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# To Build Back Better, Biden Needs to Fix Trade

## *Trump Has Left a Ticking Time Bomb at the WTO*

By Chad P. Bown



The World Trade Organization (WTO) breathed a sigh of relief when former U.S. President Donald Trump lost his bid for reelection in November. Over the past decade, the rules-based trading system has had to weather the two largest global economic crises since the 1930s, a pandemic, and a populist U.S. president seemingly intent on the system’s destruction. Also clearly relieved was the European Union, which quickly rolled out an 11-page action plan to reboot the transatlantic partnership. The document mentioned the WTO no less than eight times.

President Joe Biden has made clear that he sees trade as a “critical pillar” of his administration’s foreign policy. And much of the United States’ trade—with allies, but also

with China—takes place under WTO rules. The organization therefore likely has a vital long-term role to play. But Biden will now find the trade organization mired in multiple crises.

**The WTO's core system of resolving basic trade disputes is now broken.** The organization has failed to deliver an agreement limiting the subsidies that are depleting the world's fisheries. And the Trump administration, on its way out the door, vetoed the otherwise consensus selection of Ngozi Okonjo-Iweala as the organization's next director general.

If all that weren't bad enough, the **Trump administration left its successor a ticking time bomb in the form of tariffs, imposed in the name of national security.** The opening weeks of the Biden administration will be critical to unwinding this problem. But doing so will mean getting U.S. allies, including the European Union, to compromise on other, long-standing grievances. If that effort fails, Biden's hopes of harnessing multilateralism—to deal not only with China but with everything touching on trade, including climate and public health—risk collapsing before they ever have a chance to succeed.

## THE TIME BOMB

**Beginning in March 2018, the Trump administration imposed tariffs on nearly \$50 billion of imported steel and aluminum.** U.S. allies recognized the problem that the tariffs were supposed to address: Chinese state-owned or subsidized enterprises produced these metals far in excess of what the domestic market could absorb, and so Chinese exports flooded overseas markets. The Obama administration filed a WTO dispute against China's

aluminum subsidies, and the Organization for Economic Cooperation and Development (OECD) established a framework to discuss potential solutions for the bloated steel market.

Trump went with tariffs instead. Brushing aside the WTO dispute and the OECD framework relieved pressure on China to deal with the subsidies problem at its source. Meanwhile, Trump's duties mostly hit imports from Canada, Japan, European countries, and other allies. (Prior U.S. tariffs had already stopped most direct imports of metals from China.) To make matters worse, Trump had imposed the tariffs using emergency powers and a law that labeled the imports—most of which were in fact from U.S. military allies—a threat to national security.

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NATO allies were stung. The European Union and others retaliated against U.S. exports and lodged WTO disputes against Trump's duties. Most of the retaliatory tariffs—as well as the sting—remain. Even the United Kingdom, presumably desperate for a trade deal with the United States in the wake of Brexit, recently stated that Trump's tariffs are “unjustified under WTO rules and unfairly target UK steel and aluminum manufacturers and should be removed. Any claim that UK steel and aluminum imports harm US national security is false and without foundation.”

**But Biden's bigger problem is the formal dispute alleging that Trump's tariffs are unjustified under WTO rules. Any ruling on this matter could prove devastating for the trading system.**

If the WTO permits Trump's tariffs, it opens a giant loophole for any country to justify protectionism by invoking national security. If it rules against them—a likely outcome, given last year's decision in a similar dispute between Russia and Ukraine—the domestic political consequences could be severe for the United States. Tensions between Washington and Beijing are escalating, and more American populists are waiting in the wings: any WTO statement that the United States cannot do what it wants to protect its national security could spark a rebellion. Already, in May 2020, Republican Senator Josh Hawley of Missouri introduced a joint resolution demanding that Congress vote on whether the United States should withdraw from the organization.

#### **THE TROUBLE WITH TARIFFS**

Once he has had a chance to live with them, Biden may detest Trump's metals tariffs for their own sake. American companies and their workers continue to suffer from these duties. Not even Trump's Twitter bullying could stop Harley-Davidson from moving production to Thailand and publicizing that Trump's policies had made manufacturing its Europe-bound motorcycles in the United States unprofitable.

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Brussels has scheduled more duties—covering an additional \$3.8 billion of U.S. exports—to go into effect on March 23. Biden will also inherit the deeply worrisome procedures Trump introduced, whereby companies hurt by the tariffs can beg his administration for an exclusion. The ad hoc setup led to allegations of unfairness and corruption of a kind that the Biden administration will likely seek to avoid.

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And then there are the knock-on effects. The hike in metals prices makes manufacturing more costly in the United States than elsewhere for products ranging from cars to washing machines. As a result, for every U.S. steel worker who benefits from the tariffs, an estimated 75 American manufacturing workers are hurt. Government infrastructure projects that use metal cost more than they did before the tariffs, and U.S. taxpayers foot the bill. Moreover, the tariffs are cascading into further demands for protection: metal-using companies that have to pay more for materials than their foreign counterparts do cannot compete, and they increasingly want tariffs of their own.

Biden should be able to help the U.S. steel and aluminum industries without national security tariffs. Projects to build infrastructure at home will help. But the administration will ultimately need to convince Europe and other allies to spearhead a new multilateral effort—one with teeth—to discipline China’s subsidies, the breathtaking extent of which the OECD illustrated in a 2019 report highlighting the Chinese aluminum industry.

**Absent the Trump administration, no one wants the WTO issuing a judgment about national security and trade. But countries do need legal clarity on where they can draw the line between the two: see, for example, recent U.S. export controls preventing semiconductor sales to Huawei or Japan’s threats to limit chemicals exports to South Korea. Settling such questions, however, will require negotiation—not litigation.**

## A BROKEN MECHANISM

Trump hobbled the WTO by ending the organization's way of resolving disputes and failing to replace it with anything else. His refusal to appoint new judges to its Appellate Body—the entity that adjudicates the secondary, appeals stage of the formal process—has taken away the WTO's ability to de-escalate trade tensions. Countries can still ask the WTO to issue politically damaging first-stage legal rulings, such as the one on Trump's national security tariffs, but there is no longer agreement on what happens after that. Either side can now appeal a first-stage ruling into the void and stop the process without a legal resolution. The EU cobbled together a temporary fix with a makeshift appeals mechanism, but the United States and most WTO members refused to sign up.

American policymakers before Trump used WTO dispute settlement as an essential tool for opening foreign markets and quietly managing frictions that might otherwise escalate into trade wars. But the Biden administration cannot now simply return to using dispute settlement as in the pre-Trump days. To begin with, **Trump left the cupboard of American offensive cases bare.** Disputes started today will not be resolved until late in the new administration's first term at best. Although systemically important, the mechanism's value to the United States is mostly over the long run.

But more important, the Appellate Body created some of the very problems that helped motivate Trump's actions, including his national security tariffs. For decades, WTO legal rulings constrained the United States from using other, more acceptable tariffs, known as trade remedies, on products such as steel. Senior officials in the two administrations that preceded Trump's repeatedly highlighted problems with those rulings. The administration of President Barack Obama even rejected a South Korean nominee to the Appellate Body in

2016 in order to signal its displeasure on this issue. When nothing changed, Trump chose the nuclear option: if the Appellate Body thought the American use of antidumping laws, countervailing duties, and safeguards was bad, try a national security tariff instead.

The Biden administration cannot simply paper over long-standing American differences with the European Union and other major players on the permissible use of trade remedies. More substantive change to the rules on these sorts of tariffs is needed, and such a shift will require each side to make serious compromises. If the other key WTO members do not show signs of willingness to enter that negotiation, the Biden administration may quickly lose interest, and repairing WTO dispute settlement may slip off its to-do list.

#### WHY IT IS WORTH IT

**Disposing of the WTO disputes over Trump's national security tariffs and reestablishing a functional dispute settlement system may not offer Biden immediate political dividends. But by salvaging the WTO as an important multilateral vehicle for U.S. priorities, these actions will be critical to the ultimate success of the new president's trade and foreign policy agenda.**

The most pressing international problems that lie before the new administration require global solutions. Getting vaccines, therapeutics, and medical supplies to a world that is suffering from the COVID-19 pandemic—a world in which most countries cannot produce these items at scale quickly enough—requires open trade. Arresting climate change will likely require a communal approach to carbon border adjustment taxes. The concerns around privacy, data security, competition, and even taxation in the digital realm also demand a shared approach. And for the United States to really contend with China's rise, it will need to get back on the same page with its allies, especially on trade.

**President Biden may eventually want to build the WTO back better. But before he can do that, he will have to broker compromises to prevent matters from getting worse.**