

## **The WTO Couldn't Change China, so Robert Lighthizer Found Another Way**

*Trump's top trade official, long a critic of the WTO and China, has been busy implementing the approach*

By Greg Ip

After President Trump imposed steep tariffs on Chinese imports in 2018, Beijing did what aggrieved trading partners typically do: It complained to the World Trade Organization. Last month, a WTO panel ruled in its favor, declaring most of the U.S. tariffs violated the organization's rules.

The victory is hollow. The ruling is subject to appeal to the WTO's top court, the Appellate Body, but that body isn't functioning because the U.S. has blocked the appointment of new members. Thus, the "phase one" trade deal the U.S. and China reached in January will, for the foreseeable future, govern their bilateral relationship, not the WTO.

**The outcome formalizes the reset in U.S. trade policy the Trump administration has pursued since taking office in 2017. Mr. Trump hasn't destroyed the global-trading system as some had feared, but he has fragmented it.** Historically the U.S. sought rules and institutions like the WTO that apply equally to everyone. Under Mr. Trump, the U.S. now crafts its own rules, as it has with China, according to what it considers its own best interest.

The approach has attracted criticism as contrary to historic U.S. support for free trade and multilateralism. Yet it is hard to deny that it has an underlying logic. That is in large part thanks to the person most responsible for it, U.S. Trade Representative Robert Lighthizer.

Throughout his long career advising Republican politicians and representing U.S. steel companies hurt by imports, Mr. Lighthizer developed strong views about the many flaws in U.S. trade policy, and how to fix them if he got the chance.

Some of the most important involve the WTO, which in 1995 succeeded the General Agreement on Tariffs and Trade (GATT), set up in the aftermath of World War II to prevent a return to the trade wars of the 1930s. Participants had worried that the GATT's dispute-settlement decisions were too easily circumvented and thus the WTO included an appellate body—a sort of “supreme court”—to which lower panel decisions could be appealed.

Appeals were supposed to be rare, but they are now commonplace, and the Appellate Body, backed by a large professional staff, has increasingly gone beyond ruling on the case at hand to creating a body of jurisprudence to govern future cases. In a report issued earlier this year, Mr. Lighthizer argued that the Appellate Body's enhanced role had turned the WTO from a negotiation forum to a litigation forum. Rather than achieve access to the U.S. market through the painstaking give-and-take of trade negotiations, countries instead ask the WTO to overturn an adverse U.S. trade law or measure. USTR says up to 90% of cases against the U.S. have led to a finding that some U.S. law or measure violated WTO commitments. True, the U.S. brings lots of WTO cases and wins the vast majority, but what Mr. Lighthizer focuses on is that the U.S. is sued more often than anyone else despite having among the world's lowest trade barriers.

“We've had to make changes in our laws, which were never negotiated, never conceded and were never paid for,” Mr. Lighthizer said in an interview. “And the consequences have been, we have fewer people working in good jobs.”

Once in office, Mr. Lighthizer acted: The U.S. began blocking appointments to the seven-member appellate body, with the result it now has too few members to hear appeals of lower panel decisions.

The WTO's next major flaw, in Mr. Lighthizer's view, was admitting China as a member in 2001. The GATT worked because it was between countries with similar political and economic systems. China's authoritarian state-directed economy didn't fit that mold, and

WTO rules couldn't adequately address many of its practices, from currency manipulation to forced technology transfer. The WTO's Appellate Body tilted the rules further in China's favor—for example, by making it difficult to punish anticompetitive subsidies that come via state-owned enterprises, which dominate China's economy.

**Convinced the WTO, which decides by consensus, was structurally incapable of changing China, the U.S. acted unilaterally, dusting off a piece of U.S. legislation, Section 301 of the Trade Act of 1974, to hit China with steep tariffs until it changed its ways.**

**The success and durability of the new, U.S.-centric system of trade arrangements remains to be seen.** Jennifer Hillman, a former WTO Appellate Body member who is now at the Council on Foreign Relations, said the phase-one deal focused too much on reducing the U.S. trade deficit by forcing China to buy more goods without addressing the most problematic aspects of Chinese behavior, such as forcing Western companies to transfer their technology to Chinese competitors, or subsidies. And by acting alone rather than with allies, critics says, the phase-one deal, its ban on Huawei Technologies equipment and similar actions are fragmenting the global market for technology, which will slow innovation and hurt U.S. companies' ability to compete.

Democratic presidential nominee Joe Biden has been particularly critical of Mr. Trump's failure to work with allies on China, and his advisers have signaled that he will unblock appointments to the WTO's Appellate Body.

Yet a growing number of lawmakers, including Democrats, and trade experts, concede the prior policy of trying to change China through engagement didn't work. Mr. Trump's actions may make U.S. allies more, not less, willing to work with it on China. Perhaps the strongest defense of Mr. Lighthizer's approach to managing China is that it beats the status quo. He said: "The fact that it's complicated is not a reason not to try to do it. And even if you have a little extra inefficiency in the system, it's still worth it because the way we [had] it is absolutely crazy. It's destined to fail."

He added: "And the only person who started thinking about this is President Trump, who doesn't mind breaking a little crystal if it's going to get us to a better place."