

# **US-China Trade Friction: The WTO Dimension**

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# WTO crisis limits channel for resolving US-China trade disputes

- US/China trade frictions often subject to WTO litigation: US has brought 23 cases against China and been subject to 15 complaints by China.
- But WTO system is breaking down; the WTO rulebook and dispute settlement (DS) process need updating, leading major economies to act unilaterally.
- US has blocked approval of new Appellate Body (AB) members. Already too few members to hear appeals of US/China disputes.
- Without recourse to appeal, panel rulings cannot be finalized and remedial actions authorized.
- And if enforcement of WTO rules is blocked by DS impasse, countries will be reluctant to negotiate new WTO rules.

# US is by far the top user of WTO dispute settlement



**Table 1. Top 10 Users of WTO Dispute Settlement: 1995-2019**

	Complainant		Respondent
<b>US</b>	<b>123</b>	<b>US</b>	<b>152</b>
EU	99	EU	85
Canada	39	<b>China</b>	<b>43</b>
Brazil	32	India	25
Japan	25	Canada	23
Mexico	25	Argentina	22
India	24	Korea	18
Argentina	21	Brazil	16
<b>China</b>	<b>20</b>	Japan	15
Korea	20	Mexico	15
Subtotal	428	Subtotal	414
Subtotal as % of total	74	Subtotal as % of total	72

Note: Since 1995, total 575 cases have been brought to the WTO.

Source: World Trade Organization



# US cases challenge many countries; Chinese cases largely target the US

**Table 2. Bilateral US-China Disputes in the WTO: 2002-2018**

	Complainant			Respondent		
	All countries	Bilateral US and China	% of Total	All countries	Bilateral US and China	% of Total
US	123	23	19	152	15	10
China	20	15	75	43	23	53
Total	143	38	27	195	38	19

**Table 3. Chronology of US/China WTO cases**

	US vs. China	China vs. US
Bush (2001-2008)	7	3
Obama (2009-2016)	13	7
Trump (2017- present)	3	5
Total	23	15



# US threatens to disable WTO dispute settlement if the rules are not revised

- US concerns about (1) procedures for conducting appeals of WTO rulings and (2) judicial overreach—rulings that broaden the scope of WTO obligations.
- Procedural cures more easily addressed; overreach is a more fundamental problem—often involves panel/appellate interpretation of ambiguous or incomplete rules.
- What is needed? Procedural reforms including more AB members to handle growing caseload; new rules for AB members to ensure objective and timely decisions.
- Overreach problem requires more fundamental reform: AB needs remand authority to defer decisions where WTO rules are ambiguous or incomplete.



# What is China doing?

- China interested in maintaining multilateral system; took little action in now dormant WTO negotiations on DS reforms.
- EU/China and others recently co-sponsored WTO reform proposals, mostly on procedural issues; rejected by US officials.
- EU/China DS initiative is comparable to US/EU/Japan effort to develop new WTO rules on e-commerce/subsidies: building coalition to convince US/China to accept new multilateral disciplines/rules.
- To succeed, WTO initiatives require US and China to work together: means US needs to reinforce DS process and China needs to help develop effective disciplines on support for state-owned enterprises.
- Alternative is return to GATT era practice of big power blocking of DS decisions and continued use of extra-legal trade measures.



## USMCA's Art. 32:10 targets trade with China

- Non-market economy (NME) clause designed to deter US trading partners from negotiating free trade agreements with China and other NMEs.
- Defined NME as countries designated as such under national trade remedy laws; Chinese challenge to NME classification by the US/EU is ongoing in the WTO.
- USMCA clause requires US partners to notify intent to negotiate an FTA with an NME and consult about the final deal before signing.
- US threat to divorce its FTA partners if they negotiate with China and others.