

What Role for the WTO?

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WTO is of *Some* Help

- The key constraint
 - WTO disciplines exclusively state behavior
 - State must be the agent , or act through conduit, or challenged behavior must be somehow attributed to state (but-for test)
- Unlike ITO, no chapter on RBPs

Who Fares Better than the WTO?

- Some FTAs go further (9.10 CPTPP)
 - **No Party** shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, **impose or enforce** any requirement, or enforce any **commitment or undertaking: (f) to transfer a particular technology**, a production process or other proprietary knowledge to a person in its territory
- Still it is state behavior sanctioned, but more of state behavior is sanctioned through this formulation

Why/How Get There?

- Unilateral threats vs. China do not work, and would be irrational to expect “imaginative” case law either (assuming judiciary crisis has been resolved)
- “completion” of the contract emerges as only adequate means to address the issue
- But
 - Under-enforcement vs China seems to be incentive-compatible
 - Demandeurs need to strategize about their threat points