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# US-China Trade War

The match hasn't come to an  
end yet

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## 引言

这篇论文的的目的是要探讨近年来引起世界各国关注的话题之一，即其可能的发展和影响，也就是说中美贸易战。

为了更好地理解本文的主题，有必要从一些基本要点开始，例如，首先是国际组织作用的定义，它们是各国要求之间的调解人。第一个就是世界贸易组织（WTO）。

从一开始，就必须阐明规则的确定方式以及如何扫清国家之间货物流通的障碍。

随后，研究这一冲突，确定和分析两个大国在全球范围内争取经济和金融霸权所使用的工具将是很有用的：因此，重要的也是确定关税壁垒的概念，例如关税，有权强加它们的人，世界组织采取了哪些措施来解决可能出现的争端。

更具体地说，本文第一章的目的是通过分析背后的国际组织来理解所有规范不同国家之间贸易关系的国际贸易机制。因此，本文从关贸总协定（GATT）的基础出发，对世界贸易组织的演变进行了深入分析，奠定了建立三个主要原则的不同国家之间公平经济关系的基础。

这三个主要原则是：

- 互惠原则；
- 最惠国条款（MFN）；
- 国民待遇规则。

世贸组织于 1995 年成立后，通过 1947 年至 1994 年的八回合谈判，全面实施了关贸总协定，并完成了关贸总协定的承诺。八回合谈判始终使更多的成员国回合，并确认多边贸易协定作为统治这么大量交流的主要法律手段。

在本文的这一部分中，我发现还必须解释世贸组织还如何建立争端解决系统，该系统为成员国提供了解决在执行协议本身时出现的争端的明确法律框架，这一点至关重要。这部分对于了解这个国际组织在美中冲突中的作用非常重要。

为了阐明中国在世贸组织中的立场，重要的一点是专门提及中国的发展路径。中国进入世时的承诺是多种多样的，从降低关税到逐步废除非关税贸易壁垒（许可证和配额），从对外国公司采用更加统一和歧视性较小的贸易规则到部门服务的自由化以及对知识产权的更加严格保护。

在第一章结束时，关于美中之间的争端，关税的中心主题的定义意义重大。对于本文的读者来说，了解此工具的工作原理以及如何使用它以发挥其功能来保护内部产业和经济（按照特朗普总统的意图）非常重要。此外，重要的是在这一阶段强调，互相报复如何只会导致僵局，只会加剧冲突对全球经济共同体的负面影响。

在这一点上，为对该主题的更深入的了解奠定了基础，将可能更具体地处理与中华人民共和国和美利坚合众国的关系以及第一次敌对行动的构成要素在他们之间开始；相互强加的职责如何对双方进行报复。

第二章从对第二次世界大战后两个超级大国之间的历史商业关系的解释开始，经历了2018年的事件并到达了今天。

在对此时间表进行分析时，需要回答的最重要问题是：这两个泰坦之间如此激烈的冲突的原因是什么？在第 2.3 段中，答案是通过诸如倾销和反倾销政策等概念的理解以及有关中国政府对国有企业补贴有多公平的辩论而开始得到回答的。此外，对特朗普总统政府的分析（尤其是《贸易法》第 301 条），阐明了美国掌握的手段，对那些被视为对美国经济和工业不公平和危险的规定对中国实施报复。作为自然过程，中国也将在 2018 年首次事件之后对美国实施报复，对大豆征收关税。在本文的这一部分中，主要主题是了解此事件可能对美国农民造成的影响，美国农民可能因这种新的强制措施以及随之而来的该产品出口减少而蒙受很大的痛苦。

如果当前对全球国内生产总值最大的两个贡献者之间的争端变成全面的贸易战，它将不仅对美国和中国，而且对世界经济都产生不利影响。从长远来看，贸易战不会产生任何胜利者。

关税直接以两种主要方式影响经济：第一，因为它们起着简单的商品税的作用；第二，因为它们引起了不确定性，从而影响了家庭和公司的决策。

尽管商品税增加了政府的税收收入，但它们也导致资源分配不当，从而使整个经济陷入低效的均衡状态。由于关税提高了消费价格，因此降低了家庭的购买力，减少了购买的商品。同时，家庭和公司试图用替代品代替已关税商品，从而最终消费了一篮子被税收扭曲的商品。这种新的商品篮子对消费者来说是次等选择。

当唐纳德·特朗普总统在推特上说美国将赢得关税战时，他认为美国家庭和公司将替代国内生产的一揽子商品，这将间接创造新的美国就业机会。我对此表示怀疑。我认为，美国家庭和公司更有可能将其消费转移到越南或墨西哥生产的商品上，而不是转移回美国生产的商品上，而且外包给中国的美国工作不会在生产过程之前被遣返已完全自动化。如果美国是仅次于中国的成本效益最高的生产国（不是），或者如果美国拥有生产目前从中国进口的那些产品所需的生产设施，那么美国生产的商品将是一个可行的选择。

关税降低消费的第二种方式是制造不确定性，这会导致家庭推迟消费，而公司则推迟资本支出。不确定性对经济的影响类似于货币紧缩（这显然不是特朗普总统议程的一部分）。

由于美国和中国是世界上最大的两个经济体，因此，两国之间长期的贸易战造成的任何不确定性都将影响全球经济。可能从中受益的少数国家是越南和墨西哥，这些国家可以以经济高效的方式提供关税商品的替代品。

贸易战不仅打击消费，还影响通货膨胀，中央银行政策和汇率。由于关税在很大程度上像消费税的提高一样起作用，因此很可能导致整体通货膨胀率先上升，但就像其他任何形式的财政紧缩措施一样，它们最终将导致增长放缓。这将导致产出缺口的增加，从而降低核心通胀压力。随着美国家庭和消费者替代中国生产的商品，中国可能会通过将过剩产能出口到其他非美国国家。这就是关税的通货紧缩冲击在全球范围内传播的方式。

在上一章中，重点是这场冲突在全球范围内对国际经济，贸易和政治环境的影响和后果，还涉及诸如美国作为中国财产的公共债务和贸易引发的技术战争等话题，通过华为按研究的分析。

这种理解过程对于提出关于这种竞争的未来影响以及解决冲突的可能方案的假设是必要的。2020年1月15日，唐纳德·特朗普总统与中国国务院副总理刘鹤签署了等待已久的美利坚合众国政府与中华民国政府之间的经贸协议第一阶段。在这份协议中，两位政治人触及了许多关键要点，但是没有提到其他一些要点（也许更重要）。

# US-CHINA TRADE WAR: IS THE GAME STILL IN PLAY?

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## ACRONYMS

GATT: General Agreement on Tariffs and Trade

WTO: World Trade Organization

GDP: Gross Domestic Product

OECD: Organization for Economic Co-operation and Development

APEC: Asia-Pacific Economic Cooperation

MNF: Most Favored Nation

NATO: North Atlantic Treaty Organization

COCOM: Coordinating Committee for Multilateral Export Controls

AD Committee: Anti-Dumping Committee

USTR: United States Trade Representative

ZTE Zhongxing Telecommunications Equipment Corporation

DSU: Dispute Settlement Understanding

DSB: Dispute Settlement Body

NAFTA: North American Free Trade Agreement

TTIP: Transatlantic Trade and Investment Partnership

UNCTAD: United Nations Conference on Trade and Development

IMF: International Monetary Fund

SAFE: State Administration of Foreign Exchange

TPP: Transpacific Partnership

# INTRODUCTION

The purpose of this paper is to treat one of the topics that in recent years has kept the attention of economies around the world alive for its possible developments and implications, namely the trade war between China and the United States.

To better understand the subject of this paper, it is necessary to start from essential points such as, first of all, the definition of the role of international organizations, which are mediators between the requests of Nations. The first of these is the World Trade Organization (WTO).

Since the beginning, it is essential to clarify how the rules are determined and how the obstacles to the movement of goods between states are eliminated.

Subsequently, it will be useful to examine this conflict, identify and analyze the tools used by the two powers to contend for economic and financial supremacy on a global scale: it will therefore be important to assume the concepts of tariff barriers such as duties, who have the power to impose them and what are the measures implemented by world organizations to resolve disputes that may arise.

To be more specific, the purpose of the first chapter of this paper is to understand all the international trade mechanisms that regulates trade relations between different countries, also through the analysis of the international organizations that are behind those rules. For this reason, the paper analyzes deeply the evolution of the World Trade Organization through the time, starting from the foundation of the GATT (General Agreement on Tariffs and Trade), that laid the pillars for fair economic relationships within different countries establishing three main principles, that are:

- The Principle of Reciprocity;
- The Clause of the Most-Favored-Nation (MFN);
- The Rule of National Treatment.

After its foundation in 1995, the WTO fully implemented the and completed the commitment of GATT through the Eight Rounds of negotiations that took place from 1947 to 1994 and brought together, round by round, always an higher number of member States and confirming Multilateral Trade Agreements as the major legal instrument to rule such a great number of exchanges.

In this part of the paper, I found it essential to explain also how the WTO established also a Dispute Settlement System, which provides Member States with a defined legal framework for resolving disputes that arise in the implementation of the agreements themselves. The judicial system is divided into three main moments: the establishment of the Panels; the approval of the Panel Report or the Appellate Body Report; the authorization of countermeasures in the event of a Member State's failure to adapt to the reports adopted by the Dispute Settlement Body (DSB). This part becomes very important in order to understand the role of this international organization within the U.S.-Chinese conflict.

In order to clarify the position of China with regards to the WTO, it was important to dedicate a paragraph about the path of the PRC in entering into this international organization. Chinese commitments at its entry were numerous and heterogeneous and range from the reduction of customs duties to the gradual abolition of non-tariff trade barriers (licenses and quotas), from the adoption of more uniform and less discriminatory trade rules towards foreign companies to the liberalization of the sectors services and to a more rigorous protection of intellectual property<sup>1</sup>.

To close the first chapter, a definition of the central theme on the dispute between USA and China, customs duties, was more than relevant. For the reader of this paper, it is extremely important to understand how this tool works and how it is used in order to exploit its functioning to protect internal industries and economy (in the way President Trump intend).

At this point, laid the foundations for a more aware mastery of the topic, it will be possible to deal more specifically with the relations that bind the People's Republic of China and the United States of America and what were the elements from which the first hostilities began between them; of how the mutual imposition of duties caused retaliation to both.

The second chapter starts with an explanation of the historical commercial relationships between the two super-powers from the Post-World War II, going through the events of 2018 and arriving at nowadays. In the analysis of this timeline the most important question to be answered is: what were the causes for such a tough clash between these two titans? In the Paragraph 2.3 the answer starts to be answered through the understanding of concepts such as dumping and anti-dumping policies and the debate about how fair are Chinese State subsidies to national companies. Furthermore, the analysis of President Trump administration (in particular the Section 301 of the Trade Act), clarifies the instruments in the hand of the United States to put into force the retaliation towards China for those provisions considered unfair and dangerous for American economy and industries. As a natural process, also China implement its retaliation towards USA after the first events of 2018, imposing tariffs on soybeans. In this part of the paper the main topic is to understand the effect that this event could create on American farmers, who could suffer a lot from this new imposition and from the consequent reduction of exports for this product. Moreover, in this phase it is important to underline, how the continuous retaliation to each other could only lead to a stalemate situation, which could only protract the negative effect of the conflict on the global economic community.

If the current clash between the two biggest contributors to global GDP becomes a global trade war, it will impact not just the two giants, but the entire economic community. For this reason, I feel confident in saying that this war will not have a final winner in the end, but only losers.

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<sup>1</sup> Cavalieri R., *L'adesione della Cina alla WTO, Implicazioni giuridiche*, Argo, 2003.

Tariffs affect economies straightforward in two main aspects: first, because they work just like simple taxes on goods and, second, because they create uncertainty, which impacts families and influence in a negative way the decisions of domestic and foreign companies.

Notwithstanding the fact that taxes on goods increase the tax revenues of governments, they also lead to a wrong allocation of resources. Because tariffs raise the price of consumption, the purchasing power of citizens is reduced, leading to a reduction of goods purchasing.

When President Donald Trump states that the U.S. will be the winner of the tariff war, he assumes that U.S. households and companies will buy a greater range of American products, creating indirectly new American jobs. I don't trust a lot this view. In my opinion, it is more probable that U.S. households and companies will increase their purchasing of goods coming from Vietnam or Mexico rather than back to US-produced goods. These goods would be considered if the U.S. could be as efficient in costs as China is right now (which it is not) or if the U.S. already had the production facilities necessary to produce what it currently imports from China.

The second way that tariffs affects negatively growth is by creating uncertainty, influencing the inputs of capital in the market. The only benefit of this aspect is that, some countries (such as above-mentioned Vietnam and Mexico) could act like substitutes for Chinese goods, delivering similar products at more competitive prices comparing to the American ones.

Trade wars do not just hit people's purchasing power (and consumption), they also affect inflation and exchange rates. As U.S. consumers would buy different products from those produce in China, the respond to this is to export its excess capacity to new foreign countries, other than the USA. This process will, for sure, slow down global economic growth.

In the last chapter, the focus is on the repercussion and consequences of this conflict on a global basis for international economy, trade and political environment, touching also topics such as the American public debt as a Chinese property and the technology war sprung from the trade one, with the Huawei case.

This process of comprehension is necessary to develop hypotheses on the future repercussions of this rivalry and the possible scenarios for resolving the conflict.

On 15th January 2020, the awaited Phase One of the Economic and Trade Agreement Between the Government of The United States of America And the Government of The People's Republic of China has been signed between President Donald Trump and the Chinese Vice-Premier Liu He. In this agreement lot of crucial points have been touched by the two politicians, but some others (maybe more important) has not been even mentioned.

## Chapter I

### International organizations and customs duties

#### 1.1 The GATT, General Agreement on Tariffs and Trade

The rules that regulate international trade are more complex than single countries rules. This complexity is due to the urgent need for every country to protect its own trade field. In the past, the absence of a supra-national authority, which could put the onus on the various States to respect trade rules, in some cases avoided the evolution of trade.

During the Thirties, when the world was going through a heavy economic crisis, lot of Nations tried to seek refuge by using various barriers in order to shield their economies from the threats of that difficult moment: among these barriers there are the introduction of high protectionist tariffs, quantitative restrictions on imports as well as the control of stock exchange market.

During the Second World War, it became clear that these restrictions would weigh heavily on the world economy, unless vigorous attempts were made to dismantle and ban them. Along with the creation of the current World Bank and the International Monetary Fund (IMF), various governments have considered establishing a body designed to regulate trade: the ITO (International Trade Organization).

After the Great Depression of 1929 and II World War, the Allied Nations, especially USA and Great Britain, decided to rebalance the situation of world trade. For this reason, in 1945 United Nations have been founded, together with all its agencies, specifically created for every activity of international trade (and not only). Among these agencies, there are the International Monetary Fund and the Bank for Reconstruction and Development, now called World Bank.

In 1948, in order to lay the foundations for a multilateral system of trade relations with the aim of promoting the liberalization of world trade, the GATT (General Agreement on Tariffs and Trade) has been signed on October 30, 1947 in Geneva, Switzerland, by 23 Nations. The GATT is a multilateral treaty, establishing a common code of conduct for international trade, providing a mechanism to reduce and stabilize tariffs and other trade barriers and to hold consultations on trade related issues.

This agreement has been the tangible result of all efforts towards solving international trade problems. Its starting point is represented by the Atlantic Charter<sup>2</sup> and by the other treaties concluded between the Allies themselves during the war to seek together an exchange system based on non-discrimination and aimed at achieving high standards through free and fair trade in goods and services<sup>3</sup>.

During the early years of GATT, a group of experts was appointed to study and affirm the need to face the problem of restrictive trade practices in international trade, recognizing that these may hinder the

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<sup>2</sup> The Atlantic Charter was a diplomatic act signed by the President of the United States Franklin D. Roosevelt and the British Prime Minister Winston Churchill on August 14, 1941, among the allied powers, which established some principles for the future world order: ban on territorial expansions, internal and external self-determination, democracy, peace understood as freedom from fear and need and renunciation of the use of force.

<sup>3</sup> Ennio Di Nolfo, *Storia delle Relazioni Internazionali*, Bari, Laterza, 2000

expansion of world trade and economic development in individual countries and thus limiting the advantage of tariff reduction and the elimination of quantitative restrictions on import.

GATT was initially considered a provisional agreement, waiting for the entry into force of Havana Charter<sup>4</sup> and the establishment of an international trade institution, that could aim to the harmonization of international trade rules and improvement of free trade between Nations; anyway, in 1948 GATT had remained the only international institution that established the rules of conduct for international trade and that affected most of the world trade.

There were 23 participating countries, including Brazil, China, India, the United Kingdom, France, Italy and the United States. Over the next forty-seven years, other countries joined GATT and further trade liberalization negotiations followed. The contracting parties initiated and concluded eight separate negotiation stages (the Eight Rounds<sup>5</sup>) of voluntary trade liberalization. The last of these, the Uruguay Round, ended the GATT era in 1994, with the official foundation of the World Trade Organization (WTO).

The relationship between international trade and competition policies has been at the center of interest long before the founding of the current international trading system.

In the 1940s, restrictive trade practices constituted a central element in the negotiations leading to the Havana Charter, which devoted an entire chapter to "trade practices affecting international trade that restrict competition, limit access to markets or favor monopolistic control". The Havana Charter was a historic attempt to establish a global framework for trade liberalization and peaceful dispute resolution<sup>6</sup>. In this context, GATT, signed in 1947, became the main multilateral instrument that governed international trade from 1948 until 1995, creating a more complete multilateral trading system<sup>7</sup>.

The first five phases of the GATT negotiations (1947-1961) were generally dominated by the main exporting countries or by the main suppliers of a specific product, who met and negotiated for a mutual improvement of market access. They concentrated their negotiation efforts on reducing import barriers in countries that were of primary interest to their exporting companies. Since the main objective of the negotiations was to eliminate the commercial barriers of the markets from which most of the products were imported, these Five Rounds led to the request of reducing the tariffs of the importing countries<sup>8</sup>.

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<sup>4</sup> Composed of 106 articles, this Charter substantially stated the need to adopt every means to increase trade at international level (especially through the stabilization of raw material prices and the establishment of an antitrust authority) and to improve the employment and living standards in the acceding countries (through the formulation of fair labor regulations), with particular regard to economic development in the developing areas.

<sup>5</sup> Ferro A., Raeli G. – *La liberalizzazione dei mercati mondiali. Dall'ITO alla WTO passando per il GATT*, 1999

<sup>6</sup> However, the Charter never entered into force; American President Truman refused to submit him to the American Senate.

<sup>7</sup> Anderson D.R., Kovacic E.W., Muller A.C., Sporysheva N., "Competition Policy, Trade And The Global Economy: Existing Wto Elements, Commitments In Regional Trade Agreements, Current Challenges And Issues For Reflection", World Trade Organization, Economic Research and Statistics Division (2018)

<sup>8</sup> Since its establishment, the GATT has organized numerous multilateral negotiations. The first meeting was held in Geneva in 1947, the second in Annecy in France in 1949, in which the contracting parties negotiated over 5,000 tariff concessions,

The General Agreement on Tariffs and Trade created spaces for debates on tariff reduction, which would subsequently take place in the following decades through multilateral trade negotiations (with subsequent Rounds). In addition, the initial negotiations led to an agreement that established a set of basic rules and disciplines to be followed by the participating countries, as well as an agreement for resolving disputes in case the countries found themselves at odds.

The most important and lasting rules contained in the GATT are the fundamental principle of reciprocity and two principles of non-discrimination: treatment of the most favored nation and national treatment. In the GATT system, the **Principle of Reciprocity (Article XXVIII bis of GATT 1947<sup>9</sup>)**, has a substantial role, and it is intended as equal commercial opportunities and not as equal volumes of exchange for the signing Nations.

As previously described, these negotiations have generally been initiated on a reciprocal basis, therefore between countries with a major export interest and others, mainly importers. Second, once a contracting party has pledged itself in opening the access to its market, reciprocity has become a formal rule for renegotiations if that country subsequently wanted to withdraw from its commitment.

There are two types of situations in which countries have not supported previous commitments and the response to both has typically been based on reciprocity. The first case is when a country raises its import tariffs above the "tied" limits promised to the rest of the members, during a previous round of negotiations. Negatively affected trading partners are in this case authorized to a change of market access in another area of interest, even if more often there has been the closure of the market by the "damaged" country to rebalance the agreement.

The second case occurs when a country renounces to market opening commitments, in a way that is not compliant with the treaty; in this case, the business partners concerned can use the dispute resolution process to obtain a legal decision that allows them to rebalance the missed obligations<sup>10</sup>.

The second fundamental principle of GATT is the **Most-Favored-Nation Clause (MFN<sup>11</sup>)**. It means that, in a round of negotiations, when a GATT contracting party offers to lower its tariffs to increase

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the third in Torquay, England, in 1950, during which the tariff concessions were around 8,700; following these first meetings, the tariff levels had been reduced by 25% compared to the levels of 1948.

The fourth meeting took place again in Geneva between 1955 and 1956, and led to tariff cuts of around 2.5 billion US dollars; the fifth meeting of GATT, renamed as the American deputy Secretary of State who proposed the opening (Douglas Dillon), which began in 1960 and completed in 1962, led to tariff concessions worth a total of 4.9 billion dollars and included also negotiations on the creation of the EEC. The last three negotiations were the sixth, in Geneva from 1964 to 1967, the seventh in Tokyo from 1973 to 1979, and the eighth in Uruguay from 1984 to 1993. The latter concerned the services, intellectual property and investments, and was expected to lead to higher exchanges worth a total of 500 billion dollars by 2005 (for further details on this aspect, see Klmatu J., *Analysis of the importance of General Agreement on Tariffs and Trade and its contribution to international trade*, (2011).

<sup>9</sup> [https://www.wto.org/english/tratop\\_e/markacc\\_e/markacc\\_art28bis\\_e.htm](https://www.wto.org/english/tratop_e/markacc_e/markacc_art28bis_e.htm)

<sup>10</sup> The jurisprudence that emerged in this context, has also led to the use of the reciprocity rule for cases where it is necessary to assign a compensation to exporters that suffered negative effects after violations of the pact. This second point indicates that reciprocity becomes an extremely important principle when it comes to dispute resolution (for further details on this aspect, see <https://www.iusinitinere.it/gatt-1994-nel-sistema-della-wto-5225>)

<sup>11</sup> Article 1 of GATT 1947: [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)

market access available to foreign exporters from another GATT country, the same tariffs and market conditions must also be offered to exporters from all other GATT countries, on a non-discriminatory basis. This is clearly one of the most important reasons for joining the agreement, because it can be useful to provide the guarantee that exporters will receive the "best" treatment made available to any other country signing the agreement. The most-favored nation clause, however, has two important exceptions: the first, allows States to remove obstacles to trade within a given area without having to extend the same treatment to all other Member States<sup>12</sup>. The second important derogation concerns trade with developing countries: industrialized states have the right, but not the duty, to have to preferentially treat goods produced in developing countries, without the need to extend it to other members.

The third fundamental principle is the rule of **National Treatment (Art. III of GATT 1947)**<sup>13</sup>. This principle establishes that once the foreign produced goods have paid the price of entry into an import market, they must be treated as if they were produced on a national level; the goods cannot be subject to additional taxes or regulatory barriers to differentiate it from a product produced at home, once it has been imported and the entrance fee has been paid.

A country like China, with its over one billion inhabitants and a GDP that grew by 470% in the period between 1981 and 2000, stood as a possible leading commercial partner for anyone wishing to participate in the banquet of the globalized economy, and therefore represented a fundamental link for the future stabilization and growth of the world economy.

This explains the position taken by the United States as the main interlocutor of the Asian country, accompanied by the concern of the geopolitical importance that China could then have assumed in the Asian continent and beyond, mitigated by the potential advantages offered by the entry of the Dragon Country into the agreements on international trade<sup>14</sup>.

China was one of the twenty-three founding members of GATT when it was signed on October 30<sup>th</sup>, 1947. In October 1949 the Chinese government founded the People's Republic of China but political circumstances led the new government to suspend its relations with GATT.

In the late 1980s, after the end of the Mao Zedong regime and the changing political situation, both China and its trading partners were determined to renegotiate China's return to GATT. However, the negotiations stopped following the 1989 repression of Tiananmen, to be resumed only at the end of 1991, when GATT negotiators invited the country's legislators to improve market access for GATT members, reducing tariffs, making trade rules more open and removing obstacles to non-tariff trade.

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<sup>12</sup> This is the case of regional integration areas (free trade areas or customs unions), such as the European Community and numerous other GATT Member States first, and subsequently by the WTO.

<sup>13</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)

<sup>14</sup> Rapporto della Commissione, United States-Pacific Trade and Investment Policy, "Building American Prosperity in the 21st Century", Washington, D.C., Aprile 1997, raccomandazione 1 relativa alla Cina

In 1992 China was the eleventh country in the world for trade volumes, with exports and imports for a total of 165 billion dollars per year. If the benefits of GATT had been extended to China, they could have supported economic growth by opening further markets, and within ten years China could have become the first country in the world in terms of value of imported and exported goods; this could have contributed to the maintaining growth rates in neighboring Asian countries<sup>15</sup>.

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<sup>15</sup> Hsiao M., *China and the GATT: Two Theories of Political Economy Explaining China's Desire for Membership in the GATT*, Pacific Basin Law Journal (1994)

## 1.2 The WTO, World Trade Organization

The World Trade Organization was founded in January 1995 with 85 founding countries<sup>16</sup>. Nowadays, it is the third pillar of the world economy, together with the International Monetary Fund and the World Bank. The new institution of international trade came into force with the Marrakesh Declaration<sup>17</sup> of 15<sup>th</sup> April 1994, closed in the presence of 124 Ministers.

The WTO has replaced the GATT, representing a distinctive and qualitative improvement compared to it. In particular, it stands out for the following aspects:

- has a much larger membership than GATT; can count on the membership of 164 countries;
- it has a much broader scope than its predecessor, bringing issues such as trade in services, intellectual property protection and investments into the multilateral trading system for the first time;
- it is a fully-fledged international organization, while GATT was basically a provisional treaty managed by meetings held several years apart;
- manages a unified package of agreements to which all members are committed, while GATT included many important collateral agreements (e.g. anti-dumping measures and subsidies) whose effectiveness was limited to a few countries;
- incorporates some of the rules of GATT, improving them, in particular by clarifying and strengthening the original rules for trade in goods;
- reverses protection policies in certain "sensitive" areas on which the old GATT did not intervene or did so in an unclear and decisive way (textiles and clothing, agricultural trade and so on)<sup>18</sup>.

The WTO has fully implemented the following agreements, signed by GATT members in the Uruguay round:

- GATT (General Agreement on Tariffs and Trade);
- GATS (General Agreement on Trade in Service);
- TRIPS (Trade Related aspects of Intellectual Property Rights): Commercial aspects of intellectual property rights.

The most important development in the last years of the GATT, which later flowed into the WTO, was the radical change in what is meant by "commercial policy". For most of the period in which GATT was in force, and for centuries before, trade was understood mainly (or exclusively) as the movement of goods across borders and commercial policy was largely limited to initiatives affecting tariffs, quotas and other

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<sup>16</sup> [https://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm)

<sup>17</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/marrakesh\\_decl\\_e.htm](https://www.wto.org/english/docs_e/legal_e/marrakesh_decl_e.htm)

<sup>18</sup> [https://www.esteri.it/mae/it/politica\\_estera/economia/cooperaz\\_econom/omc.html](https://www.esteri.it/mae/it/politica_estera/economia/cooperaz_econom/omc.html)

border measures that can intervene with taxation, regulating or prohibiting such transactions. This vision began to change following the GATT meetings in Tokyo, and especially in those of the Uruguay Round, when negotiators began to address to a much wider range of issues, which significantly broadened the field of the rules adopted. Trade now includes the cross-border movement not only of goods but also of services, capital, ideas and even people.

The membership into the multilateral trading system grew in the post GATT and WTO periods, but in recent years the expansion has been greater than in the past, thanks to the expansion of the membership base and a multiplication of the number of disputes. The changes were both qualitative and quantitative, both for the trading system and for trade itself, and reflect the profound differences that occurred in the twentieth century world compared to the previous one.

To fully manifest the intentions with which it was born, the WTO faces two sets of legal challenges. The first concerns its ability to carry out the task of bringing exchanges within the rule of law; related to this problem is the need to find a fair balance between the "legislative" aspect (the commercial pacts) and the "judicial" (litigation) aspect of the institution. The second challenge comes from the conflicts that can arise between commercial law and other areas of theory and jurisprudence. Scholars disagree on the extent to which the WTO has achieved GATT's goal of bringing trade within the rule of law. The negotiation of new agreements in the "Uruguay Round" has extended the scope of international law, but the meaning of these agreements has not always been clear<sup>19</sup>.

Here below are quoted some of the most important points of the Agreement establishing the World Trade Organization signed by 162 Nation on 15<sup>th</sup> April 1994. These will facilitate the understanding of next chapters of this paper.

**Art. 2** (of the agreement establishing the WTO<sup>20</sup>) defines the scope of the WTO stating that:

*“The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement”.*

The agreements and associated legal instruments (called "Multilateral Trade Agreements") are integral parts of the agreement and bind all the Members.

**Art. 3** expressively states that the WTO function is to:

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<sup>19</sup> This is partly due to the common practice of "constructive ambiguity" in which negotiators, who find themselves hampered on certain points, can devise compromising tactics that manage to overcome the problems immediately but in reality, do not fully resolve it. These deficiencies were particularly evident during the GATT period, but did not disappear with the advent of the WTO (for further details on this aspect, see <http://www.parlamento.it/application/xmanager/projects/parlamento/file/repository/affarinternazionali/osservatorio/apfondimenti/PI0147.pdf>)

<sup>20</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](https://www.wto.org/english/docs_e/legal_e/04-wto.pdf)

“facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements”.

Moreover, Art. 3 also attributes to the WTO the function of establishing the forum for negotiations between its members on multilateral commercial relations, managing the understanding on rules and procedures that regulate the settlement of disputes (through the administration of the Understanding on Rules and Procedures Governing the Settlement of Disputes or "Dispute Settlement Understanding") and the mechanism for reviewing commercial policy<sup>21</sup>.

**Art. 4** is dedicated to the structure of the WTO. In particular it is composed by a Ministerial Conference composed of representatives of all the Members, and the General Council.

As stated by the text of the article, the Ministerial Conference “shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements”, while the General Council assume its functions during the period of interval between the meetings of the Ministerial Conference<sup>22</sup>.

In addition to these bodies, there are also a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights, which operate under the guidance of the General Council.

These councils perform the functions assigned to them by the General Council and meet when necessary

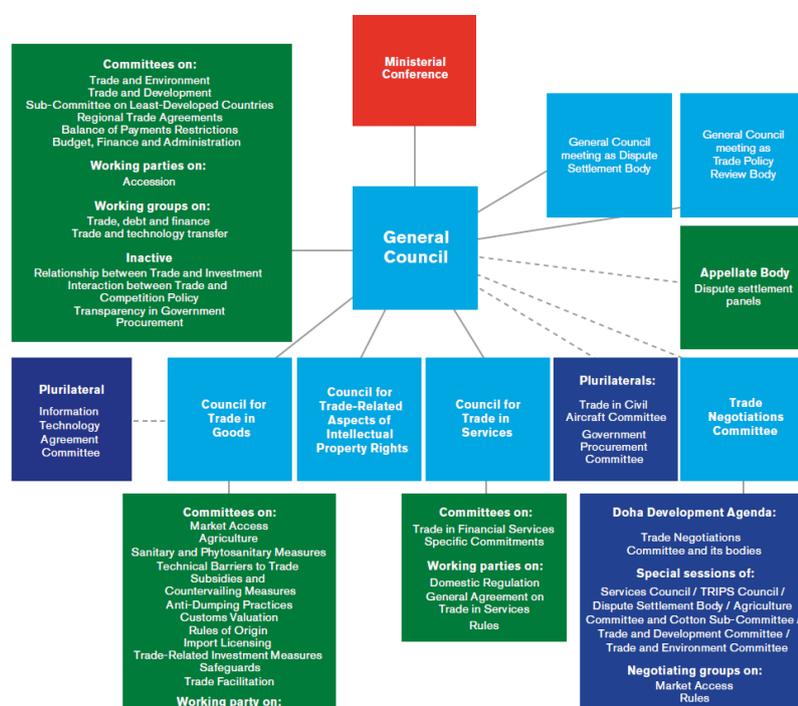


Figure 1 The structure of the WTO

to perform their functions. There is a Director-General, who is responsible for supervising the administrative functions and the secretariat, the executive technical body of the WTO; he performs a potentially very important function, consisting in "convincing" the Member States to adopt an agreement, through diplomacy, the use of the media and the proposition of agreements aimed at resolving any disputes (see Figure 1)<sup>23</sup>.

<sup>21</sup> This is in order to achieve greater consistency in the development of global economic policies, the WTO can cooperate with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

<sup>22</sup> It also assumes the role of conciliation body in the resolution of disputes, as well as the body of examination of commercial policies adopted by every single country.

<sup>23</sup> [https://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm)

**Art. 9** intervenes on the decision-making process of the organization.

Except as otherwise provided, where a decision cannot be taken by consensus<sup>24</sup>, the controversial issue is decided by vote. At meetings of the Ministerial Conference and the General Council, each member has one vote<sup>25</sup>.

The Ministerial Conference and the General Council have exclusive authority to adopt interpretations of the Multilateral Trade Agreements. The interpretation decision is made by a three-quarters majority of the members.

In exceptional cases, the Ministerial Conference may decide to waive an obligation imposed on a member of the WTO or any of the multilateral trade agreements, provided that any decision in this sense is made by a majority of three quarters of the members.

A request for derogation relating to this Agreement must be submitted to the Ministerial Conference for consideration; this establishes a period of time that must not exceed 90 days, to consider the request. If consensus is not reached during this time period, any decision to grant a waiver is made by three quarters of the members.

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<sup>24</sup> Consensus decision making is a proactive way of reaching an agreement within a group. Instead of simply voting for an item and seeking for majority, a group using consensus is committed to finding solutions that everyone actively supports.

<sup>25</sup> Where the European Community exercises the right to vote, it has a number of votes equal to the number of Member States. Decisions of the Ministerial Conference and the General Council are taken with the majority of the votes cast, unless otherwise specified.

### 1.3 The entry of China into WTO

One of the milestones for economic reform in China and for the world trade system was China's accession to the WTO in November 2001. The other WTO countries have felt the impact of China's accession to the WTO through four main channels:

- Opening of the Chinese export market;
- Increased supply of exports to markets in other countries;
- Greater competition in third markets;
- Expansion of investment in China and foreign investment from China.

Chinese membership has led to a series of economic policy changes that have opened up China's economy and made it much more engaged in the global economy. The accession of China to the WTO is only one component of the wider series of reforms that the country has undertaken since 1978, including policies aimed at development and reducing poverty.

WTO rules are important ingredients in formulating good development policies, but they do not provide a complete recipe. Like most other laws, their intent is to reduce the negative impacts of an individual or group's actions on another, rather than leading a country in the best way to achieve its goals.

As part of its commitments with the WTO, China has been able to choose to pursue its development goals aggressively or somewhat uncertainly.

The five basic principles of the General Agreement on Tariffs and Trade (GATT) and the WTO provide a useful framework for analyzing the implications of China's accession.

These principles are:

- non-discrimination (the Most-Favored nation principle - MFN - under which the best market access granted to one member is extended to all other members);
- opening of the market;
- transparency and predictability;
- undistorted trade;
- preferential treatment for developing countries.

The general principle of non-discrimination requires WTO members to agree equal treatment to competing suppliers and not to discriminate between domestic products and services and those imported into domestic markets. In the case of China, the application of this general principle entailed some additional commitments, including the elimination of dual tariff systems, the phasing out of trade restrictions, the introduction of more uniform administrative arrangements and judicial review<sup>26</sup>.

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<sup>26</sup> These agreements are of crucial importance not only for central authorities, but also for lower levels of government, which are often involved in internal trade and regulation.

The principle of market opening has been reflected in China's commitments to abolish non-clarifying obstacles, reduce tariffs and open up its service sectors, in the commitments undertaken by countries that import from China to abolish quotas for textile and clothing products originally imposed under the multi-level agreement.

The cuts in the import tariffs offered by China have been considerable, leading to a reduction in the weighted average tariff from 13.3% in 2001 to 6.8% at the end of the implementation period<sup>27</sup>.

China's commitments to trade liberalization have been much greater than those of almost all other countries, although they have been more often subject to qualifications or reservations than those of other countries.

China's entry into the WTO as a full member dates back to December 11, 2001, and has raised both hopes and fears, especially among developing countries. The hopes stemmed from the fact that China had, at the time, the fourth largest economy and its strong position in favor of developing countries, with a view to favoring the development of the collective negotiating capacity of the countries, thus making it possible to change the balance of power between the North and South of the world, while accelerating the resolution of problems such as an unbalanced multilateral trading system and the ineffective implementation of the Uruguay Round agreements. The fear was instead represented by the fact that the developing countries themselves could face more competition coming from China itself<sup>28</sup>.

China has faced numerous trade barriers in an attempt to join the WTO; the main aspect to be addressed was that of reducing tariffs.

Many differences therefore emerged between the Chinese position and the requests made primarily by the United States. First, China wanted a gradual adjustment while the United States wanted a rapid change, with the tariff reduction keeping the center of the negotiations.

As for this issue, China has reduced its average tariffs from 47.2% to 21.5% in less than six years; but this percentage was still very high compared to other WTO developing countries. China therefore expressed its willingness to reduce its average tariffs to 15% in three years for industrial products and in six years for agricultural products, but the United States requested the adoption of a rate of 7%, as a prerequisite for accession, and the EU required a percentage of 8%.

As for the commercial licensing system, China had offered to gradually phase out the existing program in five years, but the United States asked for this to happen in two or three years.

Furthermore, the OECD countries<sup>29</sup> wanted China to open its distribution sector within a few years, while China did not intend to do so until 2020.

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<sup>27</sup> These reductions are actually modest compared to the 27-percentage point reduction implemented by China between 1992 and 2001.

<sup>28</sup> <http://sam.gov.tr/wp-content/uploads/2012/01/2.-Mohammad-Tanzimuddin-Khan.pdf>

<sup>29</sup> The OECD was established with the Organization for Economic Cooperation and Development Convention, signed on December 14, 1960 and entered into force on September 30, 1961.

Finally, the United States and other developed countries wanted to provide special safeguard options to protect their industries from future surges of imports from China. The industrialized countries were aware that China would have a comparative advantage in the world market for many manufacturing products, especially in the area of low-tech sectors such as textiles, toys, footwear and so on.

The developed countries therefore intended to protect their industries from the Chinese surge in imports, so they wanted to impose safeguard measures.

As a condition for accepting China into the WTO, the EU wanted to have the right to impose "safeguard" tariffs or quotas on Chinese exports; China initially objected, but subsequently had to accept such requests.

Third, China wished to maintain protective measures for its nascent industries as a developing country, but the United States has not shown itself favorable in granting it the full range of protective measures as for other developing countries<sup>30</sup>.

As a developing country, China could indeed have taken longer to liberalize its trade sector and protect its industries. The United States argued that China's strategic importance internationally was so high that it could not be treated as a normal developing country.

According to Chinese negotiators, the demands of the WTO were far greater than they were in the late 1980s, when the Chinese economy was much less open<sup>31</sup>.

The situation of the United States in the early 1980s, with the growth of the trade deficit towards Japan, seemed to haunt the leaders of the United States, who felt the risk that, with the growing exports of China to the United States, China could have become a new Japan.

To avoid the emergence of this scenario, the United States probably wanted to access the Chinese market before this concern became reality.

A World Bank study pointed out that, with the Uruguay Round of trade liberalization expected, Chinese exports to the United States, the EU and Japan would increase by 40 percent. Many WTO member countries believed that China would receive great benefits from joining. This belief gave a strong incentive and significant contractual force to the United States and other countries to take advantage of this opportunity to ask for more from China.

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The OECD's mission is to promote policies that improve the economic and social well-being of citizens at a global level. Within the vast panorama of international organizations, and faced with the urgent need to outline a sustainable economic scenario, the Organization for Economic Cooperation and Development continues to play a full-fledged political and scientific role in promoting the market integration and the achievement of the highest levels of economic growth and sustainable employment, promoting investment and competitiveness while maintaining financial stability.

<sup>30</sup> During the entire negotiation process, the debate continued between the United States and China regarding the latter's consideration as a developing country, as requested by China, or as a developed country, as requested by the United States.

<sup>31</sup> According to some observers, China has faced a much more complex process of entry into the WTO than all the other countries, as the requests and pressures of the negotiators have been very strong and continuous; this is attributable to both political and economic reasons. From an economic point of view, China was growing very rapidly and was becoming increasingly important in Asia and Southeast Asia. Politically, it was very independent and still led by a communist party. The impetuous growth of the Chinese economy and the rapid increase in exports had made developed countries very worried about the future challenge from China.

Politically, the United States and other developed countries wanted to ensure that China's market-oriented economic reforms continued; after the collapse of the former Soviet Union, China had remained the most powerful country in Asia. Also for this reason, in order to have their sphere of influence in China, Western countries were interested in China's accession to the WTO. In addition, as a developing country with a previous planned economy, China had a large number of inefficient industrial sectors. To avoid sudden social and political changes, China had taken a gradual approach in its economic reforms.

China's economy was not only expanding and developing, but also specializing; we were no longer faced with a country that aimed to export low-tech products, but with a reality that needed the WTO regulatory system to assert its competitiveness at an international level, avoiding ad hoc decisions against it, which could take on the connotations of real commercial retaliation.

China was therefore an important pawn in the world economy, which increasingly acquired the characteristics of interdependence, with many opportunities to face; and the WTO itself needed the entry of China to be able to define itself as a truly international organization and fully unfold its effects<sup>32</sup>.

China's main commitments to the WTO were as follows:

- commitment to regulate trade in general;
- commitment to export regulation, in particular as regards duties and licenses;
- commitment to the regulation of imports, especially regarding non-tariff barriers, tariffs, duties, technical barriers and customs measures;
- liberalization of trade and commercial policies, including subsidies, exchange control, public procurement, price control;
- commitments on the regulation of intellectual property and regulation of services;
- commitments on agricultural regulation (export subsidies and import controls)<sup>33</sup>.

In the years following its entry into the WTO, China has embarked on an unprecedented path of economic growth, with benefits for all the countries of the world and in particular for the countries of Southeast Asia, which have achieved a trade surplus with the Republic of China<sup>34</sup>.

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<sup>32</sup> The negotiations between China and the WTO seemed to have ended positively, in the sense of an entry of China into the organization, already following the Uruguay round, in 1995; this did not happen due to the aforementioned differences, but despite the disappointment of both sides the negotiations continued, leading to the elaboration of a Working Party in 1997 and to the protocol of understanding in Doha (Qatar) of 10 November 2001, which ratified the entry of China into the WTO.

<sup>33</sup> Cavalieri R., *L'adesione della Cina alla WTO, Implicazioni giuridiche*, Argo, 2003.

<sup>34</sup> In 2010, China reached the figure of 2,850 billion dollars held in foreign currency, compared to 212 held in 2001. Its GDP, on the other hand, grew by an average of 10.5% per year, making it the first since 2018 world power in absolute terms. This growth is mainly due to its entry into the WTO, which allowed it to quickly become the largest importing and exporting country, as well as the main trading partner for Australia, Brazil, Japan and South Africa, the second for the European Union and the third largest for the United States (for further details about this aspect, see <https://www.corriereasia.com/economia-della-cina>).

Already after the successful conclusion of the agreements with the United States (November 1999) and with the European Union (May 2000) it seemed that China's entry into the WTO was a pure formality, a sequence of procedural requirements for the legislative bodies to ratify what had been negotiated and the government authorities subsequently signed.

Since then, China's membership has been gradually postponed, caged in laborious attempts to convert political aspects into precise and binding rules.

The entrance was actually subjected to further reciprocal concessions.

Formally the entrance had the place in the first half of 2002, when all obstacles have been overcome, both in negotiations with individual States than in multilateral ones kept it in Geneva. Of all the WTO members, only 37 countries have requested direct negotiations with China<sup>35</sup>.

Contrary to a widespread and almost unanimous Western vision, entry into the WTO has not found equal consensus in China. The debate in the ruling class was long and harsh and contributed to the unusual length of the negotiations. It was not a simple ideological clash between the two souls of the Chinese Communist Party, nor just a contrast between an autarchic conception and a tendency towards openness unfolded with the outside world. Although these considerations were present, the discrimination was essentially pragmatic and in the end the consideration prevailed that, at the end of a long and painful journey, the advantages deriving from the entry into the WTO would then have been greater than the price to be paid.

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<sup>35</sup> The latest agreement was signed with Mexico on September 12, after a long deadlock due to the defense of the textile and electronics industries by the two countries.

The final agreement with the United States, the most important of the bilateral agreements, took place after the closure of the APEC (Asia Pacific Economic Cooperation) conference, held in Shanghai in June 2002. On that occasion, President GW Bush expressed the its political support for China's rapid accession, thus speeding up the closure of the long negotiation between the US and Chinese administrations on the salient aspects of the initial agreement. Consensus was reached on the degree of openness that China has been willing to grant to the business of foreign insurance companies , on the limit on the diffusion of single-brand stores and large-scale distribution, and on the lifting of any prohibition on the international trade of companies foreigners after a period of 3 years of activity.

## 1.4 The role of the GATT and the WTO within trade disputes

The main role of GATT in international trade was to regulate the contracting parties to achieve the aim of reducing tariffs and liberalizing international trade.

First, GATT has established a set of standards to guide the contracting parties to participate in international business practices, establishing several basic principles for conducting the parties in international affairs, such as:

- Most-Favored-Nation Principle (Article I);
- Reciprocity Principle (Article XXVIII bis);
- Principle of National Treatment (Art. III)<sup>36</sup>.

In addition to the pacts established in the 1947 GATT articles, which defined the guidelines, the contracting parties reached numerous agreements and established some rules during subsequent multilateral trade negotiations.

Secondly, GATT reduced tariffs on the basis of the aforementioned mutual benefit, accelerating the trade liberalization process that took place after the Second World War. The main contribution of GATT was the reduction of tariffs by meeting in "rounds" of multilateral negotiations, following which there were approximately 35% of average tariff reductions, in particular both after the Kennedy Round and after the Tokyo Round; subsequently, in the Uruguay Round, the contracting parties recorded an average cut of 39%.

Third, GATT has reduced other forms of discrimination in tariffs and trade.

As indicated in Article II of GATT 1947<sup>37</sup>, the agreement establishes that the contracting parties cannot increase the tariff levels as they wish; however, some countries have started to adopt other non-tariff barriers to promote their protectionist position.

In response, GATT established that the contracting parties should not have used other barriers to protect their industries, called for the reduction of non-tariff barriers and their quantitative restriction, to ensure that the benefits of reducing tariffs would not be canceled by non-tariff barriers<sup>38</sup>.

After the Kennedy Round, multilateral negotiations have started to deal more closely with non-tariff barriers to goods. In 1968 and 1969, GATT compiled a list of non-tariff barriers, which contained more than 800 types of commercial barriers.

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<sup>36</sup> As described in Paragraph 1.1

<sup>37</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm)

<sup>38</sup> Milone M. L., *Le barriere non tariffarie nel commercio internazionale: analisi teorica e implicazioni per la politica economica*, (1974)

The Tokyo Round then established new rules on public procurement, technical barriers to trade, import licenses<sup>39</sup>, anti-dumping, subsidies<sup>40</sup> and countervailing measures.

Subsequently, the Uruguay Round also made significant progress in reducing and eliminating non-tariff barriers for agricultural products.

Finally, GATT acted as an "International Trade Court", providing a platform for the contracting parties for negotiation and discussion, aimed at resolving disputes in international trade.

One of the stated goals of the GATT was in fact to resolve disputes between two or more parties.

The main weakness of GATT was the provisional nature of the agreements. It was not an effective international alliance and had no real enforcement mechanism. If the bilateral agreement were broken by a country, the GATT could not have intervened significantly.

GATT's sphere of competence was then limited to the transaction of products only. However, with the development of globalization, transactions in services and technologies and international investments constituted a high percentage of international trade.

With the increase of this kind of transactions, it was inevitable that some countries would impose tariff and commercial barriers or non-tariff barriers in this type of trade.

Some GATT rules were not strict enough, and it was difficult to implement them in real economic practices. Some contracting parties could interpret the GATT rules in their personal interest, and there were no means necessary for verification and inspection.

Finally, the multilateral rounds of GATT have been influenced by the policies of some larger countries, in particular by the western signatory states, and especially by the United States. Although the international balance of powers had changed since the establishment of the EEC<sup>41</sup> (later European Union) and the emergence of Japan, all industrialized countries had numerous economic interests in common<sup>42</sup>.

As the number of developing countries acceding to GATT has increased, their position in multilateral negotiations has significantly improved. The addition of Part IV, entitled "Trade and Development"<sup>43</sup>, to GATT in 1968 had offered many benefits to the least developed countries, including requirements on the concept of non-reciprocity in trade negotiations between developed and developing countries,

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<sup>39</sup> Document through which the Ministry of Foreign Trade authorizes the import of one or more goods, upon presentation by the operator of an application. The import license is a tool by which the state controls and regulates the quality and quantity of imported products. For further details on this aspect, see [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm9\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm).

<sup>40</sup> Sometimes the state and local governments support a set of businesses or a single company with public money. These gain an undue advantage over competitors from other EU countries. In other words, subsidies distort competition and distort trade. Within the EU, It is the Commission's duty to prevent this from happening by allowing the state to intervene only in the general interest, that is to the benefit of the whole of society or the economy. For further details on this aspect, see [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm8\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm).

<sup>41</sup> European Economic Community

<sup>42</sup> <https://www.lawteacher.net/free-law-essays/international-law/role-of-gatt-in-promoting-international-trade-international-law-essay.php>

<sup>43</sup> [https://www.wto.org/english/res\\_e/booksp\\_e/gatt\\_ai\\_e/part4\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/part4_e.pdf)

specifying that, when developed countries grant commercial concessions to developing countries, they should not expect them to offer them benefits in return. In the Uruguay Round, GATT further reduced tariffs on developing countries<sup>44</sup>.

By reducing tariff and commercial barriers in developing countries, and promoting their economic development, GATT has reduced the economic gap between industrial and developing countries.

GATT was also created to reverse the trade policies of the 1930s, which entailed more restrictions and discrimination in world trade. The goal was to stop countries that have tried to isolate themselves from the Great Depression and helping them to relaunch the internal economy through more commercial exchanges and reducing tariffs.

The GATT was then replaced by the WTO, which is the world's leading trade body since January 1<sup>st</sup>, 1995, the same day the Uruguay Round entered into force. The main purpose for which the WTO was created was to ensure that global trade developed and continued smoothly, freely and in a predictable way.

The other purpose of the WTO was to strengthen the GATT trade dispute resolution mechanism. Any problem that occurred between participating nations had to be brought to the attention of WTO to be solved<sup>45</sup>. The core of the WTO's activity is represented by the resolution of commercial disputes between member countries. A controversy arises when a member believes that another one, with its policies, is violating an agreement adopted into the legal framework of WTO itself. The WTO has one of the most active international dispute resolution mechanisms in the world: 593 disputes have been filed since 1995; more than 350 sentences have been issued<sup>46</sup>.

Creating conditions for economic peace and stability in the world, especially among WTO members, through a multilateral system, is another purpose for which the World Trade Organization was established. Each member of the WTO is required to apply the rules of the treaty as a part of its country's legal system<sup>47</sup>.

The WTO promoted the establishment of the liberalization of world trade and the globalization of the economy. Since its foundation, the world market has experienced a drop in tariff levels, up to 40% on average for WTO member countries. In 1999, the average tariff rate in developed countries dropped from 6.3% to 3.9%, duty-free imported goods increased from 20% to 43%, while tariffs for imported manufactured goods decreased to 5%.

With the WTO, has been created a system that helps the commercial process to proceed smoothly, providing countries with a constructive and equitable outlet to deal with disputes on commercial issues

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<sup>44</sup> For example, the average tariff rate in India was 71.4% before the Uruguay Round, and subsequently dropped to 32.4%.

<sup>45</sup> Matsushita M., "The World Trade Organization: Law, Practice, and Policy" (2006)

<sup>46</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm)

<sup>47</sup> For example, if a company decides to start a business or invest abroad, its internal legal system cannot contradict the WTO's rules and regulations.

and preventing individual countries from increasing trade barriers in order to protect national producers and waging war against each other.

Unlike developed countries, developing countries did not have negotiating power on the market and could only adapt to the prices determined by the markets of developed countries; the creation of the WTO has offered numerous advantages, providing a system based on certain rules that effectively governs international trade, allowing also developing countries to become more involved, with the possibility to obtain greater benefits from the international commercial environment<sup>48</sup>.

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<sup>48</sup> <https://www.lawteacher.net/free-law-essays/international-law/role-of-gatt-in-promoting-international-trade-international-law-essay.php>

## 1.5. Customs duties: definition and the role of WTO in their imposition

A customs duty consists in a form of taxation which affects goods traded between companies belonging to different countries, and which therefore must "cross a border" when these goods enter the country of destination.

The main objective that the importing country wants to achieve with these measures is to stimulate the production of national companies, creating an artificial economic barrier, represented by higher sales cost, discouraging the consumption of the products affected by the duties (and therefore coming from abroad) compared to those produced within the importing country. The effect obtained is, in fact, a drop in the demand for products from abroad, which should lead to an increase in the demand for the same goods produced internally.

Duties can also be foreseen to discourage exports, as it is intended to reserve the goods concerned for the internal market, or simply to have an additional revenue for the benefit of the national coffers; in this case they are applied to internal goods that are intended for purchase from third countries. Generally, national governments try to encourage exports of goods produced by their companies, so export duties have historically been very rare<sup>49</sup>.

After the Second World War, the figure of the duty began to lose importance, gradually supplanted by other non-tariff barriers, such as import and export quotas<sup>50</sup>, affecting both advanced and developing countries.

In 1988 the duties on imports in the main western countries were 9.5%, before falling to 2.9% in 2009<sup>51</sup>.

Two types of duties can be identified:

- the specific duty, consisting of a fixed amount to be paid on each imported unit of the good concerned, regardless of the value of the same good;
- ad valorem duty, when defined on the basis of the value of the asset<sup>52</sup>.

Following the 2008 economic crisis, there was a return to protectionist policies because of the widespread mistrust on the international economic and financial situation; despite the increase in individual episodes of introduction of duties, however, in 2010 the level of duties applied internationally even decreased by 0.4 percentage points compared to the previous year and by 0.8 compared to 2008.

In this sense, the presence of the WTO had a great importance, because with its regulatory framework, the organization has also favored the subsequent economic recovery, which would have presumably been shifted over time if the protectionist measures had caused a rise in duties.

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<sup>49</sup> Varese E., *Dazi e regimi doganali nell'Unione Europea*, (2012)

<sup>50</sup> Import and export quota is the mechanism that regulates the maximum quantity of a certain product that can be imported or exported in a certain period of time.

<sup>51</sup> Hironori Asakura, *World History of the Customs and Tariffs*, (2003)

<sup>52</sup> Krugman, P.R., *Economia Internazionale 1*, (2012)

According to the WTO, only in 2011 the non-tariff restrictive measures of imports increased by 50% compared to 2010<sup>53</sup>.

The main objective of the WTO is to eliminate obstacles to trade, and the ambition of the Doha Round in 2001<sup>54</sup> was to promote a wider opening of markets to the member countries of the organization.

Discussions in the WTO focus on customs duties that best meet the MFN clause. These are "maximum" customs duties, defined by product, and it is mainly these that the WTO countries have undertaken not to increase, even if, in many aspects, this type of duty may differ from actual market access conditions when other types of barriers to trade come into play<sup>55</sup>.

As for the question of opening up some markets, reality differs even more from the WTO regulations if one takes into account the numerous preferential agreements between individual countries. Just in recent years, the number of such agreements has increased, in particular between developed and developing countries. These preferential agreements comply with the WTO rules precisely because they are maintained in the context of the development of free trade areas (article XXIV of the GATT<sup>56</sup>). Under a preferential regime, however, it must be shown that the imported products actually come from countries that have a preferential agreement, as defined by the established rules of the agreement.

In the American market, the sectors most heavily taxed on imports are clothing, textiles, synthetic fibers and filaments, cotton and leather goods. Import duties of all these products, cumulated, represent around 48% of all duties collected in the United States, with an applied average rate of 11%. For the EU, on the other hand, the most taxed products are agricultural and food products, and in particular fruit, sugar, cereals and preparations. All these cumulative agri-food products represent 18% of the duties collected in Europe, with an applied average rate of duty of 12%<sup>57</sup>.

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<sup>53</sup> MINISTERO DELLO SVILUPPO ECONOMICO, a cura di., 2012. *L'Italia nell'economia internazionale*. Rapporto 2011-2012. Roma: Agenzia ICE

<sup>54</sup> [https://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](https://www.wto.org/english/tratop_e/dda_e/dda_e.htm)

<sup>55</sup> It is therefore important to take into account the customs duty actually applied in all its aspects and in all dimensions (exceptions, suspensions, preferential duties, quotas ...). In addition, the form of expression of a customs duty is often complex, also consisting of a combination of a value and quantity tax.

<sup>56</sup> [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_art24\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_art24_e.htm)

<sup>57</sup> [https://www.wto.org/english/tratop\\_e/tpr\\_e/s324-01\\_e.pdf](https://www.wto.org/english/tratop_e/tpr_e/s324-01_e.pdf)



## Chapter II

### **Relations between China and the US: the outbreak of a conflict**

#### 2.1 Trade relations between the USA and China: an historical overview

Sino-US trade flows have exploded in the years since the People's Republic of China, in 1986, presented its first offer for joining GATT (which would later become the WTO). In 1985, imports and exports of U.S. goods to China were almost equal (\$ 4.2 billion imported from the United States and 3.8 billion exported from the United States to China). As of 2009, the volume and imbalance of the United States' trade in goods with China had increased substantially. The United States imported goods and services for \$ 310 billion and exported for \$ 70 billion, with a \$ 4.50 export ratio for each dollar imported. Expressed in terms of ratio, the imbalance peaked in 1999, the year in which the United States' import-export ratio reached \$ 6.70 of imports per dollar of exports. Since 1999 this ratio has decreased, while the absolute gap between imports and exports of goods has widened from 74.7 billion dollars in 1999 to 240.0 billion dollars in 2009. Trade in services followed a similar pattern, but on a much smaller scale; this has increased substantially in recent years and the US trade deficit has continued to widen; however, US exports and imports of services to and from China represent only 3.6% of the entire trade in US services.

Each country has grown to occupy a larger portion in the other's commercial portfolio. In 2003, China overtook Mexico as the second largest importer from the United States. Four years later, it overtook Canada as a major importer.

The United States was instead China's number one export destination until 2007, when they were overtaken by the European Union.

However, the United States remains by far the largest destination for Chinese products considering the single country (the EU is an aggregate of various states). In 2009, the United States purchased 18.4% of its goods from China. In the same year, China instead purchased 6.6% of the goods from abroad from the United States.

The growth of Sino-American trade has been rapid. Expressed in terms of percentage growth, since 1984 imports of goods from China in the United States have been impressive, with an average annual growth of 21%. Over the past twenty-five years, China has provided an additional \$ 11.8 billion in imports per year on average to the American economy, that is approximately 23.1% of U.S. import growth over the 1984-2009 period<sup>58</sup>.

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<sup>58</sup> *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: China*. Retrieved May 24, 2010, from <http://history.state.gov/countries/china> and <https://www.state.gov/u-s-relations-with-china/>

However, American public opinion, influenced by the media, has remained with an unfavorable opinion of China<sup>59</sup>.

While deepening its bilateral trade and investment relations with the United States, China has also become more integrated into the world economy and multilateral institutions over the past thirty years. Among the historical trade flows between China and the United States, the great majority of these occurred within the legal framework of the WTO. The beginning of Sino-American trade relations coincided roughly with the independence of the United States in 1783. China's opening to trade was marked by the arrival of the American ship "Empress of China" in Canton (Guangzhou) in 1784.

The next 60 years, known as "The Old China Trade"<sup>60</sup>, have seen a substantial expansion in Sino-American trade. In 1839, however, Sino-American trade suffered a setback during the first Opium War (1839-1842), which pitted China against Great Britain, France and the United States. Sino-American relations were then redefined by the Treaty of Wangxia<sup>61</sup> in 1844, with which the United States was granted various ports for trade<sup>62</sup>.

Commercial ports (e.g. Shanghai) and privileges (in particular the legalization of opium trade) were further expanded by the Tianjin Treaty in 1858<sup>63</sup>, following the second Opium War (1856-1860).

US relations with China, which expanded during the Second World War and the immediate post-war period, ended with the founding of the People's Republic of China in 1949, coinciding with the advent of the communist regime.

After 1950 China, under Mao Zedong, had minimal relations with world economies and the United States in particular for about two decades. The U.S. has instead imposed extensive trade restrictions through the Coordinating Committee for Multilateral Export Controls (CoCom)<sup>64</sup>, a multilateral agreement between members of the Atlantic Treaty Organization (NATO), Australia and Japan, to control exports to China and the Soviet bloc. The CoCom embargo has blocked Sino-American trade flows for nearly 30 years, starting to erode in 1972 after President Nixon's historic visit to mainland China.

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<sup>59</sup> The chain effects of rapid changes in the intensity of the economic relationship, particularly with respect to trade flows between the two countries, can create political frictions, and so it was between China and the United States. US imports from China have been hotly debated in the past two decades. The US trade deficit with China was often cited in the United States as a problem by the media during the financial crisis years of East Asia (1997-1999) and in the years leading up to the great recession of 2008 (2005-2007). For further details on this aspect, see <http://worldpublicopinion.net/rising-concern-about-chinas-increasing-power-global-poll/>.

<sup>60</sup> The Old China trade refers to the first trade between the Qing Empire and the United States under the cantonal system, which ran shortly after the end of the American Revolutionary War in 1783 to the treaty of Wangxia in 1844. It represented the beginning of relations between the United States and East Asia, including US-China relations. For further details on this aspect, see: Dudden, A. P., *The American Pacific, from the Old China Trade to the Present*, 1992.

<sup>61</sup> <https://china.usc.edu/treaty-wangxia-treaty-wang-hsia-may-18-1844>

<sup>62</sup> May, Ernest R., Fairbank, John King, *America's China Trade in Historical Perspective, The Chinese and American Performance*, 1986

<sup>63</sup> <https://china.usc.edu/treaty-tianjin-tien-tsin-1858>

<sup>64</sup> The Coordination Committee for Multilateral Export Controls was established by the western bloc in the first five years after the end of the Second World War, during the Cold War, to place an embargo on the Comecon countries (among these the most important are the Soviet Union and China). For further details on this aspect, see <https://www.princeton.edu/~ota/disk3/1979/7918/791810.PDF>.

Relationships began to start up again thereafter, also promoted by President Ford's subsequent visit in 1975.

In 1978, Deng Xiaoping<sup>65</sup> assumed the leadership of China, an enormous and rapidly changing economy, bringing it closer to the market and capitalism. Deng Xiaoping leadership started a period of rapprochement between China and the international economic community. In 1980, China entered the IMF and the World Bank, and applied for observer status within the GATT (granted in 1982).

Chinese diplomatic efforts towards joining the GATT were then made partially vain by the responses to the 1989 Tiananmen Square protests, which caused political resistance against China in many GATT member states.

In addition, China had problems with quotas, high tariffs, poor intellectual property rights and restrictions on foreign investment, all aspects that had to be reconciled with the interests of GATT members. The setting of the parameters for the transition of China towards accession to the Treaty was a central challenge in the accession process. Considering that China was not granted special and differentiated treatment compared to other members of developing countries, its accession process turned out to be even more problematic.

China's willingness to expose its domestic industries to foreign competition failed during the East Asian financial crisis of 1997-98<sup>66</sup>.

In 1999, however, Chinese Prime Minister Zhu Rongji<sup>67</sup> presented a set of liberalization offers to the United States and other WTO members. However, the Clinton administration, was unable to accept Chinese offers.

Sino-US relations began to wear out again in late spring 1999, when concessions offered by China in April were published and disclosed without Chinese consent. For this reason, officials in charge decided to withdraw from their commitments.

Sino-US trade negotiations resumed, culminating in an agreement in November 1999 for the entrance of China in the WTO<sup>68</sup>.

The basis for this agreement were:

- a general reduction of customs duties, with particular reference to agriculture;
- the elimination of export subsidies;
- the possibility for American companies to finance themselves in China;

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<sup>65</sup> Deng Xiaoping (1904 - 1997) was a Chinese politician, revolutionary and military man. He held leadership roles in the Chinese Communist Party (CCP) several times during the Mao Zedong era, becoming President of China from 1978 to 1992. He was the pioneer of Chinese economic reform and the architect of "socialism with Chinese characteristics", a theory that aimed to justify the transition from the planned economy to an economy open to the market, but nonetheless supervised by the state in macroeconomic prospects.

<sup>66</sup> <https://www.thebalance.com/what-was-the-asian-financial-crisis-1978997>

<sup>67</sup> Zhu Rongji, (1928 -), is a Chinese politician who was a leading economic reformer in the Chinese Communist Party (CCP). He was Chinese Prime Minister from 1998 to 2003.

<sup>68</sup> <https://www.repubblica.it/online/mondo/cina/cina/cina.html>

- greater access to banks, insurance and telecommunications and distribution rights for American exporters.

Everyone was ready for welcoming China into the WTO, except for the member countries of the European Union, that required separate negotiations with China.

A Sino-EU agreement followed six months later in May 2000<sup>69</sup>.

After 15 years of negotiation, China joined the WTO on 11 December 2001<sup>70</sup>.

In 2006, China became the United States' second largest trading partner after Canada. In September 2008, China overtook Japan by becoming the main holder of the United States' public debt; in July 2013, China held \$ 1.3 trillion in US government bonds.

In 2010, China became the world's second largest economy after the United States, and it is estimated that they will surpass them by 2027.

In addition to economic concerns, the United States and China have had several political conflicts in recent years<sup>71</sup>, as explained in next chapters.

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<sup>69</sup> Shambaugh, D., *China and Europe: The Emerging Axis*, (2004): 243-248, and Casarini, N., *Remaking Global Order: The Evolution of Europe-China Relations and its Implications for East Asia and the United States* (Oxford: Oxford University Press, 2009).

<sup>70</sup> Hufbauer G. C., "Trade Disputes Between China and the United States: Growing Pains so Far, Worse Ahead?", Working Paper Series, 2010

<sup>71</sup> China is taking a more active role in regional and international activities and this could damage or help US-China relations in unpredictable ways. In any case, the history of relations between the United States and China plays a very important role in influencing the state of their relations today. With China's growing power and influence in the international community, US-China relations have become more important than ever in ensuring the prosperity and security of both nations and the entire international community.

## 2.2. Trade War, causes

The United States of America are the largest economy in the world when considering nominal GDP, and the second largest when looking at purchasing power. They are the world's largest oil and gas producer, the largest commercial center in the world, with the largest industrial sector and the largest financial markets, as well as the largest consumer market in the world. The US economy also ranks first in the international rankings for risk capital and global funding for research and development. The United States also has a fifth of global manufacturing production.

Real GDP grew by 2.3% in 2017, while in 2016 it was 1.5%. The real GDP growth rate was 2.2% in the first quarter of 2018 and 4.1% in the second quarter of 2018. It has the best growth rate since the third quarter of 2014. In 2007, the US economy it was four times that of China, but following the recession and the global financial crisis of 2008, the US economy shrank to twice the size of China in 2012.

In 2014, China became the world's largest economy in terms of purchasing power. China ranks second in the world by nominal GDP, with a GDP growth rate of 6.9% in 2017, three times higher than that of the United States in the past 40 years.

In 1985, exports of U.S. goods to China were worth around \$ 3,855 million, and imports of U.S. goods from China were worth \$ 3,861 million, with a deficit of only \$ 6 million. Subsequently, the US trade deficit was steadily increasing; observing the trade in goods and services, in 2017 exports amounted to 187.5 billion dollars and imports to 522.9 billion. The trade deficit in goods and services in the United States amounted to 335.4 billion in 2017.

China was the United States' third largest export market in 2017.

The US exports to China increased at a very low rate, while US imports from China increased very quickly, leading to the increase in the deficit US trade. Exports of U.S. goods to China increased 577% from 2001 to 2017.

US exports to China were 8.4% of total U.S. exports in 2017. The main commodities exported from the United States to China until 2017 were agricultural products, aircraft, aerospace products and parts, oilseeds and grains , motor vehicles , semiconductors, composed electronics, oil and gas , waste and scrap, tools doctors, basic chemical products, resin, synthetic rubber, artificial and synthetic fibers, pharmaceuticals and medicines.

In particular, China is the United States' second largest agricultural export market. As for exports of services from the United States, in 2017 they were equal to 57.6 billion dollars, while imports of services were equal to 17.4 billion. The United States therefore recorded a trade surplus in trade in services with China, for a total value of 40.2 billion dollars. These exports to China have increased by 973% since 2001. The main exports of services from the United States to China concern the travel, intellectual property and transportation sectors.

China was the leading country exporter to the United States in 2017. The imports from China accounted for 21.6% of imports and US total shares. These imports increased by 394% from 2000, and mainly concern communication equipment, IT equipment, electrical machines, household appliances and various machines, furniture, kitchen furniture and bed linen, toys and sports equipment, footwear and plastic products. China also ranks fourth in the supply of agricultural products such as processed fruit and vegetables, fruit and vegetable juices, snacks, fresh vegetables and spices in the United States. The main services imported from China to the United States (which grew by 387% from 2011 to 2017) were in the travel, transportation, research and development sectors.

In 2018, exports of United States goods to China totaled 120.341 million dollars, while imports of goods from China amounted to 539.000 million. As a consequence, the trade deficit with China was equal to approximately 419.000 million. In the first quarter of 2019 American exports in China amounted to 25.9944 billion and imports at 973.9 million, leading to a deficit of 79,979.5 million dollars.

The most important reason for this discrepancy is represented by the fact that China produces consumer goods at low cost, compared to a lower cost of labor. In addition, China has become the largest buyer of public securities in the United States.

In December 2018, the U.S. debt to China was \$ 1.12 trillion. Equal to 28% of the total public debt held abroad. Through the purchase of US treasury bills, China helps to keep US interest rates on public debt low, ensuring support for the US economy and thereby allowing US citizens to continue buying from China.

At the same time, US companies are seeking to outsource jobs to China or India to reduce production costs, which has created a drop in jobs opportunities in the United States.

The American production fell between 1998 and 2010, and also related jobs fell by about a third over this period; this has reduced the competitive ability of the United States in the global market.

Among the products widely produced abroad are those of consumer electronics, which in the United States are substantially not produced but are in great demand in the domestic market<sup>72</sup>.

The United States is therefore increasingly disturbed by the growing Chinese power, accused of taking away employment, exporting deflation through the sale of low-cost products, taking advantage of both the low labor costs (thanks to the low rights of Chinese workers) and the devaluation of the yuan.

The decision to impose tariffs on Chinese goods, originating from the above, came from the American President Trump and led to the development of a protectionist policy and the explosion of a real trade war. Trump announced, on March 1, 2018, that the US would impose a 25% tariff on imports of steel and a 10% tariff on those of aluminum.

On July 6, 2018, these tariffs were implemented on these products, when imported from China, for a total value of around 50 billion.

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<sup>72</sup> Kashyap U., Bothra N., *Sino-US Trade and Trade War*, Management and Economics Research Journal, Vol. 5 (2019)

China, a major importer of soybeans and other agricultural products from the United States, immediately reacted by canceling all soybean import contracts.

The trade deficit between China and the United States increased from 40% in 2000 to the current 70%. China claims that this surplus is overrated. According to data from the US Census Bureau, the trade deficit with China in 2017 would have been 375 billion dollars, but Chinese data showed that the country's surplus with the United States amounted to 1.87 trillion yuan (about 298 billion dollars). The basic reason for this gap would be the differences in statistical approaches, which would "swell" the United States' calculation of its trade deficit with China by around 20%; in fact, many products would only be assembled in China, using components made in different countries, but for the purposes of calculation of the commercial gap are considered merely as an import from China<sup>73</sup>.

The main cause of the US trade deficit is actually that in recent decades US companies have moved their production bases to countries where there is a low production cost due to the cost of labor, together with the fact that American consumers they prefer to buy imported consumer goods, especially Chinese, which are significantly cheaper<sup>74</sup>.

There are also restrictions on exports of high-tech goods from the United States to China, which is another cause of the trade deficit with China. Chinese Minister of Commerce recently cited a U.S. research report from March 2018 that the trade deficit with China would decrease by 35% in the event of easing of US export restrictions<sup>75</sup>.

It is equally true that the Chinese companies in many areas limit the participation of foreign investors to 49% of the shares, with and foreign companies that must seek a joint venture with the Chinese companies to establish themselves in the market. In this way, Chinese enterprises may try to learn the "secrets" of foreign technology. Technology is one of the unofficial reasons for the US-China trade war, with China's rapid technological progress and its continued attempts to dominate digital technologies<sup>76</sup>.

The United States has been the technology leader in the world for many decades (and still are today), but China is increasingly focusing on the development of artificial intelligence of robotics and 5G networks, and may soon become the new technological superpower, with an impressive growth strategy. China also wants to compete with the United States in technology, apart from labor-intensive products, and this is one of the factors that threatens to significantly aggravate the trade war between the two countries.

China has a planned economy, with a government that determines economic objectives and achieves them with the help of industrial policy and the correct allocation of resources. The government provides

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<sup>73</sup> [http://www.xinhuanet.com/english/2018-03/27/c\\_137069649.htm](http://www.xinhuanet.com/english/2018-03/27/c_137069649.htm)

<sup>74</sup> The current economic structure of the United States is such as to favor high consumption and low savings, and the US companies lack competitiveness; the lack of innovation and the high labor costs entail a high production cost.

<sup>75</sup> OECD, Goldman Sachs, Wind, Ha Jiming. 2018. *China-U.S. trade conflict: causes and impact*. CF40-PIIE Joint Report. Available at: <https://www.piie.com/system/files/documents/ha20180611ppt.pdf>

<sup>76</sup> Mourdoukoutas P. 2019, January 24. *U.S.-China trade war: the official and unofficial reasons behind it*. Forbes

subsidies to state-owned enterprises and supports Chinese companies on their territory and in foreign lands. This policy often leads to excess production, which is discharged abroad<sup>77</sup>.

According to the current United States government, since China's entry into the WTO, Chinese trade policies have been unfair and, from an economic point of view, very aggressive; there would be major flaws in the rules of the trading system of the WTO, which would allow China to limit exports and to make its exports cheaper compared to other foreign countries, making available a large amount of export credit through state banks, and allowing intimidation towards foreign investors with the piracy of Western intellectual property. It has been estimated that the Chinese theft of the United States' intellectual property amounts to between 225 and 600 billion dollars per year. This would be due to the fact that US companies must transfer their technology to enter the Chinese market, through the joint ventures with local companies mentioned above.

A report published in the United States March 22, 2018 mentioned many cases of " forced "technology transfer and the theft of US intellectual property by Chinese companies. Immediately after the release of the report, the United States announced the imposition of tariffs for Chinese exports to the United States of up to \$ 60 billion, and the rules relating to Chinese investment in the United States were made stricter<sup>78</sup>.

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<sup>77</sup> For example, in the case of steel and solar photovoltaics, negative effects have occurred for the United States and global industries in terms of production and innovation. For further details on this aspect, see: Lawder D. 2018, March 1. *IMF's Lagarde says China needs to do more to cut steel capacity*. Reuters News

<sup>78</sup> Branstetter LG. 2018, June. *China's forced technology transfer problem- and what to do about it*. Peterson Institute for International Economics

## 2.2.1 The imposition of customs duties and their influence in trade between the US and China

China and the United States filed a total of 13 disputes among themselves through the WTO's Dispute Resolution Body: eight filed by the United States and five filed by China. Ten of the 13 cases have been filed since 2007. Since China's accession in 2001, the Asian country has filed a total of seven disputes and the United States twenty-five. Most of China's complaints have therefore been filed against the United States and a third of U.S. disputes (since China's accession) have been filed against China.

China has introduced disputes with only two WTO members: The United States and the EU<sup>79</sup>.

Cause for controversy between the United States and China were regarding the following measures taken by the Chinese government:

- restrictions on distribution and market access rights for various audiovisual and print media;
- protection of intellectual property rights;
- measures limiting the possibility of getting financial information by foreign companies;
- incentives for Chinese companies that met certain criteria in the export of goods and services;
- restrictive measures for the export of raw materials by Chinese companies (in 2008 the United States imported 1.7 billion dollars of raw materials from China, 46.4% of the total of 3.6 billion dollars of US imports of raw materials)<sup>80</sup>.

As for the disputes introduced by China, the most significant were:

- On the safeguard duties imposed on imports of certain steel products: in March 2002, China claimed that certain safeguard measures<sup>81</sup> adopted by the United States had increased the import duties on various steel products in an unjustified manner. The WTO body agreed with China, so that President Bush issued an order that repealed all those measures. In 2002, the United States imported \$ 0.3 billion of steel products from China, 2.2% of total steel imports to the United States and 10.4% of China's total exports of steel products;
- On the dumping<sup>82</sup> cases reported by the United States against some countries, including China itself, for the trade in coated paper, steel, off-road tires and laminated fabrics;
- On measures concerning imports of poultry from China in 2009: United States had issued a law that effectively blocked imports of these food products from China, then had to intervene to review it so as not to include an absolute import ban of Chinese poultry. In 2009, the United States imported \$ 0.2 billion and China exported \$ 0.3 billion of chicken products.

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<sup>79</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/find\\_dispu\\_cases\\_e.htm#results](https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm#results)

<sup>80</sup> Hufbauer G. C., *Trade Disputes Between China and the United States: Growing Pains so Far, Worse Ahead?* Working Paper Series, 2010

<sup>81</sup> The safeguard measures are trade defense policies, activated in the presence of serious damage to companies caused by market distortions, such as those creating from anomalous flows of imports.

<sup>82</sup> Dumping is the export of goods at a lower price than that practiced on the domestic market; often occurs thanks to state intervention, aimed at promoting the inclusion of the products concerned in foreign markets.

- On the safeguard duties imposed on some tires from China: in September 2009 China contested the imposition of safeguard tariffs provided by the Obama administration, following the discovery of a threat of "market disturbance" in the tire market of the States United by the US International Trade Commission (ITC). In 2009, the United States imported \$ 1.9 billions of tires from China, 26.1% of those imported into the United States and 27.7% of China's total tire exports<sup>83</sup>.

Safeguard measures allow the imposition of duties in circumstances where one of the WTO members verifies that imports are increasing so rapidly that they cause or threaten to cause serious injury to the domestic industry. These measures consist on the imposition of anti-dumping duties, which are applied if the following conditions are ascertained during the administrative procedure:

- Effective existence of dumping;
- Dumping injury to domestic producers;
- Causal link between dumping and such injury;
- Community costs higher than consumer benefits<sup>84</sup>.

Since China joined the World Trade Organization, the United States has conducted investigations against Chinese products in 71 cases, involving 83 product sectors. The United States imposed anti-dumping duties on 86% of the occasions, and in 77% of the cases against other countries. China was by far the most frequent target of U.S. attention, with South Korea second, with only 9 cases. The anti-dumping measures related on average to 6.5% of the US imports from China. The highest coverage of the imposition of anti-dumping duties occurred in the period 2002-2009 (16.5% on average) affecting the stone, glass and metal sectors, followed by chemicals and minerals<sup>85</sup>.

Disputes relating to countervailing duties<sup>86</sup> have been less frequent in the last ten years.

The United States has drawn attention to 50 cases of countervailing duties in the years following China's entry into the WTO. Between the 50 cases analyzed, the United States imposed duties in 35 cases. Once again, the Chinese exporters were hit the hardest. The US countervailing duties affected on average 1.5% of imports from China in the period 2002-2009, with an impact on stone, glass and metal industries to the maximum extent (6.4%), followed by plastic, the rubber and the wood industry (4.2%).

Between January 2002 and June 2010, 255 proceedings were initiated by the United States for the violation of intellectual property rights. Once again, China was by far the most affected country (104

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<sup>83</sup> Hufbauer G. C., *Trade Disputes Between China and the United States: Growing Pains so Far, Worse Ahead?* Working Paper Series, 2010

<sup>84</sup> <https://www.mise.gov.it/index.php/it/component/content/article?id=2019751:misure-di-difesa-commerciale>

<sup>85</sup> Hufbauer G. C., *Trade Disputes Between China and the United States: Growing Pains so Far, Worse Ahead?* Working Paper Series, 2010

<sup>86</sup> Countervailing duties are additional taxes imposed on imported goods to offset the subsidies provided to producers or exporters by the government of the exporting country (art. VI GATT).

cases) followed by Taiwan (60), Japan (48) and South Korea (36). Of the 83 completed investigations involving China, the ITC experienced an actual violation in 26 cases (31.3%).

The disputes introduced by the United States and China under the WTO differ for several aspects. While U.S. complaints have focused entirely on measures taken by China internally, China's complaints have, on the contrary, all been filed against U.S. measures in exports.

The broad scope of China's complained US measures has attracted the support of many other WTO members. In fact, all eight U.S. disputes with China generated requests from other members to participate in the negotiations. For four of the five US measures subject to reporting by China, only that relating to steel safeguard clauses was also supported by other member countries. China's measures contested by the United States have been defined as offensive protectionist measures, reflecting a kind of legislation designed to selectively support the development of domestic industries. Almost all the cases brought against China have challenged the legislation, particularly with regard to the high value-added industries in which the United States and other advanced WTO member countries have specialized and China has not yet fully developed. (e.g. financial services and integrated circuit design)<sup>87</sup>.

US measures challenged by China are instead characterized as defensive protectionist measures, motivated by the desire to protect mature domestic industries (steel, tires ...) from further tensions, rather than to support the growth of new industries. More of the half of the 111 consultations requested to China by the United States and other WTO members have challenged the classic border measures: anti-dumping, countervailing duties and guarantees.

These models are broadly consistent with the nature of each country's economy; each country protects its national industries from foreign competition: China has acted by protecting the space of high value-added industries, while the United States has mainly sought to protect industries operating in mature sectors<sup>88</sup>.

Since the foundation of GATT, the US has started to apply non-discriminatory duties on imports from all countries participating in the same agreement; despite having left in 1949, China has been able to enjoy a "favorable treatment" from the United States since 1980, which has granted it the same tariff granted to imports from most of the world's major economies. U.S. imports from China have thus increased significantly since 1978 and have grown further with China's accession to the WTO. With this latter event, imports of US products to China have also increased exponentially.

However, Chinese imports from the United States remained below a third of U.S. imports from China: this led to the steady increase in the U.S. trade deficit, which led to the outbreak of the U.S.-China trade war in 2018, with President Trump's decision to impose additional duties on 818 Chinese-made

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<sup>87</sup> Parenti A., *Il WTO*, Bologna, il Mulino (2011)

<sup>88</sup> Hufbauer G. C., *Trade Disputes Between China and the United States: Growing Pains so Far, Worse Ahead?* Working Paper Series, 2010

technological and industrial products, for a total value of over 34 billion dollars of goods, at a rate of 25%, and the related Chinese response with imposition of duties on Americans products such as agricultural products and vehicles in particular.

The American trade deficit against Beijing reached \$ 376 billion in 2017, equal to 47% of the total deficit, and according to Trump these numbers would constitute evidence of irregular behavior held by China.

In 2017, Chinese imports to the United States affected by special duties, amounted to 7.5%. This quantity increased to 50% between 2018 and 2019, affecting a total volume of trade for 250 billion dollars. These duties have been added to the countervailing and anti-dumping duties, which had already been applied to Chinese imports in the years between 2001 and 2017. The products affected at first were aluminum, solar panels, steel and washing machines; no electrical machinery, toys, electronics and especially minerals were affected, for which the United States are heavily dependent on China.

The duties imposed by the Trump administration also affected 90% of the intermediate inputs<sup>89</sup> imported from China; this represented a big change compared to the past, which risks could worsen the competitiveness of local businesses at a global level.

The current skirmishes do not represent an absolute novelty as regards the treatment reserved by the United States for products imported from abroad, but the current phenomenon is different from the past both in terms of size (for the number of products involved and the monetary value interested) and because in the past these policies were aimed at specific products and a greater number of countries.

The Chinese response was characterized by an increase in the products of imports subject to special rates from 5 to 70%, for a volume of 110 billion dollars of products, and mainly concerned products already affected by anti-dumping or countervailing duties, which increased on average from 10% to 18%<sup>90</sup>.

The main events that characterized the "trade war" between the United States and China in 2018 are summarized below:

January 23 - Duties on imports of washing machines and solar panels from the United States.

March 1 - Duties on steel and aluminum announced by the United States.

March 19 - China announces its intention to react to American tariffs on steel and aluminum.

March 23 - U.S. tariffs on aluminum (10%) and steel (25%) enter into force.

April 2 - \$ 3 billion in duties on products imported from the US to China.

April 3 - Duties announced on 1,333 Chinese products (for \$ 50 billion) by China.

April 4 - China announces that it will impose duties for the same amount.

June 15 - New American duty of 25% on Chinese goods, for 50 billion dollars.

June 16 - China announces duties for as many as \$ 50 billions of imported products.

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<sup>89</sup>Intermediate Inputs are represented by the value of the goods and services consumed as inputs in a production process. For further details, see <https://www.bea.gov/help/faq/185>

<sup>90</sup> <https://www.ispionline.it/it/pubblicazione/fact-checking-i-dazi-di-trump-23390>

June 18 - The United States announces the assessment of 10% tariffs for Chinese products, for a total of 200 billion dollars.

July 2 - China Mobile is barred from entering the U.S. telecommunications market.

August 1 - The United States estimates a further 25% duty increase on \$ 200 billion worth of products.

August 3 - China responds by announcing its intention to impose new duties on \$ 60 billions of products purchased from the United States<sup>91</sup>.

September 18 - The United States announces that the new duties for 200 billion dollars of imports from China will be effective from September 24, with an initial 10% and a 25% from January 1, 2019; China announces the entry into force of the new duties, 10%, for the same day.

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<sup>91</sup> Council on Foreign Relations, U.S. Relations with China, 1949-2020. Complete timeline available at: <https://www.cfr.org/timeline/us-relations-china>.

### 2.2.2 Dumping and anti-dumping policy: a definition

"Dumping" means a situation in which the export price of a product is lower than the selling price in the exporting country, or compared to the "normal value" of the product, intended precisely as the price charged in the country where the goods are sold; if this country is not governed by a market economy, normal value is determined based on the price of the same product in a third country, where there is a market economy, or on any other "fair" form.

A sporadic discounted sale, in the sense of ordinary trade, is not dumping; this can be implemented to get rid of a temporary and unexpected surplus of a certain asset.

Where it is shown that the dumped imports cause injury to the importing country, pursuant to the WTO Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade of 1994 (so-called "Anti-dumping Agreement"), pursuant to and through an investigation under this agreement, the importing country may impose anti-dumping measures to ensure aid to the national industries injured by imports.

The imposition of an anti-dumping duty by a country is determined by the dumping margin, represented by the difference between the export price and the domestic sales price in the exporting country.

By adding the dumping margin to the export price, the dumping price can be made a "fair" commercial price. When it is impossible to achieve a comparable domestic price, because there are sales at a reduced volume or void in the ordinary course of trade in the domestic market, the price comparison the price for export to third countries or a "value is used as constructed". A "constructed value" is represented by the cost of production in the country of origin, with the addition of a reasonable amount for administrative, sales and general costs, as well as for profits.

Similarly, when the export price is considered unreliable, the price at which the product is resold for the first time to independent customers or another price on a reasonable basis, determined by the authorities, can be used in the price comparison.

Dumping only occurs if markets are highly segmented (it is difficult to buy goods in one market and resell them in another) and there is imperfect competition (whereby companies can help determine market prices).

Due to the price difference that is created between the domestic and foreign markets, dumping can be used to maximize the profits of the companies.

Usually the price charged by companies in the domestic market is higher than the foreign one, as the market share is generally higher; the price of sales abroad, due to the lower market share and due to greater competition, are more susceptible to variations and more influenced.

There is a tendency to distinguish between sporadic dumping, of which we have already spoken, persistent and predatory dumping; the latter is the one that causes the most damage to consumers and businesses, as it consists in selling a product below the cost of production to push foreign companies

out, and then raise the prices once they are out from the market. The persistent dumping consists in artificially influencing the sales prices of the products, in the internal market, to keep the domestic companies in an advantageous position compared to the foreign ones, but obviously it does not detract from the consumers who benefit from lower prices even in the long term period.

The anti-dumping measures are an exception with respect to the most-favored-nation treatment rule, therefore it is necessary to take great care to be relied upon. However, unlike safeguard measures, which are also instruments aimed at protecting the national industry, the implementation of the anti-dumping measures does not require the government to provide compensatory concessions or to approve countermeasures with respect to the policies implemented by the commercial partner. This has led increasingly to the abuse of anti-dumping measures. These measures consist in the imposition of an import duty equal to the dumping margin, given by the difference between the selling price abroad and the "normal" price of the good, understood as the price at which the good is sold by the manufacturing company in the own internal market.

In the USA, anti-dumping policies are set by the Department of Commerce, to which an enterprise can appeal if it believes such a situation exists in a foreign country.

In the EU, the European Commission opens an investigation following reports from producers of at least 25% of the European producers of the product concerned; therefore, it assesses whether there is dumping, damage to European companies ensues, and whether the definition of tax measures on imports is in the economic interest of Europe and its consumers: only in this case will the price of imports be increased with the imposition of a duty.

The anti-dumping investigations are often initiated on the basis of insufficient evidence, and anti-dumping duties can be maintained long after the conditions for their removal are eliminated. Some countries applied arbitrary anti-dumping measures to limit imports, rather than to achieve the limited corrective objective authorized in the agreement. In light of this situation, one of the focal points of the Uruguay Round negotiations has been to establish clear discipline to curb the abuse of anti-dumping measures as instruments for protectionism and restriction of imports.

Although considerable progress has been made in this process compared to the past, many countries still express much concern about the abuse of this tool<sup>92</sup>.

The international anti-dumping rules are provided for in letter a) of art. VI of GATT and letter b) of the WTO anti-dumping agreement. During the "preparatory phase" of the WTO the Tokyo Round anti-dumping code was revised to become the new anti-dumping agreement following the Uruguay Round negotiations. The modification of the code was requested because the investigation of prices and costs in order to measure the damage to the domestic industry and calculate the dumping margins were extremely technical and complex, and because the Tokyo Round anti-dumping code did not have enough

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<sup>92</sup> Fara P., Soprano R., *Dumping e antidumping. Una guida per le imprese di fronte alle sfide della globalizzazione*, Il Sole 24 Ore (2009).

details for complexity of current international transactions. The lack of details of the Code has led to a lack of effective disciplines and has heightened the tendency to abuse the anti-dumping provisions, thus requiring a revision of the Code.

The WTO holds two meetings of the Anti-Dumping Committee (AD Committee) each year to provide a forum for discussion on anti-dumping measures. Among the committee's activities include the review of laws to implementation of anti-dumping measures, to facilitate compliance with the agreement, the listening to reports about anti-dumping measures on the various countries and study of issues in policies and in the anti-dumping practice. The AD Committee is directly subordinate to the Council for Trade in Goods and reports annually on the implementation and administration of the Anti-Dumping Agreement. The AD Committee has also organized, over time, various forums for the discussion of specific points of contention.

The AD Committee is also charged with reviewing the individual national laws, and Nations are required both to communicate the laws on the Committee, and also to respond to requests for other countries on their systems. If some problems are discovered, the WTO member Nations are required to align national laws to the agreement<sup>93</sup>.

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<sup>93</sup> [https://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_e.htm](https://www.wto.org/english/tratop_e/adp_e/adp_e.htm)

### 2.2.3 State subsidies: a definition

At the origins of GATT, little attention had been given to the commercial impact of subsidies. However, the contracting parties soon appreciated the need to manage these types of subsidies in order to guarantee the value of the agreed tariff concessions.

One country could indeed undermine its commitments to access to the free market by providing subsidies to industries Local competes with other foreign in the domestic market. Furthermore, subsidies granted to competing exporters from third countries can destabilize and "drug" trade with a country that was part of the same agreement.

These concerns led to the development of stricter disciplines on subsidies than those initially provided for by GATT. An important step in this direction was the negotiation of the "Code of subsidies" during the Tokyo Round and, subsequently, the agreement on subsidies and compensatory measures and the agreement on agriculture.

In most of these relationships the term "subsidies" refers to the concept later used in the founding agreement of the WTO.

Although the term "subsidy" is widely used in economics, it is often not defined clearly. Often it is treated as an "inverse tax", that is, a transfer of money by the government to an entity in the private sector. Or else it is defined as "a sum of money granted by public funds to help a sector or company to keep the price of a product or service low"<sup>94</sup>.

Many argue that even the tax benefits are also a form of subsidy. In fact, it may not make much difference to recipients to receive resources directly, or indirectly through the reduction of tax revenues. Both forms of "assistance" represent financial transfers from the government.

Tariff protections, on the other hand, do not involve any financial transfer by the government, but rather lead to tax revenues. However, it can be argued that the imposition of a tariff represents a form of subsidy for sectors competing with imports from abroad, which are therefore protected from competition from foreign companies.

An alternative approach is to consider a "subsidy" as an advantage that occurs every time a government program intervenes for the benefit of businesses.

The main problem with this approach is that the recipients, for example, of a money transfer or of a tax concession, are not necessarily the final beneficiaries of economic policy. For example, the main beneficiaries of subsidized intermediate goods may not be the recipients of the subsidies, but rather the downstream companies that use these products as input in their production.

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<sup>94</sup> This definition assumes that the subsidies received have an effect on the sale price.

However, it was generally agreed on the fact that subsidies are tax policy, or direct incentives, which come from the government of a country and creates benefits for someone, according to approaches that differ with regard to details<sup>95</sup>.

A government can provide goods or services free of charge or below the market price, as is done extensively for the ' university education, the public transport or healthcare expenses. Regulatory policies can be seen as subsidies, if there is transfer from a “social group” to another one. Tariff border protection, for example, allows for price discrimination and the pooling of revenue for producers, who in this way are implicitly financed by domestic consumers.

In this context, regulatory instruments can circumvent forms of direct subsidies, with the same effects but at higher welfare costs.

Governments have a wide range of different tools at their disposal for granting subsidies. The definitions of subsidies tend to refer to one of the following characteristics of government interventions in order to de limit the concept of subsidy itself: the recipients of the subsidies, the form themselves, the objectives and the effects.

Furthermore, these definitions often distinguish between two categories of recipients: producers and consumers. Sometimes they also refer explicitly to the nationality of people, making a distinction between national and foreign destinations. Any given grant program can limit the subsidies to certain subgroups in the interior of these categories. The more the group of recipients (potential) is defined narrowly, the more a grant program is considered specific. Grant programs with a wide range of potential recipients, on the other hand, are often referred to as "general" grants.

Neither the GATT nor the Subsidy Code resulting from the Tokyo Round contained a definition of the term "subsidy". The definition was introduced for the first time in international trade with the agreement "Agreement on subsidies and countervailing measures " of the WTO.

Article 1 of the Agreement, entitled " definition of subsidies", specifies the conditions for which there should be a subsidy. First, there must be a "financial contribution by a government or any public body ".

The different forms of financial transfers mentioned above are defined as:

- direct transfer of fund, including potential transfers, such as guarantees and loans;
- renunciation of revenue otherwise due;
- government-supplied goods and services other than general infrastructure.

It is believed that there are benefits even if a government makes payments to a funding mechanism or entrusts or order a private body to carry out one or more of the types of features described above.

In addition to financial contributions from a government, the agreement also includes any form of income or price support within the meaning of Article XVI of the 1994 GATT , or any form of support that operates directly or directly to increase exports of any product , or reduce imports into the territory

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<sup>95</sup> Roccas M., *Nuove teorie del commercio internazionale*, Milano (1975)

of a Member State Any financial contribution or form of income or price support of this type must confer an advantage on the recipient to be considered a grant under the agreement<sup>96</sup>.

In order to determine whether a subsidy, as defined in Article 1 ( 1 ), specifically refers to an undertaking, or to a sector or group of undertakings or sectors in the jurisdiction of the granting authority, it applies the following principles apply, defined by Art. 2 :

- If the granting authority, or the legislation under which the granting authority operates, explicitly restricts access to a subsidy to certain enterprises;
- If the authority of the granting or the legislation under which the authority granting authority operates, establishes criteria or objective conditions governing no eligibility for receiving benefits and the amount of a grant, specificity must not exist, provided that eligibility is automatic and that these criteria and conditions are strictly respected. The criteria or conditions of access must be clearly set out in a law, a regulation or another official document, so you can be verifiable.
- If there are still reasons to believe that the subsidy could in fact be specific, can be considered other factors, such as the use of a subsidy program used by a limited number of certain enterprises, with predominant use by certain firms, or the granting of disproportionately high grants to certain firms, as well as the way in which discretion was exercised by the granting authority in the decision to award the grant.

In applying the above, account must be taken of the extent of the diversification of economic activities within the country granting the aid, as well as the period of time during which the grant program has been (or will be) in force.

A subsidy limited to certain companies located in a specific geographical area is considered specific.

Article. 3 specifies further prohibitions regarding:

- contingent subsidies, in law or in fact, upon export;
- subsidies subordinated, exclusively or as one of several other conditions, to the use of domestic goods with respect to those of import.

Article. 4 establishes that whenever a member country has reason to believe that a subsidy is granted or maintained by another member, in violation of the conditions set out in the previous articles, that country may request the start of consultations.

A request for consultations must include a statement of available evidence regarding the existence and nature of the grant in question. The purpose of the consultations is to clarify the existence of the prohibited subsidy case, and to reach a mutually agreed agreement.

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<sup>96</sup> [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/wtr06-2b\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/wtr06-2b_e.pdf)

If no agreed solution is reached within 30 days from the request for consultations, interested members may refer the matter to the dispute resolution body, for the immediate establishment of a panel, unless the body decides by consensus. At the time of its establishment, the panel may request the assistance of the permanent group of experts to assess whether the measure in question is a prohibited aid, as well as the existence and nature of the measure in question and must offer an opportunity to the country member of applying or maintaining the measure to demonstrate that it does not fall into the category of prohibited subsidies. The expert group reports its conclusions to the panel within a predetermined time limit, and its conclusions must be accepted by the panel without modification. After that, the panel must submit its final report to the parties to the dispute. The report must be distributed to all members within 90 days from the date of composition and definition of terms.

If the measure has been considered a prohibited subsidy, the panel should recommend to the country concerned to withdraw the subsidy without delay, specifying a deadline<sup>97</sup>.

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<sup>97</sup> “Agreement on subsidies and countervailing measures”, disponibile su [https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf)

### 2.3 The sequence of events between the USA and China in 2018

After winning the presidential election, on February 9, 2017, Trump broke a long-established custom, talking on the phone with the Taiwanese President Tsai Ing-wen and questioning the position of the United States in the recognition of a single China, brought forward from Washington for four decades. The United States has maintained formal ties with the People's Republic of China, but in reality, also unofficial ties with Taiwan, including the provision of defense aid.

On 6 and 7 April 2017 Trump opened his home to the Chinese President Xi Jinping, in Florida with bilateral trade and the "question of North Korea" on the agenda.

After the meeting, Trump stated that there would be "huge progress" in US-China relations. In mid-May 2017, the Secretary of Commerce of the United States Wilbur Ross has revealed to an agreement, containing ten points, between Beijing and Washington to expand the market of products and services such as beef, poultry and electronic payments. Ross described the bilateral relations as "the all-time high", although the two countries not had tackled the most controversial trade issues, among which aluminum, car parts and steel<sup>98</sup>.

In spite of the positive steps taken in 2017 in the confrontation between the two countries, the 1 January 22, 2018 the President Trump has imposed a 30% tariff on foreign solar panels, providing for a reduction to 15% after 4 years. China was (and still is) the world's largest manufacturer and buyer of solar panels. In the course of 2018, some tariffs of 20% on imports have been imposed on washing machines to 1.2 million units; Again, China is a major producer of this commodity<sup>99</sup>.

On March 1, 2018, President Trump then announced the imposition of 25% tariffs on the import of steel and 10% on aluminum; The US government has also listed over 1,300 Chinese imported products for the imposition of tariffs, including parts of aircraft, batteries and flat-screen televisions for medical devices, satellites and various weapons.

In response, on April 2, 2018, China has announced the imposition of tariffs on imports on 128 US products, among which aluminum, airplanes, cars, pork, soybeans (25% rate), fruit, nuts and steel pipes (15%).

In addition, China canceled all soybean import contracts; this had a disruptive effect, considering that until then it had imported \$ 12 billion a year of soybeans annually from the United States, and that US farmers sold nearly 50 % of their harvest in China.

In July 2018, soy prices have in fact declined drastically to US farmers.

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<sup>98</sup> <https://www.cfr.org/timeline/us-relations-china>

<sup>99</sup> MI Qiang 米强, Zhōng měi mào yì zhàn: Shuāng fāng zhī jǐ bù zhī bǐ?, 中美贸易战：双方知己不知彼?, (US and China' s trade war is based on false assumptions), on China Financial Times, 2018, available at: <http://www.ftchinese.com/story/001079274/en?ccode=LanguageSwitch&archive>

On April 5, 2018, Trump threatened to impose higher tariffs for other 100 billion dollars of products for Chinese import and export. The next day China brought the case to the attention of the WTO, asking for a consultation with the United States.

On May 4, 2018, in a unilateral way, the United States posted on China some conditions for the interruption of the measures taken:

- stop granting subsidies to Chinese technology companies;
- stop "stealing" US intellectual property rights;
- reduce tariffs on U.S. imported goods by 2020;
- allow greater American investments in China, also through the opening of the share capital of Chinese companies to American capital;
- commit to reducing the \$ 200 billion trade deficit by 2020.

On May 20, 2018, after the Chinese Prime Minister's visit to Washington, China agreed to buy more U.S. products and reduce the trade deficit.

Evidently not satisfied with the promises received, on June 15, 2018, the United States announced a 25% tariff on Chinese goods, for about 50 billion imported products, with advanced technology. For 34 billion, the duties would have started from 6 July 2018 and for the remaining part they would have started later.

China has therefore threatened to respond by increasing tariffs on US imports from July 6, 2018. On June 18, 2018, Trump said that the United States would impose an additional fee of 10% on Chinese imports for 200 billion dollars, if China had duty imposed in response to these U.S. tariffs.

The next day, China has instead announced the further imposition of new tariff on US assets for 50 billion dollars and claimed that the US had "launched a trade war."

On July 6, 2018, the U.S. then imposed tariffs on Chinese goods worth \$ 34 billion, and China reacted with the introduction of a 40% tariff on the U.S. auto industry.

On August 23, 2018 it was the turn of the imposition of a new tariff by the United States, of 25% on 279 Chinese goods for a total value of 16 billion dollars. China has therefore imposed customs tariffs on goods of equal value.

On August 14 and August 27, 2018, China filed a complaint with the WTO against the imposition of U.S. tariff increases.

On September 17, 2018, the United States announced that a new 10% tariff on Chinese goods worth \$ 200 billion a year would go into effect on September 24, 2018, then increase to 25% by the end of the year.

China retaliated on September 18, imposing 10% tariffs on 60 billion US imported goods.

On 1 December 2018, the announced tariff increases were postponed by 90 days after the meeting of the heads of the two countries. China was given the deadline of March 1, 2019 to implement the required

reforms; otherwise, the next day would be imposed tariffs of 25% on Chinese goods to be worth over 200 billion dollars.

China has agreed to purchase large quantities of soybeans and other agricultural products, energy products and industrial products from the United States, and has also reduced tariffs on imports of U.S. cars from 25 % to 15% with effect from July 1, 2018.

The pressures of the United States were designed mainly to ensure that China did structural reforms to curb the "theft" of intellectual property of US companies, dumping on poor-quality goods, the restrictions on the entry of manufacturers and suppliers of US intelligence, the political agricultural policies contrary to US farmers and industrial policies which, according to the Trump administration, would have reduced jobs in the United States.

Some Chinese companies, such as ZTE<sup>100</sup>, have been found guilty of selling sensitive US technologies to countries such as Iran and North Korea; according to the US, China would also be in charge of the figure ranging from 50 to 80% of cross-border theft of intellectual property throughout the world, and more than the 90% of cases of cyber espionage in the United States.

The European Union has complained during the WTO against China on the grounds that the Chinese legislation requires the establishment of joint ventures with Chinese companies to enter the market place, and that foreign companies have to give up to the knowledge acquired in China, and this would represent a violation of WTO rules<sup>101</sup>.

At the end of 2018, the tension between the two countries began to ease, first with a phone call between the two Presidents in early November and then with a dinner in Argentina on the margins of the G20, following which they agreed that from 1 January 2019 additional fees would have been imposed; the sanctions provided by the United States on approximately \$ 200 billions of Chinese products have therefore been "paused", and on the other hand China has undertaken to increase its purchases of agricultural products, industrial products, energy and other goods from the United States, so as to reduce the trade deficit between the two countries<sup>102</sup>.

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<sup>100</sup> ZTE Corporation is a global leader in telecommunications and information technology. Founded in 1985 the company is committed to supply integrated end-to-end innovations to offer excellence and value to consumers, operators, companies and customers to provide greater connectivity and productivity. For the company presentation, see [https://www.zte.com.cn/global/about/corporate\\_information](https://www.zte.com.cn/global/about/corporate_information).

<sup>101</sup> Kashyap U., Bothra N., *Sino-US Trade and Trade War*, Management and Economics Research Journal, Vol. 5 (2019)

<sup>102</sup> <https://www.lastampa.it/economics/2019/08/13/news/la-guerra-commerciale-usa-cina-in-12-punti-1.37343761>

### 2.3.1 The Trump administration, the imposition of customs duties

The worries of US for Chinese policies on intellectual property, technology and innovation have led the Trump authorities to start an investigation of these policies, in accordance with art. 301 of the Trade Act. Consequently, the US has implemented three cycles of increasing tariff for a total of 250 billion dollars' worth of Chinese products, while in China tariffs on US goods have increased for a value of 110 billion dollars products, just like before.

The articles from the 301 to the 310 of the Trade Act of 1974, are commonly referred to as "Section 301", represent one of the main statutory means by which the United States assert their rights in trade agreements with foreign countries, trying to eliminate foreign barriers to US exports, considered "unfair". The section 301 procedures apply to acts, foreign policies and practices that, according to the USTR (United States Trade Representative<sup>103</sup>), violate or are inconsistent with a trade agreement, and are not justifiable, creating a burden or restricting trade in the US.

The set of procedure measures and the calendar of actions vary, according to the type of commercial barriers faced. Once that is initiated, an investigation under section 301, in the first instance is seeking a negotiated solution with the foreign country concerned (by means of a compensation or an elimination of the barrier or particular practice); for matters involving trade agreements, such as those provided by the WTO, the United States is, however, required to use the dispute settlement provided for in the specific system.

The USTR has 12 to 18 months to look for a negotiated resolution; if no agreement is obtained, the USTR assesses whether to retaliate (usually in the form of an increase in import tariffs) at a level equivalent to the economic losses that are estimated to have been suffered by US companies from the barrier or the practice put in place from the foreign country<sup>104</sup>.

After the establishment of the WTO, the USTR has repeatedly initiated investigations under Section 301, bringing the matter to the competent body of the WTO for dispute settlement.

The use by the Trump administration of Section 301 represented a significant detachment from previous U.S. practices.

On 22 March 2018, the President Trump firm signed a memorandum on US actions following the investigation under Section 301. Describing the United States as the target of a genuine "economic aggression" from China, the memorandum identified in particular four policies that would have justified the United States' retaliation against China:

- the use of joint venture requirements, restrictions on foreign investment, administrative review and mechanisms for obtaining licenses to force or put pressure on technology transfers from US companies to Chinese entities;

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<sup>103</sup> <https://ustr.gov/about-us/about-ustr>

<sup>104</sup> <https://fas.org/sgp/crs/row/IF10708.pdf>

- maintaining practices of unfair market, which would prevent foreign companies from getting results based on its intellectual property;
- the facilitation of investments and acquisitions that generate large-scale technology and the transfer of intellectual property rights supporting the objectives of the Chinese industrial policy, as also established by the project of Made in China 2025;
- support for computer intrusions in US computer networks to access valuable information activities<sup>105</sup>.

The next day, March 23, 2018, duties were imposed by the United States on imports of steel (25%) and aluminum (10%) from China, with Canada, Mexico and the EU excluded from taxation. In response, on April 2, China imposed tariffs on over 128 products, including aluminum pipes, steel pipes, pork, fruit and wine, with percentages between 15% and 25%.

On April 16, 2018, the U.S. Department of Commerce opened a file against the Chinese company ZTE (Zhongxing Telecommunications Equipment Corporation), due to alleged violations of U.S. sanctions against Iran, and banned American companies from pursuing business relations with ZTE for seven years.

The main fear was dictated by the fact that the products sold by the company could be a threat to national security; the same fate has fallen to HUAWEI.

In connection with these measures, the US government said that "based on public information and private revelations, it cannot be excluded that Huawei and ZTE are influenced by the Chinese government and therefore could pose a threat to the security of the United States of America and of its systems"<sup>106</sup>.

After the investigation, the ZTE admitted that intentionally disguised shipments through other countries and agreed to pay 1.19 billion dollars (7.5 billion yuan) in fines. ZTE relies goes to US suppliers for about 25-30 percent of the components in its visual equipment, network and smartphones.

On April 16, 2018, Secretary of Commerce Wilbur Ross announced that the United States would ban exports to the United States for ZTE and its affiliates for seven years, as mentioned above, putting the smartphone maker's business at Shenzhen. This was a major blow for ZTE: the company exported nearly 30% of the components produced in the United States. Shortly thereafter, trading in ZTE shares was suspended on the Chinese markets, in Hong Kong and Shenzhen, and less than a month later, on May 9, 2018, ZTE announced the closure of its main commercial operations.

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<sup>105</sup> <https://ustr.gov/sites/default/files/enforcement/301Investigations/301%20Draft%20Exec%20Summary%203.22.ustrfinal.pdf>

<sup>106</sup> <https://www.nytimes.com/2012/10/09/us/us-panel-calls-huawei-and-zte-national-security-threat.html>: "The US Congress freezes Huawei and ZTE, because they are too Chinese", 2018

On May 13, 2018, Trump announced that, together with Chinese president Xi Jinping, they were working to give the ZTE Corporation a chance to return in business with the United States, as many jobs were at risk in China.

However, the following day, U.S. Secretary of Commerce Wilbur Ross contradicted President Trump by saying that ZTE would not be affected by the trade negotiations<sup>107</sup>.

The two sides opened negotiations on the Section 301 investigation; different issues were also the subject of these discussions compared to the four points previously listed. Talks were held in Beijing on 3 and 4 May 2018, during which a large number of requests were made to China, summarized as follows:

- reduction in the trade imbalance of at least € 200 billion in two years;
- the resolution of each of the four problems outlined above;
- the interruption of subsidies for the Made in China 2025 initiative;
- the removal of restrictions on foreign investment;
- alignment of China's tariff levels with US tariff rates, with the removal of unclear obstacles;
- improving market access for US service providers and agricultural products.

On May 19, the United States and China issued a joint statement to the effect that there were progress on a range of trade issues, and the May 21, the Treasury Secretary of the United States Steven Mnuchin said that the trade war had been “paused”, waiting for the achievement of an agreement.

Despite these good wishes on May 29, the White House announced to proceed against China under Section 301 of the Trade Act, by imposing ad valorem rate of 25% rates for a value of 50 billion US dollars of goods imported from China, and implementing new restrictions on investment, with the strengthening of controls on exports of entities and Chinese people in connection with the acquisition of “significant technology from the industrial point of view”, for reasons dictated by national security, continuing in parallel to pursue Chinese policies within the WTO.

The White House also said it would require China to remove trade barriers and implement policies that make fees and rates mutual between the two countries and equivalent information, both in nature than by value.

Subsequently, the Chinese government said that the actions of the White House were contrary to the agreement reached between the parties and said that it would not implement the market opening measures for which it had previously committed itself.

On June 15, 2018, the USTR announced a two-step plan to impose 25% tariffs on \$ 50 billion worth of goods imported from China. When China, on 16 June 2018, issued its plan to retaliate against the United States, which is also divided into two phases, the Trump administration has asked the USTR to propose, in a preventive manner, a new list of products, which could have been affected by a 10% increase in

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<sup>107</sup> Mallick PK, "US-CHINA Trade War", VIF PAPER, September 2018

tariffs in the event that China had implemented ventilated retaliation. The first products to be affected by American tariffs were steel and aluminum; these duties were aimed at promoting the development and consolidation of the US steel industry, protecting it from international competition and in particular from China.

The U.S. measures to increase tariffs by 25% then went into effect on July 6, 2018 (worth \$ 34 billion worth of products) and August 23 (on \$ 16 billion worth of products). This second tranche concerned a long list of products, strictly "made in China"; the duties were aimed at making these products more expensive in the United States, so as to preserve "local" productions.

On September 17 the Trump administration announced a third tranche of tariffs on imports from China (amounting to 10%, with increases of 25% from 1 January 2019) of Chinese products worth 200 billion dollars (effective in September 24). China responded by increasing rates (5% and 10%) of US products worth 60 billion of euro.

After the temporary truce following the "relaxing" dinner on December 1, 2018, with suspension of the entry into force of the last tranche of tariff increases, on February 24, 2019, the President Trump "tweeted" that progress was being made in trade talks and that the expected increases would shift over time. On May 5, 2019, President Trump again "tweeted", claiming that the negotiations were going too slowly, and shortly thereafter ordered the rate hikes under Section 30.

On May 13, 2019 China announced that it would increase tariffs on many products on the third retaliatory tranche, claiming that the trade talks had stopped due to the United States, that they would persist in excessive requests and also in interference on China's internal affairs.

The first quarter of 2019 show that the United States exports and imports from China decreased respectively by 19.6% and 13.9%<sup>108</sup>.

Ultimately, in 2018 tariffs were introduced on imports into the United States from China for 250 billion euros, divided into three tranches, and additional tariffs for over 260 billion euros were proposed; China instead imposed tariff restrictions on goods purchased by the United States for 110 billion euros, also divided into three tranches.

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<sup>108</sup> <https://fas.org/sgp/crs/row/IF10708.pdf>

### 2.3.2 Retaliation by the PRC: the case of soy and ZTE

After the publication, by the USA on June 15, 2018, of a new list of imported products that would have been affected by duties, China responded the following day with the issuing of its list, mainly containing agricultural and food products; these included soybeans, an agricultural product very important in trade between the two countries, which was subject to a 25% duty on the imported value.

Since the 1980s, China has been one of the world's largest importers of agricultural products, and for the United States it has been the privileged trading partner for the past two decades. It is enough to say that in 2017 the trade between the two countries amounted to almost 32 billion dollars, speaking only of agricultural products, and that 20% of total Chinese imports of agricultural products come from the United States.

With the objective of improving the quality of life of their population, the post-1978 Chinese governments set themselves the goal of increasing the share of protein in the diet, and to do so they focused on soy, inexpensive and rich in protein, which can also be used as feed in pig breeding (which in fact grew considerably).

An ad hoc commercial agreement was then signed with the United States, large soybean producers; US soybean farmland increased by nearly 15% from 2013 to 2017, with an increase in production value of approximately \$ 40 billion<sup>109</sup>.

The Chinese import actually concerns mainly soybeans, for which the purchase of China provides for favorable taxation, in compliance with international agreements.

This choice is due to the desire of balancing the need to buy from abroad with that of safeguarding local production and labor.

China purchased soybeans from the United States in 2017 for over \$ 12 billion, which accounted for a large share of exports from the United States to China (63%), as well as a significant share of the total US soybean exports (almost 60%)<sup>110</sup>.

Given the potentially devastating scale of Chinese tariffs on soybean imports from the United States, the Trump government has launched a program of subsidies to tariff-affected agricultural producers, providing for three specific actions:

- *Market Facilitation Program*, for the payment of contributions to producers of dairy and pork, soy, wheat, sorghum, wheat and cotton, based on the amount of the annual harvest;
- *Trade Promotion Program*, to assist damaged agricultural enterprises in finding other outlet markets for their products;

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<sup>109</sup> Muhammad A., Smith SA (2018), *Evaluating the Impact of Retaliatory Tariffs on US Soybeans in China*, University of Tennessee

<sup>110</sup> UN, <http://www.un.org/>, August 6, 2018

- *Food Purchase and Distribution Program*, to purchase unsold production surpluses and donate them to associations with charitable purposes<sup>111</sup>.

The aid program, especially as regards the part of the Market Facilitation Program, raised doubts about the compatibility with the agreements made within the WTO.

Pursuant to art. 6 of the Agriculture Agreement resulting from the Uruguay Round of 1994, in fact, are defined maximum limits with which each member country can intervene in the provision of subsidies to companies operating in the agricultural sector.

The drop in the price of soybeans following the announcement of Chinese duties was then very significant, equal to almost 20%, such as to far outweigh the benefit that soybean producers were able to receive from subsidies; furthermore, the maneuver of the American government, aimed only at the internal market, did not generate any incentive towards China to eliminate its internal practices in support of production.

Before the duties, US soybean production had a positive effect on exports to China, as did the soybean bargaining price; the increase in the price of oil, on the other hand, caused a reduction in both production and exports of soy: on a monthly basis, it is estimated that for an increase in oil of one dollar a barrel there was a reduction in exports of over 1,000 tons.

It seems almost superfluous to say that, following the imposition of duties, the bargaining price of soybeans in the United States (at the Chicago Board of Trade) suffered an immediate fall, losing 14%, and subsequently falling by over 20 points percentages, against a corresponding increase in soybeans produced in Brazil, a country to which the "voracious" Chinese demand has turned<sup>112</sup>.

From the month of September 2017 to May 2018, the exports of soybeans from the US to China has reached a total of 27.7 million tons; this quantity fell by more than 70% during the nine months between June 2018 and March 2019<sup>113</sup>.

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<sup>111</sup> USDA (24 August 2018), US Domestic Agricultural Support in the International Context: <https://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/us-domestic-agricultural-support-in-the-international-context/>

<sup>112</sup> Bloomberg ( July 5 , 2018), Why Soybeans Are at the Heart of the US-China Trade War, <https://www.bloomberg.com/graphics/2018-soybean-tariff/>

<sup>113</sup> <https://www.startmag.it/mondo/ecco-gli-effetti-della-guerra-usa-cina-su-petrolio-e-agricoltura/>

## 2.4. The role of the WTO within this dispute

The need to normalize international trade through the definition and creation of a regulated multilateral trading system led to the creation of the WTO, which was essentially established for three main purposes. The first is to provide a regulated phase for member countries to consult and negotiate their commercial agenda; the second is to ensure that no member country was discriminated in terms of trade; the third is represented by the guarantee of a system of judgment functional to allow the resolution of disputes between countries.

In order to strengthen the multilateral trading system, the dispute resolution system, governed by art. 23, underlines the need for the parties to use the multilateral dispute resolution mechanism within the WTO in case of perceived damage caused or cancellation of rights by another member country.

In light of the trade war between the USA and China, and the retaliatory measures adopted by both parties without resorting to the other rules and procedures envisaged by the WTO, the need for reforms of the WTO dispute resolution mechanism emerged. In addition, the analysis of the consistency of the WTO agreements with Article 47 of the Law on Foreign trade of China and the Section 301 of the law on Foreign Trade of the United States, national laws invoked respectively from China and the United States to justify their unilateral actions.

All the retaliation and counterretaliation that characterized the commercial war between the United States and China, were provided without any recourse to the "therapies" and the procedure of the WTO dispute resolution system. Although both sides have raised complaints with the World Trade Organization, the two countries did not wait for the WTO to take a decision on the merits before the adoption of the protectionist measures.

The slowness of the WTO dispute resolution system has raised serious doubts about the ability to guarantee adequate compensation in trade disputes to member countries<sup>114</sup>.

In addition, a panel resulting from a question asked by the European Union on the compatibility of section 301 of the U.S. Trade Act of 1974 with the rules of the DSU (Dispute Settlement Understanding), i.e. the set of rules that define how to resolve the disputes between WTO member countries, established that Section 301 denies the very essence of art. 23 of the DSU<sup>115</sup>.

The said Art. 23 intervenes to regulate and strengthen the multilateral system, establishing that:

- when a member country requests compensation for a violation of the obligations or for one of the services provided for by the agreements, or for an impediment to the achievement of any objective envisaged by the agreements, they must appeal and respect the DSU rules and procedures;

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<sup>114</sup> Jones, C., *Trump cools China trade deal hopes*, The Times (2018)

<sup>115</sup> Kwa, A. and Lunenburg, P., *Us' section 301 actions: why they are illegitimate and misguided*, (2018)

- the member country cannot determine whether a violation has occurred, except through the use of the dispute resolution mechanism, in accordance with the rules and procedures envisaged by the DSU, and must make this determination consistent with the results contained in the panel report or to the appeal body adopted by the dispute resolution body or in an arbitration judgment;
- the procedures referred to in Article 21 must be followed to determine the reasonable period of time for the member concerned to implement the recommendations and judgments, and the procedures referred to in Article 22 to determine the level of suspension of concessions or other obligations<sup>116</sup>.

The panel therefore considered that only the WTO through the DSU can determine whether or not a particular policy is consistent with the WTO rules ; however, the US interpreted the panel findings as an “Administrative Action Statement”, reassuring that they would amend the provisions of section 301 of the Trade Act in accordance with article 23 of the DSU. It is therefore on the basis of this commitment that section 301 has been maintained in U.S. law.

To justify its retaliation for U.S. tariffs, the Chinese government relied instead on Article 47 of its 2004 Foreign Trade Law, which states:

*"where a country or region that has signed or acceded jointly to the Treaties or to economic and commercial agreements with the People's Republic, violates dispositions of such treaties and agreements, thereby causing loss or damage to the interests to which the Republic People's Party has the right under these treaties and agreements, or hinders the achievement of the objectives set out in the treaties and agreements, the Chinese government has the right to put in place the appropriate measures against that country, and can suspend or end the execution of the relevant obligations in accordance with the relevant agreements and conventions." <sup>117</sup>.*

Article 47 of the Foreign Trade Law of the People's Republic of China therefore allows China to "take revenge" by suspending its obligations under any commercial or economic treaty in which a contracting party to this agreement violates its obligation to the detriment of the interest of China.

From the expression "jointly to the treaties or to the economic and commercial agreements with the People's Republic of China" it can be deduced that the WTO is included in this rule.

There are, however, at the time, case law of the WTO consistency or less, the DSU, Article 47 of the Law on China's foreign trade. However, from the combined provision of the first and second paragraphs of the aforementioned article 23, it can be argued that article 47 of the Chinese Foreign Trade Law violates the push to strengthen the multilateral trading system, authorizing the Chinese government to

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<sup>116</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/dsu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm)

<sup>117</sup> [https://www.wto.org/english/thewto\\_e/acc\\_e/chn\\_e/WTACCCHN43\\_LEG\\_1.pdf](https://www.wto.org/english/thewto_e/acc_e/chn_e/WTACCCHN43_LEG_1.pdf)

take remedies and measures without no recourse or preventive negotiation, suspending its obligations in a treaty or in a commercial agreement following the alleged violation of an obligation by another country. The provision of Article 47 is similar to that of Article 7 of the same law which provides that when any country or region adopts prohibitive measures, or similar restrictive measures and against the trade in China, the Chinese government may take consequential countermeasures. The formula of this provision does not take in any way account of China's obligations in the WTO, which prohibits countermeasures or unilateral termination of the concessions.

As a result of some case law, Article 23, paragraph I, defines as a basic requirement that the members of the WTO must recourse to the DSU rules and procedures when they ask to repair the damage suffered due to violation of agreements.

Article 23 limits the behavior of member countries in two aspects:

- First is established as an exclusive forum for the resolution of disputes the WTO resolution system, and it requires adherence to the rules of the DSU.
- Secondly, certain unilateral actions by a WTO member country are prohibited.

Therefore, a member cannot unilaterally, in any way determine:

- that a violation has occurred;
- that the benefits have been canceled or compromised;
- that the achievement of any objective of the agreements has been prevented.

Considering that the Chinese government has carried out its trade reprisal against tariffs established by the United States, without resorting to the rules and procedure of the WTO, it can be inferred that article 47 of the Foreign Trade Law of the People's Republic of China is incompatible the WTO itself.

On the other hand, it could be disputed whether it would have been wiser, from an economic point of view, for the Chinese government to fulfill the obligation under article 23 of the DSU, waiting until the dispute resolution body decided to chance.

With the slowness of the "judicial" procedure, China would have had to face enormous consequences from the point of view of the economic impact, if it had not implemented its own protectionist policies to rebalance its trade balance.

This has brought attention to the ineffectiveness of the dispute settlement mechanism and on its implications for a sustainability of the multilateral trading system<sup>118</sup>.

The sole purpose of the dispute settlement mechanism is to bring a country member implementing the policies not consistent with the rules of the WTO within a reasonable period of time. The whole process

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<sup>118</sup> Tolulope AA, *US-China trade war and the WTO dispute settlement mechanism*, Article in Journal of International Trade Law and Policy (2019)

can take up to three years, or even longer, depending on when the unsuccessful party decides to comply with the decision of the resolution body<sup>119</sup>.

Although there are temporary remedies for the "winning" party in the WTO, these remedies are only intended to induce the party concerned to be consistent with the Treaty provisions. The complainant has then the possibility of negotiating a compensation with the unsuccessful party; however, this negotiated compensation does not cover the period prior to the resolution organ's ruling.

This highlights that the economic loss suffered by the complainant before the request is filed within the WTO, and during the pending issue before the final determination, cannot be restored with the mechanism foreseen by the WTO.

The unilateral actions that have characterized the trade war between the US and China can be linked to the gradual loss of confidence in the power of the remedies offered by the WTO to ensure fairness. Since the available remedies do not offer any relief for the damage caused by the unsuccessful party for the period between the entry into force of the commercial policies involved and the end of the dispute in the WTO, the incorporation of a compensatory relief can be a useful tool to restore members' confidence in the system<sup>120</sup>.

China and other countries have filed appeal to the WTO court, reporting unfair practices and the USA, and the same was done by the United States against the Asian country; only following the presentation of numerous complaints, the WTO decided to open an investigation of legitimacy for the duties on steel and aluminum; the verification process took some time, and this has contributed to complicate the situation<sup>121</sup>.

With the current system, there are no adequate remedies to compensate for economic damage. The same United States had appealed to the WTO against the alleged intellectual property theft in China, and had waited until the determination by the body of dispute resolution before taking action, they would suffer a huge economic loss, which would not have been possible to resolve in the manner of the WTO.

The US tariffs have affected also different companies based in South Korea and Turkey; these countries also resorted to unilateral measures for economic equilibrium, without resorting to WTO rules.

The ability to include monetary sanctions in the dispute resolution mechanism is corroborated by a precedent from the WTO, an arbitral award in which the US was condemned to pay the 1,219,900 dollars towards the European Union<sup>122</sup>.

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<sup>119</sup> Schoenbaum, TJ (1998), *WTO dispute settlement: praise and suggestions for reform*, International and Comparative Law Quarterly, Vol. 47 No. 3

<sup>120</sup> Tolulope AA, *US-China trade war and the WTO dispute settlement mechanism*, Article in Journal of International Trade Law and Policy (2019)

<sup>121</sup> Strauss, D., Giles, C., September 2018, *Will the US-China trade war impact on global growth?*, Financial Times

<sup>122</sup> Georgiev, D. and Van der Borgh, K., *Reforms and development of the WTO dispute settlement system*, Cameron May, International Law and Policy (2006)

This gives credit to the possibility of incorporating monetary compensation in the context of dispute resolution, with a view to strengthening the multilateral trading system.

It is also worth highlighting that, since 2018, the United States has been boycotting the appointment and renewal system of the members of the WTO Tribunal, which currently are three (compared to seven, which is the minimum number) who are struggling to dispose the number of appeals that are filed.

According to the Director General of the WTO, Roberto Azevedo, this would be an action studied by the United States aimed at favoring a paralysis, which would allow to violate the rules of the WTO with greater ease<sup>123</sup>.

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<sup>123</sup> <https://europa.today.it/lavoro/dazi-usa-bruxelles-ricorso-wto-giudici-trump.html>

### 3.1. The conflict between China and the US: a global trade war?

Whenever a State tries to protect national industries by introducing a tariff or duty on imported goods, a trade war begins. In the short term, this policy appears useful for national producers and helps to create jobs, but in the long term, it leads to job losses and hinders trade and growth in all the countries involved. Tariffs increase the prices of goods in the country that imposed them, and this increases inflation. If a country raises tariffs and the country whose companies are damaged reacts the same way, the trade war intensifies, affecting the global economy.

All over the world, wherever tariffs are imposed, consumer prices rise, and this represents an obstacle for economic growth.

Trade relations between the United States and China have suffered greatly, as both countries have increased tariffs, and this has led to a significant reduction in import and export between the two countries. With the intensification of the trade war, obstacles to trade around the world have grown, damaging the growth and circulation of trade.

Following the increase in tariffs on Chinese imports by the U.S. and the consequent Chinese reaction, many countries belonging to the EU and Canada itself, had to "replace" US suppliers.

Tariffs are the first step in bilateral tensions that are damaging global economic integration, together with increasingly intense technological competition. The evolving global scenarios of trade and technological conflicts between the United States and China are the result of an American policy increasingly centered on a short-term vision, which has abandoned its multilateral cooperative positions, in search of a dominant position.

The Trump administration, in particular, is based on an "imperial" position that is based on an emergency status quo, which entails significant risks not only for US-China relations, but also for American democracy and the international order existing.

Today the globalization process led by the United States and other advanced economies is running out, while globalization fueled by China and other emerging economies has grown significantly, especially through the Asian Infrastructure Investment Bank (AIIB) and the New Development Bank (NDB), which have significantly increased their investments in developing economies.

The administrations of both Obama and Trump, unlike their main trading partners and other members of the Group of Seven (G7), have largely limited US interventions in favor of developing countries.

Likewise, Washington has kept its distance from the Belt and Road Initiative (BRI<sup>124</sup>), led by China, with President Trump who has even called the initiative "offensive".

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<sup>124</sup> The Belt and Road Initiatives is an ambitious program of the Chinese government, which aims to finance more than 1,000 infrastructural interventions in numerous countries (Indonesia, Europe, Russia, India, Africa). Starting from the development of transport and logistics infrastructures, the Chinese strategy aims to promote its role in global commercial relations, promoting international investment flows and commercial outlets for Chinese productions.

The goal of the United States could be to contain the economic rise of China and divide Asia, as evidenced by the pressure exerted on Chinese trade policies, as well as investments and technological policies, while on the economic level the U.S. are trying to get closer to other Asian countries, especially Southeast, as evidenced by the intervention of the American Secretary of State Mike Pompeo to the "Indo-Pacific Economic Vision" on July 30, 2018, in which he announced 113 million dollars in new initiatives in the economy, energy and regional infrastructure by the United States.

Donald Trump began his tenure as 45th President of the United States on Friday 20 January 2017. On Monday 23 January, he signed a memorandum to withdraw the United States from the Transpacific Partnership (TPP) agreement<sup>125</sup>. The withdrawal of the United States from the TPP was President Trump's first executive action, consistent with his rhetoric as a candidate; with this act it laid the foundations for a series of subsequent actions, as indicated in the objectives of the 2017 trade policy agenda:

- increase US economic growth;
- promote job creation in the United States;
- promoting reciprocity with commercial partners;
- strengthen the production base and the ability to defend and expand exports of the agricultural sector and services.

To achieve these objectives, the path of bilateral negotiations was preferred, rather than multilateral one.

The Trump administration then identified four priorities:

- defend US national sovereignty over trade policy;
- strict application of US trade laws;
- use all possible sources of leverage to encourage other countries to open up their markets to U.S. exports of goods and services and provide adequate and effective protection and enforcement of U.S. intellectual property rights;
- negotiate new and better trade agreements with key countries markets around the world.

In its first months in office, the administration issued measures aimed at strengthening the "America first" concept, including:

- announced plans to renegotiate NAFTA (February 2, 2017);
- ordered a report on significant trade deficits (March 31, 2017);
- strengthened the application of anti-dumping measures and countervailing duties (March 31, 2017);

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<sup>125</sup> The Trans-Pacific Partnership is a regulatory and regional investment and free trade treaty in whose negotiations, until 2014, twelve countries in the Pacific and Asian areas took part: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, Vietnam.

- initiated national security investigations on imports of steel and aluminum (respectively April 20 and April 27, 2017);
- asked for a revision and possible amendments to the United States-Korea Free Trade Agreement<sup>126</sup> (July 21, 2017);
- finally started the investigation of Section 301 on the theft of intellectual property by China (August 14, 2017)<sup>127</sup>.

The North American Free Trade Agreement (NAFTA<sup>128</sup>) has also been the subject of the Trump administration's attention. Barack Obama himself had often been critical toward the treaty and had promised to renegotiate the deal. Candidate Donald Trump often lashed out against NAFTA during the 2016 presidential campaign, going so far as to describe it as "the worst trade deal ever approved in the United States."<sup>129</sup>

But while Obama did not reopen the NAFTA negotiations with Canada and Mexico, the Trump administration made rapid progress, starting a formal dialogue with Mexico and Canada in August 2017. The main objective of the American side, and the first to be listed in official documents was to "improve the US trade balance and reduce the trade deficit with the NAFTA countries".

Another important goal for U.S. negotiators was the expansion of market opportunities for U.S. agricultural products, including the intention to open the Canadian dairy sector for U.S. exports<sup>130</sup>.

As for commercial relations with the European Union, when Obama left office the negotiations for the "Transatlantic Trade and Investment Partnership" (TTIP) had not been concluded, for a variety of reasons: the carelessness of the U.S. Administration on the conclusion of the TTIP, the missteps in the

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<sup>126</sup> The United States–Korea Free Trade Agreement, also known as KORUS FTA, is a trade agreement between the United States and South Korea. Negotiations were concluded on April 1, 2007 and the treaty was finally signed on June 30, 2007. This agreement eliminates the major part of each nation's tariffs on goods within five years and create new protections for multinational financial services and other firms.

<sup>127</sup> "*Consequences of US trade policy on EU-US trade relations and the global trading system*", Policy Department for External Relations, Directorate General for External Policies of the Union (2018)

<sup>128</sup> The Agreement was signed by USA, Canada and Mexico on December 17, 1992 and entered into force on January 1, 1994. NAFTA established the immediate elimination of customs duties on half of the US products to Mexico and Canada and the gradual elimination of other customs duties during a period of approximately 15 years. It also provided for the removal of the restrictions hitherto in force on many categories of products, including motor vehicles, auto parts, computers, textiles and agricultural products.

The main purposes of the Agreement are:

- remove barriers to imports and facilitate intra-area movement of goods and services between the territories of the parties;
- promote conditions of fair competition in the free trade area;
- increase investment opportunities in the territories of the parties;
- provide adequate and effective protection and strengthen intellectual property rights in the territory of each party;
- create effective procedures for the implementation and application of this agreement, for its joint administrations and for the resolution of disputes;
- establish a framework for further trilateral, regional and multilateral cooperation in order to expand and increase the benefits of this agreement.

<sup>129</sup> Severns M., *Trump Pins NAFTA, 'Worst Trade Deal Ever,' On Clinton*, POLITICO (Sept. 26, 2016), <http://www.politico.com/story/2016/09/trump-clinton-come-out-swinging-over-nafta228712>.

<sup>130</sup> Office of the U.S. Trade Representative, *Summary of the Objectives for the NAFTA Renegotiation*, July 17, 2017.

early stages with respect to tariff offers, civil society concerns about investor-state dispute resolution and regulatory cooperation, which could have undermined European regulatory protections, and significant differences in negotiations on issues like agriculture and public procurement. Negotiations on TTIP have not ended but have remained dormant since President Trump is in government. US-EU trade relations, however, went in the opposite direction, particularly after the administration-imposed duties on imports of steel and aluminum for apparent "national security" purposes, and threatened to use the same justification for stopping trade<sup>131</sup>.

The first U.S. action under the Trump government that led the trade war to take on global connotations was the announcement, on March 8, 2018, of a 25% tariff on steel and a 10% tariff on aluminum imports<sup>132</sup>, based on the fact that dependence on imported metals would threaten America's ability to manufacture weapons<sup>133</sup>.

The World Trade Organization cannot judge trade disputes that affect a country's internal security, and Trump has decided to leverage this factor. Despite this, seven countries, in addition to the European Union, have made complaints to the WTO (Canada, India, Mexico, Norway, Switzerland, China and Russia).

On March 7, 2018, the EU threatened to impose a 25% tariff on U.S. exports on products such as cranberries, Harley Davidson motorcycles, blue jeans and bourbons<sup>134</sup>. Trump delayed the entry into force of the steel tariff until May 1, 2018<sup>135</sup>.

On April 21, 2018, the EU updated its trade agreement with Mexico, providing for the removal of tariffs from almost all trade between the two areas.

On May 1, 2018, Trump announced that the United States would delay the entry into force of the steel tariff against the EU on June 1, 2018, in exchange for asking the EU to cut its tariff by 10% on imports of US cars; he also asked the EU to set quotas on its steel exports.

Having failed to reach an agreement, on May 31, 2018, the United States imposed the tariff on Canada, Mexico and the EU<sup>136</sup>.

European retaliation against U.S. steel tariffs entered into force on June 22, 2018, with US \$ 3.2 billion in duties on US products, including bourbons, motorcycles and orange juice<sup>137</sup>.

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<sup>131</sup> Bravo R., Chatterley J., *Trump is Willing to Reopen TTIP Amid EU-U.S. Trade Dispute*, Ross Says, Bloomberg, March 29, 2018

<sup>132</sup> <https://www.wsj.com/articles/trump-to-meet-metal-workers-as-aides-ready-tariff-rollout-1520517821>

<sup>133</sup> <https://www.cnbc.com/2018/02/16/commerce-department-suggests-trump-impose-steep-tariffs-or-quotas-on-foreign-steel-and-aluminum--sources.html>

<sup>134</sup> <https://www.piiie.com/commentary/op-eds/europe-pushing-back-against-trumps-steel-and-aluminum-tariffs-heres-how>

<sup>135</sup> <https://www.piiie.com/research/piie-charts/who-affected-trumps-steel-and-aluminum-tariffs>

<sup>136</sup> <https://www.nytimes.com/2018/05/31/us/politics/trump-aluminum-steel-tariffs.html>

<sup>137</sup> <https://www.nytimes.com/2018/06/21/business/economy/europe-tariffs-trump-trade.html?smid=nytcore-ios-share>

On 17 July 2018 the EU signed a trade agreement with Japan, in which tariffs on imports of almost all goods were reduced or canceled; this agreement is currently the largest bilateral agreement in the world, involving assets worth \$ 152 billion<sup>138</sup>.

Furthermore, on April 15, 2019, the Trump administration announced that it would impose tariffs on European imports for 11 billion dollars<sup>139</sup>.

Despite the imposition of tariffs also on countries other than China, the tariffs imposed on Chinese exporters have made other players more competitive on the US market.

At the end of 2019 there were in fact 35 billion dollars of losses of Chinese exports to the US market, of which about 21 billion dollars (63%) were directed to other countries, while the remaining part of 14 billion dollars was collected from local producers.

U.S. tariffs on China led Taiwan to increase exports to the US by 4.2 billion USD in the first half of 2019, especially as regards office machines and communication equipment.

Mexico has also seen its exports to the United States grow by \$ 3.5 billion, mainly in the agri-food, transportation and electrical machinery sectors.

Exports from the EU increased by about 2.7 billion dollars, largely in the machinery sectors. Exports from Vietnam to the US increased by roughly the same amount (2.6 billion), driven by the trade in communication equipment and furniture.

The benefits for Korea, Canada and India have been lower, ranging from \$ 0.9 billion to \$ 1.5 billion. The remainder went largely to the benefit of other Southeast Asian countries<sup>140</sup>.

The United Nations Conference on Trade and Development (UNCTAD<sup>141</sup>) published a study, in November 2019, which examined the possible consequences if the trade war between China and the U.S. had intensified.

Among the most important consequences, the external shocks that would have affected the smaller and poorer countries, the higher cost of trade between the United States and China that would lead companies to move away from the current supply chains of East Asia, currency wars and devaluations, stagflation with job losses and rising unemployment and, above all, the possibility of a reactionary effect, with other trade-distorting measures cascading.

The UNCTAD report estimates that East Asian producers would be most affected, with an expected contraction of \$ 160 billion in exports from the region.

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<sup>138</sup> <https://money.cnn.com/2018/07/17/news/economy/eu-japan-trade-deal/index.html>

<sup>139</sup> [https://www.wsj.com/articles/u-s-to-impose-tariffs-on-11-billion-of-eu-goods-11554770493?mod=djemRTE\\_h](https://www.wsj.com/articles/u-s-to-impose-tariffs-on-11-billion-of-eu-goods-11554770493?mod=djemRTE_h)

<sup>140</sup> <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2226>

<sup>141</sup> The United Nations Conference on Trade and Development is the main permanent subsidiary body of the United Nations operating in the fields of trade, development, finance, technology, entrepreneurship and sustainable development. Established in 1964 on the initiative of the United Nations General Assembly, UNCTAD promotes the process of integration of developing countries into the world economy. The Organization is based in Geneva and currently brings together 194 countries.

According to UN research, of the approximately \$ 85 billion in U.S. exports subject to Chinese tariffs, only around 5% would be absorbed by Chinese companies; European exports would grow by \$ 70 billion, while Japan, Canada and Mexico would see exports rise by more than \$ 20 billion. Other countries that could benefit from it would be Australia, Brazil, India, the Philippines and Vietnam<sup>142</sup>.

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<sup>142</sup> Nicita A., *Trade and trade diversion effects of United States tariffs on China*, UNCTAD Research Paper No. 37 (2019)

### 3.1.1 American public debt in Chinese government hands

Due to the low level of savings, the United States borrows large amounts of capital to finance the federal budget deficit. Therefore, countries with a high savings rate, such as China, invested part of their capital in the public debt of the United States. These investments contribute to the maintenance of low interest rates in the United States and allow the U.S. to consume more resources than they produce. According to the International Monetary Fund, in 2012 the United States was the world's largest importer of capital from abroad (37.4% of the world total), while China was the largest exporter of capital (13.3%)<sup>143</sup>.

In the period from 2002 to 2012, the amount of US public debt held by private individuals increased from \$ 3 trillion to \$ 9.9 trillion; as a percentage of GDP, going from 28.4% to 63.2% of GDP<sup>144</sup>.

Of the privately held portion of US public debt, more than half is in the hands of foreign investors. Many analysts argue that the strong dependence of the United States on foreign savings is not sustainable and could undermine the economic interests of the United States in the long run. The Chinese Central Bank is one of the largest buyers of US financial assets, mainly due to its exchange rate policy. To limit the appreciation of the Chinese currency against the dollar, China must purchase US dollars; this led the Asian country to accumulate a huge level of foreign exchange reserves, which at the end of June 2013 amounted to 3.5 trillion dollars<sup>145</sup>.

In August 2019, China owned \$ 1.110 billion in US government bonds, surpassed only by Japan, which owned \$ 1,120<sup>146</sup>.

The Chinese government has converted some of its foreign exchange reserves into US financial stocks, such as US Treasury bonds<sup>147</sup>, corporate debt and equities.

US Treasury bonds, used to finance the federal budget deficit, constitute the largest category of US securities owned by China.

US policymakers have expressed concern that large Chinese holdings of U.S. securities may pose a risk to the U.S. economy, especially if China sells off a certain amount of securities. Others argue that the huge number of Chinese holdings in US securities gives it an important leverage on economic and non-economic issues. Others still claim that any attempt by China to sell part of the securities currently owned would reduce the value of the remaining holdings, leading to the destabilization of the global economy, with a negative impact on the Chinese economy.

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<sup>143</sup> IMF, Global Financial Stability Report, Old Risks, New Challenges, April 2013, Statistical Appendix, p.3, at <http://www.imf.org/external/pubs/ft/gfsr/2013/01/pdf/statapp.pdf>

<sup>144</sup> U.S. Department of the Treasury, Treasury Bulletin, June 2013, at <http://www.fms.treas.gov/bulletin/index.html>.

<sup>145</sup> Bank of China, Press Release, July 12, 2013

<sup>146</sup> [https://www.repubblica.it/economia/2019/08/16/news/debito\\_usa\\_il\\_giappone\\_sorpassa\\_la\\_cina\\_e\\_il\\_primo\\_detenore\\_straniero-233722525/](https://www.repubblica.it/economia/2019/08/16/news/debito_usa_il_giappone_sorpassa_la_cina_e_il_primo_detenore_straniero-233722525/)

<sup>147</sup> Government bonds are bonds issued periodically by the Ministry of Economy and Finance on behalf of the State with the aim of financing (and covering) its public debt or directly the public deficit. The credit rights incorporated in the security can be paid to the subscriber of the loan either through the issue discount (i.e. the difference between the nominal value and the issue or purchase price), or by paying coupons (fixed or variable) during the life of the title. Upon expiry of the obligation, the State reimburses the initial capital.

According to this line of thought, therefore, the large Chinese holdings of US securities constitute a double-edged sword and confer little influence on US politics.

According to the United States Bureau of Economic Affairs (BEA), net private savings increased 108% in the period between 2008 and 2012, although the budget deficit increased "only" by 75%<sup>148</sup>. Therefore, the economic imbalances in the United States have become more a matter of high public loans, which have increased since the beginning of the financial crisis, than a matter of low private savings, proving that the increase in private savings was a temporary response to the recession more than a permanent trend.

The problem for China, on the other hand, concerns the long-term sustainability of its current unbalanced economic policies, in particular those that have led to a high saving rate, to the dependence on exports for economic growth and the accumulation of huge currency reserves, especially considering a scenario where there could be economic slowdowns in Europe and the United States. According to some observers, these factors could lead China to accelerate efforts to increase consumer demand and improve domestic living standards, which could lead to an appreciation of the national currency against the dollar, with a reduction in China's need to buy US securities.

As already mentioned, China's economic policies promote exports as the main engine of the country's economic growth and have contributed to the increase in currency reserves over the past twenty years; tariff policies also attempt to slow the appreciation of the national currency against the dollar.

As a result of this, Chinese exports are less expensive, and imports are more expensive than if China had a floating currency.

The objective of this policy is to encourage Chinese manufacturing industries, which export their goods, and at the same time encourage foreign investment.

To this end, the Chinese Central Bank must intervene in the currency markets, buying large quantities of dollars to maintain the exchange rate with the dollar as forecasted by the government<sup>149</sup>.

These policies have led China to be a country that consumes much less than it produces, contributing to China's large annual trade surpluses.

The combination of trade surpluses, inflows of foreign direct investment into China and "hot money" inflows into China are the main components of the accumulation of foreign exchange reserves by the Dragon Country.

According to Chinese government data, foreign exchange reserves increased from \$ 212 billion in 2001 to \$ 3.341 billion in 2012, thus recording an increase of 3.1 trillion, with an average annual growth rate of 28.7%<sup>150</sup>.

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<sup>148</sup> U.S. Bureau of Economic Analysis, National Income and Product Account Table

<sup>149</sup> *La proiezione internazionale della Cina nell'era di Xi Jinping*, Questioni di economia e finanza, Banca d'Italia (2019)

<sup>150</sup> <https://st.ilsole24ore.com/art/notizie/2013-04-11/riserve-valuta-cina-valgono-112000.shtml?uuid=Ab2nFEmH>

China is not only by far the world's largest holder of foreign exchange reserves, but its reserves are higher than the combined reserves of Japan, Saudi Arabia, Switzerland, Russia and Taiwan.

Although the Chinese government does not publish the dollar composition of its holdings in foreign currency; some analysts estimate this level at around 70%. Therefore, considering that China has about 3.161 billion of foreign currency<sup>151</sup>, over 2,000 billion would be in dollars.

US assets are generally favored by China for its investments for various reasons:

- to maintain the effects on exchange rates underlying the acquisition of US dollars, these dollars must be invested in dollar-denominated securities;
- the United States is the largest economy in the world and has the largest capital market, which many analysts say would be the only global market large enough to absorb most of China's growing foreign exchange holdings;
- historically, US securities are considered safe and liquid (i.e. easily sellable) compared to other types of investments<sup>152</sup>;
- US Treasury bonds are guaranteed by the United States government, which guarantees that interest and principal payments will be due on time.

The global economic slowdown and the European sovereign debt crisis have contributed to increasing the attractiveness of US securities to China<sup>153</sup>.

According to the State Administration for Foreign Exchange (SAFE) of China, the main methods to administer Chinese currency reserves are through security, liquidity and the growth in value of investments; among these, securities is the main goal<sup>154</sup>.

From June 2002 to June 2011, Chinese purchases of US Treasury securities increased quicker than titles acquisitions than any other country, increasing from 181 billion dollars to 1.73 trillion dollars. In June 2009, China overtook Japan as the largest holder of U.S. securities and China remained the largest holder of U.S. public debt, as already seen, until 2019.

US Treasury securities are the most common type of financial instrument among those issued by US public or private entities, and are the main vehicle used by the United States government to finance federal debt.

It therefore seems normal that the growing dependence of the United States on China for the purchase of Treasury securities has become a major concern of many US policy makers. Some have focused their attention on the fact that significant amounts of Chinese contributions could leverage on economic and political issues related to the United States; others have expressed concern about the fact that China, in

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<sup>151</sup> <https://www.infodata.ilssole24ore.com/2018/05/30/la-cina-tremila-miliardi-dollari-riserve-valutarie/>

<sup>152</sup> CRS Report RL34582, *The Depreciating Dollar: Economic Effects and Policy Response*, by Craig K. Elwell.

<sup>153</sup> Department of the Treasury, Resource Center, Daily Treasury Yield Curve Rates.

<sup>154</sup> China's State Administration of Foreign Exchange (SAFE), FAQs on Foreign Exchange Reserves, July 20, 2010.

the long run, could lose confidence in the US ability to cope with the return of the resources required for loan and therefore may liquidate these assets, or significantly reduce the new securities purchases: this move would significantly damage the US economy but, as already explained above, would cause a shock of global dimensions and therefore would damage the Chinese economy, based on exports.

Some others argue that Chinese purchases of US securities have been one of the main reasons for triggering the crisis in US subprime mortgages, with consequent slowdown of the global economy, as these purchases have favored the maintenance of low interest rates in the US and increased global imbalances.

The fear of some observers is that speculative bubbles similar to the one that led to the 2008 crisis could occur in the future if these imbalances between the United States and China will not be fixed.

Chinese officials, on the other hand, express concern about U.S. debt security, and some argue that China should diversify foreign public debt securities held in its portfolio or implement policies that slow the accumulation of currency reserves.

Since the beginning of the global financial crisis in 2008, the US government officials have increasingly sought to provide guarantees to China about the safety of sovereign debt of the USA and push it to continue to buy US securities. For example, during her visit to China, dated February 21, 2009, the Secretary of State Hillary Clinton, stated to appreciate “the confidence of the Chinese government in the US Treasury”, urging the Chinese Government to continue buying US debt.

Some analysts argue that the primary concern of China is not left by a possible US default on its debt, but rather by the US monetary policies, used by the Federal Reserve to stimulate the economy.

These measures, also called “quantitative easing” (QE<sup>155</sup>), have led the Federal Reserve to purchase large quantities of US securities since March 2009, in an attempt to reduce long-term interest rates<sup>156</sup>.

The Chinese officials have expressed concern that the actions of the Federal Reserve to increase the supply of US currency could undermine the value of the availability of Chinese activities in US dollars, causing a depreciation of the dollar relative to other major currencies or increasing US inflation significantly. To date, however, quantitative easing has not led to a significant rise in inflation in the United States and the Federal Reserve has argued that it has sufficient tools to maintain low inflation in the future<sup>157</sup>.

It is difficult to determine whether Chinese holdings of US securities can give China leverage to intervene in U.S. policies. The US government officials have repeatedly denied that the Chinese availability of US Treasury titles could influence in any way US foreign policies.

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<sup>155</sup> In monetary policy, with quantitative easing is one of the unconventional ways by which a central bank intervenes on the financial and economic system of a State, to increase the currency circulating.

<sup>156</sup> Labonte M., *Monetary Policy and the Federal Reserve: Current Policy and Conditions*, Congressional Research Service, Report R41540, pp. 12-15, 2013.

<sup>157</sup> China Daily, *Dilemma of Yuan revaluation*, August 25, 2011, available at [http://www.chinadaily.com.cn/opinion/2011-08/25/content\\_13185617.htm](http://www.chinadaily.com.cn/opinion/2011-08/25/content_13185617.htm).

Some Chinese officials in the past have instead suggested that the US debt availability may be used as a weapon in place of economic and political dispute with the United States. An article of “the Telegraph” in the August 7, 2007 reported interviews with officials of the Chinese government, they would have stated that China had the power to cause a collapse of dollar currency by liquidating much of its holdings of US Treasury securities, if the United States had imposed trade sanctions to force an appreciation of the Chinese currency, and that this threat could be used in the negotiation.

The fact that China suddenly reduces its holdings of US securities, as already mentioned, seems not possible, however, because this could have a significant negative impact on the Chinese economy. Such a move could reduce the value of these stocks on international markets, which would result in large sales losses and, in turn, reduce the value of the remaining assets denominated in China's dollars. This would also occur if the value of the dollar falls sharply in the international currency markets due to Chinese divestitures.

Second, such a move would reduce US demand for Chinese products, either through an increase in the value of the yuan versus the dollar, or through a decrease in US economic growth, particularly if other foreign investors also sell their assets in the United States and they were forced to raise interest rates in response. Given this "precarious" situation, financial interdependence between the United States and China is often defined as a "balance of financial terror"<sup>158</sup>.

If China stopped buying U.S. securities, the United States would need other investors (foreign and domestic) to bridge the gap and meet its financial needs. New investors would presumably require higher interest rates than current ones. In 2007, it was estimated that a departure from China from US bonds would lead to an increase in US interest rates of 50 basis points in the long run<sup>159</sup>.

All other factors being equal, the reduction in the availability of the Chinese Treasury would cause the fall in overall foreign demand for US assets, with a consequent depreciation of the dollar.

With the depreciation of the dollar, the trade deficit would decrease, as the price of US exports would drop overseas, and the price of imports would rise in the United States. The magnitude of these effects would obviously depend on the amount of US securities sold by China; small reductions would have negligible effects on the economy, given the large size of the US financial markets.

Economic theory suggests that a slow reduction in the trade deficit and a gradual devaluation of the dollar does not lead to a shock for the economies of both countries and globally; indeed, a slow evolution in this sense may even have an expansionary effect on the economy, if the reduction of the trade deficit had a stimulating effect on aggregate demand in the short term, than the effect caused by the fall in investment, deriving from higher interest rates.

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<sup>158</sup> Morrison W., Labonte M, *China's Holdings of US Securities: Implications for the US Economy*, (2013)

<sup>159</sup> Testimony of Brad Setser before the House Budget Committee, *Foreign Holdings of US Debt: Is our Economy Vulnerable?*, (2007)

A potentially short-term problem would emerge if China decided to suddenly significantly reduce its liquid financial assets in the United States. The effect of this reduction could be further aggravated by a general financial reaction, if all foreign investors respond by reducing their availability of US assets. Ultimately, China contributes to global imbalances due on the high savings rate and its current account surplus. If China consumed more and could count on less savings, it would have less capital to invest abroad and in the United States<sup>160</sup>.

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<sup>160</sup> Morrison W., Labonte M, *China's Holdings of US Securities: Implications for the US Economy*, (2013)

### 3.1.2 Technology war: Huawei case-study

Since 2014, the year in which China's nominal GDP exceeded that of the United States, the Western world has wondered whether the United States is a declining superpower in terms of economic relations and power, and whether this trend can be reversed<sup>161</sup>.

China has acquired strong global leadership in a number of technological areas, although it depends on some supplies from other countries in the world; among the sectors in which China excels, there is, without any doubt, 5G technology, in which China has a world-renowned reputation based on the extraordinary successes of the multinational Huawei.

The United States lags significantly behind 5G technology, not only compared to China and other Asian countries, but also to two European manufacturers such as Nokia and Ericsson.

To date, there is no US manufacturer capable of building networks with 5G technology.

Chinese telephone companies have already implemented a system in which the neighborhoods of 50 cities are connected in 5G, effectively creating the fifth largest mobile network in the world and consolidating the advantage over other world powers in the new era of telecommunications.

China Mobile, China Telecom and China Unicom are the protagonists in the launch of the new technology and have invested around 49 million euros just in 2019.

Chinese companies are able to offer 5G at a lower price of 30% compared to European companies<sup>162</sup>.

The importance of 5G technology today is enormous, because it lays the foundations of the most updated, cutting-edge and high-quality digital society. With 5G technology, the potential of artificial intelligence, automation and robotization can be fully exploited. It is therefore not just a “commercial battle” between those who produce the best smartphones or laptops, but an enormous transition towards a new quality in almost all aspects of modern life (production, transport, communication...).

It is no coincidence that Chinese successes in 5G technology have been an alarm bell for the American leadership, which desperately tries to maintain global hegemony.

In the first quarter of 2019 Huawei recorded 50% more revenues than in the same period of the previous year, while in the fourth quarter of 2018 Huawei exceeded the Apple giant by turnover, with Huawei's revenues increasing and those of Apple lowering by about 30%.

Despite all the pressures exerted by the United States, which will be analyzed later, Huawei selling exceeded 100 billion dollars annually<sup>163</sup>.

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[https://www.repubblica.it/economia/2014/10/14/news/la\\_cina\\_supera\\_gli\\_usa\\_nella\\_top\\_ten\\_del\\_pil\\_sempre\\_pi\\_emergenti\\_e\\_l\\_italia\\_ora\\_fuori-98035986/](https://www.repubblica.it/economia/2014/10/14/news/la_cina_supera_gli_usa_nella_top_ten_del_pil_sempre_pi_emergenti_e_l_italia_ora_fuori-98035986/)

<sup>162</sup> [https://www.wired.it/internet/tlc/2019/11/01/cina-5g-rete/?refresh\\_ce=](https://www.wired.it/internet/tlc/2019/11/01/cina-5g-rete/?refresh_ce=)

<sup>163</sup> <https://www.bbc.com/news/business-47743152>

As long as the western world, led by the United States, has maintained a technological superiority over the rest of the world, the West and the United States in particular have promoted the spread of free trade and free competition, deregulation and privatization.

The current scenario is instead characterized by a western country, the United States, which has launched a trade war characterized by the imposition of duties, and has been integrated with the provision of prohibitions and restrictions precisely against Huawei and its suppliers and partners, so the trade war is combined with a technological war.

In the month of May 2019, the Department of Commerce of the United States included Huawei on a blacklist, for which the companies included are prohibited from buying American products without the consent of the government<sup>164</sup>.

The ban has created numerous problems for smaller companies in the US, who rely on Huawei for parts and equipment, and the American companies that depend on sales to the Chinese company. To give these companies time to adjust to the new order, the Commerce Department issued a general statement that allowed to continue doing business with Huawei for a short time.

Washington and Beijing, especially in the second half of 2019, have sought to reach a trade agreement aimed primarily at alleviating some of the Trump administration's concerns regarding China's economic practices. The US government has also been put under pressure by the companies that sell components to Huawei and companies that buy equipment from the Chinese colossus<sup>165</sup>.

The action against Huawei was initially justified by the suspicion that the Chinese company could represent a “serious threat to national security” against the United States, by implementing a widespread collection of information and espionage.

More specifically, the U.S. Department of Justice filed a series of allegations against the company in January 2019, including alleged evasion of sanctions against Iran and alleged robotic technology theft<sup>166</sup>. In addition, the Trump administration has asked the US allies, including Germany, Italy, and Japan, not to use the Chinese company's 5G network equipment, due to alleged espionage problems<sup>167</sup>.

In May 2019, President Trump has declared the national emergency and signed an executive order of banning US companies to use any technology and information and communication services from foreign companies that are believed might lead to an unacceptable risk to national security of the United States<sup>168</sup>. Although this provision does not name any company, Huawei was considered as the main objective<sup>169</sup>.

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<sup>164</sup> <https://www.nytimes.com/2019/11/15/business/us-reprieve-huawei.html>

<sup>165</sup> <https://www.nytimes.com/2019/11/15/business/us-reprieve-huawei.html>

<sup>166</sup> <https://www.justice.gov/opa/pr/chinese-telecommunications-device-manufacturer-and-its-us-affiliate-indicted-theft-trade>

<sup>167</sup> <https://www.wsj.com/articles/washington-asks-allies-to-drop-huawei-1542965105?tesla=y>

<sup>168</sup> <https://www.whitehouse.gov/presidential-actions/executive-order-securing-information-communications-technology-services-supply-chain/>

<sup>169</sup> <https://www.vox.com/technology/2018/12/11/18134440/huawei-executive-order-entity-list-china-trump>

Huawei's management and the Chinese leadership have always denied having carried out such conduct, and the Chinese company has filed a lawsuit to demonstrate the illegality of the measures to which it was addressed. After the defense of Huawei, the US State Secretary Pompeo has launched new accusations, claiming that Huawei currently represents the biggest threat to US national security, because the company is in close relations with the Chinese government and the Chinese Communist Party<sup>170</sup>.

Chinese exports of goods to the United States in 2018 were 3.6 percent of GDP. The total added value attributable to these exports is approximately 66%, with an estimated maximum loss of 2.4% of GDP if all exports to the United States were stopped. So, if half of China's exports of goods to the United States were halted, the loss would be 1.2 %<sup>171</sup>.

This shows that the damage caused by the war between United States and China are not enough to stop the Chinese economy, even in case of further escalation of the trade war, it would always be manageable for China. It would be different if the United States managed to establish a coalition to significantly ban Chinese goods. Overall, however, most of the world economy may not sacrifice its interests for the ones of US<sup>172</sup>.

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<sup>170</sup> <https://www.newsmax.com/newsfront/mike-pompeo-huawei/2019/05/29/id/917976/>

<sup>171</sup> <https://www.scmp.com/comment/insight-opinion/article/3011282/how-china-can-shrug-impact-us-trade-war-its-economy-and>

<sup>172</sup> <https://sputniknews.com/analysis/201905311075487708-huawei-court-motion-ban/>

### 3.2 The consequences for the world economy

The size of the US and Chinese economies makes possible that the stakes in the ongoing trade war are very high, as together the two countries represent over a fifth of the global economy<sup>173</sup>.

Most economic observers hear the alarm about the possible consequences of the crisis; for example, in May 2019, the Organization for Economic Cooperation and Development (OECD) announced that the uncertainties resulting from trade disputes between the United States and its partner countries were already negatively impacting global growth and investment, which were previously expected to rise by 1.7% in 2019 and 2020, down by half (3.5%) compared to the 2017-2018 period.

The breaking of the US-China negotiations in early May 2019 had a first negative impact on equity markets in the United States.

The imposition of tariffs on 200 billion dollars of for US import from China and 60 billion dollars of Chinese imports from the United States, with additional threats coming from both sides, are potentially very important in the interruption of the global growth.

In the current scenario, the WTO seems to attract the attention of the major powers only if it benefits them. President Trump has repeatedly criticized the WTO for unfairly treating the United States, and on this basis, Washington has blocked the appointment of new members to the WTO's dispute resolution body (DSB), endangering the continuation of the organism's activity.

At the same time, Trump welcomed the decision of the WTO to allow the US to impose customs worth \$ 5 billion on EU goods, after European countries were found guilty of illegal state aid to the aircraft manufacturer Airbus. Aeronautical products imported from the EU to the US were subject to a 10% customs duty and EU agricultural exports (such as cheeses and wines) to 25%; these are very significant percentages in the context of Western countries.

At the same time, the Airbus state aid case is an excellent example of WTO failure. The trade dispute began as early as 2004, when the United States accused the EU of subsidizing Airbus, and the EU responded with a complaint relating to U.S. state aid to Boeing.

In the 2010-2011 period, the WTO ruled that both sides were guilty of illegally subsidizing their airline companies, but the precise extent of the countermeasures allowed by arbitration has only recently been determined. The United States were permitted to impose customs tariff countermeasures only in early October 2019, and the EU probably will be authorized to impose tariffs of the same entity in a few months. In addition to the slowness of the decision-making mechanism, with the current mechanism the WTO seems unable to solve the trade problems between the United States and China.

The differences between the two countries can be explained substantially with the different understanding of the role of the state in the economy between the two superpowers. China has shown its willingness to compromise on many details, but not on the fundamentals of its economic model.

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<sup>173</sup> <http://wdi.worldbank.org/table/4.2>

Although the political will of the major powers is a necessary prerequisite for WTO reform; systemic changes in the global economy must be taken into account to define a new structure. According to economist Richard Baldwin, WTO was able to regulate the trade of the twentieth century, based on cross-border sales of goods and access to the market, but the business of twenty-first century has different characteristics, being a bidirectional flow of goods, services, knowledge, investments and professionals. A universal solution to all the problems of the twenty-first century seems unrealistic, which is why Baldwin also suggests that the WTO could remain in place for the resolution of old-fashioned disputes, but for the most complex questions, it is suggestable to rely mainly on bilateral agreement<sup>174</sup>.

In this context, a joint statement of 37 U.S. and Chinese economists, was published on October 27, 2019, which claimed that the resolution of the conflict in the current trade situation implies a clear choice for China between the decision to follow all the rules of multilateral trade and integration or to have to be effectively excluded from the global trading system, but that the best way is to find a compromise that respects the WTO rules, being more flexible in interpretation<sup>175</sup>.

The United States and Europe have worked together for decades to build the current liberal governance system global, and major European economies continue to participate with the United States in related economic organizations such as the OECD, the G-7, and the G-20. The United States is still the most important trading and investment partner in Europe today, as well as a fundamental strategic ally. Therefore, the guidelines of current US policy, addressed to “America First”, added to the skepticism towards many of the global institutions that the United States and Europe have created, constitute a first-order threat to Europe, even regardless of the trade war between the United States and China.

The US decision to impose tariffs on steel and aluminum imports to the US, based on considerations related to national security, currently contested by the WTO, is causing numerous global disturbances in these sectors and in the industries operating in the "downstream" sectors, like the the automotive sector, in which Europe is a full exporter to the United States<sup>176</sup>.

At the same time, Chinese policies subject to the criticism of the United States are equally unpopular also in Europe. European Governments and multinationals have often raised criticism about the alleged theft of intellectual property and trade secrets of China as well as regarding the complaints on treatment of affiliated Chinese European multinationals, forced to submit to strict rules in operating in the Asian country, quite different from the more benevolent ones with which Chinese companies operate in Europe.

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<sup>174</sup> Baldwin R., *The World Trade Organization and the Future of Multilateralism*, Journal of Economic Perspectives, Volume 30, Number 1, Winter 2016, pp. 95–116

<sup>175</sup> Crowley M. A., Howse R. L., Ju J., Staiger R. W., Huang Y., Kong Q., Krishna K., Phelps E., Rolland S., Santos a., Shaffer G., Slaughter A. M., Spence M., Stiglitz J., *US-China Trade Relations: A Way Forward / 中美经贸关系, The US-China Trade Policy Working Group Joint Statement / 中美经贸政策工作小组, 联合倡议, 18 October 2019 (published 27 October 2019).*

<sup>176</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php/USA-EU - international trade in goods statistics#EU-United States most traded goods](https://ec.europa.eu/eurostat/statistics-explained/index.php/USA-EU_-_international_trade_in_goods_statistics#EU-United_States_most_traded_goods)

Concerns about security risks are also shared on both sides of the Atlantic; both the United States and the United Kingdom have expressed strong concerns about Huawei and the development of the 5G network. On the other hand, however, it has to be considered that the competitiveness of American and Chinese companies is suffering greatly in this trade war and Europe could benefit from the benefits of commercial diversification. For example, UNCTAD estimated that the European exporting companies would be the major beneficiaries of the intensification of trade war between the US and China, with the U.E. that it would hoard \$ 70 billion (50 billion Chinese exports to the United States and 20 billion US exports to China)<sup>177</sup>.

Both China and the United States have the strong economic incentives to find an agreement, but the two governments are currently in plaster for political reasons, and neither side wants to appear weak.

The United States government specifically requests concessions related to intellectual property, forced technology transfer, non-tariff barriers, agricultural purchases and services. The majority of these areas would have a positive spillover effect on Europe and European companies could find a source of income along with US counterparts.

In short, the big threat to the EU is not the direct impact of a US-China trade war per se, although this can be worrying, but rather the uncertainty that is created by the conflict, which weighs on confidence in the future and therefore on investments.

But the biggest long-term problem concerns the health and integrity of the global system.

To safeguard the current system, the EU is integrating its activities in Asia and in particular in the Pacific. The United States had conducted intense negotiations for eight years to create a global trade agreement, called the Trans-Pacific Partnership (TPP). However, President Trump has signed for the United States exit from TPP as soon as in office. However, the remaining 11 countries of the TPP are nevertheless went ahead in negotiations and the full agreement on the Trans-Pacific Partnership entered into force on 30 December 2018. The new agreement is very similar to the TPP, and at least another five Asian economies (Indonesia, Korea, Philippines, Thailand and Taiwan) have expressed their intention to do so, with China currently studying the possibility of joining.

Europe, as mentioned, is also very active in the easternmost area of Asia and with the American continent: it has already concluded bilateral agreements with Canada, Chile, Colombia, Japan, Korea, Mexico, Peru and Singapore and has in course negotiations with India, New Zealand, the Philippines, Thailand and Vietnam<sup>178</sup>.

Secondly, the trade war places considerable emphasis on the WTO and global economic governance based on shared rules; the actions taken by China and the United States are not compatible with the

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<sup>177</sup> [https://unctad.org/en/PublicationsLibrary/ditctab2019d1\\_en.pdf](https://unctad.org/en/PublicationsLibrary/ditctab2019d1_en.pdf)

<sup>178</sup> <https://www.intereconomics.eu/contents/year/2019/number/3/article/the-us-china-trade-war-and-its-implications-for-europe.html>

WTO rules. Political balances and bargaining could become more important in global economic governance in the coming years. However, the EU is used to and is highly effective in pursuing its objectives through legalistic and technocratic negotiations within multilateral and regional forums. The EU, and in particular the European Commission, may have to adapt and learn how to operate in a different logic and context in which geopolitics plays a greater role.

It is also highly probable that the trade war and US-China tensions will intensify the ongoing crisis in the Middle East.

The United States previously imported a significant share of its oil and gas from these regions, and therefore established a strong military and political presence there. Following the discovery of shale gas and significant quantities of oil in the USA, the United States has become a net exporter of energy in recent years and is currently independent of energy reserves in the Middle East.

By contrast, China has become heavily dependent on Middle Eastern energy sources, but currently does not play a leading political or military role in the region.

The United States could use its influence on the Middle East to put further pressure on China. The growing geopolitical tensions in the Middle East, in turn, are likely to have important implications for European countries, which are equally dependent on energy raw materials from Middle East Asia<sup>179</sup>.

According to current estimates, the continued growth of protectionism worldwide would lead to a stable loss of 4% of GDP for the EU and 3% for the United States.

Much of US imports in the Euro area intermediate goods used for the manufacture of goods which are then subject to export to other countries, so a continuing crisis would undermine the system represented by the supply chains formed in the last few decades. The moment in which the intermediate goods cross the borders of several countries before the production of the final product, the application of duties affects the cost of the final product, which increases and severely affects the producers, while the consumers have to bear higher prices.

Although in the short term the economies of the EU would benefit from further escalation in the trade war, it must take into account the negative effects caused by the uncertainty of investors and the possibility of a devaluation of the Chinese currency, that would reduce demand of European products in China.

Other countries have taken a temporary advantage from the bilateral trade disputes between China and the United States, as the traditional flow of goods were diverted.

Vietnam's exports to the U.S., for example, grew of 40% in 2019, as Chinese firms moved their distribution to Vietnam to circumvent U.S. tariffs. However, there is a danger that the beneficiary country

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<sup>179</sup> <https://blogs.lse.ac.uk/europpblog/2019/10/17/the-us-china-trade-war-risks-and-opportunities-for-the-eu-and-the-united-kingdom/>

may also be subject to retaliation, and this would put an end to the beneficial side effects and further aggravate the commercial controversy.

In conditions of general uncertainty, companies wishing to enter new markets or already conducting business internationally are likely to decrease their investments; this is the case of the US manufacturing companies, 25% of which were pushed to re-evaluate their capital expenditure plans in 2018.

Indeed, uncertainty leads to a new risk assessment, reducing investment and hindering productivity.

Both the OECD and the IMF have called for attention to be drawn from the fact that, in the long term, commercial tensions only cause losers and no winners<sup>180</sup>.

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<sup>180</sup> <https://www.weforum.org/agenda/2019/11/who-benefits-from-a-trade-war/>

### 3.3 Current scenario for the resolution of conflicts between the two trade giants

After several negotiation attempts and numerous unsuccessful agreement attempts, on 13 December 2019 the United States and China announced that they had reached a general agreement for the resolution of the trade war between the two countries, leading to the cancellation of the tariffs that should have entered into force two days after the announcement, on December 15, 2019.

The Phase One of the agreement makes nine chapters dedicated to the following topics, especially dear to the United States:

- the strengthening of intellectual property;
- the transfer of technology;
- the purchase of agricultural and food products;
- the opening of the financial services markets;
- currency policies;
- the transposition of legislation;
- the promotion of exchanges;
- the dispute resolution mechanism.<sup>181</sup>

The deal opens with a strong emphasis on intellectual property issues. Section A, devoted to general obligations, states that

*“the United States recognizes the importance of intellectual property protection”*

and

*“China recognizes the importance of establishing and implementing a global legal system for the protection and enforcement of intellectual property, and believes that the improvement of intellectual property protection and its application is in the interest of building an innovative country, characterized by the growth of businesses driven by innovation and the promotion of high quality economic growth.”*

Article 1.4 lists the elements that constitute misappropriation of trade secrets, such as:

- a) electronic intrusions;
- b) violation or induction of a violation of the duty not to reveal secret information;
- c) unauthorized disclosure after the acquisition of a trade secret.

China and the United States are also committed to strengthening cooperation on the protection of trade secrets<sup>182</sup>.

As known, the theft of intellectual property was one of the main reasons that led to the clash with China. The agreement aims to facilitate the identification and punishment of theft and counterfeiting of

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<sup>181</sup> [https://www.ilsole24ore.com/art/usa-cina-vice-premier-liu-he-saturday-washington-sign-space-dates-ACr3q38?refresh\\_ce=1&fbclid=IwAR3\\_2bPioE70BU9NfXybbxjYz5zQq8Ax8](https://www.ilsole24ore.com/art/usa-cina-vice-premier-liu-he-saturday-washington-sign-space-dates-ACr3q38?refresh_ce=1&fbclid=IwAR3_2bPioE70BU9NfXybbxjYz5zQq8Ax8)

<sup>182</sup> *Economic And Trade Agreement Between The United States Of America And The Peoples Republic Of China*, (2019), available on [https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic And Trade Agreement Between The United States And China Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic%20And%20Trade%20Agreement%20Between%20The%20United%20States%20And%20China%20Text.pdf)

intellectual property, adding various provisions to protect the trade secrets, which, according to American businesses, do not would be protected by Chinese law.

The pharmaceutical industry also appears to have made significant gains, with the Chinese government's commitments to making greater efforts to protect patent owners from imitators.

The deal also contains commitments to stop the forced transfer of American technology to Chinese competitors. US companies have reported for many years that to do business in China they were “forced” to hand over technology and trade secrets.

With the new agreement signed, China has undertaken not to request such transfers, even when companies request specific government licenses or approvals<sup>183</sup>.

Another very important element is that China has committed to purchase another \$ 200 billion a year of American goods and services, by 2021, to help reduce the deficit in the trade balance with the USA, as well as to repress commercials practices placed under the Trump administration's attention.

The problem is that the text of the agreement does not provide enough information to understand how it will work in practice, therefore too much space is left for a “convenience” interpretation by both countries.

Although American businesses and farmers will undoubtedly benefit from these commercial commitments, the deal only covers the next two years, and is very vague as to what will happen next, while predicting that the largest purchases will continue until 2025.

The nature and the unclear modalities of the agreement then leave questions open also regarding the contracts that, pending the commercial crisis, China has signed with other countries (just think of those with Brazil for the purchase of soy) and the effects that the planned forecast of such purchases may have on the commodity markets.

Chinese Vice Premier Liu He said that Chinese companies will buy goods and services from the United States based on domestic market demand, suggesting that Beijing may not comply with the agreements regardless of the country's real needs. In what is probably the most solid part of the agreement, China is engaging in some major changes in its agricultural policy<sup>184</sup>. The country will get rid of some health standards that Chinese officials have used to block a variety of American agricultural products (Chapter 3)<sup>185</sup>.

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<sup>183</sup> <https://www.nytimes.com/2020/01/15/business/economy/china-trade-deal-text.html>

<sup>184</sup> XIONG Maoling 熊茂伶, GAO Pan 高攀 Měi shāngjiè huānyíng zhōng měi dì yī jiēduàn jīngmào xiéyì xiāngguān cuòshī luòshí 美商界欢迎中美第一阶段经贸协议相关措施落实, on Xihuanet.com, 2020, available at: [http://www.xinhuanet.com/2020-02/15/c\\_1125578635.htm](http://www.xinhuanet.com/2020-02/15/c_1125578635.htm)

<sup>185</sup> *Economic And Trade Agreement Between The United States Of America And The Peoples Republic Of China*, (2019), available on [https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic And Trade Agreement Between The United States And China Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic%20And%20Trade%20Agreement%20Between%20The%20United%20States%20And%20China%20Text.pdf)

Beijing is also easing the licensing, inspection and registration rules that the United States has seen as barriers to trade. The changes will affect products such as meat, poultry, seafood, pet food, infant formula, dairy products and biotechnology<sup>186</sup>.

Unlike other commercial agreements, which provide for the resolution of disputes to be reserved to a neutral body or third party, the United States and China have decided to resolve their dispute without external intervention, highlighting more clearly the bilateral nature of the agreement. It was set an Office for Bilateral Evaluation and Settlement of Disputes, that will be responsible for receiving and evaluating complaints, and was expected to appeal procedure by which the problems can be raised starting from officials medium level, to the offices of the United States commercial representative and the vice premier of China.

If the dispute is not resolved, higher tariffs may be envisaged, with the other party renouncing the imposition of own tariffs; if this occurs, both countries are free to withdraw from the agreement: in this case, they would return to a commercial war scenario.

The deal also offers US businesses significant revenue opportunities in financial services, especially electronic payments, securities, fund management and insurance; in fact, it must be pointed out that some of these changes were already underway. In fact, in an attempt to ease the tension with the Trump administration, China had already opened its financial and payment market to foreign companies in 2017, with banks and other US financial intermediaries having started to acquire shares in majority in Chinese enterprises.<sup>187</sup>

Chapter 5 is also very important, dedicated to macroeconomic, monetary and currency policies.

Article 5.1 is inherent to the general provisions, and provides as follows:

1. *Each party respects the autonomy of the other party in monetary policy, in accordance with its national law.*
2. *The Parties recognize that solid fundamentals and solid policies are essential to exchange rate stability, contributing to strong and sustainable growth and investment. Flexible exchange rates, where possible, can act as a shock absorber.*
3. *The parties share the objective of pursuing policies that strengthen the foundations of economic development, foster growth and avoid sustainable external balances.*
4. *The parties comply with the commitments relating to the currencies undertaken by each and communicated to the G20, also to refrain from competitive devaluations<sup>188</sup>.*

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<sup>186</sup> <https://www.nytimes.com/2020/01/15/business/economy/china-trade-deal-text.html>

<sup>187</sup> For years, companies like Visa, Mastercard and American Express have tried to enter China. In the agreement, China has undertaken to accept license applications from these companies, without however automatically granting access to its market. Even if China approves their applications to operate in the country, it is not clear that those companies would make many steps forward in the electronic payment system, dominated by domestic companies.

<sup>188</sup> *Economic And Trade Agreement Between The United States Of America And The Peoples Republic Of China*, (2019), available on [https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic And Trade Agreement Between The United States And China Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic%20And%20Trade%20Agreement%20Between%20The%20United%20States%20And%20China%20Text.pdf)

Trump has always been very critical on China's currency policy, aimed at weakening its currency in order to gain a competitive advantage for its exports, coming to label it as a “currency manipulator”.

With the new agreement, China has undertaken not to competitively devalue its currency and to be more transparent about its interventions on foreign exchange markets; PRC has also agreed to make public the amount of its currency reserves and its imports of goods and services.

However, most of these commitments were already foreseen in agreements with the G20 and the International Monetary Fund.

The partial ceasefire could help restore confidence on a global level, especially because Chinese purchases will help certain sectors of the American economy, at least in the short term; however, the agreement leaves unaltered the most of the tariffs, on 360 billion dollars of goods imported into the United States from China.

Trump administration officials have said that the country simply agrees not to raise these tariffs until the two countries manage to agree on a “Phase Two” agreement , which is also necessary due to the fact that the recent agreement, of "Phase One" does not touch on some points on which the United States have long been concerned:

- the use of industrial subsidies and state-owned enterprises to build and dominate in crucial industrial sectors, such as steel and solar panels;
- cyber security;
- Chinese control over how companies manage data storage and cloud computing.

To date, China has not intended to face negotiations on these issues<sup>189</sup>.

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<sup>189</sup> <https://www.nytimes.com/2020/01/15/business/economy/china-trade-deal-text.html>

## CONCLUSIONS

During these last years, from March 2018, when the conflict started, until January 2020, when the first agreement on the trade war was signed, the global community could see the escalation of the conflict made up of sudden aggression and direct retaliation, periods of brief truces and period of “back-and-forth” between the two super powers.

With this final agreement it seems like the trade peace may be soon established, even though there is still a lot of work to be done for getting a permanent success, and here below there is the motivation for this final comment.

To summarize, these are the commitment of the two Nations to each other:

a) Chinese commitments:

- i. Beijing has committed in buying US \$ 200 billion in two years. In particular, China will purchase 80 billion more of US-made manufacturing products, 50 billion of energy supplies, \$40 billion of services and \$32 billion of agri-food products. Impressive figure which, if confirmed, will decrease the trade balance with the United States by about \$300 billion.
- ii. Also with regard to energy expenditure, China has undertaken to purchase huge quantities of crude oil, liquefied natural gas and liquefied petroleum gas. The goal is to reach \$50 billion.
- iii. China has also engaged in other fields such as the protection of intellectual property, the forced transfer of technologies, the currency system, the opening of the market to financial services.

b) American commitments:

- i. For their part, to reach the agreement, Trump agreed not to increase tariffs on \$162 billion of Chinese exports in mid-December and to cut in half the 15% of the duties existing on other \$120 billion Chinese products.
- ii. On the other hand, the duties of 25% on \$250 billion of Chinese exports remain in force. Instead, the Huawei chapter on 5G and those of state subsidies to Chinese industry will remain outside the agreement and will be the subject of Phase Two of the agreement.

Despite the commitments undertaken, the United States is threatening to unilaterally introduce new duties if China fails to deliver on its commitments within 90 days.

Considering the above-mentioned aspects, it is important to underline again how some of the most important factors, causing the trade war, have not been included (or are just partially included) into the Phase One agreement. Among these there are:

- The fact that tariff barriers between the two countries have just been stopped increasing, not removed;

- Cyber-security;
- Huawei and 5G matters;
- State subsidies for Chinese companies.

Stating that these are crucial point for the final agreement, the public opinion from all around the world, feels that the negotiations for Phase Two will be tough.

It is important also to note that the choice of the US President to consider that the Chinese party could not maintain the promises made, is a signal of the lack of confidence in the agreement and means that the USA are ready to retaliate in case of failure of Chinese commitments.

In order to deeply understand how this dispute will end, it will be necessary to wait at least until the Presidential election of the US in November 2020.

中华人民共和国政府和美利坚合众国政府  
经济贸易协议

第六章扩大贸易

第 6.1 条目标

一、双方承认，本协议以及中国正在采取的开放经济和改善贸易体系的举措所带来的贸易和经济结构变化，将有助于扩大贸易流，包括显著增加美国和其他国家对中国的商品和服务出口。

二、双方认为，两国贸易具有高度的互补性，扩大贸易合作有利于改善双边贸易关系、优化资源配置、调整经济结构、促进经济可持续发展。

三、双方认识到，美国生产并能够供应品质高、价格竞争力强的商品和服务，而中国需要增加质优价廉的商品和服务的进口，以满足中国消费者日益增长的需要。

四、双方因此寻求开展建设性合作，以改善双边贸易关系，探索采取适当举措便利贸易增长。

第 6.2 条贸易机会

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<sup>190</sup> For the English version of this attachment see: *Economic And Trade Agreement Between The United States Of America And The Peoples Republic Of China*, (2019), available on [https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic And Trade Agreement Between The United States And China Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic%20And%20Trade%20Agreement%20Between%20The%20United%20States%20And%20China%20Text.pdf)

一、从 2020 年 1 月 1 日至 2021 年 12 月 31 日两年内，中国应确保，如附录 6.1 所示，在 2017 年基数之上，扩大自美采购和进口制成品、农产品、能源产品和服务不少于 2000 亿美元。具体而言，中国应确保：

（一）在制成品方面，如附录 6.1 所示，在 2017 年基数之上，中国 2020 日历年自美采购和进口规模不少于 329 亿美元，2021 日历年自美采购和进口规模不少于 448 亿美元。

（二）在农产品方面，如附录 6.1 所示，在 2017 年基数之上，中国 2020 日历年自美采购和进口规模不少于 125 亿美元，2021 日历年自美采购和进口规模不少于 195 亿美元。

（三）在能源产品方面，如附录 6.1 所示，在 2017 年基数之上，中国 2020 日历年自美采购和进口规模不少于 185 亿美元，2021 日历年自美采购和进口规模不少于 339 亿美元。

（四）在服务方面，如附录 6.1 所示，在 2017 年基数之上，中国 2020 日历年自美采购和进口规模不少于 128 亿美元，2021 日历年自美采购和进口规模不少于 251 亿美元。

二、双方应视情明确附录 6.1 中二级目录产品的采购和进口增加额。

三、双方预测，从 2022 日历年至 2025 日历年，中国自美采购和进口制成品、农产品、能源产品和服务将继续保持增长方向。

四、美国应确保采取适当举措，以便有足够的美国商品和服务供中国采购和进口。

五、双方承认，将基于市场价格和商业考虑开展采购活动。而且在特定年份，市场状况可能会影响采购的时点，尤其是在农产品采购方面。

六、中美两国的官方贸易数据应用于判定本章节是否得到落实。如果基于各自贸易数据分析得出相互矛盾的评价，双方应就此进行磋商。

七、如中国认为其落实本章节义务的能力受到美国采取或未采取行动或美国内其他情况的影响，中国有权提出与美国进行磋商。

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