

# The US-China Trade Dispute and the Future of the World Trade Organisation

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# Challenges to Rule of Law; International Order; Global Growth

- U.S. rejection of existing legal obligations and established methods of managing international trade issues
- U.S. seeking to exercise unrestrained power
- Undermining WTO law and adjudication
- Domestically, Trump utilizing emergency and other powers in an unprincipled way to empower himself and reject longstanding U.S. policies
- Similar national security claims internationally
- U.S.-initiated and escalated trade war will reduce U.S. and global growth. IMF: reduction of .5% of global growth (larger than South African economy)

# The Economic-Legal-Political History of the U.S.-China Trade Dispute

- The growth of China since 1990
- China's WTO accession in 2001
  - Protocol of Accession and WTO-plus obligations
  - What changed?
- Effects of rise of China on employment and wages in U.S.
- U.S. 2008 financial crisis
- Trump administration economic scapegoating of China; concern about bilateral trade deficit
- Trump administration geopolitical fear of rising China; cybersecurity
- Trump administration attempts to isolate China

# What is at stake?

## What Does US Want?

- Reduced deficit
- “Reciprocity” on tariffs—  
developing country status
- Protection of IP from forced  
transfer, theft
- Reduction of trade distortions  
from Chinese SOEs
- Cybersecurity for US and allies:  
import controls
- Reduced Chinese technological  
competition: export controls

## What Does China Want?

- Maintain exports to US
- Enhance Chinese competitiveness
- Maintain Chinese economic system
- Enhance Chinese cyberattack capabilities
- Enhance Chinese technological capacity

# Weapons fired and weapons at ready

## US

- 2018: 25% on \$50BN
- 2018: 10% on 200 BN → 25%  
May 10
- Threat: remainder of imports
- FIRREA monitoring foreign investment
- ECRA export controls: Huawei

## China

- 25% on \$50BN
- Increased tariffs on \$60BN
- Currency devaluation
- Bond purchases
- Threat: Rare earths exports

# Political Context: Bluster and Domestic Constituencies

## US

- Trump: “trade wars are good and easy to win”
- Farmers harmed; long term loss of markets; subsidies
- Manufacturers harmed by higher costs of inputs
- Consumers beginning to be harmed directly

## China

- Xi: get ready for another long march
- Peoples’ Daily: “Don’t say we didn’t warn you.”

# Political Pressures on Xi and Trump

- Trump is worried about stock market—part of problem is trade policy volatility
- Xi is worried about recession—stability of CCP rule
- Intertwined economies: recession in one causes problems in the other; “decoupling?”
- Both economies may be moving into recession; both economies highly indebted—difficult process of deleveraging

# Effects on Africa: “When the elephants fight, the ants perish.”

- Generally reduced growth: U.S. tariffs → reduced Chinese production → reduced Chinese purchases of raw materials
- Some countries will benefit by trade diversion: replacing U.S. agriculture exports, replacing Chinese manufactured goods exports
  - Opportunity for investment; China increasing investment in Africa
  - Overall, Africa will not benefit
- Geopolitical; new cold war; take sides or be neutral?



# Effects on South Africa

- South Africa may see benefits in diverted manufacturing; investment
- Steel and aluminum tariffs—costs absorbed by U.S. buyers
- Future of GSP?

# The “Interface” Role for International Trade Law: Management

- “To allow different economic systems to trade together harmoniously”
- WTO system was built by and for more market-oriented economies
- Challenge to homogenous rule of law: different legal rules needed for different economic systems
- Justification for negotiation of “WTO plus” obligations
- China only accorded developing country special and differential treatment on a selective, pragmatic, basis
- U.S. expected greater reforms post-accession
- **Basis for need to renegotiate**

# Leading US-China Issues

- Bilateral deficit
- “Reciprocity” on tariffs + developing country status
- Protection of IP from forced transfer, theft
- Reduction of trade distortions from Chinese SOEs
- Exchange rates
- Cybersecurity for US and allies: import controls—Huawei
- Chinese technological competition: export controls—Huawei and investment controls

# Powerful New Geopolitical/Security Competition Concerns

- Make negotiations more difficult

# The Role of the WTO?

- International law as tool of management of policy externalities
- China seeking to preserve system
- US undermining system
  - Appellate Body—motivated by dumping: zeroing
  - Institutional disloyalty: Section 301 and the DSU
  - National security claims: Section 232
- Existing law fails to reflect international political power equilibrium
- Problem of unanimity rule
- Trade warfare as expression of failure to manage conflict

# Fundamental Challenges to WTO

- Failure of U.S., EU to anticipate need for greater regulation of China
  - 2001
  - Anticipated greater reform in China
- Difficulty in amending WTO agreement: need for unanimity
- U.S. rogue action
- Scope of national security exception—recent Russia—Trade in Transit case
- Appellate Body crisis

# The Appellate Body Crisis at the WTO

- Based on requirement of consensus for appointment of new judges
- U.S. refusing to join consensus
- Issues:
  - Carry-over system for judges to finish cases
  - System of precedent
  - Alleged judicial over-reaching
  - Zeroing jurisprudence

# Reform Issues

- Appellate Body
- State owned enterprises
- E-commerce
- Defining developing countries and special treatment—U.S. calls for reform
- Monitoring and notification of subsidies
- Versus more policy space for development
- Decision-making by consensus
- Trump administration demand for mirror-image “reciprocity”
- Security exceptions



# Will the U.S. Withdraw from the WTO?

- Trade is popular with U.S. citizens
- Congress supports WTO
- Question of presidential power

# How might disaster strike?

- Continued escalation and actions by other states to protect themselves: cascading worldwide depression
- Division of the world into trading blocs
- Decoupling
- Continued escalation viewed as enmity, with security competition and cybersecurity giving rise to military confrontation
  - The vision of U.S. Secretary of State Cordell Hull
  - The vision of Robert Schuman and Jean Monnet

# How Might the U.S. (and the World) Recover?

- Disabling Trump
  - 2020 elections? But leading “progressive” Democrats are trying to take similar positions to Trump
  - Congressional assertion of control
  - Impeachment
- Reasonable multinational negotiations toward WTO reform to manage China’s rise and other issues, disciplining opportunistic holdouts
- The end of U.S. hegemonic leadership of system management?

Thank you.