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국제학석사학위논문

**Beyond Good Compliance:
Examining China's Implementation in the
WTO Dispute Settlement System**

중국의 WTO 분쟁해결제도 이행에 관한 연구

2018 년 8 월

서울대학교 국제대학원

국제학과 국제통상전공

강 은 민

**Beyond Good Compliance:
Examining China's Implementation in the
WTO Dispute Settlement System**

A thesis submitted by

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In partial fulfillment of the requirements
For the Degree of Master of International Studies

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August 2018

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이 논문을 국제학석사학위논문으로 제출함

2018년 8월

서울대학교 국제대학원

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강은민의 국제학석사학위논문을 인준함

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Abbreviations

AD	Anti-Dumping
ADA	Anti-Dumping Agreement
CV	Countervailing
DSB	Dispute Settlement Body
DSS	Dispute Settlement System
DSU	Dispute Settlement Understanding
EU	European Union
FTA	Free Trade Agreement
GAC	General Administration of Customs
GOES	Grain Oriented Flat-rolled Electrical Steel
kWh	kilowatt-hour
MIIT	Ministry of Industry and Information Technology
MMT	Million metric tons
MOFCOM	Ministry of Commerce
NDRC	National Development and Reform Commission
NEA	National Energy Administration
SCM	Agreement on Subsidies and Countervailing Measures
SOE	State-Owned Enterprises
SPS	Sanitary and Phytosanitary Agreement
US	United States
USTR	United States Trade Representative
WTO	World Trade Organization

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Abstract

China is often portrayed as flouting international law and disregarding international tribunals. Yet, in the World Trade Organization (“WTO”), China boasts an impressive track record of ‘good compliance’ with adverse rulings. This is in stark contrast to other major economies, such as the United States and the European Union, which have frequently prolonged cases and resisted modifying their regulations in accordance with WTO rulings and recommendations.

In this light, this study considers how China has been able to achieve such a record of compliance despite its continued adherence to trade-restrictive industrial policies. The dissertation first studies how China has specifically implemented WTO dispute rulings concerning three of its key strategic sectors: the renewable energy, automobile, and steel industries. Then, China’s post-WTO dispute policies are examined to analyze the domestic restructuring and changes in priority. This will help to better understand China’s pattern of compliance in relation to its industrial policy.

This paper argues that China has shown ‘good compliance’ because the restructuring of its domestic industries and policy changes due to rapid industrial growth have outpaced the WTO Dispute Settlement System. The case studies presented herein suggest that China has implemented the rulings when the contested measures were no longer needed, had expired or had been subsequently replaced by the time it was required to make changes. In this way, China has both achieved its domestic industrial goals and maintained a record of ‘good compliance’. This paper aims to provide insight into how the current Dispute Settlement System allows for China, and other WTO members alike, to navigate the system’s limitations and to help to understand China’s behavior as a key player in the international trading regime.

Keywords: Compliance; WTO; Dispute Settlement System; China; Industrial Policies; Strategic Industries; Implementation

Student number: 2016-25001

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I. Introduction

After 15 years of difficult negotiations, China's accession to the World Trade Organization ("WTO") both heightened expectations and generated unease among Member countries. At the time, many questioned whether China would adhere to the commitments inspired by Western values and transition effectively to the neoliberal system of trade governance. Nevertheless, China has made significant efforts to open up progressively to competition, eliminate import discrimination and abide by international trading rules.

Although substantial achievements have been made in the liberalization of its economy, China still deploys trade-restricting measures as key instruments to support its national development agenda. Chinese-style capitalism is characterized by industrial policies and "national champion" strategies in which the Party-state spearheads economic development by handpicking industries vital for national security and infrastructure development (Hsueh, 2011). Such industrial policies are nothing new for many countries, and this catch-up process has led to strengthened industries and expensive failures for China. However, as China's significance within the global trading system has increased, its continued reliance on trade-distorting policies—including subsidies, anti-dumping measures and import discrimination—has caused friction with its trading partners.

Contrary to expectations, China currently holds a relatively good track record of compliance with the rulings of the WTO dispute settlement body ("DSB"). This is

surprising given that China has not shown such compliance with the outcomes of other international tribunals. Whereas its trading partners, such as the United States (“US”) and the European Union (“EU”), have prolonged cases at times by longer than a decade—indicating a “resistance to WTO rulings far and above anything that China has exhibited”—China has typically revised its legal and regulatory systems within a reasonable period of time to comply (Webster, 2013). Moreover, China’s implementation measures were challenged only twice by the original complainants—in contrast with 25 times for the US—the Article 21.5 Compliance Panel, which can be invoked if there is disagreement on the adequacy of the response by the losing party. Some scholars have argued that China’s outstanding record of compliance with the Organization’s rulings exemplifies China’s gradual socialization into international norms (Harpaz 2010; Scott and Wilkinson, 2015).

A closer examination of China’s “good compliance”, however, reveals that a record of successful implementations has not resulted in a decrease in WTO-inconsistent measures in subsequent policies. This raises the question of whether China is genuinely internalizing international norms, or whether it has learned to successfully navigate the dispute settlement system (“DSS”) to advance its own economic and political goals.

Against this backdrop, the motivation of this dissertation is to analyze China’s pattern of implementing WTO rulings and subsequent policies regarding its sensitive key industries. In pursuing a structural explanation for China’s abnormally good record of compliance, this study focuses on the post-DSB implementation of three disputes that involve China’s strategic industries—renewable energy, auto parts and steel—to

demonstrate how China's industrial development has taken place too quickly to allow time for WTO Dispute Settlement System rulings to be effectuated.

II. Literature Review

1. Existing Literature and Limitations

Often portrayed as mercantilist and a non-compliant player, China's entry to the WTO and its emergence as the world's leading economic power spawned a wealth of scholarship on its role in global trade governance. Early studies focused on China's prospects as a trading nation, from its opening in a state of isolation, and considered how the international system could affect Chinese behavior (Naughton and Lardy, 1996; Blancher and Rumbaugh, 2004). Some scholars were optimistic about China's potential to be a constructive player in international institutions and regimes (Economy and Oksenberg, 1999), while some suggested that the country's commitments to substantially dismantle tariffs and increase market access would present both opportunities and risks (Blancher and Rumbaugh, 2004).

As a major trading power, China naturally became more involved in trade disputes, both as a complainant and respondent in the Dispute Settlement System. Ever since its accession, many scholars have examined China's socialization into international norms and rules through analysis of its behavior in the DSS. For example, Harpaz argued that China's participation in the DSS illustrates how China is "playing by the rules" and how the WTO functions as an "important means of socialization in China's behavioral change" (2010). She argued that China's willing participation in binding international adjudication demonstrates its "faith in western norms and institutions" and "respect for international rules", sacrificing its sovereignty, which is "historically one of its most

sacred policy goals” (*ibid*). Another China expert, Kennedy, concluded that China has acted as a “system-maintainer” in the WTO DSS because it has not challenged the tribunal’s authority, nor attempted to frustrate DSS procedures; however, he offered a less positive appraisal than Harpaz (2012). Highlighting the risk that China might feel less compelled to comply due to the non-compliance of its major counterparts, he argued that China’s incentives to comply were decreasing and that its conformity had amplified its actual performance (*ibid*).

On the other hand, Gao warned of the dangers of “over-aggressive” litigation against China by the US and the EU, claiming that such an assertive strategy might cripple and weaken the DSS (2007). Gao agreed with Kennedy that China has largely acted as a system-maintainer of the WTO, but contended that the rising nation was “dissatisfied with its perceived ‘second-class citizen’ status” due to its non-market economy status (2011). Instead, China has increasingly resorted to other free trade agreement (“FTA”) and regional trade agreement initiatives, signaling a shift away from the multilateral framework.

Regarding general issues in the WTO DSS, many studies have analyzed the legal technicalities of the system, the asymmetry between its use by developed and developing countries, political and economic considerations in the initiation of disputes and the impact of WTO disputes. For example, Jackson conducted a thorough legal analysis of the Dispute Settlement Understanding (“DSU”) text and argued that an “international law obligation” to comply should be created with the DSB report so as to reinforce Members’ implementation of the results (2004). Non-implementation issues

have been problematic ever since the inception of the DSB, and they are an important factor to consider when countries seek to initiate WTO rulings. Davis and Bermeo also identified high start-up costs and power relations as barriers to filing complaints and showed that a developing country's likelihood of initiating a dispute increased based on prior experience of the DSS (2009). However, Lee, Shin, and Shin observed that there was an asymmetry between the use of the DSM by developing and developed. While developing countries are forced to abandon industrial policies, developed countries are able to use similar measures without much challenge, and they offer recommendations to redress the balance (2015). Other studies also conducted a country analysis of major trade policy concerns and have concluded that the system has worked reasonably well to help Members resolve disputes (Davey, 2005). However, most theorists assert that more could be done to strengthen the system to force recalcitrant Members to comply (Taniguchi et al., 2007; Colares, 2011).

However, little attention has been devoted to the compliance stage of the Dispute Settlement Process, especially when DSB rulings require countries to restore industrial policies to achieve WTO-consistency. In the context of industrial policies and the WTO, Bohanes offered a legal-technical analysis of how WTO DSB interpretations and findings shape the policy space of Members in the implementation of industrial policy measures (2015). He stated that "as long as WTO Members avoid the conduct proscribed or restricted by [the WTO's] provisions, they are free to enact whatever legislation they wish" (*ibid*). He argued that DSB rulings can influence potential claimants to willingly bring challenges before the WTO, but the WTO's ability to impact

the Member's industrial policy space is limited to existing treaty rules of the WTO and its Appellate Body.

Moore and Wu offered a detailed case study of *China-X-Ray Equipment* to analyze the relationship between anti-dumping measures and strategic industrial policy and highlighted that the relationship does not always arise from a government-driven, top-down policy that might be expected from China. Firms can pressure the government to enact tit-for-tat trade remedies against other countries, and anti-dumping measures can be understood as a tool to “counteract trade remedies taken in response to one’s industrial policy” (Moore and Wu, 2015).

By way of a disclaimer, this study does not aim to criticize China for employing industrial promotion policies or to evaluate to what extent these industrial policy measures distort trade. Rather, it is intended to examine how China has been utilizing the WTO DSS to maintain trade-distorting measures while reporting full compliance to WTO DSB. In fact, governments in both developed and developing countries have renewed their interest in industrial policies over the past decade. In the wake of the deepest recession since the 19th century, the 2008 financial crisis intensified growing doubts about free-market principles and attention returned to economic statism as an alternative approach for driving economic growth. States have long aspired “to be the source of technological innovation and to acquire industrial superiority over other societies,” wanting to be at the “innovative end of the ‘product’ cycle [...] where the highest value-added is created” (Gilpin, 1987).

After decades of debunking the use of industrial policy for developing countries, some economists have even started to prescribe government intervention. Former World Bank chief economist, Justin Lin, has argued that the state should also play the role of an active facilitator to upgrade and improve industries and infrastructure (2011). Rodrik also offered guidance on how governments could better diagnose growth constraints and determine which remedies will remove hindrances to development (2008). There is clearly renewed interest in the use of industrial policies, as the question has evolved from whether to use them to *how* they should be used. The rise of industrial policies and China's persistent reliance imply it is a timely opportunity to observe China's use of industrial policies and its patterns of compliance with dispute settlement decisions.

What is missing from the existing literature is an examination of China's specific policy changes after conflicts have been "settled" or "implemented". Surprisingly, even though China's "good compliance" has been questioned, only a few scholars have examined China's implementation procedures to conform to DSB rulings (Ji and Huang 2011; Manjiao 2012; Zhou, 2016). An evaluation of China's compliance is usually based on its ability to amend WTO-inconsistent measures in its domestic regulations in a timely manner within a "reasonable period of time" and whether it annulled or revoked the offending measure in a satisfactory way. Only a few scholars have considered in detail the quality of implementation and whether new industrial policies were created to compensate for the annulment of the WTO-disputed measure. Exceptions include Oh (2015), who analyzed China's wind industry and characterized its behavior as "convenient compliance", and Webster (2013), who asserted that China

will “entertain” reforms to achieve superficial compliance and described its response as “paper compliance”. This paper aims to expand on these case studies by adding China’s first compliance panel case, *China-GOES*, to examine how China’s priorities in the industry subsequently changed and to evaluate whether the modifications show a decrease in WTO-inconsistent measures.

2. Research Methodology

2.1. Research Question

The overarching question of this dissertation is: “What explains China’s record of good compliance with the WTO Dispute Settlement System?” In answering this question, there will be a focus on the specific efforts China has taken to adjust its domestic regulations to conform with WTO rulings. This paper will examine how China complies with adverse rulings that concern its key strategic industries—those that have been highlighted in Five-Year Plans and other state, ministry and local-level policies. Key strategic industries are highly important in driving domestic growth, and since many stakeholders and regulations are involved, they are often difficult to modify.

2.2. Methodology

This paper will follow a case-study approach to examine China’s compliance by analyzing three WTO disputes in which China was involved: *China-Auto Parts* (DS339/340/342), *China-Wind Power Equipment* (DS419) and *China-Grain Oriented Electrical Steel (GOES)* (DS414). These cases challenged important aspects of China’s

industrial policies and legal regime, and China chose to settle and comply at different stages of the dispute settlement procedure. *China-GOES* was the first case in which China's implementation measures were challenged under the Compliance Panel, and it is critical for understanding why China particularly showed a defiant attitude to comply with this ruling.

Traditionally, compliance with WTO rulings and recommendations has been determined by timeliness and quality based on the losing party's report of "implementation notified" and the number of Article 21.5 Compliance Panel Proceedings. This is marked in the WTO's Current Status Report,¹ which is limited in including only what the disputants last notified and does not show whether the implementation measures were later modified to conform with WTO rules. Thus, this paper will study the courses of action pursued by China in a bid to identify patterns in its compliance and the WTO-consistency of subsequent measures.

Examining China's post-WTO dispute domestic structure and policy changes will reveal domestic motivations behind China's compliant behavior. This will help to provide an explanation for why China has chosen to comply quickly with cases involving certain industries and why it has delayed the implementation of measures arising from disputes in others.

This paper is structured as follows. First, an overview of non-implementation issues in the WTO DSS will provide a general understanding of the difficulties in

¹ WTO Current Status Report: https://www.wto.org/english/tratop_e/dispu_e/dispu_current_status_e.htm

implementing WTO decisions, along with China's current record of compliance as a respondent. Second, case studies of three WTO disputes will be conducted where 1) China was a respondent, 2) key strategic industries that are/were vital to China's state-planning were involved, and 3) regulations were annulled or modified.

This paper argues that, even though China lost disputes concerning its key strategic industries, it in fact reaped benefits utilizing the WTO DSS's loopholes to maintain protective measures until they were no longer necessary and by crafting new illegal measures if protection was still needed. The implementation of WTO rulings was a practical decision, rather than a deliberate act to abide by the international tribunal and its norms. China's industrial growth has outpaced the WTO system; therefore, it has had ample time to develop its domestic industries and remove the protective measure upon accomplishing its goals. It was ultimately China who emerged as the true victor in WTO disputes as it managed to advance its own economic agenda, while maintaining a record of "good compliance".

III. Implementation Issues in the WTO DSS

1. Overview of the Dispute Settlement System

One of the most significant achievements of the establishment of the WTO was introducing its dispute settlement system. Since its inception, the WTO's DSS has been widely acknowledged as the "Crown Jewel" of the Organization for its innovation to adopt an adjudicative model, the addition of the Appellate Body and the enforcement treaty text on implementation of results (Jackson, 2004). The WTO dispute settlement mechanism is regulated under the Understanding on Rules and Procedures Governing the Settlement of Disputes, also known as the Dispute Settlement Understanding (DSU).

Article 3.2 of DSU expressly states the role of the DSS is the "central element in providing security and predictability to the multilateral trading system," and it "serves to preserve the rights and obligations of Members under the covered agreements". The goal of the dispute settlement procedures is to achieve a "satisfactory settlement of the matter," through "prompt compliance" with its recommendations and rulings (DSU Art. 3.4; Art. 21.1).

The DSB is often subject to criticism due to its provisions on trade remedies and occasional non-implementation issues, despite its coverage in the DSU to ensure compliance. While the system is not without its flaws, the wide utilization of the DSS reflects the prevailing view of the international community that the mechanism functions fairly well.

1.1. The Panel Process

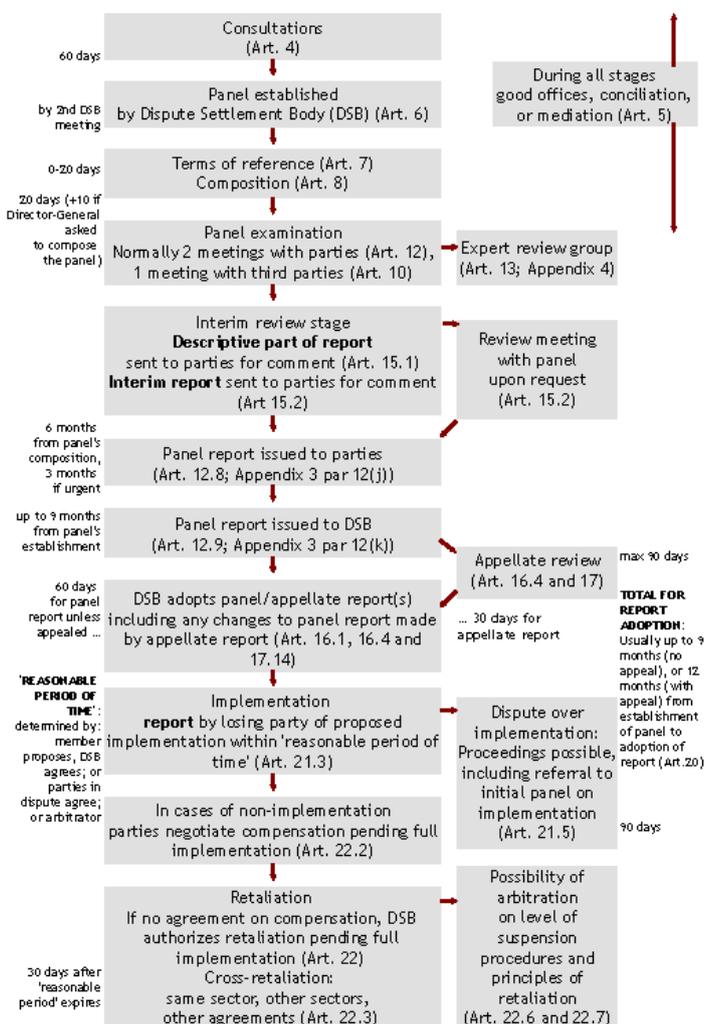
If a WTO Member believes another Member to have violated a WTO agreement or otherwise nullified or impaired benefits accruing to it, the complainant can request consultations to discuss the matter to find a satisfactory solution. The WTO usually recommends parties reach a mutually agreeable solution at this stage without resort to litigation; however, if the parties fail to resolve the matter within 60 days, the complainant can call for adjudication by the panel (DSU Art. 4.5; Art. 4.7). The majority of disputes do not proceed beyond consultations, either because the parties reach a settlement or the complainant decides not to pursue the matter further.

Once a request for adjudication has been lodged, a panel is established to rule on the dispute. The panel comprises individuals nominated by the parties: each can put forward three or five people. If the parties cannot agree on the composition of the panel within 20 days, the Director-General of the WTO proposes a set of panelists (DSU Art. 8.6). The established panel typically meets twice with the parties to discuss substantive issues, and each meeting is preceded by written exchanges to clarify the facts and to refute legal arguments put forward by the other party.

After examining the facts and the arguments, the Panel issues a draft that contains findings and recommendations (DSU Art. 15.1) and invites parties to comment on descriptive aspects of the draft report (DSU Art. 15.2). Next, the Panel issues a Panel Report to the parties with their findings of whether the respondent acted inconsistently with the agreements raised by the complainant. If the panel concludes that the respondent's measures are WTO-inconsistent, the respondent is obligated to bring the

challenged measure into conformity (DSU Art. 19.1). If no violations are found, there is no obligation for the respondent to modify or withdraw any measures. After two weeks of interim review, the Panel submits its final report to the DSB for adoption, which then becomes officially binding [See Figure 1].

Figure 1: The Stages of a Typical WTO Dispute



Source: World Trade Organization

If the losing party is dissatisfied with the Panel report, it can formally notify the DSB of its decision to appeal. According to WorldTradeLaw.Net, as of April 2018, 66.84% of standard panel reports are the subject of appeal, and the case is elevated to the Appellate Body. The Appellate Body hears the appeals of panel reports and issues its report within 60-90 days from the date of appeal. The report is automatically adopted by the DSB within 30 days, and implementation is required by the losing party. The DSB recommends that if the parties cannot reach a mutually agreed solution, the first objective is to secure the *withdrawal* of the measures found to be inconsistent (DSU Art. 3.7).

2. Implementation Related Articles in the DSU

DSU Article 21, entitled “Surveillance of Implementation of Recommendations and Rulings”, considers non-implementation issues and provides measures to ensure implementation. Under the existing rules of the DSU, if the respondent Member demonstrates “prompt compliance” by withdrawing the WTO-inconsistent measure within a “reasonable period of time”, the dispute is deemed fully resolved (DSU Article 21.1; 21.3). The respondent is generally not obligated to provide any kind of reparation for the losses caused by its WTO-inconsistent measure, and the winning Member obtains prospective relief, which is the withdrawal of the contested measure (Zimmermann, 2012). Another weakness is that the average length of WTO proceedings can be approximately 21.7 months from initial complaint to the circulation of the panel report, and the complainant has to endure economic harm until the contested measure is found

illegal and the losing member is obliged to comply (Johannesson and Mavroidis 2016; WTO 2004).

Panels do not go further than the “recommendation stage” to monitor the implementation process unless the winning member challenges the compliance measures. This leaves wide discretion for the Members concerned to decide on the most appropriate way to implement the ruling (Mavroidis, 2000). If the winning Member claims that the losing Member did not implement an adequate response, the DSU has mechanisms to pressure compliance, such as 1) the respondent offering compensation pending full compliance (Art. 22), 2) WTO-authorized retaliation through sanctions or other concessions (Art. 22), and 3) compliance review proceedings under Article 21.5.

According to Jackson, the DSU text clearly expresses a preference for the immediate withdrawal of the WTO-inconsistent measure, with compensation and suspension as temporary fallback measures (2004). Should the complainant doubt the respondent’s compliance, Article 21.5 allows for a challenge and review of the respondent’s implementation.

3. Examples of Non-Implementation Issues

3.1. Sustained Non-Compliance

Even with legal text that serves to assure compliance, sustained non-compliance occasionally happens when the respondent exceeds the reasonable period of time for compliance, either as a result of never having taken action or intentionally

implementing inadequate compliance in order to buy time. All sustained non-compliance cases face WTO-authorized countermeasures—also known as “retaliation”—as a temporary measure if requested by the complainant (Taylor, 2017). It is essential for retaliation to be proportional and equivalent to the amount of harm suffered by the complainant.

An example of a sustained non-compliance dispute that involved extended retaliations is the *EU-Hormones* (DS26/DS48) case. In 1996, the US and Canada claimed that the EU’s ban on hormone-fed beef violated the Sanitary and Phytosanitary Agreement (“SPS”). The EU claimed that the ban stemmed from genuine health concerns regarding the safety of hormones used. After both parties appealed the ruling, the Appellate Body determined that the EU’s ban was not based on a risk assessment required under the SPS Agreement and recommended the EU bring its measure into compliance. Instead of withdrawing the ban during the implementation period, it conducted a risk assessment and passed new legislation that contained a ban. When it refused to lift the ban, the US and Canada were granted the right to suspend concessions that amounted to \$116.8 million per year for the US and \$11.3 million per year for Canada in 1999.

After four years of sanctions, the EU announced further legislation claiming that it had scientific evidence to justify the ban. The US and Canada both rejected the EU’s claim of compliance and maintained their retaliatory sanctions. The EU then proceeded to file new cases against the US and Canada—*US-Continued Suspension* (DS320) and *Canada-Continued Suspension* (DS321)—asserting that the two countries

should remove retaliatory measures since the EU had terminated its WTO-inconsistent measure. The EU argued it was fully complying with the Continued Suspension cases, but the Appellate Body referred the case to be examined under the 21.5 compliance panel instead.

In 2011, 15 years after the dispute first began, the parties finally reached a solution whereby EU made concessions and the US and Canada eliminated their sanctions. However, to this day, the EU has never fully lifted the ban and continues to stand to keep all hormone-treated beef out of the EU market. This case shows how a case can be prolonged for more than a decade, with the disputed measure yet to be revoked. It illustrates how difficult it is for countries to implement WTO rulings and recommendations into domestic legislation.

3.2. Delayed or Disputed Implementation

When a Member country loses a WTO dispute, the domestic political environment and interest groups can complicate the process of implementing the outcome of the final ruling. This leads to delayed or disputed implementation of the DSB recommendations and frequently prompts retaliatory measures.

The US Continued Dumping and Subsidy Offset Act of 2000—also referred to as the “Byrd Amendment”, named after the Senator who sponsored it—was US legislation in which the federal state distributed anti-dumping duties collected by the US customs to domestic companies that petitioned for anti-dumping and countervailing investigations. Congress passed the legislation with full knowledge that it breached

international trade rules, but held that the bill was too important for the president to veto (Brewster, 2006). This led to 11 parties—including the EU, Japan, Canada and Korea—to file a dispute (DS217/234 *US-Offset Act*).

In 2003, the Appellate Body deemed the subsidies illegal under the WTO Agreements covering anti-dumping and countervailing measures. The US announced its intent to comply by the end of 2003, but the Byrd Amendment was still in place in January 2004. The fundamental structure of the amendment made it difficult to revoke since interest groups were directly receiving benefits from the Act (Taylor, 2017). The DSB first authorized eight parties to retaliate in 2004 and the remaining three parties to retaliate in 2005 by imposing sanctions on certain US goods. Even with all parties retaliating, it took the US more than two years after the implementation period to comply by repealing the Act. However, the parties claimed that the US had not fully complied since its government was still giving payments to the companies involved, and further complaints have perpetuated retaliations through to the present day (*ibid*).

Although retaliation has proven to be a valuable enforcement strategy, it should be considered as “the final and most serious consequence a non-implementing Member faces” (DSU Article 3.7). The WTO does not encourage countermeasures because they are protectionist by nature and tend to hurt the complainant’s own economy (Choi, 2007).

3.3. Inadequate Implementation

Inadequate implementation occurs when the complainant decides not to retaliate or the DSB does not issue authorization to do so, but the 21.5 Compliance Panel confirms

that the measure was not adequately implemented. DSU Article 21.5 can be invoked if the losing party notifies compliance, but the complainant doubts its full compliance and challenges the measure at issue under a Compliance Review. The aim of the Article 21.5 Compliance Panel is to determine whether the losing party has actually complied with the rulings.

An example is the *Australia-Automotive Leather II* (DS126) case, in which the Australian government's grants to exporters of automotive leather were found to be WTO-prohibited subsidies. Following the ruling, Australia announced in a press release that it complied with the Panel's recommendation by terminating the grant contract and that the leather-exporting company, Howe and Company Proprietary Ltd. (hereinafter "Howe"), had repaid a portion of the grant. The same statement, however, also said that the government would provide a new loan of A\$13.65 million to Howe's parent company, Australian Leather Holdings, Ltd (Choi, 2007). This was referred to 21.5 Compliance proceedings, and the Compliance Panel found that the Australian government failed to adequately comply with the DSB's recommendations.

In July 2000, Australia and the US reached a mutually agreed solution, and in this case, the Australian beneficiary returned A\$7.2 million to the government, which was unprecedented as a retrospective remedy. The US subsequently suspended certain customs duties it had previously imposed.

Non-compliance cases highlight the complexity of the process of law and decision-making in domestic trade and regulatory policy due to political conditions, interest groups and prevailing national interests. The US and the EU together account

for the majority of all non-implementation cases, showing a resistance to prompt compliance. This is why China’s compliance record is surprising, as it has barely been challenged for non-implementation by its complainants [See Table 1].

Table 1: Non-Implementation Case Status of the US, the EU, and China

	United States	European Union	China
Compensation	17 cases (80%)	4 cases (19%)	0 cases (0%)
Retaliation	28 cases (63%)	8 cases (18%)	0 cases (0%)
Compliance Review	25 cases (40%)	9 cases (15%)	2 cases (3%)

Compiled by the author with data from www.worldtradelaw.net

4. China’s Current Record of Compliance with the WTO Dispute Settlement System

It should be noted, however, that non-implementation cases account for a small proportion of all cases. The WTO DSU statistics show a fairly high level of compliance with the system by Members. Using the WTO Current Status Report, Taylor calculated satisfaction revealed through consultations, implementation by the respondent, mutually satisfactory settlements, or resolution in a certain period of time or in a manner that satisfied the complainant (2017): she found that 88.5% of all cases filed under the DSB were settled in a satisfactory manner, implying that most cases were resolved without much dispute over compliance (*ibid*).

Using her calculation methodology, 87.5% of trade disputes filed against China were resolved satisfactorily [See Table 2]. The numbers seem to support the general consensus that China has been a fairly compliant member of the WTO DSS. The Current Status Report, however, is limited to what the DSB was last notified by disputants, and it is impossible to track whether the settlement was on an *ad hoc* basis or whether members adequately reflected the rulings in new legislation.

This calls for an examination of what happened beyond the paper record of “settled”, “implementation notified by the respondent” and “mutually acceptable solution on implementation notified”. A satisfactory settlement does not necessarily mean that the WTO-inconsistent measure was adequately revoked or modified or, most importantly, that the complainant was satisfied with the outcome.

Table 2: China as a Respondent in the WTO DSB

China's Compliance Status (Total 40 cases)	Percentage
1. Resolved without much dispute over compliance	42.5%
<ul style="list-style-type: none"> - In consultations (10 cases; 20%) DS407, DS390, DS388, DS451, DS387, DS419, DS450, DS501, DS519 (Jan 2017), DS542 (March 2018) - Panel established, but not yet composed (3 cases; 7.5%) DS509, DS489, DS508 - Settled or terminated (withdrawn, mutually agreed solution (6 cases; 15%)) DS378, DS372, DS359, DS309, DS358, DS373 	
2. Of the cases that go to panel and/or on review by the AB	45%
<ul style="list-style-type: none"> - Reports adopted, no further action required (1 case; 2.5%) DS440 - Implementation notified (13 cases; 32.5%) DS342, DS339, DS395, DS425, DS432, DS433, DS398, DS362, DS340, DS363, DS394, DS413, DS431 - Go through proceedings, but disputants never fully notify DSB of resolution (4 cases; 10%) – Reports adopted, with recommendation to bring measure into conformity DS483 (May 2017), DS460 (Oct 2015), DS454 (Oct 2015), DS414 	
TOTAL	87.5%

* Calculation Methodology from Taylor (2017)

* Compiled by the author

* Data: www.worldtradelaw.net

* *Note: Percentages do not sum to 100% because due to disputes in the early stages of consultations at the time, or involving appeals*

IV. Case Studies

In evaluating China's compliance, it is important to examine the specific steps China has taken to implement DSB rulings. This section will focus on how China has implemented WTO decisions for cases that involved industries that were central in driving its national economic growth. Has China implemented DSB recommendations and rulings within a "reasonable period of time"? Why did China choose to implement the findings of some cases in a timely manner, while protracting others? Did it revoke the illegal measure or introduce new measures? Did any new measures fix or maintain the original inconsistencies?

To answer these questions, case studies are presented below. Each will be structured as follows: 1) The strategic importance of the industry, 2) The background to the trade dispute and the WTO's decision, 3) Implementation and post-dispute policies, and 4) Analysis.

The case studies are presented in order of how far they proceeded through the DSS. All three cases—wind power, auto parts and electrical steel—were concluded either through settlement or adjudication. The Wind Power Equipment case was settled in the consultation stage, the Auto Parts dispute ended after the Appellate Body report, while the Electrical Steel case advanced to Compliance Panel proceedings. Rather than an in-depth analysis of the legal issues raised in each dispute, these case studies focus on China's implementation procedure and the new measures it introduced following the dispute.

1. Wind Power Equipment (DS419)

1.1. The Strategic Importance of the Wind Turbine Industry

China achieved remarkable industrialization over the past three decades through the development of its heavy industries driven by the consumption of fossil fuels. According to the International Energy Agency, the exponential growth of the manufacturing industry and export-oriented sectors soon led to China becoming both the world's top coal producer and consumer, accounting for half of all global consumption (2017). Rapid economic growth, a sustained demand for energy and increased international pressure for emissions reduction have compelled China to gradually reshape its energy landscape, steering itself away from its current coal dependency and towards clean energy. Thus, the government highlighted the potential of its renewable energy sector to tackle the country's urban environmental problems, to provide energy security and to stimulate further economic growth.

Among all renewable forms of energy, wind has been recognized as one of the cheapest forms. China has had plans to develop its wind energy so as to contribute to its overall industrial capacity and as a means of expanding employment opportunities (China Wind Outlook, 2010). Initial efforts to strengthen the domestic wind turbine industry were driven by China's main economic policy agency, the National Development and Reform Commission ("NDRC") (then called the State Development and Planning Commission). This NDRC launched the "Ride the Wind" project in 1996 to facilitate technology transfer through Sino-foreign joint ventures (JV) and obligated

JVs to use a minimum 20% of local content in their production of wind turbines (Wang et al., 2016). Later, the Renewable Energy Law in 2005 was enacted to develop the wind turbine industry further. The Law served as a blueprint to regulate renewable energy and established national production targets, mandatory purchase policies, a feed-in tariff program and cost-sharing mechanisms to encourage the industry to grow (Oh, 2015).

Many other plans and programs followed the Renewable Energy Law to invigorate the development of the wind turbine industry, such as the Wind Concession Program launched by NDRC. Active between 2003 to 2007, selected domestic producers received government benefits, including the rights to construct wind farms in particular locations, tax breaks and guaranteed agreements; in return, they had to commit to increasing their domestic content to 70% by 2005 (Lewis, 2014). Government support continued in the 11th Five Year Plan (2006-2010), in which China classified the development of energy technology as its top priority, it adopted “hard targets” for the first time and it set out goals for key renewable sectors, i.e. wind, solar and hydropower. The NDRC also devised a Medium and Long Term Plan for Renewable Energy Development Plan in 2007, one feature of which was a stipulation for renewable energy to account for up to 3% of the total by 2010, applicable to power-generating companies with an installed capacity of 5GW (Kang et al., 2012). Due to the cost-effective nature of wind energy, almost all power-generating companies chose wind as their means to fulfill the quota requirement.

Another government subsidy program called the “Wind Base Program” was introduced in 2008 by the NEA to develop the domestic capacity to build large wind

turbine components. The program called for the construction of nine 10GW power bases in, among others, Gansu, Xinjiang, Hebei and Inner Mongolia, to help boost wind power development in China (Li, 2012). In addition, a feed-in tariff system establishing a benchmark price for wind power positively contributed to the growth of wind power of China (Li et al., 2010).

On the other hand, international companies faced unfavorable conditions and heightened market competition due to the effects of the preferential subsidies, tax policies and bidding processes (Oh, 2015). State regulations also pressured rigorous technology transfer through local-content requirements from international companies. In fact, China's largest wind turbine manufacturer, Sinovel, was recently convicted of stealing proprietary technology from its American strategic partner, AMSC, in 2011, potentially causing US\$800 million in losses (Hanna et. al, 2018).

State efforts were critical in building the wind turbine industry, but its discriminatory actions and illegal activities provoked trade tensions with other WTO Members.

1.2. Background to the *China-Wind Power Case* and the WTO's Decision

The dispute against Chinese wind turbine manufacturers was initiated as a result of a petition filed on 9th September 2010 by the United Steelworkers (hereinafter "USW"), an American industrial labor union. The USW claimed that China had provided WTO-inconsistent subsidies that unfairly supported domestic wind and solar energy producers, as it sought to become the "dominant global supplier of these products"

(USTR, 2010). The Office of the United States Trade Representative (“USTR”) followed up on the complaint by conducting an investigation under Section 301 (of the Trade Act of 1974) regarding the clean energy technology sector (USTR, 2011). Section 301 enables the USTR to undertake investigations and impose trade restrictions on foreign countries that engage in unfair trade practices.

Following its investigations, the USTR decided to challenge China’s wind concession plan, the Special Fund for the Industrialization of Wind Power Equipment (hereinafter, the “Special Fund”) promulgated by the Ministry of Finance in 2008, which allocated funding to wind project assessments, conducted evaluation studies, supported technology R&D and constructed pilot demonstration projects.

What was problematic about the Special Fund was that it only provided financial payments to wind turbine manufacturers providing they fulfilled two conditions: that the firm was at least 51% Chinese-owned and that 70% of the wind turbine cost had to go to local manufacturers (Lewis, 2014). The 70% localization mandate forced international wind turbine manufacturers to establish manufacturing facilities in China if they wanted to do business in China. However, even though some foreign companies did move their facilities to China, none of the foreign companies were awarded any of the most valuable contracts under the government’s US\$84 billion stimulus package (*ibid*). The package demanded the fulfillment of criteria that only domestic companies could feasibly meet, implicitly excluding foreign bidders (Oh, 2015).

On 22nd December 2010, the US requested consultations with China concerning its giving of grants, funds and awards to enterprises manufacturing wind-power equipment in China. It alleged that the Special Fund was inconsistent with WTO rules—specifically, the US claimed the Fund violated:

- 1) SCM Article 3: Measures contingent on the use of domestic over imported goods;
- 2) Article XVI:1 of GATT 1994, SCM Article 25.1, 25.2, 25.3, 25.4: Failure to notify subsidy measures; and
- 3) Part 1, Paragraph 1.2, of China’s Protocol Accession: Failure to make an available translation of these measures to one or more WTO official languages (English, French, Spanish)

A day after the consultation request, China’s Ministry of Commerce (“MOFCOM”) insisted that the subsidies were crucial for energy conservation, emissions reduction and environmental protection. It asserted that the measures were important means to achieve sustainable development and were in accordance with WTO rules (MOFCOM, 2010).

On 16th February 2011, the US and China held a WTO-mediated consultation regarding China’s prohibited subsidies on the grounds that they were contingent on the use of domestic goods, over imported equivalents, therefore violating Article 3 of the SCM Agreement.

1.3. Implementation

Instead of proceeding to litigation, the dispute ended at the consultation stage when the US announced that China had terminated the Special Fund Program by completely revoking the measure on 7th June 2011 (USTR, 2011).

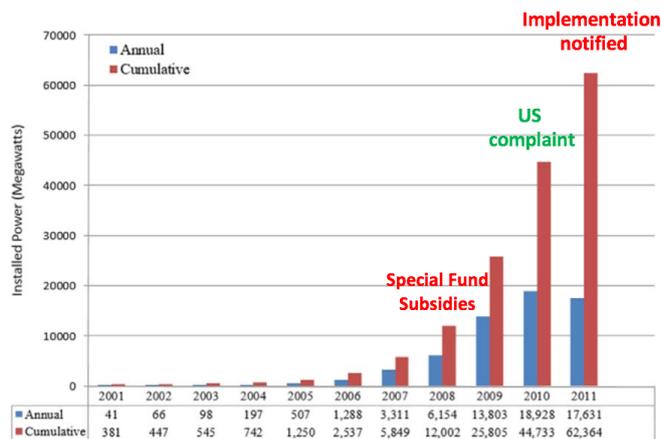
1.4. Analysis

Why did China decide to comply promptly rather than pursuing formal WTO litigation? A possible explanation could emerge from an examination of the shift in policy priorities, and industry and market developments at the time of the dispute.

1. The goals of the subsidy programs had already been achieved

Government support and initiatives helped boost the wind turbine equipment industry in the late 2000s. In 2010, the same year that the US requested the WTO consultations, China overtook the US and established itself as the world's largest installer of wind power, boasting 36% of growth in annual wind turbine production (China Wind Power Outlook, 2012). The wind turbine industry had barely existed before the Renewable Energy Law in 2005, but installed capacity grew 20-fold by 2009 [See Figure 2] and renewable energy investment doubled from 2010 to 2013 (Qi et al., 2017).

Figure 2: China's Newly-Added and Cumulative Wind Power Installed Capacities

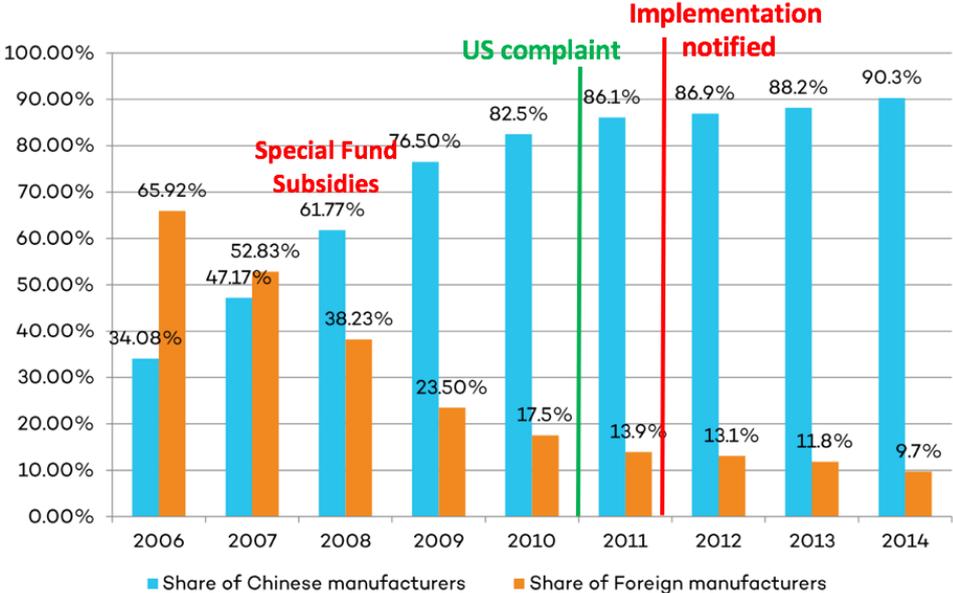


Source: China Wind Power Outlook (2012)

Note: *Dispute events are marked by the author*

Before 2006, foreign enterprises—such as Denmark’s Vestas, the US’s GE and Spain’s Gamesa—dominated the Chinese wind turbine market, occupying a 55-75% share of the total market (Oh, 2015). It was only when the Special Fund subsidies were disbursed in 2008 that the market share of domestic companies exceeded that of foreign competitors. The gap between the two had significantly widened by the time the measure was revoked [See Figure 3].

Figure 3: Market share (%) of Domestic and International Wind Turbines



Source: International Institute for Sustainable Development (2015)
 Note: *Dispute events marked by the author*

As the market share of domestic producers increased, domestic champions also came to the fore. In 2006, only three domestic companies appeared in the list of top 10 manufacturers by market share but, by 2011, the list was dominated by domestic companies, with nine out of 10 being Chinese [Table 3]. In fact, four domestic

champions—Goldwind, Sinovel, Dongfang, and Guodian—held more than half of the total market share and continued to expand their reach.

Table 3: Market Share (%) of the Top 10 Wind Turbine Manufacturers in China

Rank	2006		2007		2008		2009		2010		2011	
1	Gold Wind	33.3	Gold Wind	25	Sinovel	22	Sinovel	25.3	Sinovel	23.2	Goldwind	20.4
2	Vestas	23.6	Sinovel	21	Goldwind	18	Goldwind	19.7	Goldwind	19.7	Sinovel	16.7
3	Gamesa	15.9	Gamesa	17	Dongfang	17	Dongfang	14.8	Dongfang	13.9	Guodian	16.1
4	GE	12.67	Vestas	11	Vestas	10	Guodian	5.6	Guodian	8.7	Minyang	6.7
							United Power		United Power		United Power	
5	Dongfang	5.6	Dongfang	7	Gamesa	8	Minyang	5.4	Minyang	5.5	Dongfang	5.4
6	CASC-Acciona	3.7	GE	6	Windey	4	Vestas	4.4	Vestas	4.7	XEMC	4.1
7	Nordex	2.0	Suzlon	6	SHE	3	XEMC	3.3	Shanghai Electric	3.2	Shanghai Electric	4.0
8	Sinovel	1.5	Hangtian	2	Minyang	3	GE	2.3	Gamesa	3.1	Vestas	3.7
9	Suzlon	0.9	Zhejiang Yunda	2	Hangtian	2	Suzlon	2.1	XEMC	2.7	Huachang	3.5
10	Windey	0.7	Nordex	1	GE	2	Gamesa	2.0	Huachang	2.6	China Southern Rail	2.5

SOURCE: Compiled by the author from various sources including Junfeng Li, Pengfei Shi, and Gao Hu, *China Wind Power Outlook 2010*, China Renewable Energy Industries Association, Global Wind Energy Council, Greenpeace, October, 2010; Junfeng Li, Pengfei Shi, and Gao Hu, *China Wind Power Outlook 2012*, China Renewable Energy Industries Association, Global Wind Energy Council, Greenpeace; Global Wind Energy Council, *Global Wind Energy Outlook, 2010*; Global Wind Energy Council, *The Development of Wind Power Tariffs in China*, 2010.

Source: Oh (2015)

Note: *Chinese companies are in bold.*

Along with growth domestically, China's activity in the wind power industry also expanded internationally. In 2005, China's share of newly added wind power installed capacity comprised 5.3% of the world total and was ranked sixth, but five years later, in 2010, it rose to 48.1% and was ranked first. Also, in 2005, China's share of the total wind power installed capacity stood at 2.1% and was ranked eighth; again, five years later, in 2010, this share was up to 22.4% and was also ranked first (Kang et al., 2012). By this time, China had already surpassed the US as the leading nation in wind installed capacity and established itself as the new leading manufacturer of wind turbines.

The exponential growth in the wind turbine industry was mainly attributed to government policies that specifically promoted the utilization of domestically manufactured wind turbines. Wind turbine technology was first obtained by the

purchasing of technology licenses from foreign corporations. For example, the leading wind turbine manufacturer, Goldwind, first acquired its underlying technology through licensing agreements with a small German company called Jacobs, which later merged with the Swiss firm, Repower (Lewis, 2014). Chinese companies usually opted to pursue small, second-tier companies as a quick and easy way to acquire advanced technology, and to launch into the industry even in the absence of pre-existing knowledge (*ibid*). Once they had acquired the capabilities to manufacture their own components, wind turbine manufacturers switched to sourcing parts from local producers—up to 96% of all parts—in order to fulfill the localization requirements.

When the USW filed for CVD applications in September 2010, domestic companies had already received their subsidies and had sufficient time to scale up their production. In fact, by that time, Chinese policymakers had shifted their policy priorities, and growing the installment capacity no longer represented a problem.

2. New problems, new policies

During the 11th Five Year Plan Period (2006-2010)—the time of the dispute—increasing wind power installation capacity became China’s primary objective. Nonetheless, as the industry matured, a new obstacle emerged. The wind power industry had, in fact, grown so fast that its supporting facilities could not keep pace with installations. This led to low grid-access of wind power due to insufficient transmission infrastructure connecting wind farms and the electric grid. Although the proportion of

farms with grid connectivity had increased from 50% to 70% between 2005 and 2008, the other 30% of wind turbines were left idle and unutilized (Kang et al., 2012).

A considerable amount of lost potential energy also stemmed from mismatches in national planning. The NDRC had stipulated that all wind power plant projects above 50MW should receive its approval and implemented under national planning supervision, but projects were often approved by local governments, rather than the NDRC. A lack of coordination made it more challenging for the state to accurately discern how many power plants were being installed, resulting in more plants than the NDRC had originally planned.

By the end of 2010, symptoms of overcapacity materialized as the number of domestic wind power system manufacturers exceeded the total number of manufacturers in the rest of the world combined (*ibid*). Even though there were up to 70 domestic wind power manufacturers, only Goldwin, Sinovel and the Dongfang Turbine Company produced more than 500 wind turbines; others were inefficient and lacked core competencies, which resulted in repeated construction and a significant waste of resources.

The next 12th Five Year Plan (2011-2015) acknowledged these shortcomings and shifted priorities from increases in production to addressing curtailment issues and upgrading technology in the wind power industry (Wang et al., 2016). The State Council's White Paper on Energy Policy stated that China would stress "both intensive and distributed exploitation and optimize the development layout of wind power" (2012). This optimization plan prescribed improvements to standards, a supervision system for

wind power and the promotion of the R&D of key technologies to accelerate the upgrading of the industry. It further emphasized the industry's need to "improve its power grids' wind-power integration ability" by accelerating grid construction, increasing the grid's dispatch level and strengthening wind-power prediction and forecast (*ibid*). Except for a reference to the need to develop offshore wind farms, the section on wind power focused on technological upgrading and grid construction issues.

3. The central government, too, wanted to end government subsidies

Another problem that arose with the increase of capacity during the 11th Five Year Period (2006-2010) was divergence between the policy orientation of the Ministries in charge of the industry and the energy power authorities. While the energy authorities focused on the scale of installed capacity and advocated for subsidies to be directed to wind power plant construction, the Ministry focused on technological progress and advised that subsidies be distributed to technology R&D and the equipment manufacturing sectors (Kang et al., 2012). The central government could use the WTO dispute as rationale to end its subsidy scheme in order to focus on qualitative growth.

Underlining more balanced project development, the State Council identified wind turbine production as an "excess capacity sector", and the Ministry of Land and Resources reportedly denied all applications for the installation of new facilities in an effort to slow growth (Lewis, 2014). The National Energy Administration ("NEA") also took concrete steps to reduce the number of new project approvals. The NEA's first plan for wind power in 2011 had specified that a total capacity of 28.8GW would be installed,

with 8.9GW in three northern regions. In the same year, the NEA revised its plan with a reduction in total capacity to 16.8GW, with 1.2GW in the three northern regions. A year later, the NEA announced that it would no longer approve new projects with a curtailment rate over 20% (NEA, 2011). All these efforts show that China started to take a less proactive approach, and almost showed reluctance, to the giving of financial subsidies for the development of wind power.

Thus, China played a strategic move in the WTO consultations by quickly retracting the Special Fund. The domestic wind power industry had grown at a monstrous pace and national champions had come to dominate the market share and drive out foreign competitors. Policymakers first achieved national development goals through localization requirements and increasing domestic capacity, and then immediately revoked the measure when it no longer contributed to industry growth. The WTO decision could act as an external force for the Ministries to argue against the energy authorities and local governments, putting an end to the unsustainable subsidies and promoting healthier, qualitative growth.

On paper, it seemed like China had lost by having to make adjustments to align with the US's requests but, in fact, it had little to lose. Its domestic priorities had already shifted from installment capacity to the upgrading of technology and an expansion of grid access, and the gradual removal of subsidies for domestic companies paved the way for healthier competition in technological development. Through a fast settlement, China could both make a record of "good compliance" and benefit by the removal of measures

that had become unnecessary and inappropriate for the further development of its renewable energy industry.

2. Auto Parts (DS339/340/342)

2.1. The Strategic Importance of the Automobile Parts Industry

The automobile industry has been one of the key drivers of economic reform and growth, and had been classified as a “pillar industry” even before China joined the WTO. Zhang Ji, the deputy director of MOFCOM, remarked that the government should provide vigorous support to the auto industry because, “automobiles are in a way different from other merchandises [as the industry] represents a country’s overall economic strength [...] [and their] exports add to the dignity of a nation” (Haley, 2012). The central government made strong efforts to create “national champions” in the auto industry to displace imports, and used a combination of high tariffs, quotas and other import-substitution policies to nurture the domestic industry.

Upon accession to the WTO, however, China had to commit to abolishing these local-content requirements and export-performance requirements for domestic producers. In the automobile sector, China agreed to progressively remove import quotas by 2005 and cut automobile tariffs from 100% to 25%. The tariffs on auto parts was also reduced from an average of 23.4% to 10% by 2006 (Zhou, 2016). China had to gradually liberalize its markets to lower discriminatory trade restrictions and open up to market competition.

When China was forced to abandon local content requirements and lower tariffs, the NDRC enacted the Automotive Industry Development Policy (hereinafter “2004 Auto Policy”)—the policy contested in this WTO dispute. The 2004 Auto Policy

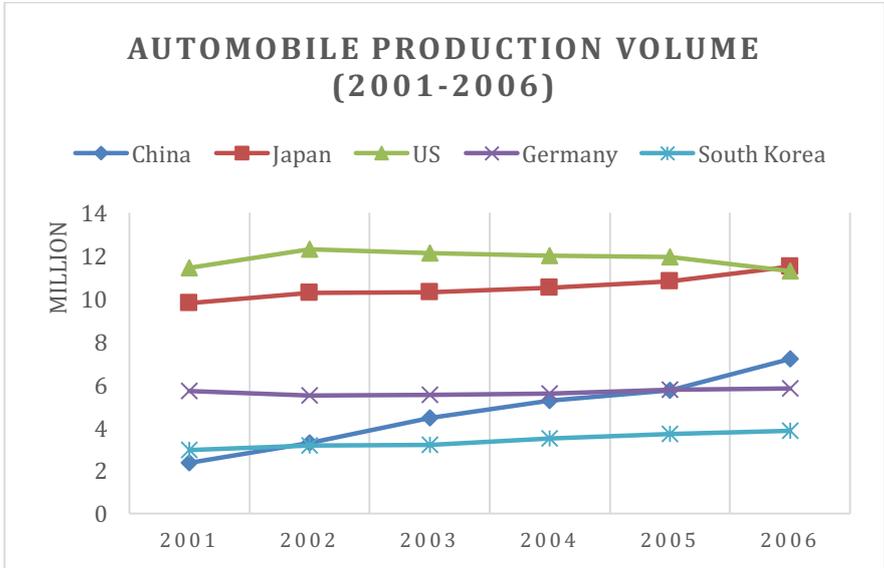
encouraged domestic producers to enhance their research capabilities, to produce vehicles independently and to increase exports to \$35-40 billion by 2010 (Haley, 2012). Foreign investors were required to establish R&D facilities with an investment of at least RMB 500 million and had to file technology-transfer agreements to obtain approval for new auto production plants (*ibid*).

The government introduced many other economic policies and initiatives to spur growth, with its decision to permit foreign enterprises to establish Sino-foreign joint ventures being the most effective. By encouraging joint ventures, the government offered increased market access to foreign auto companies in return for technology (Haley, 2012). For example, America's General Motors established a 50-50 joint venture with the Shanghai Automotive Industry Corporation Group (hereinafter "SAIC"), Germany's Daimler AG established a 49-51 joint venture with Beijing Motor Corporation and Germany's Volkswagen Group established a 40-60 joint venture with Changchun's First Auto World Group (hereinafter "FAW"). Unlike Japan or Korea, China's automobile industry expanded through foreign direct investments, and foreign-invested companies accounted for a greater share than domestic companies (Sadoi, 2008). China's strategic joint venture structure, especially technology transfers, proved vital to developing domestic firm capacity within a relatively short period of time.

Due to these government efforts, China became the world's fastest growing automotive producer after joining the WTO. According to the International Organization of Motor Vehicle Manufacturers, China was the sixth largest automobile manufacturer, accounting for 4% of global production in 2001; five years later, in 2006, it had

surpassed Germany’s production level to become the third largest manufacturer, accounting for 10% of global production [See Figure 4].

Figure 4: Automobile Production Volume by Major Producing Countries



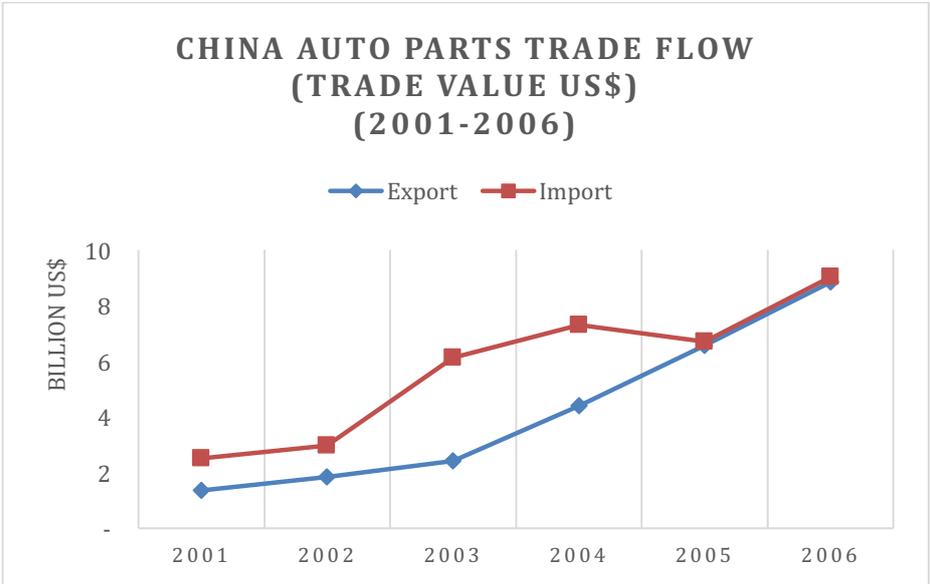
Compiled by the author
 Source: International Organization of Motor Vehicle Manufacturers

Although the auto-parts industry is relatively small compared to the automobile industry, it has simultaneously strengthened due to its direct linkage to the demand for automobiles. China was a key link in the global production and supply system of the automobile and parts industry, therefore most of the world-leading manufacturers of parts began to enter and expand their operations in China.

However, the Chinese auto industry faced a trade deficit in the parts and components sector. Before the 2004 Auto Policy was enacted, in 2003, China exported US\$2.4 billion and imported US\$6.1 billion worth of parts and components [See Figure 5]. Instead of using locally manufactured auto parts, China had used a substantial volume

of imports to manufacture whole vehicles due to the lack of capacity on the part of domestic firms.

Figure 5: China’s Auto Parts Trade Flow by Trade Value



Source: UNComtrade

To deal with this trade discrepancy, the 2004 Auto Policy explicitly stated that “the state supports the auto production enterprises to make efforts to improve the *local input* of automobile products, promote the technical progress of parts and components enterprises, and develop automobile manufacturing” (italicized by the author). Chapter VIII on Components and Parts and Relevant Industries stated that parts companies should “adapt to the trend of development of international industry” and announced that a special development plan through ‘classification’ will guide the industry’s investment and impel domestic firms to have comparative advantage to specialize and produce a large batch of production (*ibid*). As more Sino-foreign automobile joint ventures

emerged, China encouraged the integration of domestic auto parts into new vehicle models. The *China-Auto Parts* dispute arose from this background.

2.2. Background to the *China-Auto Parts* Case and the WTO's Decision

China-Auto Parts was the second complaint to ever be filed against China, and its first WTO dispute to progress to formal litigation. This suggested that the industry was significant for China's development and it was harder to compromise on domestic regulations.

On 30th March 2006, the EU and the US—joined later by Canada, too in April 2006—requested consultations regarding China's charges on imported auto parts “characterized as complete motor vehicles” based on specific criteria and the prescribed administrative procedures that followed. The policies in dispute were the following:

- 1) Automotive Industry Development Policy, issued by the NDRC Order No. 8, in effect from May 2004 (hereinafter “2004 Auto Policy”)
- 2) Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles, issued by General Administration of Customs (“GAC”), the NDRC, Ministry of Finance, and MOFCOM Decree No. 125, in effect from April 2005 (hereinafter “2005 Administrative Rule”), and
- 3) Rules on Verification of Imported Automobile Parts Characterized as Complete Vehicles, issued by GAC Announcement No. 4, April 2005 (hereinafter “2005 GAC Rule”)

In general, the 2004 Auto Policy provided a legal basis to promulgate specific management rules for the import of auto part. The 2005 Administrative Rule and 2005 GAC Rule implemented the 2004 Auto Policy by establishing procedures for administration and specifying the criteria by which to characterize auto parts.

The crux of this dispute concerned the characterization of auto parts as ‘complete vehicles’, which was subject to a higher tariff rate. If a domestic car manufacturer used imported parts and components that exceeded the 60% threshold, the parts were categorized as ‘complete vehicles’ and thus were subject to a higher tariff rate of 25%, as opposed to the original tariff rate for auto parts of 10%. The 60% threshold was applicable to both volume and value: if import parts constituted 60% or more of the total content or price of the vehicle, the imported parts would be classified as ‘complete vehicles’.

In other words, the categorization protocol pressured local manufacturers to use a minimum of 40% of locally manufactured parts in their production of cars. If not, auto manufacturers would be subject to pay a 25% charge for imported parts. Along with this new categorization, the government also brought in various related administrative procedures, including self-evaluations, vehicle registrations and verification investigations.

The US, the EU and Canada argued that China was acting inconsistently by discriminating against the use of foreign auto parts and subsidizing domestic production.

They argued that the measure was mainly inconsistent with:

- 1) GATT Article III:2 National Treatment in Taxes and Charges, because it imposed *internal charges* on imported auto parts that were not imposed on domestic parts; and
- 2) GATT Article III:4 National Treatment in Domestic Law and Regulations, because it had specified threshold for imported parts in assembled vehicles and required additional administrative procedures.

The complainants argued that the 25% charge and the onerous administrative procedures discouraged the use of imported parts by Chinese auto manufacturers, and the tariffs pushed foreign auto parts producers to relocate their facilities to China to avoid the charge.

WTO Ruling and Recommendations

On 18th July 2008, the Panel ruled that the 25% charge should be characterized as an “internal charge” to which Article III:2 applies, instead of an “ordinary customs duty”. The charge was not deemed a tariff because the auto manufacturers had to pay the charge instead of the importers, and the obligation to pay accrued *internally* once the auto parts had entered China and were already in use in complete vehicles (Panel Report). Furthermore, the Panel ruled that the measures were in violation of GATT Article III:2 because they imposed the internal charge only on imports, and GATT Article III:4 because the measure accorded imported parts less favorable treatment than like domestic products by subjecting imports to additional administrative procedures. The Panel agreed with the US, the EU and Canada’s argument that it did “create a disincentive for auto manufacturers to use imported auto parts”.

China contended that higher tariffs were necessary to prevent tax evasion by companies that imported whole cars as spare parts to avoid higher tariffs applicable to entire automobiles, but failed to provide sufficient evidence for its defense (ICTSD, 2008). China appealed on 22nd September 2008 but excluded the major contention of

violating national treatment obligations, and surprisingly did not pursue Article XX(d) on general exceptions. The Appellate Body upheld most of the Panel's findings.

2.3. Implementation and Post-Dispute Policies

China agreed to amend the offending measures by 1 September 2009, and it notified the DSB of its full implementation of rulings on 31 August 2009. The Chinese Government took the following steps for compliance:

1) Repealed Articles 52, 53, 55-57, and part of Article 60 of the contested “2004 Auto Policy” through Order No. 10 (by Ministry of Industry and Information Technology (“MIIT”) and NDRC);

- Article 52 had stated that “the state supports the auto production enterprises to make efforts to improve the local input of automobile products, promote the technical progress of automobile components and part enterprises”;
- Article 53 had mandated auto manufacturers that used imported auto parts to report to the relevant authorities and pay applicable customs duties;
- Article 55-57 had provided guidelines on the “scope of determination of the character” of complete vehicles; and
- Article 60 had allowed authorities to formulate detailed rules to implement the policy.

Revoking all the articles above removed the regulatory basis for introducing the 25 percent charge on auto parts and withdrew administrative procedures.

2) Revoked 2005 Administrative Rule through *Decision on Repealing the Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles*; and

3) Rescinded 2005 GAC Rule through Announcement No. 58 of GAC in 2009.

China abolished all the measures that violated WTO rules, and the USTR acknowledged that “China came to compliance with this ruling in September 2009 by repealing the measure at issue” (USTR, 2009). China demonstrated compliance in a timely manner and revoked the disputed measures.

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2.4. Analysis

As it was China’s first case to reach WTO litigation, China’s arguments demonstrated its unfamiliarity with the DSS and its misjudgment of the national treatment principle. In its oral statement, the US harshly noted that “although China’s first submission contains a considerable amount of material, very little of that material is relevant to the issues in this dispute. Most notably, China presented an extensive discussion of the complainants’ practices with regard to circumvention of anti-dumping duties, but this dispute had nothing to do with dumping” (DS339 AB Report, 2008).

Although China had lost the dispute and displayed a lack of familiarity with the DSS at the time, it could still benefit its industrial development agenda.

1. China withdrew when its localization goal was achieved

From the introduction of the 2004 Auto Policy to the withdrawal of the localization requirement in August 2009, China’s parts and components industry had five years to grow under the protection of discriminatory measures. By 2009, China hit a record high of 4.4 million domestic sales and production of automobiles and introduced independently-developed brands to the market (Haley, 2012).

During the five years, China had already achieved its policy objectives to encourage the use of domestically made auto parts. Domestic auto companies preferred to use local auto parts because imports incurred higher costs, and even foreign auto companies, such as BMW and Mercedes-Benz, indicated that their vehicles in China would achieve 40% or more of the “localized rate” and decrease the use of imports (Hsieh, 2009). Although quality and operational problems were reported about the domestic parts companies, such as sending mislabeled parts and sun visors that melted in the heat, foreign car manufacturers still opted to source their components locally to minimize costs (Takada, 2013).

Not only did the localization requirement encourage the use of domestic parts, the policy pressured foreign parts manufacturers to relocate their facilities and localize their supply chains in China. Unlike the vehicle manufacturing companies that had a 50% cap on ownership, the parts sector was not subject to any restrictions on foreign investment. This enabled international companies to wholly set up foreign-owned auto parts companies in China, without having to transfer technology and intellectual property. Thus, 70% of leading foreign auto parts companies—such as Bosch, Denso and Johnson Controls—moved their manufacturing bases and R&D facilities to China (Tang, 2012).

Although greater freedom on foreign investment did not force international companies to disclose their key technology, unlike in the auto sector, unpredictable mistakes by Chinese parts makers prompted foreign companies to send their experts to ensure the products met the firm’s high standards. For example, Nissan sent a team of

its Japanese engineers to work with local suppliers to make sure the products reached its quality standards (Takada, 2013). By having to meet the more exacting standards of the foreign-invested auto joint ventures, the Chinese parts suppliers were forced to improve their quality and become more competitive. The localization requirement pressured automakers to use local products that were of inferior quality, but motivated foreign companies to either establish their operations in China and/or assist domestic parts manufacturers in making their products more competitive.

2. New problems and changes in priorities

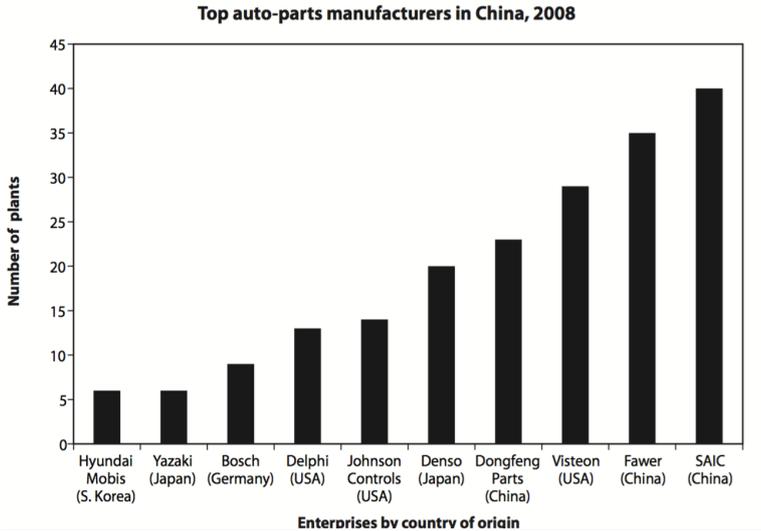
Five months before China even withdrew the localization requirement, in March 2009, the State Council announced its newly formulated three-year plan, entitled *Plan on Adjusting and Revitalizing the Auto Industry* (hereinafter “2009 New Auto Policy”). The new plan reaffirmed that the auto industry was a pillar of the state and emphasized its role in economic and social development due to its “long industrial chain, high relevance, involvement of numerous jobs, and powerful stimulus to consumption demand (State Council, 2009). The policy recognized that even though China had become a large auto-maker, problems such as “unreasonable industrial structure, low technical level, weak capability of independent development, and imperfect consumptions” had to be tackled through new initiatives.

In fact, the Chinese auto parts industry was achieving steady quantitative growth, but only 38 out of thousands of auto parts enterprises in China had annual revenues greater than \$146.4 million. This meant that the majority of domestic firms were stuck

at the bottom of the value chain and severely lacked economic substance and R&D capabilities (Haley, 2012). The number of foreign companies accounted for only 23% of all parts companies in China, but they had larger shares in revenues and operated at higher levels of the value chain.

Furthermore, foreign enterprises constituted seven of the 10 largest auto-parts companies, as measured by the number of plants [See Figure 6] (*ibid*). The three domestic firms were auto-part arms of China’s leading vehicle companies, SAIC, Fawer Automotive Parts (hereinafter “Fawer”) and Dongfeng (Haley, 2012). Even though SAIC and Fawer were the top auto-parts manufacturers in China, they did not appear in the rankings of *AutomotiveNews*’ Global Top 100 Auto parts suppliers until 2014 (2007-2010, 2015). This is rather surprising considering that China had risen to be the third largest producer of automobiles by 2006.

Figure 6: The Top Auto-parts Manufacturers in China, 2008



Source: Haley (2012)

China's lagging technology also manifested in trade discrepancies. China exported large volumes of parts and was ranked third in terms of trade quantity, while it ranked tenth in terms of trade value in 2006 [See Table 4 and 5]. With the exception of the US, China ran trade deficits with other major auto producers including Japan, South Korea and Germany (Haley, 2012). China's exports mainly still comprised low value-added, high-labor products, raw materials and consumables, while it imported higher-end parts and components (Deloitte, 2006). China's priorities clearly shifted from achieving the localization of parts and components to addressing high fragmentation issues and the low technological capacities of its domestic firms.

Table 4 (left): Top Auto-parts Exporting Countries in terms of Trade Quantity
Table 5 (right): Top Auto-parts Exporting Countries in terms of Trade Value (US\$)

Top Exporting Countries Quantity (2006)			Top Exporting Countries Trade Value US\$ (2006)		
1	Germany	4,367,286,710	1	Germany	37,258,044,000
2	USA	4,037,200,002	2	USA	33,511,038,647
3	China	2,806,989,507	3	Japan	25,867,218,155
4	Japan	2,581,899,456	4	France	16,911,994,202
5	France	2,310,449,454	5	Italy	13,174,653,758
6	Spain	2,228,979,870	6	Canada	13,143,484,594
7	Italy	2,127,901,122	7	Mexico	11,577,737,393
8	Canada	1,600,882,631	8	Spain	11,184,031,183
9	Rep. of Korea	1,444,058,953	9	Rep. of Korea	9,458,089,602
10	Mexico	1,393,154,366	10	China	8,848,851,697

Compiled by the Author
 Data: UNComtrade

3. New Protectionist Measures Crafted

To address these challenges, Section III and IV of the 2009 New Auto Policy highlighted its determination for nationwide merger and acquisition activities and the expansion of domestic firms' market share and exports. For the parts and components industry, the plan envisioned the consolidation of the manufacturing groups and independence in the technological development of key products such as engines, transmissions, drivetrains, suspensions and vehicle control systems (State Council, 2009).

The new policy contained a stimulus plan to revitalize the auto industry, which featured a reduction in the sales tax imposed on vehicles with small engines, the creation of a RMB 10 billion fund to promote R&D innovation, subsidies at both provincial and local levels to encourage new energy vehicles, the development of proprietary brands, and the building of “export bases” for autos and auto parts (USTR, 2009). Although the localization requirement was withdrawn, China had created a new industrial policy to nurture their domestic auto parts industry through the use of murky protectionist measures.

On 17th September 2012, Chinese automobile parts were under scrutiny once more. The USTR requested consultations with China—citing 84 policies, which included the 2009 New Auto Policy—in DS450 *China-Certain Measures Affecting the Automobile and Automobile-Parts Industries*. The US argued that the policies included measures that seemed to provide subsidies such as grants, loans, forgone government revenue, provision of goods and services and other incentives based on export

performance to the automobile and auto parts industries. This was inconsistent with SCM Article 3, which prohibits subsidies contingent upon export performance.

Under the policies, China designated 12 municipalities—including Wuhan, Tianjin, Chongqing and Shanghai—to become auto and auto parts “export bases”. The government disbursed extensive funds and support to these bases, with USTR Representative Ron Kirk claiming that exporters there received at least \$1 billion in subsidies (USTR, 2012).

After the consultation, the US affirmed that China repealed or did not renew key provisions concerning the export-contingent provisions of certain subsidies and other incentives. The USTR announced that it would continue monitoring the issue (USCC, 2017). In this case, the ruling had barely any impact on the domestic auto and the parts industry because many of the 84 policies that had been contested by the US, including the 2009 New Auto Plan, were set to end in 2011 regardless. This was even before the US even requested consultations to the DSB about the subsidies in 2012.

This case shows that it was more challenging for China to implement the WTO decision in the industry of auto parts than it was for the *China-Wind Power* case, as it had not fully achieved its industrial policy goals and the industry had been considered strategic for a much longer period of time. In addition, the WTO ruling did not play a decisive role in eliminating the WTO-inconsistent measures from subsequent industrial policies as China had begun to employ other means to continue sheltering its domestic industry. However, China’s implementation process showed that, if China’s measures

were challenged at the WTO, China would respond and make efforts to comply rather than completely defy the rulings.

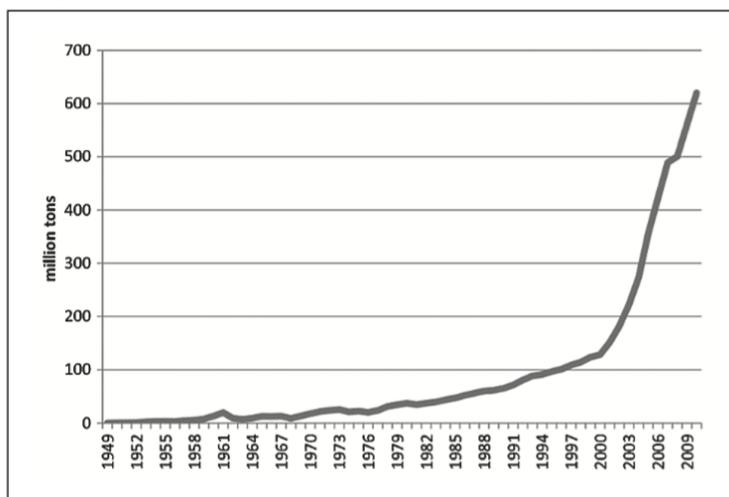
3. Grain Oriented Electrical Steel (DS414)

3.1. The Strategic Importance of the Steel Industry

Ever since the founding of the People's Republic of China, leaders have attributed great importance to the steel industry in supporting their economic development agenda. Steel was regarded as a basic precondition and a key driving force to industrialize the economy, and this dates back to the First Five Year Plan of 1953. The central government encouraged self-sufficiency in steelmaking capacity to expand its heavy industries by providing tax reductions and exemptions, subsidies and protection from anti-trust enforcement, and these incentives helped China transition from a net importer to the largest steel exporter in the world (Bru, 2016).

The rapid industrialization of its heavy industries, infrastructure development and residential construction resulted in a dramatic increase in the country's demand for steel, as China steadily improved its technological set-up over the years. This led to an expansion of steel production capacity, with an unprecedented ascent from the 1990s [See Figure 7].

Figure 7: Chinese annual crude steel output since 1949



Source: Popescu et al., 2016

In 1996, China surpassed Japan as the world’s leading steel producer, and it is currently both the world’s largest steel producer and consumer (WSA, 2012). Of all the top steel-producing companies in the world, Chinese companies represent five of the top 10 steel producers [See Table 6]. The Chinese steel industry—such as the HBIS Group (previously named Hesteel Group) and the Baowu Steel Group (the result of a merger of Baosteel and Wuhan Steel Group in 2016)—is monopolized by several state-owned enterprises (“SOEs”), with many small and medium-sized enterprises accounting for only a small share of the total output. The industry has directly employed more than 3 million people and many times more in supporting industries, and accounts for a substantial proportion of the entire workforce (WSA, 2012).

Table 6: Top Steelmakers in the World, 2016

Rank	Company	Country	Tonnage (million tonnes)
1	ArcelorMittal	Luxembourg-Indian	95.45
2	Baowu Steel Group	China	63.81
3	HBIS	China	46.18
4	NSSMC Group	Japan	46.16
5	POSCO	Korea	41.56
6	Shagang Group	China	33.25
7	Ansteel Group	China	33.19
8	JFE Steel	Japan	30.29
9	Shougang Group	China	26.80
10	Tata Steel Group	India	24.49

Compiled by the author

Data: World Steel Association (2017)

Policy Priority 1: Excess Capacity Issues in the Steel Industry

As growth in domestic demand stabilized and the export market declined in the wake of the 2008 financial crisis, overinvestment problems in Chinese steel production emerged. China's crude steel capacity utilization rate dropped from almost 80% in 2010 to 70% in 2015, and although the industry expanded its capacity to over 2,300 million metric tons ("MMT"), only 1,500 MMT was needed to meet global demand (Brun, 2016). The corporate debt-to-asset ratio climbed to over 70%, and what had been regional and structural overcapacity gradually gave way to absolute overcapacity (Greenpeace, 2017). This resulted in low profits and an influx of cheap steel on the global market, exacerbating the problem of overcapacity.

To eliminate this excess capacity, the central government subsequently made efforts to reduce crude steel production by setting targets for all relevant departments, provinces and SOEs to resolve the issue. The State Council of China released a development outline for the steel industry for 2009-2011, in which it mapped out comprehensive schemes to address the challenges of overcapacity and production fragmentation. The Notice from the MIIT emphasized the restructuring of the steel industry by encouraging mergers and acquisitions, the elimination of outdated production methods, increased industrial concentration based on market principles and improvements in enterprise competitiveness (2010).

Policy Priority 2: A Call for the Development of High-Technology Steel

Amid plans to curb excess capacity, the central government urged steelmakers to develop more technology-intensive and high-value-added products. There were discrepancies in the composition of Chinese steel imports and exports; China was a key exporter for medium-grade products such as hot rolled sheet or section steel, but mainly imported technology-intensive products such as hot/cold rolled thin sheet and electrical steel—the product at the center of the *China-GOES* case (Popescu et al., 2016). The 2009 Adjustment and Revitalization Programme highlighted that the steel industry’s “innovation ability is weak, and the advanced production technology, research and development, and application of high-end products are rudimentary and depend on imitation”.

The following 12th FYP's Development Programme for the Iron and Steel Industry continued to emphasize the upgrading of technology, stating that, “mass production should be realized in product segments with relatively high import shares – like high-strength steel for cars and various types of *silicon steel (electrical steel)*—to achieve self-sufficiency ratios in excess of 90%”. In a speech, Deng Qilin, the chairman of the China Iron and Steel Association (CISA), encouraged steel companies to promote product development to meet the demands of key development projects, to satisfy the demand of downstream industries and to displace imports of like products wherever possible (Der Heiden and Thomas, 2013).

What is Grain-Oriented Electrical Steel?

“Grain-oriented electrical steel”—also known as “silicon steel”—is used to produce energy-efficient power generators, transformers and motors. As a softer type of steel with high permeability and low energy loss, its production requires demanding processes and intricate technology (POSCO, 2017). This alloy steel is a niche product that generally yields high profits and it is an essential material for the new energy transportation industry.

The majority of Chinese steel mills were crippled by low technological expertise and quality standards, and the internal demand for top-quality steel had to be covered by imports. The need to produce electrical steel at home necessitated the upgrading of Chinese steel. As an underdeveloped area within the Chinese steel industry, the state had incentives to protect electrical steel imports from flooding its domestic industry.

3.2. Background to the *China-GOES* Case and the WTO’s Decision

On 1st June 2009, China’s MOFCOM initiated anti-dumping (“AD”) and countervailing (“CV”) injury investigations following an application by the WISCO (now merged with Baosteel) and Baosteel Group (hereinafter “Baosteel”) alleging that US Grain Oriented Flat-rolled Electrical Steel (“GOES”) producers received countervailable subsidies through 27 federal state and state laws. They claimed that subsidized imports were being dumped in the Chinese market, and that these imports caused material injury to its domestic industry.

The duties targeted two US producers of GOES, AK Steel Corporation (hereinafter “AK Steel”) and Allegheny Technologies Incorporated (hereinafter “ATI”), who were the only US exporters of electrical steel. In April 2010, MOFCOM issued a final determination for AD and CV duties for the US imports on MOFCOM Notice No. 21 [2010] including annexes [See Table 7].

Table 7: MOFCOM’s AD and CVD on US GOES Imports

	US Company	Final Determination (2010)
Anti-dumping duties	AK Steel	7.8%
	ATI	19.9%
	All Others	64.8%
Countervailing duties	AK Steel	11.7%
	ATI	12%
	All Others	44.6%

Compiled by Author, Data from MOFCOM (2010)

Five months later, the US requested consultations with China regarding China’s own AD and CVD measures on GOES, but the two parties failed to reach a resolution

on the matter. The US proceeded to request the establishment of the Panel to examine China's imposition of duties, claiming that MOFCOM No. 21 [2010] was inconsistent with China's commitments and obligations under GATT 1994, Anti-Dumping Agreement (ADA), and Agreement on Subsidies and Countervailing Measures (SCM). Among the 12 claims brought by the US, the US argued that China principally violated:

- 1) SCM Articles 11.2 and 11.3 Initiation of Investigation – Application
 - Claimed that MOFCOM initiated CVD investigation of 11 programmes without sufficient evidence to justify
- 2) ADA Article 6.8 and SCM Article 12.7 – Evidence using facts available
 - Argued that China calculated duties based on facts available to “unknown” US exporters and did not disclose essential facts
- 3) ADA Articles 3.1, 3.2, 6.9, 12.2.2 and SCM Articles 15.1, 15.2, 12.8, 22.5 – Injury determination and price effects analysis
 - Contended that price effects analysis was not based on positive evidence and objective examination
- 4) ADA Articles 3.1, 3.5, 6.9, 12.2.2 and SCM Articles 12.8, 15.1, 15.5, and 22.5 – Causation Analysis
 - Alleged that causation analysis was not supported by positive evidence or based on objective examination of evidence
- 5) Other issues included non-confidential summaries and public notice of calculations

The Panel issued its final report on 15th September 2010 and found that China had been acting inconsistently with the SCM Agreement in initiating CV investigations to all the programs challenged before. MOFCOM lacked “sufficient evidence” to justify the initiation of an AD and CVD investigation and failed to establish a causal link between subsidized imports and the alleged injury. Furthermore, the Panel determined that China's use of available facts, price effect analysis and causation analysis had

serious flaws and were “neither objective nor based on positive evidence” (DS414 Panel Report, 2012). The Panel ruled for the majority of the US’s claims. US Trade Representative, Ron Kirk, hailed the ruling as “the latest in a series of successful trade enforcement actions taken by the Obama Administration [...] [and] sends another clear signal to China that it must do more to fulfill its WTO commitments, and that it will be held accountable to play by the rules” (Financial Times, 2012).

China was dissatisfied with the ruling and notified the DSB of its intention to appeal certain issues. In its subsequent appeal, China did not include the Panel’s holding with regards to the initiation of investigations or other substantive issues (Prusa and Vermulst, 2014); instead, it focused on MOFCOM’s price depression and suppression findings and related disclosure of the underlying essential facts. The AB upheld the majority of the Panel’s main findings, claiming that the Panel was correct to conclude that China’s price effects analysis was inconsistent with the WTO rules, and that MOFCOM did not disclose “all relevant information on the matters of fact” (WT/DS414/AB/R).

3.3. Implementation and Post-Dispute Policies

On 30th November 2012, China stated its intention to implement the rulings and recommendations but expressed that it would need an extended period of time to do so. The parties could not agree on a time period, though, and the US requested for the “reasonable period of time” to be determined through binding arbitration pursuant to Article 21.3(c) of DSU (DS414/10). The arbitrator determined that China would have

eight months and 15 days from the date of adoption to comply, thereby setting a deadline of 31st July 2013 (DS414/12).

On the day of the deadline, MOFCOM issued a notice (MOFCOM No. 51 [2013]) about the *Determination on the Re-investigation of Antidumping and Countervailing Duties on Grain Oriented Flat-Rolled Electrical Steel Imports from the United States* (hereinafter “re-determination”) to execute the WTO’s recommendation of *China-GOES*.

The re-determination conducted by MOFCOM reduced the anti-dumping duties for “all other” US companies and all countervailing duties. However, only these producers, AK Steel and ATI, were still subject to the original anti-dumping rates [See Table 8].

Table 8: AD and CVD Rate Comparison of MOFCOM investigations

	US Company	Original Investigation (2010)	Re-determination (2013)
Anti-dumping duties	AK Steel	7.8%	7.8%
	ATI	19.9%	19.9%
	All Others	64.8%	13.8%
Countervailing duties	AK Steel	11.7%	3.4%
	ATI	12%	3.4%
	All Others	44.6%	3.4%

Compiled by the author with data from MOFCOM (2013)

Discontent with MOFCOM’s re-investigation duties, AK Steel and ATI argued that China had not adequately implemented the DSB rulings and recommendations. The

US requested the establishment of the DSU Article 21.5 Compliance Panel, and China’s implementation measure was challenged under the Compliance Panel for the first time. The Compliance Panel found that MOFCOM’s re-determination was not based on an “objective examination” or “positive evidence” because it still relied on a “defective” price effect analysis (WT/DS414/RW). Once again, China had failed to substantiate its claim that the increased volume of imports had suppressed or depressed domestic prices, and caused injury to its domestic steel industry.

The DSB adopted the compliance report on 31st August 2015, requiring China to implement its recommendations accordingly. China reported that the AD and CVD measures had already expired on 10th April 2015 [See Table 9]. US Trade Representative, Michael Froman, claimed a victory for the US, asserting that this case was the first time any country had challenged China over compliance and that the WTO report confirmed that the US was right (Miles, 2015).

Table 9: AD and CVD Rate Comparison after Compliance Review

	US Company	Original Investigation (2010)	Re-determination (2013)	After Compliance Panel Review
AD Duties	AK Steel	7.8%	7.8%	Expired 10 April 2015
	ATI	19.9%	19.9%	
	All Others	64.8%	13.8%	
CV Duties	AK Steel	11.7%	3.4%	
	ATI	12%	3.4%	
	All Others	44.6%	3.4%	

Compiled by Author, Data from WTO

3.4. Analysis

China-GOES was a notable case in that it was the first time China's compliance measures had been challenged, and it blemished its pristine record of no challenges under Article 21.5 of the Compliance Panel. China had fully delayed its implementation of the tribunal rulings until it was eventually challenged at the Compliance Panel. It is worth questioning why China decided to prolong this case and to withdraw its WTO-inconsistent duties at the very final stage of the dispute resolution process.

1. Buying Time to Protect the Domestic Industry

The structure of the WTO DSS does not oblige respondents to revoke or modify the contested measures until they are found illegal by the tribunals. In this case, China's antidumping and countervailing duties were found WTO-inconsistent but China resisted immediately withdrawing the measures. China, in essence, could minimize the impact of adverse WTO rulings by reviewing and appealing the original matter, initiating a re-investigation without making essential changes and not complying until the final stage of the dispute settlement process. In total, China had approximately six years to maintain the anti-dumping and countervailing duties from its first notice to impose the duties between June 2009 until their expiration in April 2015.

During this six years, the trading landscape of Chinese GOES products changed remarkably. China had imported US\$1.27 billion worth of GOES products from the world in 2009 but by 2015 this had drastically reduced to US\$244 million [See Figure 8]. On the other hand, imports rose from US\$14 million in 2009 up to US\$269 million

by 2015. The yawning gap between imports and exports substantially narrowed by the time China had lifted its import duties against the US. The Chinese government’s goal to foster the domestic production of electrical steel and to reduce the import volume slowly materialized.

Figure 8: China’s Total GOES Trade by Trade Value (US\$)



Compiled by the author, Source: UNComtrade

With regards to the trade volume with the US, imports from the US plummeted from approximately 34 million MT in 2009 to 1 million MT in 2016 as China started to impose AD and CV duties on US GOES. Meanwhile, China’s exports of electrical steel to the US surged from merely 560 MT in 2009 to 5 million MT in 2016 [See Figure 9]. According to these statistics, it was only from 2015 that China started to have a trade surplus from electrical steel, and this was also the year that US import duties were removed.

Figure 9: China’s Import Volume of Grain-Oriented Electrical Steel from the US



Compiled by Author, Source: UNComtrade

Domestic steel leader, Baosteel, also acknowledged its technological achievements in high-grade steel in its 2015 Annual Report. In the report, the Chinese steel giant emphasized its development and debut of “strategic products”, which included electrical steel. The report stated that its electrical steel product had earned approximately 45% market share in the Ultra-High Voltage AC/DC Grids engineering sector, and flaunted its success of becoming the first domestic steel company to supply the nuclear power sector. Baosteel also praised its own efforts to, “market these debut products to the extent that the technical advantages would be transformed into high profitability [...] as more than 10,000 tons of debut products were supplied in 2015, resulting in good economic benefit” (2015). The announcement of the “debut” of

electrical steel reflects how the product was previously still in its infant stages and was in need of greater protection from foreign companies.

The state also recognized breakthroughs in electrical steel to reach what it called a “foreign advanced level” in the 12th Five Year Period (2011-2015) (State Council, 2015). However, the next 13th Year Steel Industry Adjustment and Upgrading Plan (2016-2010) indicated that electrical steel needed further upgrading to the highest quality and to avoid vicious low-cost competition. The plans suggest that the infant industry was not still not considered ready to be completely exposed to competition. Therefore, it was in China’s interests to keep import restrictions intact while the *China-GOES* dispute was ongoing and to allow ample time to scale up its production and technology capacities.

2. Incremental Modifications, Resistance to Comply

China-GOES shows how China navigated its way through the loopholes of the DSB system to benefit its own economic agenda. While the industrial capacities for electrical steel manufacture were still maturing and policy goals not yet attained, China delayed its full implementation and kept import protectionist measures to help its domestic companies grow.

In each stage of the *China-GOES* dispute, China made minimal efforts to comply: its revisions did not seem to address the heart of the problem and were rather irrelevant. For example, after the Appellate Body decision, China reiterated that it had complied with the DSB by reducing “all other” US companies’ AD duties and CV duties.

However, AK Steel and ATI were the only two US GOES producers, and their duties had remained unchanged. China's modification to reduce all other companies' AD duties was pointless because there was simply no other US company that exported GOES to China. This incremental modification approach seemed to be almost testing how much, or how *little*, it had to revise its duties to make it WTO-permissible.

Furthermore, even though the Panel found that China did not have "sufficient evidence" to prove that US GOES producers were receiving subsidies from the government, it refused to revoke countervailing duties entirely; instead, it simply lowered them to 3.4%. It was only when the case was taken to the Compliance Panel that China withdrew all of its controversial measures against the US. China's action to implement circumvented the core issue and its modifications appeared to be cursory attempts to buy time and withhold compliance.

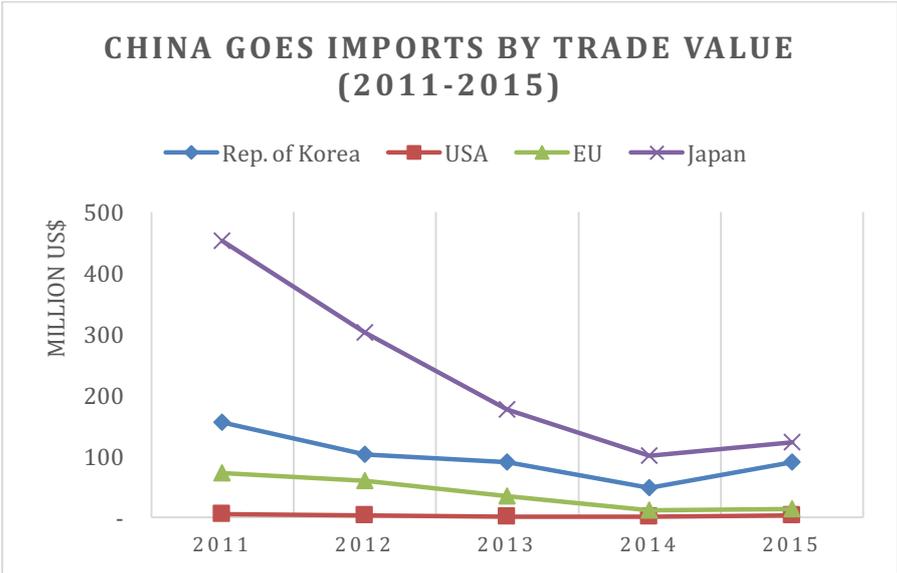
3. New players, "New" Antidumping Measures

Just when China seemed to finally be complying with the WTO at the Compliance Panel stage, MOFCOM began a new anti-dumping investigation on another group of electrical steel producers—Japan, Korea and the EU—only three months after the US measures had expired. MOFCOM's Notice No.23 [2015] claimed that Japanese, Korean and European imports were causing damage to China's domestic GOES industry, and thus decided to levy anti-dumping duties.

In fact, Japan, Korea and the EU import value of GOES products constituted a substantially larger import value than the US did. For comparison, the trade value of

imports from Japan accounted for about US\$ 301 million, Korea \$102 million and the EU \$60 million, while the US figure stood at a mere \$2 million in 2012 [See Figure 10]. The difference could have come from the AD and CVD measures imposed on US imports, but it clearly suggests that China’s bigger problem was the other three players.

Figure 10: Trade Value (US\$) of GOES Imports by Country



Source: UNComtrade

A closer examination of the “new” investigation reveals that, this time, China only conducted dumping investigations and excluded countervailing duties, which was the critical point of contention in the *China-GOES* case. MOFCOM issued its final ruling on its AD investigations in July 2016, and applied AD duties of 39% to Japan’s JFE Steel, 45.7% to NSSMC, and 45.7% to all other Japanese companies, with 37.3% to POSCO and all other Korean and EU companies [See Table 10]. Duties imposed on the

three competitors were much bigger than those imposed on US products, since China had imported most of its electrical steel from Japan and Korea.

Table 10: Comparison of AD and CVD duties on the US and Japan, Korea, and the EU

WTO DS414 (2010-2015)					New AD Investigation (2015- Effective Until 2021)			
	US Corp.	Original	Post-AB	Post-Compliance Panel		Country	Company	MOFCOM No. 33 [2016]
AD duties	AK Steel	7.8%	7.8%	Expired April 2015	AD duties	Japan	JFE Steel	39.0%
							NSSMC	45.7%
							All Others	45.7%
	ATI	19.9%	19.9%			Korea	POSCO	37.3%
			All Others				37.3%	
					EU	All	46.3%	
CV duties	AK Steel	11.7%	3.4%		CV duties	None		
	ATI	12%	3.4%					
	Others	44.6%	3.4%					

Compiled by the author, Source: MOFCOM Notice 23 [2015]

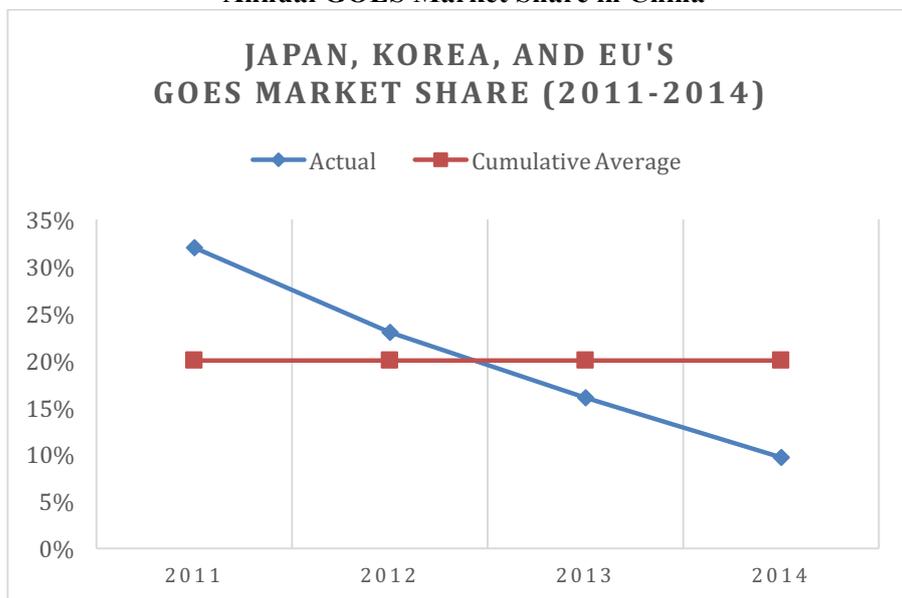
To evaluate the WTO-consistency of the new investigations, it is crucial to consider whether China adequately modified its methodology to reflect the DSB recommendations. This section will look into the details of the new AD investigation to determine whether China made material changes to these new measures.

In *China-GOES*, the key issue was whether the dumped imports had caused material injury to China’s domestic industry. To prove harm from imports, China had to demonstrate that imports suppressed or depressed prices, which prevented price increases “which otherwise would have occurred” (WT/DS414/R). First, China had to

demonstrate that there was a significant increase in dumped imports, in absolute or relative terms, for production or consumption.

Based on the annex of MOFCOM Notice No.23 [2015] (hereinafter “new investigation”), the import volume of Japan, Korea and the EU actually declined each year from 32% in 2011 to 9.7% in 2014—this does not seem to satisfy the first requirement of a significant increase in import volume. China contended that even though the import market share was decreasing, the “cumulative average market share” over the four years was 20%, which was significant. However, the cumulative average inflates actual import market share, since it fell below 20% after 2012 and continued to decrease until it was less than 10% in 2014 [See Figure 11].

Figure 11: MOFCOM’s Findings of Japan, Korea and the EU’s Collective Annual GOES Market Share in China



Data Source: MOFCOM (2015)

In its defense, China argued that even though the import market share had, in fact, decreased, the dumping import price had significantly reduced. The MOFCOM notice claimed that the, “investigated products are of comparable quality to domestic similar products, competitive and substitutable, and the price is an important factor in downstream customer’s purchasing decision. The drop in import price under investigation brought obvious pressure for price reduction to the applicants, which was the root cause of the deterioration of domestic industry” (MOFCOM No. 33, 2016).

However, the new investigation demonstrated efforts taken by MOFCOM to reflect the recommendations of the DSB. A significant change was how the price analysis had been made more accurate through the disclosure of domestic prices. Whereas MOFCOM had withheld the publication of domestic GOES prices in the US investigation, the new investigation for Japan, Korea and the EU revealed domestic prices for a more objective examination. China argued that its domestic industries were forced to adopt price-undercutting sales methods to compete with imports, and imports were preventing Chinese industries from reaping greater profit margins and the benefits of economies-of-scale (MOFCOM No. 33, 2016).

As easy as it is to deem China’s new investigation a “cursory attempt” to become more WTO-consistent, this case was nevertheless fairly trivial. Some scholars, such as Qin and Vandebussche, argue that the *US-GOES* rulings lacked a clear standard by which to identify the effect of price suppression and depression under ADA 3.2 and SCM 15.2, which could create confusion for Member countries conducting WTO-consistent and AD and countervailing measures (2017). The authors observe that the

Panel did not address what constitutes a “proper” price effects analysis, and therefore China was not informed of the expectations and criteria for a satisfactory analysis (*ibid*). As suggested, ambiguous standards could have hindered China’s adequate compliance; nonetheless, China still failed to produce a strong counterfactual analysis of imports causing injury and replaced the measures against the US with an equivalent targeting Japan, Korea and the EU.

4. Learning Process: Reference for when the role switches

Moreover, China could potentially benefit from this case because it usually sits on the other side of the table, being the world’s most popular target of AD and CVD actions. China has been the subject of almost half of all AD and CVD cases and has been criticized for its consistent use of prohibited subsidies. Prusa and Vermulst suggested that MOFCOM could have been imitating the US and EU practices when they filed AD/CVD complaints against China (2014). Frustrated by “vague references to long defunct government programs [as] an acceptable basis for [CVD] applications,” China’s defiant implementation could have stemmed from its dissatisfaction with the inadequate investigations and non-implementation of other major countries (*ibid*). The reasoning in the Panel and Appellate Body Reports could serve as guides to argue against the US, the EU or Japan’s AD/CVD investigations when the position reverses and China is accused of dumping.

In fact, shortly after the DS414 *China-GOES* case, China filed six consecutive complaints that were related to anti-dumping, countervailing duties and price-comparison methodologies.²

² *US-Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades* (DS422); *US- Countervailing Duty Measures on Certain Products from China* (DS437); *US- Countervailing and Anti-Dumping Measures on Certain Products from China* (DS449); *US-Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China* (DS471); *US-Measures Related to Price Comparison Methodologies* (DS515); *EU-Measures Related to Price Comparison Methodologies* (DS516)

V. Conclusion

A quick glance at China as a respondent to WTO disputes reveals a record of good compliance with the decisions of the DSS. China's implementation measures have barely been challenged under the Article 21.5 Compliance Panel, and China made regulatory revisions even though they directly affected sensitive national industries. This stands in stark contrast to the behavior of major developed countries, which, when respondents in compliance panels, have blatantly resisted the implementation of WTO decisions.

The case studies presented above have revealed that China's quality of compliance has depended on the maturity of the industry in question and whether the goal of the relevant industrial policy had already been attained. The wind turbine industry only had a notable presence for five years before the case concluded, being a key industry only from 2006, whereas the auto and steel industries had been considered strategic ever since establishment of the PRC. Thus, the renewable energy industry had greater flexibility to adjust policies as there were fewer stakeholders, and the subsidies were promptly removed because it was in the interests of the central government to do so for qualitative growth. Meanwhile, for auto parts and steel, the government needed more time to achieve its goals—to effect localization and to foster technological growth for its infant product—which made it more difficult to withdraw the measures in a shorter timeframe. When the goal had been somewhat achieved, and it became convenient to do so, China chose to comply with the WTO rulings and recommendations.

A closer examination of China's implementation measures, however, shows that they did not amount to complete compliance. Although China implemented the rulings in a timely manner, the revisions were not annulled or revised in a manner to effectuate the ruling. As revealed in the wind power, auto parts, and electrical steel case studies, China lost little from adhering to the WTO rules; China's domestic restructuring and policy priorities evolved faster than the WTO and so it was able to maintain its illegal measures until they were redundant, while, in other cases, the measures simply expired by the time China was obliged to withdraw them.

Moreover, inconsistent regulations remained in other forms, either through subjecting other countries to similar measures or introducing new regulations that contained other trade-restrictive measures. The limitations of the DSS allowed China to maintain inconsistent measures while the matter was under review, and the prospective nature of reparation did not induce China to craft new policies that better reflected WTO norms. One dimension of China's participation in the WTO points to its socialization into international norms, but another reveals its inclination to flout DSB rulings when deemed a hindrance to industrial growth.

There are limitations to this study, as China's lack of experience in international tribunals could partially account for its unfamiliarity with WTO proceedings and its fragmentary compliance. In addition, hasty praise for China's compliance based on the sheer number of Compliance Panel proceedings should be withheld because the US and the EU have been respondents to more than double the number of cases than has China.

However, as China has gained more WTO litigation experience over the years, it has also learned to test the boundaries of the system to advance its own agenda.

Further studies could be conducted on whether and how the WTO should craft a set of legal rules to address trade-distorting behavior that stems from non-implementation issues in China. Although the WTO system has largely been effective in resolving trade issues arising from China, clearer legal rules are needed to address the legality of Chinese behavior to prevent Members attempting to resolve the matter bilaterally, which has the potential to spark trade wars. It is indeed startling that the countries that once championed the establishment of the multilateral regime are now taking the lead in resolving trade disputes bilaterally in their own fora.

Nevertheless, it should be noted that China is exhibiting an unusual willingness to adhere to the rulings of the WTO, compared to those of other tribunals that cover the issues of human rights, labor or territorial disputes. China's imperfect but consistent record of compliance with the decisions of the DSB suggest its desire to establish itself as a leader of the global trading regime, and its demand for respect and prestige as a rising power. It remains to be seen whether China's elevated status will mark a different kind of leadership in the international system or if it will simply follow the well-established pattern of a great power.

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Abstract (Korean)

국문초록

중국은 국제법을 위반하고 국제재판소의 판결을 수용하지 않는 것에 대해 자주 비판 받아왔던 반면, WTO 분쟁해결기구에서의 판정에 대해서는 불리한 결과에 대해서도 적극 수용하고 개선하려는 모습을 보여 왔다. 이는 WTO의 판정과 권고에 따른 국내 제도 개선의 이행을 지연시키고 저항하는 미국 및 유럽연합 등 주요 경제권의 행태와는 매우 대조적인 것이다.

본 논문에서는 그간 중국의 무역제한적인 정책에도 불구하고, WTO 판정 이후 주목할 만한 이행 결과를 보였던 배경을 분석해보고자 한다. 이를 위해 우선 중국의 주요 산업군인 재생에너지, 자동차, 철강 분야와 관련된 WTO 분쟁해결기구의 판정과 그 이행 과정을 살펴본 뒤, 관련된 중국내 구조조정과 정책의 우선순위 변화도 함께 연구해 WTO 판정 이행과정에서의 중국식 패턴을 모색하려 한다.

결과적으로 본 논문은 WTO 분쟁해결제도의 절차와 비교했을 때 중국 내 국내 산업 성장과 이에 따른 해당 산업의 구조조정 및 정책 변화가 더 빠르게 진행되었기 때문에 판정에 대한 순조로운 이행이 가능했음을 증명한다. 연구에 활용된 사례 분석에 따르면 중국은 제소된 조치들에 대한 판정이 나오던 시점에 이미 해당 조치가 불필요하거나, 더 이상의 효력이 없거나 아니면 이를 대체할 정책이 시행되고 있었을

때에 한해서 WTO 의 판정을 잘 이행했던 것으로 확인되었다. 본 연구는 중국을 비롯한 유사 WTO 회원국들이 현재 WTO 분쟁해결제도의 한계를 오용하고 있는 것을 통찰함과 동시에 국제통상체제에서 보다 책임 있는 역할을 수행해야 할 중국의 행위에 대한 시사점을 제공한다.

주제어: 규정준수; WTO; 분쟁해결제도, 중국, 산업정책, 전략산업; 이행

학번: 2016-25001