



Wei ZHUANG: An Empirical Study of China's Participation in the WTO Dispute Settlement Mechanism: 2001-2010



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Abstract

On 11 December 2001, China, with its huge economy, officially became member of the World Trade Organization (WTO) and thereby accepted the compulsory jurisdiction of the WTO dispute settlement body.

The purpose of this paper is to examine China's participation in the WTO dispute settlement mechanism in its nine years of membership, up to 31 December 2010. It explores China's participation frequency, counterparties, main subject matter and current status of disputes.

China was challenged in 21 cases and has recently, after expiry of the *de facto* and *de jure* transition periods, emerged as the leading target in WTO disputes, mainly because of difficulties in effectively implementing the enormous legal commitments associated with its WTO accession. The U.S. and EU are the main complainants against China and mostly contest China's measures in the area of Subsidies, services and investment. China either settled the case in advance of a ruling through diplomatic channels or lost the case, mostly after the appeal. In contrast, none of its complaints are early settled.

China is a relatively inactive complainant and has only filed 7 complaints due to special commitments incorporated in its accession protocol and lack of litigation experience. In the early days of its membership, China gained legal experience and tried to preserve its trade interests through third party participation. Continuing to be the major target of global trade protectionism, China has resorted to WTO litigation more frequently since 2007. China mainly targeted anti-dumping and safeguard measures of the EU and U.S.. China gained a small victory in two cases and succeeded in challenging EU's individual treatment regime. However, it did not manage to change its non market economy treatment by the U.S. and eliminate the U.S. product-specific safeguards.

China has been a third party in 71 cases since its accession, making it the most active third party in the WTO dispute settlement mechanism. Trade remedy cases have China's special attention. As a third party, China is relatively active in cases to which the U.S. and EU, Mexico or Korea are party.

Key Words: China, WTO; Dispute Settlement; Complainant; Respondent; Third party

Introduction

The establishment of the World Trade Organization (WTO) in 1995 brought with it a dispute settlement mechanism (DSM), based on the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The new WTO DSU has been heralded as the anchor of the rule-based multilateral trading system and one of the crowning achievements of the Uruguay Round. Its purpose is to “preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law.” [2] The DSU has transformed the power-based dispute settlement system under the General Agreement on Tariffs and Trade (GATT 1947) into a rule-oriented system for the judicial settlement of trade disputes. The timeframe for the WTO dispute settlement process is much shorter and more strictly regulated, and the introduction of the reverse consensus principle for adoption of panel and Appellate Body reports and authorization of retaliation solved the problem of blockage by individual members which had existed under the GATT. Many trade quarrels have been resolved through this system and it has proved to be a central element in providing security and predictability to the current multilateral trading system.

The WTO DSM is unique and one of the most powerful dispute settlement bodies because of its exclusive and compulsory jurisdiction on matters arising under the WTO covered agreements, its virtually automatic process, and the economic impact of its decisions.[3] Active and effective use of the WTO DSM can help preserve the Member's economic and trade interests. Moreover, participation in the WTO DSM is essential for shaping the interpretation and application of WTO law over time, because WTO law, although it does not formally adopt a common law approach, has taken more of a common law orientation with the WTO Appellate Body and WTO panels citing and relying on past WTO jurisprudence in their legal reasoning.[4]

After fifteen years of negotiations, China, with its vast economy, finally became the 143rd WTO member on 11 December 2001. This means China has accepted the exclusive and compulsory jurisdiction of the WTO Dispute Settlement Body (DSB). Between its accession and the end of 2010, China was respondent on 21 occasions, initiated 7 complaints and participated in 71 cases as a third party. Notably, WTO's DSB is the only international 'court' with compulsory jurisdiction that China accepted without reserve and is the only international judicial body that China has resorted to so far.[5]

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