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1

DW-CHINA TRADE UPDATE (34TH EDITION)

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WTO RULING FINDS U.S. IN VIOLATION OF INTERNATIONAL REGULATIONS BY IMPOSING SECTION 301 TARIFFS ON CHINESE IMPORTS

世贸组织裁决美国对华征收301条款关税违反国际法规

The World Trade Organization (“WTO”) issued a ruling on Tuesday addressing China’s challenge to the United States’ imposition of additional *ad valorem* duties (commonly referred to as “tariffs”) on certain products imported from China since July 2018. As widely known, the Trump Administration’s “Trade War” with China began in earnest after the United States Trade Representative (USTR) concluded that China had been engaging in unfair international trade practices, including the theft of foreign intellectual property. Consequently, the USTR and the Administration, relying on Section 301 of the Trade Act of 1974, took steps to unfold a strategy of penalizing importers of Chinese goods by leveling excessive additional duties in retaliation of such practices. Since its inception, the US placed tariffs ranging from 7.5% to 25% on approximately \$400 billion of Chinese goods. While a process for requesting exclusion from the tariffs was also offered by the USTR, participants in that process realized it was lacking in due process and revealed that the Administration’s decisions over which products received temporary exempt status remained arbitrary and capricious.

世界贸易组织在周二做出裁决，针对中国对美国自2018年7月起对部分中国商品加征额外从价关税（通常称为“关税”）对美国发起的诉讼。众所周知，在美国贸易代表办公室声称中国一直以来采用包括窃取外国知识产权等不公平的国际贸易行为之后，特朗普政府展开了与中国的“贸易战”。因此，美国贸易代表办公室和美国政府根据《1974年贸易法》第301条，采取步骤，通过加征额外关税的策略来惩罚中国商品的进口商，以报复这些行为。自该策略实施以来，美国陆续对价值将近4千亿美元的中国商品加征了7.5%至25%不等的关税。尽管美国贸易代表办公室制订了一个关税豁免的程序，但是参与过该豁免申请流程的当事人普遍认为该申请流程缺乏正当程序，且表示政府关于哪些产品获得临时豁免地位的决定是武断且反复无常的。

In its WTO challenge, China asserted that the additional duties imposed by the USTR violated certain articles in the General Agreement on Tariffs and Trade 1994 (GATT 1994). Specifically, China requested:

2018年中国在世贸组织提起的诉讼中声称美国贸易代表办公室对中国商品加征额外关税违反了1994年《关税和贸易总协定》中的某些条款。其中中国做出了如下具体要求：

- The Panel find that the United States violated Article I: 1 of the GATT 1994 through its application of additional tariffs that apply only to products originating from China; and
- 专家组裁定美国由于仅对中国商品加征附加关税从而违反了1994年《关税和贸易总协定》第一条款。

- The Panel find that the United States violated Articles II: 1(a) and (b) of the GATT 1994 through its application of additional tariffs in excess of those contained in its Schedule of Concessions and Commitments (i.e., original rates in Column 1 of the HTSUS).

- 专家组裁定美国施加的附加关税税率超过了其在《承诺减让表》(即，美国协调关税表第一栏所列的原始税率) 中所载关税，从而违反了1994年《关税和贸易总协定》第二条款中的1(a) 和 (b) 条。

After nearly two years of investigating the matter, on Tuesday, the WTO panel of three trade experts in its [Ruling](#) found that the United States’ imposition of Section 301 tariffs violated international trade rules because the Section 301 tariffs only applied to products from China and not products from other WTO member nations: “The US has not provided an explanation that demonstrates how the imposition of additional duties on the selected imported products contributes to the achievement of the public morals objective as invoked by the US.” In defense of China’s argument that the tariffs violated the WTO’s most-favored treatment provision, the United States asserted that its actions were justified as necessary to protect the US’s “public morals,” pursuant to Article XX(a) of the GATT 1994. According to the United States, China’s unfair practices in IP and technology transfer violated the public morals prevailing in the United States.

经过对此诉讼将近两年的调查，由三名贸易专家组成的世贸组织专家组在[裁决](#)中表示美国加征301条款关税违反了国际贸易规则，因为301条款关税仅仅适用于来自中国的产品，而非其他世贸组织成员国的产品，“美国并未提供解释来证明对特定产品征收附加关税有助于实现美国提出的公共道德的目标。”对于中国提出的关税违反“世贸组织最惠国待遇”条款论点，美国辩称其加征关税是为了保护美国“社会公德”，是根据1994年《关税和贸易总协定》第二十 (a) 条款所采取的必要行动。美国认为中国在知识产权和技术转让方面的不公平做法违反了美国的公共道德。

Although the panel did not question the evidence of China’s unfair practice, the WTO panel ruled against the United States because it failed to substantiate how the imposition of Section 301 tariffs is necessary to protect the public morals invoked by the United States. Specifically, the WTO panel agreed with China’s argument that the basis for the United States to grant an exclusion to certain products subject to Section 301 tariffs pertains to “economic consideration,” rather than “public morals.” In other words, the end (being, resolving China’s alleged bad acts”) did not justify the means of applying tariffs to all Chinese products, with limited and unspecified exceptions.

尽管专家组没有对中国有关不公平做法的证据提出质疑，但世贸组织专家组裁定美国加征关税的行为违反规定，因为美国未能证实301条款关税的加征对保护美国援引的公共道德是必要的。具体而言，世贸组织专家组同意中国的论点，即美国对某些受301条款关税限制的产品给予关税豁免是基于“经济因素”而非“公共道德”。换句话说，对所有中国商品（除了少数且未经详细说明了的豁免）加征关税的行为并不能说明加征关税的目的（即，指出中国所谓的不公平行为）是正当的。

US Trade Representative Robert Lighthizer immediately released a statement, criticizing the WTO decision “[as] completely inadequate to stop China’s harmful technology practices.” Sounding like an aggrieved party handed an unfavorable jury decision, Lighthizer justified the US’s actions by insisting that they were only intended to protect US “innovators, workers, and businesses billions of dollars every year.” (A representation actually never proven). Doubling down on the Administration’s claim that the WTO is ineffective in protecting US interests and has favored China far too long, Lighthizer’s comments were completely expected and consistent with the Administration’s intent to reshape global trading norms by favoring bilateral trade deals and shunning a unified system overseen by the WTO. In fact, the WTO has become a buzz word for the Administration’s attack on globalism and the deep state – tag lines that have only continued to reverberate throughout this election season.

美国贸易代表罗伯特·莱特希泽立即发表声明，批评世贸组织的裁定“完全不足以阻止中国在技术转让方面所采取的有害做法”。听起来像是一个利益受损方得到了一个不利于自己的陪审团裁决，莱特希泽代表坚持认为美国加征关税的行为仅旨在保护美国的“创新者，工人和企业每年数十亿美元的利益”（尽管这个说法从未被证实）。反复指责世贸组织不能有效地保护美国的利益且长久以来支持中国，莱特希泽代表的评论在意料之中并且与美国政府试图通过支持双边贸易协议，绕开世贸组织这一统一体系来重塑全球贸易规则的意图相吻合。事实上，世贸组织已成为美国政府攻击全球主义和深层政府的常用词 – 这些口号将在整个选举季持续回响。

While the WTO’s decision has significant implications for international rules of engagement in global trade, you can expect that little fanfare will be made of such news in the US. The Trump Administration is expected to quietly appeal the decision, pushing its consequences off into the future. A future that is opaque at best, in light of the US’s actions to cripple the WTO’s appellate body for the last several years. Therefore, while Beijing is expected to run a victory lap, followers should expect that the tariffs will continue in the US, as before, until domestic policy makers or legislators reel in the current Administration’s authority under the US Trade Act. With a presidential election looming in the US, it is unlikely any changes will be seen until 2021. Apart from the direct impact (or lack thereof) to the continuation of the Section 301 tariffs, it is the Administration’s dismissive attitude towards the WTO and its role as global referee that remains the most significant fall out of this latest development. While imperfect, the WTO has traditionally allowed member nations to resolve trade disputes without significant global upheaval. To this end, President Trump has signaled in the past that he intends to withdraw from the WTO and has already expressed his displeasure with the ruling; perhaps, this decision and the US’s reaction to it is the final straw.

虽然世贸组织此次的裁定对全球贸易的国际规则有重大影响，但可以预料的是，这种新闻在美国将不会被大肆宣传。预计特朗普政府将悄悄地对这一决定进行上诉，将其后果推到未来。鉴于美国在过去几年中削弱世贸组织上诉机构的行动，这个未来充其量是不透明的。因此，虽然北京方面预期会展示一圈胜利，但关注者应该料到美国会一如既往的继续加征关税，直到美国国内政策制定者或立法者们根据《美国贸易法》收敛现任政府的权力。随着美国总统大选的临近，在2021年前不太可能看到任何变化。除了继续

加征301条款关税带来的直接影响（或缺乏）之外，美国政府对世贸组织及其作为全球贸易裁判的角色的轻视态度依然是这一最新进展中最重要的结果。尽管世贸组织并不完善，但其传统上允许成员国在不引起重大全球动荡的情况下解决贸易争端。为此，特朗普总统在过去曾表示其打算退出世贸组织的意图且已经对此次裁定表示不满。或许，世贸组织此次的裁定以及美国对此的反应会是压垮他们的最后一根稻草。

As we have done since the summer of 2018, our Team will continue to follow these stories and report any new developments.

自2018年夏季以来我们的团队一直在关注贸易方面的进展并报告任何最新动态。我们将持续关注并提供最新消息。

Postscript: Litigation continues to be brought in the Court of International Trade by aggrieved companies looking to challenge the Administration’s actions with respect to the Section 301 Tariffs, and while no decisions have been made which lessen the severity of the tariffs, we expect both private and public attacks on the tariffs to continue. For more information regarding these lawsuits, we urge you to contact us directly.

附言：受关税影响的公司依旧不断地向国际贸易法庭提起诉讼来挑战美国政府加征301条款关税的行为。尽管目前尚未对降低此类关税的严重影响做出任何裁决，但是我们预计官方和非官方对关税的抨击将会继续。如果您希望进一步了解这类诉讼的进程，我们建议您直接联系我们

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