

China's WTO accession: 15 years on Taking, shaking or shaping WTO rules?

SUMMARY

11 December 2016 marks the 15th anniversary of China's accession to the World Trade Organization (WTO). In 2001, after arduous negotiations with key WTO members, China agreed not only to extensive market access commitments but also to substantial non-reciprocal rules obligations. This was unprecedented in WTO history. Most WTO disputes involving China, notably in the field of trade remedies, have been linked to these tailor-made rules for China. China has exhibited timely and qualitatively sound compliance with WTO rulings. But its narrow letter of the law compliance has at times been found not to reflect the spirit of the legal provisions at issue, with WTO-inconsistent regulations having remained in place or re-emerged.

In the Doha Development Round of WTO multilateral negotiations China has so far taken a backseat rather than a leadership role. Domestic resistance to reform in sensitive areas on economic and ideological grounds has been a crucial factor in China's absence from the WTO Agreement on Government Procurement. Past US opposition has been key for its non-participation in the Trade in Services Agreement. Uncertainties about ratification by the US Congress of the US-led Trans-Pacific Partnership and future US trade policy under President Donald Trump may reverse the past trend of China's marginalisation from shaping global rules outside the WTO. At the same time this may lower China's ambition to shift gradually from rather shallow to EU-style 'deep and comprehensive' free trade agreements (FTAs) and may induce it to promote its own rules more assertively by leveraging its economic weight in predominantly bilateral relations under its One Belt, One Road (OBOR) initiative.



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- China's unique WTO accession commitments
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China's WTO membership

China's WTO accession has significantly [boosted](#) world trade, and China's rapid economic rise. China has overtaken former leading exporters such as Japan and Germany, with its share in global exports rising from 5.9 % in 2003 to [12.7 %](#) in 2014 and in global imports from 5.4 % in 2003 to 10.5 % in 2014.¹ But this has also spurred considerable trade imbalances, notably with its two major trading partners the [EU](#) and the [USA](#), fuelling in turn trade frictions with them. Trends in China's past behaviour in WTO disputes and multilateral and plurilateral negotiations may be indicative of what can or cannot be expected from the country in the future.

China's unique WTO accession commitments

China's [Accession Protocol](#) is [unique](#) in terms of its form, as it deviates from WTO practice by incorporating the legally binding provisions of its [Working Party Report](#) (WPR), and in terms of substance, since it contains vast commitments in respect of **WTO market accession and WTO rules obligations**. While all acceding WTO members are expected to contribute to the WTO trading system by liberalising their trade in goods and services, they commit only to respecting the WTO rules obligations spelled out in the WTO multilateral agreements. China, by contrast, agreed not only to substantial agricultural and industrial tariff cuts, but also to non-reciprocal '**WTO-plus**' commitments and '**WTO-minus**' rights. The former [exceed](#) the requirements of the WTO multilateral agreements by imposing stricter disciplines on China, the latter allow importing WTO members to take protective action against Chinese exports that deviate from WTO multilateral disciplines on trade remedies.

Table 1 – WTO-plus commitments (left) and WTO-minus rights (right)

Obligation for the state to let market forces determine domestic prices and limit price controls to few specified categories, to liberalise foreign trading rights and refrain from interfering in the commercial decisions of state-owned enterprises (SOEs)	Special anti-subsidy (AS) rules (use of non-market economy (NME) methodologies for the determination of countervailing (CV) duties), special specificity rule for subsidies granted to SOEs; no use of subsidies for privatisation or under developing country special treatment
Obligation to eliminate export taxes and charges with a few exceptions	Special anti-dumping (AD) rules (use of NME methodologies for measuring dumping)
Obligations regarding domestic governance (transparency, including translations of trade-related laws and regulations, judicial review, uniform administration of law)	Transitional product-specific safeguards that make it easier for WTO members to use safeguards in the event of a disruptive rise in Chinese imports compared with the standard safeguard mechanism (expired in 2013)
Obligation to eliminate all export subsidies including agricultural export subsidies	Special textile safeguards that lower the criteria for investigations (expired in 2008)
Transitional review mechanism (until 2011)	

Source: Key elements of a compilation as set out in 'China, India and WTO Law', Qin, J.Y., in *China, India and the International Economic Order*, M. Sornarajah and J. Wang, (eds.), Cambridge University Press 2010, pp. 167-216.

These provisions catered for [concerns](#) about the disruptive potential of China's WTO membership given the specific nature of its political, economic and legal system. They also set a precedent for country-specific rule-making in the WTO however (similarly applied to Vietnam's WTO accession in [2006](#)) and thus pose a challenge to the uniformity of WTO rules of conduct and to the rule of law.² They have also been the source of China's

[perception](#) of holding a 'less-than-equal' status within the WTO, since the provisions of China's Accession Protocol take precedence over those of WTO agreements in accordance with the principle of *lex specialis derogat legi generali* (special rules prevail over general rules).³ China's involvement in WTO trade disputes is to a large extent linked to its stringent, tailor-made accession commitments, which were the price for its WTO membership, but which it has opposed the more vigorously, as its litigation capacity and global assertiveness more generally have increased.

China's involvement in WTO disputes: from rules-taker to rules-shaker?

China's WTO case load

By November 2016, 37 WTO [cases](#) had been registered for China as a respondent since 2001. As shown in Figure 1, they were initiated mainly after 2006, mostly by developed countries and much less frequently by developing countries, the latter usually having joined developed countries' complaints.⁴ In the same period, China filed 13 offensive cases as a complainant targeting exclusively the EU and the USA. In a set of 100 recent WTO cases (DS401-500), China's case load ranks [third](#) behind the EU and the USA.

Breakdown of China's case load by the main WTO agreement invoked

Almost half of China's defensive cases have focused on trade remedies, with the Subsidies and Countervailing Measures ([SCM](#)) Agreement and the Anti-Dumping ([AD](#)) Agreement having been invoked either separately or together (AD+SCM). The remainder includes cases brought under the General Agreement on Tariffs and Trade ([GATT](#)), the Trade-Related Aspects of Intellectual Property Rights ([TRIPS](#)) Agreement, the General Agreement on Trade in Services ([GATS](#)) and most recently the [Agreement on Agriculture](#) (AA) involving a [dispute](#) still at the consultation stage in November 2016.

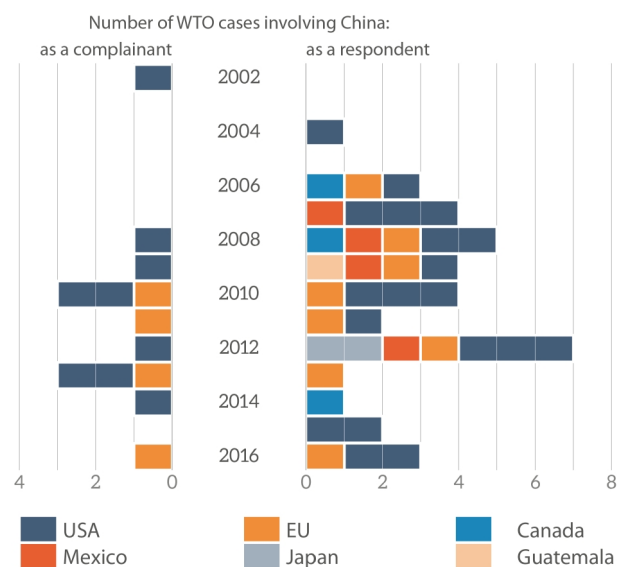
China's 13 offensive cases have concentrated even more on trade remedies in an effort to counter the application of EU and US trade defence instruments ([TDIs](#)) on Chinese exports. They also include some GATT cases and one case under the [Safeguards Agreement](#).

The breakdown of defensive and offensive cases, as displayed in Figure 2, shows that frictions with China have occurred by far more often in goods trade than in services trade, since the latter still represents a fairly small figure (US\$9 720 billion in 2014)⁵ compared with trade in goods (US\$38 093 billion in 2014) with China. (For EU-China goods and services trade please see the EPRS/Globalstat note on [China](#).)

China's strategy as a respondent

During the five-year grace period China was eager to reach early [settlements](#) with WTO members in consultations and to avoid litigation. China's early approach to WTO disputes was rooted in the Confucius-inspired non-legal tradition of Chinese culture.⁶ However, thanks to its rapid acquisition of WTO [litigation capacity](#),⁷ inter alia through third party participation (in over 130 cases by 2016), China evolved quickly from a conciliatory to an

Figure 1 – China's WTO case load from 2002 to November 2016

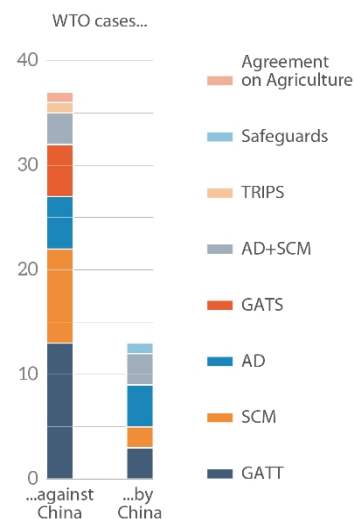


Source: Author based on [WTO](#) data.

assertive defendant. The turning point came in 2006 when China fully litigated *China – Auto Parts* brought jointly by the EU ([DS339](#)), the USA ([DS340](#)), and Canada ([DS342](#)).

This change in approach to dispute settlement had two key advantages. First, it helped China to become familiar with the different stages in WTO litigation, including the composition of a panel, the potential involvement of the Appellate Body and a compliance panel under the Dispute Settlement Understanding ([DSU](#)). As a result China's defence became more sophisticated and it started to appeal panel reports and to request the constitution of compliance panels under Article 21.5 DSU⁸ in order to exhaust the legal means available. Second, China became aware of the fact that several years of WTO litigation, while WTO inconsistent protectionist measures are in place, can buy valuable time for the development of a fledgling industry, such as China's car industry.⁹ But despite this strategic calculation, China's preference for settling disputes through consultation is still valid. The most recent example is the 2016 [USA-China agreement](#) on the elimination of a comprehensive subsidies scheme in [DS489](#) *China – Demonstration Bases*.

Figure 2 – China's WTO case load by main WTO agreement invoked



Source: Author based on [WTO](#) data.

SCM cases and combined AD/SCM cases

The SCM cases have taken issue with China's sector-specific industrial [policies](#), which aim to foster 'national champions' in a variety of sectors such as the [car](#), [aircraft](#) and chip industries or green technologies. These condition benefits on export restrictions that favour local production, such as [export taxes](#), and financial benefits, such as value-added tax (VAT) rebates or low-interest loans, on export performance and/or the use of domestic over imported goods, thus also violating the GATT's [national treatment principle](#).¹⁰

An early series of SCM cases were settled by mutual agreement with the withdrawal of the Chinese measures or programmes, but they were unlikely to entail a fundamental change in China's [opaque subsidisation](#) practice as such.¹¹ A later series of combined SCM/AD cases ([DS414](#) *China – GOES*; [DS427](#) *China – Broiler Products*; [DS440](#) *China – Autos*), which were all fully litigated, concerned AD methodologies rather than individual measures, i.e. infringements 'as such' rather than 'as applied'. This has uncovered shortcomings in China's determination of AD and countervailing (CV) duties as regards price effects, causation, evidence and transparency.

AD cases

The four AD only cases [DS407](#) *China – Fasteners*; [DS454/DS460](#) *China – HP-SSST*; [DS425](#) *China – X-Ray Equipment* and [AD483](#) *China – Cellulose Pulp* are part of a series of [recurring](#) procedural and substantial legal claims reflecting systemic problems as regards Chinese AD determination, calculation, imposition and disclosure practice. They therefore raise concerns similar to those raised by the SCM cases. Although the narrow timeframe between the last AD duty determination in the most recent case and the adoption of the panel report in the first case of this series may explain China's failure to change its practice, it could also be a sign of China being an '[obdurate](#)' WTO member. In the *China – X-Ray Equipment* case, AD duties were used as a [strategic industrial policy](#) tool to nurture a national champion ([Nuctech](#) Company Ltd.) in an infant industry against an

established EU competitor ([Smiths Heimann GmbH](#)), [retaliation](#) being an integral part of China's strategy.

GATT cases

Chinese export restrictions on critical raw materials were at issue in two landmark [GATT](#) cases: *China – Raw Materials* initiated in 2009 by the EU ([DS395](#)), Mexico ([DS398](#)), and the USA ([DS394](#)), and *China – Rare Earths* launched in 2012 by the EU ([DS432](#)), Japan ([DS433](#)), and the USA ([DS431](#)). As for rare earth, a crucial input for products such as cell phones, hybrid automobiles, and wind turbines, in 2010 China [cut](#) its global supply of [95 %](#) by half. As a result, global prices surged and undermined the competitiveness of foreign industries dependent on these inputs, which remained readily available for Chinese industries. The Appellate Body confirmed China's violation of Article XI GATT on quantitative restrictions, in conjunction with section 11.3 of its Accession Protocol, in which it relinquished its right to impose export taxes and charges. It found that the GATT's general policy exceptions (Article XX(b) and (g), public health and conservation of exhaustible natural resources) invoked by China were not applicable. The Appellate Body's decisions in both cases have remained controversial in [European](#) and [Chinese](#) academia. They deprive China of the right to [regulate](#), i.e. to justify export restrictions on raw materials, and thus of the right to benefit from the principles of sovereignty over natural resources and sustainable development, on the basis of the lack of a textual link between China's Accession Protocol and GATT policy exceptions.

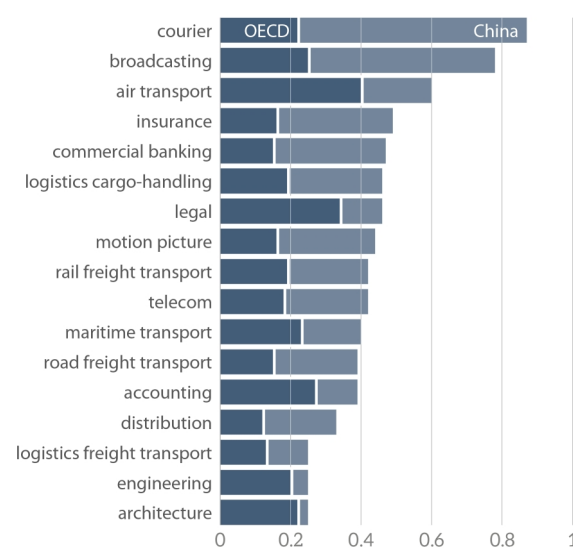
In 2016, the EU ([DS509](#)) and the USA ([DS508](#)) separately [filed](#) WTO complaints against China, challenging export restrictions imposed on a new set of raw materials (antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum and tin). These are different from those in the previous cases. The new cases suggest that China has not embraced the spirit of the related WTO rulings to the extent that it made changes 'as applied' (to a specific measure) as opposed to 'as such' (a change of policy).

GATS cases

China has nominally implemented (USTR [2015](#), p. 26) most of its substantial GATS commitments.¹² However, since these are limited as regards the commercial presence of foreign service providers on the Chinese market (mode 3), market access barriers persist including in the form of licensing, high capital requirements and foreign ownership ceilings, notably in the [banking](#)¹³ and [telecommunication](#) sectors.

Research in the telecommunications sector has established that China's 'minimalist' or 'creative' implementation¹⁴ of WTO commitments has been facilitated by ambiguities in the GATS. As shown in Figure 3, China retains much higher trade restrictiveness levels than OECD countries across its service sectors. China's slow progress in opening up its service industries has been [attributed](#) to their poor global competitiveness and market closure as a result of SOE monopolies or oligopolies.

Figure 3 – Services Trade Restrictiveness



Source: Author based on [OECD](#) data.
0=completely open; 1=completely closed

The WTO [GATS](#) cases initiated against China have revolved around highly sensitive systemic issues as regards China's commitment to practicing market economics. They have all successfully challenged an SOE monopoly in a service market segment, be it in the form of exclusive trading and distribution rights linked with the Chinese censorship regime ([DS363](#), *China – Publications and Audiovisual Products*), exclusive rights to supply financial information services ([DS372](#), [DS373](#), [DS378](#), *China – financial information services*) or the exclusive right of clearing RMB-denominated payment card transactions ([DS413](#), *China – Electronic Payment Services*).

TRIPS cases

Despite serious deficiencies in the civil, criminal and administrative protection and enforcement of intellectual property rights (IPRs) in China, only one [TRIPS](#) case was filed against the country. In [DS362](#), *China – Intellectual Property Rights*, the USA took issue inter alia with the high thresholds for criminal investigations, prosecution and conviction and the disposal of seized counterfeit goods in customs auctions. The panel found that the USA had failed to provide evidence to show whether the cases excluded from criminal liability met the TRIPS standard of 'commercial scale'. It invited China to bring its law in compliance with WTO law as regards the second issue.

According to the USTR 2016 Special 301 [Report](#), major concerns remain concerning thefts of trade secrets, technology localisation under government-led indigenous innovation policies that condition market access or government benefits on IPRs being owned or developed in China or disclosed to the government, forced technology transfer, software and online piracy, and counterfeit and pirated goods. In 2013 [63 %](#) of imported counterfeit and pirated goods detected by EU customs authorities originated in China.

China's strategy as a claimant

Although officially China filed its first offensive case against the USA in 2002 ([DS252](#), *US – Steel Safeguards*), it de facto joined seven other WTO members, allowing it to rely largely on their WTO litigation experience.¹⁵ In 2007 China turned from a reluctant into a [forceful litigant](#). It launched its first own offensive SCM case, [DS368](#), *US – Coated Free Sheet Paper*, against the USA after the latter in 2007 [ended](#) its policy of not initiating CV investigations in parallel to AD probes against imports from non-market economies (NMEs). Moreover, China has increasingly appealed panel decisions to have them possibly overturned by the Appellate Body. So far, it has requested two compliance proceedings: one against the EU in [DS397](#), *EC – Fasteners*, and another against the USA in [DS437](#) concerning CV measures against certain products from China.

AD and combined AD/SCM cases

Since the mid-2000s China has made tremendous diplomatic and economic [efforts](#) to circumvent its NME treatment for the purposes of AD and CV probes, which it has perceived as discriminatory, inter alia by conditioning the conclusion of [FTAs](#) on its market economy status (MES). Examples are [Australia](#), Iceland and Switzerland. China has not however obtained MES from main traders such as Canada, the EU, India, Japan and the USA, and it has therefore increasingly used the WTO legal channel to challenge the legality of EU and US methodologies for the determination of AD and CV duties.¹⁶

China – like the [EU](#) and [Japan](#) – has challenged the controversial US practice of '[zeroing](#)', i.e. [omitting](#) calculations where the export price is higher than the normal value, thus inflating dumping margins, in [DS422](#), *US – Shrimp and Sawblades*. It took issue with the US practice of imposing 'double remedies', i.e. the concurrent application of AD and CV duties on the same product, which may result in offsetting the same subsidisation twice,

in [DS379](#), *US – Anti-Dumping and Countervailing Duties* and in [DS449](#) *US – Countervailing and Anti-Dumping Measures on Certain Products from China*. In DS379 the broad scope of the term '[public body](#)', used by the USA for CV determinations concerning the granting of subsidies by Chinese public bodies and which included Chinese SOEs, based mainly on a public ownership criterion, was limited to 'an entity that possesses, exercises or is vested with governmental authority'.

China brought two landmark [cases](#) against the EU – [DS397](#), *EC – Fasteners*, in 2009 and [DS405](#), *EU – Footwear*, in 2010 – taking issue with the 'individual treatment' provisions under Article 9(5) of the Basic AD [Regulation](#) No 1225/2009. In both cases China challenged the EU's [imposition](#) of duties on Chinese producers/exporters from NMEs on a country-wide basis and its conditioning of the granting of individual treatment for the determination and imposition of AD duties to exporters or producers from NMEs on the fulfilment of the individual treatment test. China won both cases, forcing the EU to amend its Basic AD Regulation to ensure that for NME exporters fulfilling the regulation's criteria an individual duty is computed rather than a country-specific one.

The fasteners case [DS397](#) is moreover a showcase for China's [tit-for-tat](#) trade policy of imposing [retaliatory measures](#) under Article 56¹⁷ of China's AD [Regulation](#) in response to the imposition by the EU of definitive [AD duties](#) against Chinese iron and steel fasteners. In 2010, the EU [targeted](#) the Chinese retaliatory practice in AD case [DS407](#), *China – Fasteners*, which however did not lead to the establishment of a panel, since the provisional Chinese AD duties were terminated. Another case in point is [DS452](#), *EU – Renewable Energy Generation*, initiated by China in 2012 to challenge the domestic content requirements of feed-in tariff programmes maintained by EU Member States. This followed on the heels of EU [AD](#) and CV probes into Chinese solar panels. It repeated a Chinese retaliation [pattern](#) applied to the USA in 2010.

GATT cases

Some of China's offensive GATT cases are connected with the WTO-minus rights set out in its Accession Protocol, such as China's complaint over US measures against imports of Chinese tyres ([DS399](#)) *US – Tyres*) under the China-specific transitional safeguard mechanism. China lost this case at the Appellate Body stage. Others are not; China for instance filed and won a complaint against the USA in [DS392](#) *US – Poultry*, to counter an import ban on Chinese poultry under the GATT and the Agreement on the Application of Sanitary and Phytosanitary Measures ([SPS](#)). The ban had expired when the WTO decision was taken. In 2015, China initiated its most recent WTO case against the EU, [DS492](#) *EU – Poultry Meat*, complaining about measures concerning the EU's WTO tariff concessions.

China's compliance with WTO rulings

China as a rule has faithfully complied with WTO rulings in a timely way, in contrast with the at times considerably delayed or even refused compliance by other major WTO members, such as the [EU](#) (*EC – Hormones* [DS26](#), *EC – Bananas III* [DS27](#)) and the [USA](#).¹⁸ A more recent trend of delays and conflicts over compliance with the USA may however suggest that an increasingly assertive China is more inclined than in the past to test the boundaries of WTO compliance. For example implementation was delayed in [DS413](#), *China – Electronic Payment Services*, solved by [mutual understanding](#), and has met with US dissatisfaction ([USTR](#) 2015, p. 27).

In 2014, the USA initiated the first compliance proceedings against China in [DS414](#) *China – GOES*. The compliance panel scrutinised China's redetermination of AD duties on US steel products in implementation of the Appellate Body decision. The panel agreed with

the US claims as regards price effects and causation, but rejected the US claims on disclosure. In May 2016 the USA launched its second compliance proceedings against China in [DS427](#) concerning Chinese AD and CV duties on imports of US broiler products into China. They are ongoing as of November 2016.

Academic case studies into China's compliance with WTO decisions have established that WTO-inconsistent regulations and practices at times have remained in place at different levels of China's complex administrative and legal system.¹⁹ Lack of transparency, rapid regulatory development and China's inclination to use protectionist tools to pursue its policy goals have been identified as crucial factors that may affect the quality of China's implementation of WTO decisions.²⁰

China has frequently terminated WTO-inconsistent measures shortly before the publication of panel reports, as in [DS414](#) *China – GOES* and [DS440](#) *China – Autos*. This suggests that the WTO dispute settlement mechanism may at times have served China – like other WTO members – as a means to buy time for its domestic industries and may reveal one of the downsides of China's 'socialisation' with the WTO trading system.²¹

China's role in WTO multilateralism: from rules-taker to rules-shaper?

China's WTO accession coincided with the launch in 2001 of the [Doha Development Agenda](#) (DDA) rules and market access negotiations. China at first called for special treatment for recently acceded members (RAMs) and refused any concessions exceeding its terms of accession. But it submitted numerous rules proposals reflecting its [alignment](#) with the increasingly heterogeneous interests of developing countries. In agriculture China rather than pursuing its own interests – as a net importer of agricultural goods – has lent support to important exporters of agricultural goods among developing countries, including the [G-20](#) Group on [Agriculture](#), which pushes for the elimination of developed countries' agricultural export subsidies, and the [G-33](#) Group [advocating](#) special treatment and fewer concessions on agricultural liberalisation. In non-agricultural market access ([NAMA](#)) negotiations China's offensive interest has been to achieve a substantial reduction in high industrial tariffs, tariff peaks and the elimination of [tariff escalation](#), while preserving eligibility for flexibilities as a developing country.²² But China differs considerably both from developed and developing countries as for the scope and depth of tariff cuts.²³

With China's entry into the WTO's inner circle '[Green Room](#)'²⁴ negotiations in 2008, the [EU](#) and the USA have increasingly expected it – as the biggest beneficiary of the multilateral trading system²⁵ – to take on more responsibilities commensurate with its economic clout. But, on account of its dual identity as the biggest developing country keen to maintain political support from the developing world and as the second largest economy China has found it difficult to act more proactively as a broker between developed and developing countries, mostly taking a backseat and leaving the leadership role to India and/or Brazil.²⁶ As a result of its past extensive market access commitments and rapid economic rise China no longer entirely shares the economic [interests](#) of developing countries. Given China's [gains](#) of global market shares and its strong export competitiveness in manufacturing supported by its undervalued exchange rate, which may have the effect of completely offsetting Chinese tariff concessions, it tends to fuel reluctance rather than enthusiasm within its developing country camp to agree to industrial tariff cuts.²⁷

As a major exporter China has shared many interests with developed countries and has thus been supportive of the inclusion of the General Agreement on [Trade Facilitation](#) (GATF) into the WTO framework as part of the 2013 [Bali package](#). The GATF simplifies global customs procedures. China [ratified](#) the GATF as one of the first WTO members in 2015. Since China agreed already in 2001 to [eliminate](#) all agricultural export subsidies, it was at ease to play a constructive role by endorsing the corresponding item of the [2015 Nairobi Package](#), committing in addition to opening its market further to [cotton](#) imports from least developed countries (LSDs).

China's limited role in WTO plurilateralism

Agreement on Government Procurement (GPA)

China committed to joining the GPA in its accession documents and to submitting an accession offer 'as soon as possible'.²⁸ In 2002 China became a GPA observer, but accession negotiations have progressed very slowly. Since 2007 China has filed several accession offers that GPA members have [considered](#) insufficient. The offers have revealed China's narrow definition of government procurement, GPA-related [turf wars](#) between competent state agencies and China's concerns to exclude SOEs to a large extent from GPA coverage on economic and ideological grounds. The EU has a major interest in China's GPA accession, because this would open access for EU companies to the huge Chinese procurement market, which China is entitled to retain closed to foreign companies under the GATT exception in [Article III.8](#). (See the EPRS note on [procurement](#).)

Information Technology Agreement (ITA-II)

The ITA-II negotiations among over 50 countries including the EU-28 since 2012 were aimed at updating and [expanding](#) the coverage of the [1996](#) ITA, the number of whose participants has grown from 29 to currently 82. The agreement eliminates tariffs on more than 200 IT items. The ITA expansion is valued at over [US\\$1.3 trillion](#) per year. In 2013 China was [blamed](#) for stalling the negotiations when it submitted a long list of sensitive items to be excluded from the ITA's coverage, despite being by far the biggest [beneficiary](#) of the agreement. After an agreement on the [scope](#) was reached, the ITA was signed in 2015. In June 2016 the European Parliament gave its [consent](#) to the conclusion of ITA-II.

Agreement on Trade in Services (TiSA)

In October 2013 China asked to become a party to the ongoing TiSA negotiations among 22 countries and the EU, which account together for 70 % of world trade in services, [set to](#) liberalise services sectors beyond the 1994 GATS. This will concern areas such as licensing, financial services, telecommunications, e-commerce, and maritime transport. The [EU](#) – where services currently account for 70 % of the EU's GDP – and the [USA](#) have an offensive interest in narrowing their trade imbalance with China by increasing their service exports to the country through better access to the Chinese services market. The [EU](#) has therefore supported China's integration, including with a view to multi-lateralising TiSA, while the USA has opposed it. The USA perceives China as an obstacle to the talks given China's negotiating [behaviour](#) in ITA, its delaying tactics for joining the GPA and slow opening up of SOE-dominated services sectors to both foreign and domestic private firms, and its sensitivities in key TiSA issues. China has a vital interest in spurring growth of its services sectors to rebalance its investment and export-led economy towards the 'new normal' of enhanced domestic consumption and services trade, and therefore may use the opening up of its services as a bargaining chip in the ongoing bilateral investment agreement negotiations with the EU and the USA.

Environmental Goods Agreement (EGA)

In 2014 [16](#) WTO members, including the EU, accounting together for [86 %](#) of global trade in environmental goods, launched negotiations on the [EGA](#) which is intended to reduce tariffs on environmental technologies as well as to liberalise global trade in these goods. The EU, as a global leader in this very dynamic sector has an offensive interest in opening up export markets. The [aim](#) is to include services linked to exports of environmental goods such as the repair and maintenance of wind turbines and to address non-tariff barriers (NTBs), such as restrictions on investment and local content requirements (LCRs) to [level](#) the playing field. China is [concerned](#) about the free-riding possibilities, under a most-favoured-nation (MFN) approach, for non-participating major developing countries, such as Brazil and India, which maintain [higher import tariffs](#).

Outlook

Contrary to initial widespread fears of China triggering a disruptive flood of WTO cases, the country has acted predominantly as a rules-taker or system-maintainer²⁹ rather than a rules-shaker. China has to a large degree assimilated the standard rules of the multilateral trading system and has accepted compulsory WTO adjudication as a means not only of settling trade frictions but also – like other WTO members – of attaining its industrial policy objectives.³⁰ While its 'very acquiescent approach'³¹ to the WTO trading system identifies China as a status quo power³², it has at the same time adopted a strong revisionist power posture in its diplomatic, economic and legal fight against its NME treatment in the area of trade remedies. After the controversial December 2016 deadline set out in section 15(a)(ii) of China's Accession Protocol for its NME treatment for the purpose of AD probes, it is likely to align this fight with the policy adopted by major WTO members including the EU.³³

China has thus far punched heavily under its weight in an increasingly complex and challenging multilateral WTO negotiating environment. It has played a minor role in WTO plurilateral negotiations given its exclusion from TiSA and an apparently negligible interest in joining the GPA. The [uncertainties](#) surrounding the ratification by the US Congress of the US-led Trans-Pacific Partnership ([TPP](#)) concluded under President Barack Obama and a potential redirection of US trade policy under the incoming Trump administration may reverse the past trend of China's marginalisation from shaping new global trade rules outside the WTO. The [demise](#) of TPP and a more protectionist global environment may attract a number of TPP countries and others closer into China's orbit. Although this could result in China emerging as a leader of new global trade standards for instance by raising the level of ambition for the Regional Comprehensive Economic Partnership ([RCEP](#)) currently under negotiation and/or by pushing for the Free Trade Area of the Asia-Pacific ([FTAAP](#)) to be launched as an alternative to TPP, it could conversely also significantly undermine its ambition to shift gradually from rather [shallow FTAs](#) to EU-style 'deep and comprehensive' FTAs. This in turn would deprive it from meaningful external pressure to push its domestic economic reforms forward. It may induce China to continue to leverage its economic weight in support of an 'early harvest' approach to tariff reductions excluding [Singapore issues](#) or [rules on SOEs](#) as set out in the TPP and to promote its own rules more assertively based on abundant financial resources in predominantly asymmetric bilateral relations under its pan-continental [One Belt, One Road](#) (OBOR) connectivity initiative.

Endnotes

- ¹ WTO 2015 International Trade Statistics [report](#), pp. 42-43.
- ² [The EU and China in the WTO: What Contribution to the International Rule of Law? Reflections in Light of the Raw Materials and Rare Earths Disputes](#), M. Burnay and J. Wouters, Leuven Centre for Global Governance Studies, Working Paper No. 160, May 2015, pp. 1-16.
- ³ '[China's Ascent in Global Trade Governance: From Rule Taker to Rule Shaker, and Maybe Rule Maker?](#)' H. Gao, in *Making Global Trade Governance Work for Development*, C. Deere-Birkbeck (ed.), Cambridge University Press, 2011, pp. 153-180.
- ⁴ This is surprising, since according to the WTO anti-dumping (AD) [database](#), between 1995 and 2015 India imposed most AD duties against China (146), ahead of the USA (105) and the EU (88). Although [Argentina](#) and [Brazil](#) granted China market economy status (MES) in 2004, they have [continued](#) to impose AD duties against Chinese imports. While China has been a prime target of AD measures in India, Argentina (75) and Brazil (62), these three otherwise quite active WTO litigants have not brought any WTO case against China. China, in turn, has largely [spared](#) these countries from its AD investigations.
- ⁵ WTO 2015 International Trade Statistics [report](#), pp. 44 and 46.
- ⁶ 'Sense and sensibilities of China and WTO dispute settlement', M. D. Harpaz, in *China and Global Trade Governance*, K. Zeng and W. Liang (eds.), Routledge 2013, pp. 233-260, p. 240.
- ⁷ '[China's Development of International Economic Law and WTO Legal Capacity Building](#)', P. L. Hsieh, *Journal of International Economic Law*, 2010, Vol. 13(4), pp. 997-1036.
- ⁸ 'When the parties disagree on whether the losing member has implemented the recommendations and rulings, either of them can request a panel under [Article 21.5](#) of the DSU.'
- ⁹ '[Fifteen Years on: Has China Implemented WTO Rulings?](#) – A Perspective on "Trade in Goods" Disputes', W. Zhou, *Asian Journal of WTO & International Health Law and Policy*, 2016, Vol. 11(1), pp. 155-212, pp. 164-165.
- ¹⁰ [DS309](#), China – VAT on Integrated Circuits; [DS358/DS359](#), China – Taxes; [DS387](#), [DS388](#), [DS390](#), China – Grants, Loans and other Incentives; [DS419](#), China – Wind Power Equipment; [DS450](#), China – Automobile and Automobile-Parts Industries; [DS451](#), China – Apparel and Textile Products; [DS489](#), China – Demonstration Bases.
- ¹¹ According to the [2000](#) US-China Relations Act the US Trade Representative (USTR) submits an annual monitoring report on China's WTO compliance to the US Congress, including on China's subsidisation practice. The [2015](#) report states that only with many years' delay did China provide the subsidy notifications required to comply with its transparency obligations under the SCM Agreement. They were far from complete, as they included only central government subsidies but failed to indicate subsidies provided by local governments, since China refuses to report them ([2015](#) USTR report, p. 61). Moreover, China has a poor record of responding to questions about its subsidies before the WTO's Subsidies Committee ([2015](#) USTR report, p. 24). In the past, several times the USA compiled counter notifications under Article 25.10 of the SCM Agreement on Chinese subsidy schemes, which fed into CV probes and the SCM cases against China at the WTO. The EU has investigated a much smaller number of anti-subsidy (AS) cases against China. As of the end of [2015](#), AS duties on five Chinese products were in place. A [new](#) AS probe into hot-rolled flat steel was recorded for the first half of [2016](#). The EU has not launched WTO cases against China for violations of the SCM Agreement. For a detailed account of China's compliance with WTO law, including subsidies, please see the yearly [USTR reports](#) as well as the periodical [WTO Trade Policy Reviews](#) on China.
- ¹² China has made considerable commitments in modes 1 (cross-border supply), 2 (consumption abroad) and 4 (movements of individuals), but in mode 3 (commercial presence) market access has remained restricted as regards the form of establishment (requirements to create an equity or contractual joint venture) and foreign ownership (with varying thresholds). A. Mattoo, '[China's Accession to the WTO: the Services Dimension](#)', *Journal of International Economic Law*, Vol. 6(2), 2003, pp. 299-339.
- ¹³ According to the [2016/2017 Position Paper](#) of the European Chamber of Commerce in China, in 2015 foreign banks in China accounted for a market share (in total assets) of 1.38 %, down from 2.16 % in 2008 (p. 388). See also 'China's WTO compliance in banking services. Looking at the big picture', M. D. Harpaz, in *China in the International Economic Order*, pp. 69-102.
- ¹⁴ "'Creative compliance?' China's compliance with the WTO – a case study of telecommunications services', Y. Kobayashi, in *China and Global Trade Governance*, pp. 103-125.
- ¹⁵ '[China's First Ten Years in WTO Dispute Settlement](#)', X. Han, *The Journal of World Investment & Trade*, 2011, Vol. 12(1), pp. 49-64, p. 54.
- ¹⁶ Considerable differences exist between the EU and US methodologies, which result inter alia from the systematic application by the EU of the 'Lesser Duty Rule' (LDR). In the EU the level of AD duties is imposed at the level of the dumping margin or the level that removes injury, whichever is lower (the 'lesser duty'). As a consequence of many differences in computing dumping margins, average EU AD duties on comparable dumped products originating from China are significantly [lower](#) than in the USA. The European Commission [considers](#) that these marked differences in duty levels make the EU TDIs less effective in countering dumping.

- ¹⁷ [Article 56](#) states that: 'where a country (region) discriminatorily imposes anti-dumping measures on the exports from the People's Republic of China, China may, on the basis of actual situations, take corresponding measures against that country (region)'.
- ¹⁸ 'China's Implementation of WTO Decisions', T. Webster, in *China in the International Economic Order, New Directions and Changing Paradigms*, L. Toohey, C. B. Picker and J. Greenacre, (eds.), Cambridge University Press 2015, pp. 98-111, p. 105.
- ¹⁹ In an analysis of China's implementation of three dispute outcomes, Webster shows that China has maintained or revised inconsistent laws or regulations 'so as not to effectuate the purpose of the ruling'. As for IPR case [DS362](#) he concludes: 'By covering only *imported* counterfeit goods, the regulation does not apply to counterfeit goods made in China. This guts the provision of its primary effect, to limit agency discretion in disposing of seized counterfeits, and its secondary effect, to discourage Chinese counterfeiting. In reality, the revised regulation *protects* China's fake-goods industry by limiting this disposal method to *imported* counterfeits'. '[Paper Compliance: How China implements WTO decisions](#)', T. Webster, *Michigan Journal of International Law*, 19 August 2013, pp. 1-53, p. 37.
- ²⁰ '[Fifteen Years on: Has China Implemented WTO Rulings?](#) – A Perspective on "Trade in Goods" Disputes', W. Zhou, *Asian Journal of WTO & International Health Law and Policy*, 2016, Vol. 11(1), pp. 155-212, p. 159.
- ²¹ 'Fifteen Years on: Has China Implemented WTO Rulings?', p. 165.
- ²² 'China's position and role in the Doha Round', X. Tu, in *China and Global Trade Governance*, pp. 167-188, p. 175.
- ²³ 'China and the Doha Round non-agricultural market access (NAMA) negotiations', X. Wang, and K. Zeng, in *China and Global Trade Governance*, pp. 189-210, p. 193.
- ²⁴ The Green Room is a meeting room in the WTO premises in Geneva. To facilitate consensus between WTO members ([164](#) since 29 July 2016), key decisions are prepared in informal meetings of an inner circle, i.e. the representatives of the G7 comprising Australia, Brazil, China, the EU, India, Japan and the USA. 'From the Doha Round to the China Round', H. S. Gao, in *China in the International Economic Order*, pp. 79-97, p. 88.
- ²⁵ 'From the Doha Round to the China Round', H. Gao, in *China in the International Economic Order*, p. 85.
- ²⁶ '[China's Attitude to Multilateralism in International Economic Law and Governance](#): Challenges for the World Trading System', R. Leal-Arcas, *The Journal of World Investment and Trade*, 2010, 11(2), pp. 259-274, p. 272.
- ²⁷ Gao has argued that 'due to China's unique position as both a developing country and a major trader, neither the developed countries nor the major developing countries regard China as one of their own and both view China more as a threat rather than a potential ally'. '[Elephant in the Room: Challenges of Integrating China into the WTO System](#)', H. Gao, *Asian Journal of WTO & International Health Law and Policy*, 2011, Vol. 6(1), pp. 137-168, p. 147.
- ²⁸ WPR, para 341.
- ²⁹ China's Implementation of WTO Decisions, Webster, T., p. 99.
- ³⁰ China's embracing of international dispute settlement in trade matters contrasts sharply with its [categorical](#) rejection of international adjudication in matters concerning its national core interests, notably sovereignty and territorial integrity. The July 2016 arbitration court [verdict](#) concerning conflicting maritime claims in the South China Sea opposing China and the Philippines is a case in point.
- ³¹ '[The tale of a Trojan horse or the quest for market access?](#) China and the World Trade Organization', S. Van Kerckhoven and A. Luyten, *Revista Brasileira de Política Internacional*, 2014, Vol. 57, pp. 193-209, p. 194.
- ³² 'China, foreign investors, and TRIMS, Bulking up, but not fully compliant', J.-M. F. Blanchard, in *China in the International Economic Order*, pp. 43-68, p. 60.
- ³³ On 9 November 2016 the European Commission published its [proposal](#) to amend AD Regulation (EU) [2016/1036](#) and AS Regulation (EU) [2016/1037](#). A 2013 [Commission proposal](#) aimed to modernise TDIs has been [deadlocked](#) in a [divided](#) Council, after the European Parliament [adopted](#) its position in first reading in February 2014.

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