

# How to Use the World Trade Organization to Deal with China

*Riley Walters*

## KEY TAKEAWAYS

A perception that the WTO has failed to curb many of China's worst practices has led some to suggest the U.S. should leave the organization.

In reality, the U.S. benefits from being in the WTO more than any other member—and should be filing more complaints against China at the WTO.

Congress and the Administration should push back against China's growing illiberalism, and the WTO is a necessary tool with which to do so.

According to many observers in Washington, during the past 20 years the World Trade Organization (WTO) has failed to address many of China's worst economic practices. This has led some policymakers to go as far as to suggest the U.S. should leave the organization—even though the U.S. benefits from being in the WTO more than any other member, and trade is extremely popular among Americans. Some of these misgivings about the WTO may come from a failure to understand the organization's limitations. The WTO primarily focuses on trade issues and is not a tool that can be used against every problem arising out of China's fall back into state authoritarianism.

Criticisms of the WTO have never stopped the U.S. from winning cases against China before, and it should not stop the U.S. from mounting a full-court press against China's worst economic practices now.

---

This paper, in its entirety, can be found at <http://report.heritage.org/ib6022>

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

The U.S. should be filing more complaints against China at the WTO, including a systemic case against China's continued failure to protect intellectual property. The Trump Administration is already working with like-minded partners to deal with China's bad practices, but these efforts need to be intensified if China's practices are truly a critical focus of the U.S. government. Congress and future administrations need to push back against China's growing illiberalism, an effort that could take years—and the WTO is a necessary tool with which to do so.

## Taking China to Court

Both the U.S. and China have been members of the WTO for nearly 20 years. The U.S. helped create the WTO in 1995, and it helped China to join in 2001. Since 1995, there have been a total of 596 disputes at the WTO. Of these, the U.S. has filed 23 complaints against China, was the subject of 16 complaints by China, joined other WTO member's cases against China nine times, and even joined China in its cases against other members four times.

The Office of the U.S. Trade Representative (USTR) publishes an annual report on China's compliance (and non-compliance) to its WTO commitments—a report required by the U.S.–China Relations Act of 2000.<sup>1</sup> These reports highlight many of the successful disputes brought against China at the WTO, but also highlight many of the ways China continues to fail to uphold its commitments. These reports, along with a 2018 report on China's practices related to intellectual property, could form the foundation for multiple and significant cases against China at the WTO.<sup>2</sup>

**“Developing Country” Status.** The Administration has also highlighted a number of other concerns about China's membership in the WTO that could easily be dealt with, including China's position that it is the world's “largest developing country.”<sup>3</sup> Developing-country status can give WTO members certain benefits, like a longer transition period for WTO agreements. There is no criteria for being a developing country, and this allows members like China to self-identify as one. While this made sense for China in the late-1990s when the gross national income (GNI) per person was about \$1,000, now China's GNI per person is well over \$10,000, which is considered upper-middle-income status according to the World Bank.<sup>4</sup> The U.S. can easily identify a ceiling for what it considers a developing country—and refuse to negotiate with any WTO member above this level still trying to claim developing-country status.

**WTO Limitations.** There are other concerns about the WTO that are not China-specific, but make it harder to deal with China through the WTO.

One concern is the WTO's limitations. The WTO has limited agreements concerning trade-related labor and environmental issues, investment, or for addressing the role of state-owned enterprises used by non-market-oriented economies like China's. The other concern is the lengthy time it takes to litigate cases at the WTO.

These concerns should be taken up in an effort to reform the WTO. And the U.S. should work to get enough success on reforms that it can see clearly to allow for a quorum for the WTO's appellate body to hear disputed cases—though the currently diminished state of the appellate body should not stop the U.S. from filing disputes in the meantime. While getting all 164 members of the WTO to agree on something is nearly impossible, the U.S. can begin by negotiating side agreements and preferential trade agreements toward reform with its largest trading partners.

## Encouraging the USTR to Use the WTO More

The U.S. has the tools it needs to address some of China's worst economic practices. But failure to use all the tools it has, including using the WTO as much as possible, may go to show that Washington still is not taking the China challenge as seriously as it should.

To use the WTO against China, the Administration should:

- **Bring more dispute cases at the WTO.** The U.S. has benefited the most from the WTO than any other member, but the U.S. cannot continue to benefit if it is not using the system. The U.S. should file, encourage other members to file, and join other members' complaints against China at the WTO.
- **File a dispute against China's continued failure to protect intellectual property.** China has failed to uphold many of its WTO ascension commitments—including theft and technology-transfer practices. Bringing a case at the WTO is more likely to affect China's bad economic practices than some unilateral actions.
- **Clarify the U.S. position on the WTO's developing-country status.** In early 2019, the Trump Administration clarified how some countries take advantage of the WTO's developing-country status. Some countries, including Brazil, Singapore, South Korea, and Taiwan, have since agreed to give up this status. For the sake of future negotiations at the WTO, the U.S. should no longer recognize countries above

the World Bank's lower-middle-income upper per capita GNI threshold (currently \$4,045) as having "developing" status.<sup>5</sup>

- **Continue Trump Administration efforts to work with the European Union and Japan on non-market-oriented economies.** In 2017, the Trump Administration started working with like-minded partners in the European Union and Japan to address the non-market practices in countries like China, including its significant industrial subsidies.
- **Negotiate preferential free trade agreements.** Reform at the WTO can be slow. Side agreements at the WTO and preferential free trade agreements, like those with Georgia, Japan, Kenya, Switzerland, Taiwan, and the United Kingdom, can help lay the foundation for economic prosperity.<sup>6</sup>
- **Push for WTO agreements on digital commerce, services, and investment.** The WTO is limited to the agreements of its members. The more agreements between members, the more the WTO can be used to resolve these disputes.
- **Shorten the time it takes to establish a dispute panel and implement a dispute ruling.** Dispute litigation at the WTO can run longer than the dispute problem exists. Decreasing the time these take can shorten litigation by as much as a year.<sup>7</sup>

## Conclusion

There are some legitimate concerns about the WTO—but nothing that should stop the U.S. from using it as much as possible in the meantime. The China challenge is real, and Washington needs to use all the tools at its disposal.

**Riley Walters** is Senior Policy Analyst and Economist in the Asian Studies Center, of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation.

## Endnotes

1. U.S.–China Relations Act of 2000, Public Law 106–286.
2. Office of the U.S. Trade Representative, “Section 301 Report into China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation,” March 27, 2018, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/march/section-301-report-chinas-acts> (accessed October 26, 2020).
3. “China Remains Largest Developing Country: Economist,” *Xinhua*, April 15, 2018, [http://www.xinhuanet.com/english/2018-04/15/c\\_137113119.htm](http://www.xinhuanet.com/english/2018-04/15/c_137113119.htm) (accessed October 21, 2020).
4. World Bank, “World Bank Country and Lending Groups,” <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups> (accessed October 21, 2020).
5. *Ibid.*
6. Riley Walters, “A U.S.–Taiwan Free Trade Agreement in 2020,” Heritage Foundation *Issue Brief* No. 5034, February 3, 2020 <https://www.heritage.org/trade/report/us-taiwan-free-trade-agreement-2020> (accessed October 26, 2020).
7. James Bacchus, Jeremie Waterman, and Erin Ennis, “The WTO and the China Challenge,” Heritage Foundation *Lecture* No. 1299, November 30, 2018, <https://www.heritage.org/trade/report/the-wto-and-the-china-challenge>.