



US TRADE INVESTIGATIONS AND WTO RULES

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“New” Kinds of Trade Investigations

- **232s**
 - Steel and aluminum so far
 - National security focus
- **201s**
 - Solar and washers so far
 - Efficient breach concept
- **301s**
 - China tech so far

Could These Be WTO Cases Instead?

- **232s: nope**
 - No direct WTO remedy
- **201s: nope**
 - No direct WTO remedy
- **301 China tech: maybe, in part**
 - and the 301 may give rise to WTO litigation

Is There A Downside to Using Trade Investigations?

- **232s and 201s: yes**
 - Complicates a cooperative approach to addressing underlying problems such as global overcapacity
 - Seen as necessary anyway as that cooperative approach has not delivered results
- **301: yes**
 - Other govts who may agree with USG about the Chinese policies of concern might feel compelled to oppose, or keep their distance, since 301 is being used
 - Companies may be reluctant to come forward with info
 - Seen as necessary anyway given magnitude of concern

Should WTO Rules Be Considered in Conducting Investigations and Selecting Remedies?

- **Sure, but the content of those WTO rules is not perfectly clear**
- **GATT XXI has been only minimally interpreted**
- **WTO safeguards jurisprudence is a mess**
- **301 statute explicitly contemplates taking some issues out of the WTO sphere and into the bilateral sphere (US interests can sometimes dictate departing from WTO rules)**

Is There a Problem With WTO Dispute Settlement?

- **Yes**
- **And that problem is especially stark in cases involving review of US trade investigations**
- **This makes it difficult to navigate, during US trade investigations, based on what result WTO dispute settlement might yield**
- **USG seems quite serious now about forcing attention to, and acknowledgement of, this problem. Current leverage point: AB seats.**