

U.S. Trade Policy, the WTO, and Reframing Trade Priorities

Remarks of

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WTO Public Forum 2022
Thursday, 29 September 2022, 11:30am CET, Room D

The official statement of the United States policy toward the WTO is contained in the President's 2022 Trade Policy Agenda. It provides that:

The Biden Administration is committed to the WTO.

Consistent with our approach to trade policy more broadly, the Biden Administration believes the WTO can—and should—be a force for good that encourages a race to the top and confronts global challenges as they arise. There is strong precedent for this approach: the Marrakesh Declaration and Agreement, on which the WTO is founded, begins with the recognition that the purpose of trade should be to raise living standards and ensure full employment, bearing in mind the objective of sustainable development, and the need to protect and preserve the environment.¹

WTO Members have been encouraged by the incoming Administration's statements on multilateralism, which stood in contrast to the prior President's statements on the subject (suggesting U.S. withdrawal from the organization). In his virtual address to the UN Security Council in May 2021, U.S. Secretary of State Antony Blinken said:

Multilateralism is still our best tool for tackling big global challenges . . . [With respect to the pandemic and climate change, he continued] . . . We built the multilateral system in part to solve big, complex problems like these, where the fates of people around the world are tied together and where no single country – no matter how powerful – can address the challenges alone.²

U.S. Trade Representative Katherine Tai announced that the United States welcomed the outcomes of the recent WTO Ministerial Conference (MC12). She welcomed the fact that the

¹ "2022 Trade Policy Agenda & 2021 Annual Report of the President of the United States on the Trade Agreements Program." Executive Office of the President of the United States. March 1, 2022. [https://ustr.gov/sites/default/files/2022%20Trade%20Policy%20Agenda%20and%202021%20Annual%20Report%20\(1\).pdf](https://ustr.gov/sites/default/files/2022%20Trade%20Policy%20Agenda%20and%202021%20Annual%20Report%20(1).pdf)

² "Secretary Antony J. Blinken Virtual Remarks at the UN Security Council Open Debate on Multilateralism." U.S. Department of State. May 7, 2021. <https://www.state.gov/secretary-antony-j-blinken-virtual-remarks-at-the-un-security-council-open-debate-on-multilateralism/>

WTO was showing signs of life, and pledged U.S. cooperation to move forward on the various subjects there agreed with respect to:

- Providing flexibility with respect to intellectual property rights for COVID-19 vaccines;
- Agreeing to disciplines on fisheries subsidies;
- Extending the moratorium on applied customs duties on electronic transmissions;
- Banning export restrictions on purchases by the World Food Program, and
- Issuing declarations on food insecurity,³ and on a Work Program on Sanitary and Phytosanitary Standards.

My caveat: Stating that “the purpose of trade should be to raise living standards and ensure full employment” (as the President does in his Trade Policy Agenda) does not imply that the Biden Administration is buying into the notion that freer trade by enhancing efficiency itself raises living standards, as Adam Smith and David Ricardo might tell us.

During the last Administration, there was a general feeling here in Geneva that the United States was less clearly committed to the multilateral trading system. The Biden Administration declared that the U.S. was back. But the current policy is not the same as it largely was during the terms of President Truman through to President Obama. Clearly at some point in recent years, there was an inflection point in U.S. trade policy. There is no broad multilateral trade liberalization initiative that appears to be in the planning stage. U.S. trade policy is to be worker-centered. According to USTR Katherine Tai’s remarks in June 2021:

We will also reengage with our friends, trading partners, and multilateral institutions to promote democracy, labor rights, and economic security. We know in the past other goals – including important national security and foreign policy concerns – have sometimes drowned out workers’ voices in trade discussions and weakened our focus on serving American workers’ best interests.⁴

The United States has not yet set out a complete American agenda for the WTO. In broad terms, however, we do know something about U.S. trade priorities. (An important cautionary note: the WTO may not be the principal venue for working on what the U.S. wishes to achieve.)

³ “Ministerial Declaration on the Emergency Response to Food Insecurity WT/MIN(22)/28 WT/L/1139.” World Trade Organization. June 22, 2022.

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/28.pdf&Open=True>

We commit to take concrete steps to facilitate trade and improve the functioning and long-term resilience of global markets for food and agriculture, including cereals, fertilizers, and other agriculture production inputs.

We resolve to ensure that any emergency measures introduced to address food security concerns shall minimize trade distortions as far as possible; be temporary, targeted, and transparent; and be notified and implemented in accordance with WTO rules. Members imposing such measures should take into account their possible impact on other Members, including developing countries, and particularly least-developed and net food-importing developing countries.

⁴ “Remarks of Ambassador Katherine Tai Outlining the Biden-Harris Administration’s “Worker-Centered Trade Policy.”” Office of the United States Trade Representative. June 9, 2021. <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/june/remarks-ambassador-katherine-tai-outlining-biden-harris-administrations-worker-centered-trade-policy>

Current U.S. Trade Priorities

1. Assuring Supply Resiliency

Events during the last few years have conspired to make securing access to essential goods a priority for most nations, including the United States. First with the onset of the pandemic, there was a shortage of personal protective equipment such as face masks, as well as mechanical ventilators. There followed shortages of medicines and vaccines. It became very evident that supplies of all sorts needed to deal with the COVID virus, including components for medical equipment, were sourced very widely in many countries. Global value chains, something that economists and businesses had a lot of experience with in recent decades, became the stuff of public and therefore domestic political attention, as factories' inventories eroded and supermarket shelves became bare.

A heightened awareness of where goods came from was forcefully demonstrated by the realization that the Russian invasion of Ukraine had serious global consequences for grains, fertilizer and critical raw materials. Overlaid on these concerns was the reliance on a few countries for semiconductors and the adverse effects on automobile production when production was inadequate to meet demand. Added to this list has been the concern over managing the vulnerabilities of other countries with respect to energy supplies due to the Russian invasion of Ukraine.

The needed response was described by some American officials and politicians as “friend-shoring”, near-shoring or on-shoring. At a minimum, resilience became a watchword that increasingly replaced efficiency and just-in-time delivery. Export restrictions in various forms by many countries became commonplace. Not all the answers were to be found in trade policy. The most concrete expressions of the new direction may be in industrial policy, for example, in fostering the domestic production of semiconductors with the CHIPS Act and favoring domestic electric vehicles for tax purposes under the Inflation Reduction Act.

2. Managing U.S.–China Economic Relations

A growing geopolitical divide between the U.S. and China has brought the onset of a degree of economic decoupling between China and the United States and its allies. Supply resilience is inseparable from a related and strong U.S. priority to assure that national security interests are served in trade with China. This sometimes-overriding concern applies to goods, services and intellectual property, as well as inward foreign investment screening. The U.S. has listed as among its concerns: economic coercion, industrial subsidies, IP theft and forced technology transfer, the commercial activities of state-owned enterprises (SOEs), the need for all WTO Members to agree that the WTO is based on its Members allowing the market to determine commercial outcomes, the claim of developing country status which to the U.S. indicates China's claiming a right to a lesser level of obligations in any future negotiation, and the availability of anti-dumping and anti-subsidy remedies).

The U.S. distancing itself from China involves seeking closer economic ties with other countries, but not “free trade agreements”. A replacement for the Trans-Pacific Partnership to

continue U.S. economic presence in Asia is the Indo-Pacific Economic Forum (IPEF). Trans-Atlantic outreach takes the form of the U.S.-EU Trade and Technology Council (TTC⁵) and possible bilateral initiatives with the United Kingdom.

3. A Worker-Centered Trade Policy

A strong priority is to be serving American workers. The most overt manifestation of this element in U.S. trade policy at the WTO is a U.S. proposal to address forced labor in the context of the fisheries subsidies negotiations. One can anticipate that worker-related proposals will continue to be suggested from time to time by the United States in other contexts, perhaps in dispute settlement reforms. The primary venues to date for raising labor issues have been outside the WTO, in bilateral labor provision enforcement actions, including under the USMCA.

4. Sustainability and Climate Change

A fourth major American trade priority is care for the environment, but this has not yet led to formal WTO proposals from the U.S. to deal with climate change. The U.S. will no doubt be an active participant in some of the structured discussions taking place on the environment. This does not imply that it will choose the WTO as a primary venue for addressing these issues.

5. Inclusiveness

One would expect that the United States will be favorably disposed toward initiatives that improve the world trading system for individuals. This could take the form of greater interest in micro, small, and medium-sized enterprises (MSMEs) within the trading system, as well as gender-related proposals.

Where more detailed U.S. priorities are currently displayed

The best indication of how U.S. trade priorities would find expression in international negotiations can be found in the early results of the Indo-Pacific Economic Framework (IPEF) talks, for which there are four pillars. The trade pillar emphasizes the digital economy, including standards promoting cross-border data flows and opposition to forced data localization. It is also to attack any discriminatory and unethical use of Artificial Intelligence. It will seek strong labor and environmental standards and corporate accountability. It will also focus on agriculture, transparency and good regulatory practices, competition policy, trade facilitation, inclusivity, and technical assistance and cooperation.⁶

One would assume that the other three IPEF pillars will have some spillovers into trade concerns, such as the establishment of the means to anticipate and prevent disruptions in supply

⁵ “Fact Sheet: U.S.-EU Trade and Technology Council Establishes Economic and Technology Policies & Initiatives.” The White House. May 16, 2022. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/fact-sheet-u-s-eu-trade-and-technology-council-establishes-economic-and-technology-policies-initiatives/>

⁶ “Ministerial Text for Trade Pillar of the Indo-Pacific Economic Framework for Prosperity.” Ministry of Foreign Affairs for Japan. July 2022. <https://www.mofa.go.jp/files/100391688.pdf>

chains, as well as measures to support renewable energy, carbon removal, energy efficiency standards, including new measures to combat methane emissions. This may be true as well of some of the fairness pillar involving tax enforcement, anti-money laundering, and anti-bribery regimes.

For the WTO, the U.S. agenda will include pressing forward to finish the fisheries subsidies negotiations, engaging in the Sanitary and Phytosanitary Measures (SPS) work program, actively engaging in the digital commerce Joint Statement Initiative, and continuing to engage in discussions to discern a path forward with respect to restoring a widely acceptable dispute settlement mechanism. The United States will continue to support and promote more circular and resource-efficient approaches in other international fora, including the WTO's Committee on Trade and Environment and the Trade and Environmental Sustainability Structured Discussions, as well as at the OECD. Along with the EU, the U.S. takes seriously and is a major participant in WTO accession negotiations.

WTO Reform

Note: My judgments on reform are colored by what I would like the multilateral trading system to be. This is a benchmark against which I would judge the participation of every WTO Member, but particularly that of the United States.

What needs to be reformed? There is one primary indication of an area for institutional, as opposed to substantive (rules) reform, and that is:

1. Dispute Settlement

The subject of dispute settlement has gotten the most attention.

On December 11, 2019, the WTO Appellate Body ceased to be able to function because the United States blocked appointments to that body which requires three sitting members to hear a case. Under the terms of the Dispute Settlement Understanding of the WTO, if appealed a decision would not be final. This meant that where there was an appeal, it came to be called "an appeal into the void". The action blocked final decisions from being recorded. Dispute settlement ceased to be binding, undermining a hallmark of the WTO as compared with the GATT years and with other international agreements. Once a determination was made, either the country that had imposed a measure that was found to be WTO-inconsistent would rectify the situation by removing the measure or amending it, or the Member would have to pay trade compensation to the winning party. If it did not do so, the non-compliant Member could face trade retaliation.

To repair the hole in the WTO dispute settlement system, the European Union joined fifteen other WTO Members to put into place their own substitute appellate mechanism. Among those adhering to this Multi-Party Interim Arrangement (MPIA), a decision would still be binding. For all others, including the United States, Japan, India, Russia and most other Members, binding dispute settlement was largely a thing of the past unless some other

arrangement was made. One example of an alternative is for the disputing parties to agree to accept a panel's decision as being final, committing to the outcome without any appeal.

During the Trump administration, discussions with the United States to find a solution were close to non-existent. The Biden administration took a different approach and at the last Ministerial Conference (MC12) in June of this year agreed to find a solution to the problem of dispute settlement "with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024".⁷

The United States is conducting consultations with a wide range of other delegations to seek to discern their Member's interests. The next stage of this process is a distillation of these views. The United States does not appear to have further elaborated its interests and viewpoints on what how it sees the problems with the current dispute settlement system as put into place in 1995. According to Katherine Tai's remarks at the opening session of MC12, "the reform process must avoid being overly prescriptive at the outset. Good ideas come from everywhere. The process must be owned by the Members."⁸ The discussions have not advanced to text-based negotiations, and it is still unclear what the ultimate outcome will be, that is, what will be acceptable to the United States and then to its trading partners. There will be a major disappointment on the part of most WTO Members if the United States does not find a way to restore binding dispute settlement. While they admit the U.S. had some justified grievances, they see the responsibility for finding a solution to lie heavily with the U.S.

The U.S. complaint about the Appellate Body (AB) was basically that it engaged in overreach, that it made law. From a U.S. perspective, in doing so, the AB narrowed the possibility for the use of trade remedies (which allow restrictions to be placed on imports of goods that had caused injury to domestic industry), and further that the AB was unable to discern adequately the presence of industrial subsidies in China. It does not appear that the current discussions have progressed to the point of addressing these concerns as enunciated by a series of U.S. administrations.

2. Improved Arrangements for Negotiating Agreements

A primary purpose of the WTO is to maintain and update the rules of the global trading system. To do so, Members must be able to reach agreements. This will remain extremely difficult if all 164 Members need to approve the addition of a new agreement to the WTO rulebook. Making rules by consensus has proved to be close to impossible. A workaround was found. Since the 11th Ministerial Conference in December 2017, like-minded countries have been able to come together to negotiate in a plurilateral setting, called Joint Statement Initiatives. In one case – domestic regulation of services – commitments have been added to participating

⁷ "MC12 Outcome Document WT/MIN(22)/24 WT/L/1135." World Trade Organization. June 22, 2022. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/24.pdf&Open=True>

⁸ "Remarks by Ambassador Katherine Tai During the Opening Session of the WTO 12th Ministerial Conference." Office of the United States Trade Representative. June 12, 2022. <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2022/june/remarks-ambassador-katherine-tai-during-opening-session-wto-12th-ministerial-conference>

Members' services schedules. However, this approach is unlikely to work for all future agreements reached at the WTO.

The Joint Statement Initiatives have proved that reaching agreements is possible, but some countries still consider them illegitimate unless all have approved the addition of JSIs to the WTO's set of agreements. Plurilateral agreements are the way forward for most international trade matters. They will either take place within the WTO or outside of it. It would be best if the trading system did not fragment further by excluding plurilateral agreements from formal inclusion within the WTO set of agreements.

There are three ways forward: (1) all WTO Members join all agreements, (2) no Member blocks reaching and implementing a plurilateral agreement within the WTO which the Member does not wish to join, and (3) the Director-General accepts on behalf of the Secretariat the administrative tasks of any plurilateral agreement consonant with the purposes of the WTO and open to all Members to join, with the expenses of doing so defrayed by the signatories to the plurilateral agreement.

The WTO should be the central place where all trade agreements are administered, including bilateral and regional agreements. There is a professional Secretariat to administer trade agreements, a centralized dispute settlement system, and committees that can assure the consistency of all agreements with the multilateral trading system.

No delegation has yet tabled a proposal with an effective way to break the deadlock over how to achieve agreements that all Members are either willing to join or at least accept as formally part of the WTO *acquis*, the WTO rulebook.

I believe that the U.S. will continue to join other like-minded Members to achieve needed results, agreement by agreement.

3. Intelligence Gathering and Dissemination

A central principle of the WTO is providing transparency. This cannot be achieved with notification requirements alone. Forensic investigation and analysis are needed. All Members would benefit from having a more in-depth understanding of the importance of trade, whether in energy, medical purpose-masks, vaccines, or critical raw materials. This can and should be accomplished with an expanded and independent WTO Secretariat.

This is not a proclaimed U.S. objective.

4. The WTO's Executive Functions

All complex human activities – whether running a corporation, a government of a country or a city, or a non-governmental association – require the performance of executive functions. The WTO's sister international economic organizations recognize this by providing for a proactive role of the World Bank President and the International Monetary Fund's Managing Director. The WTO's Director-General is accorded no similar role. She does not chair the WTO

General Council. Nor is she expected to bring forward initiatives, including negotiating proposals, for Member decision. She is not expected to engage in policy planning or strategic foresight. She is to have no independent opinion of what the agreements that the Organization administers require. This is perhaps the world's largest collective endeavor run like the smallest town, or worse.

This is not a proclaimed objective of any WTO Member at present.

U.S. Priorities for WTO Reform

The most complete statement of the Administration's priorities for reforming the WTO is contained on page 11 of the President's Annual Trade Policy Agenda:

[T]he Biden Administration supports a WTO reform agenda that reflects the priorities of our worker-centered approach – one that protects our planet, improves labor standards, and contributes to shared prosperity. Our WTO reform agenda includes restoring efficacy to the negotiating arm and promoting transparency; improving compliance with and enforcement of Members' WTO commitments; and equipping the Organization to effectively address the unfair practices of non-market economies—such as economic coercion—and global market distortions. The Biden Administration understands that these reform conversations will take time, and we are working to deliver results on achievable outcomes through the WTO's existing structure.⁹

WTO Institutional Reform – Conclusions

The various parts of the WTO's functions are interrelated. When the legislative and executive responsibilities do not function, it should not be surprising that the judicial element of the organization malfunctions.

Substantive reform of the WTO cannot be avoided. Climate change requires collective action on trade, as do future pandemics, as well as providing for food security. These are global matters, as are agricultural and industrial subsidies, environmental and social sustainability, and fighting corruption.¹⁰ It is too early to tell how far the WTO Members will be able to proceed to fundamental solutions to these problems. Most recognize the need to achieve results. I have not seen a U.S. detailed articulation of goals for these subjects.

⁹ "2022 Trade Policy Agenda & 2021 Annual Report of the President of the United States on the Trade Agreements Program." Executive Office of the President of the United States. March 1, 2022. [https://ustr.gov/sites/default/files/2022%20Trade%20Policy%20Agenda%20and%202021%20Annual%20Report%20\(1\).pdf](https://ustr.gov/sites/default/files/2022%20Trade%20Policy%20Agenda%20and%202021%20Annual%20Report%20(1).pdf).

¹⁰ For a more complete discussion of my analyses and proposals for WTO reform, see the PIIE working papers here: "Alan Wm. Wolff - Distinguished Visiting Fellow." Peterson Institute for International Economics.

<https://www.piie.com/experts/senior-research-staff/alan-wm-wolff>

My guidebook to the WTO and its reform is being published by Cambridge University Press in 2023 with the title "Revitalizing the WTO".

Conclusion – Who is Driving the Bus?

The Member-driven World Trade Organization requires someone to drive the bus to carry Members forward. For the multilateral trading system, the original leaders were the U.S. and the UK, then the U.S. and the EC, followed by a quad – the U.S., Japan, Canada, and the EU. The U.S. has always been in a leadership role. The multilateral trading system was very much an American project. As I have said, there was an inflection point reached sometime in recent years where it is no longer at all apparent that this is the case. It is unclear whether the U.S. will invest enough in a multilateral approach to continue in that necessary leadership role, or whether it will simply join others' initiatives, and be more inward looking, assuming that it can afford to address primarily domestic priorities. Will so large a part of the U.S' energies be expended on domestic initiatives to boost international competitiveness, impose export controls, and engage (somewhat as the EU did for decades) in regional and bilateral efforts, as opposed to multilateral negotiations, that it has limited positive effect on shaping the agenda in Geneva? That remains to be seen. It will not absent itself, but it is unclear whether it will be the driving force that it once was.

Will the future of American trade policy include pressing vigorously for market access abroad (in whatever form trade restrictions and trade distortions exist), proposing major multilateral initiatives? There is no sign that it is willing to do so. This is not a new phenomenon; it is just more evident now as the WTO enters its second quarter century.

It is the responsibility of leadership to create a domestic constituency supporting American participation in global trade and formulating and living by its rules. This must include continuing to have Congressional buy-in for any of the Administration's international agreements. One of the lessons of Brexit is that successive British governments did not obtain full parliamentary and public buy-in to membership in the European Union. (There is a good book on this subject, with the title "The Worm in the Apple", written by Christopher Tugendhat, former EU Commissioner and member of the British House of Lords). That mistake should not be made in the United States for its participation in international trade. It must not be forgotten that the United States Constitution's Commerce Clause vests the power of regulating commerce in Congress. Forgetting that lesson can lead to negotiated outcomes being rejected domestically. That is part of U.S. history and was the fate of the International Trade Organization (ITO), which failed to come into being, and for that matter the TPP, which did come into being, but without the United States being included.

It is important to watch what U.S. administrations do with respect to garnering domestic support for multilateralism. That will determine its scope for being effective on the world stage.

I am optimistic about the future of multilateralism and open markets. But it is a garden that requires a lot of hard work tending it. Otherwise, the jungle grows back.