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**China's reaction to the Us' new
Custom Duty Policy: the WTO
Dispute Settlement 543**

**The worsening of China-Us trade relations and the
non-compliance with the WTO standards**

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Abstract

This work analyzes the inconsistency of the new Custom Duty Policy adopted by the Trump administration from 2018 on imports of goods from China and the consequential Dispute Settlement 543 filed by China against the Us. As a matter of fact, the issuing of additional custom duties on certain products imported from a specific country is a violation of the WTO “trade without discrimination” principle, and both China and the Us are WTO members.

Before discussing specifically this dispute, an overview on China’s behavioral change towards international litigations is provided, in order to understand the transformations that led China to ask for consultations to the WTO Dispute Settlement System. Soon after its entrance in the WTO, China was quite reluctant towards international litigations and international organizations’ mechanisms in general; nonetheless, after some years the country shifted its attitude and became a more active participant of the WTO Dispute Settlements. Another important precondition in this analysis is the historical background of China-Us bilateral relations; from a policy of engagement towards the Asian Pacific region and towards China in particular, the Us administrations moved to a protectionist policy that had negative consequences on bilateral and multilateral trade flows. Hence, we will deepen the China-Us Trade Unbalance and economic causes and consequences of custom duties, focusing on trade-related aspects of the Trade War. Finally, we will examine the legal implications of China’s accession to the WTO and the Dispute Settlement 543 with the Us. After a revision of the Chinese judiciary according to the WTO standards, the Chinese law rectified its inconsistencies with the WTO; however, a Us policy that did not meet the WTO standards led China to ask for consultations to the WTO. The final assertion of this thesis is the ongoing crisis of the WTO authority as international organization regulating multilateral trade.

引言

本文讨论中美贸易战，专题是美国总统特朗普采取的征收关税措施及这个措施跟WTO原理的矛盾。实际上，从2018年特朗普总统对从中国进口的数千亿美元产品征收关税；他不断地加征关税及增加征收关税的产品数量。因为关税违反多边贸易规则，所以中国政府请求世界贸易组织的争端解决机制进行磋商。中国政府和美国政府之间2018年播发的争端称呼“争端解决543”。

为了详细分析事情，本文第一、第二章介绍中美贸易战和“争端解决543”的背景。首先，本文第一章介绍世界贸易组织争端解决机制基本程序与中国在这种国际机制内持什么态度。其次，本文第二章讨论中美双边贸易和双边关系的最重要变化；还讨论在中国从1980时代发生的现代化改革和改革开放；第二章也介绍贸易差额的概念、贸易逆差的意思及其他经贸问题跟中美贸易战有密切关系。再次本文第三章讨论中国加入世界贸易组织之后应该修改的哪个法律制度方面；最后一部讨论中国跟美国“争端解决543”。

一、世界贸易组织的争端解决机制与中国对世界贸易组织争端解决机制的态度

世界贸易组织 (World Trade Organization, 英文缩写为WTO), 简称世贸组织, 是一个多边贸易体系成立于1995年1月1日; 目前世贸组织现有164个成员国。世界贸易组织包括1947年的《服务贸易总协定》(*General Agreement on Trade and Tariffs*, 英文缩写为GATT), 还包括《关税与贸易总协定》(*General Agreement on Trade in Services*, 英文缩写为GATS), 《与贸易有关的知识产权协定》(*Trade-Related aspects of Intellectual Property Rights*, 英文缩写为TRIPs) 和《与贸易有关的投资措施协定》(*Trade-Related Investments Measures*, 英文缩写为TRIMs)。世界贸易组织的核心目标是建立一个完整而具有活力的多边经贸体系以提高人们的生活水平及进行发展。为了达到该目标, 世贸组织制定追求自由贸易的一系列规则。世界贸易组织基本职能其中有通过争端解决机制 (Dispute Settlement System, 英文缩写为DSS) 解决成员国之间发生的贸易争端。贸易争端是按照《关于争端解决规则与程序的谅解》(*Dispute Settlement Understanding*, 英文缩写为DSU) 制定的规则解决的。世界贸易组织委托世界贸易组织争端解决机构 (Dispute Settlement Body, 英文缩写为DSB) 解决贸易争端。

世界贸易组织解决争端机制有一定的程序。第一阶段是磋商程序；一个世贸组织成员国觉得其他成员国违反国际贸易规则的时候，受损者能要求世界贸易组织进行磋商。最好的是两个成员国通过双边协商达到协议及得到双边利益。如双方把贸易争端解决不到，就有世贸组织争端解决机制第二阶段：调解。双方不达到协议的时候，请专家组帮助他们解决贸易争端；专家组在 60 天时限内要解决争端。下一个争端解决程序是仲裁调解程序。世界贸易组织的仲裁调解纠纷；仲裁裁决有法律结束力及双方必须执行。专家组宣布报告。争端解决无上限总时长 1 年。仲裁裁决理论上解决争端；平时一方对仲裁裁决感到不满意，因此可以请求世界贸易组织进行上诉审查。上诉机构可以支持、修改或者推翻专家组的裁决；重要的是上诉审查应该在 90 天时限内完成。最后世贸组织争端解决机制就是推程序。上诉机构也宣布一份报告。争端解决无上限总时长 1 年 3 个月。

中华人民共和国 2001 年 12 月 11 日正式加入世界贸易组织；中国加入世界贸易组织以后，对国际争端和世界贸易组织的争端解决机制持怀疑和勉强态度。其实，那时中国很难地要求世贸组织进行磋商、很难地请求世贸组织进行上诉审查，大部分的争端通过双方同意的协议结束了。中国对世界贸易组织争端解决机制保持着小心而消极态度。不过 5、6 年左右以后，中国习惯得了国际机制，国家开始更常常请求世界贸易组织争端解决机制解决国际争端，还开始使用上诉机构及要求世界贸易组织进行上诉审查。

二、中美贸易战的背景

第二章以从 1970 时代在中国与在中美关系方面内发生的变化为主题。从 1980 时代中国总统邓小平追求中华人民共和国的现代化与开放以实现国家全面的发展及在国际方面上得到竞争力。这些政策使中国越来越强的国家，会变成亚洲的霸权国家，及世界的霸权国家。随着这些改变，中国和美国双边关系恶化了。冷战爆发时，中国政府跟苏联政府有特别好的关系。然后由于不少的原因，中国和苏联联系慢慢地恶化了。从 1970 时代开始中国和美国建交：尼克森总统 1972 年正式访华。另外一个重要步骤是尼克森总统决定了取消贸易壁垒继续自由主义政策。奥巴马总统也实施自由主义政策。特朗普总统相反的实行保护主义政策以平衡中美进出口贸易差额。随着中国的发展，中国出口到美国的产品数量比从美国进口的增加，因此美国逆差。这些都是中美贸易战的原因。

本文的范围限于贸易战对经贸的影响、对贸易流动与贸易流量的影响；因此论文内介绍的只是中美贸易战经贸后果。不过，中美贸易战持续升级为全面的贸易战。关于贸

易战造成的经济问题，由于关税的征收及加征，中国到美国的出口商品数量大幅减少；如此同时，美国从中国进口的商品数量也大幅减少。因此中美双边贸易流动减少，中国产品过剩无法出口到美国，美国需要但不会自己生产的产品价格提高了，所以中国经济与美国经济都被中美贸易战损害。中美贸易战造成的经济问题之间还有：贸易转移、解藕、跳跃关税的外国直接投资(Foreign Direct Investments, 英文缩写为 FDI) 与投资流动变化。

此外，作为世界上两个最大经济体，中国和美国的贸易战让全球经济环境恶化了，中美贸易战不仅损害两国经济而且损害全球经济。不过还有一些国家得益于中美双边贸易流动的减少。有一些国家，尤其是南亚国家与拉丁美国国家，代替中国作为美国的出口商。此外不少跨国公司决定离开中国，把生产线转移到越南或者其他劳动力便宜的国家。中国也代替美国作为自己的进口商：最明显的例子就是大豆的进口。中国是世界上第一进口美国大豆的国家，随着贸易战的升级、关税的加征，中国开始把大豆从巴西进口中国来。这样，美国经济受损，巴西经济则受益。

三、中国加入世界贸易组织对中华人民共和国法律制度的影响与跟美国的“争端解决 543”

深讨世界贸易组织争端解决机制程序和中美贸易战对经贸的影响之后，本文第三章介绍中国加入世界贸易组织的后果；最后部分是关于世界贸易组织争端解决机制对中美贸易战的看法及“争端解决 543”。具体地说，加入世贸组织之后，中国应该改变自己的法律制度以便符合世贸规则：中国政府按照世界贸易组织标准修改法律制度。为了加入世界贸易组织，中国签署了《中华人民共和国加入议定书》(*Protocol on the Accession of the People's Republic of China*)；该议定书条内有统一管理、透明度、司法审查与不歧视道理。这些道理都是以前在中华人民共和国法律制度没有的。

虽然中国为了符合世界规则努力地修改了国家的法律制度，但是美国政府没遵守世界贸易组织规则。世界贸易组织规则之间最重要的是自由贸易，对从只一个国家进口的产品征收及加征关税并不是遵守自由贸易。中方不可避免要求世界贸易组织的争端解决机制进行磋商。“争端解决 543”2018年4月4日开始。2020年9月15日世界贸易组织争端解决机构宣布专家组报告；报告中专家说，美国没有道理对从中国进口的那些商品征

收关税，美国提供的观点不足。不过美国对争端解决机构不满意因此请求世界贸易组织进行上诉审查。到现在世界贸易组织还没有解决“争端解决 543”。

结论

本文最后一部分分析目前的状况。近年来中美贸易战持续升级及还没结束了；因此中美经贸关系的未来走向充满了不确定性。现代美国总统拜登似乎不想加征对从中国进口产品的关税，也不想取消关税。本论的目标并不是关于美国或者中国的态度做出判断，而是分析中美贸易战对双边经贸和多边经贸的影响。因为美国对从中国进口的商品征收关税，所以双边和多边贸易流动减少，使中国请求世界贸易组织进行磋商。关键方面就是被美国政府征收的关税违反国际贸易规则。

本文最后论点是，毫无问题美方实施的保护主义政策违反世界贸易组织的规则，但是世界贸易组织争端解决机制还没有解决中国跟美国“争端解决 543”。那有可能关键问题就是国际机制陷入了深刻危机，国际机制之间当然有应该监管国际贸易流动与流量的世界贸易组织，那世贸组织也陷入了危机。

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The WTO Dispute Settlement and the behavioral shift of China in international litigations

Before analyzing specifically the dispute between China and the Us as concerns additional trade tariffs, naming the Dispute Settlement 543, we will discuss the behavior of the Asian country regarding international litigations. As a matter of fact, right after its accession in the World Trade Organization (WTO), China seemed to be cautious and prudent towards litigations with other WTO members; traditionally the country has been reluctant to claim for litigations on trade-related issues. However, after almost twenty years of membership in the WTO, we can affirm that China's attitude in international litigations has varied greatly: from being a «cautious observer» the country shifted to be an «active participant»¹. As evidence of this shift, the disputes in which China was the complainant party – instead of the respondent – have increased in number².

The general increase in China's participation in international disputes and its shift to a more active role can be considered also as a clear evidence of the country's gradually acceptance of the international mechanisms' authority, and of the WTO Dispute Settlement System (DSS) in particular³.

1.1 The WTO DSS: the general framework

The DSS is the WTO mechanism for the resolution of disputes concerning trade issues. According to the WTO DSS there are two possibilities to settle a dispute: the complainant party –

¹ Cfr. X. Li, *Understanding China's Behavioral Change in the WTO Dispute Settlement System: Power, Capacity and Normative Constraints in Trade Adjudication*, in «Asian Survey», 52, no. 6, December 2012, pp. 1111.

² W. Ji and C. Huang, *China's Experience in Dealing with WTO Dispute Settlement: A Chinese Perspective*, in «Journal of World Trade», 45, 2011.

³ However, it has to be noted that scholars have different opinions on the implications of the active participation of China in the WTO DSS and its acceptance. Someone (Don Harpaz, 2010) argues that this fact implies a general faith in western law and western legal institutions, thus a general acceptance of international rules. Others (Manjiao, 2012) conversely state that the acceptance of the WTO DSS does not automatically imply an overall acceptance of international dispute settlement systems. Cfr. M. Don Harpaz, *Sense and Sensibilities of China and WTO Dispute Settlement*, in «Journal of World Trade», 6, 2010, p. 1156. Cfr. C. Manjiao, *China's Participation in WTO Dispute Settlement over the past decade: experiences and impact*, in «Journal of International Economic Law», 15, March 2012, p. 40.

that one which blames another one – files a respondent⁴ – the blamed party – in the WTO and then they can find a mutually agreed solution through bilateral consultations or they can decide to ask for adjudication to the Dispute Settlement Body (DSB)⁵.

1.1.1 The DSB and the adjudication process

The DSB is the WTO body responsible for settling disputes among members of the WTO; it has the role to deal with conflicts occurring among WTO members. The DSB settles dispute Panels that are responsible for the redaction of a Panel report on the dispute. A dispute between WTO members arose when a country does not respect the promises it undertook signing the *WTO Agreement*. Under this context, the WTO through the DSB, has the purpose to encourage multilateral consultations to make countries reach mutual benefits, instead of taking unilateral actions against the other country. The DSB is disciplined by the *Dispute Settlement Understanding (DSU)*.

Bilateral consultations, or mediation, are the first step of the dispute settlement process; if parties do not reach an agreement during this stage, they pass to the second stage, the adjudication, which is settled by the Panel. During this second step, the Panel publishes the Panel report and whether the respondent party is not satisfied with the decision taken, it can appeal to the Appellate Body⁶. Appealing to the Appellate Body is possible for both countries object of the dispute as long as they don't request the reexamining of laws, instead the reexamining of their legal interpretation. The appeal ends with the Appellate Body report adopted by the DSB. The last step in the dispute settlement process is the implementation of the report (Panel report or Appellate Body report) and the acquisition of the prescriptions provided as the ruling; the violation of the ruling can lead to the adoption of countermeasures by the WTO.

The DSS also establishes a timetable to be respected for disputes. In general, initial consultations or mediation should last 60 days; after other 45 days the DSB appoints the panelists and sets up the Panel that within 6 months should release the Panel final report; in the following 6 months

⁴ In a WTO dispute there can also be a third group of countries having interests in the dispute that can enjoy some rights – the so-called “third parties”.

⁵ https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s1p1_e.htm, visited on August 10, 2022.

⁶ We can notice that, compared to its predecessor, the *General Agreement on Trade and Tariffs (GATT)* Dispute Settlement mechanism – on which more will be discussed later in this thesis – the DSS of the WTO introduced an important innovation: the possibility for the respondent party to ask for a review of the Panel decisions to the Appellate Body. This possibility ended the GATT's *de facto* veto right of the respondent party. Cfr. X. Zhang and X. Li, *The Politics of Compliance with Adverse WTO Dispute Settlement Rulings in China*, in «Journal of Contemporary China», 23, no. 85, 2014, p. 143.

this report is transmitted to the WTO members and it is adopted by the DSB, thus it becomes a ruling. Hence, generally a dispute – with no appeal – lasts 1 year. In case of appeal it lasts 15 months⁷.

Scholars stated that, in comparisons to its predecessor – the *GATT* Dispute Settlement mechanism – the WTO DSS had involved more countries in the use of its bodies; it has been therefore more effective in the resolution of international disputes among WTO members. As a matter of fact, from 1948 to 1995 a total of 316 disputes has been filed in the *GATT*, with an annual average of 6.7 disputes; after the establishment of the WTO, from 1995 to 2021 there have been 607 disputes filed in the WTO, 23.3 disputes per year: an increase of 28.8% in the requests for consultations has been registered. Other data also show the stronger participation of WTO members in its disputes resolution system: from its entry into force on January 1, 1995 to December 31, 2021, the DSB settled 607 disputes among WTO members⁸; in total 52 States requested for consultation at least one time and 61 members took part in at least one dispute as respondent party. Moreover, 90 States in total acted as third parties in disputes among other WTO members. To sum up, 111 members in total participated in at least one dispute settlement as complainant, respondent or third party⁹. Furthermore, compared to the *GATT* Dispute Settlement mechanism, another change happened: countries participated more actively in the WTO DSS. East Asian countries, and China in particular, are a perfect example of these significant changes in participation in the dispute resolution mechanisms: they increased their participation in the WTO DSS¹⁰ and they assumed a more active behavior¹¹.

Nevertheless, as concerns China and its participation in the WTO DSS there is an important preliminary clarification to make: after the accession of the country to the WTO, some analysts (Ostry, 2001) expressed their worries about the number of additional disputes that the entry of China in the international organization could imply; in particular, worries were related to the fact that those multitude of disputes could «overwhelm the already over-burdened [dispute settlement] system»¹². The broke out of the Trade War and the subsequent related dispute settlements seem to validate this concern.

⁷ https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm, visited on July 23, 2022, visited on August 10, 2022.

⁸ In 2022, up to date there has been other 6 disputes filed in the WTO.

⁹ https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm#rfc, visited on August 10, 2022.

¹⁰ As a matter of fact, summing up the participation as complainant parties, respondent parties and third parties, the East Asian countries are now the 1st largest regional group using the WTO DSS. Cfr. D. Moon, *Neither Reluctant nor Aggressive Legalism: East Asian Countries under the World Trade Organization Dispute Settlement Mechanism*, in «Pacific Focus», 28, April 2013, pp. 62-98, available at: <https://doi.org/10.1111/pafo.12004>

¹¹ D. Moon, *ibid.*

¹² S. Ostry, *WTO Membership for China: To Be and Not To Be: Is that the Answer?*, in P. Grady and A. Sharpe (ed. by) «The State of Economics in Canada: Festschrift in Honor of David Slater», Queen's University Press, Canada, 2001, p. 263.

1.1.2 Function and objectives of the DSS

The DSS is considered to be to be the «backbone of the multilateral trading system»¹³, as declared in 2000 by the then-WTO Director General Mike Moore. As stated in the *Preamble* of the *WTO Agreement*, the WTO has been established to accomplish three purposes: to provide members a regulated mechanism to negotiate bilateral trade; to eliminate discriminatory trading behaviors against other members; to provide a functional disputes resolution mechanism to members in order to avoid further trade wars¹⁴. The DSS performs the adjudicatory system.

Being the dispute settlement mechanism of an international organization regulating trade flows, the main object of the WTO DSS is to provide a safe and predictable environment for multilateral trade; as a matter of fact, art. 3.2 of the *DSU*¹⁵ states that:

2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.¹⁶

Hence, the DSS makes the global trading system safer for its economic operators. Even if the WTO members are the States, economic operators in the global trade are primarily private operators, which need stability and security in the environment they work because of their weaker nature. To reach such aim, the DSS provides to WTO members a mechanism through which they can make their rights respected: when a member applies trade policies inconsistent with those set out in the *WTO Agreement* they signed, the injured country can file a dispute in the WTO¹⁷. Essential bodies of this mechanism are the Panel, the Appellate Body and all that discussed above.

Moreover, the priority of the WTO DSS is not to give a legal judgement on a specific dispute; it aims instead at settling disputes – through consultations if possible. For this reason, probably the most important part of any dispute is the first stage, namely consultations. It's important that before taking any other action, the countries try to settle the dispute by themselves “out of court” or through

¹³ M. Moore, *WTO's unique system of settling disputes nears 200 cases in 2000*, WTO News, June 2000, available at https://www.wto.org/english/news_e/pres00_e/pr180_e.htm, visited on August 6, 2022.

¹⁴ Cfr. T.A. Adekola, *US-China Trade War and the WTO dispute settlement mechanism*, in «Journal of International Trade Law and Policy», 18, no. 3, 2019, p. 125.

¹⁵ The full text in English of the *DSU* is available at: https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm

¹⁶ *DSU*, art. 3.2

¹⁷ https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c1s3p1_e.htm, visited on August 10, 2022.

the mediation of the WTO Director General. If the mediation fails, the dispute passes to the second stage and the Panel is set up¹⁸.

1.2 China's shift from reluctance to assertiveness

By accessing the WTO, China undertook to accept the international trade mechanisms laid down by the international organization itself; among these mechanisms there's the DSS, responsible for the resolution of the disputes on trade-related issues occurring among the members of the WTO. China is not one of the main users of this system, however the country greatly increased its participation in the WTO Dispute Settlement during the last twenty years¹⁹ and it became a very active party, in particular since the second five years after the accession to the WTO (from 2006/2007)²⁰. As a matter of fact, up to date China has been involved in 71 disputes²¹, in 49 of these disputes the country has been the respondent party, while in 22 the complainant party²².

1.2.1 China as complainant party

Even if the disputes in which China participated as respondent are greater in number than those in which it participated as complainant, the number of disputes advocated by China increased year by year. The following figure (*figure 1*) resumes the disputes in which China has been the complainant party from January 1, 2002 – since China entered the WTO at the end of 2001 – to December 31, 2021.

YEAR	NO. OF DISPUTES	CASES – DATE, CASE ID, DSB ABBREVIATION, NAME, RESPONDENT COUNTRY
2002	1	<ul style="list-style-type: none"> (March 26, 2002) DS252. United States – Definitive Safeguard Measures on Imports of Certain Steel

¹⁸ https://www.wto.org/english/thewto_e/whatis_e/tif_e/displ_e.htm, visited on July 23, 2022.

¹⁹ C. Manjiao, *ibid.*

²⁰ Cfr. M. Kennedy, *China's role in WTO dispute settlement*, in «World Trade Review», 11, Cambridge University Press, 2012, pp. 556-565.

²¹ For the purpose of this analysis, we will take into consideration only those disputes in which China participated as complainant or respondent party. Those cases in which China took part as third party (192 cases in total) are neglected because their impact is not relevant for the aim of this dissertation.

²² These are the official data provided by the WTO on its website, available at https://www.wto.org/english/thewto_e/countries_e/china_e.htm, visited on August 4, 2022.

2003	-	
2004	-	
2005	-	
2006	-	
2007	1	<ul style="list-style-type: none"> • (September 14, 2007) DS368. United States – Preliminary Anti-Dumping and Countervailing Duty Determinations on Coated Free Sheet Paper from China
2008	1	<ul style="list-style-type: none"> • (September 19, 2008) DS379. United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China
2009	3	<ul style="list-style-type: none"> • (April 17, 2009) DS392. United States – Certain Measures Affecting Imports of Poultry from China • (July 31, 2009) DS397. European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China • (September 14, 2009) DS399. United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China
2010	1	<ul style="list-style-type: none"> • (February 2, 2010) DS405. European Union – Anti-Dumping Measures on Certain Footwear from China
2011	1	<ul style="list-style-type: none"> • (February 26, 2011) DS422. United States – Anti-Dumping Measures on Shrimp and Diamond Sawblades from China
2012	3	<ul style="list-style-type: none"> • (May 25, 2012) DS437. United States – Countervailing Duty Measures on Certain Products from China • (September 17, 2012) DS449. United States – Countervailing and Anti-Dumping Measures on Certain Products from China • (November 5, 2012) DS452. European Union and Certain Member States – Certain Measures Affecting the Renewable Energy Generation Sector
2013	1	<ul style="list-style-type: none"> • (December 3, 2013) DS471. United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China
2014	-	
2015	1	<ul style="list-style-type: none"> • (April 8, 2015) European Union – Measures Affecting Tariff Concessions on Certain Poultry Meat Products
2016	2	<ul style="list-style-type: none"> • (December 12, 2016) DS515. United States – Measures Related to Price Comparison Methodologies • (December 12, 2016) DS516. European Union – Measures Related to Price Comparison Methodologies
2017	-	

2018	5	<ul style="list-style-type: none"> • (April 4, 2018) DS543. United States – Tariff Measures on Certain Goods from China • (April 5, 2018) DS544. United States – Certain Measures on Steel and Aluminum Products • (August 14, 2018) DS562. United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products • (August 14, 2018) DS563. United States – Certain Measures Related to Renewable Energy • (August 23, 2018) DS565. United States – Tariff Measures on Certain Goods from China II
2019	1	<ul style="list-style-type: none"> • (September 2, 2019) DS587. United States – Tariff Measures on Certain Goods from China III
2020	-	
2021	1	<ul style="list-style-type: none"> • (June 24, 2021) DS603. Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China

Figure 1. WTO disputes in which China is the complaint party - from 2002 to 2021.

Source: https://www.wto.org/english/thewto_e/countries_e/china_e.htm, visited on August 4, 2022.

As we can see from the table above, in 2009 China claimed for 3 disputes, as in 2012, and in 2018, the year in which the Trade War broke out, the Asian country has been the complainant party in 5 WTO disputes.

From *figure 1* we can also notice other important issues concerning disputes in which China is the complainant country. First of all, we can affirm that the majority of disputes concerns the trade in goods; it means that goods trade is the 1st cause of trade conflicts among China and other countries WTO members. Secondly, the totality of litigations regards added tariffs or Anti-Dumping measures; thus, trade remedies against tariffs on imports are the core issues of China's litigations within the WTO DSS over years. Third, China requests for consultations are all against the Us, the European Union or European Communities, plus one against Australia; this means that the Asian country has more disputes with developed countries because these countries are the biggest China's trading partners. Thus, the main cause of trade conflicts is the economic development; when China became an economically developed country, it met other economically developed countries and trade frictions arose²³. The Dispute Settlement 543 against the Us, object of this thesis, is coherent with these preliminary assumptions: it regards trade in goods and its purpose is to find an agreement on – for China – unjustified additional tariffs on import of goods.

²³ Cfr. C. Manjiao, *ibid*, pp. 34-37.

The percentage of China’s participation in WTO disputes as complainant country increased: in 2002 it only occupied 2.7% of WTO total disputes, in 2009 it reached 21.4% and 29.4% in 2018, the higher percentage from 2002 to date (*figure 2*). Moreover, 2009 is known as “WTO’s China year”²⁴ since the fact that 7 of the 14 WTO disputes occurred that year involved China – 4 as respondent and 3 as complainant party. In *figure 2* we can observe also the general increasing trend of the requests for consultations presented by China: the upgrading of the active participation of China in WTO Dispute Settlement is evident. And the Dispute Settlement 543 is perfectly in line with this trend.

Furthermore, another trend can be noticed: while the total number of disputes occurring in the WTO is decreasing, China’s involvement in them is increasing²⁵.²⁶ In 2002 the WTO DSS received 37 requests for consultation, in 2021 they were only 9, with a decrease of more than 70% (*figure 2*)²⁷.

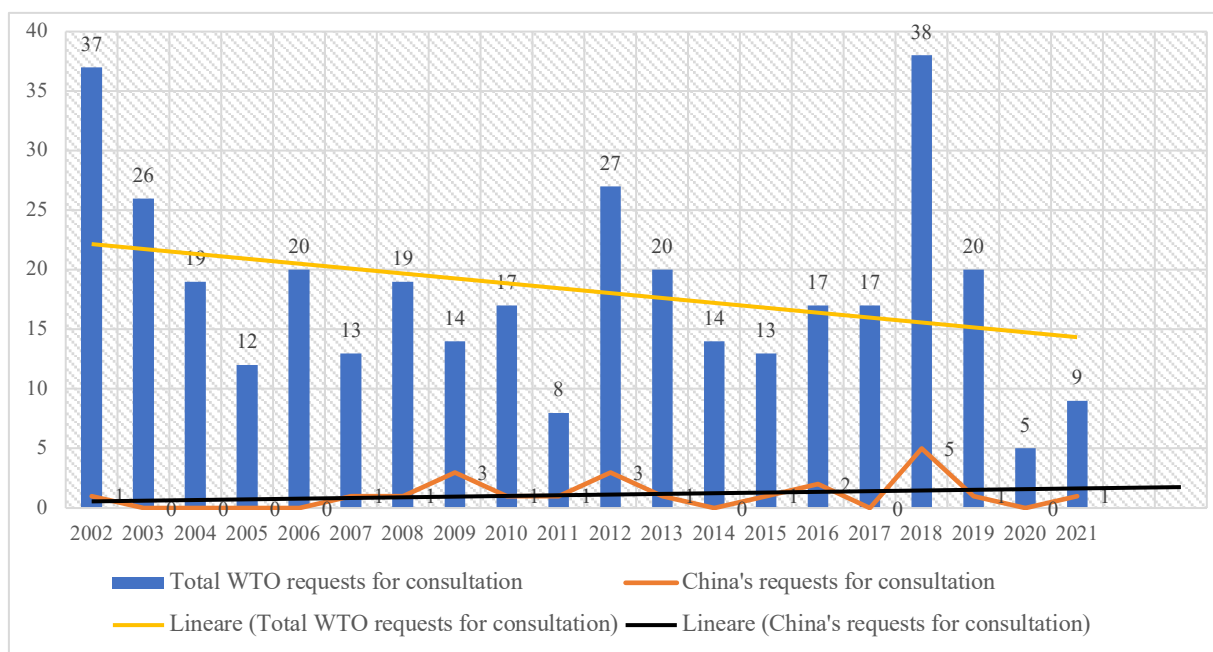


Figure 2. Percentage of China's requests for consultation on total requests - from 2002 to 2021.

Source: re-elaboration of data provided by the WTO at: https://www.wto.org/english/tratop_e/dispu_e/disputstats_e.htm#rfc, visited on August 10, 2022.

²⁴ The expression “WTO’s China year” was firstly used in 2009 by Li Chenggang, the deputy director of the Ministry Of Commerce (MOFCOM) Department of Treaty and Law, when he was participating at the annual conference of the Shanghai Consulting Center for the WTO. Cfr. X. Li, *ibid*. On this topic, see also: N. Zhang, WTO 争端解决的中国年 *WTO zhengduan jiejie de zhongguo nian*, in «Shanghai: People’s Press», 2009.

²⁵ Considering also the number of disputes in which China took part as respondent, the difference in trend is even more evident.

²⁶ The high participation of China in the WTO disputes is not surprising, since China’s size and China’s positioning in the last four decades increased year by year. On this topic, see: J.H. Jackson, *The Impact of China’s Accession on the WTO*, in D.Z. Cass *et alii* (ed. by), «China and the World Trading System: Entering the New Millennium», Cambridge University Press, 2003.

²⁷ On this topic, see: H.Horn *et alii*, *The WTO Dispute Settlement System 1995-2010: Some Descriptive Statistics*, in «Journal of World Trade», 45, 2011.

The growth in number of disputes in which China is the complainant is out of the question; thus, we can state that there is a general shift from a passive to an active role of China in the DSS.

1.2.2 China as respondent party

From 2002 to 2005 China has experienced a quiet period as a WTO member, since only 1 dispute has been initiated against the country (the Dispute Settlement 309)²⁸; starting from 2006, disputes with the other WTO members increased year by year²⁹.³⁰ The reason for the increase of China's participation in international disputes probably has to be traced back to the economic growth of the country, which led to an increment of China's international trade. On the occasion of the 10th anniversary of China's entrance in the WTO in 2001, some scholars (Han, 2011) have pointed out that, since the country seemed to grow even in the future, it was possible to assume that the involvement of China in WTO DSS both as complainant party and as respondent party would have not decreased³¹. Almost eleven years later we can state that these forecasts were right, and the same assumption can be made for the coming years.

We can affirm therefore that the more and more frequent participation of China in the WTO DSS makes of China a more and more active country in the WTO itself, and even on the international environment. This fact can be considered as an evidence of the fact that the country is aiming at an international relevant position through the enhancement of its soft power. The concern of other countries for the upcoming situation is confirmed by the gap between the number of cases in which China is the complainant party and the number of cases in which it is the respondent party; the latter is much higher than the former one³². As shown by *figure 3*, starting from 2004 the number of litigations in which China took part as respondent party roughly has been always higher than those in which the country took part as complainant one³³.

²⁸ We will discuss this dispute later in this Chapter.

²⁹ Cfr. X. Zhang and X. Li, *ibid*, p. 145.

³⁰ A full list of all the WTO disputes involving China from 2002 to date (August 23, 2022) is reported in this thesis as *Annex III*.

³¹ X. Han, *China's First Ten Years in the WTO Dispute Settlement*, in «Journal of World Investment and Trade», 1, 2011.

³² Cfr. C. Manjiao, *ibid*, pp. 32-33.

³³ With some exceptions: in 2005 China did not participate in any international dispute; in 2013 and in 2019 it participated in the same number of disputes as respondent and as complainant; in 2018 the country participated in 1 dispute more as complainant – probably because of the broke out of the Trade War.

Year	Total WTO Requests for Consultation	Disputes involving China as Complainant	Disputes involving China as Respondent	Total Disputes involving China
2002	37	1	-	1
2003	26	-	-	-
2004	19	-	1	1
2005	12	-	-	-
2006	20	-	3	3
2007	13	1	4	5
2008	19	1	5	6
2009	14	3	4	7
2010	17	1	4	5
2011	8	1	2	3
2012	27	3	7	10
2013	20	1	1	2
2014	14	-	1	1
2015	13	1	2	3
2016	17	2	4	6
2017	17	-	1	1
2018	38	5	4	9
2019	20	1	1	2
2020	5	-	1	1
2021	9	1	2	3

Figure 3. China's involvement in WTO requests for consultation - from 2002 to 2021.

Source: https://www.wto.org/english/thewto_e/countries_e/china_e.htm, visited on August 6, 2022.

In conclusion, we can affirm that China is generally becoming a more active country on the international environment; its economic development and opening-up reforms³⁴ led to the enhancement of the soft power of the country and under such conditions, international litigations cannot be avoided. The country understood that it could not continue to take part in those disputes as a passive actor, it needed therefore to adapt the national judiciary according to the WTO standards³⁵, and it needed also to implement its capabilities as concerns litigation in the WTO mechanism³⁶.

³⁴ China's modernization and opening-up reforms will be discussed broadly in *Chapter 2, Paragraph 2.1* of this thesis.

³⁵ *Chapter 3, Paragraph 3.1* refers to the adjustment of the Chinese law according to WTO principles and standards.

³⁶ The increasing participation of China in the WTO DSS made a common fear rise: the possibility that the country would reshape the WTO mechanisms. This fear was legitimated by, as seen before, the volume of disputes in which China has been involved after its accession to the WTO. However, analysts believe that it won't happen, since that the participation of China in other international organizations did not have a disruptive impact in the past. For instance, a study (Kim, 1999) conducted on the effects of China's participation within the United Nations (UN) noticed that China seemed to be «a satisfied conservative system maintainer, not a liberal system reformer nor a revolutionary system transformer». On this topic, see also: M. Kennedy, *ibid*, pp. 572-582. S.S. Kim, *China and the United Nations*, in E. Economy and M. Oksenberg (ed. by), «China joins the World: Progress and Prospects», Council on Foreign Relations Press, New York, 1999. N.R. Lardy, *Integrating China into the Global Economy*, Brookings Institution, Washington DC, 2002.

1.3 China's attitude changes in international litigations

Now we will analyze more in details the WTO disputes involving China both as complainant and as respondent to see the changes occurred in the country's approach to international litigations. As stated before, particularly after 2006/2007 China shifted from a passive to an active role in the WTO DSS; the country increased the number of requests for consultation filed to the WTO, but it participated also in a growing number of disputes as respondent party. Following this change in attitude, also other transformations in the way China acted in the WTO Dispute Settlement occurred.

1.3.1 The turning point in China's behavior: Dispute Settlements 339, 340, 342

In the beginning of this analysis in China's transformations in attitude towards international dispute settlements, we can state that following the China's acceptance to the WTO DSS and its shift to an active role, we may notice a change in China's behavior as concern the decision of the DSB. Initially litigations involving China used to end with mediations. The first Dispute Settlement in which China was claimed as respondent party, naming the Dispute Settlement 309, "China – Value-Added Tax on Integrated Circuits", occurred on March 18, 2004 ended with a mutually agreed solution between the Us – the complainant party – and China³⁷. Other 5 disputes occurred from February 2007 to June 2008 ended also with a mutually agreed solution³⁸, without asking a revision to the Appellate Body³⁹. However, the more China took part in international litigations the more it assumed an assertive behavior; the turning point has been a series of litigations started between March and April 2006, naming Dispute Settlements 339, 340, 342, respectively with the European Union, the Us and Canada. During these disputes, the complainant parties blamed China on some import tariffs imposed on certain automobile components⁴⁰. The Panel appointed to judge these disputes released the report in July 2008, but China appealed and finally the Appellate Body report was published in December 2008. For the first time China appealed on its free will to the WTO Appellate

³⁷ For more details on DS309: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds309_e.htm, visited on August 4, 2022.

³⁸ More specifically, we are referring to DS358, DS359, DS372, DS373, DS378. For more details on these disputes: https://www.wto.org/english/thewto_e/countries_e/china_e.htm#disputeCases, visited on August 8, 2022. Cfr. X. Zhang and X. Li, *ibid*, p. 144.

³⁹ A brief summary of these Dispute Settlements is available in the *Annex III* of this thesis.

⁴⁰ More in details, we are referring to the following Dispute Settlements: (1) DS339. China – Measures Affecting Imports of Automobile Parts; complainant: European Union. (2) DS340. China – Measures Affecting Imports of Automobile Parts; complainant: United States. (3) DS342. China – Measures Affecting Imports of Automobile Parts; complainant: Canada. For more details on these disputes, see: https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm, visited on August 4, 2022.

Body, thus the country used the DSS as an active party that does not completely agree with the decision taken and asks for an appeal. This is the reason why these disputes are considered as the turning point of China's behavior towards the WTO DSS⁴¹ and the decision to ask for consultations to the WTO for new additional tariffs imposed by the Us on products imported from China is perfectly in line with China's attitude towards international disputes after the end of 2008.

In 2008 another important fact occurred: for the first time a Chinese scholar was appointed as member of the WTO Appellate Body: Professor Zhang Yuejiao, the former Director-General of the Department of Treaty and Law of the Ministry of Foreign Trade and Economic Cooperation – the predecessor of the MOFCOM. Hence, it is not risky to assume that having a Chinese member in the WTO DSS has been an incentive for China to shift to a positive attitude towards the DSS itself⁴².⁴³

On the basis of the considerations above, we can affirm that China changed its attitude towards international litigations and towards international disputes resolution systems. We have already seen through official data that right after its accession to the WTO China was a little user of WTO DSS; as time passes the situation changed and China became one of the countries that used that tool to claim for international disputes and to solve them. Thus, China from an «occasional user» became a «frequent user» of the WTO dispute resolution system⁴⁴. We have also seen that the country assumed a proactive attitude towards international litigations in which it was involved as complainant or respondent party.

1.3.2 The shift to a juridical resolution and to an offensive approach

In addition to the assertive attitude, other changes in China's behavior towards international disputes occurred. First of all, China shifted «from a preference for negotiations to a preference for juridical resolution»; secondly the country also shifted «from a defensive approach to an offensive approach»⁴⁵. As concerns the first aspect, we can affirm that right after its accession to the WTO, China seemed to be quite reluctant to appeal to international tribunals – as the DSB – to solve disputes

⁴¹ Cfr. M. Don Harpaz, *ibid*, p.1156.

⁴² Cfr. C. Manjiao, *ibid*, p. 37.

⁴³ Currently, there are no appointed members of the Appellate Body since that the last term expired on November 30, 2020. However, in recent years there have been two Chinese members in the WTO Appellate Body: Zhang Yuejiao and Zhao Hong. The first one has been appointed for two terms: from 2008 to 2012 and from 2012 to 2016. The latter has been a member of the WTO Appellate Body from 2016 to 2020 and she has been appointed also as member of other WTO bodies – the WTO's Committee on Trade-Related Investment Measures (TRIMs). For more information on the Appellate Body members: https://www.wto.org/english/tratop_e/dispu_e/ab_members_descrp_e.htm, visited on August 7, 2022.

⁴⁴ Cfr. K. Leitner and S. Lester, *WTO Dispute Settlement 1995-2009 – A Statistical Analysis*, in «Journal of International Economic Law», 205, 2010, pp. 216-217.

⁴⁵ Cfr. C. Manjiao, *ibid*, p. 38.

concerning international trade; however the country gradually get used to the use of international dispute settlement mechanisms and the number of requests for consultations issued by China increased. Regarding the defensive *versus* offensive attitude, analysts (Manjiao, 2012) state that in the former disputes China seemed to be quite low-skilled in international litigations and it was defensive during WTO disputes; after some years, the country improved its skills and started also to request consultations to the DSB to solve trade frictions. As a matter of fact, when it entered the WTO, China, as all developing countries does⁴⁶, faced a general lack of competences and capacities as regards litigations with other countries. As explained before, China in particular had to deal with a great work of revision of the domestic laws and regulations and with their adaptation to the WTO standards⁴⁷. To overcome this problem, starting from 2001 the Chinese Government took several measures to enhance the capabilities of its judiciary. First of all, a work of adjustment of the Chinese law was undertaken (*Chapter 3, Paragraph 3.1*). Furthermore, the country invited law professors specialized in international law and with high competences in the English language to trainee Chinese scholars and professionals. The country also established close relations with the major experts in WTO disputes and asked them to take lectures in several Chinese universities. Then, these new educated Chinese scholars started to take courses on the WTO Dispute Settlement in order to trainee more professionals and several research centers⁴⁸ were established all over the country⁴⁹. Some scholars (Busch and Reinhardt, 2003; Bown, 2005; Davis and Bermeo, 2009) also believe that

⁴⁶ Xiaojun Li (2012) confirms this thesis stating that developing countries – of which China affirms to be part – usually do not use international dispute resolution systems because of their lack in «trade interests, retaliatory power and capacity». As concerns trade interests, the more a country trade the more it is subjected to multilateral trade frictions; hence, developed countries with higher trade flows usually enter into trade disputes more frequently, and resort to international dispute settlement systems to solve these disputes with a higher frequency. For “retaliatory power” we mean the capacity of a country to cause a dispute; when a country trades more, it has a higher retaliatory power and can cause damages to countries with a smaller retaliatory power. Commonly, developing countries have not a large economy, they have not many trading partners thus they are not in the position of damaging other countries by limiting imports and/or exports and consequently they have not the need to engage in a dispute. Finally, developing countries also lack capacities to provoke international disputes; we refer to the wider meaning of the term “capacity”, including also human and financial resources, specialized professionals, legal expertise, language skills, information about trading partners, etc. Cfr. X. Li, *ibid*, pp. 1112-1116. On this topic, see also: M. Busch and E. Reinhardt, *Developing Countries and GATT/WTO Dispute Settlement*, in «Journal of World Trade», 37, no. 4, August 2003, pp. 719-735. M. Kim, *Costly Procedures: Divergent Effects of Legalization in the GATT/WTO Dispute Settlement Procedures*, in «International Studies Quarterly», 52, no. 3, September 2008, pp. 657-686. C. Davis and S. Bermeo, *Who Files? Developing Country Participation in WTO Adjudication*, in «Journal of Politics», 71, no. 3, July 2009, pp. 1033-1049.

⁴⁷ X. Li, *ibid*, pp. 1125-1126.

⁴⁸ For instance, in Beijing was established the China National Institute of the WTO – 中国世界贸易组织研究院 *Zhongguo shijie maoyi zuzhi yanjiuyuan*; in Shanghai the WTO Affairs Consultation Center – 上海 WTO 事务咨询中心 *Shanghai WTO shiwu zixun zhongxin*.

⁴⁹ On this topic, see also: P.L. Hsieh, *China's Development of International Economic Law and WTO Legal Capacity Building*, in «Journal of International Economic Law», 997, 2010.

participating in disputes as third party⁵⁰ is a good manner to acquire experience in international litigations and to overcome the lack-of-capacity problem⁵¹. China assumed a proactive behavior in those disputes in which it participated as interested third party and started to improve its skills both by observing and by commenting disputes in which it was involved even before its entrance in the WTO. In fact, China's first participation in an international litigation as third party occurred on November 18, 1997 in Dispute Settlement 108, "United States – Tax Treatment for 'Foreign Sale Corporations' " ⁵², four years before its accession to the WTO⁵³.

There are several reasons for the China's shift in attitude towards international litigations. Firstly, as mentioned before, in the last four decades China has experienced an unprecedented economic growth that led the country to a more prominent international position; its entrance in the WTO confirmed the trend of internationalization of China. Secondly, accepting to enter in the WTO meant also accepting the mechanisms of the Dispute Settlement: China could not avoid litigations when claimed by other countries and it had also the obligation to use the international DSS to solve international disputes on trade issues⁵⁴. Finally, encouraged by the national economic development, the Chinese Government had no fear of confrontations with other countries, thus, it became more involved in international disputes and encouraged itself international disputes⁵⁵.

The Dispute Settlement 543 with the Us started in 2018 is the ending point of a process of change in attitude towards international disputes experienced by China. In the following *Chapter 3, Paragraph 3.2*, we will analyze in detail this dispute.

⁵⁰ More on third party's role in international litigations will be discussed in the following *Chapter 3, Paragraph 3.2, Note 220*.

⁵¹ C.P. Bown, *Participation in WTO Dispute Settlement: Complainants, Interested Parties and Free Riders*, in «The World Bank Economic Review», 19, no. 2, Oxford University Press, 2005. M. Busch and E. Reinhardt, *ibid*. C. Davis and S. Bermeo, *ibid*.

⁵² For more details on DS108: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds108_e.htm, visited on August 7, 2022.

⁵³ Cfr. X. Li, *ibid*, p. 1126.

⁵⁴ Someone (Zhang and Li, 2014) has argued that China was hardly encouraged to be compliant with the WTO DSS and with the WTO mechanisms in general because of the high costs that would have implied the non-compliance. In fact, the non-compliance can damage the image of China at international level (in Chinese, we refer to this fact with the expression 丢面子 *diu mianzi*, "loose face", and it is traditionally a shaming phenomenon that has to be avoided) and can cause dissatisfaction among its trading partners. Preserving a good image of the nation and maintaining good trading relations are key concepts for pursuing the economic development; thus, non-compliance with the WTO mechanisms was not a possibility. Cfr. X. Zhang and X. Li, *ibid*, p. 152.

⁵⁵ Cfr. J.Y. Qin, *The Impact of WTO Accession on China's Legal System: Trade, Investment and Beyond*, in «The China Quarterly», 191, Cambridge University Press, September 2007, pp. 720-741. Cfr. C. Manjiao, *ibid*, p. 38.

Before moving forward in this analysis of the Dispute Settlement 543, providing an outline of its economic background is necessary. Hence, in *Chapter 2* we will first introduce the China-U.S. trade relations from an historical point of view, to underline how they worsened over time, especially during the Trump administration. In fact, the worsening of bilateral trade relations led the American president to the issuing of the New Custom Duty Policy. This policy of application of additional tariffs on Chinese imports had a significant impact both on China-U.S. bilateral trade and on multilateral trade; furthermore, it is not compliant with the WTO trade standards, in particular with the “free trade” principle. For these reasons, the application of this policy could not take a back seat and it made therefore China file a dispute to the WTO against the U.S.

Chapter 2

The China-Us Trade War background. An historical overview and economic data showing the new Custom Duty Policy effects

In this Chapter we will deepen the new Trump's Custom Duty Policy that led to the broke out of the Trade War and to the Dispute Settlement 543. Firstly, we will introduce the historical and political background of China-Us trade relations. In particular, in this Chapter we will analyze economic changes occurred in China and the foreign policies about trade adopted by the American administrations from the 1970s to 2018, regarding the Asian-Pacific region and China in particular. Secondly, we will introduce the concept of "Balance of Trade" and we will analyze the economic effects of additional tariffs on imports to understand the motivations that led China to file the Us in the WTO.

2.1 From the 1970s to date: the Us administrations' main foreign policy strategies towards the Asian-Pacific region and the development of China

China-Us bilateral relations varied greatly over time. Before analyzing specifically the changes occurred in the second part of the 20th century, two preliminary considerations must be made. Firstly, for ideological and political reasons until the first half of the 20th century, the USSR seemed to be the country closest to China, so that several official meetings between the Chinese and the Soviet administrations occurred. At the same time, the Us was considered as a threat for the national security, since its policies collided with those of the Chinese political power⁵⁶. Secondly, as concerns China's foreign policy, the country starting from the second half of the 20th century issued a new policy aiming at ending up the international isolation of the country: following the opening-up and the

⁵⁶ The first reason of disagreement between China and the Us was the independence of Taiwan: the Us recognized the Government of Taiwan as an independent Government from that one of the mainland China and this fact could not be accepted by the People's Republic of China. Moreover, there were other reasons for the China-Us bad relations: the Us veto to China's accession to the United Nations (UN) and the increasing American presence in the Asian-Pacific region, in particular in Viet Nam and in Korea, where China had the hegemony over centuries. G. Samarani, *La Cina contemporanea. Dalla fine dell'Impero a oggi*, Piccola Biblioteca Einaudi, 2017.

modernization of the country, Chinese presidents also understood they needed international allies to acquire a more active role in the global governance.

2.1.1 1970-1980: the Nixon administration and the modernization of China

As mentioned before, when the Cold War broke up, China-US economic relations were at their lowest level: the two countries varied greatly in ideology and China was pro-Soviet. Finally, in the late 1960s China-USSR relations started to worsen because of problems at borders: China blamed the USSR to violate borders and to have occupied some Chinese territories. At the same time some official visits between the Chinese and the US administrations' representatives took place.

President Richard Nixon's administration (1969-1974) marked an important change in the US foreign policy strategy towards Asia and China in particular: under the Nixon administration, the US started to get closer to the Asian continent and to China⁵⁷. In 1968 the Chinese Minister of Foreign Affairs asked for an official discussion with Washington. Actually discussions and negotiations started only in January 1970; an important step towards the thawing of the China-US bilateral relations was made on October 1, 1970, when the American journalist Edgar Snow and his wife stood on a side of President Mao Zedong during the celebrations for the 21th anniversary of the foundation of the People's Republic of China (PRC). The first result of the harmonization of relations between the US and China has been the China's accession in the UN on October 25, 1971; the event took place at the UN headquarters in New York and China – as People's Republic of China – substituted Taiwan as permanent member of the UN Security Council⁵⁸.

Other important events occurred. In June 1971, President Nixon had removed trade barriers with China and the following year an official presidential visit to Beijing formally marked the

⁵⁷ As a matter of fact, Nixon's foreign policy was in line with the Wilsonian school-of-thought. As theorized by the American essayist and political analyst Walter Russel Mead, we can generally resume the foreign policies of the American presidents in two groups: the Wilsonians and the Jacksonians. The first school-of-thought refers to President Woodrow Wilson (1913-1021); his politics was advocated to the promotion of democracy and international law in those States where there is an authoritarian regime. At the contrary, President Andrew Jackson (1829-1837) opposed to this idea and thought that the nationalistic idea of first caring at the State interests and rights was to be preferred. He argued that trying to promote democracy in other States could be harmful for the US and for the Americans. Thus, opposing to President W. Wilson, A. Jackson was not supportive through a liberal policy of free trade and international integration. Cfr. W.R. Mead, *The Jacksonian revolt: American populism and the liberal order*, in «Foreign Affairs», 96, no.2, 2017, pp. 2-8.

⁵⁸ Cfr. G. Samarani, *ibid*, pp. 295-307.

beginning of economic cooperation between China and the Us⁵⁹; in that occasion, the «*Shanghai Communiqué*» was issued⁶⁰.

After the voluntary resignation of President Nixon in 1974⁶¹, the following American presidents pursued a liberal politics and continued Nixon's policies as concerns trade flows with the Asian continent and China. In particular, President George H. W. Bush (1989-1993) and President Bill Clinton (1993-2001) believed that through both international trade and economic integration, some Asian countries characterized by an authoritarian political regime, such as China or Viet Nam, could easily become democracies⁶². For this reason, the Us had the duty to open its trade flows also to the Asian continent and China⁶³.

An important step forward in China-Us bilateral trade relations was made in 1979 when for the first time a Chinese President, Deng Xiaoping (1978-1992), officially visited the Us; in that occasion, the Chinese President Deng Xiaoping and the Us President Jimmy Carter (1977-1981) discussed the importance of the industrial development and the benefits that the American technology industries could bring to China. The following year, in January 1980, the Us administration started to grant China "Most Favored Nation" tariffs⁶⁴. These tariffs facilitated China in the process of entering the Us market since it levied custom duties on export to the Us. In this way, China-Us bilateral trade started its path; in few years the Us became China's second largest importer country and in 1986 it became also China's third largest commercial partner.

At the same time, China under the Deng administration was pursuing a modernization program, aiming at the national development. This program, issued between 1978 and 2004, is known as "Four Modernizations", meaning the modernization of agriculture, industry, science and technology, military defense and it has been marked by several economic reforms⁶⁵. The modernization of China

⁵⁹ Cfr. M. Yu, *China-US Trade War and Trade Talk*, Springer, 2020, p. 57, available at: https://doi.org/10.1007/978-981-15-3785-1_1.

⁶⁰ In the «*Shanghai Communiqué*» the Us officially recognized the Government of Taiwan as part of the PRC and no more as an "independent China". This is a very important step indicating the willingness of the Us administration to begin a cooperation with China.

⁶¹ The Nixon's voluntary resignation was due to the Watergate scandal.

⁶² As a matter of fact, their administrations were both supportive of the American traditionally conservative policies on free trade. The President of the United States, *A national security strategy of engagement and enlargement*, Washington, 1994. J.D. Boys, *Clinton's grand strategy: US foreign policy in a post-Cold War world*, London, Bloomsbury Publishing, 2015.

⁶³ Cfr. M. Dian, *La Cina, gli Stati Uniti e il future dell'ordine internazionale*, Bologna, Il Mulino, 2021, pp.166-169.

⁶⁴ "Most Favored Nation" (MFN) tariffs status implies that a country provides to another one the same tariff treatment established by the WTO, and as it does with countries that take part into the WTO. This status was subjected to annual renewal.

⁶⁵ Cfr. G. Samarani, *ibid*, p. 309-336.

was followed by an opening-up strategy, implying China's accession to international trade flows⁶⁶. The Four Modernizations and the opening-up strategy led the country to a very fast economic growth that made of China a competitive country on the international environment. Thanks to the opening-up policies, China became in few decades the 1st trading country in the world; in 2017, a year before the broke out of the Trade War, the country had a foreign trade equivalent to US\$ 4.28 trillion.

After that China entered the WTO in 2001, China-U.S. bilateral trade grew faster and faster and the two countries became respectively the most important trade partner to the other country⁶⁷.

⁶⁶ It has been argued that China's opening-up can be divided into three stages: an extensive margin of opening-up (from 1992 to 2001), an intensive margin of opening-up (from 2001 to 2007) and an all-around opening-up (from 2017). The extensive margin opening-up, which characterized China before its accession to the WTO, was marked by three main policies: the trade tariffs reduction, the setting up of Special Economic Zones (SEZs) and industrial parks and the promotion of processing trade. Before 1992, China imposed high import tariffs on products imported from other countries; in 1992 the simple import tariff was 42%. During the 14th Congress of the Chinese Communist Party (CCP), the abolition of import tariffs and non-tariff barriers on foreign goods was announced; the reason for this decision was mainly the willingness of China to become a member of the WTO, thus the liberalization of trade was an essential requirement. More on this topic will be discussed in *Chapter 3* of this thesis. The second tool of the extensive margin opening-up, meaning the setting up of SEZs and industrial parks, was applied in three steps. The first step has been the establishment of the first 4 SEZs in early 1980s: Shenzhen, Zhuhai, Shantou and Xiamen. To these cities followed the establishment of other 14 cities as SEZs, added in a second step. The new SEZs were coastal cities "in line" from Dalian to Beihai; they included: Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang and Beihai. As third step, other central and even western cities and parks were added to the list of SEZs, and 25 high-tech industrial developed zones were established. The third tool of the extensive margin opening-up was the promotion of processing trade, meaning the import of components and their transformation in final goods; then final goods are resold to foreign firms. The processing trade in China created job opportunities in the manufacturing sector and it made of China the non-substitutable "world's factory". The second phase of opening-up, the intensive margin opening-up, has been marked by the exploration of new opening-up policies. A very important event in this second phase has been China's accession to the WTO. It led mutual benefits to both to China and to other countries; the liberal trade was a good opportunity for the Chinese exports; moreover, it let to other countries to import product from China – which was still the "world's manufactory" – at cheaper prices. In addition to the accession to the WTO, other factors led to the development of new opening-up policies. First of all, the establishment of 60 Export Processing Zones (EPZs), spread all over the country, to promote processing trade. Starting from 2013, the Chinese Government also set up Free Trade Zones (FTZs) in order to promote trade and foreign investments. In 2013 the Pilot FTZ was set up in Shanghai; in 2015 other FTZs were added in Guangdong, Tianjin and Fujian and in September 2016 the FTZs were implemented with other coastal and inland cities in Liaoning, Shaanxi, Henan, Hubei, Chongqing, Sichuan and Zhejiang. Finally, a new opening-up policy was the "new-economic pilot": starting from 2015, 12 cities were chosen by the Chinese Government to establish a new mechanism for market allocation of resources. As privilege, these cities could ask to the Government to apply special treatments. This experiment lasted two years. Starting from 2017, China pursued an all-around opening-up, marked by several international agreements and development plans. More in details the initiatives through which China aimed at reaching an all-around opening-up were: The Belt and Road Initiative (BRI), the Association of Southeast Asian Nations (ASEAN) and the China Free Trade Agreement (ACFTA), the Regional Comprehensive Economic Partnership (RCEP). All these initiatives and agreements will be discussed later in this Chapter. Cfr. M. Yu, *ibid*, pp. 3-30.

⁶⁷ However, even if trade relations were prosperous, some conflicts arose. For instance, the U.S. accused several times Chinese textile, steel and other manufactured goods to be produced through unfair practices at low prices, so that the Bush and Obama administrations imposed tariffs on textile products imported from China in order to protect domestic industries. Cfr. M. Yu, *ibid*, pp. 3-58.

2.1.2 The Obama administration: a rebalance towards Asia. China and the Us competing for the hegemony in the Asian-Pacific region

After the economic crisis of 2007-2008, broken out in the Us, China seemed to be gaining the hegemony in the Asian continent: there were several evidences of China's growing role in the Asian economic affairs⁶⁸. For this reason, one of the objectives of President Obama's foreign policy was to reclaim the regional control of the Asian-Pacific area.

Under the Obama administration (2009-2017) the Us tried to affirm their superiority and their influence in Asia; one of the main tools adopted by this administration has been the so called "Pivot to Asia". This long-term national project was launched in 2011⁶⁹ and it aimed at rebalancing the Us economic, diplomatic and military presence in the Asian-Pacific area through the participation in regional organizations⁷⁰. To reach such aim, the "Pivot to Asia" strategy was preceded by two important economic agreements: the signature of the *Treaty of Amity and Cooperation (TAC)* with the ASEAN (Association of Southeast Asian Nations)⁷¹ and the entry in the Trans-Pacific Partnership (TPP)⁷². These economic agreements confirmed the intention renewed by the Obama administration with the "Pivot to Asia" strategy.

⁶⁸ Cfr. K. Crane *et alii*, *Pacific currents: the response of US allies and security partners in East Asia to China's rise*, Santa Monica, RAND Corporation, 2008, pp. 1-4.

⁶⁹ Even if this plan was officially announced in 2011, President Obama in the previous years had mentioned yet the idea of regaining the economic and military supremacy in the Asian-Pacific region. In 2009, during his first official visit in Japan as the newly elected American President, Obama declared: «To meet these common challenges, the United States looks to strengthen old alliances and build new partnerships with the nations of this region [the Asia Pacific]. [...] In addition to our bilateral relations, we also believe that the growth of multilateral organizations can advance the security and prosperity of this region. I know that the United States has been disengaged from many of these organizations in recent years. So let me be clear: Those days have passed. As an Asia Pacific nation, the United States expects to be involved in the discussions that shape the future of this region, and to participate fully in appropriate organizations as they are established and evolve». The White House, *Remarks by the President to Suntory Hall*, Tokyo, November 14, 2009.

⁷⁰ K.M. Campbell, *The Pivot. The future of American statecraft in Asia*, Boston, Twelve, 2016. W.T. Tow and D. Stuart (ed. by), *The new US strategy towards Asia: adapting the American Pivot*, London, Routledge, 2015.

⁷¹ The ASEAN was established on 8 August 1967 in Bangkok, Thailand. It was founded by five States of the Southeast Asian continent, namely Indonesia, Malaysia, Philippines, Singapore and Thailand, with the declared purpose of accelerating the economic growth and promoting regional peace and stability of this area. On July 2009 Secretary of State Hillary Clinton signed the *TAC* on behalf of President Barack Obama. The purpose of this *Treaty* was to promote regional peace, everlasting amity and mutual cooperation among the countries of the Southeast Asia and the Us; signing a treaty with this Association and with such declared aim can be considered as the first sign of the willingness of the Us of investing and promoting a multilateral cooperation in the Asian-Pacific area. <https://asean.org/about-us>, visited on June 24, 2022. <https://asean.org/what-we-do>, visited on June 24, 2022. Cfr. M. Dian, *ibid*, p. 184.

⁷² The second essential sign of the Us' willingness to start multilateral cooperation in Asia has been the entry of the country in the TPP. This was a yet-existent trade agreement among Singapore, New Zealand, Brunei and Chile, which established a free trade area. The entry in the TPP, announced for the first time in November 2009, was coherent with the liberal policy pursued by the Obama administration, and with his declared objective of leading Asian-Pacific regional integration. As declared by Secretary of State Hillary Clinton in the article *America's Pacific Century*, the

As can be supposed, China tried to counterbalance its hegemony in the Asian continent. As a matter of fact, under President Xi Jinping administration (2012-) China abandoned the “keeping a low-profile” strategy (KLP strategy) and moved to a “striving for achievement” strategy (SFA strategy)⁷³: the country has started a new foreign policy strategy of affirmation of the Chinese presence not only in the Asian-Pacific area but also worldwide. Since 2012 and even more since 2017, when the 19th Congress of CCP took place, President Xi announced his intention to make China great again as it was in ancient times⁷⁴, and to replace the Us as the world’s major superpower⁷⁵. In order to do so, Xi launched three long-term projects: the

TPP was fundamental for the establishment of a trans-pacific multilateral governance based on free trade. The *Treaty* issuing the TPP, signed in 2016 by the twelve State members, established a free trade area for some goods; the productive sectors regulated by this agreement were: agriculture, services, intellectual property rights, origin rules, competition, work, environmental standards, State-owned enterprises. The entry of the Us in the TPP was followed by a renegotiation of the *Treaty* itself and by the adhesion of other States, such as Canada, Mexico, Peru, Japan, Malaysia, Australia and Vietnam. In February 2016 the TPP had twelve States members. After the election of President Donald Trump, the Us left the TPP and this fact led in 2018 to the signature of a new treaty by the other States, named *Comprehensive and Progressive Agreement for a Trans-Pacific Partnership*. The decision of the Us to leave the partnership had an impact on the reputation and on the credibility of the nation: many countries in order to enter the partnership had to make important and costly reforms, and these reforms had an impact on their political organization too. Cfr. M. Dian, *ibid*, pp.184-207. *Overview of the Trans Pacific Partnership*, <https://ustr.gov/tpp/overview-of-the-TPP>, visited on June 24, 2022. M. Forman and M.E. Janow, *The future of U.S. Trade and the Trans-Pacific Partnership*, Washington, Council of Foreign Relations, 2016. D.K. Elms *et alii*, *Trans-Pacific Partnership: the quest for a 21st century trade agreement*, Cambridge, Cambridge University Press, 2012. Cfr. H. Clinton, *America’s Pacific century*, in «Foreign Policy», 189, no. 1, 2011, pp. 56-63.

⁷³ X. Yan, *From Keeping a Low Profile to Striving for Achievement*, in «The Chinese Journal of International Politics», 7, n. 2, 2014.

⁷⁴ During the 19th Congress of CCP, Xi briefly summarized his intentions using the expression 新时代 *xinshidai* “new era”, to remark the fact that China foreign policy reached a breakout point: conversely to the Deng Xiaoping administration, Xi Jinping aims at making China regaining a central position in the international environment. Moreover, the previous Chinese administrations gave more importance to the domestic policy, since there was the belief that only through building up a strong and stable country, that country could be internationally influent. Now, the Xi administration considers the establishment of cost-effective economic, financial and trade relations as the essential points to make China rise up. However, there’s an important clarification to make: even if the Xi Jinping administration is the one that gave primary priority to regain a position at international level, Deng Xiaoping had started yet the so-called “open door policy”, transforming China from a self-sufficient country to a country that actively participate in the world trade flows. As a matter of fact, this policy starts from the assumption that the contemporary world’s economies are interrelated, thus self-sufficiency and isolation will not lead to economic growth, integration conversely does it. The “open door policy” is functional to achieve the so-called “Chinese Dream” – 中国梦 *Zhongguo meng*: the Xi’s willingness to make China great again as it was in ancient times. M. Miranda, *La “nuova era” di Xi Jinping e la fine dell’assetto post-Tian’anmen*, in P. Innocenzi, R. Cavalieri (ed. by), «Mondo Cinese. Rivista di Studi sulla Cina Contemporanea della Fondazione Italia Cina», no. 165-166, Milano, 2020. Cfr. G.B. Andornino, *Cina: le Nuove “Vie della Seta”*, in «Osservatorio di Politica Internazionale», 140, 2018, pp. 3-4. G. Huan, *China’s Open Door Policy, 1978-1984*, in «Journal of International Affairs», 39, no. 2, 1986, p. 1.

⁷⁵ Cfr. J. Cabestan, *Xi Jinping’s international objectives and strategies*, in P. Innocenzi, R. Cavalieri (ed. by), «Mondo Cinese. Rivista di Studi sulla Cina Contemporanea della Fondazione Italia Cina», no. 165-166, Milano, 2020, p. 40.

Belt and Road Initiative (BRI)⁷⁶, the Asian Infrastructures and Investments Bank (AIIB)⁷⁷ and the Regional Comprehensive Economic Partnership (RCEP)⁷⁸. In particular the third one, the RCEP has been the tool through which China affirmed its intention to oppose itself to the Us, since it's the Chinese alternative to the TPP⁷⁹. From a legal point of view, the main difference between TPP and the RCEP is their relationship with the WTO regulations: while the TPP proposes some *WTO Plus* regulations⁸⁰, the RCEP is in line with the regulations proposed by the WTO. As a matter of fact, the distinctive characteristics of the TPP is the goods and services trade liberalization through *WTO Plus* regulations⁸¹.

⁷⁶ The BRI – in Chinese 一带一路 *yidaiyilu* – is literally translated in “One Belt One Road”. It's a long-term infrastructural project promoted by President Xi with the aim to connect China to European countries passing through the Central Asia and the Southern China harbors to Southeast Asia, to the Pacific Ocean, to the Arabian Gulf and to the Mediterranean Sea. In fact, the BRI is the union of two different projects: “The Silk Road Economic Belt” – which represents the land route – and “The 21st Century Maritime Silk Road” – which represents the maritime route. The BRI project was officially announced by President Xi on September 2013 in Kazakhstan and it consists on the construction of infrastructures and on the furniture of services in the areas of interest, as well as financial investments. To do so, the BRI project is supported by two other major structures: the Silk Road Fund and the Asian Infrastructure Investment Bank (AIIB). The Silk Road Fund, established in 2014, is a fund that offers financial supports and fundings to those who want to develop infrastructural projects in the geographic areas concerned by the BRI. For an in-depth analysis of AIIB see *Note 77*. The BRI has its roots in the ancient Silk Road – 丝绸之路 *sichouzhilu*, which was developed starting from the Han dynasty (206 a.C.-220 d.C.) to the Yuan dynasty (1271-1368). But there is an essential difference between the BRI and the Silk Road: while in the second one infrastructures were property of none, part of the BRI project is the construction of infrastructures by China, this means that they are a property of China, which maintains their monopoly and can issue duties. This is one of the reasons why the BRI is not fully supported by other States – especially by the Us and the other world's superpowers: it can lead to an uncontrolled supremacy of China. <http://ydyi.china.com.cn>. <http://www.silkroadfund.com.cn>, visited on June 24, 2022. Cfr. J. Cabestan, *ibid*, pp. 40-53. Cfr. F. Rampini, *La seconda Guerra fredda*, Milano, Mondadori, 2019, p. 95. G.B. Andornino, *ibid*.

⁷⁷ The AIIB, established in 2016, is a multilateral development bank whose objective is the promotion of public welfare; it supports sustainable infrastructures' construction projects and other development projects through investments and loans. It's a bank supportive to the economically and infrastructurally undeveloped areas. <https://www.aiib.org/en/about-aiib/index.html>, visited on June 24, 2022. Cfr. R. Fatiguso, *Così I vertici di Pechino correggono il tiro su risorse e obiettivi*, in P. Innocenzi, R. Cavalieri (ed. by), «Mondo Cinese. Rivista di Studi sulla Cina Contemporanea della Fondazione Italia Cina», no. 165-166, Milano, 2020.

⁷⁸ The RCEP is a free trade agreement signed in November 2020 by the ASEAN members, plus China, Japan, South Korea, Australia and New Zealand. Until 2019 also India participated in the RCEP; then in 2019 the Modi administration decided to leave the Partnership. The first idea was not of the Chinese Government but of the East Asia Vision Group. The East Asian Vision Group is a committee created in 1999 by the ASEAN plus Three which has the role to discuss ideas and formulate issues to promote the cooperation in the East Asian region. Between 2001 and 2004 it announced the willingness to create a free trade area among the member State of the ASEAN plus other six States. Cfr. M. Dian, *ibid*, pp. 200-204.

⁷⁹ M. Dian, *ibid*.

⁸⁰ For “*WTO Plus*” we mean the regulation of new aspects not regulated by the WTO regulations yet; generally speaking, these regulations refer to the removal of non-tariffs barriers, which are trade barriers generated by differences in economic standards and legislative standards among countries.

⁸¹ Cfr. M. Dian, *ibid*, pp. 185-202.

2.1.3 The Trump administration: “America First” and the protectionist policy against China

The Trump administration is characterized by the persistence of the “America First”⁸² great ideal. In fact, during his inaugural speech on January 20, 2017 President Trump announced: «From this day forward, a new vision will govern... it's going to be only America first, America first»⁸³. The American President pursued a policy of defense of the national interests and tried to limit all those situations that could damage its country⁸⁴. Evidently, China was considered one of his priorities, meaning that the economic growth and the relevant international position acquired by the Asian country in the last four decades could prejudice the Us hegemony.

One of the first decisions taken by President Trump (2017-2021) after his election was to leave the TPP⁸⁵. This is a clear sign of the protectionist policy⁸⁶ adopted by the president concerning foreign affairs. Moreover, starting with the Trump administration, the Us suspended the so-called “Open Door” policy⁸⁷, one of the focus points of the liberalism that characterized the previous administrations.

Reasons for such a decision can be traced back both to Mead’s theory – as said before – and to the belief that international organizations can threaten the power and the supremacy of the Us⁸⁸. In particular, President Trump was hostile towards international and multilateral organizations such as

⁸² The expression “America First” means putting the stress on the economic interests of the Us, reducing the engagement towards and the responsibilities on the rest of the world’s countries. Cfr. G. Liang and H. Ding, *The China-Us Trade War*, New York, Routledge, 2021, p. 28.

⁸³ <https://www.bbc.com/news/av/world-us-canada-38698654>, visited on August 9, 2022.

⁸⁴ As a matter of fact, with reference to the Mead’s theory cited before, we can affirm that while President Nixon and President Obama are Wilsonian, President Trump is Jacksonian.

⁸⁵ Cfr. B. Kausikan, *Asia in the Trump Era: from Pivot to peril*, in «Foreign Affairs», 96, no. 4, 2017, p. 146.

⁸⁶ In this work, by the term “protectionist policy” we mean the imposition of restrictions on international trade flows and on globalization processes in order to improve the domestic industry’s capabilities. Thus, we will talk about protectionist trade policies, and of additional tariffs on imports in particular. As a matter of fact, tariffs are only one of the tools used by governments to implement protectionist policies; others are quotas, standardization, and subsidies. Furthermore, the Us are not the only country in the world which is issuing protectionist policies in this moment, for instance also the United Kingdom’s Brexit can be considered as a protectionist policy. Cfr. A. Terzulli and P. Ciabattini, *La nuova età del protezionismo*, in «Harvard Business Review», November 2018, p. 118. <https://corporatefinanceinstitute.com/resources/knowledge/economics/protectionism/>, visited on August 9, 2022.

⁸⁷ The “Open Door” policy has its roots in 1899, when the Secretary of State John Hay firstly used this term to indicate the Us efforts to open the country to the Chinese market. By the way, this expression has a wider and more significant meaning: it stands for the aspiration of the country to access overseas market for investments and trade purposes, and the aspiration of the Us to promote an international stable system of commerce. Cfr. M.P. Cullinane and A. Goodall, *The Open Door Era: United States Foreign Policy in the Twentieth Century*, Edinburgh, Edinburgh University Press, 2017, pp. 1-2.

⁸⁸ Through this way of thinking, President Trump gained the consensus of the so-called “losers from globalization”: those low-skilled workers that majorly suffered for the negative effects of globalization – relocation, immigration, international trade, transition towards a post-Fort economy. Cfr. R. Inglehart and P. Norris, *Trump and the populist authoritarian parties: the silent revolution in reverse*, in «Perspective on Politics», 15, no. 2, 2017, pp. 443-454. G. Liang and H. Ding, *ibid.*

the UN, the WTO, the International Monetary Fund (IMF), the World Bank and multilateral free trade agreements⁸⁹. Behind Trump's foreign policy there are the convictions that the Us should firstly take care of its national and domestic interests and should not be distracted from foreign policy matters and international issues; secondly international organizations cited before can mislead the Us to lose its global hegemony⁹⁰.

In his vision of the world, President Trump considered China as the biggest and most powerful danger to the American supremacy⁹¹; as a matter of fact, China seemed to be gaining control on the Asian-Pacific region, replacing the Us⁹². For this reason, under the Trump administration the engagement strategy towards China, started under the Nixon administration, and the consequent liberalism are suspended⁹³. The Trade War is the natural consequence of this view of things and it's the way to fight the Chinese enemy on the trade and commercial fields.

The first measure adopted by the Trump administration to reduce the Us economic integration with China has been the decision taken in 2017 to leave the TPP, mentioned before. The following measure has been the application of custom duties on goods imported from China and other policies regarding the Us-China economic interdependence. From the first months of 2018 started what is called "Trade War": in February President Trump introduced the "Global Safeguard Tariffs"⁹⁴ and in March he decided to apply a 25% tariff on steel and a 10% tariff on aluminum imported from different countries, among which China. In the following days he removed these duties for all the countries

⁸⁹ In particular, in the *Remarks by President Trump to the 72nd Session of the United Nations General Assembly*, multilateral free trade agreements are defined by Donald Trump as "bad deals". The White House, *Remarks by President Trump to the 72nd Session of the United Nations General Assembly*, New York, 2017.

⁹⁰ Cfr. M. Dian, *ibid.*

⁹¹ M. Junping, 特朗普政府贸易政策及其成因探析 *Telanpu zhengfu maoyi zhengce jiqi chengyin tanxi*, Central Party School, 2020.

⁹² In his speech *Communist China and the Free World's Future* (June 2020), the Us Secretary of State Michael Richard Pompeo defined China as a country whose actions «threaten our people and our prosperity». M.R. Pompeo, *Communist China and the Free World's Future*, Speech of the Secretary of State, Yorba Linda, California, The Richard Nixon Presidential Library, June 23, 2020.

⁹³ In particular, President Trump consider this policy as the result of an international order and of a foreign policy which don't care about the Americans and the American interests, and which are capable of sacrificing the Americans welfare in the name of a Wilsonian liberal utopia. Cfr. M. Dian, *ibid.*, p. 206.

⁹⁴ The Global Safeguard Tariffs have their roots on the *Section 201* of the *Trade Act* of 1974. According to the Office of the United States Trade Representative (USTR), the main Us agency for the formulation of commercial policies, *Section 201* allows the temporary application of additional safeguard measures – duties and taxes – on a product or service when a domestic industry is seriously threatened or injured by the import of that product or service. The *Agreement on Safeguard (SG Agreement)* by the WTO regulates the imposition of such safeguard measures. Those applied by President Trump are additional custom duties on solar cells and modules for panels (tariff of 30%) and on large residential washing machines (tariff of 20%) imported from almost all the Us' trade partners. Further details about national safeguard measures will be given in *Chapter 3* of this thesis. Cfr. A. Antimani *et alii*, *L'America First di Trump. L'impatto della guerra commerciale tra Stati-Uniti e Cina*, Programma Rete Rurale Nazionale 2014-2020, September 2019, p. 29. <https://ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/trade-remedies/safeguard-actions>, visited on June 27, 2022.

except for China, the main country producing steel and aluminum⁹⁵. However, the Trade War⁹⁶ is considered to officially start on July 2018, when unilateral tariffs specifically against China were applied for the first time: the Us administration imposed a 25% tariff on 818 products imported from China, for a US\$ 34 billion worth^{97,98}.

The Custom Duty Policy is the central point of the Trump administration as regards foreign policy. To be more precise, as concerns international trade the Trump administration introduced both custom duties and imports quotas. Custom duties are taxes to pay on imported goods or services; import quotas are fixed numbers that establish the maximum quantity of a certain product that can be imported by a country⁹⁹.

In conclusion, we can sum up foreign policies of the Us presidents regarding the Asian-Pacific region and China in particular in this way: President Nixon started a strategy of engagement towards China, hoping in a *win-win* situation; President Obama preferred to maintain a good relation with China, through trade agreements and commercial polices, in order to preserve the Us presence and hegemony in the Asian-Pacific region¹⁰⁰. In the meantime, China has changed and appeared now as a country that has experienced the economic development, that is competing on the international environment and that can represent an obstacle to the Us global hegemony. President Trump, scared by China as competitor, aimed at short-term results, which could bring to the Us true or presumed advantage, and to reach such aim he advocated for reducing economic interaction, trade flows and trade unbalance between China and the Us¹⁰¹ - a protectionist policy. In doing so, President Trump applied a series of economic policies that reshaped the bilateral relations between China and the Us. Among these policies, that one discussed in this thesis is the new Custom Duty Policy. The following

⁹⁵ https://www.agi.it/economia/guerra_dazi_cina_usa-6735924/news/2019-12-15/amp/, visited on June 25, 2022.

⁹⁶ It's important to underline that when we talk about "Trade War" we do not only talk about custom duties; it implies other policies regarding other aspects than trade, as for example international investments and technology - Foreign Direct Investments (FDI), technology transfers etcetera. However, as remarked before, the focus of this thesis is international trade.

⁹⁷ M. Li *et alii*, *The US-China trade war: Tariff data and general equilibrium analysis*, in «Journal of Asian Economics», 69, 2020.

⁹⁸ The full list of additional custom duties applied by the Us administrations on Chinese imports is available in this thesis as *Annex I*.

⁹⁹ Cfr. M. Dian, *ibid*, pp. 207-208.

¹⁰⁰ In his *Statement by the President on World Trade Organization Enforcement Action*, Obama firstly expressed the concept that the Us had the need of «establishing rules before China does it». He affirmed: «Unless we act now to set our own high standards, the fast-growing Asia-Pacific will be forced to play by lower-standard rules that we didn't set. We can't let that happen». The White House, *Statement by the President on World Trade Organization Enforcement Action*, Washington, September 13, 2016.

¹⁰¹ Cfr. M. Guo *et alii*, *The day after tomorrow: evaluating the burden of Trump's trade war*, in «Asian Economic Papers», 17, 2018, no. 1, pp. 101-120.

paragraphs will deepen its meaning and its implications on China-U.S. bilateral trade and on international trade in general.

2.2 Reasons for the new Custom Duty Policy: the concepts of “Balance of Trade” and “Trade Deficit”

After having discussed foreign policy strategies adopted by the U.S. as regards trade flows with the Asian-Pacific region and China specifically, we are going to deeply analyze the economic impact of what is called “Trade War”. As a general principle, analysts and economists state that the increase in tariff trade barriers as those imposed by the Trump administration usually results in a decrease of bilateral trade flows and in higher prices of the final products at the expense of consumers. Moreover, they agree that trade barriers and custom duties lead to some specific economic effects as the “Trade Diversion”, the “Decoupling”, “Tariff-jumping Foreign Direct Investments” (FDI) and changes on investments flows. Thus, as a consequence of the China-U.S. trade conflict, the U.S. consumers are forced to pay higher prices to buy goods, while China exports decrease significantly causing losses to the Chinese economy¹⁰². This Chapter will provide numeric evidences to support this thesis. For clarity reasons, before analyzing data, we will introduce the concept of “Trade Unbalance”.

This Chapter will analyze trade flows’ data up to 2021 and it takes into consideration official data provided by the United States Census Bureau¹⁰³ as concerns the U.S. trade flows with China, and official data provided by the General Administration of Customs of China¹⁰⁴ as regards China trade flows with the U.S.¹⁰⁵.

The new Custom Duty Policy adopted by the Trump administration is the response to the several changes happened starting from the 1980s in China – those already discussed in *Chapter 2, Paragraph 2.1* – that led the country to the acquisition of power at the international level. As a matter of fact, China’s economy grew fast in the last four decades and this fact made China a competitive

¹⁰² A. Nicita, *Trade and trade diversion effects of United States tariffs on China*, UNCTAD Research Paper No. 37, November 2019.

¹⁰³ The United States Census Bureau is part of the U.S. Department of Commerce and it’s the nation’s most important provider of data and rankings on the U.S. economy and population. The official website is available at: <https://www.census.gov/en.html>

¹⁰⁴ The General Administration of Customs of China 中华人民共和国海关总署 *zhonghuarenmingongheguo haiguan zongshu* is the main agency of China Customs; it protects national security and facilitates international trade. It also provides data on China international trade and publishes annual reports. The official website is available at: <http://www.customs.gov.cn>

¹⁰⁵ In this work, we will take into consideration the official data provided by the two institutions. Sometimes data provided by China and by the U.S. don’t exactly correspond, but for the purpose of this empirical analysis we will consider as correct data provided by the most authoritative institution of a country for that country.

country; China's economic growth led also to the increase of Chinese exports. Hence, a general rebalance of the global multilateral trade happened and China trade flows with the Us were also subjected to transformations. Moreover, after China's entrance in the WTO, and particularly after 2004, we can observe a general increase in the use of the WTO DSS by the Us to obstacle Chinese exports¹⁰⁶. The growth of disputes claimed by the Us against China from 2004 is evident: in 2004, 2015 and 2017 the WTO disputes filed by the Us against China occupied the 100% of the total WTO disputes claimed against the country those years. This fact is particularly significative in 2017, the year before the broke out of the Trade War. A summary of WTO disputes filed by the Us against China is provided in the following *figure 5*¹⁰⁷:

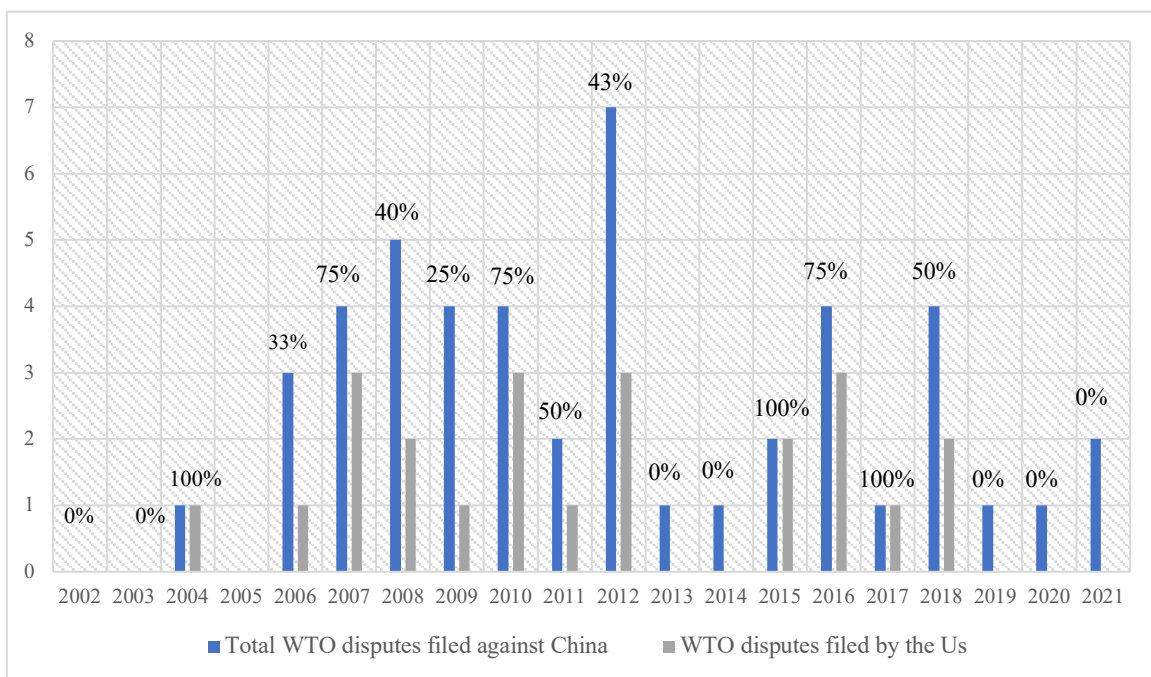


Figure 5. WTO disputes filed by the US against China - from 2002 to 2021.

Source: re-elaboration of data provided by the WTO at: https://www.wto.org/english/thewto_e/countries_e/china_e.htm#disputeCases, visited on August 20, 2022.

For these reasons, we can affirm that there's an ongoing conflict for hegemony and China and the Us are the two main competitors. The Trade War, the new Custom Duty Policy and the other phenomena discussed in this Chapter are consequences of the current situation.

¹⁰⁶ Cfr. X. Zhang and X. Li, *ibid*, pp. 143.

¹⁰⁷ For the full list of WTO disputes filed against China, see *Annex III*.

2.2.1 The “Balance of Trade”: the Us “Trade Deficit” with China

As already mentioned in *Chapter 2, Paragraph 2.1* one of the main worries of the Trump administration are trade flows with China and the Trade Unbalance¹⁰⁸. As a matter of fact, trade flows between the Us and China grew fast, especially after China’s accession to the WTO¹⁰⁹; in fact, the bilateral trade volume had a value of US\$ 97 billion in December 2001; it reached a value of US\$ 524 billion in December 2016. The average annual growth rate is equal to 11.11%. *Figure 6* shows China-Us bilateral trade’s growth, from 2000 – the year before the accession of China in the WTO, to 2016 – the year before President Trump’s election. We notice that starting from 2001, China-Us bilateral trade’s growth rate is higher and higher; from 2000 to 2001 the growth rate of the Us import from China is equivalent to 4.17%; from 2001 to 2002 it increases seven times (up to 28.79%). China imports from the Us from 2001 to 2002 greatly decreases, but it increases eight times from 2002 to 2003.

	TRADE FLOWS (US\$ BILLION)		GROWTH RATE (PERCENTAGE)	
	US IMPORT FROM CHINA	CHINA IMPORT FROM US	US IMPORT’S GROWTH RATE	CHINA IMPORT’S GROWTH RATE
2000	52.14	22.36		
2001	54.32	26.2	4.17	17.17
2002	69.96	27.23	28.79	3.91
2003	92.51	33.88	32.23	24.44
2004	124.97	44.65	35.09	31.78
2005	162.94	48.73	30.38	9.14
2006	203.52	59.22	24.9	21.52
2007	232.76	69.86	14.37	17.96
2008	252.33	81.5	8.41	16.66
2009	220.9	77.46	-12.45	-4.95
2010	283.37	102.06	28.28	31.76
2011	324.56	122.14	14.54	19.68
2012	352.0	132.88	8.45	8.79
2013	368.48	152.55	4.68	14.81
2014	396.15	159.19	7.51	4.35
2015	410.15	149.78	3.53	-5.91
2016	389.11	135.12	-5.13	-9.79

Figure 6. Bilateral trade between China and the Us, 2000-2016.

Source: CEIC, <https://www.ceicdata.com/en>, visited on June 30, 2022.

¹⁰⁸ F. Yaru, 特朗普政府对华经济政策研究 *Telanpu zhengfu dui hua jingji zhengce yanjiu*, Jilin University, 2021.

¹⁰⁹ Cfr. M. Yu, *ibid*, p. 58.

However, the Balance of Trade¹¹⁰ has always been in China’s favor. In 2016 (*figure 7*) and 2017 (*figure 8*) China is the country with which the Us has the highest “Trade Deficit”¹¹¹ and in Trump’s opinion that’s a situation that must be changed.

As shown by data provided by the United States Census Bureau, at the end of 2016 China was the 1st Us trading partner, occupying the 15.9% of its total trade (*figure 7*). The following year, China still remained the Us main trading partner (*figure 8*), and the percentage of total trade also increased by 0.5%, from 15.9% in December 2016 to 16.4% in December 2017. Moreover, as stated before, China was the 1st country in the Us Trade Deficit ranking; the Us Trade Deficit with China increased from US\$ 347 billion in December 2016 (*figure 9*) to more than US\$ 375 billion in December 2017 (*figure 10*). Finally, from the data above, we can also see that China was the Us 1st import country both in December 2016 and in December 2017, but China was not the Us 1st export country, which instead was Canada both in December 2016 (*figure 7*) and in December 2017 (*figure 8*). In particular, in December 2017, China occupied 21.6% of the Us imports but only 8.4% of the Us exports.

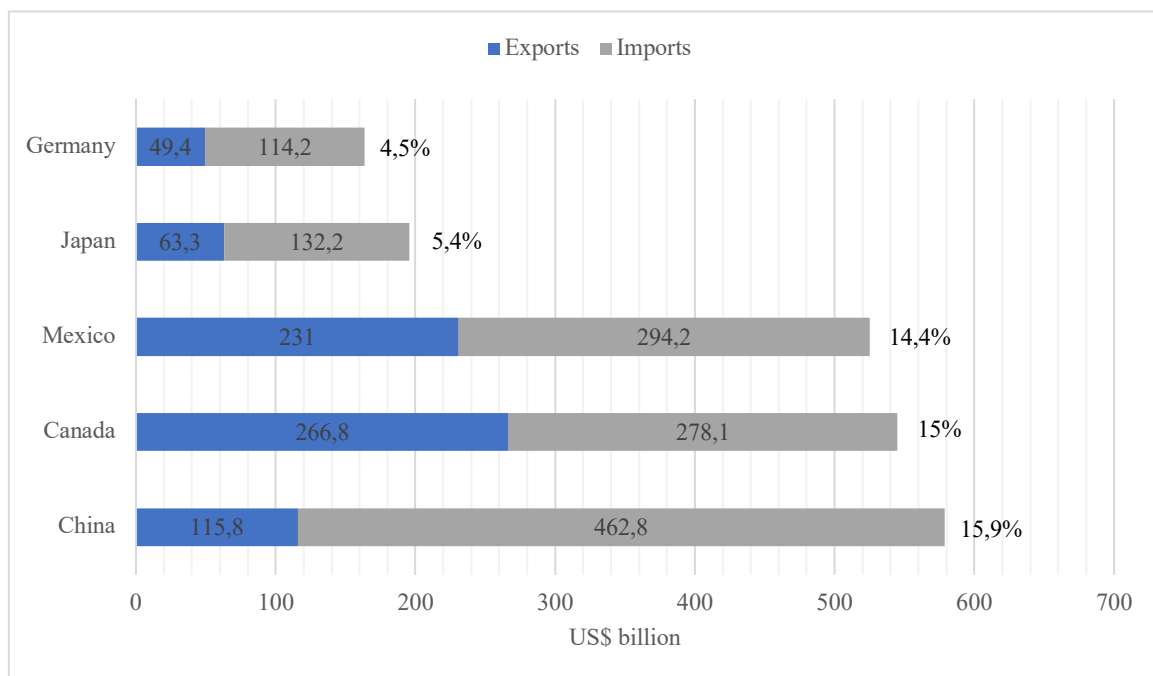


Figure 7. The Us top 5 trading partners, December 2016.

Source: data reported by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on June 28, 2022.

¹¹⁰ For or “Balance of Trade” (BOT) or “Trade Balance” we mean the difference in value between a country’s import and export. The BOT can be favorable when exports are higher that imports; in this case there is a condition of “Surplus”. Conversely, when imports exceed exports the BOT is adverse and causes “Trade Deficit” or “Trade Unbalance”.

¹¹¹ Cfr. A. Antimani *et alii*, *ibid*, p. 7.

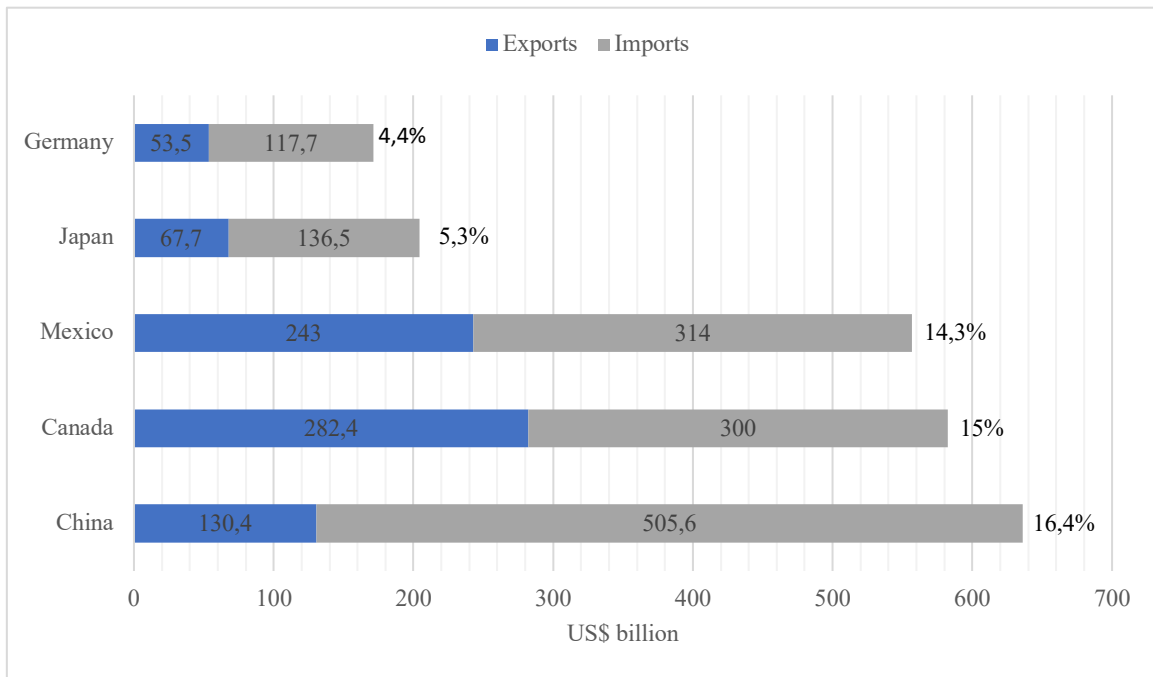


Figure 8. The Us top 5 trading partner in December 2017.

Source: data reported by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on June 28, 2022.

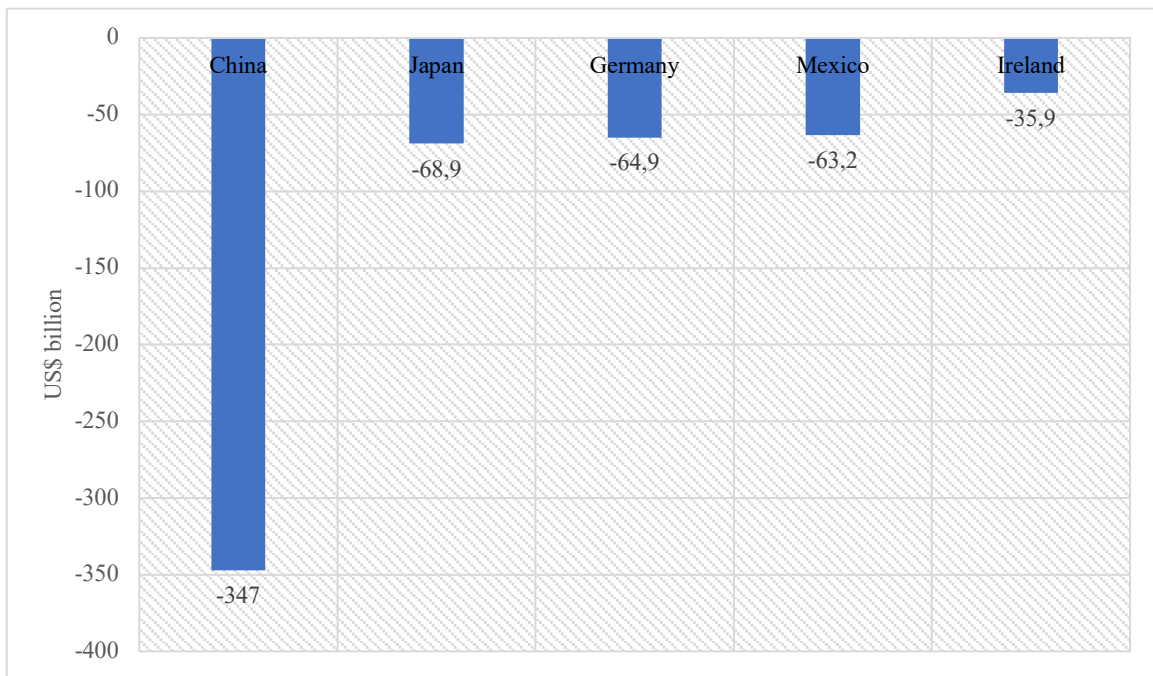


Figure 9. The Us Trade Deficit - top 5 countries, December 2016.

Source: data reported by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on June 28, 2022.

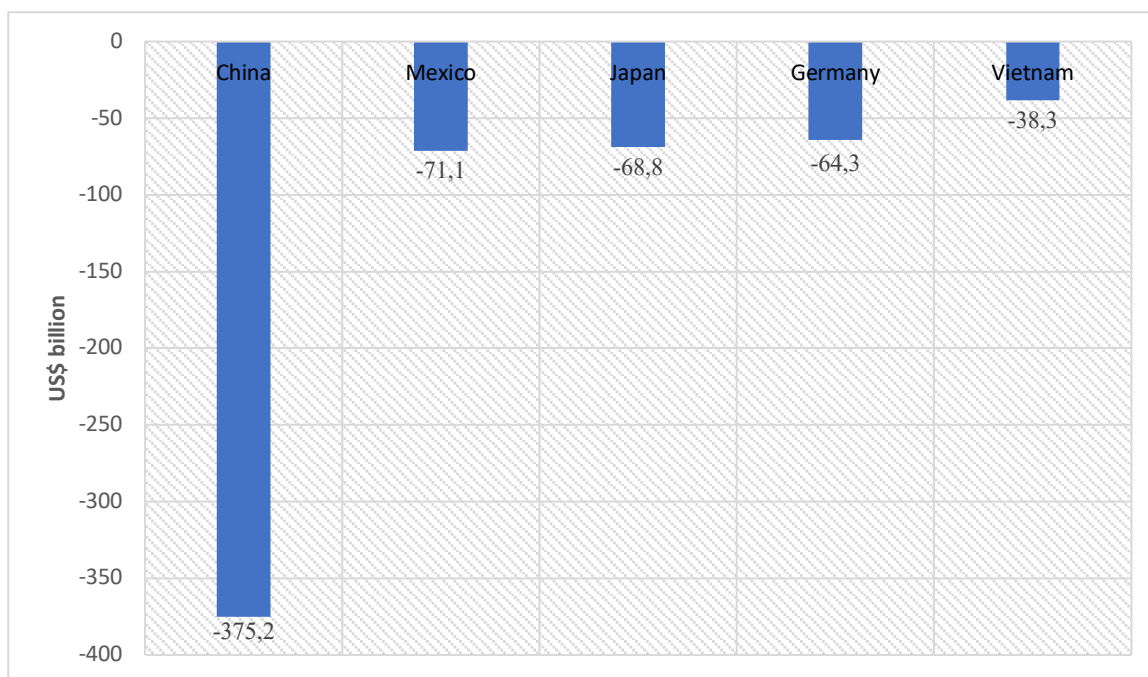


Figure 10. The Us Trade Deficit - top 5 countries, December 2017.

Source: data reported by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on June 28, 2022.

Causes of the Trade Unbalance between China and the Us are manifold but can be reconducted mostly to the relation between the demand and the supply. Following the economic development pursued during the 1980s, China is facing an overproduction of goods: industries produce a quantity of goods higher than the domestic demand, thus the country is forced to export the industrial surplus. At the same time, the Us have a high demand of certain products that the domestic production can't satisfy; for this reason, the country is forced to import the missing products' amounts from other countries. For example, this is the case of high-tech products. As shown by a study (Xing and Detert, 2010) the iPhones highly contribute to an increase of the Us Trade Deficit with China¹¹².

From the analysis above, it is evident that right before the broke out of the Trade War, the Us Trade Balance with China was negative: Us imports from China exceed exports in the same country, leading to the Trade Deficit. There was therefore an evident dependence of the Us economy on the Chinese one, and the country that beneficiated the most from this situation was China: the counterpart paid huge amounts of money for the products that it needed to import.

¹¹² Y. Xing and N. Detert, *How the iPhone Widens the United States Trade Deficit with the People's Republic of China*, in «Asian Development Bank Institute Working Paper Series», 257, December 2010.

The monetary value of Trade Balance cannot be neglected: the United States Census Bureau reported in 2001 Trade Deficit between China and the Us had a value of US\$ 83 billion; starting from that year, the Trade Deficit increased constantly¹¹³ and it reached US\$ 367 billion in 2015, occupying half part of the total Us national Trade Deficit. Then in 2016 it decreased to US\$ 347 billion but increased again by US\$ 28.2 billion (corresponding to 8.1%) in 2017, reaching the amount of US\$ 375.2 billion (*figure 11*). This is the highest Trade Deficit value ever registered¹¹⁴.

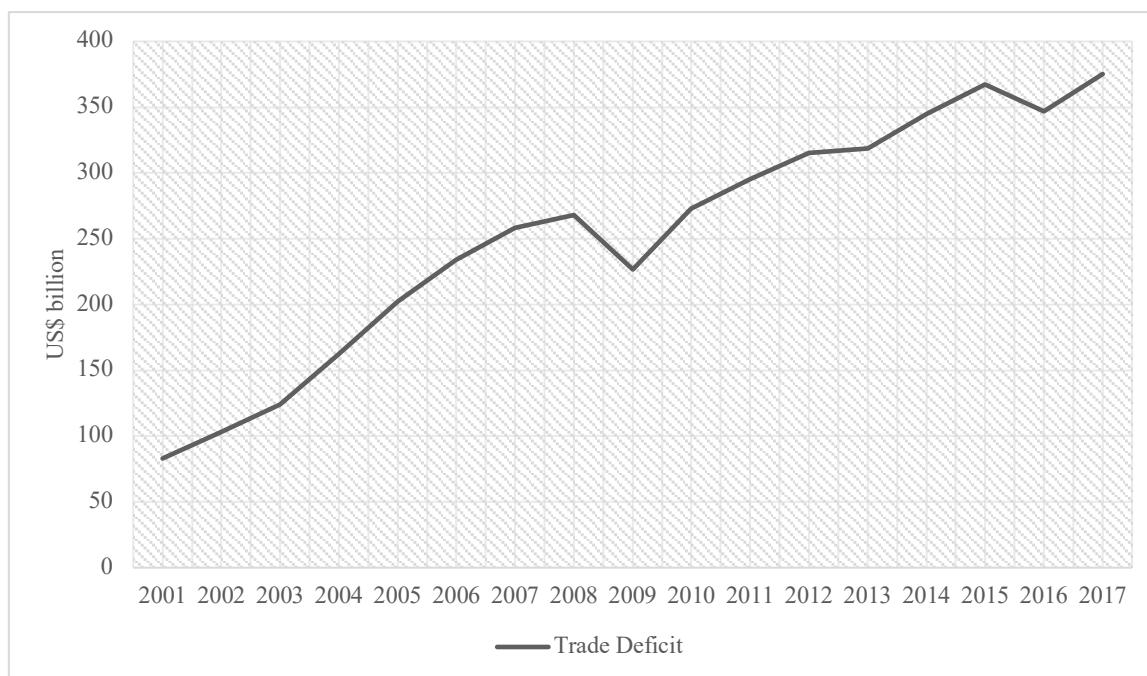


Figure 11. Us Trade Deficit with China, 2001-2017.

Source: re-elaboration of data provided by the United States Census Bureau at: <https://www.census.gov/foreign-trade/balance/c5700.html>, visited on June 28, 2022.

In general, it can be affirmed the cost that the Us had to pay for the Trade Unbalance with China was high, thus the Trump’s decision to apply additional tariffs on products imported from China aimed at solving this situation of Trade Deficit. However, there are studies (Zhang, 2018) affirming that in any case, the Trade War cannot reduce or definitely eliminate the Us deficit on trade in goods with China¹¹⁵.

¹¹³ With the exception of 2009, the year after the broke out of the financial crisis.

¹¹⁴ https://www.census.gov/foreign-trade/Press-Release/current_press_release/index.html, visited on June 28, 2022.

¹¹⁵ Y. Zhang, *The US-China Trade War: A Political and Economic Analysis*, in «Indian Journal of Asian Affairs», 31, no. 1/2, December 2018, pp. 53-74.

2.2.2 Causes of the Trade Unbalance

From the second half of 20th century to 2008, when the financial crisis broke out, the Us has been the world's largest and most influent economy, *thus why in 2016 and in 2017 the same country had a Trade Deficit with China?* Reasons can be traced back to the China's development in the second half of the 20th century, and they are both internal changes and external opportunities¹¹⁶. With the expression "internal changes" we mainly refer to the reforms under the Deng administration and the consequent modernization of the country, as discussed in *Chapter 2, Paragraph 2.1*. For "external opportunities" we mean mainly China entering the WTO on December 11, 2001. This important event led to the internationalization of Chinese firms and to foreign countries' accession to the Chinese markets; starting from 2001 therefore the FDI inflows in China promptly grew up. Consequently, amounts never seen before of foreign capital entered the country, Chinese industries developed, stimulating the domestic competition, and the high-tech industry saw an unprecedented advancement¹¹⁷. To sum up, the opening-up of China, subsequent to both economic reforms and to its entrance in the WTO, made Chinese export volumes increase. This is another demonstration of the fact that in the 21th century China became a potentially substitute to the Us as world's hegemonic country.

Additionally, starting from the first years of the 21st century, China also entered the Us market and China-Us trade relations started to assume their interdependent nature. As a matter of fact, from that point China-Us bilateral trade grew rapidly and in few years China moved from the 3rd to the 1st place in the ranking of the Us top trading partners. In fact, in December 2004 China was the Us 3rd top trading partner (*figure 12*); in December 2006 it became the 2nd country in the ranking (*figure 13*) and it finally gained the 1st position in December 2015 (*figure 14*).

¹¹⁶ Cfr. G. Liang and H. Ding, *ibid*, pp. 25-35.

¹¹⁷ G. Liang, *New competition. Foreign Direct Investments and Industrial Development in China*, Rotterdam School of Management and of Economics, Erasmus University Rotterdam, 2004.

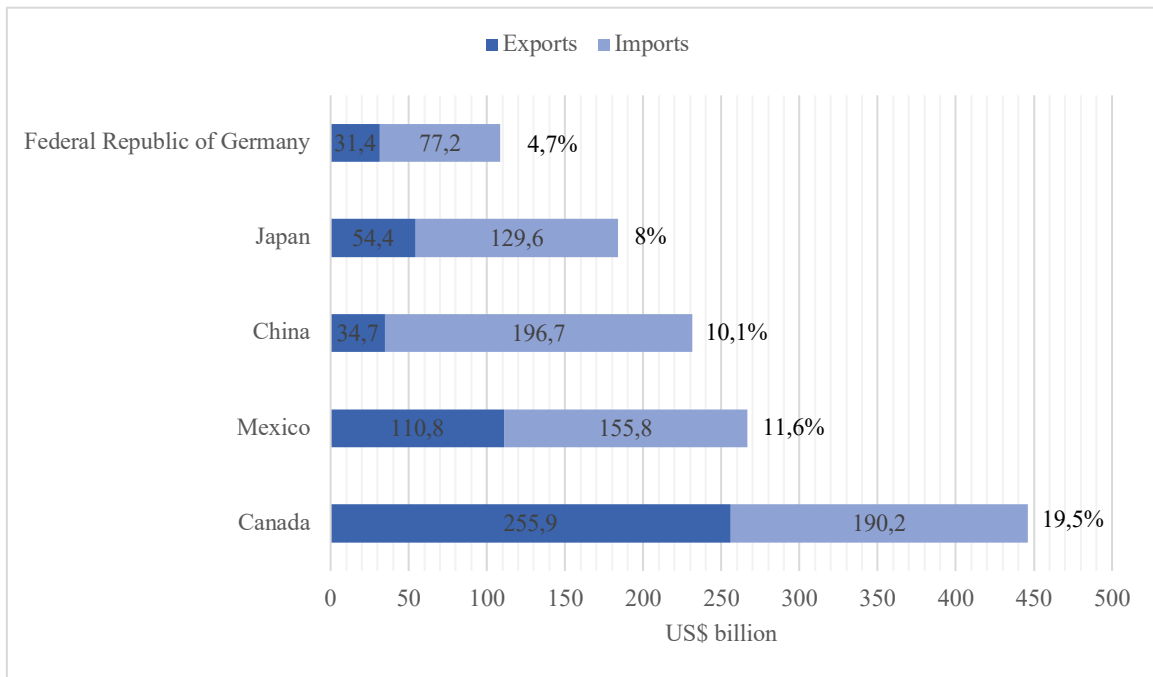


Figure 12. The Us top 5 trading partners, December 2004.

Source: data provided by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on June 28, 2022.

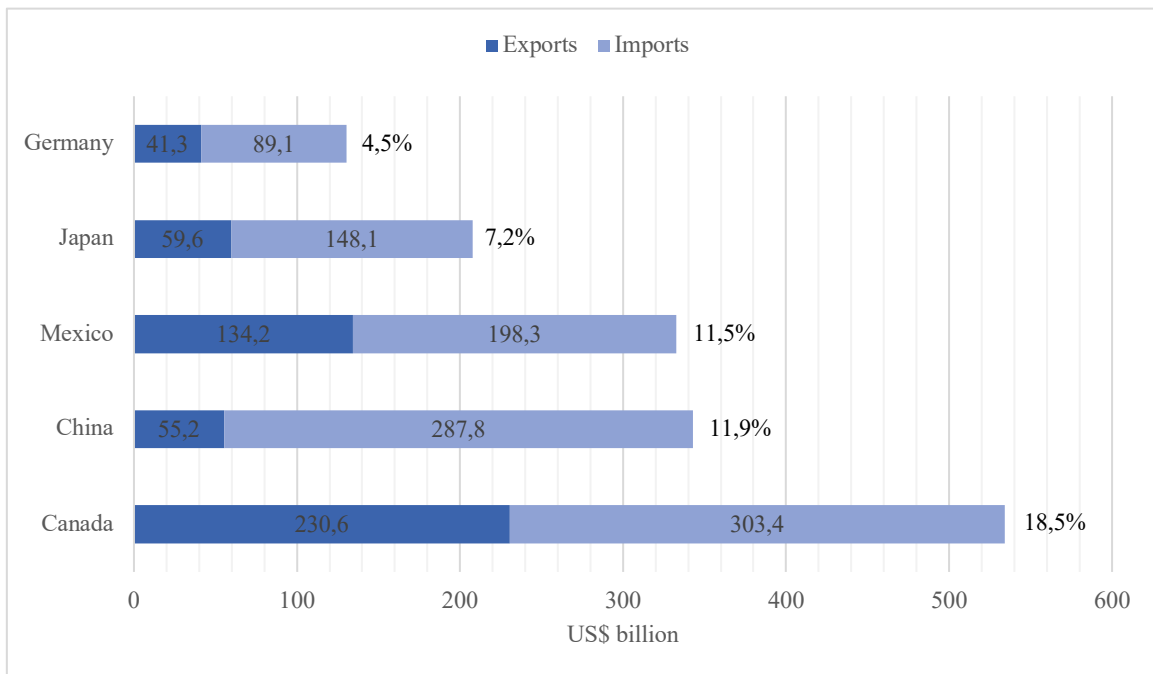


Figure 13. The Us top 5 trading partners, December 2006.

Source: data provided by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on June 28, 2022.

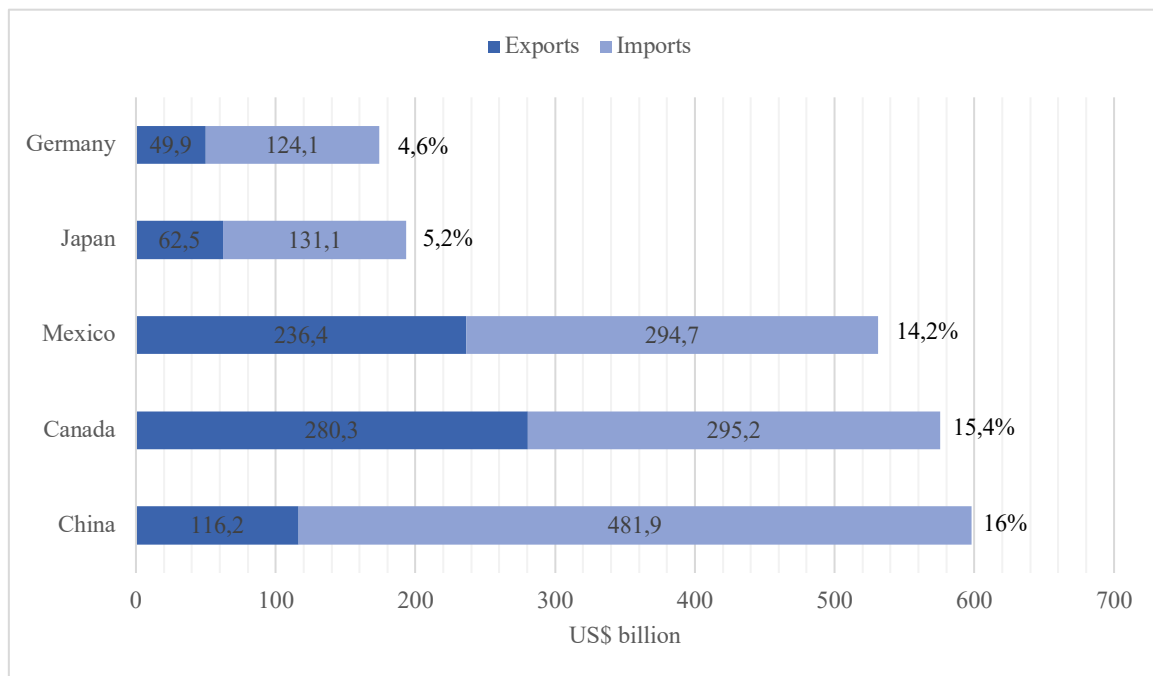


Figure 14. The Us top 5 trading partners, December 2015.

Source: data provided by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on June 28, 2022.

Nonetheless, a consideration has to be done. The trade surplus of China regards only trade in goods. In services trade, conversely, China maintains a Trade Deficit, even if it reduced over time. As a matter of fact, the amount of the Us services export in China is higher than the amount of services import. In 2016 China's Trade Deficit in services trade amounted to above US\$ 240 billion, in 2017 it reduced to US\$ 54 billion and to US\$ 49 billion in 2018¹¹⁸. This can be considered as a clear evidence of the fact that China's growth is mainly an industrial growth; this means that the country improved the production of its firms and their technological capabilities, but it is still to be considered as a developing country because its overall advancement is not fulfilled yet. For the purpose of this paper we will take into consideration only goods trade because it is the first cause of trade conflicts among China and others WTO members, as we will see in *Chapter 3, Paragraph 3.2*.

The rebalance of the Trade Deficit with China is the main triggering cause of the Trade War. Another reason is the current technological development of China: the country aims at reaching the primacy in high-tech advancement. As a matter of fact, in 2015 the Xi administration launched the

¹¹⁸ Cfr. G. Liang and H. Ding, *ibid*, p. 33.

“Made in China 2025” ten-years program¹¹⁹ as a strategic tool to reach such supremacy¹²⁰. In the past China looked at the Us as a trading partner and as an economic allied to give an impulse to the domestic high-tech industry; now China aims at stealing the Us technology primacy and the Trump administration cannot let this happen. The tariffs applied by the Trump administration on steel (25%) and aluminum (10%) in 2018 aimed at affecting the development of China manufacturing industry¹²¹ and we can affirm that the emerging competitiveness of Chinese manufacturing industries and the trade conflict between China and the Us are strictly related¹²².

Before the “Made in China 2025”, another policy was launched in 2000, the “Go Global” strategy¹²³. Its aim was to make Chinese firms actively participating in the world’s industrial environment, in order to allow China to gain the positioning of world economic leader¹²⁴. Once again, the purpose of China to reach a hegemonic position in Asia and at a global level seems to be clear.

Furthermore, as well as the economic reasons discussed above, there are also ideological differences between China and the Us that led to the broke out of the Trade War. In particular the Us questioned about the following issues: the Chinese market economy¹²⁵, the presumed cyber-espionage on the Us industries, the respect of intellectual-property rights, the extensive use of

¹¹⁹ The “Made in China 2025” plan, *中国制造 2025 Zhongguo zhizao erlingerwu*, also known as “China Manufacturing 2025”, is a ten-years plan through which China aims at reducing its technological dependence to other countries – to Germany in particular – through the development of domestic high-tech industries. China’s purpose is to become the world’s manufacturing country. To do so, China is investing its financial resources in the acquisition of foreign technology industries, in particular in economically and technologically developed countries, in order to acquire their industrial knowhow. Since that some years have passed from the beginning of this plan, we can now affirm that China is improving its role within the global value chains and the country is enhancing its technology and innovation capacity. Cfr. F. Rampini, *ibid*, pp. 143-144. R. Cavalieri, *La Belt and Road Initiative e gli investimenti cinesi*, in P. Innocenzi, R. Cavalieri (ed. by) «Mondo Cinese. Rivista di Studi sulla Cina Contemporanea della Fondazione Italia Cina», no. 165-166, Milano, 2020. Cfr. E. Barbieri *et alii*, *The Globalization of China’s Health Industry. Industrial Policies, International Networks and Company Choices*, Palgrave Macmillan, 2020, p. 48.

¹²⁰ Cfr. A. Antimani, *ibid*, p. 29.

¹²¹ X. Xuzhen, *中美贸易战对 A 股制造业上市公司股价影响研究 Zhongmei maoyizhan dui A gu zhizaoye shangshi gongsi gujia yingxiang yanjiu*, Yunnan University of Finance and Economics, 2022.

¹²² N. Zhenfang, *中国制造业竞争力与中美贸易摩擦研究 Zhongguo zhizaoye jinzhengli yu zhongmei maoyi moca yanjiu*, Liaoning University, 2019.

¹²³ The “Go Global” strategy, *走出去战略 zouchuqu zhanlüe*, also known as “Go Out” strategy, it’s a strategy that encourages Chinese firms to invest overseas; it is part of the opening-up program started in the 1970s with the Deng modernization reforms. P. Bellabona and F. Spigarelli, *Go Global e crisi mondiale. Sfide, insidie e opportunità*, in «Mondo Cinese. Rivista di Studi sulla Cina Contemporanea della Fondazione Italia Cina», no. 143, Milano, 2010.

¹²⁴ Cfr. E. Barbieri *et alii*, *ibid*, p. 44.

¹²⁵ The Us and China economic structures differ a lot: while the Us is a liberal economy, China is a market economy. This means that in the former type of economic system, the Government has no power, all the decisions about industrial production, prices, etcetera are taken on the basis of the demand-offer mechanism. In the latter, the Government is the responsible for all the economic decisions and it can also directly affect the economy of the country through incentives to firms and other financial measures. This means that the Chinese Government can alter the economic situation of the country in order to protect its industries, and this led to unequal trading conditions. The Us blamed China to apply unfair strategies in order to protect its trade interests to the detriment of the Us ones. Cfr. A. Antimani, *ibid*, p. 6.

industrial policies as financial subsidies to firms and tariff and non-tariff barriers to foreign investments and trade¹²⁶. As we will see in *Chapter 3, Paragraph 3.2* the cyber-espionage and such problems concerning intellectual-property rights are strictly related to the Us' arguments for the issuing of additional duty tariffs provided to the WTO DSB during the dispute with China. In fact, the Us were concerned that the Asian country was using illegal methods to steal the Us technology at unfair and discounted prices¹²⁷. Hence, it is not an error to affirm that the Trade War aims also at preventing the Chinese firms to have full access to the Us technologies, in order to not let the country achieve a technological advancement that can damage the Us primacy in that sector¹²⁸. As a matter of fact, another aspect of the Trade War – not relevant for the purpose of this paper, but that cannot not to be mentioned – is the technology war between China and the Us.

2.3 Implications of the new Custom Duty Policy on China-US trade flows. The “Trade Diversion” and other consequences on bilateral commerce

The Trade War and the protectionist policy that characterized the Trump administration had a significant economic impact; they affected not only the economies of the Us and China¹²⁹, but their effects can be seen worldwide. Naturally, the Custom Duty Policy affected economies under a lot of aspects¹³⁰; starting from the end of 2018 we can observe macroeconomic effects¹³¹, microeconomic

¹²⁶ Cfr. A. Antimani, *ibid*, p. 5.

¹²⁷ Cfr. T. Liu and W.T. Woo, *Understanding the Us-China Trade War*, in «China Economic Journal», 11, October 2018, pp. 319-340.

¹²⁸ A. Drevalov *et alii*, *US-China Trade War: Causes and Outcomes*, in «SHS Web of Conferences», 73, 2020.

¹²⁹ Z. Yiran, 属性议程设置视角下中美经贸磋商报道研究 *shuxing yicheng shezhi shijiao xia Zhongmei jingmao cuoshang baodao yanjiu*, Zhingnan University of Economics and Law, 2020.

¹³⁰ In particular, the multilateral effects of the Trade War and of the new Custom Duty Policy are due to the fact that they take place in a background of strong globalization. Hence, their effects are not limited to trade flows. After the end of the Cold War, in 1990s started what is called the “economic globalization”; with this term we mean the process of increasing the economic interdependence among world's countries. This phenomenon led to the internationalization of economies and to the increase of economic exchanges and cross-border flows of goods, services, capital, people and information. Cfr. G. Liang and H. Ding, *ibid*, pp. 25-26.

¹³¹ Specifically, with reference to investments and to the domestic consumption; a reduction of investments and domestic consumption of a country led to the reduction of the GDP growth rate. Thus, we can affirm that the Custom Duty Policy also affected the GDP growth rate and the economic development of the countries involved. Cfr. G. Liang and H. Ding, *ibid*, p. 71.

effects¹³², effects on trade, on FDI¹³³, on investments¹³⁴, etcetera. Nevertheless, for the purpose of this thesis we will focus only on the effects of custom duties on trade.

2.3.1 The “Trade Diversion” phenomenon

As said before, the aim of the Trump administration was to rebalance the Us Trade Deficit with China, mainly affecting the Us imports from China. But actually, both China and the Us were damaged by the Trump’s policies; first of all, both China and the Us saw the reduction of the national

¹³² With reference to the decisions taken by each economic entity (enterprises, households, etcetera).

¹³³ As concerns the influence of the Trade War and of the Us protectionist policy on FDI flows, we refer to “Tariff-jumping FDI” or “Tariff-hopping FDI”. This means that, in order to avoid new protectionist tariffs on trade and new custom duties imposed by an importer country on goods or services, multinational enterprises may decide to relocate their production facilities, moving them from the home country to another country (the new host country), that could be also the country destination of the export. Nonetheless, it’s important to precise that there are also a few countries that apply tariffs on products imported by foreign firms, even if these firms have their production facilities in the country itself; in this case tariff-jumping is not a possibility. In the specific context of a trade war, the fact that a Country A (export destination country) imposes specific trade tariffs on a Country B’s products (the exporter country), implies that the price of products produced by Country B increases and Country B loses its competitiveness on international market. Thus, other two consequences follow: potential investments will divert from Country B to a third country (Country C), affecting Country B’s economy, and some existing production facilities currently located in Country B may be moved to Country C. From 2018 to date, as a consequence of the China-Us trade conflict, there have been evidences of tariff-jumping FDI with the resulting divestments in China. For example, the Japanese video game company Nintendo, moved its Switch console production facilities from China to Viet Nam; Google also moved the manufacturing chain of some of its hardware components – the cloud motherboards – and some Nest smart home from China to Taiwan Province of China and Malaysia; finally the high-tech companies HP and Dell shifted the production of most of their computers from China to South East Asian countries. B.A. Blonigen *et alii*, *Tariff-jumping FDI and domestic firms’ profits*, in «Canadian Journal of Economics/Revue Canadienne d’Economie», 37, no. 3, Canada, August 2004. Cfr. G. Liang and H. Ding, *ibid*, pp. 68-70. T. Mochizuki, *Nintendo Moves Some Switch Production Out of China, Adapting to Tariff Threat*, in «The Wall Street Journal», June 12, 2019, available at: <https://www.wsj.com/articles/nintendo-moves-some-switch-production-out-of-china-adapting-to-tariff-threat-11560328484>, visited on July 2, 2022. J. Scheck, *Dell Plans to Sell Factories in Effort to Cut Costs*, in «The Wall Street Journal», September 5, 2018, available at: <https://www.wsj.com/articles/SB122058183649202581>, visited on July 2, 2022. M. Bergen and D. Wu, *Google Is Moving More Hardware Production Out of China*, in «Bloomberg», June 11, 2019, available at: <https://www.bloomberg.com/news/articles/2019-06-11/google-is-quicken-a-shift-of-hardware-production-from-china#xj4y7vzkg>, visited on July 2, 2022.

¹³⁴ Tariff barriers may cause changes in investments flows, since that it can affect investors’ securities and it can make them change their valuation on where to invest their finances. Specifically, in April 2018, the first issue of some additional custom duties by the Us on Chinese imported products, was followed by two months of consecutive reduction of the net inflows of the Chinese stock market in the global financial market. In June, both China and the Us stock markets were damaged by the Trade War, and experienced relevant net outflows; moreover, the stocks of these two countries seemed to be appealing only for internal investors. In July 2018 Chinese stocks started to recover in global markets but after some months, in November capital inflows in the Chinese stock market declined again because of the new developments of the Trade War. Conversely, the Us stock market for all these months continued to be marked by capital outflows. This is only what happened in the first period of the Trade War; as can be supposed the situation has remained unchanged for the following years and capital outflows followed the developments of the trade conflict. Moreover, its escalation affected negatively not only China and the Us stock exchange markets, but also many other country’s stock exchange markets. Cfr. G. Liang and H. Ding, *ibid*, pp. 70-71.

Gross Domestic Product (GDP), respectively by -1.41% and -1.35%¹³⁵. Furthermore, the two countries were affected by other consequences. For China, the worst effects can be seen on its export flows, since that custom duties reduced the industrial outputs and limited its goods' outflows. For the Us, conversely, the sector that suffered the most from the new policies was the import of goods, because of new tariffs on imports, with the consequent growth of goods' prices for consumers. Also, the Us export has been partially damaged but only relatively to some specific areas, as agriculture¹³⁶. More specific data will be presented later in the Chapter.

Generally, the effects of the Trump administration's protectionist policy on trade can be summarized in the "Trade Diversion" phenomenon. With this expression we mean the change in trade flows and trade volumes between two – or more – countries, due to changes in specific policies such as trade policies, trade remedies and tariffs¹³⁷. In practical terms, when a Country A imposes a specific tariff on a Country B, Country B exported goods' price increases, the export of Country B to Country A is therefore reduced. Moreover, potentially a third country, a Country C, will benefit from this change in trade flows and will substitute to a certain extent Country B in exporting goods to Country A. As can be deduced, the effects of Trade Diversion on the economy of a country can have a different impact depending on some variables. Specifically, these variables are: the real and concrete effects of new tariffs on prices; the price elasticity of supply and demand of a country; the real presence of a substitution country – a country C – and the difference in production costs between Country B and Country C; the capital and time needed to Country C to build new production facilities or expand the existing ones¹³⁸.

In the same way, also the effects of the Trade War and in particular of the new Custom Duty Policy on the economies of China and the Us differ in quantity and timing. In general, we can state that both China and the Us exports are affected hugely by the Trump administration policies¹³⁹. In the following paragraphs we will discuss deeper the changes in import and export in the China-Us bilateral trade, from 2018 to 2021.

¹³⁵ Cfr. K. Itakura, *Evaluating the impact of the US-China Trade War*, in «Asian Economic Policy Review», 15, August 2019, pp. 77-93.

¹³⁶ Cfr. G. Liang and H. Ding, *ibid*, p. 64.

¹³⁷ The concept of «*trade creation and diversion*» was firstly theorized by Jacob Viner in *The Customs Union Issue* (1950). According to Viner, some trade policies as free trade agreements may cause trade diversion in the sense that, because of the benefits deriving from these policies, trade flows are diverted from an exporter country to a more efficient one. S. Cigna *et alii*, *The impact of US tariffs against China on Us imports: evidence for trade diversion?*, European Central Bank Working Paper Series, 2503, December 2020, p. 3.

¹³⁸ Cfr. G. Liang and H. Ding, *ibid*.

¹³⁹ E. Cerutti *et alii*, *Push factors and capital flows to emerging markets: why knowing your lender matters more than fundamentals*, in «Journal of International Economics», 119, issue C, 2019.

2.3.2. Changes in trade flows between the Us and China from 2018 to 2021

As shown in *figure 15*, in December 2018, right after the break out of the China-Us trade conflict, China was still the Us 1st trading partner; the following year the country dropped to the 3rd position (*figure 16*). For the first time China was surpassed by Mexico. In 2020 China gained again the 1st place (*figure 17*) among the Us top trading partners ranking; however, while in 2018 China occupied the 15.7% of the Us total trade (*figure 15*), in 2020 it only occupies the 14.9% (*figure 17*). We can affirm therefore that China lost 2.2% of its total trade with the Us in 2019 and then it gained some percentage points in 2020, but not enough to compensate the loss – China’s percentage of total trade decreased by 0.8% in total. In December 2021 China was again at the 3rd place of the ranking (*figure 18*), following Canada – at the 1st place – and Mexico – in the 2nd place – with the 14.3% of total trade.

These data clearly show how the Trade War negatively affected China trade flows with the Us; the purpose of Trump’s Custom Duty Policy was to damage Chinese imports in the Us and to minimize the Us dependence to those products, in order to partially rebalance the Trade Deficit. As described above, the policy achieved its purpose and from 2018 to 2021 the Us imports from China decreased.

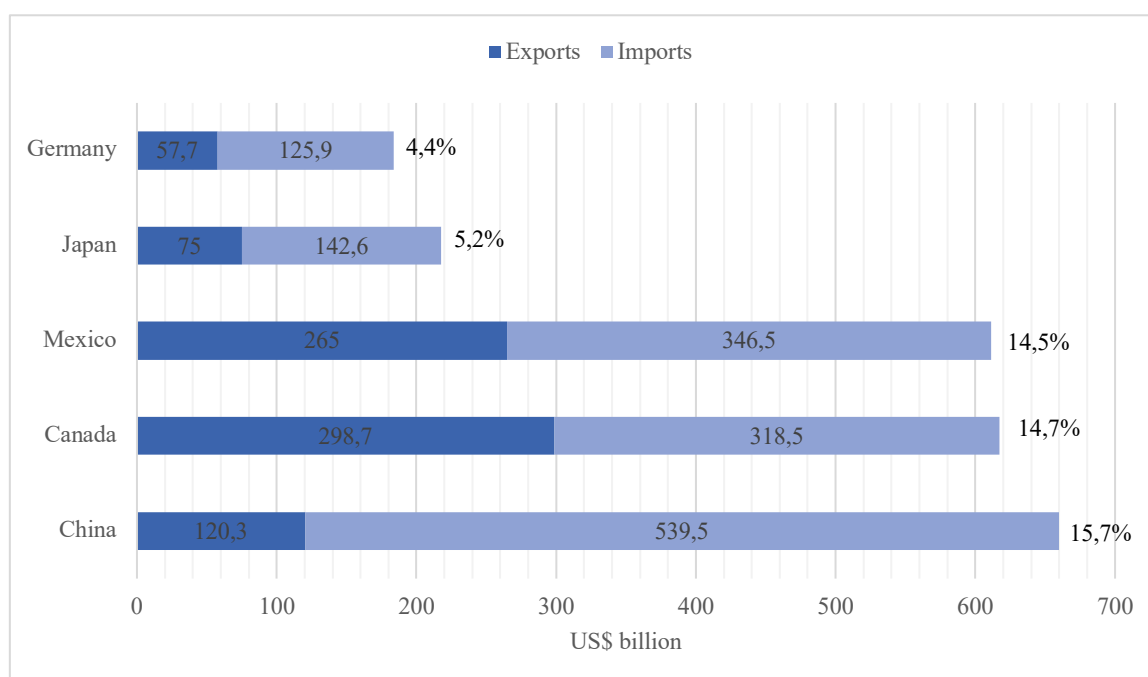


Figure 15. The Us top 5 trading partners, December 2018.

Source: data reported by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on July 2, 2022.

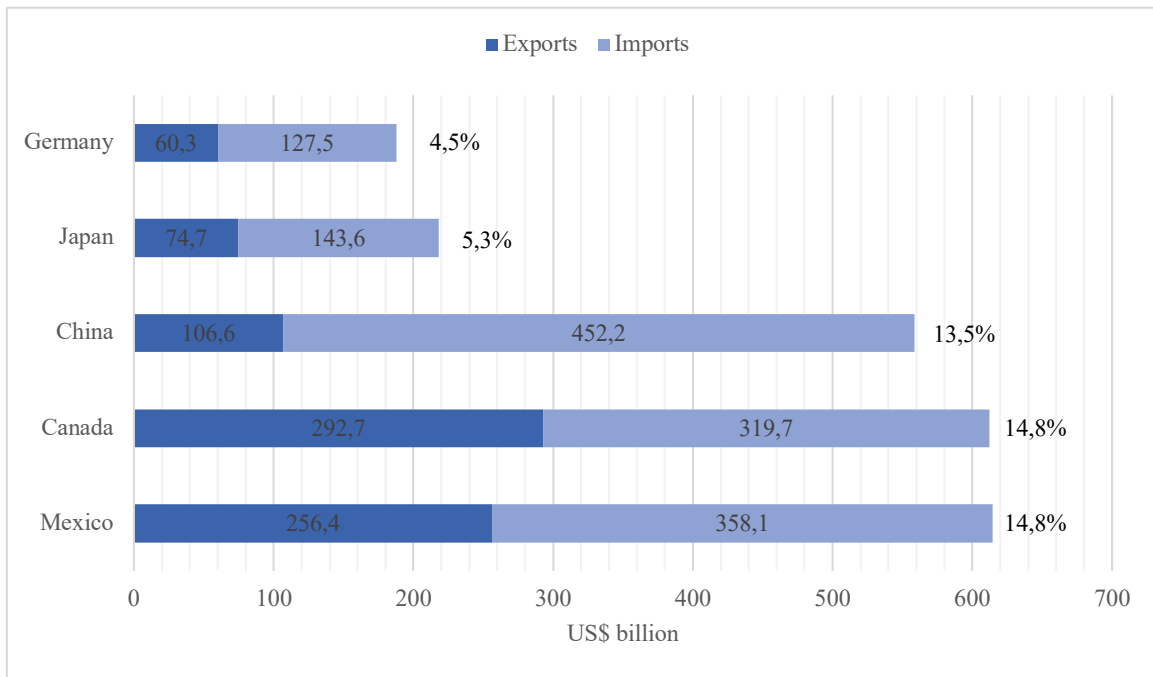


Figure 16. The Us top 5 trading partners, December 2019.

Source: data reported by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on July 2, 2022.

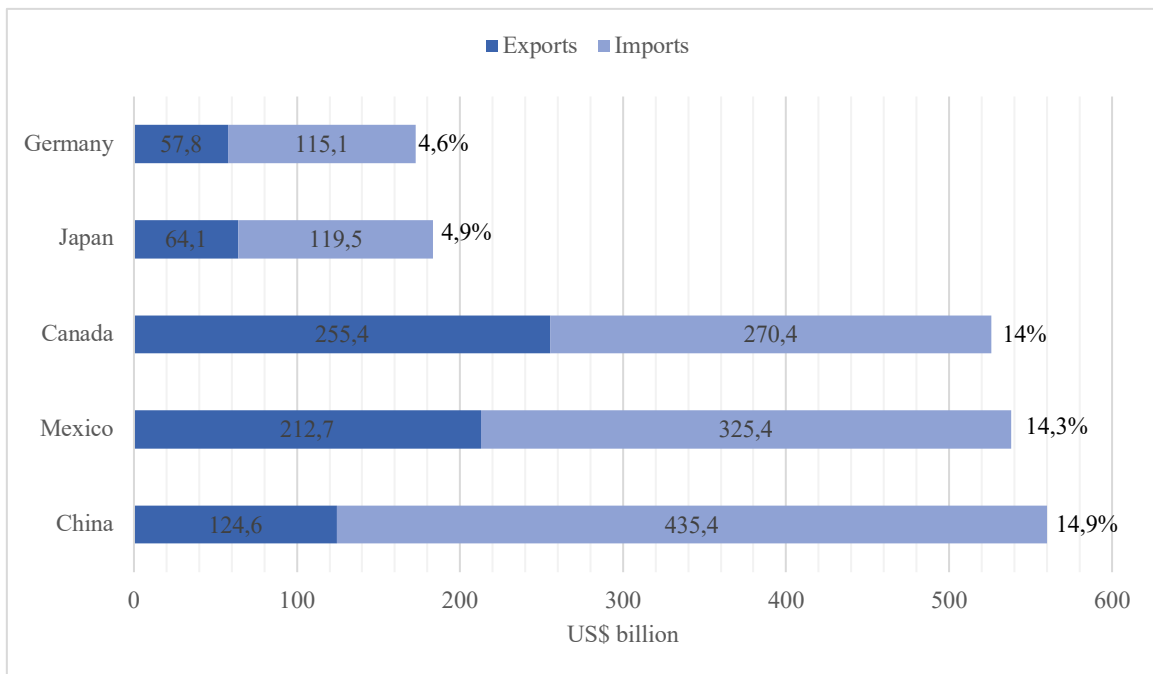


Figure 17. The Us top 5 trading partners, December 2020.

Source: data reported by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on July 2, 2022.

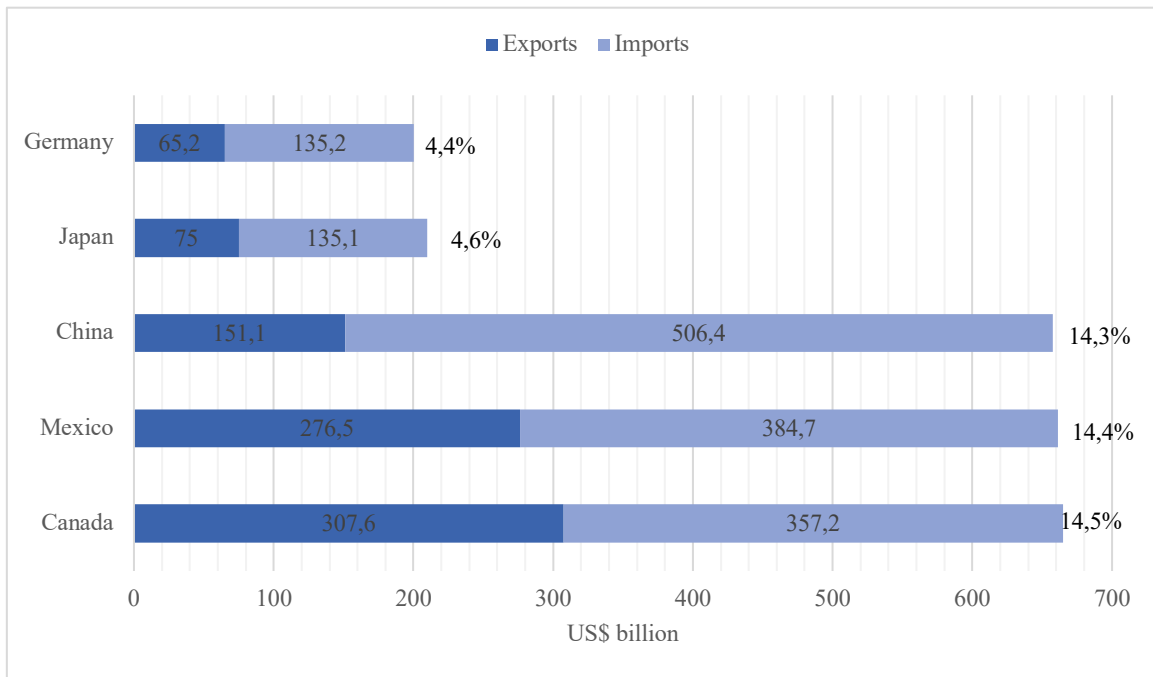


Figure 18. The Us top 5 trading partners, December 2021.

Source: data reported by United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on July 2, 2022.

The following figure (*figure 19*) resumes the percentage of the Us total trade occupied by China in the years object of analysis. As can be seen, in 2018 China occupied 15.7% of the Us total trade; in only three years the country lost 1.4%, decreasing to 14.3% of the total trade. This is again a confirmation of the statement above: China’s trade with the Us faced a substantial reduction from 2018 to 2021, as consequence of the Us administration new Custom Duty Policy.

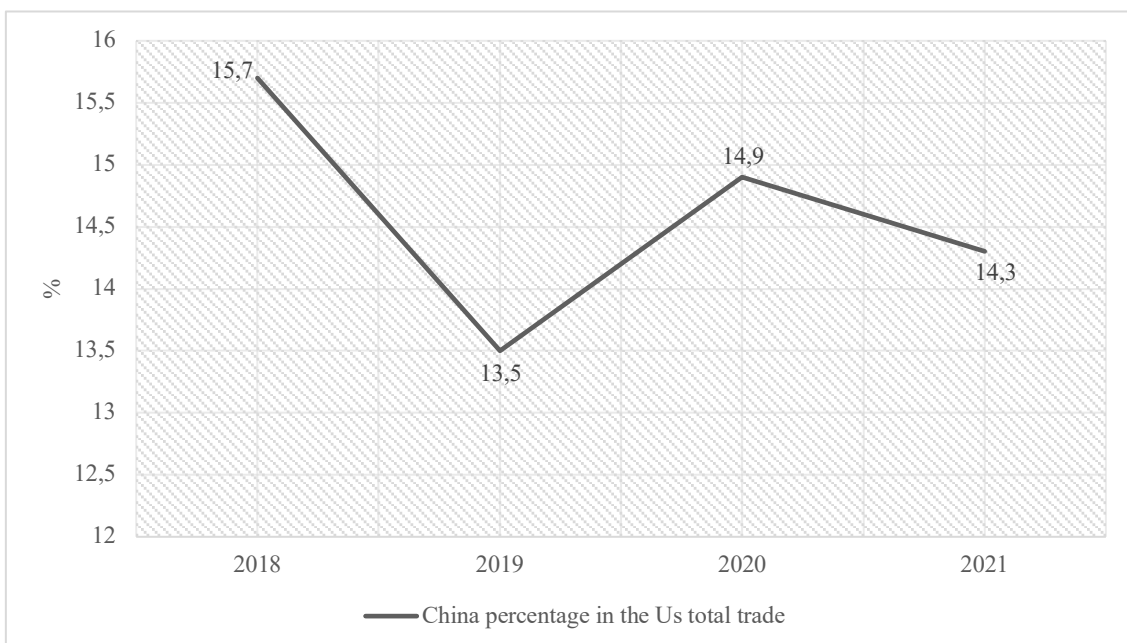


Figure 19. China percentage in the Us total trade, 2018-2021.

After a general consideration on bilateral trade, in the following paragraphs we will analyze more in details the changes in imports and exports between China and the Us from 2018 to 2021.

In 2019 the Us export to China remained quite stable – from US\$ 120 billion in 2018 to US\$ 107 billion in 2019 (*figure 20*), a reduction of US\$ 13 billion; conversely China export to the Us started to decrease – from US\$ 478 billion in 2018 to US\$ 419 billion in 2019 (*figure 21*), a reduction of US\$ 59 billion. Consequently, the amount of Us imports from China dropped from US\$ 584 billion in 2018 to US\$ 449 billion in 2019 (*figure 20*), and the China's share in the Us import declined from 21.2% in 2018 to 18.1% in 2019¹⁴⁰. These data confirm the affirmation that custom duties hit differently the two countries: the policy affected the most the Us imports on a side, and Chinese exports on the other side.

In 2020 we can observe a general improvement of trade flows, both for China and the Us, due to the better conditions imposed by the Trade War¹⁴¹; in particular the signature of the *Phase-One Trade Deal* on January 15, 2020 led to an improvement of trade relations¹⁴². Starting from that year, the Us imports from China grew again – from US\$ 449 billion in 2019 to US\$ 505 billion in 2021 (*figure 20*) – as long as China exports to the Us – from US\$ 419 billion in 2019 to US\$ 576 billion in 2021 (*figure 21*), with an increase of US\$ 157 billion. In fact, as shown before, in 2020 China gained again the 1st place in the Us top trading partners ranking and the percentage of the Us total trade occupied by the Asian country increased.

¹⁴⁰ United States Census Bureau, <https://www.census.gov/foreign-trade/statistics/highlights/top/index.html#2004>, visited on July 2, 2022.

¹⁴¹ The escalation of the Trade War and its phases are discussed in the *Annex I* to this thesis.

¹⁴² X. Xuzhen, *ibid.*

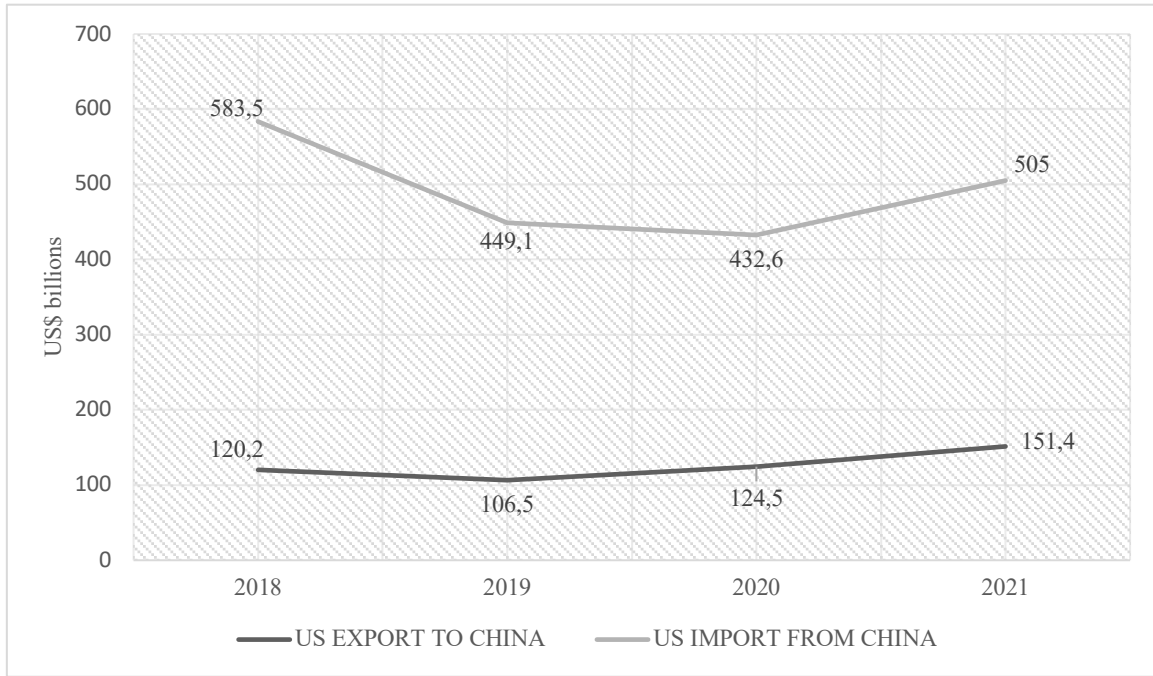


Figure 20. Us trade in goods with China, 2018-2020.

Sources: General Administration of Customs of China, <http://english.customs.gov.cn/statics/report/preliminary2020.html>, visited on July 2, 2022. United States Census Bureau, <https://www.census.gov/foreign-trade/balance/c5700.html>, visited on July 2, 2022.

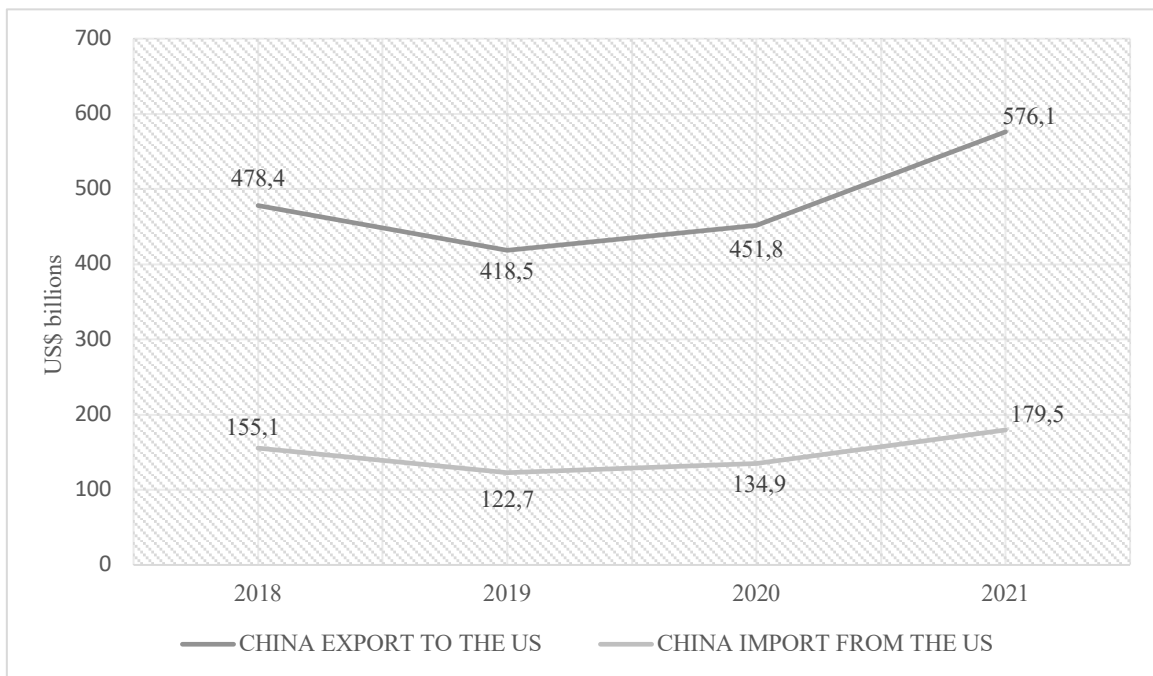


Figure 21. China trade in goods with the Us, 2018-2020.

Sources: General Administration of Customs of China, <http://english.customs.gov.cn/statics/report/preliminary2020.html>, visited on July 2, 2022. United States Census Bureau, <https://www.census.gov/foreign-trade/balance/c5700.html>, visited on July 2, 2022.

2.4 Implications of the new Custom Duty Policy on international trade flows. The “Decoupling” and new commercial opportunities for other countries

As mentioned in *Chapter 2, Paragraph 2.3*, when an importer country imposes additional tariffs on its exporter country, the exports volume of the latter will reduce; this mechanism can represent a good opportunity for a new potential exporter country aiming at substituting the former exporter one. And this is exactly what happened as consequence of the issuing of the new Custom Duty Policy: exports from China reduced significantly and other countries benefited from this reduction¹⁴³. In the following paragraphs, we will see more in details the situation described above.

2.4.1 The “Decoupling” phenomenon

Following the general increase of tariffs on goods imported from China, the Us importers were forced to change their sourcing strategy. Starting from 2019, the Us importers purchased in other countries those goods that they usually imported from China, thus the Trade Diversion happened. A consequence of the Trade Diversion is the “Decoupling” effect of the economies. By the term “Decoupling” we mean the strategy of reducing the economic dependence of a country on another country. As some scholars pointed out (Morrison and Stewart, 2021), China has actually looked for Decoupling from the Us for more than fifteen years; as a matter of fact, with the modernization reforms and the opening-up of the country, China aimed at reducing its technological dependence on the Us and at developing domestic industries’ capabilities¹⁴⁴. The willingness of China to minimize its interdependence with the Us is an essential step to become an internationally powerful country; China is aiming at substituting the Us in its role of global-leader country.

In this specific case, following the Us protectionist policy and the subsequent Trade Diversion, China and the Us economies moved away from each other¹⁴⁵. Generally, we can affirm that countries

¹⁴³ A significant example is the case of refrigerators: in the first quarter of 2019 the Us imported from China 24% refrigerators less than those imported in 2018, while they imported 32% refrigerators more than the previous year from South Korea and Mexico. Similarly, in the same period tires imported from China decreased by 29% while those imported from Viet Nam increased by 142% compared to 2018. Cfr. G. Liang and H. Ding, *ibid*, p. 67.

¹⁴⁴ A.J. Morrison and J.S. Stewart, *The Strategic Challenges of Decoupling*, in «Harvard Business School», May-June 2021, available at: <https://hbr.org/2021/05/the-strategic-challenges-of-decoupling>, visited on July 3, 2022.

¹⁴⁵ Linked to the Decoupling phenomenon is the “Relocation of supply chains”; this event is a wide problem that can have different implications. For the purpose of this analysis, we will consider it only as follow. The Relocation of Supply Chains consists in the relocation of the production of a good in a new country, in order to avoid tariffs imposed on the first country exports. The term “supply chain” refers to the entire process of transforming the raw materials into a finished and ready-to-be-sold product. Thus, the supply chain includes all those firms involved in the production, in transactions as buying and selling, in the transferring of goods from the productive industry to the final consumer. In the case of analysis, the Us multinational firms started to relocate their production subsidiaries preferably in Asian countries, such

chosen as substitutes for the import of goods or as production bases are mainly South Asian countries, as Viet Nam, or Latin American countries, as Mexico. For this reason, these countries are also the main beneficiaries of Trade Diversion and other custom duties policies¹⁴⁶.

2.4.2 The Decoupling's effects on other countries

As a consequence of the Decoupling, countries other than China increased their exports to the Us and profited from this situation. According to a study (Nicita, 2019), in the first half of 2019 the main beneficiary of the Us tariffs on China is Taiwan Province of China, whose additional export to the Us accounted US\$ 4.2 billion; Taiwan Province of China mainly exported to the Us office machineries and communication equipment. In the 2nd place of the ranking, there is Mexico, with an increase in export of US\$ 3.5 billion, mainly in the agri-food sector, transport equipment sector and electrical machineries sector. The European Union accounted an increase of US\$ 2.7 billion in export to the Us, mostly in the machineries sector. The other beneficiary countries in order are: Viet Nam (increase of US\$ 2.6 billion), Japan (increase of US\$ 1.7 billion) Republic of South Korea (increase of US\$ 1.4 billion), Canada (increase of US\$ 1.1), India (increase of US\$ 0.9 billion) and other South East Asian countries (increase of US\$ 1.7 billion). Conversely, the other Latin American countries, Sub Saharan African countries and the rest of the world marginally received benefits from the China-Us Trade Diversion and the Us tariffs on China (*figure 22*)¹⁴⁷.

Hence, data confirm the fact that the main beneficiaries of the Trade Diversion happened between China and the Us are South Asian countries and Latin American countries.

as Viet Nam, in Latin American countries, such as Mexico, or in the Us. The most well-known example of Relocation happened owing to the Trade War, is the production of iPhone components by Apple Inc., shifted from China to India. F. Fasulo, *China-USA: il decoupling è davvero possibile?*, available at: <https://www.ispionline.it/it/pubblicazione/cina-usa-il-decoupling-e-davvero-possibile-24899>, visited on July 3, 2022. L. Shaomin, 供应链从中国转移及其对中国经济的影响 *gongying lian cong Zhongguo zhuan yi ji qi dui Zhongguo jingji de yingxiang*, available at: <https://www.prcleader.org/shaomin-li>, visited on July 3, 2022.

¹⁴⁶ Cfr. G. Liang and H. Ding, *ibid*.

¹⁴⁷ Cfr. A. Nicita, *ibid*, pp. 11-12.

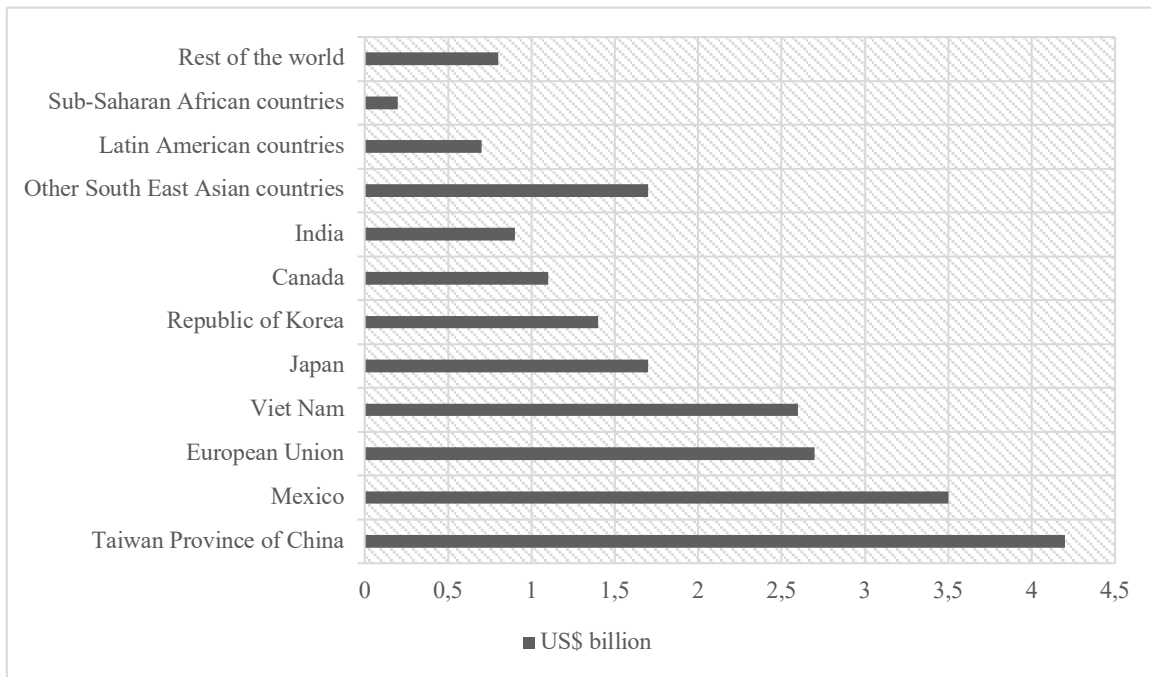


Figure 22. Countries' additional export to the Us, first half of 2019.

Source: A. Nicita, *Trade and trade diversion effects of United States tariffs on China*, UNCTAD Research Paper No. 37, November 2019, p. 11. United States Census Bureau.

As briefly introduced before, the Us replaced China as importer of goods with other countries, and these new importer countries were chosen according to the sector of the good to be imported.

We will see in details the Trade Diversion effects by sectors.

Office machineries is the sector which has been damaged the most by the Trade War; the Us replaced China mainly with the Taiwan Province of China. However, since the fact that the Us imported from China a huge amount of office machineries and that Chinese firms were the leading firms in this sector, Taiwan Province of China was not able to fill the gap, and the total loss caused by the Trade Diversion in this sector had a value of almost US\$ 3 billion. The same happened for communication equipment and furniture; the Us replaced China mainly with Viet Nam but they lost US\$ 2.6 billion. As concerns the electrical machineries sector, the main beneficiaries from the trade diversion were East Asian countries, Mexico, the European Union countries as well as Japan. In the agri-food sector, China was replaced mainly by Mexico as for transport equipment sector. Mexico replaced China as the Us importer country also in metals and ore sector, as well as Taiwan Province of China, India and The European Union countries did (*figure 23*)¹⁴⁸.

¹⁴⁸ Cfr. Nicita, *ibid*, p. 12.

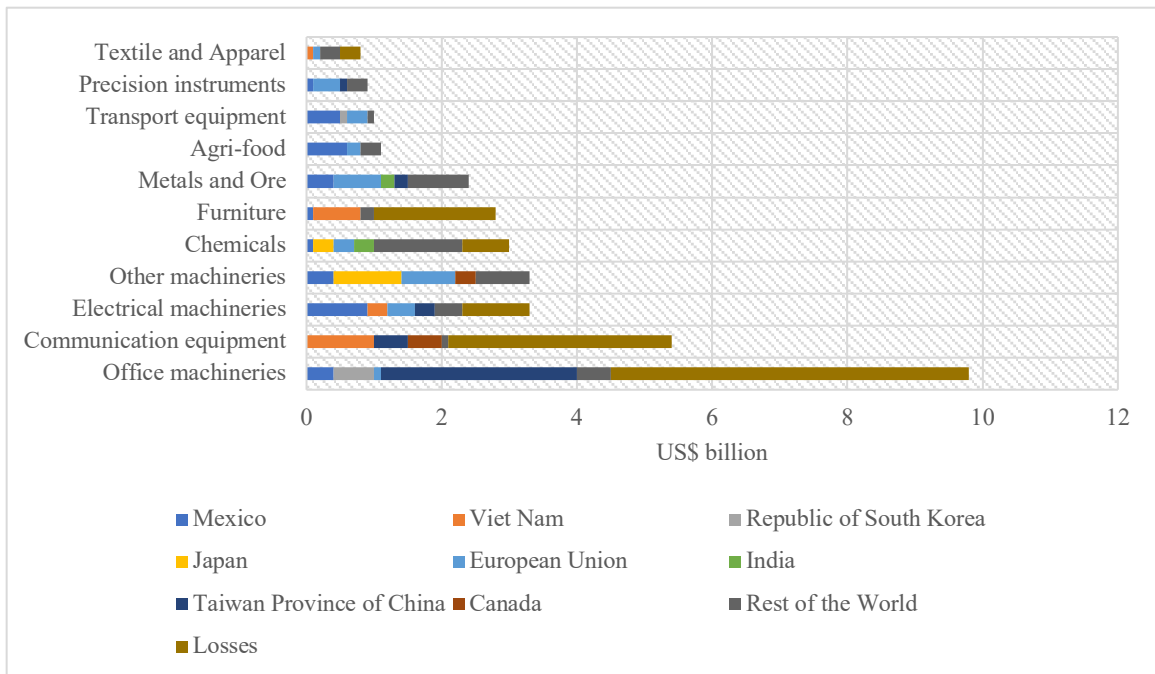


Figure 23. Trade diversion's beneficiaries countries by sector.

Source: A. Nicita, *Trade and trade diversion effects of United States tariffs on China*, UNCTAD Research Paper No. 37, November 2019, p. 12. United States Census Bureau.

As stated before, the Trade War in the Us had the worst impact on imports and consequently consumers were damaged the most. Goods' prices increased and the offer was not sufficient to satisfy the demand, since the new exporter countries' production was not sufficient to fully replace the Chinese one – at least as concerns some products.

However, it has to be noted that the effects of Trade Diversion are not unidirectional: the Us replaced China as main importer country for some goods, but China did the same. In July 2018, in response to the Us tariffs on Chinese washing machines, solar panels, steel, aluminum and other products, China and other Us top trading partners issued new tariffs on US\$ 34 billion of Us agricultural exports^{149,150}. The main agricultural product exported by the Us was soybean, and the main soybean importer country was China¹⁵¹, thus this was the product that suffered the most from the imposition of custom duty tariffs. In July 2018 China issued an additional 25% tariff on soybean imported from the Us and the amount of soybean exported from the Us to China reduced of 74% that

¹⁴⁹ China decided to apply tariffs on the Us agricultural products for mainly three reasons: the Us is the first largest exporter of agricultural products in the world; agricultural products are easy to be substituted since there are lots of different potential suppliers; farmers represent a politically influent part of the Us lawmakers. J. Hopkinson, *Profiles and Effects of Retaliatory Tariffs on U.S. Agricultural Exports*, Congressional Research Service, report R45448, December 2018, available at: <https://crsreports.congress.gov>.

¹⁵⁰ For the full list of events occurred from 2018 up to date, see *Annex I*.

¹⁵¹ The Us producers exported and sold half of the total amount of soybean that they produced to the Chinese market. Furthermore, China is the world's largest soybean importer country. Cfr. M.K. Adjemian *et alii*, *Estimating the market effect of trade war: The case of soybean tariffs*, in «Food Policy», 105, September 2021, pp. 1-3.

year, compared to 2017¹⁵². Conversely, to fill the gap, the amount of soybean that China imported from Brazil increased significantly in 2018¹⁵³.

In the previous paragraphs we analyzed the consequences of the Us protectionist policy on China-Us trade flows because, as said before, our focus is on bilateral and multilateral trade flows. However, it's important to underline that other important consequences can be observed; there are economic, financial, technological consequences and many others. And their impact can be seen on many aspects of the Chinese, the Us and other countries' economies.

This Chapter is focused on the quantitative description of trade flows between China and the Us. Trade flows between the two countries are both the main triggering cause of the Trade War and one of the aspects on which the same dispute had a major impact. In fact, data provided above are intended to demonstrate the Trade Unbalance between China and the Us, which led the Trump administration to the need of finding a solution for the deficit in trade. But data are also willing to show how trade flows between China and the Us reduced starting from 2018, and the effects both on China-Us bilateral trade and on international trade.

Nonetheless, an important element is still missing in this analysis on the trade-related aspects of the Trade War: the new Custom Duty Policy adopted by the Trump administration, which reshaped multilateral trade starting from 2018, is not consistent with the WTO standards, among which the first one for importance is free trade. The aim of the world's organization is actually to «help its members use trade as a means to raise living standards, create jobs and improve people's lives»¹⁵⁴. However, this is not what China and the Us did through the imposition of additional custom duty tariffs on goods imported from the conflict's counterpart; conversely, the Trade War only had negative effects on the economies of the two countries and it did not improve the living conditions of neither Chinese nor American people. Moreover, the fact that both China and the Us are members of the WTO cannot be neglected. For this reason, and also following a change in China's attitude towards international litigations (*Chapter I*), a dispute appealed by China to the WTO was inevitable.

¹⁵² According to the United States Census Bureau data, in 2017 the Us exported to China 31.7 million metric tons of soybean; in 2018 the Us exported to China 8.2 million metric tons of soybean, with a reduction of 23.5 million metric tons, corresponding to the 74% of the total. S. Arita *et alii*, *Agricultural exports and Retaliatory Trade Actions: An Empirical Assessment of the 2018/2019 Trade Conflict*, in «Applied Economic Perspectives and Policy», 43. no. 2, June 2021.

¹⁵³ M.K. Adjemian *et alii*, *ibid*.

¹⁵⁴ From the WTO official website, section “who we are”: https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm, visited on July 28, 2022.

Chapter 3 analyzes China's accession to the WTO, its legal implications on Chinese law system and on the country's judiciary, specifically as concerns trade, and the legal dispute that occurred between China and the Us. But before, to better understand why China appealed the Us and the economic importance of the following dispute, a quantitative description of the Trade War effects on bilateral trade seemed to be necessary.

Legal implications of China entering the WTO. Influences on the Chinese law and the legal dispute with the Us

After having analyzed the economic effects of the protectionist policy adopted by the Us administration on import and export flows between China and the Us, we will deepen its conflict with the WTO rules from a legal point of view. In fact, both China and the Us are WTO members; the Us has been a WTO member since its foundation in January 1, 1995 while China entered the WTO on December 11, 2001. Thus, they both signed the *Marrakech Agreement*¹⁵⁵ and they both declared to agree the WTO rules, also as regards the global trading system. But actually, custom duties applied by the Us on Chinese imports constitute an obstacle to the free trade principle, technically named “trade without discrimination” in the *WTO Agreement*.

3.1 China entering the WTO: legal implications on international trade

The process that led China to enter the WTO and to become its 143rd member ended on December 11, 2001; however it started in the first half of the 20th century: in fact, in 1947 China signed the *Protocol of Provisional Application* of the *GATT*¹⁵⁶ and the following year, in 1948 China became one of its contracting parts. After a period of isolation of China from international organizations and from the *GATT* too¹⁵⁷, on March 4, 1987 a Working Party was established in order

¹⁵⁵ The *Marrakech Agreement*, correctly named “*Agreement establishing the World Trade Organization*”, is the agreement settling the foundation of the WTO; it has been signed in Marrakech (Morocco) on April 15, 1994. It is also commonly known as “*WTO Agreement*”.

¹⁵⁶ The *GATT* is the main international agreement regulating international trade in goods. The final version of the agreement was signed on October 30, 1947 by 23 States, among which there was China. In 1994, with the formulation of the *Agreement of Marrakech* and with the consequent establishment of the WTO, the *GATT* has been incorporated in the WTO, so that the signing members of the WTO also implicitly accepted the *GATT* provisions. The main difference between the *GATT* and the WTO is that, while the former only disciplines trade in goods, the latter covers more aspects of international trade. In fact, it contains the *GATT* which regulates the trade in goods; the *GATS* (*General Agreement on Trade in Services*) which regulates the trade in services; the *TRIPs* (*Trade-Related aspects of Intellectual Property Rights*) which regulates intellectual property rights; the *TRIMs* (*Trade-Related Investments Measures*) which regulates investments and the *DSU* (*Dispute Settlement Understanding*) which regulates legal disputes occurring within the WTO. https://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm, visited on July 19, 2022.

¹⁵⁷ In 1950 the Chinese Nationalist Government decided to withdraw from the *GATT*; starting from that moment, the other members of the Agreement decided not to recognize the PRC. Then in 1971, following the UN General Assembly’s

to negotiate the *Protocol on the Accession of People's Republic of China in the WTO*. During the 1990s two provisional versions of the *Protocol* were drafted¹⁵⁸ and then on November 10, 2001 the final agreement was reached and subscribed the day after, establishing China's accession to the international organization of trade. The Working Party also published a *Working Party Report (WPR)* to resume the negotiation.

The entry of China in the WTO is probably one of the most significant events of the 21st century: accessing the WTO means opening the Chinese market to foreign firms and products and making it international. Thus, the entry in the WTO marks once again the Chinese willingness to internationalize its economy; it is the final step of the Deng's opening-up reforms.

3.1.1 The WTO and the "trade without discrimination" principle

One of the most important implications of the China's accession to the WTO is the breaking down of trade barriers and custom duties. The free trade principle, officially named as "trade without discrimination", was one of the core principles of the *GATT*¹⁵⁹ in the past, and now of the WTO. The *GATT* was first negotiated in 1947 and it entered into force in 1948; from 1994 it has been incorporated into the WTO, and its core principles on multilateral trade are now the core principles of the WTO¹⁶⁰. Among these core principles there is the "trade without discrimination principle" that includes the "most-favored-nation (MFN) treatment" principle – art. I, 1 of *GATT*. The "MFN treatment" principle states that:

Resolution no. 2758 (XXVI), the Communist Government was recognized as the legitimate Government of the PRC, along as the legitimate representative of the PRC in international organizations. Nevertheless China, under the Mao Zedong administration, decided not to take part in international organizations. The situation changed only after 1979, with the beginning of the opening-up and modernization reforms settled by Deng Xiaoping and China started to take part in international organizations once again. As a consequence, in 1980 China entered the IMF, in 1983 it subscribed the *Multi Fiber Agreement*, in 1984 it acquired the status of observer member of the *GATT* and finally in 1986 China formally asked to become once again a member of the *GATT*. Cfr. F. Spadi, *L'evoluzione del protocollo di accessione della RPC all'Organizzazione Mondiale del Commercio*, in «Diritto del commercio internazionale», 2, 2000, pp. 163-164. G. Adinolfi, *L'Organizzazione mondiale del commercio. Profili istituzionali e normativi*, Padova, 2001, pp. 116-122.

¹⁵⁸ The first version of the *Protocol* was drafted on December 20, 1994, soon before the entry into force of the *WTO Agreement* on January 1, 1995, in order to allow China to obtain the status of founding member of the WTO. However, this draft contained many points on which the Parties disagreed; it was therefore not ratified and China didn't become a WTO founding member. On March 1997 the second version of the *Protocol* was drafted, but once again China and the WTO members didn't reach an agreement. During the following years, some bilateral agreements were implemented, in particular between China and the US (November 15, 1999) and between China and the European Union (May 19, 2000), and these events actually led to the improvement of China's position in the process of accession to the WTO. Cfr. R. Cavalieri, *L'adesione della Cina alla WTO. Implicazioni giuridiche*, Università degli Studi di Lecce, Argo, Lecce, July 2003, p. 13.

¹⁵⁹ The full text of the *GATT* is available at: https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm#articleX

¹⁶⁰ https://www.wto.org/english/res_e/booksp_e/agrmtseries2_gatt_e.pdf, visited on July 16, 2022.

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,* any advantage, favor, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.¹⁶¹

This means that, as established by WTO agreements, countries are not allowed to make distinctions and discriminations among members; this implies that favorable treatments are not permitted, and any special benefit in favor of a country has to be applied also to the other signing countries of the WTO agreements¹⁶².¹⁶³

The “trade without discrimination” and the “MFN treatment” principles are also regulated by art. II, 1-2-3 of *GATS*, with reference to the trade in services.¹⁶⁴

1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favorable than that it accords to like services and service suppliers of any other country.

2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

¹⁶¹ *GATT*, art. I, 1.

¹⁶² https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm, visited on July 16, 2022.

¹⁶³ However, the MFN treatment principle also allows some exceptions, stating that «1. (a) Each contracting party shall accord to the commerce of the other contracting Parties treatment no less favorable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement. (b) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date. (c) The products described in Part II of the Schedule relating to any contracting party which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates shall, on their importation into such territory, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for in Part II of that Schedule. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly or mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date. Nothing in this Article shall prevent any contracting party from maintaining its requirements existing on the date of this Agreement as to the eligibility of goods for entry at preferential rates of duty». *GATT*, art. II, 1, A, B and C. Hence, even some exceptions are permitted, but they are very limited in number and nature and can be applied only under a few circumstances, those described by this article. https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm#articleI, visited on July 19, 2022.

¹⁶⁴ The full text of the *GATS* is available at: https://www.wto.org/english/docs_e/legal_e/26-gats.pdf

3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.¹⁶⁵

Evidently, the Trade War's new Custom Duty Policy adopted by the Trump administration – *Chapter 2, Paragraph 2.1* – and as response, also by China collides with the standards of the WTO, expressed by the statements above. The “trade-without-discrimination” principle is not respected, since that additional tariffs injured Chinese exports, and as a consequence, the Chinese economy, as shown by data provided in *Chapter 2*. The “MFN treatment” principle is neither observed, since that the Us imposed on Chinese products a tariff treatment less favorable than that imposed on products imported from other countries.

As consequence to the opening-up and to the internationalization of China, the fact that new products delivered from other countries enter the Chinese market will have consequences on the products of the Chinese market themselves; prices are different, and also manufactory practices may differ. This can act as a booster for the Chinese firms, it can increase the competition and boost the innovation, but it can also damage the Chinese economy. In particular, the main change of the Chinese economic system followed to its accession to the WTO is the transition from a planned economy to a market economy, in order to pursue the market liberalization¹⁶⁶. However, for the purpose of this analysis, economic effects can be neglected¹⁶⁷ and we will focus mainly on legal consequences and on the juridical impact, specifically on trade, of the China's accession to the WTO.

3.1.2 Consequences of the accession to the WTO on Chinese legislation: uniform administration, transparency, juridical review and non-discrimination

The entry in the WTO led China to an adjustment of its law system; it represented an opportunity for a modernization of its legislation, meaning that some changes were necessary to improve the country's judiciary¹⁶⁸. It seems evident that the revision of the Chinese judiciary is a

¹⁶⁵ GATS, art. II, 1, 2, 3.

¹⁶⁶ S. Bianchi, *Cina tra sviluppo e democrazia*, Trento, Uni Service, 2009.

¹⁶⁷ For an in-depth analysis of the economic impact and of the economic commitments of China after its accession to the WTO, see: C. Cheong and H.Y. Ching, *Handbook on China's WTO Accession and Its Impacts*, World Scientific Publishing Co. Pte. Ltd., Singapore, June 2003. R. Ash and H. Holbig, *China's accession to the World Trade Organization. National and International Perspectives*, Routledge, Oxo, July 2002.

¹⁶⁸ For further studies on this topic, see: M. Li, *China's Compliance with WTO Requirements Will Improve the Efficiency and Effective Implementation of Environmental Laws in China*, in «Temple International and Comparative Law Journal», 155, 2004. D.C. Clarke, *China's Legal System and the WTO: Prospects for Compliance*, in «Washington University Global Studies Law Review», 97, 2003. C.X. Lin, *A Quiet Revolution: An Overview of China's Juridical Reform*, in «Asian-Pacific Law and Policy Journal», 9, 2003.

further element of the modernization policy pursued by China starting from 1980s. When the country, which has been closed to foreigners for centuries, opened-up and confronted itself with the rest of the world's countries, the Chinese administration understood that important changes had to occur in order to be competitive on the international environment. As discussed in *Chapter 2, Paragraph 2.1* the Xi's "Chinese Dream", meaning the willingness to reaffirm the Chinese supremacy or even hegemony, was a result of Deng's "Open Door Policy" and it is influencing the administrations of China starting from last century. But, differently from the "ancient China" which dominated the Asian region for centuries, the "new China" aims at the hegemony at international level.

To be more specific on the reforms adopted by the Chinese administrations as regards the national law system, there was a need for modernization of the Chinese judiciary in particular because judges and the law in general still had a close link with politics¹⁶⁹. Hence, the revision of the Chinese judiciary system stressed both on judges and on the law system in general¹⁷⁰.

Besides the reforms concerning the judicial profession and the national law system, the entry of China in the WTO also implied the incorporation in the national judiciary of some fundamental

¹⁶⁹ As concerns this problem, a study by Qin Dachang and Huang Jinbo (1998) is relevant. They carried out a survey on the Chinese judges' perception on the independence of the Chinese law from the country's politics. 288 judges were asked to what extent, in their personal opinion, the principle that judges – directly citing the survey – "shall independently exercise their adjudication rights in accordance with laws" has been realized?; as a result, 0 judges replied "completely realized", 164 answered "basically realized" (56.9%), 98 judges chose "basically not realized" (34.1%) and 26 said "not realized" (9%). This shows that in 1998 there was yet a high percentage of Chinese judges (about 43%) believing that their colleagues were highly influenced by the national Government as concerns their professional duties. Q. Dachang and H. Jinbo, 论法官独立审判机器责任制 *lun faguan duli shenpan jiqi zere zhi*, in «Chinese Courts Net», October 2003.

¹⁷⁰ Soon after the entry into the WTO, the Chinese Government enacted some reforms in order to innovate the national juridical system and to improve its capabilities. In particular, magistrates and judges had a really low professional qualification since that the career in the judiciary was part of the career in the police or in the army. Thus, specific figures as magistrates were typically low-skilled; in fact, already before the accession to the WTO, the Government was trying to overcome two important problems: the low professional skills of magistrates and their dependence to local political powers. As concerns the first problem, an important decree must be mentioned: the introduction of a uniform national exam for juridical professions. Moreover, it has been decided that juridical figures can get ahead in their career gradually and not jumping some steps. As concerns the increase of the degree of independence of the juridical system from the political power, the People's Supreme Court issued two regulatory acts: the first one, came into force on March 1, 2002 and established that civil and commercial legal cases that involved international actors must be regulated by intermediate or superior courts, instead of normal court, since that the formers were less influenced by local authorities. The second notable regulatory act entered into force on October 1, 2002 and it established that international trade cases involving the trade in goods and intellectual property rights must be judged according to international agreements, and in particular the equal treatment has to be respected, in accordance with the WTO principles. Moreover, the regulatory act of 2002 also established that those legal cases also must be regulated by intermediate or superior courts, instead of normal court. For an in-depth analysis of the national exam for juridical profession, see: V.H. Mei-Ying, *China's WTO Commitment on Independent Juridical Review: An Opportunity for Political Reform*, Carnegie Endowment, Washington, November 2002. As concerns the regulatory act, see: K. Xiangjun, *A Judication of Administrative Cases of International Trade Related to WTO Rules*, in «China Law», December 2002.

principles, as clearly stated in the *Protocol*¹⁷¹ and underlined in the *WPR*¹⁷². In particular these principles were: as concerns the administration of the trade regime, the principle of “uniform administration”, the principle of “transparency” and the principle of “juridical review”; as general provision, the “non-discrimination principle”.

By “uniform administration” (*Protocol*, Part I, 2, A) we mean the entry into force of the same package of rules regulating foreign trade in any part of the country, without distinctions; this prescription is roughly equivalent to art. X, 3, A, B and C of *GATT*, which states that:

3. (a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

(b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(c) The provisions of subparagraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this subparagraph.¹⁷³

This article of *GATT* points out that rules must be applied uniformly, in a non-discriminatory manner and specific juridical bodies are entrusted of the control of this uniform application of laws.

The *WPR* also points out that these rules must be applied even in some particular areas as boarder trade regions, autonomous areas, SEZs¹⁷⁴, economic and technological development areas, open coastal municipalities and in any other specific economic zones (*WPR*, III, 3, 71-73):

¹⁷¹ The full text of the *Protocol on the Accession of the People's Republic of China* is reported as *Annex II* of this thesis.

¹⁷² The full text of the *WPR* is available at: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?FullTextHash=1&MetaCollection=WTO&SymbolList=%22WT/ACC/CHN/49%22+OR+%22WT/ACC/CHN/49*%22&languageUIChanged=true#.

¹⁷³ *GATT*, art. X, 3, A, B and C.

¹⁷⁴ As regards SEZs, the WTO aims at reducing the facilitations in these areas, such as the previously-into-force favorable tariffs for imported products; moreover, the WTO also establishes that the same treatment on imports in China should be applied also on goods imported in these areas and then resold in other part of the country, even as components (*WPR*, IV, D, 7). For more details on SEZs regulation, see: C. Jun, *WTO 与中国经济特区立法穿新研究* *WTO yu zhongguo*

71. Some members of the Working party stated that it should be made clear that China would apply the requirements of the *WTO Agreement* and its other accession commitments throughout China's entire customs territory, including border trade regions, minority autonomous areas, Special Economic Zones ("SEZs"), open coastal cities, economic and technical development zones and other special economic areas and at all levels of government.

72. Those members of the Working party also raised concerns about whether China's central government would be sufficiently informed about non-uniform practices and would take necessary enforcement actions. Those members stated that China should establish a mechanism by which any concerned person could bring to the attention of the central government cases of non-uniform application of the trade regime and receive prompt and effective action to address situations in which non-uniform application was established.

73. The representative of China confirmed that the provisions of the *WTO Agreement*, including the Draft Protocol, would be applied uniformly throughout its customs territory, including in SEZs and other areas where special regimes for tariffs, taxes and regulations were established and at all levels of government. The Working Party took note of this commitment.¹⁷⁵

Furthermore, it's important to notice that, in order to pursue the uniform administration, art. III, 3, 72 of the *WPR* states that local regulations contrasting with WTO regulations will be withdrawn, and that specific legal bodies will be established so that the public can report the non-uniform application of regulations.

The "uniform administration" principle is a breaking point in the Chinese administration. As known, starting from 1980s the Government pursued a development policy; according to this policy, the SEZs were issued. In these cities¹⁷⁶ a favorable regulation on custom duties was in force at that time, with the aim of attracting foreign investments and achieving economic and technological development. Those cities were supposed to pull the development of the entire country, but actually, even if the general development of the country was achieved, SEZs also contributed to make China a country with a non-uniform development and a huge derangement. Thus, it is clear that applying a uniform administration in any part of the country with any geographic distinction, is a big change in the Chinese legislation¹⁷⁷.

The principle of "transparency" (*Protocol*, Part I, 2, C) prescribes that China makes available those regulations that affect multilateral trade in goods and in services, intellectual property rights

jingjitequ lifa chuanxin yanjiu. 法 学 研 究 , 2001, available at: http://www.faxueyanjiu.net/Admin/UploadFile/publish_article/2001/3/20010308.pdf

¹⁷⁵ *WPR*, art. III, 3, 71-73.

¹⁷⁶ In 1979 there were four SEZs: Shenzhen, Zhuhai, Shantou, Xiamen. In 1984 the same treatment was applied to fourteen coastal cities and later to other central or western cities.

¹⁷⁷ Cfr. R. Cavalieri, *ibid*, p. 23.

(*TRIPs*) and the control of foreign exchange that are actually enforced. Furthermore, *WPR* underlines that China has to provide a translation of these regulations at least in one of the WTO three official languages – English, French or Spanish – within ninety days from their entry into force (*WPR*, VII, 3, 334):

334. The representative of China confirmed that China would make available to WTO Members translations into one or more of the official languages of the WTO all laws, regulations and other measures pertaining to or affecting trade in goods, services, *TRIPs* or the control of forex, and to the maximum extent possible would make these laws, regulations and other measures available before they were implemented or enforced, but in no case later than 90 days after they were implemented or enforced. The Working Party took note of these commitments.¹⁷⁸

In accordance with “transparency” principle, China also undertook to establish a unique official journal for the publication of regulations on multilateral trade in goods and in services, *TRIPs* and foreign exchange; moreover, this journal will be published periodically and uniformly in the country.

With reference to this aspect, art. X, 1 of *GATT* establishes that official central and local decrees and administrative regulations must be published in a country’s official bulletins and journal:

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.¹⁷⁹

An information center on Chinese regulations were also established; this center is named “China WTO Notification and Enquiry Point” and any WTO member can address to it in order to ask for clarification on the rules applied by China as concerns the aspects above.

Before the accession to the WTO, the common practice in China was to enforce rules not following a clear and unique path: regulations and rules were enacted sometimes specifically for a litigation; other times regulatory acts were intern – 内部条例 *neibu tiaoli* - and confidential; laws were issued even as provisional acts – 暂行条例 *zanxing tiaoli* – or as experimental laws – 实行条

¹⁷⁸ *WPR*, art. VII, 3, 334.

¹⁷⁹ *GATT*, art. X, 1.

例 *shixing tiaoli* – specifically for a certain dispute. It happened also that a specific rule was enforced in a litigation before its formal publication on the official journal. Incorporating the transparency principle into the Chinese juridical and legal system meant that Chinese citizens and also foreign countries would have free and easy access to sources of law¹⁸⁰.¹⁸¹

The application of the transparency principle is even more binding as concerns international litigations; as a matter of fact, by accessing the WTO, China also accepted to take part in its litigation system, the WTO DSS. It means that when international litigations on trade-related aspect occur, China takes part in them following the rules of the DSS. Thus, under such circumstances, transparency standards must be applied. Right before the accession of China in the WTO, there were doubts among analysts and scholars on the China's capability to apply transparency standards¹⁸². However, two decades after we can affirm that the transparency requested by the WTO has been respected and it has been even improved by the China's participation in international litigations through the WTO DSS¹⁸³. In fact, as confirmed in a study by Kara Leitner and Simon Lester (2010), during international litigations under the WTO DSS, the complaint part requests for evidences and China is forced to provide explanations¹⁸⁴.

¹⁸⁰ One of the main problems in the modern Chinese law was the so-called “sources of law problem”. This was because in the Chinese law system three different systems of law coexisted: a Soviet-style legislation, the Confucian tradition and a Western vision of law. Moreover, rules and regulations sometimes were not accurately codified in a written form. As for the juridical profession, during 1980s and 1990s the law started to be seen as independent from the party and from the political system. During those years there has been the intention to build a “rule of law”, a sort of codification of the law. However, there was still a problem: the plurality of rulers, meaning the subjects that produced laws. In particular there was confusion between local rules and national rules, between general rules and specific rules, and even the establishment of different special economic zones led to a conflict of laws. The *Constitution* (in particular the last version, published in 1982) was formally the primary source of the Chinese law; in fact, in the last part of the *Preamble* it is said that «This Constitution [...] is the fundamental law of the State and has supreme legal force. The people of all ethnic groups, all State organs and armed forces, all political parties and social organizations, and all enterprises and public institutions in the country must treat the Constitution as the fundamental standard of conduct; they have a duty to uphold the sanctity of the Constitution and ensure its compliance». But actually, in practice this principle was not always applied. To solve this problem the Legislation Law (立法法 *lifa fa*) was issued. This law was adopted at the III Session of the IX National People's Congress on March 15, 2000 and promulgated by Order no. 31 of the President of PRC the same day. For the first time, this law clarified the hierarchy, the jurisdiction, the method of promulgation and the legality review of the different sources of law. Moreover, this law also established the obligation of publishing any rule or regulation on official journals. F.R. Antonelli, *La legge sulla legislazione ed il problema delle fonti nel diritto cinese*, in «Mondo cinese», no. 119, April-June 2004, available at: https://www.tuttocina.it/Mondo_cinese/119/119_anto.htm#1a, visited on July 19, 2022. Cfr. R. Bertinelli, *Verso lo stato di diritto in Cina*, Giuffrè, Milano, 1989, p. 12. Cfr. L. Moccia, *Il Sistema giuridico cinese: caratteri tradizionali e lineamenti attuali*, in «Rivista trimestrale di diritto e procedura civile», no. 4, 2000, pp. 1251-1281.

¹⁸¹ Cfr. R. Cavalieri, *ibid*, pp. 26-30.

¹⁸² S. Ostry, *China and the WTO: The Transparency Issue*, in «UCLA Journal of International Law and Foreign Affairs», 1, 1998.

¹⁸³ C. Manjiao, *ibid*.

¹⁸⁴ Cfr. K. Leitner and S. Lester, *ibid*, p. 218.

As concerns “juridical review” (*Protocol*, Part I, 2, D), China undertook to establish competent juridical bodies to control the administrative actions related to the application and to the implementation of laws and regulations referred to the art. X of *GATT* 1994, to art. VI of *GATS* and to the relevant provisions of the *TRIPs* agreement. In addition to this, China also undertook that these juridical bodies had to be «impartial» and «independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter»¹⁸⁵. Furthermore, individuals or firms affected by any administrative actions must have the right to appeal to an administrative body without penalty.

It has to be noted that the Chinese *Constitution of the People’s Republic of China*¹⁸⁶, art. 127 guarantees that:

第一百二十七条 监察委员会依照法律规定独立行使监察权，不受行政机关、社会团体和个人的干涉。

监察机关办理职务违法和职务犯罪案件，应当与审判机关、检察机关、执法部门互相配合，互相制约。

Article 127. Commissions of supervision shall, in accordance with the provisions of law, independently exercise supervisory power, and shall not be subject to interference from any administrative organ, social organization or individual.¹⁸⁷

This article also prescribes the need to have independent commissions that conduct supervisions separately from any other administrative body.

As stated before, theoretically tribunals and the juridical system in general should be independent but actually they were controlled by the Communist Party and by the Government through informal means and appropriate institutional mechanisms. Hence, the commitment to establish independent and impartial juridical bodies, in accordance with the WTO principles, is a huge change in the Chinese juridical system and this fact will imply important innovation points.¹⁸⁸ Moreover, art. I, 2, D, 2 of the *Protocol* states that «Review procedures shall include the opportunity for appeal, without penalty [...]. If the initial right of appeal is to an administrative body, there shall in all cases be the opportunity to choose to appeal the decision to a juridical body».¹⁸⁹ This means

¹⁸⁵ *Protocol on the Accession of People’s Republic of China in the WTO*, Part I, 2, D, 1.

¹⁸⁶ The full text in Chinese of the *Constitution of the People’s Republic of China* is available at: <https://www.elegislation.gov.hk/hk/A7%21sc.assist.pdf>. The full text in English of the *Constitution* is available at: <http://www.npc.gov.cn/englishnpc/constitution2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml>.

¹⁸⁷ *Constitution of the People’s Republic of China*, art. 127.

¹⁸⁸ Cfr. R. Cavalieri, *ibid*, pp. 30-34.

¹⁸⁹ *Protocol on the Accession of People’s Republic of China in the WTO*, Part I, 2, D, 2.

that the *Protocol* establishes that in any case, a juridical person or an enterprise subject of an administrative action must have the right to be judged by an independent and impartial judicial body¹⁹⁰.

Finally, the “non-discrimination” principle (*Protocol*, Part I, 3) refers to the fact that China agreed to apply to foreign enterprises and to foreign individuals the same treatment applied to national enterprises and to Chinese citizens; in particular it refers to both the procurements of goods and services necessary for production and to the prices and availability of goods and services. To complement the *Protocol*, art. II, 1, 18 of *WPR* established that the “non-discrimination” principle would be applied not only on foreign enterprises but also on foreign-funded enterprises based in China. In fact, it states that:

18. The representative of China further confirmed that China would provide the same treatment to Chinese enterprises, including foreign-funded enterprises, and foreign enterprises and individuals in China. China would eliminate dual pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export. The Working Party took note of these commitments.¹⁹¹

While in the past the Chinese legal system favored national firms, now this is no more possible, and China has to modify some aspects of its legislation in order to keep faith to this principle¹⁹².

Generally speaking, the importance of such provisions is that, as broadly discussed in the paragraphs above, they were not previously incorporated in the Chinese juridical system, they constitute therefore an important innovation that can also collide with the political system of China. As can be deduced from the analysis above, and also from the text of the *Protocol*, the new provisions regard in particular multilateral trade. This fact is even more significant for the purpose of this analysis and emphasizes once again that the new Custom Duty Policy should be considered as not consistent with the WTO principles on multilateral trade. Signing an international agreement means to undertake its core principles; China revised the national judiciary and the domestic law system in order to adhere to the WTO principles. Nonetheless, the country applied additional tariffs on products imported from the Us, even if as response to the same trade treatment. Conversely, the Us, whose

¹⁹⁰ Cfr. V.H. Mei-Ying, *China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform*, in «The American Journal of Comparative Law», 52, 2004, pp. 78-79.

¹⁹¹ *WPR*, art. II, 1, 18.

¹⁹² Among the aspects included in the review, there are intellectual property rights and foreign investments (green-field and brow-field investments), which were not object of safeguard measures before. The procedures for the import of technology in China are also simplified; on this subject, see also: M.A. D'Urso, *Il nuovo regolamento cinese per l'import-export di tecnologia*, in «Cina Notizie», no.4, July-August 2002.

judiciary is even more compliant with WTO outline, actually didn't respect the principles of the international organization to which the country is one of the founding members.

3.1.3 An adjustment of the Chinese law and its compliance with WTO standards

As conclusion of this analysis on legal implications of China entering the WTO, an important clarification has to be done: *to which extent the provisions established by the Protocol were actually enforced in the Chinese legal system?*

Soon after China's accession to the WTO, the enforcement of international agreements into the Chinese law and their application as law were not-clear issues, since there was any official statement by the juridical and legislative organs. As can be supposed, modifying the domestic judiciary according to international standards is not an easy process; conversely is a time-consuming and burdensome process, that requires relevant changes. Moreover, a country's law system is the result of a country's politics, adjusting it on the basis of international standards sometimes means therefore not to be coherent with the domestic administration. This has been the case of China too.

According to practice in China, international agreements' provisions are sometimes incorporated into the Chinese law; though, when the Chinese law doesn't refer to international agreements, and international agreements' rules are in conflict with national rules, the former should prevail on the latter¹⁹³.

The source of this principle is the *General Principle of Civil Law of the People's Republic of China* (中华人民共和国民法通则 *Zhonghua renmin gongheguo minfa tongze*)¹⁹⁴, art. 142, which declares that:

第一百四十二条 【一般规定】 涉外民事关系的法律适用，依照本章的规定确定。

中华人民共和国缔结或者参加的国际条约同中华人民共和国的民事法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。

中华人民共和国法律和中华人民共和国缔结或者参加的国际条约没有规定的，可以适用国际惯例。

Article 142

¹⁹³ Cfr. R. Cavalieri, *ibid*, pp. 16-21.

¹⁹⁴ The full text in Chinese of the *General Principle of Civil Law of the People's Republic of China* is available at: http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-03/15/content_2018907.htm. The full text in English of the *General Principle of Civil Law* is available at: <http://www.npc.gov.cn/englishnpc/lawsoftheprc/202001/c983fc8d3782438fa775a9d67d6e82d8.shtml>.

The application of law in civil relations with foreigners shall be determined by the provisions in this chapter. If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

International practice may be applied to matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.¹⁹⁵

The principle is also discussed by art. 238 of the *Civil Procedure of the People's Republic of China* (中华人民共和国民事诉讼法 *Zhonghua renmin gongheguo minshi susong fa*)¹⁹⁶; the article states as follows:

第二百三十八条 对公证机关依法赋予强制执行效力的债权文书，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行，受申请的人民法院应当执行。

公证债权文书确有错误的，人民法院裁定不予执行，并将裁定书送达双方当事人和公证机关。

Article 238

If an international treaty concluded or acceded to by the People's Republic of China contains provisions that differ from provisions of this Law, the provisions of the international treaty shall apply, except those on which China has made reservations.¹⁹⁷

Both the articles above, even if part of different sources, declare the predominance of international standards on domestic laws; this can be seen as a further step towards the opening-up of the country and towards the willingness to take part – again – in international organizations to participate actively in the international environment.

Starting from 2001, China did a great work of revision and adjustment of the domestic law on international trade according to WTO standards. It is reported that China revised more than 2000 laws and rules on international trade, and 500 of these were withdrawn since they were not consistent with the WTO discipline. In particular, the revision of the *Foreign Trade Law of The People's Republic of*

¹⁹⁵ *General Principle of Civil Law of the People's Republic of China*, art. 142.

¹⁹⁶ The full text in Chinese of the *Civil Procedure of the People's Republic of China* is available at: http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-06/29/content_2024892.htm. The full text in English of the *Civil Procedure* in English is available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383880.htm.

¹⁹⁷ *Civil Procedure of the People's Republic of China*, art. 238.

China (中华人民共和国对外贸易法 *Zhonghua renmin gongheguo dui waimao yifa*)¹⁹⁸ is one of the most important part of the revision work. In fact, this Law establishes the fundamental principles of international trade, which are fairness and freedom of trade:

第四条 国家实行统一的对外贸易制度，鼓励发展对外贸易，维护公平、自由的对外贸易秩序。

Article 4

The State applies a unified system of foreign trade, encourages the development of foreign trade and preserves a fair and free foreign trade order.¹⁹⁹

This article provides for an equal and liberal trade in which there are any barriers²⁰⁰. It is evident that the discipline is not consistent with custom duties. The same principle is reported in the *Agreement establishing the World Trade Organization*²⁰¹, the official act of the foundation of the WTO. In the *Preamble* it is stated that:

The *Parties* to this Agreement,

[...]

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations,

[...] ²⁰²

The abolition of trade barriers and the abolition of any discriminatory behavior are provisions shared by all the signing members of the WTO; hence, both China and the Us agreed on the liberalization of trade, but actually the Trade War and the subsequent new Custom Duty Policy constitute an obstacle to it. Both countries adopted trade measures not consistent with the agreements they signed and with the provisions they undertook. Nonetheless, it has to be noted that both countries provided argumentations to justify the application of these additional tariffs. The Us administration

¹⁹⁸ The full text in Chinese of the *Foreign Trade Law of The People's Republic of China* is available at: http://www.gov.cn/flfg/2005-06/27/content_9851.htm. The full text in English of the *Foreign Trade Law* is available at: https://www.wto.org/english/thewto_e/acc_e/chn_e/wtacchn43_leg_1.pdf.

¹⁹⁹ *Foreign Trade Law of The People's Republic of China*, art. 4.

²⁰⁰ X. Zhang, *International Trade Regulation in China. Law and Policy*, Bloomsbury Publishing, March 2006.

²⁰¹ The full text of the *Agreement establishing the World Trade Organization* is available at: https://www.wto.org/english/docs_e/legal_e/04-wto.pdf.

²⁰² *Agreement establishing the World Trade Organization, Preamble*.

– which made the first move – justified the enforcement of the new Custom Duty Policy with the safeguard measures, already discussed in *Chapter 1* of this thesis (this topic will be discussed also later in this Chapter). The *Agreement on the Safeguard* is in line with art. XIX of *GATT*, which states that if the import of a particular product «cause or threaten serious injury to domestic producers»²⁰³, the provisions established by the *GATT* can be suspended. As a matter of fact, the safeguard measures are called “emergency actions”²⁰⁴. On the basis of the *Trade Act, Section 201* and of the *SG Agreement*²⁰⁵, the Trump administration adopted custom duties on the imports of some products. On January 22, 2018 President Trump imposed safeguard tariffs on residential washing machines and solar cells and modules imported from its partners. Similarly, in the following months President Trump did the same with custom duties applied on other products imported from China²⁰⁶. The Asian country, from its point of view, was forced by the Us’ strategy to take countermeasures proportioned to the injuries received.

In the last part of this thesis, we will see more in details arguments provided by the Us administration to justify its violation of the WTO principles and the consequent reaction of China.

3.2 China appealing the Us to the WTO: the Dispute Settlement 543

Entering the WTO, China agreed WTO principles on international and multilateral trade, among which the first one is the “trade without discrimination” principle; the same happened for all the other members of the WTO, including the Us. Acceding the WTO meant also adopting its internal mechanisms, therewith the DSS. Furthermore, China also made some adjustments to its legislation in order to make it compliant with the WTO requirements. We can reconduct to these decisions made by China to the so-called “Socializing China” phenomenon. The term “socialization” stands for the voluntary decision of a subject to participate in a new community and the subsequent «process of inducting actors into the norms and rules of a given community»²⁰⁷; socialization makes the individual to accept the mental system shared by the members of a community and to adopt the same

²⁰³ *GATT*, art. XIX.

²⁰⁴ https://www.wto.org/english/tratop_e/safeg_e/safeg_info_e.htm, visited on July 19, 2022.

²⁰⁵ See *Chapter 2, Paragraph 2.1, Note 94* of this thesis.

²⁰⁶ For further details, see *Annex I* to this thesis.

²⁰⁷ Cfr. J.T. Checkel, *International Institutions and Socialization in Europe: Introduction and Framework*, in «International Organization», 59, no. 4, Cambridge University Press, October 2005, p. 805.

behaviors²⁰⁸. For this reason, entering the WTO China also accepted its standards – as the “trade without discrimination” principle – and its mechanisms – as the DSS²⁰⁹.

However, in 2018 the Us administration decided to impose additional tariffs on goods imported from China, for the reasons showed in *Chapter 2*, starting the so-called Trade War. In the beginning, custom duties were applied only on some goods – namely, on those goods contained in the *List 1*²¹⁰ provided by the Us administration, but the more the months went by, the more the goods object of the Custom Duty Policy increased – a *List 2*²¹¹ of products subjected to additional tariffs was also published. China considered these facts as a violation of the WTO “trade without discrimination” requirement, that both China and the Us subscribed; for this reason, China has been forced into trade frictions and decided to solve the problem appealing the Us to the WTO²¹².

The following summary of the China-Us dispute is the official one provided by the WTO on its website²¹³, and it’s up to date at November 26, 2020.

3.2.1 The dispute: China’s request for consultations with the Us to the DSB

On April 4, 2018 China filed a complaint to the WTO and requested for consultations with the Us because of the additional tariffs imposed by the Us administration on a list of goods imported from China. The Us justified the tariffs on the basis of the Us *Trade Act* of 1974, *Section 301*²¹⁴;

²⁰⁸ M. Finnemore, *National Interest and International Society*, Cornell University Press, New York, 1996.

²⁰⁹ On this topic, see also: X. Li, *ibid.* A.I. Johnston, *Treating International Institutions as Social Environments*, in «International Studies Quarterly», 45, no. 4, 2001, pp. 487-515. D. Bearce and S. Bondanella, *Intergovernmental Organizations, Socialization and Member-State Interest Convergence*, in «International Organization», 61, no. 4, 2007.

²¹⁰ *List 1* is available at: <https://ustr.gov/sites/default/files/enforcement/301Investigations/FRN301.pdf>, visited on August 12, 2022.

²¹¹ *List 2* is available at: <https://ustr.gov/sites/default/files/2018-13248.pdf>, visited on August 12, 2022.

²¹² Some Chinese scholars (Yang, 2018) recognized that thanks to the WTO China could try to find a solution for Us’ additional tariffs on Chinese imports; he argued that because of the role played by the WTO in international disputes settlement the Trade War did not become a situation in which the most powerful country submitted the other and ruled on it. Cfr. G. Yang, 中美贸易战中的国际法 *ZhongMei maoyizhan Zhong de guojifa*, Wuhan University International Review, 2018, p. 139.

²¹³ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds543_e.htm, visited on July 20, 2022.

²¹⁴ As briefly introduce in *Chapter 2, Note 94* of this thesis, *Section 201* of the *Trade Act* of 1974, allows the application of temporary safeguard measures when a domestic (of the Us) industries are damaged by the import of products or services from other countries. Similarly, *Section 301* of the same document states that: «Section 301(a) applies to any case in which "the United States Trade Representative determines under section 304(a)(1) that (A) the rights of the United States under any trade agreement are being denied" or "(B) an act, policy or practice of a foreign country – (i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (ii) is unjustifiable and burdens or restricts United States commerce the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice» (*Trade Act*, 301, 1) – full text available at: https://www.wto.org/english/tratop_e/dispu_e/wtds152r.pdf. Thus, extraordinary

according to China's position, instead, these tariffs were not consistent with some *GATT* and *DSU*. More specifically, China claimed that the US measures were not consistent with the following articles:

General Most-Favored-Nation Treatment (*GATT*, art. I, 1):

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favor, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.²¹⁵

Schedules of Concessions (*GATT*, art. II, 1, A and B):

1. (a) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favorable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

(b) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.²¹⁶

Strengthening of Multilateral System (*DSU*, art. 23, 1-2):

actions against other countries are permitted in the case in which the Us' interests are violated; according to the Us administration, that's the case of imports from China. In fact, on August 18, 2017 an investigation on China's policies regarding technology transfer, innovation and intellectual property rights began; the investigation was held by the USTR following a *Memorandum* by President Trump. As will be explained later in this thesis, these are the arguments cited by the Us administration for imposing additional tariffs on Chinese imports. As a matter of fact, the result of the investigation conducted by the USTR is that policies and acts of the Chinese government concerning technology transfer, innovation and intellectual property rights are discriminatory and threaten the Us' trade. In particular, object of the accusation are Chinese joint ventures, restrictions on foreign investments, licensing processes and cyber intrusions. These accusations can be conducted to another aspect of the Trade War: the "Technology War". For these reasons, actions taken by the Us administrations against China are additional tariffs. D. Layton and J. Zhang, *New section 301 tariffs: US targets \$200 billion worth Chinese imports and China responds*, in «Mondaq Business Briefing», 21, September 2018. <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/march/section-301-fact-sheet>, visited on July 24, 2022.

²¹⁵ *GATT*, art. I, 1.

²¹⁶ *GATT*, art. II, 1, A and B.

1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall:

(a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the Panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

(b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

(c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.²¹⁷

Hence, in art. I, 1 the *GATT* doesn't allow special favors to countries since that this fact can lead to discrimination behaviors; in art. II the Agreement disciplines some exceptions, that are related to some specific products. Art. 23 of the *DSU* disciplines the actions to be taken against a country that violates the obligations undertaken; it states that when both countries are members of the WTO (implicit), the injured one has to appeal at the DSB and at the Appellate Body of the WTO instead of deliberately taking counteractions. Conversely, China blamed the Us to treat only China in a way that damages its trade, imposing tariffs limitedly on Chinese products, and this specific case is not part of the exceptions contained in *Part 1* of the *Schedule of Concessions* annexed to the *GATT*. Finally, the Us didn't appeal to the DSB; it directly took unilateral actions against China through the imposition of additional custom duties.

After China's complaint, the Us accepted to enter into consultation and nine days later, on April 13, they asked to the Chair of the DSB to circulate to Members a communication indicating that the Us accepted China's request. However, the Us blamed China's request of April 4 was not compliant with art. 4 of *DSU*, which disciplines consultations and states that:

1. Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.

²¹⁷ *DSU*, art. 23.

2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former.

3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a Panel.

4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

6. Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.

7. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a Panel. The complaining party may request a Panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.

8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a Panel.

9. In cases of urgency, including those which concern perishable goods, the parties to the dispute, Panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

10. During consultations Members should give special attention to the particular problems and interests of developing country Members.

11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of *GATT* 1994, paragraph 1 of Article XXII of *GATS*, or the corresponding provisions in other covered agreements, such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of *GATT* 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of *GATS*, or the corresponding provisions in other covered agreements.²¹⁸

²¹⁸ *DSU*, art. 4.

China once again disagreed with the Us: on April 25, the country asked to the Chair of the DSB to circulate a communication stating that China did respect art. 4 of *DSU* and China's letter of April 4 was compliant with *DSU* requirements. However, China on the notification of April 25 also expressed the willingness to find an agreement with the Us on an appropriate date for both Parties for consultations.

On June 15 the Us published an updated list of products imported from China object of an additional duty tariff of 25%, starting from July 6, 2018²¹⁹. Thus, on July 6 China expressed the willingness to implement the previous claim for consultations; China blamed the Us to apply these tariffs only on goods imported from China and in excess of the US bound rates. The Us replied to China's request ten days later, and on July 16 asked to the Chair of the DSB to circulate to Members a communication stating that the Us' list of June 15 was in response to the fact that China also imposed additional tariffs on certain products imported from the Us. The same day, China asked for additional consultations to the request of April 4 and July 6, after that on July 10 the Us published a new list of Chinese products on which apply a duty of 10%. China's accusations were the same: the Us' new tariffs applied only on products imported from China and in excess of the Us bound rates.

On July 26, 2018 the Us asked to the Chair of the DSB to circulate Members a communication as response to China's request of consultations of July 16; in this communication, the Us agreed on consultations with China, despite the fact that China would have announced a new group of products imported from the Us on which impose other additional duties.

On September 18, 2018 China asked for new consultations to implement the previous ones (those of April 4, July 6 and July 16) because of the publication by the Us on September 17 of a further list of products on which impose a duty tariff of 10% starting from September 24, and of 25% starting from January 1, 2019. Also in this occasion, China blamed the Us once again to apply additional duty tariffs only on goods imported from China and in excess of the Us bound rates.

On September 28, ten days later, the Us asked the Chair of the DSB to circulate a communication to Members reporting that it agreed on consultations with China, even if China on September 18, soon after the request of consultations, announced the willingness to apply additional duty tariffs on certain products imported from the Us.

As can be seen form the paragraphs above, the Trade War between China and the Us didn't stop after the first request for consultations to the DSB by China: both the two countries continued to implement their strategy, increasing the number of additional duties and the quantity of goods object

²¹⁹ For further details on the Us decision of July 6, 2018, see *Annex I*.

of these tariffs²²⁰. Even if the implementation of the Trade War and of the imposition of custom duties happened contemporary to the WTO Dispute Settlement, it seems that both countries violated art. 23 of *DSU*.

Finally, in December 6, 2018 China asked to the DSB the setting up of a Panel of trade experts and twelve days later, on December 18 the DSB announced the confirmation of its establishment; the Panel was actually appointed on January 28, 2019. The countries that received the third-party rights²²¹ were: Australia, Brazil, Canada, The European Union, India, Indonesia, Japan, Kazakhstan, New Zealand, Norway, the Russian Federation, Singapore, the South Korea, Taipei and Ukraine. On June 3 the Director-General of the DSB formed the Panel, following the Chinese request of May 24, 2019. However, on September 25 a panelist presented to the Director-General his resignation, thus a new panelist was appointed, and a new Panel was composed on October 17.

The consultations between the two Parties and the Panel went on for several months; on April 9, 2020 the Chair of the Panel notified to the DSB that the final report was expected to be released by the end of June 2020, according to an agreed schedule by the Parties and the Panel. After the presentation of the report and its publication in all of the three WTO's official languages, the final Panel report circulated to Members on September 15, 2020, more than two years later than the initial request of consultations by China.

The following table (*figure 24*) resumes the main stages of the China-Us dispute.

UNITED STATES – TARIFF MEASURES ON CERTAIN GOODS FROM CHINA
(DISPUTE SETTLEMENT 543)

COMPLAINT:	China
RESPONDENT:	United States

²²⁰ Someone (Adekola, 2019) argued that the main problem has been the neglect of the WTO DSS, it means the fact that parties have not waited for the WTO to give a judgement on the issue. Even if China has filed a complaint against the Us to the WTO, they both adopted measures and counter measures and they both adopted protectionist tariffs without waiting for the WTO DSS report. T.A. Adekola, *ibid*.

²²¹ As briefly introduced in *note 50*, in a WTO dispute a “third party” is a party that is not neither the compliant country nor the respondent country of the dispute. Differently, a “third party” is a country member of the WTO which has a «substantial interest» in the dispute because the object of litigation influences its economic interests and can damage its interests. In fact, art. 10, 2 of *DSU* states that: «Any Member having a substantial interest in a matter before a Panel and having notified its interest to the DSB (referred to in this Understanding as a “third party”) shall have an opportunity to be heard by the Panel and to make written submissions to the Panel. These submissions shall also be given to the Parties to the dispute and shall be reflected in the Panel report» (*DSU*, art. 10, 2). More specifically, the “third party rights” consist in the participation in the first stage of the Panel proceedings and in the participation in the Appellate Body proceedings (only whether the decision of the Panel is appealed). The role of “third parties” in general is disciplined by art. 10 of the *DSU*. https://www.wto.org/english/tratop_e/dispu_e/repertory_e/t8_e.htm, visited on July 23, 2022.

THIRD PARTIES:	Australia, Brazil, Canada, The European Union, India, Indonesia, Japan, Kazakhstan, New Zealand, Norway, the Russian Federation, Singapore, South Korea, Taipei and Ukraine
AGREEMENTS AND ARTICLES CITED FOR CONSULTATIONS BY THE COMPLAINANT:	<i>GATT</i> 1994, art. I, 1 <i>GATT</i> 1994, art. II, 1, A <i>GATT</i> 1994, art. II, 1, B <i>DSU</i> , art. 23
CONSULTATION REQUESTED (1):	April 4, 2018
CONSULTATION REQUESTED (2):	July 6, 2018
CONSULTATION REQUESTED (3):	July 16, 2018
CONSULTATION REQUESTED (4):	September 18, 2018
PANEL REQUESTED:	December 6, 2018
PANEL ESTABLISHED:	January 28, 2019
PANEL COMPOSED (1):	June 3, 2019
PANEL COMPOSED (2):	October 17, 2019
PANEL REPORT CIRCULATED:	September 15, 2020

Figure 24. The China-U.S. dispute, key facts.

Source: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds543_e.htm, visited on July 20, 2022.

3.2.2 The Panel report

In its final report, the Panel recognized that the dispute between China and the Us was caused by additional duty tariffs imposed on some important products²²²; the Us justified the application of these tariffs with *Section 301* of the *Trade Act*, blaming China to act against the Us and to steal commercial secrets, intellectual property, technology transfer and innovation practices in general. For this reason, the Panel recognized that, as indicated by China, the Us' tariffs were inconsistent with art. I, 1 and art. II, 1 A and B of *GATT* 1994, and also with art. 23 of *DSU*. More specifically,

²²² As said before, the imposition of additional custom duties is only one aspect of the Trade War; the dispute between China and the Us involved many aspects and has an impact not only on the economies of the two countries. It led to a general competition in other fields, such as the race for innovation in the high-tech sector or the willingness to assert the supremacy of an ideologic system in spite of the other. In general, it can be seen as a conflict aiming at the affirmation of a country's global hegemony.

the duty tariffs to which China referred were the 25% additional duties applied in July 2018 on a first group of products (*List 1*), which had an trade value roughly equivalent to US\$ 34 billion per year; the 25% additional tariff on a second group of products (*List 2*) imposed in August 2018 on US\$ 16 billion products; the 10% additional duties imposed in September 2018 (*List 3*) and increased to 25% additional duties in May 2019 on a third group of Chinese products, with an annual trade value of US\$ 200 billion approximately²²³. The Panel also recognized the Us' argumentations; the country stated that the Panel should just publish a brief statement of facts and notify that the settlement has been reached, since the fact that the Parties engaged in bilateral negotiations and they also decided to settle the dispute outside the WTO. The Us also cited art. 12, 7 of the *DSU*, which confirm that in the China-Us trade tariffs dispute there was no need for the WTO to settle the dispute; as a matter of fact, the article states that:

7. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the Panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a Panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the Panel shall be confined to a brief description of the case and to reporting that a solution has been reached.²²⁴

The Us also claimed that in any case, the additional duty tariffs were consistent with art. XX, A of *GATT* 1994 (General Exceptions):

XX. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(a) necessary to protect public morals²²⁵

Hence, custom duties were aiming at protecting the public morals prevailing in the Us, as a consequence of the China's theft of commercial secrets, intellectual property and technology.

After these preliminary considerations and having taken into consideration China's complaint, the arguments provided by the Us and the articles of the multiple Agreements cited, the Panel gave its judgement on the issue.

²²³ On this topic, see *Annex I* of this thesis.

²²⁴ *DSU*, art. 12, 7.

²²⁵ *GATT*, art. XX, A.

First of all, the Panel affirmed that with any doubts there was an ongoing trade conflict between China and the Us, and this conflict was a bilateral one since that the Us first imposed custom duties on Chinese import, but in response, China did the same on Us products. However, the Panel also declared that this ongoing conflict of additional duties proceeded in parallel with the proceedings of the Panel, or this was true for China at least, since that China imposed additional tariffs on the Us imports after the request for consultations. Thus, the Panel report was not inconsistent with art. 12.7 of *DSU*, as stated by the Us.

The Panel also found out that, as blamed by China, the additional duty tariffs were actually inconsistent with art. I, 1 of *GATT* 1994 because they had been applied only on products imported from China; at the same time, tariffs were not consistent also with art. II, 1 A and B of *GATT* 1994 because they were applied in excess of the Us bound rates.

As concerns the Us declaration of consistency of the additional tariffs with the country's need to protect its public morals (according to art. XX, A of *GATT* 1994), the Panel didn't reach a definitive decision and it asked to the Us to present more arguments in support of the thesis. As a matter of facts, the Panel stated that the «standards of right and wrong» presented by the Us as concerns the presumed theft can be included in the concept of «public morals» only at a conceptual level²²⁶; however further arguments are necessary and in particular, the Panel tried to find out a link between the effects of these additional custom duties tariffs and the benefits on the cited public morals.

To sum up, the Panel's final report reported that the Us had not provided yet sufficient arguments to explain the imposition of additional tariffs on some selected products imported from China and its benefits on the Us' public morals, as justified by art. XX, A of *GATT* 1994. Furthermore, the Panel's report contains a section named *Concluding Comments* reporting the Panel's awareness of the broad nature of this conflict, that can be defined as “unprecedented”. In addition to this, the Panel's report has no legal value²²⁷, it's just the fulfillment of its tasks. In conclusion, the Panel expressed its encouragement to the Parties to find a bilateral agreed solution that can be convenient for the both sides.

As can be supposed, the Us didn't fully accept the decision of the Panel on the dispute with China, and on October 26, 2020 the Us requested to the DSB to appeal to the Appellate Body some arguments reported in the final report of the Panel. Up to date, any Appellate Body report circulated

²²⁶ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds543_e.htm, visited on July 23, 2022.

²²⁷ The Panel report has not a legal value since that Panel reports in general do not become a rule and their violations does not imply the jail for the guilty party. Panel reports are rather a strong encouragement to a country to adjust its policy according to the Panel's observations and recommendations. In the case in which a country continues to persist and continues to take trading actions against other countries, as a remedy, it has to offer a suitable compensation to submit the losses it caused. https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm, visited on July 23, 2022.

among WTO Members yet. This means that the Dispute Settlement 543 has not been settled yet by the WTO DSS, determining the continuing of the Trade War²²⁸.

3.3 Conclusions

This thesis firstly examines the trade-related aspects of the China-US Trade War to focus on the core subject of analysis: the non-compliance of the new Custom Duty Policy with the WTO “trade without discrimination” principle and the subsequent Dispute Settlement 543 filed by China against the Us to the WTO. The Dispute Settlement 543 is the final action of a long sequence of attacks and counterattacks between China and the Us, that made of the Trade War a *tit-for-tat* conflict. As a matter of fact, in conclusion to this thesis, there’s the need to underline that the China-Us dispute on trade tariffs must not to be seen as a dispute in which there is a guilty part – the Us – that attacks another not-guilty part – China – with the intention to threaten it. Conversely, the event under analysis moves forwards following a *tit-for-tat* strategy, in which both countries take measures against the other one to injure it proportionally to the damages received. In each conflict there is a side that hits the first shoot; however, the Trade War is a conflict fed by the double-side measures and counter measures. Its long-lasting nature is therefore the result of two phenomena: firstly, the policies adopted by both countries, China and the Us, which have, even if in different measure, the responsibility of the conflict and of its negative effects on the domestic economies and on the international environment. Secondly, another cause that contributed to the escalation of the conflict is the inability of the WTO DSS to settle the dispute.

Obviously, the Trade War affected China-Us bilateral relations under lots of aspects. From 2018 bilateral trade flows greatly reduced and the Us imports from China reached the smallest amounts; the Us sanctioned and applied restrictions on various China’s technology industries, among which Huawei is the most famous one, starting the so-called “technology war”; the stock market has

²²⁸ As concerns the efficiency of the WTO in solving disputes and with specific reference to the China-US trade conflict, some Chinese scholars (Xu, 2019) pointed out that some problems on the application and enforcement of the WTO principles exist today, and for this reason a reform of the WTO DSS is necessary: rules should be improved in order to make countries respect their application. Otherwise the authority of the WTO as international organization regulating multilateral trade is compromised. This thesis is supported also by other scholars who affirmed that China did a great work of revision of its law and fulfilled the obligation undertaken with its accession to the WTO, hence WTO should also adjust its rules and regulations according to the current needs (Ni Yueju and Xing Houyuan in Feldshuh, 2019). Maybe China could be also the leader country in this work of revision of the international trade rules (Cui Fan in Feldshuh, 2019). J. Xu, 中美贸易战背景下 WTO 规则即法律适用问题研究 *ZhongMei maoyizhan beijingxia WTO guize ji falu shiyong wenti yanjiu*, Tianjin University of Finance and Economics, 2019. H. Feldshuh, 中美竞争下的 WTO: 是失效机制还是多边主义支柱 *ZhongMei jingzhengxia de WTO: shi shixiao jizhi haishi duobian zhuyi zhizhu*, in «China-US Focus», January 2019, available at: <http://cn.chinausfocus.com/m/35682.html>, visited on September 8, 2022.

been characterized by uncertainty that led investors to doubt of the American and Chinese firms in those moments in which there was high tension between the Us and China. Consequences of the Trade war have been experimented also by other countries; sometimes these consequences were positive, as the increase in exports towards China or the Us; other times consequences were negative, as the lack of micro-chips and of raw materials to produce finished goods.

However, the central point is that the Trade War affected, among the multitude of aspects, bilateral trade; bilateral trade should be regulated by the WTO, an international organization of which both China and the Us are members and that negotiates trade rules in order to achieve the liberalization of trade to improve people's living standards. Nonetheless, the additional tariffs on Chinese goods' imports do not liberalize trade; on the contrary it is a protectionist policy aiming at damaging China's economy. Hence, from China's point of view, asking WTO consultations on the Us tariffs was inevitable. The Dispute Settlement 543 is certainly the consequence of several dynamics: first of all, the modernization and opening-up pursued by China during the last four decades; these changes led to the China's acquisition of awareness of its capabilities and of its competitiveness; finally, the achievement of a relevant position in the international environment, that led the country to a more active role in international organizations. Thus, it can be affirmed that filing a dispute against the Us to the WTO is the last phase of China's affirmation of soft power, it is part of a bigger plan through which the Xi administration aspires to reaffirm China's supremacy not only in the Asian continent but globally. That's not a case that the Chinese name of China – 中国 *Zhongguo* – means exactly “the country that stays in the center”.

The application of custom duties non-compliant with the WTO principles by a WTO member on another WTO member is also the symptom of another trend occurring in last years: the crisis of the WTO authority and of international organizations in general. In fact, in recent years we notice an increase in disputes filed to the WTO: this means that more and more frequently WTO members are not respecting the rules settled by the international organization as concerns multilateral trade. Moreover, up to date several disputes are not settled: some are still in consultations while for others the Panel has been requested or appointed but any Panel report circulated yet. Trade disputes between China and the Us are a perfect example of this dynamic. After its accession to the WTO, there have been 39 trade conflicts involving China and the Us, filed by one country against the other one; of these 39 conflicts, 14 are not settled yet, a percentage of almost 36%. Furthermore, several WTO Panel reports require more than 12 months to be published and adopted. These are all symptoms of a crisis of the WTO DSS and of the Appellate Body; more generically they are symptoms of an ongoing crisis of the authority of the WTO as organization aiming at regulating multilateral trade.

The Trade War is still in progress; this is a topical issue and the situation is ongoing. For this reason, we cannot know with certainty what will be its ending. We can affirm that the Biden administration, which followed the Trump's one, has been neither a positive nor a negative happening for China-U.S. trade relations. As a matter of fact, President Biden decided not to enforce further additional duties on Chinese imports and not to expand the list of goods on which the duties are enforced; however, the current American President neither withdrew the already-enforced additional tariffs. Nonetheless, it has to be underlined that from 2021 bilateral consultations between President Biden and President Xi are going on.

In this paper we tried to provide firstly an overall analysis of the Trade War general framework to clarify the happening of the Dispute Settlement 543. All the dynamics that are considered to be relevant for the occurring of the litigation have been described in order to provide a general vision of China-U.S. trade relations as clear as possible. For this reason, this thesis which aims at a juridical analysis of the dispute starts from a global view on China's attitude in international litigations and then it takes into consideration topics not related to the juridical aspect of the dispute – specifically, the historical changes happened in China-U.S. relations and the economic effects of additional duties on imports.

In conclusion, it has to be noted that the purpose of this thesis is not to give a judgement on the behavior of the U.S. and neither of China; this is not an argumentation on the incorrect policy of the U.S., neither on the supremacy ambition of China. The limit of this thesis is the description of a unique consequence of a conflict started as conflict between two countries but affecting the global environment under a lot of aspects. The implicit purpose is to demonstrate that a conflict started as a trade conflict, thus as an economic conflict, has actually a multidisciplinary nature. The wide impact of every single policy therefore should not be underestimated; the Trade War started as trade conflict between two States, China and the U.S., but it became actually a global trade conflict. The final conclusion is that this global conflict should have been avoided since the very first requests for consultations by China to the WTO in 2018 – the Dispute Settlement 543; nonetheless the conflict continued by the application of additional custom duty tariffs on an increasing number of products by the U.S. – Dispute Settlement 565 and Dispute Settlement 587. The main object of the WTO is promoting multilateral free trade and mutual benefits among members and both China and the U.S. are WTO members; hence, the correct functioning of the WTO DSS should have avoided the spreading of the trade frictions between China and the U.S. and its transformation into a Trade War affecting almost all world's economies. But actually it did not.

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Annex I

The escalation of the Trade War

The following summary aims at clarifying the escalation of the Trade War as regards the imposition of additional tariffs on imports, both by the Us and by China. Events are listed by year, from 2018 – the year in which the Trade War broke out – to 2022²²⁹.

2018

MONTH	US' ACTIONS	CHINA'S ACTIONS	NOTES
February	“Global safeguard tariffs”: 30% on solar panels and 20% on washing machines imported from other countries		Even if these additional tariffs were imposed on imports from other countries, the main object was China since it was the main world exporter of these products
March	Tariffs of 10% on aluminum and of 25% on steel imported from other countries		
April		Tariffs from 15% to 25% on 128 products imported from the Us – agricultural products, recycle aluminum, seamless steel pipes, etc.	The tariffs balanced the loss suffered because of Us' additional tariffs
May		Cancellation of a soybean import order from the Us	
July	(July 6, 2018) Trade War officially begins. First unilateral tariffs against imports from China: 25% tariffs on 818 products related to the “Made in China 2025” plan – <i>List 1</i> . Imports worth: US\$ 34 billion	Reply to the Us' tariffs: 25% tariffs on 545 products imported from the Us, among which: agricultural products - soybean - and machines Imports worth: US\$ 34 billion	<i>Tit-for-tat</i> strategy
August	(August 23, 2018) Tariffs of 25% on 279 products imported from	Reply to the Us' tariffs: 25% tariffs on 333 products imported from the Us,	

²²⁹ Z. Suisheng and D. Guo, *A New Cold War? Causes and Future of the Emerging US-China Rivalry*, in «Vestnik RUDN International Relations», 19, no.1, 2019. A. Drevalov *et alii*, *US-China Trade War: Causes and Outcomes*, in «SHS Web of Conferences», 73, 2020. A. Antimani *et alii*, *L'America First di Trump. L'impatto della guerra commerciale tra Stati Uniti e Cina*, Programma Rete Rurale Nazionale 2014-2020, September 2019. E.J. Balistreri *et alii*, *The US-China trade war: Tariff data and general equilibrium analysis*, in «Journal of Asian Economics», 69, 2020. D. Layton and J. Zhang, *New section 301 tariffs: US targets \$200 billion worth Chinese imports and China responds*, in «Mondaq Business Briefing», 21, September 2018. <https://www.scmp.com/economy/china-economy/article/3146489/us-china-trade-war-timeline-key-dates-and-events-july-2018>, visited on August 9, 2022..

	China, among which: chemicals, plastics, semiconductors, motorbikes and electric scooters, etc. – <i>List 2</i> . Imports worth: US\$ 16 billion	among which: coal, fuel, medical equipment, etc. Imports worth: US\$ 16 billion	
September	(September 24, 2018) Tariff of 10% on some products imported from China – <i>List 3</i> . Tariffs increased up to 25% in 2019. Imports worth: US\$ 200 billion	(September 24, 2018) Tariffs from 5% to 10% on imports from the Us. Imports worth: US\$ 60 billion	

2019

January	The Us threaten to increase up to 25% the tariffs imposed on Chinese products in September 2019		
May	(May 10, 2019) Increasing up to 25% the tariffs imposed on Chinese products in September 2019. Imports worth: US\$ 200 billion		
June		Reply to the Us tariffs: 10%, 20% and 25% tariffs on products imported from the Us. Imports worth: US\$ 60 billion	
(June 29, 2019) During the G20 summit in Japan, President Xi and President Trump agree to a Trade War truce			
August		(August 23, 2019) China plans 5% and 10% tariffs on certain products imported from the Us. Imports worth: US\$ 75 billion	
September	Tariffs on certain products imported from China – <i>List 4</i> . Imports worth: US\$ 125 billion. Tariffs delayed tendays later.	Reply to the Us tariffs: tariffs on certain products imported from the Us. Imports worth: US\$ 75 billion	
October	Delay of a planned tariff increase (from 25% up to 30%) on US\$ 250 billion of Chinese products		

2020

(January 15, 2020) China and the Us sign the <i>Phase-One Trade Deal</i> . Reduction by half of the tariffs imposed in September 2019 both by the Us and China

February		Reduction of tariffs imposed in 2019 on US\$ 75 billion Us' products	
May		Reduction of tariffs imposed previously on 79 Us' products	
September	Exemption from tariffs for certain products imported from China	Exemption from tariffs for 16 products imported from the Us	
December	Announcement of the ban to import cotton products produced in Xinjiang Province by Xinjiang Production and Construction Corps (XPCC)		The Us blame Xinjiang companies to abuse of force labour

2021

February	The Us administration announces that additional tariffs on products imported from China will continue to be applied		
May-June: bilateral consultations between China and the Us administrations			
July	The Us administration announce that bilateral consultation will not continue		

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Annex II

Protocol on the Accession of the People's Republic of China²³⁰

ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

Decision of 10 November 2001

The Ministerial Conference,

Having regard to paragraph 2 of Article XII and paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization, and the Decision-Making Procedures under Articles IX and XII of the Marrakesh Agreement Establishing the World Trade Organization agreed by the General Council (WT/L/93),

Taking note of the application of the People's Republic of China for accession to the Marrakesh Agreement Establishing the World Trade Organization dated 7 December 1995,

Noting the results of the negotiations directed toward the establishment of the terms of accession of the People's Republic of China to the Marrakesh Agreement Establishing the World Trade Organization and having prepared a Protocol on the Accession of the People's Republic of China,

Decides as follows:

The People's Republic of China may accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms and conditions set out in the Protocol annexed to this decision.

²³⁰ The full text of the *Protocol* is available at: <http://docsonline.wto.org/>, visited on August 9, 2022.

PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

Preamble

The World Trade Organization ("WTO"), pursuant to the approval of the Ministerial Conference of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), and the People's Republic of China ("China"),

Recalling that China was an original contracting party to the General Agreement on Tariffs and Trade 1947,

Taking note that China is a signatory to the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations,

Taking note of the Report of the Working Party on the Accession of China in document WT/ACC/CHN/49 ("Working Party Report"),

Having regard to the results of the negotiations concerning China's membership in the WTO,

Agree as follows:

Part I - General Provisions

1. General

1. Upon accession, China accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which China accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of accession. This Protocol, which shall include the commitments referred to in paragraph 342 of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in this Protocol, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with entry into force of that Agreement shall be implemented by China as if it had accepted that Agreement on the date of its entry into force.
4. China may maintain a measure inconsistent with paragraph 1 of Article II of the General Agreement on Trade in Services ("GATS") provided that such a measure is recorded in the List of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

2. Administration of the Trade Regime

(A) Uniform Administration

1. The provisions of the WTO Agreement and this Protocol shall apply to the entire customs territory of China, including border trade regions and minority autonomous areas, Special Economic Zones, open coastal cities, economic and technical development zones and other areas where special regimes for tariffs, taxes and regulations are established (collectively referred to as "special economic areas").

2. China shall apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures issued or applied at the sub-national level (collectively referred to as "laws, regulations and other measures") pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights ("TRIPS") or the control of foreign exchange.

3. China's local regulations, rules and other measures of local governments at the sub-national level shall conform to the obligations undertaken in the WTO Agreement and this Protocol.

4. China shall establish a mechanism under which individuals and enterprises can bring to the attention of the national authorities cases of non-uniform application of the trade regime.

(B) Special Economic Areas

1. China shall notify to the WTO all the relevant laws, regulations and other measures relating to its special economic areas, listing these areas by name and indicating the geographic boundaries that define them. China shall notify the WTO promptly, but in any case within 60 days, of any additions or modifications to its special economic areas, including notification of the laws, regulations and other measures relating thereto.

2. China shall apply to imported products, including physically incorporated components, introduced into the other parts of China's customs territory from the special economic areas, all taxes, charges and measures affecting imports, including import restrictions and customs and tariff charges, that are normally applied to imports into the other parts of China's customs territory.

3. Except as otherwise provided for in this Protocol, in providing preferential arrangements for enterprises within such special economic areas, WTO provisions on non-discrimination and national treatment shall be fully observed.

(C) Transparency

1. China undertakes that only those laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange that are published and readily available to other WTO Members, individuals and enterprises, shall be enforced. In addition, China shall make available to WTO Members, upon request, all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange before such measures are implemented or enforced. In emergency situations, laws, regulations and other measures shall be made available at the latest when they are implemented or enforced.

2. China shall establish or designate an official journal dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange and, after publication of its laws, regulations or other measures in such journal, shall provide a reasonable period for comment to the appropriate authorities before such measures are implemented, except for those laws, regulations and other measures involving national security, specific measures setting foreign exchange rates or monetary policy and other measures the publication of which would impede law enforcement. China shall publish this journal on a regular basis and make copies of all issues of this journal readily available to individuals and enterprises.

3. China shall establish or designate an enquiry point where, upon request of any individual, enterprise or WTO Member all information relating to the measures required to be published under paragraph 2(C)1 of this Protocol may be obtained. Replies to requests for information shall generally be provided within 30 days after receipt of a request. In exceptional cases, replies may be provided within 45 days after receipt of a request. Notice of the delay and the reasons therefor shall be provided in writing to the interested party. Replies to WTO Members

shall be complete and shall represent the authoritative view of the Chinese government. Accurate and reliable information shall be provided to individuals and enterprises.

(D) Judicial Review

1. China shall establish, or designate, and maintain tribunals, contact points and procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, Article VI of the GATS and the relevant provisions of the TRIPS Agreement. Such tribunals shall be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Review procedures shall include the opportunity for appeal, without penalty, by individuals or enterprises affected by any administrative action subject to review. If the initial right of appeal is to an administrative body, there shall in all cases be the opportunity to choose to appeal the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any right to further appeal.

3. Non-discrimination

Except as otherwise provided for in this Protocol, foreign individuals and enterprises and foreign-funded enterprises shall be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of:

- (a) the procurement of inputs and goods and services necessary for production and the conditions under which their goods are produced, marketed or sold, in the domestic market and for export; and
- (b) the prices and availability of goods and services supplied by national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other utilities and factors of production.

4. Special Trade Arrangements

Upon accession, China shall eliminate or bring into conformity with the WTO Agreement all special trade arrangements, including barter trade arrangements, with third countries and separate customs territories, which are not in conformity with the WTO Agreement.

5. Right to Trade

1. Without prejudice to China's right to regulate trade in a manner consistent with the WTO Agreement, China shall progressively liberalize the availability and scope of the right to trade, so that, within three years after accession, all enterprises in China shall have the right to trade in all goods throughout the customs territory of China, except for those goods listed in Annex 2A which continue to be subject to state trading in accordance with this Protocol. Such right to trade shall be the right to import and export goods. All such goods shall be accorded national treatment under Article III of the GATT 1994, especially paragraph 4 thereof, in respect of their internal sale, offering for sale, purchase, transportation, distribution or use, including their direct access to end-users. For those goods listed in Annex 2B, China shall phase out limitation on the grant of trading rights pursuant to the schedule in that Annex. China shall complete all necessary legislative procedures to implement these provisions during the transition period.

2. Except as otherwise provided for in this Protocol, all foreign individuals and enterprises, including those not invested or registered in China, shall be accorded treatment no less favourable than that accorded to enterprises in China with respect to the right to trade.

6. State Trading

1. China shall ensure that import purchasing procedures of state trading enterprises are fully transparent, and in compliance with the WTO Agreement, and shall refrain from taking any measure to influence or direct state trading enterprises as to the quantity, value, or country of origin of goods purchased or sold, except in accordance with the WTO Agreement.

2. As part of China's notification under the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China shall also provide full information on the pricing mechanisms of its state trading enterprises for exported goods.

7. Non-Tariff Measures

1. China shall implement the schedule for phased elimination of the measures contained in Annex 3. During the periods specified in Annex 3, the protection afforded by the measures listed in that Annex shall not be increased or expanded in size, scope or duration, nor shall any new measures be applied, unless in conformity with the provisions of the WTO Agreement.

2. In implementing the provisions of Articles III and XI of the GATT 1994 and the Agreement on Agriculture, China shall eliminate and shall not introduce, re-introduce or apply non-tariff measures that cannot be justified under the provisions of the WTO Agreement. For all non-tariff measures, whether or not referred to in Annex 3, that are applied after the date of accession, consistent with the WTO Agreement or this Protocol, China shall allocate and otherwise administer such measures in strict conformity with the provisions of the WTO Agreement, including GATT 1994 and Article XIII thereof, and the Agreement on Import Licensing Procedures, including notification requirements.

3. China shall, upon accession, comply with the TRIMs Agreement, without recourse to the provisions of Article 5 of the TRIMs Agreement. China shall eliminate and cease to enforce trade and foreign exchange balancing requirements, local content and export or performance requirements made effective through laws, regulations or other measures. Moreover, China will not enforce provisions of contracts imposing such requirements. Without prejudice to the relevant provisions of this Protocol, China shall ensure that the distribution of import licences, quotas, tariff-rate quotas, or any other means of approval for importation, the right of importation or investment by national and sub-national authorities, is not conditioned on: whether competing domestic suppliers of such products exist; or performance requirements of any kind, such as local content, offsets, the transfer of technology, export performance or the conduct of research and development in China.

4. Import and export prohibitions and restrictions, and licensing requirements affecting imports and exports shall only be imposed and enforced by the national authorities or by sub-national authorities with authorization from the national authorities. Such measures which are not imposed by the national authorities or by sub-national authorities with authorization from the national authorities, shall not be implemented or enforced.

8. Import and Export Licensing

1. In implementing the WTO Agreement and provisions of the Agreement on Import Licensing Procedures, China shall undertake the following measures to facilitate compliance with these agreements:

- (a) China shall publish on a regular basis the following in the official journal referred to in paragraph 2(C)2 of this Protocol:
- by product, the list of all organizations, including those organizations delegated such authority by the national authorities, that are responsible for authorizing or approving imports or exports, whether through grant of licence or other approval;
 - procedures and criteria for obtaining such import or export licences or other approvals, and the conditions for deciding whether they should be granted;
 - a list of all products, by tariff number, that are subject to tendering requirements, including information on products subject to such tendering requirements and any changes, pursuant to the Agreement on Import Licensing Procedures;
 - a list of all goods and technologies whose import or export are restricted or prohibited; these goods shall also be notified to the Committee on Import Licensing;
 - any changes to the list of goods and technologies whose import and export are restricted or prohibited.

Copies of these submissions in one or more official languages of the WTO shall be forwarded to the WTO for circulation to WTO Members and for submission to the Committee on Import Licensing within 75 days of each publication.

- (b) China shall notify the WTO of all licensing and quota requirements remaining in effect after accession, listed separately by HS tariff line and with the quantities associated with the restriction, if any, and the justification for maintaining the restriction or its scheduled date of termination.
- (c) China shall submit the notification of its import licensing procedures to the Committee on Import Licensing. China shall report annually to the Committee on Import Licensing on its automatic import licensing procedures, explaining the circumstances which give rise to these requirements and justifying the need for their continuation. This report shall also provide the information listed in Article 3 of the Agreement on Import Licensing Procedures.
- (d) China shall issue import licences for a minimum duration of validity of six months, except where exceptional circumstances make this impossible. In such cases, China shall promptly notify the Committee on Import Licensing of the exceptional circumstances requiring the shorter period of licence validity.

2. Except as otherwise provided for in this Protocol, foreign individuals and enterprises and foreign-funded enterprises shall be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of the distribution of import and export licences and quotas.

9. Price Controls

1. China shall, subject to paragraph 2 below, allow prices for traded goods and services in every sector to be determined by market forces, and multi-tier pricing practices for such goods and services shall be eliminated.

2. The goods and services listed in Annex 4 may be subject to price controls, consistent with the WTO Agreement, in particular Article III of the GATT 1994 and Annex 2, paragraphs 3 and 4 of the Agreement on Agriculture. Except in exceptional circumstances, and subject to notification to the WTO, price controls shall not

be extended to goods or services beyond those listed in Annex 4, and China shall make best efforts to reduce and eliminate these controls.

3. China shall publish in the official journal the list of goods and services subject to state pricing and changes thereto.

10. Subsidies

1. China shall notify the WTO of any subsidy within the meaning of Article 1 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), granted or maintained in its territory, organized by specific product, including those subsidies defined in Article 3 of the SCM Agreement. The information provided should be as specific as possible, following the requirements of the questionnaire on subsidies as noted in Article 25 of the SCM Agreement.

2. For purposes of applying Articles 1.2 and 2 of the SCM Agreement, subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies.

3. China shall eliminate all subsidy programmes falling within the scope of Article 3 of the SCM Agreement upon accession.

11. Taxes and Charges Levied on Imports and Exports

1. China shall ensure that customs fees or charges applied or administered by national or sub-national authorities, shall be in conformity with the GATT 1994.

2. China shall ensure that internal taxes and charges, including value-added taxes, applied or administered by national or sub-national authorities shall be in conformity with the GATT 1994.

3. China shall eliminate all taxes and charges applied to exports unless specifically provided for in Annex 6 of this Protocol or applied in conformity with the provisions of Article VIII of the GATT 1994.

4. Foreign individuals and enterprises and foreign-funded enterprises shall, upon accession, be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of the provision of border tax adjustments.

12. Agriculture

1. China shall implement the provisions contained in China's Schedule of Concessions and Commitments on Goods and, as specifically provided in this Protocol, those of the Agreement on Agriculture. In this context, China shall not maintain or introduce any export subsidies on agricultural products.

2. China shall, under the Transitional Review Mechanism, notify fiscal and other transfers between or among state-owned enterprises in the agricultural sector (whether national or sub-national) and other enterprises that operate as state trading enterprises in the agricultural sector.

13. Technical Barriers to Trade

1. China shall publish in the official journal all criteria, whether formal or informal, that are the basis for a technical regulation, standard or conformity assessment procedure.

2. China shall, upon accession, bring into conformity with the TBT Agreement all technical regulations, standards and conformity assessment procedures.

3. China shall apply conformity assessment procedures to imported products only to determine compliance with technical regulations and standards that are consistent with the provisions of this Protocol and the WTO Agreement. Conformity assessment bodies will determine the conformity of imported products with commercial terms of contracts only if authorized by the parties to such contract. China shall ensure that such inspection of products for compliance with the commercial terms of contracts does not affect customs clearance or the granting of import licences for such products.

4. (a) Upon accession, China shall ensure that the same technical regulations, standards and conformity assessment procedures are applied to both imported and domestic products. In order to ensure a smooth transition from the current system, China shall ensure that, upon accession, all certification, safety licensing, and quality licensing bodies and agencies are authorized to undertake these activities for both imported and domestic products, and that, one year after accession, all conformity assessment bodies and agencies are authorized to undertake conformity assessment for both imported and domestic products. The choice of body or agency shall be at the discretion of the applicant. For imported and domestic products, all bodies and agencies shall issue the same mark and charge the same fee. They shall also provide the same processing periods and complaint procedures. Imported products shall not be subject to more than one conformity assessment. China shall publish and make readily available to other WTO Members, individuals, and enterprises full information on the respective responsibilities of its conformity assessment bodies and agencies.

(b) No later than 18 months after accession, China shall assign the respective responsibilities of its conformity assessment bodies solely on the basis of the scope of work and type of product without any consideration of the origin of a product. The respective responsibilities that will be assigned to China's conformity assessment bodies will be notified to the TBT Committee 12 months after accession.

14. Sanitary and Phytosanitary Measures

China shall notify to the WTO all laws, regulations and other measures relating to its sanitary and phytosanitary measures, including product coverage and relevant international standards, guidelines and recommendations, within 30 days after accession.

15. Price Comparability in Determining Subsidies and Dumping

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

- (a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:
 - (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;
 - (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation

cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

16. Transitional Product-Specific Safeguard Mechanism

1. In cases where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards. Any such request shall be notified immediately to the Committee on Safeguards.

2. If, in the course of these bilateral consultations, it is agreed that imports of Chinese origin are such a cause and that action is necessary, China shall take such action as to prevent or remedy the market disruption. Any such action shall be notified immediately to the Committee on Safeguards.

3. If consultations do not lead to an agreement between China and the WTO Member concerned within 60 days of the receipt of a request for consultations, the WTO Member affected shall be free, in respect of such products, to withdraw concessions or otherwise to limit imports only to the extent necessary to prevent or remedy such market disruption. Any such action shall be notified immediately to the Committee on Safeguards.

4. Market disruption shall exist whenever imports of an article, like or directly competitive with an article produced by the domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry. In determining if market disruption exists, the affected WTO Member shall consider objective factors, including the volume of imports, the effect of imports on prices for like or directly competitive articles, and the effect of such imports on the domestic industry producing like or directly competitive products.

5. Prior to application of a measure pursuant to paragraph 3, the WTO Member taking such action shall provide reasonable public notice to all interested parties and provide adequate opportunity for importers, exporters and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest. The WTO Member shall provide written notice of the decision to apply a measure, including the reasons for such measure and its scope and duration.

6. A WTO Member shall apply a measure pursuant to this Section only for such period of time as may be necessary to prevent or remedy the market disruption. If a measure is taken as a result of a relative increase in the level of imports, China has the right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than two years. However, if a measure is taken as a result of an absolute increase in imports, China has a right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than three years. Any such action by China shall be notified immediately to the Committee on Safeguards.

7. In critical circumstances, where delay would cause damage which it would be difficult to repair, the WTO Member so affected may take a provisional safeguard measure pursuant to a preliminary determination that imports have caused or threatened to cause market disruption. In this case, notification of the measures taken to the Committee on Safeguards and a request for bilateral consultations shall be effected immediately thereafter. The duration of the provisional measure shall not exceed 200 days during which the pertinent requirements of paragraphs 1, 2 and 5 shall be met. The duration of any provisional measure shall be counted toward the period provided for under paragraph 6.

8. If a WTO Member considers that an action taken under paragraphs 2, 3 or 7 causes or threatens to cause significant diversions of trade into its market, it may request consultations with China and/or the WTO Member concerned. Such consultations shall be held within 30 days after the request is notified to the Committee on Safeguards. If such consultations fail to lead to an agreement between China and the WTO Member or Members concerned within 60 days after the notification, the requesting WTO Member shall be free, in respect of such product, to withdraw concessions accorded to or otherwise limit imports from China, to the extent necessary to prevent or remedy such diversions. Such action shall be notified immediately to the Committee on Safeguards.

9. Application of this Section shall be terminated 12 years after the date of accession.

17. Reservations by WTO Members

All prohibitions, quantitative restrictions and other measures maintained by WTO Members against imports from China in a manner inconsistent with the WTO Agreement are listed in Annex 7. All such prohibitions, quantitative restrictions and other measures shall be phased out or dealt with in accordance with mutually agreed terms and timetables as specified in the said Annex.

18. Transitional Review Mechanism

1. Those subsidiary bodies²³¹ of the WTO which have a mandate covering China's commitments under the WTO Agreement or this Protocol shall, within one year after accession and in accordance with paragraph 4 below, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of this Protocol. China shall provide relevant information, including information specified in Annex 1A,

²³¹ Council for Trade in Goods, Council for Trade-Related Aspects of Intellectual Property Rights, Council for Trade in Services, Committees on Balance-of-Payments Restrictions, Market Access (covering also ITA), Agriculture, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Subsidies and Countervailing Measures, Anti-Dumping Measures, Customs Valuation, Rules of Origin, Import Licensing, Trade-Related Investment Measures, Safeguards, Trade in Financial Services.

to each subsidiary body in advance of the review. China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this Protocol, in those subsidiary bodies which have a relevant mandate. Each subsidiary body shall report the results of such review promptly to the relevant Council established by paragraph 5 of Article IV of the WTO Agreement, if applicable, which shall in turn report promptly to the General Council.

2. The General Council shall, within one year after accession, and in accordance with paragraph 4 below, review the implementation by China of the WTO Agreement and the provisions of this Protocol. The General Council shall conduct such review in accordance with the framework set out in Annex 1B and in the light of the results of any reviews held pursuant to paragraph 1. China also can raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this Protocol. The General Council may make recommendations to China and to other Members in these respects.

3. Consideration of issues pursuant to this Section shall be without prejudice to the rights and obligations of any Member, including China, under the WTO Agreement or any Plurilateral Trade Agreement, and shall not preclude or be a precondition to recourse to consultation or other provisions of the WTO Agreement or this Protocol.

4. The review provided for in paragraphs 1 and 2 will take place after accession in each year for eight years. Thereafter there will be a final review in year 10 or at an earlier date decided by the General Council.

Part II - Schedules

1. The Schedules annexed to this Protocol shall become the Schedule of Concessions and Commitments annexed to the GATT 1994 and the Schedule of Specific Commitments annexed to the GATS relating to China. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the relevant Schedules.

2. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of accession.

Part III - Final Provisions

1. This Protocol shall be open for acceptance, by signature or otherwise, by China until 1 January 2002.

2. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

3. This Protocol shall be deposited with the Director-General of the WTO. The Director-General shall promptly furnish a certified copy of this Protocol and a notification of acceptance by China thereof, pursuant to paragraph 1 of Part III of this Protocol, to each WTO Member and to China.

4. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Doha this tenth day of November two thousand and one, in a single copy, in the English, French and Spanish languages, each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one or more of these languages.

Annex III

WTO disputes involving China from 2002 to 2022^{232 233}

YEAR	TOTAL WTO DISPUTES	CHINA AS COMPLAINANT	CASES – DATE, CASE ID, DSB ABBREVIATION, NAME, RESPONDENT COUNTRY, COMPLAINANT COUNTRY	CURRENT STATUS	CHINA AS RESPONDENT	CASES – DATE, CASE ID, DSB ABBREVIATION, NAME, RESPONDENT COUNTRY, COMPLAINANT COUNTRY	CURRENT STATUS	TOTAL WTO DISPUTES INVOLVING CHINA
2002	37	1	<ul style="list-style-type: none"> (March 26, 2002) DS252. United States – Definitive Safeguard Measures on Imports of Certain Steel. Complainant: China 	<ul style="list-style-type: none"> Panel report circulated on December 10, 2003; Appellate Body report circulated on November 10, 2003 	-	-	-	1
2003	26	-	-	-	-	-	-	-
2004	19	-	-	-	1	<ul style="list-style-type: none"> (March 18, 2004) DS309. China – Value-Added Tax on Integrated Circuits. Complainant: United States 	<ul style="list-style-type: none"> Mutually agreed solution notified on October 5, 2005 	1
2005	12	-	-	-	-	-	-	-
2006	20	-	-	-	3	<ul style="list-style-type: none"> (March 30, 2006) DS339. China – Measures Affecting Imports of Automobile Parts. Complainant: European Communities (March 30, 2006) 	<ul style="list-style-type: none"> Panel report circulated on July 18, 2008; Appellate Body report circulated on December 15, 2008 Panel report circulated on July 18, 	3

²³² The table shows disputes occurred up to August 9, 2022.

²³³ All data are the official data published by the WTO at: https://www.wto.org/english/thewto_e/countries_e/china_e.htm, visited on August 9, 2022.

						<p>DS340. China - Measuring affecting Imports of Automobile Parts. Complainant: United States</p> <ul style="list-style-type: none"> • (April 13, 2006) <p>DS342. China – Measures Affecting Imports of Automobile Parts. Complainant: Canada</p>	<p>2008; Appellate Body report circulated on December 15, 2008</p> <ul style="list-style-type: none"> • Panel report circulated on July 18, 2008; Appellate Body report circulated on December 15, 2008 	
2007	13	1	<ul style="list-style-type: none"> • (September 14, 2007) DS368. United States – Preliminary Anti-Dumping and Countervailing Duty Determinations on Coated Free Sheet Paper from China. Complainant: China 	<ul style="list-style-type: none"> • In consultations on September 14, 2008 – no dispute Panel established and no withdrawal or mutually agreed solution notified 	4	<ul style="list-style-type: none"> • (February 2, 2007) DS358. China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments. Complainant: United States • (February 26, 2007) DS359. China – Certain Measures Granting Refunds, Reductions or Exemptions from Taxes and Other Payments. Complainant: Mexico • (April 10, 2007) DS362. China – Measures Affecting the Protection and Enforcement 	<ul style="list-style-type: none"> • Mutually agreed solution notified on December 19, 2007 • Mutually agreed solution notified on February 7, 2008 • Panel report circulated on January 26, 2009 	5

						<p>of Intellectual Property Rights. Complainant: United States</p> <ul style="list-style-type: none"> • (April 10, 2007) DS363. China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products. Complainant: United States 	<ul style="list-style-type: none"> • Panel report circulated on August 12, 2009; Appellate Body circulated on December 21, 2009 	
2008	19	1	<ul style="list-style-type: none"> • (September 19, 2008) DS379. United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China. Complainant: China 	<ul style="list-style-type: none"> • Panel report circulated on October 22, 2010; Appellate Body report circulated on March 11, 2011 	5	<ul style="list-style-type: none"> • (March 3, 2008) DS372. China – Measures Affecting Financial Information Services and Foreign Financial Information Suppliers. Complainant: European Communities • (March 3, 2008) DS373. China – Measures Affecting Financial Information Services and Foreign Financial Information Suppliers. Complainant: United States • (June 20, 2008) 	<ul style="list-style-type: none"> • Mutually agreed solution notified on December 4, 2008 • Mutually agreed solution notified on December 4, 2008 • Mutually agreed 	6

						<p>DS378. China - Measures Affecting Financial Information Services and Foreign Financial Information Suppliers. Complainant: Canada</p> <ul style="list-style-type: none"> • (December 19, 2008) DS387. China – Grants, Loans and Other Incentives. Complainant: United States • (December 19, 2008) DS388. China – Grants, Loans and Other Incentives. Complainant: Mexico 	<p>solution notified on June 20, 2008</p> <ul style="list-style-type: none"> • In consultations on December 19, 2008 - no dispute Panel established and no withdrawal or mutually agreed solution notified • In consultations on December 19, 2008 - no dispute Panel established and no withdrawal or mutually agreed solution notified 	
2009	14	3	<ul style="list-style-type: none"> • (April 17, 2009) DS392. United States – Certain Measures Affecting Imports of Poultry from China • (July 31, 2009) DS397. European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China. 	<ul style="list-style-type: none"> • Panel report adopted on September 29, 2010 • Panel report circulated on December 3, 2010; Appellate Body report circulated on July 15, 2011; further recommendation 	4	<ul style="list-style-type: none"> • (January 19, 2009) DS390. China – Grants, Loans and Other Incentives. Complainant: Guatemala • (June 23, 2009) DS394. China – Measures Related to the 	<ul style="list-style-type: none"> • In consultations on January 19, 2009 - no dispute Panel established and no withdrawal or mutually agreed solution notified • Panel report circulated on July 5, 2011; Appellate Body report 	7

			<p>Complainant: China</p> <ul style="list-style-type: none"> • (September 14, 2009) DS399. United States – Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China. Complainant: China 	<p>to bring measures into conformity on February 12, 2016</p> <ul style="list-style-type: none"> • Panel report circulated on December 13, 2010; Appellate Body report circulated on September 5, 2011 		<p>Exportation of Various Raw Materials. Complainant: United States</p> <ul style="list-style-type: none"> • (June 23, 2009) DS395. China – Measures Related to the Exportation of Various Raw Materials. Complainant: European Communities • (August 21, 2009) DS398. China – Measures Related to the Exportation of Various Raw Materials. Complainant: Mexico 	<p>circulated on January 30, 2012</p> <ul style="list-style-type: none"> • Panel report circulated on July 5, 2011; Appellate Body report circulated on January 30, 2012 • Panel report circulated on July 5, 2011; Appellate Body report circulated on January 30, 2012 	
2010	17	1	<ul style="list-style-type: none"> • (February 2, 2010) DS405. European Union – Anti-Dumping Measures on Certain Footwear from China. Complainant: China 	<ul style="list-style-type: none"> • Panel report circulated on October 28, 2011 	4	<ul style="list-style-type: none"> • (May 7, 2010) DS407. China – Provisional Anti-Dumping Duties on Certain Iron and Steel Fasteners from the European Union. Complainant: European Union • (September 15, 2010) DS413. China – Certain Measures Affecting Electronic Payment Services. Complainant: United States • (September 15, 2010) 	<ul style="list-style-type: none"> • In consultations on May 7, 2010 - no dispute Panel established and no withdrawal or mutually agreed solution notified • Panel report circulated on July 16, 2012 • Panel report circulated on June 15, 	5

						<p>DS414. China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat rolled Electrical Steel from the United States. Complainant: United States</p> <ul style="list-style-type: none"> • (December 22, 2010) <p>DS419. China – Measures Concerning Wind Power Equipment. Complainant: United States</p>	<p>2012; Appellate Body report circulated on October 18, 2012; Arbitration award circulated on May 3, 2013</p> <ul style="list-style-type: none"> • In consultations on December 22, 2010 - no dispute Panel established and no withdrawal or mutually agreed solution notified 	
2011	8	1	<ul style="list-style-type: none"> • (February 26, 2011) DS422. United States – Anti-Dumping Measures on Shrimp and Diamond Sawblades from China. Complainant: China 	<ul style="list-style-type: none"> • Panel report circulated on June 8, 2012 	2	<ul style="list-style-type: none"> • (July 25, 2011) DS425. China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union. Complainant: European Union • (September 20, 2011) DS427. China – Anti-Dumping and Countervailing Duty Measures on Boiler Products from the United States. 	<ul style="list-style-type: none"> • Panel report circulated on February 26, 2013 • Panel report circulated on August 2, 2013; implemented Panel report circulated on January 18, 2018 	3

						Complainant: United States		
2012	27	3	<ul style="list-style-type: none"> • (May 25, 2012) DS437. United States – Countervailing Duty Measures on Certain Products from China. Complainant: China • (September 17, 2012) DS449. United States – Countervailing and Anti-Dumping Measures on Certain Products from China. Complainant: China • (November 5, 2012) DS452. European Union and Certain Member States – Certain Measures Affecting the Renewable Energy Generation Sector. Complainant: China 	<ul style="list-style-type: none"> • Panel report circulated on July 14, 2014; Appellate Body report circulated on December 18, 2014; decision by the Arbitrator on January 26, 2022 • Panel report circulated on March 27, 2014; Appellate Body report circulated on July 7, 2014 • In consultations on November 5, 2012 - no dispute Panel established and no withdrawal or mutually agreed solution notified 	7	<ul style="list-style-type: none"> • (March 13, 2012) DS431. China – Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum. Complainant: United States • (March 13, 2012) DS432. China – Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum. Complainant: European Union • (March 13, 2012) DS433. China – Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum. Complainant: Japan • (July 5, 2012) DS440. China – Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States. Complainant: United States • (September 17, 2012) DS450. China – Certain Measures 	<ul style="list-style-type: none"> • Panel report circulated on March 26, 2014; Appellate Body report circulated on August 7, 2014 • Panel report circulated on March 26, 2014; Appellate Body report circulated on August 7, 2014 • Panel report circulated on March 26, 2014; Appellate Body report circulated on August 7, 2014 • Panel report circulated on May 23, 2014 • In consultations on September 17, 2012 - no 	10

						<p>Affecting the Automobile and Automobile-Parts Industries. Complainant: United States</p> <ul style="list-style-type: none"> • (October 15, 2012) DS451. China – Measures Relating to the Production and Exportation of Apparel and Textile Products. Complainant: Mexico • (December 20, 2012) DS454. China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless-Steel Seamless Tubes (“HP-SSST”) from Japan. Complainant: Japan 	<p>dispute Panel established and no withdrawal or mutually agreed solution notified</p> <ul style="list-style-type: none"> • In consultations on October 15, 2012 - no dispute Panel established and no withdrawal or mutually agreed solution notified • Panel report circulated on February 13, 2015; Appellate Body report circulated on October 14, 2015 	
2013	20	1	<ul style="list-style-type: none"> • (December 3, 2013) DS471. United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China. Complainant: China 	<ul style="list-style-type: none"> • Panel report circulated on October 19, 2016; Appellate Body report circulated on May 11, 2017; authorization to retaliate requested on September 21, 2018 	1	<ul style="list-style-type: none"> • (June 13, 2013) DS460. China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless-Steel Seamless Tubes (“HP-SSST”) from the European Union. 	<ul style="list-style-type: none"> • Panel report circulated on February 13, 2015; Appellate Body report circulated on October 14, 2015 	2

						Complainant: European Union		
2014	14	-	-	-	1	<ul style="list-style-type: none"> • (October 15, 2014) DS483. China – Anti-Dumping Measures on Imports of Cellulose Pulp from Canada. Complainant: Canada 	<ul style="list-style-type: none"> • Panel report circulated on April 25, 2017 	1
2015	13	1	<ul style="list-style-type: none"> • (April 8, 2015) European Union – Measures Affecting Tariff Concessions on Certain Poultry Meat Products. Complainant: China 	<ul style="list-style-type: none"> • Panel report circulated on March 28, 2017; mutually agreed solution notified on May 30, 2019 	2	<ul style="list-style-type: none"> • (February 11, 2015) DS489. China – Measures Related to Demonstration Bases and Common Service Platforms Programs. Complainant: United States • (December 8, 2015) DS501. China – Tax Measures Concerning Certain Domestically Produced Aircraft. Complainant: United States 	<ul style="list-style-type: none"> • Panel established but not yet composed on April 22, 2015 • In consultations on December 8, 2015 - no dispute Panel established and no withdrawal or mutually agreed solution notified 	3
2016	17	2	<ul style="list-style-type: none"> • (December 12, 2016) DS515. United States – Measures Related to Price Comparison Methodologies. Complainant: China • (December 12, 2016) DS516. European Union – 	<ul style="list-style-type: none"> • In consultations on December 12, 2016 – no dispute Panel established and no withdrawal or mutually agreed solution notified • Panel lapsed on June 15, 2020 	4	<ul style="list-style-type: none"> • (July 13, 2016) DS508. China – Export Duties on Certain Raw Materials. Complainant: United States • (July 19, 2016) DS509. China – Duties and Other 	<ul style="list-style-type: none"> • Panel established but not yet composed on November 8, 2016 • Panel established but not yet composed on 	6

			Measures Related to Price Comparison Methodologies. Complainant: China			Measures Concerning the Exportation of Certain Raw Materials. Complainant: European Union	November 23, 2016	
						<ul style="list-style-type: none"> • (September 13, 2016) DS511. China – Domestic Support for Agricultural Producers. Complainant: United States • (December 15, 2016) DS517. China – Tariff Rate Quotas for Certain Agricultural Products. Complainant: United States 	<ul style="list-style-type: none"> • Panel report circulated on February 28, 2019; compliance proceedings ongoing on September 28, 2020 • Panel report circulated on April 18, 2019; compliance proceedings ongoing on August 30, 2021 	
2017	17	-	-	-	1	<ul style="list-style-type: none"> • (January 12, 2017) DS519. China – Subsidies to Procedures of Primary Aluminum. Complainant: United States 	<ul style="list-style-type: none"> • In consultations on January 12, 2017 - no dispute Panel established and no withdrawal or mutually agreed solution notified 	1
2018	38	5	<ul style="list-style-type: none"> • (April 4, 2018) DS543. United States – Tariff Measures on Certain Goods from China. Complainant: China • (April 5, 2018) DS544. United States – Certain Measures on Steel and 	<ul style="list-style-type: none"> • Panel report circulated on September 15, 2020; appeal requested on October 26, 2020 • Panel composed on January 25, 2019 	4	<ul style="list-style-type: none"> • (March 23, 2018) DS542. China – Certain Measures Concerning the Protection of Intellectual Property Rights. Complainant: United States 	<ul style="list-style-type: none"> • Panel lapsed on June 9, 2021 	9

			<p>Aluminum Products. Complainant: China</p> <ul style="list-style-type: none"> • (August 14, 2018) DS562. United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products. Complainant: China • (August 14, 2018) DS563. United States – Certain Measures Related to Renewable Energy. Complainant: China • (August 23, 2018) DS565. United States – Tariff Measures on Certain Goods from China II. Complainant: China 	<ul style="list-style-type: none"> • Panel report circulated on September 2, 2021; appeal requested on September 16, 2021 • Consultations requested on August 14, 2018 • Panel requested on October 18, 2018 		<ul style="list-style-type: none"> • (June 1, 2018) DS549. China – Certain Measures on the Transfer of Technology. Complainant: European Union • (July 16, 2018) DS558. China – Additional Duties on Certain Products from the United States. Complainant: United States • (October 16, 2018) DS568. China – Certain Measures Concerning Imports of Sugar. Complainant: Brazil 	<ul style="list-style-type: none"> • In consultations on June 1, 2018 - no dispute Panel established and no withdrawal or mutually agreed solution notified • Panel composed on January 25, 2019 • Consultations requested on October 16, 2018 	
2019	20	1	<ul style="list-style-type: none"> • (September 2, 2019) DS587. United States – Tariff Measures on Certain Goods from China III. Complainant: China 	<ul style="list-style-type: none"> • Consultations requested on September 2, 2019 	1	<ul style="list-style-type: none"> • (September 9, 2019) DS589. China – Measures Concerning the Importation of Canola Seed from Canada. Complainant: Canada 	<ul style="list-style-type: none"> • Panel composed on November 10, 2021 	2
2020	5	-	-	-	1	<ul style="list-style-type: none"> • (December 16, 2020) DS598. China – Anti-Dumping and Countervailing Duty Measures on 	<ul style="list-style-type: none"> • Panel composed on September 3, 2021 	1

						Barely from Australia. Complainant: Australia		
2021	9	1	<ul style="list-style-type: none"> (June 24, 2021) DS603. Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China. Complainant: China 	<ul style="list-style-type: none"> Panel established but not yet composed on February 28, 2022 	2	<ul style="list-style-type: none"> (June 11, 2021) DS601. China – Anti-Dumping Measures on Stainless-Steel Products from Japan. Complainant: Japan (June 22, 2021) DS602. China – Anti-Dumping and Countervailing Duty Measures on Wine from Australia. Complainant: Australia 	<ul style="list-style-type: none"> Panel composed on January 24, 2022 Panel composed on March 4, 2022 	3
2022 (up to August 23, 2022)	6	-	-	-	2	<ul style="list-style-type: none"> (January 27, 2022) DS610. China – Measures Concerning Trade in Goods and Services. Complainant: European Union (February 18, 2022) DS611. Enforcement of Intellectual Property Rights. Complainant: European Union 	<ul style="list-style-type: none"> In consultations on January 27, 2022 - no dispute Panel established and no withdrawal or mutually agreed solution notified In consultations on February 18, 2022 - no dispute Panel established and no withdrawal or mutually agreed solution notified 	2

