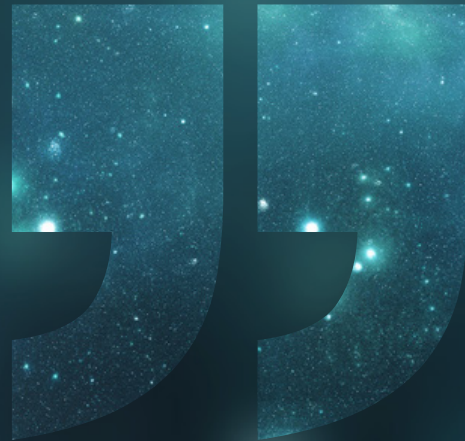


C L I F F O R D

C H A N C E



**TRADE IN 2021:
FIVE TRENDS TO
WATCH**



— THOUGHT LEADERSHIP

FEBRUARY 2021



TRADE IN 2021: FIVE TRENDS TO WATCH

2021 will be an important year in international trade. States continue to grapple with the COVID-19 pandemic and the resulting economic downturn. A new US administration has just taken office. Questions remain about tensions in the US-China relationship. High on the agenda are also digital services trade, trade and the environment, and the future of multilateralism. Here are five areas to watch:

1

Trade adapting to COVID-19

The pandemic has created an international healthcare emergency, reduced trade volumes (the WTO estimates a 9% drop in goods trade in 2020) and prompted States to introduce export controls on essential goods. In 2021, we expect to see:

- **Further calls for leniency on Intellectual property obligations during the pandemic:** At the end of 2020, India and South Africa called for a pandemic-long waiver of the IP obligations under the WTO Agreement on Trade-related Aspects of Intellectual Property (TRIPS). Although many other WTO Members remain opposed to such a waiver — some contending that existing TRIPS flexibilities are sufficient — we expect discussions over a narrower waiver to continue and certain States to impose compulsory licences of IP as permitted under TRIPS. The transitional period for least developed countries to begin complying with TRIPS is due to expire on 1 July 2021, and the TRIPS Council may agree an extension.
- **Attempts at tariff reform for healthcare goods:** In anticipation of the next pandemic, a number of WTO Members have stated their interest in reforming the rules on trade in healthcare goods. In June 2020, the EU circulated a paper which included calls for permanent tariff elimination on all pharmaceutical and medical goods and limitations on the duration and scope of export controls for medical goods in health emergencies. If the EU and other States can find a pathway towards a mutually beneficial rule book governing trade in healthcare goods which effectively deals with health emergencies, they could make proposals in a Ministerial Statement at the expected 2021 WTO Ministerial.
- **States address supply chain vulnerabilities:** Through domestic legislation and executive action, we also expect States to build greater control over supply chains and domestic capacity to produce essential goods. This may include exercising greater domestic oversight of medical goods, encouraging or incentivising more diversified regional and global supply chains and “near-shoring” suppliers to aligned countries. Recent moves by the EU to exert greater scrutiny over vaccine exports have illustrated the political challenges of maintaining the free flow of goods in a pandemic. With global demand for Covid-19 vaccines expected to outstrip supply during 2021 and beyond, debates over “vaccine nationalism” are likely to remain centre stage throughout the year—particularly given the vaccine access challenges faced by the developing world.

2

US-China under the Biden administration

The future of the US-China trade relationship will continue to loom large in international trade in 2021. Despite the “Phase 1” agreement reached between the Trump Administration and Beijing in early 2020, average tariffs between the world’s two largest exporters remain at around 20%. Complaints about Chinese trade and investment practices, including its access to sensitive technologies and data, exist in a number of WTO Members including the US. The Biden Administration has said that it will be patient

in terms of making changes to the policies that it has inherited from former President Trump in this field, and that it plans to consult with allies and Congress in deciding how to move forward with the US-China relationship.

- **Supply chains:** The existing restrictions on doing business with Chinese technology firms in the US are likely to continue (see below), as are “decoupling” policies designed to reduce US tech firms’ reliance on or sharing of technology with China.
- **Tariffs:** One key question is what will now happen with the various tariffs imposed by the Trump Administration on Chinese imports. The Biden Administration has indicated it intends to take its time in determining what to do with these tariffs, and no immediate tariff cuts are expected. One question is whether any proposed rollback of tariffs will come with demands for market access and structural reform by China, particularly once the Phase One Agreement expires.
- **US-China at the WTO:** A key question for the US-China relationship is whether the WTO will be a forum through which the Biden Administration attempts to resolve trade disputes with China. Also, we may see calls at the WTO to reform rules relating to subsidies and state-owned entities to address the imbalances that the United States and others claim are created by China’s anti-competitive practices.

Trade and tech

Tech continues to be a major driver of international economic growth, and yet trade rules have been slow to keep pace with developments. We expect 2021 to bring further attempts to regulate cross-border technology issues, both through international agreements and unilateral measures, as well as, potentially, disagreement about tech regulation:



- **Trade Agreements on Digital Services:** 2021 marks the coming into force of the Digital Economy Partnership Agreement (DEPA) between New Zealand, Singapore and Chile, establishing rules in areas such as cross-border transfer of data, e-payments, and use of digital identities. We expect to see other countries adopting elements of the DEPA framework in 2021, with Canada having already signalled its interest in the initiative. However, the EU and US, the world’s two largest economies, lack any such agreement. Indeed, since the CJEU’s 2020 privacy shield decision, the EU has prohibited commercial data transfers to the US where end-to-end encryption is not feasible. We anticipate bilateral efforts by the US and EU to resolve issues arising from this decision to accelerate in 2021.
- **Digital Taxation:** In recent years, several countries have adopted digital services taxes on certain revenue streams of major (often US domiciled) digital companies. The United States has launched multiple investigations into these taxes. In response to a French tax, the US has notified but suspended implementation of retaliatory tariffs of USD 1.3 billion against French exports. In 2020 the Trump Administration suspended its participation in OECD negotiations aimed at producing a multilateral solution to taxing multinational corporations. However, signalling a potential shift in the US’ approach, Treasury Secretary Janet Yellen indicated in her Senate confirmation hearing that the United States will pursue a constructive approach to the OECD negotiations and will work to resolve the digital taxation disputes in that context.
- **China and Telecoms:** The number of countries imposing some form of prohibition on Chinese telecom giant Huawei’s involvement in 5G network development expanded throughout 2020. The Biden Administration’s proposed approach to Chinese telecom and tech has not yet been fully articulated, although it is likely that he and his team share many of the same concerns as the previous administration.

4

International trade's role in promoting climate change objectives

With COP26 on the horizon and the increasing pressure globally to take action to address climate change and environmental damage, we expect international trade's role in combating these challenges to take centre stage in 2021.

- **Carbon Border Adjustments:** The debate over carbon border adjustment mechanisms (CBAMs) – in essence a tax on imported goods based on their carbon content – is likely to hit the spotlight again in 2021. Touted by some as an essential tool for preventing carbon leakage and by others as trade protectionism, it is inevitable that the proposal for a CBAM to be tabled this year by the European Commission as part of the European Green Deal will attract significant interest (and potentially WTO challenge) from EU trading partners.
- **Promoting trade in green goods:** WTO Members including the EU, China and UK intend to organise structured discussions on trade and environmental sustainability in 2021, and a group of six smaller countries are engaged in plurilateral negotiations for an Agreement on Climate Change, Trade and Sustainability (ACCTS). Measures that could emerge include removing tariffs and non-tariff barriers on green goods, fossil fuel subsidies reform and support for the circular economy. Another group of WTO members including China and Fiji has launched an informal dialogue on plastics pollution and facilitating more sustainable plastics trade. At the domestic level too, States are looking for mechanisms to incentivise greener global supply chains—with EU proposals for mandatory environmental and human rights due diligence expected to be developed further in 2021.
- **Level playing field:** States are increasingly implementing domestic measures that encourage business to reduce pollution. In tandem, we see efforts by States to impose “level playing field” commitments – ensuring that their trading partners uphold high environmental standards. The 2020 UK-EU Trade Continuity Agreement (TCA) includes significantly more extensive level playing field provisions than those in traditional FTAs, with violations of environmental non-regression potentially leading to trade retaliation, and respect for the Paris Agreement expressed as being an essential element of the treaty. The US plans to submit a draft WTO ministerial statement in 2021 calling for a new anti-subsidy measure to tackle Members’ failures to enforce environmental protections “above a fundamental standard”.
- **Subsidies for green industries:** States may wish to use subsidies to facilitate investment in the technologies required to transition to a low carbon economy, however where these subsidies have trade distorting effects they may attract scrutiny under WTO rules. With multiples disputes involving green energy subsidies having already been subject to WTO dispute settlement, this will continue to be a major area to watch in 2021.

5

The future of the WTO and multilateralism

Over recent years the WTO has been under pressure due to slow or paralysed negotiations, a partial breakdown in its dispute settlement system and the shift of Members’ attention to bilateral and regional trade agreements. In 2021, the issues to watch are:

- **The Appellate Body crisis:** The WTO appeals body, the Appellate Body, has been inoperative for over a year due to a US block on new appointments. Proposals for WTO dispute settlement reform are on the table, but breaking the current dispute settlement impasse is likely to require consensus on a broader package of WTO reforms—which will be a key focus of discussions in 2021.

- **Appointment of new Director General:** WTO Director General Roberto Azevêdo stepped down in 2020 and his post has been empty since September. The Trump Administration blocked the appointment of the otherwise consensus candidate – Nigeria’s Ngozi Okonjo-Iweala. This appointment is likely to be one of the first trade issues that will fall to the Biden Administration to address—and its approach to this issue may provide hints about the Administration’s broader approach to the WTO.
- **Challenges to Trump-era tariffs:** The Trump administration imposed a number of tariffs on imports – including steel and aluminium – on national security grounds, leading other WTO Members to enact retaliatory tariffs and challenge these measures at the WTO. Reports of the WTO dispute panels reviewing the US tariffs and other State’s retaliatory tariffs are pending, with the panel reports on the retaliatory tariffs **expected** in the second half of 2021. The Biden Administration will have to make a decision about the existing tariffs and whether to pursue future trade disputes through WTO-sanctioned mechanisms.
- **New initiatives:** There is hope that in 2021 long-standing negotiations on a Fisheries Subsidies Agreement can finally be brought to fruition, and that a plurilateral Investment Facilitation Agreement could be agreed amongst at least 70 WTO Members. Success with one or more of these initiatives, and a positive Twelfth WTO Ministerial Conference later this year, would signal forward movement for the WTO after a challenging period, and reaffirm its role as a cornerstone of multilateralism.



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