The WTO: The Other Side of the Trade War

Oscar Ugarteché

The President of the United States has sabotaged the appointment of judges to the WTO Court of Appeals, an instance that is used if one of the parties disagrees with the initial arbitration decision. The World Trade Organization was promoted by the United States in 1990 leading to the 1994 Marrakesh Conference with the objective of opening economies and having greater flows of world trade. The mechanism was the arbitral tribunals. Now with the globalization process in retreat, it has rendered those tribunals inoperative and is dismantling the multilateral body created for that purpose is being dismantled.

According to Marcelo Olarreaga of the University of Geneva, "If you ask me what I think the U.S. administration's strategy today is to get rid of the WTO because then the U.S. can do whatever it wants... It wants to impose U.S. rules on all countries." This could leave as a dispute resolution mechanism the courts of the Southern District of New York, which were used in the landmark Elliot v. Argentina case, with Judge Griesa. It would be absolute unilateralism. The impartiality or in any case the perception of impartiality that an arbitral tribunal should have would be lost.

The sabotage of the WTO appellate courts by the United States is longstanding, since G.W. Bush to the present. The appellate court should have seven judges, but under Presidents George W. Bush, Barack Obama and Donald Trump - new judges have been prevented from being appointed to protest the WTO's operation because they insist on its principle of exceptionality and that the U.S. Constitution does not allow a foreign court - in this case appellate judges - to replace a U.S. court. Everything indicates that if they thought that the WTO would be an instrument of global dominance, it did not work and it was a boomerang.

---

1 Senior Researcher at the Instituto de Investigaciones Económicas UNAM, Coordinador www.OBELA.org, member of the Academia Mexicana de las Ciencias.
3 http://datos-bo.com/Economia-a-Finanzas/Analisis/Los-fondos-buitres-y-el-horrendo-antecedente-Elliot
In 2018, after a U.S. campaign to block the appointment and renewal of judges in both courts; on September 30 of that year, it prevented the renewal of a judge whose term expired that day, and left three. The terms of two others ended on December 10, 2019, leaving Chinese judge Hong Zhao alone in office until her term ends in November 2020. No case can be heard by her alone because it takes three judges to make a ruling.\(^5\) The WTO, with that, ceased to exist for the practical purposes of the case. The trade war now has no brakes. Neither China nor anyone else has a place to complain. Since international trade contracts are made in U.S. dollars, this leaves U.S. courts as candidates to replace WTO courts. America über Alles.

There have been 592 cases filed with the WTO between January 1995 and December 2019; 120 decisions were taken in the appellate court, covering 162 of those cases. The others were abandoned or decided outside the WTO. What emerges is that Americans are bad losers and worse competitors. For example, the lawsuit against Airbus Industries for the subsidies it receives from the European Union, wanted to avoid facing the problem that Boeing manufactures some aircraft that will not fly again soon, according to experts.\(^6\) In any case, the lawsuits against Airbus Industries obviate the fact that the aircraft manufacturers have a concentrated oligopoly (Boeing, Airbus, COMEC), that without a regulator of international trade will set the prices it wants, and that they live on military contracts with the State.

At the beginning of December 2019 the United States has before the WTO, 124 cases as complainant and 155 cases in complaints against them in a universe of 31 countries that complain about it. The European Union has 194 cases as complainant and 86 in complaints against them in a universe of 18 countries in complaints against them. China has 21 cases as a complainant and just 44 cases in complaints against them in a universe of 4 countries in complaints against them.\(^7\) Closing the WTO courts makes sense for the country against which there are more complaints from more countries, and which furthermore does not believe in free trade. Using its own courts on this horizon makes sense to apply the principle of power, as was done in the case of Argentina and Elliot. This is a State decision that accompanies the trade war and favours its companies, but also allows it to fight its weakened commercial hegemony.

---


7. [https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)