JTSR (2018) 25: 3-11
DOI 10.14665/1614-4007-25-1-001

PAPER

Reforming International Trade Order: Shaping Positive Environment for China's Trade Disputes Settlement

Wang Hongyu* • Yang Furong**

Abstract After the financial crisis, China has been facing severe international trade disputes and a complicated international trade environment. China needs to distinguish and apply various bilateral, regional, and multilateral trade dispute settlement paths. Facing the increasing number of international trade disputes and a more and more complex trade environment, China should distinguish, utilize and evaluate various bilateral, regional and multilateral routes of trade dispute settlement. With developing economic and commercial power, China has internal impetus to involve in shaping international trade order in a new round of multilateral trade negotiations. This paper analyzes the interactive relationship between the adjustment of international trade order and China's trade dispute settlement through the following three aspects: constructing international trade power structure, building up trade regulation system, and settling international trade administration.

Keywords: international trade order; trade dispute settlement; Chinese economic diplomacy, US-China trade dispute.

JEL classification: F02; F10

Introduction

The growth of economic strength and trade scale has made China a backbone in the international trade system. At the same time, it has also made China a target of international trade frictions. Trade dispute[1] has become an important factor restricting China's foreign economic and diplomatic strategies. The data released at the 2016 National Conference on Business Work points out that the investigations on trade remedy launched by WTO member states in 2016 reached the culmination since 2009, one-third of which was targeted at China; by the end of 2016, 27 countries

[1] Trade disputes, trade friction, and trade conflict are different manifestations of trade conflicts. In general, trade frictions are more prominent than trade disputes. This article does not strictly distinguish the use of trade disputes and trade frictions.

Wang Hongyu* (✉); Yang Furong**

* University of International Business and Economics, Chinese Academy of Social Science, Beijing, PRC
e-mail: hongyuruc@gmail.com

** University of International Business and Economics, Beijing, PRC.
e-mail:furongyang@foxmail.com

around the world had launched investigations on China. There were 117 trade remedy investigations with the number of cases and the amount involved increased by 34.5% and 71.5% year-on-year. China has been the country bearing the most anti-dumping investigations for 21 years and the most anti-subsidy investigations for 10 years.[2]

Throughout China's trade dispute cases, the two sides of the disputes exhibited a gradual shift from China-Europe, China-India, China-Japan to China-United States. At the beginning of 2017, the United States made a number of trade remedy rulings against China, and imposed a high level of anti-subsidy and anti-dumping duty rate on China's double reflexes on China's amorphous fabrics, general carbon and alloy steel plates, ammonium sulfate and wheels, and stainless steel strips.[3]

On August 18th, the United States officially launched the "301 investigation" on China based on the "Trade Act 1974" and investigated on that "China infringes upon US intellectual property and forced the transfer of technology from US companies"; in August 2017, the United States appealed to WTO to set up a special group to investigate the use of tariff quotas (TRQ) for agricultural products in China.[4] US announced its trade sanction towards China's steel products and telecommunications giant ZTE in 2018. At this point, the trade war between China and the United States has entered an intense period.

The current trade frictions faced by China have already formed a new normal status characterized as high frequencies and large countries confrontation. With the increasingly complex international trade environment and the endogenous drive of China's gradual growth into a powerful trading nation, China's trade dispute settlement program must surpass the simple "one time one thing" response and should pay more attention to the reform of international trade system and the adjustment of international trade order . This article focuses on the interactive relationship between the adjustment of the international trade order and the settlement of China's trade disputes. Can we shape a more rational and fair international trade order from the perspective of dispute settlement mechanism selection and construction? China actively participates in the process of reforming global trade order. Can we establish an international trade environment which promotes the settlement of China's trade disputes?

In order to respond to the new round of global trade protection and the "U.S. priorities" and "trade nationalism" of the Trump Administration, China should adhere to the principles of fair trade, adhere to WTO trade rules, leadthe construction and improvement of international trade rules, and safeguard the normal operation of the international economic order.

---

[2] Chen Yu (2016) Ministry of Commerce: China faces frequent trade frictions. CRI Online http://news.cri.cn/20161227/a774489d-55d5-b4c4-5b28-f76c1882a3e9.html

[3] Yu Jiaxin (2017) How do you see the frequent Sino-US Trade Frictions during the New Year? Xinhua Net http://www.xinhuanet.com/world/2017-02/09/c_1120440778.htm

[4] Wang Ximeng (2017) U.S. Application for WTO Investigation of China's Import of Agricultural Products. Cankaoxiaoxi.com http://www.cankaoxiaoxi.com/world/20170823/2223679.shtml

International Trade Order and China's Trade Dispute Settlement

1. China's International Trade Environment

The international trade environment is mainly composed of external trade policies faced by a country. International trade rules are dominated by managed free trade. WTO has become the authoritative "agent" of international trade management. Various WTO dispute settlement mechanisms play a regulatory role in restricting trade barriers among large countries and maintain a rule-based international trade order. Since joining WTO, China has grown into the world's largest exporter, the second largest importer, the third largest importer of service, and the fourth largest exporter of service. After the financial crisis, trade protectionism has risen and global trade frictions have intensified. China has become the largest target country for global trade remedy measures. The external pressure of increasing foreign trade disputes and the internal tensions in the domestic economic transition have form an objective trade environment that China cannot avoid. Here are several characteristics of China's foreign trade disputes: dispute are mainly with developed countries such as the United States, Japan, and the European Union and also with developing and emerging countries in recent years; disputes are based on non-tariff barrier measures such as anti-dumping, countervailing subsidies, and technical trade barriers; the dispute fields include goods trade, service trade, trade-related intellectual property, etc.; disputes mainly target at labor-intensive products of traditional manufacturing industries in China and also involve some emerging industries; RMB exchange rate, new energy policy, investment environment, market access and government procurement have become new hot spots in trade disputes.

2. China's Existing Dispute Settlement Mechanisms

The existing mechanisms for the settlement of international trade disputes mainly include three types: first, bilateral negotiations and consultations; second, regional trade dispute settlement mechanisms; third, WTO multilateral dispute settlement mechanisms.[5] To choose among various mechanisms and increase their effectiveness is the primary step to resolve trade frictions and the main challenge for China to participate in the reconstruction of the international trade order.[6]

2.1. Bilateral consultation

The bilateral consultation mechanism is the theory and mechanism for the settlement of international issues in a political or legal manner on the basis of negotiation between the two subjects of international law. [7]The bilateral approach is an important way for China to solve problems and improve the international trade environment. In the first few

[5] Taking unilateral retaliatory measures will easily lead to an escalation of the trade war, which is beyond the scope of this article.

[6] Li Chunding, Zhao Yingmei (2011) Choice and Effectiveness of International Trade dispute settlement Mechanism: Theory and China's Choice, Finance and Trade Economy

[7] Bilateralism limits the number of participants, and refers only to the way between two countries, two international organizations and one country and one international organization. Refer to Wu Yonghui (2010) An Analysis of the Bilateralism in the WTO System, Modern Law

years after China's accession to the WTO, we reached an agreement through bilateral consultations to resolve trade disputes, including China-South Korea trade negotiations, China-Japan bilateral agricultural product disputes consultation, China-EU consultation on textile issues, and China-US textile negotiations. Although trade disputes between China and developed countries have gradually shifted to multilateral mechanisms, bilateral consultations are still an important means for the settlement of trade disputes between China and developing countries, including India, Turkey, and Argentina that have implemented trade remedy measures to China.[8]

However, it is difficult for bilateral consultations to effectively prevent trade remedy measures such as anti-dumping that relies on the laws of the complaining country. In response to the EU's anti-dumping investigation on China's footwear products, China negotiated with the EU in a diplomatic manner in 2007 to discriminate against Chinese products in violation of WTO principles, but it did not prevent the EU from passing anti-dumping resolutions and imposing high anti-dumping duties on Chinese products. Ultimately, this case was won by China in 2012 through the WTO dispute settlement mechanism. It can be seen that the bilateral dispute settlement is closely related to both the strength of the two sides and the ability to retaliate. Developing countries must strengthen their economic power and strive more for initiatives in bilateral trade negotiations.

2.2. Regional dispute settlement mechanism

At present, most WTO members have joined various regional trade arrangements. The role of regional trade arrangements and regional economic integration organizations in the settlement of disputes has continued to increase with increasing related research.[9] Existing regional dispute settlement mechanisms are mainly: the EU's judicial enforcement mechanism, the Association of Southeast Asian Nations (ASEAN) quasi-judicial mechanism[10], the EU-China free trade agreement and other loose mechanisms11. China's participation in regional dispute settlement mechanisms is mainly quasi-judicial and loose.

Regional trade agreements have legal status under the framework of the WTO and have the right to establish dispute settlement mechanisms on their own, resulting overlap of jurisdictions. The dispute counterparties therefore can give choose the adjudication mechanism for the dispute. China has established various free trade zones, especially the China-ASEAN Free Trade Area which offers options for the settlement of trade disputes between members with relatively single interests. Orderly

[8] Wang Xiaowen (2009) Research on China's International Trade Environment and Effects under the Multilateral Trade System, Nankai University Doctoral Dissertation

[9] The dispute settlement mechanism of the North American Free Trade Area is not strong, but it is more flexible. There are differences in the degree of legalization of different regional dispute settlement mechanisms and it is proportional to the balance of power among members in each region.

[10] This mechanism does not have regional courts at the super-national level, but there are expert groups and appellate bodies that deal with disputes. The main means of settlement are mediation and arbitration.

[11] Such mechanisms do not have any specific provisions on dispute settlement, nor do they have permanent expert groups and working bodies to resolve disputes through diplomatic means such as consultations, and mediation.

regional economic integration can serve as a useful complement to the multilateral trading system. Over-development and unregulated regionalization may also weaken the authority and role of the multilateral trading system, making competition among nations evolve toward regional group competition.[12]

2.3. WTO multilateral dispute settlement mechanism

The dispute settlement mechanism (DSM), which is mandatory and binding, has become one of the main functions of the WTO and the biggest mark that distinguishes WTO from other international economic organizations. The WTO Dispute Settlement Mechanism has established a permanent part to balance the use of judicial jurisdiction and diplomatic consultations, including consultation and mediation, the work of the expert panel, the work of the Appellate Body, the adjudication of dispute settlement bodies, and the implementation of the report.

The mechanism has achieved remarkable results since its establishment. However, there are also many deficiencies in the actual operation of the DSM, such as inefficiency, lack of implementation capabilities, power-oriented institutional arrangements favoring trade powers, and the lack of flexibility required for crisis management. Therefore, the WTO dispute settlement mechanism also needs continuous reform.[13]

2.4. Evaluation of various dispute settlement mechanisms

A large number of documents have analyzed domestically and abroad about the choice of trade dispute settlement mechanism. On the one hand, bilateral consultations on dispute settlement, regional arrangements, and multilateral mechanisms are linked. Any settlement of trade frictions must first be conducted through bilateral consultations. The multilateral dispute settlement mechanism also has obvious bilateralism. On the other hand, there are obvious differences among the three mechanisms. Bilateral negotiations are aimed at negotiating and solving the root causes of friction. They are highly efficient and low-cost. However, bilateral negotiations lack a basis for cooperation and common interests so it is barely feasible to weak countries. The regional mechanism combines the comparative advantages of efficiency in bilateral negotiations with the binding force of the multilateral system; however, regional organizations are difficult to set up and dispute settlement systems are poor. Multilateral mechanisms are authoritative and binding to counterbalance powerful countries and protect weak ones. Disadvantages of it are low efficiency, high costs, and unpredictable results. Therefore, careful research on the choice of trade dispute settlement mechanism is needed.

---

[12] Wu Yonghui (2010) An Analysis of the Bilateralism in the WTO System, Modern Law

[13] He Ping (2009) Study on the Japan-US Trade dispute settlement Mechanism under the Multilateral Trade System, Fudan Journal(Social Sciences Edition)

China's efforts to shape international trade order of dispute settlement

1. Constructing International Trade Power Structure

The global financial crisis has provided an opportunity for the establishment of a more fair and more rational trade system. It requires relevant agencies and stakeholders to jointly formulate policies and rules for the coordination of international economic trade.14The relative changes in the trade pattern between countries are manifested in internal adjustments among developed countries and changes in the power among developing countries. Developed and developing countries have begun to formulate international trade rules. The new international trade system should be more fair and more equitable and pay more attention to the needs of developing countries. However, due to major differences in positions and interests between traditional big powers and emerging powers, it will be difficult for the power core to reach effective consensus. First, whether the existing dominant powers and rules of international order can accept the rising power of emerging powers. Second, whether the application of international strategies and the strengths of emerging powers can help them obtain the corresponding abilities to transform the international order.15 With the stagnation of the new round of multilateral negotiations, all parties need time to adapt and adjust. In the multilateral trading system, the status and role of the economy should be proportional to the scale of its trade. Corresponding to the scale of trade, new US-led, EU-led, and China-led trade structures may emerge.

The rise of China has brought about changes in the pattern of trade power, but it is difficult to challenge the entire trade governance system. China gradually abandons the establishment of a new international political and economic order, but instead reshapes the multilateral trading system through a more feasible approach. Shaping the international trade order requires strengthening coordination and cooperation among major countries, developing the grouping of international trade, and paying attention to bilateral or simple multilateral regional trade cooperation and cross-regional trade development. In the short term, China must use its market influence, foreign aid, and foreign investment tools to relieve the trade restrictions it faces, achieve a transition to a market economy, and expand China's economic influence.[16]

2. Creating a Trade Rules System

Formulating a set of more flexible fair trade rules will be an important part of the restructuring of the international trade.[17] In the process of resolving trade frictions, the management of trade through "trade coordination" (pre-coordination or post-event coordination) operates and improves the trade rules system, helping to shape a fair and reasonable international trade order. If the construction of national internal rules is the

[14] Han Liyu (2010) Perfecting the International Trade System after the Global Financial Crisis and China's Countermeasures, Jurist

[15] Zhang Xiaotong, Wang Hongyu, Zhao Ke (2013) On the Application of China's Economic Strength, Northeast Asian Forum

[16] Joel Wuthnow, Xin Li, Lingling Qi, "Diverse Multilateralism: Four Strategies in China's Multilateral Diplomacy", Journal of China Political Science, Vol. 17, 2012:269-290

[17] Huang Jingbo (1992) International Trade Friction and Multilateral Management Trade, Journal of Sun Yat-sen University (Social Science Edition)

fundamental requirement for resolving trade disputes, bilateral rules mainly solve high-efficient solutions to specific trade frictions, and regional rules focus on the interaction criteria between homogeneous countries, then multilateral rules are to harmonize global trade principles and norms.[18]

In the view about the construction of China's internal rules, it is necessary to formulate rational industrial policies and implement market diversification strategies; to vigorously promote market economic reforms; to set up governmental inter-agency coordination mechanisms; promote the active participation of companies in prosecution, responding, or participating as a third party in the trial of dispute settlement cases; to encourage non-governmental organizations to participate in the settlement of trade disputes and to establish a dialogue and consultation mechanism between corresponding civil organizations.

2.1. Establish efficient and coordinated trade negotiation rules at the bilateral level

This include: use diplomatic means such as negotiations and consultations to solve the issues related to politically-oriented trade frictions; develop symmetry and interdependence; carry out targeted all-round economic diplomacy; encourage the links between industrial countries in disputed countries; optimize the negotiation team; promote diplomatic cooperation with regional and multilateral diplomacy.

2.2 Establish "homogeneous" trade rules at the regional level

This include: strengthen the institutionalization of regional organizations; increase the degree of network liberalization of regional trade; examine the impact of major regional economic organizations on international trade and China's foreign trade from the perspective of dispute settlement; and improve the exisiting regional trade agreements and their trade dispute settlement mechanisms. [19]

2.3. Adjust the WTO rules

This include: strengthen the WTO dispute settlement theory and case studies; improve the negotiation methods in the WTO dispute settlement mechanism;; vigorously improve the operational efficiency of the WTO dispute settlement mechanism; change the traditional governance mechanism of the WTO group and encourage emerging countries to assume more responsibilities and obligations.[20]

3. Establish an international trade management system

Trade friction is not only an economic issue. It also involves various factors such as foreign policy decisions, government-run disputes, public opinion, interest groups,

[18] Yu Minyou (2009) A review of China's participation in WTO dispute settlement activities, World Trade Organization Dynamics and Research

[19] Davis, Christina L. "Setting the Negotiation Table: Forum Shopping and the Selection of Institutions for Trade Disputes", 2005.http://www.princeton.edu/~cldavis/files/institutional_selection.pdf.

[20] Song Hong(2011) The Rise of China and the Adjustment of the International Order: A Case Study of China's Participation in the Multilateral Trade System, World Economy and Politics

and the mass media. The dispute settlement mechanism should shift from result-oriented "stress response" to system-oriented "normal management." [21]

The establishment of a multilateral management system that is applicable to the settlement of disputes, needs to be guided by multilateral institutions of the WTO, to be coordinated by regional integration organizations, and to be connected by the competent commercial authorities of various countries. In short, the ideal multilateral trade management system is guided by problem-solving values and based on order and the principle of efficiency, with the aim of fairness and the rule of law as the criterion, through universally valuable laws, precedents, and diplomatic negotiations. This organizational system will ensure the shaping and development of the global trade order.

Conclusion and Suggestion

This paper analyzes the existing international trade order and explains the international trade environment which China is facing from the perspective of trade dispute settlement. It points out that shaping a more reasonable and more fair international trade order is the only way to co-ordinate the dispute settlement mechanism and solve the difficulties of China's trade. This article believes that the adjustment of multilateral trade rules and the global trade order is the fundamental solution to China's trade dispute settlement. China has the characteristics of both developed and developing countries, and has the responsibility to play an important role in adjusting the global trade order in the new round of multilateral trade negotiations. In the adjustment of the international trade order, China should use its position in relevant international organizations to play a greater coordinating role, promote the improvement of international trade rules, influence the reconstruction of the international trade order, and establish international trade conducive to the settlement of China's trade disputes.

It is still unrealistic for China to fully participate in the formulation of multilateral trade rules within a short period of time. It is possible to achieve the initial goal of improving the international trade environment by participating in shaping dispute settlement mechanisms and accumulating experience in formulating international trade rules during the course of study.

China should coordinate the bilateral negotiation path for the settlement of trade disputes, the regional cooperation path, and the adjustment path of the multilateral trade order, solve the trade dispute through internal and external structural adjustments, and safeguard the core interests of national economic diplomacy from the strategic perspective of economic diplomacy. China should transform the international pressure brought by external trade disputes into a driving force for domestic policy adjustments, not only to improve the international competitiveness and resilience of domestic products, but also to emphasize the benefits of foreign trade development to the national economy. China should go beyond the existing trade dispute settlement ideas, quickly move from a "passive response" strategy based on self-interest to an international trade

[21] He Ping (2009) Study on the Japan-US Trade dispute settlement Mechanism under the Multilateral Trade System, Fudan Journal(Social Sciences Edition)

order that represents emerging country positions and universal interests, participate in and shape the "strategic transformation" and expand China's foreign trade interests as an emerging power in the balance between the resolution of external trade disputes and the shape of the international trade order.

Acknowledgments:

This paper is funded by China National Social Science Fund (17BGJ011) and China Postdoctoral Science Foundation (2016M591337)