

The Future of World Trade Organization--Reform Challenges and Countermeasures

Xiaoyu Zhang

School of Economics and Management, Chongqing University of Posts and Telecommunications,
Chongqing 400065 China.

ZxyChuck@yeah.net

Abstract

As a permanent institution in the WTO dispute settlement body, the WTO Appellate Body has played a vital role in the effective mitigation and resolution of international trade disputes in the rapidly changing world economic environment. However, the challenges it faces are constantly emerging. Among them, the problems of dispute resolution, trade distortion, development Issues have become the focus of discussion among members. Based on the typical cases of delays in the efficiency of WTO appeal dispute settlement, this paper analyzes several issues and points out countermeasures.

Keywords

WTO, Reform Challenges, Dispute Resolution, Trade Distortion, Development Issues.

1. Introduction

World trade is expected to fall by between 13% and 32% in 2020 as the COVID-19 pandemic disrupts normal economic activity and life around the world. The economic crisis has led to a sharp contraction in global trade and a decline in consumer confidence. As distributable "cakes" have shrunk, trade protectionism has shyly advanced under the cover of nationalism, patriotism, and misuse of WTO rules (WTO, World Trade Organization). During the economic crisis, trade protectionism was implemented under the cover of fair trade grounds. In addition to the traditional "two anti-two protection" trade remedy investigation, tariffs, import restrictions, customs barriers, technical trade measures, Trade measures such as government procurement, barriers to trade in services, and trade-related intellectual property rights protection measures. It should be said that trade protectionism is a reflection of trade policy, and it is not equivalent to trade protection and trade restrictions. The proliferation of trade protectionism under the financial crisis has continuously impacted the multilateral trading system aimed at trade liberalization [1]. From the performance of WTO members during the economic crisis, we have seen both deviations from commitments, abandonment of principles and abuse of rules, as well as adherence to free trade and correction of trade protectionism.

2. Reform Challenges

According to media reports, on September 25, 2018, the economic officials of the United States, the European Union and Japan issued a joint statement, reaffirming the joint trade position on issues such as compulsory technology transfer, subsidies and WTO's reform. Analysis of the current situation, the future of the WTO faces an urgent need for a new round of reform. On the basis of the release of signals from all parties and the EU reform plan, the most concerned and controversial challenges of the WTO are reflected in the three aspects. The following are elaborated and pointed out the countermeasures. As shown in figure 1.

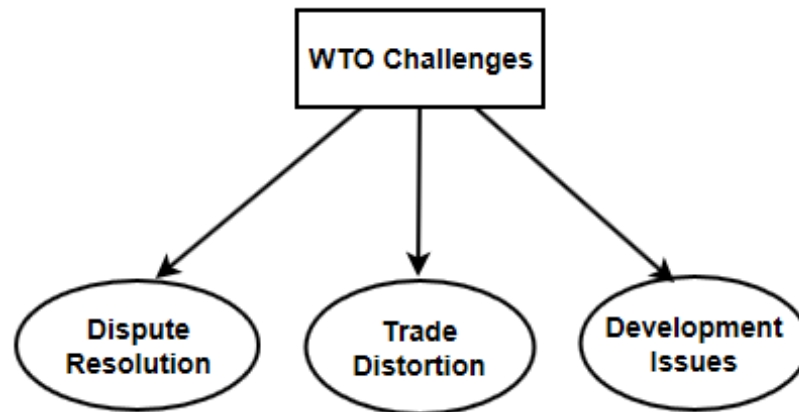


Fig1. WTO situation chart

2.1 Dispute Resolution

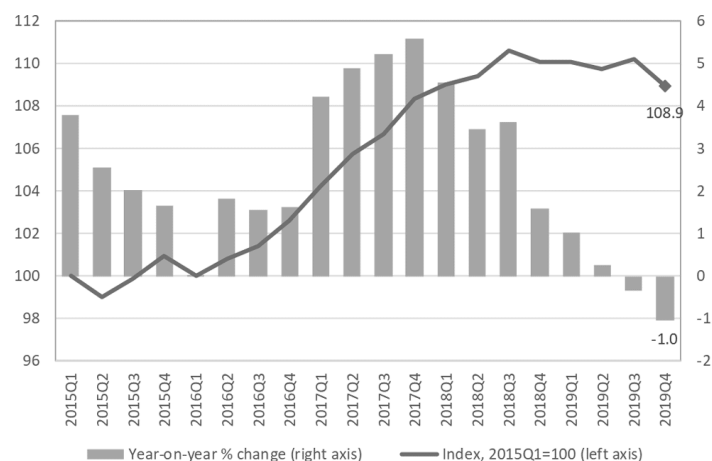
Nowadays, dispute resolution is the most pressing crisis of the WTO faced [2]. Under the current circumstances, the EU believes that, the reform plan for dispute resolution should first ensure that the Appellate Body can continue to operate normally. For example, on February 12, 2016, the WTO Dispute Settlement Body passed the report of the Appellate Body on “China's v. EU's enforcement of the opposition procedure against the final anti-dumping measures against Chinese steel fasteners”. After cracking the deadlock, the second phase will address the substantive issues of the application of the WTO rules [3].

Focusing on the special concerns of the United States regarding the way the Appellate Body works, the EU's specific recommendations are as follows:

- ① Amend the time limit for the Appellate Body to stipulate that “in any case, the procedure should not exceed 90 days unless the parties to the case agree”.
- ② Define transitional rules for members of the outgoing Appellate Body and limit the continued participation of the outgoing members in the Appellate Body case.
- ③ Amend the “Appellate Body to address each of the issues raised in the appeals process” to limit its decision to make a dispute resolution unnecessary.
- ④ Clarify the meaning of domestic law as a matter of fact, stipulating that “appeals should be limited to the legal issues involved in the report of the expert group and the legal interpretations made by the expert group, which does not include the meaning of domestic measures.”
- ⑤ The Appellate Body’s report has a de facto precedent effect, which is mitigated by limiting the re-election of members of the Appellate Body and establishing a regular exchange system between Appellate Body and WTO members.
- ⑥ With regard to the independence of the members of the Appellate Body, members of the Appellate Body can only have one term, but the existing four-year term can be extended to six or eight years, thereby addressing members’ concerns about the independence of the Appellate Body.

2.2 Trade Distortion

The wide range of possibilities for the predicted decline is explained by the unprecedented nature of this health crisis and the uncertainty around its precise economic impact. World trade is expected to fall by between 13% and 32% in 2020 as the COVID-19 pandemic disrupts normal economic activity and life around the world. Global merchandise trade stalled in 2019 under the weight of persistent trade tensions, with trade turning down toward the end of the year. This is illustrated by Fig2, which shows seasonally-adjusted quarterly merchandise trade volumes as measured by the average of exports and imports. Trade in the fourth quarter was down by 1.0% year-on-year and by 1.2% compared to the third quarter of 2019. The latter is equivalent to a 4.6% decline on an annualized basis.



(Index 2015Q1=100 and year-on-year % change)

Fig2. World merchandise exports and imports, 2015Q1-2019Q4

Source: WTO Secretariat and UNCTAD.

Table1 shows Leading exporters and importers in world merchandise trade excluding intra-EU trade by region. South America and Other Regions posted large declines in exports in the second half of 2019, while Europe, North America, and Asia experienced either minimal growth or mild declines. Import volumes for South America experienced a sharp decline throughout 2019, with Europe, North America, and Asia also ending the year lower. Only imports for other regions continued rising with year-on-year growth for each quarter of between 1.9% and 4.9% in 2019.

Table1. Leading exporters and importers in world merchandise trade excluding intra-EU trade, 2019. (Billion US\$ and %)

Rank	Exporters	Value	Share	Annual percentage change	Rank	Importers	Value	Share	Annual percentage change
1	China	2499	16.2	0	1	United States of America	2568	16.2	-2
2	Extra-EU exports	2386	15.4	-2	2	Extra-EU imports	2166	13.7	-4
3	United States of America	1646	10.6	-1	3	China	2077	13.1	-3
4	Japan	706	4.6	-4	4	Japan	721	4.5	-4
5	Korea, Republic of	542	3.5	-10	5	United Kingdom	692	4.4	3
6	Hong Kong, China	535	3.5	-6	6	Hong Kong, China	578	3.6	-8
	Domestic exports	15	0.1	18		Retained imports ¹	138	0.9	-10
	Re-exports	517	3.3	-7					
7	United Kingdom	469	3.0	-4	7	Korea, Republic of	503	3.2	-6
8	Mexico	461	3.0	2	8	India	484	3.0	-6
9	Canada	447	2.9	-1	9	Mexico	467	2.9	-2
10	Russian Federation	419	2.7	-5	10	Canada	464	2.9	-1
11	Singapore	391	2.5	-5	11	Singapore	359	2.3	-3
	Domestic exports	184	1.2	-12		Retained imports ¹	153	1.0	-9
	Re-exports	206	1.3	1					
12	Chinese Taipei	331	2.1	-2	12	Chinese Taipei	287	1.8	0
13	India	324	2.1	0	13	Switzerland	277	1.7	-1
14	Switzerland	314	2.0	1	14	United Arab Emirates ¹	262	1.7	0
15	United Arab Emirates ¹	280	1.8	-12	15	Russian Federation ²	254	1.6	2
16	Australia	272	1.8	6	16	Viet Nam	254	1.6	7
17	Saudi Arabia, Kingdom of ¹	269	1.7	-9	17	Thailand	237	1.5	-5
18	Viet Nam	264	1.7	8	18	Australia	222	1.4	-6
19	Thailand	246	1.6	-3	19	Turkey	210	1.3	-9
20	Malaysia	238	1.5	-4	20	Malaysia	205	1.3	-6
21	Brazil	223	1.4	-7	21	Brazil	184	1.2	-2
22	Turkey	181	1.2	2	22	Indonesia	171	1.1	-10
23	Indonesia	167	1.1	-7	23	Saudi Arabia, Kingdom of ¹	142	0.9	4
24	Norway	103	0.7	-16	24	Philippines	113	0.7	-5
25	South Africa	90	0.6	-4	25	South Africa ¹	108	0.7	-6
26	Iraq ¹	89	0.6	-6	26	Norway	85	0.5	-2
27	Qatar ¹	73	0.5	-14	27	Israel	76	0.5	0
28	Philippines	70	0.5	1	28	Egypt	71	0.4	-2
29	Chile	70	0.5	-8	29	Chile	70	0.4	-7
30	Argentina	65	0.4	5	30	Ukraine	61	0.4	6
	Total of above ³	14169	91.7	-		Total of above ³	14367	90.6	-
	World excluding EU intra-trade ³	15459	100.0	-3		World excluding EU intra-trade ³	15866	100.0	-3

Source: WTO and UNCTAD.

The issue of trade distortion is the most concerned issue of the United States, in order to echo the concerns of the United States, but also to attract US concessions on dispute settlement [4]. The main platform for the formation of international economic and trade rules has been concentrated in bilateral or multilateral free trade agreements established by giant economies, and the WTO as a member-driven international organization has not issued new rules with enforcement and binding for many years [5]. The absence of a rule on fisheries subsidies at the 2017 Ministerial Conference in Buenos Aires is a typical example. Frankly speaking, although the issue of fisheries subsidies has been discussed in the WTO for a long time and has undergone many negotiations, members still cannot form binding fishery subsidy rules within the WTO framework [6].

The EU has made two clear recommendations:

Formulate rules to rebalance the WTO system and achieve fair competition;

Develop new rules to address service and investment barriers, including mandatory technology transfer in the first proposal. It is believed that rules aimed at restricting the use of industrial subsidies and the activities of state-owned enterprises should be promoted. One of the biggest shortcomings of the current system is the lack of comprehensive information on subsidies provided by members. The transparency of subsidies should be further enhanced and the implementation of notification obligations should be strengthened through the presumption mechanism for subsidy notification. The so-called presumptive mechanism means that if a subsidy is not notified or is reported in the reverse direction, it can be presumed to be a subsidy or even a subsidy that causes serious damage.

2.3 Development Issues

Under the development agenda, the focus of the parties is on the application of special and differential treatment (S&D) provisions [3]. The EU believes that the current lack of S&D provisions is a major source of tension in the WTO and an obstacle to the progress of the negotiations.

To this end, the EU recommends:

- ① Set up a “graduation” mechanism for the S&D provisions, encouraging members to graduate from developing country camps and choose not to enjoy special and differential treatment.
- ② In the new agreement to be developed, shift special and differential treatment from the current open-ended overall exemption model to a demand-driven and evidence-based application model.
- ③ In existing agreements, if a member requests additional special and differential treatment, a rule should be established to decide whether to grant on a case-by-case basis.

3. Countermeasures

The WTO dispute settlement mechanism has been in operation for more than two decades, and its challenges and criticisms have never ceased. Negotiations in the Doha Round failed, and the Buenos Aires were on the rise, and reform was imperative. Choosing whether to make incremental improvements and minor repairs, or top-down reforms requires a careful choice [7]. Progressive improvement has little effect for value analysis. How to reform essentially depends on how to deal well with the balance of interests between a strong trading country and a weak trading country. When WTO self-summarizes the principles of disputes and settlement mechanisms, in addition to fairness and efficiency, it is mutually inclusive or acceptable. Rules are the means to solve problems, not the purpose of profit planning. The use of rules to resolve disputes is only to balance the gap between member states. The rules-oriented and member-driven features of the WTO dispute settlement mechanism have been highly expected since its birth.

Indeed, as the Chinese Ministry of Commerce on WTO reform basic stance as stated, the WTO reform is not to reinvent the wheel, but should adhere to the existing rules in the perfect basis. Reform cannot change the existing basic principles of the WTO and the overall direction of trade liberalization. WTO reform should always adhere to the development as the core, take care of the reasonable demands of developing members, and give priority to solving the problems that threaten the survival of the WTO on the basis of mutual respect, equality and mutual benefit.

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