



CLAYTON YEUTTER INSTITUTE OF
INTERNATIONAL TRADE AND FINANCE

With no deterrent effect, the WTO dispute settlement crisis leaves US exporters exposed, especially US agriculture

Christine McDaniel

Non-Resident Fellow, Yeutter Institute

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The absence of a functioning Appellate Body at the World Trade Organization (WTO) leaves the dispute settlement mechanism weakened, and countries may be more likely to pursue their domestic policy goals in ways that restrict trade. Industries with relatively large export exposure like US agriculture will be particularly vulnerable in this new chaotic regime.

The deterrent effect is more important than you think

An integral part of the world trading system has been the WTO's dispute settlement mechanism, which enables the WTO to enforce the rules the Members signed up for. Knowing you could get sued in the WTO for not following the rules tends to deter bad behavior. Citing need for reform, however, the US has blocked appointments to the body responsible for reviewing appeals and this has left the enforcement mechanism ineffective. Countries can still bring cases but there is no Appellate Body so the losing party can indefinitely delay the process by appealing the panel decision into a void, leaving the issue unsettled.

The WTO is inherently a member driven organization and the dispute settlement function can be seen as a way for members to “check” each other on following the rules. When Members designed the Dispute Settlement Understanding, they were saying, “we commit to following the rules that we made for ourselves and if we don't follow them, then we subject ourselves to retaliation.” Disputes inevitably arise from time to time, so having a place to sort things out before a trade war ensues is essential.

The most important function of the dispute settlement mechanism might just be the deterrent effect—that is, policymakers and legislators are deterred from designing laws and policies that would violate the WTO rules. The deterrent effect has been hard to measure. Until now.

Recent policy moves around the world may give us a hint at what happens when the deterrent effect is taken away. In the United States, the 2022 budget reconciliation bill known as the [Inflation Reduction Act](#) includes generous [consumer subsidies](#) for electric vehicles assembled in North America—a provision that is quite explicitly WTO-inconsistent. In fact, it seems to violate three of the main rules: You cannot treat imported goods less favorably than domestically produced goods; what you accord to one member you must accord to all; and any domestic

policy goals shall be achieved in the least trade-restrictive manner. The [EU](#), [South Korea](#), and [Japan](#) have all expressed concern that the consumer subsidies break the rules.

Troubling signs are popping up in other countries, too. Bhutan has [banned imports](#) of most vehicles, Egypt has [restricted](#) numerous imports, and Nepal has [banned](#) the import of non-essential goods including vehicles, a range of consumer goods, and luxury items. These countries are running into foreign exchange reserve problems as inflation grows and foreign income shrinks. In an attempt to save foreign reserves, they are trying to restrict imports. While they could go to the International Monetary Fund for help, that tends to come with strings attached that politicians don't always like, such as pro-growth domestic reforms, privatization of large entities, and more sustainable fiscal policies. Trying to save foreign reserves by restricting imports is short-sighted though since it limits supply and results in even more inflation and disrupts supply chains wreaking economic havoc down the road. But with no immediate WTO repercussions, more countries are choosing this path.

US agriculture is especially exposed

The EU's "Farm to Fork" policy opens up another risk factor. European leadership says the new policy will lead to more sustainable farming practices and healthy food. To be sure, citizens around the globe have a right – through their governments – to demand better labeling, access to healthy food and stronger environmental protection. According to the European Commission, tracing the origin of the food, ingredients, and the chemicals and pesticides used to grow or process it will enable the EU to work toward a "[healthier and more sustainable](#)" EU food system. The policy imposes strict limits on bio-agriculture technologies like genetically modified crops and pesticides, which have enhanced US agricultural productivity over the years.

When the EU announced the new policy two years ago, US Agriculture Secretary Sonny Perdue said it was veiled protectionism and even hinted at a WTO case. Even with a fully functioning dispute settlement mechanism, it might be hard for the US to win that case if the EU could show that domestic and foreign products were being treated in the same way, and the policies were all being done in the least trade-restrictive manner. But with no deterrent effect, European countries may feel less pressure to implement the program in a trade friendly way.

Some countries have set up a separate appeal system for trade disputes, called the Multi-Party Interim Appeal Arbitration Arrangement. It can work if both the "plaintiff" and "defendant" are party to the arrangement. The US has not joined so could not bring a case using the arrangement.

US farmers export an estimated 20% of their production, which is double the US economy-wide average. If another country were to discriminate against US agriculture, the US could retaliate with tariffs on any type of imports from that country. But with many of our trading partners, the US would not be able to fully retaliate because US agricultural exports exceed our total imports. For instance, US farmers sold \$325 million to Venezuela in 2021, while the total value of US imports from Venezuela was \$293 million. Last year there were 48 countries for which US agriculture exports outweighed the value of our total imports from them. It is already a challenge for the United States to retaliate when agriculture is discriminated against. The lack of a fully functioning dispute settlement mechanism makes the risk of discrimination against US agriculture even greater.

Without a fully functioning dispute settlement mechanism there is less pressure on countries to pursue domestic policy agendas in the least trade-restrictive way. For the US agriculture industry, it will be that much more important for regulators across the Atlantic to liaise on agriculture sustainability goals in ways that facilitate important scientific advances and allow sovereign nations to achieve their goals.