obligations of all the multilateral agreements. Governments are motivated to join not just to expand access to foreign markets but also to spur domestic economic reforms, help transition to market economies, and promote the rule of law.[61] While any state or customs territory fully in control of its trade policy may become a WTO member, a lengthy process of accession involves a series of documentation of a country's trade regime and market access negotiation requirements (see **Figure 7**).[62]

For example, Kazakhstan joined the WTO on November 30, 2015, after a 20-year process. Afghanistan became the 164th WTO member on July 29, 2016, after nearly 12 years of negotiating its accession terms. Other countries have initiated the process but face delays. Iran first applied for membership in 1996 and, while it submitted its Memorandum on the Foreign Trade Regime in 2009 (a perquisite for negotiating an accession package), Iran has not begun the bilateral negotiation process, and the United States is unlikely to support its accession.[63]

As the WTO generally operates by member consensus, any single member could block the accession of a prospective new member. As part of the process, a prospective member must satisfy specific market access conditions of other WTO members by negotiating on a bilateral basis. The United States has been a central arbiter of the accession process for countries like China (joined in 2001, see below), Vietnam (2007), and Russia (2012), with which permanent normal trade relations had to be established concurrently under U.S. law for the United States to receive the full benefits of their membership.

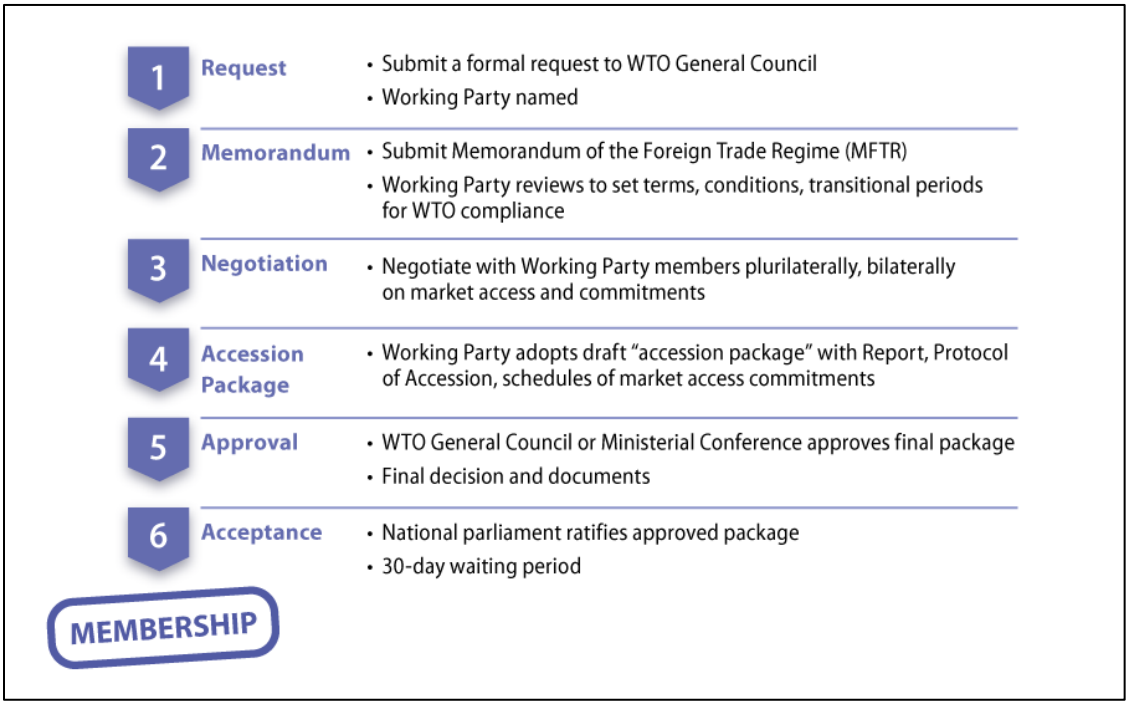
[60] For the current status of accessions, see https://www.wto.org/english/thewto_e/acc_e/status_e.htm.

[61] Uri Dadush and Chiedu Osakwe, ed., *WTO Accessions and Trade Multilateralism: Case Studies and Lessons from the WTO at Twenty,* Cambridge University Press and the World Trade Organization, 2015.

[62] For more information on WTO accessions, see https://www.wto.org/english/thewto_e/acc_e/acces_e.htm and https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c4s1p1_e.htm.

[63] Iran's prospective WTO membership is complicated by U.S. economic sanctions, which restrict trade and investment. Iran's accession to the WTO would require the United States and other members to extend MFN treatment to Iran.

Figure 7. WTO Accession Process



Source: WTO. Created by CRS.

Notes: The Working Party is a group of WTO members negotiating multilaterally with a country that is applying to join the WTO.

China's Accession and Membership

China formally joined the WTO in December 2001.[64] China has emerged as a major player in the global economy, as the fastest growing economy, largest merchandise exporter, and second-largest merchandise importer worldwide. China's accession into the WTO on commercially meaningful terms was a major U.S. trade objective during the late 1990s.[65] Entry into the WTO was viewed as an important catalyst for spurring additional economic and trade reforms and the opening of China's economy in a market, rules-based direction.[66] These reforms have made China an increasingly significant market for U.S. exporters, a central factor in global supply chains, and a major source of low-cost goods for U.S. consumers. At the same time, China has yet to fully transition to a market economy and the government continues to intervene in many parts of the economy, which has created a growing debate over the role of the WTO in both respects.

Negotiations for China's accession to the GATT and then the WTO began in 1986 and took more than 15 years to complete. During WTO negotiations, China sought to enter the WTO as a developing country, while U.S. trade officials insisted that China's entry into the WTO had to be based on "commercially meaningful terms" that would require China to significantly reduce trade and investment barriers within a relatively short time. In the end, a compromise was reached that

[64] For more information, see CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison.

[65] CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison.

[66] Written testimony by Nicholas R. Lardy, "Issues in China's WTO Accession," May 9, 2001, Brookings Institution, https://www.brookings.edu/testimonies/issues-in-chinas-wto-accession/.

required China to make immediate and extensive reductions in various trade and investment barriers, while allowing it to maintain some level of protection (or a transitional period of protection) for certain sensitive sectors (see **text box**).[67]

Selected Terms of China's 2001 WTO Accession[68]

- **Reduce the average tariff** for industrial goods from 17% to 8.9%, and average tariffs on U.S. priority agricultural products from 31% to 14%.
- **Limit subsidies for agricultural production** to 8.5% of the value of farm output, eliminate export subsidies on agricultural exports, and regularly notify WTO of all state subsidies.
- **Grant full trade and distribution rights to foreign enterprises** within three years (with some exceptions, such as for certain agricultural products, minerals, and fuels).
- **Provide nondiscriminatory treatment to all WTO members**, such as treating foreign firms no less favorably than Chinese firms for trade purposes.
- **End discriminatory trade policies against foreign invested firms**, such as domestic content rules and technology transfer requirements.
- **Implement the TRIPS Agreement** (which sets basic standards on IPR protection and rules for enforcement) upon accession.
- **Fully open the banking system** to foreign financial institutions within five years.
- **Allow joint ventures in insurance and telecommunications** sectors (with various degrees of foreign ownership allowed).

According to USTR, after joining the WTO, China began to implement economic reforms that facilitated its transition toward a market economy and increased its openness to trade and foreign direct investment (FDI). China also generally implemented its tariff cuts on schedule. However, by 2006, U.S. officials and companies noted evidence of some trends toward a more restrictive trade regime and more state intervention in the economy.[69] In particular, observers voiced concern about various Chinese industrial policies, such as those that foster indigenous innovation based on forced technology transfer, domestic subsidies, and IP theft. Some stakeholders have expressed concerns over China's mixed record of implementing certain WTO obligations and that in some cases, China appeared to be abiding by the letter but not the "spirit" of the WTO.[70]

The United States and other WTO members have used dispute settlement procedures on a number of occasions to address China's alleged noncompliance with certain WTO commitments. As a respondent, China accounts for about 12% of total WTO disputes since 2001. The United States has brought 23 dispute cases against China at the WTO on issues, including IPR protection, subsidies, and discriminatory industrial policies, and has largely prevailed in most cases. Though some issues remain contested, China has largely complied with most WTO rulings.[71] China has

[67] For more detail on the terms, see CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison.

[68] Adapted from CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison.

[69] See USTR, *2016 Report to Congress on China's WTO Compliance,* January 2017, and the annual USTR *National Trade Estimate Reports* for specific examples.

[70] For example, see Written testimony by the U.S.-China Business Council, "China's Implementation of its World Trade Organization Commitments," Submitted in response to the Office of the US Trade Representative's Request for Comments and Notice of Public Hearing Concerning China's Compliance with WTO Commitments, September 21, 2016; and Atkinson et al., *Stopping China's Mercantilism: A Doctrine of Constructive, Alliance-Backed Confrontation*, Information Technology and Innovation Foundation, March 16, 2017.

[71] James Bacchus, Simon Lester, and Huan Zhu, "Disciplining China at the WTO," CATO Institute, *Policy Analysis* No. 856, November 15, 2018.

also increasingly used dispute settlement to confront what it views as discriminatory measures; to date, it has brought 15 cases against the United States (as of November 2018).

More broadly, the Trump Administration has questioned whether WTO rules are sufficient to address the challenges that China's economy presents. USTR Robert Lighthizer expressed this view in remarks in September 2017: "The sheer scale of their coordinated efforts to develop their economy, to subsidize, to create national champions, to force technology transfer, and to distort markets in China and throughout the world is a threat to the world trading system that is unprecedented. Unfortunately, the World Trade Organization is not equipped to deal with this problem."[72] In its latest report to Congress on China's WTO compliance, USTR stated:[73]

> While some problematic policies and practices being pursued by the Chinese government have been found by WTO panels or the Appellate Body to run afoul of China's WTO obligations, many of the most troubling ones are not directly disciplined by WTO rules or the additional commitments that China made in its Protocol of Accession.

Another related concern some have is whether China claims it is a "developing country" under the WTO. Through developing country status, which countries self-designate, countries are entitled to certain rights under special and differential (SDT) treatment, among other provisions in WTO agreements (see "Treatment of Developing Countries" and **text box**). USTR has claimed that "China persists in claiming to be a 'developing Member'" in future negotiations at the WTO.[74] While it is unclear what SDT provisions China has sought in ongoing negotiations, China is a part of the coalition group of Asian developing members at the WTO and has claimed to be a developing country in various fora.[75] Chinese officials have asserted that despite being the world's second largest economy, China remains a developing country, due to its relatively low GDP per capita and other economic challenges.[76]

Concerns over China's trade actions have led the Trump Administration to increase the use of unilateral mechanisms outside the WTO that in its view more effectively address Chinese "unfair trade practices;" the recent Section 301 investigation of Chinese IPR and technology transfer practices and resulting imposition of tariffs is evidence of this strategy.[77] Prior to the establishment of the WTO, the United States resorted to Section 301 relatively frequently, in particular due to concerns that the GATT lacked an effective dispute settlement system.[78] When the U.S. joined the WTO in 1995, it agreed to use the dispute settlement mechanism rather than

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[72] "U.S. Trade Policy Priorities: Robert Lighthizer, United States Trade Representative," September 18, 2017, Center for Strategic and International Studies, https://www.csis.org/events/us-trade-policy-priorities-robert-lighthizer-united-states-trade-representative.

[73] USTR, *2017 Report to Congress on China's WTO Compliance*, January 2018.

[74] "U.S. Statement at the Trade Policy Review of the People's Republic of China," Statement as delivered by Ambassador Dennis C. Shea on Behalf of the United States of America, July 11, 2018, Geneva.

[75] In its June 2018 white paper "China and the World Trade Organization," which reflects on its compliance with WTO obligations and support for the multilateral trading system, China called itself the "largest developing country in the world." See http://www.xinhuanet.com/english/2018-06/28/c_137286993.htm.

[76] "China remains largest developing country: economist," *Xinhua*, April 15, 2018. As per the World Bank, China is considered a developed country, though it is often distinguished as an "emerging market." However, based on World Bank classifications of countries by income groupings, using gross national income (GNI) per capita, China is considered an upper-middle income economy. See World Bank, https//www.worldbank.org/en/country/china/overview, and https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups.

[77] See CRS In Focus IF10708, *Enforcing U.S. Trade Laws: Section 301 and China*, by Wayne M. Morrison.

[78] Chad P. Bown, "Rogue 301: Trump to Dust Off Another Outdated US Trade Laws," Peterson Institute for International Economics, August 3, 2017, https://piie.com/blogs/trade-investment-policy-watch/rogue-301-trump-dust-another-outdated-us-trade-law.

act unilaterally; many analysts contend that the U.S. has violated its WTO obligations by imposing tariffs against China under Section 301. The United States also initiated a WTO dispute settlement case against China's "discriminatory technology licensing" in March 2018. Subsequently, China filed its own complaints at the WTO over U.S. tariff actions.

The United States has pursued cooperation to some extent with other countries with similar concerns over certain Chinese trade practices and the need to clarify and improve WTO rules on industrial subsidies and SOEs in particular.[79] At the WTO Ministerial meeting in December 2017, USTR Lighthizer, the European Commissioner for Trade Cecelia Malmström, and Japan's Minister of the Economy, Trade and Industry Hiroshige Seko, issued a joint statement in which they agreed to cooperate on issues related to government-supported excess capacity, unfair competitive conditions caused by market-distorting subsidies and SOEs, forced technology transfer, and local content requirements and practices.[80] Observers believe that China, while not specifically named, is the intended target of the coordinated action. The three officials continued talks in 2018 and issued a scoping paper on stronger rules on industrial subsidies, as well as joint statements on technology transfer and "market-oriented conditions."[81] Some experts have questioned whether recent U.S. tariff actions might undermine efforts to coordinate further action to address these challenges (see "Selected Challenges and Issues for Congress").

Another pending dispute involving China could have significant implications for the treatment of China's economy under WTO rules, in particular debate over the terms of China's "nonmarket economy" (NME) status under its WTO accession protocol.[82] Under its accession, China agreed to allow other WTO members to continue to use alternative methodologies, such as surrogate countries, for assessing prices and costs on products subject to antidumping measures. This concession was a result of WTO members' concerns that distortions in the Chinese economy caused by government intervention result in Chinese prices that do not reflect market forces, making them poorly suited to determining dumping margins. China contends that language in its WTO accession protocol requires all WTO members to terminate their use of the alternative methodology by December 11, 2016, including the United States, which has classified China as a NME for trade remedy cases since 1981. The NME distinction is important to China because it has often resulted in higher antidumping margins on Chinese exports; moreover, a significant share of Chinese exports is subject to trade remedies, namely AD duties.[83] The United States and the EU have argued that the WTO language is vague and did not automatically obligate them to extend market economy status (MES) to China because it is still not a market economy.[84]

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[79] Some experts suggest that the United States should pursue a comprehensive, multilateral case at the WTO with a broad coalition of countries sharing concerns about certain Chinese practices that either violate one or more specific WTO commitments or that "nullify or impair" a benefit provided to WTO members (known as a non-violation claim under Article XXIII of the GATT). See U.S.-China Economic and Security Review Commission, *Hearing on U.S. Tools to Address Chinese Market Distortions*, written testimony of Jennifer Hillman, June 8, 2018.

[80] USTR, "Joint Statement by the United States, European Union and Japan at MC11," December 11, 2017.

[81] USTR, "Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union," press release, May 2018.

[82] Section 301 through 310 of the Trade Act of 1974, commonly called "Section 301," is one of the principal statutory means by which the United States addresses "unfair" foreign trade barriers to U.S. exports and enforces U.S. rights under trade agreements. Section 301 applies to foreign acts, policies, and practices that USTR determines either violates, or is inconsistent with, a trade agreement; or is "unjustifiable" and burdens or restricts U.S. trade. For more detail, see CRS In Focus IF10385, *China's Status as a Nonmarket Economy (NME)*, by Wayne M. Morrison.

[83] Chad P. Bown, "Should the United States Recognize China as a Market Economy?" Peterson Institute for International Economics, December 2016.

[84] The expectation back in 2001 was that China would transition to a market economy within 15 years.

On December 12, 2016, China requested consultations under WTO dispute settlement with the United States and EU over the failure to grant China MES, and the cases are now pending. In April 2017, a panel was established in the EU case, and in November 2017, the United States formally submitted arguments as a third party in support of the EU. The panel said it expected to issue its final report during the second quarter of 2019.[85]

Current Status and Ongoing Negotiations

Buenos Aires Ministerial 2017

The 11th WTO Ministerial Conference took place December 10-13, 2017, in Buenos Aires, Argentina. The Ministerial generally convenes every two years to make decisions and announce progress on multilateral trade agreements. After countries were unable to complete the Doha Round (see **text box**), many questioned what could effectively be achieved in 2017. Members have made some progress in recent years, reaching the Trade Facilitation Agreement in 2013, followed by a small package of deals in 2015 concerning agriculture and rules for LDCs. Still, they remain sharply divided over how to prioritize both unresolved and new issues on the agenda, and, more fundamentally, how to conduct negotiations to better facilitate successful outcomes.

WTO Director-General Azevêdo had tempered expectations for major negotiated outcomes or announcements at the 11th Ministerial, acknowledging that "members' positions continue to diverge significantly on the substance issues."[86] These differences were perhaps most apparent by the inability of WTO members to reach consensus over a draft Ministerial Declaration, largely due to staunch disagreements over including references to the mandate of the Doha Round (see **text box**).[87] Instead the Ministerial became primarily an opportunity for members to take stock of ongoing talks and further define priority work areas.

WTO members had worked intensively to build consensus over proposals in several areas, including reducing fisheries subsidies, a permanent solution to public stockholding for food security, domestic services regulations, and e-commerce. Some members pushed for new initiatives in areas such as investment facilitation; others like India advocated for a greater focus on trade facilitation in services.[88] The U.S. proposal to improve overall transparency at the WTO, with penalties for countries that fail to comply with notification requirements, did not garner enough support to be discussed extensively at the Ministerial.[89]

The 11th Ministerial did not result in major breakthroughs. WTO members committed to intensify fisheries subsidies negotiations, "with a view to adopting" an agreement by the next Ministerial; the United States has supported these efforts. A joint statement was issued by 60 members in support of advancing multilateral negotiations on domestic regulations in services. Subsets of

[85] WTO, "DS516: European Union – Measures Related to Price Comparison Methodologies," https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds516_e.htm.

[86] WTO, "DG Azevêdo details process for MC11 as preparations enter final stages," November 28, 2017, https://www.wto.org/english/news_e/spra_e/spra201_e.htm.

[87] "MC11 expected to end without Ministerial declaration as U.S., India clash over language on development," *Inside U.S. Trade*, December 13, 2017.

[88] Communication from India, "Possible Elements of a Trade Facilitation in Services Agreement," WTO S/WPDR/W/57, November 14, 2016.

[89] The proposal proved controversial for several members. See WTO, "Goods Council discusses US proposal to enhance transparency," November 10, 2017, https://www.wto.org/english/news_e/news17_e/good_16nov17_e.htm.

WTO members also issued statements committing to new work programs or open-ended talks for interested parties to potentially conclude plurilateral agreements in areas, including:[90]

- **E-commerce**: among 71 WTO members (covering 77% of global trade);
- **Investment facilitation**: among 70 WTO members (covering 73% of global trade and 66% of inward FDI); and
- **Micro, small and medium-sized enterprises (MSMEs)**: among 87 WTO members (covering 78% of global trade).

Of these, the United States signed on to the declaration in support of e-commerce.

The lack of concrete multilateral outcomes at the 11th Ministerial was a reminder of the continued resistance of some countries to a new agenda outside of the original 2001 Doha mandate. In the view of EU Trade Commissioner Malmström, the Ministerial "laid bare the deficiencies of the negotiating function at the WTO" and that "members are systematically being blocked from addressing the pressing realities of global trade." Malmström blamed the lack of progress on "procedural excuses and vetoes" and "cynical hostage taking."[91] Some developing country members, including India, attempted to block progress in a range of areas—including the renewal of the decades-old moratorium on e-commerce customs duties—absent more progress on Doha issues such as agricultural stockholding for food security. Such "hostage-taking" tactics, widely acknowledged to have hindered progress in the Doha Round, further highlights the difficulty of achieving future consensus among all 164 members.

While the United States provided input and signaled support for select proposals, the overall perception of many was a lack of U.S. leadership in the Ministerial discussions.[92] Consistent with the Trump Administration's "America First" trade policy, the U.S. stated objective for the Ministerial was broadly to "advocate for U.S. economic and trade interests, including WTO institutional reform and market-based, fair trade policies."[93] Several observers were relieved when USTR Lighthizer acknowledged in ministerial remarks that the WTO plays an important role, even as he outlined key criticisms. The United States viewed the Ministerial outcome positively—that it signaled "the impasse at the WTO was broken" paving the way for like-minded countries to pursue new work in other areas.[94] USTR expressed U.S. support in particular for forthcoming work on e-commerce, scientific standards for agriculture, and disciplines on fisheries subsidies.

What Happened to the Doha Round

The Doha Round launched in November 2001, but after nearly two decades of negotiations, members did not achieve its agenda. In the 2015 Ministerial Declaration, WTO members acknowledged their divisions over the future of Doha and over reaffirming its continuation:

> *We recognize that many Members reaffirm the Doha Development Agenda (DDA), and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis. Other Members do not reaffirm the Doha mandates, as they*

[90] WTO, "New initiatives on electronic commerce, investment facilitation and MSMEs," December 13, 2017, https://www.wto.org/english/news_e/news17_e/minis_13dec17_e.htm.

[91] European Commission, "EU Statement at the Heads of Delegations meeting," Buenos Aires, Argentina, December 13, 2017, http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156464.pdf.

[92] "U.S. role in WTO talks unclear as others prep for Ministerial outcomes," *Inside U.S. Trade*, July 28, 2017.

[93] David Lawder and Tom Miles, "Trump's trade chief gets his chance to confront WTO nemesis," *Reuters*, December 8, 2017.

[94] USTR, "USTR Robert Lighthizer Statement on the Conclusion of the WTO Ministerial Conference," press release, December 2017.

> *believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations. We acknowledge the strong legal structure of the Organization.*
>
> Put simply, the large and diverse membership of the WTO made consensus on the broad Doha mandate difficult. At the root of the stalemate were persistent differences among the United States, EU, and developing countries on major issues including agricultural market access, subsidies, industrial tariffs and nontariff barriers, services, and trade remedies. Developing countries, including large emerging markets like China, Brazil and India, sought reduction of agricultural tariffs and subsidies by developed countries, nonreciprocal market access for manufacturing sectors, and continued protection for services sectors. In contrast, developed country members sought reciprocal trade liberalization, especially commercially meaningful market access in advanced developing countries, while retaining protection for agriculture.
>
> Procedural rigidities inherent in the WTO negotiating approach also complicated negotiations. In particular, the "single undertaking" approach, which means "nothing is agreed until everything is agreed," prevented progress in select areas where consensus might be easier to achieve. However, some experts view a big package as the best approach to securing major new trade liberalization where every member has to give and take.
>
> Countries have disagreed about how to learn best from the perceived failure of Doha, leaving the path forward unclear. In the view of former USTR Michael Froman: the "route forward is a new form of pragmatic multilateralism. Moving beyond Doha does not mean leaving its unfinished business behind. Rather, it means bringing new approaches to the table. Doha issues are too important to leave to the Doha architecture that has failed for so long." Recently, the EU, Canada, and others have put forward proposals to "modernize" the WTO.

Ongoing WTO Negotiations

While WTO members did not announce any negotiated outcomes at the 11th Ministerial meeting, several countries committed to make progress on ongoing talks, including fisheries subsidies and e-commerce. In other areas, such as agriculture and environmental goods, talks remain stalled with no clear path forward.

Agriculture

For some issues multilateral solutions arguably remain ideal, for example, disciplines on agricultural subsidies, which are widely used by developed and advanced developing countries alike. One concern is that such important, unresolved issues may founder for want of a negotiating venue. While the Doha Round largely did not achieve its comprehensive negotiating mandate to lower agricultural tariffs and subsidies, negotiations more limited in scope have continued. The 2015 Nairobi Ministerial agreed to eliminate export subsidies for agriculture, but the issue of public stockholding remains seemingly intractable. Public stockholding, also known as food security programs, are used by governments, especially in developing countries, to purchase and stockpile food to release to the public during periods of market volatility or shortage. These programs become problematic when governments purchase food at a price and quantity that effectively become trade-distorting domestic support. While no agreement was reached at Buenos Aires, some developing countries, such as India, have demanded that the issue be resolved before new issues are considered in the WTO work program.

The United States has also flagged the broader issue of notification and transparency. Under WTO agreements, members are required to notify subsidies and trade-distorting support to ensure transparency and consistency with a member's obligation. Compliance with notifications have been notoriously lax, with some countries years behind on their reporting. According to U.S. Department of Agriculture trade counsel Jason Hafemeister, these practices have consequences:

> In the absence of transparency, how are we to determine whether Members are complying with existing obligations? Moreover, only with comprehensive and current information can

> negotiators understand, discuss, and address the problems that face farmers today: high tariffs, trade distorting support, and non-tariff barriers.[95]

The United States with other countries recently issued new proposals to address these concerns—see "Transparency/Notification."

Fisheries Subsidies

As noted above, WTO members committed to negotiate disciplines related to fisheries subsidies at the 11th Ministerial with a view toward reaching an agreement by 2020. The proposals aim to meet the goals outlined in United Nations Sustainable Development Goal 14 targeting illegal, unregulated and unreported (IUU) fishing. Though multiple areas of disagreement remain, members have been negotiating on the scope of exemptions, such as for fuel subsidies. The United States reportedly seeks to minimize the level and scope of such exclusions.[96] Members are expected to move from discussions of proposals into negotiations on a consolidated draft text by early 2019.[97] The Trump Administration has voiced support for the talks, stating that it continues "to support stronger disciplines and greater transparency in the WTO with respect to fisheries subsidies."[98]

Electronic Commerce/Digital Trade

Digital trade has emerged as a major force in world trade since the Uruguay Round, creating both end products (e.g., email or social media), enabling trade in services (e.g., consulting), and facilitating goods trade through services, such as logistics and supply chain management that depend on digital data flows. While the GATS contains explicit commitments for telecommunications and financial services that underlie e-commerce, trade barriers related to digital trade, information flows and other related issues are not specifically included. The WTO Work Program on Electronic Commerce was established in 1998 to examine trade-related issues for e-commerce under existing agreements.[99] Under the work program, members agreed to continue a temporary moratorium on e-commerce customs duties, and have renewed the moratorium at each ministerial meeting. Some developing countries, however, have begun to question the moratorium, seeing it as blocking a potential government revenue stream. Progress under the work program has largely stalled as multiple members have put forward competing views on possible paths forward.

In advance of the 2017 Ministerial, various members had submitted proposals for specific work agendas in e-commerce. The U.S. submission, dated July 4, 2016, reflected many of the ideas included in the proposed Trans-Pacific Partnership (TPP), an FTA with 11 other countries in the Asia-Pacific from which the United States withdrew in January 2017.[100] The proposal may gain support from the other TPP members as they ratify a slightly modified agreement—the Comprehensive and Progressive TPP (CPTPP or TPP-11)—maintaining the digital trade provisions as negotiated by the United States. The Chinese WTO submission, on the other hand,

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[95] U.S. Department of Agriculture, Foreign Agriculture Service, "What's Next for Agriculture in the WTO?" January 5, 2018, https://www.fas.usda.gov/newsroom/what-s-next-agriculture-wto.

[96] "WTO members at odds over exemptions to fisheries subsidies measures," *Inside U.S. Trade*, May 24, 2018.

[97] "As 2020 deadline looms, WTO fisheries negotiations to move to draft texts," *Inside U.S. Trade*, November 15, 2018.

[98] USTR, *2017 Trade Policy Agenda and 2016 Annual Report*, March 2017, p.5.

[99] WTO, "Electronic Commerce," https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm.

[100] Non-paper from the United States, June 4, 2016, http://src.bna.com/gvF.

more narrowly focuses on facilitating e-commerce.[101] India has said it would not agree to any new obligations in the WTO related to e-commerce or digital trade, preferring to focus on issues identified under the original Doha mandate, including agriculture.[102] As a result, the 2017 Ministerial ended with an agreement to "endeavor to reinvigorate our work."[103]

The plurilateral effort announced at the ministerial agreeing to "initiate exploratory work on negotiations on electronic commerce issues in the WTO" may provide the best avenue to pursue an agreement within the WTO framework.[104] USTR Lighthizer noted that, "the digital economy serves as a critical engine of domestic and global economic growth, and all countries would benefit from the development of strong, market-based rules in this area. The launch of this initiative marks a significant milestone, with a large group of countries now working together to move forward in this important area within the WTO."[105] It is unclear how, or if, the plurilateral effort will overlap or build on the existing multilateral work program.

A U.S. discussion paper on the initiative outlined potential provisions, including protecting cross-border data flows, source code, and encryption technology; prohibiting discrimination, customs duties, technology transfer or localization requirements; and promoting cybersecurity and open government data.[106] The United States also included the WTO Telecommunications Reference Paper, seeking all WTO members to adopt its principles on telecommunications competition. Notably, the U.S. submission did not list privacy or consumer protection among its provisions. The provisions agreed to under the CPTPP and proposed U.S.-Mexico-Canada Agreement (USMCA) could also provide a starting point for plurilateral talks, as both agreements represent compromises between developed and developing members.

Environmental Goods Agreement (EGA)

Some countries viewed the 11th Ministerial meeting as a missed opportunity to reinvigorate the stalled EGA plurilateral negotiations. The EGA negotiations, initiated in mid-2014 by 14 WTO members including the United States and China, seek to liberalize trade in environmental goods through tariff liberalization. Current EGA members represent 86% of global trade in covered environmental goods. Like the ITA, the EGA would be an open plurilateral agreement so that the benefits achieved through negotiations would be extended on an MFN basis to all WTO members. Despite 18 rounds of negotiations, members were unable to conclude the agreement at the December 2016 General Council meeting, and talks have since stalled. Most parties blamed China for the lack of progress, as it rejected the list of products to be included and requested several lengthy tariff phaseout periods which other countries refused to accept. The EGA's future now remains uncertain—while several countries have expressed support for resuming the talks, the Trump Administration has not put forward a public position on the agreement.[107]

[101] Communication from the People's Republic of China, November 16, 2016, http://src.bna.com/jVC.

[102] Nayanima Basu, "India Not Ready to Discuss E-Commerce at WTO Ministerial," *Bloomberg BNA,* November 11, 2017.

[103] WTO Work Programme on Electronic Commerce, "Draft Ministerial Decision," December 13, 2017.

[104] "Joint Statement on Electronic Commerce," December 13, 2017, https://ustr.gov/sites/default/files/files/Press/Releases/Joint%20Statement%20on%20Electronic%20Commerce.pdf.

[105] USTR, "USTR Robert Lighthizer on the Joint Statement on Electronic Commerce," December 2017, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/ustr-robert-lighthizer-joint.

[106] United States, "Joint Statement on Electronic Commerce Initiative," WTO JOB/GC/178, April 12, 2018.

[107] "U.S. remains silent as WTO members look for ways to resume EGA talks," *Inside U.S. Trade,* June 22, 2017.

Policy Issues and Future Direction

The inability of WTO members to conclude a comprehensive agreement during the Doha Round raised new questions about the WTO's future direction. Many intractable issues from Doha remain unresolved, and members have yet to reach consensus on a way forward. Persistent differences about the extent and balance of trade liberalization continue to stymie progress, as evidenced by the outcomes of recent ministerial meetings. Further, members remain divided over adopting new issues on the agenda, amid concerns that the WTO could lose relevance if its rules are not updated to reflect the modern global economy. Some WTO members seek to incorporate new issues that pose challenges to the trading system, such as digital trade, competition with SOEs, global supply chains, and the relationship between trade and environment issues.

These divisions have called into question the viability of the "single undertaking," or one-package approach in future multilateral negotiations and suggest broader need for institutional reform if the WTO is to remain a relevant negotiating body. Moreover, the consistent practice of some countries like India to block discussion of new issues serves as a reminder of the power of a single member to halt progress in the WTO's consensus-based system.

As a result of slow progress at the WTO, countries have increasingly turned to other venues to advance trade liberalization and rules, namely plurilateral agreements and preferential FTAs outside the WTO. Plurilaterals have been seen as having the potential to resurrect the WTO's relevance as a negotiating body, but have also been seen as possibly undermining multilateralism if the agreements are not extended to all WTO members on an MFN basis. Regional trade agreements have also been seen as potential laboratories for new rules. How these negotiations and agreements will ultimately affect the WTO's status as the preeminent global trade institution is widely debated. In addition, an open question is whether U.S. leadership within these initiatives will continue under the Trump Administration.

More recently, concerns for some have been mounting about further strains on the multilateral system, due to the growing use of trade protectionist policies by both developed and developing countries, the recent U.S. tariff actions and counterretaliation by other countries, and the escalating trade disputes between major economies. Many countries are questioning whether the WTO is equipped to effectively handle the challenges of emerging markets, as well as the deepening trade tensions. Some experts view the system as facing a potential crisis, while others remain optimistic that the current state of affairs could spur renewed focus on reforms of the system. Certain WTO members, like the EU and Canada, have begun to explore some areas for reform (see below).

Negotiating Approaches

Plurilateral Agreements

In contrast to the consensus-based agreements of the WTO, some members, including the United States, point to the progress made in sectoral or plurilateral settings as the way forward for the institution.[108] By assembling coalitions of interested parties, negotiators may more easily and quickly achieve trade liberalizing objectives, as shown by the ITA. Sectoral agreements are viewed as one way to pursue new agreements and extend WTO disciplines and commitments in new areas, including for example, U.S. trade priorities in digital trade and SOEs. The

[108] Following the conclusion of the ministerial, on December 13, 2017, the official USTR twitter account proclaimed that "the new direction of the WTO is set: improving trade through sectoral agreements by like-minded countries."

commitments by some WTO members to pursue talks in e-commerce, investment facilitation, and SMEs could plant the seeds for future plurilaterals.

Plurilateral negotiations, however still involve resolving divisions among developed and advanced developing countries. Members were able ultimately to overcome their differences in the ITA negotiation, but thus far have been unable to reach consensus in the EGA. At the same time, the participation of developing and emerging market economies, like China and India is critical to achieving agreements that cover a meaningful share of global trade. There is also a concern that plurilateral agreements not applied on an MFN basis could lead nonparticipating countries to become marginalized from the trading system and face new trade restrictions. To attract a critical mass of participants and lower barriers for developing countries and LDCs who may be hesitant to agree to ambitious commitments, agreements could allow flexibility in implementation timeframes and provide additional assistance, as in the TFA.

Some experts question whether potential waning U.S. leadership in plurilateral and multilateral trade negotiations might slow momentum toward concluding new agreements (see "Value of the Multilateral System and U.S. Leadership and Membership"). The Trump Administration has yet to clarify its position on plurilaterals pursued under the Obama Administration, such as EGA and TiSA, which have stalled, but is supporting new efforts on e-commerce/digital trade.

Preferential Free Trade Agreements

Given that the WTO allows its members to establish preferential FTAs outside the WTO that are consistent with WTO rules, many countries have formed bilateral or regional FTAs and customs areas; since 1990, the number of RTAs in force has increased seven-fold, with 290 trade agreements notified to the WTO and in force, as of the end of 2018.[109] FTAs have often provided more negotiating flexibility for countries to advance new trade liberalization and rulemaking that builds on WTO agreements; however, the agreements vary widely in terms of scope and depth. Like plurilaterals, many view comprehensive FTAs as having potential for advancing the global trade agenda. Also like plurilaterals, however FTAs can also have downsides compared to multilateral deals.

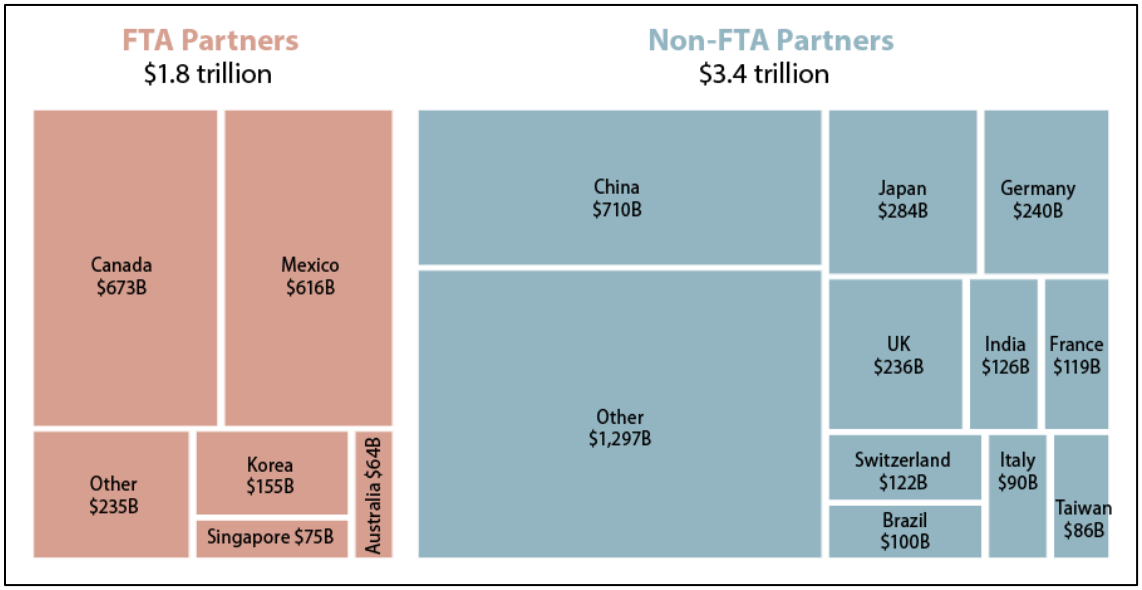
The United States currently has 14 FTAs in force with 20 countries. The Trump Administration has stated a preference for negotiating bilateral FTAs, rather than multi-party agreements. In September 2018, the United States, Mexico and Canada completed negotiations of the proposed USMCA, which revamps the North American Free Trade Agreement (NAFTA).[110] The United States and South Korea also agreed to some modifications of their bilateral FTA. In addition, USTR notified Congress of its intent to begin trade negotiations with the EU, Japan, and the UK. In general, U.S. FTAs are considered to be "WTO-plus" in that they reaffirm the WTO agreements, but also eliminate most tariff and nontariff barriers and contain rules and obligations in areas not covered by the WTO. For example, most U.S. FTAs include access to services markets beyond what is contained in the GATS or, more recently, digital trade obligations.

While U.S. FTAs cover some major trading partners, the majority of U.S. trade, including with significant trade partners such as China, the EU, and Japan, continue to rely solely on the terms of market access and rulemaking in WTO agreements. In 2017, the United States traded $3.4 trillion with non-FTA partners, compared to $1.8 trillion with its FTA partners (**Figure 8**).

[109] WTO RTA database, https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx.

[110] CRS In Focus IF10997, *Proposed U.S.-Mexico-Canada (USMCA) Trade Agreement*, by Ian F. Fergusson and M. Angeles Villarreal.

Figure 8. U.S. Trade in the WTO



Source: Data from the Census Bureau and Bureau of Economic Analysis. Figure created by CRS.

Notes: Includes exports and imports of goods and services in 2017. U.S. trade with non-FTA partners is covered under WTO rules.

More recently, groups of countries have also been pursuing so-called "mega-regional" trade agreements that cover significant shares of global trade. These include the CPTPP signed in March 2018 between 11 countries in the Asia-Pacific to replace the TPP, ongoing negotiations over the Regional Comprehensive Economic Partnership (RCEP) between the Association of Southeast Asian Nations (ASEAN) and six of its FTA partners including China, and the Pacific Alliance signed in June 2012 among Chile, Colombia, Mexico, and Peru. Negotiations on the proposed Transatlantic Trade and Investment Partnership (T-TIP) between the United States and EU stalled, and though new U.S.-EU trade talks are to resume, their scope remains unclear.[111] Such agreements could potentially consolidate trade rules across regions and to a varying extent address new issues not covered by the WTO.

There has been wide debate regarding the relationship of preferential FTAs to the WTO and multilateral trading system.[112] Some argue that crafting new rules through mega-regionals could undermine the trading system, create competing regional trade blocs, lead to trade diversion, and marginalize countries not participating in the initiatives.[113] On the other hand, some view such agreements as potentially spurring new momentum at the global level. WTO DG Azevêdo has supported the latter sentiment, expressing that "RTAs [regional trade agreements] are blocks which can help build the edifice of global rules and liberalization."[114] Many analysts have viewed

[111] "USTR to begin consultations with Congress on Europe trade talks under TPA," *Inside U.S. Trade*, September 10, 2018. Also see CRS In Focus IF10931, *U.S.-EU Trade and Economic Issues*, by Shayerah Ilias Akhtar.

[112] For example, see World Economic Forum, *Regional Trade Agreements: Game Changers or Costly Distractions for the World Trading System*, July 2014.

[113] For more on the debate, see CRS Report R45198, *Bilateral and Regional Trade Agreements: Issues for Congress*, by Brock R. Williams.

[114] WTO, "Regional trade agreements 'cannot substitute' the multilateral trading system," September 25, 2014, https://www.wto.org/english/news_e/spra_e/spra33_e.htm.

the CPTPP specifically through this lens.[115] Some experts view plurilateral agreements in particular as potential vehicles for bringing new rulemaking from RTAs into the multilateral trading system.[116] While RTAs may propagate precisely what the multilateral system—with MFN and national treatment at its underpinnings—was designed to prevent, namely trade diversion and fragmented trading blocs, some observers believe it may be the only way trade may be liberalized in the future as additional interested parties could join the agreements over time.

Future Negotiations on Selected Issues

Since the founding of the WTO, the landscape of global trade has changed dramatically. The commercial Internet, the growth of supply chains, and increasing trade in services have all contributed to the tremendous expansion of trade. However, WTO disciplines have not been modernized or expanded since 1995, aside from the TFA and the renegotiation of the ITA and the GPA. In addition to ongoing WTO efforts to negotiate new trade liberalization and rules in areas like e-commerce and digital trade, the following are selected areas of trade policy that could be subjects for future negotiations multilaterally within the WTO, or as plurilaterals. Meaningful progress in areas such as services, competition with SOEs, investment, and labor and environment issues could help increase the relevance of the WTO as a negotiating body.

Services

Since the GATS, the scope of global trade in services has increased tremendously, spurred by advances in IT and the growth of global supply chains. Yet, these advances are largely not reflected in the GATS. WTO members committed to further services negotiations (GATS Article XIX), which began in 2000 and were incorporated into the Doha Round. Further talks were spurred by the recognition among many observers that the GATS, while it extended the principles of nondiscrimination and transparency to services trade, was not thought to provide much actual liberalization, as many countries simply bound existing practices.[117] However, services negotiations during Doha also succumbed to the resistance of developing countries to open their markets in response to developed country demands, as well as dissatisfaction with other aspects of the single undertaking. Whether the stalled plurilateral TiSA talks will ultimately lead to services reform in the WTO is an open question.

Aside from increased market access, several issues are ripe for future negotiations at the WTO, such as transition from the current positive list schedule of commitments to a negative list.[118] Instead of a member declaring which services are open for competition, it would need to declare which sectors are exempted. This exercise in itself could force members to reexamine their approximately 25-year-old commitments and decide whether current market access barriers will be maintained. New services sectors such as online education and telemedicine that were not envisioned at the founding of GATS, could also be the subject of future negotiations, at least on a plurilateral basis. The issue of "servicification" of traditional goods industries—e.g., services that

[115] See CRS Report R44489, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, coordinated by Ian F. Fergusson and Brock R. Williams.

[116] For example, see Chad P. Bown, *Mega-Regional Trade Agreements and the Future of the WTO*, Council on Foreign Relations, Part of Discussion Paper Series on Global and Regional Governance, September 2016.

[117] Gary Clyde Hufbauer, "Liberalization of Services Trade," in *Trans-Pacific Partnership: An Assessment*, ed. Cathleen Cimino-Isaacs and Jeffrey J. Schott, (Washington, DC: Peterson Institute of International Economics, 2016).

[118] U.S. FTAs use a negative list approach, and the proposed TiSA negotiations use a hybrid approach to apply a negative list to national treatment commitments and a positive list for market access.

are sold with a good, such as insurance or maintenance services, or enabling services, such as distribution, transportation, marketing, or retail—has also attracted attention as the subject of possible WTO negotiations.[119] Other issues of interest to members, include services facilitation (transparency, streamlining administrative procedures, simplifying domestic regulations),[120] and emergency safeguards, envisioned in the GATS (Article X) as an issue for future negotiation.

Competition with SOEs

The United States and other members of the WTO see an increased need to discipline state-owned or state-dominated enterprises engaged in international commerce, and designated monopolies, whether through the WTO or through regional or bilateral FTAs. However, WTO rules on competition with state-owned or state-dominated enterprises are limited to state trading enterprises (STE)—enterprises, such as agricultural marketing boards, that influence the import or export of a good. GATT Article XVII requires them to act consistent with GATT commitments on nondiscrimination, to operate in accordance with commercial considerations, and abide by other GATT disciplines, such as disciplines on import and export restrictions. The transparency obligations consists of reporting requirements describing the reason and purpose of the STE, the products covered by STE, a description of its functions, and pertinent statistical information.[121]

Meanwhile, countries desiring disciplines on SOEs have turned to FTAs. The TPP and the proposed USMCA have dedicated chapters on SOEs. The USMCA includes commitments that SOEs of a party act in accordance with commercial considerations; requires parties to provide nondiscriminatory treatment to like goods or services to those provided by SOEs; and prohibits most noncommercial assistance to its SOE, among other issues. The SOE chapter in USMCA likely is aimed at countries other than the three USMCA parties, such as China, to signal their negotiating intentions going forward. While there could be a desire to multilateralize these disciplines, they likely would face objections from those members engaged in such practices.

State-support provided to SOEs, including subsidies, is a closely related issue, as it can play a major role in market-distorting behavior under current rules. The WTO ASCM covers the provision of specified subsidies granted to SOEs, including by the government or any "public body." Some members, including the United States and EU, have contested past interpretations by the WTO Appellate Body of what qualifies as a public body as too narrow, and remain concerned that a large share of Chinese and other SOEs in effect have avoided being subject to disciplines.[122] As discussed, the United States, EU and Japan, are engaged in ongoing discussions on strengthening rules on industrial subsidies and SOEs, including "how to develop effective rules to address market-distorting behavior of state enterprises and confront particularly harmful

[119] International Centre for Trade and Sustainable Development (ICTSD), "Negotiating Disciplines on Domestic Regulations in Services," June 2018, https://www.ictsd.org/themes/services-and-digital-economy/research/negotiating-disciplines-on-domestic-regulations-in.

[120] Marta Soprana, "Services facilitation in regional trade agreements and opportunities for convergence," The E15 Initiative, October 2018, http://e15initiative.org/blogs/services-facilitation-in-regional-trade-agreements-and-opportunities-for-convergence/.

[121] WTO, "Technical Information on State Trading Enterprises," https://www.wto.org/english/tratop_e/statra_e/statra_info_e.htm.

[122] European Commission, *WTO Modernization*, Concept Paper, September 2018, p. 4-5; and USTR, Statement by the U.S. to the Dispute Settlement Body, March 2011, https://ustr.gov/sites/default/files/uploads/Mar25%20Stmt%20US%20AD-CVD%20fin.pdf.

subsidy practices."[123] They commit to both "maintain effectiveness of existing WTO disciplines" and also initiate negotiations on "more effective subsidy rules" in the near future.

Investment

With limited provisions under TRIMS and GATS, rules and disciplines covering international investment are not part of WTO. More extensive protection for investors was one of the "Singapore issues" proposed at the 1996 WTO Ministerial as a topic for future negotiations, but then dropped under opposition from developing countries at the 2003 Cancun Ministerial. The OECD also attempted to liberalize investment practices and provide investor protections through a Multilateral Agreement on Investment, however, that effort was abandoned in 1998 in the face of widespread campaigns by nongovernment organizations in developed countries.

While multilateral attempts to negotiate investment disciplines have not borne fruit, countries have agreed to investment protections within bilateral investment treaties (BIT) and chapters in bilateral and regional FTAs. The U.S. "model BIT," serves as the basis for most of recent U.S. FTAs.[124] These provisions are often negotiated between developed countries and developing countries—often viewed as having less robust legal systems—that want to provide assurance that incoming FDI will be protected in the country. Developed countries themselves have begun to diverge on the use and inclusion of provisions on investor-state dispute settlement (ISDS).[125]

Incorporating investment issues more fully in the WTO would recognize that trade and investment issues are increasingly interlinked. Moreover, bringing coherence to the nearly 3,000 BITs or trade agreements with investment provisions could be a role for the WTO. In addition, agreement on investment disciplines could help to resolve the thorny issue of investment adjudication between the competing models of ISDS and an investment court, as proposed by the EU in its recent FTAs, given that disputes likely would remit to WTO dispute settlement. While it remains unclear whether developing countries would be more amenable to negotiating investment disciplines multilaterally than they were in 2003, this area could be ripe for plurilateral activity.

In the meantime, since the Ministerial some WTO members are pursuing the development of a multilateral framework on investment facilitation. The group comprised of a mix of developed and developing economies, including the EU, Canada, China, Japan, Mexico, Singapore, and Russia, but not the United States.[126]

Labor and Environment

Labor and environmental provisions were not included in the Uruguay Round agreements, largely at the insistence of developing countries.[127] Some observers maintain that this has created major

[123] "Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union," September 2018, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/joint-statement-trilateral.

[124] CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar, and CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss.

[125] The United States has pursued ISDS in most of its FTAs. In the proposed USMCA, the Trump Administration restricted recourse to ISDS in the case of Mexico and ended the application of ISDS with Canada. Recent EU agreements contain an investment court model with a standing body replacing ad hoc tribunals common to ISDS.

[126] "Joint Ministerial Statement on Investment Facilitation for Development," WT/MIN(17)/59, December 13, 2017.

[127] One labor-related provision, GATT Article XX(e) provides an exception to trade obligations for measures "relating to products of prison labor."

gaps in global trade rules and call for the WTO to address these issues.[128] Related provisions have developed and evolved within U.S. FTAs outside the WTO. Recent U.S. FTAs require partner countries to adhere to internationally recognized labor principles of the International Labor Organization (ILO) and applicable multilateral environmental agreements, and to enforce their labor or environmental laws and not to derogate from these laws to attract trade and investment. The CPTPP and proposed USMCA also contain provisions, though not identical, prohibiting the most harmful fisheries subsidies, and relating to illegal trafficking, marine species, air quality, marine litter, and sustainable forestry. More broadly, while inclusion of labor and environmental provisions within FTAs has expanded in the past decade, in general the commitments can vary widely in their scope and depth, with only some subject to dispute settlement mechanisms.[129]

While general provisions on labor and environment may be a heavy lift at this time given these differences, the WTO has undertaken an effort to discipline fisheries subsidies, which could have a beneficial environmental effect (see above). However, fisheries subsidies may be a special case, as it directly pertains to an existing trade-related agreement, the ASCM.

Proposed Institutional Reforms

Many observers believe the WTO needs to adopt reforms to continue its role as the foundation of the world trading system. In particular, its negotiating function has atrophied following the collapse of the Doha Round. Its dispute settlement mechanism, while functioning, is viewed by some as cumbersome and time consuming. And some observers, including U.S. officials, contend it has exceeded its mandate when deciding cases.

Potential changes described below address institutional and negotiation reform, as well as reforms to the dispute settlement system. Reforms concern the administration of the organization, including its procedures and practices, and attempts to address the inability of WTO members to conclude new agreements. Dispute settlement reforms attempt to improve the working of the dispute settlement system, particularly the Appellate Body (AB). Addressing concerns related to the dispute settlement system may take priority in the near term, as the WTO faces a pending crisis should the AB fall below its 3-member quorum in late 2019.

Certain WTO members have begun to explore some aspects of reform. In July 2018, the European Commission produced a discussion paper on WTO reform proposals and in September, published a revised paper on its comprehensive approach "to modernise the WTO and to make international trade rules fit for the challenges of the global economy."[130] As noted, the United States, EU, and Japan have issued scoping papers and joint statements on strengthening WTO disciplines on industrial subsidies and SOEs and cooperating on forced technology transfer.[131]

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[128] For example, in the view of Thea Lee of the Economic Policy Institute, WTO rules are currently "lopsided" and do not adequately protect the interests of workers, consumers, and the environment; in particular, the WTO should recognize that "violation of internationally recognized workers' rights is as much an unfair trade policy as the violation of patents or copyrights." Senate Foreign Relations Committee, *Hearing on Multilateral Economic Institutions and U.S. Foreign Policy*, written testimony by Thea M. Lee, November 27, 2018.

[129] The ILO reports that less than a third of trade agreements have labor-related provisions (as of 2016). Of those, nearly half are U.S., EU or Canadian agreements, while about a quarter are between South-South trading partners. See ILO, *Labour-related provisions in trade agreements*, GB.328/POL/3, September 2016.

[130] European Commission, "EU proposals on WTO modernization," WK8329/2018 INIT, July 5, 2018; and "European Commission presents comprehensive approach for the modernization of the World Trade Organization," press release, September 18, 2018, http://europa.eu/rapid/press-release_IP-18-5786_en.htm.

[131] "U.S., Japan, EU continue talks on Chinese trade practices," *Inside U.S. Trade*, August 23, 2018.

In addition, Canada organized a ministerial among a small group of "like-minded" countries interested in WTO reform, including Australia, Brazil, Chile, the EU, Japan, Kenya, Mexico, New Zealand, Norway, Singapore, South Korea, and Switzerland, held in Ottawa on October 24-2, based on a discussion draft of its proposals.[132] Canadian trade officials have said that "starting small has allowed us to address problems head-on and quickly develop proposals," while acknowledging that a larger effort must include the United States and China.[133] In a joint communiqué, the group of 13 countries emphasized that "the current situation at the WTO is no longer sustainable," and identified three areas requiring "urgent consideration," including: safeguarding and strengthening the dispute settlement system; reinvigorating the WTO's negotiating function; including how the development dimension can be best pursued in rulemaking; and strengthening the monitoring and transparency of WTO members' trade policies.[134] The group plans to meet again in January 2019 on the sidelines of the annual World Economic Forum meetings in Davos. Some Members of Congress have expressed support for these new efforts to address long-standing concerns of the United States.[135]

Institutional Issues

Consensus in Decisionmaking

While consensus in decisionmaking is a long-standing core practice at the GATT/WTO, voting on a non-consensus basis is authorized for certain activities on a one member-one vote basis. For example, interpretations of the WTO agreements and country waivers from certain provisions require a three-fourths affirmative vote for some matters, while a two-thirds affirmative vote is required for an amendment to an agreement. However, even when voting is possible, the practice of consensus decisionmaking remains the norm.

As an organization of sovereign entities, some observers believe the practice of consensus decisionmaking gives legitimacy to WTO actions. Consensus assures that actions taken are in the self-interest of all its members. Consensus also reassures small countries that their concerns must be addressed. However, the practice of consensus has often led to deadlock, especially in the Doha Round negotiations. The ability to block consensus also has perpetuated so-called "hostage taking," in which a country can block consensus over an unrelated matter.

In order to attempt to expedite institutional decisionmaking, some expert observers have proposed alternatives to the current system, such as:

- Use the voting procedures currently prescribed in the WTO agreements.

[132] "Strengthening and Modernizing the WTO," Discussion Paper, September 21, 2018, http://international.gc.ca/gac-amc/campaign-campagne/wto-omc/discussion_paper-document_travail.aspx?lang=eng.

[133] Janyce McGregor, "Global trade reform must include China, U.S., Jim Carr says after hosting WTO meeting," *CBC News*, October 25, 2018.

[134] "Joint Communiqué of the Ottawa Ministerial on WTO Reform," October 15, 2018, https://www.canada.ca/en/global-affairs/news/2018/10/joint-communique-of-the-ottawa-ministerial-on-wto-reform.html.

[135] In a statement, House Ways and Means Chairman Kevin Brady noted, "I am pleased that some of the key trading partners appear to be engaged in serious discussion of the concerns the United States has raised for many years about the need for reform...the WTO urgently needs to reform to keep the organization well-functioning and viable, including with respect to negotiations towards new agreements as well as improving dispute resolution." See "Brady Calls for Serious WTO Reform," October 25, 2018, https://waysandmeans.house.gov/brady-calls-for-serious-wto-reform/.

- Adopt a weighted voting system based on a formula, that include criteria relating to a member's gross domestic product, trade flows, population, or a combination thereof.
- Establish an executive committee composed of a combination of permanent and rotating members, or composed based on a formula as above or representatives of differing groups of countries.
- Maintain current consensus voting but require a member stating an objection to explain why it is doing so, or why it is a matter of vital national interest.[136]

The Single Undertaking Approach

The "single undertaking" method by which WTO members negotiate agreements means that during a negotiating round, all issues are up for negotiation until everything is agreed. On one hand, this method, in which nothing is agreed until everything is agreed, is suited for large, complex rounds in which rules and disciplines in many areas of trade (goods, services, agriculture, IPR, etc.) are discussed. It permits negotiation on a cross-sectoral basis, so countries can make a concession in one area of negotiation and receive a concession elsewhere. The method is intended to prevent smaller countries from being "steamrolled" by the demands of larger economies, and helps ensure that each country sees a net benefit in the resulting agreement.

On the other hand, arguably, the single undertaking has contributed to the breakdown of the negotiating function under the WTO, exemplified by the never-completed the Doha Round, as issues of importance to one country or another served to block consensus at numerous points during the round. Some members, including the EU have called for "flexible multilateralism," based on continued support for full multilateral negotiations where possible, but pursuit of plurilateral agreements on an MFN basis where multilateral consensus is not possible.[137]

Transparency/Notification

An important task of the WTO is to monitor each member's compliance with various agreements. A WTO member is required to notify the Secretariat of certain relevant domestic laws or practices so that other members can assess the consistency of WTO members' domestic laws, regulations, and actions with WTO agreements. Required notifications include measures concerning subsidies, agricultural support, quantitative restrictions, technical barriers to trade, and sanitary and phytosanitary standards.

Compliance with the WTO agreement's notification requirements, especially regarding government subsidy programs, has become a serious concern among certain members, including the United States. Many WTO members are late in submitting their required notifications or do not submit them at all. This effectively prevents other members from fully examining the policies of their trading partners.

In response, some members—notably the United States and the EU—have proposed incentives for compliance or sanctions for noncompliance with notification reporting requirements. These include:

[136] Peter Sutherland et al., *The Future of the WTO: Addressing institutional challenges in the new millennium*, World Trade Organization, 2004, p. 64.

[137] European Commission, "WTO modernization," Concept Paper, September 2018.

- A U.S. proposal to impose a series of sanctions including steps to "name and shame" an offending member, limiting the member from using certain WTO resources, and designating a member "inactive."[138]
- An EU proposal to create a rebuttable presumption that a non-notified subsidy measure is an actionable subsidy or a subsidy causing serious prejudice, thereby allowing a member to challenge the subsidy under WTO dispute settlement.
- An EU proposal to encourage counter-notifications—a challenge to the accuracy or existence of another member's notification—against members that do not voluntarily notify on their own.[139] In May and November 2018, for example, the United States launched counter-notifications of India's farm subsidy notifications regarding wheat, rice and cotton.

In November 2018, the United States, EU, Japan, Argentina and Costa Rica put forward a joint proposal that reflects several of these elements, including penalties for noncompliance.[140] It also specifies exemptions for developing countries that lack capacity and have requested assistance to help fulfill notification obligations.

Treatment of Developing Countries

A country's development status can affect the pace at which a country undertakes its WTO obligations. Given that WTO members self-designate their status, some members hold on to developing-country status even after their economies begin more to resemble their developed-country peers.[141] In addition, some of the world's largest economies, including China, India, and Brazil, may justify developing country status because their per capita income more closely resembles those of a developing country than those of developed countries. Developing country status enables a country to claim special and differential treatment (SDT) both in the context of existing obligations and in negotiations for new disciplines (see **text box**).[142] The WTO specifies however, that while the designated status is on the basis of self-selection, it is "not necessarily automatically accepted in all WTO bodies."[143]

Developed countries, including the EU and United States, have expressed frustration at this state of affairs. According to USTR Lighthizer:

> we should all be troubled that so many members appear to believe that they would be better off with exemptions to the rules. If in the opinion of a vast majority of members playing by current WTO rules makes it harder to achieve economic growth, then clearly serious reflection is needed.[144]

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[138] "Procedures to enhance transparency and strengthen notification requirements under WTO agreements," Communications from the United States, JOB/GC/148, October 30, 2017; under this proposal, inactive members would have access to most training and technical assistance, and would be referred to as such in General Council meetings.

[139] European Commission, "EU proposals on WTO modernization," WK8329/2018 INIT, July 5, 2018.

[140] "Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements," JOB/GC/204, November 1, 2018.

[141] The WTO does not specify criteria for "developing" or "developed" country status, but least-developed countries, are defined under UN criteria.

[142] For examples of types of the SDT provisions in WTO agreements, see https://www.wto.org/english/tratop_e/devel_e/teccop_e/s_and_d_eg_e.htm.

[143] "Understanding the WTO: The Organization," https://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm.

[144] USTR Robert Lighthizer, "Opening Plenary Statement," December 11, 2017, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/opening-plenary-statement-ustr.

Several suggestions have been made to address the situation, including encouraging countries to graduate from developing country status, setting quantifiable criteria for development status, targeting SDT in future agreements on a needs-driven, differential basis, and requiring full eventual implementation of all new agreements.[145] Some of these steps were implemented in the WTO Trade Facilitation Agreement.

The Meaning of "Developing Country" Status

The WTO does not apply established definitions of "developed" and "developing" countries to its members; in practice, most WTO members select their designation as "developing." In general, this status means countries are entitled to certain rights under so-called "special and differential treatment" (SDT). Broadly, these provisions include:[146]

- Measures that aim to increase trading opportunities for developing countries.
- Requirements that WTO members safeguard the interests of developing countries.
- Transitional time periods for implementing WTO agreements and commitments.
- Flexibility of commitments, action, and use of certain policy instruments.
- Technical assistance to build capacity to carry out WTO work, handle disputes, and implement technical standards.
- Specific provisions for least-developed countries.

These provisions are generally nonreciprocal, meaning that developed country members agree to unilaterally grant additional preferences or flexibilities to developing countries. According to the WTO, there are 145 SDT provisions across core WTO agreements including on goods, agriculture, services, intellectual property, government procurement, and dispute settlement.[147] Most recently, SDT provisions were also included in the Trade Facilitation Agreement. Certain ministerial declarations and General Council decisions allow for SDT as well. The Bali Ministerial in December 2013 established a monitoring mechanism to review implementation of SDT provisions.

Dispute Settlement

Supporters of the multilateral trading system consider the dispute settlement mechanism (DSM) not only a success of the system, but essential to maintain the relevance of the institution, especially while the WTO has struggled as a negotiating body. However, the DSM is facing increased pressure for reform, in part due to long-standing U.S. objections over certain rules and procedures. USTR Lighthizer contends that the WTO has become a "litigation-centered organization," which has lost its focus on negotiations.[148] While WTO members have actively used the DSM since its creation, some have also voiced concerns about various aspects, including procedural delays and compliance, and believe the current system could be reformed to be fairer and more efficient.

The Doha Round included negotiations to reform the dispute settlement system through "improvements and clarifications" to DSU rules.[149] A framework of 50 proposals was circulated

[145] European Commission, "EU proposals on WTO modernization," WK8329/2018 INIT, July 5, 2018.

[146] See WTO, "Special and differential treatment provisions," https://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm, and "Examples of provisions for differential and more favourable treatment of developing countries," https://www.wto.org/english/tratop_e/devel_e/teccop_e/s_and_d_eg_e.htm.

[147] WTO Committee on Trade and Development, *Special and Differential Treatment Provisions in WTO Agreements and Decisions*, Note by the Secretariat, WT/COMTD/W/219, September 22, 2016.

[148] USTR Robert Lighthizer, "Opening Plenary Statement," December 11, 2017.

[149] "Doha WTO Ministerial 2001: Ministerial Declaration," WT/MIN(01)/DEC/1, November 20, 2001,

in 2003 but countries were unable to reach consensus.[150] Discussions have continued beyond Doha with a primary focus on 12 issues, including third-party rights, panel composition, and remand authority of the Appellate Body. Under prior administrations, the United States proposed greater control for WTO members over the process, guidelines for the adjudicative bodies, and greater transparency, such as public access to proceedings. However, these negotiations have yet to achieve results. Some experts suggest that enhancing the capabilities and legitimacy of the dispute settlement system will likely require several changes, including improving mechanisms for oversight, narrowing the scope of and diverting sensitive issues from adjudication, improving institutional support and providing WTO members more input over certain procedures.[151]

Appellate Body (AB) Vacancies

The immediate flashpoint to the system is the refusal of the United States to consent to the appointment of new AB jurists. The United States has long-standing objections to decisions involving the AB's interpretation of certain U.S. trade remedy laws in particular—the subject of the majority of complaints brought by other WTO members against the U.S.[152] The AB consists of seven jurists appointed to four-year terms on a rolling basis, with the possibility of a one-term reappointment. Each dispute case is heard by three jurists. Like the previous administration, the Trump Administration blocked the process to appoint new jurists in 2017 and 2018, leaving only three AB jurists remaining to hear all cases. Concerns are rising that the AB, already facing a backlog of cases, could come to a halt in 2019 if additional appointments are not made.[153] Deputy DG of the WTO Alan Wolff summarized the stakes in recent remarks, noting that if the Appellate Body were to cease to function, member countries would be unable to appeal an adverse panel decision against one of their policies, and without that option, "there is a risk of every trade dispute devolving into small and not so small trade wars, consisting of retaliation and counter-retaliation."[154]

Proposed DS Reforms

The United States expounded on some of the perceived shortcomings of the dispute settlement system in its most recent trade policy agenda. Arguably the main U.S. complaint is that the system, particularly the AB, is "adding to or diminishing U.S. rights by not applying the WTO agreements as written" in the areas of subsidies, antidumping and countervailing duties, standards, and safeguards.[155] At its crux, the current controversy is over the autonomy of the AB, its deference to the DSB, and its obligations to implement the provisions of the DSU. The United States has been the most vocal in its criticisms, yet other WTO members have expressed similar concerns. While the United States has not tabled specific reforms for these complaints to the WTO membership, other members have. Two groups (G-12, G-3) submitted specific proposals

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https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm.

[150] There have been some cases of past DSU procedural reforms, such as the decisions to accept outside counsel and *amicus curiae* briefs in panel deliberations. See Craig VanGrasstek, *The History and Future of the World Trade Organization*, World Trade Organization, 2013.

[151] Robert McDougall, "Crisis in the WTO: Restoring the WTO Dispute Settlement Function," Centre for International Governance Innovation, CIGI Papers No. 194, October 2018.

[152] Adam Behsudi, "The man getting ready to take on the WTO," *Politico*, February 15, 2017.

[153] "America holds the World Trade Organisation hostage," *The Economist*, September 23, 2017.

[154] Megan Cassella, "WTO's Wolff: More trade wars coming if Appellate Body dies," *Politico*, October 16, 2018.

[155] USTR, *2018 Annual Report*, March 2018, p. 23.

for the December 2018 General Council meeting to attempt to break the impasse.[156] The G-12 submission reflects proposals of all 12 members; the G-3 submission are supplementary proposals put forward by a subset of the 12. Under each of the following issues, these proposals are raised along with other reform proposals that members or observers have put forward to address current concerns.

- *Disregard for the 90-day, DSU-mandated deadline for AB appeals.* USTR claims that the AB does not have the authority to fail to meet the deadline without consulting the DSB, maintaining that the deadline "helps ensure that the AB focuses its report on the issue on appeal."
  - The G-12 submission proposes to amend the DSU to allow parties, based on a proposal by the AB, to extend the length of time to conclude an appeal. If the parties do not agree on an extension, the AB would propose work procedures or arrangements to allow it to conclude the appeal within 90 days.[157]
  - In addition, the G-3 submission proposes to amend the DSU to increase the number of AB jurists from seven to nine to allow for greater efficiency and geographical diversity.
- *Extension of service by former AB jurists on cases continuing after their four-year terms have expired.* The United States maintains that the AB does not have the authority unilaterally to extend the terms of jurists, rather that authority lies with the DSB and that it is a matter of adherence to the DSU.[158] In actual practice, however, it may be the case that having former jurists stay on to finish an appeal may be more efficient than having a new jurist join the case.
  - The G-12 submission proposes to amend the DSU to allow outgoing AB jurists to complete the disposition of a pending appeal, provided that the hearing stage has taken place.
  - In addition, the G-3 submission proposes that outgoing AB members continue to serve until replaced, but not more than two years following expiration of their term.
  - Alternatively, some trade experts have suggested that the AB could refrain from assigning cases to jurists less than 90 days before his or her exit.[159]

During the Obama Administration, the United States blocked the reappointment of a South Korean jurist to the AB in May 2016. The United States cited what it considered "abstract discussions" in prior decisions by the jurist that went beyond the legal scope of the WTO.[160] This

[156] "Communication from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore and Mexico," WT/GC/W/752, November 26, 2018, (G-12); and "Communication from the European Union, China, and India," WT/GC/W/753, November 26, 2018, (G-3).

[157] The G-12 submission suggests examples of such working arrangements and procedures as allowing the parties to "voluntarily focus the scope of the appeal," set page limits on the parties' submissions, reduce the length of AB reports, or initially translate the decision only in the language of the appeal.

[158] USTR indicates this plank requires immediate attention, noting "the United States is resolute in its view that Members need to resolve this issue before moving on to the issue of replacing Appellate Body Members." See USTR *2018 Annual Report,* March 2018, p. 26.

[159] Tetyana Payosova, Gary Clyde Hufbauer and Jeffrey J. Schott, "The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures," Peterson Institute for International Economics, Policy Brief 18-5, March 2018.

[160] Shawn Donnan, "US accused of undermining WTO," *Financial Times,* May 30, 2016.

action has led to the concern that the prospect of non-reappointment could affect the independence of the AB system.[161] However, one former AB jurist opines that, "reappointment is an option, not a right," and calls for the WTO members to determine if a more formal process similar to initial appointment of AB jurists is needed for reappointment.[162] The G-3 submission proposes to amend the DSU to permit AB members to serve one term of longer length (6-8 years) and not allow for reappointment.

Dispute Settlement Understanding, Article 3.2

The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The members recognize that it serves to preserve the rights and obligations of members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

Other criticisms of the AB involve the extent to which it can interpret WTO agreements. The United States, in arguing for a more restrictive view of the power of the DSB, points to Article 3.2 that "recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements" (see **text box** above). However, those supporting a more expansive view of the DSU's role can point to the same article, which highlights the role "to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law." The scope and reach of the AB's activities is an enduring controversy for the organization, not limited to the Trump Administration. USTR has flagged several specific practices relating to these issues, such as:

- *Issuing advisory opinions on issues not relevant to the issue on appeal.* This point is related to the U.S. concern that the AB is engaged in "judicial overreach" by going beyond deciding the case at hand. USTR contends that the ability to issue advisory opinions or interpretations of text rests with the Ministerial Conference or General Council.
    - The G-12 proposes to amend the DSU to stipulate that the AB address each issue raised in a dispute "to the extent necessary for the resolution of the dispute."
    - Rather than issue advisory opinions, some observers have suggested that the AB also could "remand" issues of uncertainty to the standing committees of the WTO for further negotiation.[163]
    - In addition, members could also use a provision of the WTO Agreement (Article IX.2) to seek an "authoritative interpretation" of a WTO text at the General Council or Ministerial Conference, which could be adopted by a three-fourths vote.
- *De novo review of facts or domestic law in cases on appeal.* The U.S. alleges that the AB is not giving the initial panel due deference on matters of fact, including regarding the panel's interpretation of domestic law. This point derives from USTR's view that a country's domestic law should be considered as fact, and that the panel's interpretation of the domestic law is thus not reviewable by the AB.

[161] European Commission, "EU proposals on WTO modernization," (WK8329/2018 INIT), July 5, 2018, p. 16.

[162] WTO, "Farewell Speech of Appellate Body Member Ricardo Ramirez-Hernandez, May 28, 2018, https://www.wto.org/english/tratop_e/dispu_e/ricardoramirezfarwellspeech_e.htm.

[163] See, for example, Joost Pauwelyn, *Appeal without Remand: A Design Flaw in WTO Dispute Settlement and How to Fix It,* International Centre for Trade and Sustainable Development, June 2007.

  - The G-12 submission proposes to amend the DSU to clarify that the meaning of a party's domestic laws are matters of fact, and not reviewable by the AB.
- *Treatment of AB decisions as precedent.* Like the previous two concerns, this complaint speaks to the alleged overreach of the AB. USTR asserts that while AB reports can provide "valuable clarification" of covered agreements, they cannot be considered or substituted for the WTO agreements and obligations negotiated by members. However, according to a former DG of the WTO, "the precedent concept used in the WTO jurisprudence is…centrally important to the effectiveness of the WTO dispute settlement procedure goals of security and predictability."[164] A related concern some WTO members have is "gap-filling" by the DS system, where the legal precedent is unclear or ambiguous or there are no or incomplete WTO rules regarding a contested issue. Here there are diametrically opposite beliefs: a U.S. trade practitioner asks, "Is filling gaps and construing silences really not the creation of rights and obligations through disputes vs. leaving such function to negotiations by the members?"[165] The former DG, however, contends that "every juridical institution has at least some measure of gap-filling responsibility as part of its efforts to resolve ambiguity."[166] The issue of the legitimacy of precedence or gap-filling may be one of the thorniest issues of all with few solutions proposed that would potentially satisfy differences among members.
  - The G-12 submission proposes to amend the DSU to establish a yearly meeting between the AB and the DSB. This session would allow for WTO members to comment on rulings made during the year. According to the submission, it could be a venue "where concerns with regard to some Appellate Body approaches, systemic issues or trends in the jurisprudence could be voiced."[167]

It is likely that many of the issues that could arise from proposed reforms to the WTO system would require clarification of or amendment to the language of the Marrakesh Agreement or the DSU. Clarification could take the form of interpretation of the agreements. As noted above, interpretation can be undertaken by the Ministerial Conference (held every two years), General Council, or Dispute Settlement Body, with a three-fourths vote of the WTO membership. Amending the decisionmaking provisions of the Marrakesh Agreement (Article IX) or the DSU would require consensus of the membership at the Ministerial Conference (Marrakesh Agreement, Article X.8). Amendments to the Marrakesh Agreement would require a two-thirds vote of the membership. As noted above, negotiations related to reforms of the DSM occurred during the Doha Round, and despite the criticism of the DSM by the United States and others, the General Council or the DSB has not undertaken serious consideration of these reforms.

[164] Peter Sutherland et al., *The Future of the WTO: Addressing institutional challenges in the new millennium*, World Trade Organization, 2004, p. 55.

[165] Terence Stewart, "The Broken Multilateral Trade Dispute System," Asia Society Policy Institute, February 7, 2018.

[166] Sutherland, 2004, p. 52.

[167] G-12 submission, p. 2.

Selected Challenges and Issues for Congress

Value of the Multilateral System and U.S. Leadership and Membership

The United States has served as a leader in the WTO and the GATT since their creation.[168] The United States played a major role shaping GATT/WTO negotiations and rulemaking, many of which reflect U.S. laws and norms. It was a leading advocate in the Uruguay Round for expanding negotiations to include services and IPR, key sources of U.S. competitiveness, as well as binding dispute settlement to ensure new rules were enforceable. Today, many stakeholders across the United States rely on WTO rules to open markets for importing and exporting goods and services, and to defend and advance U.S. economic interests.

The Trump Administration has expressed doubt over the value of the WTO and multilateral trade negotiations to the U.S. economy. As a candidate, President Trump asserted that WTO trade deals are a "disaster" and that the United States should "renegotiate" or "pull out."[169] In late June 2018, media reports suggested that President Trump was considering withdrawing the United States from the WTO.[170] While U.S. officials have downplayed talks of withdrawal as "premature" and an "exaggeration," the President has since reportedly repeated these threats in July and August 2018.[171] The Administration has continued to express skepticism toward the value of multilateral agreements, preferring bilateral negotiations to address "unfair trading practices." In addition, "reform of the multilateral trading system" is a stated Administration trade policy objective.[172] While some U.S. frustrations with the WTO are not new and are shared by other trading partners, the Administration's overall approach has spurred new questions regarding the future of U.S. leadership of and participation in the WTO.

Most observers would maintain that the possibility of U.S. withdrawal from the WTO remains unlikely for procedural and substantive reasons. Procedurally, a withdrawal resolution would have to pass the House and Senate; it has also been debated what legal effect the resolution would have if adopted. Moreover, if the United States were to consider such a step, withdrawal would have a number of practical consequences. The United States could face economic costs, since absent WTO membership, remaining members would no longer be obligated to grant the U.S. MFN status under WTO agreements. WTO rules also restrict members' ability to use quotas, regulations, trade-related investment measures, or subsidies in ways that discriminate or disadvantage U.S. goods and services. It also requires members to respect U.S. IPR. Consequently, U.S. businesses could face significant disadvantages in other markets, as members without FTAs with the United States could raise tariffs or other trade barriers at will. Nondiscrimination, a key bedrock principle of the multilateral trading system, could be eroded, particularly given the added impetus U.S. withdrawal could give to the proliferation of FTAs.

Withdrawal could also lead to a U.S. loss of influence over how important international trade matters are decided and who writes global trade rules. In the process, economic inefficiencies and political tensions could increase. Exiting the WTO and the international trading relationships it

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[168] Drawn from CRS Insight IN10945, *The World Trade Organization (WTO): U.S. Participation at Risk?*, by Cathleen D. Cimino-Isaacs.

[169] Meet the Press, Transcript, *NBC News*, July 24, 2016.

[170] Jonathan Swan, "Scoop: Trump's private threat to upend global trade," *Axios*, June 29, 2018.

[171] "Trump threatens action on WTO after reports he wants to withdraw," *Reuters*, July 2, 2018; "Megan Henney, "Is the US leaving the WTO? Mnunchin says report is 'exaggeration,'" *FoxBusiness*, June 29, 2018; and John Micklethwait, Margaret Talev, and Jennifer Jacobs, "Trump Threatens to Pull U.S. Out of WTO If It Doesn't 'Shape Up'" *Bloomberg*, August 30, 2018.

[172] USTR, *2018 Trade Policy Agenda*, March 2018.

creates and governs could have broader policy implications, including for cooperation between the United States and allies on foreign policy issues.

Another question is whether the WTO would flounder without U.S. leadership, or whether other WTO members like the EU and China would increase their roles. As some in the United States question the value of WTO participation and leadership, other countries have begun to assert themselves as leaders and advocates for the global trading system. As noted, cooperation on WTO reform has become elevated as a major topic of discussion at recent high-level meetings, including the latest EU-China Summit held in July 2018 and at the October summit held in Canada among trade ministers from 13 WTO members.

Congressional oversight could examine the value, both economic and political, of U.S. membership and leadership in the WTO. As part of its oversight, Congress could consider, or could ask the U.S. International Trade Commission to investigate, the value of the WTO or potential impact of withdrawal from the WTO on U.S. businesses, consumers, federal agencies, laws and regulations, and foreign policy. Congress could vote on a resolution expressing support of the WTO, instructing USTR to prioritize WTO engagement, or, conversely, a resolution for disapproval of U.S. membership under the URAA in 2020.

Respect for the Rule and Credibility of the WTO

The founding of the GATT and creation of the WTO was premised on the notion that an open and rules-based multilateral trading system was necessary to avoid a return to the nationalistic interwar trade policies of the 1930s. There are real costs and benefits to the United States and other countries to uphold the rules and enforce their commitments and those of other WTO members. A liberalized, rules-based global trading system increases international competition for companies domestically, but also helps to ensure that companies and their workers have access and opportunity to compete in foreign markets with certainty of a stable, rules-based system. A framework for resolving disputes that inevitably arise from repeated commercial interactions may also help ensure such trade frictions do not spill over into broader international relations.

However, certain actions by the Trump Administration and other countries have raised questions about respect for the rules-based trading system, and could weaken the credibility of the WTO. In particular, recent U.S. actions to both raise tariffs against major trading partners under Section 232 and Section 301, and to potentially obstruct the functioning of the dispute settlement system by withholding approval for appointments to the AB, have prompted concerns that the United States and other countries who have retaliated to the U.S. actions may undermine the effectiveness and credibility of the institution that it helped to create.[173] Moreover, the outcomes of controversial ongoing dispute cases at the WTO, initiated by several countries over U.S. tariffs, could set precedents and have serious implications for the future credibility of the global trading system. In particular, several U.S. trading partners view U.S. action as blatant protection of domestic industry and not a legitimate use of the national security exception. Some are concerned that U.S. actions may embolden other countries to protect their own industries under claims of protecting their own national security interests. Furthermore, U.S. tariff actions outside of the multilateral system's dispute settlement process may open the United States to criticism and could impede U.S. efforts to use the WTO for its own enforcement purposes.

[173] For more analysis, see CRS Report R45249, *Section 232 Investigations: Overview and Issues for Congress*, coordinated by Rachel F. Fefer and Vivian C. Jones, and CRS In Focus IF10708, *Enforcing U.S. Trade Laws: Section 301 and China*, by Wayne M. Morrison.

Respect for the rules is also weakened when any country imposes new trade restrictions and takes actions that are not in line with WTO agreements.[174] In particular, China's industrial state policies, including IPR violations and forced technology transfer practices, arguably damage the credibility of the multilateral trading system that is based on respect for the consensus-based rules. In part, the WTO's perceived inability to address certain Chinese policies led to the U.S. resorting to Section 301 actions. Other countries' pursuit of industrial policy or imposition of discriminatory measures broadly in the name of national or economic security further call into question the viability of the WTO rules-based system.

U.S. Sovereignty and the WTO

Under the Trump Administration, USTR has put new emphasis on "preserving national sovereignty," within the U.S. trade policy agenda, emphasizing that any multinational system to resolve trade disputes "must not force Americans to live under new obligations to which the United States and its elected officials never agreed."[175]

The question of sovereignty is not a new one. The withdrawal procedures in the URAA responded to concerns that the WTO would infringe on U.S. sovereignty. During the congressional debate over the Uruguay Round agreements, there were some proposals to create extra review mechanisms of WTO dispute settlement, and many Members stressed that only the Congress can change U.S. laws as a result of dispute findings.

While U.S. concerns regarding alleged "judicial overreach" in WTO dispute findings are long-standing, the Trump Administration has also emphasized unilateral action outside the WTO as a means of defending U.S. interests, including national security. Some observers fear that disagreements at the WTO on issues related to national security (e.g., Section 232 tariffs) may be difficult to resolve through the existing dispute settlement procedures, given current disagreements related to the WTO AB and concerns over national sovereignty that would likely be raised if a dispute settlement panel issued a ruling relating to national security.[176] As noted previously, Article XXI of the GATT allows WTO members to take measures to protect "essential security interests." WTO members and parties to the GATT have invoked Article XXI in other trade disputes. These parties, including the United States, have often argued that each country is the sole judge of questions relating to its own security interests. However, neither the WTO members nor a WTO panel have formally interpreted the Article XXI exception to define its scope.[177] Accordingly, there is little guidance as to (1) whether a WTO panel would decide, as a threshold matter, that it had the authority to evaluate whether U.S. invocation of the exception was proper; and (2) how a panel might apply the national security exception, if invoked, in any dispute before the WTO involving the steel and aluminum tariffs.

[174] In its latest monitoring report, the WTO noted that trade-restrictive measures imposed by G20 economies "hit a new high" between mid- and late 2018, compared to the previous reporting period, and was the largest recorded since 2012. "WTO report shows sharp rise in trade-restrictive measures from G20 economies," November 27, 2018, https://www.wto.org/english/news_e/news18_e/trdev_22nov18_e.htm.

[175] USTR, *2018 Trade Policy Agenda*, March 2018, p. 3.

[176] For more information, see CRS Report R45249, *Section 232 Investigations: Overview and Issues for Congress*, coordinated by Rachel F. Fefer and Vivian C. Jones.

[177] See CRS Legal Sidebar LSB10223, *The "National Security Exception" and the World Trade Organization*, by Brandon J. Murrill.

Role of Emerging Markets

The broadened membership of the WTO over the past two decades has promoted greater integration of emerging markets such as Brazil, Russia, India, and China in the global economy, and helped ensure that developing country interests are represented on the global trade agenda. At the same time, many observers have attributed the inability of WTO members to collectively reach compromise over new rules and trade liberalization, to differing priorities for reforms and market opening among developed countries and emerging markets.

One question is to what extent emerging countries like China, with significant economic clout, will take on greater leadership; will such countries play a constructive role, advance the global trade agenda, and facilitate compromise among competing interests? China has voiced support for globalization and the multilateral trading system under which it has thrived.[178] The Chinese government's recent white paper on the WTO stated: "The multilateral trading system, with the WTO at its core, is the cornerstone of international trade and underpins the sound and orderly development of global trade. China firmly observes and upholds the WTO rules, and supports the multilateral trading system that is open, transparent, inclusive and nondiscriminatory."[179] At the same time, China has blocked further progress in certain initiatives, including the WTO plurilateral Environmental Goods Agreement and has not put forward a sufficiently robust offer on government procurement to join that WTO agreement, a long-standing promise. With its industrial policies that advantage domestic industries, some analysts contend that China often abides by the letter but not the "spirit" of WTO rules, raising questions about the country's willingness in practice to take on more leadership responsibility in the WTO context.

Another related concern voiced by the United States and other WTO members is the role of large emerging markets and the use of developing country status by those and other countries to ensure flexibility in implementing future liberalization commitments. The United States could work with other WTO members to set specific criteria to clarify the "developing" country qualification, such as using a combination of metrics including GDP, per capita income, and trade volume. Members could be given incentives to graduate from developing status; different WTO agreements could offer different incentives.

Priorities for WTO Reforms and Future Negotiations

The Administration included "reform of the multilateral trading system" in its 2018 trade policy objectives.[180] Congress may also hold oversight hearings to ask the USTR about specific plans or objectives regarding WTO reforms for the institution, dispute settlement, or in regards to updating or amending existing agreements to address trade barriers and market-distorting behaviors not sufficiently covered by current rules. Congress could also consider directing the executive branch to increase U.S. engagement in reform negotiations, by, for example, endorsing the current trilateral negotiations announced by USTR, the EU and Japan, to address nonmarket practices, mostly aimed at China. Congress may also want to review the recent report by economists from the WTO, the IMF and the World Bank that identifies potential areas for greater trade integration, and determine which are in the U.S. national economic interest.[181] Congress could further consider establishing specific or enhanced new negotiating objectives for multilateral trade

[178] See, for example, President Xi Jinping's remarks at the World Economic Forum held in Davos in January 2017, http://www.china.org.cn/node_7247529/content_40569136.htm.

[179] China's State Council Information Office, "China and the World Trade Organization," white paper, June 2018, http://english.gov.cn/archive/white_paper/2018/06/28/content_281476201898696.htm.

[180] USTR, 2018 *Trade Policy Agenda,* March 2018.

[181] IMF, World Bank, and WTO, *Reinvigorating Trade and Inclusive Growth,* September 2018.

agreement negotiations, possibly through amendment to TPA. Congress may request that USTR provide an update of ongoing plurilateral negotiations to address new issues, including digital trade—specified by Congress as a principal trade negotiating objective of TPA.

Some experts argue however, that recent U.S. unilateral tariff actions may limit other countries' interest in engaging in future WTO or other negotiations to reduce international trade barriers and craft new rules. Such concerns are amplified given the proliferation of preferential FTAs outside the context of the WTO, which have the potential for discriminatory effects on countries not participating, including the United States. Congress may consider the long-term implications of the U.S. actions on current and future trade negotiations.

Outlook

The future outlook of the multilateral trading system is the subject of growing debate, as it faces serious challenges, some long-standing and some emerging more recently. Some experts view the system as long stagnant and facing a potential crisis; others remain optimistic that the current state of affairs could spur new momentum toward reforms and alternative negotiating approaches moving forward. Despite differing views, there is a growing consensus that the status quo is no longer sustainable, and that there is urgent need to improve the system and find ground for new compromises if the WTO is to remain the cornerstone of the trading system.

Debate about the path forward continues. Recent proposals for WTO reforms and for new rules have provided the seeds for new ideas, though concrete solutions and next steps have yet to be agreed among countries involved in discussions. In the near term, several events on the horizon could provide added impetus for resolving differences and assessing progress. The dispute settlement system could cease to function by late 2019 if the terms of the three remaining AB members continue to expire without the approval of new appointments. WTO members will also face their biennial Ministerial Conference in June 2020, which could provide an opportunity for countries to announce completion of ongoing negotiations, such as on fisheries subsidies, and concrete progress in other areas of long-standing priority, including the plurilateral efforts launched during the 2017 Ministerial. Meanwhile, other ambitious trade initiatives outside the WTO are proceeding, including the CPTPP with expected entry into force in December 2018, which many analysts view as providing a possible template for future trade liberalization and rulemaking in several areas.

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