

Trade Disputes Between China and the United States: Growing Pains so Far, Worse Ahead?

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Introduction

Sino-US trade flows have exploded in the years since the Peoples' Republic of China (PRC or China) made its first bid for GATT/WTO accession in 1986. In 1985, one year before China's accession bid, US merchandise imports and exports with China were nearly equal (\$4.2 billion imported by the United States and \$3.8 billion exported). As of 2009, both the volume and imbalance of US merchandise trade with China had increased dramatically. The United States imported \$310 billion and exported \$70 billion, a ratio of 4.50 of merchandise imports from China for every dollar of exports to China. However, expressed in ratio terms, the imbalance peaked in 1999: that year the US import-export ratio reached 6.70 of imports for every dollar of exports. Since 1999, the ratio has declined, while the absolute dollar gap between merchandise imports and exports has widened from \$94.1 billion in 1999 to \$240.0 billion in 2009 (see Table 1). Trade in services has followed a similar pattern, but on a much smaller scale. Services trade between the countries has increased substantially over the past several years in percentage terms, but from a tiny base, and the US trade deficit has continued to widen; however, US services imports from China account for under 3% of total US services imports from the world (see Table 1; Fig. 1).¹

¹Note that the total services trade share occupied by China is not presented in Table 1 for economy. All dollar adjustments are made using data from the U.S. Department of Commerce, Bureau of Economic Analysis, Gross Domestic Product: Implicit Price Deflator, retrieved 30th June, 2010, from Federal Reserve Bank of St. Louis, Economic Research, <http://research.stlouisfed.org/fred2/series/GDPDEF/downloaddata?cid=21>.

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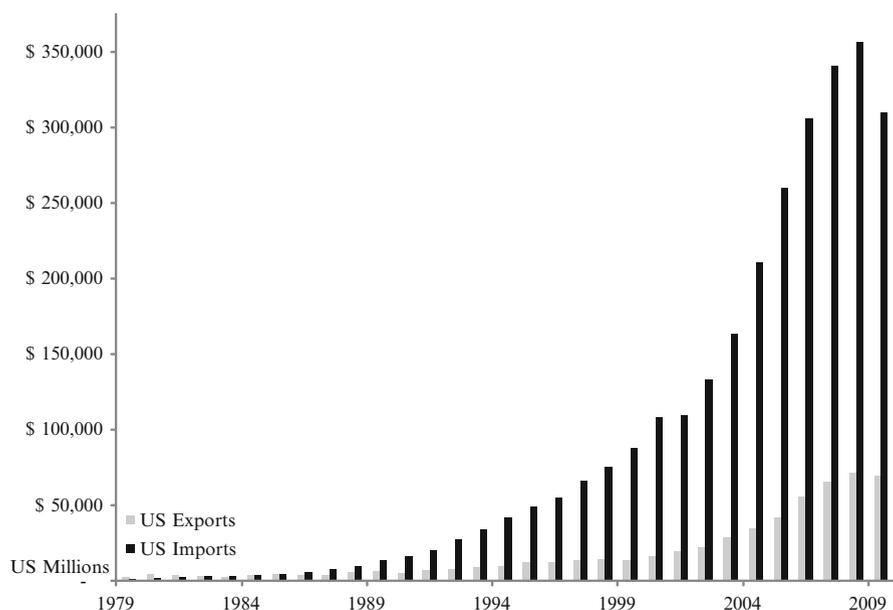
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Table 1 US-China Trade, 1999–2009

US Trade with China, 1999–2009 (2009 \$US Billion)										
US-China Trade										
Year	Merchandise						Services			
	Imports		Exports		Total		Imports		Exports	
	Value (\$)	China / World	Value (\$)	China / World	Value (\$)	China / World	Value (\$)	China / World	Value (\$)	China / World
1999	110.6	8.3%	16.5	1.9%	127.1	5.8%	n/a	n/a	n/a	n/a
2000	132.4	8.6%	20.0	2.1%	152.3	6.1%	n/a	n/a	n/a	n/a
2001	131.9	9.3%	23.2	2.6%	155.1	6.7%	n/a	n/a	n/a	n/a
2002	158.1	11.1%	26.1	3.2%	184.2	8.2%	n/a	n/a	n/a	n/a
2003	189.3	12.5%	32.9	3.9%	222.2	9.4%	2.7	1.3%	2.8	1.0%
2004	236.5	13.8%	39.0	4.2%	275.5	10.5%	6.5	3.1%	5.8	2.2%
2005	281.9	15.0%	45.4	4.6%	327.3	11.4%	7.2	3.5%	6.4	2.3%
2006	322.5	15.9%	58.2	5.3%	380.8	12.2%	8.9	4.3%	6.7	2.5%
2007	349.2	16.9%	67.0	5.6%	416.1	12.7%	10.4	5.0%	7.1	2.6%
2008	358.7	16.5%	71.9	5.5%	430.7	12.3%	n/a	n/a	n/a	n/a
2009	309.5	19.3%	69.6	6.6%	379.1	14.3%	n/a	n/a	n/a	n/a
Total	2,581	13.8%	470	4.3%	3,050	10.3%	36	2.3%	29	1.5%

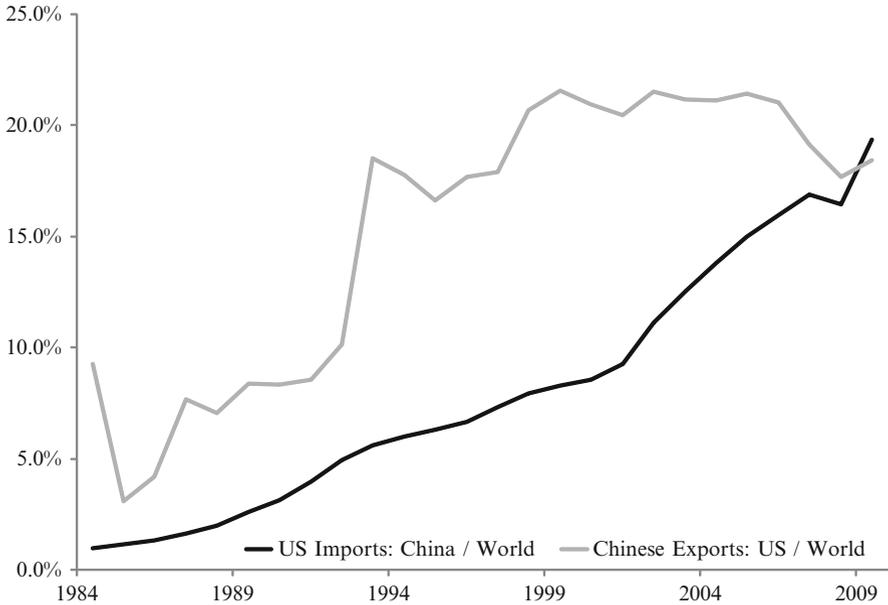
Sources: UN Comtrade; UN Service Trade; Bureau of Economic Analysis GDP Implicit Price Deflator

Notes: Data are as reported by the United States. Dollar values are 2009 USD. Services data for 2009 are as yet unavailable. Dollar value totals represent the cumulative trade flows with China for reported years; percentage totals are calculated only for the years of available data in the case of services trade



Source: UN Comtrade.

Fig. 1 30 Years of US merchandise trade with China, 1979–2009



Source: UN Comtrade.

Fig. 2 Sino-US merchandise trade dependence, 1984–2009

Each country has grown to occupy a greater portion of the other’s trade portfolio. In 2003, China overtook Mexico as the second largest provider of US merchandise imports. Four years later, it overtook Canada as the largest provider. The United States was China’s number one export destination through 2007, when it was overtaken by the European Union (according to PRC-reported data).² However, the United States is still by far the largest single-country destination for PRC merchandise. In 2009, the United States relied on China to supply 19.3% of its merchandise imports, and China relied on the United States to purchase 18.4% of its merchandise exports (see Fig. 2). In the same year, China purchased 6.6% of US exports, while 7.7% of Chinese imports came from the United States.³

The growth in Sino-US trade has been rapid. Expressed in percentage growth terms, US merchandise imports from China since 1984 have been impressive (21.0% average annual growth). Each year over the past quarter century, China has supplied an additional \$11.8 billion of imports to the US economy on average, some 23.1% of average US import growth over the period 1984–2009. Canada has supplied the second largest share of import growth over this period, with an average of \$6.7 billion additional imports per year, some 13.1% of average US import

² UN Comtrade (2010), <http://comtrade.un.org/db>. According to US-reported data, PRC exports to the United States were \$310 billion (19.3%) in 2009, versus \$287 billion (17.9%) for the EU-27.

³ UN Comtrade (2010), <http://comtrade.un.org/db>.

Table 2 Growth in Sino-US merchandise trade

Top ten sources of average annual merchandise trade growth, 1984–2009					
US imports			PRC exports		
Source country	Annual per cent growth	Annual value growth (\$ billion)	Destination country	Annual per cent growth	Annual value growth (\$ billion)
1. China	21.0%	11.8	United States	22.6%	9.1
2. Canada	6.4%	6.7	Hong Kong	16.6%	6.7
3. Mexico	9.9%	6.2	Japan	14.1%	3.9
4. Germany	7.4%	2.3	Korea (Rep. of)	186.3%	2.6
5. Japan	3.9%	2.1	Germany	20.3%	2.0
6. UK	5.5%	1.4	Netherlands	23.1%	1.5
7. Korea (Rep. of)	7.6%	1.3	UK	31.4%	1.3
8. France	7.2%	1.1	India	36.1%	1.2
9. Russia	27.2%	1.1	Singapore	15.9%	1.2
10. Ireland	17.0%	1.1	Russia	18.2%	0.9
Total	7.5%	51.2	Total	18.3%	49.0

Source: UN Comtrade

Note: The annual dollar amounts and percentage growth rates are reported by the respective countries. While the figures in the first row differ, in principle they represent the same flows

growth.⁴ PRC figures differ somewhat from US statistics. According to PRC reported data, the United States has purchased an annual average of \$9.1 billion in additional exports from China over the 1984–2009 period, not \$11.8 billion (indicating annual growth of 22.6%, not 21.0). These flows have supported average annual growth of 18.3% in total PRC export volume (see Table 2).

During this remarkable growth period in two-way trade, the United States and China have also invested directly in each other's economies. Between 2000 and 2008 US capital provided 5.8% of foreign direct investment (FDI) in China. On average, total foreign investment in the United States has been much greater than that in China: \$180 billion per year in the United States and \$69 billion per year in China. The trends in FDI into the two countries also differ. China has enjoyed a steady rise in inward FDI, while inflows to the US economy have been more volatile (see Table 3).

The ripple effect of rapid shifts in the intensity of the economic relationship, particularly with respect to trade flows between a developed and developing country, can create political friction. Rising US imports from China have been much debated over the past two decades. Major news and business press in the United States gave frequent coverage to the US trade deficit with China during the years of the East Asian Financial crisis (1997–1999) and the years just prior to the Great Recession (2005–2007). The US media have offered considerable

⁴ UN Comtrade (2010), see: <http://comtrade.un.org/db>. Amounts given are in nominal terms.

Table 3 FDI flows between China and the United States

Foreign Direct Investment between the United States, China, and the World, 2000–2009 (\$US Millions)

United States					China		
Inward		Outward			Inward		Outward
Year	Total (\$)	Total (\$)	To China (\$)	%	Total (\$)	From US	Total (\$)
2000	313,997	142,626	4,400	3.1%	40,715	10.8%	916
2001	159,478	124,873	4,900	3.9%	46,878	10.5%	6,885
2002	74,501	134,946	5,400	4.0%	52,743	10.2%	2,518
2003	53,141	129,352	4,200	3.2%	53,505	7.8%	2,855
2004	135,850	294,905	3,900	1.3%	60,630	6.4%	5,498
2005	104,809	15,369	3,100	20.2%	72,406	4.3%	12,261
2006	237,136	224,220	3,000	1.3%	72,715	4.1%	21,160
2007	265,957	393,518	2,600	0.7%	83,521	3.1%	22,469
2008	324,560	330,491	2,900	0.9%	108,312	2.7%	52,150
2009	129,883	248,074	N/A	N/A	95,000	N/A	48,000
Cumulative	1,799,311	2,038,374	34,400	1.9%	686,424	5.8%	174,712
Average	179,931	203,837	3,822	4.3%	68,642	6.7%	17,471

Sources: Total inward and outward FDI data are from UNCTAD Stat (www.unctadstat.unctad.org). FDI from the United States to China are as reported by the US-China Business Council (http://www.uschina.org/statistics/fdi_cumulative.html)

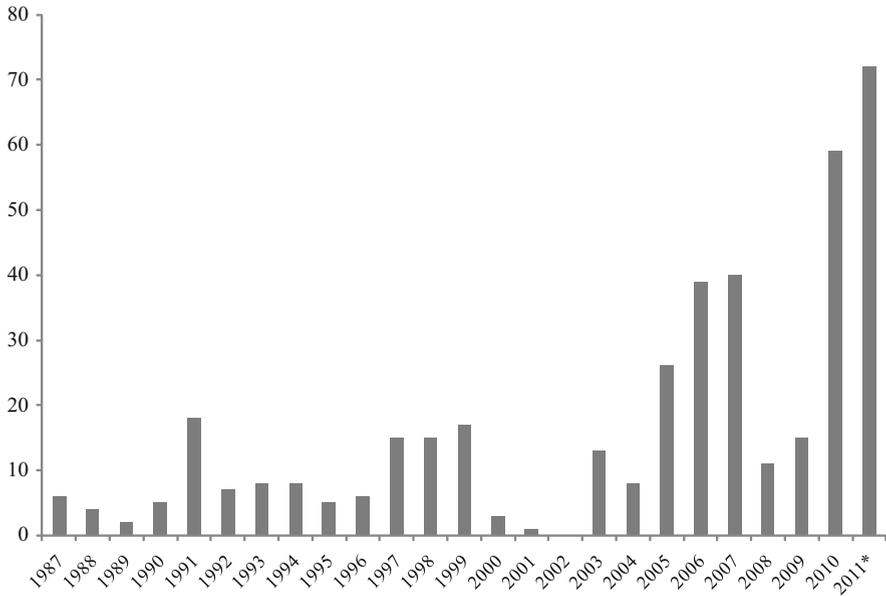
Notes: All amounts are in millions of current US dollars. The anomaly in US outward FDI in 2005 is attributable in part to corporate tax code changes. The “to China” per cent column is US FDI to China as a per cent of total US outward FDI. The per cents in the “from US” column are total US outward FDI into China as a per cent of all PRC inward FDI

coverage of the Sino-US trade relationship in 2010 and 2011 as well. In 2010, the number of articles mentioning the trade deficit was 55% higher than in 2006 and 2007, the prior high water mark years (see Fig. 3).

Extrapolating coverage intensity from the first quarter of 2011 indicates that it too will be a heavy press year in the United States.⁵ Alongside considerable growth in media coverage of the trade relationship, US public opinion has remained largely steady, with approximately half of US residents holding an unfavourable opinion of China (see Fig. 4).

While deepening its bilateral trade and investment relationship with the United States over the past 25 years, China has also integrated itself more fully into the world economy and multilateral institutions. Of the cumulated historical trade flows between China and the United States, the great majority have been governed by the terms of the WTO legal framework. The increasing interdependence between the United States and China, and the conflicts interdependence has sparked, make the history of the relationship an interesting object of study. This chapter pays

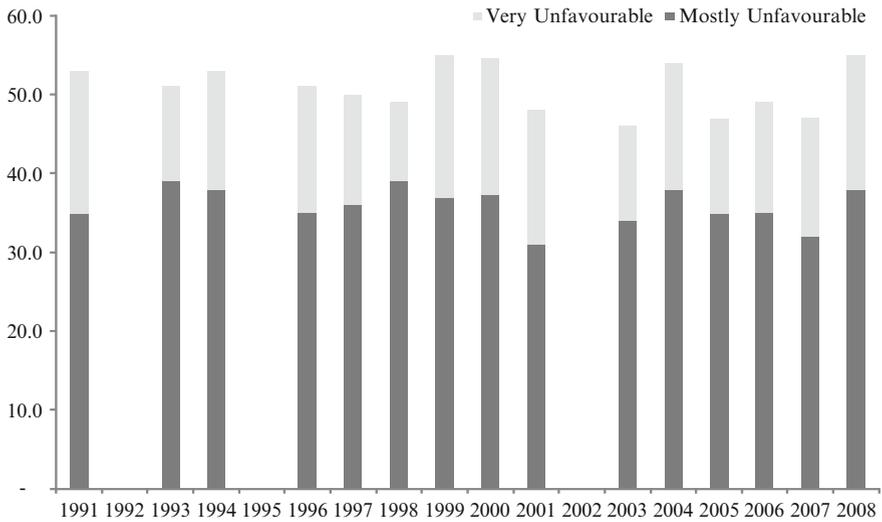
⁵ Articles were identified from the Dow Jones Factiva database with the search terms “(China or Chinese) w/2 (trade or import*) and (trade deficit or trade surplus)” in the headline or lead paragraph of articles published by US “Major News and Business Publications,” excluding duplicates, republished news, market data, and obituaries.



Source: Dow Jones Factiva.

Note: Count for 2011 is projected by quadrupling the count from quarter one 2011.

Fig. 3 US major news articles on the US trade deficit with China, 1987–2010



Source: Gallup opinion polls provided by www.WorldPublicOpinion.org

Note: China, Regional Issues Poll. Americans and the World Digest, World Public Opinion.org, retrieved 29th July, 2010, from http://www.americans-world.org/PDF/china_data_update-8_2008.pdf. No Gallup polls were available in the years without a column (1992, 1995, 2002)

Fig. 4 Per cent of US public with an unfavourable opinion of China

particular attention to the ten years of China's WTO membership and the bilateral trade conflicts that have occurred and those that are likely to occur.

We begin with a brief account of modern Sino-US economic relations in three sub-periods: Pre-GATT, GATT to PRC Accession Process, and the PRC Accession Process. We then address the trade disputes between the United States and China that have been mediated through the WTO since China's accession in late 2001. Section "Sino-US Disputes Adjudicated Within the WTO Framework" identifies current protectionist measures that could lead to future conflicts and examines patterns of past conflicts that may colour future Sino-US trade relations. Section "Dispute History" summarizes the themes of Sino-US protectionism and highlights the most likely flashpoints for future disputes. The final section concludes with recommendations for how the trading partners can best cope with future conflicts.

Sketch of Commercial History

Pre-GATT

The beginning of Sino-US trade relations coincided approximately with US independence in 1783. The opening of trade was marked by the arrival of the US ship "Empress of China" in Canton (Guangzhou) China in 1784.⁶ The following sixty years, known as "The Old China Trade," saw a substantial expansion in Sino-US commerce. In 1839, however, Sino-US trade suffered setbacks during the First Opium War (1839–1842), which pitted China against Britain, France and the United States. Sino-US relations were restored by the Treaty of Wangxia in 1844, which opened several additional ports, granted the United States most favoured nation status, and established official Sino-US diplomatic relations. Trading ports (e.g., Shanghai) and privileges (notably, legalization of the opium trade) were further expanded by the Treaty of Tianjin in 1858 following the Second Opium War (1856–1860).

Fearing political obstacles that would hinder US access to the Chinese economy, Secretary of State John Hay issued the "Open Door Notes" at the turn of the twentieth century, advocating the US position of "perfect equality of treatment" among foreign economic interests in China. A wave of Chinese nationalism erupted shortly after, threatening all foreign economic interests in China. In 1915, Japan encroached severely on Chinese economic sovereignty with its "21 demands" for trade and territorial privileges. The most intrusive of these demands were resisted by China with the encouragement of the US government. The United States

⁶ A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: China, retrieved 24th May, 2010, from <http://history.state.gov/countries/china>.

supported China against Japanese aggression some years later in the prelude to the Second World War, principally by lending money for military supplies. US aid to China, which expanded throughout the war and the immediate post-war period, ended with the Communist victory and founding of the Peoples' Republic of China in 1949. Sino-US relations then deteriorated as a casualty of the Cold War.⁷

GATT to PRC Accession Process

In 1947, China and the United States signed the General Agreement on Tariffs and Trade (GATT) along with 21 other countries.⁸ Three years later, the Kuomintang nationalist government, from its perch on the island of Taiwan, withdrew China from the GATT. In the same year, the US Congress refused to ratify the International Trade Organization, leaving the provisional GATT to govern world trade for the following 44 years. After 1950, the Peoples' Republic of China, under Mao Zedong, had minimal relations with the world economic system and the United States. For its part, the United States enforced certain trade restrictions through the Coordinating Committee for Multilateral Export Controls (CoCom), a multilateral agreement between most NATO members and Japan with the primary goal of controlling exports of certain merchandise (e.g., military equipment) to Communist states. While the role of the CoCom embargo in suppressing Sino-US trade flows in the nearly thirty years following the Second World War should not be overstated, it is emblematic of the generally frosty diplomatic and economic relationships between the United States and communist countries. Relations with China began to thaw in 1972 following President Nixon's landmark visit to mainland China. The visit yielded the Shanghai Communiqué, which vaguely committed both countries to the normalization of relations. Economic relations began to improve thereafter, furthered by President Ford's visit in 1975.

In 1978, Deng Xiaoping assumed leadership of a massive and remarkably successful economic transformation, leading to a market-oriented and capitalist-flavoured PRC economy. China and the United States signed a Trade Relations Agreement the following year, according each other most-favoured nation status. The Deng leadership ushered in a period of PRC rapprochement with the international economic community. In 1980, China occupied the erstwhile Taiwanese seat within the IMF and the World Bank and requested observer status within the GATT

⁷Chronology of US-China Relations, 1784–2000, retrieved 24th May, 2010, from <http://history.state.gov/countries/china/china-us-relations>.

⁸The General Agreement on Tariffs and Trade, 1947 and as incorporated in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, 15th April, 1994, retrieved 29th July, 2010, from http://www.wto.org/english/docs_e/legal_e/legal_e.htm#gatt47.

(granted in 1982). In 1983, China signed the Multi-Fibre Agreement and in 1986 it asked to rejoin the GATT, starting a 15 year long process toward WTO accession.⁹

PRC Accession Process

Diplomatic efforts by China toward GATT membership were frustrated early on by the PRC government's response to the Tiananmen Square protests of 1989, which roused political resistance to China among many GATT member states. At the time, China's MFN status with the United States was subject to annual congressional review and approval under the Jackson-Vanik Amendment.¹⁰ This gave critics of China in the United States a regular forum to air grievances, both political (primarily on human rights and environment) and economic (notably, US job displacement). There were broader challenges to integrating China's external trade into the WTO legal framework as well. China's strict quotas, high tariffs, poor intellectual property rights, restrictions on foreign investment, and other forms of market intervention all had to be reconciled with the GATT and the interests of WTO members. Setting parameters for China's transition to WTO membership was a central challenge of the accession process, and this challenge proved even greater since China was not granted Special and Differential Treatment, which was the norm for other developing country members.

China's willingness to expose its domestic industries to foreign competition faltered during the East Asian financial crisis of 1997–1998. In 1999, Chinese premier Zhu Rongji emerged from the crisis with an appealing, though domestically controversial, set of liberalization offers to the United States and other WTO members. However, the Clinton administration, beset by scandals and unified Republican Party opposition, was not then in a position to accept the Chinese offers.

Sino-US relations deteriorated in the late spring and summer of 1999. The concessions China offered in April were summarized and published electronically by the United States Trade Representative (USTR) without China's consent. The summary was vehemently denied by Chinese officials, who then proceeded to back away from prior commitments. In early May 1999, a NATO plane with an American pilot accidentally bombed the PRC embassy in Belgrade, inciting anti-US protests and boycotts in China. Sino-US trade negotiations recovered quickly,

⁹ The Chinese Nationalist Party government in Taiwan rejoined the GATT with observer status in 1965 after withdrawing in 1950. In 1971, the China seat in the United Nations was transferred from Taiwan to the PRC government and Taiwanese observer status in the GATT was subsequently revoked. Taiwan applied to rejoin the GATT/WTO in 1990. It acceded immediately following the PRC accession under the label of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (the TPKM customs territory).

¹⁰ The Jackson-Vanik Amendment prohibited normal trade relations with non-market economies that restricted emigration or otherwise infringed on human rights; however, it did allow for an annual presidential waiver.

however, culminating in an agreement in November 1999, just before the controversial WTO Seattle ministerial. A Sino-EU agreement followed six months later in May 2000.¹¹ China had already reached agreement with many other WTO members, but the US and the EU bilateral pacts were the most comprehensive and most difficult to conclude. After fifteen years of negotiation, China acceded to the WTO on December 11, 2001.

Sino-US Disputes Adjudicated Within the WTO Framework

Introduction

Through the first quarter of 2011, China and the United States have filed a combined total of seventeen disputes against each other through the WTO Dispute Settlement Body (DSB); eleven filed by the United States and six filed by China. Fourteen of the seventeen cases have been filed since 2007. Since China's accession in 2001, it has filed a total of eight disputes against all WTO members (see Table 4) and the United States has filed 28 (see Table 5). Three quarters of PRC complaints have therefore been filed against the United States and two fifths of US disputes (since China's accession) have been filed against China.

This section provides an overview of the WTO disputes between China and the United States. We then summarize the seventeen Sino-US disputes, explaining the measures in question, the alleged violations of WTO rules, and how, if at all, the disputes have been resolved.

Dispute History

Overview

Since 2002, the United States has requested consultations on eleven occasions with China, the most with any WTO member. In fact, the United States has requested consultations on more than one occasion with only four WTO members since 2002:

¹¹ See Bhala, *Enter the Dragon: An Essay on China's WTO Accession Saga*, *American University International Law Review* 15 (2000), p. 1469, for a comprehensive review of China's "Accession Saga".



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