



The Bottom Line

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CHINA TARIFFS UNDER ATTACK

Summary

The punitive tariffs levied on Chinese products by the U.S. administration are under attack in both the Court of International Trade and the World Trade Organization.

Background

The Trade Act of 1974 (Section 301) authorizes the President to take all appropriate action, including retaliation, to obtain the removal of any act, policy or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce. In August 2017, the President instructed the U.S. Trade Representative to investigate China's unfair trade practices. The results, announced in March 2018, concluded that China does engage in activities, including foreign ownership restrictions on business in China, requirements for technology transfer to Chinese entities, investment in U.S. firms to obtain cutting-edge technology and intellectual property, supporting and conducting unauthorized intrusions into computer networks of U.S. companies, and manipulation of Chinese currency to inflate the cost of U.S.-manufactured goods in China. Starting in June 2018, punitive tariffs have been levied against Chinese products.

The World Trade Organization (WTO) was established with six key objectives: (1) to set and enforce rules for international trade, (2) to provide a forum for negotiating and monitoring further trade liberalization, (3) to resolve trade disputes, (4) to increase the transparency of decision-making processes, (5) to cooperate with other major international economic institutions involved in global economic management, and (6) to help developing countries benefit fully from the global trading system. The United States has taken action to undermine the arbitration authority of the WTO and has threatened to withdraw completely from the agreement. Since 1995, members have filed more than five hundred disputes with the WTO. Each dispute is heard by a panel which consists of three of the seven Appellate Body's jurors. Jurors serve four-year terms, which are staggered so that Members do not begin and end their terms at the same time. The U.S. has been blocking appointments of new

replacement jurors and as a result, the Appellate Body no longer has the minimum three members necessary to hear disputes and issue rulings.

Current Status

The case being heard by the U.S. Court of International Trade alleges that Section 301 of the Trade Act requires that the U.S. Trade Representative act within 12 months after the initiation of the relevant investigation. List 3 and List 4 of the products subject to China tariffs fall outside that window. The case also alleges violations of the Administrative Procedure Act—that the decision process “bears no resemblance to the standards that the APA demands.”

The World Trade Organization undercut the main justification for President Donald Trump's trade war against China, saying that American tariffs on Chinese goods violate international rules. A panel of three WTO trade experts on Tuesday said the U.S. broke global regulations when it imposed tariffs on Chinese goods in 2018. Washington has imposed levies on \$400 billion in Chinese exports. The panel said in its report “that the United States had not met its burden of demonstrating that the measures are provisionally justified.”

Impact

Because the Trump administration has already paralyzed the WTO's appellate body, Washington can effectively veto their decision by lodging an appeal at any point in the next 60 days. The case in front of the Court of International Trade (USCIT) won't be so easily sidestepped. The United States Court of International Trade was established under Article III of the Constitution and has nationwide jurisdiction over civil actions arising out of the customs and international trade laws of the United States. A ruling for the plaintiff in this case would render all duties collected on List 3 and List 4 products subject to refund.

Resources:

[HMTX Industries vs. U.S.](#) (Court of International Trade)

[U.S. Violated Trade Rules with Tariffs on China](#) (Bloomberg)

[WTO Issues Report for U.S. Tariffs on Chinese Goods](#) (WTO)