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A China With More Clout Awaits Biden at the WTO

Beijing has become more active in cases and cast itself as a defender of the group's top court.



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HONG KONG—President Biden has said he plans to work with allies to keep pressure on China, but at the World Trade Organization the U.S. will be facing a rival in Beijing that has become a more dominant force in recent years.

Skepticism toward the WTO in successive U.S. administrations translated into policies, such as blocking judges to its top court, that have largely gutted its ability to serve as an international arbiter of trade disputes.

At the same time, Beijing has cast itself as a defender of the WTO and its top court, fueling its stature within the organization. That has helped China to blunt calls for changes to its state-controlled economy, which other members say distort the market.

Major Player

China has gone from being largely a bystander to the WTO's most prolific third-party participant, a role that can influence hearings.

World's most active participants in WTO adjudication, by number of cases

China 217
Japan 173
EU 171
India 141
U.S. 112

Note: Period covers 2001-2020

Source: WTO

“For the foreseeable future, China will partake actively in WTO discussions and initiatives, without offering major concessions at the negotiating table,” said Harvard University law professor and trade expert Mark Wu.

Mr. Biden's team has said that he would lift the U.S. blockade on judges but that the pandemic and U.S. economic recovery could take precedence over trade.

A delay would be a mistake, said James Bacchus, a former Democratic congressman from Florida who served twice as the chairman of the WTO's Appellate Body, its top court. “The rest of the world is not going to wait for the U.S.,” he said.

Beijing's influence has grown as it shows signs that, after a long history of losing its cases before the WTO's court, its record might be improving, particularly as it challenges U.S. trade policies imposed under President Donald Trump.

China won a landmark ruling against the U.S. in September. A WTO panel agreed with Beijing's charges that Washington's 25% tariffs levied in June and September 2018

breached the WTO's most-favored-nation rule, which prohibits discrimination among trading partners. The U.S. is appealing the ruling.

“Most of the trade measures taken against China by the Trump administration are illegal under the WTO,” said Mr. Bacchus, who was critical of Mr. Trump’s trade policies. “I anticipate China will win many of those cases.”

The U.S., starting with the Obama administration, has long criticized the WTO for rulings against Washington’s use of certain trade remedies, such as the U.S. methodology for calculating penalties in trade dumping cases. Accusing the tribunal of overreach, Washington began to block the selection process for judges to the WTO court in 2016.

The Trump administration, which argued that the WTO’s dispute-settlement system needed an overhaul, extended the blockade, making the court inoperable in December 2019.

“The U.S. objects to any arrangement that would perpetuate the failings of the Appellate Body, which the U.S. has cataloged in detail,” Mr. Trump’s WTO ambassador, Dennis Shea, wrote in a letter to the WTO in June, opposing efforts to revive its judicial function.

In the past decade, China has been using the WTO’s dispute-resolution system more frequently and getting more involved in other cases. Largely a bystander when it joined 20 years ago, China is now the world’s most active participant in disputes at the organization.

Beijing has lodged 13 complaints since 2011, after filing eight in the prior decade. It joined 54% of all cases as a third party—meaning a noncontestant permitted to influence hearings—twice that of the U.S. since 2001.

It is embroiled in 39 disputes with the U.S., trailing only the number of disputes between Washington and Brussels. The clash extends even to the continuing contest over the next WTO director-general, as Beijing and the Trump administration backed different candidates.

China has also been dealt numerous setbacks at the WTO. The most prominent among these was Beijing's high-stakes bid, filed in December 2016, to end China's status as a nonmarket economy at the WTO. The label gives its trade adversaries wide authority to impose punishing antidumping duties—as high as 1,700%, valued at billions of dollars—whenever they win.

Practice Makes Perfect

Unlike many other economies, China has filed more complaints in its more recent years at the WTO than at the beginning of its membership.

Beijing sent high-level emissaries—including China's WTO ambassador, Zhang Xiangchen—to the opening of the panel reviewing its status in Geneva in December 2017. “Normally, I do not attend panel hearings in disputes,” he said.

Then, in May 2019, on the verge of a ruling, China requested that the panel be suspended. Analysts say it is likely that the panel was poised to reject China's complaint, reaffirming a bedrock of international trade law designed to account for the price-distorting potential of a state-controlled economy. Beijing didn't explain its retreat, and its Foreign Ministry declined to comment.

Despite the setbacks, Beijing has cast itself as a linchpin of defending the WTO's top court. China backed the European Union last year in establishing an interim process to resolve disputes, which Washington opposed and Tokyo didn't join.

Offensive Measures

China shaped its rising clout at the WTO by showing up more in global trade adjudication, and increasingly targeting winning cases.

The measure provides an appeal hearing for members until the WTO court is restored and began seating judges in August. It is available only to members who sign up. Signatories have risen to at least 23 from 16 since its launch in April, including U.S. partners such as Australia, New Zealand and Canada.

The U.S. and the EU had hoped that admitting China to the WTO in 2001 would spur an overhaul of its economic policies, but they have made little headway against Beijing, which has campaigned for only “necessary reform.”

As Beijing has worked more closely with Europe on WTO issues in recent years, Brussels has indicated that its appetite for pushing Beijing to make changes may be waning.

It wouldn't be helpful “for the EU to focus its proposals for common initiatives on bilateral issues that are controversial for the EU and China, such as trade-distorting subsidies for state-owned enterprises and the trade impact of forced technology transfer,” the EU said in a May position paper on EU-China trade and investment.

China and the EU agreed in principle last month on an investment accord promising Europe greater access to Chinese markets in exchange for commitments from Beijing to end forced technology transfer and improve transparency on subsidies for companies. U.S. officials have expressed concerns that the pact could help China to deflect pressure for a broader overhaul of its policies.

China's complaints at the WTO

<u>YEAR</u>	<u>TARGET</u>	<u>SUBJECT</u>
2002	U.S.	China joins EU complaint on U.S. duties on steel imports
2007	U.S.	U.S. duties on China's coated free sheet paper exports
2008	U.S.	U.S. tariffs on steel pipe, tubes, and other products
2009	U.S.	China poultry exports to U.S.
2009	U.S.	Steel fastener tariffs
2009	U.S.	Vehicle and light truck tire tariffs
2010	EU	Footwear tariffs
2011	U.S.	U.S. tariff methodology for shrimp and diamond sawblades
2012	EU	Renewable energy tariffs

<u>YEAR</u>	<u>TARGET</u>	<u>SUBJECT</u>
2012	U.S.	U.S. alleged 'double dip' in countervailing and antidumping duties

<u>YEAR</u>	<u>TARGET</u>	<u>SUBJECT</u>
2012	U.S.	U.S. probes on solar panels, steel pipes, and other Chinese exports
2013	U.S.	U.S. methodology in antidumping penalty calculations
2015	EU	Poultry tariffs
2016	U.S.	China's WTO status as a non-market economy
2016	EU	China's WTO status as a non-market economy
2018	U.S.	Solar power cells
2018	U.S.	Trade war tariffs
2018	U.S.	Trade war tariffs
2018	U.S.	Trade war tariffs
2018	U.S.	U.S. rules on domestic content in renewable energy
2019	U.S.	U.S. Trade war tariffs

President Xi Jinping has put an emphasis on the WTO as central to its efforts on global trade, saying in 2017 that the group is crucial to “promoting China’s transformation from a big trading nation to a powerful one.”

“For our nation, WTO reform is a complex and difficult multilateral game, with a long way to go,” said Huo Jianguo, a former trade negotiator for China, now vice chairman of state-run think tank China Society for WTO Studies. “We must expose in this the narrow-minded intentions of the U.S.”