



The Bottom Line

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U.S. POLICY HAS CRIPPLED WTO ARBITRATION PANEL

Summary

Citing criticisms, the United States has taken action to invalidate the World Trade Organization's Appellate Body, leaving no mechanism in place to hear or decide upon trade disputes between member nations.

Background

The World Trade Organization (WTO) was established in 1995, following the "Uruguay Round" of renegotiations of the General Agreement on Trade and Tariffs (GATT). The GATT was created in 1947 and intended as a temporary measure while negotiations were finalized for the International Trade Organization (ITO), a specialized agency of the United Nations (UN), which was designed to work alongside the International Monetary Fund (IMF) and World Bank as pillars of post-WWII reconstruction. The ITO never materialized because the United States failed to ratify the agreement and the GATT became the de facto organization governing international trade.

The WTO was established with six key objectives: (1) To set and enforce rules for international trade, (2) to provide a forum for negotiating and monitoring further trade liberalization, (3) to resolve trade disputes, (4) to increase the transparency for decision-making processes, (5) to cooperate with other major international economic institutions involved in global economic management, and (6) to help developing countries benefit fully from the global trading system.

By bringing greater certainty and predictability to international markets, it was thought the WTO would enhance economic welfare and reduce political tensions. The WTO seemed to offer broad coverage of trading rules, a strengthened dispute settlement mechanism, and the prospect of a forum where political disagreements over trade might regularly be hammered out. One of the rare points of agreement in global trade policy recently is that the WTO is in trouble.

Current Status

The U.S. has taken action to undermine the arbitration authority of the WTO and has threatened to withdraw completely from the agreement. Since 1995, begin and end their terms at the same time. The U.S. has been blocking members have filed more than five hundred disputes with the WTO. Each dispute is heard by a panel which consists of three of the seven Appellate Body's jurors. Jurors serve four-year terms, which are staggered so that members do not

begin and end their terms at the same time. The U.S. has been blocking appointments of new replacement jurors, and as a result, the Appellate Body no longer has the minimum three members necessary to hear disputes and issue rulings. Critics of the Appellate Body argue that rulings often overreach its mandate by reinterpreting rules without the agreement of the member states, as John Greenwald stated in a 2013 article published in the Tulane Journal of International and Comparative Law, calling it "less rigorous an exercise in the neutral application of the text of WTO agreements, and more of an exercise in arriving at results that meet the prevailing sense of 'trade policy correctness.'" Critics also hold that the organization is ill-equipped to deal with the challenge posed by the Chinese economy's blend of capitalism and state control.

While China made substantial commitments to economic reform in its accession and has largely carried them out, those commitments, negotiated between 1986 and 2001, were incomplete. They did not address every concern the U.S. and other countries had at the time, nor have they addressed every issue that has emerged since, as China has continued to grow in importance as a trading nation. In 2001, the WTO membership launched the "Doha Development Agenda"—a massive attempt to update trading rules. The participating countries spent years trying and failing to reach an agreement. Significant differences remain in countries' views of the WTO's problems and the necessary remedies. Several reform proposals have been floated by various groups of countries, only to be promptly rejected by others. Since agreement is based on consensus of all 164 members of the WTO, progress is highly unlikely any time soon. As an alternative to WTO authority, many countries have turned to bilateral free trade agreements (FTAs) or larger (multilateral) regional ones. These agreements, however, offer preferential treatments to members compared to non-members, thus leading to a fragmentation of the global trading system envisioned during the establishment of the WTO.

Impact

Criticisms have touched on three of the WTO's main functions: (1) Providing a forum for multilateral trade negotiations, (2) monitoring members' trade policies, and (3) arbitrating trade disputes. Without the rules of conduct that each member agrees to upon joining the WTO, countries are free to take unilateral action and engage in tit-for-tat trade wars without fear of repercussions from a policing body.

RESOURCES:

[What's Next for the WTO?](#) (Council on Foreign Relations)

[What's Wrong with the World Trade Organization?](#) (Forbes)