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# Making the Most of the 2021 WTO Ministerial

What the United States Should Do



Policy recommendations for advancing world trade reforms at the 12th Ministerial Conference (MC12) of the World Trade Organization, November 30 to December 3, 2021, in Geneva, Switzerland

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*October 2021*

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# 1 Restoring US Leadership in the World Trade Organization

Jeffrey J. Schott and Alan Wm. Wolff

America's workers, farmers, and businesses need access to foreign markets and curbs on harmful foreign subsidies.

America's innovators and businesses need assurances that access to the growing world of digital commerce, the source of substantial jobs growth, will be unfettered.

America's exporters, locked in strategic competition with state-owned or supported entities, need more effective global trade rules to level the playing field at home and abroad.

There is only one place in which global trade rules are negotiated, and that is the World Trade Organization (WTO). The United States has long been a *de facto* leader of the WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT); it now needs to use the WTO to contribute to solutions to critical problems plaguing workers and industries in the United States and around the world. Inaction would hurt US economic interests and US influence in the world trading system.

The United States needs to act because the WTO now faces an existential crisis. Deep divisions among its 164 members block updating the existing trading rules, most of which were crafted in the 20th century. WTO provisions are being abused, circumvented, or ignored by major trading countries. The ability to enforce WTO rights has been impaired by the disabling of effective WTO dispute settlement, which in turn cannot but discourage efforts to modernize the WTO rulebook. WTO reform is pledged by world leaders and trade ministers but with little practical follow-up.

The upcoming 12th WTO Ministerial Conference (MC12) cannot fix the WTO and redress the substantive and institutional shortcomings that have undercut confidence in and support for the multilateral trade institution. But WTO members can commit to start the process and contribute a substantial down payment toward the prospective outcome. The United States, the chief founder and guarantor of the system, needs be at the forefront of this effort, as it has throughout the postwar era, in support of US economic and political interests.<sup>1</sup>

From the start, the global trading system was designed to advance US interests. The GATT, established after World War II in the belief that liberalized trade would promote global stability and prosperity, was based on US law, practice, and values. The GATT and WTO have been an important platform for

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<sup>1</sup> The United States was a principal driver of every GATT negotiation and the few but significant agreements reached in the WTO since 1995.

US leadership of the world economy, propelling postwar economic recovery in Europe and Asia, strengthening US allies against the Soviet Union, and helping to bring hundreds of millions of people worldwide out of poverty.

The WTO once again must become the place where trade rules are set and where they can be faithfully enforced. Too often, WTO rules, written 30 years ago, have failed to cover the new dimensions and challenges of international commerce faced today by workers, farmers, and businesses. There have been no major agreements at the WTO since the Trade Facilitation Agreement in December 2013.<sup>2</sup>

The WTO risks being overshadowed by regional trading blocs, especially those in the Asia-Pacific where China has become a dominant player. Since the US withdrawal from the Trans-Pacific Partnership, China has upgraded its existing bilateral trade pacts; anchored the newest and largest trade deal, the Regional Comprehensive Economic Partnership; and applied to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. These bilateral and regional deals discriminate against American trade.

WTO MC12 provides a major opportunity to articulate a US vision for the multilateral trading system, setting priorities for updating the WTO rulebook and refocusing the WTO dispute settlement on judging compliance with existing WTO obligations. Progress in one is unlikely without progress in the other; neither is likely without active US leadership.

To restore credibility to the rules-based trading system, the WTO needs to come up with firm plans to address the shared challenges its members face:

- WTO members need to respond to the COVID-19 pandemic by making sure that the trading system speeds the flow of essential goods to fight the pandemic, including vaccines across borders. No country is fully self-sufficient in the goods, medicines, and equipment that are essential.
- Coming soon after the United Nations' COP26 climate change summit in Glasgow from October 31 to November 12, WTO members need to begin to address how trade measures can support carbon abatement commitments through new provisions covering green subsidies, energy regulations, and carbon taxes and border measures.
- WTO members must advance a plan to fix the dispute settlement process so that it can be used effectively to counter foreign subsidies and other discriminatory practices that harm workers, farmers, and companies doing business abroad or competing against unfair imports at home. To be credible, the global trading rules must be enforceable.

The issue of subsidies is critical, with respect to manufacturing, services, and agriculture. State-driven competition, often benefiting from subsidies and passed from or through state-owned enterprises (SOEs), distorts competition in home and export markets. These issues cannot be resolved by the United States alone, and not bilaterally or in regional agreements. Global rules are needed. US officials

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2 The only other significant upgrade to WTO rules was the ban on agricultural export subsidies (December 2015). WTO efforts to negotiate more fundamental subsidy reforms for both industry and agriculture and new provisions on investment and intellectual property rights, among others, failed to revise the trading rules.



need to work closely with other countries, developed and developing alike, to reduce the burden of unproductive SOEs on competition within and between countries. For starters, WTO members could consider how to curb SOE support sector-by-sector, beginning with steel and aircraft.

The Biden administration has committed itself to a worker-centered trade policy. The WTO was designed to promote sustainable and equitable trade to benefit workers, businesses, and farmers in rich and poor countries alike. Where current rules fall short, where new challenges arise, the trading system must be improved for the benefit of all. MC12 is an opportunity for the United States to illuminate a path forward. It should do so without hesitation.

Some would argue that the WTO will be in existence the day after MC12 just as it was the day before, with or without US leadership. That is a miscalculation. It is true that it will not disappear, but it will be further hollowed out without the United States joining energetically in providing collective leadership with others. To risk it becoming a zombie institution would be to fail to act in the interests of American workers and all those who in the United States that depend on international commerce.

## 2 The World Needs a COVID-19 Vaccine Investment and Trade Agreement

Chad P. Bown and Thomas J. Bollyky

The world's trade ministers are struggling to deliver a concrete response to the [urgent appeal](#) by the new director-general of the World Trade Organization (WTO), Ngozi Okonjo-Iweala, that vaccinating the world against COVID-19 “is a moral, practical, and economic imperative.” The WTO’s 12th Ministerial Conference (MC12) at the end of November can make progress by getting trade officials to reengage in the pandemic challenge. To vaccinate the world, they should support a new COVID-19 Vaccine Investment and Trade Agreement that focuses on accelerating immediate-term production.

In the story of COVID-19 vaccines, trade is both hero and villain. The unglamorous, day-to-day import and export of raw materials, equipment, and vaccines taking place under the rules of the multilateral trading system have already helped save millions of lives and livelihoods. The WTO should be celebrated for creating an environment to facilitate this progress, however limited.

But WTO members also deserve criticism for not doing more to scale up vaccine production. Despite some progress on international cooperation, their efforts have been piecemeal, often bilateral and inefficient, failing to leverage the collective action framework the WTO provides. In addition, the activities of some of the WTO members actively engaged in Geneva are not necessarily aligned with Okonjo-Iweala’s implicit call for measures that would immediately increase vaccine production.

Accordingly, the United States, European Union, and India must convene a small and select group of critical WTO members to facilitate a plurilateral COVID-19 Vaccine Investment and Trade Agreement. The deal should be agreed by MC12 and focus on accelerating the manufacturing needed to get more than 16 billion additional vaccine doses produced and traded as soon as possible.

### COVID-19 VACCINE DOSES CONSTITUTE PROGRESS, BUT BILLIONS MORE ARE NEEDED

As of October 6, 2021, roughly [6.5 billion](#) COVID-19 vaccine doses have been administered globally. Together the United States and European Union account for nearly one billion of those doses, increasingly the highly effective mRNA-based vaccines from Pfizer-BioNTech and Moderna (figure 1). India has dispensed more than 900 million doses; much of that is the AstraZeneca vaccine manufactured locally by the Serum Institute of India. China has administered more than 2.2 billion doses of its home-grown vaccines, including Sinovac and Sinopharm.

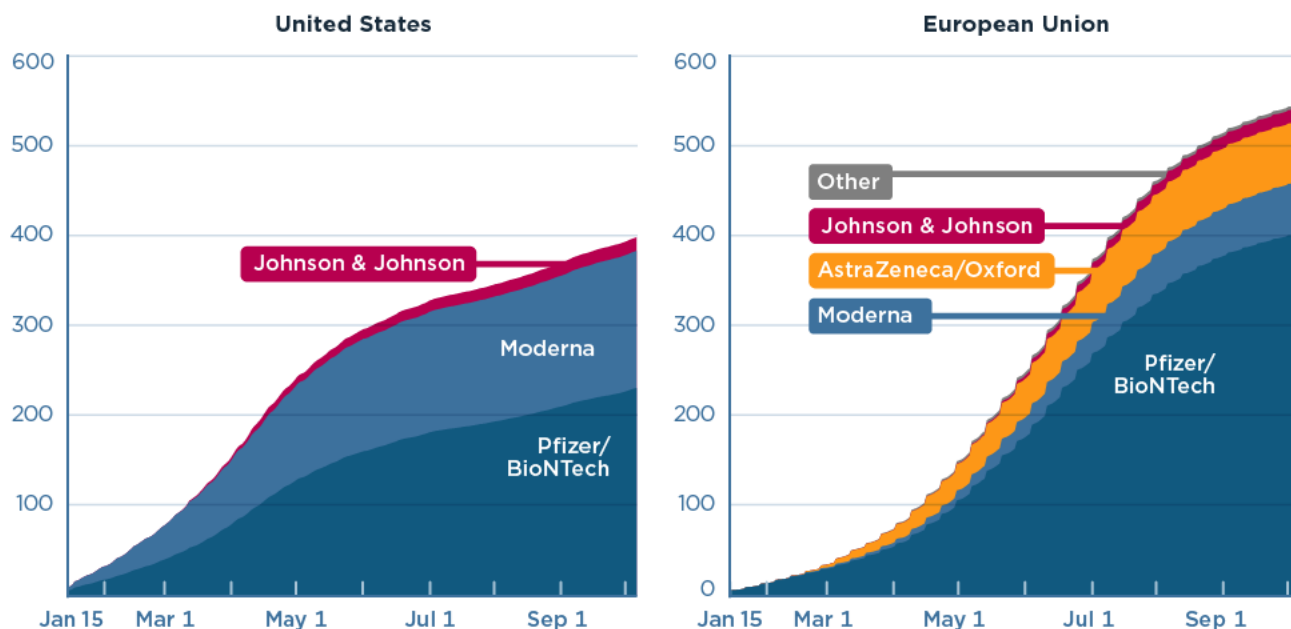
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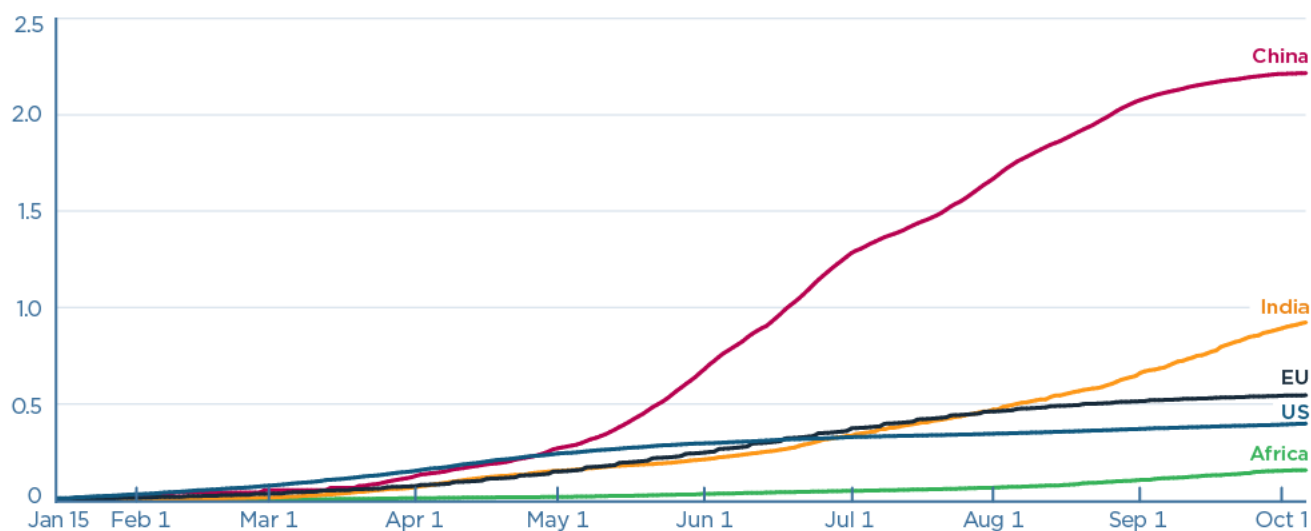
Figure 1

### The US and EU increasingly relied on mRNA vaccines as administered doses ramped up worldwide

a. COVID-19 vaccine doses administered, by manufacturer, January 15–October 6, 2021, millions



b. COVID-19 vaccine doses administered, by economic area, January 15–October 6, 2021, billions



Note: Other vaccines administered in the European Union include Sputnik V (Slovakia and Hungary) and Sinopharm (Hungary). As of October 6, 2021, China administered only domestic vaccines. Vaccinations in India were dominated by the Serum Institute of India's production of the AstraZeneca/Oxford vaccine, and to a lesser extent the vaccine from Bharat Biotech.

Sources: Constructed by the authors with data from European Centre for Disease Prevention and Control and Our World in Data.

At the other extreme is Africa, which has administered only 160 million doses. Roughly **4 percent** of the continent's adult population has been fully vaccinated. Globally, low-income countries are estimated to have vaccinated less than **3 percent** of their populations. The World Health Organization target of vaccinating **40 percent** of their populations by the end of 2021 is increasingly out of reach.

It is remarkable that the world acted with unprecedented speed to invent multiple life-saving vaccines, get them through clinical trials and rigorous regulatory processes, and manufacture as well as distribute 6.5 billion doses globally so far. Few would have predicted this achievement at the outset of the pandemic. But the crisis is far from over, and obvious shortfalls need to be addressed. COVAX, the consortium organized by Gavi (the Vaccine Alliance), the Coalition for Epidemic Preparedness Innovations (CEPI), and the World Health Organization, was established early for distributing COVID-19 vaccines to poor countries. But it has failed to do so because it could not secure a sufficient number of doses from companies and the countries where the manufacturing is located. Instead, India, the United States, European Union, United Kingdom, and China all prioritized allocating locally produced doses to their entire eligible domestic populations, including those at low risk.

In the continued absence of vaccine-producing countries agreeing and adhering to a more equitable vaccine sharing scheme based on global public health needs, the only solution is that manufacturers in those countries greatly expand their production targets.

The mathematics are simple but stunning. With the exception of Johnson & Johnson, each of the other vaccines is a two-dose regimen. For a global population of more than 7 billion, the starting point is thus roughly 14 billion doses. With waning immunity, some governments are already granting third doses; universal adoption could push demand to 21 billion doses. Finally, because governments are stockpiling excess doses and because there is some inevitable waste in the system (e.g., expired, or opened but unused vaccines), estimated demand must be increased by 10 percent. To be safe, about 23 billion doses of COVID-19 vaccines may thus be needed in the immediate term.

Going from 6.5 billion administered doses to the capacity to manufacture roughly 16 billion more doses is still a long way off.

## **TRADE AND COVID-19 VACCINE MANUFACTURING SUPPLY CHAINS TODAY**

Trade will ultimately be the unsung hero if and when COVID-19 vaccines are eventually credited with helping to control the pandemic. For billions globally, shots will not be available through local production, and imports are the only answer. But even Americans and Europeans living in countries where vaccines are manufactured depend on international supply chains in ways that are still poorly understood.

Start with the cross-border movement of people and ideas. In the United States, two of the three authorized vaccines were invented at least partially overseas. The Pfizer jab was created by Turkish immigrants at BioNTech in Germany; Johnson & Johnson was codeveloped at the Janssen R&D lab in the Netherlands. A similar story has emerged for vaccines being administered across the European Union. US-based scientists came up with the Moderna shot, and British researchers at Oxford invented the AstraZeneca vaccine.



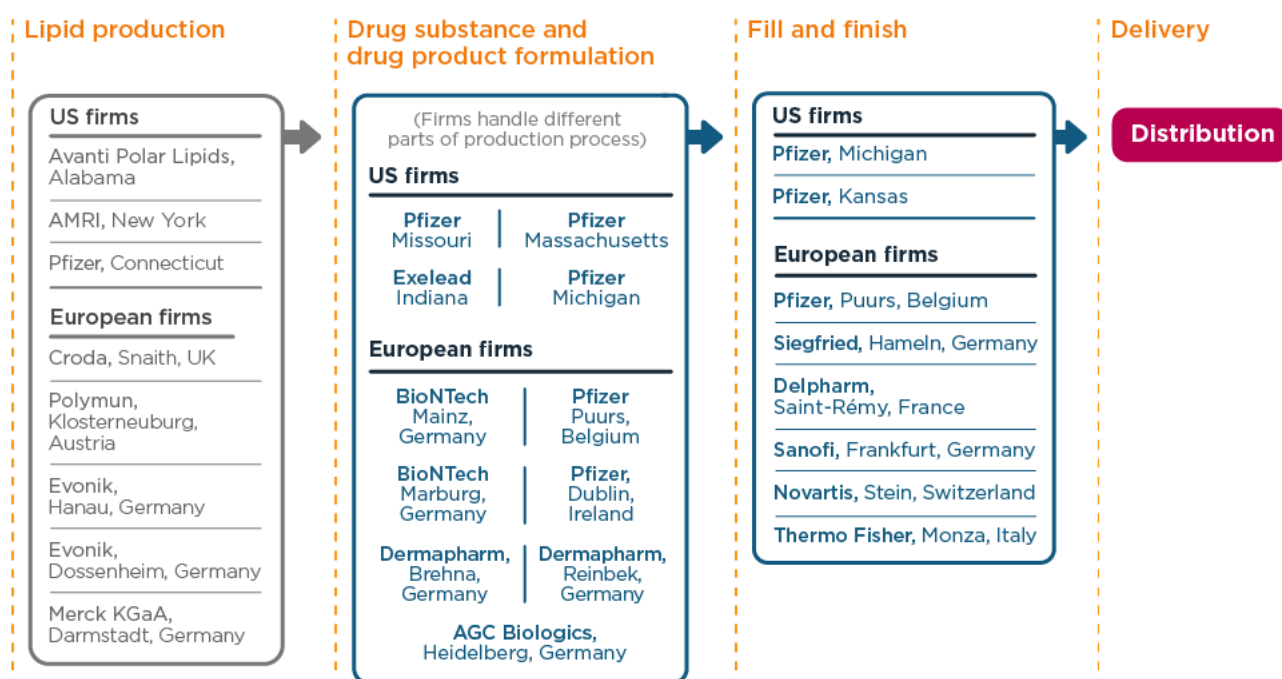
Trade has also enabled the cross-border transfer of technology and development of brand new supply chains for COVID-19 vaccine manufacturing. While each vaccine maker created a unique supply chain capable of producing billions of doses annually, one common feature was trade.<sup>3</sup> Take two examples of the basic two-step process of first manufacturing the drug substance and formulating it into drug product in one set of plants before shipping it to a second “fill and finish” assembly-line style plant where the liquid vaccine is put into millions of vials for distribution.

Pfizer and BioNTech mostly relied on their own manufacturing facilities to perform the first step, even by mid-2021 (figure 2). The flow of technology and ingredients between the Pfizer and BioNTech plants in different countries was one form of trade. A second arose within its European supply chain, where the mRNA vaccine might be manufactured at facilities in Germany or Ireland but then shipped over a border to that second type of plant for bottling in Switzerland, France, or Italy.

Figure 2

**How Pfizer and BioNTech manufacture their vaccine**

Partners and facilities involved in Pfizer/BioNTech vaccine production as of June 30, 2021



Source: Chad P. Bown and Thomas J. Bollyky. Forthcoming, “How COVID-19 vaccine supply chains emerged in the midst of a pandemic,” *The World Economy*.

3 For an explanation, see Chad P. Bown and Thomas J. Bollyky. Forthcoming, “How COVID-19 vaccine supply chains emerged in the midst of a pandemic,” *The World Economy*.

AstraZeneca set up a different type of production network, but one that also featured trade (figure 3). The jab was invented in Oxford, but instead of using its own plants, AstraZeneca transferred the technology to contractors to manufacture its vaccine, including companies in many developing countries. The largest manufacturer of the AstraZeneca vaccine is the Serum Institute of India. It is also being produced through networks of facilities in the European Union, South America, Japan, Thailand, and Australia, as well as in the United Kingdom and elsewhere.

Highly specialized inputs are a third way in which trade has been essential. Each COVID-19 manufacturer relies on a host of critical equipment and raw materials—such as bioreactors, bioreactor bags, filtration pumps, filters, cellular materials, vials, stoppers, syringes, and other ancillary supplies—that are often produced only in other countries.

Shortages of those imported inputs often grabbed headlines during the pandemic. The heads of the [Serum Institute of India](#), [Novavax](#), [Biological E.](#), and [CureVac](#) all complained publicly that such import shortfalls impeded their abilities to reach production targets. ([Pfizer](#) and [Moderna](#) also complained of input shortages but did not necessarily tie them to imports.) On the other hand, such interdependence and the fear of a trading partner retaliating by shutting down a vaccine input pipeline likely also helped keep trade for finished vaccines flowing in the other direction. Take the lipid nanoparticles critical to the mRNA vaccine of Pfizer-BioNTech (see again figure 2). The United Kingdom was a critical source of lipid nanoparticles early in 2021 for the plants in the European supply chain. Keeping those UK exports flowing during the pandemic was essential to getting those vaccines manufactured and ultimately shipped back to the United Kingdom despite rising UK-EU political tensions.<sup>4</sup>

But trade disruptions are also the problem in the COVID-19 vaccine story. Though less an indictment of the WTO, governments of vaccine-manufacturing economies engaged in “[vaccine nationalism](#)” by refusing to share enough doses with COVAX to distribute to health care workers and vulnerable populations globally. The failure to prioritize the global public health crisis has led to additional deaths and to the emergence of lethal virus variants that have spread to vaccine-hoarding countries themselves.

These problems demonstrate the critical need for further geographic diversification of manufacturing facilities. For Africa, COVID-19 vaccine makers have taken baby steps to address this during the pandemic. [Johnson & Johnson](#) was the first—its vaccine is already being bottled by Aspen Pharmacare in South Africa, but only starting in July 2021. [Pfizer-BioNTech](#) signed an agreement with Cape Town-based pharmaceutical company Biovac, also to begin doing fill and finish for their vaccine, but the South African facility is expected to come online only in 2022. In October 2021, [Moderna](#) announced plans to build a 500-million-dose mRNA vaccine production facility in Africa, but the site had not yet been selected. Neither has the timeline for when it would become operational. Finally, in another long-run initiative, the European Commission [announced](#) in May it would provide €1 billion to help “develop a number of regional manufacturing hubs across the continent.”

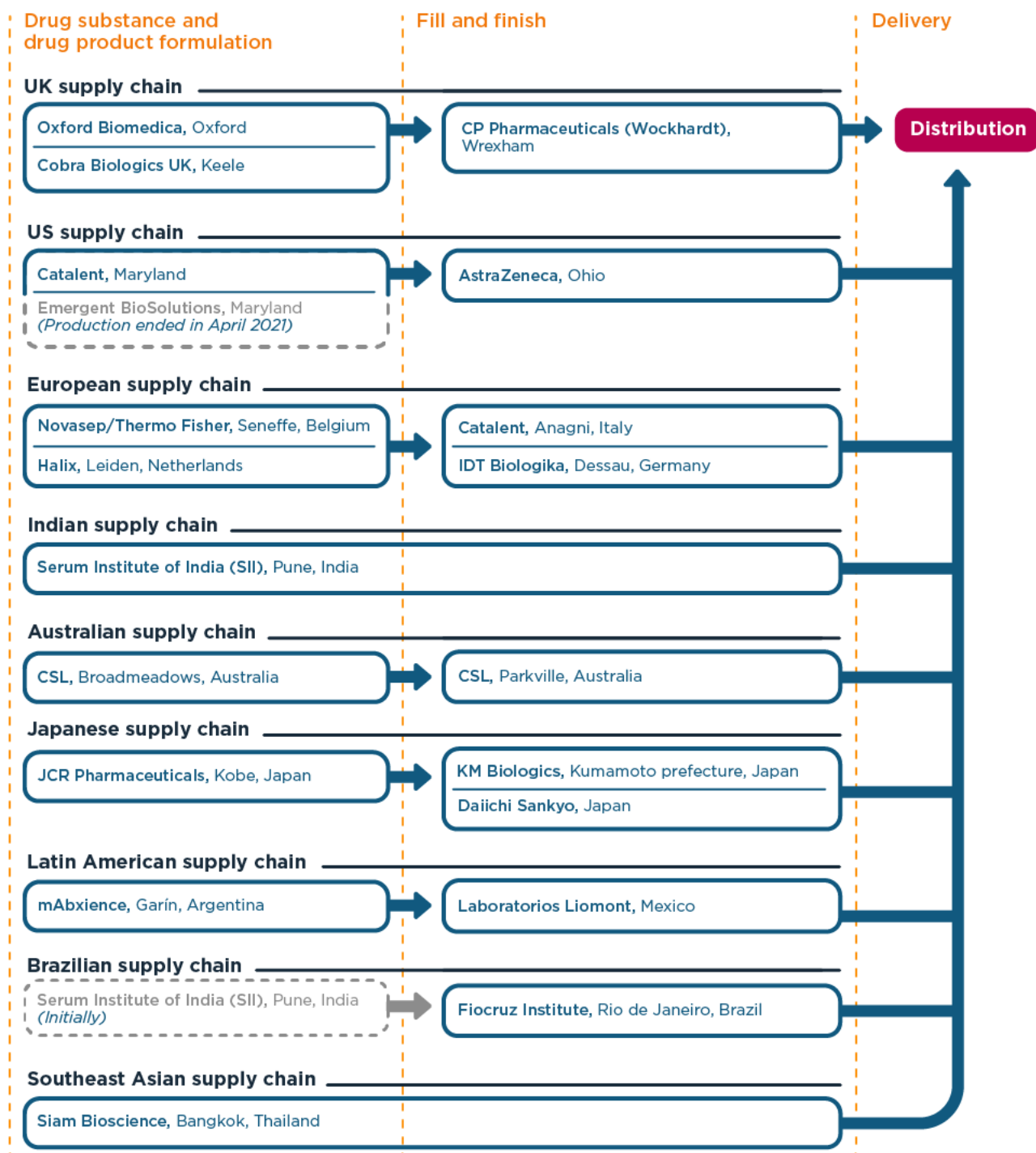
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4 See also figure 3 of [Bown and Bollyky \(Forthcoming\)](#).

Figure 3

**How AstraZeneca manufactures its vaccine**

Partners and facilities involved in Oxford/AstraZeneca vaccine production as of June 30, 2021



Note: The Novasep plant in Belgium was taken over by Thermo Fisher in January 2021.

Source: Chad P. Bown and Thomas J. Bollyky. Forthcoming, "How COVID-19 vaccine supply chains emerged in the midst of a pandemic," *The World Economy*.

Getting COVID-19 shots quickly into the arms of people across Africa, as well as low-income countries elsewhere, cannot wait until more African production comes online sometime late in 2022 or 2023. That goal must therefore rely on trade and expanding production in manufacturing countries today.

## INTERNATIONAL COOPERATION SO FAR

Policymakers at the highest levels in major vaccine-manufacturing economies have now recognized the need for enhanced cooperation and engagement. Significant steps began in March 2021 and have accelerated since, albeit in a disorganized fashion and not in concert with the WTO. The United States has been heavily involved, in part because the inputs in short supply in other countries were primarily sourced from US manufacturers.

In March, Presidents Joseph R. Biden and Ursula von der Leyen [appointed](#) Jeffrey Zients and Thierry Breton to facilitate US-EU cooperation over COVID-19 vaccine supply chains. Their relationship helped resolve input bottlenecks—[CureVac](#) is one public example—and was [formalized](#) into a joint COVID-19 Manufacturing and Supply Chain Taskforce in September.

There are other examples. A US-India dialogue began in earnest in April 2021, triggered by the CEO of the Serum Institute of India accusing the Biden administration of imposing an “[embargo](#)” on US exports of vaccine-making inputs. The United States [responded](#) by immediately sending emergency supplies of that equipment, later cementing US-India vaccine collaboration through the “Quad” (with Japan and Australia) in [September](#). Furthermore, the United States, France, Germany, and the World Bank announced [funding](#) in June to South Africa’s Aspen Pharmacare to expand its vaccine manufacturing.

Manufacturing more vaccine doses more quickly, cheaply, and in more locations also requires expanding the capacity to supply critical inputs and facilitating additional investment. The United States provided some subsidies to companies manufacturing those inputs in 2020 and early 2021 under [Operation Warp Speed](#). In the face of continued input shortages, the Biden administration [announced](#) an additional \$2.7 billion from the American Rescue Plan in September 2021. Aside from CEPI, few others globally have announced subsidies to expand capacity to vaccine input suppliers.<sup>5</sup>

## HOW TO MAKE CVITA A REALITY

The United States, European Union, India, and their partners in vaccine manufacturing supply chains must now consolidate their fragmented initiatives into a COVID-19 Vaccine Investment and Trade Agreement (CVITA). To start, CVITA would be a plurilateral agreement, demanding participation by those WTO members, as well as the United Kingdom, Switzerland, Japan, Australia, and potentially South Africa. (It could include China, but uncertainty over Chinese vaccines, its mostly local supply chain, and onerous transparency demands described below mean China may be unwilling to participate.)

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5 See table 7 of [Bown and Bollyky \(Forthcoming\)](#).

CVITA must have four components to work:<sup>6</sup>

First, CVITA should be aligned to leverage COVAX, the umbrella for the public and private international organizations that have joined together for the purchase and distribution of vaccines. The committed vaccine output of the producing-economy members of CVITA would be allocated between themselves and COVAX. Other countries would subscribe to COVAX for their vaccine disbursements, with the subscriptions having zero cost (or being highly subsidized) for low-income countries.

Second, the *investment* component of the agreement must create a framework to subsidize the full vaccine manufacturing supply chains for the committed vaccine manufacturers. “Push” contracts must be written to coordinate *expansion* of input production capacity to supply COVAX; they must not simply be deals to buy supplies that allow firms to use existing capacity to eventually deliver on their own timetables.<sup>7</sup> Furthermore, since the benefits of such investments spill over outside of national borders, local governments (including the United States) lack the incentive to subsidize input capacity enough to meet global manufacturing demand. Those public investments in supply chains should thus also be funded by the subscriptions paid into COVAX. Finally, CVITA should also support [COVAX Marketplace](#), a secondary market established by CEPI to help short-term reallocation of scarce inputs when inevitable bottlenecks materialize. (This exchange would include for plants set up by manufacturers prior to obtaining regulatory approval where the vaccine candidate subsequently failed to pass clinical trials.)

Third, CVITA should include an enforceable commitment not to place export restrictions on supplies of vaccines and related materials destined for other signatory countries. In effect, subsidized imported inputs would be exchanged for future doses of an exported vaccine. Countries should agree that vaccine export restrictions may enable other treaty participants to retaliate by jointly curbing their supply of inputs to the export-restricting country. This potential mechanism for reciprocity, if made explicit, can be used to convince skeptical domestic audiences that hoarding—while politically tempting—is self-defeating. Since CVITA would not apply to non-participants, it would not alter the current status quo under WTO agreements which permit export restrictions on public health grounds to vaccine-consuming countries refusing to participate. Receiving protection against export restrictions would thus provide an incentive for nations to join the CVITA.

Fourth, this type of international policy cooperation demands high levels of transparency. Trust can be maintained—decreasing the likelihood of hoarding—only if access to information on COVID-19 vaccines and inputs

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6 Given recent developments, these proposals update those originally formulated in Chad P. Bown and Thomas J. Bollyky. 2021. [Here's how to get billions of COVID-19 vaccine doses to the world](#). *PIIE Trade and Investment Policy Watch*, March 18.

7 See Scott Duke Kominers. 2021. [World Can Have Covid Boosters and Its First Doses, Too](#). *Bloomberg Opinion*, September 28.



reduces uncertainty. When supply disruptions occur, transparency will also help differentiate between genuine input shortages versus those resulting from export bans.<sup>8</sup>

In response to dozens of countries imposing export restrictions on staples during a perceived food crisis in 2008-2011, the Group of Twenty (G20) developed the Agricultural Market Information System (AMIS) to improve transparency and coordinate policy in the event of sudden scarcity. That system generated information and trust that arguably reduced the use and duration of agricultural export bans in the [early days](#) of the COVID-19 pandemic.<sup>9</sup>

These four components must all be part of the deal. If not, CVITA will fail. Firms will refuse investments to achieve economies of scale without guarantees that they can “export” from those facilities. Governments will refuse to subsidize the full supply chain needed to create that expansion if they fear insufficient access to finished vaccines that get manufactured.<sup>10</sup>

## NOW IS THE TIME FOR CVITA

Establishment of a CVITA faces many obstacles. The unprecedented nature of the pandemic demands new types of international collaboration over different policy instruments because of the cross-border nature of vaccine manufacturing supply chains. To its credit, the WTO Secretariat has played an important role in [convening](#) industry, civil society, and policymakers to educate the community about the underlying supply chain challenges and to generate potential policy solutions.

Until now, small groups of well-intentioned negotiators have proposed a few initiatives without making progress on turning those ideas into reality. The [Trade and Health](#) initiative received a lukewarm reception, in part because it focused on trade facilitation and stopping export bans. Those are important issues, but negotiators must achieve a joint commitment that members subsidize and provide transparency over the full vaccine manufacturing supply chains as well as ensure that poorer countries are not priced out of the market for the vaccines they are someday able to produce domestically.<sup>11</sup> A second proposal, initially made by India and South Africa, was to [waive](#) patents for vaccines.

8 The failure to be transparent in early 2021 led to allegations the United States was using the Defense Production Act (DPA) to restrict exports of vaccine inputs. The alternative and perhaps dominant explanation, given that domestic manufacturers like Pfizer were also complaining about shortages, is that DPA was used to allocate inputs in short supply globally to the manufacturers most in need and that were making vaccines authorized for public use. See Thomas J. Bollyky and Chad P. Bown. 2021. [The Real Vaccine Procurement Problem: Why America Should Make Its Supply Chain More Transparent](#). *Foreign Affairs*, June 24.

9 See Thomas J. Bollyky and Chad P. Bown. 2020. [Vaccine Nationalism Will Prolong the Pandemic. A Global Problem Calls for Collective Action](#). *Foreign Affairs*, December 29.

10 Such a framework would have been more likely to address two fundamental problems to emerge with Indian government policy. First, India waited to subsidize vaccine manufacturing capacity until [April](#) 2021, perhaps because it miscalculated the seriousness of the pandemic. Second, the Indian government didn't pre-order sufficient doses; it simply seized doses that had been produced by COVAX-funded technology transfer and manufacturing arrangements.

11 This last issue of poor countries becoming concerned about access to vaccines produced locally [emerged](#) in late 2021 when Johnson & Johnson vaccine doses bottled at the Aspen facility in South Africa were found to be shipped back to Europe despite the latter having much higher vaccination rates.

Such a waiver by itself is likely to have only a limited immediate impact on increasing production, given that the main technological impediment to vaccine manufacturing is how to affirmatively transfer production knowhow, not the patent. (There are other impediments to scaling up manufacturing, such as insufficient supply of specialized inputs, inadequate regulatory oversight, and an inexperienced workforce, that a patent waiver would also not resolve.)

A final challenge is that many governments have not adequately included trade ministers in the domestic pandemic policy response. For COVID-19 vaccine supply chain policy, US efforts have been shepherded by the White House (Jeffrey Zients) as opposed to the US Trade Representative (Katherine Tai). In the European Union, policy has been driven by the Commissioner for the Internal Market (Thierry Breton) as opposed to the Trade Commissioner (Valdis Dombrovskis).

The time is now for the US Trade Representative, EU Trade Commissioner, and other trade ministers to become more engaged. Over 16 billion additional doses are still needed to save lives globally. The world economy is suffering trillions of dollars of losses due to the ongoing pandemic. Inequality is rising. Supply chains for other products are under attack.

At MC12 in November, the United States, European Union, India, and a select group of other key countries should commit to a small, plurilateral CVITA to enshrine and expand upon the cooperative steps they are already taking outside of the WTO. The threat that new and more devastating virus variants could emerge, against which existing COVID-19 vaccines would be ineffective, means that no one is safe until the pandemic is under control globally. Trade ministers should do their part to ensure that everyone everywhere has access to COVID-19 vaccines.

# 3 MC12 Should Set the WTO Agenda on Trade and Climate Policies

Jeffrey J. Schott

When delegates arrive in Geneva for the 12th Ministerial Conference (MC12) of the World Trade Organization (WTO) in late November, they will likely find a gauntlet thrown at their feet. A couple weeks earlier, the United Nations climate summit known as COP26 will have met in Glasgow and likely called for redoubled efforts to curb carbon emissions. WTO members will be expected to follow suit and advance a WTO agenda of trade and investment initiatives that complements the Glasgow results. The United States needs to lead WTO efforts, along with other major carbon-emitting nations, on new trade reforms that contribute to reducing greenhouse gas (GHG) emissions and promote the global transition to low-emissions growth.

Sustainable development and protection of the environment have long been core principles of the world trading system. While the WTO is not the platform for setting climate policies and decarbonization goals, its rules govern subsidies, regulations, taxes, and other instruments that countries use to raise the cost of energy from fossil fuels and of carbon-intensive products. Such policies can handicap domestic producers and workers competing against imports, leading to calls for carbon border adjustment measures (CBAMs) that are effectively a tax or tariff designed to eliminate the trade advantages of foreign producers not similarly burdened by climate policies. Such tax adjustments may in turn contravene WTO obligations; US officials should pursue new WTO rules to avoid prospective trade fights over climate policies.

What could be done in the WTO to support efforts to reduce global GHG emissions? A trade and climate change program adopted at MC12 should include the following components:

## 1. REVISE WTO SUBSIDY RULES TO ENCOURAGE INNOVATIVE RESEARCH AND DEVELOPMENT IN RENEWABLE ENERGY RESOURCES, DEPLOYMENT OF CARBON ABATEMENT TECHNOLOGIES IN MANUFACTURING AND TRANSPORTATION SERVICES, AND THE PHASE-OUT OF FOSSIL FUEL EXTRACTION AND CONSUMPTION.

In its early years, the WTO classified subsidies supporting environmental objectives as “nonactionable” under unfair trade laws, i.e., not subject to dispute or retaliation. Consideration should be given to recreating rules comparable to the “green box” subsidies of the late 1990s. This reform would create a “safe haven” from countermeasures for environmentally beneficial subsidies supporting R&D in renewable energy, investment in carbon scrubbers, and other GHG abatement technologies.

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Green box subsidies are a two-edged sword for the implementation of trade and climate policies, however. The reason is that they allow countries to subsidize infrastructure and new technologies without the risk that exports of “green” products and technologies would be hit by antidumping and countervailing duties. President Biden wants to boost US manufacturing and create US jobs while addressing climate challenges. Accordingly, he supports US subsidies for electric batteries and other new climate-oriented policies but also the strict enforcement of US trade laws against imports benefiting from foreign subsidies. Policies of other countries face the same conflict. Subsidies for new climate initiatives can help build new industries and create jobs, but not without displacing some output and employment in carbon-intensive sectors. New WTO subsidy rules could help members find a workable balance between supporting new activities and protecting existing ones.

One frequently mentioned but rarely acted upon area of subsidy reform would phase out subsidies for fossil fuels. WTO subsidy rules should bar support for new coal-fired electricity generation plants while allowing carbon abatement upgrades to existing facilities; such reforms would have little impact on the US market but would discourage China and others from going forward with new investments. WTO efforts could be coordinated with World Bank development programs to provide technical and financial assistance to poor countries to develop clean energy resources.

## **2. REVIVE NEGOTIATIONS ON THE ENVIRONMENTAL GOODS AGREEMENT TO PROMOTE THE DIFFUSION OF GREEN TECHNOLOGIES BY LOWERING TRADE BARRIERS TO A NARROW LIST OF ENVIRONMENTAL GOODS.**

Disputes over what products would be subject to tariff liberalization crippled the nearly completed Environmental Goods Agreement in December 2016; China insisted on tariff-free treatment for bicycles and others resisted. The talks have been dormant ever since. WTO members should commit themselves to reaching agreement on an initial list of tariff-free goods. In addition, the pact should commit to a built-in agenda for negotiations to regularly update the product coverage and to extend liberalization to environmental services.

## **3. HELP RESTORE GLOBAL “CARBON SINKS”—FORESTS, OCEANS, OR OTHER BODIES THAT ABSORB CARBON—BY NEGOTIATING TRADE OBLIGATIONS THAT PROTECT THESE RESOURCES.**

WTO negotiations have been underway for many years to protect the marine environment by banning subsidies to illegal, unreported, and unregulated fishing that deplete fish stocks. These talks have floundered, as major subsidizing nations try to exempt their fishing operations from subsidy disciplines. Special and differential treatment for small, artisanal fish operators can be justified. Exemptions for industrial fisheries operating in the deep ocean cannot. WTO obligations should require that all members undertake and enforce the subsidy obligations of the [Port State Measures Agreement](#), including those not yet a party to that pact like China, India, Brazil, and Malaysia, after a limited transition period. Other actions that WTO members could take to preserve the oceans include reducing marine litter, for which a useful precedent has been set by the

United States-Mexico-Canada Agreement (USMCA) that took effect in 2020. The WTO should also commit itself to working with International Maritime Organization members to mitigate GHG emissions from shipping.

WTO obligations should be developed to ban the taking and trade of illegal timber. The environment chapter of the USMCA once again provides an excellent template of rules to block trade of proscribed products. With effective monitoring and enforcement, demand for these products would decline along with the incentive to harvest the illegal timber. Trade policy measures also could encourage reforestation efforts in developing countries—for example, by according credits for the country in calculating the costs of its decarbonization policies compared to other WTO members.

#### **4. WTO COUNTRIES WITH THE HIGHEST LEVELS OF CARBON EMISSIONS SHOULD EXERCISE RESTRAINT ON THE INTRODUCTION OF CBAMS.**

The European Union announced plans to impose levies in 2026 on carbon-intensive imports not subject to comparable climate policies in their home country. Legislation before the US Congress would impose tariffs on such goods even sooner. EU and US officials would calculate their CBAMs based on how foreign policies compare with the EU Emissions Trading System or US climate regulations. The problem, of course, is that national policies to counter GHG emissions differ widely across and within countries. As a result, individual facilities may be affected differently by the mix of regulation, subsidies, and tax policies.

Assessing comparability and ensuring that every country is doing its fair share in reducing GHG emissions will be a major challenge. The trading system has a tried and true method for doing so: the negotiation of mutual recognition agreements. In this case, leading carbon emitters could join in plurilateral negotiations to document the decarbonization policies each is implementing and how efforts will be ratcheted up over time to meet the nationally determined commitments undertaken in a global climate agreement. The aim would be for each country to commit to a package of carbon tax and regulatory measures that all could mutually recognize as effectively equivalent and thus not liable for CBAMs. During a fixed period for these negotiations, say three years, countries participating in the talks would agree not to impose CBAMs against each other.



## 4 How to Revive Dispute Settlement in the World Trade Organization

Gary Clyde Hufbauer

The Trump administration effectively terminated the World Trade Organization's (WTO) dispute settlement function by refusing to appoint new members of the Appellate Body when old members retired. As a result, the Appellate Body lost a sufficient number of members to hear a case at the end of 2019. Although successive administrations have complained that the Appellate Body unfairly threw out US enforcement of legitimate antidumping and safeguard duties, disabling it has come with a cost, making it impossible for the United States to get final resolution of its own legitimate complaints over trading partners' practices. It should not be impossible to salvage the Appellate Body or the WTO's ability to adjudicate trade disputes.

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### THE APPELLATE BODY CRISIS

The goal of the Trump administration, led by United States Trade Representative Robert Lighthizer, was to accelerate negotiations to reform but not destroy the Appellate Body. But that was not the outcome. Under WTO rules as written, member countries have the right to appeal adverse findings by an expert panel (the first stage of adjudication) to the Appellate Body before a final decision is rendered. Thus, in practice WTO members have appealed adverse panel findings to a nonexistent Appellate Body, thereby putting their cases in limbo.<sup>12</sup>

Taking a cue from President Donald Trump's persistent claim that the United States has suffered greatly because of unfair trade agreements and practices, the administration filed multiple detailed objections to the WTO Appellate Body, focusing especially on rulings that prevented the United States from enforcing trade remedies. Most of the objections to Appellate Body rulings originated over several administrations, including those of Presidents George W. Bush and Barack Obama. In many instances the United States got favorable rulings over its complaints to the WTO. But the core objections to the appellate process have generally been [well-grounded](#). As a practical matter, Ambassador Lighthizer strongly objected to Appellate Body decisions that rejected US antidumping duties and safeguard actions designed to insulate American producers from unfair foreign practices or harmful imports. Lighthizer's objections found [considerable support](#) in the US Congress and within the US trade bar.

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<sup>12</sup> Members choosing to belong to a Multi-party Interim Arrangement (MPIA), first proposed by the European Union, have agreed to an alternate appellate procedure. However, when they litigate with a nonsignatory to this MPIA, they are free to seek to avail themselves of this "appealing in the void" maneuver.

Accordingly, Trump's condemnation of the Appellate Body was welcomed both by Democratic and Republican officials and the members of Congress who follow trade issues.

But the absence of a functioning dispute settlement system not only affects resolution of disputes. It also cripples the negotiating arm of the WTO. Member countries are much less willing to make binding commitments on new subjects, such as carbon emissions, subsidies, or medical supplies, if they cannot rely on WTO enforcement if another member breaches the commitments. Moreover, the detailed rulebook of prior commitments has less value when any member can ignore rules with no WTO penalty. Neither of these outcomes serves US interests. Conducting trade with 163 other WTO member countries is much easier for the United States when those members generally abide by WTO rules. This is true even of China when it has lost a WTO case. The alternative to a healthy WTO is an endless series of unresolved bilateral disputes.

### **PROPOSALS TO RESTORE A FUNCTIONING DISPUTE SETTLEMENT SYSTEM**

Thus, the United States should make specific proposals to revive the dispute settlement function. Such proposals would serve as an essential first step not only to ensure fresh WTO negotiations on the pressing issues of our time, but also to secure the broader health of world trade, a keystone of the global economy. Moreover, a functioning dispute settlement system will provide an important alternative path for the United States to challenge Chinese practices that violate WTO norms. Historically, China has amended its practices when found in violation by the WTO. However, China made few if any constructive changes in response to President Trump's punitive Section 301 tariffs, charging that China unfairly subsidized its exports or engaged in other unacceptable trade practices. To make dispute settlement fully effective, there will have to be clearer understandings of when subsidies occur within the Chinese economy with its strong role of the state and state-influenced companies.

Reflecting US interests, the proposed conditions for reviving WTO dispute settlement, through the appointment of new Appellate Body members, should contain these elements:

- The Appellate Body should stick to resolving disputes and not "fill gaps" in WTO agreements. If a case raises an issue not covered by WTO rules, the Appellate Body should remand the issue to member countries to negotiate new rules. Until that happens, the issue should not be decided by the Appellate Body.
- Appellate Body decisions should be limited to legal questions and not reconsider factual findings previously determined by expert panels.
- Appellate Body decisions should be issued within the time limits set forth by WTO rules, normally 90 days. Briefs should observe strict page limits.
- For a period of four years, the Appellate Body should not hear cases challenging antidumping duties, safeguard measures, or national security restrictions. During that period, since expert panel decisions cannot be challenged in the Appellate Body, the decisions reached by the regular adjudication process should become final.

These proposals may not be accepted by all 164 WTO members attending the 12th WTO Ministerial Conference in November 2021, or when they meet again at the following Ministerial Conference in 2023. But the United States should begin to work with other WTO members immediately to begin the process of making WTO dispute settlement serve the purposes for which it was constructed when the WTO was established more than two decades ago.

Trade remedies are of particular economic and political relevance to industries that are labor intensive. They must be restored to their rightful place in the trading system if worker interests are to be fully taken into account.

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