

Electric Vehicle Tariffs by the US, EU, and Canada: Different Approaches and Implications for the WTO

Introduction

Recently, over the course of 2024, the US, EU, and Canada each imposed tariffs on Chinese electric vehicles (EVs). EVs have enjoyed increased popularity globally and are regarded as an important step towards protecting the environment through reduction of carbon emissions. The implementation of these tariffs occurs amidst growing concern about the increasing use of protectionist trade barriers and the erosion of the World Trade Organization's (WTO) significance.

This *Insight* explains why it is significant for the WTO that there is a critical difference between how the EU and Canada, respectively, have imposed their tariffs on Chinese EVs. First, this *Insight* describes the US imposition of EV tariffs, and the implications of the US blocking of WTO Appellate Body appointments. Second, it reviews the imposition of EU and Canadian tariffs on Chinese EVs. Third, it discusses the implications of the differing EU and Canadian approaches for the WTO and offers observations about how other countries may proceed in the future.

The US Tariffs and Multi-Party Interim Appeal Arbitration Arrangement

On May 14, 2024, the US announced that it would impose a [100% tariff on Chinese EVs](#) after a review by the United States Trade Representative. This tariff was imposed under US law using [Section 301 of the Trade Act of 1974](#). Section 301 states that the US may impose trade sanctions on other nations if they violate trade agreements or commit

unjustifiable acts that negatively affect US commerce. It is important to note that Section 301 is US domestic law only. It is how the US justifies its trade sanctions within its own legal system. Action taken under Section 301 does not require or imply permission by the WTO. The US stated that the tariffs were in response to China's "unfair trade practices" and "flooding global markets with artificially low-priced exports." Although these allegations could potentially form the basis of a WTO complaint, the US did not file any complaint and proceeded to simply impose the tariffs on Chinese EVs.

Interestingly, China did not file any complaint against the US imposition of EV tariffs. One reason for this might be that any WTO complaint against the US is potentially a moot point. According to the [WTO dispute settlement process](#), an appointed panel can hear a dispute and provide a report on its findings. The panel's report can become the WTO Dispute Settlement Body's ruling, but either party may appeal the report. These appeals are heard by the WTO Appellate Body, and the matter is not concluded until the Appellate Body has issued its decision.

The problem is that the US has been blocking appointments to the WTO Appellate Body and, as of December 2019, it does not have enough members to hear appeals. The US has cited its dissatisfaction with the WTO Appellate Body's judicial approach and procedure as the underlying reason why it has refused to allow the appointment process to proceed.¹ This means that if a panel rules against a WTO member, that WTO member can appeal the decision to the non-functioning Appellate Body, with the result that the panel ruling will not be adopted because the appeal is indefinitely pending. By "appealing into the void,"² any WTO member can render a panel decision to be practically ineffective.

To work around this problem, on April 30, 2020, a group of 20 WTO members, including the EU, signed the [Multi-Party Interim Appeal Arbitration Arrangement](#) (MPIA) under [section 25 of the WTO Dispute Settlement Understanding](#). Section 25 allows WTO members to use arbitration as an alternative to the usual WTO dispute settlement process. The signatories to the MPIA can now use the MPIA to hear appeals from panel rulings. The US is not a party to the MPIA, but importantly for purposes of this Insight, the EU, Canada, and China are.

The EU and Canadian Tariffs on Chinese EVs

On October 28, 2024, after concluding its anti-subsidy investigation of China's electric vehicles, [the European Commission announced](#) that it would be imposing countervailing duties on Chinese EVs. Importantly, the announcement was framed with specific

language that aligns with the WTO Agreement. It referred to how the Chinese EV value chain “benefits from unfair subsidization which is causing a threat of economic injury” and to ongoing efforts to find “alternative, WTO-compatible solutions.” According to the [WTO Agreement on Subsidies and Countervailing Measures](#) (“SCM Agreement”), WTO members may impose countervailing duties against subsidized imports that cause injury to a domestic industry. The [SCM Agreement](#) states the amount of the countervailing duty should be in the “appropriate amount” and that it must not be in excess of the subsidy benefiting the product. Based on its investigation, the EU stated that its duties would vary according to Chinese manufacturers – suggesting a relatively thorough investigation. This ranged from a tariff of 17% for BYD Auto to as high as 35.3% for SAIC Motor (a Chinese state-owned company).

In response, China filed [a WTO complaint](#) challenging these tariffs. China also announced that it would be investigating certain EU dairy products, which China believes may be subsidized. In reply to that Chinese investigation, the EU filed [a WTO complaint](#) alleging that China’s investigation is unfounded and an act of retaliation for the imposition of EU tariffs on Chinese EVs.

Despite the trade tension between the EU and China in the above complaints, it is important to note that these actions were implemented with specific reference to WTO principles. This is in direct contrast to Canada’s approach. On August 26, 2024, Canada announced that it would impose a 100% tariff on Chinese EVs. The approach in Canada’s [announcement](#) was similar to the US approach. Canada justified its tariffs based on what it referred to as China’s unfair, non-market practices, lack of rigorous labor and environmental standards, and an overcapacity directed by Chinese government policy. Like the US, Canada simply imposed the tariffs at a level of 100%. Unlike the EU, Canada did not appear to justify its tariff level based on a subsidy investigation using the specific language found in the WTO and SCM Agreements.

In response, on September 6, 2024, China filed a [WTO complaint](#) against Canada’s EV tariffs. In addition, China [announced](#) that it would conduct an anti-dumping investigation into Canola products from Canada. China also indicated that it would consider invoking measures against Canada under section 7 of China’s [Foreign Trade Law](#). Section 7 states China may take countermeasures against any country that applies restrictive trade measures against China on a discriminatory basis. This is notable because, although this Chinese law was enacted in 1994, it does not seem to have ever actually been used by China.³ Unlike the EU, Canada has not filed any complaint against China’s anti-dumping investigation.

Observations and Implications for the Future of the WTO

The EU and Canadian approaches to imposing tariffs on Chinese EVs have significance for the WTO. This is because they represent two contrasting alternatives that countries may adopt to protect their EV markets. The EU approach had a clearer connection to the WTO Agreement because the EU directly referenced WTO principles, and the imposition of EU tariffs was further supported by its subsidy investigation. The EU response to the Chinese investigation of EU dairy products was also within the WTO framework. In contrast, Canada did not specifically ground its tariffs in a subsidization investigation as the EU had. It is unclear how Canada arrived at a figure of 100% for its tariffs. In addition, unlike the EU, Canada did not file a WTO complaint about China's antidumping investigation into Canadian canola oil. Given how Canada did not strongly ground its tariffs by reference to the WTO Agreement, it may be that it would have been awkward to invoke WTO principles to complain about China.

China's response to Canada's tariffs is noteworthy. China filed WTO complaints against both the EU and Canada regarding their respective EV tariffs. However, in Canada's case, China took the extraordinary step of potentially invoking its own Foreign Trade Law, which it has never used before. Like Section 301 of the US Trade Act (1974), China's Foreign Trade Law is a domestic law only, not tied to the WTO. To simply impose a trade sanction on that basis constitutes unilateral action, outside of the WTO's multilateral framework. Therefore, one might interpret China's reply as a signal to other nations. China is willing to pursue and perhaps even prefers trade dispute resolution through formal WTO procedures. However, if a WTO member is perceived by China as acting outside of the WTO Agreement, China is also willing to resort to unilateral retaliation through its own domestic legislation.

Since both the EU and China are signatories to the MPIA, China's respective complaints against their EV tariffs may eventually be the subject of arbitration under the MPIA. Regardless of the outcome, whether the interested parties comply with any MPIA arbitration decision will be a test of their adherence to WTO principles. If the EU and Canadian EV tariffs remain in place, there is the possibility that China's supply of affordable EVs may flood other markets, leading to the potential for new trade conflicts.

Such conflicts may already be brewing in countries that are developing their own EV industries. For example, Brazil has its own domestic EV industry, and it has imposed a tariff of 18% (which is intended to rise to 35% by 2026).⁴ India also has a domestic EV industry and it has imposed EV tariffs of between 70-100%. Only companies that have

invested at least \$500 million into local manufacturing will be eligible to import up to 8000 EVs (costing at least \$35,000 each) per year at a lower tariff of 15%.⁵ Brazil is a signatory to the MPIA but India is not. China has not filed any WTO complaints against these countries. However, if China does file WTO complaints against Brazil and India, it will be interesting to observe whether they defend their actions with reference to WTO principles. India, since it is not a MPIA signatory, could simply appeal into the WTO Appellate void. Brazil, like the EU and Canada, could be forced to decide whether it would comply with an adverse MPIA arbitration ruling.

In conclusion, with the WTO Appellate Body paralyzed, the future of the WTO is uncertain. The contrasting approaches of the EU and Canada represent differing degrees to which a country may wish to justify its tariffs by reference to WTO principles. If more countries decide to develop and protect their domestic EV industries with tariffs, whether their approach follows the EU or Canada may be a signal about their commitment to the WTO as a multilateral body for trade dispute resolution. As such, this is an important issue for the WTO to monitor and address.

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¹ Henry Gao, *Finding a Rule-Based Solution to the Appellate Body Crisis: Looking Beyond the Multiparty Interim Appeal Arbitration Arrangement*, 24 J. INT'L ECON. L. 534, 536 (2021).

² Isabelle Van Damme, *25 Years of Law and Practice at the WTO: Did the Appellate Body Dig its Own Grave?*, 26 J. Int'l Econ. Law 124, 125 (2023).

³ Henry Gao & Weihuan Zhou, *Major economies are taking aim at China's EV industry. Here's what to know*, WORLD ECONOMIC FORUM (Nov. 14, 2024), <https://www.weforum.org/stories/2024/09/major-economies-are-taking-aim-at-china-s-ev-industry-here-s-what-to-know/>.

⁴ *Brazil imports of Chinese electric vehicles surge ahead of new tariff*, REUTERS (Apr. 5, 2024), <https://www.reuters.com/business/autos-transportation/brazil-imports-chinese-electric-vehicles-surge-ahead-new-tariff-2024-04-05/>.

⁵ Tanvi Mehta & Aditi Shah, *In big win for Tesla, India to lower EV import tax if \$500 mln invested*, REUTERS (Mar. 15, 2024), <https://www.reuters.com/business/autos-transportation/india-approves-policy-boost-e-vehicle-manufacturing-2024-03-15/>.

