

On the Feasibility of Using the WTO Dispute Settlement Mechanism as the Trade Dispute Settlement Mechanism for the "Belt and Road" Initiative

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Abstract

As soon as the Belt and Road initiative was proposed, it attracted great attentions at home and abroad. The dispute settlement mechanism for the Belt and Road initiative has also become a widely discussed subject. Many experts and scholars advocate the establishment of a new dispute settlement mechanism for the Belt and Road. However, there are many different opinions on how to design this new mechanism, and no consensus has been reached yet.

This paper examines how the countries along the Belt and Road routes participate in and make use of the WTO dispute settlement mechanism and compares China's participation with that of the most active representative WTO members among them, such as India and South Korea. Based on this, the article concludes that the WTO dispute settlement mechanism is still the best choice for trade dispute settlement among the countries along the Belt and Road routes at least until a new mechanism is established.

Key Words:

Belt and Road Initiative; Trade Dispute; Dispute Settlement; the WTO Dispute Settlement Mechanism

Foreword

On September 7, 2013, President Xi Jinping delivered a speech at Nazarbayev University in Kazakhstan and advocated the joint construction of the Silk Road Economic Belt. In October of the same year, President Xi Jinping visited ASEAN and proposed the joint construction of the 21st-Century Maritime Silk Road. These two proposals constitute the significant Belt and Road initiative. Over the past four years, from the top-level design to the implementation of the project, Belt and Road has advanced in construction, perfected in development and grown in cooperation.¹

As soon as the Belt and Road initiative was proposed, it attracted great attentions at home and abroad. The implementation of the international economic and trade rules under the initiative cannot be separated from an effective dispute settlement mechanism. Therefore, the dispute settlement mechanism for the Belt and Road has become a widely discussed subject. Many experts and scholars² advocate the establishment of a new Belt and Road dispute settlement mechanism. However, there are many different opinions on how to design this new mechanism and no consensus has been reached.

¹ Xi Jinping and the Belt and Road, see BELT AND ROAD PORTAL, <https://www.yidaiyilu.gov.cn/xwzx/gnxw/6339.htm>, access date: October 22, 2017.

² For representative papers, see Qi Tong, The Belt and Road and the International Economic and Trade Dispute Settlement Mechanism; Jiang Shengli, On the Establishment of International Trade Dispute Settlement Mechanism under the Strategic Background of the Belt and Road; Gu Minkang, How to Solve Disputes under the Belt and Road; Liu Jingdong, Construction of a Just and Reasonable Dispute Settlement Mechanism under the Belt and Road, etc.

The author favors the view of Professor Qi Tong from Wuhan University. Under the Belt and Road initiative, when establishing dispute settlement mechanism, parties should give full consideration to and analyze the operation of the current international system. This strategy should be incorporated to make the dispute settlement mechanism suitable for the national conditions of China and the countries along the Belt and Road routes and serve to promote the construction of the Belt and Road. At the same time, the conception of the dispute settlement mechanism should be farsighted. Based on the vision of global governance and integration, China should promote the coordination and unification of international economic and trade rules instead of aggravating the fragmentation of them. Under the Belt and Road initiative, China should not only work on Alternative Dispute Resolution (ADR) and dispute prevention mechanisms, but also consider how to utilize and improve the existing judicial and semi-judicial mechanisms for settling international economic and trade disputes. This is also an important aspect of raising China's voice in global governance.³

At this stage, due to the following reasons, it seems inappropriate to abandon all existing mechanisms for settling international disputes, including the WTO dispute settlement mechanism, and set up another: on the one hand, the current concept of the dispute settlement mechanism for the Belt and Road is not yet mature or perfect, and many problems have not been solved or arranged properly. There is a lack of operability. On the other hand, even if the concept is perfect, it will take a long process to realize it. It will not be accomplished in a single step. Then how should we settle any disputes arising before the new mechanism takes effect?

The WTO dispute settlement mechanism is the backbone of the current multilateral trading system. It aims to settle disputes through a stronger and more binding mechanism in order to help ensure that the WTO trade rules reached after serious negotiations are respected and implemented. It has abandoned political power showing offs and become a relatively peaceful dispute settlement mode in international politics and economic and trade relations.

In the field of international trade, the WTO dispute settlement mechanism is regarded as a model. Its status is unshakable and should be actively maintained. As the most representative and important international economic and trade cooperation organization, WTO enjoys the reputation of the economic UN. Its dispute settlement mechanism is highly regarded as the pearl of the WTO Crown and the most successful global trade dispute settlement mechanism: since the WTO was formally established on January 1, 1995, the WTO Dispute Settlement Body (DSB) has heard more than 500 international trade disputes successfully.⁴ Its credibility and effectiveness are beyond doubt.⁵

This paper examines how the countries along the Belt and Road routes participate in and make use of the WTO dispute settlement mechanism. It also compares China's participation with that of other major active WTO members among them, such as India and South Korea. Based on this, it concludes that the WTO dispute settlement mechanism is still the best choice for trade disputes among the countries along the Belt and Road routes at this stage or at least before the new Belt and Road dispute settlement mechanism is established.

³ Qi Tong: The Belt and Road and the International Trade and Economic Dispute Settlement Mechanism, <http://www.wtolaw.org.cn/newsitem/277868625>, access date: October 22, 2017.

⁴ See the official website of the WTO: https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm, access date: October 25, 2017.

⁵ Jiang Shengli, On the Establishment of International Trade Dispute Settlement Mechanism under the Strategic Background of the Belt and Road, *Journal of Yunnan University (Law Edition)*, 2016, (1), pp. 77-78.

I. Theoretical Analysis on the Feasibility of Using the WTO Dispute Settlement Mechanism to Settle Trade Disputes among the Countries along the Belt and Road Routes

According to information on BELT AND ROAD PORTAL, there are a total of 68 countries along the Belt and Road routes, of which 54 have joined the WTO. The remaining 14 countries (Palestine, East Timor, Ethiopia, Bosnia and Herzegovina, Turkmenistan, Lebanon, Syria, Bhutan, Iran, Azerbaijan, Belarus, Iraq, Serbia and Uzbekistan) are not WTO members. From a quantitative point of view, the WTO members account for 79.4% and the non-WTO members account for only 20.6%. Among the 14 non-WTO members, except for Palestine and Turkmenistan, the remaining 12 countries are observers of the WTO. The basic requirement of the WTO for an observer is that the state must start the accession negotiations within five years after it becomes an observer, except for the Holy See. Therefore, the 12 countries that are observers of the WTO have begun accession negotiations one after another and are in the process of entering the WTO. It is only a matter of time before such observer countries eventually become WTO members. After becoming a member of the WTO, such countries will apply the WTO dispute settlement mechanism to settle any trade disputes with China and other WTO countries. However, at this stage, due to the restriction of the status of non-WTO member, these 14 countries cannot resort to the WTO dispute settlement mechanism directly to settle trade disputes. However, if we examine the trade environment and economic development level of the 14 non-WTO members, it is clear that these countries are at a rather low level of economic development. Among them, Timor-Leste and Ethiopia are among the least developed countries in the world. Therefore, in practice, the trade and economic ties between China and these countries are very limited. Even if China has a dispute in the course of trade, considering the actual conditions of these countries and adhering to the traditional Chinese thought of “harmony is precious” and the spirit of “mutual benefit and win-win” of the Belt and Road initiative, China should try its best to settle disputes through friendly means such as negotiation. In addition to legal means, establishing a dialogue mechanism between the parties to the dispute, carrying out exchanges through meetings between state leaders or trade representatives and using other methods of political diplomacy including consultation, mediation and conciliation are also important measures for settling disputes.⁶

II. An Empirical Study on the Utilization of the WTO Dispute Settlement Mechanism by the Countries along the Belt and Road Routes

In practice, there are mainly two basic ways for countries participating in the WTO dispute settlement. First, a country gets involved in the case as a party to the dispute, i.e., the complainant or the respondent; most of the developed countries participate in this way. Second, a country gets involved in the case as a third party.⁷ According to

⁶ Liu Jingdong, The Conception of Rule of Law in the Strategy of the Belt and Road, the website of China Law Society: https://www.chinalaw.org.cn/Column/Column_View.aspx?columnID=956&InfoID=14619, access date: October 23, 2017.

⁷ In the context of the WTO dispute settlement, “third party” means any member who has a substantial interest in a matter before a panel and has informed its interest to the DSB (Dispute Settlement Body). The purpose of the third party’s participation in the dispute settlement process lies mainly in expressing its own concerns and understanding of the relevant rules and obligations, thereby affecting the judgment of the panel or appellate body. However,

Article 10 of the DSU, any member having a substantial interest in a matter before a panel and having notified its interest to the DSB shall have an opportunity to participate in the consultation process, the panel process and the appellate body process as a third party.⁸

Table 1: Participation in the WTO Dispute Settlement Mechanism by the Countries along the Belt and Road Routes

Serial Number	Country	WTO Member	As a Complainant		As a Respondent		Third Party
			Total	Sue China	Total	Sued by China	
1	India	Yes	23	0	24	0	129
2	New Zealand	Yes	9	0	0	0	42
3	Montenegro	Yes	0	0	0	0	0
4	Lithuania	Yes	0	0	0	0	0
5	Palestine	No	-	-	-	-	-
6	Afghanistan	Yes	0	0	0	0	0
7	Pakistan	Yes	5	0	3	0	10
8	Croatia	Yes	0	0	1	0	0
9	Oman	Yes	0	0	0	0	11
10	Yemen	Yes	0	0	0	0	0
11	Jordan	Yes	0	0	0	0	0
12	Indonesia	Yes	11	0	14	0	22
13	Myanmar	Yes	0	0	0	0	0
14	East Timor	Observer	-	-	-	-	-
15	United Arab Emirates	Yes	0	0	1	0	3
16	Ethiopia	Observer	-	-	-	-	-
17	Bosnia	Observer	-	-	-	-	-
18	Turkmenistan	No	-	-	-	-	-
19	Latvia	Yes	0	0	0	0	0
20	Albania	Yes	0	0	0	0	0
21	Estonia	Yes	0	0	0	0	0

compared with the parties to the dispute, the third party cannot obtain any actual trade benefit from the award of the case. See Han Liyu: Let Bygones Be Bygones -- Study on the WTO Dispute Settlement Mechanism, Peking University Press, 2009 edition, p. 447.

⁸ See https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm, access date: October 23, 2017.

22	Slovenia	Yes	0	0	0	0	0
23	Lebanon	Observer	-	-	-	-	-
24	Bahrain	Yes	0	0	1	0	2
25	Egypt	Yes	0	0	4	0	10
26	Syria	Observer	-	-	-	-	-
27	Philippines	Yes	5	0	6	0	15
28	Brunei	Yes	0	0	0	0	0
29	Bhutan	Observer	-	-	-	-	-
30	Thailand	Yes	13	0	4	0	73
31	Vietnam	Yes	3	0	0	0	28
32	Israel	Yes	0	0	0	0	8
33	Armenia	Yes	0	0	1	0	0
34	Bangladesh	Yes	1	0	0	0	1
35	Cambodia	Yes	0	0	0	0	0
36	Hungary	Yes	5	0	2	0	2
37	Iran	Observer	-	-	-	-	-
38	Laos	Yes	0	0	0	0	0
39	Qatar	Yes	3	0	0	0	3
40	Moldova	Yes	1	0	1	0	3
41	Malaysia	Yes	1	0	1	0	9
42	Mongolia	Yes	0	0	0	0	0
43	Poland	Yes	3	0	1	0	1
44	Romania	Yes	0	0	2	0	0
45	Saudi Arabia	Yes	0	0	1	0	33
46	Singapore	Yes	1	0	0	0	32
47	Azerbaijan	Observer	-	-	-	-	-
48	Czech Republic	Yes	1	0	2	0	0
49	Belarus	Observer	-	-	-	-	-
50	Georgia	Yes	0	0	0	0	0
51	Iraq	Observer	-	-	-	-	-

52	Kyrgyzstan	Yes	0	0	0	0	0
53	Kazakhstan	Yes	0	0	1	0	10
54	Kuwait	Yes	0	0	0	0	1
55	Maldives	Yes	0	0	0	0	0
56	Macedonia	Yes	0	0	0	0	0
57	Nepal	Yes	0	0	0	0	0
58	Bulgaria	Yes	0	0	0	0	0
59	Serbia	Observer	-	-	-	-	-
60	Slovakia	Yes	0	0	3	0	0
61	Tajikistan	Yes	0	0	0	0	0
62	South Africa	Yes	0	0	5	0	7
63	Korea	Yes	17	0	16	0	114
64	Ukraine	Yes	7	0	4	0	17
65	Russia	Yes	6	0	8	0	39
66	Sri Lanka	Yes	1	0	0	0	3
67	Turkey	Yes	4	0	9	0	75
68	Uzbekistan	Observer	-	-	-	-	-

It can be seen that in the 68 countries along the Belt and Road routes, in terms of the number of WTO complaints filed proactively, India (23 cases) and South Korea (17 cases) are the two most active countries, followed by Thailand (13 cases), Indonesia (11 cases), Ukraine (7 cases), Russia (6 cases), the Philippines (5 cases), Pakistan (5 cases), Turkey (4 cases) and so on.

India is a founding member of the WTO and was also one of the sponsors of the General Agreement on Tariffs and Trade (GATT) in 1947. India became a member of GATT on July 8, 1948 and signed the Final Document of the Uruguay Round of the GATT on April 15, 1994, thus becoming a founding member of the WTO. In the WTO, for a long time, the leaders of developing countries are India and Brazil because they are founding members. China is a freshman in the WTO, while Russia did not join the WTO until 2012.⁹ Korea joined the GATT on April 14, 1967 and joined the WTO as a founding member when WTO was established in 1995.

Table 2: Statistics on Participation in the WTO Dispute Settlement Mechanism by the Countries along the Belt and Road Routes

Serial Number	Country	Number and Object of Complaint	Number of being Sued and the Complainant
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⁹ See China's First Ambassador to the WTO, Sun Zhenyu: Does the WTO Still Work? http://www.360doc.com/content/17/0207/18/22953_627321558.shtml, access date: October 25, 2017.

1	India	23¹⁰ (4¹¹) Poland (1), the United States (10), Turkey (2), European Community/EU (7), South Africa (1), Brazil (1), Argentina (1)	24¹² (2¹³) The United States (6), European Community (10), Australia (1), Canada (1), New Zealand (1), Switzerland (1), Bangladesh (1), Chinese Taipei (2), Japan (1)
2	New Zealand	9 (4) Hungary (1), the European Community (1), India (1), Canada (1), the United States (2), Australia (1), Indonesia (2)	0
3	Pakistan	5 (2) The United States (2), Egypt (1), EU (1), South Africa (1)	3 (1) The United States (1), European Community (1), Indonesia (1)
4	Croatia	0	1 (1) Hungary (1)
5	Indonesia	11 (3) Argentina (1), the United States (3), South Korea (1), South Africa (1), EU (2), Australia (2), Pakistan (1)	14 (3) EC/EU (2), Japan (2), the United States (4), New Zealand (2), Brazil (2), Chinese Taipei (1), Vietnam (1)
6	United Arab Emirates	0	1 (1) Qatar (1)
7	Bahrain	0	1 (1) Qatar (1)
8	Egypt	0	4 (3) Thailand (1), Turkey (1), the United States (1), Pakistan (1)
9	Philippines	5 (1) Brazil (1), the United States (1), Australia (2), Thailand (1)	6 (1) The United States (4), South Korea (1), European Community (1)
10	Thailand	13 (3) The European Community (1), Hungary (1), Turkey (1), the United States (5), Colombia (1), Egypt (1), the European Community (3),	4 (2) Poland (1), the European Community (1), the Philippines (1), Brazil (1)
11	Vietnam	3 (1) The United States (2), Indonesia (1)	0

¹⁰ The total number of disputes.

¹¹ The total number of disputes between the countries along the Belt and Road routes.

¹² The total number of disputes.

¹³ The total number of disputes between the countries along the Belt and Road routes.

12	Armenia	0	1 (1) Ukraine (1)
13	Bangladesh	1 (1) India (1)	0
14	Hungary	5 (5) Slovakia (1), Czech Republic (1), Romania (1), Turkey (1), Croatia (1)	2 (1) Argentina, Australia, Canada, New Zealand, Thailand, the United States (1), Czech Republic (1)
15	Qatar	3 (3) United Arab Emirates (1), Bahrain (1), Saudi Arabia (1)	0
16	Moldova	1 (1) Ukraine	1 (1) Ukraine
17	Malaysia	1 (0) The United States (1)	1 (1) Singapore (1)
18	Poland	3 (1) Thailand (1), Slovakia (1), Czech Republic (1)	1 (1) India (1)
19	Romania	0	2 (1) The United States (1), Hungary (1)
20	Saudi Arabia	0	1 (1) Qatar (1)
21	Singapore	1 (1) Malaysia (1)	0
22	Czech Republic	1 (1) Hungary (1)	2 (2) Hungary (1), Poland (1)
23	Kazakhstan	0	1 (1) Ukraine (1)
24	Slovakia	0	3 (2) Switzerland (1), Hungary (1), Poland (1)
25	South Africa	0	5 (4) India (1), Turkey (1), Indonesia (1), Brazil (1), Pakistan (1)
26	Korea	17 (1) The United States (11), the Philippines (1), the European Community (3), Japan (2)	16 (1) The United States (6), Canada (2), European Community (4), Australia (1), Indonesia (1), Japan (2)
27	Ukraine	7 (6) Armenia (1), Moldova (1), Australia (1), Russia (3), Kazakhstan (1),	4 (3) Moldova (1), Japan (1), Russia (2)

28	Russia	6 (2) The EU (4), Ukraine (2)	8 (3) The EU (4), Japan (1), Ukraine (3)
29	Sri Lanka	1 (0) Brazil (1)	0
30	Turkey	4 (2) Egypt (1), South Africa (1), Morocco (1), the United States (1)	9 (4) Hong Kong, China (1), India (2), the United States (2), Thailand (1), Brazil (1), Ecuador (1), Hungary (1)

Table 2 provides a detailed breakdown of the 30 countries among the 68 countries along the Belt and Road routes that have participated as parties in WTO dispute settlements. Data was collected on the total number of disputes each country participated in as a complainant or a respondent, and the number of disputes between the countries along the Belt and Road routes was further specified. It can be seen that the number of disputes between the countries along the Belt and Road routes accounts for a significant part of the total number of cases. Among the countries, India and South Korea are the most active, although the disputes of the United States and the European Community/European Union (EU) still have the highest share (because the United States and the EU are the most active participants in the WTO dispute settlement mechanism so far). There are also many disputes between the countries along the Belt and Road routes; for Hungary, Ukraine, Pakistan, Turkey, Singapore, Czech Republic and other countries, the WTO dispute settlement mechanism is already the first choice to settle trade disputes with any other country along the Belt and Road routes. Although they have participated in only a few disputes, most of the disputes are with countries along the Belt and Road routes. So far, China has not resorted to the WTO dispute settlement mechanism to settle any dispute between China and any country along the Belt and Road routes (see Tables 1 and 2). However, the practice of using the WTO dispute settlement mechanism to settle trade disputes among the countries along the Belt and Road routes has prevailed for a long time. The first case under the WTO dispute settlement mechanism was the complaint filed by Singapore regarding Malaysia's prohibition of imports of polyethylene and polypropylene.¹⁴ Therefore, it can be foreseen that there may be trade disputes between China and other countries along the routes in the future, and that the WTO will be the best place to settle related disputes. The quasi-judicial procedures provided by the WTO dispute settlement mechanism, ranging from consultations to friendly solutions, panel processes, appellate processes, etc., will powerfully safeguard the proper settlement of disputes.

In the realm of the WTO, countries which are more familiar with the rules will better safeguard their own interests. Since China formally acceded to the WTO in 2001, China has actively participated in the practice of dispute settlement and gradually strengthened its own capacity-building and personnel training. It has grown from a passive participant and executor of rules to an active user and maker of rules.¹⁵ China's overall performance in handling and responding to WTO disputes has been steady and orderly. China has achieved a significant transformation from learning to using and

¹⁴ Malaysia — Prohibition of Imports of Polyethylene and Polypropylene (WT/DS1), see the official website of the WTO: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds1_e.htm, access date: November 10, 2017.

¹⁵ Li Chenggang, *Game of WTO Rules - Ten Years of Legal Practice on China's Participation in WTO Dispute Settlement*, Commercial Press, 2011 edition, p. ii.

developing. It has steadfastly defended its national interests and strengthened its voice in the WTO dispute settlement mechanism.¹⁶

III. An Empirical Study on China's Participation in the WTO Dispute Settlement Mechanism¹⁷

(I) Overall Situation

Since China's accession to the WTO more than 16 years ago, the number of cases China is involved in under the WTO dispute settlement mechanism has grown steadily. As China gets more involved in the WTO dispute settlement mechanism, China's role and position under the mechanism are also changing quietly. At the beginning, China participated in the dispute settlement process negatively and passively, mainly as a third party. After several years of accumulation and study, China actively participated in the dispute settlement process as a complainant or respondent. Gradually, China became one of the most active participants and users of the WTO dispute settlement mechanism. During this process, China has grown and transformed continuously, completing the transition from a simple follower to a user and maker of the WTO rules.

Table 3: Comparison of Participation in Cases between China and Major WTO Members

Member	As a Complainant	As a Respondent	As a Third Party
The United States	115	130	141
EU	97	84	168
Canada	35	21	121
Brazil	31	16	113
Mexico	24	14	83
<u>India</u>	<u>23</u>	<u>24</u>	<u>129</u>
Japan	23	15	173
Argentina	20	22	60
<u>Korea</u>	<u>17</u>	<u>16</u>	<u>114</u>
<u>China</u>	<u>15</u>	<u>39</u>	<u>141</u>

Note: The data is accurate as of November 10, 2017. Source: The WTO official website

Table 4: Classification Statistics of China's Participation in WTO Disputes¹⁸

Status	Number of Cases Involved in of Each Year (Proportion in the Total Number of WTO Cases That Year)					
	As a Complainant	2002	1 (2.7%)	2008	1 (5.3%)	2014
2003		0	2009	3 (21.4%)	2015	1 (7.7%)
2004		0	2010	1 (5.9%)	2016	2 (11.8%)

¹⁶ Li Chenggang, *Game of WTO Rules - Ten Years of Legal Practice on China's Participation in WTO Dispute Settlement*, Commercial Press, 2011 edition, p. iii.

¹⁷ Referring mainly to Xiao Bing, "China Phenomenon" in *Settlement of the WTO Disputes: An Empirical Review of China's Involvement in Cases*, *Journal of International Economic Law* (Vol. 20 No. 3), 2013, pp. 12-32.

¹⁸ Unless otherwise stated, the data in this chapter on the WTO cases are derived from the statistics of the WTO official website as of November 10, 2017. See https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm#results.

	2005	0	2011	1 (12.5%)	2017	0						
	2006	0	2012	3 (11.1%)								
	2007	1 (7.7%)	2013	1 (5.0%)	Total	15 (2.8%)						
As a Respondent	2002	0	2008	5 (26.3%)	2014	1 (7.1%)						
	2003	0	2009	4 (28.6%)	2015	2 (15.4%)						
	2004	1 (5.3%)	2010	4 (23.5%)	2016	4 (23.5%)						
	2005	0	2011	2 (25%)	2017	1 (7.1%)						
	2006	3 (15.0%)	2012	7 (25.9%)								
	2007	4 (30.8%)	2013	1 (5.0%)	Total	39 (7.3%)						
As a Third Party	2002	19 (51.4%)	2008	7 (36.8%)	2014	12 (85.7%)						
	2003	17 (65.4%)	2009	6 (42.9%)	2015	8 (61.5%)						
	2004	9 (47.4%)	2010	7 (41.2%)	2016	7 (41.2%)						
	2005	6 (50.0%)	2011	4 (50.0%)	2017	2 (14.3%)						
	2006	8 (40.0%)	2012	11 (40.7%)								
	2007	2 (15.4%)	2013	12 (60.0%)	Total	137 (25.8%)						
Number of Cases	2002	1 ¹⁹	19 ²⁰	37 ²¹	2008	6	7	19	2014	1	12	14
	2003	0	17	26	2009	7	6	14	2015	3	8	13
	2004	1	9	19	2010	5	7	17	2016	6	7	17
	2005	0	6	12	2011	3	4	8	2017	1	2	14
	2006	3	8	20	2012	10	11	27				
	2007	5	2	13	2013	2	12	20	Total	54	135	290

If we analyze China's participation in the WTO dispute settlement mechanism after its accession to the WTO carefully, we will find that China's practice has shown distinctive Chinese characteristics. Firstly, since China's formal accession to the WTO on December 11, 2001, the number of cases involving China in the WTO has increased year by year. However, China participated in the WTO dispute cases as a party mainly after 2007. Before 2007, i.e., just after China's accession to the WTO, China seldom participated in WTO cases as a party: from 2002 to 2006, there were only five such cases (China participated in only one case as a complainant and four cases as a respondent) and they can almost be neglected. Secondly, China's participation in consultation processes, panel processes and appellate processes as a third party runs almost through the entire period from China's accession to the WTO up to now. In particular, just after China's accession to the WTO and before 2007, in order to familiarize itself with the WTO rules for dispute settlement and related operations, China has taken part in almost all WTO cases as a third party (see Tables 3 and 4).

According to the statistics in Table 4 above, we can see that China's participation in the WTO dispute settlement mechanism can be roughly divided into two stages: the first stage was from 2001 to 2006 and can be called "the initial stage" or "the transition period". At this stage, China had just acceded to the WTO, and the WTO dispute settlement mechanism was still new to China. China also held a wait-and-see and learning attitude toward it. Therefore, at this stage, China participated in very few cases as a party; instead, China participated in cases mainly as a third party. The second stage runs from 2007 to the present and can be called "the growth period" or "the post-transition period". On the one hand, since 2007, China has been working hard to grasp

¹⁹ The figures in this column show the annual number of WTO cases in which China was a party.

²⁰ The figures in this column show the annual number of WTO cases in which China was a third party.

²¹ The figures in this column show the total number of WTO cases each year.

the rules for the WTO dispute settlement and its operation mechanism. China has been active in the WTO dispute settlement mechanism, which can be seen from the data in Table 3 on China's participation in the WTO disputes as a third party. Compared with the initial stage, China's participation in the WTO disputes as a third party has declined in the second stage, but still maintains a high percentage; at the beginning, China participated in almost every case, but participated in only selected cases in recent years. On the other hand, in the second stage, China participated in more cases as a party. However, it is worth noting that the proportion of cases China participated in as a respondent is still far higher than that of cases China participated as a complainant, which reflects that China is still a relatively passive follower of rules in the WTO dispute settlement mechanism.

(II) Specific Performance

After analyzing the overall situation, in combination with the data, we will examine China's specific performance in the WTO dispute settlement since China's accession to the WTO, i.e., China's participation in the WTO dispute settlement mechanism as a party (the complainant or the respondent) and as a third party.

1. Participation in Dispute Settlement as a Party

Table 5: Comparison of Participation as a Party between China and Major WTO Members

Member	1995-2001		2002-2006		2007-2017		1995-2017		2002-2017	
	N ²²	P ²³	N	P	N	P	N	P	N	P
U.S.	125	51.7%	55	48.2%	65	36.9%	245	46.1%	120	41.4%
EU	89	36.8%	43	37.7%	49	27.8%	181	34.0%	92	31.7%
Japan	21	8.7%	6	5.3%	11	6.3%	38	7.1%	17	5.9%
Korea	17	7.0%	9	7.9%	7	4.0%	33	6.2%	16	5.5%
India	26	10.7%	9	7.9%	12	6.8%	47	8.8%	21	7.2%
Brazil	29	12.0%	7	6.1%	11	6.3%	47	8.8%	18	6.2%
Mexico	17	7.0%	13	11.4%	8	4.5%	38	7.1%	21	7.2%
China	∕	∕	5	4.4%	49	27.8%	54	10.2%	54	18.6%
Total²⁴	242		114		176		532		290	

According to the data in Table 5, we can see that the cases China gets involved in as a party thereto have progressed from none to a few to many. In terms of quantity and proportion, the upward trend is very clear. In particular, after the transition period, China has gotten involved in more cases; in addition, compared with other countries and regions, the proportion of the cases China is involved in has reached 27.8%, far exceeding that of Japan and ranking second in the world along with the EU. This proportion is only 9.1 percentage points lower than that of the US, which ranks first. The number of cases China gets involved in is only 16 fewer than that of the US. This change also illustrates China's transition from the initial negative and passive participation to active participation, together with China's gradual change in position from defense to the balance of defense and attack.

²² N: Number of Cases.

²³ P: Proportion.

²⁴ The total number of cases accepted by the WTO within a specific period of time.

Table 6: Comparison of Status as a Complainant and a Respondent between China and Major WTO Members

	1995-2001		2002-2006		2007-2017		Total		Proportion in Total Cases	
	C ²⁵	R ²⁶	C	R	C	R	C	R	C	R
U.S.	69	56	15	40	31	34	115	130	21.6%	24.4%
EU	56	33	20	23	21	28	97	84	18.2%	15.8%
Japan	9	12	3	3	11	0	23	15	4.3%	2.8%
Korea	6	11	7	2	4	3	17	16	3.2%	3.0%
India	13	13	4	5	6	6	23	24	4.3%	4.5%
Brazil	17	12	5	2	9	2	31	16	5.8%	3.0%
Mexico	10	7	6	7	8	0	24	14	4.5%	2.6%
China	/	/	1	4	14	35	15	39	2.8%	7.3%
									5.2% ²⁷	13.4% ²⁸
Total²⁹	242		114		176		532	(290³⁰)		

According to Table 6, in terms of data and proportion at various stages, for every country, no matter whether it is a developed country, such as the US, the EU, Japan, South Korea and so on, or a developing country, such as India, Brazil, Mexico and so on, there is not much difference between the number of disputes in which the country is a complainant (hereinafter referred to as Number 1) and the number of disputes in which it is a respondent (hereinafter referred to as Number 2). The proportion of disputes in which a country is a complainant (hereinafter referred to as Proportion 1) is basically close to the proportion of disputes in which the country is a respondent (hereinafter referred to as Proportion 2); neither the number nor the proportion has obvious fluctuation. The US ranks first in both the number and the proportion, while the EU ranks second. Compared with other five countries, the number and proportion of the US and the EU fluctuate larger; however, the difference between Proportion 1 and Proportion 2 for the US is only about 3%, so it is similar to the EU. In contrast, the difference between Proportion 1 (2.8%) and Proportion 2 for China (7.3%) is 4.5 %; Number 2 for China is 2.6 times of Number 1 for China. If we study China's situation after it acceded to the WTO only, the difference between Proportion 1 (5.2%) and Proportion 2 (13.4%) reaches 8.2%. This fully shows that China's participation in the WTO dispute settlement mechanism is mainly manifested in the form of being a respondent. Currently, China's main position is still a rule-follower under the WTO dispute settlement mechanism.

In terms of change of roles of different countries at different stages, the patterns of major WTO members in Table 6 can be summarized as follows: (1) the United States

²⁵ C: As a Complainant.

²⁶ R: As a Respondent.

²⁷ The proportion of the number of cases in which China was a complainant to the total number of disputes (there were 290 cases from 2002 to 2017) since China's accession to the WTO.

²⁸ The proportion of the number of cases in which China was a respondent to the total number of disputes (there were 290 cases from 2002 to 2017) since China's accession to the WTO.

²⁹ The total number of dispute cases accepted by the WTO within a specific period of time.

³⁰ There were 290 dispute cases in total from 2002 to 2017.

and the EU: Proportion 1 > Proportion 2 → Proportion 2 > Proportion 1; (2) Japan and South Korea: Proportion 2 > Proportion 1 → Proportion 1 ≅ Proportion 2; (3) India: Proportion 1 ≈ Proportion 2; (4) Brazil: Proportion 1 > Proportion 2; (5) Mexico: Proportion 1 > Proportion 2 → Proportion 2 > Proportion 1 → Proportion 1 > Proportion 2.

Now let us analyze China’s performance: (1) No matter what stage China is at, Number 2 is much larger than Number 1; Proportion 2 (7.3%) is nearly 3 times of Proportion 1 (2.8%), which is much higher than that of any other country. (2) According to the comparison of the three stages in Table 6, China has always been in an “upside down” state, i.e., Proportion 2 > Proportion 1, no matter whether China is in or after the transition period. (3) As can be seen from the data in Table 6, compared with the transition period, after the transition period, both Number 1 and Number 2, together with the proportion thereof, has increased significantly. Among them, Number 1 has risen dramatically and gone far beyond other countries except the US and the EU, while Number 2 has risen to the top, exceeding that of both the US and the EU and reaching 3.2 times the sum of that of the other five countries.

2. Participation in Dispute Settlement as a Third Party

Table 7: Comparison of Participation as a Third Party between China and Major WTO Members

Member	1995-2001		2002-2006		2007-2017	
	Number	Proportion	Number	Proportion	Number	Proportion
U.S.	42	17.4%	29	25.4%	70	39.8%
EU	43	17.8%	38	33.3%	87	49.4%
Japan	45	18.6%	43	37.7%	85	48.3%
<u>Korea</u>	<u>18</u>	<u>7.44%</u>	<u>24</u>	<u>21.1%</u>	<u>72</u>	<u>40.9%</u>
<u>India</u>	<u>32</u>	<u>13.2%</u>	<u>18</u>	<u>15.8%</u>	<u>79</u>	<u>44.9%</u>
Brazil	15	6.2%	33	28.9%	65	36.9%
Mexico	18	7.44%	28	24.6%	37	21.0%
<u>China</u>	<u>/</u>	<u>/</u>	<u>59</u>	<u>51.8%</u>	<u>82</u>	<u>46.6%</u>
Total	242		114		176	

Table 7 divides the cases that China and major WTO members were involved in as a third party into three stages: 1995-2001, 2002-2006 and 2007-2017.

According to the data in the table, except for Mexico and China, the proportion of the cases major WTO members get involved in as a third party is increasing continuously, no matter in which stage the country is and no matter whether the country is a developed one or a developing one. Except for the US, which had a relatively small increase, all the other countries have increased by double or more.

In contrast, the trend of the cases China gets involved in as a third party is the opposite. From 2002 to 2006, China participated in 59 cases as a third party, covering 51.8% of the total number of cases. From 2007 to 2017, although the number of cases China participated in as a third party rose slightly, to 82, the proportion of the number to the total number of cases dropped to 46.6%, a 5.2% reduction.

In the WTO dispute settlement mechanism, the third-party system is rather unique. It not only provides a learning platform for new WTO members, but also provides a

channel for old WTO members to fight for their interests. For China, the third-party system is of special significance. First, just after China's accession to the WTO, China had no understanding of the procedures of the WTO dispute settlement mechanism. China came to understand and master the WTO dispute settlement mechanism mainly through its participation in cases as a third party. Second, the third-party system provides a learning platform for China, saves on costs and simplifies procedures. In a dispute, as a third party, China cannot only get the first written submissions of the parties to the case, but can also attend the hearing convened by the panel specifically for third parties. In addition, according to the provisions of the DSU, the settlement of a case must follow rigorous procedures. A case must go through the consultation process before a party applies for the establishment of a panel, which makes the procedures rather complicated. At the same time, before the panel process, the dispute parties must bear the heavy burden of proof, which requires a great deal of manpower and material resources. However, as a third party, participating in the dispute settlement is relatively economical and simple. Third, the third-party system has protected China's interests in the initial period rather well. Article 10 of the DSU provides that "The interests of the parties to a dispute and those of other Members under a covered agreement at issue in the dispute shall be fully taken into account during the panel process," where "other members" mainly refer to any WTO member participating in a dispute as a third party. When the panel is trying a case, a third party may propose its own demand to the panel according to the provisions of this article. In order to ensure that the outcome of the case is fair and reasonable, the panel will also consider the statements of the third parties. Therefore, while participating in cases as a third party, China is also in a position to safeguard its own interests.

IV. Conclusion

As the most successful mechanism for settling global trade disputes, the WTO dispute settlement mechanism can and should be applied to trade disputes among the countries along the Belt and Road routes. Although there are inevitably some problems and imperfections, in the field of international trade, the WTO dispute settlement mechanism is still regarded as a model of international dispute settlement mechanisms. Its status is unshakable and should be actively maintained. Since China's accession to the WTO, China has changed from a negative and passive observer to one of the most active participants in the WTO dispute settlement. China has completed the process of study, accumulation and application and is now skilled at using the WTO dispute settlement mechanism. Instead of creating a new dispute settlement mechanism for Belt and Road and re-learning and adapting to the new system of rules and regulations, it is better to work to maximize the efficacy of existing mechanisms. In addition, it would be difficult to match and duplicate the success of the WTO dispute settlement mechanism. Therefore, the WTO dispute settlement mechanism is still the first choice for trade disputes among the countries along the Belt and Road routes at this stage, or at least until a new mechanism is established.

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