

**“If the US Steps Back from ‘Power-Based’ Bargaining:
What are the Implications for Agricultural Trade?”**

Ian Sheldon (Ohio State University)

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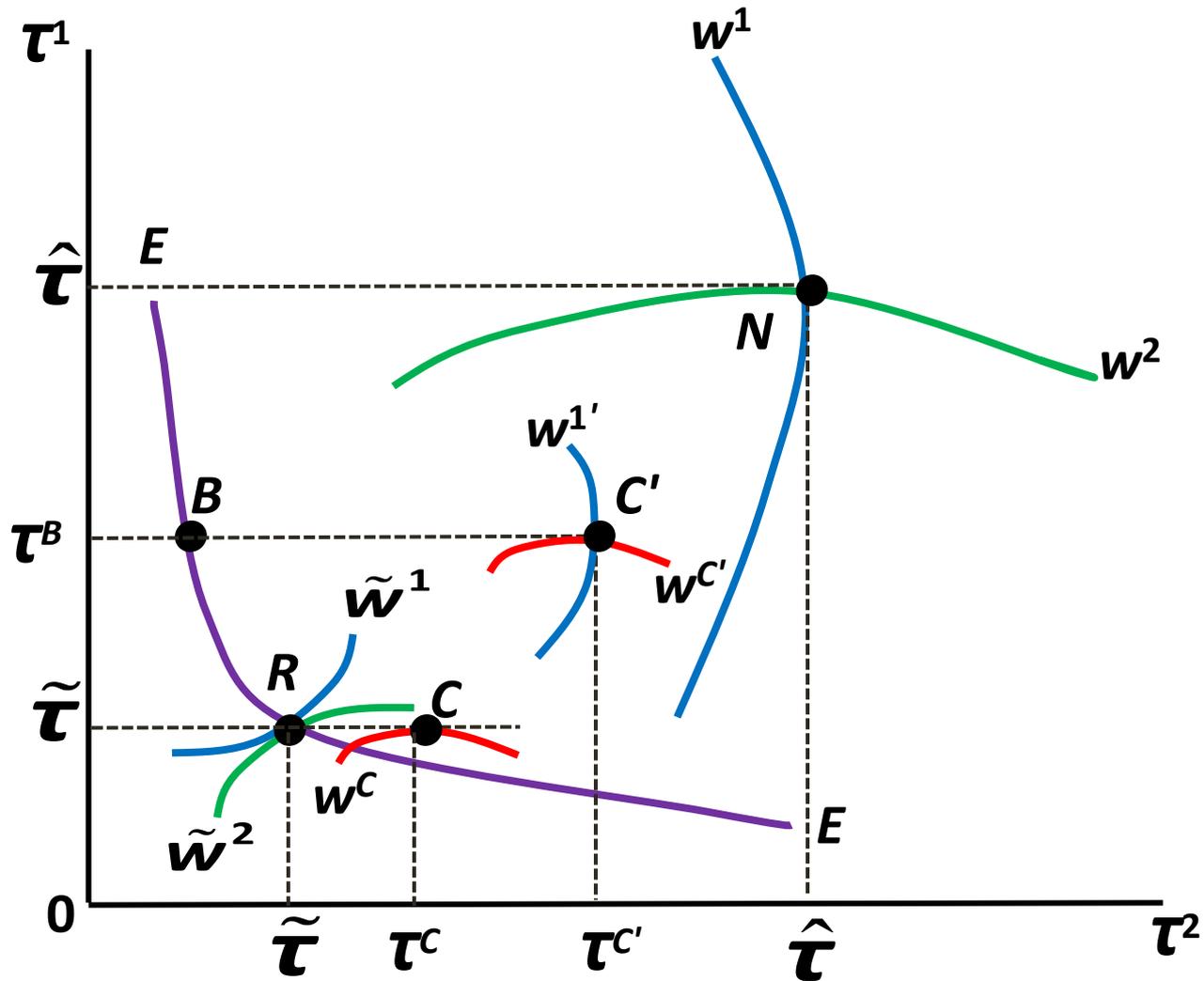
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US Shift to “Power-Based” Bargaining

- **Mattoo and Staiger (2020): US has shifted from “rules-based” to “power-based” approach to trade negotiations**
- **Superficially, it has worked, i.e., 2020/2021 import commitments by China under USCTA**
- **However, does not “...avoid a narrow, deficit-focused bilateral deal...” (Hillman, 2018)**
- **Approach has essentially failed (Sheldon, 2021):**
 - **Pushed average US/Chinese tariffs towards non-cooperative equilibrium, undermining multilateral system**
 - **Come at cost to US consumers, taxpayers, and exporters**
 - **Failed to address issues relating to China’s economic model, and weakness of WTO disciplines on subsidies**

“Power-Based” Bargaining



What has Driven Change in US Approach?

- **US concerns over China's trade and other policies widely documented (USTR, 2018a, 2018b; Morrison, 2018)**
- **Eventually US chose to provoke trade policy "crisis" in 2018:**
 - **China no longer transitioning to market economy – extensive use of explicit/implicit subsidies (Bown, 2019)**
 - **Concerns about ineffectiveness of WTO-permitted remedies, e.g., CVDs (Bown and Hillman, 2019)**
 - **Dissatisfaction with WTO's Appellate Body (AB) and some of its rulings (Pauwelyn, 2019; Bown and Keynes, 2020)**
 - **Lack of WTO negotiating function to develop new trade rules targeted at "China Inc." (Wu, 2016, 2019)**

Where Does Agriculture Feature?

- **Agricultural sector could be deemed as “collateral damage” in trade war after China retaliated against 2018 US tariffs**
- **Compensation to US farmers via MFP and focus on agricultural import commitments in USCTA would certainly support this view**
- **USTR’s (2018b) Section 301 report only touches on agriculture insofar as it relates to Chinese actions on technology transfer and investment in biotechnology**
- **Also, Hillman’s (2018) congressional testimony pushing for a GATT Article XXIII:1(a) case against China focuses only on its non-transparent use of SPS measures**
- **In contrast, USTR’s (2018a) report on China’s WTO compliance contains more discussion of agriculture**

US Concerns Relating to Agricultural Trade

- **USTR's report (2018a) focused on evaluating China's compliance with the URAA's disciplines:**
 - **Market access: TRQ allocation/administration; approval process for GM crops; SPS/TBT measures**
 - **Domestic support: increased spending levels and non-transparency of methodology for calculating support**
 - **Export subsidies: incomplete subsidy notifications**
- **USTR (2018a) notes US filed separate WTO complaints in September and December 2016 respectively:**
 - **China's domestic support for corn, rice, and wheat**
 - **TRQ administration for corn, rice, and wheat**

WTO Dispute Settlement Works?

- **WTO panels established in 2017 for both, with rulings against China in each case - panel reports being adopted in April 2019 (domestic support) and May 2019 (TRQs)***
- **Despite shift to “power-based” bargaining, US has continued to abide by WTO dispute settlement process**
- **US has sought authorization under DSU Article 22.2 to suspend concessions on grounds China is not in compliance with panel ruling(s) relating to domestic support (July 2020) and TRQ administration (July 2021)**
- **US continues to engage in multilateral governance of agricultural trade at same time it has engaged in bilateral bargaining with China through USCTA**

***see Brink *et al.*, (2019) and Orden *et al.* (2019) for details**

Is US Trade Policy Inconsistent?

- **US concerns with China essentially about two broad issues:**
 - **“Behind-the-border” policies, i.e., lack of IP protection, forced technology transfer, unfavorable licensing arrangements, investment restrictions (Morrison, 2018)**
 - **Use of implicit subsidies via “China Inc.” (Wu, 2016)**
- **In case of agriculture, focus is mainly on market access and trade-distorting effects of Chinese domestic support**
- **Inconsistency relates to US policy choices not issues, i.e., substantial agreement among WTO members over China’s economic model (Brown and Hillman, 2019)**
- **If it has worked for agriculture, why not pursue WTO dispute settlement across all issues?**

Logic of US Trade Policy Choices?

- **US imposed national security tariffs and Section 301 tariffs in part because of Chinese economic model (Bown, 2019):**
 - **Chinese trade practices had to be countered**
 - **ADs and CVDs had not worked**
 - **Safeguard tariffs would have been stopped by WTO**
 - **US would not win case at WTO due to “China, Inc.”**
- **Counter-argument: US gave up on formal dispute settlement too soon, i.e., should have filed comprehensive case with its major trading partners (Hillman, 2018)**
- **However, would require AB to deal with interactions in non-market economy – burden of proof too complex (Wu, 2019)**

Why Undermine WTO Dispute Settlement?

- “...Too often members seem to believe they can gain concessions through lawsuits that they could never get at the negotiating table...” (Lighthizer, 2017)
- Beyond rhetoric, real US concerns about AB (Pauwelyn, 2019):
 - Repeated rulings of against US use of trade remedies (Bown and Keynes, 2020)
 - Ruling removing contributions by China’s SOEs from subsidy definition (WTO, 2011)
 - “Judicial over-reach”, and emergence of principle of *stare decisis* in WTO case law (Payosova *et al.*, 2018)
- However, given success of US in winning WTO cases against China related to agricultural trade, why prevent AB from functioning?

Stepping Back from “Power-Based “ Bargaining

- **Bilaterally - US and China could reduce all tariffs to pre-2018 level – note this did not happen in USCTA**
- **Any impact on US market access in agriculture will have to be separated out from ongoing impact of USCTA, and other factors such as China rebuilding its hog production capacity**
- **Before future trade disputes can be brought, need to find way out of AB crisis, allowing judicial arm of WTO to operate, i.e., agree on appointing new AB members (Pauwelyn, 2019)**
- **However, without changes to WTO rules, and functioning of AB, agricultural trade is at risk of being caught in future “crossfire”**
- **Fundamentally, modality required for WTO members to negotiate/update trade rules – especially as regards “China Inc.” and use of subsidies (Bown and Hillman, 2019)**