



INTERNATIONAL JOURNAL OF TRENDS IN EMERGING RESEARCH AND DEVELOPMENT

INTERNATIONAL JOURNAL OF TRENDS IN EMERGING RESEARCH AND DEVELOPMENT

Volume 2; Issue 6; 2024; Page No. 204-209

Received: 23-08-2024
Accepted: 26-10-2024

WTO dispute resolution via public-private collaboration: Enabling developing nations

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DOI: <https://doi.org/10.5281/zenodo.15820152>

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Abstract

The World trading Organization (WTO) was established as a result of the Uruguay Round negotiations, which aimed to revive the world trading system and establish guidelines for it. The World Trade Organization's Dispute Settlement System's structure is examined at in this thesis, along with the growing problems and flaws it faces, mainly in terms of developing countries. Looking at the Public-Private Partnership (PPP) approach and making it better within the framework of developing nations is the primary goal of this research. The Uruguay Round accomplished a great deal more than expected, notwithstanding the pessimism around its potential success due to worries about growing dependency.

Keywords: World trading organization, public-private partnership, dispute settlement body, international organizations, institutional environment

1. Introduction

In order to assist developing nations in resolving their disputes, the Advisory Centre on WTO Law (ACWL) was established in 2001. As an alternative to the WTO, ACWL was established to empower developing nations, such as the least developed countries (LDCs), to produce their voices heard. rights under the DSU. Services include seminars, internships, legal advice on WTO law, assistance in WTO dispute resolution processes, and more. As of 2012, ACWL has a legal team of twelve in-house attorneys, twenty outside law firms, and two individuals.

The WTO Dispute settlement Body (DSB), established by Article 2 of the WTO, is in charge of overseeing the administration of dispute settlement procedures. Although it is founded on consensus, it turns the concept on its head, preventing any one member from obstructing crucial decisions. The Panel and Appellate Body's decisions must be accepted by the DSB suggestions. The winning Member in a dispute might seek punitive actions, and the DSB will allow them. In a sense, these choices are made

automatically.

A public-private partnership (abbreviated as PPP, 3P, or P3) is a long-term contract between public and private sector organisations. Typical In collaborations between the public and commercial sectors (PPPs), private companies give money to the government. initial funding for public projects and services and then collecting payments from those same investors or from taxpayers and/or service users in order to turn a profit. Numerous nations have used public-private partnerships, which are most often employed for infrastructure projects. Construction, furnishing, operation, and maintenance of educational institutions, healthcare facilities, transportation networks, and water and sewage systems have all made use PPPs, or public-private partnerships, even though they are not mandated.

Public-private partnerships (PPPs) are contentious because some believe the public does not get a good return on investment (ROI) compared to the private funder. Public-private partnerships (PPPs) have many commonalities with privatization and the outsourcing of public services.

Evaluating the effectiveness of PPPs is made more difficult by the obscurity surrounding their financial information. Proponents of PPPs stress the importance of risk sharing and innovation creation, while opponents point to the greater costs and problems with accountability as reasons to reject them. For example, there is conflicting and often inaccessible evidence about how much money PPP saves and how well it works performance.

It's best to say that a PPP is up for debate. There is a vast variety of long-term contracts that might fall under this umbrella, each with its own unique finance structures, transparency standards, and risk distributions. The new public management, neoliberalism, and globalization forces Late in the 20th century, the ones responsible for the conceptual and practical progress of PPPs. Major entities have defined the phrase, even though there is no official agreement on what it means.

Making good use of the WTO DSU's provisions can improve the organization's ability to protect and enforce its rights, open up more markets to developing nations, and help those nations become more integrated into the world's trade method. All of these things will make the legitimacy of the World Trade Organization governance institution and a place to resolve international trade disputes. This study is introduced and defined by these arguments when read in conjunction with the aforementioned features of WTO DSU.

2. Literature review

Chen, Cheng et al. (2012) ^[1]. Through an analysis of citizen participation in two troublesome projects in Taiwan and China, this paper investigates the dynamics and outcomes of citizen attempts to oppose the expenses imposed on them by public-private partnerships for infrastructure. In both instances, the government-investor relationship was the main emphasis of the design and procurement phases, leaving no clear avenue for public input and shifting costs onto consumers. In Taiwan, where the institutional environment was more responsive and open, citizen opposition (voice) was more successful in preventing expenses during the operational phase; in the case of China, the availability of other highways (choice) was essential.

Kennedy, Matthew. (2016) ^[3]. In order to have access to a functional dispute resolution process that may approve trade penalties, the TRIPS Agreement was implemented inside the WTO. However, the WTO Dispute Settlement process Understanding and TRIPS are founded on separate procedures that emerged under GATT and WIPO. By analyzing how the WTO handles intellectual property disputes, Matthew Kennedy's book highlights the difficulties brought about by the integration and autonomy of TRIPS inside the trading organization. He draws a comparison between the treatment of conflicts over intellectual property between countries before and after the World Trade Organization was formed. The problems with intellectual property that people face in the real world are used as examples in this book. come up under the 1994 GATT, TRIPS, DSU, and other WTO accords. These include substantive treaty interpretation and disputes, procedural problems, and remedies including cross-retaliation.

Public-private partnerships have potentially significant prospects for developing nations' growth and development,

according to a critical analysis of several studies. The yield gap in many developing nations that import food is mostly explained by inadequate public sector funding for agriculture and a deficiency in Businesses should have good reasons to operate in areas without markets. However, the public and private sectors may collaborate in productive ways. to make agriculture more sustainable in poor countries. One example is public-private partnerships (PPPs). It's an agreement including at least two governmental and private sectors that lets them share ownership, risks, work together, and cooperate. These relationships are usually long-term in nature and contribute to one or more tasks including organising, gathering materials, and doing tasks as required to achieve a common objective established by the partners. In addition to lowering risk and uncertainty, it speeds up implementation, lowers life cycle costs, and maximizes risk of agricultural projects. It also offers chances for community mobilisation, technical management, information management, and the financial empowerment of farmers and women. It enables the public sector to benefit from the effectiveness of the private sector and efficiency. It also has some drawbacks since agriculture suffers from issues related to raw material availability, procurement methods, and rate setting, which hinders partner coordination and collaboration. The idea and significance of public-private partnerships in agriculture, as well as their many forms, dimensions, effect, and constraints, were all thoroughly reviewed in this research.

The paper's goal aims to investigate the practice of establishing public-private partnerships throughout the world and how it is used in the Republic of Kazakhstan's present economic situation. The analytical technique was the most popular research approach. The research also made use of synthesis, systematicity, comparison, induction, and deduction techniques. The development of a strong dependence on a state's public-private partnership's institutional mechanism on international organisations and provisions that lead to Both formal and casual international structures, global business networks, and voluntary organizations. There are also states. is a characteristic of the international institutional environment made up of world-renowned nations. This is what makes the study novel. The authors demonstrate how, in a world that is becoming more interconnected, the institutional subjects of public-private partnerships engage both domestically and internationally. The fact that public officials, as members of a group of states, create networks of contacts with other organisations that, in collaboration with private capital representatives, create ideas and state plans for public-private partnerships that are based on a common set of norms set of foreign laws decides the study's practical significance.

The goals of international business in recent decades have been to accomplish economic development and improve society while safeguarding the environment and natural resources for coming generations. Implementing Public-Private Partnerships (PPPs) that promote robust and green infrastructure as well as improved living circumstances is necessary for the "greening" of the economy. While the need for products like wood or furniture, for instance, is a natural objective in and of itself, an effective heating system powered by village-wide electricity cogeneration may assist cut carbon emissions and energy consumption, which will

lower the contractor's overall life cycle costs. Green PPP initiatives may provide social and health advantages in addition to financial gains from reduced operational expenses. This study goal is to look at the history and finest practices of green PPPs as cutting-edge investment options. The authors identify them as a tool for sustainable development with a focus on their new aspects after reviewing their place in the plan for sustainable growth around the world and analysing a number of case studies. Their implementation in the EU is also taken into consideration.

3. Taking part in the WTO DSU is good for both member states and businesses

As part of a timed process of debate, lawsuit, and execution, the Members of the World Trade Organisation (WTO) are allowed to protect and improve their access to international markets by disputing foreign trade practices and implementing their own measures. By lowering trade obstacles and increasing international commerce via multilateral regulation, WTO DSU aims to boost a country's total economic growth and development.

Companies who deal in international commerce are the ones that mostly reap the advantages of WTO DSU involvement in terms of getting into more areas. The WTO DSU rules say that only states can bring issues to the organization. This means that non-state entities are not directly entitled to any remedies or rights under the rules. Still, the main goal of methods for resolving conflicts is to make sure that the business interests of corporate groups are protected. There is more and more case law on international trade law is largely based on efforts to regulate the actions and disputes of exporters and importers, two groups that stand to gain and lose from trade regulations.

An improvement in living standards and general growth may be achieved via the expansion of investment possibilities and the creation of new jobs made possible by increased international commerce and open markets. To be more specific, countries may benefit from WTO dispute resolution experience by increasing their knowledge and understanding of international trade law. With this knowledge, you can find trade practices in other countries that don't follow WTO rules and use WTO conflict settlement rules to get them changed. To protect the trade interests of their businesses in the face of what may be a "shadow of a potential WTO litigation," governments can benefit from developing negotiation methods that allow them to confidently utilize WTO rules. These strategies can be used to friendly settle (and diffuse) trade problems. After noting that "the career of most cases does not lead to full-blown trial and adjudication but consists of negotiation and manoeuvre in the strategic pursuit of settlement through mobilization of the court process," Galanter refers to this procedure as "litigotiation." Once emerging nations have mastered the art of litigation, they may move on to enhancing their bargaining skills.

The conditions under which Member States may trade with one another can be improved with better litigation and negotiation tactics, and as a result, with an expanded capability to issue credible lawsuit threats. Their respective economic sectors and society as a whole stand to gain even

more from this, on top of the already substantial social and environmental advantages. Thanks to how Issues with important raw resources, green technology, and consumers were interpreted and clarified by the Panels and Appellate Body. welfare, public health, and purely social concerns, the WTO dispute settlement process has expanded beyond commerce and into areas beyond law and economics. Therefore, it is easy to see how WTO DSM may provide extensive economic and non-economic advantages for governments and businesses, even when Member States have minimal legal representation. But these advantages vary from nation to country and instance to instance.

A country's potential to reap the advantages of participating in WTO DSUs may be affected by factors such as the kind of dispute, the likelihood of winning and the execution of the judgment, its bargaining power, and its capacity for retaliation. As an example, even when a WTO-inconsistent policy harms a Member State's trade interests, a state with weak retaliatory capabilities and negotiating leverage may choose not to use DSU provisions. This is particularly true when a powerful trade partner or nation with superior negotiation, litigation, or retaliatory capabilities maintains the disputed policy. In addition, following unsuccessful bilateral negotiations with an offending Member State, a country may opt not to initiate formal action if the time and money needed to settle the dispute outweigh the benefits, or if the social, diplomatic, or political aspects of the dispute outweigh the economic ones.

In addition, the high cost of resource mobilization for DSU participation and low economies of scale are common challenges for countries with modest absolute trading stakes and small market sizes¹⁰. This is due to the fact that removing trade barriers that are incompatible with the World Trade Organization may incur non-economic expenses, such as litigation, which may be too high for their profit margins and trade volumes to warrant. The primary reason for this is because the expenses of litigation inside the WTO do not take into account the economic stakes or market size of the nation that is disputing anything. That is why it is unlikely that a small-stakes nation would participate in WTO DSU more than once. These nations would have little motivation to improve their internal dispute resolution capabilities in order to reap the advantages of WTO DSU if they participate at such a low rate. Due to the lack of established monitoring institutions, information repositories, and in-house knowledge, as well as the potential need to hire economic consultants and lawyers from other countries, as well as to acquire information and evidential documents from outside sources, low economies of scale are often associated with high start-up costs. Thus, a country's economic sector may not reap the full economic gain that would otherwise result from a trade barrier's elimination due to the high expense of WTO litigation.

To further demonstrate this association, let's look at China and India as instances. They are both members of the WTO's developing nations group and have low per capita incomes, yet they've both taken use of the DSU rules. A somewhat positive and equal link exists between the worth of China's and India's exports and the number of times they appear in the WTO DSU as complaint, responder, or third party is shown, respectively, in Figures 1 and 2.

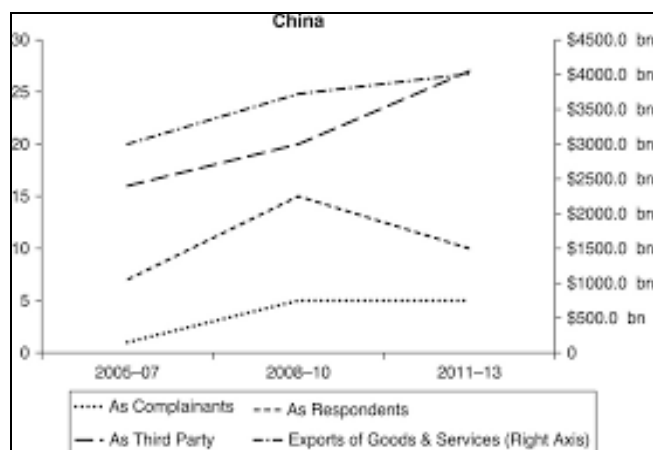


Fig 1: Exports of goods and services in China vs. membership in the WTO DSU

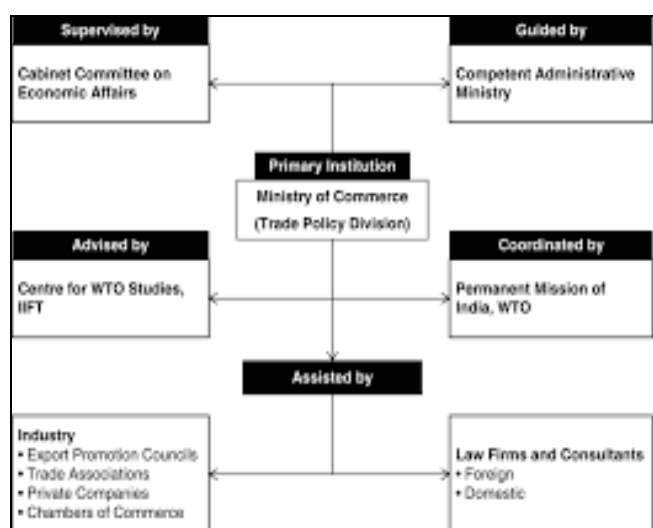


Fig 2: India's exports of products and services in contrast to its WTO membership DSU

4. Developing countries: Meaning and classification

Developing nations were defined as those whose economies "... [could] only support low standards of living and [were] in the early stage of development" according to the 1947 General Agreement on Tariffs and Trade (GATT). Due to its self-classification approach, the World Trade Organisation agreements have neither defined or classified the word. By using factors like as gross national product per capita, human capital, and economic vulnerability, the United Nations defines and classifies some nations as least developed (LDCs), and the WTO follows this criterion.

The World Trade Organization's method of self-classification has led to a diverse and wide range of "developing countries," which includes both little economies dependent on subsistence farming and big, rising economies like India, China, Brazil, and Mexico. Countries with high per capita incomes, like Korea and Argentina, are on one extreme of the spectrum. On the other hand, this category includes the least developed nations, which have very low GDP and income per person.

How developed these countries are, how big their markets are, and what their foreign trade goals are varied

industrialized nations are wildly different from one another. In addition, their level of involvement at WTO DSU varies greatly; some have been very active participants, while others have been rather inactive. As an example, Cuba has only ever lodged a single complaint with the WTO DSU, and Brazil has reacted to sixteen of them, out of thirty total complaints made between 1995 and 2017. Finding and analyzing the strengths and shortcomings of common techniques that any member "developing" nation may use to defend its WTO rights is therefore neither feasible nor helpful.

In order to accomplish this goal, it focuses on the perspectives and experiences of developing nations that, as of April 15, 2017, belong to the World Trade Organisation and are categorised by the World Bank as middle-income nations (MICs). These comprise nations with high, middle, and lower middle incomes. Businesses that are micro, small, or medium-sized (MICs) have outpaced global economic growth, and they are more eager than ever to utilize WTO DSU to defend local policies, open up new markets, and create jobs. The use of WTO DSU to reestablish and secure access to international markets has progressed, especially among major MICs like Brazil, China, India, Mexico, and Thailand. Some of the MICs who use DSU the most have been complainants, responders, and third parties. parties a total of three times, as shown in Table 1.

Table 1: Taking part in the WTO DSU by middle-income countries (1995–2017)

Income Group	Respondents			Total
	High income	Upper-middle income	Lower-middle income	
Complainants:				
High income	25.6%	20.5%	25.6%	71.8%
Upper-middle income	7.7%	7.7%	10.3%	25.6%
Lower-middle income	2.6%	0.0%	0.0%	2.6%
Total	35.9%	28.2%	35.9%	100.0%

The three MIC users who use DSU the most nations are Brazil, India, and China (BIC), as seen clearly in Table 1. Mexico and Thailand follow suit in terms of involvement. This chart further shows that MICs, especially bigger ones, have been more at ease acting as third parties in the conflicts than as complainants or responders. While it's understandable that the top three DSU users would want to stay out of the expensive litigation system, it's clear they're still interested in DSM based on their high participation rate as third parties.

5. The choice of China to join the WTO

China joined the World Trade Organisation. It's already included in a number of other foreign groups. (WTO) in 2001 as its 143rd member. This marked a significant shift in China's commerce, with its merchandise trade value increasing from \$516.4 billion in 2001 to \$4.1 trillion in 2017, largely due to tariff reductions. Despite a higher in 1992, the world average weighted tariff rate was 7.7%, but this year it was 32.2%, China's tariffs have remained stable, hovering around 4.8% from 2003 to 2017. In 2018, due to persistent trade tensions, China began increasing taxes on US imports. The country's membership marked a significant A big step forward for China's economic expansion and integration into the global trading system.

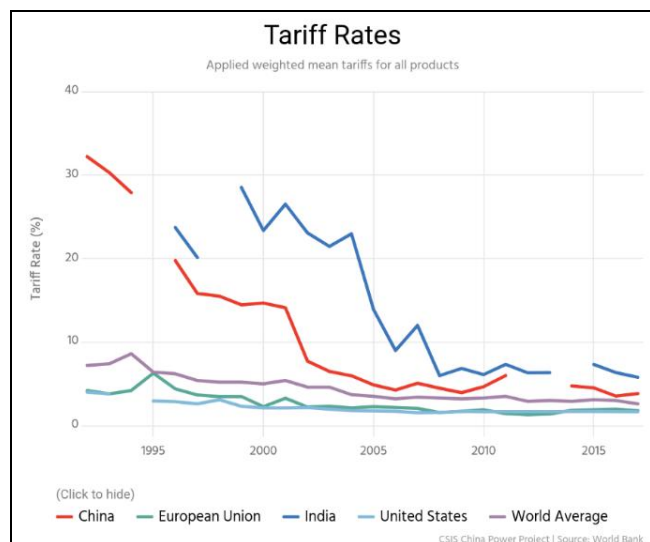


Fig 3: Tariff Rates

6. China's experience as part of the system for dispute settlement

The figures in this section are calculated from disputes filed until the end of 2019. One explanation for China's perplexing relationship with the WTO is to look at how it works with the system for settling disputes, which is very important to the WTO. operation. There were 65 conflicts involving China between 2002 and 2019, with the country taking the role of complainant 21 times and respondent 44 times. With 278 conflicts and 190 disputes, respectively, involving the US and EU, China ranks third among DSS members during this time. Next on the list are Canada with 63 disagreements and India with 57 disputes. Compared to its BRICS colleagues, China had a relatively low number of disagreements during its first five years as a member (2002–2006). While Russia was embroiled in eleven issues during India took part in twenty-one in its first five years as a WTO member. On February 18, 2002, China was one of many countries that complained about the United States' steel taxes. This was the start of the conflict. The United States found it simple to swap reaction from other nations when the World Trade Organization declared the levies unlawful.

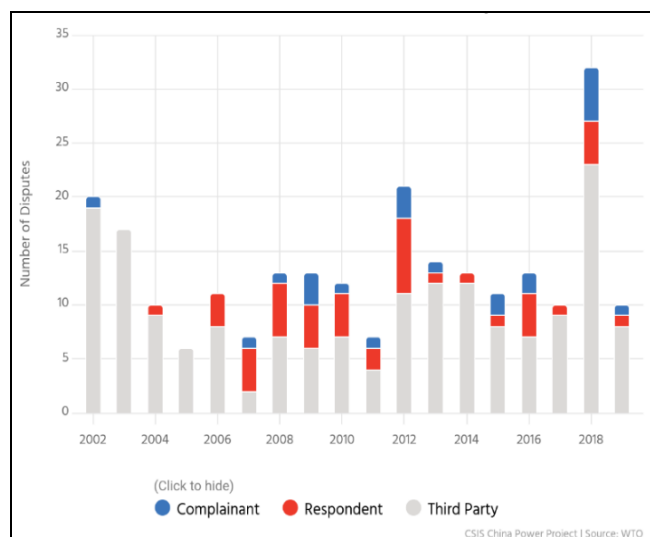


Fig 4: China's Involvement in WTO Disputes

Eighty-five percent of China's 65 fights have either worked for the EU (14 instances) or the US (39 cases). China has filed 21 complaints against the US, while the US has filed 52.2% of all complaints against China. The United States usually comes out on top when the two economic giants get into a conflict. Ten of the twenty-three issues that the United States brought against China in 2018 did not settle during discussions and went on to a panel inquiry. The United States emerged victorious in each of these ten conflicts, according to research out of China, on the other hand, other hand, saw eight of its fifteen grievances against the United States go to a panel examination, where it came out on top four times, tied three times, and lost one.

Regardless, China has achieved notable triumphs in lawsuits pitted against the United States. China has given the green light by the World Trade Organization to tax \$3.6 billion worth of US products in November 2019. A disagreement that started China claimed in 2013 that the US had unfairly imposed anti-dumping charges on over 40 Chinese goods exports finally came to a close with the ruling.

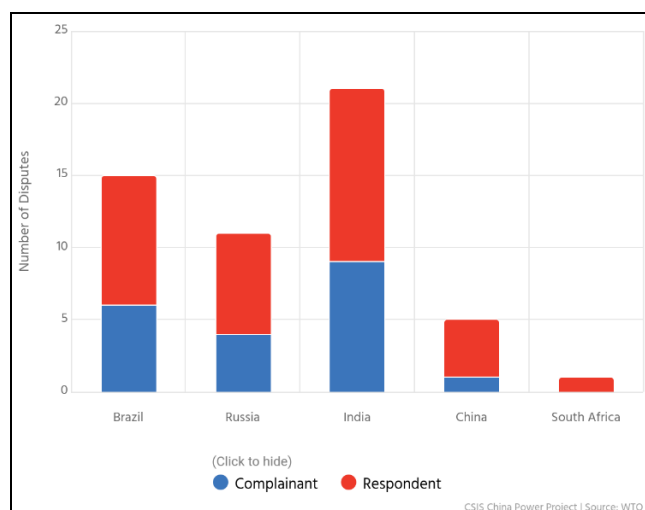


Fig 5: Disputes During the First Years of WTO Membership

7. What China does to the WTO

Major nations get special treatment because of their size and power in other foreign groups. One example is that China can reject any decision because it belongs to the UN Security Council as a regular member. Only the United States (16.52 percent) and Japan (6.15 percent) have more votes than China (6.09 percent) at the International Monetary Fund. In contrast, the World Trade Organisation (WTO) allows size and power to be more subtly shown. Because it is expensive and takes a lot of technical and administrative work to win a trade dispute, members who aren't highly developed often don't bring complaints. legal knowledge.

The five most active DSS members are the United States, the European Union, China, Canada, and India. These five nations are also the most powerful in the world. Approximately two-thirds of global gross domestic product came from them in 2018. The 30 least-developed WTO members, on the other hand, had a GDP of less than 1% of the worlds in 2018,8. They have only been involved in one dispute, which was Bangladesh's protest against India in 2004., as either parties or complainants.

Tensions have arisen among WTO members due to the ways that the world's second-largest country runs its business. Solar panels, aluminium, and steel are just a few of the products that the Chinese government has been accused of dumping on global markets due to overcapacity and subsidies, according to the US and EU. While Beijing's subsidies have the potential to alter the global marketplace, their impact would be lower in a smaller economy. For instance, between 2007 and 2015, global aluminium prices fell 46% due to Chinese subsidies.

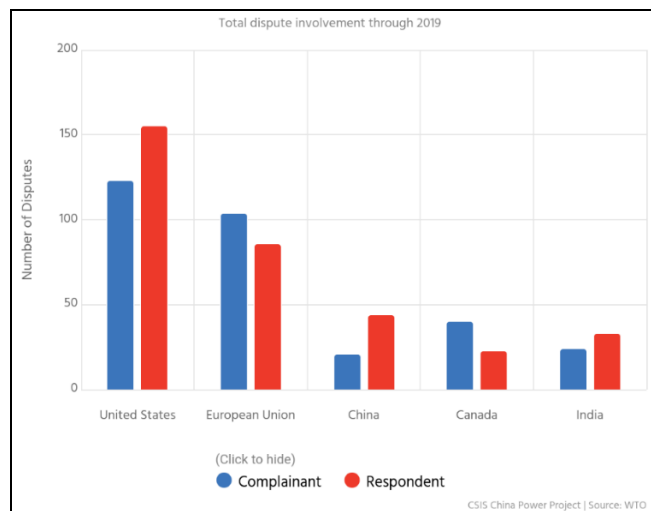


Fig 6: Most Active WTO Members

8. Conclusion

Preserving the rules-based multilateral trade system is of paramount importance to the world's major developing market economies, which include nations like Indonesia, Brazil, Mexico, India, China, Korea, and Thailand. Fast economic expansion spurred by In these countries, commerce has helped hundreds of millions of people escape poverty. For large emerging market economies to be able to access global markets for their exports, safeguard third parties from possible discrimination, and protect trade officials from domestic protectionist forces, an efficient dispute resolution and enforcement mechanism is essential. Strong regulations and well-executed policies attract capital, boost economies throughout the globe, and create an atmosphere where companies may prosper via investment and trade.

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