



## **U.S.-China Trade Relations – Litigation in the WTO 2001 - 2014**

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### ***I. Introduction***

The World Trade Organization (WTO) dispute resolution system is widely used and is a litigation-oriented process. It is at the core of global trade relations today. Both the United States and China have been aggressive users of the system. Each country has shown a willingness to address contentious issues, which has been to the benefit of both countries. As newer trade issues arise, this process will be indispensable in keeping U.S.-China trade relations on a stable course.

My approach is to examine litigation data provided by the WTO and the United States Trade Representative (USTR) concerning the WTO dispute resolution system's inception, the activity of the Bush and Obama administrations in regard to trade disputes, and China's record in the WTO. A series of charts with short explanatory passages helps illustrate this story.

This is not a jurisprudential study, but rather one assessing empirical litigation data in order to disclose implications for American trade policy and the international trade system as they relate to China's role in the global trading system.<sup>1</sup>

The conclusions are straightforward. The dispute resolution system is widely used by many developed and developing countries. The U.S. has been the most active in the WTO's dispute resolution system. The focus of the U.S. has increasingly been on China, and Chinese litigation has been primarily focused on the U.S. Further, the pace of WTO litigation among all countries has picked up.

This review of U.S.-China litigation is of the competitions that reflect trade flows and frictions, which are addressed successfully in a rules-based system rather than as a narrative of a deadly winner-take-all conflict. Such legal conflicts and their resolution is the way that the system was intended to work by its architects, principally the U.S.

My general conclusion is that, whereas the U.S. and China are competitors, they have channeled their major trade disputes into an international diplomatic and adjudicatory mechanism that demonstrates cooperation and management. This approach is beneficial to both parties politically and to U.S.-China trade relations and global governance.

## **II. Background**

The WTO negotiates and adjudicates global trade rules. The dispute resolution system is at the heart of the WTO today; it is the judicial system of the WTO and of the global trading system.

The WTO and its dispute resolution system are the successor to the older, much weaker GATT system and came into existence in 1995. For the first time in history, there is now a multilateral system that resolves trade disputes with binding decisions enforceable by sanctions. There is nothing else like it in the international economic arena today.

The basis of the dispute resolution system is the WTO's "Dispute Settlement Understanding" (DSU), one of the multilateral agreements that came to force in 1995. It establishes compulsory jurisdiction, binding decisions, and trade sanctions to enforce those decisions. The dispute resolution system applies all the rules found in the whole range of WTO trade agreements relating to agriculture, intellectual property, subsidies, services, investment measures, and merchandise trade, among others.

The United States has filed various actions against China concerning what it considers improper export subsidies and failure to enforce intellectual property rights. On the other hand, China has filed actions against the United States for their imposition of antidumping duties and safeguard tariffs. A large number of trade cases before the WTO involve "trade remedy legislation" authorizing dumping, subsidies, and safeguard measures.<sup>2</sup> Indeed, the dumping and subsidies codes are the most litigated substantive agreements. The dispute resolution

system is widely used by many states, but most WTO litigation involves that between the United States and the European Union (EU). However, the most politicized and high-profile litigation involves the United States and China.

The actual dispute resolution process combines traditional negotiations and litigation and is relatively simple and quick. From start to finish, this entire process generally takes twelve to fifteen months. States file a request for consultation that involves confidential diplomatic negotiations between the parties. If consultation does not result in a settlement, the complaining party may request the establishment of a panel to hear the case. This is where the litigation takes place. However, the majority of cases requesting consultation are resolved without ever going through the full litigation process.

Panel members are trade experts selected by the WTO and then chosen by the parties. The cases are decided by the panelists, not juries – a seeming adaptation of the civil-law approach to litigation. While precedent, a common-law notion, is not specifically provided for in the Dispute Resolution Understanding, it is in fact often utilized in panel and Appellate Body decisions. For a very long time, these proceedings were closed and did not allow amicus briefs, but this has now changed somewhat.

Parties may appeal the decision of the panel to the Appellate Body, which is composed of members selected by the WTO. Determinations by both the panel and Appellate Body are required to be adopted by the Dispute Settlement Body, essentially the entire membership of the WTO. In reality this adoption has proven to be automatic. When a decision is

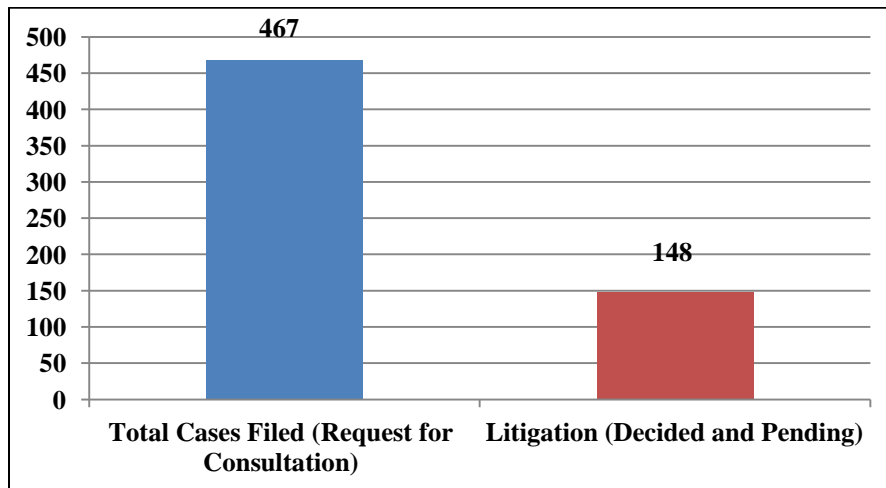
finalized, the losing party is required to bring its offending measure into compliance with the decision (technically, a recommendation), which allows it to formulate the specifics of the losing party's compliance to remove the offending restriction.

If there is a failure to comply after a reasonable time, the complaining party may request authorization to impose sanctions on the losing state. Most often, these sanctions are tariff surcharges on imports from the responding state until the offending measure is removed. Requests for sanctions have been very rare, and even when authorized, they have not always been imposed. Generally, states are no longer allowed to unilaterally impose trade sanctions on others unless authorized by the WTO. By and large, only multilateral trade sanctions as authorized by the WTO are lawful under global trade law today.

### III. The WTO Dispute Resolution System

At the outset of any discussion of WTO litigation, it is important to note that only approximately one-third of cases filed go through the entire WTO litigation system. (It is a bit higher for cases involving the U.S.) The first stage in the litigation process is to file a request for consultation. This stage involves confidential diplomatic negotiations. Often, cases are dropped in this stage, even when there may not have been an agreement to remove contested restrictions. Only after negotiations are unsuccessful can the parties request for a panel to be formed. The chart below covers 1 January 1995 through 30 September 2013. Of the 467 cases filed (request for consultations), only 148 have led to litigation (some are still pending). Sanctions were authorized in only seven cases and sanctions were not actually implemented in all of them.

Chart 1. WTO Cases (Merits) Filed and Litigated from 1 January 1995 – 30 September 2013



Data Source: 2013 Annual Report of the DSB (1 Nov. 2013) – Overview of State of Play of WTO Cases by the Secretariat is appended to the DSB Report WT/DSB/61/Add.1

The WTO dispute resolution system has been widely utilized by both developed and developing countries. Developing countries have filed over one-third of the requests for consultation. For example, in 2012 Latin American countries alone filed nine of the twenty-seven requests for consultation.<sup>3</sup> A 2013 WTO report concluded that “developing countries participated strongly in the dispute settlement system, both as complainants and respondents.”<sup>4</sup> A recent study sponsored by the WTO of litigation data observes, “The first conclusion that one can draw from the data is that these distinctions between common, code law and pluralism are not significant for explaining different members’ level of litigiousness.”<sup>5</sup>

*A. The U.S. in the Dispute Resolution System*

The U.S. has been extremely active in the WTO litigation process. In fact, it

has been the most active member. The U.S. was brought before the WTO approximately fifty percent more often than it brought cases. As the complainant, it brought a total of ninety-nine cases. (This includes nine compliance cases that were brought after the original case in order to secure compliance.) It was a respondent in a total of one hundred forty cases. (This includes sixteen compliance cases.) Of the ninety original cases it brought, forty-two were fully litigated, resulting in thirty-eight wins and just four losses. Of the 124 original cases brought against the U.S., it lost fifty but won a relatively high number of seventeen. In total, the U.S. won just about as many cases as it lost (fifty-five wins and fifty-four losses). A significantly higher number of cases went on to the full litigation process when the U.S. was the respondent rather than when it was the complainant.

Chart 2. U.S. as Complainant 1995 – 2012 (Merits)<sup>6</sup>

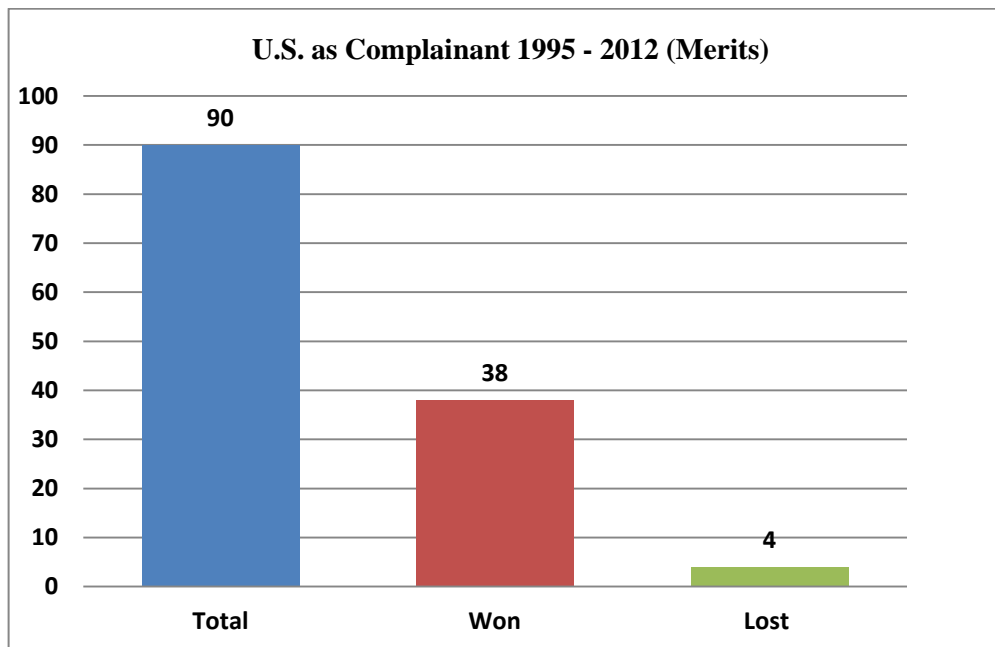


Chart 3. U.S. as Respondent 1995 – 2012 (Merits)

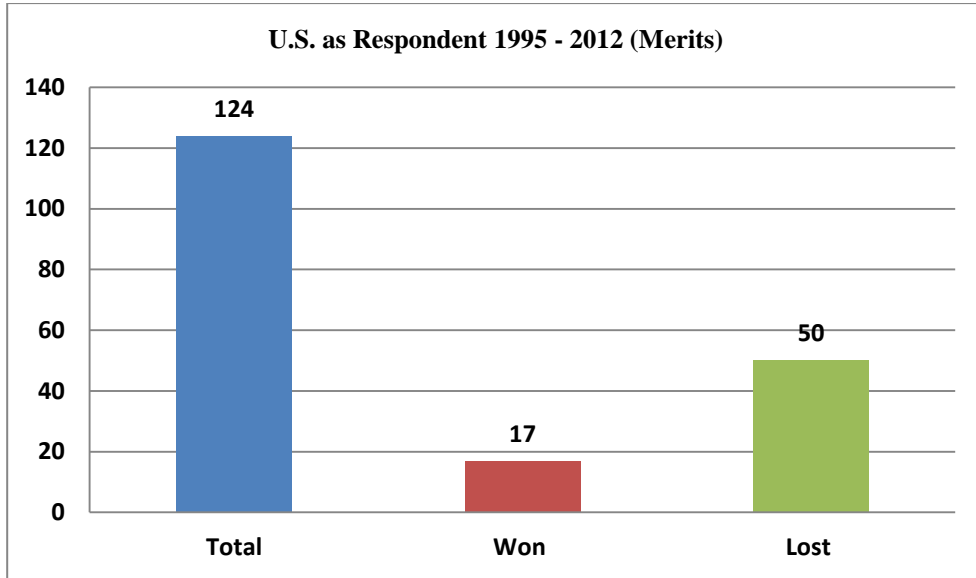


Chart 4. U.S. as Complainant and Respondent 1995 – 2012 in Total Cases (Merits and Compliance)

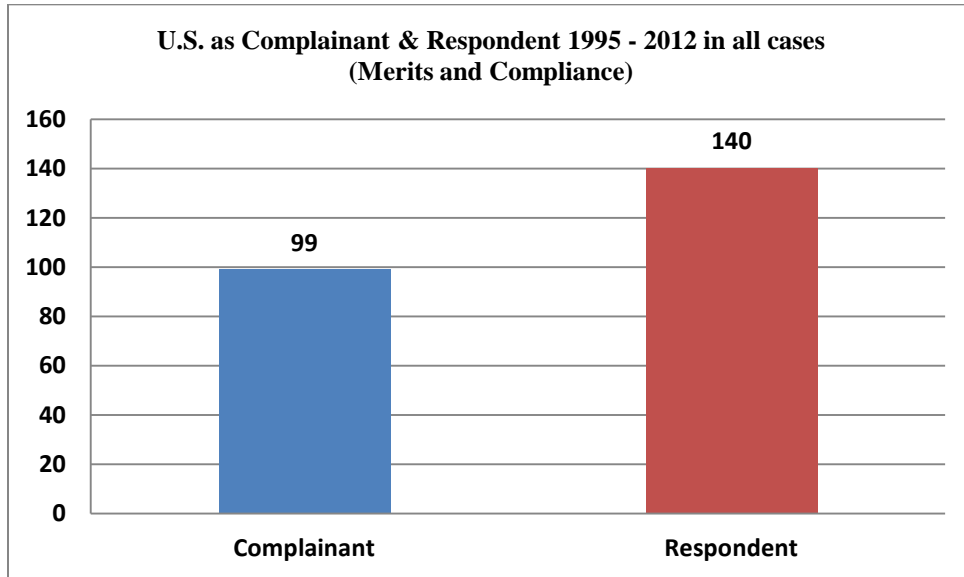
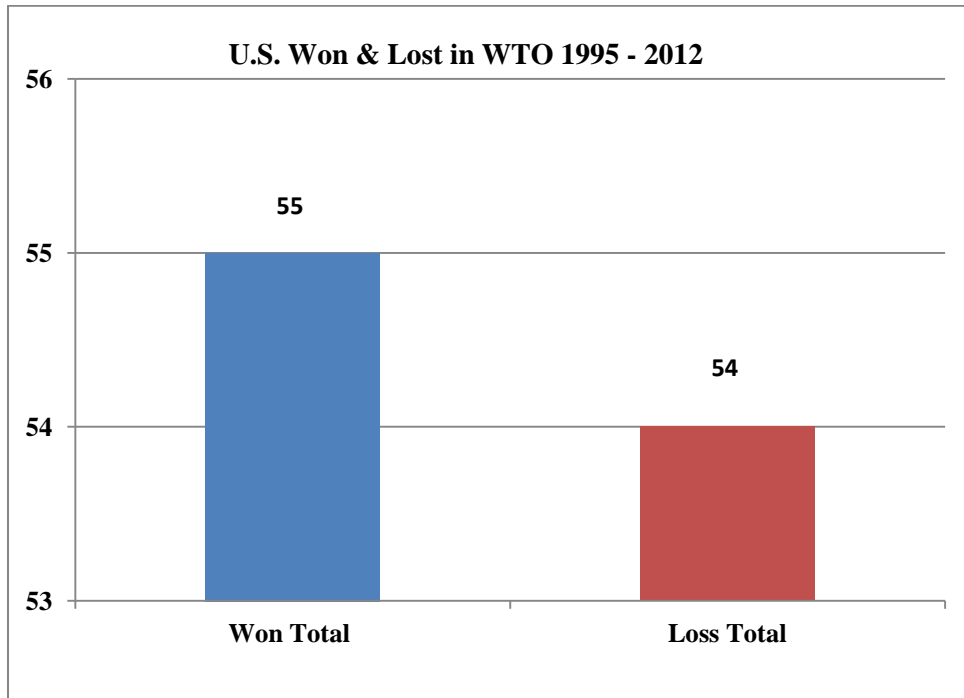


Chart 5. Total U.S. Won/Lost as Complainant and Respondent 1995 – 2012 (Merits)



Data Source for Charts 2–5 USTR, *Snapshot of U.S. Cases in the WTO* (8 August 2012).  
[http://www.ustr.gov/sites/default/files/Snapshot%20Aug8.fin\\_.pdf](http://www.ustr.gov/sites/default/files/Snapshot%20Aug8.fin_.pdf)

### B. Bush and Obama Administrations in the Dispute Resolution System

During the last presidential election, President Obama made much of his record for bringing legal actions against China and his aggressive use of the WTO legal process as a means of enforcing global trade obligations.

President Clinton actually brought a far larger number of cases before the WTO than did either President Bush or President Obama. Over eight years, President Clinton brought sixty-nine cases, whereas President Bush brought twenty-four cases. In five years, President Obama brought only thirteen cases. China was not a member of

the WTO during President Clinton's administration. This decrease in number of cases brought subsequent to the Clinton years may well indicate that the United States is more satisfied today that trade obligations are being observed than in the earlier years of the WTO, as well as the possibility that the WTO has clarified many complex trade obligations.

Comparing President Bush's eight years and President Obama's first four years or so, it is clear that President Obama has been more aggressive than his predecessor. President Obama brought eight cases in four years compared to President Bush's seven cases in eight years. President Obama was much more focused on China in WTO

litigation than was President Bush. President Bush brought a total of twenty-four cases; only seven were directed against China. President Obama has brought thirteen cases;

eight of them were against China. Therefore, it is fair to conclude that President Obama has been very aggressive against China.

Chart 6. Clinton, Bush, and Obama --Total WTO Cases Brought (1993 – Feb. 2014)

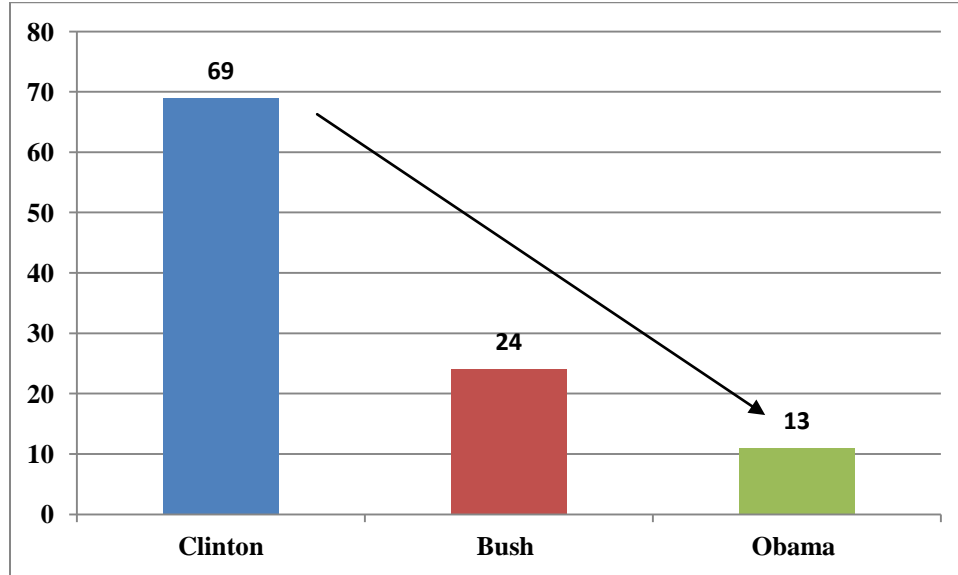


Chart 7. U.S. Cases Against China – Bush and Obama (2001 – Feb. 2014)

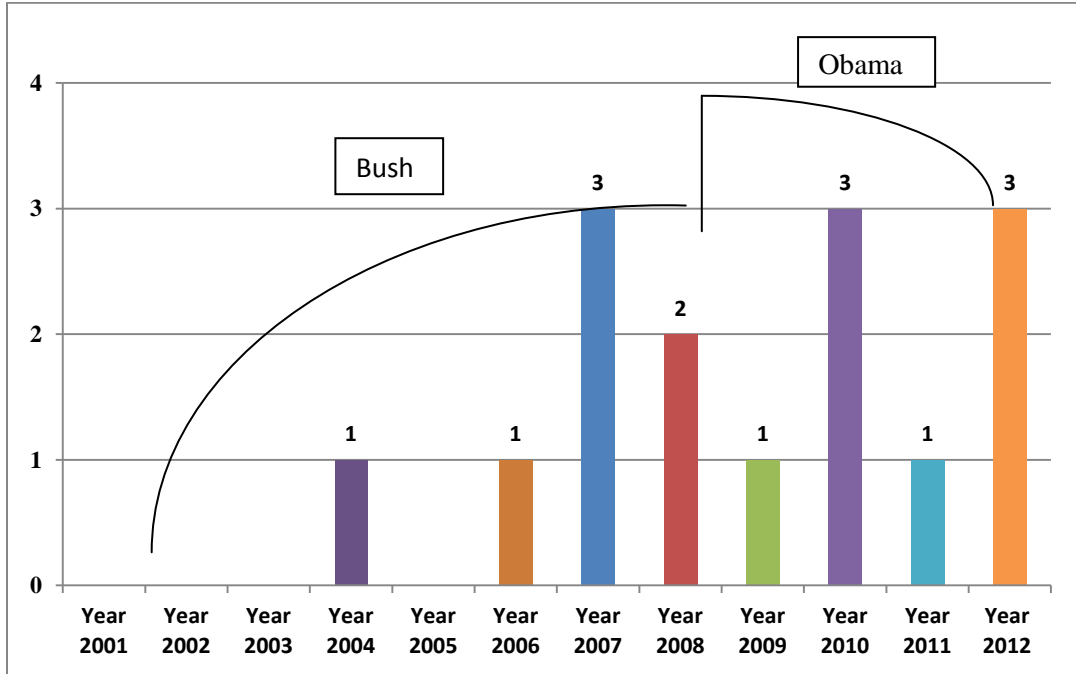
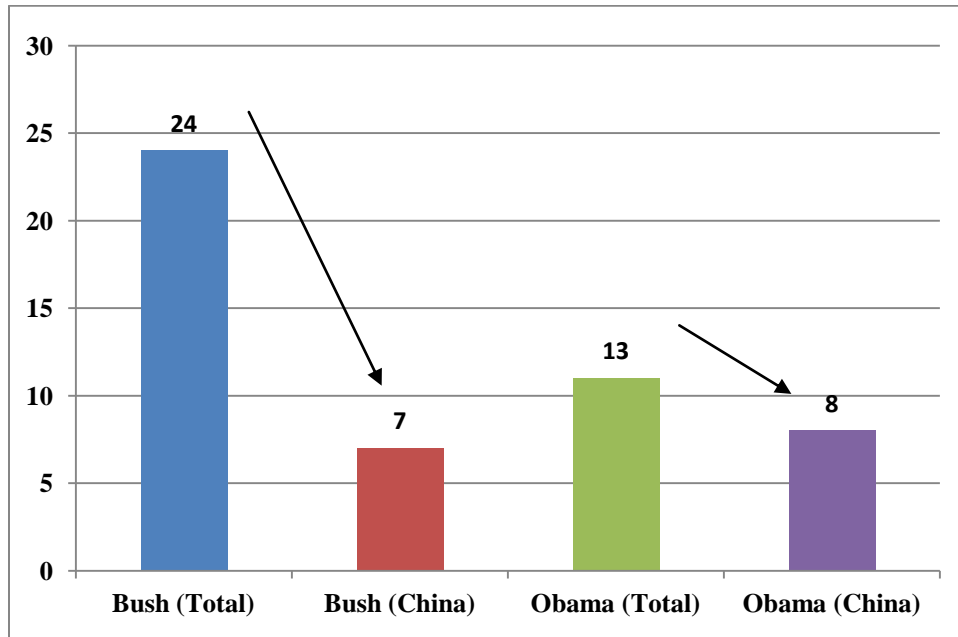


Chart 8. Total Cases and China Cases by Bush and Obama (2001 – Feb. 2014)



Data Source for Charts 6-8: WTO website, *Disputes from Countries/Territories* (10 Feb. 2014). [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)



### *C. China in the Dispute Resolution System*

Almost immediately after its accession to the WTO in 2001, China became extremely knowledgeable in the WTO litigation process. In fact, China filed a case against the U.S. before the U.S. filed its onslaught of cases against China.<sup>7</sup> China and the U.S. have been major adversaries in the WTO's litigation process, but China's litigation has also involved other member states, such as the EU and Japan.

China has brought fourteen actions against WTO members. It brought nine cases against the U.S. and three against the EU. However, China has been brought before the WTO more often than it has brought cases. China has been a respondent in thirty-one cases. The U.S. brought fifteen cases, whereas the EU brought seven. Further, nine other cases have been filed, including those by Mexico and Japan. It should be noted that most of the cases brought against China were parallel actions to those filed by the U.S., although some were totally independent. Parallel actions are those that by-and-large mimic U.S. arguments and legal issues. They merely involve different countries with their own fact-specific situations.

Of the twelve cases brought by China and concerning the U.S., five have

been decided. The others are pending. China won three, and the U.S. prevailed in two. These cases almost exclusively involved dumping and safeguard issues. In the fifteen actions brought by the U.S. against China, the U.S. won all of the seven decided cases. The other cases are pending or inactive. The cases won by the U.S. involved, among other issues, intellectual property rights, dumping, and export controls. Therefore, in the twelve decided cases involving the U.S. and China, the U.S. won a total of nine cases, whereas China won three.<sup>8</sup>

One of the highest profile trade issues, the valuation of the yuan, has not been submitted by the Obama administration to the WTO, despite significant demands from Congress and the public to do so. In my opinion, both the Bush and the Obama administrations understand that the WTO agreements were never intended to cover this type of currency-exchange issue. Similarly, no cases have been filed by China against the U.S. concerning U.S. restrictions on Chinese direct investment in the U.S. when based upon claims of national security. The WTO provides architecture for global trade relations. The WTO's central mandate is trade, not finance or investment.

Chart 9. China as a Complainant and Respondent (2001 – Feb. 2014)

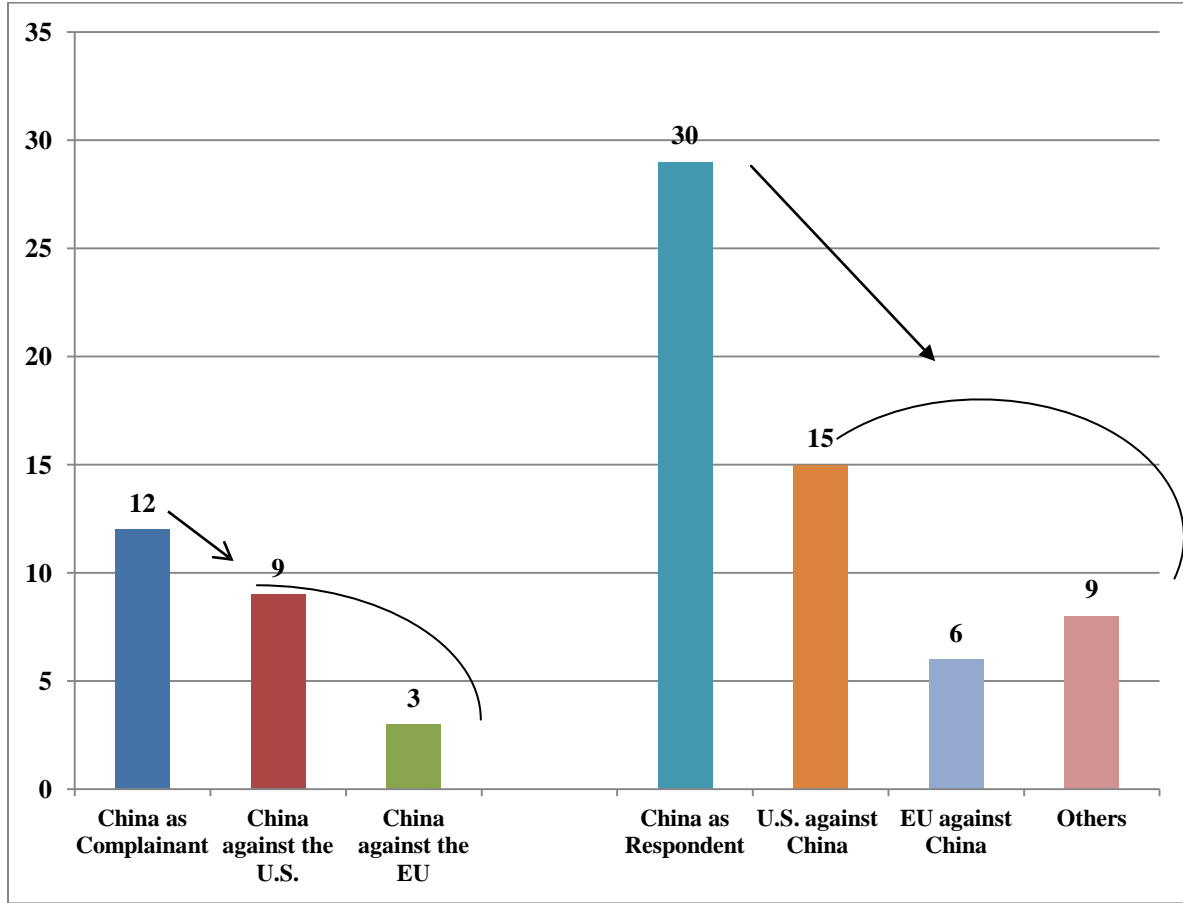


Chart 10. Wins in U.S.-China Litigation

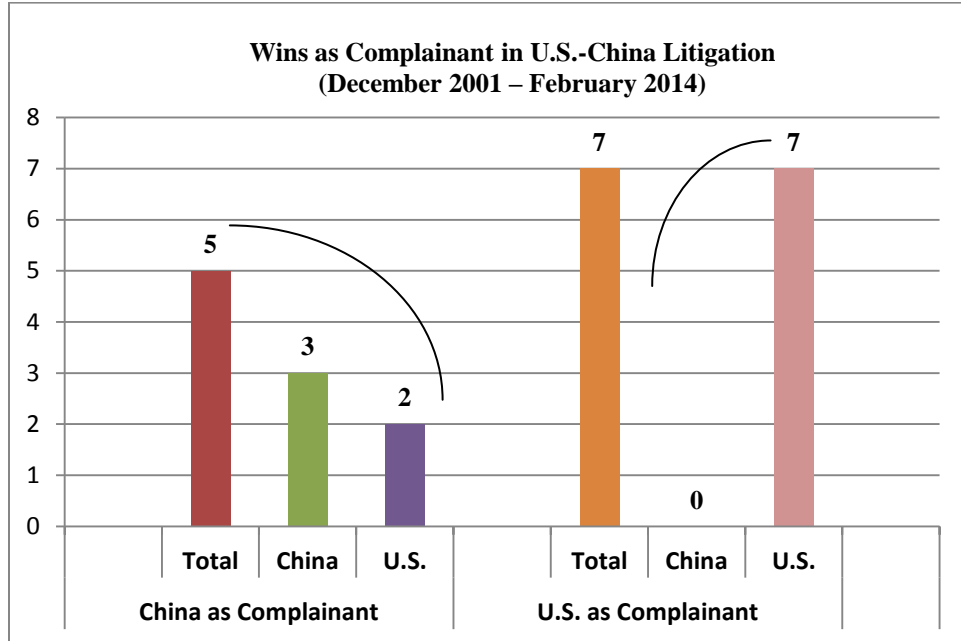
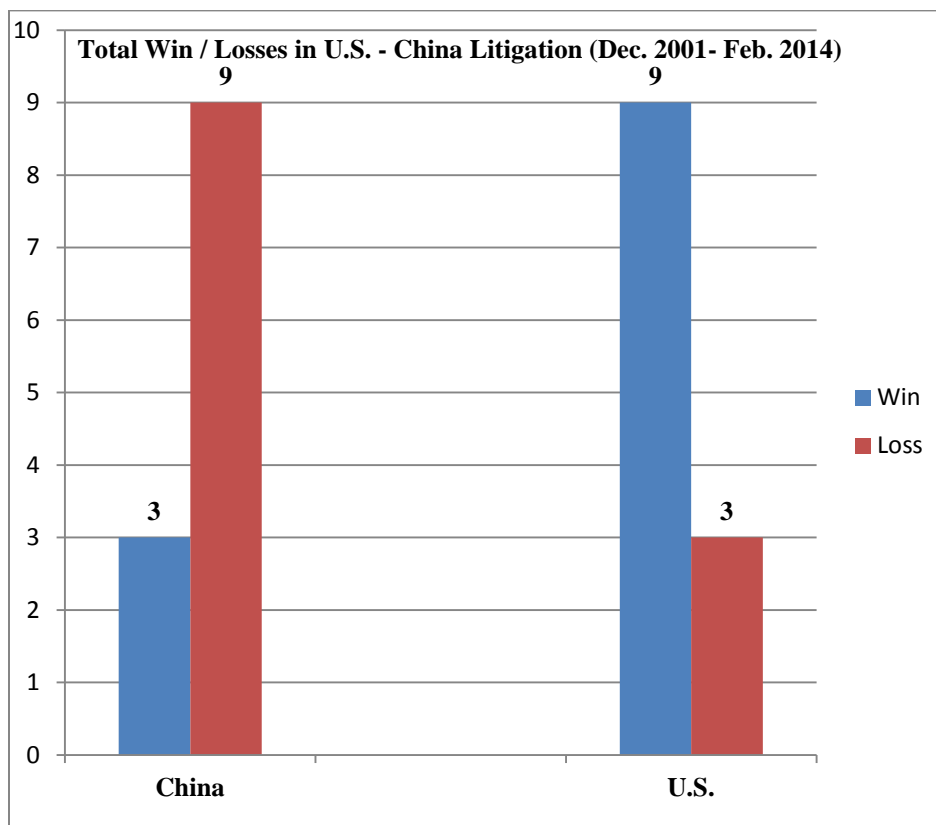


Chart 11. Total Wins/Losses in U.S.-China Litigation



Data Source for Charts 9–11: WTO website, *Disputes from Countries/Territories* (10 Feb. 2014)  
[http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

#### D. Observations

The Obama administration has not filed a new case against China since the 2012 election. In contrast, both the EU<sup>9</sup> and Japan<sup>10</sup> have filed actions against China. Moreover, China has filed recent actions against the EU<sup>11</sup> and the United States.<sup>12</sup>

Some observers argue that constant litigation is corrosive to the international trading system. For example, one commentator laments the fact that “more and more of the work of trade relations has shifted away from

negotiations and towards litigation and arbitration.”<sup>13</sup> Another argues, “The Obama administration has put enforcement of trade agreements at the heart of the approach toward China ... But winning in the courtroom is often only the start of the battle.”<sup>14</sup>

However, others have taken more nuanced approaches. In fact, an earlier skeptic recently stated, “In fact, the situation is more complex, and less worrying, than it might appear ... [A] heartening amount of the litigation has actually been aimed at preventing arbitrary trade restrictions in the future

... Much is aimed at obtaining rulings preventing others using ‘trade defense’ instruments, such as antidumping and countervailing duties, as a politicized tool of arbitrary retaliation.”<sup>15</sup>

I view U.S.-China litigation in the WTO as validating the strength and critical importance of the WTO and its dispute resolution system. China is now the second-largest economy in the world. It is expected that disputes increase with trade flows. The strength of the international system is not in the absence of disputes, but in the way that they are resolved. The failure of the WTO to conclude a more robust agreement at the conclusion of the 2013 Bali Ministerial and the general failure of the Doha round of negotiations to formulate newer trade rules only highlight the growth and immense historical significance of the dispute resolution system.

An examination of the cases involving China shows that trade disputes

that arise between it and the United States are submitted to the WTO and are resolved, either by diplomatic negotiations in the consultation stage or in the litigation phase. No enforcement actions by either country asking for sanctions have been filed under Article 22 of the Dispute Settlement Understanding. The primary focus of China’s litigation in the WTO has been the U.S. Nevertheless, China is paying an increasing amount of attention to the EU and other countries.<sup>16</sup> China’s use of the dispute resolution system and observance of the WTO’s recommendations are beneficial developments in promoting a rules-based global trading system. This history of China’s participation in the WTO’s dispute resolution system shows a growing acceptance of global trade rules by China. This represents an understanding that, to benefit from the global trading system, China needs to follow the rules of the road.<sup>17</sup>

Chart 12. Summary of China's WTO Litigation (2001 – 2014)

CHINA'S WTO LITIGATION (2001 – 2014)

[14 as Complainant; 31 as Respondent]

*As of 10 February 2014*

CHINA AS COMPLAINANT

Respondent	Subject Matter of Case	Status	DS No.	Win	
				<u>China</u>	<u>U.S.</u>
US	US Safeguard Measures on Steel Imports from China	AB (2003)	252	X	
US	Dumping and Subsidies—Paper Imports from China	Consul. 2007	368	///	
US	Dumping and Subsidies—Certain Products from China	AB 2011	379		X
US	§ 727 (2009 Act) Denial of Poultry Imports from China	Panel 2120	392	X	
US	§ 421 (1974 Act) Safeguard—Tire Imports from China	AB 2011	399		X
US	Dumping—Shrimp and Diamond Sawblades	Panel 2012	422	X	
US	Subsidies—Various Products	Consultation 2012	437	///	
US	Dumping—Various Products	Consultation 2012	449	///	
US	Dumping—Procedures (Steel)	Consultation 2013	471	///	
[Non- US Respondents]					
				<u>China</u>	<u>EU</u>
EC	Dumping—Iron & Steel Fasteners from China	AB 2011	397	X	
EU	Dumping—Footwear Imports from China	Panel 2011	405	X	
EU	Subsidy —Reusable Energy Sector (3 Respondents)	Consultation 2012	452	///	

CHINA AS RESPONDENT

Complainant	Subject Matter of Case	Status		Win	
				<u>China</u>	<u>US</u>
US	VAT on Integrated Circuits	MAS (2005)	309	///	
US	Measures on Import of Auto Parts*	AB (2008)	340		X
US	Taxes and Refunds to China Firms*	Panel—MAS (2007)	358	///	
US	Protection of IPR	Panel (2009)	362		X
US	Distribution of Audiovisual and Entertainment Prod.	AB (2009)	363		X
		Consult.—MAS			
US	Financial Information Services and Suppliers*	(2008)	373	///	
US	Grants and Loans (Subsidies)*	Consult. since 2008	387	///	
US	China's Raw Material Restraints*	AB 2012	394		X
US	Restrictions on Credit Card & Elect. Payments	Panel 2012	413		X
US	Dumping/Subsidies Duties on Steel from US	AB 2012	414		X
US	Subsidies on Wind Power Equipment	Consult. since 2010	419	///	
US	Restrictions on Broiler Products	Panel pending 2012	427		X
US	Export Restrictions on Rare Earth Metals*	Consult. filed 2012	431	///	
US	Dumping and Subsidies on US Auto Imports	Consult. filed 2012	440	///	
US	Subsidies on Autos and Auto Parts	Consult. filed 2012	450	///	

\* Parallel Cases with other Complainants

[Non-US Complainants]

--- Often Parallel Cases with the US ---

				<u>China</u>	<u>Other</u>
EC	Measures on Import of Auto Parts*	AB (2008)	339		X
Canada	Measures on Import of Auto Parts*	AB (2008)	342		X
Mexico	Taxes and Refunds to China Firms*	Panel—MAS (2008)	359	///	
				///	
EC	Financial Information Services and Suppliers*	Consult.—MAS (2008)	372	///	
Canada	Financial Information Services and Suppliers*	Consult.—MAS (2008)	378	///	
				///	
Mexico	Grants and Loans (Subsidies)*	Consult. since 2008	388	///	
Guatemala	Grants and Loans (Subsidies)*	Consult. since 2009	390	///	
EC	Raw Material Export Restraints*	AB 2012	395		X
Mexico	Raw Material Export Restraints*	AB 2012	398		X
EC	Iron and Steel Fasteners from EU (Dumping)	Consult. since 2010	407	///	
EU	Dumping Duties on X-Ray from EU	Panel since 2012	425		X
EU	Export Restrictions on Rare Earth Metals*	Consultation 2012	432	///	
Japan	Export Restrictions on Rare Earth Metals*	Consultation 2012	433	///	
Mexico	Subsidies on Apparel and Textile	Consultation 2012	451	///	
Japan	Chinese A/D Duties on Steel	Consultation 2012	454	///	
Europe	Chinese A/D Duties on Steel	Consultation 2013	460	///	

Data Source: WTO website, *Disputes from Countries/Territories* (10 Feb. 2014)  
[http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm)

#### IV. Conclusion

An analysis of all WTO cases filed in 2012 in *The WTO Annual Report for 2013* shows that the U.S. filed five cases (requests for consultation), whereas China and Japan filed three each.<sup>18</sup> The main targets of all litigation were China (seven), the U.S. (six), and the EU (three).<sup>19</sup> The report concluded, “In sum, WTO dispute settlement activity increased markedly in 2012. It is clear that WTO members, both developed and

developing, continue to have a high degree of confidence in the WTO dispute-settlement mechanism to resolve their disputes in a fair and efficient manner. It is also evident that members are confident that the system is capable of adjudicating a wide variety of disputes covering significant questions and complex issues.”<sup>20</sup>

It is worthwhile to note the recent observation by Pascal Lamy, then Director General of the WTO.<sup>21</sup> He

argued that “trade frictions are a statistical proportion of trade volumes,” whereas “trade disputes are a statistical proportion of trade frictions.” He brushed off concerns about the increasing number of trade disputes between the U.S. and China. He contended that the WTO mechanism takes the heat out of disputes by utilizing a process that is rules-based, predictable, and respected.<sup>22</sup>

Lamy warned in a subsequent presentation that geopolitics is back at the trade table.<sup>23</sup> He noted that the value chains are multilateralizing and that trade governance needs to meet this challenge. Lamy argued that China would benefit from taking a more active role in global governance in trade and related issues: “China’s economic take-off benefited from a stable external environment. Its sustainability depends on a well-functioning global trading system. As a key stakeholder, China should take a more proactive role in international economic governance ....”<sup>24</sup>

While inheriting a complex trade situation,<sup>25</sup> the Obama administration has clearly put trade at the heart of its second-term agenda.<sup>26</sup> This policy includes negotiating the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (TTIP). The future of these negotiations is dependent on Congress’s authorization of “fast track” authority for President Obama.<sup>27</sup> Nevertheless, the core of the administration’s trade policy is its insistence on greater trade enforcement by U.S. trade agencies and the WTO, particularly with China. What is the point of negotiating rules if they will not be enforced? The Secretary of State John Kerry succinctly stated, “Foreign policy is economic policy.”<sup>28</sup>

*The 2013 Report to Congress on China’s WTO Compliance* by the United States Trade Representative (USTR) stated clearly the central position of WTO litigation in U.S.-China trade relations: “When trade frictions have arisen, the United States has preferred to pursue dialogue with China to resolve them. However, when dialogue with China has not led to the resolution of key trade issues, the United States has not hesitated to invoke the WTO’s dispute settlement mechanism.”<sup>29</sup> While the “U.S.-China Strategic and Economic Dialogue” (S&ED) was established by President Obama in order to discuss diplomatically a broad range of issues, the report continues that “the United States has placed a strong emphasis on the need for China to adhere to WTO rules, holding China fully accountable as a mature participant in, and a major beneficiary of, the WTO’s global trading system ... Unquestionably, China’s incomplete adoption of the rule of law has exacerbated this situation.”<sup>30</sup> Indeed, the report outlines a large number of issues that might very well eventually find their way to the dispute resolution system. The report outlines a policy that is continuing under USTR Michael Froman, a former member of the National Security Council,<sup>31</sup> and under the new United States Ambassador to China, Max Baucus, former chairman of the Senate Finance Committee. USTR Froman recently stated in the 2014 Trade Agenda Report to Congress, “A robust international trading system offers the greatest economic benefits when all trading partners abide by their commitments and play by the same rules ... It is for this reason that President Obama has placed trade enforcement on a par with opening markets for U.S. exports ... As a top priority ... we will



continue to hold China accountable to its WTO obligations to ensure that U.S. producers and workers have a level playing field to compete in a wide range of industries.”<sup>32</sup>

At least in terms of adjudicating trade disputes and governing existing and emerging trade issues, the WTO has proven itself well beyond the grandest dreams of the early architects of the dispute resolution system. The new Director-General of the WTO, Roberto Azevêdo, appropriately noted in one of his first speeches that, “The dispute settlement mechanism is under heavy demand. This is yet another sign of the importance of the WTO system in uncertain times.”<sup>33</sup> A recent book sponsored by the WTO makes the point that international economic law and global trade rules enhance a country’s ability to participate in the global economy and helps strengthen the domestic rule of law.<sup>34</sup>

Newer trade issues are emerging swiftly in this rapidly globalizing trading system.<sup>35</sup> A recent WTO panel on “Defining the Future Trade Issues” released its report in 2013.<sup>36</sup> It enumerated nine issues, including competition policy, international investment, currencies, labor, climate change, corruption,<sup>37</sup> and coherence of international economic rules. Some of these issues have been around for a while, and some have become much more pressing.

To this list, I would add the issue of cyber-espionage for commercial and economic gain as a new front in global trade wars. The Obama administration has suggested<sup>38</sup> that trade tools should be used to combat cyber-espionage for commercial gain, which would possibly

involve WTO litigation.<sup>39</sup> Of course, recent disclosures that the National Security Agency (NSA) have discussed with the Australian intelligence agency Australia’s snooping on Indonesia’s communications with its American legal counsel, involved with its WTO actions against the United States, complicates this policy proposal by the Obama administration.<sup>40</sup>

In addition to this newer issue of commercial cyber-espionage, I would add two additional issues: foreign direct investment and taxation. Growing foreign investment by Chinese companies has raised questions of national security.<sup>41</sup> Tax avoidance has become the scourge of many countries and international organizations who have targeted it as economic development and national budgets come under increasing pressure because of global economic problems.<sup>42</sup> These areas could certainly benefit from greater multilateral-based solutions through the WTO, perhaps leading to trade agreements relating to direct investment (TRDI) and to international taxation (TRIT). These areas may even be subject to future litigation in the WTO under existing rules.

Challenges remain and are expected to continue. Those relating to the most important bilateral trade relations in the world today between the U.S. and China are set to grow as trade develops even more. Global transactions in a multijurisdictional world need a mechanism to resolve a wide range of business, trade, and economic issues.<sup>43</sup> In an increasingly interconnected trading system, and a less hierarchical political system, cooperation through diplomacy and adjudication is preferable to outright power-politics confrontation.

Each country has shown that it is willing to work with the other to apply the rules of global trade, which will need to continue as new disputes arise and even newer trade issues evolve. It is in the national interest of China to conform to the global rules and to be proactive in developing them. This approach should be at the core of Chinese foreign-policy decision-making in the 21st century. It is to the advantage of both the U.S. and China that they look toward the future together to build a peaceful, international rules-based system.

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<sup>1</sup> A new study released by the WTO and written by Professor Craig VanGrasstek presents, in part, a statistical assessment of WTO litigation relying upon data compiled by the WTO. See Chapter 7 – “Dispute Settlement” in C. VanGrasstek, *THE FUTURE AND HISTORY OF THE WTO* (2013).

<sup>2</sup> 2013 Appellate Body, Annual Report 13 (Chart 2) (March 2014), available at [http://www.wto.org/english/news\\_e/news14\\_e/ab\\_14mar14\\_e.htm](http://www.wto.org/english/news_e/news14_e/ab_14mar14_e.htm)

<sup>3</sup> 2013 WTO Annual Report of the World Trade Organization 82 (WTO 2013), available at [http://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/anrep13\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep13_e.pdf)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> C. VanGrasstek, note 1 *supra*.

<sup>7</sup> Over forty cases did not make it out of the consultation stage. The USTR considered that twenty-nine of them were resolved to the US’s satisfaction without completing litigation. The remainder were either dropped or inactive. *Snapshot of US Cases in the WTO* (8 August 2012), available at [http://www.ustr.gov/sites/default/files/Snapshot%20Aug8.fin\\_.pdf](http://www.ustr.gov/sites/default/files/Snapshot%20Aug8.fin_.pdf)

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<sup>7</sup> DS 252, *China v. US (US Safeguard Measures on China Steel Imports)* (26 March 2002).

<sup>8</sup> The two panel reports were released in March 2014 and are not included. The cases won or lost by the United States or China: DS 431, *Exportation of Rare Earths*, WTO NEWS (26 March 2014); DS 449, *U.S. Measures on Chinese Products*, WTO NEWS (27 March 2014). The panel in *Rare Earths* upheld the U.S. challenge to China’s export restrictions. The panel in *Measures on Chinese Products* issued a split-decision: It denied China’s challenge to the 2012 U.S. legislation authorizing countervailing duties on imports from non-market economies, but upheld China’s challenge to “double remedies” when anti-dumping duties are also applied.

<sup>9</sup> DS 460, *EU v China (China A/D Duties on EU Steel Imports)* (13 June 2013). The EU and China have settled the “solar case” after mutually threatening WTO filings. This has raised issues concerning the common or external trade powers of the EU. *Frustrated and Outflanked*, FINANCIAL TIMES (31 July 2013).

<sup>10</sup> DS 454, *Japan v. China (China A/D Duties on Japan Steel Imports)* (24 May 2013).

<sup>11</sup> DS 452, *China v. EU (European Subsidies in Renewable Energy Sector)* (5 Nov. 2012).

<sup>12</sup> DS 471, *China v. US (A/D Methodology on Steel into US)* (3 December 2013).

<sup>13</sup> Beattie, *How Lawsuits Are Coming to Dictate the Terms of Trade*, FINANCIAL TIMES (20 February 2007).

<sup>14</sup> Schneider, *At WTO, US Racks up Wins against China, But the Benefit Is Less than Certain*, WASHINGTON POST (9 August 2012).

<sup>15</sup> Beattie, *Decommission the Weapons of Trade Warfare*, FINANCIAL TIMES (8 August 2012).

<sup>16</sup> Yap and Shangguan, *China Ups Ante in Trade Spat with E.U.*, WALL STREET JOURNAL (5 June 2013) (involving solar panels and wine subsidies).

<sup>17</sup> Former USTR and former World Bank President Robert Zoellick recently stated, “Twenty years ago Zhu Rongil, China’s former premier, shrewdly used negotiation over his country’s accession to the World Trade Organization to open its domestic markets ... and gave China a greater stake in global trade.” Zoellick, *International Treaties Can Once Again Help China Advance*, FINANCIAL TIMES (10 March 2014). China’s trade policy is now not just to join the global trading system but to help write the rules for 21<sup>st</sup>-century global commerce. Donnan,

*China Craves Invitation to join Global Trade Club*, FINANCIAL TIMES (3 April 2014).

<sup>18</sup> *2013 Annual Report of the World Trade Organization* 82 (WTO 2013), available at [http://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/anrep13\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep13_e.pdf)

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 89.

<sup>21</sup> Politi, *Lamy Dismisses Rise in U.S.-China Disputes*, FINANCIAL TIMES (1 October 2012).

<sup>22</sup> *Id.*

<sup>23</sup> Lamy, *Putting Geopolitics Back at the Trade Table*, WTO NEWS (29 January 2013).

<sup>24</sup> Lamy, *China Should Be More Active in Global Economic Governance*, WTO NEWS (24 March 2013).

<sup>25</sup> Schneider, *Inheriting a Complex Trade Agenda*, WASHINGTON POST (22 June 2013).

<sup>26</sup> McGregor, *Obama Puts Trade at Heart of Agenda*, FINANCIAL TIMES (5 February 2013).

<sup>27</sup> Malawer, *President Needs Fast-Track Authority*, RICHMOND TIMES-DISPATCH (17 February 2014).

<sup>28</sup> Gordon, *Kerry Links Economics to Foreign Policy*, NEW YORK TIMES (25 January 2013).

<sup>29</sup> *2013 Report to Congress on China's WTO Compliance*, 2 (USTR) (December 2013).

<sup>30</sup> *Id.*

<sup>31</sup> Goldfarb, *More Obama Appointments: Froman for Trade Representative*, WASHINGTON POST (13 May 2013).

<sup>32</sup> *2014 Trade Policy Agenda and 2013 Annual Report* 9 (USTR 2014), available at <http://www.ustr.gov/sites/default/files/201420Trade%20Policy%20Agenda%20and%202013%20Annual%20Report.pdf>

<sup>33</sup> *Azevêdo Launches "Rolling Set of Meetings" Aimed at Delivering Success in Bali*, WTO NEWS (9 September 2013).

<sup>34</sup> M. Jansen, M Jallab and M Smeets, *Connecting to Global Markets* 4 (WTO 2014).

<sup>35</sup> Korea filed a new action against the US in the WTO over its antidumping and subsidies measures concerning imports from Korea that utilize "zeroing." This methodology has long been contested in many actions against the US in the WTO. The US has almost always been found to have violated the WTO's rules for imposition of antidumping duties based upon zeroing. *Korea Files Dispute (Washing Machines)*, WTO NEWS (29 August 2013).

<sup>36</sup> *The Future of Trade: The Challenges of Convergence* (WTO Panel Report to the Director-General) (24 April 2013).

<sup>37</sup> USDOJ and SEC, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (November 2012).

<sup>38</sup> "The Administration will utilize trade policy tools to increase international enforcement against secret theft to minimize unfair competition against US companies." *Administration Strategy on Mitigating the Theft of US Trade Secrets* 4 (White House) (February 2013). "Finally, we need China to engage with us in a constructive direct dialogue to establish norms of behavior in cyberspace." *Remarks by Tom Donilon to the Asia Society - The US and Asia-Pacific in 2013* (White House) (11 March 2013).

<sup>39</sup> Nakashima, *Cyber-Spying Said to Target US Business*, WASHINGTON POST (11 February 2013).

<sup>40</sup> Risen and Poitrasfeb, *Spying by NSA Ally Entangled U.S. Law Firm*, NEW YORK TIMES (17 February 2014).

<sup>41</sup> Herzstein, *The Dangers behind the Smithfield Deal*, WASHINGTON POST (1 June 2013). The US and China have agreed to restart negotiations over a new bilateral investment treaty during the annual strategic economic dialogue talks. This could lead to international rules governing direct investment into both China and the US and alleviating tensions in this area. *U.S., China to Pursue Investment Treaty*, WALL STREET JOURNAL (12 July 2013).

<sup>42</sup> Houlder, *Nations on Defensive as Anger Grows over Tax Avoidance*, FINANCIAL TIMES (29 April 2013).

<sup>43</sup> Croft, *Law & National Borders--Legal Minefields Sit on National Borders*, FINANCIAL TIMES (2 May 2011).