

China-US Trade War and the Dispute Settlement Mechanism of the WTO

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Abstract: This paper studies the hegemonism of the WTO dispute settlement mechanism and the severe damage to the free trade system exposed by the Sino-US trade war. The agency faces several problems. First, the WTO currently covers a wide range of areas, which makes it challenging to coordinate the interests of member states. Second, the WTO has adopted a decision-making mechanism by consensus. As long as no member objects, corresponding decisions can be adopted. From the historical development process of the decision-making mechanism, it is the first time that the consensus decision-making mechanism considers all members' opinions in the decision-making process and tries to make overall considerations. Still, the consensus decision-making mechanism does not stipulate voting or specific decision-making rules. In addition, the paper proposes several potential solutions to modify the dispute settlement mechanism.

Keywords: trade war, dispute settlement mechanism, the WTO

1. Introduction

The China-US trade war is a large-scale economic and political conflict between China and the United States. In January 2018, the U.S. government began imposing tariffs and other trade barriers on China in hopes of changing a long history of unfair trade practices and intellectual property theft. The Chinese government accused the U.S. government of nationalist protectionism and took countermeasures. Trade disputes mainly occur in two aspects: one is the export sector, where China has comparative advantages; Second, China has no benefits in import and technical knowledge. The former is competitive, while the latter is an imperfect market, and their impact on the two countries economic welfare and long-term development is different. The causes and types of trade frictions between China and the United States can be summarized into five categories: microeconomic conflicts caused by some import surge or import restriction of one side; Macroeconomic friction caused by bilateral trade imbalance; Investment frictions related to international investment; Frictions caused by different trade systems between the two sides; Technical friction caused by technical barriers to trade. In the context of economic globalization, trade frictions are inevitable. China is a big developing country with an imperfect market economy. The cultural traditions of the United States and China are very different, and some trade frictions are every day. The trade war has exposed problems in the WTO's dispute settlement system [1].

2. The Influence of Both China and the USA

The trade war significantly influenced China and the United States and caused heavy losses.

First, it affects China's export situation. In economics, it is often said that export is one of the "three carriages" that affect GDP growth [2]. From this, it tells the importance of export to China's economy. But at this time, the United States set a series of unreasonable policies on Chinese exports, such as imposing 25% and 10% heavy taxes on Chinese steel and aluminum imports, which pointed directly at China and set 25% additional taxes on various imported goods. All these policies are meant to prevent China from developing in the US market. Therefore, China's export market will experience significant change.

Second, it negatively influences China's import of specific sorts of technology. America is ahead of China in technology. China imports most of its cell phones and electronic devices from the United States. However, during the trade war, Huawei is a good reflection of the Chinese situation. United States froze Huawei by letting Google, QUALCOMM, Intel, and other comprehensively block Huawei, in other words, by cutting technical assistance. This lack of technology introduction has left China with a significant technological handicap. Third, the trade war influences China's consumer market. Chinese enterprises generate less profit, and the corresponding income of their employees will also be reduced. In the case of decreasing GNI, the purchasing power of each person declines, which means China's economic development will be retarded by the time imports from the United States are bound to become much more expensive because of the tariffs. The per capita income decreases, but the price increases correspondingly, which only leads to a decrease in the purchasing power of the people, which restrains the consumption of China, and thus causes a reduction in China's economic development.

The United States is restricted from exporting goods. China is the United States' third-largest export market, a significant source of U.S. agricultural and industrial products such as soybeans and aircraft. The most significant impact on agriculture has been on American farmers at the bottom of the country. Most of their economic profits come from exporting soybeans. When a trade war breaks out, the price of American exports spikes, making American soybeans uncompetitive in the Chinese market. And those economic losses will go to American farmers. It also affects the American election. These farmers, who have many votes, will vote for the president who can make more profits for them. If they fail to export to China, there will be large-scale farmers' protests against many agricultural products, and the U.S. government may experience a crisis of public trust in Trump. The political turmoil in the United States is likely to intensify. Views on the trade war are divided within the United States. The US has seen numerous protests and demonstrations against the Trump administration since he took office. The internal conflict in the United States will bring excellent resistance to the United States government. So, a hybrid approach could prevent the US from winning a trade war with China as smoothly as hoped.

Second, the trade war has brought unemployment to the United States. Between 2009 and 2019, U.S. exports to China supported more than 1.1 million jobs in the United States [3]. As the trade war continues and deepens, many people will likely lose their careers in the United States, which will increase the unemployment rate in the United States and ultimately undermine economic development.



Figure 1: WTO OMC.

3. The Challenges of the WTO Mechanism During the Whole Process Sino-US Trade War

China and the United States have taken each other as targets of attack, and trade frictions have reached a plateau or peak, negatively impacting the world economy and international trade. Under such circumstances, it is worth pondering why WTO, regarded as the most core multilateral mechanism in current global trade governance and its DSM, known as the “pearl on the crown”, has not played its role [4]. Throughout the whole process of the Sino-US trade war, the WTO mechanism faces the following challenges.

First, they abandoned the principle of most-favored-nation treatment between the US and China.

The MFN principle is that a member will give preferential treatment to another country (whether a WTO member or not) in the product market, services, and intellectual property. On the one hand, the US accuses China of violating WTO rules; On the other hand, it constantly imposes tariffs on imports from China. At the same time, the US also launched the “War of 232” and “War of 301” to impose sanctions on many countries, including China. Many senior administration officials, including US Trade Representative Robert Lighthizer, expressed their support for the administration to use Section 301 of the Trade Act of 1974 to resolve trade frictions unilaterally. This is seriously inconsistent with Article 23 of the DSU that GATT parties have gradually forged in the Uruguay Round negotiations. Article 23 of the DSU was established to overcome the abuse of “301 measure” and the defects of the GATT dispute settlement mechanism, with the purpose of denying unilateral acts (including self-help or retaliatory measures) under the WTO multilateral system and establishing the exclusivity of the WTO multilateral dispute settlement mechanism [5]. According to this interpretation, if the United States believes that China has committed illegal acts, the author should resort to the multilateral dispute settlement mechanism of the WTO instead of resorting to unilateralism.

Moreover, the trade liberalization principle has been undermined [6].

The principle of trade liberalization aims to reduce tariffs and eliminate other trade barriers through multi-country trade negotiations to increase commodity trade among member countries. However, instead of doing so, the United States, to maintain its advantages in the field of high and new technology, united with other countries to block China’s development of new technologies, hoping to curb the growth of emerging economies, including China, by strengthening the protection of intellectual property rights and restricting technological development.

Lastly, the principle of reciprocal trade has been dealt a blow, and protectionism is rising.

A reciprocity treaty distributes mutual trade interests, preferences, privileges, or exemptions between the parties. Reciprocal opening of one's market to other members through multilateral trade negotiations is a concrete manifestation of the principle of trade reciprocity. The US government believes that trade relations between China and the US are unfair and that the US has been running a high trade deficit. The reason, the United States says, is the peculiarities of China's economic system.

Based on the current situation, the author deem it necessary to revise the existing WTO dispute settlement mechanism [7]. First, the design of the WTO's rule framework does not fully anticipate the destructive impact of government-led economic management members on global trade. Meanwhile, the current rules and WTO rulings, as a result, are seriously flawed. Many countries, such as the United States, hope to address the challenges of non-market economy status by formulating new multilateral rules and taking other measures [8]. Second, the WTO dispute settlement mechanism, especially the Appellate Body, has deviated from its original philosophy and seriously undermined the political sustainability of the current system [9]. Therefore, it is urgent to improve the dispute settlement mechanism.

4. Conclusion

This paper aims to analyze the problems in the dispute settlement mechanism and propose potential modification plans for each issue. The trade war between China and the United States has brought most of the contradictions to the surface, but it also underscores the urgency of changing the WTO system. The research results of this paper can reflect its value in the process of revising the system.

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