TRADE DISPUTES BETWEEN CHINA AND THE EU

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Executive Summary

1. The European Union is China's biggest trade partner and China is EU's second after the US. However, EU's trade deficit, which is still surging, and disputes, which are looming on the horizon, may threaten to worsen China-EU economic relations.

2. The hundreds of billions of trade deficit that EU suffers annually dwarf all other trade disputes combined, with repercussions felt throughout the world.

3. As economic development relies heavily on exports, China's export to the EU was given emphasis, particularly against the backdrop of a slump in the US economy. This is primarily responsible for the widening trade deficit.

4. However, more blame is often placed on the renminbi exchange rate. The renminbi has been perceived as undervalued, thus giving Chinese firms an advantage when exporting to Europe and beyond.

5. Whilst reminbi has since July 2005, appreciated about 20% in value against the US dollar, it has weakened some 10% against the euro during the same period, contributing in part to the rising trade deficit.

6. In this context, the exchange rate clearly dominates other disputes in its quantitative impact, and that is where a discussion of current China-EU economic relations must begin.

7. Even if China revalues its currency, other conflicts may also shape China-EU trade relations and China-EU relations in general. These include the textiles and clothing issue, perceived abuse of trade defense instruments, EU's demand for further market access and intellectual property rights (IPR) protection, and China's call for market economy status, with Chinese raw material export adding to the litany of commercial disputes.

8. In line with a more assertive China in trade practice, the EU has begun treating China as a mature WTO member and is likely to push China harder to trade fairly, and meet its WTO obligations, which implies more confrontations and disputes.

9. From a purely legalist point of view, trade disputes between China and the EU were managed through their willingness to use legal channels (e.g., the High Level Economic and Trade Mechanism) and other WTO mechanisms.

10. However, there is still a possibility of mismanagement of trade disputes between China and EU member governments when they bow to internal political pressure to mount protectionist measures against Chinese exports or when the EU adopts an idealist approach to the human rights issue in China.

11. For the EU, the real question is how to help China open its market to more imports and its industries to foreign investments that it still considers as strategic and to provide more incentives for China to protect IPRs.

12. A smooth and healthy China-EU trade relation will finally hinge on the EU's patience and skills in dealing with a rising China.

TRADE DISPUTES BETWEEN CHINA AND THE EU

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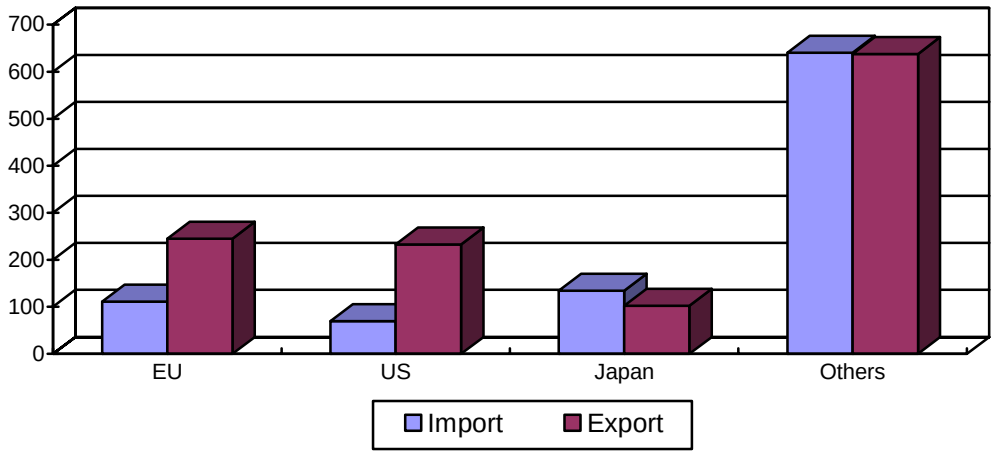
Robust China-EU Trade Relation Overshadowed by Prospective Disputes

1.1 Trade between China and the European Union has been spurred by the liberalization of markets after China's accession to the WTO. While the EU's open market has been a large contributor to China's export-led growth, it has also benefited from the growth of the Chinese market. China is Europe's fastest growing export market. Indeed, the commitments made by China in its accession to the WTO have secured improved access for EU firms to China's market. Many import tariffs and other non-tariff barriers were sharply and permanently lifted.[1]

CHART 1 CHINA'S EXPORT AND IMPORT IN 2007 (Billions of US dollars)



Source: Chinese Ministry of Commerce statistics, http://ozs.mofcom.gov.cn/date/date.html?878713802=201021409

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[1] China's market is also relatively open. For example, China's average nonfarm tariff is 9%, while India's average rate, by contrast, is more than 16%.

China's WTO compliance[2]

1.2 While China has made good progress in implementing its WTO commitments, there are still outstanding problems. Barriers to trade in China are estimated to cost EU businesses €20 billion in lost trade opportunities every year. That is equivalent to New Zealand's total imports, or Bulgaria's total GDP. It is one third of the current EU exports to China.[3] Market impediments are generally held responsible for the trade deficit.

1.3 The surging trade deficit also highlights the acuteness of the issue of renminbi evaluation. Renminbi has, since July 2005, appreciated 21% in value against the dollar. To the dismay of the EU, during this same period, the renminbi has weakened some 10% against the euro, damaging European competitiveness.

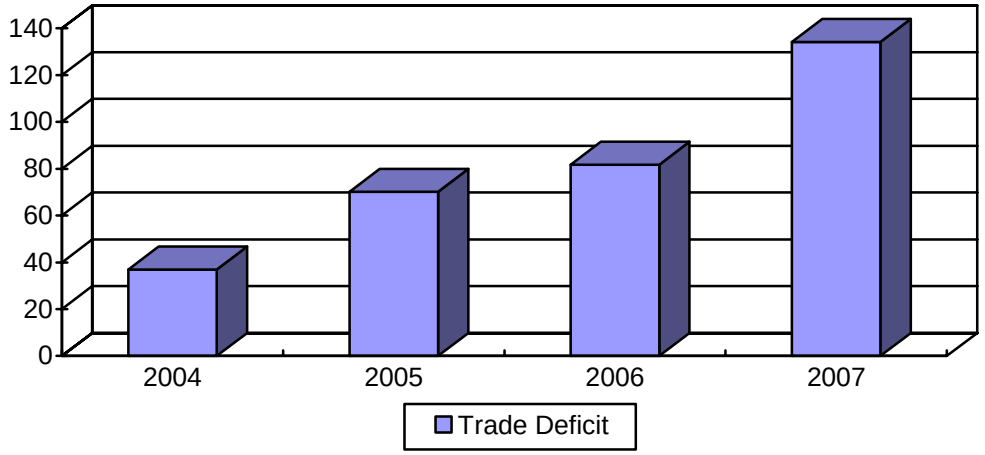
Trade Deficit

1.4. Though the EU enjoyed a trade surplus with China at the beginning of the 1980s, it is now experiencing a sizeable and widening trade deficit with China. In 2007 the figure was US$134 billion. Although a large consumer market is developing in China, the EU still exports more to the 7.5 million people who live in Switzerland than to the 1.3 billion people who live in China.

[2] For an elaboration of EU's monitoring of China's compliance with its WTO commitments, see KONG Qingjiang, 'EU's Monitoring Of China's Compliance With WTO Obligations', *EAI Background Brief No. 417*, 4 December 2008.

[3] See 'Trade barriers cost EU billions in lost business in China', *International herald Tribune*, February 19, 2007.

CHART 2 EU'S TRADE DEFICIT WITH CHINA
(Billions of US dollars)



Source: Chinese Ministry of Commerce statistics,
http://ozs.mofcom.gov.cn/date/date.html?878713802=201021409

1.5 It is natural for a high-cost developed economy to run a deficit with a low-cost efficient economy; it is the size of the deficit, and a rising one, that causes concern. In the eyes of protectionists, the deficit reflects considerable access problems EU businesses have in the Chinese market. Under trade deficit pressure, the European objective is to either reduce Chinese imports or increase European exports to China. While the former is tantamount to a protectionist reaction, which will certainly lead to contention with China, the latter requires unfettered market access in China. This again is a bone of contention as Beijing insists that market access exists, while European companies insist otherwise.

Renminbi Revaluation

1.6 It has long been argued that the renminbi was undervalued against the US dollar on the order of 25 to 40 percent.[4] There has been a growing chorus that the peg was unfairly helping China gain shares in global markets and the value of the renminbi should be raised or immediately floated to let market forces decide its value. In the eyes of the critics, China's exchange rate policy allows

[4] Mary Amiti and Caroline Freund, 'An Anatomy of China's Export Growth', *Mimeo*, July 13, 2007.

Chinese firms to export goods to the EU at artificially low prices, resulting in EU job losses.

1.7 However, Chinese processing industries are unhappy to see a sharp rise in the renminbi value, which hitherto would eat into a substantial part of their thin profits from the export market. China fears that an abrupt move to a freely floating exchange rate, particularly if accompanied by an abolition of its controls on financial outflows, could trigger capital flight and jeopardize its economy in view of the fragility of its banking system.

1.8 Accordingly, the mounting EU and US pressure has induced only slight changes in the Chinese exchange rate regime. Since July 2005, renminbi has appreciated in value against the dollar; it has weakened some 10% against the euro. Economists argued that the problem is with the weak dollar and not the strong renminbi, and so long as the Chinese currency continues to track the dollar.

1.9 Protagonists contend that the undervalued renminbi violates Article XV(4) of the General Agreement on Tariffs and Trade (GATT) and the WTO Agreement on Subsidies and Countervailing Measures. To force a substantial revaluation, interested US groups are looking to advance a case against China in the WTO. It is likely that the EU will join hands with the US in this again. However, the chances of a US (and EU) legal victory in the WTO are modest as the WTO Dispute Settlement Body (DSB) would most likely reject the claims. Similarly, a policy case against the renminbi value can be made with the International Monetary Fund, but a legal case has no supporting precedent and faces an uphill battle.

1.10 Trade imbalance, in conjunction with lesser market access opportunity underscoring EU's concerns over the bilateral trade relations, may give rise to disputes, if not addressed or improperly addressed, and damage trade relations between China and the EU.

China's Concerns

Major target of Antidumping

2.1 China is the major target of EU's trade defence investigations, including antidumping, countervailing, safeguard measures and other trade remedies. The EU has accused China of overproducing and dumping key sensitive products like steel and textiles, and has responded with anti-dumping measures under both EC regulations and WTO Antidumping Agreements.[5] In fact, China is the biggest target of EC antidumping investigations.[6] The EU even extends its anti-dumping duty against Chinese products produced in other customs territory.[7] Although covering less than 2% of Chinese trade, the 41 EC antidumping measures currently in place against Chinese imports have greatly impacted Chinese exporters.

2.2 Moreover, under existing EC regulations on antidumping, Chinese imports are in an even more disadvantaged position, since the built-in mechanism in the EC regulations is likely to be manipulated. The method of "analogy country", for example, is widely used by the EC to calculate the dumping margin in antidumping cases. This practice is discriminative in nature and denies the comparative advantage of the Chinese enterprises.

2.3 China is concerned with the EC using the "analogy country" methodology. Chinese enterprises' pleas over the choice of the methodology are usually not accepted by the EC. It is not clear whether the criteria for determining "analogy country" relates to the level of development of the countries

[5] The European Confederation of Iron and Steel Industries (Eurofer), alone, initiated 4 anti-dumping complaints against steel imports from China in five months starting late 2007.

[6] From 1 January 1995 to 31 December 2005, the EC initiated 327 anti-dumping proceedings, nearly all of which were against imports from emerging countries, including China (60 cases), India (27), Korea (25), Taiwan (19), Russia (16), Thailand (15), Malaysia (13), Indonesia (12) and Poland (10). In contrast, there were only 8 cases against Japan and 9 against the United States.

[7] For example, on April 29 2008 the EC extended a 16.5-percent anti-dumping duty on Chinese leather shoes to Macao, which the EU alleged was used by Chinese shoemakers as a transit for re-exports to Europe. The duty was previously imposed by the EC in October 2006 on Chinese leather shoes.

concerned, or the respective production processes, or the comparability of the products, or the comparability of the respective industries.[8] The fact that China remains the primary target, together with the manipulative practices in antidumping, has caused great concerns among Chinese companies.

China-Specific "Non-market Economy" Denomination

2.4 Closely related to EU's antidumping and countervailing measures is China's non-market economy (NME) status. China is currently treated, in anti-dumping and countervailing measures, as an economy in transition, assuming prices and costs are influenced by the state. Other countries can use prices of third-country markets as benchmarks to compare domestic prices to determine if China is dumping or over-subsidizing products.

2.5 If China gains NME recognition, investigating authorities will have to use prices and costs reported by individual companies in question, subsequently boosting China's ability to fight anti-dumping charges.[9]

2.6 However, in a report on 28 June 2008, the EC clearly concluded that China is not yet a 'market economy'.[10] Rather, it listed four conditions for China to fulfill: reduce state interference of companies; increase level of compliance with accounting law; ensure equal treatment in bankruptcy law and respect for property and IPRs; and apply market rules in the banking sector. The fact that the conditions are quite subjective shows that the EC is reluctant to forgo the

[8] For example, the EC investigating authorities had chosen the US and Japan, which are not at a similar level of development as China, as analogy countries for some antidumping investigations against Chinese imports. It is irrelevant to take the domestic prices of those countries as a benchmark for the normal value in China. Even scholars from the EU call for transparency of EC procedures for antidumping investigations. André Sapir, Some Ideas for Reforming the Community Anti-Dumping Instrument, Brussels, 11 July 2006, available at http://trade.ec.europa.eu/doclib/docs/2006/august/tradoc_129815.pdf.

[9] Not long after its accession to the WTO, Beijing launched an economic diplomatic campaign to solicit recognition of its NME status worldwide. It has acquired NME recognition from New Zealand, Singapore, Malaysia, Thailand and Kyrgyzstan but is awaiting approval from the US and the EC, its biggest trading partners.

[10] *International Herald Tribune*, 29 June 2004, p.15.

leverage that can be used to punish China for noncompliance or induce China to give more concessions. China is clearly resentful of such a treatment.

Textiles-related Trade Defense Instruments Specifically against Chinese Products

2.7 Before the termination of the Agreement on Textiles and Clothing (ATC) at the end of 2005, China expected the EU as well as the US to eliminate all existing restrictions on the import of textiles and clothing products from 1 January 2005 in accordance with the requirement of the ATC. However, what China noticed with concern was the signs of increasing use of trade remedies by the EU. Indeed, the EC had in place product-specific safeguard measures targeted at textiles and clothing products which were fully integrated into normal GATT rules and disciplines as it took full advantage of China's commitments to WTO accession.[11] In return China threatened to retaliate.

2.8 To avoid an imminent trade war, both China and the EU were forced to negotiate and reach an agreement which could be rightfully referred to as a "voluntary restraint arrangement" on the part of China.[12] The agreement placated the dispute on Chinese textile exports in the years that followed. As quotas in the 2005 bilateral textiles and clothing agreement are set to expire by the end of 2008, textile and clothing trade disputes are certain to continue for another decade or longer, which will test the patience of the industries concerned and governments of the EU and China. It is unknown whether the

[11] Paragraph 242 of the Working Party Report on China's Accession.

[12] Voluntary Restraint Arrangement (VRA) originated from Japan in its response to pressure from the US concerning Japanese textiles in 1957, which seemed to become a routine response of Japan in the 1970s and 1980s when facing mounting pressures from its biggest trade partner, the US. The agreement of 10 June 2005 between China and the EU was designed to manage the growth of Chinese textile exports to the EU until 2008. The deal ensured a period of adjustment for textile industries in the EU. The highlights of the Agreement are Chinese textile exports to the EU in 10 categories of concern that were limited to agreed growth levels until the end of 2007; this agreement covered 10 of the 35 categories of Chinese imports liberalised on 1 January 2005: pullovers, men's trousers, blouses, t-shirts, dresses, bras, flax yarn, cotton fabrics, bed linen, table and kitchen linen. The EU agreed to end the ongoing investigations concerning these product categories; the agreement limited growth in imports in the 10 categories to between 8 and 12.5% per year for 2005, 2006 and 2007. These levels would be calculated on a base that included either two or three months of post-quota trade levels in those categories for which growth was initially set at 8% where agreed growth rates would rise over the three-year period. For categories not covered by the agreement, and for 2008, the EU undertook to exercise restraint in the application of its rights under Article 242 of the Protocol on the Accession of China.

Chinese government will bow to the pressure to acquiesce to the new voluntary restraint arrangement for textiles export when disputes escalate.

Complicated EC Technical/SPS Standards/Environment Criteria

2.9 The EU is famous for its great number of stringent and sophisticated technical regulations and standards for consumer products and food. Although they were made under the claimed purpose of protecting human health and life, as well as in the consumers' interests, inappropriate application would lead to trade protectionism, which would exert a negative impact on EU-bound Chinese exports which are subjected to no or less sophisticated standards in China. These standards, in actuality, are green barriers.[13]

2.10 Chinese firms are often unprepared for these mounting regulations and standards which are subject to frequent revision, causing resentment to grow. Moreover, EC standards affecting Chinese imports are either complex or opaque, and to the Chinese, the EC's standards or their implementation are not necessarily scientifically based. Of products withdrawn from the European market because of consumer faults, about half come from China.

Abuse of Trade Defense Instruments against Imports from China

2.11 There are cases where the EU is found to abuse trade defense instruments against imports from China. On one occasion, China accused the EU of adopting double standard towards imports of Chinese products. When Chinese firms sold coke in the European market at lower prices, they were charged for dumping and levied an antidumping duty in 2003; when the Chinese government restricted coke exports for environmental reasons in 2005, the EC threatened to bring the case to the WTO. This was sheer evidence of double standard.

[13] For example, in May 2002, the European Standardization Committee published the standard set for lighters — one-off lighters of less than €2.00 have to be equipped with a safety device to prevent children's ignition. This is tantamount to forcing China-originated lighters out of the EU market. See EN 13869:2002 (child resistancy in lighters).

2.12 More alarming to China is the EU's inclination to apply two or more trade measures simultaneously. For example, European firms and the EC were found to use intellectual property rights protection and antidumping measures against Chinese imports. A typical example is the import of China-made DVDs players and DVD discs. When Chinese manufacturers of DVD players were accused of intellectual property rights infringement, the EC concurrently launched anti-dumping investigations against Chinese DVD discs in August 2005. [14]

Arms Sales Embargo

2.13 Last but not least important is China's resentment towards EU's arms embargo that has been in place since the 1989 Tianamen incident. The issue is more about politics than about trade. However, China sees it as a test stone of the strategic partnership, which has certainly impacted on China-EU relationship and on the mutual trust between the two parties, which is crucial to maintaining a smooth trade relation. Moreover, EU's maintenance of the arms sales embargo could sometimes trigger irrational Chinese response to trade issues, and subsequently trade disputes.

China-EU Trade Disputes: Misplaced or Manageable?

3.1 For the foreseeable future, trade disputes between China and the EU cannot be avoided. It should be pointed out that from purely legalist point of view, the trade disputes between China and the EU were managed through the use of the WTO dispute settlement mechanism (DSM) and the TPRM; both parties' willingness to use the legal channels; and China's gradual adeptness in using them.

[14] EU starts anti-dumping investigation against China's DVD, *People's Daily*, August 6, 2005.

3.2 Empirical evidence shows that the use of a sound DSM by one party has the effect of defusing mounting political pressure and the resort to unilateral trade measures on the part of the other party.[15]

3.3 The EU will not hesitate to use the DSM to engage China over specific trade concerns. Since China's WTO entry, the EC has launched 2 complaints or joined the US in making a complaint against China.[16] The latest case is that of 3 March 2008 when the EU formally requested consultations at the WTO over measures that affect the operation of foreign financial information suppliers in China. China has prevented foreign suppliers of financial information services from providing their services directly to their clients.[17]

3.4 China, which has been brought to the DSB eight times since its WTO accession,[18] no longer views the use of the DSM as hostile, and instead, views lengthy negotiations as a normal way mature trading partners used to resolve their differences. Moreover, China is learning to use the DSM particularly by way of third party involvement in disputes and has become comfortable with using the mechanism.

3.5 The EU also uses the regular TPRM to address its concerns.[19] In this respect, it treats China as a normal and important trading partner, and uses the review to press China on key issues such as government interference, transparency,

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[15] It is not difficult to find two disputing countries ceasing their rhetoric wars after they refer a dispute to such international ajudicatory institutions as the International Court of Justice or the WTO's DSB. The recent case between Singapore and Malaysia over Pedra Branca is an example.

[16] The EU joined the US in the first ever complaint against China in the WTO over tax breaks for chip makers in China. http://www.iht.com, 1 April 2004.

[17] Foreign suppliers are now required to operate through an agent under the umbrella of Xinhua itself. Moreover, Xinhua has recently launched a financial information service in direct competition with foreign suppliers. The Chinese measures appear to breach China's General Agreement on Trade in Services commitments on national treatment and market access, which require that foreign companies operating in China are not treated on less favourable terms than local ones. It is also contrary to obligations not to cut back on existing rights for companies and to provide regulatory independence, which China committed to ensure at the time of its WTO accession in 2001.

[18] See WT/TPR/S/161, 28 February 2006 and WT/TPR/S/199, 16 April 2008.

[19] Trade Policy Reviews (TPR) are an exercise, mandated in the WTO agreements, in which member countries' trade and related policies are examined and evaluated at regular intervals. Significant developments that may have an impact on the global trading system are also monitored.

standards, intellectual property rights protection and discrimination against EU firms.[20] China has also taken advantage of the TPRM to challenge the EU in relation to those EC trade measures which were perceived as unfair.[21]

3.6 Legalistically, the possibility of trade disputes is minimised if parties refrain from exercising their rights that are made available by the Protocol on the Accession of China (to the WTO). Of course, the EU can apply trade defense instruments justified under the WTO Agreements. In industries where Chinese imports are rising rapidly and genuinely affecting domestic EU firms, the EU may apply the time-limited defense mechanism.[22] Similarly, to reduce prospective disputes between the EU and China, China should be granted market economy status earlier.[23]

3.7 However, there is still a possibility of a mismanagement of trade disputes between China and the EU in a broader context, where the legal mechanism is of little assistance. China-EU trade relations are an intricate phenomenon, and changes in the nature of China-EU trade relations mirror the political and economic settings between the two parties.

3.8 In this regard, it might be helpful to bear in mind that given that the two economies are deeply interconnected and interdependent within global production networks, the deficit is largely a structural one driven by the process of global production sharing. The widely held view that China's rapid penetration of the European market is driven by unfair trade practices needs to be reexamined. To shun domestic political pressure, EU policy makers could

[20] On the second TPR from 21-23 May 2008, for example, the EU submitted more than 170 questions to China.

[21] On the TPR of EU on 25 and 27 October 2004, for example, China addressed 36 trade issues with the EC.

[22] Technically speaking, for the sake of avoiding direct confrontation with China, the WTO Safeguard Agreement is preferable to Article 16 of the Protocol on the Accession of China (which allows for product-specific safeguard measures against China). That is to say, the EU would shift to normal safeguard measures ahead of the 2013 expiry year of Article 16.

[23] This would mean that ahead of the 2016 expiry year of Article 15 of the Protocol on the Accession of China (which allows WTO members to designate China as a non-market economy in determining price compatibility in antidumping or countervailing investigations), the EU should refrain from applying the discriminatory status against imports from China.

perhaps publicly declare that the 'China deficit' will not be fully addressed until industrial adjustment and productivity growth in the EU are in place,[24] and expanding trade relations between the EU and China serve the European interests, even when China has a bilateral surplus.

3.9 Due in part to this, the EU and China launched the High Level Economic and Trade Mechanism (HLM) in Beijing in April 2008.[25] Designed to deal with issues of strategic importance to EU-China trade relations, investment and economic cooperation, the HLM will provide a new tool to addressing issues of mutual concern especially in the areas of investment, market access, IPR protection and other strategic issues related to trade, and become a perfect venue for resolving some of the disputed issues in the WTO. Specifically, the consultation phase of the HLM can be fully utilised to ease the stress of a trade dispute.

3.10 The EU's trade defense instruments are apt to defend European industries. Antidumping and safeguard measures may relieve some of the strains from Chinese competition on the European market.[26] A smooth China-EU trade relation will first hinge on how the EU perceives its prospective trade disputes with China and how it minimizes its dependence on trade defense instruments.

3.11 A sustainable and healthy China-EU trade relation depends on how the EU further integrates China. China is now sticking to the vision of a harmonious world and is committed to a peaceful rise. This will provide impetus for the country to look for amicable solutions to trade disputes with the EU. But the

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[24] Jan Hoogmartens, EC Trade Law Following China's Accession to the WTO, Kluwer Law International, 2004, pp.177-78.

[25] The HLM was agreed on at the November 2007 Summit by President Barroso and Premier Wen Jiabao to address the imbalance in trade flows between the EU and China. The broad remit of the HLM is to examine the global trading system; strategic bilateral trade-related issues; investment; innovation, technology and IPR; and EU-China economic cooperation. The mechanism is to function as a complement and reinforcement to established EU-China dialogues.

[26] It is the EU's and its member states' own reforms such as industrial restructuring that will safeguard their competitiveness in the long run. Criticism of China's trade policies should focus on market access barriers, and unwanted barriers as well as China's trade imbalance with the world—not China's bilateral surplus with the EU.

EU's obsession with values, particularly human rights values, is likely to be a stumbling block to the agenda.

3.12 From the EU's perspective, the human rights and environment issues are some of the main obstacles to closer relations with China. Although the official EU-China Dialogue on Human Rights works well technically and leads to better mutual understanding and to the freeing of dissidents or signing of the UN covenants on human rights, a growing frustration is still being felt in Europe because the overall human rights situation in China is not showing much progress, at least, not the kind of progress that the Europeans would like to see. The growing public pressure might drive the EC to confront China by, for example, supporting draft resolutions on China in the UN Human Rights Commission.[27] In this case, neither the China-EU strategic partnership rhetoric nor the HLM can facilitate a dispute resolution.

3.13 On the environment front, the highlight is on greenhouse gas emission. China has become the largest emitter in 2007.[28] In September 2005, the EU, after its unilateral promise of a 40% cut of carbon dioxide by 2030, began to press China to commit to a binding scheme, which China has been reluctant to accept for fear of inhibiting China's development. As greenhouse gas emission is a threat to the whole mankind, this issue would loom larger and larger in EU-China relations.

3.14 For the EU, the real question is how to help China open its market to more imports and its industries to foreign investments that it still considers as strategic and to provide more incentives for China to protect IPRs. Therefore, a smooth and thus healthy China-EU trade relation will finally hinge on EU's patience and skills in dealing with a rising China.

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[27] The annual meeting of the UN HumanRights Commission has since the early 1990s been used by the US and a few international NGOs as a venue to confront China on human rights record. The EU has been occasionally seen to join the call for human rights reform. See Pitman Potter, Human rights—social welfare and social control, in Pitman Potter: the Chinese Legal System-Globalization and local culture, London: Routledge Curzon, 2002, pp.91-92.

[28] See Joseph Kahn and Jim Yardley. 'As China rises, pollution soars', *International Herald Tribune*, August 25, 2007.

APPENDIX:
A COMPARISON OF CHINA-US AND CHINA-EU TRADE DISPUTES

A check on the trade disputes between China and the US will show that both the EU and the US share the same or similar concerns in their trade relations with China. Over the past decade the widening US-China trade deficit has been the focal point of bilateral relations, and has often been portrayed as a cause for overall US current account imbalances. Real public concerns are, however, rooted in the perceived economic threat of import competition from China. Perceived unfair import competition is similar and in areas concerning illegal export subsidies, lax enforcement of intellectual property rights, restricted market access, and an undervalued national currency.[29]

These concerns have fueled calls for legislation to prevent unfair practices. In February 2005, the US Senate passed the Byrd Amendment, encouraging American companies to file anti-dumping investigation applications by awarding the revenue collected from the resultant tariffs to litigating companies. Other China-specific legislation proposed since then includes a bill declaring exchange rate protection to be an illegal subsidy for which US firms can seek compensation.[30] However, compared to China-EU commercial disputes, the trade disputes between China and the US are even more prominent. In fact China-US trade disputes occurred even earlier than China-EU disputes[31] and the intensity has never abated as the Chinese economy booms and the US economy slumps in the past decade.

Three political and economic factors seemingly have a bearing on the occurrence and handling of prospective trade disputes with China. Firstly, the EU has been seen to adopt a distinct attitude towards China's rise. The US sees China as a

[29] Gary Clyde Hufbauer, Yee Wong, and Ketki Sheth, US-China Trade Disputes: Rising Tide, Rising Stakes, The Institute for International Economics, August, 2006, pp. 4-10.

[30] Gary Clyde Hufbauer, Yee Wong, and Ketki Sheth, US-China Trade Disputes: Rising Tide, Rising Stakes, The Institute for International Economics, August, 2006, p.23

[31] Early 1990s saw frequent eruption of Sino-American disputes on intellectual property rights. See Qingjiang Kong, Intellectual property rights protection in Post-WTO China, still an incurable blight on Sino-US trade relations? *Issues & Studies* 38 (3), September 2003, pp.59-79.

competitor, and is somewhat intolerant of China's rise. Indeed, for the US, the aversion to the prospect of a strong prosperous China under an authoritarian state is more palpable than for the EU. The EU and China have pledged to a comprehensive strategic partnership while the US views China as a stakeholder at best. The political tolerance on the EU side, cemented in the "Comprehensive Strategic Partnership",[32] is supposed to lower the decibel level of EU complaints.

Secondly, the EU has also been found to take a different approach to managing disputes, and to press China towards a pre-determined goal. Compared with the more assertive stance of the US, the EU approach is much softer. It either adopts a proactive approach or is satisfied with silently following a provocative US. However, in a late 2007 internal document, the EC trade commissioner Mandelson conceded that conciliatory tactics towards Beijing had failed to secure concessions for Europe. He proposed to align policies more closely to that of the US and called for greater use of trade law to hit back at Beijing.[33]

Thirdly, although the EU is a single customs union with a single trade policy and tariff, it takes time to build up consensus among its 27 members. For the EU it has been difficult to come to a single policy toward China; each member state has its own history of dealing with China, and some of them have competing economic interests. Therefore, the EU might be not as efficient as the US in dealing with China.

[32] In a Joint Statement at the Ninth EU-China Summit on 9 September 2006, both parties proclaimed the existence of the Comprehensive Strategic Partnership between them. Since January 2007 China and EU have started negotiating for a comprehensive Partnership and Cooperation Agreement (PCA).

[33] Stephen Castle, 'EU-China trade tensions start to heat up', *International Herald Tribune*, November 6, 2007.