



# ***Why Trump Shot the Sheriffs: The End of WTO Dispute Settlement 1.0***

**Chad P. Bown**

**Peterson Institute for International Economics**

**& Trade Talks podcast**

**Soumaya Keynes**

***The Economist***

**& Trade Talks podcast**

**ASSA Annual Meeting, January 2020**

**(preliminary)**



# Outline

- 1. What is WTO dispute settlement?**
- 2. Where did it come from?**
- 3. Why has the US killed it?**
- 4. What next?**



# What is WTO dispute settlement?

- **WTO members can complain about rule breaking to independent referees**
- **If arbiters say YES the rules have been broken...**
  - **Either** the rule-breaker has to change its ways
  - **Or** the complainant gets to retaliate



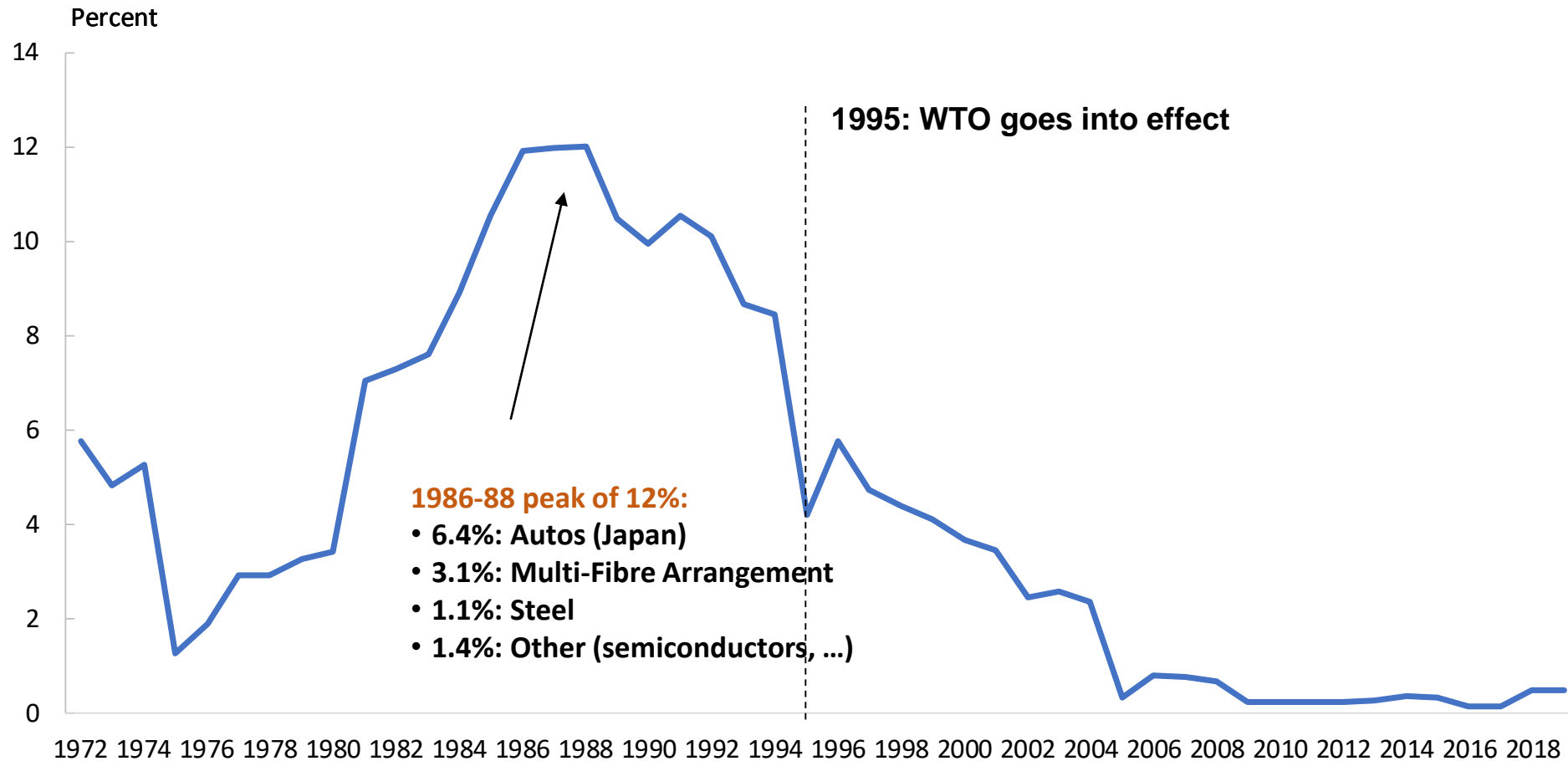
## What came BEFORE WTO dispute settlement?

- **GATT dispute settlement deficiencies**
- **US use of Section 301 – “aggressive unilateralism”**
- **Voluntary Export Restraints**



# The Rise and Fall of Voluntary Export Restraints

Share of US imports covered by demands that trading partners take on VERs, 1972-2019



Source: constructed by the authors with data from Bown (2019)



# WTO compromises...

- ~~Voluntary Export Restraints~~
- Safeguards
- Anti-dumping
- Countervailing Duties



## WTO compromises...

- ~~US use of Section 301 – “aggressive unilateralism”~~
- Binding dispute settlement



...so what happened?







# The US mostly complained about SYSTEMIC issues

## US targets of WTO dispute settlement, 1995-2016

US disputes brought  
against rest of world  
(112 disputes)

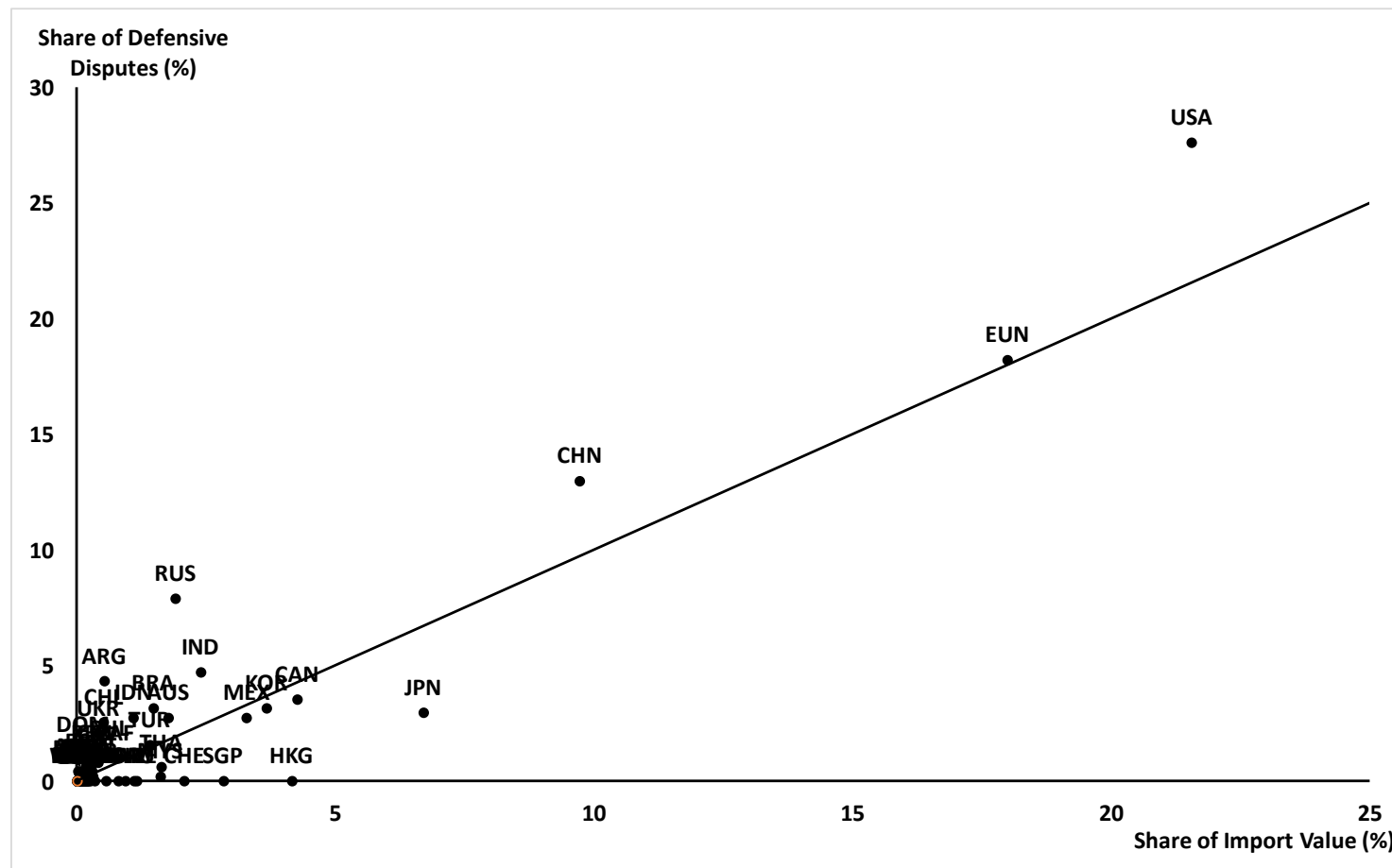


Source: constructed by the authors.



# Other countries ALSO brought disputes AGAINST the US

Share of WTO disputes as defendant vs Share of world imports, 1995-2016

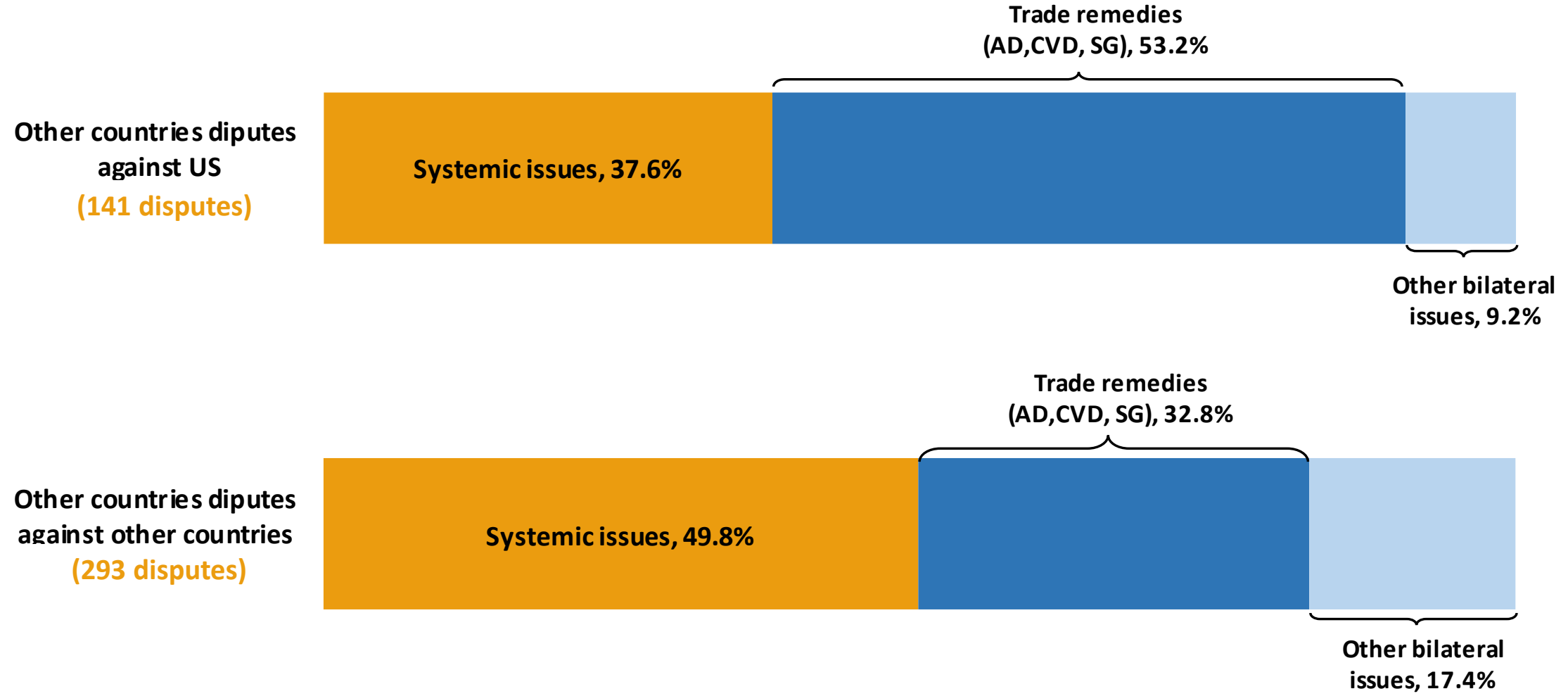


Source: constructed by the authors.



# Countries used WTO dispute settlement to target US trade remedies

Targets of WTO dispute settlement, 1995-2016



Source: constructed by the authors.

## HOW did the US shoot the sheriffs?

- **Warnings - blocking appointments/reappointments (pre-Trump)**
  - **2007, 2011, 2016**
- **Then... Trump**
  - **December 10, 2019**





## WHY did the US shoot the sheriffs?

### *WHO has power?*

#### **Senate hearing in 2000 reviewing performance of WTO dispute settlement...**

“inadequately prepared panelists, who are not reviewed effectively for bias, staffed by international bureaucrats who seek to advance substantive agendas of their own, meet in secret, and can cause a chain of events leading to a reordering of US laws that would ordinarily take the Committees of jurisdiction of the Congress, the two Houses of Congress, and the President acting after serious deliberation.”

***Robert Lighthizer & Alan Wolff, 2000***



## WHY did the US shoot the sheriffs?

### ***US LOST disputes***

**Accusation: Appellate Body DENIED flexibility the US thought it had negotiated**

**“I think that the Americans who negotiated that text did a pretty good job. I mean, when I read it, and I think when most American lawyers read it, it looks as though you have created a process whereby there will be a panel, and then there will be an Appellate Body, but that Appellate Body is really constrained. It says that they have to make a decision within 90 days, it says that they can't change the rules and obligations of the parties, you have provisions like Article 17.6 that are supposed to give deference to members in sensitive areas like the anti-dumping laws. So on paper, it appears to look like a reasonable set of rules. In reality, none of those paper protections did the United States very much good at all.”**

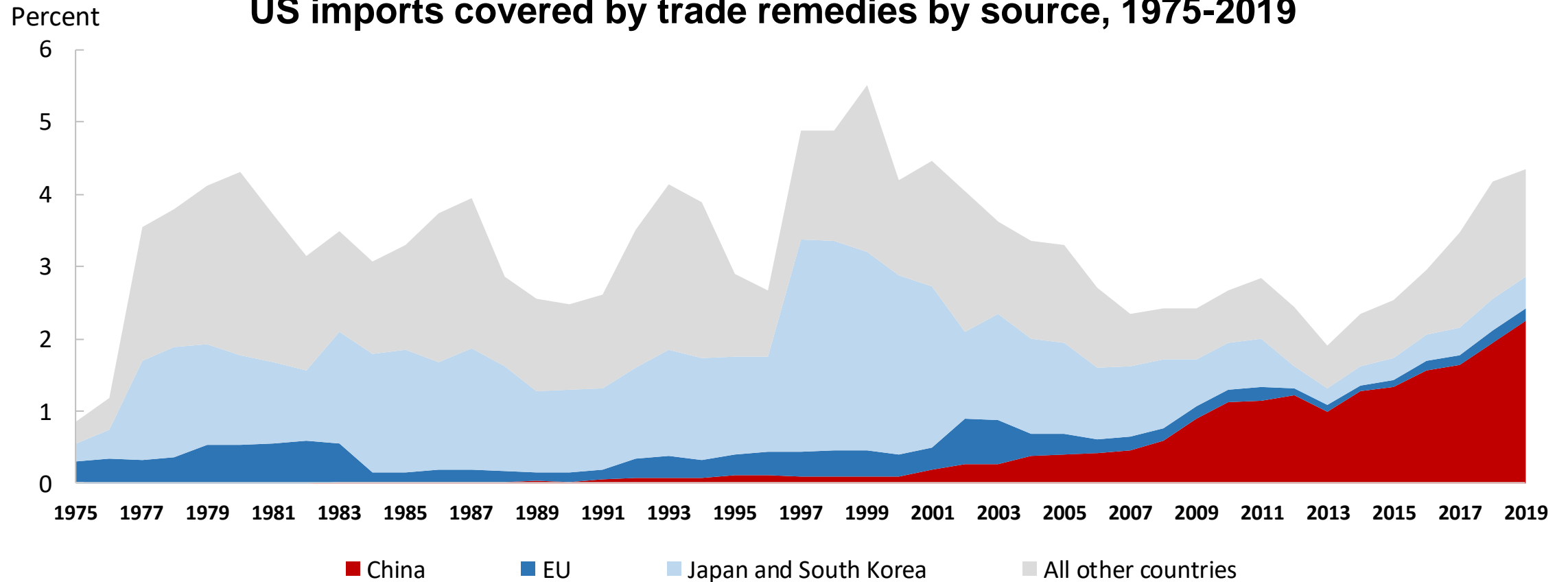
**Source: *Trade Talks*, Episode 111 ex-USTR GC Stephen Vaughn, 2019**



# Can we see this in the DATA?

*Consistent but not necessarily causal*

## US imports covered by trade remedies by source, 1975-2019



Source: constructed by the authors with data from Bown (2019). Trade remedies = antidumping, countervailing duties, safeguards and China-specific transitional safeguard (2001-2014 only).





## WHY did the US shoot the sheriffs?

### ***System inadequate when dealing with CHINA***

**Limits on US defences against China (public bodies)...**

**...and FRUSTRATION over having to do ALL the heavy lifting**

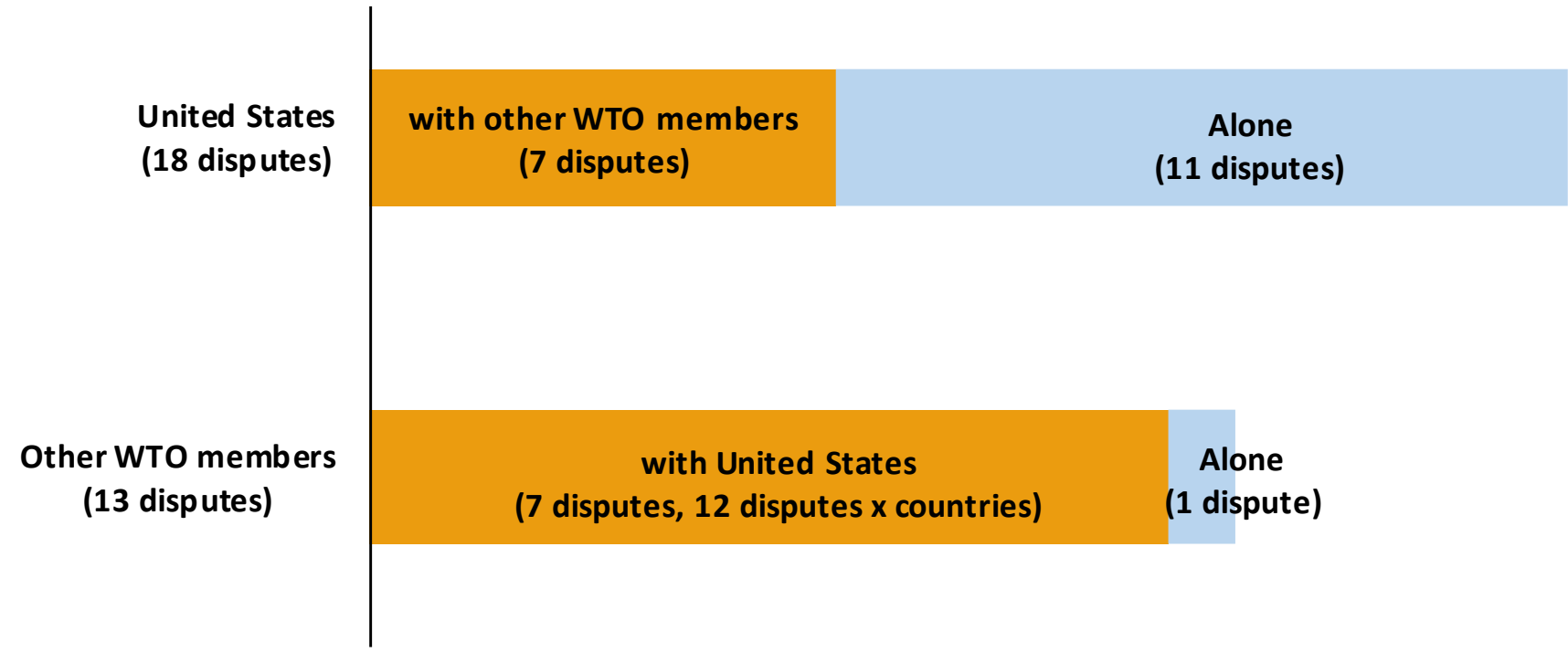
“other countries look to us to carry that burden and are very happy to hold our coat while we do so...but not invest themselves in that effort. Sometimes they are willing to join cases; and on occasion they're willing to initiate cases, and we join them and have in the past. But **more often than not, they come to us; they're very happy to have us go and pursue these issues with China, but they don't necessarily invest a huge amount of effort themselves.**”

**Source: *Trade Talks*, Episode 93**

***ex-USTR Mike Froman***



# *No one aside from the US really brought systemic cases against China alone*





## In summary...

- **Long-standing concerns over sovereignty and flexibility**
- **US losing cases**
- **Not effective enough with respect to new offensive interests**



## Is the US right?

- **Sovereignty – US never FORCED to do anything**
- **Trade remedies – ESPECIALLY anti-dumping – flawed**
- **There are legal arguments in favour of US case...**
- **Very unclear this is the product of a reasoned cost-benefit analysis**