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High stakes: United States–China trade disputes under the World Trade Organization

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Abstract

This paper examines United States (US)-China trade disputes under the World Trade Organization (WTO) and argues that both countries are increasingly resorting to the WTO's dispute settlement mechanism to target issues of most critical concern to their respective domestic constituencies. While the United States' WTO complaints against China tend to challenge Chinese industrial policy, cases involving anti-dumping and countervailing duties dominate China's WTO disputes against the United States. In addition, the significant expansion of bilateral trade relations in the past decades has provided opportunities for Chinese leaders to identify or to threaten retaliation against anti-protectionist groups in the United States in order to mobilize them against the disputed measure. Overall, United States–China trade disputes under the WTO increasingly reflect a distinctive political logic whereby domestic political considerations not only figure prominently in the decision to launch WTO disputes, but also frequently influence the way the dispute is played out either within or outside of the WTO framework.

China's entry into the World Trade Organization (WTO) represents an important milestone in the country's integration into the world economy. Since China became a member of the WTO in 2001, it has not only adopted a number of measures to harmonize Chinese domestic laws with WTO regulations, but has also actively participated in a series of activities carried out within the framework of the multilateral trade institution, including participation in the WTO's dispute settlement mechanism (DSM), multilateral trade negotiations under the Doha Development Agenda, and the trade review process. Importantly, in light of the continued growth of Chinese exports to the rest of the world, in particular the United States, both countries have more frequently resorted to the WTO DSM as the main instrument for addressing bilateral trade disputes. Indeed, over one-third (or 11) of the 30 complaints the United States filed at the WTO since 2001 were directed against China.[1] As the two countries are unlikely to be able to quickly resolve the tensions surrounding the large US bilateral trade deficit against China, it is reasonable to expect that the DSM will remain the key mechanism for addressing bilateral trade tensions in the future.

This paper provides an overview of United States–China trade disputes under the WTO and argues that both countries are increasingly resorting to the DSM to challenge trade barriers of most pressing concern to their respective domestic constituencies. Moreover, not only are such domestic considerations manifested in the pattern of WTO dispute initiation, they are also reflected in the subsequent negotiation process as the domestic divisions in the United States resulting from the expansion of bilateral economic ties have provided opportunities for Chinese leaders to either threaten or to actually impose trade restrictions against anti-protectionist groups with substantial economic interests at stake in that country in order to mobilize them against the disputed measure. While it is far from clear that such strategies are successful in influencing dispute outcomes, they nevertheless demonstrate a growing recognition of the importance of exploiting domestic divide in the other country for potential gains in bilateral trade confrontations. Overall, United States–China trade disputes under the WTO increasingly reflect a distinctive political logic whereby domestic political considerations are

1 Author's calculation based on WTO dispute cases available at http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm (26 September 2011, date last accessed).

not only able to increasingly shape the government's decision to launch WTO disputes, but also to subsequently influence the way the dispute is played out either within or outside of the WTO framework. To the extent that dispute initiation and the negotiations over the disputed issue (s) represent two important processes associated with a trade conflict, the emphasis on domestic political considerations provides a unifying theme that ties these two processes together and helps to provide a more comprehensive analysis of how domestic political factors affect the unfolding of United States–China WTO trade disputes.

This paper is composed of two major sections. Through a survey of the cases involving China as both a complainant and a defendant under the WTO DSM, the first section suggests that the scope of United States–China trade disputes under the WTO has expanded to target issues of most critical concern to both sides. While the United States' WTO trade disputes against China tend to target Chinese industrial policy and challenge the dominance of state-owned enterprises (SOEs) in the Chinese economy, cases involving anti-dumping duties (ADs) and countervailing duties (CVDs) have taken up a disproportionate share of China's WTO disputes against the United States. To the extent that China's continued use of industrial policy represents a primary concern for US policymakers and in light of the fact that China has become the number one target of US AD and CVD measures, it seems reasonable to suggest that both sides have taken most politically salient issues to the WTO DSM.

The second section of the paper further underscores the importance of domestic political considerations for the resolution of United States–China WTO-related trade disputes, arguing that both sides are increasingly targeting anti-protectionist interest groups in the other country in order to achieve a more favorable bargaining outcome. On the side of the United States, Washington's effectiveness of manipulating domestic political divisions in China for political gains is limited by the relative lack of transparency of China's political regime and specific characteristics of the United States–China trade and investment relationship. On the side of China, growing domestic divisions in the United States stemming from the multifaceted nature of the United States–China trade and investment relationship have made it possible for the Chinese leadership to target US groups with substantial trade and investment interests in China in order to mobilize anti-protection groups to lobby against trade

restrictions against China. Consequently, it seems likely that domestic political factors will play an increasingly important role in shaping how United States–China trade disputes are handled under the WTO in the near future. The paper concludes by discussing the effectiveness of the WTO in defusing United States–China trade tensions and by suggesting questions for future research.

1 The targeting of politically salient issues under the WTO

Studies of the choice of trade negotiation forum (Reinhardt, 2001; Davis, 2005; Shaffer, 2006) suggest that domestic political pressure plays an important role in influencing the venue of bargaining over trade issues. Powerful domestic interest groups not only help to identify specific trade problems and bring them to the government's attention, but also use available resources to lobby for the selection of a specific negotiation strategy. Consequently, formal complaints are likely to occur only when the disputed trade barrier represents a possible violation of existing trade commitments *and* when both sides to the dispute face strong domestic political pressure to act on the issue. In other words, governments tend to select hard cases, or the ones over which they face the most intense political pressure, for WTO adjudication.

The above logic would lead us to expect both the United States and China to use the DSM to target politically salient issues to their respective domestic constituencies. In particular, dispute initiation is more likely if there exists strong resistance against policy change in the respondent country and if the respondent's protectionist policies have generated substantial concern for powerful domestic constituencies in the complainant. The following overview of United States–China trade disputes under the WTO lends support to this view. While the United States' WTO disputes against China tend to target Chinese industrial policy and continued state protection for SOEs, cases involving anti-dumping, countervailing duties, and safeguard measures dominate China's WTO disputes against the United States. The dominance of these cases in China's WTO disputes against the United States in turn reflects the importance of these import relief measures as key instruments for addressing US trade concerns with China in recent years.

1.1 China as a defendant in WTO disputes

Since its WTO accession, China has been the target of 22 disputes initiated by WTO members. The United States accounted for the lion's share of these disputes, initiating 11, or 50% of all WTO disputes targeted at China (Table 1). The Chinese measures being challenged by the United States include semiconductors, auto parts, intellectual property rights, trading rights and distribution services for certain products, grants and loans, and more recently, wind power equipment, renewable energy, and access to resources. Many of these cases involve Chinese government support to domestic enterprises such as tariffs, subsidies, grants, refunds, exemptions from taxes, loans, and other incentives that either provided an unfair advantage to Chinese exporters or restricted foreign market access in China.

In the first case involving China as a defendant (DS 309), the United States charged that China provided for a 17% value-added tax (VAT) on domestically produced or designed integrated circuits (ICs), which effectively subjected imported ICs to higher taxes than that applied to domestic ones. The United States argued that such preferential treatment represented a measure taken by the Chinese government to promote the development of its infant semiconductor industry, and allegedly violated the WTO's national treatment principle. China quickly settled this dispute with the United States and agreed to amend or revoke the measures at issue at the consultation stage, before the dispute reached the next stage of dispute settlement.[2]

In DS 340, the United States claimed that the policies promulgated by China's National Development and Reform Commission (NDRC) regarding the development of the automobile industry had adversely affected US exports of automobile parts to China.[3] As Harpaz (2010) pointed out, this case marked a significant shift in China's attitudes toward third-party adjudication. In a sharp departure from its earlier conciliatory stance, Beijing allowed the dispute to go through the full panel process. In its reports circulated to members in July 2008, the

2 Liang (2007) attributes China's preference for early settlement in this case to institutional learning and to the country's reputational concerns as a new WTO member.

3 For case details, see China – Measures Affecting Imports of Automobile Parts. Available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds340_e.htm (19 September 2011, date last accessed).

Table 1 China as a respondent in WTO disputes, 2002–12

Dispute No.	Complainant	Year of initiation	Issue	Resolution
DS 309	United States	2004	VAT on ICs	Mutually agreed solution reached in 2004; China agreed to amend or revoke measures
DS 339, DS 340, DS 342	EU, United States, Canada,	2006	Measures affecting imports of automobile parts	The panel report circulated on 18 July 2008; AB report circulated on 15 December 2008; DSB adopted the AB and panel reports on 12 January 2009; China to bring inconsistent measures into conformity by 1 September 2009; at the DSB meeting on 31 August 2009, China informed the DSB that it had brought its measures into conformity with the DSB recommendations and rulings
DS 358, DS 359	United States, Mexico	2007	Certain measures granting refunds, reductions or exemptions from taxes and other payments	The panel established on 31 August 2007; agreement reached with the United States in December 2007; agreement reached with Mexico in February 2008; China agreed to remove taxes
DS 362	United States	2007	Measures affecting protection and enforcement of intellectual property rights	The panel report circulated on 26 January 2009; DSB adopted the panel report on 20 March 2009, which concluded that China's copyright law and the customs measures are inconsistent with the TRIPS agreement. The DSB recommended that China bring the copyright law and the customs measures into conformity with its obligations under the TRIPS agreement. On 29 June 2009, China and the United States informed the DSB that China had agreed to implement the DSB recommendations and rulings by 20 March 2010. On 8 April 2010, China and the United States notified the DSB of Agreed Procedures under Articles 21 and 22 of the DSU

DS 363	United States	2007	Measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products	On 19 January 2010, the DSB adopted the AB and panel reports which requested that China bring its GATT/WTO-inconsistent measures found to be inconsistent with its GATT/WTO obligations into conformity with its obligations. On 13 April 2011, the United States and China informed the DSB of Agreed Procedures under Articles 21 and 22 of the DSU
DS 372, DS 373, DS 378	EU, United States, Canada	2008	Measures affecting financial information services and foreign financial information suppliers	Agreement reached in December 2008; China agreed to eliminate discriminatory restrictions on foreign firms
DS 387, DS 388, DS 390	United States, Mexico, Guatemala	2008, 2009 (Guatemala)	Grants, loans and other incentives	Ongoing
DS 394, DS395, DS 398	United States, Mexico, Canada, Turkey, Columbia	2009	Measures related to the exportation of various raw materials	DG composed a panel on 21 December 2010; the panel report circulated on 5 July 2011; the panel found that China's export duties, export quotas, and certain aspects of its export licensing regime were inconsistent with WTO rules and China's WTO commitments
DS 407	EU	2010	Provisional ADs on certain iron and steel fasteners from the European Union	EU requested consultations with China on 7 May 2010; ongoing
DS 413	United States	2010	Certain measures affecting electronic payment services	The United States requested consultations with China on 15 September 2010; DG composed the panel on 4 July 2011
DS 414	United States	2010	Countervailing and ADs on grain oriented flat-rolled electrical steel from the United States	The United States requested consultations with China on 15 September 2010; DG composed the panel on 10 May 2011

Continued

Table 1 *Continued*

Dispute No.	Complainant	Year of initiation	Issue	Resolution
DS 419	United States	2010	Measures concerning wind power equipment	The United States requested consultations with China on 22 December 2010
DS 425	EU	2011	Definitive ADs on X-ray security inspection equipment from the European Union	EU requested consultations with China on 25 July 2011
DS 427	United States	2011	AD and CVD measures on broiler products from the United States	The United States requested consultations with China on 20 September 2011; DG composed the panel on 24 May 2012
DS 431, DS 432, DS 433	United States, EU, Japan	2012	Measures related to the exportation of rare earths, tungsten and molybdenum	The United States requested consultations with China on 13 March 2012 and requested the establishment of a panel on 27 June 2012; DSB deferred the establishment of a panel on 19 July 2012
DS 440	United States	2012	ADs and CVDs on certain automobiles from the United States	The United States requested consultations with China on 5 July 2012

panel found that, in general, Chinese policy accorded imported auto parts less favorable treatment than domestically produced ones and requested China to bring its measures into conformity with its WTO commitments. By August 2009, China had informed the dispute settlement body (DSB) that the Ministry of Industry and Information Technology and the NDRC had halted the implementation of relevant provisions concerning the importation of auto parts as set out in the earlier decree and had subsequently repealed it.

In a more recent dispute involving wind power equipment (DS 419), the United States challenged Chinese policies providing grants, funds, or awards to enterprises manufacturing wind power equipment in China, arguing that these measures were contingent on the use of domestic over imported goods and, as a result, were inconsistent with China's obligations under the Agreement on Subsidies and Countervailing Measures.[4]

The cases involving semiconductor, automobile parts, and wind power cited above are indicative of the broader pattern of the disputes brought by the United States and other WTO members against China. As in the above cases, WTO members have challenged Chinese industrial policy and Chinese government policies that provided continued support to domestic enterprises, in particular ones over which the state retains substantial stakes.

Indeed, while the Chinese government has committed itself to a set of sweeping market liberalization concessions in its WTO accession agreement in order to deepen domestic economic reform and while these measures have generated impressive economic results,[5] this does not necessarily mean that Beijing has refrained from intervening in the process of domestic industrial development. Rather, studies (Ralston *et al.*, 2006) have shown that the Chinese government has been able to transform the SOEs from the bureaucratic, pre-reform dinosaurs to the desired configurations to make them viable in the competitive global market. In part due to government spending, many of China's SOEs which used to be inefficient have grown into dynamic entities, while the relatively young private sector which has contributed significantly to

4 DS 419, China – Measures concerning Wind Power Equipment. Available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds419_e.htm (19 September 2011, date last accessed).

5 For an overview of China's WTO accession commitments, see Lardy (2002).

China's economic growth in the earlier years of economic reform has been left to fend for itself.[6] Instead of scaling back its support of the SOEs in the 1990s and 2000s, the government has accelerated its investment in the state sector during this period (Huang, 2008, pp. 22–23). Moreover, while the Chinese government did carry out a privatization program in the 1990s, it also made a key decision to make massive investments in large enterprises in which the state had substantial financial control at the 15th Party Congress in 1997. The policy of 'grasping the large and letting go of the small', which was made official at this Party Congress, subsequently set the tone for China's industrial policy agenda during the next decade (Huang, 2008).

Consequently, while economic reform and WTO entry have introduced substantial market incentives to the Chinese economy, the Chinese government, far from abandoning industrial policy as a key instrument for managing the economy, has increased its reliance on such policy during the past decade. The 2008 global financial crisis, which led to a substantial contraction in China's export markets, further reinforced the role of government stimulus spending, especially stimulus spending in the state sector, in ensuring the country's sustained growth (Ramzy, 2009). As the WTO is a liberal international economic institution whose operation is guided by market principles, it is no surprise that China's state-centric model of development would have come to the forefront at the WTO. If the current pattern continues, then it is likely that the United States and other WTO members will continue to use the DSM to challenge China's industrial policy and government support for the SOEs. These disputes will in turn raise important systemic issues for the organization regarding the impact of the state sector on trade flows and the ability of existing rules to cope with the challenges raised by a large transitional economy such as China.

1.2 China as a complainant in WTO disputes

Turning to China's trade disputes against the United States, the most distinctive characteristic is the large percentage of cases filed against US AD, CVD, and safeguard measures against China. Since it became a member of the WTO, China has only initiated eight cases at the WTO

6 Ramzy (2009).

(Table 2). However, with the exception of DS 392 in which China challenged US sanitary and phytosanitary (SPS) measures affecting poultry imports, the remaining seven cases all involve AD, CVD, and safeguard measures. The products targeted by these complaints include paper, steel pipes, tires, woven sacks, iron and steel fasteners, and shrimp and diamond sawblades.

The large percentage of cases involving AD, CVD, and safeguard measures in China's WTO complaints needs to be viewed in light of the fact that China has become the leading target of anti-dumping and countervailing investigations worldwide in the past two decades. As Davis and Shirato (2007, p. 283) pointed out, 'WTO rules for import relief measures (antidumping, countervailing, and safeguard duties applied for temporary protection) have been highly contested. Governments have shown a strong tendency to initiate WTO disputes related to these measures and panels have consistently found in favor of their challenges'. As these measures of contingent protection are particularly damaging, have a strong chance of success, and have been frequently used against China, it is not surprising that they have become the main targets of China's WTO dispute initiation.

Indeed, US ADs and CVDs against China have increased significantly in the past decade. Between 1999 and 2008, the United States imposed more than 50 new anti-dumping import restrictions on Chinese exporters, and these restrictions were roughly a third of all anti-dumping measures the United States imposed during this period. The non-market-economy (NME) designation that China has accepted upon its WTO accession in part contributed to the growing incidence of AD initiation and imposition against China. The underlying rationale for this designation is that as China is undergoing a transition from a planned to a market economy, domestic prices in China do not adequately reflect market demand and supply. Consequently, under the NME designation, instead of comparing the price of a good imported from China with the price of the same good marketed in either the Chinese or a third country market, authorities in the AD initiating country will either use the constructed cost of producing the same good in a third country where the prices of factor inputs are determined by the market or the 'normal value' of the cost of production in a surrogate country as a benchmark for determining whether a product from China is being dumped in the domestic market (Hufbauer *et al.*, 2006). The use

Table 2 China as a complainant in WTO Disputes, 2002–12

Dispute No.	Respondent	Year of initiation	Issue	Resolution
DS 252	United States	2002	Definitive safeguard measures on imports of certain steel products (steel safeguards)	July 2003 panel report; December 2003 AB report; US safeguard measures found to be inconsistent with obligations
DS 368	United States	2007	Preliminary AD and CVD determinations on coated free sheet paper (coated paper)	No panel established; no settlement notified; China did not pursue after United States' negative injury determination
DS 379	United States	2008	Definitive ADs and CVDs on certain products from China (ADs and CVDs – China or double-remedy problem)	The panel report October 2010; AB report March 2011; the panel rejected most of China's claims
DS 392	United States	2009	Certain measures affecting imports of poultry from China	DG composed a panel on 23 September 2009; DSB adopted the panel report on 25 October 2010; although the panel found several violations, it did not recommend that the DSB requests the United States to bring the measure at issue (Section 727) into conformity with its obligations under the SPS Agreement and the GATT 1994, because Section 727 had already expired
DS397	EC	2009	Definitive anti-dumping measures on certain iron or steel fasteners from China	DG composed a panel on 9 December 2009; panel report(s) adopted, with recommendation to bring measure(s) into conformity on 28 July 2011

DS 399	United States	2009	Measures affecting imports of certain passenger vehicle and light truck tires from China (safeguard issue)	Request for consultations on 16 September 2009; first request for the panel on 9 December 2009; the panel report circulated on 13 December 2010; the panel concluded that in imposing the transitional safeguards measure on 26 September 2009 in respect of imports of subject tires from China, the United States did not fail to comply with its obligations under paragraph 16 of the Protocol and Articles I:1 and II:1 of the GATT 1994. The panel also found that there was no 'as such' violation in respect of the US statute implementing the causation standard of paragraph 16 of the protocol
DS 405	EU	2010	Anti-dumping measures on certain footwear from China	DG composed a panel on 18 May 2010
DS 422	United States	2011	Anti-dumping measures on shrimp and diamond sawblades from China	China requested consultations on 28 February 2011
DS 437	United States	2012	CVDs on certain products from China	China requested consultations on 25 May 2012

of the above two methodologies for AD determination – the factors of production approach (also called the constructed value approach) and the surrogate country approach – are disadvantageous to Chinese producers for a number of reasons. Most importantly, by continuing to treat China as an NME in AD investigations, AD authorities in the initiating country are allowed substantial discretion in choosing surrogate countries to be used to estimate the costs of Chinese firms.[7] Empirical studies (Zeng and Liang, 2010; Zeng, 2011) have shown that the NME designation not only increased the likelihood of foreign AD initiations against China, but also increased the probability of affirmative AD adjudication against Chinese firms.

Figure 1a and b presents the number of US anti-dumping investigations against China and the share of such investigations in US worldwide AD investigations between 1980 and 2008, respectively. As Fig. 1a indicates, the number of US AD investigations against China reached record high numbers of 12, 11, and 12 in 2007, 2008, and 2009, respectively. Fig. 1b further indicates that the percentage of ADs against China in total US AD investigations has been rising steadily during the last decade, reaching 61% in 2008.

At the same time China has become a leading target of US anti-dumping investigations, it has become a prime target of two additional policies of contingent protection of the United States – CVDs and country-specific safeguard measures. US CVD law allows authorities to launch investigations into foreign subsidies that have conferred an unfair advantage onto foreign exporters and, in case of an affirmative determination, to levy an import tax equal in size to the foreign subsidy. Between 1979 and 2006, the United States never used its CVD law to impose new import restrictions on China. A decision by the Department of State in 1984 explicitly exempted China cases from consideration under the countervailing statute (Bown and McCulloch, 2009). However, in November 2006, US producers of coated free sheet paper included China in a petition they were filing against Indonesia and Korea over alleged subsidies. In 2007, the US Department of Commerce (USDOC) reversed its earlier policy of not undertaking CVD investigations against imports from non-market economies such as China, Russia, Poland, and Czechoslovakia

7 For a more detailed discussion of the NME status and its impact on foreign AD actions against China, see Lardy (2002).

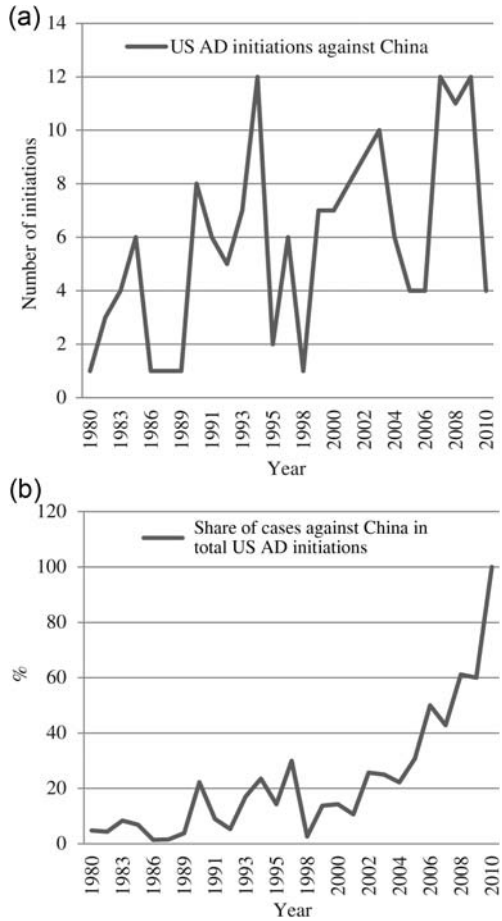

Figure 1 (**a**) Number of US AD investigations against China, 1980–2010. (**b**) US AD investigations against China as a percentage of US AD investigations against all countries, 1980–2010. Source: Global Antidumping Database.

by launching a CVD investigation into coated free sheet paper from China.[8] While the investigation resulted in a negative injury determination, with no duties imposed, it represents a fundamental shift in the way the United States deals with unfair Chinese trade practices and set a

8 The rationale underlying earlier US policy was that as the entire economy of non-market economies was directed by the government, it would be difficult to isolate the economic distortions caused by any given subsidy program (Kaplan and Cloutier, 2007).

precedent that may apply across the manufacturing sector, with potential significant implications for United States–China trade.

Figure 2a and b presents the number of US CVD investigations against China and the share of these cases in US worldwide CVD investigations between 1980 and 2010, respectively. These figures indicate that US CVD investigations against China were almost negligible from the 1980s through the early half of the 2000s. However, China has increasingly become a prime target under the CVD statute in the latter half of the last decade. From 2007 to the end of 2010, the United States initiated a total of 26 CVD investigations against China. The share of CVD investigations targeted at China in US worldwide CVD investigations has also

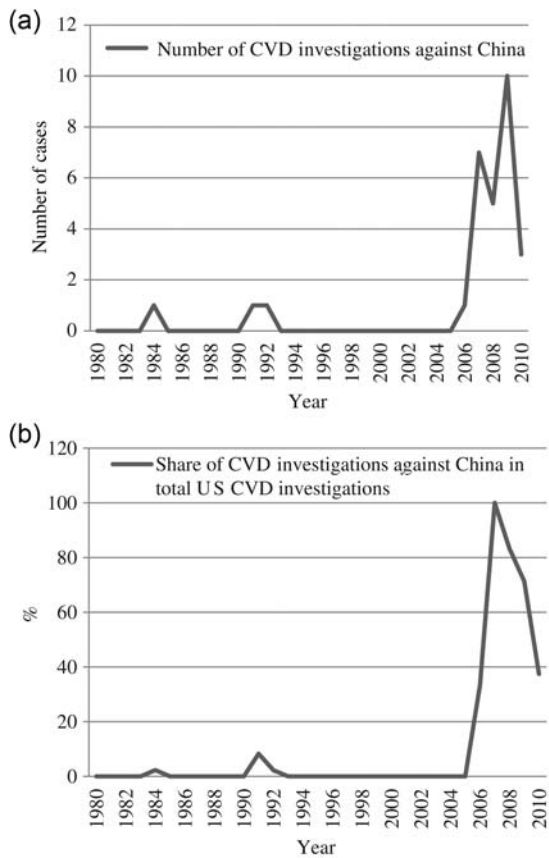

Figure 2 (**a**) Number of US CVD investigations against China, 1980–2010. (**b**) US CVD investigations against China as a percentage of US CVD investigations against all countries, 1980–2010. Source: Global Countervailing Duty Database.

experienced significant growth, reaching 83% in 2008 and 71% in 2009.[9] As the United States is the leading user of CVDs in the WTO, the trend described above suggests that it is possible that Washington will increase its resort to CVDs to complement the use of anti-dumping and safeguard measures as key import relief measures against Chinese products.

In addition to the policy instruments mentioned above, the United States adopted two separate safeguards against imports from China in its domestic legislation. First, in order to protect the textile industry from a possible surge in imports of textiles and apparel from China following the country's WTO accession, the United States implemented a safeguard program which covered only US imports of textile and apparel products from China. The program was administered by the Office of Textiles and Apparel and the USDOC and applied to the 2001–08 period. Second, in addition to the textiles safeguard, the United States adopted a broader China-specific safeguard through 2014. The procedure for administering the China-specific safeguard generally follows Section 201 of the US domestic law for administering US global safeguards. While the USITC is charged with injury investigations, the ultimate authority for determining the US policy response to the investigation resides with the President.

Between 2002 and 2009, the USITC launched six investigations against Chinese products under the Section 421 law. While three of the six products investigated were denied import protection under the China safeguard, they were granted import protection under the US anti-dumping law within five years after the failed China-safeguard investigation. Moreover, in 2009, the United Steel Workers initiated a safeguard petition against certain passenger vehicles and light truck tires from China. The case represented the first China-safeguard investigation initiated during the Obama administration and resulted in the imposition of a new 35% tariff in September 2009.

As AD, CVD, and safeguard measures have become the main instruments for addressing US trade concerns with China outside of the multilateral framework, it is perhaps not surprising that Beijing has turned to

9 Global Countervailing Duties Database (GCVD): part of the Temporary Trade Barriers Database (TTBD). Available at http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:22574932~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html (19 September 2011, date last accessed).

the DSM to address the perceived unfairness in the use of such instruments and to challenge the NME designation, which was considered to have at least partly contributed to the rising tide of AD and CVD measures against China. And even if China does not win a particular case, it is possible that the simple action of initiating a WTO dispute may exert a deterrent effect on other WTO members by curtailing their anti-dumping filings against China.

China's WTO complaints and WTO panel rulings in these cases further highlight the importance of the NME designation as a source of China's WTO complaints and the conflict between China's market socialism and the free market principles of the multilateral organization. A good case in point is DS 379 in which China claimed that the NME methodology used by the USDOC has resulted in the imposition of a 'double remedy' (i.e. both anti-dumping and countervailing duties) on the same products. The panel report issued in October 2010 rejected most Chinese claims. First, the panel ruled that as all SOEs can be considered as 'public bodies', subsidies to SOEs supplying inputs to investigated producers and state-owned commercial banks providing loans to such entities should be considered as the government's financial contribution. Second, the panel rejected China's claims that the USDOC's refusal to use in-country private prices in China as benchmarks to determine the existence and amount of benefit conferred by government programs was inconsistent with WTO rules on the grounds that land is publicly owned in China. Third, the panel did not find the USDOC's rejection of using Chinese interest rates as benchmarks for calculating the benefit of RBM-denominated loans from state-owned commercial banks to be WTO-inconsistent as interest rates in China are subsidized.[10] While the Appellate Body report issued in March 2011 reversed some of the panel findings, it by and large upheld the key elements of the panel report described above. Overall, while China has sought to challenge the USDOC's practice of using the NME methodology as the basis for calculating the costs of Chinese firms in AD investigations, the panel and Appellate Body have largely relied on the NME clause in their rulings.

10 For detailed information on this case, see DS 379, United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China. Available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds379_e.htm (19 September 2011, date last accessed).

This dispute therefore suggests the potential for both the United States and China to try to continue to resolve the political tensions surrounding the NME designation through WTO adjudication and illustrates the ongoing challenge that China's hybrid economy poses for WTO jurisprudence.

1.3 Domestic politics and China's WTO disputes

While the paper presents an initial overview of United States–China trade disputes under the WTO, the detailed analysis presented above nevertheless points to the potential influence of domestic political pressure in the initiation and resolution of China's WTO trade disputes. For example, in terms of the politics behind China's decision to launch WTO disputes, what is most noticeable is the large number of cases involving the treatment of SOEs. The overview of the sectoral composition of China's WTO disputes presented above suggests that China's WTO complaints are targeted at US anti-dumping and safeguard measures against China and the NME methodology for determining the dumping margin and the level of subsidization of Chinese firms. To the extent that these complaints reflect China's growing frustration with the US treatment of SOEs in AD and CVD cases, it is possible that Chinese government concerns about the viability of the state sector in the Chinese economy may have played an important role in influencing Beijing's WTO policy agenda.

Indeed, SOEs' large size, high degree of firm concentration, and historically privileged position within the Chinese economy may have made them attractive targets of trade protection by the government. (Zeng, 2007; Downs, 2008; Berry, 2009; Wang, 2009). Moreover, as SOEs have come to bear the brunt of the costs of the NME approach for AD and CVD designation, it is reasonable to expect that they may have captured the government's attention in defining China's WTO trade policy agenda. Indeed, interviews with Chinese researchers of China's involvement in the WTO DSM suggest that while the Chinese government dominates the dispute initiation process, there nevertheless remains the possibility that the government's dispute initiation decision reflects the historically dominant position of SOEs in the Chinese economy and their continued strong influence over the policymaking process in the

reform era.[11] More research would be needed to ascertain the extent to which SOEs are the driving force behind China's WTO policy agenda and the mechanisms through which they influence China's WTO dispute initiation.

2 Domestic politics and the management of United States–China trade disputes under the WTO

The above overview of United States–China WTO trade disputes suggests that both countries tend to select politically salient issues for WTO adjudication. This section pushes this argument further and argues that domestic political pressure not only figures prominently in the decision to launch trade disputes, but also plays an important role in the bargaining processes that follow. In this sense, this paper tackles the impact of domestic politics on two important aspects of a trade conflict – dispute initiation and the negotiations over the disputed issue. Indeed, the significant expansion of bilateral trade relations in the past decades has provided opportunities for leaders of both countries to identify and to threaten retaliation against business groups with sufficient political clout and access to decision-makers in the other country to help lobby for the removal of the alleged protectionist measure when a case gets to the retaliatory-threat stage at the WTO. As Bown (2009) points out, while authorized retaliation is extremely rare in the history of the WTO, the capacity to retaliate may nevertheless constitute an important impetus for policy reform. The ability to impose economic costs on powerful export-oriented domestic groups who could effectively counterbalance against protectionist groups could therefore provide an important means for facilitating compliance and reform. While the large amount of US imports from China may present substantial opportunities for Washington to threaten trade retaliation against China, the effectiveness of such a strategy may nevertheless be limited by the non-transparency of Chinese politics, the fact that major Chinese exports to the United States are lower-end products which may be easily exported to third-markets in case of US retaliation, and the large amount of Chinese exports generated by US-based multinational corporations whose

11 Author's interviews conducted between April and May 2012.

interests may be hurt instead of being helped by trade retaliation (Bown, 2009, pp. 38–39).

At the same time, China seems to be increasingly threatening or actually undertaking retaliation against American products for which China is an important export market in WTO-related disputes with the United States. Chinese restrictions against poultry imported from the United States in the aftermath of the US tire tariffs against China in 2009 provide a good illustration of this phenomenon. Starting in 2007, the United States had imposed a ban on Chinese poultry imports on the grounds that they did not meet US sanitary standards. On 17 April 2009, China formally requested WTO consultations on the issue, arguing that the US measures violated certain sections of the Uruguay Round Agreement on SPS measures as well as the WTO's principle that the imports and exports of a country are to be treated no differently than those of other countries.

In September 2009, in response to charges from United Steelworkers Union that imports of Chinese-made tire had increased sharply from $453.3 million in 2004 to $1.8 billion in 2008, causing 7,000 job losses among US factory workers, the Obama administration imposed special safeguard measures against Chinese tires under Section 421 of US trade law.[12] Shortly after the US decision, China filed a dispute against the tire tariffs at the WTO and launched its own anti-dumping investigations into US poultry products, arguing that American poultry firms have been exporting poultry products, especially chicken parts which are unpopular in the United States but are considered as delicacies in China at unfairly low prices in the Chinese market, thus putting Chinese poultry farmers out of business.[13] The investigation resulted in the imposition of ADs on US chicken imports as of February 2010, ranging from 43.1% for companies that cooperated with the investigation to 105.4% for those that did not.

China's decision to threaten retaliation against the poultry industry reflects Beijing's growing ability to leverage its market and to mobilize groups with potential substantial economic losses in order to influence US trade policy. China represented the largest export market for the US poultry industry, with sales of $722 million in 2008.[14] Imports from the

12 Dyer (2009).

13 Ford (2009).

14 Dyer (2010).

United States accounted for almost 73% of China's broiler import market in 2008. The Chinese decisions also came at a time when US poultry exports to the other major market, Russia, was endangered by a series of restrictions and quotas imposed by the Russian government on sanitary grounds.[15]

Indeed, following the Chinese WTO dispute against US import restrictions, a coalition composed of about 40 food and agricultural groups in the United States filed comments with the Office of the US Trade Representative to support the Chinese position. The coalition urged the administration to 'observe the rule of law in international trade', arguing that 'we will have little ability to insist on adherence to the rule of law if we do not do so ourselves' (Johnson and Becker, 2010, p. 10). The coalition further argued that food products from China 'is a public health issue that should not be entangled in trade discussions. [Chinese] officials have tried in the past to make the exportation of poultry products to the United States a quid pro quo for re-opening US beef exports to [China]. Those talks should be separate and distinct' (Johnson and Becker, 2010, pp. 6–7).

After China announced its decision to impose anti-dumping investigations into US poultry products, US poultry producers launched a major effort to lobby the government from imposing trade restrictions against China, arguing that such measures would be WTO-inconsistent. The Arkansas-based Tyson Foods, the biggest US poultry processer, was particularly vocal in this process. China, which will constitute about 50% of global meat consumption growth in the coming decade, is Tyson's biggest overseas market. According to the USA Poultry and Egg Export Council, the company's exports to China, which amounted to about $200 million each year, accounted for 14% of the company's $1.6 billion international poultry sales ('China Sets Anti-Dumping Penalties on US Poultry Imports', 2010). At the same time, the company's operations in China have experienced rapid increases in the past decade. In the past few years, Tyson China has established two new joint ventures in China: Tyson Dalong based in Shandong province and Tyson Xinchang based in Jiangsu. The establishment of these joint ventures promises to increase Tyson China's annual revenue from the current figure of about $15 million to $500 million (Liu, 2009).

15 Schwirtz (2010).

Following China's decision to levy ADs on US poultry products, the company announced that it is 'disappointed by the news and will continue to work through the US government and our trade associations to reverse this decision'. It further indicated that it will try to do everything it can to 'continue selling chicken profitably to China' (Singh, 2010). In addition, the company worked closely with the China Animal Farm Association and the US Chamber of Commerce in China to try to influence the Chinese government's decision. In part due to its active opposition to the tire duties and cooperation with the Chinese investigation, Tyson was assessed the lowest AD of 50.3%, compared with 105.4% for companies that did not cooperate with the investigations. Overall, this case illustrates how Chinese authorities are increasingly able to leverage the lure of the Chinese market and to target US companies with substantial trade and investment ties with China in order to influence the outcomes of WTO-related trade disputes with the United States.

More recent United States–China WTO trade disputes lend additional support to the above argument. For example, shortly after the United States announced that it would ask the WTO to launch investigations into Chinese restrictions on US poultry exports, the Commerce Ministry announced that it would open investigations into whether to impose tariffs on American automotive exports to China. The auto investigation subsequently resulted in China's imposition of anti-dumping and anti-subsidy tariffs on American-made sport utility vehicles and cars with large engines in December 2011 (Bradsher, 2012). The tariffs targeted imports of Honda and Cadillac models, Chrysler Jeep Grand Cherokee, the BMW X5 and X3, and Mercedes Benz models made in Ohio, Michigan, Alabama, and South Carolina. China alleged that the government bailout these companies received during the 2008 economic downturn represented subsidies that are forbidden by WTO rules, allowing them to sell vehicles at prices lower than they are sold for in the United States.

It should be noted that the Chinese announcement took place at a time when the United States was launching a separate investigation into possible Chinese government illegal subsidies for exports of solar panels and possible dumping of these products in the American market. As China is the world's leading producer of solar panels, with green technology representing one of the country's most innovative developing markets, a negative WTO ruling or WTO-authorized retaliation could

have major ramifications for the solar power industry (Rapoza, 2011). While the tariffs did not seem to be a retaliatory response against any particular American trade move, it is possible that they were intended to preempt the filing of a WTO dispute by mobilizing the politically powerful US automakers with substantial trade and investment relationships with China. Indeed, US auto exports to China, valued at around $4 billion a year, amounted to about 4% of annual US exports to that country. According to the US-China Business Council (USCBC), the tariffs, which amounted to as much as 21.5%, could impact $2.5 billion worth of American auto exports, or 3% of all US exports to China. Moreover, the three big US automakers have invested heavily in China-based production. For example, General Motors manufactured and sold 2.5 million vehicles from its China-based plants in 2011. While the bulk of the cars sold in China are manufactured in that country, luxury vehicles and those with engines of 2.5 l or more are mostly produced in US plants and exported. In 2011, the United States exported about 92,000 of these luxury vehicles, worth about $3 billion to the Chinese market (Nakamura and Schneider, 2012). China's retaliatory tariffs on US auto exports thus threatened to undermine the interests of US auto exporters to China and jeopardize the overall United States–China trade and investment relationship in the auto sector.

Following Beijing's announcement of trade restrictions, USCBC President John Frisbie made public statements that the 'ability for American companies to export and sell cars to China is important' (Rapoza, 2011). USCBC further noted the frequent imposition of duties by both countries against each other in the past decade and expressed concerns that the current economic and political environment could further exacerbate the trade conflict and generate a climate that could lead to tit-for-tat retaliation (Lee, 2011).

In addition to the auto tariffs, Beijing threatened to impose restrictions on American exports to China of polysilicon, a main ingredient in solar panels, after the USDOC announced that it would launch investigations into Chinese solar panels based on preliminary evidence of Chinese dumping of solar panels in the US market and Chinese government subsidies for the export of solar panels. Furthermore, when the US AD and CVD investigation resulted in the imposition of 31% tariffs on some solar panels produced in China, Beijing responded by launching its

own investigations into six clean-energy products in five US states which had allegedly received illegal support from the US government.

It should be noted that the US solar industry itself was divided over the investigation. While companies such as SolarWorld Industries America, the largest manufacturer of crystalline silicon photovoltaic cells in the United States, and Helios Solar Works supported the investigation, the Coalition for Affordable Solar Energy (CASE) and other manufacturers such as SunEdison and Q.Cells consistently opposed the investigation on the grounds that it would result in higher panel prices in the United States, thus lowering rates of installation and threatening up to 60,000 jobs in the United States. For example, Jigar Shah, CASE president and founder of SunEdison stated that while the US move 'is a relatively positive outcome for the US solar industry and its 100,000 employees, … tariffs large and small will hurt American jobs and prolong our world's reliance on fossil fuels'. Similarly, the vice president of SunEdison stated that 'by increasing the price of modules and therefore the price of solar energy, these tariffs will undermine the success of the US solar industry and reduce the ability of solar energy to compete with electricity generated from fossil fuel' (O'Tooley, 2012). The chief executive officer of Q.Cells further suggested that the issue was broader than panel prices and raised the challenge for the United States to 'stay focused on providing reliable, predictable and sustainable energy solutions for utilities and other customers' (Carus, 2012). The Chinese retaliation thus threatened the interests of a significant segment of the US solar industry which had benefitted from low-cost Chinese imports (Bradsher and Cardwell, 2012).

Indeed, following Beijing's decision to launch investigations into US clean-energy projects, the chief executives of four major Chinese solar-power equipment producers reportedly stated at a news conference that they 'had allies to fight Washington's allegations' as the Chinese industry is beneficial to the United States. The Chinese manufacturers suggested that not only are US companies major suppliers to the Chinese industry, American consumers also 'benefit from the lower prices that result from the industry's concentration and competitiveness' (Areddy and Ma, 2012). While the solar panel case took place outside of the WTO framework, the above discussion suggests that Chinese retaliatory move seems to be designed to mobilize US solar producers reliant on low-cost

Chinese solar panel imports in order to avoid possible litigation at the WTO.

The above cases suggest that US domestic divisions resulting from the growing United States–China trade and investment relationship have made it possible for Beijing to target retaliation against anti-protectionist groups in that country in order to influence the development of WTO-related trade disputes. It should be pointed out though that the above argument merely emphasizes China's growing utilization of such a retaliatory strategy instead of explicitly linking such an effort to successful negotiation outcomes. Indeed, the extent to which China has been able to effectively mobilize potential allies in the United States to influence dispute outcomes is far from certain. For example, China's effort to exploit domestic divisions in the United States in the tire case described above did not translate into a more favorable outcome. Furthermore, as Table 2 suggests, China has lost most of the WTO disputes in which it is a complainant. The relative inability of Chinese leaders to translate retaliatory strategies into favorable bargaining outcomes merits further research.

3 Conclusion

This paper provides an overview of United States–China trade disputes under the WTO, suggesting that domestic political considerations not only figure prominently in Washington and Beijing's decisions to launch WTO disputes, but also affect the ability of leaders of both countries to carry out focused retaliation against anti-protectionist groups on the other side in WTO-related disputes. In particular, the pattern of dispute initiation by both the United States and China described above is consistent with the argument that governments tend to push most politicized issues to the WTO for adjudication (Davis, 2005).

It should be emphasized, though, that this study only makes the very preliminary suggestion that domestic political pressure potentially exerts an important influence over trade dispute initiation and the subsequent bargaining process through an overview of the pattern of United States–China trade disputes under the WTO. Its primary intent is to point out the growing salience of domestic political forces in shaping United States–China trade disputes at the WTO. As such, this paper does not provide concrete evidence of how domestic interest groups lobby for their

preferred policies. Nor does it address the question of whether the same domestic political pressure that affects dispute initiation also influences its resolution or how such pressure might work differently in the United States and in China. Future studies could engage in more detailed analyses of the channels through which domestic interest groups in both countries, especially those in China, influence the process of WTO trade dispute initiation.

If the argument about how the WTO DSM has been used to handle the most politically difficult issues for both countries is valid, then it seems reasonable to suggest that United States–China trade disputes are increasingly being fought out within the framework of the WTO and that the growing utilization of the DSM in the past decade may have helped to channel the tensions surrounding the bilateral trade relationship to the multilateral forum and to prevent intense interest group pressure from impairing overall United States–China trade relations. In the absence of the DSM, it is possible that major bilateral trade disputes resulting from China's ever-growing trade surplus with the United States and allegations of the undervaluation of the Chinese RMB could have generated far more acrimony and tensions in bilateral trade relations.

If both sides have tried to use the DSM to address issues of most pressing concern, then it may be worthwhile to analyze the extent to which the DSM has been effective in promoting the interests of each country. The record so far suggests that while the DSM seems to have enhanced the effectiveness of the United States in addressing its trade concerns with China compared with the era of bilateral negotiations, Beijing has lost a good number of its fights at the WTO. Table 2 presents a list of cases in which China is a respondent under the DSM. A cursory look at the dispute-settlement outcome presented in Table 2 suggests that China did not fare well in these cases. In the 11 cases for which the outcome is known so far, China has either reached agreement with the complainant over the disputed practices or has been found by the DSB to be engaging in practices that are inconsistent with its WTO obligations. China fared slightly better in cases in which it is a complainant. Of the six cases for which the outcome is known, China won one case, received mixed rulings in another, and lost the remaining four cases.

The fact that China has lost almost all of the cases in which it is a defendant is particularly puzzling in light of theories which suggest that legal adjudication creates a level playing field for developing countries,

allowing them to achieve better outcomes in multilateral than in bilateral settings (Davis, 2006).[16] Moreover, as China has progressively enhanced its legal capacity and revised its traditional attitudes toward third-party adjudication to embrace what can be described as 'assertive legalism' in the past decade (Jiang, 2005; Gao, 2007; Liang, 2007; Harpaz, 2010; Hsieh, 2010), the above pattern is also puzzling for arguments (Guzman and Simmons, 2005; Shaffer, 2006; Busch and Reinhardt, 2003; Busch *et al.*, 2009) about how the lack of legal capacity may prevent developing countries from effectively representing their interests within the WTO. Future studies could more specifically analyze the effectiveness (or the lack therefore) of the WTO in addressing the respective trade concerns of China and the United States.

Finally, in addition to analyzing how the WTO DSM affects the *self-interest* of each of the parties, it may be meaningful to ask how United States–China WTO disputes will affect the effectiveness of the WTO *system* as a whole. This question is gaining in importance as it is likely that both countries will more frequently resort to the DSM to challenge the alleged unfair trade practices of the other, potentially increasing the case load for the WTO. As the above analysis suggests, the United States' WTO disputes against China and panel rulings so far raise the fundamental issue of whether and how the liberal international institution could accommodate the presence of a large transitional economy which does not yet operate fully according to free-market principles. How United States–China trade disputes will be played out under the WTO is therefore likely to have significant implications for understanding the effectiveness of the organization in integrating China into the liberal international economic system.

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