

U.S. Takes Aim at WTO Appeals Court

By Evan Zimmerman, J.D. Candidate 2020 | October 15th, 2018

With the high-profile international disputes of the past few months, such as the trade war with China and the impending signing of USMCA, one could be forgiven for forgetting about the WTO. The Trump administration's war against the WTO continues, however, as the organization has been thrown into crisis by the [failure of the U.S. to appoint enough judges](#) to its Appellate Body. The vacant seats could lead to the shutdown of the WTO's appeals court, presenting a foreign policy confrontation that comes on the heels of the U.S. withdrawal from the Paris Accord and the UN Human Rights Commission, among other American pullouts.

The WTO is governed by the General Agreement on Trade and Tariffs, or [GATT](#). GATT serves two main purposes. First, it serves to lower trade barriers through terms like the most-favored-nation (MFN) principle for GATT signatories. Second, and just as important, it introduces a [path for dispute resolution](#). When member countries believe that another country has engaged in unfair practices, such as dumping or non-national security tariffs, they can enter a dispute mediation overseen by a rotating panel of judges. At any point, the parties may end the dispute and settle. If the initial ruling is unsatisfactory, the parties can then appeal. The United States has the power to block the appointment of any WTO judge—in 2016, President Obama blocked the appointment of a South Korean judge for the first time. Now, under President Trump, the seven-seat WTO Appellate Body has three vacancies. It may soon be unable to operate.

The WTO has been [amended several times](#) since its inception. Nonetheless, in recent years it has been [criticized](#) as [ineffective](#), especially as countries like [China flout WTO principles](#) without reprimand. It has also been [accused of being out of date](#). Fundamentally, these accusations speak to the physical goods orientation of the GATT in a world that is increasingly driven by property that is less physical and more intellectual. For example, when it comes to ecommerce, the WTO still has no dedicated rules.

The United States is actually the [most active member of the WTO](#), participating in more disputes than any other country by a large margin. Yet the WTO is under siege from the country that previously was its biggest booster. Secretary of Commerce Wilbur Ross [called the WTO "outdated."](#) President Trump even [proposed leaving the WTO](#) altogether in favor of bilateral agreements, which [he has always supported](#) over multilateral agreements. Conservatives have



[critiqued](#) multilateral bodies like the UN for a long time, but such concerns typically center around loss of sovereignty, rather than crude mercantilism. With the Trump administration's refusal to appoint new judges to the Appellate Body, the WTO's future looks less certain than ever.