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Why Trump shot the Sheriffs: The end of WTO dispute settlement 1.0☆

Chad P. Bown[a,*], Soumaya Keynes[b]

[a] *Peterson Institute for International Economics, 1750 Massachusetts Avenue NW, Washington, DC 20036, USA*
[b] *The Economist, 1730 Rhode Island Ave NW #1210, Washington, DC 20036, USA*

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1. Introduction

When Robert Lighthizer arrived on the global stage as the Trump administration's newly installed US Trade Representative on December 11, 2017, he had an important message for his colleagues. Addressing the Ministerial Conference of the World Trade Organization (WTO) in Buenos Aires, his words packed a punch: "Too often members seem to believe they can gain concessions through lawsuits that they could never get at the negotiating table," he said in his opening statement (Lighthizer, 2017a). Ominously, he continued that "we have to ask ourselves whether this is good for the institution and whether the current litigation structure makes sense."

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* Corresponding author.
E-mail addresses: cbown@piie.com (C.P. Bown), soumayakeynes@economist.com (S. Keynes).

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Less than three months later, the Trump administration published its first official *Trade Policy Agenda*, which laid out America's grievances with the WTO's system of settling disputes.[1] Alongside procedural complaints, the USTR dossier listed policy areas in which the administration insisted WTO jurists got their legal decisions wrong. A rules-based system was all very well, but only if its arbiters could be trusted to stick to the rules members had agreed to. And as far as Lighthizer was concerned, that trust had been broken.

Over the following two years, the Trump administration acted on its concerns, refusing to approve members of the WTO's Appellate Body and effectively hobbling the organization's system of resolving disputes. By the end of December 10, 2019, there were too few arbiters left to do their job, which meant that either side of a trade dispute could appeal to a nonexistent Appellate Body and send the case into legal limbo. In effect, the Trump administration ended the WTO's 25-year-old system of resolving trade disputes (Keynes, 2019).

This article explains how and why we arrived at this point. The United States has long insisted on the flexibility to defend itself against politically problematic imports, driven by the demands of industries such as steel. The creation of the WTO involved a compromise that was supposed to curtail one type of defense, notably voluntary export restraints (VERs). But over time a series of WTO legal decisions made it harder for the United States to use other tools that it thought it had negotiated to keep. Simmering discontent reached the boiling point under the Trump administration. Policy decisions shifted to personnel like Lighthizer, who harbored both longstanding hostility toward the WTO and a deep familiarity with the desires of import-sensitive industries such as steel.

The WTO rules do allow for safeguard tariffs, countervailing duties, and antidumping duties, all of which are designed to slow or stop imports that are surging, subsidized, or underpriced. But other members have repeatedly accused the United States of applying these sorts "trade remedies" overzealously. And so for over 20 years, the US government sent teams of lawyers to Geneva to defend itself against their complaints. In the list of objections the USTR published in its *Trade Policy Agenda* of 2018, one section stood out: "Defending US Trade Remedy Laws at the WTO."[2]

In the end, US policymakers argued that too much of the flexibility they needed had been taken away. Through the events resulting in December 10, 2019, they demanded change.

2. Defining the WTO dispute settlement system

The WTO system of resolving disputes involved litigation before independent arbiters. If one WTO member thought another had broken the rules, it could file an official complaint. If that could not be resolved by the two sides talking to each other, the case would be heard by an ad hoc three-member panel. If either side did not like the verdict, it could appeal the case to the Appellate Body, which would deliver the final word on the case. The Appellate Body had seven members,

[1] See, in particular, USTR (2018, pp. 22–28). This was the Trump administration's first major trade agenda-setting document, in part because Lighthizer was not confirmed by the US Senate until May 2017. Many of the arguments were later explored in greater depth in USTR (2020).

[2] Specific trade remedy concerns highlighted by the *Agenda* include disputes challenging US treatment of China as a nonmarket economy in antidumping investigations, US treatment of Chinese state-owned enterprises as public bodies in countervailing duty investigations, US resort to safeguards under GATT Article XIX, and the US Byrd Amendment. Nontrade remedy concerns listed in the report include challenges to US technical barriers to trade—such as the *Country of Origin Labeling* decision—as well as the early 2000s dispute over *Foreign Sales Corporation*, which was a challenge to US tax law. Stewart (2018) provides a list of broader WTO members' criticism of panel and Appellate Body decisions over 2004–2017 taken from meeting minutes of the Dispute Settlement Body.

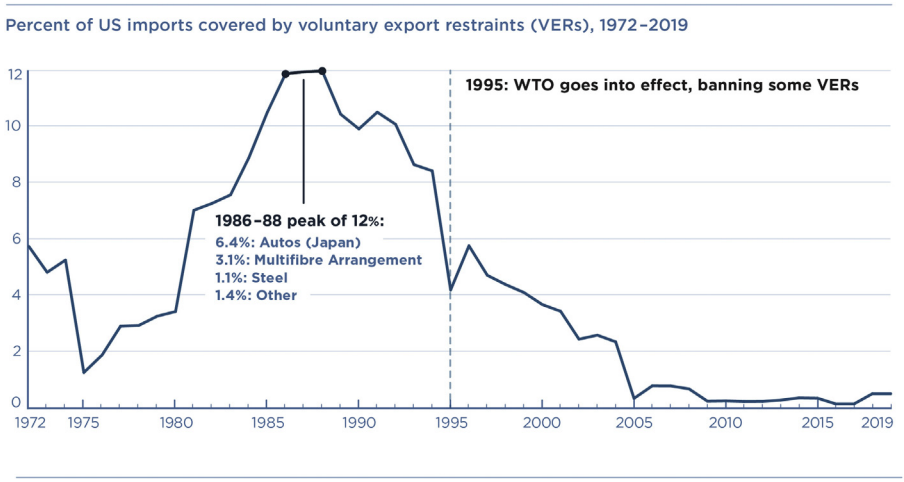

Fig. 1. Voluntary export restraints were often used as protection during the GATT period but were mostly phased out under the WTO.
WTO = World Trade Organization.
Note: The General Agreement on Tariffs and Trade (GATT) was in effect from 1948 to 1994.
Source: Constructed by the authors with data from Bown (2020).

each serving four-year terms that could be renewed once; three members were assigned to any given appeal. If the Appellate Body decided that there had been rule breaking, then the offending country could either change its policies to come into compliance or suffer (limited) retaliation.

3. History: Origins of WTO dispute settlement

The WTO was the product of problems with its predecessor, the General Agreement on Tariffs and Trade (GATT), which was the backbone for the multilateral, rules-based trading system for nearly five decades after the Second World War. Its emergence was partly an attempt to prevent a repeat of the 1930s, a period marred by tit-for-tat tariffs and discriminatory trade regimes. But despite its considerable success in deepening and maintaining open trade, by the 1980s three big frustrations had emerged.

First, although import tariffs had fallen, new trade barriers had arisen in the form of voluntary export restraints. At their peak in the mid-1980s, US-demanded VERs covered sectors as diverse as automobiles, steel, machine tools, textile products, and semiconductors, and constrained 12 percent of total US imports (Fig. 1).[3] Japan was a sizeable target because of adjustment pressure created by its export growth. But many other countries were affected too, including developing countries that saw their clothing and textile exports constrained by quantitative limits in the Multi-Fiber Arrangement (MFA).

[3] The methodological approach used to construct Fig. 1 (as well as Figs. 4 and 5) is detailed in Bown (2020), which is based on Bown (2011). The figures illustrate the annual share of US imports covered by a particular form of trade protection in effect that year. VERs (Fig. 1) refer to the actual import coverage. To deal with endogeneity concerns that previously imposed tariffs depress subsequent levels of imports, the coverage ratio for all other policies (Figs. 4 and 5) relies on the import share from the year prior to the policy going into effect for the duration of time that the policy is in place.

There was much to dislike about the VERs. They were opaque, government-negotiated, managed trade arrangements that short-circuited markets. Governments agreed to them under duress, to avoid a tariff or a quota, and in the hope that they could pass on the benefits of elevated prices to their exporters. VERs also bred corruption, as foreign bureaucrats were charged with allocating very valuable export licenses. And they created a challenge for policymakers who needed both to coordinate the export sales and pricing decisions of firms and to prevent anticompetitive behavior for sales to other markets.[4]

The second, mostly American, frustration with the GATT concerned gaps in its coverage. US export interests had shifted heavily into services and sectors intensive in intellectual property, including financial services, pharmaceuticals, and the Hollywood entertainment industry. But countries had made very few GATT commitments in these areas.

The third problem, which emerged in the 1980s, was that the GATT lacked a reliable way of resolving trade disputes. Members could file official complaints, which could be adjudicated by a panel of three arbiters assembled for the purpose. But the panel rulings were unenforceable, because a requirement for consensus meant that any member—including the defendant—could block adoption of the ruling, and therefore any consequences. (Often disputes did not make it that far, as members could also block even the initiation of an inquiry.) This led to festering disputes in the 1980s, especially between the United States and the European Community, over issues including American exports of hormone-treated beef and European subsidies to Airbus. And it meant that some member governments felt unable to bring forward complaints at all.[5]

On the defensive side, the American government was using VERs to deal with pressure from foreign import competition. On the offensive side, the second and third of these frustrations with the GATT led to an American period of "aggressive unilateralism." The United States would trigger Section 301 of the Trade Act of 1974, accusing a trading partner of giving insufficient market access or of stealing US companies' intellectual property. After conducting an investigation in which it was prosecutor, judge, and jury, the US Trade Representative would demand that the partner fix the situation—or face tariffs. In several cases, again including Japan, the trading partner managed trade in reverse and signed up to 'voluntarily' expand its imports from America.[6]

4. The compromise that created the WTO

The WTO emerged from a set of compromises that attempted to resolve many of these issues. First, when responding to surges of imports that would trigger a safeguard investigation, VERs

[4] VERs were not solely a US phenomenon. Japan had been forced to negotiate them with partners including Australia, Canada, the United Kingdom, and the European Community (GATT, 1992).

[5] The EC blocked three panel reports after US-initiated challenges of subsidies to canned fruit and dried grapes (1982), EC tariff preferences for citrus products (1982), and EC subsidies to Airbus (1989). In 1987–1989, the United States and European Community also blocked various aspects of potential disputes over the EC's ban on imports of hormone-treated beef and the unilateral US retaliation under Section 301. Brazil and Canada also blocked disputes, and other topics of blocking included the subsidies code and countervailing duties. For more, see the database of Hudec (1993), cases 107, 113, 132, 137, 149, 159, 185, 191, 193, and 196. See also Chang (2004). Legal scholars such as Hudec (1993) attributed the declining use of the GATT dispute settlement system in the 1980s at least in part to member government perception of its declining effectiveness.

[6] For more on "aggressive unilateralism," see Bhagwati and Patrick (1990). Japan's internal market for semiconductors, which American companies had found difficult to penetrate, was an early target for demands of a voluntary import expansion. Following the 1986 US–Japan semiconductor agreement, pressure continued into the early 1990s as the United States made similar import expansion demands in auto parts, insurance, telecommunications, and medical equipment. See Irwin (1994, p. 13) as well as Bergsten and Noland (1993).

were banned and tariffs made more attractive. Under the GATT, safeguard tariffs were allowed to defend against surging imports, but the exporting country had been allowed to get immediate "compensation" through retaliatory tariffs of its own. Under the WTO, exporters had to wait three years. Not only were new VERs prohibited, but existing ones were phased out, reducing their importance (see Fig. 1); and the MFA was dismantled.[7]

Second, the WTO introduced new benefits for America's export interests, including the General Agreement on Trade in Services and the Agreement on Trade-Related Aspects of Intellectual Property Rights.

And finally, the WTO ushered in a new system of binding dispute settlement.[8] Most importantly, a single country would no longer be able to block the initiation or resolution of a dispute. And members added the possibility of a final check on any first-stage panel decisions by introducing the Appellate Body. This satisfied both those in the United States who wanted an internationally sanctioned way to prise open barricaded foreign markets, and those elsewhere who expected it to curb America's unilateralism.

5. Trade remedies in the WTO

Trade remedies under the WTO deserve a closer look because of both their role in the demise of the Appellate Body and their political importance in America. Historically, the United States has placed political priority on maintaining easy access to antidumping duties, which are sometimes referred to as the "third rail" of US trade policy (Mankiw & Swagel, 2005). Although Congress has delegated authority to the president to negotiate trade deals and reciprocal tariff reductions since the 1934 Reciprocal Trade Agreements Act, one condition was that the United States retain the right to apply antidumping duties. When that right was curtailed, there were consequences. In the late 1970s, for example, Congress grew so frustrated with what it saw as lackluster application by the US Treasury, it delegated the authority to the Commerce Department instead. Congress wanted more antidumping protection and got it.[9]

In the Uruguay Round, while America wanted to retain its right to apply these defensive duties, export powerhouses including Japan and South Korea were increasingly feeling their sting. They wanted US antidumping curtailed and its potential abuse subject to the WTO's new dispute settlement system.

In the end, the WTO involved compromises over both the use and scrutiny of antidumping duties. One important example involved a practice known as "zeroing," which both the United States and Europe applied at the time (Kim & Ahn, 2018). This technique is used to calculate whether and how much "dumping" (or unfair pricing) has taken place. Its use makes it more likely

[7] VERs did not completely disappear in the United States after 1995. They arose as "suspension agreements" to resolve some antidumping and countervailing duty investigations, including for tomatoes, sugar, honey, and uranium. Canada's exports of softwood lumber are included as part of the VERs for 1986–1991, 1996–2001, and 2006–2015. At the end of the Agreement on Textiles and Clothing, the United States negotiated a VER with China on clothing and textiles that lasted through 2008. And in 2018 the Trump administration negotiated VERs with South Korea, Brazil, and Argentina as part of the Section 232 actions on steel and aluminum (Bown, 2020). Developing countries were ultimately dissatisfied with the outcome of more liberal trade in textiles and clothing as China's tremendous export growth unexpectedly squeezed their exports out of global markets. More generally, the WTO compromise also included additional disciplines to agricultural trade, such as some limits on farm subsidies.

[8] Mavroidis (2016) provides a thorough review.

[9] See Irwin (2005), which provides details on US antidumping policy prior to 1980. The original US antidumping law dates to 1916, with the modern version first implemented in 1921.

that dumping will be found and inflates the size of the remedying tariff. With Americans wanting to keep the practice and affected exporters wanting it banned, as is common in trade negotiations, the text was deliberately left vague. The Antidumping Agreement is silent on zeroing—it doesn't say that a country can do it, but it also doesn't say that a country cannot.

The broader compromise that emerged was Article 17.6 of the WTO's Antidumping Agreement. WTO adjudicators were supposed to be able to scrutinize countries' use of antidumping duties, as long as they gave deference to domestic investigating authorities. In America's eyes, that meant they were supposed to accept the investigations, facts, and decisions provided by the Department of Commerce and the US International Trade Commission (USITC) when delivering their judgments.

6. Benefits of the WTO dispute settlement system

The dispute settlement system that came out of this grand set of compromises was often referred to as the WTO's "crown jewel." But despite its acclaim, there is neither a universally accepted economic theory nor a set of empirical estimates that would place a value on it—or indeed any trade agreement's dispute settlement system.[10]

One could measure its value indirectly, by looking to the broader benefits of WTO commitments. (Arguably those commitments are meaningless without a dispute settlement system to enforce them.) Then the benefits of binding dispute settlement would include the gains from reciprocal tariff reduction between major trading economies and the certainty that allows firms and workers to invest and take advantage of trade.[11]

One can also pick out benefits of the system as it was designed. Decisions could no longer be blocked by a single member, a basic requirement that meant the system could reliably function. Principles of nondiscrimination and transparency were required of any dispute outcome, so that two litigating countries could not resolve their disagreement by managing trade to the detriment of other WTO members. Third countries were also able to join litigation to monitor the situation and protect their own rights.[12]

In addition, the system was designed to avoid complaints about infringement of national sovereignty. If a member was found breaking the rules, it was not forced to change its ways but could opt to suffer limited retaliation. Because the retaliation would be sanctioned by independent arbiters, disputes could remain compartmentalized to the products and policies involved, and thus not spiral out of control. The system was meant to be apolitical and technocratic, immune from the accusation that countries had succumbed to US bullying. From the US side, this also meant that trade disputes might be pursued without interfering with other American foreign policy objectives.

The system was not perfect. For enforcement to work, countries had to be willing and able to stick up for their rights with tariffs. On bilateral issues, there is some evidence that bigger

[10] The formal theoretical economics literature on WTO dispute settlement is relatively nascent. See Maggi and Staiger (2011, 2018). For a broader survey of dispute settlement research, see Bagwell, Bown, and Staiger (2016, pp. 1206–1218).

[11] For evidence linking terms-of-trade influences to the WTO, see Broda, Limão, and Weinstein (2008), Bagwell and Staiger (2011), Bown and Crowley (2013), Ludema and Mayda (2013), and Nicita et al. (2018). For evidence linking uncertainty reduction to the WTO, see Handley and Limão (2017) and Handley (2014).

[12] For the efficiency-enhancing role of national treatment, see Horn (2006). For the efficiency-enhancing properties of reciprocity and MFN, see Bagwell and Staiger (1999).

countries were better able to use their clout to threaten those tariffs and induce compliance.[13] Smaller countries without the ability to threaten retaliation credibly or with enough force may therefore not have fully benefited from the system. And on systemic issues such as subsidies, which hurt the interests of multiple countries, there was the risk of collective inaction. Many would attempt to free-ride on the enforcement efforts of the few. Thus, although the system was useful for holding to account countries whose rule breaking was clear and had obvious bilateral effects, it was less successful in dealing with those whose protection was opaque and with negative effects that diffused broadly across the trading system.

7. How countries used the WTO dispute settlement system

Between 1995 and 2016, WTO members filed over 500 formal disputes against one another, a considerable increase relative to the GATT period (1948–94) when fewer than 300 cases were brought.[14] Although some saw this as evidence of the system's smashing success, it was unsurprising given that the WTO came with new scope for disputes: more member countries as potential complainants and defendants, more trade, and more commitments that could be violated.

Although in principle the system could be used by importers and exporters, in practice the latter have been the most prolific complainants. According to one estimate, over 90 percent of disputes challenged policies that could constrain import competition.[15] Put differently, fewer than 10 percent of cases involved complaints from disgruntled importers, that their access to inputs was being distorted through export taxes or quotas for example.

Unsurprisingly, then, countries that trade more have tended to be more involved in WTO disputes (Fig. 2). Those with a larger share of global exports filed more disputes (panel a), and those with a larger share of global imports had more disputes brought against them (panel b).

While it is relatively straightforward to see who has been involved in disputes, it can be fiendishly difficult to assess their results. For example, economists might describe a legal "loss" over a WTO-inconsistent tariff as an economic "win." Furthermore, losing an import-protection case could prove beneficial if it establishes precedent that might benefit the country's exporters of a different product in a foreign market. And in some instances, governments turn to external enforcement through WTO dispute settlement to deal with time-consistency or commitment problems. Governments sometimes use the WTO to clarify the costs of noncompliance in ways that help them overcome the demand of one domestic political constituency in favor of another.

But even legally, each dispute contains dozens of claims and rulings and tends to be a mixed bag of wins and losses. Parsing to identify the legal winner of each case thus requires qualitative

[13] See, for example, Bown and Reynolds (2017). In the quintessential example of the system breaking down, the tiny island nation of Antigua won a dispute challenging the US internet gambling regime as discriminatory and yet did not implement retaliation. One explanation for its nonretaliation was Antigua lacked market power sufficient to shift costs on US export interests and thus induce US compliance.

[14] The data analysis undertaken here focuses on the period before the Trump administration came into office, for two reasons. First, the Trump administration's WTO strategy was arguably established before it started implementing its broader trade approach to trade policy, which included a considerable escalation of tariffs beginning in 2018. Second, the pattern of disputes that arose in 2018–2019 was quite distinct from the earlier period and has largely been in response to a variety of potentially WTO-inconsistent policies imposed both by the Trump administration (e.g., Section 232 actions on steel and aluminum, Section 301 action on China) and by trading partners in response to those US policies.

[15] See Bown and Reynolds (2015) for an empirical assessment of policies and trade flows subject to formal disputes over 1995–2011.

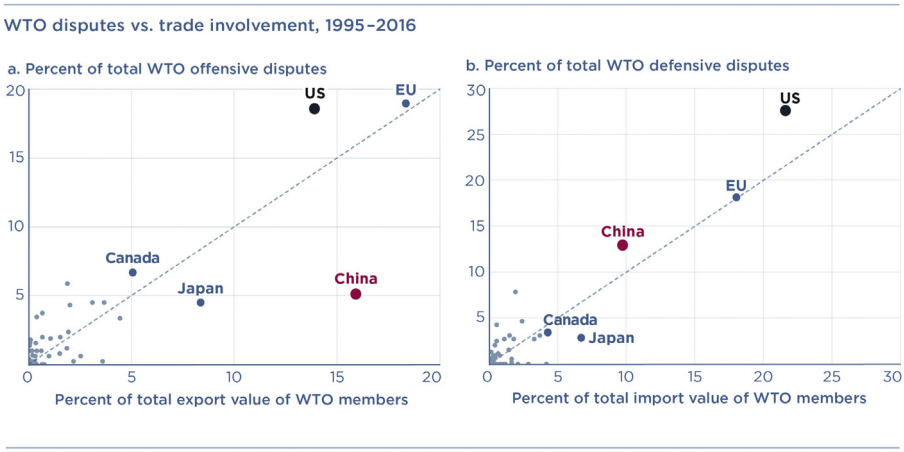

Fig. 2. Countries that trade more have tended to engage in more WTO disputes.
EU = European Union.
Note: Percent of total WTO defensive/offensive disputes defined as number of times county was respondent/complainant as a share of all WTO disputes. Data only include years that a county was a WTO member.
Source: Constructed by the authors with data from the WTO, World integrated Trade Solution, and US Bureau of Labor Statistics.

judgment as to which claims are more important than others. Indeed, it is not uncommon for both sides to declare political victory after rulings.

Nevertheless, it is broadly accepted that complaining countries, typically representing exporter interests, win the vast majority of cases. The legal scholar Simon Lester estimates that roughly 90 percent of all disputes have resulted in a panel finding at least one violation.[16]

8. Defending the WTO dispute settlement system against its critics

Despite the nuance involved in assessing wins and losses at the WTO, plenty have found fault with its system of resolving disputes. The process has been accused of delivering biased outcomes in favor of exporters' interests, of impinging on member countries' sovereignty, and of making more judgments than it was ever intended to make. Any of these could justify the organization's demise. A system of enforcement that is stacked against politically sensitive industries competing with foreign competition is not politically sustainable, and neither is one that undermines members' rights to govern or is overly meddlesome.

There are two basic retorts to these accusations. The first is that what seems like a bias in outcomes reflects, in fact, a bias in the kinds of disputes filed.[17] As for the question of sovereignty, this is an area of controversy among legal scholars, as some seem to think that WTO rulings can force members to comply. The alternative interpretation of the rules is that, so long as a government

[16] Correspondence with Simon Lester based on estimates derived from data compiled by WorldTradeLaw.net. See also Hoekman et al. (2009).

[17] Maggi and Staiger (2011), for example, find that this is more likely when the cost of pursuing a dispute falls disproportionately on the exporting country complainant relative to the importing country respondent. This seems realistic in much of the WTO dispute settlement system, where the evidentiary burden of proof falls heavily on the complaining country.

is willing to live with the consequences of retaliation as compensation, policy change is not required.[18] Experience supports the latter interpretation, as there have been a handful of disputes in which the WTO authorized retaliation and it was implemented for years without compliance. For example, as the European Union has been unable politically to modify its precautionary principle and allow for the importation of American hormone-treated beef, there has been a long period of WTO-authorized US retaliation against EU exports, albeit at moderate levels. Similarly, the US government compensated Brazil with $147 million annually for a number of years as it lacked the political will to comply with a ruling over its cotton subsidies.

Admittedly, these disputes were the outliers. Fewer than 20 cases ended with the WTO authorizing retaliation and even fewer led to retaliation being implemented. Most disputes led to compliance with rulings or a termination of the legal proceedings long before the process ever got to that point.

There is an element of truth to the final accusation that the Appellate Body ended up doing more work than it was supposed to. At least some of the negotiators in the Uruguay Round were surprised that countries appealed their disputes so often. (Lester estimates that over two-thirds of panel reports have been appealed.)

But at least part of the problem here lies with the design of the Appellate Body, not the behavior of its members. The system had built-in incentives for countries to appeal panel decisions, as an appeal would delay a politically awkward ruling for at least one of the parties. WTO member governments also had incentives to throw the legal kitchen sink at each case, making every possible argument they could think of. Legal submissions got longer, panel decisions got longer, there was more scope for appeal, and more requests reached the Appellate Body. No wonder then, with all these rulings over highly contentious issues, that member governments also found grounds to complain about the decisions being made.

9. US involvement in WTO disputes

The WTO system had been in place for 18 months before the first formal challenge to America's use of trade remedies.[19] The complainant was the Mexican government, which disputed a 1996 US antidumping duty on Mexican tomatoes. The case was unusual as it was settled even before the panel offered a judgment. But the settlement also revealed just how difficult managed trade arrangements were to shake off; despite Uruguay Round negotiators' best efforts, Mexico had agreed to a VER.

After that slow start, challenges to America's use of trade remedies quickly mounted. WTO members filed disputes over American safeguard tariffs on brooms, wheat gluten, lamb, line pipe and wire rod, and (controversially) billions of dollars of steel imports in 2002. WTO panels and the Appellate Body found fault in virtually every US application of a safeguard, and, until the Trump administration, the Section 201 statute was effectively abandoned.[20] Seen one way, the safeguard rules themselves were both inadequate and too difficult to use. Alternatively, the

[18] See Schwartz and Sykes (2002), who interpret WTO limits to retaliation as inducing efficient breach of the agreement when unanticipated circumstances arise.

[19] The United States had faced challenges to its trade remedy use under the GATT. And in the first 18 months under the WTO, it faced eight disputes unrelated to trade remedies.

[20] The safeguards exception was a 2009 tariff on imports of Chinese tires, though that was applied as part of a special provision (Section 421) negotiated in China's WTO accession. In 2018 the Trump administration applied protection to solar panels and washing machines under Section 201. See also Sykes (2003).

Appellate Body thwarted the efforts of WTO negotiators to make safeguards a more attractive way for policymakers to temporarily address protectionist pressures.

America also faced disputes over its use of countervailing duties. Beginning in 1997, Chile, the European Union, Canada, and India challenged a series of US antisubsidy tariffs imposed on their exports of salmon, lead, live cattle, and steel, respectively. In 2000 the European Union brought a case against 14 US countervailing duty orders affecting a variety of steel products. Losses piled up in these disputes, and more cases ensued.

Perhaps most concerning to the United States was the sheer number of successful challenges to its use of antidumping duties. After that first dispute with Mexico was settled, South Korea filed one against US tariffs on color televisions and semiconductors. Then the European Union and Japan brought disputes against a separate US law, the Antidumping Act of 1916, which led to its repeal. Others complained that America's failure to remove antidumping duties after five years was inconsistent with a "sunset review" process introduced in the Uruguay Round. And in 2000 eight WTO members teamed up to challenge the "Byrd Amendment," which handed the revenue from America's antidumping and countervailing duties to the companies that had requested them. Those eight members won and were authorized to retaliate.

Then there were the disputes over zeroing.[21] It is worth noting that when the Uruguay Round was concluded, America was not the only WTO member that apparently thought the practice was allowed. The European Union used zeroing too, and stopped only after a successful challenge from India. Between 2002 and 2017, America faced nearly 20 disputes over its use of zeroing in dozens of antidumping cases.[22]

Overall, nearly two thirds of the 141 disputes brought against the United States between 1995 and January 19, 2017 involved its safeguards, antidumping, and countervailing duties (Fig. 3). By contrast, barely a third of WTO disputes between other countries concerned trade remedies, even as big members like the European Union, India, Turkey, and China became major users of them as well.

Importantly, as was common for respondents in WTO cases, the United States typically lost in the cases brought against its trade remedies. This was despite expectations that WTO arbitrators would give deference to American authorities, as laid out in Article 17.6 in the case of antidumping. These cases were a major irritant for Americans, especially those working in the steel industry, who saw trade remedies as an important defense against unfair imports. Still, after these losses, US policymakers tended to change their practices to come into compliance with WTO rules. Over time, this generated feelings of resentment in some quarters, and developed into complaints about lost "national sovereignty" (see again USTR, 2018, 2020).[23]

A second, albeit comparatively minor, American frustration with WTO dispute settlement had to do with its offensive cases and a feeling that the rest of the world was not pulling its weight. The United States has tended to behave quite differently from the rest of the WTO membership, with over 80 percent of its offensive disputes focused on issues of *systemic* concern, where resolving the case would have had spillover benefits to exporters in other countries (see Fig. 3). By contrast, less than half of the cases brought by other WTO members focused on discrimination between

[21] For an analysis of zeroing, see Bown and Prusa (2011).

[22] Japan brought the first in 2002 against corrosion-resistant steel, and zeroing was also part of a Canadian dispute against US duties on softwood lumber. In 2003 an EC dispute challenged zeroing in 21 US antidumping cases. In 2004 Japan lodged a single dispute over zeroing covering 16 US antidumping cases against its exporters. The United States lost each of these, and more challenges arose.

[23] See again USTR (2018, 2020).

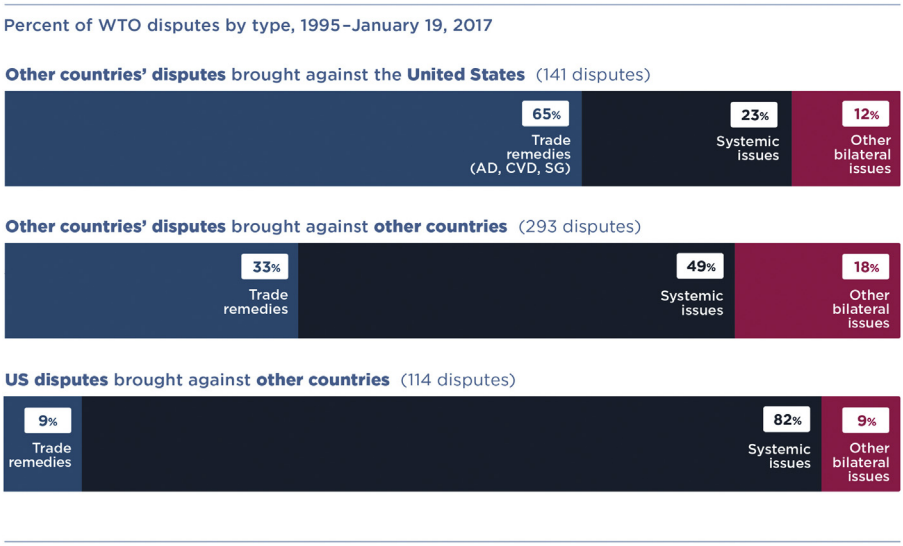

Fig. 3. WTO disputes brought against the United States mainly challenge trade remedies.
AD = antidumping; CVD = countervailing duties; SG = safeguards.
Note: Systemic disputes are those in which the primary concern is a violation of national treatment or discrimination between local producers and all foreign producers, as opposed to a violation of most-favored nation (MFN) treatment or discrimination between two suppliers in different foreign countries.
Source: Compiled by the authors with data from the WTO.

domestic and foreign suppliers (a national treatment violation) rather than treatment of one foreign supplier relative to another (an MFN treatment violation).[24]

So while America was filing difficult systemic cases, where the evidentiary burden was high, the rest of the world was targeting America's trade remedies, using evidence helpfully provided by the US government(!).

10. America's growing dissatisfaction with the Appellate Body

When diagnosing the demise of the Appellate Body, it is worth noting that some Americans were hostile toward it from the start. One such critic was none other than Lighthizer, the Trump administration's US Trade Representative. In 1995, as an advisor to Senator Robert Dole, he pushed for legislation that would allow the United States to withdraw from the WTO after three adverse dispute rulings.[25] Lighthizer found support from Alan Wolff, as both were longtime lawyers representing the US steel industry in trade remedy cases, many of which would subsequently be challenged at the WTO. Wolff, who later became the WTO's deputy director-general, testified in favor of the bill before the US Senate. He too saw the threat in a system that lurched toward litigation and away from negotiated settlements, seeming to question whether the United

[24] The United States has been hesitant historically to bring disputes against partner use of trade remedies. One contributing explanation is that US exporters have not traditionally been a big target of trade remedies. A second is that the United States was worried about having precedent set in other disputes that would constrain how it was able to utilize trade remedies.

[25] See Wildavsky (1995) and Davis (1996). For the proposed legislation, see US Senate (1995).

States should ever have signed up to it: "our negotiators should have begun to recognize that there was something suspect about the US proposal for an automatically binding system when the rest of the parties to the negotiations made an about face and embraced it" (US Senate, 1995, p. 58).

Congress ultimately rejected the proposed legislation. But it did call for a five-year review of US participation in the legislation implementing the WTO. For the first such review, in 2000, Lighthizer and Wolff jointly submitted scathing testimony about the dispute settlement panel process, which had apparently lived up to their fears. They complained of "inadequately prepared panelists, who are not reviewed effectively for bias, staffed by international bureaucrats who seek to advance substantive agendas of their own, meet in secret, and can cause a chain of events leading to a re-ordering of US laws that would ordinarily take the Committees of jurisdiction of the Congress, the two Houses of Congress, and the President acting after serious deliberation" (US Senate, 2000, p. 84).

As the dispute settlement system repeatedly ruled against America's use of trade remedies, it gathered more US enemies. They worried that litigators were forcing commitments on America that its negotiators had never meant to make. As John Greenwald, a US trade negotiator later nominated by the Obama administration for the Appellate Body, described it in 2003, "the WTO dispute settlement system has been far more an exercise in policy-making, and far less and exercise in even-handed interpretation of the carefully negotiated language of WTO agreements (especially in cases challenging anti-dumping, countervailing, and safeguard measures), than the WTO enthusiasts are willing to admit" (Greenwald, 2003, p. 113).

The Americans pointed out the glee of other WTO members when dispute rulings confirmed their suspicions. After a major loss to the European Union in a 2006 zeroing dispute, in a formal statement to the WTO, the Americans cited a supporter of the decision who said that the Appellate Body had "made a huge contribution to free trade, which could not be made by negotiation alone." The very critical American response noted that such rulings were "highly corrosive to the credibility that the dispute settlement system has accumulated over the past 11 years" (WTO, 2006).

These concerns began to feed into the US approach to nominating members of the Appellate Body. In 2003 the Bush administration suggested Lighthizer for the job, alongside Merit Janow, a law professor at Columbia University and former USTR official. But after the rest of the WTO membership plumped for Janow, the Bush administration decided to end her tenure after just one term. Jennifer Hillman, her successor, had been a USITC commissioner for eight years and so was intimately acquainted with the American trade remedy system. But she too was pushed out after just one term, this time by the Obama administration in 2011. Although she was apparently not given an official explanation, she later recalled that "certainly what was said publicly at the time in reports in the news was that the United States wanted someone that would more forcefully defend US interests and. . .be more willing to dissent particularly in trade remedy cases" (Bown & Keynes, 2018, min 11:37. See also Blustein, 2019).

In 2016 the Obama administration went further and blocked the South Korean appointment of Chang Seung Wha. Michael Froman, who was USTR at the time, later explained the decision as "really about an approach to WTO jurisprudence, and whether the Appellate Body members were sticking to the Uruguay Round agreement or were creating new law" (Bown & Keynes, 2019a, min 16:25). (Froman also emphasized that the Obama administration was not trying to stymie the whole institution, but merely encouraging an alternative nominee.)

In late 2017, with two spots on the Appellate Body roster unfilled, the Trump administration made clear that it would block all future of candidates until its concerns had been dealt with. Although it put forward no proposals itself, in the president's 2018 *Trade Policy Agenda*, the

office of the USTR set out these grievances in more detail.[26] Its chief complaint was that the Appellate Body had added to or diminished the rights and obligations laid out under the WTO agreement in areas such as subsidies, antidumping duties, countervailing duties, safeguards, and standards under the technical barriers to trade agreement. Its decisions had, for example, "seriously undermined the ability of Members to use safeguard measures."

Besides the Appellate Body's interpretation of the rules, the Trump administration made separate complaints about its procedures.[27] The Appellate Body is supposed to handle appeals within 90 days, and until 2011 had sought the consent of the disputing countries if they needed an extension; in 2011 it stopped asking for that permission. The Trump administration also objected to Appellate Body members taking it upon themselves to stick around to complete their cases after their terms had officially expired. It complained about the Appellate Body's habit of "issuing advisory opinions on issues not necessary to resolve a dispute." And it complained about the Appellate Body's claims that its reports "are entitled to be treated as precedent."

As former Trump administration USTR general counsel Stephen Vaughn later put it, the problem was not with the WTO's text but with the Appellate Body itself: "I think that the Americans who negotiated that text did a pretty good job. I mean, when I read it,. . .[the] Appellate Body is really constrained. It says that they have to make a decision within 90 days, it says that they can't change the rules and obligations of the parties, you have provisions like Article 17.6 that are supposed to give deference to members in sensitive areas like the anti-dumping laws. So on paper, it appears to look like a reasonable set of rules. In reality, none of those paper protections did the United States very much good at all" (Bown & Keynes, 2019c, min 33:47).

The Appellate Body was clearly aware of the US grievances. As former Appellate Body member Peter Van den Bossche put it after leaving his post, "If you look at not all but the majority of the cases in which the United States argues that the Appellate Body has been guilty of judicial activism or of overreach,. . .they are primarily trade remedy cases. The United States has a problem with the zeroing case law. . .. That is known, that they have a problem with that case law. They've always voiced that concern" (Bown & Keynes, 2019b, min 15:25).

11. US trade remedy use declined under the WTO

To the likes of Lighthizer, the Appellate Body hampered the US government's ability to defend its citizens against unfair or excessive imports. But how much truth is there to that complaint?

Aggregate trends provide some circumstantial evidence. The share of US imports affected by trade remedies—the combination of antidumping, countervailing duties, and safeguards—did decline after the WTO went into effect (Fig. 4), from a peak coverage of 5.5 percent of US imports in 1999 to a low of 1.9 percent in 2013.[28] (As trade protection has increased considerably since, 2013 may be the freest year ever for American imports.) This decline is surprising when one considers the simultaneous fall in America's import tariffs.[29] It is even more so alongside the

[26] These were further elucidated in USTR (2020), whose introduction lists examples of six concerns, five of which involve trade remedies.

[27] For more on the procedural complaints, see Payosova et al. (2018), Schott and Jung (2019), González and Jung (2020), Hillman (2018), and McDougall (2018).

[28] Much of the uptick between 2013 and 2016 was the result of a surge in cases covering steel products targeting imports from third countries, since US imports of Chinese steel had already been covered by earlier use of antidumping.

[29] These were falling due to America's commitments in the Uruguay Round, as part of the North American Free Trade Agreement, and various other trade deals.

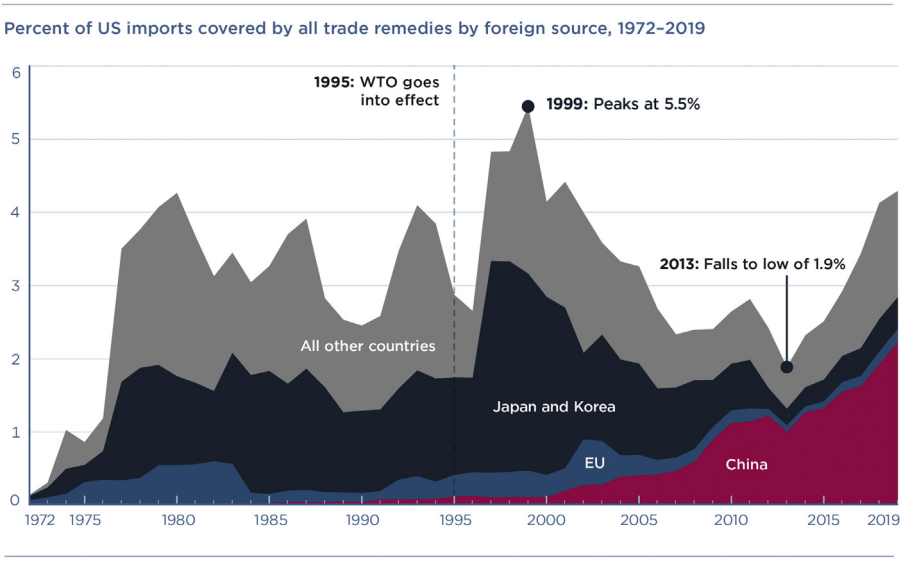

Fig. 4. US trade remedy use fell after the creation of the WTO, reaching a low point in 2013.
Note: Trade remedies include antidumping, countervailing duties, global safeguards, and China-specific transitional safeguards (2001–2014 only).
Source: Constructed by the authors with data from Bown (2020).

phase-out of its VERs (see again Fig. 1). As import protection was peeled back, one might have expected demands for new protection in the form of trade remedies to rise. Not even the massive economic shock of the Great Recession of 2008–09 could generate more than a minor uptick in such protection.[30]

Changing patterns of trade protection reveal some more clues. Fig. 4 shows that in 1997 around 60 percent of the imports covered by US trade remedies came from Japan and South Korea alone, and less than 2 percent from China. Twenty years later, that had reversed, with Japan and South Korea accounting for less than 12 percent of affected imports, and China representing over half.[31] Although pinning down causality is difficult, some of that change is probably due to Japan and South Korea having used WTO dispute settlement to curtail the use of US trade remedies against their exports.

Trading partners collectively challenged much of the US import protection arising from trade remedies during the WTO period (Fig. 5). Every US safeguard faced a formal dispute in Geneva, and by the early 2000s over a third of all antidumping and countervailing duties (measured by

[30] Nevertheless, there were also countervailing forces pushing against trade remedy use during this period. These include the rise of cross-border supply chains that made US companies ask for less trade remedy protection out of the worry that it would harm their own economic interests (Blanchard et al., 2017).

[31] This is the one area roughly consistent with the story of trade policy substitution between falling general protection and increasing trade remedy use. China's WTO accession reduced trade policy uncertainty regarding US tariffs, the United States increasingly imposed antidumping duties, and the share of US imports from China subject to antidumping duties increased from 2 percent in 2001 to 10 percent by 2019 (Bown, 2020).

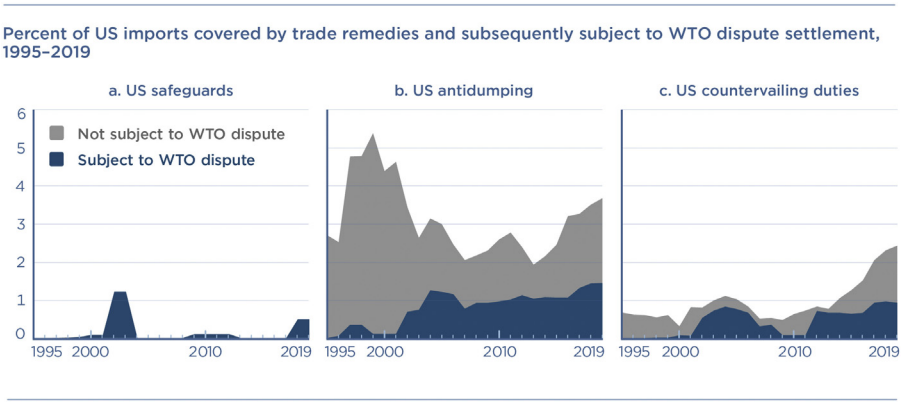

Fig. 5. US trade remedies have been subject to many WTO disputes.
Note: "Subject to WTO dispute" is the share is US imports covered by a trade remedy that is subsequently subject to a WTO dispute, with the beginning coverage being the date of the WTO dispute initiation.
Source: Constructed by the authors with data from Bown (2020).

import coverage) in place became subject to a formal challenge. And in those cases, the United States mostly lost.[32]

It is therefore plausible that WTO legal decisions dampened US trade remedy use. Nevertheless, it seems unlikely that the overall effect would amount to more than 2 or 3 percentage points of covered imports. The argument that the WTO prised open America's markets beyond what was sustainable rests on a narrow set of sectors—mostly steel, some chemicals—of huge political importance. It is possible that their clout was particularly high under the Trump administration, whose USTR was headed by a former lawyer for the US steel industry in its trade remedy cases.

12. US fears that the WTO would constrain its trade remedy use against China

In line with China's emergence as the world's biggest exporter, over time America increased its use of trade remedies to defend against Chinese exports. As part of China's accession to the WTO in 2001, the United States had negotiated the right to treat it as a nonmarket economy, which made it easier to apply antidumping duties to its exports and to apply them at a higher rate. But according to China's interpretation of the rules, that treatment was supposed to last only 15 years. China filed WTO disputes against the United States and the European Union over the issue in December 2016, though neither dispute resulted in any success.[33]

Against a backdrop of fear that America's ability to use antidumping duties against China would eventually be curtailed, the United States had increasingly turned to countervailing duties. From the first use of countervailing duties against China in 2007, their coverage grew such that by 2019 over 7 percent of US imports from China were subject to the antisubsidy tariffs (Bown, 2020). But here the Appellate Body would create problems too. In 2011 it was asked to decide

[32] The 2009–2011 uptick in panel a is due to the China-specific transitional safeguard the Obama administration imposed on imports of tires. Under the terms of China's WTO accession, this policy was available only from 2001 through 2014.
[33] While the dispute against the United States stalled, China ultimately decided to terminate proceedings against the European Union, reportedly because it lost the panel decision so badly that it did not want it entered into the WTO legal system's public record (Miles, 2019).

whether Chinese state-owned enterprises counted as "public bodies" and therefore whether they could grant subsidies by selling cheap inputs to other Chinese firms.[34] The Appellate Body's decision, that SOEs did not automatically count as subsidy providers, was alarming to those in the United States who wanted to use countervailing duties to defend against Chinese imports.

13. Belated attempts by WTO members to save the Appellate Body

The political response of other WTO members to the Trump administration's concerns about the Appellate Body was slow and ultimately badly received by the United States. It took until October 2018 for other countries' trade ministers to formally recognize the severity of the Appellate Body crisis and convene a conference in Ottawa. In November 2018 a group of WTO members put forward a joint proposal to deal with some of the procedural challenges that the United States had identified, including that the Appellate Body was taking too long to issue its decisions.[35] They suggested allocating more resources to the Appellate Body—more members, longer tenure—to help alleviate pressures that caused them to violate the 90-day rule.

The United States was unimpressed. According to Stephen Vaughn, "if the Americans are coming to you, and the Americans are saying, 'this process is creating major political problems for us, because we simply cannot give up that much policymaking power to an unelected international body,' and your response is to say, 'actually, we think that unelected international body should have a lot more power,' that's not really being responsive to US concerns" (Bown & Keynes, 2019c, min 31:40).

In October 2019 a WTO process led by New Zealand ambassador David Walker generated a proposal to fix the procedural problems that the United States had identified.[36] Again, the United States indicated that its concerns had not been addressed.

There is one other interpretation to the problem worth airing. In this reading, the heart of the issue involves neither American sour grapes after losing lots of cases nor a revolt because the WTO forced the United States to open to trade more than was considered politically sustainable. Rather, the US takedown of the Appellate Body is a sign of US resistance to a fundamentally European approach to international law. According to that interpretation, European lawyers and policymakers are inherently more comfortable with international courts reading into agreements and creating new law through their judgments. American policymakers, on the other hand, see international law as comparable to a contract, and any reading between the lines or reinterpretation as an affront to US sovereignty.

Those who see the problem this way—who may include Lighthizer—will struggle to find any solution to the impasse. The rules had been written to preclude diminishing WTO members' negotiated rights or adding to their obligations. But this happened anyway. The Appellate Body cannot be staffed exclusively with American judges, and it may be impossible for Europeans and Americans to reconcile their differing worldviews.

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[34] The Appellate Body reversed an earlier panel ruling that concurred with the United States that Chinese state-owned enterprises were public bodies and could be offering a subsidy (in terms of underpriced inputs) to downstream Chinese firms. See *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, Report of the Appellate Body*, WTO Legal document WT/DS379/AB/R, 11 March 2011.

[35] "Communication from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore and Mexico to the General Council," WTO legal document WT/GC/W/752, 26 November 2018.

[36] "Informal Process on Matters Related to the Functioning of the Appellate Body – Report by the Facilitator, H.E. Dr. David Walker (New Zealand)," WTO legal document WT/GC/W/752, 15 October 2019.

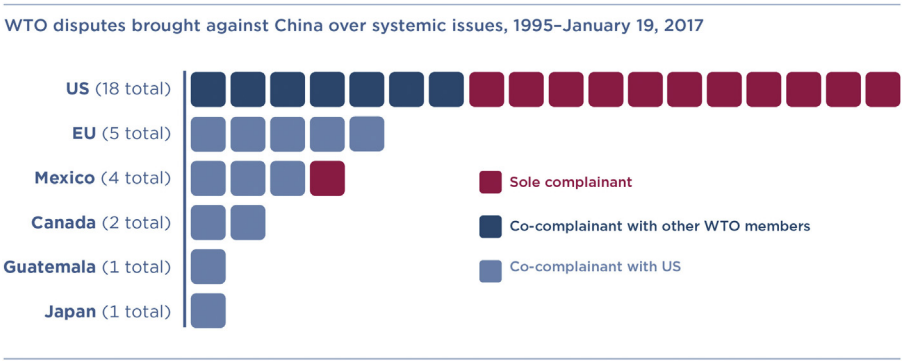

Fig. 6. The United States brought far more WTO cases against China than other WTO members did.
Note: Systemic disputes are those in which the primary concern is a violation of national treatment or discrimination between local producers and all foreign producers, as opposed to a violation of MFN treatment or discrimination between two suppliers in different foreign countries. Dates reflect time before the start of the Trump administration. Not included are eight bilateral disputes brought by WTO members over China's antidumping duties.
Source: Compiled by the authors with data from the WTO.

From this perspective, there is a good chance that the Trump administration never really wanted the problem to be solved. Lighthizer has been known to wax nostalgic for the way disputes were handled before the WTO. Reflecting in 2017, he referred to dispute settlement under the GATT as one "where you would bring panels and then you would have a negotiation. And trade grew and we resolved issues eventually. And it's a system that was successful for a long period of time" (Lighthizer, 2017b).

14. Using WTO dispute settlement to confront China

Setting aside philosophical differences in the American and European approaches to international law, it seems likely that, had the WTO dispute settlement system not ruled repeatedly against America's use of trade remedies, it might have survived. This section asks whether the system could have done more to address America's other major contemporaneous concern involving China's economic evolution and its role in the trading system.

At first glance, China's involvement in WTO dispute settlement does not appear that unusual. WTO members brought 39 disputes against China between the first filing on March 8, 2004, and January 20, 2017, when the Trump administration came into office. This represented 13 percent of all WTO disputes, slightly higher than China's 10 percent share of world imports during those years (see Fig. 2b).

A deeper look, however, reveals that the burden of these cases was very unbalanced. Consider especially areas of systemic concern—e.g., China's system of subsidies or its failure to protect intellectual property—that negatively impacts many WTO members. The United States challenged China in 18 separate disputes over such systemic concerns (Fig. 6). But the rest of the WTO membership joined the United States in only seven of those disputes. In eleven instances, the United States was forced to work on its own. And only once did another WTO member challenge China over a systemic issue without the United States being involved.[37]

[37] That was in 2012, when Mexico briefly challenged Chinese subsidies to textile and apparel production. The only other example of a country filing a dispute against China in which the main complaint was a national treatment violation was

How the United States challenged China at the WTO was broadly consistent with how it has tended to use dispute settlement overall (see Fig. 3). But often, it did so alone. Of the rest of the world, former USTR Michael Froman said "they're very happy to have us go and pursue these issues with China; but they don't necessarily invest a huge amount of effort themselves."[38]

The disputes that the United States brought against China were also often very difficult to win. In the WTO legal system, the evidentiary burden is generally on the complaining country, and to put together a case the USTR needed the cooperation of the injured industry. According to Froman, "in a lot of cases, the US industry was unwilling to put its head up or raise its hand or provide the necessary data to be able to do these cases. They would come in and raise concerns about what China was doing. But when it came time to actually put together the cases, for quite understandable reasons—they were worried about retaliation, worried about sharing business proprietary information" (Bown & Keynes, 2019a, min 6:25).

The Trump administration now appears to have abandoned the WTO system as a way of addressing its complaints with China. As part of its phase one deal, concerns will be raised bilaterally and solved at the discretion of political appointees. It remains to be seen how stable that system will be.[39] And the world will never know whether, had other countries joined in more wholeheartedly, or had America felt that the system was more effective in dealing with its concerns, US supporters of the system might have had a stronger voice in defending it.

15. Conclusion

In retrospect, the WTO's system of dispute settlement from 1995 to 2019 was an incredible experiment. It arrived under one peculiar set of American circumstances, and its downfall took place under a similarly peculiar set of American political circumstances.

One important contributor to the collapse of the Appellate Body is that the WTO lacked a functioning legislative body. No rules could be added when countries recognized unforeseen gaps in WTO legal provisions. No legislative fixes could be made by negotiators to clarify rules when WTO adjudicators inevitably made errors. The result was an Appellate Body put under unrealistic pressure to resolve ambiguities without stepping over political red lines. Perhaps the most impressive feature of the system is that it lasted as long as it did.

This article provides only a positive account of the story. We have sought to explain the US decision from the perspective of current US policymakers. Given space constraints, we have mostly shied away from normative assessments of the US decision.

Nevertheless, the US decision to end the original WTO dispute settlement system does not appear to be based on a reasoned cost-benefit analysis of its full implications. It is narrowly focused on only one side of the ledger. It has not taken into consideration, for example, that many of the original system's benefits are likely to disappear as a cost. The goal may be simply to achieve more US policy space to access trade remedies. But other countries face domestic

late 2018, when Brazil filed a WTO dispute against China's safeguard on sugar. Of the 39 total disputes brought against China, not included in Fig. 6 are eight disputes challenging China's use of bilateral antidumping duties, i.e., where the trade barrier at issue was not systemically important because it only affected one exporter.

[38] See Bown and Keynes (2019a, min 7:54). On the other hand, there were benefits to the United States' taking the lead in WTO dispute settlement against China. Americans shaped the arguments being made and, in that way, any new precedent that might be set.

[39] See chapter 7, "Bilateral Evaluation and Dispute Resolution," of *Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China.*

pressure for protection too. Removing WTO-imposed shackles on US policymakers will likely relieve similar constraints on policymakers around the world. The US administration may be too heavily discounting future economic costs to American exporting interests from reciprocal acts of protection that are likely to emerge.

The system that is to replace WTO dispute settlement 1.0, in both the immediate and long term, remains an unknown. But the political-economy reality is that any sustainable fix may require rebalancing access to trade remedies. Economists have long identified flaws in the underlying antidumping provisions that can contribute to misuse and would propose relying on anticompetition principles and criteria instead. The details of those critiques and proposals are left for another article.[40]

The main concern of trading partners, of course, is that such rebalancing may go too far in the other direction. A system that is too lenient could end up with special protection jacked up to levels closer to those of 1986 (Fig. 1) than 2013 (Fig. 4).

As of December 10, 2019, the world trading system's sheriffs were put out of action. With too few Appellate Body few members to hear new appeals, any panel reports that a country disliked could be appealed into legal limbo. Because retaliation cannot be authorized until the potential for appeal was exhausted, the WTO's dispute settlement system effectively reverted to the GATT era. Perhaps some countries, like the United States, will take matters into their own hands. Perhaps others will stay silent. Perhaps at some point the shot sheriffs will be revived. It might help if members could agree on where the bullets came from.

References

Bagwell, K., & Staiger, R. W. (1999). An economic theory of GATT. *American Economic Review*, *89*(1), 215–248.

Bagwell, K., & Staiger, R. W. (2011). What do trade negotiators negotiate about? Empirical evidence from the World Trade Organization. *American Economic Review*, *101*(4), 1238–1273.

Bagwell, K., Bown, C. P., & Staiger, R. W. (2016). Is the WTO passé? *Journal of Economic Literature*, *54*(4), 1125–1231.

Bergsten, C. F., & Noland, M. (1993). *Reconcilable differences? United States–Japan economic conflict*. Washington: Institute for International Economics.

Bhagwati, J., & Patrick, H. T. (1990). *Aggressive unilateralism: America's 301 trade policy and the world trading system*. Ann Arbor: University of Michigan Press.

Blanchard, E. J., Bown, C. P., & Johnson, R. C. (2017). *Global value chains and trade policy*. CEPR Discussion Paper No. 11044, August (revised).

Blonigen, B. A., & Prusa, T. J. (2016). Dumping and antidumping duties. In Kyle W. Bagwell, & Robert W. Staiger (Eds.), *Handbook of commercial policy* (Vol. 1B). Amsterdam: Elsevier, North Holland.

Blustein, P. (2019). *Schism: China, America, and the fracturing of the global trading system*. Waterloo, Ont: Center for International Governance Innovation.

Bown, C. P. (2011). Taking stock of antidumping, safeguards and countervailing duties, 1990–2009. *The World Economy*, *34*(12), 1955–1998.

Bown, C. P. (2020). *US special protection in historical perspective: 1974–2019*. Washington: Peterson Institute for International Economics. Manuscript in progress.

Bown, C. P., & Crowley, M. A. (2013). Self-enforcing trade agreements: Evidence from time-varying trade policy. *American Economic Review*, *103*(2), 1071–1090.

Bown, C. P., & Keynes, S. (2018). America may be doing away with WTO dispute settlement. *Trade Talks podcast*,. Episode 60, October 29.

Bown, C. P., & Keynes, S. (2019a). US trade policy before trump, with Ambassador Michael Froman. *Trade Talks podcast*,. Episode 93, July 19.

Bown, C. P., & Keynes, S. (2019b). A different US–China fight hits the headlines. *Trade Talks podcast*,. Episode 109, November 5.

[40] For a survey of economics research on dumping and antidumping, see Blonigen and Prusa (2016).

Bown, C. P., & Keynes, S. (2019c). Trade policy under Trump. *Trade Talks podcast*,. Episode 111, November 25.
Bown, C. P., & Prusa, T. J. (2011). U.S. antidumping: much ado about zeroing. In William J. Martin, & Aaditya Mattoo (Eds.), *Unfinished business? The WTO's Doha agenda*. London, UK: CEPR and World Bank.
Bown, C. P., & Reynolds, K. (2015). Trade flows and trade disputes. *Review of International Organizations*, *10*(2), 145–177.
Bown, C. P., & Reynolds, K. M. (2017). Trade agreements and enforcement: Evidence from WTO dispute settlement. *American Economic Journal: Economic Policy*, *9*(4), 64–100.
Broda, C., Limão, N., & Weinstein, D. E. (2008). Optimal tariffs and market power: The evidence. *American Economic Review*, *98*(5), 2032–2065.
Chang, P.-L. (2004). The evolution and utilization of the GATT/WTO dispute settlement mechanism. In James Hartigan (Ed.), *Trade disputes and the dispute settlement understanding of the WTO: An interdisciplinary assessment*. Bingley, UK: Emerald Group Publishing Limited.
Davis, B. (1996). Campaign 96 Lighthizer, Dole's Idea Man, attempts to derail Buchanan with trade issue. *Wall Street Journal*, A16. February 28.
GATT. (1992). *Trade policy review mechanism: Japan. Report by the Secretariat*. GATT Legal Document, C/RM/S/30B, 14 September.
González, A., & Jung, E. (2020). *Developing countries can help restore the WTO's dispute settlement system*. Washington: Peterson Institute for International Economics. Policy Brief 20-01.
Greenwald, J. (2003). WTO dispute settlement: An exercise in trade law legislation? *Journal of International Economic Law*, *6*(1), 113–124.
Handley, K. (2014). Exporting under trade policy uncertainty: Theory and evidence. *Journal of International Economics*, *94*(1), 50–66.
Handley, K., & Limão, N. (2017). Policy uncertainty, trade, and welfare: Theory and evidence for China and the United States. *American Economic Review*, *107*(9), 2731–2783.
Hillman, J. A. (2018). Three approaches to fixing the World Trade Organization's Appellate Body: The good, the bad and the ugly? *Georgetown Law Center*,. December.
Hoekman, B., Horn, H., & Mavroidis, P. C. (2009). Winners and losers in the panel stage of the WTO dispute settlement system. In C. Thomas, & J. Trachtman (Eds.), *Developing countries in the WTO legal system*. New York: Oxford University Press.
Horn, H. (2006). National treatment in the GATT. *American Economic Review*, *96*(1), 394–404.
Hudec, R. E. (1993). *Enforcing international trade law: The evolution of the modern GATT legal system*. Butterworth Legal Publishers.
Irwin, D. A. (1994). *Managed trade: The case against import targets*. Washington: AEI Press.
Irwin, D. A. (2005). The rise of U.S. antidumping activity in historical perspective. *The World Economy*, *28*(5), 651–668.
Keynes, S. (2019). It's the end of the World Trade Organisation as we know it. *The Economist*,. November 28.
Kim, K., & Ahn, D. (2018). To be or not to be with targeted dumping. *Journal of International Economic Law*, *21*(3), 567–598.
Lighthizer, R. (2017a). *Opening plenary statement of USTR Robert Lighthizer at the WTO ministerial conference*. December 11.
Lighthizer, R. (2017b). *Remarks at CSIS event on US trade policy priorities*. Washington: Center for Strategic and International Studies. Available at https://www.csis.org/analysis/us-trade-policy-priorities-robert-lighthizer-united-states-trade-representative (accessed February 16, 2020)
Ludema, R. D., & Mayda, A. M. (2013). Do terms-of-trade effects matter for trade agreements? Theory and evidence from WTO countries. *Quarterly Journal of Economics*, *128*(4), 1837–1893.
Maggi, G., & Staiger, R. W. (2011). The role of dispute settlement procedures in international trade agreements. *Quarterly Journal of Economics*, *126*(1), 475–515.
Maggi, G., & Staiger, R. W. (2018). Trade disputes and settlement. *International Economic Review*, *59*(1), 19–50.
Mankiw, G., & Swagel, P. (2005). Antidumping: The third rail of trade policy. *Foreign Affairs*, *84*(4), 107–119.
Mavroidis, P. C. (2016). Dispute settlement in the WTO: Mind over matter. In K. Bagwell, & R. W. Staiger (Eds.), *The handbook of commercial policy* (Vol. 1A). North Holland: Elsevier.
McDougall, R. (2018). The crisis in WTO dispute settlement: Fixing birth defects to restore balance. *Journal of World Trade*, *52*(6), 867–896.
Miles, Tom. (2019). China pulls WTO suit over claim to be a market economy. *Reuters*,. June 17.
Nicita, A., Olarreaga, M., & Silva, P. (2018). Cooperation in WTO's tariff waters? *Journal of Political Economy*, *126*(3), 1302–1338.

Payosova, T., Hufbauer, G. C., & Schott, J. J. (2018). *The dispute settlement crisis in the World Trade Organization: causes and cures*. Washington: Peterson Institute for International Economics. Policy Brief 18-5.

Schott, J. J., & Jung, E. (2019). *The WTO's existential crisis: How to salvage its ability to settle trade disputes*. Washington: Peterson Institute for International Economics. Policy Brief 19-19.

Schwartz, W. F., & Sykes, A. O. (2002). The economic structure of renegotiation and dispute resolution in the World Trade Organization. *Journal of Legal Studies*, *31*(1), S179–S204.

Stewart, T. P. (2018). *The broken multilateral trade dispute system*. Washington: Asia Society Policy Institute.

Sykes, A. O. (2003). The safeguards mess: A critique of WTO jurisprudence. *World Trade Review*, *2*(3), 261–295.

US Senate. (1995). *WTO dispute settlement review commission Act. 104th Cong. S. 1438*. Washington: Government Printing Office. Available at https://www.finance.senate.gov/imo/media/doc/Hrg104-124.pdf (accessed February 16, 2020)

US Senate. (2000). *Dispute settlements in the WTO. Hearing before the Subcommittee on International Trade of the Committee on Finance, June 20, 106th Cong*. Washington: Government Printing Office. Available at https://www.finance.senate.gov/imo/media/doc/hrg106629.pdf (accessed February 16, 2020)

USTR (US Trade Representative). (2018). *2018 trade policy agenda and 2017 annual report of the President of the United States on the Trade Agreements Program*. Washington.

USTR (US Trade Representative). (2020). *Report on the Appellate Body of the World Trade Organization*. Washington.

Wildavsky, Ben. (1995). The insider's insider. *National Journal*.

WTO (World Trade Organization). (2006). *United States – laws, regulations and methodology for calculating dumping margins ("Zeroing")*. Communication from the United States. WTO Legal document WT/DS294/16, 17 May. Geneva.