China’s First Ten Years in WTO Dispute Settlement

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I. INTRODUCTION

It has been nearly ten years since China acceded to the World Trade Organization (WTO) on December 11, 2001. China has experienced 27 cases in all in WTO Dispute Settlement Body (DSB), among others, 7 cases as complainant and 20 cases as respondent. In addition, China participated as third party in 71 cases during the period under review. China has to face increasing disputes in the future with its economic development and prevalence of trade protectionism in the current world. Therefore, as the ten year benchmark approaches of China’s joining the WTO, perhaps now is a suitable time to look back upon China’s experiences in disputes settlements.

China formally applied for admission to the WTO predecessor, the General Agreement on Tariffs and Trade (GATT), resuming its GATT negotiations on 11 July 1986. The GATT formed a Working Party in March 1987 to examine China’s application and negotiate terms. For the next eight years, negotiations had been held under the auspices of the GATT Working Party. Following the formation of the WTO on 1 January 1995, a successor WTO Working Party took over the negotiations, and accordingly, China continued to start its WTO accession negotiations. WTO members formally approved an agreement on the terms of accession for China on 10 November 2001, at the WTO’s Fourth Ministerial Conference, held in Doha, Qatar. One day later, China signed the agreements and deposited its instrument of ratification with the Director-General of the WTO. China became the 143rd member of the WTO on

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2 Although it is still not ten years since China acceded to WTO, summary and evaluation to China’s performance in WTO dispute settlement has been dealt with in many foreign and domestic fields. For example, United States-China Economic and Security Review Commission, Evaluating China’s Role in the World Trade Organization Over the Past Decade, 9 June 2010, available at http://www.uscc.gov/hearings/2010hearings/hr10_06_09.php, last visited on 18 October 2010; WTO, Rule of Law, and China—Symposium on China’s ten years after acceding to WTO, held by the Department of Treaty and Law, Ministry of Commerce of the People’s Republic of China, and China Society of International Economic Law, Nanjing University, 14 October 2010.
11 December 2001. China's commitments are set forth in China's Protocol of Accession and an accompanying Report of the Working Party. In addition, China has shouldered some WTO-plus obligations, and one typical example is the obligation stipulated in article 16 of China's Protocol of Accession, that is, "Transitional Product-Specific Safeguard Mechanism".

After acceding to the WTO, China has to take concrete steps to remove trade barriers and open its markets to foreign companies and their exports in virtually every product sector and for a wide range of services. For this purpose, China has to undertake important changes to its legal framework in order to add transparency and predictability to business dealings. Otherwise, where China's measures are considered to be inconsistent with the WTO multilateral trade treaty covered under the Dispute Settlement Understanding (DSU), China has to confront challenges from other Members and comply with the decisions approved by WTO Dispute Settlement Body (DSB). As the tenth anniversary of China's accession to WTO is quickly approaching, this article aims at empirically investigating China's performance in WTO dispute settlement.

II. CHINA'S CHARACTERISTICS IN WTO DISPUTE SETTLEMENT

The details that China involves WTO dispute settlement can be shown by the practice of China in WTO dispute settlement.

2.1 CHINA'S INCREASED INVOLVEMENT IN WTO DISPUTES

Examining the cases related to China from the perspective of absolute numbers and relative numbers chronologically, we can find China is increasingly involving the WTO trade disputes. In the first four years after China joined the organization (between its joining and the end of 2005), of the 92 trade disputes taken to the WTO, it was involved in just two: one case brought by the United States against a Chinese value-added tax measure; the other case brought by China against the American definitive safeguard measures on imports of certain steel products from China. As to the reasons for sparse cases, honeymoon effect theory perhaps can explain to the most extent why. For