

# Will the WTO Survive without the United States?



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The rule-based multilateral trading system is in grave danger. The U.S. President Donald Trump has circumvented the WTO to impose tariffs on steel and aluminum imports, including those from America's allies. Complaining of unfair treatment, the Trump administration is blocking nominations to seats on the WTO's Appellate Body, which could leave it unable to hear cases after 2019.<sup>1</sup> Most unfortunately, the U.S. is embroiled in a trade war with China. Both sides have imposed tariffs on goods worth tens of billions of dollars and are threatening worse. Furthermore, President Trump has repeatedly suggested pulling the U.S. out of the WTO, a move that would upend the decades-old international trading order and throw world economies into chaos. Can we save the WTO?

In order to find a reasonable solution to this critical situation, we need to ask ourselves fundamental but very realistic questions, such as, can we expect the WTO to operate without the U.S.? My answer to this question

<sup>1</sup> There should be seven members in the WTO appeal body but as of September 2018 only three members are serving. Since the minimum quorum required to hear an appeal is three members, the appeal panel will cease to function properly after 2019.

is "Definitely, No." Removing the U.S. from the WTO would fundamentally undermine the legitimacy of the organization because it implies that the largest economy will no longer follow the system of trade rules created by the international community. The U.S. is still the world's single largest economy (at market exchange rates), accounting for almost 22 percent of global output and over a third of stock market capitalization. It is prominent in virtually every global market, accounting for about one-tenth of global trade flows, one-fifth of global FDI stock, and one-fifth of global energy demand.

Since the U.S. dollar is the most widely used currency in global trade and financial transactions, changes in U.S. monetary policy and investor sentiment as well as trade policy play a crucial role in driving global financing conditions and global trade flows. Hence, it is hardly realistic to envision a WTO without the U.S., nor can we deny the fact that the U.S. is not likely to be replaced with any other country for the time being, although China has rapidly expanded its economic influence on the world economy since its accession to the WTO in 2001. This implies that we are compelled to accept the U.S.' demands, at least in part, if we are to rescue the WTO because saving the WTO is the most important and urgent task in the current global trading environment. This is why recent proposals by the European Union or Canada on modernizing the WTO are evaluated as measures that reflect the U.S.' interests faithfully.

There is some rationale in the U.S.' assertions on how to reform the current WTO. In particular, its arguments on the issues of notification and transparency are very persuasive and constitute what is believed to be an irresistible proposal. In fact, in the agricultural sector, it is a mandatory duty of WTO members to report all kinds of domestic subsidies, regardless of whatever they are permitted or not, while industrial subsidies are notified to the WTO only when they are classified to be prohibited or actionable. According to the EU's proposal, more than half of the WTO members had not made any notifications as of end of March 2018. The U.S. has continuously complained about China's unfair trade practices or industrial subsidies resulting in over-supply in global markets. In this respect, a first step could consist of countering subsidy notification failures, namely by ensuring that WTO members comply with the requirements on subsidy notifications. However, we need to understand that the issue would be framed in the big picture of systemic trade distortions. Beyond a mere procedural reform of the subsidy notification system, what the U.S. wants is to bridge the gaps in multilateral rules that allow distortions such as Chinese subsidies to state-owned enterprises.

Special and differential (S&D) treatment for developing members is another issue that the U.S. has continuously requested the WTO members to deal with in the process of WTO re-

form. When it comes to the S&D issue, in fact, all developed countries, including the U.S., European Union and Japan, have continuously raised objections against excessive benefits being provided for developing countries in the Doha Round. There is still significant dissent within the WTO surrounding how the economic superpower China remains classified as a "developing country" by the WTO, thus allowing it certain S&D privileges.

It is true that the current distinction between developed and developing countries within the WTO no longer reflects the reality of the rapid economic growth in some developing countries. Clearly, there is a wide range of heterogeneity among developing countries. This lack of nuance, and its consequences with regard to the S&D treatment question, has been a major source of tensions in the WTO and an obstacle to the progress of negotiations. Developing countries, of course, should be allowed the assistance and flexibilities that they need to meet their development goals. However, change is needed in terms of ensuring that flexibilities are made available to those countries who actually need them. Graduation mechanisms with proper grace periods and assistance measures could be a reasonable solution to the S&D treatment issue.

The last issue raised by the U.S. is about the dispute settlement mechanism. The U.S. essentially criticizes the WTO's Appellate Body (AB) for not respecting Article 17.5 of the Dispute Settlement Understanding (DSU), according to which "in no case shall the proceedings exceed 90 days." The U.S. also objects to the continued participation of former AB members in cases ongoing after their term has expired, which has been an established practice under the AB's Working Procedures, though not WTO law. In other words, Washington has argued that the AB does not have the authority to deem someone who is not an AB member to be a member.

Fundamentally, the United States has been increasingly wary of the influence wielded by the AB Secretariat, which it claims has developed a jurisprudence that is openly hostile to trade defense instruments (TDI). According to the U.S., the AB is based on academic legal constructions rather than on the reality of distortions of competition caused by non-WTO compliant state subsidies.<sup>2</sup>

While the prescribed time limit for conducting an appeal process is 60 days, or 90 days for complex appeals, this has been observed only once since 2003, and the current average du-

<sup>2</sup> The AB's interpretation of the WTO subsidy agreement resolving the U.S.-China dispute over state-owned enterprises (DS379) from 2011 is the best able to illustrate the U.S.' criticism of a malfunctioning AB.

ration is almost one year. According to a Geneva trade official, several WTO members recognized the importance of having the AB meet the 90-day deadline for issuing reports. I also agree that this would speed up the process for resolving trade cases, and address the need to improve transparency in communications between the AB and dispute parties.

The rules for amending the AB's working procedures offer more flexibility than the WTO's Dispute Settlement Understanding. In order to amend the DSU, which sets the rules of the appeal, however, a consensus must be reached within the Dispute Settlement Body (DSB) and a WTO Ministerial Conference. In this perspective, it seems to me that the European and Canadian attempts to amend the DSU, aimed to compel the panels and the AB to adhere strictly to their mandate, would fail to obtain the required consensus because of strong resistance by developing countries, mainly China, India, and Brazil.

The current stalemate in the WTO system is the consequence of a dual threat: that posed by the United States to the dispute settlement mechanism and that posed by Chinese state capitalism to international trade. It is clear that simply continuing as before is not possible. Neither is there one size that fits all. We know that the WTO is not perfect, but we know it is good and we seek to make it better. If so, it is time to ask ourselves how we can make sure that the U.S. remains in the WTO framework. **KIEP**