

# What's at Stake for America at the Upcoming WTO Ministerial Conference (MC13) at Abu Dhabi in February 2024

Notes for remarks

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## *How MC13 is shaping up*

It is the stated view of the US, and many WTO members that MC13 should be the first of a series of “WTO reform ministerial conferences”. If I had my way, the ministers would embark upon [root and branch reform](#) of the WTO as an institution as I detailed in my book, [Revitalizing the World Trading System](#), published a few months ago by Cambridge University Press. This will not happen. Not now, in any event. More realistically, the ministers should at least make a series of credible down-payments on institutional reforms. These down-payments could include:

- **[Holding the line](#) against creating more exceptions to the current WTO disciplines.** This means, first, by obtaining renewal of the moratorium banning the imposition of customs duties on e-commerce. The ministers should avoid offsetting progress toward WTO reform with any retreat from the current rules-based liberal international trading order.
- **Making headway toward restoring the enforceability of WTO commitments through binding dispute settlement.** While there are major issues that will not be resolved by MC13, there is much that is already informally agreed on this subject that can be adopted. Members should also renew their pledge that remaining gaps in coverage will be resolved during 2024.
- **Demonstrating through action that the negotiating function of the WTO is viable.** This can be accomplished through approval by consensus of an open plurilateral agreement giving it clear legal status within the WTO body of agreements.
- **Moving toward conclusion of Fish 2** while continuing to collect ratifications of the first part of the Agreement. The last half of the Fisheries Subsidies Agreement, dealing with

input subsidies, remains to be agreed. (This is a geostrategic and environmental, not a commercial, objective of the United States.)

- **Adopting an agreed framework for international cooperation to heighten food security.** The ministers should move beyond statements of political intent to make firm commitments in the context of agricultural reforms.
- **Publishing initial elements of an e-commerce plurilateral agreement (perhaps even in a form open for signature).** There is a range of noncontroversial provisions regarding business facilitation and public interest, recognition of e-contracts, e-signatures, open government data, and the like, that could be adopted.
- **Other positive elements:**
  - Continuing to move the WTO towards **universality through the accession** of two very small countries, Timor L’Este and Comoros, foretelling progress that can be made with the conflict-affected countries of the horn of Africa;
  - Adopting a declaration **softening the effects of LDC graduation** from “least developed” status; and
  - Adopting housekeeping arrangements directed at **improving WTO committee operations.**

Accomplishing these outcomes would be widely viewed as a success and would merit US support.

*What does the US seek?*

In broad terms, the most [definitive statement of US views](#) and objectives with respect to the upcoming ministerial meeting was made on this stage two months ago by USTR Katherine Tai, in conversation with WTO Director-General Ngozi Okonjo-Iweala. Ambassador Tai cited the desirability of making major improvements in the WTO to make it substantively more relevant to key challenges “to adapt to a more challenging era marked by rapid technological change, increasing extreme climate events, vulnerable supply chains, intensifying geopolitical friction, widening inequality, and spiking food insecurity.” She saw a need for greater transparency with respect to other’s trade measures, a need to deal with nonmarket competition and industrial targeting, ending judicial overreach in dispute settlement, and avoiding according developing country status inappropriately to any major country in any future negotiation. Amb. Tai’s statement did not include any specific, current proposals.

### *An assessment of US interests at this ministerial conference*

It is my standing assumption that the world trading system that the US created and the trade agreements it has negotiated have [served America well](#) and remain in its best interests. That said, besides preserving past liberalization under the WTO's agreements, there is nothing of identifiable direct commercial advantage pending at the WTO at MC13 for the United States in terms of increased foreign market access. At the same time as there is no prospect of economic gain through liberalization, there are, nevertheless, some substantial commercial risks. As noted, renewal of the moratorium on applying customs duties on electronic transmissions is far from certain. No one knows the extent to which the world of digital commerce would be curtailed through the imposition by foreign governments of tariffs in the absence of this prohibition. At present global digital trade is growing in importance. The [World Economic Forum estimates](#) that over the next decade 70% of new value created will occur on digitally enabled platforms. The costs of lifting the moratorium in terms of lower global growth and harm to US economic interests will only become apparent later when duties are imposed.

At this ministerial conference, what had been possible in terms of gaining further assured access to the foreign digital markets largely depended upon gaining additional assurances for the free flow of data across borders, and by prohibiting forced server location and the mandatory disclosure of source code. American support for these goals was recently withdrawn. Offering no additional access for the goods and services of other nations to the US market, the US can expect to receive none abroad. There could still be marginal economic gains for the US and others in a harvest of some of the lesser elements of the e-commerce negotiations – such as rules favoring acceptance of e-contracts, use of e-signatures and mandating a more open government through digital means. But the substantive heart of the e-commerce negotiation has been put on hold by the United States, effectively deleted from the “pending decision” column in the name of “preserving policy space” column. This action incidentally preserves for autocratic as well as democratic governments the freedom to regulate and interfere with e-commerce. This US position assures continuing uncertainty for business.

A further risk is posed by a proposal to further dilute intellectual property protections for therapeutics and diagnostics during pandemics. The US position is, as far I know, undecided. There could be adverse commercial consequences for US pharmaceutical producers of adoption of the proposal. At present, however, it appears unlikely that the ministers can reach consensus on this issue.

### *A potential US role in near-term institutional reform of the WTO*

**The top two reform priorities for MC13 must be to restore the promise of the WTO to be a place where trade agreements can be negotiated, and where trade disputes are settled.** This would serve US interests. The US has not tabled major proposals to accomplish these objectives but indicates that it is open to solutions.

*a. Negotiations*

**The tyranny of the single member veto exercised irresponsibly must be ended.** The clearest path forward to restoring the negotiating function of the WTO is for the members to adopt an agreement concluded within a coalition of the willing (an open plurilateral agreement) as part of the WTO *acquis*, without being blocked by nonparticipants. At present this could take place by the members approving as part of the WTO the Agreement on Facilitation of Investment for Development (IFD). The United States is not a party to this agreement but is a party to e-commerce negotiations which could attempt to follow the same route. It is in the broader US interest favoring systemic reform to support member approval of the IFD plurilateral as a WTO agreement even if it does not plan to join this particular agreement nor to support its implementation through financial assistance.

Completion of the Fisheries Subsidies Agreement would not solve the failure at the WTO to include open plurilateral agreements as an important part of the structure of the WTO. Any success on the Fish agreement could be considered a contribution to WTO reform, extending its remit further into sustainability, but would not affect institutional reform more broadly.

An agreement that provides meaningful [food security](#) to vulnerable countries, would similarly improve the coverage WTO, but would not necessarily clear the way for other agreements, such as updating the Agreement on Agriculture with respect to market access and limits on domestic support. In addition, it is far from clear that much in the way of binding commitments and accompanying agricultural reforms can be agreed in the near future.

*b. Dispute settlement*

A down payment on dispute settlement reform, that perhaps the US could support, would be to adopt the largely procedural reforms embodied in, for example, the [Walker Principles](#), and similar issues that are the product of consultations led by Mr. Molina, Deputy Permanent Representative of Guatemala. The Biden Administration has indicated its willingness to work with other members to put into place an effective dispute settlement system and has agreed to reach a solution to the current impasse by 2024. The US would have a new system rely more on mediation and negotiation and less on adjudication.

In my view, the best way to assure that the WTO ultimately restores agreed forms of binding dispute settlement during 2024, is for the ministers to instruct the Secretariat that it does not have further authority to accept appeals to a non-existent Appellate Body. If this approach were adopted, it would be understood that Members could not bring a dispute settlement case to the WTO for resolution without agreeing in advance that a final adjudication of the rights and obligations will be accepted, and in each case stipulating how the outcome would be binding, after an appeal of a kind the litigants agree to. The warehoused cases (“appeals into the void”, to the nonexistent Appellate Body) would be required to be resolved within a short time period. This “no faux-appeal” proposal is not currently before members and is therefore unlikely to figure in the deliberations at MC13. Too many members have become

comfortable with sidelining panel findings, replicating the increasing ineffectiveness of dispute settlement during the GATT era.

The bottom line: While it is possible to make progress on resolving the dispute settlement impasse at MC13, it would be unrealistic, to assume that binding dispute settlement itself will be restored, applicable to all, absent addressing major US objections: the narrowing of the availability of trade remedies, the intrusion of a panel into a member's decision to invoke the [national security exception](#), and the inability to fully address unfair competition from state-owned enterprises. The costs for the United States of failing to contribute to progress on this issue include a further fragmented (and fractured) global trading system.

*What would a robust set of additional US negotiating objectives include?*

- **Adopting a work program for negotiations for agricultural reform.** The US is the [world's foremost exporter](#) of agricultural goods, accounting for 20% of its production. Outside of gains from access to additional markets that have occurred as a result of additional countries joining the WTO, the US has received no additional commitments of foreign market access in the WTO since its founding in 1995. The negotiations should center on market access and limiting domestic support programs. (Food security would be a separate item of importance.)
- **Preparing for negotiations for expanding the coverage of the General Agreement on Trade in Services (GATS) to business services, and beyond.** The United States is the [world's largest exporter of services](#). Services account for over 30% of its exports. Business services market is growing at a rate of [20% per year](#) and as much as 80% of the market is outside the United States (based on US share of global GDP).
- **Updating the coverage of the Information Technology Agreement (an ITA III).** Current coverage was decided last in ITA II in 2015. Despite the strong US priority to expand domestic production of semiconductors (under the CHIPS Act) and its interest in fostering the development of Artificial Intelligence (AI), additional foreign market access, important to these industries as well as other IT intensive industries, such medical equipment, updating the ITA has not been proposed by the US. Inaction permits tariffs to be placed on leading edge information technology goods.
- **Increasing transparency by providing the WTO Secretariat with a strong mandate to collect and publish current information on national trade measures.** The US in the prior administration backed penalties for failure to notify trade measures when members were obligated to do so. Under this alternative proposal, the WTO staff would proactively identify and analyze instances of government measures that distort or otherwise interfere with trade.
- **Increasing the role of trade in the economic development of members based upon need.** The emphasis would be on developing country members being assisted to

comply with the rules of the trading system through domestic reforms aided by tailored technical and financial assistance. The system would depend on each developing country identifying its own needs rather than its status.

- **Reaffirming that the WTO rules are premised upon market forces determining competitive outcomes.** The foundation of the WTO rulebook rests upon this assumption.
- **Launching negotiations to regulate the use of industrial subsidies.** While many would say that the US has triggered a subsidy competition through its IRA and CHIPS Act, these are narrow bands of intensive subsidization, tied to climate change and national security (creating greater resilience in supply chains for crucial semiconductors). There is still scope for ring-fencing areas of agreed subsidization and considering how to avoid a broader subsidies race.
- **Adopting an agreed framework for international cooperation to deal with future pandemics.** Trade is the only effective immediate response to pandemics, whether in sourcing disinfectants, personal protective equipment, medicines, hospital equipment, or vaccines. There is still no rapid response mechanism in the multilateral trading system to facilitate trade in essential goods during pandemics.
- **Resuming negotiation of an Environmental Goods and Services Agreement (EGSA).** Fostering the green transition is a major objective of the Biden Administration but is not reflected in any US proposal to revive this past WTO initiative. Facing climate change and the increasing incidence of severe weather events has yet to stimulate a return to this negotiation.
- **Having India and China join the duty-free Pharmaceutical Agreement.** Three decades ago, these two countries were not major producers of pharmaceuticals. This early WTO agreement covered 90% of world trade. It now falls far short of that goal. As the current agreement operates on a nondiscriminatory basis, these countries already have the benefits but not the obligations of the agreement. The issue does not appear to be under active consideration at the WTO.

### *US international economic leadership*

This is an era in which the largest WTO members (as measured by their share of world trade) are too often seen to be primarily seeking to advance their own economic agendas with little reference to multilateral, that is, global, efforts. None of the large players – the US, the EU, China, and certainly not India, are viewed as strong leaders in the cause of multilateralism. The evidence for this conclusion may be found in China’s use of trade as an instrument of foreign policy; the European Union’s emphasis on its extensive series of bilateral trade agreements and its unilateral (if understandable) approach to carbon reduction; and the United

States' lengthy list of unilateral actions. Current policies of all three consist of "de-risking" trade for geopolitical reasons, imposing their own measures to combat climate change, and addressing critical minerals in their own ways, rather than seeking to work together on new global rules.

The disappointment over the dearth of leadership tends to focus more on the United States than others, perhaps, because it was in many respects founder and guarantor of the world trading system. Furthermore, in recent years, it earned the distrust of other members through a series of policy choices and actions. It terminated the Appellate Body without providing a clear path forward to a solution. It failed to convince other members of the necessity for and validity of its trade actions (steel and aluminum), and more recently the granting of discriminatory subsidies (under the IRA and CHIPS Act). This record is compounded by America's internal politics, driving reliance on the use of tariffs and perhaps even more tariff increases after the next Presidential election, its withdrawal from the Trans Pacific Partnership and its not undoing that decision, and most recently its reversal on the core provisions of the e-commerce negotiations at the WTO and IPEF. Collectively these actions undermine any claim it might have to global economic leadership and the sense that the United States is a reliable negotiating partner.

America is not playing the role that it once did, providing the central impetus to making progress in traditional ways understood by WTO members. In the absence of making strong substantive proposals, its rhetoric about moving the WTO to a higher plane of service to its members is not compelling to other members.

### *History's judgment*

Is this ministerial a make-or-break meeting for the WTO? No. A ministerial meeting is not the end of the story; it is just a milestone, remembered later, perhaps, for being an inflexion point or even a milestone in making progress. It can give a boost to global trade cooperation, or it can come and go and leave no mark, although this in itself would have longer-term negative consequences both for the United States and the world trading system. Lack of US leadership, and any WTO failure to find an effective substitute can lead to a gradual degradation of the WTO and its role as the forum in which international trade cooperation takes place. This said, this is not a counsel for despair. The 2017 Ministerial Conference (MC11) was termed a failure by almost everyone at the time, but the opposite was true. It launched the joint statement initiatives, open plurilaterals, and paved the way for progress in negotiations in Geneva on many fronts. After the ministerial in 2024, if it fails to reach agreed conclusions, most of world trade will nevertheless continue to flow consistently with WTO rules. Negotiations among interested members will likely continue. Regional agreements that can be a template for multilateral cooperation will likely thrive. The relevance of the WTO to current trade will not be in question. But belief in the WTO members' ability to act collectively, as a whole, to rise to new challenges will decline.

What is at stake for the United States? The world needs a global trading system, a WTO, where the rules provide fairness to those who seek to market goods or services across borders, where transparency is assured so that trade conditions are more fully understood, where governments remain free to remedy harms from trade distorting practices, where sustainability is served, where food insecurity is remedied, where innovation and competitiveness are rewarded, where fish stocks are not destroyed by subsidies, where access to critical minerals is assured, where conflict-affected countries can better the lives of their people and find stability to underwrite peace, where future challenges to world health can be met when pandemics occur and where countries can cooperate to use trade to mitigate and adapt to climate change.

The United States accounts for about one-fifth of global economic activity. Its instincts over time have proved to serve a national interest that is positive not only for itself but for the world trading system. Its active participation in the shaping of that system is still necessary.