CRISIS AND OPPORTUNITY: 
THE MULTILATERAL TRADING 
SYSTEM AT A CROSSROADS

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INTRODUCTION

Since the end of World War II, much of the world has embraced a rules-based global trading system, of which the United States was a primary architect. The crown jewel of this system is the General Agreement on Tariffs and Trade (GATT) that later became the World Trade Organization (WTO). When it took effect on Jan. 1, 1948, there were 23 members of the GATT. Since then, trade flows have skyrocketed and as of 2016, total exports were “250 times the level of 1948.” Today, the WTO boasts 164 members and covers 98 percent of world trade.

Located in Geneva, Switzerland, the WTO serves a couple of basic functions. First, it is a global forum for the negotiation of trade agreements and rules, with the overarching goal of eliminating trade distortions like tariffs and other non-tariff trade barriers. Second, it provides a framework for settling disputes that arise under the agreed-upon trade rules. This is done through consultation and, if necessary, litigation.

Although WTO rules cover myriad aspects of global trade, two rules in particular form the cornerstone of its multilateral international trading system: most-favored nation treatment (MFN) found in Article I of the GATT and national treatment found in Article III. MFN establishes that WTO members cannot discriminate between “like” products that originate in or are destined for other, WTO-member nations. It also requires countries to treat all WTO members equally when applying tariffs to their goods. For example, if the United States agrees to cut its tariffs on widgets from China, it must apply the same tariff reduction to widgets entering the country from other WTO member nations.

Meanwhile, national treatment prohibits favoring domestic products over imported products of other WTO-member nations. As the WTO notes: “The result is that once the applicable border duties (e.g. tariffs) have been paid, the importing Member cannot apply any further burdens on imports that are not applied to the like domestic products.” This means the United States cannot charge a five percent sales tax on.


5. Ibid.

6. Note: There are certain exceptions to MFN, such as concessions granted under a formal trade agreement.

widgets imported from China if U.S.-made widgets are not subject to the same tax.\(^8\)

Facilitated by the WTO, trade expansion is estimated to have increased “US GDP per capita and GDP per household [...] by $7,014 and $18,131, respectively (both measured in 2016 dollars).”\(^9\) Furthermore, studies suggest that poorer individuals and households experience outsized gains from expanded trade of manufactured goods and other products.\(^10\) Moreover, for more than 70 years, the rules-based trading system has prevented protectionist beggar-thy-neighbor contagion from spreading the way it did in the early 1930s. For example, during the financial crisis of 2008 and 2009, many observers expected to see a major uptick in widespread protectionist policies. Yet, under the enormous pressure of a crumbling global economy, the multilateral trading system held its ground and major economies avoided widespread protectionism.

Today, however, the multilateral trading system faces the most serious challenge in its seven-decade history. This challenge has a few primary drivers: stalled multilateral trade negotiations, the rise of China’s unique brand of state capitalism and the Trump administration’s multilateral assault on the WTO.\(^11\) Specifically, the administration has publicly threatened to withdraw the United States, has withheld the appointment of new members to the Appellate Body and has levied unilateral tariffs on trading partners, without first going through the legally prescribed channels in Geneva.

Accordingly, the present study discusses the history of the multilateral trading system, explains in depth the challenges it currently faces and explores ideas to address those challenges, and highlights the disastrous consequences of a potential withdrawal from the WTO.

### A BRIEF HISTORY OF TRADE POLICY CONSENSUS BUILDING

After the notorious failure of the Smoot-Hawley tariffs in the early 1930s, it became widely accepted that protectionism was an economic and foreign policy disaster.\(^12\) As World War II was winding down, the State Department quietly developed plans for an ambitious post-War trade policy, the central feature of which would be a large, multilateral trade negotiation.

With protectionism largely discredited, a consensus about the benefits of international trade began to emerge in the United States. For example, a Gallup poll found that “75 percent of those questioned supported continuing the trade agreements program, and just 7 percent were opposed, with 18 percent expressing no opinion.”\(^13\) The United States capitalized on this political atmosphere and in 1947, trade negotiators from all over the world convened in Geneva to negotiate what became known as the General Agreement on Tariffs and Trade (GATT).

Throughout the negotiations, the countries adopted a number of basic trade rules. Ultimately, 23 countries joined and the GATT’s tariff reductions became effective in the United States by executive order on Jan. 1, 1948.

Throughout World War II, the average tariff in the United States remained virtually unchanged at about 33 percent.\(^14\) By 1951, it had fallen to 13 percent—a 60 percent decline from 1944 levels.\(^15\) This was the lowest average tariff since 1791.\(^16\) Although the GATT played a role in this, Douglas Irwin notes that:

> [T]he main reason for the postwar decline was the sharp increases in import prices after the war [...] about two-thirds of the tariffs were specific duties, and rising import prices reduced the ad valorem equivalent of those duties, just as deflation increased the ad valorem equivalent during the Great Depression.”\(^17\)

In fact, ultimately, it is estimated that the GATT cut the average tariff by about 21 percent, while higher import prices reduced the average tariff by about 40 percent.\(^18\)

Following the war, the United States emerged as the leading economic powerhouse around the globe in terms of productive capacity; a status it used to lower trade barriers and establish a multilateral, rules-based trading system.

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8. Like MFN treatment, national treatment has certain limited exceptions.
From the GATT to the WTO

Despite decades of relative success, by the 1970s, post-War cooperation had begun to fray. Various barriers to trade had proliferated and there was little enforcement of trade rules. One glaring problem was the lack of a binding dispute settlement mechanism. Under the GATT, a party against whom a dispute was filed could block the establishment of a panel to hear a dispute and could also block the adoption of a panel report, effectively nullifying the result. For these reasons and others, by 1982, Arthur Dunkel, then director-general of the GATT warned: “The real danger to the GATT is not that a trade war will break out, but that the major signatories to the GATT will simply pretend that the General Agreement is not there.”

In response to such lacking enforcement and the discriminatory foreign trade barriers faced by American exports at the time, Congress enacted the Trade Act of 1974, which included a provision (Section 301) that allowed the executive branch to impose import restrictions to combat “unjustifiable, unreasonable, and discriminatory” foreign practices by our trading partners. It bears noting here that the statute was intended to open foreign markets to U.S. exports—not to use import restrictions to protect domestic industries. And, during the 1980s (and much to the chagrin of other nations), the Reagan administration used Section 301 widely as a mechanism to pry open markets abroad.

In 1985, President Reagan called for a new multilateral negotiation round and by 1986, the “Uruguay Round” was underway. Whereas previous negotiations had focused primarily on trade of industrial goods, the Uruguay Round sought to address a host of issues important to the United States: namely domestic subsidies, effective enforcement, trade in services, intellectual property, government procurement and other non-tariff barriers.

Over the course of the next eight years, nearly 120 countries participated in negotiations that culminated in the Marrakesh Agreement in April of 1994. The result was a complete transformation of the rules-based trading system that converted the informal GATT structure into a formal organization known as the World Trade Organization.

The new WTO kept the original GATT rules that covered trade in goods but supplemented them with a host of new agreements that covered investment (Trade-Related Investment Measures, or TRIMS), trade in services (General Agreement on Trade in Services, or GATS) and intellectual property (Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS). Likewise, the WTO’s new structure prohibited voluntary export restraints, a favorite protectionist tool, and limited trade-distorting agriculture subsidies through the Agreement on Agriculture. Perhaps most importantly, the GATT’s informal non-binding dispute mechanism was replaced with a binding one: the Dispute Settlement Understanding (DSU).

The Uruguay Round negotiations also established that countries would not act unilaterally to address trade practices that fell within WTO agreements. Instead, they would resolve issues through the WTO’s dispute settlement system. This “grand bargain” was a notable compromise particularly for the United States, as it had traditionally operated from the position of complainant and thus in exchange for other nations’ agreements to abandon a veto mechanism in the dispute settlement process, the United States agreed to end its previous policy of imposing unilateral trade sanctions under Section 301 of the U.S. Trade Act.

CHALLENGES TO THE SYSTEM AND WAYS FORWARD

In late-2001, as China was planning to join the WTO, the United States wanted to quickly jumpstart the next round of multilateral negotiations. Even though many countries were reluctant to do so, in a show of solidarity after the terrorist attack on September 11, 2001, the WTO launched the next round of trade negotiations in Doha, Qatar, in November of that year.

The overarching goal of the “Doha Development Round” was to integrate developing countries into the global economy. However, not long after it began, it became apparent that much of the agenda faced intractable problems, particularly with respect to agriculture subsidies and other forms of protectionism. The United States and the European Union could not agree on cuts to domestic agriculture subsidies, and developing nations refused to make market-oriented reforms. Likewise, in 2008, the United States clashed with India over tariff hikes to combat agricultural import surges.

23. Ibid., pp. 644-45.
24. Ibid., p. 651.
25. Ibid.
26. Ibid.
27. Ibid.
28. Ibid., pp. 654-55.
31. Ibid., p. 675.
To many observers, the 2008 stalemate marked the beginning of the end of the Doha Round. The causes of failure were numerous and complicated, and trade negotiators formally shut down negotiations in 2015, marking the first time in the history of the GATT and the WTO that a round had failed, which in hindsight, was perhaps a sign of things to come.

Today, the multilateral trading system and general globalization are in peril. Though the causes of this are nuanced, the prevailing consensus holds that the benefits of the post-World War II liberal order are fraying. And the multifaceted problems facing the WTO are on the frontlines of this breakdown, driven primarily by the same issues that stalled the Doha negotiations, subsequent issues with China and by the Trump administration’s antipathy toward the system itself. Accordingly, the following sections outline these major issues and suggest potential ways forward that can help salvage the multilateral trading system.

**Stalled Negotiations**

First, the collapse of the Doha Round has led to a stalemate of negotiations and questions as to whether members will ever begin a new major negotiating round. At the WTO’s 2017 ministerial conference in Buenos Aires, Ambassador Robert Lighthizer, the current United States Trade Representative, complained that the Geneva-based organization is “losing its essential focus” and becoming “a litigation-centered organization,” as members often use litigation to seek outcomes they could not achieve through negotiation. And, in recent years, it has been the case that negotiations have been virtually non-existent.

However, there is a way forward. Members of the WTO should turn toward plurilateral negotiations, which are those between some, but not all, members of the WTO. Ideally, these could eventually transform into binding commitments for all WTO members. Two areas in particular are ripe for plurilateral negotiations.

First, WTO members should begin negotiating rules to address electronic commerce (e-commerce). With the rise of the internet, commerce is increasingly taking place online. For several years, the United States and several other major economic powers have clamored for new negotiations to shape Internet-based commerce and trade. China had been reluctant to engage on e-commerce issues, but at the World Economic Forum in Davos, Switzerland in January 2019, Beijing relented and agreed to join the plurilateral talks.

Next, trade negotiators in Geneva should jumpstart negotiations regarding the Environmental Goods Agreement (EGA). In 2014, a group of more than 45 WTO members, including the United States, China, the European Union, Japan and Canada, agreed to begin negotiating trade rules and tariff reductions for clean energy products. By lowering the costs of clean energy, the EGA would use freer global trade to help mitigate the effects of climate change. EGA negotiations have been on pause since 2016.

While plurilateral negotiations will not solve all that ails the WTO, they could end a stalemate that has been ongoing for too long. With too many distortions and barriers still prevalent in the international trading system, more negotiations are necessary.

**China’s Role in the WTO**

Although China was not an original member of the WTO, its rapid rise as a world economic power led it to join in 2001. Through a series of negotiations that led to its admission, China agreed to cut its tariffs from an average of 25 to 9 percent, agreed to phase out import quotas and licensing requirements, and committed itself to open up services and adhere to agreements on trade-related investment and intellectual property.

Since its accession, U.S. imports from China have increased significantly. This growth can be attributed to the overall growth of China’s economy. As Irwin notes: “For nearly three decades, China’s real GDP grew at more than 10 percent a year and China became the world’s second largest economy in the early 2000s.” In recent years, however, China’s role in the WTO has generated an enormous amount of controversy.

First, as Harvard Law School Professor Mark Wu has argued, its unique brand of state capitalism—a complicated and opaque web of formal and informal relationships between the Communist Party, state-owned enterprises, private enterprises and others—does not align with existing WTO


37. Ibid., p. 664.

38. Ibid.

39. Ibid.
trade laws and therefore poses significant challenges to the rules-based trading system. Whether the WTO can meet the challenges posed by China is an open question. And, although many believed admission into the WTO would move Beijing’s economic model in a market-oriented direction, it is not clear that it has. And for this reason, there is growing consensus that the United States and its allies need to confront China’s trade policy practices.

To this end, in March 2018, the USTR issued its Section 301 report, which essentially served as an indictment of China’s trade policy practices and formed the basis of the unilateral tariffs the Trump administration levied on Chinese imports. The report raises four major concerns. First, as a condition of doing business in China, Beijing forces foreign companies to transfer technology, including trade secrets, to Chinese-based companies through joint-venture requirements and foreign equity limits.

Second, Beijing imposes discriminatory requirements on U.S.-based companies seeking to license technologies to Chinese firms on non-market terms in a way that benefits Chinese companies. Additionally, “the bureaucratic hurdles contained in licensing regulations provide China with an additional opportunity to pressure firms to transfer more technology, or transfer it on more favorable terms, in exchange for administrative approvals.” These practices discriminate against American technology companies by preventing them from licensing their products on market-based terms while facilitating the illegitimate transfer of technology to Chinese-based firms and state-owned enterprises. The destructive nature of such practices led the USTR to register a dispute against Beijing at the WTO.

Third, the Chinese government directs and “unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies, to obtain cutting-edge technologies and intellectual property (IP) and generate large-scale technology transfer in industries deemed important by state industrial plans.” This state-directed and supported outbound investment policy of acquiring foreign companies to service Chinese industrial policy is a unique challenge, particularly with respect to strategic and high-tech products. Unlike other policies and practices cited in the Section 301 report, the WTO has relatively few disciplines covering the type of predatory investment strategies documented by the USTR.

Finally, the Chinese government “conduct[s] and support[s] cyber intrusions into U.S. commercial networks targeting confidential business information held by U.S. firms. Through these cyber intrusions, China’s government has gained unauthorized access to a wide range of commercially-valuable business information, including trade secrets, technical data, negotiating positions, and sensitive and proprietary internal communications.” Cyber intrusions complained of in the Section 301 report have facilitated Chinese acquisition of extremely valuable business information, including proprietary information and data, as well as trade secrets. This is an enormous burden on American businesses and is in direct violation of the TRIPS Agreement.

In addition to those laid out in the report, the U.S. has long-standing complaints about other Chinese trade policy practices. Specifically, U.S.-based policy analysts and government officials often cite China’s massive subsidies to domestic firms, particularly State-Owned Enterprises (SOEs), which lead to overcapacity issues in certain industries.

While much of the rhetoric and policy proposals regarding China are overblown, there are legitimate concerns about whether Beijing’s commercial practices are compatible with more market-oriented economies and WTO rules. And, while the Trump administration is correct in identifying some of China’s abuses, its subsequent choice to unilaterally impose tariffs is a violation of WTO obligations that imposes unnecessary burdens on American consumers and further imperils the existing trading system.

Despite the administration’s claims to the contrary, the WTO is the appropriate and legally required venue to resolve complaints such as those lodged against China by the United States in the Section 301 report. And, while the USTR does retain sole discretion to determine whether an issue falls under the WTO agreements, any such determination can be challenged in domestic courts. And, as trade attorney Scott Lincicome argues, “there is a very strong argument that most of the Chinese practices that USTR has targeted are actually covered by the WTO.”

In light of this, rather than acting unilaterally, in violation of our WTO commitments and potentially domestic trade law, the Trump administration should piece together a large coalition of trading partners who share our concerns such as Canada, the European Union and Japan. Together, this coalition could pose an aggressive challenge to China’s trade practices through dispute settlement at the WTO. The formation of a large trading bloc of countries committed to better co-

42. Ibid., p. 48.
43. Ibid., p. 65.
44. Ibid., p. 153.
mercial practices may have the leverage to force Beijing to raise its commercial standards.

There are a number of legal bases for a holistic challenge to Beijing’s trade regime, including its previously mentioned commitments under the TRIPS Agreement and its Accession Protocol. Article 39.2 of the TRIPS Agreement provides that companies “shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent.” Moreover, TRIPS Article 41 establishes an obligation for WTO members to protect intellectual property. Meanwhile, Article 7.3 of China’s Accession Protocol, for instance, prohibits Beijing from conditioning importation or investment on, among other things, “the transfer of technology.” This is an explicit prohibition. Together, the TRIPS Agreement and China’s Accession Protocol provide the United States and its trading partners with a unique opportunity to demonstrate that these agreements have teeth and can be applied to the changing nature of trade in the 21st century.

These facts belie the Trump administration’s lack of faith in the WTO to discipline China. Although not perfect, Beijing has a decent record of compliance with negative rulings from the Dispute Settlement Body at the WTO. In fact, according to Simon Lester and Huan Zhu of the Cato Institute: “In almost all complaints brought against China, whether litigated fully or resolved without litigation, the complainants have made at least some progress towards their goals of greater market access in China.” Given this, similar methods employed by the Trump administration are likely to yield positive results, without upending the multilateral trading system.

The Current Administration

While China’s state-driven capitalism and its policy transgressions are a more serious long-term challenge, the most immediate threat to the rules-based system is the Trump administration’s multi-front attack on the WTO. First, along with the imposition of unilateral tariffs, citing that its policies are “unfair,” Trump has threatened to withdraw the United States from the WTO. However, as is often the case with the president’s anti-trade pronouncements, such attacks are not grounded in reality. For example, to demonstrate this alleged unfairness, top administration officials routinely claim that U.S. tariffs are much lower than our major trading partners. In so doing, the administration cherry picks individual products that face higher foreign tariffs than those levied by the United States. For instance, under WTO rules, the United States has a maximum tariff, known as a “bound” rate, of 2.5 percent on automobile imports while the European Union has a 10 percent bound rate on automobile imports.50

Upon initial inspection, this may appear unfair, but cherry-picking individual products paints an incomplete picture. According to 2016 data from the World Bank, the United States’ trade-weighted average tariff is 1.6 percent, while the EU’s is also 1.6 percent, Japan’s is 1.4 percent and China’s is 3.5 percent.51 In other words, it is simply not true that the United States imposes much lower tariffs than our major trading partners. All nations protect certain politically sensitive products and industries but in the end, the averages are roughly the same.

In an effort to remedy this imaginary inequity and in conjunction with Congressman Sean Duffy of Wisconsin, the White House drafted legislation that would give the president the authority essentially to eliminate MFN and raise tariffs on a product-by-product basis above the bound rate the United States agreed to at the WTO. And although the stated goal is to equalize tariffs with trading partners on an individual product basis, if enacted, the bill would mostly accomplish a serious blow to the WTO, as it would essentially allow the president to negate fundamental WTO principles (such as MFN and tariff bindings) without formally withdrawing the United States from the organization.

The second major conflict between the Trump administration and the WTO is the administration’s imposition of unilateral tariffs on imports from China under Section 301 of the Trade Act of 1974. As discussed, many of the practices alleged in the complaint—forced technology transfer, intellectual property abuses and others detailed above—are legitimately concerning, but the Trump administration’s levying of unilateral tariffs is enormously problematic. As a justification for using Section 301 in this manner, the administration


argues that, “the World Trade Organization is not equipped to deal with [China].”

Likewise, pursuant to Section 232 of the Trade Expansion Act of 1962, the Trump administration has levied unilateral tariffs on steel and aluminum imports under the guise of “national security.” The administration is also currently considering whether to invoke its national security powers to restrict the importation of automobiles and auto parts and uranium. It is true that GATT Article XXI excepts members from their WTO obligations and allows members to impose import restrictions if such measures protect their national security. However, invocations of Article XXI have been rare. As one scholar has noted, “WTO members have historically been quite restrained in claiming national security concerns, recognizing that broad national security claims could be misused to provide economic protection to industries.” And certainly, it is not too difficult to imagine any number of countries making frivolous claims to enact measures to protect politically sensitive domestic industries.

As is the case with his claims of “unfairness” in trade distributions, Trump’s “national security” claims are dubious. For example, the Department of Defense estimates that only three percent of domestic steel and aluminum production is used for military purposes. Perhaps worse, by invoking GATT Article XXI to impose tariffs, the administration has put the WTO and the dispute settlement system in a bind. Certain members, including the European Union, Canada and China, have challenged the steel and aluminum tariffs, arguing that they amount to illegal protectionism. As it has throughout the history of the GATT, the United States maintains that the WTO has “no authority to mediate national security matters and should simply issue a decision that says the matter is outside of the WTO’s remit.” If pressed, the WTO will have two unenviable options: telling the largest, most powerful economic power in the world what is and is not in its national security interest or legitimizing an enormous loophole in its own rules that will surely open the floodgates for other claims by member nations. The overriding concern is that if the WTO chooses the former, the Trump administration will intensify its war on the multilateral system.

The final front in the administration’s multifaceted threat to the WTO is its war of attrition on Geneva’s Appellate Body, the highest international trade court in the world. The Appellate Body is traditionally comprised of seven members who serve staggered, four-year terms, which can be extended another four years to a maximum of eight. The members are from geographically diverse parts of the world but traditionally, the United States and the European Union have always had one member.

Citing certain disagreements with the WTO in general and the Appellate Body in particular, the Trump administration is currently blocking the appointment of new judges to Geneva’s highest court. As a result, as of Oct. 1, 2018, the Appellate Body has just three members—the bare minimum required to hear appeals of panel decisions. This means that if an Appellate Body member has a conflict of interest, it is unable to render a decision. Unless the Trump administration stops blocking new appointments from being made, the Appellate Body will have just one member by the end of 2019.

At the WTO’s General Council meeting last December, the European Union and a host of members, including China, India, Canada and Mexico, proposed changes to WTO rules in order to address American concerns and in an attempt to avert the pending Appellate Body crisis. The United States flatly rejected the proposal. At the same meeting, the United States once again blocked consideration of any new nominees.

This could potentially spell the effective end of binding dispute settlement at the WTO. While panels could still be formed and cases heard, on their own, decisions from panel reports are not binding. To become so, they must be adopted by the Dispute Settlement Body. However, under Article 16.4 of the Dispute Settlement Understanding, if a party notifies its decision to appeal a panel report, “the report by the panel shall not be considered for adoption by the [Dispute

60. Although it is beyond the scope of this paper, the United States has cited the failure of WTO members to properly notify Geneva of subsidies and the disparate treatment of developing economies, as well as vague claims of “judicial overreach” by the Appellate Body.
Settlement Body] until after completion of the appeal.”\(^6\) In other words, without a functioning Appellate Body, a WTO member that loses a panel decision could block the adoption of the report simply by filing an appeal.

There is a pervasive belief among the Trump administration that the WTO is an ineffective organization to deal with the challenges of the modern economy, and that the deck is stacked against the United States. Yet the 2018 report of the president’s own Council of Economic Advisers, which includes President Trump’s own signature notes: “[T]he United States has won 85.7 percent of the cases it has initiated before the WTO since 1995, compared with a global average of 84.4 percent. In contrast, China’s success rate is just 66.7 percent.”\(^6\)

If the Trump administration succeeds in killing the Appellate Body, it will lose one of the only avenues the United States has to challenge unfair and protectionist trade policies employed by other countries and a forum for defending American interests. Eliminating binding dispute settlement at the WTO would constitute an enormous step backward to the bygone era of the GATT and all of its major limitations and flaws.

However, put simply, despite the president’s threats to leave the WTO, the administration lacks the legal authority to do so. Article XV of the Marrakesh Agreement does state that any member of the WTO may withdraw from the agreement six months after notifying the Director-General but it does not specify how the process must take place in each country. However, the Uruguay Round Agreements Act (URAA), which ratified the Uruguay Round and implemented it in domestic law, establishes a clear and unequivocal process for withdrawal from the WTO: Membership can be terminated only by joint resolution of Congress.\(^6\)

**THE DIRE CONSEQUENCES OF WITHDRAWAL**

Though the president does not have unilateral authority to withdraw from the WTO, if he persuaded Congress to support such an action, the consequences could be catastrophic.

First, if the United States withdrew, the president would have unilateral authority to significantly increase tariffs. Since the tariff code has not been revised since 1930 and the only subsequent reductions were achieved due to multilateral trading rounds under the GATT,\(^6\) to withdraw from the WTO would enable the president, through executive order, to increase tariffs to the maximum rates established under Smoot-Hawley. These rates are well above the maximum tariff bindings established under the GATT. It is worth noting that these increases would not impact tariffs on products from the 20 countries with which the United States maintains free-trade agreements. About 40 percent of total U.S. two-way trade is covered by free-trade agreements; the other 60 percent is covered by WTO rules.\(^6\) In a worst-case scenario, it is estimated that the average tariff could increase by 26 percentage points.\(^6\)

Since the United States is the world’s largest importer of goods and services, an across-the-board tariff hike would significantly harm consumers of imported items, whether companies or individuals.\(^6\) Further, it is estimated that about half of all imports are intermediate products, raw materials and capital goods and equipment used by domestic firms to make their products more globally competitive.\(^6\) Increasing tariffs, then, merely makes these firms less competitive and poses a threat to the millions of Americans they employ. Individuals and families who purchase final goods imported into the country would also see higher costs and an erosion of purchasing power. The incidence of new tariffs would fall particularly hard on lower-income families because they spend a greater percentage of their income on traded goods.\(^7\)

Not only would families and businesses be harmed, foreign countries would almost certainly retaliate against American exports. American firms export more than $1.5 trillion worth of goods and services annually, making the nation the world’s second-largest exporter after China.\(^7\) Without membership in the WTO, American exporters would lose market access around the globe. Countries retaliating against American products would be free to raise tariffs to any rate with impunity, well-above MFN-bound rates. Many American products would be replaced by other exporters’ products in foreign markets, jeopardizing the millions of Americans employed by firms reliant on export markets.


\(^7\) ibid., p. 7.


\(^6\) Ibid.

\(^6\) 19 USC §3535.
Finally, the United States’ withdrawal from the WTO would eliminate the benefits accrued through the dispute settlement system and its litigation forum, which helps stop the spread of protectionist contagion. The United States uses the dispute settlement system to challenge foreign-trade practices that illegally and unfairly discriminate against its exports. The United States brings approximately 20 percent of all cases filed at the WTO, and it is “involved in almost half of all [...] dispute resolution procedures.” Withdrawal would therefore be a devastating blow to the defense of American commercial interests abroad.

CONCLUSION

For 80 years, the United States has led the global economic order. Far from a victim of this system, the United States is a primary beneficiary. We have shaped it according to our interests and the results have been overwhelmingly positive. While the rules-based trading system faces enormous challenges, the WTO is an indispensable player in an increasingly globalized world. As an architect and defender of the WTO, the United States bears a special responsibility to protect its system. Accordingly, policymakers must thoughtfully address the challenges the WTO faces rather than using it as a punching bag to score cheap rhetorical points.

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