

# The Wire *China*

## COVER STORY Sidelined

How the World Trade Organization lost control of its two most important members — and became irrelevant in the process.

BY GRADY MCGREGOR — AUGUST 13, 2023

ECONOMY

POLITICS

TRADE



*Illustration by Valeria Petrone*

On November 30, 2020, in a small classroom in Geneva, Switzerland, one of the world's most powerful courts withered into nothing.

That day, Dr. Hong Zhao, the last remaining member of the World Trade Organization's Appellate Body, stepped down. For 25 years, the seven-person committee had provided the final say in trade disputes between the WTO's member countries, acting in many ways as the referee of globalization. As of 2022, 98 percent of the [\\$25 trillion global trade market](#) ([https://www.wto.org/english/res\\_e/booksp\\_e/trade\\_outlook23\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/trade_outlook23_e.pdf)) took place between the WTO's 164 member states.



**Dr. Hong Zhao, during her  
swearing in ceremony to the WTO  
Appellate Body, January 25, 2017.  
*Credit: WTO***

But with Zhao's departure, the Appellate Body, at least functionally, ceased to exist.

"From tomorrow on, the Appellate Body will be an entity that exists only in the Treaty of Dispute Settlement Understanding," Zhao said in her [farewell speech](https://www.youtube.com/watch?v=w22ckLlK1VI) (<https://www.youtube.com/watch?v=w22ckLlK1VI>), referring to the 1995 agreement that established the WTO appeals court. Normally, as chairperson, Zhao's speech would be delivered in front of hundreds of delegates in one of the cavernous halls of the WTO campus on the banks of Lake Geneva. But these were not normal circumstances.

Thanks to a years-long U.S.-led effort, the Appellate Body had been mostly neutered during Zhao's tenure. By refusing to nominate or re-appoint members to their four-year terms, the U.S. had sentenced the Appellate Body to a slow death of attrition; since 2019, it hadn't had sufficient members to rule on cases. Add Covid restrictions to the Body's ignominious end, and it meant that Zhao's historic speech was delivered in front of a tarp painted to look like a library in an empty classroom at the Graduate Institute of Geneva.

But the speech was not just a eulogy for the Appellate Body. Zhao also wanted to issue a warning about what lay ahead: total disintegration of the global trading system.

## The Appellate Body used to be called ‘the crown jewel’ of the multilateral trading system. Now it’s not there.

— *Padideh Ala’i*  
 (<https://www.wcl.american.edu/community/faculty/profile/alai/bio>), a law professor at American University

“The WTO’s existential crisis is looming large,” she said. “This should be highly alerted and clearly sensed by all members. Save the dispute settlement system, save the WTO. There is no time to waste.”

Padideh Ala’i (<https://www.wcl.american.edu/community/faculty/profile/alai/bio>), a law professor at American University, notes that Zhao wasn’t exaggerating. Because every member of the WTO has the right to appeal WTO decisions, countries can now file appeals indefinitely “into the void” since the Appellate Body no longer exists.

“The Appellate Body used to be called ‘the crown jewel’ of the multilateral trading system,” she says. “Now it’s not there.”

### The Fall of the WTO Appellate Body

A timeline of the departure of WTO Appellate Body members since December 2016



It is perhaps one of the greatest ironies of the 21st century that the United States, once one of the WTO’s biggest cheerleaders, is almost entirely responsible for sidelining it.

The U.S. first stopped re-appointing members to the Appellate Body in 2011, when the Obama administration blocked Jennifer Hillman’s appointment. The administration didn’t cite a reason at the time, but many experts think U.S. grievances over China’s trade policies were — and continue to be — a major factor.

“In the U.S. view, the Appellate Body was overreaching in saying the U.S. could no longer use trade remedies [such as anti-dumping tariffs] the way the U.S. thought it was entitled to,” says [Bruce Hirsh](https://www.linkedin.com/in/bruce-hirsh-b3667114) (<https://www.linkedin.com/in/bruce-hirsh-b3667114>), a principal at Tailwind Global Strategies and former official at the Office of the U.S. Trade Representative (USTR). “And as the China issues rose to the fore, it drew a line under this disagreement. The Chinese government has control over its economy in ways that are different from other WTO members — and the Appellate Body’s decisions were limiting the ability of the United States to use its trade remedy tools against China.”

| VIII. Findings and Conclusion |  |
|-------------------------------|--|
| 611.                          | For the reasons set out in this Report, the Appellate Body:  |
| (d)                           | with respect to "double remedies":   |
| (iii)                         | finds that, in the four sets of anti-dumping and countervailing duty investigations at issue, by virtue of the USDOC's imposition of anti-dumping duties calculated on the basis of an NME methodology, concurrently with the imposition of countervailing duties on the same products, without having assessed whether double remedies arose from such concurrent duties, the United States acted inconsistently with its obligations under Article 19.3, and, consequently, under Articles 10 and 32.1 of the <i>SCM Agreement</i> . |

**An excerpt from an Appellate Body report (<https://www.thewirechina.com/wp-content/uploads/2023/08/379ABR.pdf>) in response to a dispute filed by China against the U.S., with respect to the U.S.'s anti-dumping and countervailing duties. The report was adopted on March 25, 2011.**

Although China has complied with the vast majority of WTO dispute settlement rulings against it — a better track record than the U.S. by some calculations (<https://www.amazon.com/Implementation-Rulings-Organization-International-Economic/dp/1509913556>) — the WTO system as a whole hasn't lived up to U.S. expectations for holding China's economy and political system to account. Structural problems, such as China's increasingly authoritarian turn under Chinese President Xi Jinping or the government's state-led support for industrial sectors like aluminum and steel (<https://www.thewirechina.com/2023/06/04/aluminum-foiled-china/>), continue to frustrate U.S. policymakers. But many experts note that the WTO was never designed to change China's system.

"The most common criticisms you hear about China is that it imposes the most subsidies, employs unfair trade practices, or uses state-owned enterprises as an instrument to facilitate its industrial policies and to outcompete other major economies," says Weihuan Zhou (<https://www.unsw.edu.au/staff/weihuan-zhou>), an international trade law professor at the University of New South Wales in Sydney. "But those practices are not necessarily prohibited under China's accession to the WTO. When China acceded, the U.S. and EU were not successful in asking China to give more rigorous commitments; it did not commit to transition into a western-style market economy."

The result, as a senior official for the U.S. State Department told reporters in June, is that "We have one of the largest non-market economies in the world swimming in a sea of market economies and using practices that are unfair, unbalanced and that are causing concern among many countries around the world."



## Shi Guangshen, then Chinese foreign trade minister, signs documents for China's accession to the WTO in Doha, November 11, 2001. Credit: WTO

([https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_chine\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_chine_e.htm))

And the U.S., it seems, is at a loss as to how to deal. More than two decades after the U.S. paved the way for China's accession to the WTO, the overall size of China's economy has grown by a factor 14; it is now the world's largest exporter of goods and the second largest importer. U.S. companies and consumers were beneficiaries of that boom — U.S. purchasing power grew by \$1,500 per person (<https://blogs.lse.ac.uk/businessreview/2019/08/20/trade-with-china-benefited-us-consumers/>) in just the first six years of China's WTO inclusion, thanks to lower-cost Chinese goods — but lawmakers have become more focused on the drawbacks in recent years.

U.S. backlash to the 'China Shock,' which refers to the gutting of American manufacturing (<https://sccie.fsi.stanford.edu/china-briefs/china-shock-and-its-enduring-effects>) since China's WTO accession, as well as to China's increasingly authoritarian and state-led orientation, have infected the daily WTO operations — and it's unclear if there is a cure.

"Both countries have benefited enormously from the trade relationship. And there's still a huge amount of trade happening between China and the U.S.," says David Dollar (<https://www.brookings.edu/people/david-dollar/>), a senior fellow at the Brookings Institution. "But the question is: If the WTO becomes dysfunctional, should it be reformed and repaired? Is it sustainable for the U.S. and China to keep trading?"



(<https://www.thewirechina.com/2022/08/05/robert-zoellick-on-accepting-china-as-it-is/>)

Historically, Dollar notes, the situation is unprecedented. The Soviet Union, for example, was not part of trade agreements with the West nor was it part of the World Bank or International Monetary Fund (IMF). But now, Dollar says, "we have this geostrategic tension in both China and the U.S. — and they are both integrated into the same global system."

As a result, that global system is teetering on the edge of irrelevance.

"The WTO has gotten caught in the growing U.S.-China conflict," says Mary Lovely ([https://www.pii.com/experts/senior-research-staff/mary-e-lovely?gclid=Cj0KCOjw2qKmBhCfARIsAFy8buLWLURiN3xB2gi\\_nPRVfy-kPn4CDKYZ7PSN0AxfVMVlveXZb2G1ZvkaAhH6EALw\\_wcB](https://www.pii.com/experts/senior-research-staff/mary-e-lovely?gclid=Cj0KCOjw2qKmBhCfARIsAFy8buLWLURiN3xB2gi_nPRVfy-kPn4CDKYZ7PSN0AxfVMVlveXZb2G1ZvkaAhH6EALw_wcB)), a senior fellow at the Peterson

Institute for International Economics. “If there wasn’t China, I don’t think the U.S. would be doing this to the WTO and increasingly looking for ways to move around the WTO. This relationship is fundamental to where we go with the global trading system.”

## TRADE’S TRIUMPH

**I**t is a wonder that a multilateral trading system — one that boasts the participation of the vast majority of countries on earth — exists at all.

In 1944, over 700 delegates from 44 allied nations came together to design the foundations of the modern international economic system at the Bretton Woods conference in New Hampshire. The conference resulted in the creation of the IMF, a financial agency made to monitor currency exchange rates and serve as an international lender, and the International Bank for Reconstruction and Development, a bank to fund World War II reconstruction efforts.



**An excerpt from the introduction to the  
General Agreement on Tariffs and Trade  
(<https://www.thewirechina.com/wp-content/uploads/2023/08/GATT-PDF.pdf>).**

The conference was also supposed to result in a third pillar of the newly created global order — a group called the International Trade Organization (ITO) that would set trade rules and have the power to settle disputes between countries. But the ITO perished when the U.S. Congress failed to ratify the measure.

Still, negotiators at Bretton Woods agreed to a less ambitious proposal called the General Agreement of Tariffs and Trade (GATT), which went into effect in 1948, with 23 countries agreeing to lower trade barriers between one another.

The GATT was, at the time, the largest-ever multilateral agreement to govern global trade, and by 1994 its membership grew to include 128 countries. But the agreement was initially designed as a stopgap measure and had several gaping holes. It only covered trade merchandise, for instance, and not services or intellectual property, and it lacked an effective enforcement mechanism (<https://www.piie.com/commentary/speeches-papers/understanding-world-trade-organization>), meaning there was no way to ensure countries actually adhered to its rules.

“It was a diplomatic, consensus-based system,” Ala’i says. “A party could make a complaint but the party who was being complained against had to agree.”

GATT’s shortcomings highlighted the need for a more effective global trade body, and in 1995 the WTO replaced GATT as the world’s largest multilateral trade body. The WTO’s [initial charter](https://www.wto.org/english/res_e/booksp_e/agrmtseries1_wto_e.pdf) ([https://www.wto.org/english/res\\_e/booksp\\_e/agrmtseries1\\_wto\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/agrmtseries1_wto_e.pdf)) introduced a comprehensive set of trade governance rules as well as an independent body — the dispute settlement mechanism that included the Appellate Body — to resolve disputes.



**The first seven members of the WTO Appellate Body after their first meeting in Geneva, December 13, 1995. From left to right: Justice Florentino Feliciano (Philippines), Said El-Naggar (Egypt), Julio Lacarte Muro (Uruguay), James Bacchus (U.S.), Christopher Beeby (New Zealand), Mitsuo Matsushita (Japan) and Claus-Dieter Ehlermann (Germany). Credit: Donald Stampfli via AP Photos (<https://newsroom.ap.org/detail/SWITZERLANDTRADEDISPUTE/a454d7l?Query=WTO%20appellate&mediaType=photo&sortBy=arrivaldatetime:asc&>)**

For the five years after the WTO’s formation, global trade volumes grew by an average of 7 percent each year. There was pushback, of course — including the infamous ‘Battle of Seattle’ protests in 1999 over environmental and workers rights — but many WTO believers eyed even more profound change.

At the time, China represented just 4 percent of global exports (<https://unctad.org/news/china-rise-trade-titan>) (compared to 14 percent today) and its economy was the sixth largest in the world. But if China became a member of the WTO, advocates argued, the U.S. would benefit. As then-U.S. President Bill Clinton said, accession “requires China to open its markets — with a fifth of the world’s population, potentially the biggest markets in the world — to both our products and services in unprecedented new ways... If we don’t sell our products to China, someone else will step into the breach.”

#### CHINA’S COMPLIANCE

As a prerequisite for China’s accession, Clinton needed U.S. Congress to pass the U.S.-China Relations Act, which established ‘Permanent Normal Trade Relations’ with China and dropped U.S. tariffs against the country.

In addition to arguing that China's accession would be a boost to the U.S. economy, Clinton also argued that it would serve as a liberalizing push for the country's closed-off political and economic systems.

**A 2011 interview with Long Yongtu, Chief Negotiator of China's accession to the WTO. Credit: WTO (<https://youtu.be/eFn1ytKmNfc>)**

"Membership in the WTO, of course, will not create a free society in China overnight or guarantee that China will play by global rules," Clinton said in a [speech](#) ([https://www.iatp.org/sites/default/files/Full\\_Text\\_of Clintons\\_Speech\\_on\\_China\\_Trade\\_Bi.htm#:~:text=It%20requi](https://www.iatp.org/sites/default/files/Full_Text_of Clintons_Speech_on_China_Trade_Bi.htm#:~:text=It%20requi)) in March 2000. "But over time, I believe it will move China faster and further in the right direction."

Clinton signed [the bill](#) (<https://www.govtrack.us/congress/bills/106/hr4444/text>) into law in October 2000, paving the way for China's official WTO accession on December 11, 2001.

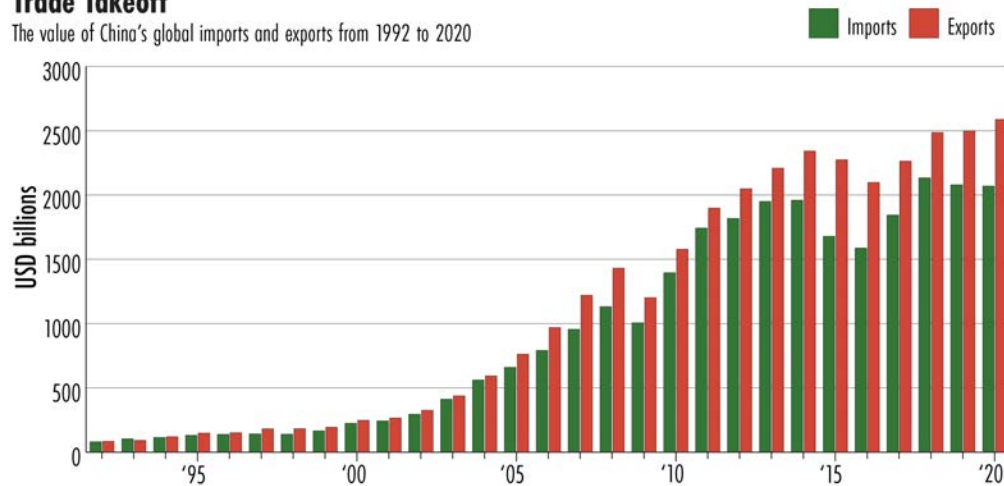
In order to meet WTO rules, China privatized thousands of state-run organizations, lowered trade barriers and changed protectionist laws. The WTO agreement, however, did not require China to fully transition to a market-based economy; as Clinton framed it, China would be heading in the "right direction" given that China's "state-owned dinosaurs" would be "least likely to survive in the global economy."

"China's political and economic systems, including the use of state-owned enterprises and the use of industrial policies and subsidies, were not required to be removed in any WTO agreements," says Zhou.



## Trade Takeoff

The value of China's global imports and exports from 1992 to 2020



### Data: WTO

Still, the net effect amounted to considerable changes to China's economy — China was even granted a unique grace period of a few years to accomplish it all — and was seen as a victory for reformers inside China.

“Chinese leaders needed the WTO rules to push forward the kinds of economic reforms that they thought were very badly needed for China,” says [Yeling Tan](http://www.yelingtan.net/) (<http://www.yelingtan.net/>), a political science professor at the University of Oregon and author of *Disaggregating China Inc.*, a book on the impacts of China's accession to the WTO.

**...China was reforming, it was opening, and it was using the WTO negotiations to help it achieve what it needed to achieve domestically.**

— [Wendy Cutler](https://asiasociety.org/policy-institute/wendy-cutler) (<https://asiasociety.org/policy-institute/wendy-cutler>), a former USTR official

[Wendy Cutler](https://asiasociety.org/policy-institute/wendy-cutler) (<https://asiasociety.org/policy-institute/wendy-cutler>), a former USTR official, notes that American negotiators had been working on China's accession agreement for 15 years before it was actually signed, and many officials thought the changes could help lead to a dramatic liberalization of the Chinese economy.

“Looking back, there was a lot of unfounded optimism about what [the accession] meant. But we have to keep in mind that China was reforming, it was opening, and it was using the WTO negotiations to help it achieve what it needed to achieve domestically,” she says. “The notion [at the time was] that external forces could help propel reform, or at least embed reform into a system.”

In retrospect, many experts say, the WTO's failure to deliver new trade rules in the 2001 Doha Round of WTO talks contributed to the stalling of China's economic liberalization.



**The WTO Doha Ministerial Conference, November 9-13, 2001. Credit: WTO via Flickr**  
**[\(https://www.flickr.com/photos/world\\_trade\\_organization/9308714762/\)](https://www.flickr.com/photos/world_trade_organization/9308714762/)**

“The WTO rules and the protocol of [China’s] accession were never designed to last forever. They were designed by trade negotiators to last for a short period of time, because at that point in time, negotiators anticipated that there would be another round of liberalization multilaterally through the Doha Round — a new set of rules would keep that momentum going,” says Tan, of the University of Oregon. “Since that additional set of rules never materialized, the additional impetus for [China’s] external liberalism never came along. And over time, China’s industrial policy planning agencies came to have more power within the system.”

It only took a few years for U.S. officials to become concerned that China’s commitment to its economic reform agenda was diverting from U.S. expectations. Cutler pins the turning point to 2006, when China launched the Indigenous Innovation initiative, a state-led policy that was aimed at developing Chinese capabilities in advanced technologies.

That same year, the U.S. government ordered a “top-to-bottom” review of China’s compliance with WTO rules, and USTR appointed Claire Reade as chief counsel for China trade enforcement to bring cases against China’s violations.

“Given that they had had this additional privilege of a transition period, [the U.S.] wanted to be sure no one was letting anything slide,” says Reade (<https://www.arnoldporter.com/en/people/r/rea-de-claire>), who is now a trade lawyer at Arnold & Porter. “And given what a large trading partner China was, [the U.S.] wanted to ensure China removed laws and regulations that were inconsistent with the WTO.”



**Gary Locke, then U.S. Secretary of Commerce, meeting with Chen Deming, China's then Minister of Commerce, May 10, 2011. Credit: U.S. Department of Commerce (<https://2010-2014.commerce.gov/blog/2011/05/11/secretary-locke-attends-productive-meetings-during-third-meeting-us-china-strategic-.html>)**

Under Bush, the U.S. brought seven WTO cases against China (<http://reuters.com/article/us-usa-trade-wto/insight-ten-years-on-american-business-rethinks-china-dreams-idUSTRE7B80EB20111209>), including protesting Chinese taxes on imported American auto parts ([https://ustr.gov/archive/Document\\_Library/Press\\_Releases/2006/March/United\\_States\\_Files\\_WTO\\_Case\\_Against\\_market\\_access\\_barriers\\_and\\_intellectual\\_property\\_rights\\_related\\_to\\_importing\\_films\\_and\\_books](https://ustr.gov/archive/Document_Library/Press_Releases/2006/March/United_States_Files_WTO_Case_Against_market_access_barriers_and_intellectual_property_rights_related_to_importing_films_and_books)) (<https://ustr.gov/about-us/policy-offices/press-office/press-releases/archives/2007/april/united-states-files-wto-cases-against-china>), to China, and Chinese government subsidies (<https://ustr.gov/about-us/policy-offices/press-office/press-releases/archives/2007/november/china-end-subsidies-challenged-united-st>) to producers of steel, wood and other raw materials.

President Barack Obama's administration continued the effort, ramping up the number of cases. Of the 25 WTO challenges Obama's administration brought, 16 were against China (<https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/fact-sheet-obama-administrations-record-trade-enforcement>), including disputing China's decision to place export limits on rare earths (<https://www.cnn.com/2012/03/13/world/asia/china-rare-earth-cases/index.html>), its dumping of aluminum on global markets (<https://www.thewirechina.com/2023/06/04/aluminum-foiled-china/>), and its decision to impose restrictions on agricultural imports (<https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/fact-sheet-obama-administrations-record-trade-enforcement>).

"There was a conscious effort to bring as many WTO cases against China as possible in Geneva, and the [Obama] administration had an excellent track record of winning these cases," Cutler says.

But Dollar, at Brookings, notes that many of these wins were "Pyrrhic victories" since China was able to successfully protect its industries long enough to gain market dominance. In 2012, for example, the U.S. won a WTO case against China related to banking. China, the U.S. argued, was discriminating against U.S. banks like Visa, Mastercard and American Express by providing Chinese payments processor UnionPay an unfair monopoly in the Chinese market. UnionPay was the only government-approved yuan-denominated payments processor, meaning foreign banks could only process transactions in foreign currencies — a small fraction of China's payments market.

Although the U.S. won the case in 2012, China only began accepting applications to process RMB transactions five years later in 2017, and American Express and Mastercard received preliminary approval to operate in 2018 (<https://www.cnn.com/2018/11/09/business/american-express-china/index.html>) and 2020 (<http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3969844/index.html>), respectively, while China's central bank has not made a decision yet on Visa's application. That delay likely provided a large boost to UnionPay's rise in becoming one of the world's largest payment processors. In 2011, Visa processed 80 percent of global debit card transactions while UnionPay's market share was less than 1 percent. By 2021, Visa and UnionPay both had a global market share of roughly 40 percent (<https://www.globaltimes.cn/page/202305/1291548.shtml>).

#### F. THE UNITED STATES' CLAIMS UNDER ARTICLE XVI OF THE GATS

7.508 The United States argues that the six alleged requirements imposed by China on the supply of EPS are inconsistent with Article XVI of the GATS. The United States submits that China made mode 1 and mode 3<sup>650</sup> commitments in its Schedule covering the supply of EPS, wherein China committed not to maintain any limitations on the number of foreign EPS suppliers. Through the imposition of these six requirements, the United States asserts, China established and maintains a monopoly structure to ensure that CUP is the exclusive supplier of EPS for all RMB bank card transactions in China whenever a bank card is issued in China and used in China.<sup>651</sup> It further argues that the measures are not justified by any limitations, conditions or qualifications on market access in China's Schedule. As a result of this, the United States considers that the measures at issue are inconsistent with China's obligations under Articles XVI:1 and XVI:2(a) of the GATS.<sup>652</sup>

### **An excerpt from the U.S.'s WTO case**

**(<https://www.thewirechina.com/wp-content/uploads/2023/08/413R.pdf>) made against China with respect to Electronic Payment Services. Note: CUP stands for China UnionPay, EPS stands for Electronic Payment Services.**

Under Obama, the U.S. also began to grow frustrated with the Appellate Body, and in 2011 it began blocking regular re-appointments of members. The U.S. did not offer an explanation (<https://www.piie.com/blogs/realtime-economic-issues-watch/wto-judicial-appointments-bad-omen-trading-system>) at the time, but experts say the U.S. believed the Body was overstepping its bounds.

"The U.S. felt that the Appellate Body started making new rules, but the countries themselves never agreed to those rules," says Reade. "The Body was never supposed to create law and create new obligations."

In one example of the alleged overreach, the Appellate Body ruled on a case involving U.S. tariffs on a range of Chinese imports, including products like woven sacks and welded pipes. China, which brought the case, argued the U.S. was violating WTO free trade principles through imposing the tariffs. The U.S. argued that its anti-dumping duty tariffs on the products were justified because U.S. producers were competing against subsidized state-owned firms. In 2010, a WTO panel sided with the U.S., but the Appellate Body reversed most of the WTO panel's initial findings — a move that highlighted a fundamental disagreement between how the U.S. and the Appellate Body would view the Chinese state's involvement in industry.



**Then U.S. Trade Representative Robert Lighthizer with then Chinese Vice Premier Liu He, April 4, 2019, in Washington, D.C. Credit: U.S. Trade Department**

**(<https://twitter.com/USTradeRep45/status/1114213612824997893>)**

During President Donald Trump's administration, the U.S. flat-out refused to nominate new members to the Appellate Body. In February 2020, then-U.S. Trade Representative and longtime critic of the WTO Robert Lighthizer published a [174-page report](#) ([https://ustr.gov/sites/default/files/Report\\_on\\_the\\_Appellate\\_Body\\_of\\_the\\_World\\_Trade\\_Organization](https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization)) outlining the alleged failures of the Body since its formation. By allowing non-market-based economies like China to operate unchecked, and by limiting the ability of economies like the U.S. to retaliate, the report said the Appellate Body was responsible for trade distortions that had made the global economy less efficient and that had undermined confidence in the WTO.

"The United States has raised concerns with the functioning of the Appellate Body for more than 20 years," the report said. "For too long, these concerns have been ignored, the problems have grown worse, and the WTO dispute settlement system has suffered as a result."

Indeed, the Trump administration wasn't shy about its feelings regarding the WTO. In 2018, after launching his [trade war against China](#) (<https://www.thewirechina.com/2020/06/14/how-the-trade-deal-fell-apart/>), Trump threatened to pull out of the WTO entirely. Establishing the WTO was "the single worst trade deal ever made," Trump [told](#) (<https://www.bloomberg.com/politics/articles/2018-08-30/trump-says-he-will-pull-u-s-out-of-wto-if-they-don-t-shape-up>). *Bloomberg* in August 2018.

The fact that Trump took unilateral measures against China and chose not to litigate his grievances through the WTO spoke volumes about the organization's ability to stay relevant in the rapidly deteriorating U.S.-China relationship.

"What does it say about the future of the WTO when the world's two largest economies took their trade fight outside the confines of the WTO?" says [Clark Packard](#) (<https://www.cato.org/people/clark-packard>), a research fellow at the Cato Institute. "That calls into question the future of the system."

0:00 / 1:13

**U.S. Trade Representative Katherine Tai's remarks on the World Trade Organization, October 14, 2021.**

**Credit: Geneva Trade Platform**

**([https://www.youtube.com/watch?](https://www.youtube.com/watch?v=DakSYxJEGNk&ab_channel=GenevaTradePlatform)**

**[v=DakSYxJEGNk&ab\\_channel=GenevaTradePlatform](https://www.youtube.com/watch?v=DakSYxJEGNk&ab_channel=GenevaTradePlatform))**

Some observers hoped the U.S. might be more conciliatory under the Biden administration, which has repeatedly said it is committed to the WTO. But the Biden administration has continued to block new appointments to the Appellate Body; as U.S. Trade Representative Katherine Tai put it [in a speech](https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/october/ambassador-katherine-tai-remarks-prepared-delivery-world-trade-organization) (https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/october/ambassador-katherine-tai-remarks-prepared-delivery-world-trade-organization) to the WTO in October 2021, the U.S. is still not interested in having the dispute settlement process “go back to the way it used to be.”

The WTO and USTR didn't respond to requests for comment.

The U.S. has also opted not to participate in the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), which is an alternative WTO appeals court that was set up in 2020 as a stop-gap replacement to the Appellate Body. Currently, [two dozen countries participate](https://wtoplurilaterals.info/plural_initiative/the-mpia/) (https://wtoplurilaterals.info/plural\_initiative/the-mpia/) in the MPIA including the European Union, China and Japan.

“China was not unhappy about [the MPIA],” says [Simon Lester](https://www.bakerinstitute.org/expert/simon-lester) (https://www.bakerinstitute.org/expert/simon-lester), non-resident fellow at Rice University's Baker Institute for Public Policy. “This is a great opportunity for them to show that they act in accordance with international law, that they're a good faith player, and that they will support the alternative.”



(<https://www.thewirechina.com/2023/05/28/a-new-architecture-for-u-s-china-engagement-secretariat/>).

Some, like Packard, note that this isn't a “good look” for the U.S., which risks ceding the WTO to China if it can't figure out how to re-engage.

“When the architect of the system is threatening to torch the system,” he says, “I think that calls into question the U.S.'s long-term commitment.”

#### TRADE'S TWILIGHT?

The WTO has set a 2024 deadline for member countries to negotiate Appellate Body reform and re-establish the court. But very few observers are optimistic about the prospects, namely because it is difficult to see China and the U.S. being able to come to an agreement.

“We see a lot of activity by WTO scholars making interesting suggestions and proposals for reform, but they’re really not gaining much traction,” says Lovely, at the Peterson Institute. “China has not engaged very deeply on reform yet because they know it’s not going anywhere. We don’t see a lot of activity in the United States.”

And we’re not likely to, experts say, since fixing the appeals court won’t address the U.S.’s underlying unease: that China’s WTO accession may have been flawed from the start.

Ultimately, the WTO may not be equipped to handle the relationship between its two most important members.



**U.S. Trade Representative Katherine Tai (left) and Chinese Minister of Commerce Wang Wentao at the WTO’s 12th Ministerial Conference at the WTO headquarters in Geneva, June 12, 2022. Credit: WTO via Flickr**

“Many of the issues that plague the U.S.-China trade relationship — dealing with subsidies or excess capacity or forced technology transfer — are not adequately addressed in the WTO,” Cutler says. “And the prospect of agreeing to meaningful rules in these areas has become increasingly difficult. It’s not realistic to expect the WTO to negotiate rules to curb the unfair trade practices that China is pursuing and that are of concern to the U.S. and others. I do not see the utility anymore.”

With no effective way to resolve disputes or to agree on reforms, WTO scholars warn that economic liberalization could be set back decades, leading to a more fragmented and power-imbalanced global economy.

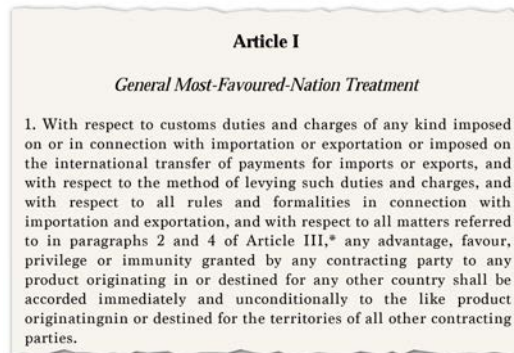
**Before we bury the WTO, it’s important to say that the WTO system has largely won, right? The overwhelming majority of goods traded globally are traded according to WTO rules. That’s a triumph of the system.**

— *Clark Packard* (<https://www.cato.org/people/clark-packard>), a research fellow at the Cato Institute

“Countries are increasingly turning to plurilateral, bilateral and even unilateral measures in the absence of the WTO. When nations predominantly collaborate with partners and allies, that results in diversion from international trade,” says Zhou, at the University of New South Wales in Sydney. “It hampers businesses worldwide since there’s no longer a single set of rules but various ones under different initiatives.”

It also hampers smaller countries, which many experts argue have been the real beneficiaries of the WTO since large economies are forced to play by the same rules as less powerful countries.

Indeed, even as many experts question the WTO’s continued relevance, they remain emphatic about its value in the world.



**The ‘Most-Favoured-Nation Treatment’**  
**(<https://www.thewirechina.com/wp-content/uploads/2023/08/MFN-PDF.pdf>)**

“We don’t always see or feel the benefits of the WTO’s system, but we definitely feel the costs,” says [Inu Manak](https://www.cfr.org/expert/inu-manak) (<https://www.cfr.org/expert/inu-manak>), a trade policy fellow at the Council on Foreign Relations. “People often forget that the [most favored nation] principle that allows for low tariffs on so many products around the world has been incredibly beneficial. And most trade happens on an MFN basis — it’s something that’s been around for so long, that we don’t appreciate it anymore. But if we were to lose it, we would feel it very deeply.”

This is why, Manak says, the WTO has not been sunk completely even as the U.S. pulls back from it and tries to create workarounds, such as ‘friend shoring’ and regional agreements.

Still, without an answer to the fundamental question of whether the WTO can continue to function with both the American and Chinese economies in it, the WTO’s ambitions and role will surely diminish, creating a smaller and more fragmented world in the process. Today, WTO observers often sound like they are picking up the baton from Zhao and eulogizing the unprecedented trade agreement, however reluctantly.

“Before we bury the WTO, it’s important to say that the WTO system has largely won, right? The overwhelming majority of goods traded globally are traded according to WTO rules. That’s a triumph of the system,” Packard says. “But the economic issues that animate the conflict between the United States and China are increasingly subordinated to broader national security and geopolitical concerns. Can a tribunal sitting on beautiful Lake Geneva in Switzerland serve a moderating role in that relationship? I don’t know.”





Grady McGregor is a staff writer for *The Wire China* based in Washington, D.C. He was previously a staff writer at *Fortune Magazine* in Hong Kong, writing features on business, tech, and all things related to China. Before that, he had stints as a journalist and editor in Jordan, Lebanon, and North Dakota. [@GradyMcGregor](https://twitter.com/GradyMcGregor) (<https://twitter.com/GradyMcGregor>).