This panel addressed the broader question of WTO reform beyond the current Appellate Body crisis. The participants had a chance to share their perspectives on what WTO reform is, what it should be, and whether or not reform was at all feasible.

The participants all agreed that there is an opportunity to do some real good, and that reform issues are not anything new or limited to the Trump administration.

The moderator began by asking the panelists what the state of play for anything that could be called WTO reform is. One of the participants began by stating that the future of the WTO is bright, and that the current crisis is an opportunity to help us get to a better place. This is not much different than U.S. unilateralism in the past, which accelerated the conclusion of the Uruguay Round. In explaining how we got to this point in the first place, however, the participant highlighted three main causes. The first, is the rise of a new major economy, in this case, China, whose growth was certain to generate a degree of friction or upset. This was also true of Japan when it was rising. Second, the change in the U.S. administration, which is taking a different approach to international leadership than in the past. Third, increasing income inequality, the rise of populism across the globe, increasing cross-border movement and wage stagnation has also had an effect on international institutions. But what do we mean by reform, the participant asked? For one, the one thing agreed at Buenos Aires was that there would be a new agreement on fisheries subsidies by the next ministerial; reform could also mean accessions, as each one can be used as a means of reform; there are also efforts that can be undertaken by the committees, such as if there were an agreement on agriculture subsidies.

It was noted that Amb. Lighthizer, at Buenos Aires, noted three things he was looking for in terms of reform: one, that you can’t get through litigation what you cannot get through negotiation; that there should be compliance when it comes to transparency; that self-designation by developing countries is not acceptable, and needs review. But the major efforts of reform are outside the walls of the WTO, such as the trilateral effort by the EU, China and Japan, as well as the effort led by Canada. But it’s important to note that we are in our early days and far from consensus, and short of preparation, so we should remain optimistic. It was noted that the Tokyo Round took nearly a decade to complete, but this process is likely to occur much faster. The fact is that there isn’t a single member that would disagree that the WTO could be made better, the hard part will be figuring out what the landing zones will be.
The next participant began with a discussion of how WTO reform is viewed in Washington, arguing that how the problems of the WTO are viewed depends on whom you ask. For instance, Trump is very critical of the WTO, and Amb. Lighthizer has made a number of specific criticisms as well. There is a growing concern about where the U.S. sees the WTO in a broader international agenda and wonder about how actions towards it are being driven by those that are critical of the ICC or International Court of Justice, and international institutions in general. For instance, at the UN General Assembly, Trump called the UN an unelected, unaccountable, global bureaucracy. This raises questions about how the administration generally views its place in these institutions in the first place and could have major implications for a number of organizations of which the United States is a member.

Stepping back from Trump, and looking at the American people’s viewpoints, there seems to be more reason for optimism. For instance, the most recent Pew Global Attitude survey suggest a positive outlook. The data suggests that more than half of all Americans support the United States growing trade and business ties with other countries. However, fewer people agree that trade helps to increase wages or jobs, or that it lowers prices. Comparatively, Americans in general are much less positive of trade overall than other countries that were polled.

The participant also noted that Congress has a role to play as well and is a backstop on the authority of the president to withdraw from the WTO. Congress has never hinted at any desire to leave the WTO at any point in the last 15 years. However, when asked about the Appellate Body, Congress has a different viewpoint, and may be more in line with Amb. Lighthizer’s views in this regard—that is, going back to the GATT system where a panel reports would not have to be adopted. It is unlikely that Congress would come to the rescue of the Appellate Body, not least because most members of Congress don’t even know what the Appellate Body is, and those that do, may just see the issue as an annoyance, not a serious problem.

The next participant started by asking what can be done to make the WTO function efficiently and effectively? In order to answer this question, the participant addressed: 1) how we got here; 2) which avenues we can pursue going forward; and 3) depending on which avenue we choose, what agenda could we put together?

The participant noted that the first major reason we are where we are today is a failure by developed economies to address the redistribution of benefits and costs of globalization. The EU and the United States have varied incredibly in how they have addressed these issues, and it remains the major elephant in the room that these problems cannot be addressed by the WTO, but rather, have to be tackled domestically. The second major reason is China’s growth, which is having spillover effects across the globe, as well as spurring on its geopolitical rivalry with the United States.

The participant proposed two distinct avenues to move forward. The first is to pursue some form of containment so as to build a wall against the problem and hope for China to change its behavior. However, this is likely to be a lose-lose proposition because the key difference this time, compared to the past, is the high degree of interdependence of our economies. The second avenue is one of engagement, a win-win, with a clear understanding that there is no win-lose proposition on the table, which will open the door for a real discussion on a cooperative. The second, the participant noted, is feasible.
But what should be the issues we focus on in such a dialogue? The participant noted two big-ticket items. First, to address the growing link between trade and technology. There may not be space for a single global regulatory framework, but we could come up with common guidelines for technology subsidies, as well as procurement, cybersecurity, data localization and revisiting intellectual property theft. Second, we could address the distribution of flexibilities within the WTO rulebook, for instance, by no longer calling some members developing countries, and instead looking for other ways to build in flexibilities within the regulatory framework, such as was done with the Trade Facilitation Agreement. Otherwise, this debate will turn into the current fight over non-market economy status. However, in addition to these big-ticket items, the participant also noted a flurry of smaller issues that could be addressed as well, which have been ongoing at the committee stage. The immediate threat, however, is fixing the dispute settlement function of the WTO.

In the question and answer that followed, one of the participants acknowledges that much more could be done to bolster the various branches of the WTO—the executive, legislative, and judicial branch—to strike a better balance among the three. The participant went on to note that, where the United States is wrong is in pushing down and decimating the judicial branch. Instead, more power should be given to the executive arm, as well as empowering the legislative branch to engage in more rulemaking in the 21st century issues we need to address.

Subsidies reform was noted as one particular issue that should be addressed, first, through greater transparency in what everyone is doing in this space, and second, coming up with tighter disciplines. It was elaborated that this is not just a China issue, but rather should be framed more broadly as a problem of state intervention in the economy. One aspect of this is industrial policy that has led to overcapacity as a result of state subsidies, which has become a major trade problem. The question is, when do you intervene, and when do you have a right to intervene? With an anti-dumping duty, it is after injury has been determined, but what disciplines can we also agree to before then?

Another participant noted that the discussions happening external to the WTO will also be useful in feeding into the discussions at the WTO as well, and therefore should be continued. The participant noted that other members should be cautious in asking the U.S. what it wants on the reform agenda, because they may not want to know what that is and could possibly get locked in to a discussion they do not want.

In turning to the broader question about problems the trading system is facing today, one participant noted that the United States has openly challenged the core principles of the WTO, such as most-favored nation. What do you do as an institution when you have one member flouting the rules? Another participant responded by saying we had reason to be more pragmatic, and that the system would move towards more openness and inclusiveness as opposed to closure and protectionism. One way to do this is to actually have the members sit down and agree to new disciplines in the areas where it is required. The conflict with China, for example, would be better settled within a rules-based system than outside of it. However, one should not think the United States is willing to put the fate of this future relationship to litigation, so a political solution is necessary. Another participant agreed, adding that it is also in China’s best interest to undertake domestic reforms to increase openness and transparency as it continues to grow.