



## U.S. on WTO Reform: Aiming to Contain China

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*The U.S. administration demands changes in the functioning of the WTO to limit the powers of the Appellate Body and use of the developing country status, mainly by China. To achieve this, the U.S. has taken [unilateral protectionist measures](#) and aims to block the WTO dispute settlement system (DSS). On the latter issue, it may be seeking to take world trade back to the times prior to the WTO. In other areas, the U.S. wants to define the criteria for recognizing a member as a developing country.*

In 2017, the U.S. held the second-largest trade in goods and services by GDP (14.5%), after the EU. The U.S. is the largest importer of goods in the world (16.7%) and the third-largest exporter (11.2%). It also noted the highest trade deficit (including trade in services), which in 2017 amounted to €490 billion (see Table 1 below). The U.S. has the lowest average duty rate among the largest economies (3.4%) and has concluded 14 regional free-trade agreements. Nevertheless, the U.S. economy is the least dependent on international exchange of the developed economies—trade accounts for 27% of U.S. GDP compared to the OECD average of 57%).

**The Importance of the WTO for the U.S.** The development of the WTO from the General Agreement on Tariffs and Trade (GATT), due to the organisation's wider membership and scope of activities, including protection of intellectual property, is important to the U.S. China's accession to the WTO in 2001 has had enormous consequences. As a result of the unilateral opening of the U.S. market and restrictions still in place on access to the Chinese market (with lower production costs), bilateral trade has developed unsustainably. The U.S. trade deficit with China increased from \$83 billion in 2001 to \$420 billion in 2017. The fall in the prices of consumer goods in the U.S. market has happened at the cost of industrial employment. These developments became the main argument for Donald Trump's trade policy: striving to reduce the deficit through [protectionism](#) and [threats](#), including a U.S. withdrawal from the WTO.

The U.S. uses the DSS most frequently to combat subsidies and regulatory barriers it sees as illegal. The U.S. has filed 123 complaints through the WTO, although it is even more frequently a responder—153 times. The U.S. has won 86% of the cases it's initiated (not counting settlements; the average for WTO members is 84%) and 25% of those in which they were defending (compared to the 15% average for WTO members). The majority of these then went to the Appellate Body (AB). Even with this level of success, the U.S. has objected to the use of the DSS since the beginning of the WTO and even Barack Obama's administration blocked the selection of some judges to the AB. The current Trump administration has since 2017 blocked all appointments of new AB judges. If the U.S. does not change its position, in [December 2019 the AB will become paralyzed](#) as the number of judges falls below the required minimum three.

**U.S. Reservations and Proposals.** The American criticism targets the AB as overreaching its scope, going beyond verification of potential errors of the arbitration panel and creating new interpretations and rules, even in cases in which the U.S. is not a party. The U.S. is concerned this will expose it to further lawsuits. It does not accept the role of AB as a kind of supreme court reinterpreting the WTO establishing agreement and other agreements concluded in this forum against their interpretation by the member states. This has

happened in important cases involving the U.S., including one on the calculation of anti-dumping duties (so-called zeroing). The U.S. believes that the AB does not have to resolve all issues, especially when the text of the agreements is not specific.

In this light, the GATT, which preceded the WTO, was more beneficial for the U.S., because the resolution of disputes depended on the consent of both parties. If the respondent did not accept establishing an arbitration panel, no procedure was initiated. Either party could also block the publication of the final report. The WTO, though, created a much more effective system because the parties have no right to block the arbitration procedure and can only appeal to the AB. This has caused the U.S., which often imposes anti-dumping and other duties, to be a respondent in one-third of all cases brought before the WTO since it was established.

Another issue that raises U.S. objections is the use of the status of developing country by states that, due to economic development indicators, could operate in the WTO as developed countries. In a communication published in January 2019, the U.S. cited this problem as precluding any negotiations at the WTO because the results would *de facto* concern a small group of developed members, while others, including those that could be considered developed, would not be bound by them. The U.S. administration argues that since the establishment of the WTO there has been significant social, economic, and technological progress in many countries (primarily China), as well as a reduction in poverty. Therefore, in February 2019, the U.S. presented a proposal to establish criteria for a “developed country”. The U.S. would like to prevent the use of [Special and Differential Treatment \(SDT\)](#) by a state meeting at least one of the following conditions: a) members or official candidates for the OECD, b) G20 members, c) high-income countries according to the World Bank, or d) countries with a share in world merchandise trade of not less than 0.5%. In addition, other countries might not be eligible for SDT as a result of sectoral negotiations. This proposal was opposed by China, India, and others, which accuse the U.S. of creating divisions in the bloc of developing countries.

The U.S. also wants existing obligations to be fulfilled by all members, including the requirement of notification of changes in, for example, customs duties and non-tariff barriers. To strengthen transparency in trade policy, the U.S. along with the EU and 10 other WTO members proposed on 29 March allowing counter-notifications of measures adopted by other members and setting a one-year notification period (currently, the lack of notification must be confirmed by a panel). In addition, they suggest introducing sanctions on countries that do not meet the notification obligation, including a ban on nominations to chair WTO bodies or a fine paid to the organisation for a notification-support mechanism. Developing countries could count on technical assistance from the WTO secretariat.

The U.S. administration also supports “flexible multilateralism”, or sectoral liberalisation among interested members. As part of negotiations on e-commerce, the U.S. demands, among others, free flow of data (including banning transmission restrictions, data-archiving obligations on local servers, blocking the internet, or limiting access to clouds), and non-discrimination of digital products. This position is consistent with provisions that were [under negotiation in the Trans-Pacific Partnership](#) (although the U.S. later withdrew from it, Japan may be a U.S. ally on that issue).

**Conclusions and Perspectives.** The U.S. administration treats the WTO as [another field of competition with China](#). The proposed reform is primarily intended to protect developed countries from what they consider to be unfair competition and to stop the deepening imbalance in trade with the largest exporter of goods—China. The potential paralysis of arbitration through the WTO in December 2019, unilateral trade restrictions, and the reform proposals have led to U.S.–China bilateral negotiations. Although on 10 May the U.S. increased tariff pressure on China, negotiations between the trade partners may include WTO issues and the potential agreement may soften some U.S. demands for reform of the organisation.

When the DSS results in advantageous decisions for the U.S., as with the result of the arbitration in the matter of EU subsidies for Airbus, the Trump administration tends to follow the WTO rules. However, statements by U.S. Trade Representative Robert Lighthizer and inactivity in talks on DSS reform indicate that the U.S. may not stand down from the blocks on AB judges. The goal may be not to introduce changes to the current system but to try to reverse the setup to the GATT era when states could block the adoption of the report. This would be the *de facto* situation of DSS paralysis because an appeal of an arbitration panel’s decision would block further procedures. This would be more beneficial for the largest countries, including the U.S., which can use it to protect their interests regardless of the WTO arbitration. This would mean, however, wrecking the organisation’s main success as a functioning dispute-resolution system that prevents the escalation of commercial disputes. It also seems that blocking arbitration is more beneficial to the U.S. than leaving the organisation since it will not fear a negative decision from the DSS while remaining covered by the most-favoured-nation clause in relation to the other WTO members. The U.S. also will be able to influence the development of standards, including in e-commerce, as part of the WTO negotiations.

**Table 1. Summary of U.S. Trade in 2017**

	<b>Export</b>	<b>Import</b>
<b>Merchandise trade</b>	€1,368.2 billion	€2,073.7 billion
<b>Trade in services</b>	€691.2 billion	€476.3 billion
<b>Total trade</b>	€4609.4 billion	
<b>Trade balance</b>	-€490.7 billion	
<b>Share in the world merchandise trade</b>	14%	
<b>Share in the world trade in services</b>	16.4%	
<b>Share in the world trade</b>	14.5%	
<b>Share of trade in the GDP</b>	26.9%	
<b>Number of Regional Trade Agreements</b>	14	
<b>Number of complaints in DSS (complainant)</b>	123	
<b>Number of complaints in DSS (respondent)</b>	153	
<b>Number of complaints in DSS (third-party)</b>	148	
<b>Average tariff</b>	3.4%	
<b>Average tariff (MFN)</b>	3.4%	
<b>Average tariff (weighted in trade volume)</b>	2.4%	

Source: DG Trade Statistical guide, WTO.