CRS INSIGHT

The World Trade Organization (WTO): U.S. Participation at Risk?

July 31, 2018 (IN10945)

|

Related Author

- Cathleen D. Cimino-Isaacs

|

Cathleen D. Cimino-Isaacs, Analyst in International Trade and Finance (cciminoisaacs@crs.loc.gov, 7-1173)

Trump Administration Approach to the WTO

In a break from past administrations, the Trump Administration has expressed doubt over the value of the World Trade Organization (WTO) to the U.S. economy. The United States was a key architect of the WTO—the 164-member international organization established in 1995 that oversees global trade rules and trade liberalization negotiations, and resolves trade disputes. In late June, media reports suggested that President Trump was considering withdrawing the United States from the WTO; U.S. officials have since said talks of withdrawal are "premature" and an "exaggeration." Congress has recognized the WTO as the "foundation of the global trading system," and plays a direct legislative and oversight role over WTO agreements.

As a candidate, President Trump asserted that WTO trade deals are a "disaster" and that the U.S. should "renegotiate" or "pull out." Since taking office, the Administration has continued to express skepticism toward the value of multilateral agreements, preferring bilateral negotiations to address "unfair trading practices" of other countries. In addition, "reform of the multilateral trading system" is a stated trade policy objective. One concern U.S. officials voice is that the WTO is not equipped to deal effectively with the unique, state-driven features of the Chinese economy. In addition, they criticize the ability of emerging markets to claim special treatment under WTO flexibilities for developing countries.

The Administration has suggested that the United States might ignore WTO rulings that are not in the U.S. favor, amid concerns that dispute settlement infringes on U.S. sovereignty. The U.S. is currently blocking new appointments to the WTO's Appellate Body (the seven-member body responsible for appeals)—a practice that began under the Obama Administration; with more judicial terms set to expire, the AB could no longer meet its quorum after December 2019.

Some officials have downplayed U.S. retreat from the WTO. In the view of WTO Deputy Director-General Alan Wolff, "the U.S. is actively engaged in a whole panoply of areas." At the 11th WTO ministerial, U.S. Trade Representative Lighthizer acknowledged the WTO does "an enormous amount of good" and expressed U.S. support for initiatives on e-commerce and fisheries subsidies.

Some U.S. frustrations with the WTO are not new and many are shared by other trading partners. But the

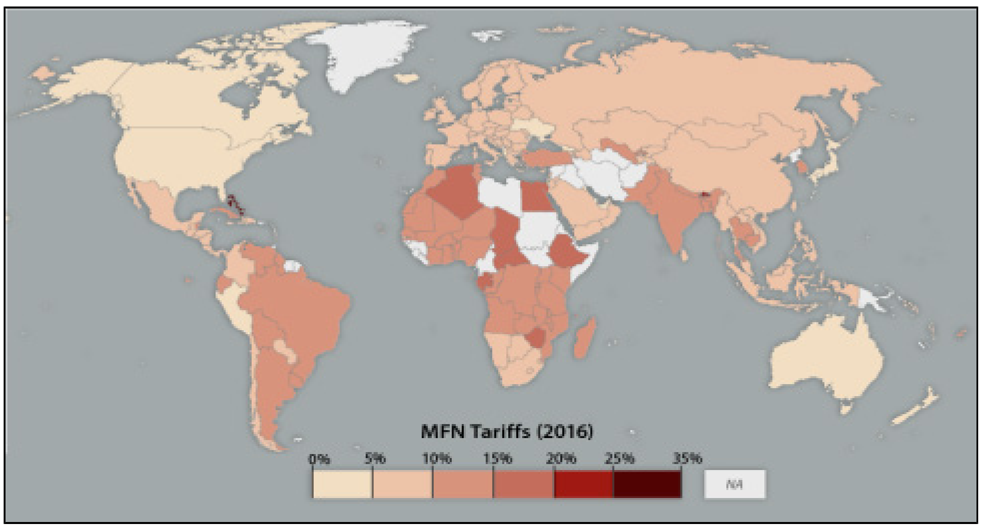
Administration's overall approach has spurred new questions regarding the future of U.S. leadership (and participation) in the WTO, as well as the role of Congress in U.S. trade policy. In particular, recent U.S. actions to raise tariffs against major trading partners unilaterally and to potentially obstruct the functioning of the dispute settlement system, have prompted concerns that the United States may undermine the effectiveness and credibility of the institution that it helped to create.

WTO Successes and Challenges

The WTO succeeded the 1947 General Agreement on Tariffs and Trade (GATT), created out of U.S. post-war efforts with other developed countries to foster an open, rules-based trading system. The GATT was established in part to lessen incentives for countries to resort to tit-for-tat trade protectionism. As the WTO describes itself, it is not simply a "free trade" institution, but "a system of rules dedicated to open, fair, and undistorted competition."

The WTO now covers 98% of global trade. Successive rounds of trade liberalization have supported the significant expansion of trade, with the average most-favored nation (MFN) applied tariff of WTO members falling from 25% in 1994 to less than 10% today (**Figure 1**). Greater trade openness and investment flows have helped drive economic growth and raise living standards across economies. The WTO also created a binding dispute settlement system, which has processed more than 500 disputes, with the aim of enforcing its rules, managing trade tensions, and ensuring a stable system.

Figure 1. Average applied MFN tariffs



Source: Map created by CRS using 2017 WTO data.

The WTO has also faced challenges as a consensus-driven organization. With a few exceptions, members have been unable to bridge differences and agree to comprehensive new trade and market opening rules—which require unanimous approval—raising questions over the institution's relevance as a negotiating body. Countries have increasingly turned to trade deals outside the WTO and plurilaterals to tackle new issues. The dispute settlement system is increasingly under strain due to the growing number and complexity of cases.

Perhaps at the root of WTO challenges are questions about its ability to adapt to new realities of the global economy; as the EU put it: "in essence, since 1995 the world has changed; the WTO has not." These challenges have raised the stakes for members to find new strategies to safeguard and strengthen the trading system.

U.S. WTO Participation

The United States participates in the WTO for several reasons. Reconsidering U.S. leadership of or membership in the organization would potentially raise a number of issues for congressional consideration.

U.S. leadership

U.S. historical leadership of the global trading system has ensured a seat at the table to shape the agenda in important areas that both advance and defend U.S. interests. The United States played a major role shaping GATT/WTO negotiations and rulemaking, many of which reflect U.S. laws and norms. It was a leading advocate in the Uruguay Round (1986-1994) for expanding negotiations to include services and intellectual property rights (IPR), key sources of U.S. competitiveness, as well as binding dispute settlement to ensure new rules were enforceable. The U.S. has indicated strong interest in ongoing initiatives that are gaining some momentum, such as new WTO disciplines for e-commerce.

A growing question is whether the WTO would flounder for lack of U.S. leadership, or whether other WTO members like the EU and China would step up to greater roles. In an effort to address growing trade tensions, in mid-July, EU and Chinese officials jointly called for new WTO reforms. The EU issued a proposal for WTO modernization, including rules on subsidies, a new approach to development, and dispute settlement reforms. Many of these ideas arguably are in line with current and past U.S. negotiating objectives.

Market access and rules

WTO membership encourages the United States to maintain an open market, while ensuring access to markets abroad. WTO rules are built on the principle of nondiscrimination: MFN treatment means a member's lowest tariff or best trade concession must be granted to all members (with some exceptions), and national treatment means domestic products cannot be treated more favorably than foreign products.

Absent WTO membership, remaining members would no longer be obligated to grant the U.S. MFN status under WTO agreements. Consequently, the U.S. could face significant disadvantages in other markets, including China, the EU and Japan, as members without bilateral free trade agreements (FTA) with the United States could raise tariffs or other trade barriers at will. Since joining the WTO, China's average MFN tariff on U.S imports (trade-weighted) fell from 17.1% to 6.3%. More than 60% of U.S. trade is with non-FTA partners and thus relies solely on terms negotiated under the WTO. WTO rules also restrict members' ability to use quotas, regulations, trade-related investment measures, or subsidies in ways that discriminate or disadvantage U.S. goods and services; as well as require members to respect U.S. IPR.

Resolving disputes

The WTO has provided the United States a forum for resolving disputes and holding countries accountable for their trading practices. The U.S. has been the largest user of WTO dispute settlement, initiating 122 disputes—with a relatively high success rate—challenging China over several issues including export restrictions, agricultural support, and IPR enforcement.

The United States also has had the largest number of cases filed against it, as a respondent in 147 disputes. In particular, one concern of U.S. officials is several WTO findings that certain aspects of U.S. trade remedy measures are inconsistent with U.S. WTO obligations. Adverse rulings cannot compel the U.S. to change its laws, but a panel may authorize countries to retaliate if the U.S. maintains measures in violation of WTO rules. Without recourse to WTO dispute settlement, the United States could face unrestrained retaliation. In turn, the U.S. could potentially pursue more unilateral enforcement outside the WTO—as in the past through mechanisms like Section 301 and again recently. Many argue this approach is less effective at addressing trade barriers and mitigating trade tensions.

Role of Congress

Many analysts view U.S. withdrawal from the WTO as unlikely, in part given the potential role of Congress, which holds constitutional authority over foreign commerce. There has been broad debate among experts over whether the President has authority to withdraw unilaterally from trade agreements without congressional consent. The agreement establishing the WTO specifies any member may withdraw following six months of written notice.

Congress established the statutory basis for U.S. WTO membership in the Uruguay Round Agreements Act (URAA; P.L. 103-465)—WTO agreements take effect in domestic law only through implementing legislation. Congress has also included provisions in trade promotion authority (TPA) setting forth objectives for WTO negotiations.

Sec. 125(b) of the URAA sets procedures for congressional disapproval of WTO participation. It specifies that Congress's approval of the WTO agreement shall cease to be effective only if Congress enacts a joint resolution calling for withdrawal. Congress may vote every five years on withdrawal; resolutions were introduced in 2000 and 2005, however neither passed.