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COMMENTARY



## A skeletal review of the Sino-U.S. “trade war”: contentious issues, trade multilateralism and policy recommendations

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### ABSTRACT

The recent US trade policy change during the past two years has given rise to a series of trade frictions between the U.S. and many other countries. The Sino-U.S. trade war is probably the most intense and significant aspect of these trade frictions. While the U.S. resorts to trade protectionism and unilateralism in pursuit for a fair trade order, China tries to set up an image of a defender of trade multilateralism centered on the WTO. Neither the U.S. nor China will benefit from the trade war. While the U.S. would suffer from erosion of its leadership and credibility, China would face immense difficulty in the future if the persistent global concerns over its economic model remain unaddressed. The trade war necessitates the international community to reflect on the notion of a fair trade order and to take measures to realize it.

### RÉSUMÉ

Le changement de politique commerciale des États-Unis au cours des deux dernières années a entraîné une série de frictions commerciales entre les États-Unis et de nombreux autres pays. La guerre commerciale entre la Chine et les États-Unis est probablement l’aspect le plus intense et significatif de ces frictions. Alors que les États-Unis recourent au protectionnisme commercial et à l’unilatéralisme pour obtenir un ordre commercial équitable, la Chine tente de se donner une image de défenseur du multilatéralisme commercial centré sur l’OMC. Ni les États-Unis ni la Chine ne tireront profit de la guerre commerciale. Tandis que les États-Unis souffriraient de l’érosion de leur leadership et de leur crédibilité, la Chine devrait faire face à d’immenses difficultés à l’avenir si les préoccupations mondiales persistantes quant à son modèle économique restaient sans réponse. La guerre commerciale exige que la communauté internationale réfléchisse à la notion d’un ordre commercial équitable et prenne des mesures pour le réaliser.

### KEYWORDS

China–US Relations; WTO; fair trade; multilateralism; unilateralism

The United States (U.S.) has changed its trade policies since President Donald Trump took office in early 2017. This has given rise to intense trade frictions between the U.S. and many trading countries. For instance, the U.S. has withdrawn from the Trans-Pacific Partnership (USTR 2017c) and suspended the negotiations of the Transatlantic Trade and Investment Partnership (USTR 2016). Trade issues have been on top of the G7 agenda in recent years

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(European Council 2017, 2018, 2019). China has become a main “target” of the U.S. for several reasons, such as its increasing economic power, growing ambition for international leadership and a drastically different economic model from that of many other countries. Though China is not the only country impacted by the U.S. trade policy change, trade frictions between China and the U.S. have grown unprecedentedly intense and are often labelled as “trade war”. The trade war roughly started from the time the U.S. initiated a Section 301 investigation on China’s exports (USTR 2018a), and has lasted for nearly two years, without a clear end in sight. This paper presents a skeletal review of the trade war, discusses its implications and raises policy recommendations from the perspective of China.

## Major contentious issues of the trade war

Notwithstanding the complexity of the issues in the trade war, the U.S. has highlighted a few “key issues” that are fundamental and urgent to the bilateral trade between the two countries.

First, the US trade deficit with China has accumulated to a stunningly high level in recent years. The U.S. believes that it is evidence of a disadvantageous position in bilateral trade with China (USTR 2017a), and responded by repeatedly raising tariffs on Chinese exports (USTR 2018c). China rebuts that the U.S. profits immensely from bilateral trade (MOFCOM 2019a), and has therefore reciprocated by raising tariffs on U.S. exports several times (Ministry of Finance of China 2018a, 2018b). With the exchanges of rising tariffs, it has even been argued that a risk of “decoupling” between the two countries has emerged (Auslin 2019).

Second, the U.S. claims that China engages in “intellectual property (IP) theft” through compulsory IP transfer (The National Bureau of Asian Research 2017), and bans several Chinese companies from entering the U.S. market, often citing national security reasons (White House 2017). China rebuts that IP transfer is de facto a contractual arrangement between U.S. investors and their Chinese partners (MOFCOM 2018a), and also enacts a “list of unreliable entities”, targeting foreign entities and individuals that “refuse to supply Chinese companies for political reasons, seriously damage the interests of Chinese companies and cause potential harm to China’s national security” (MOFCOM 2019b).

Third, the U.S. claims that China’s State-owned enterprises (SOEs) have strong market distorting effects, and that China’s “state-led, market-disruptive economic model” presents a grave challenge to U.S. global interests (U.S.-China Economic and Security Review Commission 2018). Chinese SOEs not only impede U.S. companies entering the Chinese market (U.S.-China Economic and Security Review Commission 2017), but also put them at a disadvantageous position in global competition (O’Connor 2018, pp. 11–12). China rebuts that its SOEs are entitled to an independent legal status apart from the government and that they operate under market conditions (State Council Information Office of China 2015).

Fourth, the U.S. claims that China manipulates currency policies for trade purposes and listed China as a currency manipulating country in August 2019 (U.S. Department of the Treasury 2019). China rebutted that the rate of Chinese currency is determined by the market on a floating basis, and that the unilateralist behavior of the U.S. will undermine the operation of the international monetary system (People’s Bank of China 2019).

Up to the present, China and the U.S. have held many rounds of negotiations to resolve the ongoing trade war (Xinhua Net 2019a), but no agreement has been reached at the time of writing this commentary.

## The fight over trade multilateralism

The World Trade Organization (WTO), with 164 members and a comprehensive set of trade rules, stands in the center of the existing global trade governance regime. It provides a forum for multilateral negotiations, national policy review and international dispute settlement on a wide range of trade issues. Both China and the U.S. are WTO members. The WTO has not only become an important “frontline” of the trade war, but the trade war has also “nourished the fears of WTO governance crisis” (Petersmann 2019, p. 504).

At the outset, one should be reminded that, though the trade war broke out merely two years ago, U.S. concerns over China are not recent. They have been high on the trade agenda of the two countries for a long time. For instance, the debate over China’s currency policy has almost led the two countries to a WTO dispute a decade ago (Tatom 2009, pp. 301–312). The U.S. has been concerned over China’s control over its SOEs for quite a long time (O’Connor 2018), and has initiated several cases against China, targeting at, *inter alia*, China’s SOEs and their functions in China’s trade governance (WTO 2010). It is in light of these long-standing concerns that U.S. President has stated that the trade war should have been fought earlier by his predecessors (Lane 2019).

The U.S. seems to be gradually losing confidence in the multilateral trade governance regime. It finds the WTO regime insufficient when it comes to ensuring fair trade (USTR 2019a), and is incapable of addressing its trade concerns effectively (USTR 2018b). Particularly, the U.S. claims that China has benefited from its WTO membership, but failed to fulfill its WTO obligations, and the WTO is incapable of correcting China’s behavior (USTR 2017b). According to the U.S., it had supported China’s WTO accession with an expectation that China will reform its economy to integrate into the world trading system that underlines free trade and market economy (USTR 2017b). However, China’s performance in the WTO seems to be moving in the opposite direction. China has enhanced control over its economy and developed a state capitalist economy (Hirson 2019). China’s growing economic power and different economic model pose growing threat to U.S. global leadership (Layne 2018, pp. 89–111).

The factors listed above, among others, lead the U.S. to believe that the WTO regime is no longer suitable for global trade governance. This partly explains why the U.S. has begun to “attack” the WTO and have threatened to withdraw therefrom (Wang 2018). Some “attacks” are addressed to specific WTO members, such as blaming China for failing to honor its WTO commitments (USTR 2017b) and refusing to grant preferential treatment to what the U.S. sees as a “self-labeled” developing countries (USTR 2017b). Other “attacks” are aimed at the WTO itself, such as blaming the WTO for failing to ensure “fair trade” (Payosova *et al.* 2018, p. 3) and blocking the appointment of WTO Appellate Body members (White House 2019).

Interestingly, the U.S. views itself as a “victim” of the WTO regime, while China tries to portray itself as a “defender” of this regime. While China recognizes U.S. support in its WTO accession, it firmly denies being a “dirty player” in the WTO. Probably for ideological reasons, China does not respond directly to “state capitalism”, but it uses a different

narrative. In China's view, state sovereignty means it is entitled to choose an economic model it deems appropriate and that the WTO has no prohibition in this regard. Thus, the economic model is not a trade issue and the U.S. is in no position to require China to "structurally reform" its economy. Even if China's economic model violates WTO rules, WTO members should and could resort to WTO dispute settlement mechanisms. In fact, China is frequently sued in the WTO, and the majority of WTO cases against China are filed by the U.S. (WTO 2019a). Here, China draws an implied equivalence between trade multilateralism and the WTO, essentially meaning that defending the WTO is defending trade multilateralism, and that abandoning or deviating from the WTO would constitute trade protectionism and unilateralism. This position could explain why, when U.S. tariff hikes on Chinese export were brought to the WTO dispute settlement (WTO 2019b), China claimed to defend not only its own trade interest but also trade multilateralism in general (Xinhua Net 2019b).

In a sense, China's strategy is not without merits, especially from a legal perspective. First, despite its defects, the WTO regime remains a legitimate and effective one for global trade governance. The WTO dispute settlement system remains the only worldwide, multilevel, compulsory jurisdiction for impartial, independent third-party adjudication of international disputes (Petersmann 2019, p. 505). Thus, adherence to trade multilateralism, the WTO regime in particular, does show a common aspiration of many countries. Second, the WTO and its "predecessor", the General Agreement on Tariffs and Trade (GATT), have played a key role in shaping today's global trade governance regime. As WTO law comprises the most comprehensive set of trade rules applied almost universally, it makes the WTO regime irreplaceable. Third, as U.S. trade policy change also impacts many other countries, adherence to the WTO regime is helpful for China to keep the WTO as a negotiation forum to build international consensus on certain trade issues with other countries. For instance, China has partnered with the European Union (EU) and several other WTO members to submit a WTO reform proposal (WTO 2018). Fourth, China also has a keen interest in maintaining the WTO regime. Aside from being a beneficiary of this regime, China needs it to mitigate the potential negative impacts of the trade war, given that U.S. trade protectionism and unilateralism could decouple China from the U.S. market, and drive investors out of China.

## **A tougher time for China ahead**

While adherence to trade multilateralism is a sensible strategy for China, it does not guarantee its "victory" in the trade war. In fact, the trade war could have a profound impact on trade relationships between China and its partners, since many countries could potentially benefit from the trade war as "strategic free riders" or "economic beneficiaries".

On the one hand, some major trading powers, such as the EU, Canada and Japan, could be "strategic free riders" of the trade war. These countries share the U.S. concerns regarding China to a substantial extent. For instance, the EU also demands broader market access of products and service to China (European Commission 2019a), and shares concerns on China's SOE policy (European Commission 2019b). In light of this, the EU and some other countries may benefit from the trade war in two ways. First, they could benefit from the possible results of the trade war. For example, if were to lower its most-favored-nation

tariff rates, liberalize trade in services, or allow for greater investment opportunities, other countries would benefit from U.S. “tariff war” gains. Second, these countries may also take the opportunity of the trade war to press China on some trade issues, with or without the U.S. For example, despite their trade tensions, the EU, Japan and the U.S. still managed to issue a joint statement on China’s non-market-oriented policies and practices, a long-standing concern of Western countries over China (USTR 2018c).

On the other hand, other countries, especially China’s neighboring countries, such as Vietnam and Thailand, are “economic beneficiaries” of the trade war. In the past decades, China has been a favored destination of foreign investment, and has developed an export-oriented economy (Deloitte 2018). Due to recent U.S. tariff hikes on China’s exports and the increase of China’s labor and environmental costs, foreign investment to China has started to move to countries with lower production costs. A major part of these investments have been transferred to China’s neighboring countries (Can 2019, pp. 28–29; Setboonsarng 2019, pp. 26–27). Compared to other trading powers, these developing countries focus primarily on economic development and are less able and likely to defend trade multilateralism. If the trade war continues, the value chain of various industries may be permanently transferred to these countries, dealing long-term blows to China’s economy (Moeller 2018, pp. 3–6).

In light of such a situation, China’s adherence and support to the WTO regime and trade multilateralism is unlikely to yield meaningful results if the world’s major trading countries do not provide sufficient support to China or exert sufficient pressure on the U.S. China’s image as a defender of the WTO is inadequate to dispel other countries’ longstanding concerns over its economic model. Moreover, a probable result will be that the U.S. obtain help from these countries, leaving to fight this war on its own. Such “isolation” will bring about difficult times for China if the existing situation does not change in the near future.

More recently, there are fears that the trade war would escalate to a full-fledged conflict. The U.S. has stated that China’s economic reforms have “not only failed to embrace market-oriented principles but have enabled the Communist Party to strengthen its control over the economy” (U.S. Mission to International Organizations in Geneva 2018). As China “will present a wide variety of economic, political, counter-intelligence, military, and diplomatic challenges” to the U.S. (Coats 2019), it should be deemed as a “strategic competitor” (Department of Defense of the U.S. 2018). Obviously, if the trade war keeps escalating, the U.S. is likely to take political and military measures against China. On these “non-trade” issues, adherence to the WTO regime would no longer make much sense and result in the overall isolation of China. By that time, China will face further hardship, especially given the slowdown of China’s economic development.

### **Some policy recommendations**

The trade war is beneficial to neither country. To the U.S., even if it could “win” the war, it will face a dilemma of “defeating China but losing the world”, since the war also severely impacts many other countries and profoundly erodes U.S. global leadership and credibility (Dunne 2018). For China, it lacks leadership and partnership at the multilateral level and bargaining power at the bilateral level, thus it would be hard for China to pull through the trade war without being substantively harmed. Furthermore, if persistent concerns

over China's economic model remain unaddressed, the international community will only be reminded that China's reform is impossible. Such confirmation will lead to further isolation of China in the future.

That said, such "lose-lose prospects" seem incapable of nudging the two countries to reach an agreement. It is advisable that the international community, especially China and the U.S., should try to consider whether the trade war is truly helpful in realizing a fairer global trade order for both countries and for all sides. Towards this end, it is necessary to investigate why the WTO regime is unable to deliver and ensure "fair trade", and how to improve this regime, if it were to be preserved at all.

Normatively, WTO law adopts a narrow understanding of "fair trade". The GATT 1994 has two agreements to deal with "unfair" trade practices, the Anti-Dumping Agreement, and the Agreement of Subsidies and Countervailing Measures (SCM Agreement) (Van den Bossche and Prevost 2017). These agreements are unable to capture all types of trade distorting practices due to their limited scope and inherent vagueness. For instance, in *U.S. — Anti-Dumping and Countervailing* (WTO 2010), though the WTO Appellate Body ruled that certain Chinese SOEs do not constitute "public body" in the meaning of the SCM Agreement (WTO 2011, p. 225), the U.S. still opined that the involvement of SOEs is unfair trade (WTO 2011, p. 83). To some extent, the vagueness of WTO rules makes it difficult for the WTO to regulate unfair trade in a more effective way. Obviously, at least to the U.S. and some other countries, WTO rules should be substantially amended to capture a broader range of trading conducts.

Operationally, the U.S. "attack" on the WTO, especially its Appellate Body, also suggests that the function of the WTO should be improved. In fact, many of the U.S. criticisms of the WTO are shared by other countries. Since the U.S. has vowed its disapproval of the WTO regime, the issue of WTO reform has quickly attracted global attention, especially among trading powers, such as the EU and Japan. Up to the present, a number of reform proposals have been made, but no agreement has been achieved.

In the long run, neither the isolation of China nor the erosion of U.S. credibility is beneficial to global trade governance. Thus, regardless of the result of the trade war, it is necessary for the international community to start reflecting on fair trade. On the one hand, political willingness and legal efforts should be devoted to build consensus on fair trade. Yet, it seems that inadequate attention has been devoted towards this end, even the bilateral negotiations between China and the U.S. seem far from successful. On the other hand, it is necessary for the consensus building process to be realized on a multilateral basis, which implies that the WTO, or a reformed WTO, should play a key role in this process.

## Disclosure statement

No potential conflict of interest was reported by the authors.

## Notes on contributors

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