



Is the global trading system unravelling before our eyes? Here is where things stand

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The modern history of global trade is being written at warp speed, with a dizzying series of developments now testing the international trading system.

What the rules-based order looks like after this is anyone's guess.

Credit a collision of conditions: a pandemic, a trade-skeptical U.S. president, simmering frustration with China, and a growing great-power rivalry.

In the past few days alone, the U.S. has dismissed the World Trade Organization's top dispute-resolution body as illegitimate.

The Trump administration said it would ignore WTO appellate body rulings, after years of complaints from successive American administrations.

Then the U.S. slapped several new regulatory controls on high-tech exports to China that could be used by the military.

The U.S. has also placed its closest allies on notice: it is studying similar export controls for friendly nations that sell sensitive U.S. technology to rivals.

Then there's the pandemic.

Protectionist measures have not only sprouted all over the globe as countries cling to desperately needed medical equipment, such as masks and medicines.

A few countries have also limited food exports, in a sign of nervousness about potential hunger. There's a Canadian-led push at the WTO, supported by dozens of countries, including the U.S., to maintain free trade in food.

One of Washington's best-known trade-policy experts wrote a paper 18 years ago predicting a Cold War II between the U.S. and China, which would strain international institutions.

Gary Hufbauer fears the moment has arrived.

"Oh, yes," said Hufbauer, now semi-retired at 81 after a long career as a trade analyst and U.S. trade official.

"We're in it. We're in the Cold War II. You see how it's being fought. Trade, technology."

Hufbauer sees cracks not only at the World Trade Organization, but also in the current pandemic-related scuffle at the World Health Organization, and in ongoing paralysis at the United Nations Security Council.

Depending on who you ask, this is either the end of the postwar order, or a minor, perhaps even welcome, hiccup.

A return to the law of the jungle — or not

Hufbauer foresees a return to the era of great-power diplomacy where large countries make their own rules, regardless of whether smaller countries agree.

And it saddens him.

"This was the best 60 years in human history," Hufbauer said.

"There's no doubt [about that], in terms of improving the average standard of living around the world. ... This new world doesn't have the same power."

He fears greater protectionism will harm both rich and poor countries, reducing competition, productivity and international investment.

Other trade analysts are more optimistic.

While it's true trade has grown more slowly in recent years, and that 2019 featured the most new tariffs in a long time, the long-term trend line still points in one clear direction: lower tariffs.

In addition, Canada has new trade agreements with the U.S., Mexico, Europe, and the Asia-Pacific Rim. Most of the world still supports the WTO appeals body. And even the U.S. has, to date, continued to support lower-level WTO decisions.

Count Mona Pinchis-Paulsen among the cautious optimists.

"I don't think all is lost," she said.

A trade historian and lawyer, she's a Canadian who teaches at Stanford University and has extensively researched the roots of the global trading system.

One lesson of history, she said, is that institutions work as long as there's a will to co-operate. She's heartened by the support for Canada's WTO statement against food protectionism.

But what about the pandemic-induced torrent of protectionism — all the corporate subsidies, buy-local initiatives and export controls?

She says the system is flexible enough to accommodate temporary measures in a crisis.

She cites Willard Thorp, a U.S. official who championed the push for a global trading system after the Second World War, who said international institutions should be responsible, not overly legalistic.

The rules, she says, allow exceptions now, too.

For example, it's true that export restrictions are generally forbidden under Article 11 of the General Agreement on Tariffs and Trade.

But right beneath that admonition, there's fine print: exceptions are allowed for critical shortages of food and essential products.

Article 20 also allows exceptions to protect human health.

Simon Lester shares her view.

A former official at the WTO's appellate body, and current trade-policy expert at the Cato Institute, a Washington, D.C.-based think-tank, Lester says countries are behaving responsibly.

"You see blaring headlines: 'Export bans on medical supplies!' 'The system can't handle it!' 'Everything's falling apart!' What I've seen so far is that the measures taken so far are generally reasonable," Lester said.

"I think we'll say [someday] that the trading system dealt with this just fine."

But he'll be watching two upcoming cases at the WTO.

While Lester personally regrets the erosion of the appeals body, he said the system can still function if the U.S. accepts negative findings by lower-level WTO panels.

That's why he'll be paying attention over the coming months as the U.S. squares off against Canada on softwood lumber, and against Vietnam on fish fillets.

A U.S. refusal to respect any findings, by any WTO panel, would render the international trade body mostly useless, he said.

That would leave middle-power countries in a tough spot, he said.

In Canada's case, that would leave it reliant, in future disputes with the U.S., on the panels in the new NAFTA — Lester still isn't sure how well those new panels will work.

What just happened at the WTO

One Canadian trade lawyer says Canada's actions have sometimes been self-defeating. That includes last week's milestone case where the U.S. declared the WTO appellate body illegitimate.

"Idiocy," is how the Toronto-based lawyer Mark Warner described the Canadian government's actions in the case.

The dispute involved U.S. duties on Canadian glossy paper.

The U.S. had already dropped its duties two years ago, after being found mostly in the wrong by a lower-level WTO panel.

Yet the Canadian government appealed anyway, to contest the methodology the U.S. uses in calculating duties against subsidized goods.

The U.S. was furious.

President Donald Trump's trade representative, Robert Lighthizer, said Canada's pointless fight would undermine the U.S.'s ability to defend itself against a bigger economic threat: illegally subsidized, state-sponsored businesses in China.

All this was happening as the U.S. was already working to paralyze the appeals body, created with the formation of the WTO in 1995.

American administrations have been complaining about the appellate body for years — that it overstepped its original mandate, that it shouldn't be applying precedents from unrelated cases, that it constantly misses legal deadlines.

The Trump administration began blocking the appointment of new panellists.

Finally, last week, the U.S. said the body no longer had the required three members to be legitimate.

It said two panellists' mandates had expired, and alleged the third worked directly for a Chinese government department.

WTO rules say panellists should be recognized trade experts unaffiliated with any government.

Despite it all, Warner says the international trading system will be OK.

He says gloomy predictions about the collapse of the post-Second World War order are off — by approximately 50 years.

We're more likely seeing a return to the world before the creation of the WTO appellate body in the 1990s, he says.

"I don't think this is the return to the law of the jungle.... It's a return to 1995."