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What will China do under the New Background of WTO Dispute Mechanism?

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Abstract: In the process of establishing a multilateral rule system, WTO (World Trade Organization) has always been an irreplaceable role, which can promote global economic development and provide a platform for resolving disputes. Nowadays, global economic and trade governance is multi-polar, and traditional governance rules are not enough to maintain the world economic order. There is an international recognition that the WTO is anachronistic and in need of reform. China, one of the world 's largest trading countries, for the sake of acclimatizing itself to the new changes in the global economic environment and respond to challenges as soon as possible, China must firmly safeguard the authority and effectiveness of the multilateral trading regime with the WTO as the core, and propel the recovery of the WTO dispute settlement mechanism actively. This paper mainly studies that the current WTO dispute settlement mechanism cannot play an effective role and therefore needs to be reformed. It also analyzes the crises and challenges that China faces in the new era, and gives suggestions for the crises and challenges. Finally, it calls for the current approach to dispute resolution to be through cooperation rather than conflict.

Keywords: World Trade Organization; Dispute Settlement Mechanism; Appellate Body; China Problem; Dispute Reform.

1. Introduction

As an influential international economic organizations in the world, WTO plays an indelible role as a manager and supervisor of global economic and trade, and is recognized and supported by various organizations around the world. However, in recent years, due to the outbreak of the epidemic, the Sino-US trade war, the Russia-Ukraine war and other crises, the role of the WTO has been limited. This is evidenced, for example, by the deadlock in the functioning of the Appellate Body, the proliferation of unilateral measures and the suspension of the dispute settlement mechanism. These series of changes have impacted the authority of the WTO. Therefore, many countries have called for a new round of reform of the WTO, especially the dispute settlement mechanism.

Since China 's accession to the WTO, China continues to play its role as a major responsible country, actively participated in international affairs, and expressed demands for developing countries. However, with the Trump administration, China and the United States have clashed over some trade issues in the past few years. Although the two countries have also used the WTO dispute settlement mechanism, it has not worked as expected. In the face of a new round of difficulties, China should actively seek the way of development.

2. The Inadequacy of WTO Dispute Mechanism

According to the 2023 World Trade Report, at the multilateral and plurilateral levels, initiatives such as the WTO Agreement on Trade Facilitation and the WTO Agreement on Fisheries Subsidies, as well as joint initiatives on domestic regulation of services, investment facilitation for development and e-commerce, are addressing key issues facing international trade. Over the past decade, the organization has continued to play an outstanding role in helping global trade flow smoothly, freely and predictably. However, today the WTO is facing a major crisis. With the serious game between major powers, the multi-polarization development of the world, the outbreak of the epidemic and the impact of the Russian-Ukrainian war, the world economy has entered a state of malaise. The current international economic and trade rules are not enough to cope with contradictions and conflicts, and it will be bound to change again. For example, the escalation of the tariff war between the United States and China has led to a slowdown in trade growth between the world 's two largest economies, and the WTO dispute settlement mechanism has played little role in it. Besides, in recent years, major developed countries such as the United States argue that the WTO has become a litigious body, defeating the purpose of the mechanism itself. They call for reform of the WTO, put pressure on the selection of judges of the WTO Appellate Body, and require reform, while developing countries led by China oppose this. So far, the members of the appellate body have not yet taken office, which makes the appellate body unable to play the role of resolving disputes. The emergence of these phenomena shows that there are loopholes in the function of WTO.

2.1. The Appellate Body of the WTO has a Limited Role

At present, many countries, especially the United States, are very worried about the future fate of the WTO dispute settlement mechanism. They argued that the powers of the appellate body were ultra vires, beyond the powers given to it, and therefore illegal. [1] Pursuant to Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), the membership of the Appellate Body is generally composed of seven persons with recognized authority and recognized expertise in law, international trade and subjects covered by applicable agreements, who serve for a term of four years, renewable once each. The birth of the DSU provides an alternative way to resolve disputes. It helps to establish the relevant rules of

the WTO by explaining the differences within the WTO organization, thus making the WTO rules predictable and reliable. The performance of the United States in the international trade dispute settlement mechanism is disturbing. Although their claims are reasonable, the side effects are obviously more.

2.2. Dispute Settlement Mechanisms are not Equal.

According to statistics, between 1995 and 2002, the Appellate Body made 47 rulings, of which India, Mexico and Brazil participated in the rulings as third-party participants for 7 times, 6 times and 4 times respectively, far less than the United States (15 times) and the European Union (18 times). [2] In addition, the COVID-19 epidemic has also affected the operation of the appeal mechanism. We know that when the world is facing an economic crisis, the strategies that countries implement in response to the crisis will affect their trade policies. For example, the Doha round of trade negotiations, which was scheduled to end in 2005, broke up the negotiations among the members of the WTO and caused huge economic losses because some countries adhered to the concept of trade protectionism. What is more, the impact of the new Coronavirus epidemic has expanded. Some countries have restricted trade exchanges for their own security, banned the export of food, ore resources, high-end technology, and even adopted unilateralism, affecting the reform process of the appeal mechanism. We need to reflect on the two issues of the way the current rules allow for the politicization of appellate body appointments and the framework within which the appellate body must make decisions in a short time in the context of increasingly complex trade disputes. [3] In short, this not only means that the dispute settlement mechanism is not completely neutral, it seems to be susceptible to political influence, but also reflects the fact that in a multi-polar political world, there is currently no good dispute settlement mechanism.

3. The Dilemma Facing China in the New Eras

Due to long-term exclusion from the world multilateral trading system, there was a time when Chinese enterprises suffered from some violations of the principle of equality and fairness and mutual benefit when they wanted to export their products to the international market. With the implementation of China 's reform and opening up policy, China is eager to join the WTO to share the fruits of economic globalization. On December 11, 2001, China officially joined the WTO as its 143rd member. Nowadays, as the world 's largest developing country, China 's economic aggregate and total import and export value are among the top in the world. If China wants to enhance its international status, it is a good choice to participate in the restructuring of the international economic order and make good use of dispute settlement mechanisms. Nevertheless, driven by the theory of the structure of international relations, some scholars describe China as destroying or evading rules based on a free international order. Based on this, even the reasons for the unilateral measures, which is taken by the United States, can be attributed to the ineffectiveness of the opposition to China 's policies and the dissatisfaction with the ruling of the WTO Appellate Body. [4] Among them, there has been controversy over the unclear role of Chinese state-owned enterprises in the market. Some countries have questioned the links between state-owned enterprises and the government, because the management of state-owned enterprises is often the officials of the Communist Party of China. Taking the steel industry subsidy as an example, according to the definition of the Chinese government, only the financial support of non-state-owned enterprises is called subsidy, so state-owned enterprises provide cheap subsidies to downstream manufacturers as 'subsidies'. According to the interpretation of the Appellate Body, 'public institutions' are governments or government entities that exercise government functions, and this interpretation does not identify subsidies for state-owned enterprises as subsidies. [5] Surprisingly, not only the United States, but also the European Union disagreed with the Appellate Body's interpretation, and therefore does not recognize China 's market economy system. These subsidies will be considered as government policies from the perspective of foreign investors, and will lead countries to adopt countervailing policies to safeguard their own interests. A report points out that the advantages of state-owned enterprises are unfair. Some large state-owned enterprises will be merged by the state for national pride, crowding out competitors from the Chinese market and completely ignoring monopoly, thus undermining the WTO 's conditions for maintaining fair competition. [6] In the next few years, China needs to respond seriously to these doubts, otherwise this dispute will continue.

4. WTO Dispute Mechanism Reform Proposal

Applying to join the WTO and become a member is not an easy process for China. After 15 years of accession negotiations, the price paid is also quite high. China not only reduces tariffs to one of the lowest tariff levels in the world, but also makes corresponding commitments in service industry reform, market access, additional obligations, etc. The reason why China strongly wants to join the WTO is that the WTO is not only a product of economic globalization, can enjoy the benefits brought about, but also has a universally recognized dispute settlement mechanism, which is conducive to China 's participation in the formulation of multilateral trading system rules. [7]

Since the outbreak of the Sino-US trade war in 2018, global tensions have arisen. Both China and the United States have complained to the WTO, and then regrettably, the two sides have not waited for the ruling to take protectionist measures on their own, making the role of the dispute settlement mechanism questioned, which has also led to calls for reform of the dispute settlement mechanism. [8] In fact, China has also called for the reform of the WTO dispute settlement mechanism, saying that it needs to establish a permanent multilateral appeal mechanism with fixed procedures, institutions and personnel. However, China does not say clearly enough about how to establish and whether to support the original framework. [9]

The outbreak of the Sino-US trade war can clearly see the differences in policies, laws and regulations, and social forms between the two countries, but it does not mean that the two countries can not cooperate and exchange on trade. In his article *Expanding Trade and Spreading Values : Why I Strive to Secure China 's* Permanent *Trade Status*, Clinton argues that the United States needs to engage with China in a principled and purposeful manner, and establish a stable and

mutually beneficial relationship with China." He also argues that "if China is isolated, this rising power will sooner or later become a threat, and a prosperous China that opens its market to U.S. exports and abides by international rules may promote nuclear non-proliferation, improve human rights, trade and other goals. [10] Sino-US relations should be cooperation, rather than confrontation and conflict. The past Cold War thinking should be abandoned, but fortunately, at least both sides have a certain degree of dispute settlement mechanism to deal with disputes, and agree that the WTO dispute settlement mechanism needs to be improved.

Under the background of the reform of the WTO dispute settlement mechanism, China, as a big country with global influence and the world's largest developing country, its fate will also affect the world 's economic operation. According to the "International Economic and Trade Rules Observation Report" issued by the University of International Business and Economics this year, if China wants to connect with high-standard international economic and trade rules, it needs to actively participate in and promote WTO reform, focus on promoting the accession negotiations of CPTPP, DEPA and other agreements, give full play to the pilot role of the pilot free trade zone, and accelerate the construction of a new open economic system that is compatible with high-standard rules. [11] Secondly, in the face of the current problems of the WTO dispute mechanism, China can actively participate in other informal channels to communicate with other member states. One of the reasons why the WTO dispute mechanism cannot play a role may be related to judicial ultra vires. The EU believes that the key to solving the problem lies in the need to reactivate political guidance and judicial responses. They suggest 'annual meetings between arbitration and dispute settlement bodies', where member states can express their views on disputes, which on the one hand abides by legality, and on the other hand provides 'additional channels of communication' between political and judicial bodies, which requires the participation of all members of the WTO, including China. Finally, about the blamed 'China 's economic system problem'. Although the WTO 's provisions on state-owned enterprises have solved some of the problems of China 's other trading partners, there are still some criticisms of China 's trade behavior in the world. However, in general, we need to realize that unilateral measures do not solve the problem, but will intensify the problem and even violate the rules of the WTO. The Sino-US trade war obviously reflects this. Therefore, for the problem of China 's state-owned enterprises, the most effective way is not to eradicate their system or require WTO members to accept their existence, but to change their economic behavior while retaining their economic system and act in a market-friendly manner. In fact, China 's issue is not the only problem under the current WTO dispute reform. It is only receiving more attention than ever before. The United States and Western countries need to realize that in today 's era of multi-polarization, unilateralist measures are not effective and will be met with more intense confrontation. The key to solving the problem between countries lies in cooperation and communication, which is particularly important in today 's restoration of multilateral mechanisms. [12]

5. Conclusion

There is only one earth in the universe, and human beings have a common home. When the avalanche comes, no snowflake can be spared. Guterres, Secretary-General of the United Nations, said in the general debate of the 78 th United Nations General Assembly that the world is becoming unstable, geopolitical tensions are heating up, the world is developing towards multi-polarization, peace and security are facing unprecedented pressure, and the global multilateral system needs to be reformed. As one of the world 's largest economies, China is also an important member of the WTO and a supporter of the dispute settlement mechanism. China should actively communicate with the member countries and properly handle the conflicts with them. In view of the challenges in the new era, the reform of the WTO dispute settlement mechanism is essential, and China should work with other members to assist the reform so as to establish a more fair and reasonable mechanism as soon as possible.

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