Why Trump Shot the Sheriffs: 

The End of WTO Dispute Settlement 1.0

Chad P. Bown
Peterson Institute for International Economics
& Trade Talks podcast

Soumaya Keynes
The Economist
& Trade Talks podcast

ASSA Annual Meeting, January 2020
(preliminary)
Outline

1. What is WTO dispute settlement?
2. Where did it come from?
3. Why has the US killed it?
4. What next?
What is WTO dispute settlement?

• WTO members can complain about rule breaking to independent referees

• If arbiters say YES the rules have been broken...
  
  • Either the rule-breaker has to change its ways
  
  • Or the complainant gets to retaliate
What came BEFORE WTO dispute settlement?

- GATT dispute settlement deficiencies
- US use of Section 301 – “aggressive unilateralism”
- Voluntary Export Restraints
The Rise and Fall of Voluntary Export Restraints

Share of US imports covered by demands that trading partners take on VERs, 1972-2019

1986-88 peak of 12%:
- 6.4%: Autos (Japan)
- 3.1%: Multi-Fibre Arrangement
- 1.1%: Steel
- 1.4%: Other (semiconductors, ...)

1995: WTO goes into effect

Source: constructed by the authors with data from Bown (2019)
WTO compromises...

- Voluntary Export Restraints
- Safeguards
- Anti-dumping
- Countervailing Duties
WTO compromises...

• US use of Section 301 — “aggressive unilateralism”

• Binding dispute settlement
...so what happened?
The US DID bring disputes against other countries

Share of WTO disputes as complainant vs Share of world exports, 1995-2016

Source: constructed by the authors.
The US mostly complained about SYSTEMIC issues

US targets of WTO dispute settlement, 1995-2016

Source: constructed by the authors.
Other countries ALSO brought disputes AGAINST the US

Share of WTO disputes as defendant vs Share of world imports, 1995-2016

Source: constructed by the authors.
Countries used WTO dispute settlement to target US trade remedies

Targets of WTO dispute settlement, 1995-2016

Other countries disputes against US
(141 disputes)

Other countries disputes against other countries
(293 disputes)

Systemic issues, 37.6%

Systemic issues, 49.8%

Trade remedies (AD, CVD, SG), 32.8%

Other bilateral issues, 9.2%

Trade remedies (AD, CVD, SG), 53.2%

Other bilateral issues, 17.4%

Other countries disputes against other countries (293 disputes)

Other countries disputes against US (141 disputes)

Source: constructed by the authors.
HOW did the US shoot the sheriffs?

- **Warnings - blocking appointments/reappointments (pre-Trump)**
- **Then... Trump**
  - December 10, 2019
WHY did the US shoot the sheriffs?

WHO has power?

Senate hearing in 2000 reviewing performance of WTO dispute settlement...

“inadequately prepared panelists, who are not reviewed effectively for bias, staffed by international bureaucrats who seek to advance substantive agendas of their own, meet in secret, and can cause a chain of events leading to a reordering of US laws that would ordinarily take the Committees of jurisdiction of the Congress, the two Houses of Congress, and the President acting after serious deliberation.”

Robert Lighthizer & Alan Wolff, 2000
WHY did the US shoot the sheriffs?

US LOST disputes

Accusation: Appellate Body DENIED flexibility the US thought it had negotiated

“I think that the Americans who negotiated that text did a pretty good job. I mean, when I read it, and I think when most American lawyers read it, it looks as though you have created a process whereby there will be a panel, and then there will be an Appellate Body, but that Appellate Body is really constrained. It says that they have to make a decision within 90 days, it says that they can't change the rules and obligations of the parties, you have provisions like Article 17.6 that are supposed to give deference to members in sensitive areas like the anti-dumping laws. So on paper, it appears to look like a reasonable set of rules. In reality, none of those paper protections did the United States very much good at all.”

Source: Trade Talks, Episode 111  ex-USTR GC Stephen Vaughn, 2019
Can we see this in the DATA?

Consistent but not necessarily causal

US imports covered by trade remedies by source, 1975-2019

WHY did the US shoot the sheriffs?

System inadequate when dealing with CHINA

Limits on US defences against China (public bodies)...
...and FRUSTRATION over having to do ALL the heavy lifting

“other countries look to us to carry that burden and are very happy to hold our coat while we do so...but not invest themselves in that effort. Sometimes they are willing to join cases; and on occasion they're willing to initiate cases, and we join them and have in the past. But more often than not, they come to us; they're very happy to have us go and pursue these issues with China, but they don't necessarily invest a huge amount of effort themselves.”

Source: Trade Talks, Episode 93  
ex-USTR Mike Froman
No one aside from the US really brought systemic cases against China alone.
In summary...

• Long-standing concerns over sovereignty and flexibility

• US losing cases

• Not effective enough with respect to new offensive interests
Is the US right?

- Sovereignty – US never FORCED to do anything
- Trade remedies – ESPECIALLY anti-dumping – flawed
- There are legal arguments in favour of US case...
- Very unclear this is the product of a reasoned cost-benefit analysis