

Research Briefing

25 March 2024

By Ana Peres

World Trade Organization: Challenges and opportunities



Summary

- 1 What is the WTO?
- 2 What are WTO's main challenges?
- 3 The path ahead for the WTO
- 4 The UK's membership of the WTO

Image Credits

[World Trade Organisation building](#). Licensed by the [WTO](#)

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing [‘Legal help: where to go and how to pay’](#) for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Sources and subscriptions for MPs and staff

We try to use sources in our research that everyone can access, but sometimes only information that exists behind a paywall or via a subscription is available. We provide access to many online subscriptions to MPs and parliamentary staff, please contact hoclibraryonline@parliament.uk or visit commonslibrary.parliament.uk/resources for more information.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

Summary	5
1 What is the WTO?	8
1.1 Rules of the World Trade Organization	8
Principles of WTO membership	10
1.2 WTO Agreements	12
General Agreement on Tariffs and Trade (GATT)	12
General Agreement on Trade in Services (GATS)	14
Trade-Related Aspects of Intellectual Property Rights (TRIPS)	15
Technical Barriers to Trade (TBT) Agreement and Sanitary and Phytosanitary Measures (SPS) Agreement	16
Trade remedies	17
1.3 Functions	19
Negotiations	19
Dispute settlement	20
Trade policy review	20
1.4 Bodies making up the WTO	20
Ministerial Conference	20
General Council	21
Councils and committees	21
Secretariat	21
2 What are WTO's main challenges?	24
2.1 Negotiations deadlock	24
2.2 Appellate Body paralysis	26
Interim appeal and arbitration arrangement	29
2.3 Geopolitical context	30
“Trade war” between the US and China	31
The developing countries status	32

	New industrial policies	33
2.4	Is the WTO still relevant?	35
	Increase in free trade agreements (FTAs)	35
	Main topics agreed since 1995	39
3	The path ahead for the WTO	41
3.1	Negotiating agenda for the thirteenth Ministerial Conference (MC13)	41
	Reform discussions ahead of MC13	41
	Fisheries	43
	Agriculture and development	44
	Joint initiatives	45
3.2	MC13 main outcomes	46
4	The UK's membership of the WTO	48
4.1	UK Parliament and the WTO	49
4.2	The UK's trade priorities	49

Summary

The World Trade Organization (WTO) is a multilateral organisation where countries meet to agree on trade rules, review trade policies, and settle trade disputes.

The WTO is the main institution regulating international trade with the aim of certainty and stability in trade relations and the promotion of its members' economic growth and development.

In February 2024, ministers representing all WTO members came together at the [13th WTO Ministerial Conference](#) in Abu Dhabi to take stock of recent negotiations and discussions. The agenda included WTO reform, fisheries subsidies, and agriculture.

The UK and the WTO

[The UK is a founding member of the WTO](#) and has, since Brexit, regained its independence to act in the organisation. This means it can determine its own specific obligations, engage in WTO bodies and groups, and represent itself in WTO disputes.

In the absence of free trade agreements, which are an exception allowed by the WTO to grant more favourable terms of trade to specific partners, the UK will trade under WTO rules. The UK will then abide by the WTO's standards and agreed tariff rates.

What is the WTO?

The WTO was created in 1995 after a long negotiation to establish a multilateral trade organisation. Before the WTO, the General Agreement on Tariffs and Trade (GATT/47) regulated multilateral trade relations. The GATT/47 was intended to be a provisional agreement and not an organisation. Conversely, the WTO has both an institutional and a regulatory dimension. It encompasses different bodies and a secretariat headed by the WTO Director-General.

All the decisions in the WTO are taken by consensus of its membership. [The WTO currently has 164 members](#), comprising countries at different levels of development.

WTO rules regulate different aspects of international trade, which are grouped into three main areas: [goods](#), [services](#), and [intellectual property](#).

According to the principle of the ‘single undertaking’, all WTO members must accept all the WTO multilateral rules. Other principles include non-discrimination, ensuring all WTO members are equal, and transparency, making all information available to all members.

What are the WTO’s main challenges?

The WTO has faced many recent challenges related to changes in the global economy and geopolitical context. WTO members have not been able to agree on [new rules on agricultural goods](#), highlighting the conflicting interests between developing and developed countries.

In 2016, [the US began blocking appointments](#) to the WTO [Appellate Body](#), the third stage of the WTO dispute settlement system (DSS), arguing that it was overreaching its original mandate. Consequently, the Appellate Body is now inoperative and the DSS is impaired. WTO members are trying to agree on how to reform the mechanism.

Difficult trade relations between the two largest world economies and WTO members – the US and China – also puts a strain on the WTO. Unilateral trade measures, such as raising tariffs on iron and steel, threaten the multilateral trading system. This highlights that the [WTO might need to be reformed](#) to meet current concerns such as national security, environmental standards, and the impact of technology on trade.

What is the WTO’s role in international relations?

Despite the recent popularity of [free trade agreements](#), a multilateral venue like the WTO still has a role in restraining protectionism (practices giving an “unfair trade advantage” to domestic industries). It also provides a forum for discussion and helps members cooperate over issues of public interest.

For example, the WTO has addressed epidemics like HIV/AIDS and the [Covid-19 pandemic](#). By [amending the WTO rules](#), members made it easier for developing and least-developed countries to access affordable medicine and vaccines. However, critics of the WTO response to the Covid-19 pandemic argue that [WTO intellectual property rules could have been relaxed further](#). The [Agreement on Fisheries Subsidies](#) also shows how the WTO can help protect resources shared by all nations (“global commons”).

Given the WTO’s role in international trade, the 13th ministerial conference attempted, [albeit not successfully](#), to find solutions for current challenges and offer a way ahead for multilateral trade negotiations. Members are still trying to improve rules on longstanding issues such as agriculture and fisheries. They also aim to find permanent solutions for the Appellate Body paralysis and to reform negotiations and deliberations in the WTO.

How does the WTO affect the UK’s trade and economic priorities?

The UK views a functioning WTO and a strengthened multilateral trading system as playing an important role in [curbing protectionism and building resilient trade relations](#). This system would support the [Government’s](#)

[priorities](#) (PDF) of boosting the UK's exports and improving the international competitiveness of the British economy, as well as its interests in promoting digital trade, trade in services, and greener practices.

1 What is the WTO?

The World Trade Organization (WTO) is a forum where governments negotiate trade rules and settle trade disputes. The WTO began its activities in 1995, incorporating the General Agreement on Tariffs and Trade (GATT) which was in force since 1948. The negotiations leading to the creation of the WTO, known as the Uruguay Round, lasted from 1986 to 1994, resulting in a legal and institutional framework.

The [Agreement Establishing the WTO \(Marrakesh Agreement\)](#) recognises that trade relations should promote social and economic indicators while working for sustainable development. In line with this, the WTO's main goals are to reduce tariffs and other trade barriers, eliminate discriminatory treatment and “unfair trade advantages”, and promote fair trade relations.

The WTO currently comprises [164 countries](#), which are the WTO members. They make all the decisions and steer all the initiatives in the WTO. That is why the WTO is often described as a ‘members-driven organisation.’ A country wishing to join the WTO must negotiate its terms of [accession](#). Since all members must agree with those terms, they establish a working party to manage each [accession process](#). WTO members have distinct levels of development and are grouped into three categories:

- Developed countries comprising high-income economies
- Developing countries comprising a heterogeneous group of members. The developing country status is based on self-declaration rather than specific requirements
- [Least-developed](#) countries as per the United Nations (UN) classification

1.1 Rules of the World Trade Organization

The WTO has a legal system underpinning its operation. Members negotiate trade agreements that become WTO rules. The substantive trade rules fall within three main categories – goods, [services](#), and [intellectual property \(IP\)](#). WTO rules set:

- the principles governing trade relations
- members’ rights and obligations
- procedures for negotiations, dispute settlement, and trade policy review

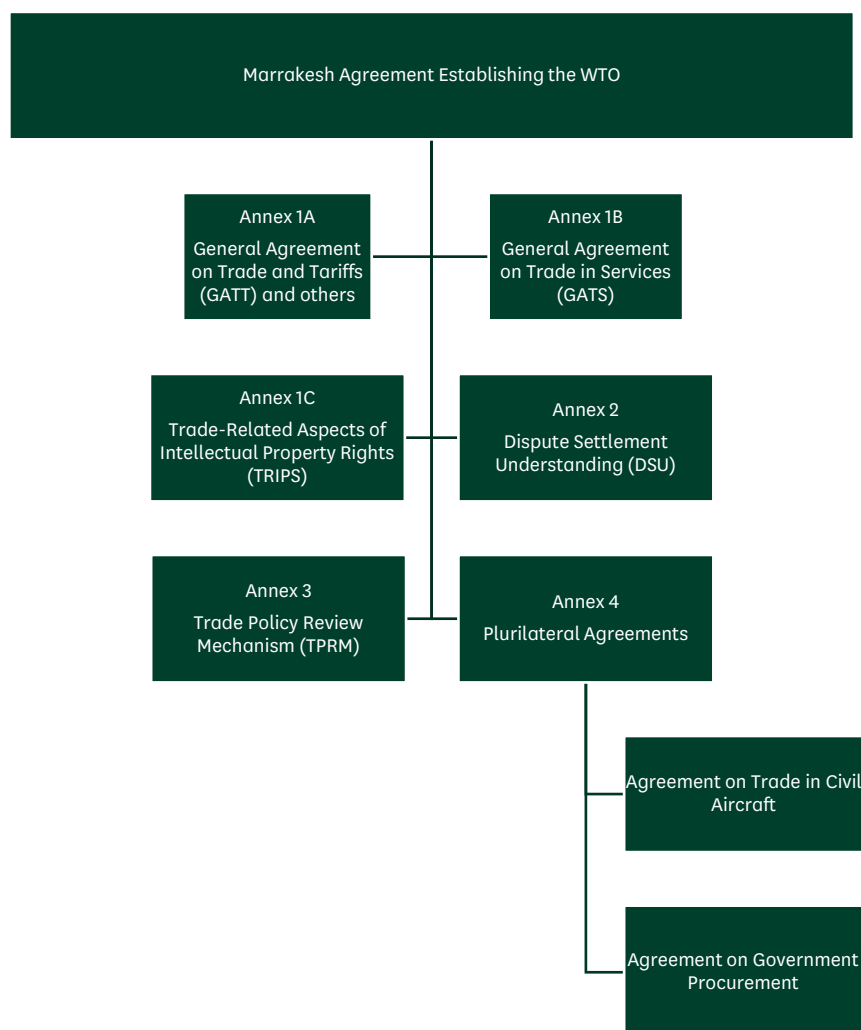
- the permitted exceptions, for example, for developing countries.

Besides multilateral obligations common to all WTO members, governments also undertake individual obligations in their schedules of commitments. Likewise, the WTO comprises plurilateral agreements to which membership is optional for member states, the so-called Annex 4 agreements.

The underlying goal is to promote legal certainty and predictability that will improve cooperation and trust among WTO members, encouraging them to keep furthering their trade relations. The WTO legal regime takes the shape of an umbrella system encompassing:

- Annex 1A including the multilateral agreements on trade in goods, like the General Agreement on Trade and Tariffs (GATT) and other agreements such as Trade-Related Investment Measures (TRIMS), Agreement on Agriculture, Technical Barriers to Trade (TBT), Sanitary and Phytosanitary Measures (SPS), and Subsidies and Countervailing Measures (SCM)
- Annex 1B covering the General Agreement on Trade in Services (GATS)
- Annex 1C incorporating the Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Annex 2 comprising the Dispute Settlement Understanding (DSU)
- Annex 3 consisting of the Trade Policy Review Mechanism (TPRM)
- Annex 4 containing the Plurilateral Trade Agreements

The diagram below shows the regulatory structure of the WTO.



Principles of WTO membership

Non-discrimination

Non-discrimination is at the basis of multilateral trade relations and, consequently, the WTO regime. It splits into two principles:

- Most-favoured-nation (MFN), which states that an advantage granted to one member should be extended to all WTO members. [Free trade agreements \(FTAs\) are an exception to this rule](#) since the benefits agreed in an FTA are exclusive to its parties. Likewise, developing countries may also receive preferential treatment, although non-reciprocal, through, for example, the [Generalized System of Preferences \(GSP\)](#).
- National Treatment (NT), which establishes that a WTO member should give foreign producers and suppliers the same treatment given to domestic ones once the product, service, or item of intellectual property (IP) has entered its market. This means that countries can charge customs duties without violating the NT principle.

1 Promoting equality among WTO members

The MFN and NT principles promote equality among WTO members by ensuring that everyone will receive the same treatment. Countries should not discriminate in favour of a specific trade partner or its own nationals.

Given the importance of both principles, they are present in all three main WTO agreements (GATT, GATS, and TRIPS) although with some variations.

Transparency

The principle of transparency ensures that information and data are readily available to and easily accessible by members; this works both ways and applies to members and the WTO alike.¹ Members must notify the WTO and its membership of all changes in trade measures, policies, and laws. The WTO, through its Trade Policy Review Body (TPRB), must conduct periodic reviews of each member's trade policies and publish the relevant report. The WTO also publishes the list of meetings and all negotiating documents and Dispute Settlement Body (DSB) decisions for members consultation.

Comparative advantage

The principle of comparative advantage supports the WTO trade liberalisation rationale and its efforts in curbing protectionist practices. According to this principle, countries should channel their resources – financial, human, natural – to the product they are relatively more efficient at producing and then trade it for products other countries produce best. This is intended to increase trade flows and promote efficiency, competition and innovation, allowing consumers to have access to the best product at the best price.²

Consensus and single undertaking

Consensus and the single undertaking are the two principles guiding decision-making in the WTO. Each WTO member has one vote with the same weight in line with the WTO's efforts to promote equality among members. The consensus principle means that members only adopt a decision in the WTO negotiations when no country votes against it, that is, vetoes its adoption.

¹ P Ungphakorn and R Wolfe, '[How wide should the window be set? Short read on WTO transparency](#)', Trade β Blog, 26 April 2021.

² World Trade Organization, Understanding the WTO (accessed 3 October 2023).

The single undertaking establishes that all WTO members must accept all WTO multilateral agreements. Likewise, all topics in the negotiating agenda are part of a package members should agree on simultaneously.

2 Reverse or negative consensus

Panels and Appellate Body reports are only binding if approved by consensus by the DSB, which comprises the entire WTO membership.

However, there is a twist - the DSB follows the reverse or negative consensus rule, which means that its decisions will not be adopted only if all Members oppose it. Accordingly, even if only the winning party in a dispute accepts the report, but all the other WTO Members reject it, it will still be adopted and binding.

1.2

WTO Agreements

The WTO comprises a wide array of trade agreements. Three agreements are at the forefront of the WTO regulatory framework, regulating each one of the three broad trade areas:

- The General Agreement on Tariffs and Trade (GATT) for trade in goods
- The General Agreement on Trade in Services (GATS) for trade in services
- The Trade-Related Aspects of Intellectual Property Rights (TRIPS) for trade in intellectual property

The WTO also includes agreements on specific trade issues. In particular, the agreements covering standards and trade remedies have greatly influenced current trade relations.

General Agreement on Tariffs and Trade (GATT)

As the name suggests, GATT's main goal is to consolidate and reduce members' tariffs on goods.³ Each WTO member has a schedule of commitments where they bind their tariff rates and agree not to increase them beyond that established limit. This is to promote greater market access.

Apart from the general rules to reduce tariffs and eliminate quantitative restrictions in trade in goods, as well as the most-favoured nation (MFN) and national treatment (NT) principles, the GATT also comprises some exceptions.

³ World Trade Organization, [Tariffs: more bindings and closer to zero](#) (accessed 28 November 2023).

For instance, Article XX provides for general exceptions to protect, among others, public morals and human and animal life and health, and Article XXI allows for a national security exception as discussed in Section 2.3.

The first [General Agreement on Tariffs and Trade \(GATT\)](#) was agreed by 23 countries in 1947 and came into force in 1948. It gave rise to the multilateral trading system. When the WTO was established in 1994, GATT/47 was updated and eventually superseded by [GATT/94](#). It includes Understandings, Protocols, and GATT decisions adopted from 1948 until 1994 (when the WTO was created).

The GATT/47 and the GATT/94 are different legal instruments, as per Article II:4 of the WTO Agreement. Because the GATT/47 was terminated on 1 January 1996, we generally refer to the agreement in the WTO simply as GATT.

3 Agriculture in the WTO

When the WTO was first established, members concluded the Agreement on Agriculture, which marked a big shift in an area that was not the focus of multilateral negotiations. Yet, members saw this agreement as the first step to reduce subsidies and trade barriers to limit policies distorting agricultural markets. Article 20 of the Agreement provided for future negotiations as part of the continuing efforts to reform agriculture. Accordingly, members started negotiating agriculture in the WTO in March 2000 to review and update the existing rules. These discussions included three main topics - export subsidies and related issues, domestic support, and market access.⁴

The deadlock in the Doha Round (discussed in Section 2.1 below) shows the challenges in negotiating agriculture in the WTO, especially given the different interests of members. While the members of the [Cairns Group](#), a coalition comprising developing and developed countries that are agricultural exporters, advocate for liberalising agricultural trade, other members oppose that idea. For example, the [agricultural lobbies in the EU and the US](#) call for more support for domestic farmers. India, on the other hand, argues for its need to undertake [public stockholding](#) for food security purposes.

Although members have agreed on the peace clause and export subsidies, the most pressing issues are still open for discussion, namely food security and limiting domestic support.⁵ In this context, the UK circulated its first paper in the agriculture negotiations, discussing the need for addressing export restrictions to curb food insecurity.⁶

⁴ [Agriculture negotiations](#), World Trade Organization (accessed 26 October 2023).

⁵ P Ungphakorn, '[New proposals stir WTO agriculture negotiations out of deep sleep](#)', Trade β Blog, 24 June 2023.

⁶ World Trade Organization, Committee on Agriculture Special Session, [Why MC13 Needs to Address Export Restrictions on Agricultural Products](#), Communication from the United Kingdom, JOB/AG/244 14 June 2023.

General Agreement on Trade in Services (GATS)

The [GATS](#)⁷ seeks to regulate trade in services. It was negotiated during the Uruguay Round (1986-1994) as the result of the increasing role played by services in the world economy and the lack of multilateral rules in this area.

Similar to the GATT, the GATS' main text comprises the MFN and NT principles, general obligations to reduce barriers to trade in services and some exceptions, like the formation of economic integration agreements provided for in Article V. Article I.2 of the GATS establishes that the agreement applies to four modes of supply of services:

- Mode 1: Cross-border, when only the service crosses the border as the consumer and the supplier remain in their respective countries. For example, call centre services and remote training.
- Mode 2: Consumption abroad, when the consumer benefits from the service while abroad, for instance, when travelling as a tourist or to receive medical care.
- Mode 3: Commercial presence, when the provider – a commercial entity – establishes a physical presence in another country, such as when companies set up a branch or subsidiary abroad.
- Mode 4: Presence of natural persons, when the supplier – a natural person – migrates to the country where they will provide the service. For instance, consultants working on a project or artists on tour.⁸

The GATS covers services like finance, telecommunications, tourism, and professional services. It does not include, however, governmental services and certain air transport services.⁹

Trade in services encompasses different economic areas that are usually regulated domestically by different rules. Consequently, the GATS also contains annexes with provisions on specific sectors. Each WTO member has its schedule of commitments in which they specify their market access obligations to each one of those sectors.

⁷ World Trade Organization, [General Agreement on Trade in Services](#) (accessed 28 November 2023).

⁸ [Trade in services and Brexit](#), Commons Library Research Paper 8586.

⁹ World Trade Organization, [Services: rules for growth and investment](#) (accessed 28 November 2023).

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The [TRIPS](#) is another WTO Agreement negotiated during the Uruguay Round. Governments, mostly from industrialised countries, promoted the TRIPS as playing an essential role in facilitating trade in knowledge and creativity.¹⁰

The World Intellectual Property Organization (WIPO), an agency of the United Nations, already administers 26 treaties relating to intellectual property (IP)¹¹. The TRIPS was negotiated separately to address how IP rights should be treated in trade relations.

The TRIPS protects IP, which is an immaterial property resulting from the creation of someone's mind. TRIPS rules confer to the IP holder the exclusive right to exploit their creations for a certain period of time. The agreement covers:

- Copyrights
- Trademarks
- Geographical indications
- Industrial designs
- Patents
- Layout-designs (topographies) of integrated circuits
- Industrial secrets

The goal is to balance the need for encouraging innovation and enabling public welfare in a way that society can enjoy the advantages brought by such innovation. For developing countries, this discussion includes the promotion of [technology transfer and dissemination](#), according to [Article 7 of the TRIPS](#). This allows for the building of a sound technological basis to support research and development instead of relying on technology exports from developed countries.

Like the GATT and GATS, the TRIPS incorporates the MFN and NT principles. It also establishes the minimum standards of IP rights protection members should have in their domestic legal system and the procedures they should put in place to enforce those IP rights.¹²

¹⁰ World Trade Organization, [TRIPS — Trade-Related Aspects of Intellectual Property Rights](#) (accessed 28 November 2023); R L. Gana, 'Prospects For Developing Countries Under the TRIPs Agreement', 29 *Vanderbilt Law Review* 735 (1996).

¹¹ World Intellectual Property Organization, [WIPO-Administered Treaties](#) (accessed 28 November 2023).

¹² World Trade Organization, [Intellectual property: protection and enforcement](#) (accessed 28 November 2023).

Despite the controversies around the impact of the TRIPS rules on developing countries,¹³ important development issues have been added to the discussions. The HIV crisis and the Covid-19 pandemic brought to the fore discussions about a patent waiver as examined in Section 2.4. The increasing importance of digital technologies also highlights the role of IP and the TRIPS in the promotion of sustainable development by encouraging innovation in and transfer of clean technology.¹⁴

Technical Barriers to Trade (TBT) Agreement and Sanitary and Phytosanitary Measures (SPS) Agreement

Liberalising trade goes beyond reducing tariffs. Governments can take behind-the-border measures that may affect trade competition and unfairly impact trade partners. For example, governments have adopted regulations limiting the carbon levels in the production of a good or prohibiting hormones in beef. These are often referred to as Non-Tariff Measures (NTMs) or Non-Tariff Barriers (NTBs).

The TBT Agreement and the SPS Agreement allow countries to protect, among others, their consumers, environment, and national security, considering the regulations and standards drawn on scientific evidence and, preferably, international guidelines. They ensure WTO members have regulatory space to issue standards ensuring the quality of products, food safety, and animal and plant health and safety. This is particularly important given current discussions on the [environment](#),¹⁵ [agriculture](#),¹⁶ and [global supply chains](#).¹⁷

The [TBT Agreement](#) and the [SPS Agreement](#) aim at preventing governments from using domestic standards to pursue protectionism, that is, discriminate in favour of domestic producers and suppliers.¹⁸

TBT and SPS measures should be the least trade-restrictive alternative to fulfil legitimate goals in line with the relevant agreement. Governments must undertake risk assessments and notify other WTO members of the measures adopted. Countries should also set up enquiry points to make information readily available.

¹³ R L. Gana, '[Prospects For Developing Countries Under the TRIPS Agreement](#)', 29 Vanderbilt Law Review 735 (1996).

¹⁴ UN Environment Programme, '[Trade in clean technologies offers opportunities in economic development, job creation and innovation](#)', 27 March 2019.

¹⁵ HC Deb 18 May 2023 cc952-53.

¹⁶ N McElhatton, W Barns-Graham, R Booth, '[Government announces new approach to SPS checks on agricultural imports](#)', Institute of Export & International Trade, 28 April 2022.

¹⁷ 'TBT Symposium on Alleviating Regulatory Bottlenecks in Global Supply Chains, Remarks by Deputy Director-General Jean-Marie Paugam', World Trade Organization, 14 October 2022.

¹⁸ World Trade Organization, '[Technical barriers to trade and Sanitary and phytosanitary measures](#)' (accessed 10 October 2023).

If members find that a TBT or SPS measure may potentially represent an unfair barrier to trade, they can use [specific trade concerns \(STCs\)](#) as an alternative to initiating a dispute before the WTO dispute settlement system (DSS).

STCs are a soft law mechanism, that is, they do not issue a binding ruling. Instead, members resort to STCs to request more information about a TBT or SPS measure. They will hold meetings in the relevant council to discuss such measures. During this process, the adopting country is encouraged to bring its regulation into conformity with its WTO obligations.

Trade remedies

WTO rules also allow members to use trade remedies. These are instruments to protect domestic industries and sectors against injuries caused by unfair practices that favour imports – known as [countervailing duties and anti-dumping](#) – or by unforeseen surges in imports – known as safeguards.

Countervailing measures to protect against subsidies

The [Agreement on Subsidies and Countervailing Measures \(SCM\)](#)¹⁹ regulates the use of subsidies and the actions countries can take to protect themselves from the effects of another country's subsidies.²⁰

[For the purpose of the SCM](#)²¹, a subsidy must be 'specific', that is, it must target certain enterprises or industries. The following three elements must be present to identify a measure as a subsidy:

- A financial contribution (such as grants, loans, equity infusions, loan guarantees, fiscal incentives, the provision of goods or services, the purchase of goods, payments into funding mechanisms)
- by a government or any public body within the territory of a member
- which confers a benefit.

Under the SCM, some subsidies are prohibited outright while the rest are 'actionable'; an actionable subsidy is allowed, but other countries can take certain actions if the subsidy harms them.

Countervailing duties are a tax on subsidised imports, making them more expensive to buy. The rationale behind these duties is to bring the market price of subsidised imports back up to what it would have been without subsidies. Doing so eliminates the "unfair advantage" granted by the subsidies and restores the level playing field between domestic producers and the imports they compete with. Accordingly, countervailing duties cannot exceed the amount of the subsidies.

¹⁹ World Trade Organization, '[Subsidies and countervailing measures](#)' (accessed 12 October 2023).

²⁰ [EU State Aid Rules and WTO Subsidies Agreement](#), Commons Library Research Paper 6775.

²¹ World Trade Organization, Agreement on [Subsidies and Countervailing Measures](#), Article 2.

To impose countervailing duties, a country must conduct a detailed investigation to prove that certain imports are subsidised and that these subsidies are injuring a domestic industry. This can be done in addition to bringing a claim before the WTO DSS to make the country purportedly in breach conform its trade policies to the WTO rules.

Anti-dumping

The [Anti-dumping Agreement](#)²² disciplines the practice of anti-dumping, that is, actions members adopt to respond to dumping. Dumping happens when a country exports a product at a lower price than its normal value in the exporter's home market.

Although WTO rules do not prohibit dumping, this practice can trigger “unfair competition”. That is why the WTO allows its members to impose anti-dumping measures to protect their domestic industry from injuries caused by dumped products.

The provisions of the [Anti-dumping Agreement](#)²³ specify that the amount of anti-dumping duty may not exceed the dumping margins. The importing country charges such duty in addition to its normal customs duty to that specific product from that particular exporter. The goal is to bring the price of the product closer to its normal value or to eliminate the injury to the domestic industries. To adopt anti-dumping measures, WTO members must undertake a detailed investigation to identify three conditions:

- The existence of a dumped product
- Injury to the importing domestic industry
- Causal link between the two

Safeguards against surges in imports

The [Agreement on Safeguards](#) lays out the rules for countries to impose safeguard measures.²⁴ These are temporary import restrictions governments adopt as a response to an unforeseen surge in imports of a given product that is causing or threatening to cause serious injury to a domestic industry producing a similar or directly competitive product.

Safeguards seek to maintain ‘traditional’ trade flows judged against a recent period before the surge. [Safeguards](#) can include, for example, a quota (a quantitative limit on the volume of imports) or an import tariff increase. Tariff rate quotas (TRQs) set a volume of a product that may be imported at

²² World Trade Organization, ‘[Anti-dumping](#)’ (accessed 12 October 2023).

²³ World Trade Organization, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

²⁴ World Trade Organization, ‘[Safeguard measures](#)’ (accessed 12 October 2023).

relatively low (or zero) tariffs. Usually, beyond that limit a higher safeguard tariff applies.²⁵

According to the [Agreement on Safeguards](#),²⁶ safeguards must be time-limited, progressively liberalised, and necessary to allow domestic industries to adjust to the new market situation. Countries apply safeguards to an imported product irrespective of the country it originates from. Likewise, a government can only introduce a new safeguard measure following an investigation by its competent authority. Such investigation must establish a causal link between a surge in imports and serious injury to domestic industry. A country disagreeing with a safeguard measure can challenge it before the WTO DSS.

For instance, the UK Government has recently established the [Trade Remedies Authority \(TRA\)](#) as part of its efforts to defend UK industry against "unfair international trade practices". As one of its first tasks, the TRA analysed the need for safeguard measures on steel products. The imposition of these measures was previously governed by the EU, which decided to implement safeguard measures on steel imports in 2018 as a response to the US raising tariffs.

Since the end of the Brexit transition period on 31 December 2020, the UK has had to carry out its own assessment based on the impact suffered by its steel industry. The TRA was responsible for investigating the existence of a threat of or a serious injury to UK steel producers and recommended that relevant safeguard measures should be imposed.²⁷

1.3

Functions

In line with the goals set by the WTO Agreement, members' activities in the WTO fulfil three main functions:

- negotiate new rules and update the existing agreements
- peacefully settle trade disputes
- review trade policies

Negotiations

Negotiations are at the centre of the WTO. Through rounds of negotiations, governments strive to lower trade barriers and increase market access. Such negotiations revolve around a [trade agenda](#)²⁸ that seeks to improve existing

²⁵ [UK steel safeguards](#), Commons Library Research Paper 9596.

²⁶ World Trade Organization, [Agreement on Safeguards](#), Articles 5 and 7.

²⁷ [UK steel safeguards](#), Commons Library Research Paper 9596.

²⁸ World Trade Organization, ['Doha Development Agenda'](#) (accessed 17 October 2023).

agreements, furthering their rules, or create new agreements to regulate pressing issues.

The consensus and the single undertaking guide the WTO negotiations, which take place in the day-to-day activities of different committees and councils and in plenary meetings and ministerial conferences.

Dispute settlement

WTO members resort to dispute settlement to enforce the rules they negotiate. The WTO Dispute Settlement System (DSS) comprises various stages, ranging from bilateral consultations to panels of experts and appeals. Parties to a dispute only abide by a decision after its adoption by the [Dispute Settlement Body \(DSB\)](#), which makes it final.

The WTO DSS was once considered the “[jewel in the crown of the WTO](#)”²⁹ given its importance in ensuring the predictability of the multilateral trading system and the efficiency of its rules. Indeed, [WTO members have started more than 615 disputes](#)³⁰ before the WTO DSS. However, the WTO DSS is currently under pressure given the paralysis of its Appellate Body, as section 2.2 discusses.

Trade policy review

WTO members use [trade policy reviews](#) to monitor the implementation of the rules they negotiate. Upholding the principle of transparency, each WTO member must go through a regular review process of its trade policies. Such a process results in two reports – one by the country under review and the other by the WTO secretariat – which are then adopted by the Trade Policy Review Body (TPRB).

1.4 Bodies making up the WTO

In addition to a broad legal framework, the WTO also has a hierarchical institutional structure to fulfil its mandate.

Ministerial Conference

The [Ministerial Conference](#) (MC) is the main decision-making body in the WTO, comprising trade ministers and senior officials from the 164 WTO members. It usually meets every two years to discuss multilateral trade developments and decide on the issues debated in the WTO. Its mandate covers all multilateral trade agreements. The last MC – MC13 – was held in Abu Dhabi between 26 February and 2 March 2024.

²⁹ World Trade Organization, ‘[WTO disputes reach 400 mark](#)’, 6 November 2009.

³⁰ World Trade Organization, ‘[Dispute settlement activity — some figures](#)’ (accessed 17 October 2023).

General Council

The [General Council](#) holds the WTO plenary meetings in Geneva on behalf of the Ministerial Conference to which it reports. These are regular meetings where ambassadors and delegates from all WTO members oversee the day-to-day work of the WTO. The General Council can meet in three different capacities:

- The General Council to discuss negotiations and trade topics
- Dispute Settlement Body (DSB) to discuss new cases, the composition of new panels and appeal procedures, and the circulation and adoption of reports, that is, the rulings
- The Trade Policy Review Body (TPRB) to examine members' trade policies

Councils and committees

The councils consist of all the WTO members and report to the General Council. Each broad area of trade has its own council, which oversees the matters belonging to the relevant agreement:

- The Council for Trade in Goods (Goods Council)
- The Council for Trade in Services (Services Council)
- The Council for Trade Related Aspects of Intellectual Property Rights (TRIPS Council)

Both the General Council and the three above-mentioned councils contain committees where the WTO members debate specific trade issues. Despite their smaller remit, committees also encompass all WTO members. The day-to-day activities of such bodies contribute to the progress of negotiations and the relevant agenda.

Secretariat

The WTO [Director-General](#) is the head of the [Secretariat](#), which comprises about 620 permanent WTO staff in its headquarters in Geneva.

Given that only members make decisions in the WTO, the Secretariat's mandate does not include decision-making powers. Instead, the Secretariat offers the WTO bodies administrative and technical support to perform a wide range of activities. For instance, the Secretariat oversees trade policy reviews, and its legal staff supports the work of panels and the Appellate Body.

The Secretariat also assists the WTO membership in negotiating and implementing WTO agreements by gathering, processing, and circulating data and information, drafting documents, and delivering technical support and capacity building.

4 The current Director-General

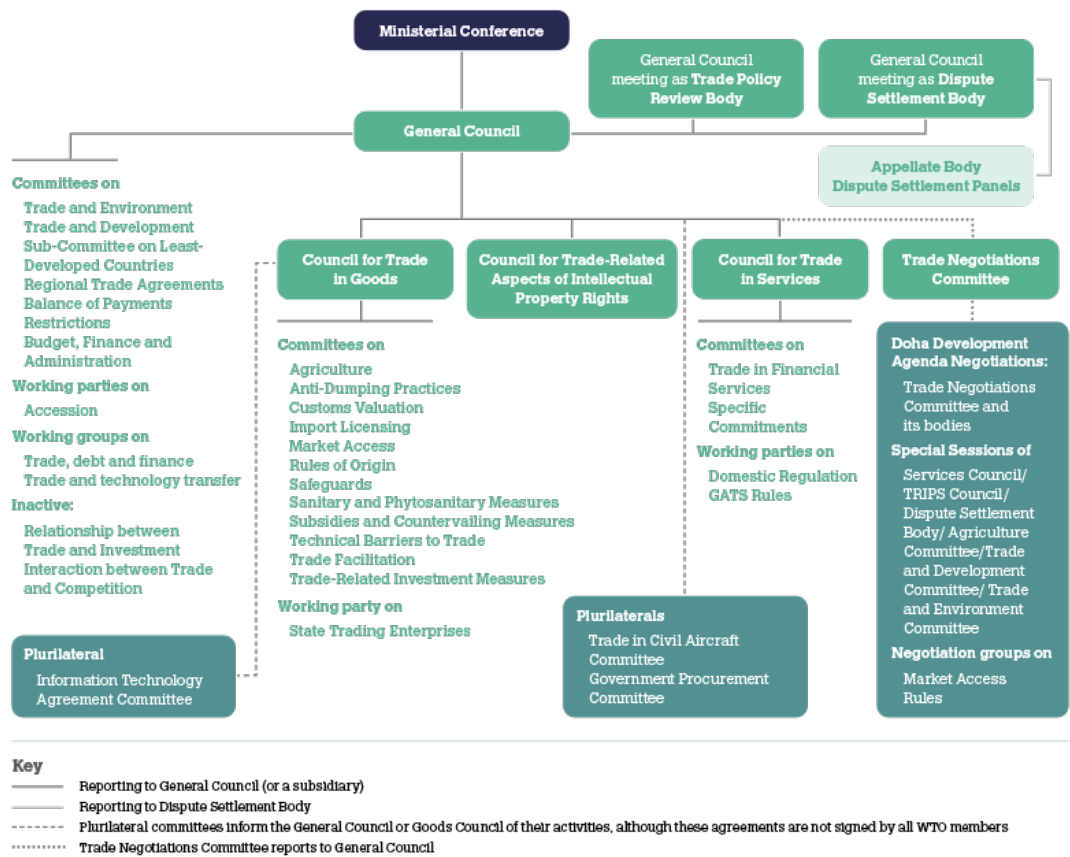
Dr Ngozi Okonjo-Iweala was appointed by WTO members as the seventh Director-General and has been in office since March 2021. Dr Okonjo-Iweala is the first woman and the first African to serve in the post.

The selection of a new Director-General happens through the consensus of the WTO membership; members nominate candidates according to their expertise to perform the role. The Director-General is appointed for a four-year term with the possibility of being reappointed for a second term of the same period.

The Director-General's role helps to advance cooperation among WTO members and gather consensus, supervising the WTO Secretariat and guiding WTO members to fulfill the organisation's purposes.

The WTO Secretariat also manages the WTO budget, which supports the different activities and programmes of the organisation. Most of the budget comes from members' contributions, which are calculated according to the share of international trade of each member. However, differently from other financial and economic institutions, the amount contributed does not affect the weight of members' votes. All votes have the same importance in the WTO.

WTO Organisation Chart



Source: [WTO Annual Report 2022](#)

2

What are WTO's main challenges?

In many aspects, the WTO is a “victim of its own success”.³¹ The efficiency of the Dispute Settlement System (DSS) led countries to try to include more topics in the WTO rulebook. Any eventual dispute related to those could then be settled using the WTO mechanism.

The evolution of the global economy also added new concerns to trade relations. For instance, governments proposed rules on competition, e-commerce, and investment. Developing countries wanted to advance negotiations on development issues, mainly on agriculture. Most of these topics addressed behind the border measures, that is, regulations governments adopt that affect products, services, and IP once they are inside the importing country. Consequently, the negotiating approach differed from the usual tariff reduction negotiations. Members needed to find new ways to bargain. These developments resulted in the deadlock of the WTO negotiations during the Doha Round and the most recent Appellate Body paralysis.

Growing geopolitical tensions between some WTO members are leading to a rise in the adoption of unilateral measures and national security exceptions. This results in increasing protectionism.

2.1

Negotiations deadlock

WTO members decided to launch the latest round of negotiations in 2001, referred to as the [Doha Round](#). Besides furthering tariff reduction, the focus of the negotiations is on development issues. This is due to developing countries' discontent with the unbalanced outcomes of the Uruguay Round, which led to the creation of the WTO. The goal is to ensure that trade benefits not only developed countries but also developing countries and least-developed countries (LDCs). That is why the Doha Round is also known as the Development Round.

The Doha [Ministerial Declaration](#)³² offers the mandate for the negotiations, including a working programme that addresses matters related to the implementation of existing obligations, agriculture, IP, and services. Apart

³¹ This expression has been used since at least 2000 when Gary Sampson highlighted the danger of expanding the WTO. B Glosserman, ‘[WTO Falling Victim to Its Own Success](#)’, The Japan Times, 21 November 2000.

³² World Trade Organization, [Doha WTO Ministerial 2001: Ministerial Declaration](#), WT/MIN(01)/Dec/1, 20 November 2001.

from the negotiations to improve the Dispute Settlement Understanding (DSU), which sets the rules governing the WTO dispute settlement system, all the items on the agenda are part of a single package and members must agree all of them by consensus following the single undertaking principle.

However, the complexity of the negotiations, the number of members involved, and the conflicting interests drove the Doha Round to a deadlock. The main point of dispute revolves around the [negotiations on agriculture](#),³³ more specifically on market access, export subsidies, and domestic support.³⁴

5 Trade G20 and coalitions

A decision-making system based on consensus and the single undertaking leads WTO members to create coalitions, that is, groups to promote their shared interests. Through coalitions, members strengthen their negotiating stance by coordinating their positions and efforts.

One example of a coalition is the trade G20, which was formed during the preparatory works for the Cancun Ministerial Conference in 2003. The G20 comprises a broad and diversified group of WTO developing members committed to protecting the development items on the Doha agenda. The group adopted a strong and unified stance in agriculture, opposing the proposals made by the US and the EU.

Because WTO members could not agree on a commitment to eliminate agricultural export subsidies, the Doha negotiations eventually collapsed resulting in its deadlock.

From 2006 to 2011, WTO negotiations did not progress. At the Bali Ministerial Conference, in 2013, members could again deliver some significant outcomes and agree on the [Bali Package](#).³⁵

This document comprises a series of decisions related to the promotion of development through trade. For example, it addresses public stockholding to promote food security, resulting in members agreeing on a [peace clause](#)³⁶ (that is, not challenging developing countries' support to staple food crops pursuing food security goals before the WTO Dispute Settlement System) and preferential rules of origin for LDCs to grant their exports preferential market access.

³³ '[Agriculture: negotiating modalities](#)', *World Trade Organization Briefing notes* (accessed 26 October 2023).

³⁴ P Ungphakorn, '[The 20-year saga of the WTO agriculture negotiations](#)', *Trade & Blog*, 23 March 2020.

³⁵ World Trade Organization, [Bali Package and November 2014 decisions](#), adopted on 7 December 2013.

³⁶ World Trade Organization, [Public stockholding for food security purposes](#), General Council: Decision of 28 November 2014, WT/L/939.

The most significant achievement on this occasion was the adoption of the [Trade Facilitation Agreement \(TFA\)](#), discussed in section 2.4 below.

WTO members could not reconcile their positions during the 2015 Nairobi Ministerial Conference. The resulting [Nairobi Ministerial Declaration](#)³⁷ shows that, while some countries reaffirmed the Doha Round mandate, others no longer supported it. The latter group of members, despite their commitment to agree on the remaining Doha issues, understood the WTO should seek new ways of negotiating.³⁸ Yet, members agreed on the Nairobi Package, achieving the greatest progress to eliminate agricultural export subsidies since the creation of the WTO.³⁹

2.2

Appellate Body paralysis

The [Appellate Body](#) (see box 6) was established in 1995 to add to the legitimacy and efficiency of the WTO dispute settlement system (DSS). The previous mechanism in the General Agreement on Tariffs and Trade (GATT/47) did not include an independent court of appeals. That is why the Appellate Body constitutes an improvement to promote the rule of law over power dynamics in trade disputes.⁴⁰

Since December 2019, the Appellate Body has been unable to review appeals given a lack of members. The Appellate Body has been vacant since November 2020 when the mandate of its remaining members expired. This is the outcome of a long process⁴¹ that led up to the US systematically blocking the (re)appointment of new members to the Appellate Body since 2017.

3 The WTO Dispute Settlement System (DSS)

Any WTO member can bring a claim concerning any of the WTO multilateral agreements before the DSS. The goal is to make WTO members found to be in breach change their domestic policies to comply with their WTO obligations. The DSS contains three main stages:

- Consultation, which is a mandatory first stage where parties attempt to find a diplomatic solution to the dispute through bilateral negotiation. Most of the disputes are settled in this phase.

³⁷ World Trade Organization, [Nairobi Ministerial Declaration](#), Adopted on 19 December 2015, WT/MIN(15)/DEC.

³⁸ As above, para 30-31.

³⁹ [‘World Trade Organization strikes ‘historic’ farming subsidy deal’](#), BBC News, 20 December 2015.

⁴⁰ P Van den Bossche, [‘The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication?’](#), WTI Working Paper No. 02/2021.

⁴¹ I Van Damme, [‘25 Years of Law and Practice at the WTO: Did the Appellate Body Dig its Own Grave?’](#), *Journal of International Economic Law*, Volume 26, Issue 1, March 2023, p 124–132.

- Panel, which is an ad hoc tribunal comprising technical experts who will hear the arguments of the parties and issue a report with recommendations. This report can be appealed or adopted by the Dispute Settlement Body (DSB) in which case it will be final and binding to the parties to the dispute.
- Appellate Body, which is a permanent court that will hear a case when any of the parties to a dispute decides to appeal a report issued by the panel. The Appellate Body will issue its own report with recommendations, which needs to be approved by the DSB to be final and binding to the parties to the dispute.

The Appellate Body comprises seven permanent ‘judges’, called the Appellate Body members, selected by the consensus of the WTO members for a four-year term with the possibility of reappointment for an equal period. They are independent experts with recognisable knowledge of international trade law.

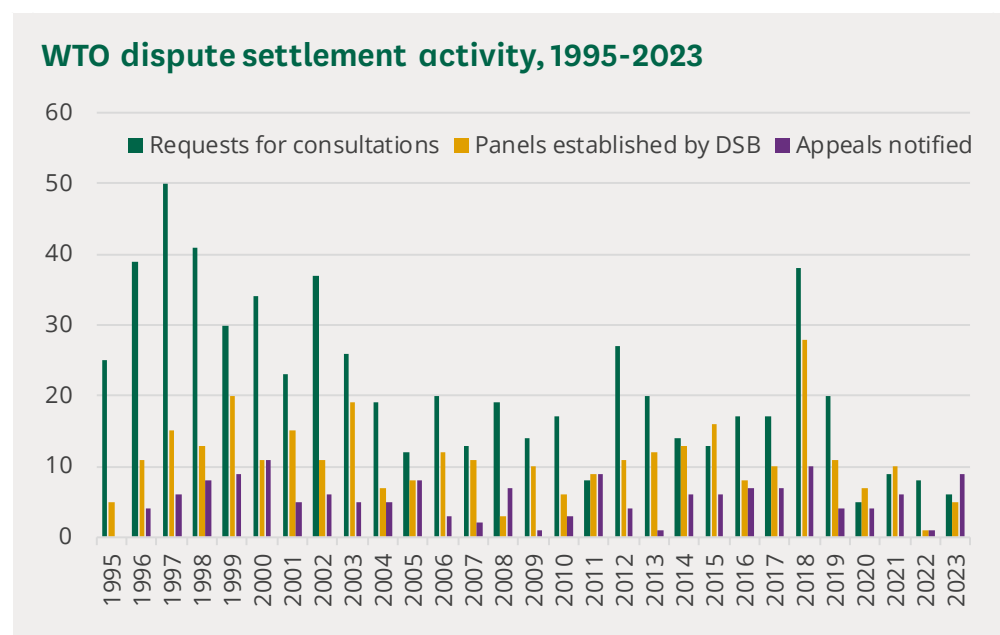
The [Dispute Settlement Understanding](#) (DSU)⁴² governs how the DSS and the Appellate Body function. According to its rules, a board of three Appellate Body members will hear an appeal brought by a WTO member concerning a panel report. Appeals can refer only to points of law, that is, the Appellate Body cannot review the facts of a dispute. At the end of the process, the Appellate Body can uphold, modify or reverse the panel’s legal findings and conclusions. The Appellate Body report will only be final and binding to the parties of the dispute if approved by negative consensus by the Dispute Settlement Body.

As trade relations grew more complex, the difficulty of trade disputes also increased. The negotiations deadlock meant WTO members could not update or agree on new rules. Consequently, countries started resorting to the DSS where specific rules had not been agreed.⁴³ This put a bigger strain on the Appellate Body since it had limited institutional resources to meet the demands of WTO members.

The graph below shows the number of disputes initiated in the WTO and how many of them went on to the panel and appeal stages.

⁴² World Trade Organization, [Understanding on rules and procedures governing the settlement of disputes](#).

⁴³ P Sutherland and others, [‘The Future of the WTO: Addressing Institutional Challenges in the New Millennium’](#), World Trade Organization, 2004, p64.



Source: WTO, [Dispute settlement activity — some figures](#)

The role and functioning of the Appellate Body led some WTO members to question the primary purpose of the WTO DSS. Governments had irreconcilable views on whether the DSS served to settle conflicting trade interests or to govern through adjudication. Some WTO members grew uneasy with the purported activism of the Appellate Body.

The US⁴⁴ had long challenged the legitimacy of the Appellate Body, and is its most outspoken critic,⁴⁵ claiming the body was acting beyond its original mandate as conceived by the DSU. As mentioned, its opposition to the (re)appointment of new members led to the vacancies that now prevent the Appellate Body from operating.⁴⁶ The main concerns the US raises about the Appellate Body are:

- Precedential value of the Appellate Body reports: they were setting the rules to be followed in future disputes
- Judicial activism, that is, deciding beyond the WTO rules in a way to add obligations or diminish rights in violation of Article 3.2 of the DSU
- Issuing advisory opinions on secondary matters that do not constitute the subject under appeal
- Reviewing factual findings of the panel, especially the meaning of domestic law
- Exceeding the 90-day deadline set by Article 17.5 of the DSU

⁴⁴ S Charnovitz, 'The Obama Administration's Attack on Appellate Body Independence Shows the Need for Reforms', International Economic Law and Policy Blog, 22 September 2016.

⁴⁵ World Trade in 2019: the US and the WTO, Commons Library Research Paper 08465.

⁴⁶ M Schneider-Petsinger, 'Reforming the World Trade Organization: Prospects for Transatlantic Cooperation and the Global Trade System', Chatham House Research Paper, 11 September 2020.

- Appellate Body members continuing to serve on appeals even after the end of their term⁴⁷

Not having a functioning Appellate Body can create many risks, especially for developing countries and least-developed countries (LDCs). This is because powerful countries would have an advantage by deciding whether they would abide by a panel report. WTO members could choose not to implement the decision or appeal “into the void” since there is no court to hear it.

Smaller developing countries and LDCs would not have enough tools to pressure powerful governments to conform their trade policies with their WTO obligations. Such a scenario would resemble the GATT/47 era when power took precedence over rules in trade relations. To avoid this, some WTO members agreed on a provisional solution based on Article 25 of the DSU, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA).

Interim appeal and arbitration arrangement

The WTO Multi-Party Interim Appeal Arbitration Arrangement (MPIA) is a temporary alternative procedure for deciding on appeals of panels’ recommendations. It is a response, but not a solution, to the Appellate Body crisis. The MPIA allows the WTO DSS to keep functioning, avoiding appeals into the void, while members discuss ways to revive the Appellate Body.

Forty-seven WTO members (see box 7 below) established the MPIA in April 2020 building on Article 25 of the DSU that provides for arbitration within the WTO.⁴⁸ It follows the same substantive and procedural aspects of the Appellate Body to emulate its core features, particularly its independence and impartiality.

The MPIA has decided on one dispute between its parties (Colombia and EU), [Colombia — Frozen Fries](#).⁴⁹ Another dispute, [Turkey — Pharmaceutical Products \(EU\)](#),⁵⁰ was decided following a procedure similar to the MPIA through Article 25 of the DSU, despite Turkey not being a party to the former.

7 Who established and joined the MPIA?

The following members established the MPIA: Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, the European Union, Guatemala,

⁴⁷ United States Trade Representative, Ambassador Robert E. Lighthizer, ‘[Report on the Appellate Body of the World Trade Organization](#)’, February 2020.

⁴⁸ World Trade Organization, [Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU](#), JOB/DSB/1/Add.12, 30 April 2020.

⁴⁹ World Trade Organization, [DS591: Colombia — Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands](#).

⁵⁰ World Trade Organization, [DS583: Turkey — Certain Measures concerning the Production, Importation and Marketing of Pharmaceutical Products](#).

Hong Kong, Iceland, Mexico, New Zealand, Norway, Pakistan, Singapore, Switzerland, Ukraine and Uruguay.

The following WTO members have since joined the MPIA: Benin, Ecuador, Japan, Macao, Montenegro, Nicaragua and Peru.

The UK is not a party to the MPIA.

Under the MPIA, appeals are heard by arbitration panels composed of three members chosen by the parties from a roster of trade experts. They can decide on any trade dispute concerning any of the WTO multilateral agreements. When a dispute involving two MPIA parties arises, they should notify the DSB of their intention to use the MPIA procedures should the case reach the appellate stage, as per Article 25 of the DSU.⁵¹

Adherence to the MPIA is voluntary, which means that any WTO member can choose to participate by notifying the DSB. Once they have done so, WTO members commit to adopt the report issued by the relevant arbitration panel. More than 50 WTO members are currently parties to the MPIA. However, the MPIA is not a plurilateral agreement. It is part of the WTO multilateral arrangement through Article 25 of the DSU, which foresees arbitration as an alternative means to solve disputes in the WTO. Arbitrators working on the disputes receive assistance from the WTO staff and their payment comes from the WTO dispute settlement budget.⁵²

The MPIA is intended to support the integrity of the rules underpinning the WTO system, avoiding the escalation of trade tensions that could result in unilateral retaliatory measures. It stresses the importance of rules over power in promoting predictability and stability in trade relations. Accordingly, the MPIA encourages members to keep cooperating to settle their trade disputes.

2.3

Geopolitical context

In the past few years there has been an increase in concerns related to national security, leading countries to adopt policies to protect strategic industries – from aluminium to microchips.

In the WTO, all three main agreements include a security exception. This allows governments to put in place measures to meet security interests, even if they would violate their WTO obligations. [Article XXI of the GATT](#) is one of those provisions. It became the centre of a legal dispute between the US and China regarding the raising of tariffs on certain goods. This led to an

⁵¹ [Multi-Party Interim Appeal Arbitration Arrangement \(MPIA\)](#), WTO Plurilaterals (accessed 31 October 2023).

⁵² J Pauwelyn, 'The MPIA: What's New?', International Economic Law and Policy Blog, 21 February 2023.

escalating series of retaliatory tariffs (known as “trade war”) between the two largest world economies.

“Trade war” between the US and China

In 2017, the Trump administration launched an investigation on possible violations of US property rights in China based on Section 301 of the Trade Act of 1974. This provision allows the US president to unilaterally apply fines on trade partners found to be unfairly harming US trade interests. As the outcome of this process, the US not only requested consultations with China in the WTO DSS (the parties later requested the Panel to suspend its proceedings)⁵³ but also imposed a 25% tariff on strategic products imported from China. These products would amount to approximately \$50 billion.⁵⁴

Adding to that, since 2018 the US has raised its tariffs on a wide range of products, from solar panels to aluminium and steel.⁵⁵ Although such measures also affected other countries and trading blocs, such as the EU, Brazil, South Korea, and Turkey, the main target was Chinese imports. By July 2018, the US had imposed tariffs on \$34 billion worth of Chinese goods. In response, the Chinese government started applying retaliatory tariffs of equivalent amounts on products ranging from aluminium to pork, of which China is the largest global consumer.

China also requested consultations with the US in the WTO DSS concerning such tariff measures. The US argued that these tariffs were necessary to protect its “public morals” according to the exception in Article XX(a) of the GATT. A WTO Panel concluded that the US failed to demonstrate the relationship between ends (preserve public morals) and means (raise in tariffs), finding the US measures to be inconsistent with its obligations and not justified by the exception in Article XX (a). The US decided to appeal to an inoperative Appellate Body.⁵⁶

Much of US trade policy in this context relies on [Section 232 of the Trade Expansion Act of 1962](#). According to this provision, the US Commerce Department can investigate and report whether imports of a particular item pose a threat to national security. Based on such a report, the US President may propose whichever remedy they deem appropriate. Therefore, Section 232 includes a national security rationale to justify protectionist measures. This resonates with Article XXI of the GATT, which establishes national security as an exception for the violation of WTO obligations. Following recent geopolitical tensions, national security is a priority for many governments.

⁵³ World Trade Organization, [DS542: China — Certain Measures Concerning the Protection of Intellectual Property Rights](#).

⁵⁴ Office of the United States Trade Representative, ‘[Section 301 Investigation Fact Sheet](#)’ (accessed 31 October 2023).

⁵⁵ [World Trade in 2019: the US and the WTO](#), Commons Library Research Paper 08465, pp 18-19.

⁵⁶ World Trade Organization, [DS543: United States — Tariff Measures on Certain Goods from China](#).

However, any trade measure adopted on this ground can be challenged and reviewed by the WTO DSS; this rule has been criticised by the US.⁵⁷

The dispute brought by China before the WTO addressing the tariffs imposed by the US on steel and aluminium products is the best example of this discussion around national security.⁵⁸ The Panel on that case concluded that the measures were not “taken in time of war or other emergency in international relations” as required by [Article XXI](#)⁵⁹ of the GATT and, hence, the US was in breach of its WTO commitments. Once again, the US appealed into the void. More recently, two new cases were brought against the US on similar issues involving national security.⁶⁰

The developing countries status

Part of the tension between the US and China stems from the status of China as a developing country. As discussed in section 1, the WTO adopts a self-declaration approach to whether a member is a developing country. It does not impose any requirements or standards a member must meet to fit into this category. Consequently, approximately two-thirds of the WTO membership is formed by developing countries. As such, they receive special and differential treatment (SDT) in the WTO. SDT provisions have a best endeavour nature, raising concerns regarding their effectiveness.⁶¹ SDT provisions fall within five categories:

- Increasing trade opportunities
- Ensuring developed countries safeguard the interests of developing countries
- Flexibility of commitments, action, and use of policy instruments
- Transitional time periods
- Technical assistance

The economic growth of some developing countries and their regional – or sometimes global – power changed the dynamics in trade relations and the WTO. Yet, some of these countries believe in the ‘indivisible relationship between [the] developing country status and special and differential treatment’,⁶² which would be unconditional rights. Other members, like

⁵⁷ W Maruyama and A Wm. Wolff, ‘[Saving the WTO from the national security exception](#)’, Peterson Institute for International Economics Working Paper, May 2023.

⁵⁸ World Trade Organization, [DS544: United States—Certain Measures on Steel and Aluminium Products](#), Panel Report WT/DS544/R.

⁵⁹ World Trade Organization, [Article XXI/GATT: Security Exceptions](#) (accessed 30 November 2023).

⁶⁰ World Trade Organization, [DS597: United States—Origin Marking Requirement; DS615: United States—Measures on Certain Semiconductor and Other Products, and Related Services and Technologies](#).

⁶¹ World Trade Organization, [Doha WTO Ministerial 2001: Ministerial Declaration](#), WT/MIN(01)/Dec/1, 20 November 2001, par. 44.

⁶² World Trade Organization, Communication from the African Group, Cuba and India, ‘[Strengthening the WTO to Promote Development and Inclusivity](#)’, WT/GC/W/778/Rev.3, 4 December 2020.

Brazil⁶³ and South Korea,⁶⁴ are more pragmatic and have decided not to seek SDT in future agreements.

The US⁶⁵ and the EU⁶⁶ argue for reforming the WTO developing country status to introduce nuances to differentiate countries within that spectrum. They claim the current blanket approach that applies all exceptions to all developing countries results in some members being granted a competitive advantage. Yet, there is no consensus on the standards to use when categorising countries, such as economic indicators like gross domestic product and share of international trade, or social indexes like the human development index. In this discussion, the Trade Facilitation Agreement (TFA) offers a new alternative by allowing countries to identify the provisions they would need assistance to implement given their lack of resources.

Likewise, the US challenges the market-economy status of China given the dominance of state-owned enterprises (SOEs) in the country.⁶⁷ The US argues that China is benefiting from WTO rules while not abiding by its commitments. As a non-market economy, WTO members could apply to China, for example, a different methodology to calculate the “normal value” of goods that facilitates the imposition of antidumping measures (see section 1.2 above).

New industrial policies

Governments adopt industrial policies to promote the growth and development of strategic sectors of the economy and protect domestic interests. While pursuing such domestic interests, a policy should be designed and implemented in line with international trade obligations. Yet, industrial policies may affect trade competitiveness and be challenged as protectionist measures. For instance, subsidies are one of the main tools governments may employ when adopting industrial strategies. The measures, however, should be in line with the WTO regulation of subsidies, as discussed in section 1.2.

Given the current geopolitical context, the focus of recent industrial policies is on areas related to environmental protection and national security. Indeed, countries are putting into place policies that support environmentally friendly technologies and practices. This may involve a wide range of measures, for example:

- providing incentives for clean energy and sustainable forms of production.

⁶³ Brazilian Ministry of Foreign Affairs, ‘[Joint Statement from President Jair Bolsonaro and President Donald J. Trump](#)’, 19 March 2019.

⁶⁴ J Chung Roh Joori, ‘[South Korea to Give up Developing Country Status in WTO Talks](#)’, Reuters, 25 October 2019.

⁶⁵ United States, Trade Representative, ‘[Memorandum on Reforming Developing-Country Status in the World Trade Organization](#)’, 26 July 2019.

⁶⁶ European Commission for Trade, ‘[EU concept paper on WTO reform](#)’, 18 September 2018.

⁶⁷ World Trade Organization, Communication from the United States, [China's Trade-Disruptive Economic Model](#) WT/GC/W/745, 11 July 2018.

- funding research and development of green technologies.
- implementing regulations encouraging companies to reduce their environmental impact.

Concerning national security, governments seek to ensure the domestic production and supply of certain strategic goods and services, safeguarding them against potential disruptions in global supply chains. These policies might also be adopted to promote economic diversification, reduce international dependency and build a more resilient economy. Such policies may also limit the export of goods and services to specific countries deemed to pose a threat to a country's national security. The idea of what constitutes a threat has changed in recent years due to the increasing use of technologies and concerns over cyber security.

The US Inflation Reduction Act (IRA), for example, focuses on promoting employment and tackling environmental issues whilst trying to curb the development of new Chinese technologies.⁶⁸ Through the IRA, the US government approved \$400 billion of subsidies for clean energy, which particularly impacts the electric vehicles sector. To have access to tax credits for electric vehicles, some of the requirements establish that the final assembly should happen in North America and a percentage of critical minerals used in the batteries should come from partners that have a free trade agreement with the US.⁶⁹ This could lead to a change in the supply chains, displacing trade relations.

The EU has also developed a series of industrial policies seeking to promote a greener economy, among which is the [Carbon Border Adjustment Mechanism \(CBAM\)](#). This measure seeks to limit cheaper carbon-intensive goods, such as iron and aluminium, entering the EU market by imposing tariffs on imports. Arguably, these goods could be cheaper because they do not follow the EU carbon emissions standards.

For the UK, the discussion on new industrial policies⁷⁰ revolves around ensuring the competitiveness and resilience of UK low-carbon industries⁷¹ and access to green technology and green supply chains.⁷² The government's Net-Zero Strategy⁷³ has started the discussion and could be the first step to the adoption of an industrial policy to protect these interests.⁷⁴ Likewise, the

⁶⁸ ['US tightens rules on AI chip sales to China in blow to Nvidia'](#), Financial Times, 17 October 2023.

⁶⁹ ['Biden offers olive branch to allies in electric vehicle subsidy dispute'](#), Financial Times, 31 March 2023.

⁷⁰ The House of Commons Business and Trade Committee has recently launched a programme of work to scrutinise the UK Government's approach to industrial policy: [Industrial Policy](#), House of Commons Business and Trade Committee (accessed 11 January 2024).

⁷¹ HM Government, [Industrial Decarbonisation Strategy](#), March 2021.

⁷² E Lydgate, ['The UK in a World of Green Industrial Strategies'](#), UK Trade Policy Observatory, 13 March 2023.

⁷³ [The UK's Plans and Progress to Reach Net Zero by 2050](#), Commons Library Research Paper 9888; HM Government, ['Powering up Britain'](#), March 2023.

⁷⁴ HM Government, [Addressing carbon leakage risk to support decarbonisation: A consultation on strategic goals, policy options and implementation considerations](#) (accessed 16 November 2023).

government is advancing discussions on areas like critical minerals,⁷⁵ batteries⁷⁶ and semiconductors.⁷⁷ The Advanced Manufacturing Plan aligns with such goals, prioritising investments in long-term manufacturing, building resilient supply chains and boosting competitiveness.⁷⁸

The new industrial policies highlight the need to improve WTO rules on subsidies and national security, besides regulating the relationship between trade and the environment. Concerns have been raised about the possible impacts of such policies in developing countries⁷⁹ and their discriminatory effects, given the advantage granted to domestic producers and products that meet certain requirements.⁸⁰ For instance, China initiated a WTO dispute against the US regarding its measures on semiconductors.⁸¹

2.4 Is the WTO still relevant?

Over the last thirty years there has been a big increase in the number of free trade agreements (FTAs). Unlike the WTO multilateral rules, those instruments offer governments the option to choose their preferential trade partners. This phenomenon, however, can result in fragmentation and disruption of global supply chains by creating contradictory rules and standards.

Increase in free trade agreements (FTAs)

WTO rules allow for its members to participate in FTAs. For instance, both the GATT and the GATS include provisions regulating FTAs (in WTO language, they are called Regional Trade Agreements or RTAs) – Articles XXIV and V, respectively. These rules create an exception for FTAs since they initially violate the most-favoured nation (MFN) principle by offering a trade advantage to specific partners. To fall within such an exception, FTAs must meet the following requirements:

⁷⁵ HM Government, [Resilience for the Future: The UK's Critical Minerals Strategy](#), Policy paper, 13 March 2023. The Foreign Affairs Committee stressed the urgency in adopting a strategy on this matter: [A rock and a hard place: building critical mineral resilience](#), House of Commons

Foreign Affairs Committee, First Report of Session 2023 – 24, 15 December 2023.

⁷⁶ HM Government, [UK Battery Strategy: Call for evidence on the scope and priorities for the UK Battery Strategy](#) (accessed 16 November 2023).

⁷⁷ HM Government, [National semiconductor strategy](#), Policy paper, 19 May 2023.

⁷⁸ HM Government, [Advanced Manufacturing Plan](#), 26 November 2023.

⁷⁹ [Implications for African Countries of a Carbon Border Adjustment Mechanism in the EU](#), African Climate Foundation (ACF) and the Firoz Lalji Institute for Africa at the London School of Economics and Political Science (LSE). 9 May 2023. J Trachtman, J Yves Remy [Comment: The EU's carbon border tax is a blow to climate justice. Here's how to fix it](#), Reuters, 15 November 2023.

⁸⁰ S Lester, [Electric Vehicle Tax Credits and Non-Discrimination under the Inflation Reduction Act](#), International Economic Law and Policy Blog, 11 August 2022. A Lv and D Patton [China steel association says EU carbon tax a new trade barrier, calls for more talks](#), Reuters, 3 November 2023.

⁸¹ World Trade Organization, [DS615: United States — Measures on Certain Semiconductor and other Products, and Related Services and Technologies](#).

- Cover substantially all the trade among the parties to the agreement.
- Eliminate substantially all restrictions to trade among the parties to the agreement.
- Not raise the level of barriers to trade for countries outside the agreement.

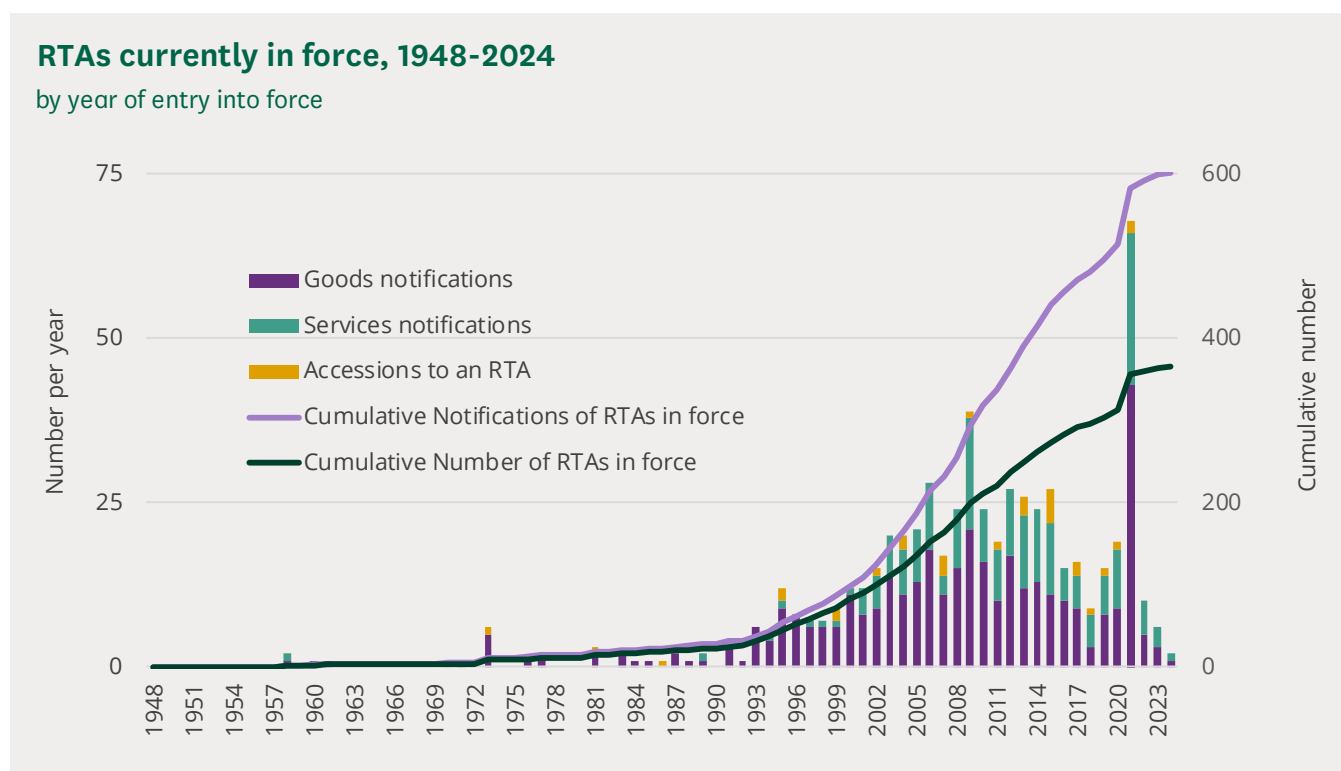
The rationale behind the FTA exception is to ensure WTO members negotiate agreements among themselves to reduce trade barriers to selected countries without having to extend the same benefit to all WTO members. The goal is to further trade liberalisation without raising trade barriers to those WTO members who are not parties to the FTA.

FTAs encourage countries to create trade and improve their trade relations through cooperation and dialogue. Each FTA has its own bodies and mechanism to settle disputes arising from the interpretation and application of its rules.

WTO members are required to notify other members of FTAs and make the full text available in line with the transparency principle.⁸² The membership can then assess if the agreement is compatible with the WTO, not creating additional trade discrimination. To clarify and improve the rules on notification, members agreed on [an RTA Transparency Mechanism](#) in 2006. This is in operation on a provisional basis until a permanent mechanism can be agreed upon at the conclusion of the Doha Round of negotiations.

The deadlock in the WTO negotiations led many members to shift the focus to FTAs to agree on new trade rules to address pressing issues that the WTO could not regulate. This explains the surge of FTAs in the 2000s as the graph below shows:

⁸² World Trade Organization, [Regional Trade Agreements Database](#) (accessed 16 November 2023).



Note: Notifications of RTAs: goods, services & accessions to an RTA are counted separately. The cumulative lines show the number of RTAs/notifications currently in force.

Source: [WTO Secretariat](#)

Even with the increase in FTA numbers, WTO rules are still important to offer a common regulatory framework to avoid fragmentation. The new agreements should build on those shared standards, adding to the existing multilateral rules, instead of violating them. Because of this, FTAs are known as ‘WTO plus’. Recent agreements, especially the mega-regionals (see box 8 below), are moving toward becoming ‘WTO more’. This is due to provisions in areas not regulated by the WTO, such as labour and environmental standards.

8 Mega-regional trade agreements

Mega-regionals are free trade agreements encompassing a significant number of countries with large shares of international trade and a broad range of issues agreed upon. Despite the name, mega-regionals do not necessarily comprise countries in the same geographical area.

For example, the UK has formally agreed to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP),⁸³ which

⁸³ [The Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\)](#), Commons Library research briefing.

initially included countries in the Asia-Pacific zone. The CPTPP has rules on e-commerce, labour standards, and the environment.⁸⁴

FTAs are particularly important in the context of non-tariff measures since average tariffs are usually already fairly low across all the WTO membership.⁸⁵ These agreements can be a tool to harmonise regulatory policies, especially concerning technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures. Consequently, exports from FTAs parties flow more freely as countries recognise each other's production processes and requirements. This also reflects the current structure of the global economy, which relies on global value chains. Governments pursue lower barriers with strategic partner-countries and regions that are part of important global value chains for their domestic industries.

However, FTAs can create regulatory poles and competing blocks of global value chains, resulting in different – and even contradictory – standards. This is known as the 'spaghetti bowl effect',⁸⁶ which characterises the coexistence of entangled legal regimes. The phenomenon illustrates the lack of coherence among different FTAs and the trade costs this may generate for both businesses and governments.

Exports to markets adopting different standards will have to comply with different methods of production, making the process more expensive and inefficient. This has a higher impact on micro, small and medium enterprises (MSMEs) and developing countries and least developed countries (LDCs) because they will bear a heavier burden of the costs of adapting to different requirements.

FTAs also face other challenges. More ambitious agreements normally struggle to receive domestic support, for they are seen to interfere unnecessarily with policy space, placing constraints on domestic legislators and policymakers.⁸⁷ For smaller developing countries and LDCs, besides the extra costs, FTAs can reduce the bargaining power and negotiating leverage they would enjoy in the WTO. Additionally, these countries could be less attractive trade partners, not even being invited to join an FTA, which could create a division between insiders versus outsiders.

⁸⁴ HM Government, [The Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership: Agreement Summary](#), 17 July 2023.

⁸⁵ World Trade Organization, [World Tariff Profiles 2023](#).

⁸⁶ M Panezi, '[The WTO and the Spaghetti Bowl of Free Trade Agreements: Four proposals for moving forward](#)', CIGI Policy Brief no. 87, September 2016.

⁸⁷ C P. Bown, '[Mega-Regional Trade Agreements and the Future of the WTO](#)', Part of Discussion Paper Series on Global and Regional Governance, September 2016.

Main topics agreed since 1995

Despite all of the WTO's struggles, a multilateral framework for trade is an important platform where countries can negotiate trade rules on an equal footing. It produces a common ground for regulatory cooperation and dialogue. None of the suggested alternatives to the WTO would have the same scope and chances to create fair rules. The topics agreed by the members since the creation of the WTO illustrate its importance.

In November 2001, as part of the Doha Round, members agreed on the [Declaration on the TRIPS Agreement and Public Health](#).⁸⁸ This document highlighted the importance of ensuring developing countries and LDCs have access to affordable medicines to fight epidemics like HIV/AIDS. In December 2005, Members agreed on a protocol to amend the TRIPS Agreement, which entered into force on 23 January 2017.

The insertion of [Article 31bis in the TRIPS Agreement](#) provided the legal basis for WTO members to grant special compulsory licences for the production and export of affordable generic drugs to other WTO members that cannot domestically produce the needed medicines in a sufficient amount to meet the demand of their internal market.

Compulsory licences returned to the spotlight during the Covid-19 pandemic discussion on access to vaccines.⁸⁹ At MC12, in June 2022, WTO members agreed on a [Ministerial Decision on the TRIPS Agreement](#).⁹⁰ This document was a compromise between different positions regarding the need for a vaccine waiver, which means allowing developing countries to authorise suppliers other than the patent holder to produce vaccines provided the patent holder is compensated.⁹¹ It clarifies the application of Article 31bis of the TRIPS Agreement to the Covid-19 pandemic.

Another important advancement was the Trade Facilitation Agreement (TFA) – the first multilateral agreement concluded under the WTO. The TFA comprises rules to streamline procedures related to the import and export processes of goods. It entered into force on 22 February 2017, when two-thirds of the WTO membership ratified it.

More recently, part of the WTO membership willing to advance rules on new issues launched a series of negotiations known as Joint Initiatives (JIs). They comprise groups of like-minded countries that represent a critical mass, that is, a large number of the WTO membership accounting for around 90% of the global market in the relevant sector.

⁸⁸ World Trade Organization, [Declaration on the TRIPS agreement and public health](#), WT/MIN(01)/DEC/2, adopted on 14 November 2001.

⁸⁹ [Waiving intellectual property rights for Covid-19 vaccines](#), Commons Library Research Paper Number 9417.

⁹⁰ World Trade Organization, [Ministerial Decision on the TRIPS Agreement](#), WT/MIN(22)/30 WT/L/1141, adopted on 17 June 2022.

⁹¹ A Shalal, E Farge, [U.S., EU, India, S.Africa reach compromise on COVID vaccine IP waiver text](#), Reuters, 16 March 2022.

In this context, two new agreements have been reached – [the reference paper on Services Domestic Regulation \(SDR\)](#)⁹² was agreed in November 2021, and [the text of the agreement on Investment Facilitation for Development \(IFFD\)](#)⁹³ was agreed in July 2023. The section below will discuss these in more detail.

⁹² World Trade Organization, Joint Initiative on Services Domestic Regulation, Reference Paper on Services Domestic Regulation, INF/SDR/2, 26 November 2021.

⁹³ World Trade Organization, WTO Structured Discussions on Investment Facilitation for Development, Statement by the Co-Coordinator, INF/IFD/W/51, 6 July 2023.

3

The path ahead for the WTO

The previous section discussed all the challenges the WTO currently faces, which stem mostly from the changes in the global economy and trade relations. To address existing needs and keep its relevance, the WTO is seeking to change. Members are engaging in reform discussions and new initiatives to adapt the WTO procedures and rules. The most recent ministerial conference, in February 2024, showed the importance and difficulties of this process.

3.1

Negotiating agenda for the thirteenth Ministerial Conference (MC13)

WTO members had an ambitious agenda for MC13, held between 26 February and 2 March 2024. The current geopolitical context put pressure on the WTO to deliver on pressing issues as a sign that countries can still cooperate multilaterally on trade topics. The need to reform the WTO to overcome current struggles and meet present needs was at the centre of MC13. Besides reform, members also expected to agree on fisheries, agriculture and food security, development, e-commerce, and investment facilitation.⁹⁴

Reform discussions ahead of MC13

Most of the work leading to MC13 focused on reforming the WTO, both its deliberative function in the day-to-day WTO activities and its dispute settlement system (DSS). Because of that, WTO members expected it to be a 'reform ministerial'.⁹⁵ This is in line with the commitments members made in the MC12 outcome document.⁹⁶

Regarding deliberation, the discussion ahead of MC13 revolved around the 'reform by doing' approach. This means that members in Geneva are seeking alternatives to improve 'the daily functioning of WTO bodies'.⁹⁷ The goal is to make members' participation in the WTO easier without modifying the

⁹⁴ World Trade Organization, '[Senior Officials Meeting paves way for progress on deliverables at MC13](#)', 24 October 2023.

⁹⁵ World Trade Organization, '[DG Okonjo-Iweala: "Our Work Is Cut out for Us" on Achieving Concrete MC13 Outcomes](#)', 1 November 2023.

⁹⁶ World Trade Organization, '[MC12 Outcome Document](#)', WT/MIN(22)/24, WT/L/1135, adopted on 17 June 2022, para. 3 and 4.

⁹⁷ World Trade Organization, '[Senior Officials Meeting Paves Way for Progress on Deliverables at MC13](#)', 24 October 2023.

balance of rights and obligations between them.⁹⁸ For instance, a group of WTO members, including the UK, have proposed:⁹⁹

Improving the organisation of WTO meetings and the support to facilitate the participation of members

- Promoting better engagement through, for example, holding thematic and joint sessions
- Facilitating notification procedures to improve transparency
- Streamlining the discussion of trade concerns over members' policies

WTO members expressed the urgency in finding solutions to the challenges of the WTO DSS. They also committed 'to having a fully and well-functioning dispute settlement system accessible to all members by 2024.'¹⁰⁰

Despite the DSS reform being a priority, little convergence or even concrete proposals have emerged from the discussions between delegates in Geneva. The confidentiality of these negotiations also adds to the lack of information and concerns over fairness and transparency.

During all this negotiating process, the US, the main critic of the Appellate Body, has not made any public proposals to address the main claims it raised against the functioning of the WTO DSS.¹⁰¹ Information gathered from the confidential talks reveals that the US's idea is to focus on negotiation and mediation and allow appeals only when both sides of the dispute agree with that procedure.¹⁰²

The former facilitator of the discussions on DSS reform, Marco Molina, then Deputy Permanent Representative of Guatemala to the WTO, reported that members have met regularly in Geneva to discuss practical solutions to current challenges. As a result of this process, members presented more than 70 initial proposals.¹⁰³ Besides considering options to revitalise the appellate stage of the WTO DSS, members also examined ways to handle disputes arising from the national security exception, including industrial policies justified on that ground.¹⁰⁴

⁹⁸ World Trade Organization, [General Council, Communication from the African Group. A Development Perspective on Institutional Reforms of the World Trade Organization](#), WT/GC/W/895, 13 July 2023.

⁹⁹ World Trade Organization, [General Council, Improving the Operation of WTO Bodies To Revitalise The WTO's Monitoring And Deliberative Function](#), WT/GC/W/877, 4 May 2023.

¹⁰⁰ World Trade Organization, [MC12 Outcome Document](#), WT/MIN(22)/24, WT/L/1135, adopted on 17 June 2022, para. 4.

¹⁰¹ World Trade Organization, [Communication from the United States. U.S. Objectives for a Reformed Dispute Settlement System](#), JOB/DSB/4, 5 July 2023.

¹⁰² 'Reform or die? If the US gets its way, the WTO might do both', *Politico*, 9 May 2023; A Wm. Wolff, [What's at Stake for America at the Upcoming WTO Ministerial Conference \(MC13\) at Abu Dhabi in February 2024](#), Notes for remarks, 20 November 2023.

¹⁰³ World Trade Organization, [Discussions concerning dispute settlement reform](#), 30 May 2023.

¹⁰⁴ P Ungphakorn, R Wolfe, [WTO senior officials face struggle to avoid distractions 'elsewhere'](#), Trade β Blog, 19 October 2023.

Fisheries

WTO members concluded an [Agreement on Fisheries Subsidies](#) (AFS) in 2022 – a milestone for the WTO multilateral negotiations. The topic is part of the Doha Agenda and intends to ban subsidies on illegal, unreported and unregulated (IUU) fishing and subsidies contributing to overfishing. For the first time, a WTO agreement recognised the spillover effects of trade, focusing on the environmental effects of members' trade policies on “global commons” instead of their economic impact.¹⁰⁵

However, the AFS fell short of delivering on the main issue members were trying to regulate: subsidies contributing to overcapacity and overfishing. This is also part of target 14.6 of the United Nations Sustainable Development Goals.¹⁰⁶

Because of a lack of convergence on this matter, members decided to replace it with a vaguer provision on ‘other subsidies’, which resulted in Article 5 of the AFS. Members have agreed to continue negotiations to reach a consensus on the outstanding issue. The goal was to make recommendations by MC13 that enhanced regulation in fisheries.¹⁰⁷

In Geneva, Members have been discussing draft articles and making proposals to amend them.¹⁰⁸ Yet differences remain. Negotiations are also confidential, but from the information available, members mostly diverge on the following points:¹⁰⁹

- Improving data and information on subsidies to enhance scrutiny of the biggest subsidisers
- Amending other provisions of the AFS
- The scope of the special and differential treatment (SDT) provision and to which developing countries it should apply

To keep momentum, members also established in Article 12 of the AFS that the agreement will be terminated within four years after coming into force if members do not agree on more comprehensive disciplines, unless the General Council decides otherwise. Despite the urgency of regulating fisheries

¹⁰⁵ B M. Hoekman, P C. Mavroidis and S Sasmal, ‘[Managing Externalities in the WTO: The Agreement on Fisheries Subsidies](#)’, *Journal of International Economic Law*, 2023, 26, 266–284, p. 267-268.

¹⁰⁶ United Nations, [Sustainable Development Goals](#) (accessed 23 November 2023).

¹⁰⁷ World Trade Organization, [Agreement on Fisheries Subsidies](#) (accessed 23 November 2023).

¹⁰⁸ World Trade Organization, Unofficial Room Document, Negotiating Group on Rules – Fisheries Subsidies, [Draft Disciplines on Subsidies Contributing to Overcapacity and Overfishing, and Related Elements](#), RD/TN/RL/174, 4 September 2023.

¹⁰⁹ P Ungphakorn, ‘[WTO fish talks complete draft read-through with little real negotiation](#)’, *Trade β Blog*, 16 October 2023.

subsidies,¹¹⁰ the AFS is not in force yet since it has not reached the minimum ratification number of two-thirds of the WTO membership.¹¹¹

The UK formally accepted the AFS on 13 December 2023 when it also pledged to donate up to £1 million to the WTO Fisheries Funding Mechanism.¹¹² The House of Lords International Agreements Committee welcomed the AFS as promoting ocean stability and also encouraged the UK Government to “work actively towards achieving a comprehensive agreement on overfishing and overcapacity in 2024.”¹¹³

Agriculture and development

As discussed in section 2.1, agriculture is the most contentious negotiating issue in the Doha Agenda. The lack of consensus on agricultural matters remained from the failure to reach a deal on agriculture during MC12.¹¹⁴

Ahead of MC13, the Chairperson for the Committee on Agriculture, Ambassador Alparslan Acarsoy, held more than 20 consultations with members and group coordinators, identifying the following topics as priorities in the negotiations:¹¹⁵

- Public stockholding for food security purposes
- Reducing trade-distorting domestic support
- Cotton
- Improving market access

The need to promote food security is central to the discussions. Members have committed to improve the “resilience of global markets for food and agriculture”, expressing their determination to achieve “a fair and market-oriented agricultural trading system, ending hunger, achieving food security and improved nutrition”.¹¹⁶ While WTO members recognise the importance of addressing such issues, they disagree on what would be a permanent solution

¹¹⁰ UNCTAD, [‘Time, ambition of the essence in ending harmful fisheries subsidies’](#), 18 September 2019.

¹¹¹ World Trade Organization, [Members submitting acceptance of Agreement on Fisheries Subsidies](#) (accessed 23 November 2023).

¹¹² World Trade Organization, [‘The Gambia, UK formally accept Agreement on Fisheries Subsidies: UK pledges to the Fund’](#), 13 December 2023.

¹¹³ International Agreements Committee, [WTO Agreement on Fisheries Subsidies](#), 29 November 2023, HL Paper 20, 2023-24, p2.

¹¹⁴ P Ungphakorn, [‘The successful WTO Conference saw one big failure: agriculture’](#), Trade β Blog, 4 July 2022.

¹¹⁵ World Trade Organization, Committee on Agriculture in Special Session, [Oral Report by the Chairperson, Ambassador Alparslan Acarsoy](#) JOB/AG/249, 6 October 2023.

¹¹⁶ World Trade Organization, [Ministerial Declaration on the Emergency Response To Food Insecurity](#), WT/MIN(22)/28, WT/L/1139, adopted on 17 June 2022.

to them.¹¹⁷ Given such divergencies, reaching a deal on agriculture in the MC13 was always a challenge for WTO members.

Joint initiatives

The deadlock in negotiations during the Doha round led WTO members to seek alternatives to advance trade issues. Groups of like-minded members have launched informal discussions upheld by a critical mass (discussed in section 2.4) – [the joint initiatives \(JIs\)](#).

The goal is to agree on new multilateral rules but given the challenges of the consensus principle, members participating in these initiatives are moving toward establishing open plurilateral rules. This means that, while the new obligations would only bind the governments adopting the JI agreements, the benefits would be extended to all WTO members based on the most-favoured nation principle.¹¹⁸

The new rules differ from the Annex 4 plurilaterals mentioned in section 1, which only benefit members who are party to the agreements. Likewise, any WTO member could join the initiatives at any point. They follow the rationale used for the approval of the [Reference Paper on basic telecommunications](#), which sets regulatory principles on the telecommunications sector, and the [Information Technology Agreement \(ITA\)](#), in which 82 participants accounting for 97% of world trade in IT products commit to eliminating tariffs on the covered products.

The JIs offer an alternative to members wishing to proceed with negotiations on certain trade issues based on their current needs by taking advantage of political momentum. They do not impair the WTO multilateral decision-making based on consensus and the single undertaking. JIs may be a useful first step to raise awareness of regulating some topical matters, attracting supporters to an eventual multilateral agreement. In this capacity, they may be used to keep the WTO relevant for current discussions.

The main challenges faced by the JIs are opposition from India and South Africa and the absence of the US in most of these efforts. Critics focus on the fragmentation of the multilateral trading system, since not all WTO members would abide by these new plurilateral rules. Moreover, they say the JIs could move the focus away from outstanding issues on the Doha agenda.¹¹⁹

The first JIs – Service Domestic Regulation (SDR), Investment Facilitation for Development (IFFD), E-commerce, and Micro Small and Medium Enterprises (MSMEs) – emerged during the 2017 Ministerial Conference in Buenos Aires. New JIs were also announced since Buenos Aires, such as Trade and

¹¹⁷ J Glauber, T Sinha, '[Procuring Food Stocks Under World Trade Organization Farm Subsidy Rules: Finding a permanent solution](#)', IISD Report, August 2021.

¹¹⁸ L. A Winters, B Hoekman, '[WTO reform: Plurilateral Agreements](#)', UKTPO blog post, 13 January 2022.

¹¹⁹ N Lamp '[A Historical Perspective on India's and South Africa's Threat to Block the Implementation of the Joint Statement Initiatives in the WTO, and a Potential Way Forward](#)', International Economic Law and Policy Blog, 26 February 2021.

Environmental Sustainability and Plastics Pollution and Environmentally Sustainable Plastics Trade.¹²⁰

The informal discussions usually evolve into negotiations of draft texts based on a mandate granted by the joint statement of each initiative. As mentioned in section 2.4, the JIs on SDR and IFFD have resulted in substantial rules. The members participating in the JI on e-commerce are working toward achieving a substantial outcome on certain technical aspects.¹²¹ Nonetheless, many sensitive topics such as cross-border data flow and data localisation¹²² are still open to negotiations. The UK currently participates in all the JIs.

3.2 MC13 main outcomes

From 26 February to 2 March 2024, trade and foreign ministers from all WTO members met in Abu Dhabi to take stock of the discussions of the past two years in the WTO. They also tried to agree on the main issues in the agenda highlighted in section 3.1. At the end of the last day, WTO members agreed on a [ministerial declaration](#) summarising the main outcomes of the meeting and laying the groundwork for the next two years of negotiations.

During MC13, the WTO formally welcomed two new countries, which will bring its membership to 166 members: Comoros and Timor-Leste.¹²³ These two countries now have to accept their respective protocol of accession. Their accession shows the importance of the WTO to least-developed countries (LDCs) that seek integration into global trade.

About LDCs, WTO members agreed on rules to support a smooth transition for countries graduating from that category into that of a developing country (see section 1 for the different categories of WTO members). In general, they will have a grace period of three years to adapt to the new rules. During that time, they will continue to benefit from the application of special procedures in the WTO dispute settlement system (DSS) and specific technical assistance and capacity building.¹²⁴

Another success was the formal entry into force of the rules agreed upon by the services domestic regulation (SDR) joint initiative. This means that no WTO member opposed the new commitments added to the services schedules

¹²⁰ [WTO Plurilaterals](#) (accessed 6 October 2023).

¹²¹ Y Ismail, 'Joint Statement Initiative on E-commerce at Crossroads for a "Substantial" Conclusion by MC13', IISD policy analysis, 17 July 2023.

¹²² There is no consensus on the definition of data localisation, but it generally means that the data generated in a country are subjected to its regulations, which limit the use of those data outside the jurisdiction. See Frontier Economics, 'The Extent and Impact of Data Localisation: Report prepared for DCMS', 1 June 2022.

¹²³ World Trade Organization, [Abu Dhabi Ministerial Declaration](#), WT/MIN(24)/DEC, para 19, adopted on 2 March 2024.

¹²⁴ World Trade Organization, [WTO smooth transition support measures in favour of countries graduated from the LDC category - ministerial decision](#), WT/MIN(24)/34, WT/L/1189, adopted on 2 March 2024.

of 26 of the SDR co-sponsors. However, some objections remain in the certification of other schedules. For example, the UK's schedule of services was contested by Russia on the grounds of its commitments after Brexit.¹²⁵

WTO members also agreed to extend the moratorium on the application of import duties on e-commerce until the next ministerial conference or 31 March 2026, whichever comes first. This means that, for the duration of the moratorium, governments must refrain from imposing tariffs on electronic transmissions coming into their territory, such as streaming services. As the moratorium expires, members will have to reach consensus on a permanent solution for e-commerce tariffs or each Member can unilaterally and non-reciprocally choose to apply the moratorium.¹²⁶

These outcomes notwithstanding, WTO members could not agree on most of the items in the negotiating agenda for MC13, in particular:

- Agriculture
- New rules on fisheries, although 11 members formally accepted the AFS during MC13.¹²⁷
- Reforming the dispute settlement system (DSS)
- Integrating the investment facilitation for development agreement into the WTO.

Members will continue to discuss these issues in the different WTO meetings, councils and committees (see section 1.4) to find convergence on possible solutions. Likewise, MC13 also showed the support of many WTO members in debating the relationship between trade and the environment, especially climate change. This is an issue that will likely be more present in the negotiations in Geneva.¹²⁸ As will be the discussions on industrial policy, on which Members could not find consensus to launch a multilateral effort during MC13.¹²⁹

The UK Government saw MC13 as an opportunity to strengthen multilateral trade rules to promote stability and growth, especially in the context of geopolitical tensions. Despite the challenges faced during MC13, the UK still perceives the WTO as 'a critical, albeit imperfect, part of the global trading system'.¹³⁰

¹²⁵ P Ungphakorn, '[Objections dropped on services regulation say nothing about other plurilaterals](#)', Trade β Blog, 28 February 2024.

¹²⁶ World Trade Organization, '[Work programme on electronic commerce - ministerial decision](#)', WT/MIN(24)/38, WT/L/1193, adopted on 2 March 2024.

¹²⁷ World Trade Organization, '[MC13 closing speech - Dr Ngozi Okonjo-Iweala](#)', 1 March 2024.

¹²⁸ E Kerstens, '[Reflections on MC13: the Path Forward for Trade and Climate](#)', E3G, 07 March 2024.

¹²⁹ European Commission, '[EU secures results at WTO Ministerial but important work remains to reform global trade rulebook](#)', 1 March 2024.

¹³⁰ UK Government, '[Update on 13th World Trade Organisation Ministerial Conference](#)', statement UIN HCWS310, statement made on 5 March 2024.

4 The UK's membership of the WTO

The multilateral trading system is one of the main pillars of the UK's trade relations.¹³¹ The [UK is a founding Member of the WTO](#) and, since Brexit, it has acted in the WTO in its own capacity.¹³²

This means, for instance, that the UK now has its own schedules of commitments for trade in goods and services where it specifies its obligations in each area. Likewise, the UK represents itself in disputes before the WTO dispute settlement system (DSS).

If the UK trades under WTO rules with another country, this implies they do not have a free trade agreement in place and so their trade relations should be based on the WTO rules and principles.¹³³ This includes:

- Observance of customs procedures and duties
- Application of the most-favoured nation (MFN) tariff
- Absence of preferential rules of origin
- Compliance with multilateral and domestic regulations and standards
- Application of the schedules of commitments for services to determine the degree of and requirements for market access
- Meeting professional qualifications and visa requirements when providing services abroad
- Bidding for procurement opportunities in the territories of parties to the WTO Government Procurement Agreement (GPA).

The UK's trade with countries such as China, India, Brazil, and the US is based on WTO rules.

¹³¹ HM Government, [Preparing for our future UK trade policy](#), October 2017.

¹³² World Trade Organization, Communication from the United Kingdom, [End Of The UK-EU Transition Period](#), WT/GC/226, 4 January 2021.

¹³³ HM Government, [Guidance: Trading under WTO rules](#), 31 December 2020.

4.1

UK Parliament and the WTO

Parliament has a role in approving and implementing WTO decisions in the UK. Part 2 of the Constitutional Reform and Governance Act 2010 (CRAG) established that before ratifying most treaties, the Government must lay the signed instrument before Parliament for 21 sitting days.¹³⁴ Parliament can delay ratification if it acts within that timeframe.

Likewise, the deals agreed in the WTO cannot change domestic law in the UK, such as trade regulations, without the participation of Parliament. In this scenario, Parliament would have to pass legislation to implement the WTO agreement into the domestic legal system.¹³⁵

Given the role of WTO members' parliaments in implementing WTO provisions in national legal systems, the WTO develops [different initiatives](#)¹³⁶ to ensure greater involvement of parliamentarians in gathering information and monitoring WTO negotiations, as well as exchanging views and experiences. For example, parliamentary conferences are held regularly to assess developments in the WTO and the ways parliaments can contribute to the multilateral trading system.

Senior WTO staff also engage with parliamentarians in the WTO, international meetings, and capitals. Likewise, the secretariat's Information and External Relations Division is working to improve its relations with parliamentary organisations, such as the [Commonwealth Parliamentary Association](#).

4.2

The UK's trade priorities

Among the [five priorities](#)¹³⁷ identified in 2023 by the Secretary of State for International Trade, Kemi Badenoch, three are directly related to the activities developed by the WTO:

- Remove trade barriers
- Grow UK exports
- Defend free trade, strengthening supply chains and challenging protectionism

Similarly, item 2 of the [Global Britain](#)¹³⁸ strategic framework (The Integrated Review) includes an “open, resilient global economy” aimed at establishing

¹³⁴ [Constitutional Reform and Governance Act 2010](#), Part 2.

¹³⁵ [How Parliament treats treaties](#), Common Library Research Briefing Number 9247

¹³⁶ World Trade Organization, [Parliamentarians](#) (accessed 28 November 2023).

¹³⁷ HM Government, Speech, Trade Secretary: [My top five priorities for trade](#), delivered on 23 January 2023.

¹³⁸ HM Government, [Global Britain in a competitive age: The Integrated Review of Security, Defence, Development and Foreign Policy](#), March 2021 .

the UK as a “global services, digital and data hub”.¹³⁹ To achieve this goal, the Government underlines the need for free trade, structural changes to produce better and fairer rules, and renewing “the trust in the international economic system to deliver effective governance and provide stability.”¹⁴⁰ Some of the priorities established in the document are also directly related to the functioning of the WTO, such as:¹⁴¹

- Promoting a greener economy
- Strengthening the UK economy and making it more competitive internationally
- Revitalising free, fair and transparent trade by strengthening the global trading system and modernising the international rulebook
- Becoming a global leader in digital trade and supporting dynamic and competitive digital markets
- Diversifying the UK’s supply of critical goods

A strong multilateral trading system is viewed as essential to achieving the UK’s economic goals.

The Government supports the WTO reform and is a member of the Ottawa Group, a coalition of WTO members discussing alternatives to reform the WTO. As mentioned in section 3.1, the UK strongly supports the reform of the WTO deliberating function by participating in discussions to improve the day-to-day activities of WTO committees and councils.¹⁴²

According to a speech delivered by then International Trade Secretary Liz Truss, the UK is a “critical friend” of the WTO.¹⁴³ The Government’s main goals are to ensure fairer rules and the regulation of pressing issues that will support free trade and promote a stable and resilient global economy.¹⁴⁴

Regarding the WTO dispute settlement system (DSS), the UK supports a meaningful reform. A functioning DSS will ensure legal certainty and predictability in trade relations and reduce the escalation of trade conflicts.¹⁴⁵ Besides, enhancing cooperation and coordination to solve disputes and

¹³⁹ As above, p 51.

¹⁴⁰ As above, pp 51-52

¹⁴¹ As above pp 52-54.

¹⁴² HM Government, [WTO General Council May 2023: UK Statement on Reform](#), delivered by the UK’s Permanent Representative to the WTO in Geneva, Simon Manley, on 8 May 2023.

¹⁴³ ‘[United Kingdom finds its role as ‘critical friend’ of World Trade Organization](#)’, *Borderlex* (subscription only), 24 March 2021.

¹⁴⁴ [ITC Inquiry: Trade and Foreign Policy \(Memorandum\)](#), Written evidence submission from Department for International Trade (TFP0017), March 2022.

¹⁴⁵ As above.

deliver on important negotiating outcomes prevents governments from adopting protectionist measures.¹⁴⁶

The UK's participation in WTO discussions related to e-commerce, development, and the environment is in line with the Government's interests in improving international regulations in those areas. As expressed by Angus Brendan MacNeil MP, former Chair of the International Trade Committee (which operated until 2023), "the UK has the power to promote democracy, human rights and environmental goals around the world through international trade."¹⁴⁷ One important area is, for instance, the transition to a clean-tech economy.¹⁴⁸

¹⁴⁶ P Van den Bossche, '[The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication?](#)', WTI Working Paper No. 02/2021.

¹⁴⁷ UK Parliament, '[Government must reveal strategy for trade and foreign policy goals](#)', 31 October 2022.

¹⁴⁸ I Borchert and others, '[Addressing the climate gap in digital technologies](#)', *CITP briefing paper*, 20 November 2023.

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)