



# WTO Dispute Settlement Mechanism Reform

## A Case Study of China v. US Anti-dumping Cases

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**Abstract.** Taking China v. US anti-dumping cases as an example, this study explores the role of the WTO dispute settlement mechanism in regulating international trade frictions and its reform path. The WTO dispute settlement mechanism provides institutional guarantee for resolving Sino-US anti-dumping disputes, restricts the abuse of anti-dumping measures by the United States, protects China's legitimate trade interests, and maintains the basic order of multilateral trade.<sup>[1]</sup> However, the current WTO dispute settlement mechanism still faces many deficiencies in practice, such as an overly long dispute settlement cycle, serious vacancies in the Appellate Body, inconsistent application of rules by dispute settlement bodies, and difficulties in the enforcement of rulings.<sup>[2]</sup> In response to these problems, this paper puts forward targeted reform suggestions from the aspects of improving dispute settlement procedures, reconstructing the Appellate Body, unifying the standards for rule application, and strengthening the enforcement of rulings, so as to promote the reform and improvement of the WTO dispute settlement mechanism, better resolve international trade disputes, and maintain the stability and prosperity of the multilateral trading system.

**Keywords:** WTO dispute settlement mechanism; reform; China v. US anti-dumping cases; international trade frictions

## 1 Introduction

The core institutional arrangement of the multilateral trading system is the WTO dispute settlement mechanism, which is hailed as the "cornerstone of the multilateral trading system".<sup>[3]</sup>It plays an irreplaceable role in resolving international trade frictions, maintaining a fair and orderly international trade order, and promoting the stable development of global trade. Since China's accession to the WTO in 2001, China has actively participated in the operation of the WTO dispute settlement mechanism and is one of the major users of the mechanism.<sup>[4]</sup>China has initiated numerous dispute settlement proceedings against other members' trade protectionist measures, among which China v. US anti-dumping cases (such as Case DS471) are typical representatives.

In recent years, the United States has frequently used anti-dumping measures to implement trade protectionism, imposing high anti-dumping duties on China's export products, which has seriously damaged China's export interests, disrupted normal Sino-US trade order, and also impacted the multilateral trading system. Based on a dynamic comparison of China's import volume and the world's total export volume from 2005 to 2015, this paper analyzes the historical evolution and current situation of the trade relations between the two countries using the time series analysis method, providing an important perspective for understanding China's position and role in international trade. <sup>[5]</sup>After initiating WTO dispute settlement proceedings, China appealed against the unreasonable anti-dumping measures of the United States and promoted the fair settlement of relevant disputes, thereby safeguarding its own trade interests and accumulating experience for the practice of the WTO dispute settlement mechanism.<sup>[6]</sup>

At present, the global trade pattern is undergoing profound adjustments, trade protectionism is on the rise, and the WTO dispute settlement mechanism is facing unprecedented challenges. <sup>[7]</sup>Its inherent defects have become increasingly prominent, making it unable to fully adapt to the needs of resolving international trade disputes in the new era. <sup>[8]</sup>Therefore, this paper selects *China v. US anti-dumping cases* as the research object, analyzes the practical role and deficiencies of the WTO dispute settlement mechanism, and proposes a reform path, so as to provide some references for improving the multilateral trading system and promoting the healthy and stable development of global trade.

## **2 Core Concepts and Operating Mechanism of the WTO Dispute Settlement Mechanism**

The WTO dispute settlement mechanism is a formal institutional arrangement within the WTO framework for resolving trade disputes between members. Its main purpose is to resolve trade frictions in a peaceful, fair and efficient manner, safeguard the authority and effectiveness of multilateral trade rules, prevent trade disputes from escalating into trade wars, and ensure the stable development of global trade.<sup>[9]</sup>Based on the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) as its legal foundation, the mechanism has formed a complete operating system, mainly consisting of dispute consultation, panel procedure, Appellate Body procedure, ruling enforcement and other parts, forming a closed loop of "consultation-ruling-enforcement".

In terms of core operating mechanism, the WTO dispute settlement mechanism mainly includes four core elements:

1. Consultation procedure: As a preliminary link of dispute settlement, it requires disputing parties to resolve differences through bilateral consultation first. The consultation period is generally 60 days. If consultation fails, the next procedure can be entered. This link aims to resolve disputes peacefully as much as possible and reduce the cost of dispute settlement.

2. Panel procedure: The core substantive link of dispute settlement. After consultation fails, the complaining party may request the WTO to establish a panel composed of 3 to 5 independent experts, which investigates the facts of the dispute, interprets relevant rules, and finally issues a panel report to rule on whether the dispute violates WTO rules. The panel procedure generally takes 6 to 9 months.
3. Appellate Body procedure: Any disputing party dissatisfied with the panel report may file an appeal with the Appellate Body within the specified time limit. As the highest judicial body of WTO dispute settlement, the Appellate Body is responsible for reviewing legal issues in the panel report (not involving factual findings). The appellate procedure generally takes about 3 months, and the Appellate Body finally issues a report to uphold, modify or reverse the panel report.
4. Ruling enforcement procedure: A link to ensure the effective operation of the dispute settlement mechanism. WTO rulings are binding, and the losing party must implement the ruling within the specified time limit to correct acts violating WTO rules. If the losing party fails to implement the ruling, the complaining party may propose retaliatory measures to force the losing party to fulfill the ruling.

Relying on the above operating mechanism, the WTO dispute settlement mechanism provides a fair and transparent dispute settlement platform for all members. Its core value is to resolve trade frictions under the rule orientation, rather than relying on national strength for unilateral pressure, which is also the difference from bilateral trade negotiations. The whole process of *China v. US anti-dumping cases* is a typical example of the operation of the WTO dispute settlement mechanism, which well reflects the important role of the mechanism in regulating anti-dumping measures and protecting trade fairness.

### **3 Practical Role of the WTO Dispute Settlement Mechanism in Sino-US Anti-dumping Disputes**

*China v. US anti-dumping cases* (taking Case DS471 – *China v. US anti-dumping and countervailing duties on Chinese photovoltaic products* as an example) are typical cases of China using the WTO dispute settlement mechanism to safeguard its own rights and interests. The case, from complaint, panel hearing, appeal to ruling enforcement, fully reflects the operation process of the WTO dispute settlement mechanism and highlights the important role of the mechanism in resolving Sino-US trade frictions and regulating anti-dumping measures, which is mainly reflected in the following three aspects.

#### **3.1 Restricting the Abuse of US Anti-dumping Measures and Protecting China's Legitimate Trade Interests**

In recent years, to curb the development of China's industries and implement trade protectionism, the United States has frequently launched anti-dumping investigations on China's export products. In the investigation process, there are problems such as

abuse of anti-dumping rules, arbitrary determination of dumping margins, and violation of procedural justice. In the photovoltaic product anti-dumping case, the US Department of Commerce, disregarding the actual situation of Chinese enterprises, used an unreasonable surrogate country method to calculate dumping margins and arbitrarily raised anti-dumping duty rates, which seriously damaged the export interests of Chinese photovoltaic enterprises and hindered the international development of China's photovoltaic industry.

China filed a complaint with the WTO for consultation and dispute settlement proceedings on the grounds of the US unreasonable anti-dumping measures against China. [5] In the process of panel hearing and Appellate Body review, China actively presented evidence and clearly explained the procedural and substantive violations of the US anti-dumping measures. Finally, the WTO ruled that the relevant US anti-dumping measures violated the Anti-Dumping Agreement and relevant rules, requiring the United States to revoke unreasonable anti-dumping duties and correct its trade protectionist acts. The ruling effectively stopped the abuse of US anti-dumping measures, enabled Chinese photovoltaic enterprises to resume exports to the United States, protected China's legitimate trade interests, and provided a model for other Chinese export industries to respond to US anti-dumping measures.

### **3.2 Safeguarding the Authority of Multilateral Trade Rules and Curbing the Spread of Trade Protectionism**

One of the main functions of the WTO dispute settlement mechanism is to ensure the authority and uniformity of multilateral trade rules and prevent the spread of trade protectionism. As a WTO member, the United States should act in accordance with WTO rules, but it frequently uses anti-dumping measures to damage China's interests, undermine the seriousness of multilateral trade rules, and shake the foundation of the multilateral trading system.

In Sino-US anti-dumping cases, the fair WTO rulings define the scope of application of anti-dumping rules, deny US trade protectionist acts, restore the authority of multilateral trade rules, and send a signal of opposing trade protection and maintaining multilateral trade order. It also makes other countries realize that the abuse of anti-dumping measures will cause harm to themselves, thereby restraining trade protectionism in other countries.

### **3.3 Accumulating China's Experience in Participating in Multilateral Dispute Settlement and Enhancing Its International Discourse Power**

China's participation in the WTO dispute settlement mechanism has changed from passive response to active use. Through cases such as *China v. US anti-dumping cases*, China has accumulated rich experience in dispute settlement, including evidence collection, rule application, court debate and other aspects, and a talent team has been cultivated.

At the same time, China actively participates in the interpretation and practice of rules, takes the initiative to voice its positions and propositions in the WTO dispute settlement process, promotes the fair and reasonable operation of the WTO dispute settlement mechanism, and improves China's voice and influence in the multilateral trading system. In the application of anti-dumping rules, China adheres to the principles of fairness, justice and transparency, opposes the abuse of the surrogate country method, promotes the WTO to improve anti-dumping rules, and supports developing countries in participating in international trade dispute settlement.

## **4 Existing Deficiencies of the WTO Dispute Settlement Mechanism**

Although the WTO dispute settlement mechanism has played an important role in Sino-US anti-dumping disputes, combined with the practice of the case and the new situation of current global trade disputes, it is not difficult to find that the mechanism still has many deficiencies in operation. These deficiencies not only affect the efficiency and effect of dispute settlement, but also restrict its own development, which are mainly manifested in the following aspects.

### **4.1 Overly Long Dispute Settlement Cycle, Failing to Meet Enterprises' Timely Rights Protection Needs**

According to the DSU provisions, the WTO dispute settlement procedure (consultation, panel, appeal) generally takes 12-15 months, and complex cases take longer. In the Sino-US photovoltaic product anti-dumping case, it took nearly 18 months from China's initiation of dispute settlement proceedings to the final WTO ruling. During this period, the high US anti-dumping duties remained in effect, Chinese photovoltaic enterprises' exports to the United States almost stagnated, and a large number of enterprises suffered from order loss, overcapacity, capital chain tension and other problems. Even if they won the case in the end, the enterprises had suffered irreparable economic losses.

The long dispute settlement time greatly reduces the "relief effect" of WTO rulings, fails to meet enterprises' timely rights protection needs, and cannot promptly stop the negative impacts of trade protectionist measures on enterprises. This is also an important reason why many enterprises shrink back from the WTO dispute settlement mechanism when facing international trade frictions.

### **4.2 Serious Vacancies in the Appellate Body, Leading the Mechanism into a "Judicial Crisis"**

The Appellate Body is the highest judicial organ of the WTO dispute settlement mechanism, which reviews legal issues in panel reports and makes final rulings with finality, serving as the key to ensuring the fairness of dispute settlement.<sup>[10]</sup> However, since 2019, due to the malicious obstruction of the United States, the vacancy of Ap-

pellate Body members has become increasingly serious, eventually leading to the paralysis of the Appellate Body, which cannot normally accept and hear appeal cases.

After the Sino-US anti-dumping case, the appellate procedure was forced to suspend due to the insufficient number of Appellate Body members, thereby affecting the dispute settlement process. Due to the absence of the Appellate Body, the second-instance function of the WTO dispute settlement mechanism has been cancelled, disputing parties cannot safeguard their legitimate rights and interests through the appellate procedure, and the supervision and correction mechanism for the fairness of panel reports is not sound, leading the WTO dispute settlement mechanism into a judicial crisis and seriously affecting the authority and credibility of the mechanism.

#### **4.3 Inconsistent Application of Rules and Insufficient Consistency in Rulings**

The core advantage of the WTO dispute settlement mechanism is rule orientation, but in practice, due to differences in the understanding and interpretation of WTO rules among members of various panels and the Appellate Body, the application of rules in different cases is inconsistent and the ruling results lack consistency. In Sino-US anti-dumping cases, there is a problem of inconsistent WTO ruling standards for similar anti-dumping measures. In some cases, the corresponding acts are deemed illegal, while in other similar cases, they are ruled legal. The uncertainty of rule application brings greater troubles to enterprises in responding to trade disputes and affects the fairness and authority of the WTO dispute settlement mechanism.

In addition, some WTO rules are inherently vague. For example, the conditions for the application of the surrogate country method and the calculation standards for dumping margins in anti-dumping rules are not clearly defined, giving dispute settlement bodies greater discretionary power in hearing cases, thus resulting in inconsistent application of rules.

#### **4.4 Difficulties in Ruling Enforcement and Unsecured Binding Force**

The validity of WTO rulings is reflected by binding force and enforceability, but in practice, it occurs that the losing party fails to implement or delays the implementation of rulings, especially when powerful WTO members ignore or even disregard WTO rulings. Even if the WTO rules that the relevant US anti-dumping measures are illegal and requires it to revoke unreasonable anti-dumping duties, the United States still delays implementation on various grounds, or even evades ruling obligations by revising relevant laws and adjusting the form of measures, making it impossible for Chinese enterprises to obtain timely and effective relief for their legitimate rights and interests.

At the same time, the WTO lacks an effective compulsory enforcement mechanism. For members who refuse to implement rulings, only the complaining party is allowed to take retaliatory measures. However, the implementation of retaliatory measures will trigger trade wars, damage the interests of both parties, and is not conducive to the stability of the multilateral trading system. Therefore, the binding force

of WTO rulings is greatly weakened, making it difficult for the dispute settlement mechanism to play its role.

## **5 Policy Recommendations for the WTO Dispute Settlement Mechanism**

Based on the practical reflection of China v. US anti-dumping cases and the current dilemmas of the WTO dispute settlement mechanism, this paper puts forward suggestions for improving and perfecting the WTO dispute settlement mechanism from the following aspects, so as to better adapt to the needs of resolving international trade disputes in the new era and maintain the stability and prosperity of the multilateral trading system. Combined with China's practical experience and the consensus of the international community, the following suggestions are put forward.

### **5.1 Improving Dispute Settlement Procedures and Shortening the Dispute Settlement Cycle**

In response to the long dispute settlement cycle, the WTO dispute settlement procedures should be further improved to shorten the time of each procedural link and improve the efficiency of dispute settlement.

1. Shorten the period of consultation procedure from 60 days to 45 days, and establish a consultation supervision mechanism to impose corresponding restrictive measures on members that refuse or delay consultation, urging disputing parties to resolve differences through consultation as soon as possible.
2. Optimize and improve the hearing procedures of the panel and the Appellate Body, shorten the time of hearing links, clarify the working time limit of each link, and ensure that the hearing matters of the panel and the Appellate Body are completed within the specified time limit to prevent cases from being delayed indefinitely.
3. Establish an expedited hearing procedure for simple cases with clear facts and minor disputes to shorten the dispute settlement cycle and meet enterprises' timely rights protection needs.

### **5.2 Reconstructing the Appellate Body to Resolve the "Judicial Crisis"**

The normal operation of the Appellate Body is an important guarantee for the effective operation of the WTO dispute settlement mechanism. Measures should be taken as soon as possible to rebuild the Appellate Body and resolve the current "judicial crisis".

1. Promote WTO members to reach a consensus to solve the problems caused by the malicious obstruction of the United States, accelerate the appointment of

Appellate Body members, ensure that the Appellate Body can normally accept and hear appeal cases, and restore the second-instance function of the Appellate Body.

2. Improve the operating rules of the Appellate Body, clarify the term of office, scope of duties, recusal system of Appellate Body members to improve the independence and fairness of the Appellate Body.
3. Establish a temporary alternative mechanism for the Appellate Body. During the vacancy of Appellate Body members, temporary panel members shall perform the duties of appellate hearing to ensure the continuity of dispute settlement procedures and prevent the dispute settlement process from being affected by the paralysis of the Appellate Body.

### **5.3 Unifying Standards for Rule Application and Improving the Consistency of Rulings**

To solve the problems of inconsistent rule application and poor ruling consistency, the management of the interpretation and application of WTO rules should be strengthened to unify the standards for rule application.

1. Establish a unified mechanism for the interpretation of WTO rules. Led by the WTO Secretariat, organize experts to clearly interpret vague rules and form a unified interpretation guide, providing a clear basis for dispute settlement bodies to hear cases and reducing discretionary power.
2. Strengthen the training of panel and Appellate Body members, improve their ability to understand and apply WTO rules, and promote the consistency of rule application in different cases.
3. Establish a ruling case guidance system, taking the ruling results of typical cases as references for similar cases in the future to ensure the consistency and coherence of ruling results and improve the fairness and authority of the WTO dispute settlement mechanism.

### **5.4 Strengthening the Ruling Enforcement Mechanism and Securing the Binding Force of Rulings**

The effective implementation of rulings is the core purpose of the WTO dispute settlement mechanism. The ruling enforcement mechanism should be further strengthened to improve the binding force of rulings.

1. Establish a ruling enforcement supervision mechanism. The WTO Secretariat supervises the implementation of the losing party, regularly issues implementation progress reports, and circulates a notice of criticism to members that delay or refuse to implement, urging them to fulfill their implementation obligations.

2. Improve the retaliatory measure system, clarify the conditions, scope and extent of the application of retaliatory measures, simplify the application procedures for retaliatory measures, enhance the deterrent effect of retaliatory measures, and urge the losing party to implement rulings in a timely manner.
3. Establish a variety of dispute settlement relief mechanisms. In addition to retaliatory measures, introduce arbitration, mediation and other methods to provide more relief channels for disputing parties and improve the efficiency and effect of ruling enforcement.

At the same time, China should actively reach a consensus with the international community to jointly safeguard the authority of WTO rulings and promote the establishment of a more effective enforcement mechanism.

## 6 Conclusion

The WTO dispute settlement mechanism is an important part of the multilateral trading system. It plays an irreplaceable role in resolving Sino-US anti-dumping disputes, protecting China's legitimate trade interests, stopping trade protectionism, and maintaining multilateral trade order. In *China v. US anti-dumping cases*, fair rulings restrict the abuse of US anti-dumping measures, provide a rights protection channel for Chinese enterprises, accumulate experience in participating in multilateral dispute settlement, and enhance China's status in the multilateral trading system.

However, based on the practical reflection of the case, it can be seen that the current WTO dispute settlement mechanism still has many deficiencies. Problems such as an overly long dispute settlement cycle, serious vacancies in the Appellate Body, inconsistent application of rules, and difficulties in ruling enforcement seriously hinder the operation efficiency and authority of the dispute settlement mechanism, and also affect the role of the mechanism in resolving international trade disputes in the new era. At a time when the global trade pattern is undergoing profound adjustments and trade protectionism is on the rise, promoting the reform of the WTO dispute settlement mechanism is not only necessary to defend the stability of the multilateral trading system, but also to resolve international trade conflicts and promote the healthy development of global trade.

Based on China's practical experience and the consensus of the international community, measures such as improving dispute settlement procedures, reconstructing the Appellate Body, unifying standards for rule application, and strengthening ruling enforcement can make up for the deficiencies of the WTO dispute settlement mechanism and enable its continuous optimization and upgrading.

In the future, China will continue to participate in the reform and operation of the WTO dispute settlement mechanism, take the initiative to play a leading role, promote the formation of a fair, efficient and transparent multilateral trade dispute settlement system, continue to use the mechanism to safeguard its own legitimate trade interests, promote the peaceful settlement of Sino-US trade frictions, and make greater contri-

butions to the stable prosperity of global trade and the development of the multilateral trading system.

It should be noted that this study takes China v. US anti-dumping cases as an example to discuss the reform of the WTO dispute settlement mechanism. Due to the differences in trade disputes between different countries and the different interest demands of WTO members, the reform suggestions proposed still need to be further improved in combination with the practice of different countries and the consensus of the international community. More international trade dispute cases can be studied to analyze the defects of the WTO dispute settlement mechanism and put forward targeted and operable reform suggestions.

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