



## **Thanks to Donald Trump, a crucial component of the World Trade Organisation could soon cease functioning**

**The US president poses a direct threat to the WTO's future and the UK could be badly exposed, says a former advisor to the WTO director-general**

by [David Tinline](#) / September 24, 2019

Boris Johnson loves the WTO, or so he said to the WTO director-general and I as we left Downing Street after a meeting in May last year. Certainly, in any likely Brexit scenario the UK will soon be relying on the WTO more than ever in managing its trading relationships. However, we are betting on this organisation just at the moment that its very viability is being called into question. As the floodwaters rise in global trade, the UK has made the bold decision to seek lower ground.

According to President Trump the WTO is a “catastrophe” and “the single worst trade deal ever made,” and his policies now pose a direct threat to the organisation’s future. The most immediate risk is that the WTO’s vital dispute settlement function could cease hearing new appeals from December this year. This is because the US is blocking the appointment of the judges it needs to function. The WTO provides the legal bedrock of global trade, so this crisis in its Appellate Body should be of real concern to everyone. It would matter to the UK with or without Brexit, but there is a clearly a difference between facing this situation as part of the EU as the world’s largest trading bloc and doing so alone.

Any WTO member can bring a dispute against another member if they think that it has violated the rules. The dispute then follows a three-part process. First, the members involved try to settle the issue through consultations. If that doesn’t work, you can move to the second stage where a panel is appointed to assess the evidence and deliver a ruling. This ruling can then be appealed via the Appellate Body, which is the third part of the process.

If the appeals stage ceases to function then the process cannot be completed and the dispute remains unsettled. In this scenario a member who has brought a dispute and had a panel finding in their favour would not be able to act on that finding (unless the losing side agreed, which seems highly unlikely). That means they couldn’t insist that the other party complies with the ruling, demand compensation or pursue appropriate retaliation. There is a strong possibility that this member would therefore act unilaterally, raising tariffs on the other party, who may see that as illegitimate and respond with their own unilateral measures. This is how trade wars start

- and it is precisely what the WTO was created to avoid.

The US has various concerns about the Appellate Body—some are linked to President Trump's broader aggressive stance on trade, some were shared by previous administrations. One key argument is that the body is overreaching its agreed role. For example, with WTO negotiations to further liberalise trade and modernise the rulebook moving slowly, the US thinks that the Appellate Body is effectively seeking to create new rules with its judgments—using litigation in place of negotiation.

Other WTO members would agree that the Appellate Body can be improved, but they do not want to see it shut down. Without it, WTO rules could not be enforced, sowing uncertainty and unpredictability throughout the trading system. This would not mean the end of the WTO but it would be a huge blow and would go a long way to undermining the gains that have quietly been made over recent years. For the UK this scenario would represent a dramatic weakening of the rules-based system on which we depend.

WTO members are coming up with creative interim solutions to see the system through the long winter of the Trump Presidency. For example, the EU and Canada have agreed, if necessary, to use arbitration (which is provided for in the rules) instead of the appeals process. Other members could also sign up to this plan if the worst happens.

The G20 and G7 leaders have given broad commitments towards reforming and strengthening the WTO, but so far there has not been much action. Step forward Boris Johnson. If the prime minister could use his burgeoning relationship with President Trump to urge him to soften his position on the WTO, starting with unblocking the process of appointing judges, it could help to transform the outlook for the global trading system. The rhetoric of Brexit is about a more “global” Britain, leading on the world stage—so let's start leading.

Arguably, this should be where we first seek to use any leverage we have with the US on trade issues. But in reality the chances of influencing President Trump on this point are surely very slim. The sad fact is that among our greatest allies in working to save the WTO and the rules-based global system are actually Chancellor Merkel, President Macron and the EU itself.

Whether or not the UK loves the WTO, the fact is we need it—particularly now. This current crisis could leave another rather large hole in the government's Brexit strategy.

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