Master's Thesis of International Studies

Challenges for Korea's Judicial Review System for Trade Remedies

통상구제를 위한 사법심사제도의 과제

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Abstract

This study's purpose is to find ways to introduce the system of the United States Court of International Trade (USCIT), a special law in the United States, into Korea. In recent years, trade disputes between countries have increased significantly in a rapidly changing environment. Since the outbreak of COVID-19, conflicts between countries have intensified as significant countries, including the U.S. and China, have strengthened their protective trade measures due to the global economic slowdown. Therefore, a systematic system and a credible judicial agency are emphasized to resolve these disputes. Whether trade agreements and dispute settlement procedures are applied in a consistent form in the domestic law system is an essential measure of a country's status in international relations. Considering the size of the trade in South Korea, it is urgent to establish a highly specialized institution and a reliable judicial system related to resolving international trade disputes. To cope with these changes, we would like to review the current systems and systems related to international trade disputes and consider ways to introduce a new judicial system. To this end, this study reviews how countries with their legal systems for resolving international trade disputes operate the judicial system. This study examined the case handling procedures, duration, organization, and cases of The Commercial Court in the U.K in the United Kingdom and The Singapore International Commercial Court system in Singapore. Second, China, the most disputed country with the United States, also has a judicial system complete enough to file a complaint with the USCIT, and considering the size of other trade and the completion of the system, it reviewed the USCIT's judicial procedures, strategy, and efficiency, judging that it was appropriate to introduce the USCIT's judicial system advantages in South Korea's judicial system. Third, to determine the effectiveness of the USCIT's judicial system, patterns were analyzed by statistically all cases, Chinese cases, and South Korea-related cases from 2005 to 2022. Fourth, the current judicial system of South Korea (Korea Commercial Arbitration Board, Trade Commission, and Korean Administrative Court) related to international trade was reviewed, and problems in the current system were derived. Finally, it presented the effects and suggestions of introducing the USCIT system in Korea's current international trade judicial system. This study aims to provide a

starting point for enhancing the nation's status by improving the judicial system's credibility in international relations by consolidating the judicial system specialized for international disputes amid sharp trade conflicts.

Keywords : USCIT, International Trade Disputes, Commercial Court, Judicial System, Korea Administrative Court

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Chapter I. Introduction

1. Study Background

The U.S Court of International Trade (CIT, USCIT) is one of the special courts in the United States. International trade-related disputes have risen due to the recent global economic slowdown and each country's growing possibility of protectionist measures. Therefore, the importance of systems and judicial agencies to resolve such trade disputes is emphasized. In particular, the United States has many conflicts with countries that trade on economic size and interests in the international order.[1] Since the launch of the Trump administration in 2017, the U.S.- China trade conflict has intensified due to technology protection policies to keep China in check and the U.S. priority in the international order. The United States is having trade disputes with China, South Korea, the EU, and other countries in the globe.

As mentioned above, attention is being paid to the United States Court of International Trade (USCIT) amid growing trade-related disputes. Recently, an interest in the U.S Court of International Trade has increased as many countries experiencing trade disputes with the U.S. file complaints with the U.S Court of International Trade rather than resolving them through their courts or WTO. Even Chinese corporations, which are heavily at odds with the U.S. on trade-related issues, are increasingly engaged in legal disputes in the USCIT over anti-dumping,

[1] Noland, M. (2018). US trade policy in the Trump administration. *Asian Economic Policy Review*, *13*(2), 262-278.

export items, and technology transfer[2].

In the case of South Korea, there was a case in which the U.S Department of Commerce ruled that the high tariff on Korean steel products was unfair due to a translation error in 2019. In addition, in April 2022, cases related to the Korean oil pipeline (i.e., welded line pipe) anti-dumping tariffs filed by South Korean companies such as Seah Steel and Nexsteel against the U.S. Department of Commerce are drawing attention[3]. This is because the USCIT ruled in favor of Korean companies by ordering the U.S. Department of Commerce to review its initial decision.

The U.S Court of International Trade is drawing attention because "international trade policy" is an essential issue for the country, and the direction of the ruling can vary depending on the president's trade policy establishment and the government's advice and all of these have a significant impact on national interests. Nevertheless, there must be an apparent reason for many countries to file a complaint with a special court in the United States or the other countries. Therefore, it is necessary to study why it is required to file a complaint with the U.S Court of International Trade, how the system does the U.S Court of international trade has, and what characteristics of the U.S Court of International Trade have. Finally, it would be a meaningful judicial system research of whether such a system can be introduced in South Korea, and how it can be done if it is presented.

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[2] Dugiel, W. (2019, June). Trade policy of the United States and China in the new era of trade wars: macroeconomic and behavioral approach. In *Proceedings of International Academic Conferences* (No. 9011284). International Institute of Social and Economic Sciences.

[3] 홍성환. “[단독] 美 국제무역법원 ‘세아제강·넥스틸 '송유관' 반덤핑 관세 부당.’” THE GURU, April 20, 2022. https://www.theguru.co.kr/news/article.html?no=34290.

2. Purpose of Research

First, analyzing the systems and characteristics of the courts to understand the nature of the U.S Court of International Trade. Furthermore, comparing and analyzing the systems and characteristics of the UK's International Trade Court, which called as “the U.K Commercial Court” and Singapore's International Trade Court, which called as “Singapore International Commercial Court” which are introducing similar commercial/trade court systems. Meanwhile, this study would like to analyze how to operate in South Korea to understand how international trade disputes are being resolved in the current South Korea judicial system and the current status and nature of the International Trade Commission and Administrative Courts in charge of international trade-related cases.

Next, this study analyzes the total number of cases filed with the U.S Court of International Trade to learn about the actual operation and effectiveness of the U.S Court of International Trade. In addition, this study would like to analyze the number of complaints filed by the most conflicting Chinese companies against the U.S agencies, government or corporations to determine the efficiency, economic feasibility, and fairness of the U.S Court of International Trade. In addition, this study would like to find out an analysis of the South Korean cases to find out how much domestic companies are aware of the procedures or judgments of the U.S Court of International Trade at a time when the introduction of the domestic system is being considered.

Finally, based on this, this study would like to comprehensively analyze the possibility of introducing the USCIT system into South Korea.

3. Scope of Study

3-1. The Time Scope of Study

The time range of the study is as follows. The early 2000s was when the international trade order was reorganized due to China's growth[4]. In addition, this period is an essential time for the international trade as the establishment of strategies for domestic products which has been strengthened with the full-fledged FTA[5]. Therefore, about 17 years, from 2005 to 2022, were set as the reference point for analysis in this study. From a long-term perspective, this study can examine how the U.S Court of International Trade's ruling affects companies in other countries that filed as a complaint. It is also possible to analyze the issues of efficiency, economic feasibility, and fairness of judgments required due to the nature of commercial courts. Furthermore, it can be analyzed whether political tendencies affect the U.S Court of International Trade's ruling.

3-2. The Spatial Scope of Study

First, to understand the nature and system of the U.S Court of International Trade, this study would like to consider the characteristics of the U.S Special Court and compare and analyze the strategies in the U.K and Singapore that are introducing similar systems. In addition, for cases filed with the U.S Court of International Trade, we would like to analyze not only the entire cases but also

[4] Sun, P., & Heshmati, A. (2010). International trade and its effects on economic growth in China.

[5] Singh, T. (2010). Does international trade cause economic growth? A survey. *The World Economy*, *33*(11), 1517-1564.

cases of China, an Asian country that has one of the most severe trade conflicts with the United States like South Korea does with China. Furthermore, considering the introduction of the U.S Court of International Trade in Korea, this study wants to figure out how much Korean corporations are aware of the U.S Court of International Trade system.

4. Research Questions

I. What is the United States Court of International Trade (USCIT)?

II. How do the international trade courts in other countries operate? (U.K, Singapore)

III. How are South Korea's international trade disputes being resolved?

IV. What is the status of the cases resolved in the USCIT? (Total, China, South Korea)

V. What are the pros and cons of the USCIT, and why should South Korea adopt this system?

Chapter II. Comparative Study on Administrative Court System on the International Trade

1. The Characteristics of the Korea Administrative Court

1-1 The Characteristics of the Korea Administrative Court

Administrative litigation is a trial procedure for disputes over legal relations under public law, which include disputes related to international trade. The South Korean administrative court belongs to the jurisdiction and belongs to a court composed of judges under the judicial branch. The Supreme Court has an authority to examine and make a final decision on whether a disposition or rule violates the Constitution or law. (Article 107 (2) of the Constitution).[6] As though civil or criminal litigations, administrative litigation belongs to the authority of the general court under the judicial branch with the Supreme Court as the highest court. However, it is stipulated that an administrative trial can be made as a pre-trial procedure for a trial in consideration of the specificity of the administrative case (Article 107 (3) of the Constitution).[7] The Civil Procedure Act also applies mutatis mutandis to the administrative litigation but there are special provisions in the Administrative Litigation Act, which are special provisions different from the civil

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6 "법령조문'제107조'." 종합법률정보. Accessed January 11, 2023. https://glaw.scourt.go.kr/wsjo/lawod/sjo192.do?lawodNm=%ED%97%8C%EB%B2%95&jomunNo=107&jomunGajiNo=0.

7 Kim, Jungwhan, Sujin Lee, and Jiyoung Jang. "국제상사법원에 관한 연구 ." Research on the International Commercial Court . Judicial Policy Research Institute , September 23, 2020. https://www.judiciary.uk/wp-content/uploads/2022/06/Commercial-Court-Guide-11th-edition-1.pdf.

litigation that is provided for the revocation litigation such as “special provisions concerning jurisdiction”, standing to sue, standing to be sued, correction of the Defendant, the period prior to administrative trial, period of filing a lawsuit, investigation of ex officio evidence, the judgment under special circumstances, suspension of execution, etc. are established.[8]

1-2. The Administrative Litigation procedures of the Korea Administrative Court

Korea's administrative litigation process begins[9] first with a written settlement of issues at the stage before the due date. There are two key elements in this process: the "preparation paper workshop" and the "examination of evidence before due date". Among them, the "battle for preparatory documents" is conducted in a structure in which when the Defendant submits a written answer with substantial content, he/she shall deliver it to the Plaintiff and submit a written preparation for rebuttal within about three weeks. And in the process, both parties must complete the submission of claims by preparatory documents, as well as the application for evidence and the presentation of evidence to support the claim. In principle, it is necessary to complete the application for documents and fact-finding witnesses in this process.

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[8] “알기쉬운 행정 소송 .” 대한민국법원 전자민원 센터 , 2017. https://help.scourt.go.kr/nm/min_7/min_7_4/index.html.

[9] “알기쉬운 행정소송 .” 대한민국 법원 . Accessed November 14, 2022. https://help.scourt.go.kr/nm/min_7/min_7_2/min_7_2_1/index.html.

When these things are completed[10], after the presiding judge reviews the records and designates the issue settlement date, the following date is the so-called intensive evidence investigation date, in which both witnesses and people subject to the examination of the parties involved in each case are intensively examined at once, and the case that completed the interrogation is operated in a structure in which the judgment is sentenced within a short period of time. However, since the subject of administrative litigation is a matter related to the public interest, in the hearing of administrative litigation, the court can examine evidence ex officio without only holding the parties responsible for claiming facts and submitting evidence. The court can also judge the facts not claimed by the parties after the investigation. In principle, the principle of no disadvantage is applied, such as in civil litigation, and the principle of no disadvantage refers to the principle that the court cannot judge without filing a lawsuit and cannot deliberate and judge beyond the scope of the party's claim. In principle, the principle of disposition right, in which the subject of the lawsuit is determined according to the intention of the parties, is applied to administrative litigation.

Therefore, the court cannot make a hearing judgment on a case in which the Plaintiff's lawsuit is not filed, and cannot deliberate or judge a case in which a lawsuit is filed beyond the scope of the Plaintiff's claim. In principle[11], pleadings

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[10] 법제처. "행정소송 > 행정소송 절차 > 행정소송의 심리 > 심리의 진행 (본문): 찾기 쉬운 생활법령정보." 행정소송 > 행정소송 절차 > 행정소송의 심리 > 심리의 진행 (본문) | 찾기쉬운 생활법령정보, October 25, 2022. https://easylaw.go.kr/CSP/CnpClsMain.laf?popMenu=ov&csmSeq=829&ccfNo=3&cciNo=3&cnpClsNo=1.

[11] "행정소송법: 국가법령정보센터: 법령 > 본문." 행정소송법 | 국가법령정보센터 | 법령 > 본문, August 17, 2021. https://www.law.go.kr/LSW/LsiJoLinkP.do?lsNm=%ED%96%89%EC%A0%95%EC%86%8C%EC%86%A1%EB%B2%95¶s=1&docType=JO&languageType=KO&joNo=000800

are applied to administrative litigation, just like civil litigation. The principle of pleading refers to the principle of hearing that litigation data, that is, the responsibility for the collection and submission of facts and evidence should be entrusted to the parties, and only the litigation data collected by the parties and submitted in the pleading should be used as the basis for the trial. However, according to the public interest function of administrative litigation, the Administrative Litigation Act stipulates exceptions to the principle of pleadings. In other words, when deemed necessary, the court may ex officio investigate the evidence and judge facts that the parties have not claimed. The burden of proof in a revocation suit is also the same as in the civil suit[12]. When a lawsuit is filed in court, the court first decides whether to accept the lawsuit filed. This is called a requirement review. This is called a requirement review. At this time, the person who filed the lawsuit mis-designated the Defendant, person who files a lawsuit and wins, the person who already filed the lawsuit has no substantial interest, or if there are reasons for disqualification in the lawsuit itself, such as filing a lawsuit in violation of statutes that stipulate the procedures for filing a lawsuit, the lawsuit is not accepted, which is called "dismissal." If it is accepted, the lawsuit is initiated, and the judgment is sentenced in such a way that the presiding judge reads the disposition according to the original judgment, and if necessary, the reason may be briefly explained.

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[12] "민사소송법: 국가법령정보센터: 법령 > 본문." 민사소송법 | 국가법령정보센터 | 법령 > 본문. Accessed November 14, 2022. https://www.law.go.kr/LSW/LsiJoLinkP.do?lsNm=%EB%AF%BC%EC%82%AC%EC%86%8C%EC%86%A1%EB%B2%95¶s=1&docType=JO&languageType=KO&joNo=024800000#.

The judgment may be sentenced even if the parties do not attend, and the judgment becomes effective by the sentence. After the judgment is sentenced, the court delivers the authentic copy of the judgment to the party, and the party dissatisfied with the judgment may appeal by submitting a petition of appeal to the first instance court within two weeks from the date on which the written judgment is served. And then the trial process is the same principle as general civil litigation and is carried out in the judgment process of the lower court, the second trial, and the Supreme Court[13].

1-3. Appeal systems and procedures in the Korea Administrative Court

Appeal is possible against the final judgment of the administrative court of the first trial court. The appellate court is a high court (the same for the appellate trial in a case judged by a single judge by a single ruling). The periods, methods, and procedures for filing an appeal are same as the civil litigation (Article 8 of the Administrative Litigation Act)[14]. In the case of an objection (final appeal) to the judgment of the High Court, which is the appellate trial, the Supreme Court judges and A person who has filed an appeal may withdraw the appeal without the consent

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[13] "신뢰할 수 있는 법체처. 국가법령정보센터." 국가법령정보센터, January 26, 2021. https://www.law.go.kr/LSW/lsSc.do?section=&menuId=1&subMenuId=15&tabMenuId=81&eventGubun=060101&query=%EB%B2%95%EC%9B%90%EC%A1%B0%EC%A7%81%EB%B2%95#undefined.

[14] "행정소송법: 국가법령정보센터: 법령 > 본문." 행정소송법 | 국가법령정보센터 | 법령 > 본문, August 17, 2021. https://www.law.go.kr/LSW/LsiJoLinkP.do?lsNm=%ED%96%89%EC%A0%95%EC%86%8C%EC%86%A1%EB%B2%95¶s=1&docType=JO&languageType=KO&joNo=000800000#. (참조 3)

of the other party at any time until the final judgment is made.

A party dissatisfied with the finding of fact or legal judgment of the first instance judgment may appeal within two weeks from the date of receipt of the judgment. In principle, appeals are to be heard by a high court, but cases heard by a single judge are heard by an appeals department set up in a district court. The appeal process is similar to the first trial process, so it is legally possible to submit new claims and evidence[15], but as faithful issue hearing and extensive evidence investigation are increasingly emphasized in the first trial process, the submission of new claims and evidence are expected to be reduced in the appellate trial.

A party dissatisfied with the judgment of the appellate trial may appeal to the Supreme Court, which is the final trial, within two weeks from the date of receipt of the judgment. Since the Supreme Court is a legal trial, the parties can file an appeal only if there is a mistake in the legal judgment of the appellate trial or if there is a serious violation of the law in the appellate trial procedure[16].

1-4. Judges in the Korea Administrative Court

The jurisdiction of the administrative court is exercised by a panel of three judges. However, in the case of an administrative court, the exclusive judge exercises the right to judge the case determined by the collegiate division of the administrative court. Different from other international commercial court or

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[15] "알기쉬운 행정 소송 ." 대한민국법원 전자민원 센터 , 2017. https://help.scourt.go.kr/nm/min_7/min_7_4/index.html.

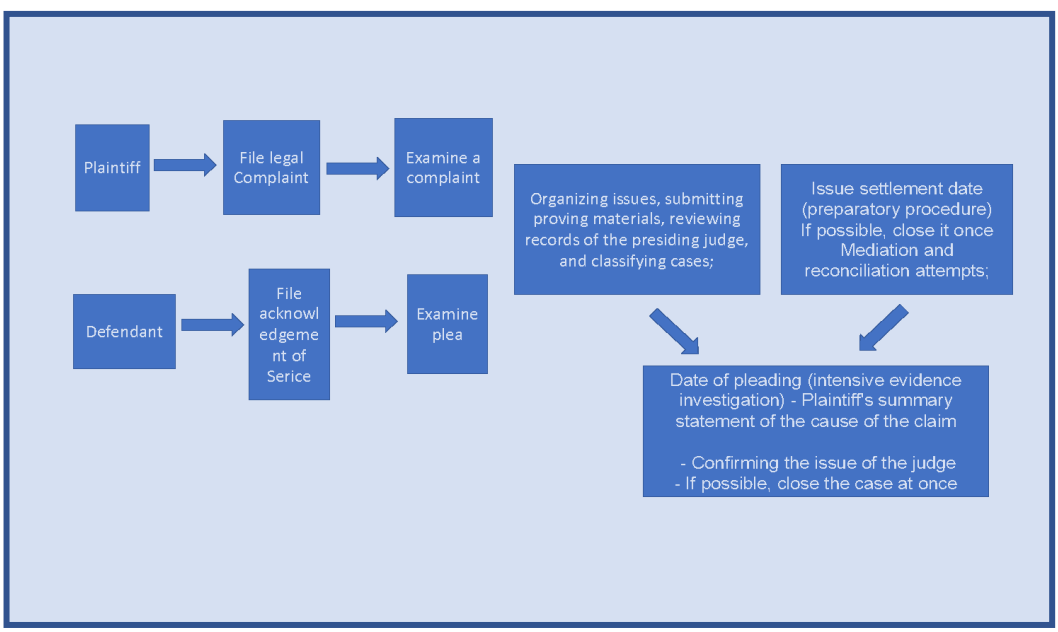
[16] 법제처. "행정소송 > 행정소송 절차 > 행정소송의 심리 > 심리의 진행 (본문): 찾기쉬운 생활법령정보." 행정소송 > 행정소송 절차 > 행정소송의 심리 > 심리의 진행 (본문) | 찾기쉬운 생활법령정보, October 25, 2022. https://easylaw.go.kr/CSP/CnpClsMain.laf?popMenu=ov&csmSeq=829&ccfNo=3&cciNo=3&cnpClsNo=1.

international trade court overseas, there is no administration judge for life or the president appoint a certain judge in an administrative court. Korea's judicial system has a rotation system, in which judges do not belong to a particular court for life, and the term of office of a judge is ten years[17]. There are 1560 judges in total from lower courts to the supreme court in South Korea. This also means that 1560 judges have the possibility to work in the administrative court[18].

1-5. South Korea Administrative Court's overall procedure

1-5-1. Procedures before Trial

Figure 1. Overall Procedures before the Trial begins



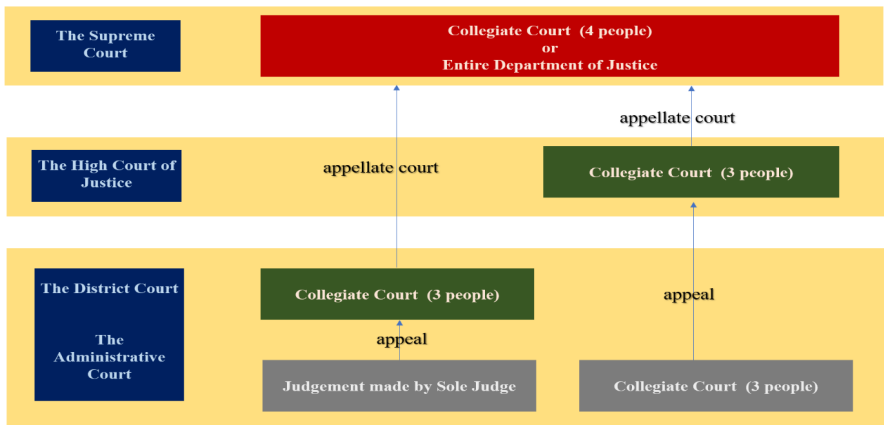
Source: "신뢰할 수 있는 법제처. 국가법령정보센터." 국가법령정보센터, January 26, 2021.

[17] "법관." 대한민국 법원 Court of Korea. Accessed November 14, 2022. https://www.scourt.go.kr/judiciary/member/judge/index.html.

[18] "각급 법원에 배치할 판사 수 ." Korean Law Information Center, March 5, 2019. https://www.law.go.kr/LSW/eng/engMain.do.

1-5-2 Comparing Judicial Procedures between Cases Filed in the Administrative Court and Other Courts

Figure 2. Judicial procedures comparison (appeal procedures)



Source:https://www.scourt.go.kr/supreme/sup_deci/process/process01/index.html

Generally, appeal procedures are conducted in the High Court (Appellate Court). However, it is sometimes allowed for cases filed in the administrative court in South Korea to conduct an appeal procedure by a sole judge in the trial court.

There are only two representative cases in the administrative court in South Korea where foreign countries file case to the administrative court in South Korea trade measures from 2003 to 2020. The Korea Administrative Court hears not only international dispute cases but also hears other cases related to public or administration disputes that happen in Korea. However, the Korea Administrative Court mostly hears domestic administration cases.[19]

[19] "The Judiciary > Proceedings > Administrative." Supreme Court of Korea. Accessed January 31, 2023. https://eng.scourt.go.kr/eng/judiciary/proceedings/administrative.jsp.

2. The Commercial Court in the U.K

2-1 The Characteristics of the U.K Commercial Court

The Commercial Court in U.K. was established in 1895 to resolve economic and trade disputes promptly under judges expertise in commercial issues. The Commercial Court in the U.K is a part of the Queen's Bench Divison of the High Court. There is a "Registry and the Listing Office", which handles applications, and procedures of parties and support the communication between legal representatives. Also, it ensures that the parties comply with the pleading procedures and trial timetable. In the U.K., international or trade disputes are heard by the commercial court, not the administrative court. Cases related to national disputes including the s that happened in overseas, the Commercial Court of the United Kingdom hears cases. Based on the Courts and Tribunals Judiciary, nearly 75% of the cases under commercial court are international cases and it has been more than 20 years since more than of 75%[20] cases are international cases[21].

Approximately 800 cases are issued in the commercial court, and 1000 hearings occur each year. There were 156 cases in 2017-2018, 173 cases in 2018-2019, 200 cases in 2019-2020, and 159 cases in 2020-2021 that the judgments were made.

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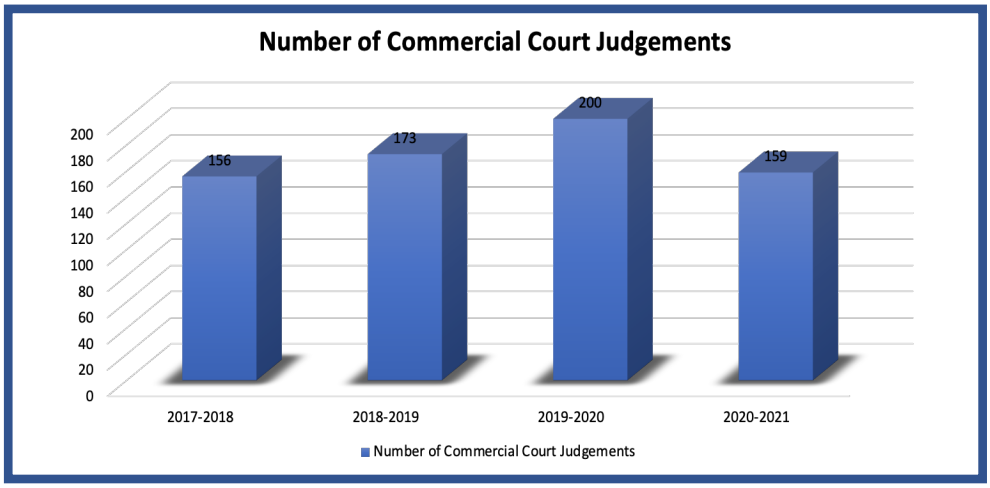
[20] "The Work of the Commercial Court." Courts and Tribunals Judiciary, August 9, 2022. https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/the-work-of-the-commercial-court/.

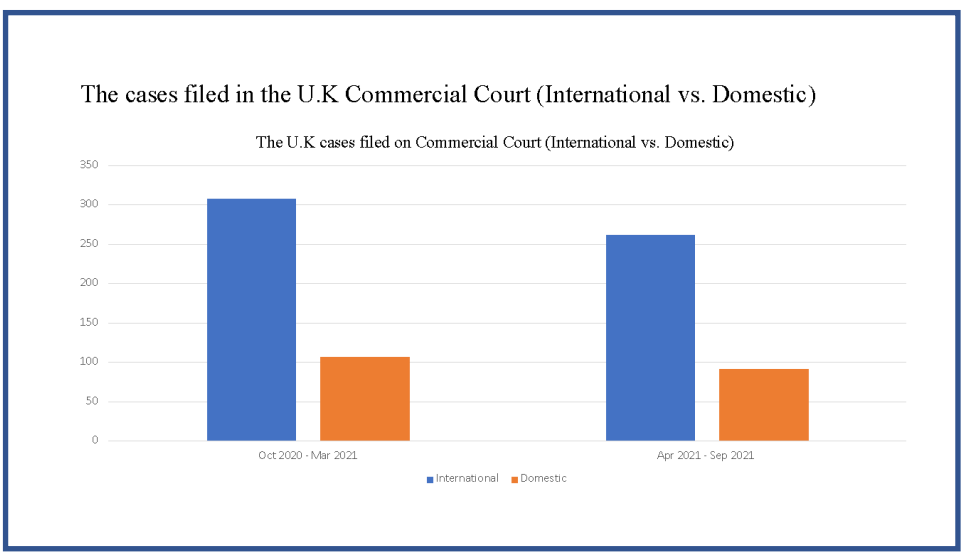
[21] "The Commercial Court Report 2019-2020 (Including the Admiralty Court Report)." Gov.UK. Courts and tribunals judiciary. Accessed November 9, 2022. https://www.judiciary.uk/wp-content/uploads/2021/05/6.7302_Commercial-Courts-Annual-Report_Final_WEB.pdf.

Figure 3. Number of Judgements made in the Commercial Court in the U.K



Source: The Commercial Court Report 2020-2021 (Including the Admiralty Court Report)

Figure 4. Cases comparison Filed in the U.K Commercial Court between International and Domestic



Source: The Commercial Court Report 2020-2021 (Including the Admiralty Court Report)

Also, there are more international cases than domestic cases filed in the U.K commercial court. It can be seen that in cases filed on the U.K commercial

court, there are more international trade cases filed than domestic ones. Due to there are some trade cases that should be resolved based on English Law[22], parties actively chose the U.K commercial court to resolve the disputes. More than 800 cases on average were filed from October 2018 to September 2021[23].

2-1-1. Judges in the U.K Commercial Court

There is total 13 commercial judges[24], who are specialized in commercial disputes in the U.K Commercial Court. In order to be a commercial judge, the judge should be either from King's Counsel or senior solicitors at commercial law firms in the U.K. Also, the Lord Chancellor and the Lord Chief Justice appoint the judges of the Commercial Court in the U.K. Depends on the cases, Deputy High Court judges can sit in the cases filed on the Commercial Court in the U.K. Moreover, judges in the Commercial Court can also hear the cases in the High Court such as cases related to administrative law or criminal law. The special feature of judges in the Commercial Court not only sit on trials but also participate in all processes with cases including case management and interim hearings.

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[22] "The Work of the Commercial Court." Courts and Tribunals Judiciary, August 9, 2022. https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/the-work-of-the-commercial-court/.

[23] Kim, Jungwhan, Sujin Lee, and Jiyoung Jang. "국제상사법원에 관한 연구 ." Research on the International Commercial Court . Judicial Policy Research Institute , September 23, 2020. https://www.judiciary.uk/wp-content/uploads/2022/06/Commercial-Court-Guide-11th-edition-1.pdf.

[24] Standing International Forum of Commercial Courts. Accessed November 13, 2022. https://sifocc.org/countries/united-kingdom/.

2-1-2. Features of the Commercial Court in the U.K

Among cases in the Commercial Court, the cases can be transferred to the court named as "The Circuit Commercial Court." The case should be fundamentally suitable for the Commercial Court but if the case is more related to financial value or the nature of the factual technical or legal issues, or if its value merits trial in the High Court and the factual technical or legal issues that arise require, or would benefit from, resolution by a Circuit Commercial Judge[25].

The circuit commercial court is also judged by one judge and if the case is transferred to the circuit commercial court, the case can be assigned to be heard by a commercial court judge.

2-1-3. The average duration of case to be closed

The disputes in the trial, usually take from 1 week to 4 weeks[26].

2-1-4. What Cases does the U.K Commercial Court Deal with

The U.K. Commercial Court exercises jurisdiction over commercial cases. For commercial cases, Rule 58.1 (2)[27] describe a commercial claim that CPR

[25] "Circuit Commercial Courts." Courts and Tribunals Judiciary, September 14, 2022. https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/commercial-court/circuit-commercial-courts/.

[26] "The Commercial Court Report 2020-2021 (Including the Admiralty Court Report) ." Gov.UK , 2022. https://www.judiciary.uk/wp-content/uploads/2022/02/14.50_Commercial_Court_Annual_Report_2020_21_WEB.pdf.

[27] The Rt Hon Sir Maurice Kay. "Blackstone's Civil Practice 2015." Google Books. Oxford University Press, January 22, 2015.

provides for cases related to commercial transactions (transaction of trade)[28] or 1) dispute cases related to commercial contracts or international commercial agreements, 2) cases related to the export and import of goods, even though the case is not based on the U.K 3) Land or sea, cases involving the transport of goods through the public or through pipelines 4) cases related to oil and natural gas and development of other natural resources, 5) cases related to insurance or reinsurance, 6) cases related to financial and banking services, 7) cases related to the stock market and exchanges 8) cases related to the purchase and sale of goods, 9) an incident related to the construction of a ship, 10) cases related to business or agency 11) arbitration and competition cases or matters[29].

2-1-5. How the procedure starts and transferred to other courts

If the Defendant intends to dispute over the jurisdiction of a commercial court, he/she shall submit the prior confirmation and the reason for the violation of jurisdiction within 28 days from the date of submitting a written confirmation of the fact that he/she has received the complaint and an application to the effect of seeking jurisdiction must be submitted. [Rule 58.7(2) CPR].

The transfer of a lawsuit may be made on the grounds of violation of jurisdiction (§ 4 PD 58), and regardless of whether it is transferred from a commercial court to another court or from another court to a commercial court, an application for transfer must be filed to the commercial court. [Rule 30.5 (3)

[28] https://books.google.com/books/about/Blackstone_s_Civil_Practice_2015.html?id=eH9srgEACAAJ.

[29] "The Commercial Court Report 2020-2021 (Including the Admiralty Court Report) ." Gov.UK, 2022.https://www.judiciary.uk/wpcontent/uploads/2022/02/14.50_Commercial_Court_Annual_Report_2020_21_WEB.pdf.

CPR][30] Furthermore, an application for transfer can be made at any stage in the procedure, but it is generally recommended to apply in the early stages of the lawsuit, and if it is transferred from another court to a commercial court, most cases are heard in the commercial court without re-transfer[31].

2-1-6 How the U.K Commercial Court Cases Manage Filed Cases

Overall proceedings of Commercial Courts are governed by Civil Procedure Rules ("CPR") and Practice Directions ("PD")[32]. The management of the case in the U.K commercial court is led by the court. Case management by the court deals with the arrangement of issues, the arrangement of matters to be discussed at the case management meeting schedule and meeting, the preparation of a schedule (timetable) related to the progress and management of the progress, and the court's order deemed appropriate in connection with a case management. (Rule 58.13 CPR, § 10 PD 58) The court takes the lead in ensuring that the case proceeds appropriately and reasonably from the pre-pleading stage. If the issue is complicated and there are several issues, the case management meeting may be held again later. Other orders that the court considers suitable for a case management can also be issued.

Due to the nature of the case, the British commercial court's pleading

[30] https://books.google.com/books/about/Blackstone_s_Civil_Practice_2015.html?id=eH9srgEACAAJ.

[31] "The Commercial Court Report 2020-2021 (Including the Admiralty Court Report) ." Gov.UK, 2022.https://www.judiciary.uk/wpcontent/uploads/2022/02/14.50_Commercial_Court_Annual_Report_2020_21_WEB.pdf.

[32] "New Editions of the Commercial Court Guide and Circuit Commercial Court Guide Published." Courts and Tribunals Judiciary, November 7, 2022. https://www.judiciary.uk/guidance-and-resources/new-editions-of-the-commercial-court-guide-and-circuit-commercial-court-guide-published/.

procedure can be carried out as a rapid pleading procedure (expedited trial)[33] if its urgency and importance are recognized. The procedure for rapid pleading is made at the request of the party, and as mentioned above, the party should review his/her dispute at least at the Case Management Meeting (case management conference) in terms of prevention of procedural delay and cost reduction. (PD 51N). In addition, the commercial court may order the separation of pleadings in relation to a specific issue (Rule 3.1 (2) (i) CPR), which is recognized when the benefit of separating and hearing a specific issue is greater than hearing all issues at once. In this regard, according to, [Rule 3.1 (2) (j), (k), (l) CPR] , the court may exclude or dismiss some issues from the hearing, and it is also possible to make judgments only on some issues first. This is mainly done when the issue is complex and large in scale and takes a lot of time to proceed with the argument. After the judgment is sentenced by the judge, if you wish to object, you can submit an appeal to the commercial court. Later, it could be sent to the High Court of Justice in London (His Majesty's High Court[34] of Justice in England) and the Court of Appeal[35](the Supreme Court of the United Kingdom).

[33] "Apache Beryl I Ltd v Marathon Oil UK LCC and Others." vLex Justice, August 16, 2017. https://vlex.co.uk/vid/apache-beryl-i-ltd-841087471.

[34] "High Court." Courts and Tribunals Judiciary, September 14, 2022. https://www.judiciary.uk/courts-and-tribunals/high-court/.

[35] "Court of Appeal." Courts and Tribunals Judiciary, September 15, 2022. https://www.judiciary.uk/courts-and-tribunals/court-of-appeal-home/.

3. Singapore

3- 1 Background of the Singapore International Commercial Court

The Singapore International Commerce Court (SICC) was established on January 2015. The SICC puts importance on parties can take advantage through avoiding common concerns that can happen in the arbitration disputes, 1) over-formalization of, delay in, and rising costs of arbitration; 2) concerns about the legitimacy of and ethical issues in arbitration; 3) the lack of consistency of decisions and absence of developed jurisprudence; 4) the absence of appeals, and 5) the inability to join third parties to the arbitration[36].

According to the Singapore International Commercial Court, "The superior court of law in the Singapore International Commercial Court is based on the foundations of a legal and judicial system that has been highly regarded and favourably ranked in international surveys conducted by, among others, the Swiss-based International Institute for Management Development and the Hong Kong-based Political and Economic Risk Consultancy.[37]"

Mostly Singapore International Commercial Court hears the case related to international commercial disputes. 22 cases of judgements were made until November 2nd, 2022, 25 cases of judgements were made in 2021, 20 cases of judgements were made in 2020, 6 cases of judgement was made in 2019, 15 cases

[36] "Establishment of the SICC." SICC- Singapore International Commercial Court, March 22, 2022. https://www.sicc.gov.sg/about-the-sicc/establishment-of-the-sicc.

[37] "Overview of the SICC." SICC, November 1, 2022. https://www.sicc.gov.sg/about-the-sicc/overview-of-the-sicc.

of judgement were made in 2018 and 12 cases of judgement were made in 2017. More cases are filed compared to 2019, and the cases are rising every year until 2021[38].

3-2 Judges in the Singapore International Commercial Court

The particular feature of the Singapore Commercial Court is if the party prefers to appoint an adjudicator, the Singapore International Commercial Court can assign judges on every case from the international panel or Singapore judges. There are 46 judges in the Singapore International Commercial Court in total, and all of them are either from Singapore or overseas. In the case of the Singapore International Commercial Court foreign judges, the Chief Justice of the Supreme Court may be appointed if he/she is deemed to "have the necessary qualifications, experience, and expertise as a foreign judge," and may be appointed as a foreign judge with a fixed term of office. However, In terms of authority, unlike the judges of the Singapore Supreme Court, they can only participate in lawsuits filed with the SICC and cases appealed in the SICC[39].

3-3 The Singapore International Commercial Court Special Features

Multiple parties from overseas can join the disputes under the Singapore International Commercial Court, and the court requires third parties to join during the proceedings, which increase the objectivity[40]. Judges from overseas and third

[38] "Judgments." SICC, 2022. https://www.sicc.gov.sg/hearings-judgments/judgments.
[39] "PART 8 JUDICIARY ." Singapore Statutes Online. A Singapore Government Agency Online, November 10, 2022. https://sso.agc.gov.sg/Act/CONS1963?ProvIds=P18-#pr95-.
[40] "Court of Appeal." Courts and Tribunals Judiciary, September 15, 2022. https://www.judiciary.uk/courts-and-tribunals/court-of-appeal-home/.

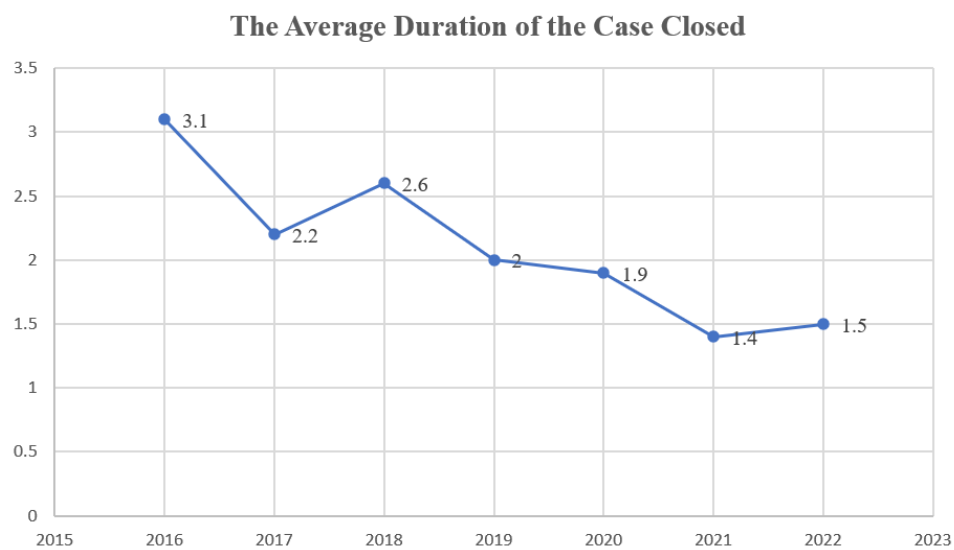
panels from other countries also can join the hearings and trial, which is a unique system that the Singapore Commercial Court only has.

The Singapore Commercial Court also provides an advanced e-filing system such as notifications through email or cell phone SMS and provides touch screens and audio facilities in the court so that immediate evidence investigation or witness examination can be conducted during the trial. E-filing systems that the Singapore Commercial Court obtained is what the Korea judicial system should implement due to unexpected pandemics such as Covid-19 could reoccur in the future and could influence international trade and trial procedures.

3-4 Average duration of Case Closure in the Singapore International Commercial Court

The Singapore International Commercial Court takes 2.1 years on average until the final decision.

Figure 5. The Average Duration of the Case Closed in SICC



In Singapore, the number of cases handled by commercial courts is relatively small. Therefore, it takes relatively little time for a case to be closed. Due to the nature of the commercial court, the fact that disputes can be resolved in a short period of time can serve as an advantage. Looking at the average time it took to resolve the case from 2016 to 2022, the investigation period, it can be seen that it took nearly three years, but most recently tends to end in a short period of time, with an average of 1.2 years. This would serve as a considerable advantage over commercial courts in other countries. The longer the case takes, the more it costs, and it always has the element of dispute from the perspective of the company or the state, so resolving it as quickly as possible due to the court's quick decision can be an advantage.

3-5 Procedures of Case Commencement and Case Transfer Procedures in the Singapore International Commercial Court

The method of filing a lawsuit in Singapore is divided into two ways: filing a summons (writ of summon) and filing a summons (originating summon), and the same applies to the Singapore International Commercial Court. The case filed with the SICC will be heard by a subcommittee consisting of one to three judges. However, it is common in practice to undergo a hearing by one judge, and the hearing is conducted by three judges only if appointed by the 1) Chief Justice of the International Commercial Court (The Chief Justice in Singapore) or, 2) agree to undergo a hearing by three judges and the Chief Justice of the International Commercial Court does not order otherwise, according to SICC

Practice Direction and Rules of Court[41].

The Singapore International Commercial Court not only hears the cases filed directly to this court but also hears the cases transferred from the Singapore High Court. Third or more parties can be joined to the Singapore International Commercial Court cases if the case has been transferred from the General Division of the High Court.

3-6 What Cases does the Singapore International Commercial Court Deal with

Singapore International Commercial Court deals with cases related to transnational disputes, particularly commercial international disputes.

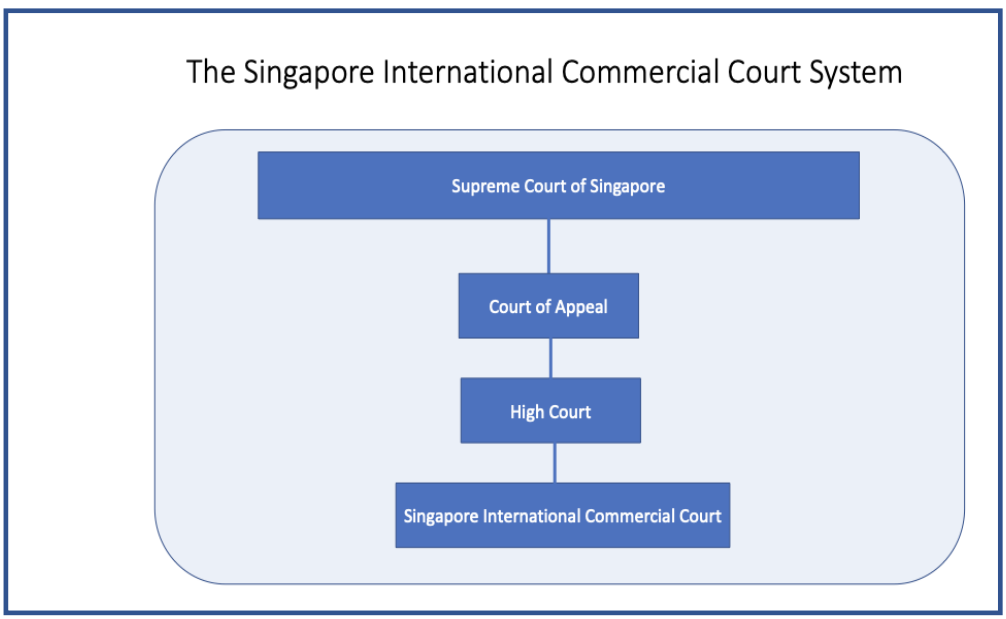
3-7 Overall Appeal Procedures in the SICC

If the case does not resolve under Singapore International Commercial Court, all cases can be appealed to the Singapore Court of Appeal and the Supreme Court of Singapore. During the Appeal procedures, the SICC assists judges and the Court of Appeal Judges in hearing appeals from the SICC and participating in all conferences and hearings for pre-trial. Also, the judges of the High Court of Singapore, the International Judges of the Supreme Court in Singapore, and the judges of the Appellate Division can be designated during the appeal procedures

[41] "Originating Application: What It Is and How to File in Singapore." SingaporeLegalAdvice.com, April 19, 2022. https://singaporelegaladvice.com/law-articles/originating-application-summons-file-singapore/.

from cases filed on the SICC. The objection procedure in Singapore's appeals court is generally heard by three judges, and it is very exceptional for five judges to hear it. In the case of SICC, five judges proceed with the hearing if the head of the International Commercial Court orders it or if the party agrees with it. The appellate court may proceed with the procedure without holding an oral hearing with the consent of all parties[42].

Figure 6. The Singapore International Commercial Court (SICC) System



Source: "Overview of the SICC- the Singapore International Commercial Court." SICC, November 1, 202.

[42] "Establishment of the SICC." SICC- Singapore International Commercial Court, March 22, 2022. https://www.sicc.gov.sg/about-the-sicc/establishment-of-the-sicc.

4. Comparison between Courts in Korea, the U.K and Singapore

Table 1. Commercial Judicial System Comparison Between South Korea, the U.K, and Singapore

Country	**Total case**	**Specialized Court**	**Duration**	**Total Judges**	**Appeal Procedures**
The United Kingdom	688(Judgment made from 2017-2021)	Yes	1-4weeks(Only in the trial)	13	Yes
Singapore	78 cases (Judgement made from 2017-2021)	Yes	2.1 (from the trial to final judgement)	46	Yes
South Korea	2 Representative International Trade cases (2003 -2021)	No	5.75 year	1560 (South Korea does not have judges appointed to a particular court for life).	Yes

Chapter III. The Special Feature of the U.S Court of International Trade

1. The Emergence Background of the U.S Court of International Trade

The United States is the world's largest economy and has the largest trading scale in the world. Due to most of the countries in the world exporting and importing goods related to the U.S., there are countless trade disputes have progressed from the past. The importance of trade disputes has arisen for decades, and in accordance with this, the United States Court of International Trade is designed to offer "a comprehensive system for judicial review of civil actions arising out of import transactions and federal transactions affecting international trade.[43]"

The U.S Court of International Trade is under the Federal Court System and was established based on the U.S Constitution III, Article I, Section 8 and hears international trade cases involved with the U.S government, the U.S agencies, the U.S corporations, and overseas corporations or agencies. The court is authorized only to decide different types of international trade that are defined by the U.S Constitution and particular laws enacted by the U.S Congress. The U.S Court of

[43] "United States." About the Court | Court of International Trade | United States. Accessed November 10, 2022. https://www.cit.uscourts.gov/about-court.

International Trade hears all the international court cases that happened related or across to the United States, regardless of the geographical jurisdiction. This court put an emphasis on "expeditious procedures along with just, speedy and inexpensive determination" on unfair trade practices, transactions and measures within the United States.[44]" Disputes over tariffs or customs imposed by the Department of Commerce of the United States, ITC(the U.S Trade Commission), U.S Customs and Border Protection(CBP) and other United States agencies can be handled under the USCIT. According to the Customs Courts Acts 1980, the USCIT has an exceptional jurisdictional authority to decide any civil actions regarding to occurrence of any law related to international trade against the United States, the U.S agencies, corporations, officers,,,etc.

Moreover, according to the USCIT explanation of the court's jurisdiction, the USCIT has granted a complete and separate power in law in international trade cased filed in the USCIT. It explains "This broad grant of subject matter jurisdiction is complemented by another provision in the Customs Courts Act of 1980 which makes it clear that the United States Court of International Trade has the complete powers in law and equity of, or as conferred by statute upon, other Article III courts of the United States. Under this provision, the court may grant any relief appropriate to the case before it, including, but not limited to, money judgments, writs of mandamus, and preliminary or permanent injunctions.[45]"

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[44] USCIT Rules, Forms, Chambers Procedures, Guidelines and Administrative Orders | Court of International Trade | United States. Accessed November 12, 2022. https://www.cit.uscourts.gov/uscit-rules-forms-chambers-procedures-guidelines-and-administrative-orders.

[45] "United States Court of International Trade- About the Court ." About the Court | Court of International Trade | United States. Accessed November 11, 2022.

2. Overall Systems of the U.S Court of International Court

2-1 Overall Procedures and Practices of the Court in the U.S Court of International Trade

The U.S. Court of International Court has its own rules of procedures and practices before the court begins. Those own rules of procedures and practices are made by numbering and arrangement used in the Federal Rules of Civil Procedure. Before the court, the Federal Rules of Evidence govern the cases' trial within certain limited exceptions. Not only the cases that happened in the United States or in New York City, where the headquarter of the U.S Court of International Trade is located but also any cases that happened in the jurisdiction of the United States can file the case in the U.S Court of International Trade. Therefore, the U.S Court of International Trade set the procedures concerning the needs of the parties not in the United States or in New York City but can still be able to file the case in the U.S Court of International Trade. Also, the court may refer for guidance to other courts' rules.

The special feature[46] of the U.S Court of International Trade is that when the chief judge of the U.S Court of International Trade assigns the judge to the case, then the trial can preside at any location within the United States Courthouses. When the trial is conducted outside of the United States, the clerk of the United

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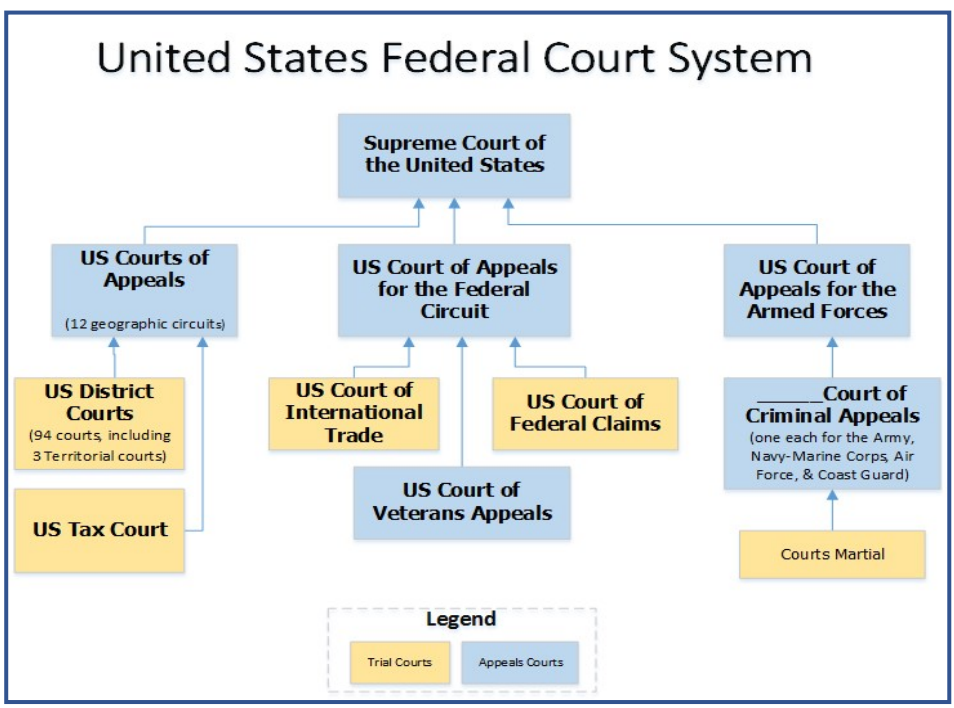
https://www.cit.uscourts.gov/about-court.

[46] "United States." USCIT Rules, Forms, Chambers Procedures, Guidelines and Administrative Orders | Court of International Trade | United States. Accessed November 12, 2022. https://www.cit.uscourts.gov/uscit-rules-forms-chambers-procedures-guidelines-and-administrative-orders

States Court of International Trade can be displaced by the clerk of the district court in that judicial al district in matters of the case. Throughout the trials, the U.S Court of International Trade has the authority to ask for remands on government agencies' determination against the corporations or agencies in the United States or overseas, up until the judge decides the determination of the U.S agencies or the government is fair and makes a final decision.

After several remands occur, appeals from the final decisions made by the U.S Court of International Trade can be taken to the United States Court of Appeals for the Federal Circuit and finally, to the Supreme Court of the United States[47].

Figure 7. The United States Federal Court System



Source: Marshall University Libraries, "First Year Seminar- Basic Legal Research: Case Law."

[47] "United States Court of International Trade- About the Court ." About the Court | Court of International Trade | United States. Accessed November 11, 2022. https://www.cit.uscourts.gov/about-court.

2-2 Judges in the U.S Court of International Trade

There is a total of 9 judges in the U.S Court of International Trade appointed for life by the president and consent of the Senate. However, depending on the cases, the U.S. Court of International Trade judges can be assigned to the United States Court of Appeals or the United States District Court temporarily by the Chief Justice of theU.S.S Court of International Trade. In any international trade case filed by the U.S. Court of International Trade, the chief judge assigns a case to one judge, and the case is also exercised by one judge. However, suppose the case is in a huge complication or involves "a Presidential proclamation, Constitutionality of an act of Congress or an Executive order". In that case, the case can be assigned to a three-judge panel by the chief judge of the U.S Court of International Trade.

2-3 Detailed Process of Cases in the USCIT (Based on the Rules of the U.S Court of International Trade)

According to the USCIT official states, "Once a civil action starts by filing the case with the clerk of the U.S Court of International Trade, and once the Plaintiff pays the filing fee, then the case would be commenced. If the parties want the case to be transferred, "19 U.S.C. § 1516a(g)(12) in which a complaint or a Request for an Extraordinary Challenge Committee was filed under NAFTA Article 1904 Panel Rule 39 or NAFTA Extraordinary Challenge Committee Rule 5 and in which the time for filing a Notice of Appearance under NAFTA Article 1904 Panel

Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, anyone otherwise entitled to intervene under Rule 24 of these rules will be permitted to intervene."[48]

Also, the USCIT official states, "For dismissal process of the case filed in the United Court of International Trade, For the voluntary dismissal, Rule 41 states as "Rule 41. Dismissal of Actions (a) Voluntary Dismissal. (1) By the Plaintiff. (A) Without a Court Order. Subject to Rules 23(e), 23.2, 56.2, and 66 and any applicable federal statute, the Plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared. (B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the Plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits. (2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the Plaintiff's request only by court order, on terms that the court considers proper. Suppose a Defendant has pleaded a counterclaim before being served with the Plaintiff's motion to dismiss. In that case, the action may be dismissed over the Defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice".[49] "

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[48] "Rules of the U.S. Court of International Trade." the U.S Court of International Trade. Accessed November 11, 2022.

[49] "Rules of the U.S. Court of International Trade." the U.S Court of International Trade . Accessed November 10, 2022.

Otherwise, there could be Involuntary Dismissal and rules of the U.S Court of International Trade states as " (b) Involuntary Dismissal; Effect. (1) Actions on the Customs Case Management Calendar or the Suspension Disposition Calendar are subject to dismissal for lack of prosecution at the expiration of the applicable period of time as prescribed by Rules 83 and 85. (2) Actions commenced pursuant to 28 U.S.C. § 1581(c) by the filing of a summons only are subject to dismissal for failure to file a complaint at the expiration of the applicable period of time prescribed by 19 U.S.C. § 1516a. (3) When it appears that there is a failure of the Plaintiff to prosecute, the court may on its own after notice, or on motion of a Defendant, order the action or any claim dismissed for lack of prosecution. No notice or motion is required when subparagraphs (1) or (2) apply. (4) For failure of the Plaintiff to comply with these rules or with any order of the court, a Defendant may move that the action or any claim against the Defendant be dismissed. (5) Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, operates as an adjudication on the merits."

For Consolidation and cases of conducting separate trials, the rules of the U.S Court of International Trade states as "Rule 42. Consolidation; Separate Trials (a) Consolidation. If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid

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https://www.cit.uscourts.gov/sites/cit/files/COMPLETE%20RULES%20AND%20FORMS.pdf.

unnecessary cost or delay. (b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial[50].”

Regarding Default Judgement, Rules of the U.S Court of International Trade states as “Rule 55. Default Judgment (a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party default. (b) Entering a Default Judgment. In all cases the party must apply to the court for a default judgment. When the Plaintiff’s claim is for a sum certain or for a sum that can be made certain by computation, the court – on the Plaintiff’s request with an affidavit showing the amount due – must enter judgment for that amount and costs against a Defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 14 days before the hearing. The court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when to enter or effectuate judgment, it needs to: (1) conduct an accounting; (2) determine

[50] “Rules of the U.S. Court of International Trade.” the U.S Court of International Trade. Accessed November 11, 2022. https://www.cit.uscourts.gov/sites/cit/files/COMPLETE%20RULES%20AND%20FORMS.pdf.

the number of damages or other relief; (3) establish the truth of an allegation by evidence; or (4) investigate any other matter. (c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b). (d) Judgment Against the United States. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.[51]"

3. Differences between the U.S Administrative agencies and South Korea Administrative Court System

3-1 The U.S Administrative Agencies

Different from South Korea Judicial System in that South Korea has a separate court called "Administrative Court", the U.S does not have an individual court called " the U.S Administrative Court". Instead, there are many executive branch agencies in the United States. There is no administrative court in the United States. Most laws and binding legal decisions related to administration come from both state and federal administrative agencies. Administrative agencies in the United States defined as "the official government bodies that have the power and authority to direct, supervise and implement certain legislative acts or statutes." Yet, not all of the administrative agencies in the U.S have the term "agency" in the title

[51] "Rules of the U.S. Court of International Trade." the U.S Court of International Trade . Accessed November 05, 2022. https://www.cit.uscourts.gov/sites/cit/files/COMPLETE%20RULES%20AND%20FORMS.pdf.

and named as “divisions, departments or commissions.[52]”

There are several types of administrative agencies, executive agencies, and independent agencies. Examples of agencies related to International trade are U.S. International Trade Commission, U.S. Trade and Development Agency, Federal Trade Commission International Trade Administration,…etc. The difference between the executive agency and independent agencies the president of the United States cannot remove the head of the independent agency without the approval of Congress and a clear reason. However, the head of the executive agency can be removed at any time. The Administrative Agency in the United States can create and enact laws based on “the Administrative Procedures Act”. According to Justia Administrative Law, “The APA also specifies when courts may review and nullify administrative agency rules and provides standards for any administrative hearings that are conducted.” Furthermore, administrative agencies have the authority to enforce and adjudicate what they create. Likewise, judicial court opinions and the overall decisions of administrative enforcement create a body of administrative law. If a party wants to appeal an administrative agency’s determination, then the determination can be appealed[53] to the courts within the judicial branch for review the case. There are separate federal judges named” Administrative Law Judges”, and they are different from Administrative Judges, who belong to states. Once the party has exhausted all of the agency-level appellate

[52] Administrative Law. Justia, May 5, 2022. https://www.justia.com/administrative-law/#:~:text=What%20do%20administrative%20agencies%20do,violations%20of%20laws%20or%20regulations.

[53] “Appeals from Administrative Proceedings.” Justia, May 5, 2022. https://www.justia.com/administrative-law/appeals-from-administrative-proceedings/.

remedies, then the federal court will accept the appeal and review the case. Regardless of whether trade cases happen within U.S corporations or foreign corporations, trade dispute cases do not belong to the regular judicial court, but to either trade specialized court which is the U.S Court of International Trade, or Trade related federal agencies[54].

3-2 Advantages of the U.S Court of International Trade

Majority of cases filed on the Administrative Court in South Korea and Commercial Courts in the U.K and Singapore are corporation-based dispute cases. Therefore, once the party wants to complain or appeal on what foreign governments or federal agencies trade decisions related to tariffs or customs, the party should request its government to file a case to the World Trade Organization. There is no particular judicial system or appeal system established under the Constitution. However, in the United States, it has established the U.S Court of International Trade, was established under the constitution and has the authority to evaluate its own government or federal agencies' determination under the official judicial system. Also, it is the only court that allows foreign corporations to directly file a case against the U.S government or federal agencies in the United States and request hearings, review for remands or commences the trial. It should be discussed in the next section if the U.S Court of International Trade makes a fair decision, however, the important feature and advantage of this court are that the court provides an opportunity to foreign corporations to complain of decisions that plaintiffs think unfair or suspicious without its government's support.

[54] "Branches of the U.S. Government." USAGov. Accessed November 12, 2022. https://www.usa.gov/branches-of-government#item-214501.

3-3 Reasons Why Filing Cases in the U.S Court of International Trade

According to the Office of the United States Trade Representative, more than 200 countries are in trade relationships with the United States. In order to conduct international trade, there are several factors to be concern such as regulations, laws, guidelines, tariffs, customs, antidumping…etc. Those many factors can create harder and complicated circumstances for government to make fair and speedy trade determinations against foreign corporations. Moreover, due to trade partners cannot always perfectly satisfy each other's demands, trade disputes between different countries or corporations are unavoidable. As the United States market is one of the biggest markets in the globe, foreign corporations are inevitably to not trade with the United States. Since the U.S Court of International Trade hears all the cases within the U.S territory regardless of corporations are based on domestic or overseas, all foreign corporations can file the case or complain the case that the U.S government or the U.S federal agencies have decided. Moreover, the U.S Court of International Trade has its own detailed systematic judicial system, which is simple to file the case, appeal the case, gain speedy decisions, possible to remand the government or federal agencies' decisions and very cost-effective. Moreover, as the world is fastly changing, technology is advancing day by day, policies, laws and regulations are rapidly revising to catch up the advancement of society or depending on the elected government's trade directions, foreign corporations can constantly get fluctuant influence in trade. Once foreign corporations receive fluctuant influence related to issues such as tariffs or customs, it would bring more complicated trade disputes between

countries and eventually be reflected the court. Then, the trials or appeals would be longer than expected, then both parties need to pay more costs and time to solve trade disputes. Those concern may be solved by the features of the U.S Court of International Trade and can provide advantages to foreign corporations to resolve the case quicker and be the cost-effective while the decision made by the U.S Court of International Trade is not just a symbol but has a validity and legal binding.

Chapter IV. The Overall Review and Cases Reported in the USCIT

1. Overall Cases of the USCIT (2005-2022)

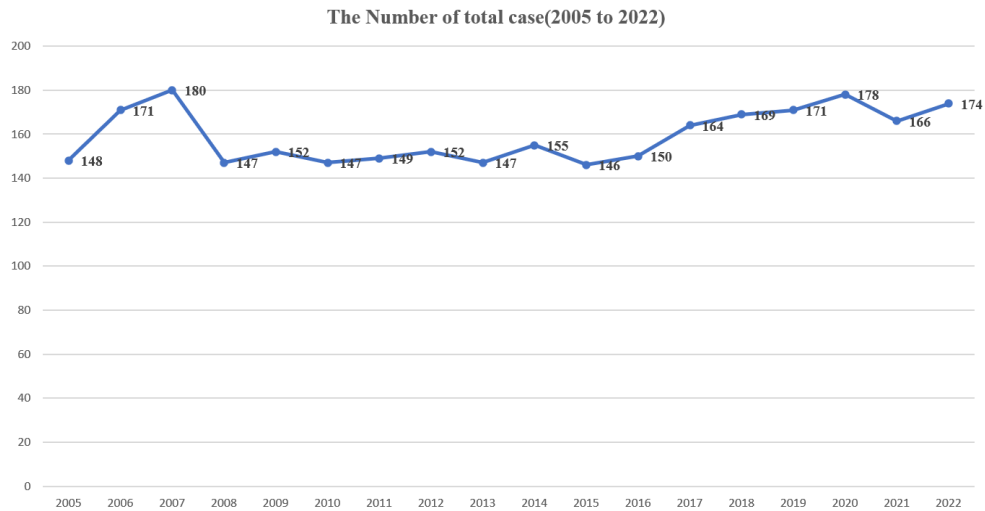
As mentioned above, the USCIT, as a special court, focuses on the legal resolution of cases concerning international trade disputes. Most early trade disputes were judged based on simple facts about the price of goods or quantity. However, in recent years, the role of the special court in resolving these problems has become more critical as there are more professional and complex issues, such as technology transfer and environmental disputes. Therefore, in this chapter, it would like to take an overall look at the cases handled by the USCIT and the number of complaints filed by major countries covered by the USCIT (China, South Korea, etc.) to find out why USCIT's system as a special commercial court in the United States is attracting attention.

First, the criteria for case inclusion and period inclusion are as follows. The number of cases is based on the unique number (i.e., Docking Number) received by the court but is treated as a case for the current year based on the time of receipt. For example, if the unique number is 06-XXXX, it is included in the case of 2006. Therefore, even if the case was terminated in 2009, if the case initially began in 2006, the case was counted as a case in 2006. In addition, the consolidated case was calculated as one case, and overlapping cases were excluded.

1-1 Total Cases

As of 2005, when the USCIT received attention[55] as trade transactions between countries have been more activated since the signing of the FTA, the total number of cases up to 2022 is as follows.

Figures 8. The Number of the USCIT's Total Case (2005-2022)



The number of cases filed in the USCIT surged from 148 in 2005, the 25th anniversary of USCIT's full-fledged operation, to 180 in 2007. During this period, the U.S. protective trade policy was somewhat strengthened as the U.S. economy was deepening, decoupling with developing countries due to slowing economic growth, including the sluggish housing market, high oil prices, and poor

[55] Gordon, L. M. (2006). United States Court of International Trade 25th Anniversary Celebration Special Session of the Court November 1, 2005. *Geo. J. Int'l L.*, *38*, 5.

subprime mortgages[56]. As a result, the number of complaints filed between 2005 and 2007, when the investigation began, shows a sharp increase. Meanwhile, in 2008, the number of cases eased due to political issues such as the U.S. presidential election. The Obama administration (2009-2017) maintained the number of cases somewhat more stable than in 2007 while expanding partnerships with ASEN countries such as China and India[57]. However, since 2018, as the Trump administration took office, the U.S. has adhered to its self-centered trade policy[58], turning to an increase in the number of cases filed again.

1-2 The Classification of the Entire Cases by Industry Group

Meanwhile, among the cases filed by the USCIT, the following are examined by industry groups. Classification by industry group indicates which industrial groups have intensified confrontation among countries engaged in trade transactions in the United States. This classification by industry group confirms the interests of the United States and opposing countries in their protection industries. The industry-specific type in this study was based on the industrial sort by Clark, which is classified in classical economics. The primary industries were based on sectors that act on nature, such as agriculture, livestock, forestry, fishing, mining, fisheries, livestock, and hunting, and occupations dealing with their processed products. Secondary industries include manufacturing, mining, construction, electricity, water, and gas. Finally, the tertiary sector provides commerce, transportation and communication, finance, public service, housekeeping, and self-

[56] Moseley, F. (2009). The US economic crisis: Causes and solutions. *International Socialist Review*, *64*(2), 204.
[57] Schott, J. J. (2009). Trade policy and the Obama administration. *Business Economics*, *44*(3), 150-153.
[58] Stiglitz, J. E. (2018). Trump and globalization.

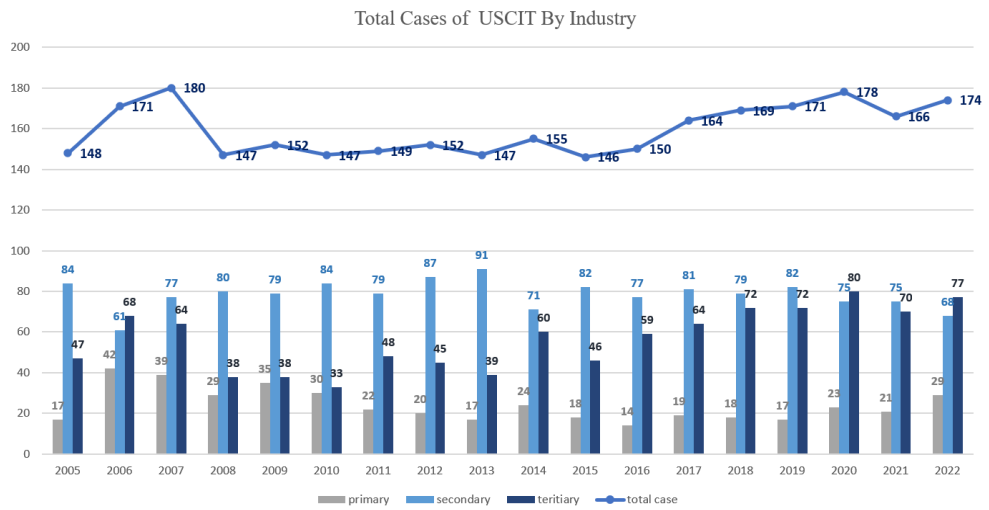
employed business. In this study, industries belonging to the fourth industrial group, such as high-tech, were classified into three major categories, with at least the third industry.

Table 2. The Industry Classification by Clark

Industry	Contents
Primary	It includes agriculture, ranching, forestry, fishing, etc., and this study means raw materials that have not been processed. Among the cases of USCIT, there are many cases related to shrimp products, wood products, mushroom collection, and garlic production.
Secondary	The secondary industry refers to manufacturing, construction, civil engineering, mining, gas, etc., that process raw materials or materials obtained from nature. This study has many steel products, bearings, furniture, and hardware cases.
Tertiary	The tertiary industries include wholesale and retail, lodging and restaurant businesses, transportation, telecommunications, finance, real estate, public administration, education, health and social welfare, and cultural and sports-related services. In this study, technology and high-tech industries were included in the tertiary sector without classifying them as the 4th industry.

Based on this, the total number of events by industry group in USCIT is as follows.

Figures 9. The Total number of Case Filed in the USCIT by Industry



Based on this, the total number of events by the industrial group in the USCIT is as follows. The most significant portion is the second industrial group, accounting for more than 50% of the total. Next, the proportion of industries above the tertiary sector is high, and the primary industry accounts for the smallest number. One noteworthy thing is that it was filed mainly in the secondary industry from 2005 to 2013. Still, since then, the number of complaints has continued to increase, mainly in the high-tech sectors above the tertiary sector, as the issue of technology transfer between China and the United States has intensified[59].

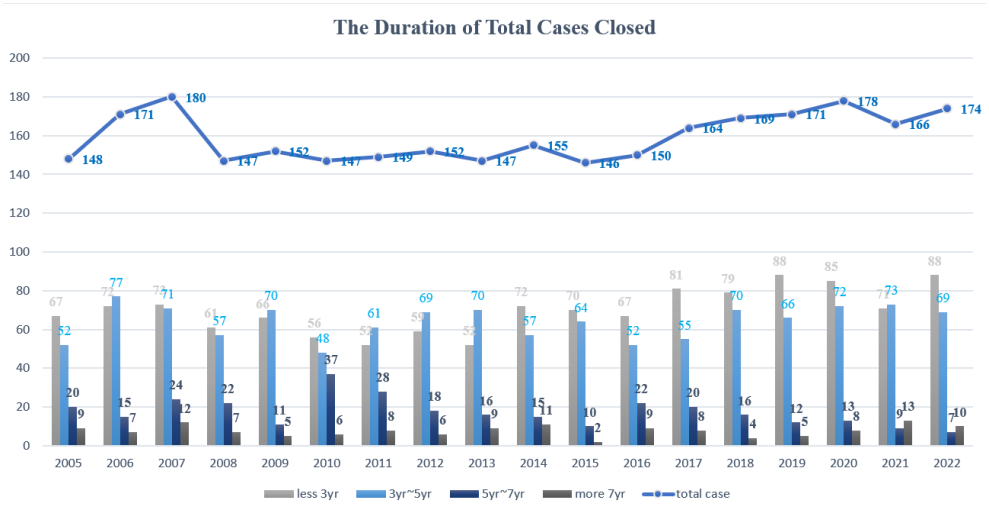
1-3 Duration of the USCIT's Case Closure

The time it took for the USCIT to close the case became an important

[59] Liu, T., & Woo, W. T. (2018). Understanding the US-China trade war. *China Economic Journal*, *11*(3), 319-340.

issue. This is because, in the case of commercial courts in other countries or administrative courts in Korea, which have been examined above, the most disturbing thing is the time it takes to close the case. Commercial trials take a long time and require a high level of expertise in making judgments. Because it is difficult for judges dealing with laws to have expertise in cases, they need help from people who need technical advice from outside. In addition, commercial trial cases often have complicated interests. Therefore, it usually takes a long time to handle a case in a commercial trial (in some cases, an administrative court) and is often a long-term case. Furthermore, it may take decades for a lawsuit to continue in the original court. Therefore, how much time the USCIT usually takes to close a case is a crucial factor in the introduction of the system.

Figures 10. The Duration of Total Cases Closed



The time it took for the USCIT to close the case was divided into four categories. It was divided into a short-term resolution of fewer than three years, a

relatively short time from three to five years, a rather general termination in a commercial trial from five to seven years, and a long-term case for more than seven years. In the cases of the USCIT, there is an 85% probability of the case closing within five years from 2005 to 2022, when the investigation began, which is relatively faster than other commercial trials. From 2007 to 2008, before the U.S. economic crisis started in earnest, the proportion of cases ending in less than three years was the highest, but the number of cases ending between three and five years from 2009 to 2013 was the highest. In addition, the number of cases ending between five and seven years increased significantly during this period, proving that the stance on foreign trade policy has changed along with the U.S. protective trade policy. Since 2014, the closing of cases in the USCIT has been proceeding relatively rapidly, which is limited to more than 90% of all cases closing within three years or between three and five years. This allows us to examine that efforts have been made to shorten the settlement period to the judgment of commercial trials and to improve procedures and systems. In the cases of the USCIT, some of the judges were changed during this period, and it is consistent with the timing that many personnel with expertise and legal knowledge were hired to simplify the procedure for confirming facts[60]. The rapid termination of the case suggests that the USCIT has a significant advantage as an arbitration agency for the termination of commercial dispute cases. In the case of commercial cases, the longer it takes to close the case, the greater the damage. Failure to resolve trade procedures or disputes affects many aspects, including input personnel, product production, and

[60] Casson, A. C., & von Schriltz, K. S. (2015). A Review of the Court of International Trade's 2014 Decisions Addressing Trade Remedy Determinations of the US International Trade Commission. *Geo. J. Int'l L.*, *47*, 27.

corporate profits.

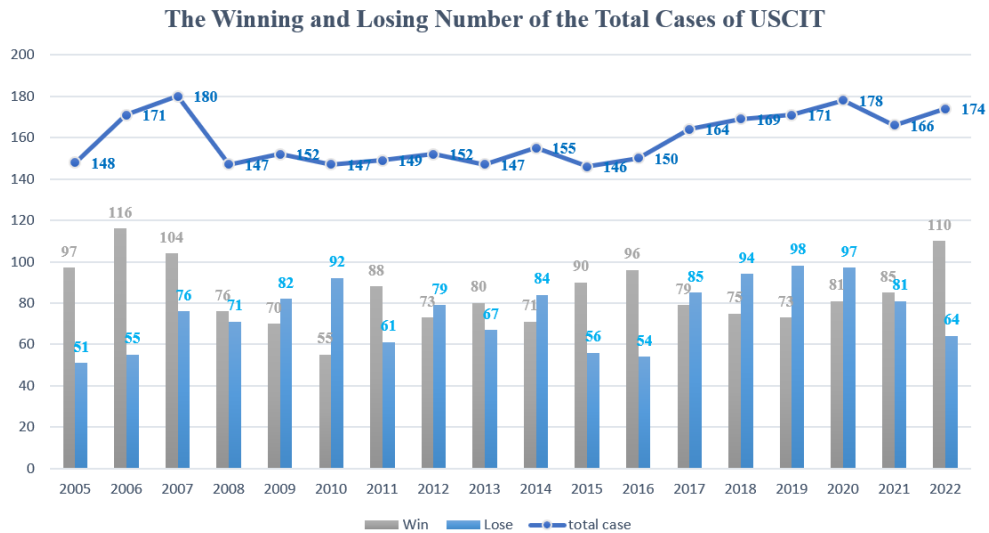
1-4 The Winning Rate of the Total Cases of the U.S Court of International Trade

The USCIT's definition of winning and losing is as follows. The Plaintiff of the USCIT is mainly a company in a trade dispute with the United States. Still, as an agency for the company, the state can participate together as multiple parties. In addition, the Plaintiff may be a single corporation or numerous corporations with the same interest. At this time, the state can participate as an agent for the company and raise objections with the company. The Defendant becomes the U.S. company, the U.S. government representing them, the U.S. Department of Commerce, and the executive branches. In addition, if a U.S. company shares interests with another country's company or its national agency, it may file a complaint against the U.S. government, the U.S. Department of Commerce, or the executive agencies such as the USITC.

The criteria for winning and losing the case are counted as the Plaintiff's win if all of the Plaintiff's claims are accepted, or any of the Plaintiff's claims are accepted, and the U.S. government, the U.S. Department of Commerce, or the executive branches are accepted to accept or review even part of the judgment. Meanwhile, if the court accepts all the opinions of the U.S. government, the U.S. Department of Commerce, or the executive agencies it is counted as the Plaintiff's loss.

This study counted the number of wins and losses from 2005 to 2022. At this time, the standard time was calculated based on the time when the incident began. Initially, the docking number of the case is not when the complaint of the matter is received but when the subject is terminated. However, calculating the number of cases was based on the time when the lawsuit was filed. For example, when the case was closed, the case's docking number was given as of 2007. Even so, if the lawsuit was filed in 2004, it was counted as the case in 2004. The winning and losing cases counted based on the above criteria are shown in the graph below.

Figures 11. The Winning and Losing Number of Total Cases of USCIT



From 2005 to 2008, in the early days of the tally, the Plaintiff's claim was accepted and won more than the case of losing. In addition, 2008 was when the U.S. presidential election changed government policy on international trade[61]. However, it was difficult for such economic conditions or policy changes to be

[61] Hoffman, M. E. (2009). What explains attitudes across US trade policies? *Public Choice*, *138*(3), 447-460.

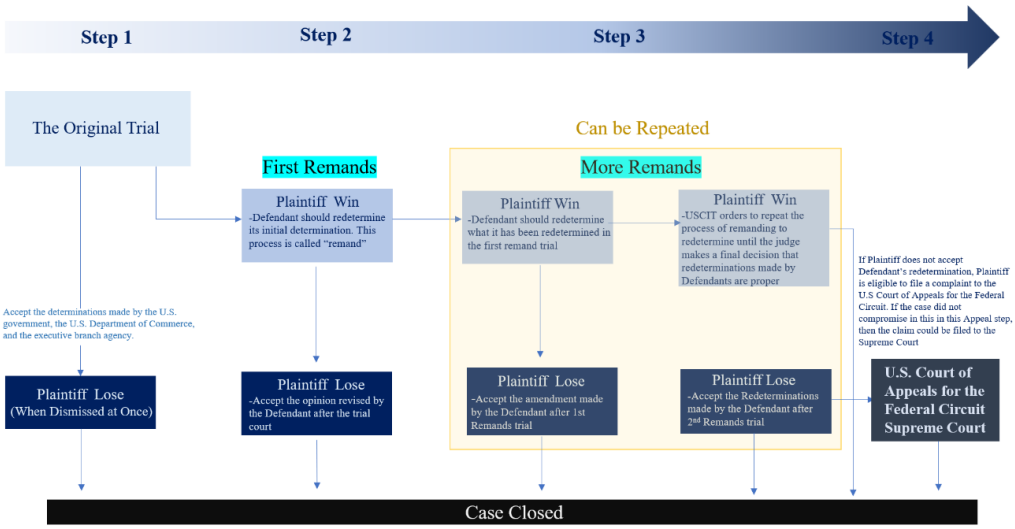
immediately linked to the trial's outcome. Therefore, there were more cases of accepting the Plaintiff's opinion than the opinions of the U.S. government, the U.S. Department of Commerce, or the executive agencies. However, there were more cases against the Plaintiffs in 2009 and the following year, in 2010, when the subprime mortgage crisis centered on the U.S. and the U.S. financial crisis increased[62], and it can be seen that more cases ruled in favor of the U.S. government. Since then, from 2011 to 2014, it can be seen that the Plaintiff's winning rate was similar or slightly higher. Until 2014, when it advocated to grow and grow together and somewhat eased the standards, the number of lawsuits against the Plaintiff was higher than that of the loss. Still, it can be seen that the number of cases against the Plaintiff was relatively higher after 2017 when there was a sharp confrontation due to U.S. protectionism and the trade war[63]. However, despite these issues, the number of wins or losses at a particular time in the entire case is not significantly different, so it can be considered that it has some objectivity despite this policy stance.

[62] Acemoglu, D. (2009). The crisis of 2008: structural lessons for and from economics. *Globalization and Growth*, 37.

[63] Fidler, D. P. (2017). President Trump, trade policy, and American grand strategy: From common advantage to collective carnage. *Asian J. WTO & Int'l Health L & Pol'y*, *12*, 1.

1-5 *4-Step* Procedures of the USCIT Judicial System (from a trial to the Supreme Court)

Figures 12. The 4-Step Procedure of USCIT



In this study, the procedure for closing the case in USCIT was primarily divided into four steps. As shown in the above figure, the USCIT usually closes the case through four steps of the procedure, but not all cases go through all four steps of the process. However, like the federal civil court, the USCIT can have three examinations, including the lower court. If mediation is not made even after three examinations, it can be appealed to the U.S Court of Appeals for the Federal Circuit or the Supreme Court. The details of the procedure are as follows.

First, the original trial begins when the Plaintiff submits a complaint against the Defendant to the USCIT. The Plaintiff at this time may mainly include

companies that are not satisfied with the decision of the upper affairs of the United States (it is also possible for multiple parties or multinational corporations) and countries as an agency that support them. At this time, the Defendant becomes U.S Department of Commerce, US Trade Representative (USTR), USITC, or executive branch agencies. In the original trial, judges of the U.S International Trade Court may review the documents (administrative records) necessary for the complaint and examinations, make a decision, or request a remand. After the judgment of the original trial, the Plaintiff may accept the result. In this case, the trial will be terminated at the original trial. In general, the Defendant's decision is accepted by the court and accepted by the Plaintiff, and it can be regarded as the Plaintiff's lose (the Defendant's win). However, if the court requests the Defendant's decision to be remanded, the case will not be completed but will proceed to the first remand.

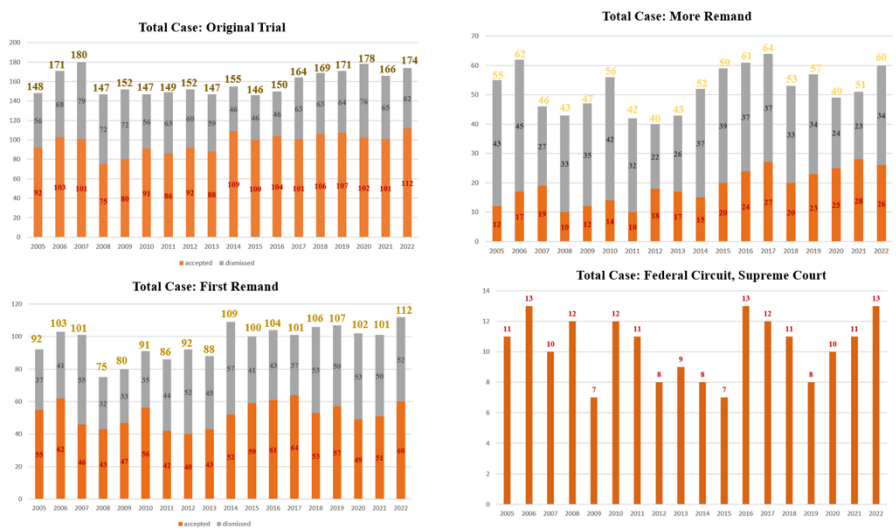
The second step is the "First Remand," where the Plaintiff does not accept the Defendant's decision, and the court's judgment also requires the Defendant to reconsider the initial decision. At this time, the court may request the Plaintiff to submit records on additional necessary matters, and the court will review them. In addition, in the process of the first remand, the Defendant needs to reconsider the customs or policy decisions on the Plaintiff by the court's decision. Like the original trial, if the Plaintiff does not accept the court determination in this process, additional procedures may be carried out in the second remand.

The next step is "the more remand(s)" step, in which the court asks the Defendant to make a re-decision through additional record reviews submitted by the Plaintiff. In USCIT, three remand procedures will be carried out as before.

However, if the court's final determination is not accepted even after several steps of remand, or if additional examinations and trials are required, a further appeal may be held in the U.S. Court of Appeals for the Federal Circuit or the Supreme Court other than the USCIT.

According to the above definition, the number of step-by-step cases from 2005 to 2022 was counted as follows. In addition, "accepted" means that the decision presented by the Defendant in the court was accepted. On the other hand, "dismissed" means that the Defendant's initial decision should not be accepted by accepting the Plaintiff's claim and should be re-examined.

Figures 13. The Number of Processes in Four-Steps of the Total Cases



In general, the case where the court accepted the Defendant's decision as it is in the original trial does not exceed 50%. In 2005, when the case began to be counted, only 56 out of 148 cases accepted the Defendant's initial decision. The

remaining 92 cases accepted the Plaintiff's claim and ruled to reconsider the Defendant's initial decision. In 2009, when the U.S. financial crisis escalated, many accepted the Defendant's claim. By accepting 80 out of 152 cases, it can be assumed that the United States intended to protect its industry. Meanwhile, with the escalating confrontation over technology transfer between countries, it can be seen that there have been many rulings that have forced the Defendant to reconsider, citing the Plaintiff's arguments since 2014, when U.S. international trade policy began to change. (The gray part of the left-top graph)

On the other hand, At the step of "the First Remand," it can be seen that there is a growing number of cases in which the original trial accepts the Defendant's claim as it is. In 2014, when the technical confrontation intensified, the number of accepting the Defendant's decision was 57 cases higher than the Plaintiff's claim. In the rest of the year, many rulings still took the Plaintiff's claim and commanded the Defendant to reconsider the previous decision. However, it can be seen that after the "More Remand(s)" step, there were far more cases against the Plaintiff accepting the Defendant's re-considered decision as it is, rather than accepting the Plaintiff's claim (The green part of the right-top graph). There are not many additional appeals in federal courts as the case is not closed in a total of three steps. Although the number of appeals was relatively small in the Obama administration, it was confirmed that the number was higher in the Trump administration than in other years except for 2019.

2. Cases related to China and South Korea in the USCIT (2005-2022)

2-1 The Number of China Total Cases in the USCIT

Before discussing how the USCIT covers many cases related to South Korea, this study will first discuss how many cases related to China are covered by the USCIT. This is because China has the most significant trade with the U.S., and there are also sharply conflicting trade disputes between the U.S. and China. South Korea, which is adjacent to the same Asian country, cannot be free from the trade war between the U.S. and China. In addition, there may be a particular reason for Chinese companies that are most at odds with the U.S. (including the Chinese government) to file a complaint with the USCIT to resolve the case. To find out why this study would like to compile cases related to Chinese companies first. The total number of cases related to China filed with the USCIT is as follows.

Figures 14. The Number of China-Only and China-Related Cases

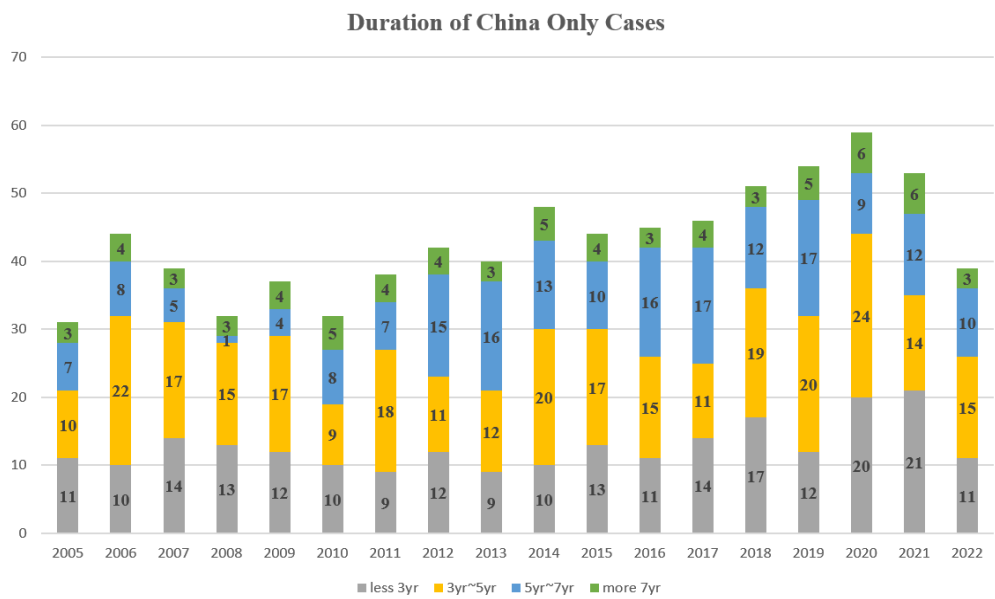
In the figure above, based on the total number of cases, the party to the complaint was divided into a "China-Only" case consisting of a Chinese corporations and the Chinese government, which is an agent, and a "China-Related" case involving multiple interested parties including Chinese companies. Based on the number of trial cases between the U.S. and China from 2005 to 2010, the initial time of calculation, about 30 to 40 cases were reported in the case of "China-Only." However, since 2014, when the trade dispute between the U.S. and China intensified, there have been about 45 to 60 cases, a relatively significant increase compared to the total number of lawsuits. In addition, the increase in cases involving Chinese corporations (i.e., China-Related) is similar. Except for a sharp rise in cases related to Chinese corporations between 2006 and 2007, just before the U.S. financial crisis, the cases were generally between 50 and 60. However, it has exceeded 60 since 2014, when the U.S.-China trade dispute intensified. It is noteworthy that during the Trump administration, when the U.S.-China trade was at its peak, the number of cases related to Chinese companies was the highest, which is significant compared to the total number of cases covered by the USCIT.

2-2 Duration of China Cases Filed in the USCIT

As mentioned above, there may be a particular reason for Chinese corporations, one of the most severe trade conflicts with the United States, to file a complaint against the United States. The time it takes for the case to close has a significant mean for both litigants (Chinese companies versus U.S Department of Commerce, USTR, USITC, or executive branch agencies). In particular, due to the

nature of commercial courts, it should be given priority to provide legal services to litigants to resolve disputes from an efficient, economic, and fair perspective. Among them, the time it takes for the case to close is the most crucial factor in terms of efficiency and economy. If the processing period takes a long time to close the case, it will be difficult for companies or the government that agencies them to establish strategies. In addition, cost consumption from lawsuits can destabilize companies' management, and the government is also an obstacle to establishing trade policies. Therefore, Examining the period that it takes for a Chinese corporation with severe trade confrontation to close the case in the USCIT by dividing it into "China-Only" and "China-Related" and find the implications of the closing period of the case.

Figures 15. The Duration of China-Only Cases Filed in the USCIT



In the case of the "China-Only" case, there were about 30 to 40 cases from 2005 to the early 2010s, and the number had increased to about 50 to 60 since the

mid-2010s when the trade conflict between the U.S. and China intensified. Until 2010, the number of cases that were mainly resolved between three and five years until the closed of the case was found to be the highest. It can also be seen that in 2005 and 2012, the number of cases was the highest in less than three years. However, since 2013, when the trade conflict between the U.S. and China began to intensify, the number of cases closed mainly between three and five years has been the highest, and the number of cases closed between five and seven years continues to increase. Furthermore, it was confirmed that cases that took more than seven years were consistent between three and five cases throughout the investigation period. When filing a complaint with the WTO, it is common to close it between five and seven years; in many cases, it takes more than seven years[64]. Therefore, the number of complaints to USCIT, which takes relatively little time to close the case, is increasing.

Figures 16. The Duration of China Related Cases Filed in the USCIT

64 Horn, H., & Mavroidis, P. C. (2011). The WTO Dispute Settlement System 1995–2010: Some Descriptive Statistics. *Journal of World Trade*, *45*(6).

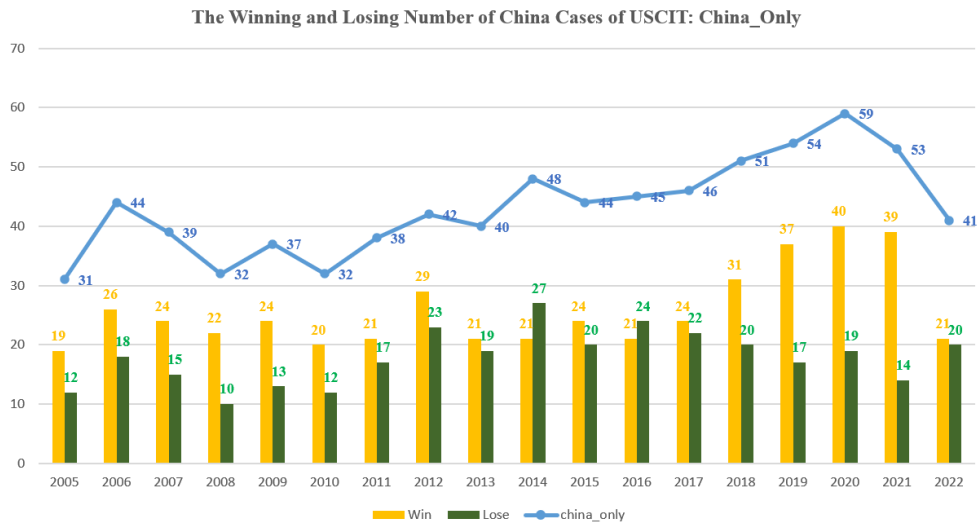
In the "China-Related" case, about 50 to 60 lawsuits were filed from 2005 to the early 2010s, except for the largest number of 83 in 2007 when the U.S. recession began. However, since the mid-2010s, when trade conflicts due to technological confrontation have intensified, there have been about 60 to 70 cases. In 2020, the second half of the Trump administration, the number of cases was the highest at 85. From 2005 to early 2010, the number of cases closed between three and five years was the highest. However, since 2014, when trade conflicts intensified, the number of cases closed within three years was the highest. In particular, in the "China-Related" case, due to the nature of the existence of multilateral stakeholders as well as China, there is a tendency to close the case quickly with standards rather than dragging it for a long time.

2-3 The Winning Rate of the China Cases Filed in the USCIT

As in the entire case, the Plaintiff becomes the Chinese government that agencies Chinese company or a Chinese company, or another company that shares the same interests with a Chinese company. At this time, the Defendant becomes the U.S Department of Commerce, USTR, USITC, or executive branch agencies. The winning rate is essential as an indicator of whether the judgment is being made fairly. In particular, since trade conflicts are intensifying between the U.S. and China, the win-and-lose rate of Chinese cases filed with the USCIT indicates how much USCIT's public confidence is. This study, as compiled above, it was divided into "China-Only" and "China-Related" cases. The result of calculating the winning

rate is shown in the figures below.

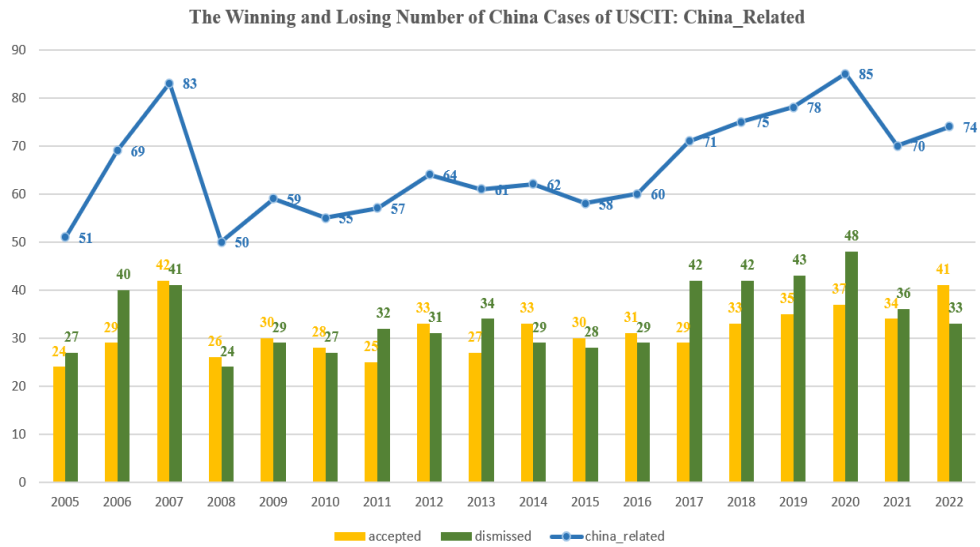
Figures 17. The Winning and Losing of China Cases of the USCIT: China-Only



In the 2005s and early 2010s, there were relatively many cases in which the court did not accept the Defendant's decision as it was but had to review all or part of the case. In 2008, only about 32% of the Defendant's claims were accepted. Since 2011, as the Obama administration was newly launched, the U.S. policy on international trade has also changed. The Obama administration tended to adopt a policy of coexistence and tolerance for China in relation to international trade. Therefore, it can be assumed that the decisions of becomes the U.S Department of Commerce, USTR, USITC, or executive branch agencies often worked in favor of Chinese companies. In particular, in 2014 (43% of the Plaintiff's winning rate) and 2016 (52% of the Plaintiff's winning rate), the number of cases that accepted the Defendant's decision was higher. However, these orders appeared in conflicting forms in the Trump administration, which took a hardline policy (the U.S. first), with more orders that some or all needed to be reconsidered rather than accepting

the Defendant's decision as it is. In particular, it can be seen that this trend was high between 2019 (the Plaintiff's winning rate of about 61%), 2020 (the Plaintiff's winning rate of about 68%), and 2021 (the Plaintiff's winning rate of about 73%). It is somewhat ironic that Chinese companies have a high winning rate in the Trump administration, which has adhered to a strict trade policy against China. Two factors can be thought of as why these results came out. First, it can be considered that there were many unfavorable clauses for Chinese companies due to U.S. priority in trade policy. On the other hand, it can be regarded that considerations have become more complicated as China's industrial structure, including technology transfer, has become more advanced than in the past.

Figures 18. The Winning and Losing Number of China Cases of the USCIT: China-Related



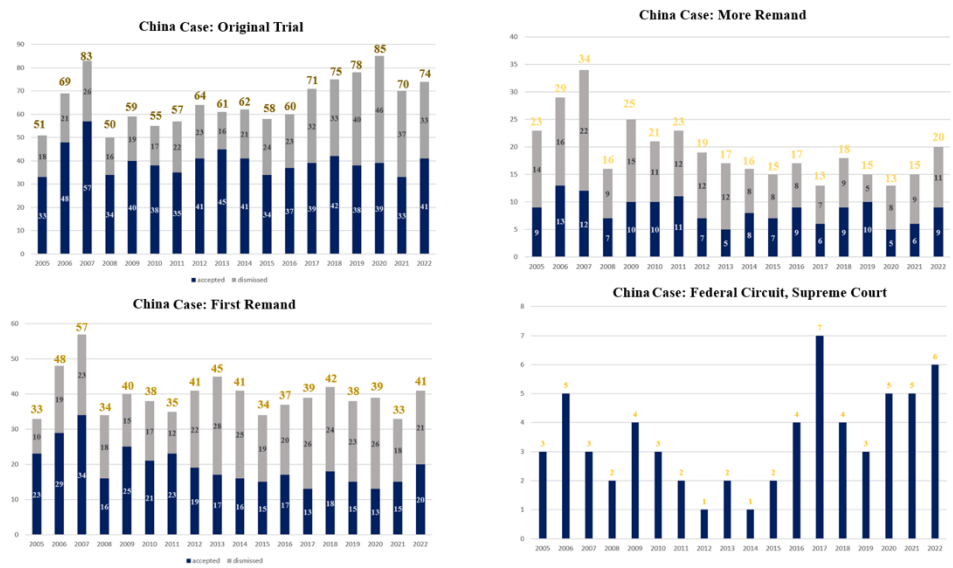
There are also some differences in the pattern of "China-Related" cases from the "China-Only" case. In 2005 (about 53% of the Plaintiff's winning rate) and 2006 (about 59% of the Plaintiff's winning rate), the the Plaintiff's winning rate was

higher. However, when the U.S. suffered the financial crisis and held the presidential election, it can be seen that the Plaintiff's winning rate was smaller than the Defendant's winning rate in 2008 (about 48% of the Plaintiff's winning rate), 2009 (about 49% of the Plaintiff's winning rate), and 2010 (about 49% of the Plaintiff's winning rate). However, it is difficult to conclude that the Plaintiff's winning rate and the Defendant's winning rate are almost similar, nearly 50%, making it statistically significant. What stands out is that the Plaintiff's winning rate has also been higher in the "China-Related" case, as in the "China-Only" case since 2017, when the Trump administration newly began. In 2017 (about 59% of the Plaintiff's winning rate) and 2020 (about 54% of the Plaintiff's winning rate), the Plaintiff's winning rate was high. However, it is difficult to see this as a big difference compared to the "China-Only" incident. From this point of view, it can be considered that the "China-Only" case had more items to review than the "China-Related" case.

2-4 *4-Step* Procedures of China Cases Filed in the USCIT

Based on the results of calculating the win and lose rate in Chapter 2.3, a more detailed examination of the number of Chinese cases carried out in four stages can be shown in the figure below.

Figures 19. The Number of Processes in the Four-Steps of the China Cases



According to an analysis of China's four-step graph, 57 cases were found to have been judged "remand" at the original trial, the most significant number in 2007. This is about 69% of the total case, which is far higher than in other years. Since then, about 74% of the cases were found to have the highest "remand" determination by the USCIT in 2013. The second step will result in a "First Remand" ruling as China still does not accept the relocation decision against the U.S Department of Commerce, USTR, USITC, or executive branch agencies after USCIT's "Remand" determination. Like the original trial, 2007 was the highest at about 60%. In the third step, it can be seen that the number of "Remand" cases overall has decreased significantly compared to the second step. In particular, from 2005 to early 2010, there were many cases in the "More Remand" step.

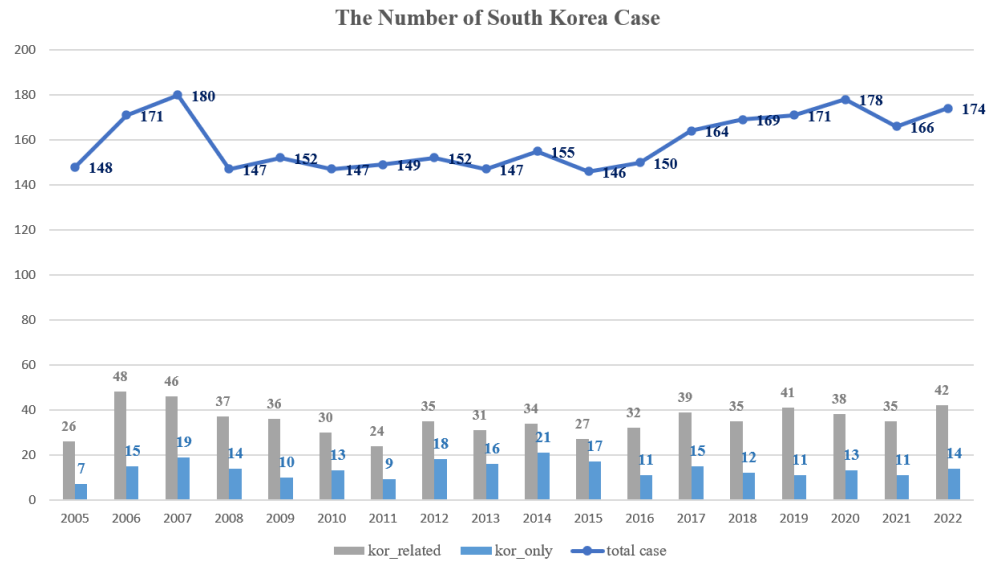
However, since mid-2010, the number of cases has gradually declined. This also relates to the time it takes to deal with the case. As the USCIT's ruling is specialized and advanced, it can be assumed that the number of cases leading to the

next step of appeal is gradually decreasing. On the other hand, China could file a lawsuit with the U.S Supreme Court despite going through three remands and more procedures. As seen before, the total number of cases is usually between 10 and 13 cases, of which Chinese cases account for more than one to seven cases on average, indicating that events related to China are more sharply at odds with the United States than those of other countries.

2-5 The Total Number of Korean Cases Filed in the USCIT

So far, this study has looked at the total the USCIT cases and China Cases. While studying the need to introduce the USCIT system in South Korea, it is necessary to look at the South Korean case filed with the USCIT. Like China, it was calculated separately for "Korea-Only" and "Korea-Related" cases. The results of the total number of cases in South Korea are as follows.

Figures 20. The Number of South Korea Case Filed in the USCIT



According to the graph above, the proportion of South Korea's total number of cases filed is not high compared to the number of cases in China. In the case of "Korea-Only" cases, it was the smallest, with 7 cases in 2005, and the highest, with 21 cases in 2014. The average number of cases in South Korea was 13, accounting for about 8% of the total average of 158. Compared to the size of trade with the U.S., the number of complaints filed with the USCIT is somewhat lower. As a U.S. trading partner, South Korea has the world's sixth-largest trade, and its trade money has risen to about 35 percent yearly since 2010[65].

Meanwhile, the case of "Korea-related" was similar. In 2007, the number was the highest at 48 cases, and in 2011, it was the lowest at 24 cases. In mid-2010,

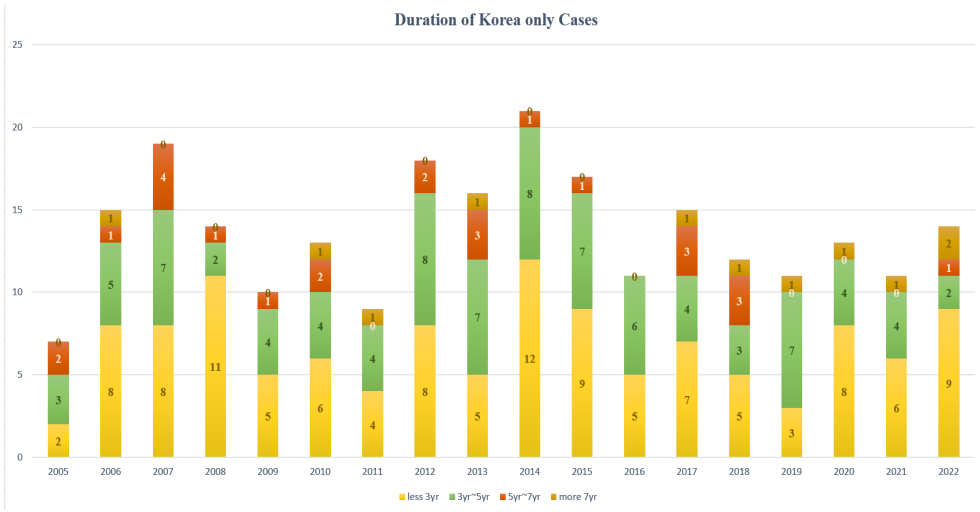
[65] Lester, S., Manak, I., & Kim, K. (2019). Trump's First Trade Deal: The Slightly Revised Korea-US Free Trade Agreement. *Cato Institute Free Trade Bulletin*, (73).

the proportion of "Korea-Related" cases was high compared to "Korea-related" cases. But, since 2017, there has been a big difference between "Korea-Related" cases and "Korea-Only" cases. This reason seems to be that Korean companies that share interests with China or other Asian countries are participating in the lawsuit as the trade confrontation between China and the United States has intensified since the Trump administration in 2017.

2-6 Duration of Korea Cases Filed in the USCIT

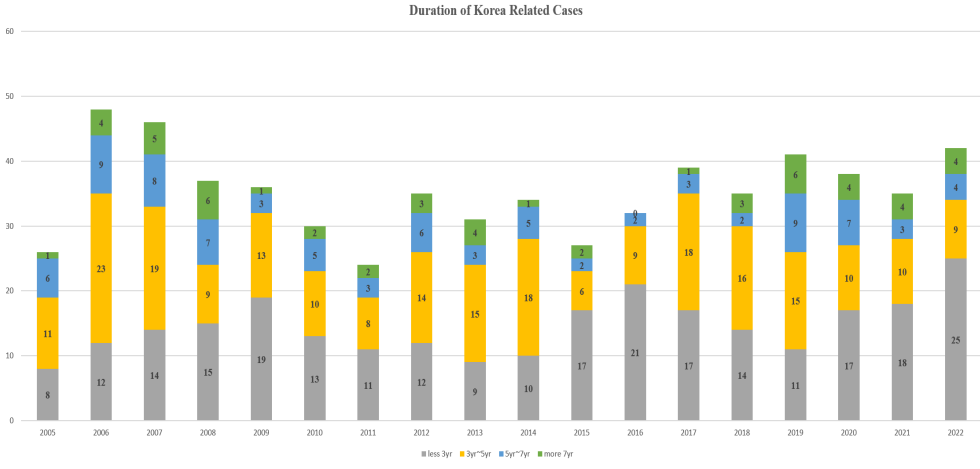
It is crucial to examine how long the Korean case takes at the USCIT. This is because the USCIT's system is an indicator to consider how efficient it is. The reason South Korea does not file a complaint with the WTO or the South Korean administrative court in trade-related lawsuits with the United States also includes the time it takes to close the case. As mentioned above, in the case of WTO, the average period before the case is closed is very long, about 11 years. In addition, the Korean Administrative Court, which is in charge of trade-related cases, also needs more expertise and a system. Therefore, it is one of the crucial points to calculate how long it takes for the Korean case to be closed at the USCIT.

Figures 21. The Duration of Korea Only Cases Filed in the USCIT



In the case of "Korea-Only," the number of cases generally closed within three years is the highest (graph yellow part). Compared to the Chinese cases, the "Korea-Only" cases were found to be closed relatively quickly. The probability of a case closing within five years is about 96%, and cases that take more than five years or more than seven years are rare. It was the largest, with four cases in 2007, and as of 2016, all cases were closed within five years.

Figures 22. The Duration of Korea Related Cases Filed in the USCIT

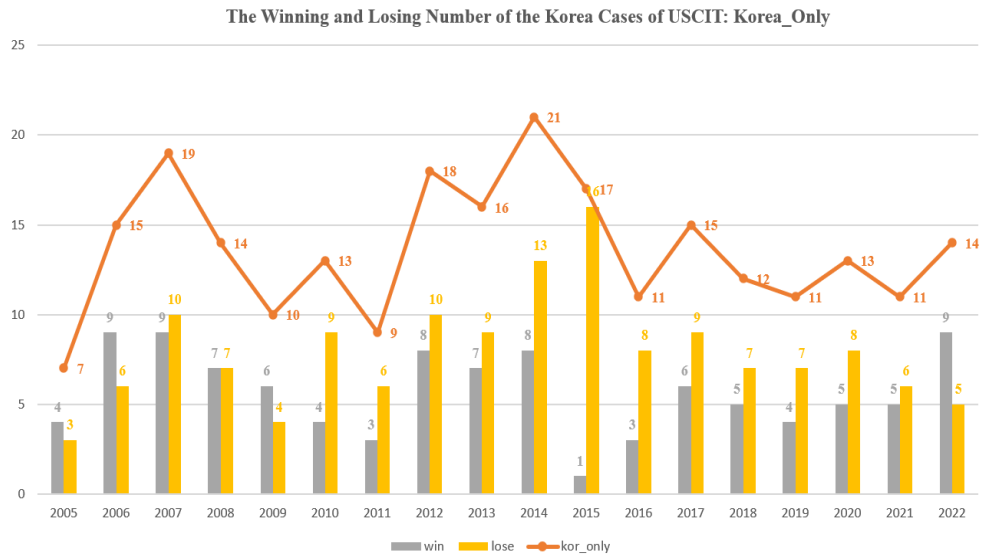


In the closing period of the "Korea-Related" case, you can see that it takes a little longer than the "Korea-Only" case. However, generally, the probability of being closed within five years is more than 87%. Considering several stakeholders other than Korea are participating in the lawsuit, it is relatively quick to close the "Korea-Related" case, just like the "Korea-Only" case. Examining the closing period of the case in detail, it can be seen that the number of cases closed between three and five years was 23 cases in 2006, 19 cases in 2007, 14 cases in 2012, 15 cases in 2013, 18 cases in 2014, and 16 cases in 2018 accounting for the most considerable portion. In addition, the number of cases closing within three years was 19 in 2009, 17 in 2015, 17 in 2020, and 18 in 2021.

2-7 Winning rates of Korea Cases Filed in the USCIT

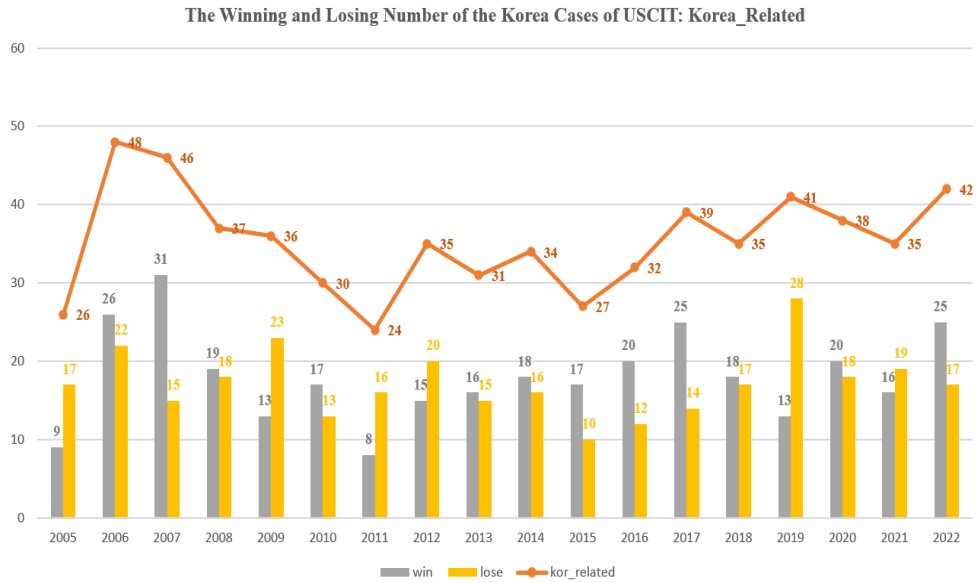
Reviewing the winning rate of the South Korean case in the USCIT indicates how fair the USCIT's ruling is. In the case of China's cases, as seen earlier, it was confirmed that the USCIT is operating under the U.S. system, but the case is being handled relatively fairly. Although there may be differences depending on political and economic times, it was confirmed that the USCIT did not unconditionally accept only the Defendant's (i.e., the U.S Department of Commerce, USTR, USITC, or executive branch agencies) decision. Although there are not many cases in South Korea, it is crucial to calculate the winning rate of the South Korean cases and draw implications for it.

Figures 23. The Winning and Losing Number of The Korea Cases of the USCIT: Korea-Only



The characteristic of the "Korea-Only" cases is that Korea has a high winning rate. Four cases in which the USCIT accepted the Defendant's (i.e., the U.S Department of Commerce, USTR, USITC, or executive branch agencies) decision and ruled against the Plaintiff. Examining the cases in which the Plaintiff lost in detail, there were 4 cases in 2005, 10 cases in 2007, 9 cases in 2010, and 10 cases in 2012. Except for the initial case, South Korea's winning rate is much higher in the second half. In particular, in 2015, except for one case, it can be seen that 15 cases were ruled in favor of the Plaintiff.

Figures 24. The Winning Rates of Korea-Related Cases of the USCIT: Korea-Related



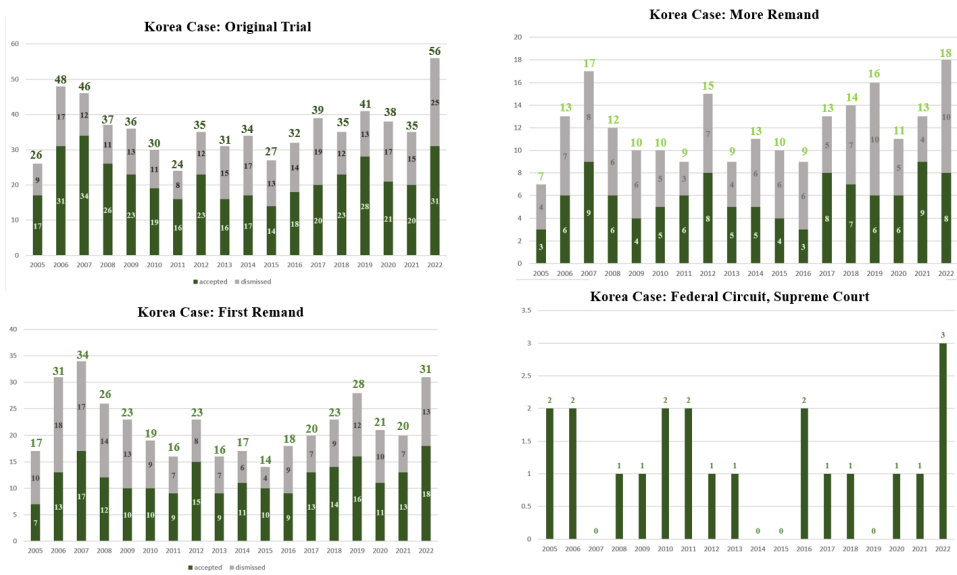
On the other hand, the "Korea-Related" case is somewhat different from the "Korea-Only" case. Overall, the number of losses for the Plaintiff is high. If South Korea and several stakeholders participate in the lawsuit as the Plaintiffs, it can be seen that there are more cases of loss than winning. The number of losses is similar to or far exceeds the number of winning cases, except for 23 in 2009, 16 in 2011, 20 in 2012, 28 in 2019, and 19 in 2021. Based on this, it can be seen that the United States is favorable to South Korea, but it is skeptical about other cases involving South Korea.

2-8 *4-Step* of the Korea Cases Filed in the USCIT

In the case of the fourth step of South Korea, the number of cases is not large, but it is a criterion for confirming how much South Korea's claims are accepted in the USCIT's ruling. It also indicates whether the legal review of various

matters is sufficiently carried out.

Figures 25. The number of Processes in the Four-Steps of the Korea Cases



In cases related to South Korea, the number of "Remand" was high between 2005 and 2009, and the number of "Remand" was relatively small in the mid-2010s when the United States took a stance of tolerance and coexistence in trade policies. It can be seen that the pattern of the number of cases from the original trial to the first "remand" and the number of cases going to the second to "More remand" are similar (U-shaped curve). However, in the South Korean cases, it is somewhat unusual, and it is usually notable that three or more steps of "More remand" still account for a high percentage of cases. In South Korea, the number of cases is not large, but if a complaint is filed, it means that there are many items to be considered until the court's final determination.

3. Analytics Results towards Cases Reported in the USCIT

3-1 The Characteristics of the USCIT

This study analyzed the trend of cases filed from 2005 to 2022 through the USCIT's opinion. The period of about 17 years, from 2005 to the first half of 2022, was reviewed to find out the long-term trend. For 17 years, the average number of complaints filed at the USCIT has been 158 per year. Considering the characteristics of commercial courts that require a high level of expertise and are challenging to handle due to various intertwined interests, the number of cases dealt with by the USCIT is usually significant. In particular, the study tried to review the public confidence, efficiency, and fairness of the USCIT by looking at the number of complaints filed against the U.S. to resolve the dispute by Chinese companies with severe trade conflicts with the U.S. (including the state as an agency). In addition, since South Korea is considering introducing the USCIT system in Korea, it also tried to figure out how much Korean companies were aware of the system and judgment of the USCIT and the scale of handling the case. Chinese companies filed an average of 65 cases yearly, and South Korean companies filed an average of 35 cases with the USCIT. The number of complaints filed by China and South Korea accounts for a high proportion considering the size of trade with the U.S.

Furthermore, it takes an average of 4.75 years for the entire case and the case in China to be closed. The South Korean case takes an average of 3.55 years, but considering the size of the trade or the degree of confrontation compared to the Chinese case, it takes a short time to close the case. In particular, considering WTO,

which usually takes 11 years during the same period, the USCIT is quick to close the case. This is the advantage of the USCIT.

When filing a lawsuit with the U.S. Forces South Korea, the win or lose rate is an essential indicator of whether the Plaintiff can get a fair trial by filing a lawsuit with the other country, the U.S. court. Therefore, when looking at the winning rate of the entire case filed in this study, it was found that it was not mainly biased toward the United States, where it was located. Between 2009 and 2010, during the U.S. financial crisis and recession, the number of the Plaintiffs' loses was higher than the number of wins, but the trial cannot be seen as biased only in the U.S. Since then, the Plaintiff's lose rate has been exceptionally high during the 2017-2020 Trump administration. Still, it is not a figure that can be unilaterally judged to be favorable to the U.S. Even considering the winning rate of China, which has the most severe trade confrontation with the U.S., it isn't easy to judge it as a one-sided game by the U.S. Instead, during the Obama administration, which took a moderate attitude to trade policy, China's loses were higher than the number of wins. However, since 2017, when confrontation intensified, and trade goods began to be technologically advanced, it was investigated that the Plaintiff's winning rate was higher due to many controversial issues. In the case of South Korean cases, the winning rate was higher than that of China. For this reason, South Korea has been trading goods in higher-order industries (semiconductors, automobiles, etc.) at the time of investigation than in China, so it can be considered that it is prudent to closely and professionally review the other country's claims rather than making a unilateral ruling to the U.S. immediately.

It is conducted in four steps of the judicial process, and due to the nature of

the superior court, it can be seen that it has the conditions to deal with the professional and technical parts fully. In the case of the USCIT, it can be confirmed that all four stages of procedures are in progress, including the entire Chinese and South Korean cases. In the original court and the "first remand" step, there were many cases in favor of the Plaintiff (requiring the Defendant to reconsider the decision). Still, in the "More remand" step, it can be seen that the lose of the Plaintiff increased. This means that the USCIT has professionally reviewed both claims from the original trial to the "Remand" step. Nevertheless, suppose the outcome of the trial cannot be accepted. In that case, the appeal may proceed. Even if the "Remand" step is completed or even before, it is possible to file a complaint with the federal circuit or the Supreme Court, indicating that the procedures are in place to sufficiently review the case.

3.2 Reasons Why China and Korea Prefer Filing Cases in the USCIT

There are many reasons to file a complaint with the other country, the USCIT, even though it is a partner in a trade dispute. The most significant advantage is that it takes a relatively short time to close the case. In the event of a trade dispute, there is usually a way to deal with it through a state-to-state diplomatic channel before the trial or to file a formal complaint with the WTO. However, this method could lead to unnecessary diplomatic disputes between countries. Also, in the case of WTO, it takes a very long time to close the case. In addition, there are cases where judges are appointed by each country, not with expertise, and there are cases where the judge is absent because it requires approval from several interested parties. Furthermore, it was appointed with the consent of

the other country. Even so, it is often difficult to resolve cases due to the lack of high expertise necessary for commercial cases. For this reason, it can be seen that more and more companies are filing complaints with the USCIT, where the procedure is fair and relatively fast. Fair process and rapid resolution are the most critical factors in commercial trials. In addition, the system is in place to proceed with follow-up procedures in cases where the lawsuit's outcome cannot be accepted. An individual (corporate) unit can be a party to a lawsuit, not necessarily a state-to-state lawsuit, so it can be seen that if the United States can have jurisdiction, it prefers to file a complaint with the USCIT.

Chapter V. The Effective Method of the New Judicial Review System in Korea

1. Reasons Why the Korea Administrative Court System needs the New Judicial Review System

1.1 The features of the Korean Commercial Arbitration Board

The Korea Commercial Arbitration Board is the only arbitration agency in South Korea. It was established in 1966 as an affiliated organization of the Korea Chamber of Commerce and Industry and was designated as an independent arbitration institution under the Arbitration Act in 1970. The Ministry of Trade, Industry, and Energy is in charge and has the nature of a quasi-judicial agency. In addition to arbitration, it carries out mediation, mediation, investment counseling, and commercial investigation. In 1980, various foundations for arbitration were laid with the support of the government and the Korea International Trade Association. When the Foreign Trade Act was revised, the legal basis for strengthening the business function of the Commercial Arbitration Board was institutionalized, and lectures and research on commercial arbitration were actively conducted on local economic organizations and businesses based on enhanced business functions. With the revision of the Arbitration Act in 1999, Korea also fully accepted the UCITRAL Model Arbitration Act and revised the system to meet international arbitration standards. It also made it possible to expedite disputes arising from international transactions as well as domestic disputes. In particular,

the use of foreign companies and lawyers has increased since the establishment of regulations on international arbitration. Due to the revision of the Arbitration Act during this period, the International Arbitration Association was established, and the arbitration system was strengthened, such as the establishment of the International Arbitration Office. Since then, there has been a re-amendment of the Arbitration Act in 2015, which was intended to serve as a hub to promote the attraction of international arbitration cases. Also, as the arbitration environment changed rapidly, it was intended to strengthen the nature of legal services. As part of that, the ministry in charge of Korean commercial arbitration was changed from the Ministry of Trade, Industry, and Energy to the Ministry of Justice in 2016[66].

The team composition of the Korea Arbitration Board is as follows. In addition to the management and office support departments, an arbitration business team specializing in domestic and foreign arbitration and a separate center providing comprehensive dispute support. It also operates a separate international arbitration center, an international cooperation team, an international cooperation team, and an overseas office (LA, Hanoi). An arbitration center for investment exists separately[67].

The characteristics and advantages of the Korea Commercial Arbitration Board are as follows. The arbitration at the Korean Commercial Arbitration Board appoints a third party, an individual, as an arbitrator, not based on the court's judgment in accordance with the arbitration agreement between the parties to the

[66] http://www.kcab.or.kr/html/kcab_kor/intro/kcab.jsp (2022.08)
[67] http://www.kcab.or.kr/servlet/kcab_kor/intro/1511 (2022.08)

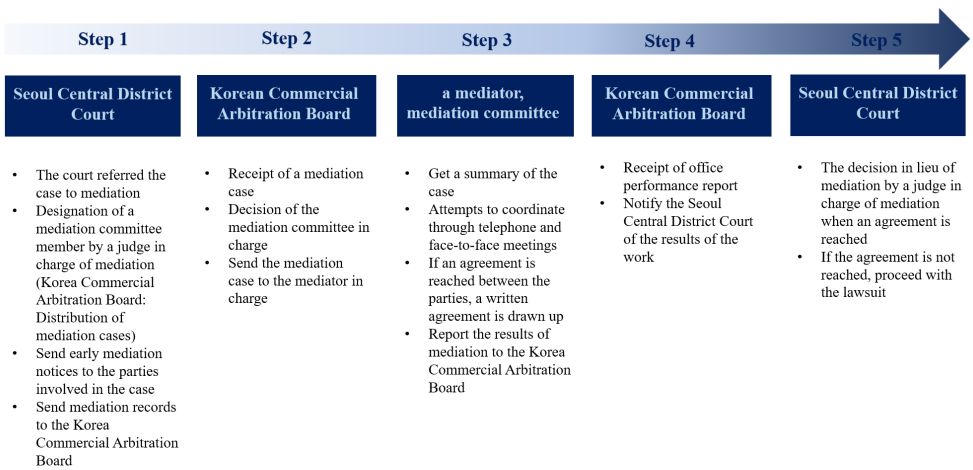
dispute (contractual or ex post facto arbitration). If this judgment is accepted, the dispute has the nature of an independent court system that is ultimately resolved. In addition, the effect of the arbitral award is the same as the effect of the court's final and conclusive judgment, so the right to compulsory execution is guaranteed. Arbitration is a single-trial system in which the case is terminated by a single decision, not a three-trial system. Since a single trial system is adopted, resolving the dispute is relatively short compared to the third trial. If the lawsuit goes to the final appeal, it takes up to three years to get a final ruling. Still, in the case of arbitration, it takes an average of five to seven months to reach the final decision. (about five months for domestic cases and about seven months for international cases) In addition, it is relatively cheaper than the 3rd trial system because it is treated as a single trial. Furthermore, it is virtually impossible to enforce compulsory execution in a foreign country due to the court's ruling. Still, the arbitration award of the Korea Commercial Arbitration Board can be implemented in 147 countries that have joined the New York Convention. Currently, about 1,200 commercial arbitration agencies are active.

However, despite these institutional advantages, shortcomings also clearly exist. When a dispute arises in advance to resolve a dispute quickly, the agreement to be mediated by the Commercial Arbitration Board may be included in the contract in advance. However, the hearing proceeds only once. The critical point is that once a judgment is made, it has the same effect as the Supreme Court ruling, so a lawsuit can be filed to invalidate the judgment itself, but there is no other way to reverse the judgment. In addition, if the amount is less than 100 million won, one person does it alone, so the results may vary depending on which arbitrator the

case is allocated to. There is a possibility that there will be an error in the judgment in order for one person to review it in a short time in the only hearing. In addition, there are several conditions for mediators, including those who have more than five years in the legal field, more than ten years of practical experience in the business field, more than five years as a university professor, more than five years after a doctorate, and have worked in a major field with a master's degree. Even if the minimum conditions of these mediators are met, there is a wide range of mediators, so it is difficult to say they have expertise in the case. Recently, recognizing these problems, arbitration has been divided into two types: the existing and the court-linked arbitration methods. The court-linked arbitration method is shown in the following picture.

Figures 26. Korea Commercial Arbitration Board: Court-linked Arbitration

In recent years, they have tried to supplement the weaknesses of



arbitration by supplementing the court-linked system, but as recent cases have become more technically complex and there are more issues to be dealt with, many companies are reluctant to accept the mediation plan of a one-person mediator immediately. In addition, there is a tendency to seek a ruling through a court with

res judicata, so there is a tendency to be reluctant to decide by the arbitration board. There is, therefore, a limit to the current arbitration system alone[68].

1.2 The features of the Korea Trade Commission (KTC)

The Korea Trade Commission (KTC) was established to investigate and determine if the domestic industry of the Republic of Korea is damaged or feared to be damaged by dumped imports, the import of goods subsidized by foreign governments, or a surge in the import of specific goods. The Trade Commission is an administrative agency under the Ministry of Trade, Industry, and Energy. It consists of nine members, including one vice-minister-level chairperson, one standing member, and seven non-standing members. The Act established the basis for the committee investigating Unfair Trade Events and Remedies for Industrial Damage. The Foreign Trade Act was enacted in 1986, and the organization was newly established by Article 38 of the Foreign Trade Act the following year. In 1989, as an administrative agency of the collegiate body, some functions were added to investigate and determine industrial damage related to anti-dumping duties and countervailing tariffs. In 1990, a trade investigation office was established, and the number of trade committee members was increased from five to nine. In 1993, the organization's function was further strengthened by transferring the work of receiving applications for anti-dumping duties and deciding whether to commence investigations from the Ministry of Finance to the Trade Commission. In addition, in 1995, the dumping rate investigation work was

[68] http://www.kcab.or.kr/html/kcab_kor/intervention/intervention_2.jsp (2022.09)

added, and the investigation function was strengthened. The dumping rate investigation work, which was in charge of the Korea Customs Service, was transferred to the Korea Trade Commission, which expanded outwardly. Since 2000, the investigation and corrective measures function has been strengthened by enacting the Unfair Trade Act and the Industrial Damage Relief Act. After that, in 2008, according to the reorganization of the government, the affiliated organization was transferred from the Ministry of Commerce, Industry, and Energy to the Ministry of Knowledge Economy. In 2013, it was moved again to the Ministry of Trade, Industry, and Energy. Since then, it has been maintained as it is now[69].

Recently, as interests through international relations and trade have significantly impacted national interests, China, Vietnam, and India have signed MOUs with countries to come up with measures to cooperate with each other. In addition, the government has established an import trend system to strengthen monitoring, overhaul the unfair trade survey system and make efforts to define procedures[70].

The systems handled by the Trade Commission include anti-dumping duties, countervailing duties, safeguards, investigations into unfair trade practices, violations of international trade norms, and cases of trade relief. Anti-dumping tariffs are a system in which fair competition can take place by imposing anti-dumping duties or taking measures such as price promises on imported goods if they have caused or are feared to cause substantial damage to the domestic industry

[69] Ju, S. S. (1997). Korea: Major Changes in the Fair Trade Commission. *Int'l Bus. Law.*, *25*, 463.
[70] https://www.ktc.go.kr/pageLink.do?link=/contents/introduce/history (2022.09)

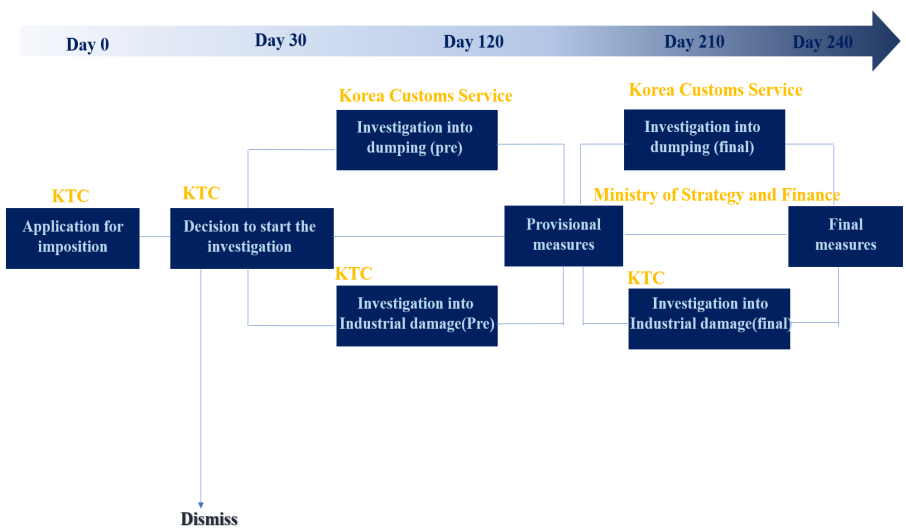
by exporting goods at a lower price than the normal selling price in the country, or if the establishment of a domestic industry is delayed. (Customs Act, GATT Regulation)[71] A set-off duty is deemed to exist when measures in the form of financial contribution, income, or price support are taken by the government or a public institution, and the benefits are granted. This subsidy (prohibited subsidy, actionable subsidy)[72] is deemed to exist. A set-off duty is imposed as an anti-subsidy measure if this subsidy is limited to a specific company or industry. (The Customs Act, the Act on the Investigation of Unfair Trade Practices and Remedy for Industrial Damage, GATT Regulations, WTO Subsidies and Offsetting Measures)[73] A safeguard is an import relief measure that limits the number of imports or raises tariffs to protect related domestic industries if the domestic sector is feared to be seriously damaged due to increased imports of certain goods. In particular, since it is a system that regulates fair trade imports, the requirements for triggering are stricter than those that regulate unfair trade, such as dumping and subsidies. (The Act on the Investigation of Unfair Trade Practices and Remedy for Industrial Damage, Customs Act, GATT Regulations, WTO Safeguard Agreement)[74] The investigation of unfair trade practices refers to a system that establishes a fair trade order and protects the domestic industry by investigating unfair trade activities such as infringement of intellectual property rights and import and export of goods violating the country of origin labeling and sanctioning violators. Unfair practices include infringement of intellectual property rights, country of origin labeling, and false exaggerated labeling. The investigation into the violation of international trade norms refers to a system that takes retaliatory

[71] https://www.ktc.go.kr/pageLink.do?link=/contents/KG21000 (2022.09)
[72] https://www.ktc.go.kr/pageLink.do?link=/contents/KG22000 (2022.09)
[73] https://www.ktc.go.kr/pageLink.do?link=/contents/KG23000 (2022.09)
[74] https://www.ktc.go.kr/pageLink.do?link=/contents/KG24000 (2022.09)

measures allowed by laws, such as tariffs and non-tariff measures, if the domestic industry is damaged as trade laws, systems, and practices of trading partners violate international trade norms. (The Act on the Investigation of Unfair Trade Practices and Remedy for Industrial Damage, WTO, GT Regulations)[75]

The organization of the Secretariat of the Trade Commission is composed as follows. It consists of four departments and about 50 people in the trade investigation room. It consists of the Trade Relief Policy Division, the Industrial Damage Investigation Division, the Dumping Investigation Division, and the Unfair Trade Investigation Division under the Trade Commission. The Trade Commission's bailout procedure is shown in the following figure.

Figures 26. The Trade Commission Process: Tariff Issue



As shown in the picture above, the Trade Commission has procedures

[75] https://www.ktc.go.kr/pageLink.do?link=/contents/KG25000 (2022.09)

from application receipt, investigation commencement decision, and the preliminary decision to the final decision. However, these investigative agencies are divided into the Korea Customs Service and the Trade Commission, and the final decision is made by the Ministry of Strategy and Finance, making it complicated to handle the work. The purpose is to check and balance investigative agencies, but from the companies' perspective, the dualization of investigative agencies can be very complex. Furthermore, the final decision does not create a res judicata of the court. With the Ministry of Strategy and Finance making the final decision, this decision becomes an administrative act, which acts as a limitation that there are points that are usually inconsistent with the procedural regulations of the Trade Commission because there is no separate Administrative Procedure Act in Korea[76].

1.3 Cases of South Korea's Trade Disputes

5-3-1 Antidumping Measures on Uncoated Wood-Free Paper (Indonesia)

The applicants were five companies in Korea, including Hansol Paper and Korea Paper, which began on September 30, 2002, when they jointly applied for an anti-dumping investigation. The respondent is Indonesia. It is a paper company such as Kiat and Findo Deli. The items subject to investigation are Uncoated Wood-Free Paper and information paper (copy and computer paper), and the domestic market size is KRW 5,517 billion as of 2002. Among them, Indonesian products accounted for 22.6%. On September 24, 2003, the Ministry of Strategy

[76] Jo, S. (1993). Korea Industrial Damage Relief System and Trade Commission (3). *Journal of Korean Electronics*, *13*(7), 40-43.

and Finance decided to impose an 8.22% dumping duty on Indonesian companies over the next three years.

Afterward, on February 24, 2004, three Indonesian companies filed a lawsuit with the Seoul Administrative Court with the Trade Commission and the Ministry of Strategy and Finance (then the Ministry of Finance and Economy) as the Defendants. The case was handled by the first administration of the Seoul Administrative Court. The gist of the claim was to cancel the Defendant Trade Commission's favorable dumping decision and the anti-dumping tariff imposition rules enforced by the Defendant Minister of Finance and Economy. The main issues were the calculation of the single dumping rate, the use of available data, the judgment of the same kind of goods, etc., and whether it violated the WTO Anti-dumping Agreement and Customs Act. A total of five prior dates and six pleading dates (examination of witnesses and submission of documentary evidence) were held. On September 1, 2005, the Plaintiff's claim was dismissed in the lower court. Subsequently, on September 23, 2005, the Plaintiff filed an appeal with the Seoul High Court.

At the same time, on June 4, 2004, Indonesia, where the Plaintiffs were agents, filed a complaint with the WTO against the Korea Trade Commission's imposition of anti-dumping duties. On September 27, 2004, a panel was installed on the WTO, and the panel was composed of experts from Norway, Brazil, and Israel. From February to March 2005, the WTO listened to the opinions of the Plaintiff and the Defendant through two-panel meetings. At this time, the United States, the EU, and China supported Korea as a third country. The final report of

the WTO panel was distributed to the parties on 14 July 2005. The case was then wrapped up on October 28, when the final report of the WTO panel was circulated to the Member States[77].

This ruling is meaningful because the Korea Trade Commission finally won, allowing the domestic paper industry to compete freely with foreign exporters in a fair position, relieving damage to the domestic industry caused by dumping goods. In addition, the status, fairness, and expertise of the Trade Commission established in the 1980s proved to have reached an international level. It also allowed for the qualities of professional investigators to be internationally recognized.

Nevertheless, the reliability, equity, and expertise of the decision of the Trade Commission are still continuously mentioned. As described above, there is a perception that procedures and processes are somewhat complicated due to the dualization of the Trade Commission. In addition, since there is no legal coercion, it is also a disadvantage that higher courts, such as administrative and high courts, have to deal with legal issues again. The Trade Commission's final decision is made in up to 240 days, and if the Trade Commission's decision is not accepted, the lawsuit takes longer to close the case. This can be a significant risk factor for commercial courts where economic efficiency and efficiency should precede.

[77] Nadya, J. S. (2018). *THE IMPLEMENTATION OF WTO DISPUTE SETTLEMENT BODY IN THE TRADE DISPUTE SETTLEMENT IN THE CASE OF KOREA—ANTI-DUMPING DUTIES ON IMPORTS OF CERTAIN PAPER FROM INDONESIA (2002-2010)* (Doctoral dissertation, President University).

5-3-2 Anti-Dumping Dispute on Pneumatic Valves (Japan)

The case began on December 23, 2013, by requesting the imposition of anti-dumping duties equivalent to the dumping rate on the goods as the domestic industry that produces goods of the same kind is substantially damaged by the dumping (dumping rate: 98.71%) of the Japanese air pressure transmission valve to three Korean companies, including TPC Mechatronics and KCC. A pneumatic valve is a crucial item applied to mechanical structures requiring straight motion or various mechanical operations in production facilities such as automobiles, electronics, semiconductors, general industrial auto, and motion machinery. Therefore, various companies in Korea, including Hyundai and Kia Motors, use goods. As of 2013, the domestic market was about 64.7 billion won, with Japanese products accounting for about 73%. In February 2014, the Trade Commission began an investigation, and on January 20, 2015, the imposition of anti-dumping duties was finalized. However, the Japanese government, which is a Japanese company and agent, objected to the imposition of tariffs of 11.66 to 22.77% over the next five years.

The Defendant is the Minister of Strategy and Finance, and the Intervenor joining the Defendant is the Trade Commission. As a supplementary participant in the lawsuit, the Trade Commission decided to commence an investigation into the existence of dumping and damage to the domestic industry on February 21, 2014, and acknowledged some of the damage (it did not admit the damage from 2012 to 2013) and imposed customs duties. After the final decision on January 20, 2015, the Plaintiff filed a lawsuit with the Seoul Administrative Court. The case was assigned to the sixth division of the Seoul Administrative Court. The main issue

was whether the three companies, TPC Mechatronics and KCC, were interested parties who could apply for tariff imposition and whether they had representation. In addition, there was a widespread confrontation over the submission of evidence on dumping facts under Article 5.3 of the WTO Anti-dumping Agreement, the calculation of actual damage through Article 6 of the GATT and the Marrakesh Convention[78], and the establishment of a causal relation to the damage. The conclusion of the lower court's argument was on June 23, 2017, and the judgment was completed on September 1, 2017. The result was partially revoked against the imposition of anti-dumping control imposed by the Defendant, and it was judged that the Plaintiff partly won[79].

However, the lawsuit was not completed, and the Korean side filed an appeal with the Seoul High Court again. This case was allocated to the Fifth Administration. The judgment of the appellate court was sentenced on July 3, 2019. As a result, all appeals of the Defendant were dismissed. Nevertheless, the lawsuit continued, and the Japanese government asked for a consultation with the dispute settlement procedure of the WTO.

In September 2019, the WTO appeals body judged that Korea's violation of the WTO regulations was not proven. Japan objected to the first instance judgment and filed an appeal with the WTO again. However, the appeals body also judged that the rest of the five items reviewed by the Dispute Settlement Board (DSB) panel did not violate the WTO regulations.

[78] Lim, S., & Tanaka, S. (2022). Why Costly Rivalry Disputes Persist: A Paired Conjoint Experiment in Japan and South Korea. *International Studies Quarterly*, *66*(4), sqac063.
[79] Buzard, K., & Claussen, K. (2021). Under Pressure: Intractable Trade Conflicts and Korea–Pneumatic Valves. *World trade review*, *20*(4), 509-523.

This case is the second case that has been filed with the WTO against anti-dumping tariffs since the Uncoated Wood-Free Paper case, and South Korea lost in its court. Still, it is significant in that it won the WTO and was recognized for the investigation capabilities and expertise of the Ministry of Trade, Industry, and Energy.

However, although it is a dispute between companies, it is difficult to deny that time and money were excessively incurred by utilizing diplomatic channels between countries. In addition, Japan excluded Korea from the "white country (trade-friendly country)" when trade disputes were sharply divided. In particular, the trade dispute between Korea and Japan is complex due to compensation for forced labor, cultural conflicts, and political issues, and the dispute is intensifying[80]. The problem with the WTO is that it is not easy for panel countries to gather due to COVID-19, that expertise on issues is gradually decreasing over time, and that there are many problems in resolving unfair competition because the WTO is greatly affected by political and diplomatic interests between countries. This is not just a matter of Korea-Japan relations. The United States also declared its withdrawal from the WTO due to interests in U.S.-China relations. This can be said to show the limitations of the WTO as a resolution agency for trade disputes.

[80] Palomäki, M. (2022). The window of Opportunity for the Paradox of Disputes Despite Interdependence by the Relational Theory of World Politics: A Predicate Analysis of the Relationship Between Japan and South Korea.

2. The Expected Effect of the Introduction to New Judicial Review System in International Trade to the South Korea Administration Court

As Korea's status increases in the international trade sector, foreign governments and companies are increasingly interested and inquiring about how Korea understands and applies trade agreements in its domestic legal system. Regarding Korea's trade size alone, it can be taken for granted that there are specialized institutions and relevant legal systems related to resolving trade disputes. However, while international interest in our court rulings is increasing, it is still pointed out that there is still a lack of expertise in many ways.

The first is the matter of expertise in the relevant knowledge, which must clearly organize the facts based on an understanding of the highly technical part. In the case of the Korea Commercial Arbitration Board, which specializes in cases related to current trade disputes, the scope of people who can act as arbitrators is broad and ambiguous. In particular, if it is necessary to grasp facts in the area of advanced technology, it should be to present the scope of "experts" for the technology in more detail.

The second is the question of legal expertise. In some cases, it is challenging to deal appropriately with the complicated relationships of stakeholders or the failure to accurately grasp the purpose of the agreement. Considering that our court itself mentions the need to reflect on the purpose of the trade agreement, it is

necessary to try to narrow this gap as much as possible. Currently, administrative courts in charge of commercial cases tend to allocate cases arbitrarily among administrative court judges rather than assigning cases to professional judges in this field. Furthermore, the procedures and systems of administrative courts are not appropriate for the procedures and systems of commercial trials. Suppose a foreign company or a government, their agent, participates in a lawsuit. In that case, if time and money are excessively spent on handling a case due to a system that does not meet international standards, it will not be tried at the risk of being disadvantaged by a Korean court or system. Various trade disputes arising from the rapidly changing international trade system need to be in common with related international agreements and Korean domestic laws.

In this regard, if the current Korean system is improved due to the introduction of the USCIT system, it will be an opportunity to build awareness and credibility of foreign governments and companies and further enhance national prestige through systems and systems suitable for the size of Korea's trade. In the cases of the USCIT, a dedicated judge is appointed to have a system in which the case can be handled clearly. Rather than several broad expertise, judges are required to make judgments with public confidence in resolving procedures and cases, and professional investigators cooperate closely with the judges by clearly organizing the facts. Under a special federal court called a commercial court, the institution is not dualized but handled by one special court, a single institution. In addition, it will have res judicata as a full member of the judiciary. Korea is divided into the Korea Commercial Arbitration Board, the Trade Commission, the administrative

court, the administrative agency of investigative agency, the arbitration agency, and the arbitration agency. This somewhat confuses the case resolution and excessively wastes time, money, and input personnel. In addition, decisions by institutions without legal coercion make it challenging to accept the outcome of the incident, resulting in a loss of trust in dealing with international trade issues in Korea.

Therefore, if a new legal system is accepted and organized according to the situation of our country, not only can Korea quickly respond to the rapidly changing situation as a country with a trusted law enforcement agency in line with the size of the trade, but it can also enhance its international competitiveness and solidify its status through efficient handling of international trade disputes.

3. Suggestions on the New Judicial Review System in International Trade issues in South Korea

First of all, it is necessary to establish a more detailed and strict judge selection system for the criteria for selecting professionals or judges with expertise in international trade and customs like the U.S Court of International Trade, rather than assigning judges to the court based on allocation system for a certain period like the current Korea judicial system. In addition, depending on cases, it is also necessary to introduce a system in which judges are selected by the president, presidential executive office or through in-depth screening at the National Assembly like the U.S Court of International Trade. It is uncommon for an international trade dispute to be disputed with only one reason or issue. Therefore,

appointing a judge with obtaining specialized knowledge in depth as well as abundant experience in international trade or customs are also very important factors, so it is necessary to implement the new system of the court where the judge can serve for the long term only in the administrative court or appoint for life to work under international trade dispute department in the administrative court. Currently in Korea, in addition to the administrative court, there are only two commissions that deal with the international trade disputes; the Korea Trade Commission and the Korea Commercial Arbitration Board. However, these two commissions are not obtaining a detailed and speedy one-stop trade dispute services either. As explained earlier, in the case of the Trade Commission, the investigation is conducted by the Trade Commission, but it is often made decision by the Korea Trade Commission, instead made decision by different departments or boards such as the Ministry of Economy and Finance or the Korea Customs Service. Investigating and making decisions from different departments or boards can cause foreign corporations, that request for arbitration to Korea Trade Commission can think the process is too complex and has a possibility to create an unfair or unprofessional decisions.

Furthermore, while the results determined by the USCIT are legally binding on both the U.S government, the U.S federal agency, and the Plaintiffs either from the U.S or overseas, the Korea Trade Commission lacks the same legal binding force as the USCIT or the Korea administrative court has. The Korea Trade Commission has an authority to investigate the case that is filed and commence the arbitration, but cannot carry legal binding force. In the case of the Korea Commercial Arbitration Board, when the party, who files the case, disobeys the

results, there is a system that links it to the administrative court as mentioned above. However, if the case is transfer to the administrative court from the Korea Commercial Arbitration Board, the case needs to be re-investigated and restarted. This whole case transferring procedures tends to be excessively time wasted for the Plaintiffs, cumbersome to recommence the case in the new judicial court and mostly would be not cost-effective for both parties.

Therefore, the Korea Administrative court needs to create and enact an administrative procedure law that can be practice under the administrative court only for the trade dispute cases and implement the new international trade dispute system in which a judge with a high level of expertise and experience can work in a court or department under the Korean administrative court that only hears an international trade disputes for a long time or for life, as the U.S Court of International Trade appoints the judges.

In addition, the new system should include judges proceeds with all of trade dispute case filed on the court's should participate in the whole process of the case from case procedures, hearings, trials, and appeals. If an international trade dispute case is too complex to make a judgment, then the court should allocate three professional trade judges to evaluate and resolve the case.

Rather than the international trade disputes decisions are investigated and made decision by separated department, composing a specific department only for international trade in the Korea administrative court or implement specialized court for international trade disputes consist with selected professionals and appointed

judges specialized in international trade and customs could increase the speed and credibility of international dispute cases. Particularly, if the specialized judges participate on the whole process of filed international trade dispute cases, from hearings case data evaluation, trial and appeal systems, the Plaintiffs would save time and reduce costs together. In addition, if these qualified judges made decisions under detailed trade dispute system, the credibility in judgments made by courts will also increase.

Lastly, as South Korea is one of the global countries with international trade, it is expected for South Korea government and corporations to have constant international trade disputes are unavoidable. Therefore, implementing a new international trade dispute court system consist with professional judges specializing in international trade or create a specialized court in international can increase the possibility that overseas corporations can file the case and resolve the case related to South Korea government or corporations. Also, if we have such new judicial systems suggested above, situations when South Korea government made an unfair judgment with complex issues related to tariff or antidumping, the possibility of foreign corporations avoiding or excluding the Korean market like current could also be lowered. The system for implementing such specialized trade systems to the current administrative court or consist specialized trade judges in international trade disputes can be expected that the Korean court's legal binding in international level and credibility in the international dispute cases can be strengthened and result in many advantages.

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국문 초록

본 연구의 목적은 미국의 특별법원인 USCIT의 제도와 시스템을 국내에 도입하는 방안을 모색하려는 것이다. 최근 급변하는 환경 속 에서 국가 간의 무역분쟁은 크게 증가하고 있다. 코로나 이후, 글로벌 경기 침체를 겪으면서 미국, 중국을 비롯한 주요국가들이 보호무역 조치를 강화하면서 국가 간의 갈등이 심화되고 있다. 따라서 이러한 분쟁을 해결하기 위해서는 체계화된 제도와 공신력이 있는 사법기관의 중요성이 강조되고 있다. 통상협정과 분쟁해결 절차를 국내법 체계에서 일관된 형태로 적용하고 있는지 여부는 국제관계에서 한 국가의 위상을 보여주는 중요한 척도가 된다. 한국의 경우 무역규모를 고려했을 때, 국제 무역분쟁의 해결과 관련된 전문성 높은 기관과, 공신력 있는 법적 시스템의 구축이 시급하다. 이러한 변화에 대응하고자 국제무역분쟁과 관련된 현행 제도와 시스템을 리뷰하고 새로운 법적 시스템 도입 방안을 고찰하고자 한다. 이를 위하여 첫째, 국제무역분쟁 해결을 위한 자국내 법적 시스템이 이미 구축되어 있는 국가들이 어떻게 사법시스템을 운영하고 있는지를 살펴본다. 본 연구에서는 영국의 The Commercial Court in the U.K 와 싱가폴의 The Singapore International Commercial Court 시스템의 사건처리 절차, 소요기간, 기관 구성, 사례 등을 살펴보았다. 둘째, 미국과 분쟁이 가장 심한 국가인 중국도 USCIT에 제소를 할 만큼 완성도 높은 사법시스템으로, 상대 무역의 규모와 제도의 완결성을 고려했을 때, 미국 국제무역법원(USCIT)를 국내에 도입하는 것이 적절하다는 판단 하에 USCIT의 사법적 절차, 체계성, 효율성 등의 측면을 리뷰하였다. 셋째,

USCIT의 실효성을 알아보기 위해 2005년부터 2022년까지의 전체 사건, 중국 사건, 그리고 한국 관련 사건들을 통계하여 패턴을 분석하였다. 넷째, 국제무역과 관련한 한국의 현행 사법 시스템(대한상사중재원, 무역위원회, 한국행정법원)을 고찰하고, 현행제도에서의 문제점을 도출하였다. 마지막으로 현재 한국의 국제무역 사법 시스템에서 USCIT의 제도를 도입했을 때의 효과와 제언을 제시하였다. 본 연구를 통해 첨예한 무역 갈등 상황 속에서 사법제도를 공고히 함으로서 국제관계 속에서 제도의 신뢰성을 높이는 것으로 국가의 위상을 제고하는데 단초를 제공하고자 한다.

주요어: 미국 국제무역법원(USCIT), 한국 행정 법원, 국제 무역 분쟁, 통상 법원, 사법 제도