

**ACCESSION OF
THE PEOPLE'S REPUBLIC OF CHINA
TO THE WORLD TRADE ORGANIZATION:
BASELINE OF COMMITMENTS,
INITIAL IMPLEMENTATION AND
IMPLICATIONS FOR U.S.-PRC TRADE RELATIONS
AND U.S. SECURITY INTERESTS**

VOLUME 1

April 30, 2002

By **TERENCE P. STEWART, ESQ.**
MANAGING PARTNER
LAW OFFICES OF STEWART AND STEWART
WASHINGTON, DC

TABLE OF CONTENTS

I.	Introduction	4
	A. China's journey to WTO membership	5
	B. Importance of US-PRC trade to the United States	8
II.	Baseline commitments undertaken by the PRC	12
	A. Introduction	12
	B. WTO Secretariat's Summary of Commitments Undertaken by China	17
	C. Protocol of Accession	19
	D. Working Party Report	27
	E. Tariff commitments at accession and over time contained In schedules	31
	F. Services commitments in schedules	35
III.	Implementation of obligations: technical assistance available from the WTO and individual nations to help the PRC fully implement its obligations and periodic reviews	44
	A. Technical assistance from the WTO: announced and anticipated	44
	B. Programs offered by the US, EU, Japan and others	46
	1. United States	47
	2. The EU	50
	3. Japan and other countries	52
	4. Private and International organizations	53
	C. Transitional review program	54
	D. Governmental and private sector monitoring programs in the US	55
IV.	Current status of PRC compliance	57
	A. Tariff Schedule	57
	B. Legal reform within China	71
	1. China's notifications of law revisions during the accession process - March 2000	72
	2. China's notifications of law revisions during the accession process - September 2000	74
	3. China's notifications of law revisions during the accession process - November 2000	76
	C. Laws and regulations adopted In 2001/2002 to bring China into conformity with obligations	79
	1. MOFTEC	80
	2. New Chinese Laws 2001-2002	81
	3. Working Party Report - transparency	82
	4. China Notification to the `WTO Pursuant to Working Party Report and Protocol	85
	D. Evaluation of likely conformity	89
	E. Laws and regulations identified by the PRC as under review/revision	91
	F. Reactions from the private sector to internal reform	92

V.	Other aspects of PRC accession relevant to US trade and security interests	94
A.	Doha Development Round- do implementation issues, Declaration on TRIPs and Public Health or the work program modify existing obligations of the PRC or otherwise raise issues for monitoring by the US-China Security Review Commission?	94
B.	Accession of Taiwan - implications of accessions of both the PRC and Taiwan on cross-straits relations and US interests	95
C.	What WTO accession does not currently address (ag., investment restrictions not tied to trade flows, competition policy, elimination of state trading enterprises, mandatory participation in the Government Procurement Agreement). Witt these issues be addressed In ongoing negotiations; do they matter In the Commission's evaluation?	96
VI.	Suggested conclusions on initial compliance	97
A.	Areas of apparent non-compliance as of late April 2002	97
B.	Areas where compliance will need to be monitored and whether apparent public information sources seem adequate to permit compliance monitoring	98
C.	Areas where implementation appears complete	102
D.	Time periods where significant changes in laws/regulations can be expected	102
E.	Whether any identified areas of non-compliance or future implementation are being addressed within the PRC and by the WTO or individual countries	102
F.	Whether any current actions by the PRC warrant bilateral action by the US	102
G.	Areas of initial friction	103
	1. Information Technology Agreement (ITA)	103
	2. Tariff-rate Quotas (TRQs)	105
	3. Genetically Modified Organisms (GMOs)	109
	4. Insurance Services	113
	5. Express Courier Services	117
	6. Export Subsidies	121
VII.	Likely Implications for US-PRC bilateral trade relations and for US security interests	122

**ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION:
BASELINE OF COMMITMENTS, INITIAL IMPLEMENTATION, AND IMPLICATIONS FOR US-
PRC TRADE RELATIONS AND US SECURITY INTERESTS**

BY TERENCE P. STEWART, ESQ.
MANAGING PARTNER
LAW OFFICES OF STEWART AND STEWART
WASHINGTON, DC

I. Introduction

On December 11, 2001, the People's Republic of China ["China" or "PRC"] became the 143rd member of the World Trade Organization ["WTO"] 30 days after it had notified the WTO that it had completed ratification within China of the accession package. On December 27, 2001, President Bush signed a proclamation granting the PRC permanent normal trade relations with the US (effective January 1, 2002). The accession of China to the WTO is an important event both for existing WTO members and for China.

Membership brings many rights and carries wide-ranging obligations. Because of the size and growth of the Chinese economy over the last two decades and the structure of the Chinese economic system, the process of accession has been complicated, has extended over 15 years and requires significant additional changes in the Chinese economic system in the future. The accession documents are unprecedented within the WTO or its predecessor, the GATT, in terms of their complexity, the range of issues that required specific commitments and the number of deviations allowed at the commencement of membership. The Protocol on the Accession of the PRC runs 103 pages, is broken into seven parts, the first of which has eighteen sections covering different areas of commitments/concerns and contains a series of annexes including schedules of commitments on goods and services. Although these schedules are typical of acceding nations, China's schedules are quite lengthy, accounting for more than 600 pages. Similarly, the Report of the Working Party on the Accession of China is 72 pages in length (excluding annexes) and details a series of commitments China has undertaken which are incorporated by reference in the protocol.¹

As a general matter, acceding countries are expected to be in compliance with all WTO obligations at the date of accession. Where this is the case, the protocol is a very abbreviated document. A complicated protocol such as China's is necessary only where the acceding country is not in compliance or where the nature of the economic system raises questions about whether existing members will, in fact, be receiving benefits after accession. In such cases, either special phase-in periods are identified or additional requirements mapped out. China has a significant number of areas where full compliance or full liberalization by the time of accession was not possible or where trading partners (or China) wanted special provisions added.

¹ See para. 342 of the Report of the Working Party, WT/MIN(01)/3 at 72).

Because of China's importance in the world economy and the importance of the bilateral trade relationship between China and the United States, this paper attempts to identify commitments undertaken by China in the accession process, information publicly available on China's implementation efforts through mid-April of 2002 as well as likely implications for US economic policy and national security going forward.

A. China's journey to WTO membership

The Republic of China had been an original signatory to the GATT in 1947 and had bound 110 tariff categories of primary interest to the US comprising roughly 52% of its imports from the United States (1946 basis; 75% based on 1939 imports) including automotive, chemicals, agricultural products and wood and wood products.² However, the Republic of China, following the loss of the mainland, "notified the Secretary-General of the United Nations of its decision to withdraw from the GATT on 6 March 1950. This withdrawal took effect on May 5, 1950."³

As reviewed in the introduction to the Working Party Report, the People's Republic of China submitted its request "for resumption of its status as a GATT contracting party" in mid 1986.⁴ As reviewed in the *GATT Activities 1987* (page 108):

China, a founding member of GATT, indicated to the Council in June 1986 its wish to resume GATT membership (see *GATT Activities 1986*). In March 1987, it submitted a memorandum on its foreign trade regime to the Council which subsequently established a working party open to all contracting parties.

In May 1987, the Council adopted the following terms of reference of the working party:

"The People's Republic of China has submitted to the GATT Contracting Parties a request to resume its status as a contracting party and a Memorandum on the People's Republic of China's Foreign Trade Regime. Taking note of the statements made in the Council of 4 March 1987, a Working Party was established by the Council. This Working Party will examine the foreign trade regime of the People's Republic of China, develop a draft Protocol setting out the respective rights and obligations, provide a forum for the negotiation of a schedule, address as appropriate other

² See US Department of State, "Analysis of General Agreement On Tariffs and Trade Signed at Geneva, October 30, 1947," Publication 2983 at 62-68 (November 1947).

³ See GATT, Basic Instruments and Selected Documents, Volume I at 7 n. 1 (1952); see also US Tariff Commission, Operation of the Trade Agreements Program, 3rd Report, April 1949-June 1950, Report No. 172 Second Series at 40 (1951).

⁴ See WT/MIN(01)/3, para. 1 (referencing GATT document L/6017, 10 July 1986).

issues concerning the People's Republic of China and the GATT, including procedures for decision-making by the Contracting Parties, and make recommendations to the Council."

With the first meeting in October 1987 and five meetings in 1988, the GATT Secretariat characterized the Working Party's progress as follows in *GATT Activities 1988* (at 129):

The Working Party held further meetings in April, June, September and December, characterized by comprehensive exchanges of detailed questions from participants and replies from China. This initial exploratory phase was thus completed and the Working Party was expected to begin consideration of the possible terms of a Protocol in 1989.

However, after the events in Tiananmen Square in early June 1989⁵ progress on the PRC's accession negotiations stalled as reviewed in *GATT Activities 1989* at 130-131:

By April of 1989, the working party examining China's request to resume its membership of GATT had reached a relatively advanced stage, having largely completed its assessment of China's foreign trade regime and economic reform programmes. There remained, nevertheless, some doubts among participants regarding pricing mechanisms within the Chinese economy, customs procedures, bilateral trade agreements and the need for greater transparency in trade regulations.

It was intended that the June meeting of the working party would begin consideration of the elements which would form the basis of a protocol. In the event, political and economic upheaval in China, in the early Summer, led participants to conclude that no useful work could be done at that stage. The working party met again in December to consider a report by the Chinese authorities on the current state of economic reform and intentions for the future. At this meeting participants were anxious to clarify whether the recent cutbacks in imports and slowdown in the pace of reform was a short-term reaction to an overheated economy or represented a more permanent change of approach. The working party decided that the examination should be continued at a meeting to be held in the Spring of 1990.

The next meeting was in the fall of 1990 after which it was around a year and a half before activity resumed on China's accession.⁶ During 1992, there were three Working Party meetings and a bifurcated approach was taken, continuing the examination of the Chinese trade regime while also holding bilateral market access

⁵ See Tiananmen Square, 1989, The Declassified History, available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB16/index.html>.

⁶ See *GATT Activities 1990* at 132; *GATT Activities 1992* at 94-95.

commitments and discussing possible elements of a protocol of accession.⁷ China had been participating in the Uruguay Round negotiations and was anxious to complete its accession program to be an original member of any new entity. "Throughout the year [1993], China expressed its wish that the negotiations on its status as a contracting party be concluded in time for it to become an original member of the World Trade Organization."⁸ While the efforts of the PRC and the Working Party continued at a high level in 1994, China had not completed its negotiations prior to the commencement of the WTO although agreement was reached on various areas of the draft protocol including "the administration of China's trade regime; special economic areas and transparency; special trading arrangements; state trading; import and export licensing; foreign exchange controls; price controls; taxes and levies charged on imports and exports and agricultural policies."⁹

When negotiations did not conclude in 1995, the PRC submitted an application for accession to the WTO under Article XII and requested the conversion of "the existing working party to the Working Party on China's Accession to WTO".¹⁰ It took 18 more meetings over the next six years (2 in 1996, 4 in 1997, 2 in 1998, 6 in 2000 and 4 in 2001) to conclude the Working Party process, with the intensity of the process picking up following bilateral agreements with the United States (11/15/1999) and the EU (5/19/2000).

With the Working Party having concluded its activities on September 17, 2001, the package of documents generated were forwarded for consideration by the WTO's 4th Ministerial Conference in Doha, Qatar in November 2001. By consensus, the Ministerial Conference approved the text of the agreement governing China's accession to the WTO on November 10. China signed the document the following day and submitted its notification that the PRC had completed domestic ratification of its accession package immediately thereafter. Thirty days later on December 11, 2001, China became the 143rd member of the World Trade Organization.

While not addressed in this short overview, one of the issues of major importance for the relationship of China with other WTO members (including the US) is whether China will assume full "developing country" rights. China pursued for many years the position of seeking specific confirmation in its accession documents that it was a developing country. As within the UN system, designation as a developing country is a matter of self-selection, the debate was in fact more about whether major trading nations or blocks such as the US, EC, Japan, et al. would accept China receiving all of the special and differential treatment rights provided within the WTO agreements for developing countries. Because of the tremendous growth in exports from China and perceived lack of need by many trading partners for China to receive across the board special and

⁷ *Id.*

⁸ *GATT Activities 1993* at 105.

⁹ *GATT Activities 1994 and 1995* at 113.

¹⁰ WT/ACC/CHN/1 (7 December 1995).

differential treatment, the US, EC and others insisted on China agreeing to waive certain rights it could otherwise assert as a "developing country". As is true for nearly all countries, China's protocol does not contain any explicit mention that China is to be treated as a developing country. The only known exception was Mexico's accession, supported at the time by the US, which does contain such a recognition.¹¹ As will be reviewed in part V of the paper, the issue of developing country will be of considerable importance in the future trade relationship between the US and China, including in the Doha Development Round.

Some 114 documents were generated during the Working Party process before the final documents released at the end of 2001. A "Checklist of Documents" is included in WT/ACC/CHN/23/Rev.1 (31 July 2001) which is included as Attachment 1 to this paper. Many of the documents since 1995 are available from the WTO website. Other documents from the GATT era should be derestricted and can presumably be obtained by the Commission from the US government.

B. Importance of US-PRC trade to the United States

China has a land mass somewhat smaller than that of the United States and is the world's most populous nation with an estimated population of 1.273 billion people in mid-2001.¹² Its exports to all countries have grown from just \$2.783 billion dollars in 1971 to \$22.0 billion in 1981 to \$71.9 billion in 1991 to \$249.3 billion in 2000. Imports during the same time period went from \$2.1 billion in 1971 to \$22.0 billion in 1981 to \$63.8 billion in 1991 and \$206.1 billion in 2000.¹³ At the same time, the gross domestic product increased from 490 billion yuan (\$241 billion) in 1981 to 2.128 trillion yuan (\$274 billion) in 1991 to 8.94 trillion yuan (\$829 billion) in 2000.¹⁴

China has had one of the fastest growing economies during much of the last two decades and has shown substantial export prowess across a wide range of goods.¹⁵ From the US Census Bureau's Statistical Abstract of the United States 2001 (pages 802-805), imports from China increased from \$51.5 billion in 1996 to \$100.1 billion in 2000, an increase of \$48.6 billion or 94.2% (vs. 53.0% for all imports). At the same time, exports to China grew from \$12.0 billion to \$16.3 billion, an increase of \$4.3 billion or 35.5%. The US merchandise trade deficit on goods with China increased from \$39.5 billion to \$83.8 billion, an increase in the deficit of \$44.3 billion or 112.1%. By 2000, China accounted for 2.1% of US exports, 8.2% of US imports and 19.3% of the US trade deficit in goods. Imports from China ranked fourth behind Canada (\$229.2 billion), Japan (\$146.6 billion) and Mexico (\$135.9 billion). China ranked 11th for US exports (Canada,

¹¹ See *Protocol for the Accession of Mexico to the General Agreement on Tariffs and Trade*, GATT Doc. L/6036 (signed by Mexico July 25, 1986), 33S BISD 3 (1987).

¹² CIA, *The World Factbook 2001*, China (from the internet).

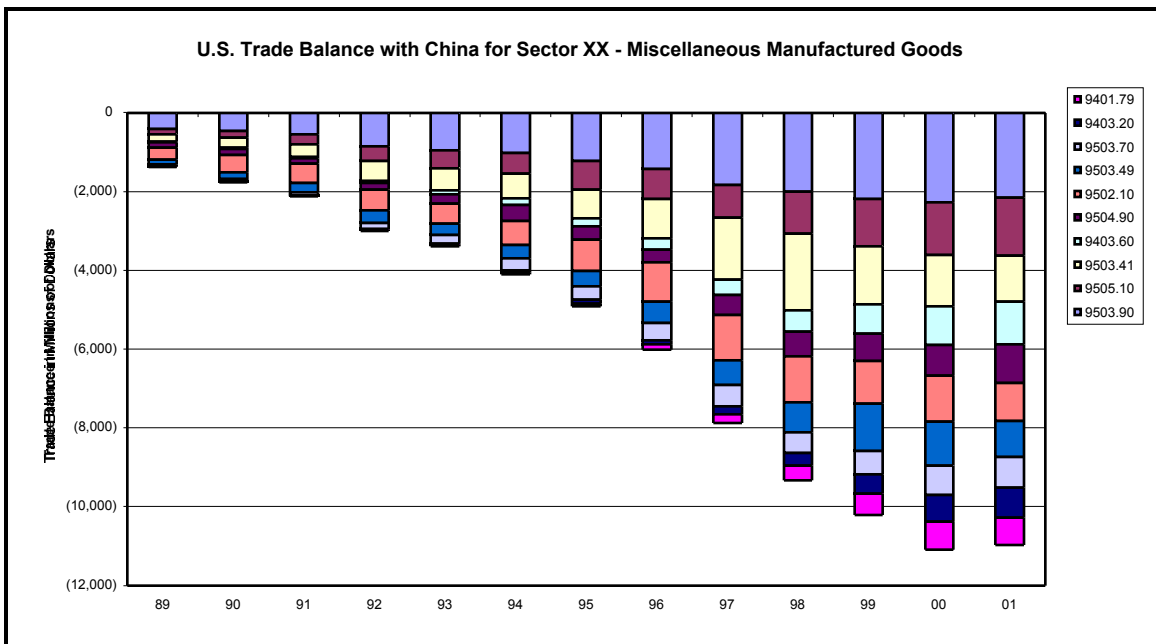
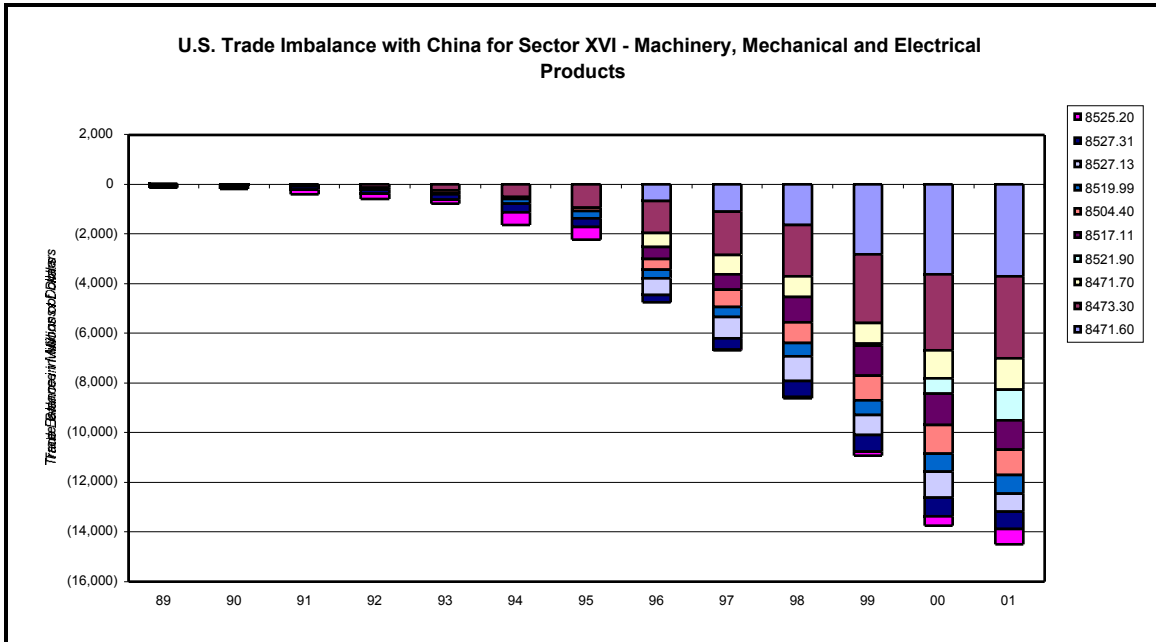
¹³ International Monetary Fund, *International Financial Statistics Yearbook 2001* at 356-57.

¹⁴ *Id.* at 16-17 and 356-57.

¹⁵ See, e.g., *Global Trends 2015: A Dialogue About the Future with Nongovernment Experts* at { HYPERLINK <http://www.cia.gov/cia/publications/globaltrends2015/index.html> }.

Mexico, Japan, United Kingdom, Germany, Korea, Taiwan, Netherlands, France, Singapore). In 2000, China surpassed Japan in the magnitude of the trade surplus with the US in goods -- \$83.8 billion vs. \$81.3 billion. China has for many years disputed the trade figures reported by the United States, viewing US exports as larger (since some portion of US exports to Hong Kong may be re-exported to China) and because a significant portion of exports to the US reportedly contains US value added (particularly true in electronics). Nonetheless, as the following charts demonstrate, the trade balance with China as measured by US exports (fas) - US imports (customs value) shows a breathtaking decline in the vast majority of product categories over the last 13 years (1989 -2001) with only three of twenty-two product groupings showing consistent trade surpluses during the period and with at least sixteen of the twenty-two showing sharp deteriorations during the period examined.

The trade deficit is largest in two groups, XVI Machinery, Mechanical and Electrical Products (\$25 billion +) and XX Miscellaneous Manufactured Articles. Included below are charts and tables reviewing the ten 6-digit HS items within these two categories that account for the largest deficits. The three largest deficit items in category XVI relate to computers while category XX tends to be made up of toys and furniture.



Sector XVI. Machinery, Mechanical and Electrical Products		Sector XX. Miscellaneous Manufactured Articles	
8527.31	Radiobroadcast Receivers, NESOI, With Sound Recorder	9505.10	Art F Christmas Festivities And Pts & Accessories
8527.13	Radiobrdcst Rcvrs, No Ext Pur, Sound Repro/Rec, NESOI	9504.90	Game Mach Ex Coin; Board Game; Mah-Jong; Dominoes; Dice
8525.20	Transmission Appr Incorporating Reception Apparats	9503.90	Toys And Parts And Accessories, NESOI
8521.90	Video Recrdg/Reprdc App W/N Video Tnr Exc Mgn Tape	9503.70	Toys, Put Up In Sets Or Outfits & Pts & Acc, NESOI
8519.99	Sound Reproducing Apparatus Except Cassette, NESOI	9503.49	Toys Repres Anml/N-Human Creatures & Pts & Access
8517.11	Line Telephone Sets With Cordless Handsets	9503.41	Stuffed Toys And Parts And Accessories Thereof
8504.40	Static Converters; ADP Power Supplies	9502.10	Dolls, Whether Or Not Dressed
8473.30	Parts & Accessories For ADP Machines & Units	9403.60	Wooden Furniture, NESOI
8471.70	Automatic Data Processing Storage Units, NESOI	9403.20	Metal Furniture NESOI
8471.60	ADP Input Or Output Units, Storage Or Not, NESOI	9401.79	Seats With Metal Frames, Except Upholstered NESOI

At the same time, there has been a substantial increase in US investment in China in recent years growing from as little as \$354 million in 1990 to \$7.8 billion in 1999 and continuing to grow rapidly in light of the WTO accession process.¹⁶ US companies view China as a major potential export market and, frequently, as an important supply base for inexpensive manufacture or assembly.

¹⁶ See US Census Bureau, Statistical Abstract of the United States 2001 at 794, Table No. 1291.

II. Baseline commitments undertaken by the PRC

A. Introduction

When a country or customs territory accedes to the WTO, it is expected to be in conformance with the full array of obligations contained in the various WTO agreements. For example, the acceding country is expected to provide most favored nation treatment on tariffs to all WTO member nations on accession and to provide national treatment to WTO-member goods after entry into the importing country. Where trade remedies are provided for dumping or subsidization or when safeguard actions are permitted, the acceding country is expected to have laws, regulations and practices that conform with WTO norms in Articles VI and XIX of GATT 1994 and the various agreements implementing these articles [Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Agreement on Subsidies and Countervailing Measures, Agreement on Safeguards].

The purpose of the accession process is to provide existing members the ability to understand the trade regime of the acceding country and to see that changes are made to the system before accession. As a result the Protocol of Accession is normally quite abbreviated with any exceptions usually being relatively few and noted in the Working Party Report and incorporated into the protocol by a single paragraph reference. For example, since the start of the WTO, sixteen countries or customs territories have acceded to the WTO (China being the 15th). The length of the protocol for each of these countries/territories, other than China, is shown below:

- Ecuador (1/21/1996), WT/ACC/ECU/6, 3 pages (protocol 1 and 1/4 pages, 10 paragraphs, para. 2 references commitments in para. 81 of the WPR)
- Bulgaria (12/1/1996), WT/ACC/BGR/7, 3 pages (protocol 1 and 1/4 pages, 10 paragraphs, para. 2 references commitments in para. 92 of the WPR)
- Mongolia (1/29/1997), WT/ACC/MNG/11, 3 pages (protocol 1 and 1/2 pages, 10 paragraphs, para. 2 references commitments in para. 61 of the WPR, para. 3 requires annual notification of phased commitments referenced in 17 paragraphs of the WPR)
- Panama (9/6/1997), WT/ACC/PAN/21, 3 pages (protocol 1 and 1/4 pages, 10 paragraphs, para. 2 references commitments in para. 116 of the WPR)
- Kyrgyz Republic (12/20/1998), WT/ACC/KGZ/29, 3 pages (protocol 1 and 1/2 pages, 11 paragraphs, para. 2 references commitments in para. 173 of the WPR)
- Latvia (2/10/1999), WT/ACC/LVA/35, 3 pages (protocol 1 and 1/2 pages, 11 paragraphs, para. 2 references commitments in para. 131 of the WPR)
- Estonia (11/13/1999), WT/ACC/EST/30, 3 pages (protocol 1 and 1/3 pages, 10 paragraphs, para. 2 references commitments in para. 141 of the WPR)

- Jordan (4/11/2000), WT/ACC/JOR/35, 3 pages (protocol 1 and 1/3 pages, 11 paragraphs, para. 2 references commitments in para. 248 of the WPR)
- Georgia (6/14/2000), WT/ACC/GEO/33, 3 pages (protocol 1 and 1/3 pages, 10 paragraphs, para. 2 references commitments in para. 180 of the WPR)
- Albania (9/8/2000), WT/ACC/ALB/53, 3 pages (protocol 1 and 1/3 pages, 10 paragraphs, para. 2 references commitments in para. 167 of the WPR)
- Oman (11/9/2000), WT/ACC/OMN/28, 3 pages (protocol 1 and 1/3 pages, 10 paragraphs, para. 2 references commitments in para. 157 of the WPR)
- Croatia (11/30/2000), WT/ACC/HRV/61, 3 pages (protocol 1 and 1/4 pages, 11 paragraphs, para. 2 references commitments in para. 225 of the WPR)
- Lithuania (5/31/2001), WT/ACC/LTU/54, 3 pages (protocol 1 and 1/3 pages, 11 paragraphs, para. 2 references commitments in para. 189 of the WPR)
- Moldova (7/26/2001), WT/ACC/MOL/40, 3 pages (protocol 1 and 1/4 pages, 10 paragraphs, para. 2 references commitments in para. 237 of the WPR)
- Taiwan (Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu)(1/2/2002), WT/L/433, 7 pages (protocol 1 and 1/2 pages, 11 paragraphs, para. 2 references commitments in para. 224 of the WPR; Annex I (references the schedules of tariff and services commitments), Annex II (3 pages, Special Exchange Agreement Between the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and the WTO)

The decision and protocol for Ecuador are included as Attachment 2 and is typical of the protocols for countries other than China.

By contrast, China's accession document, WT/L/432, runs 103 pages and consists of the following elements (it also references paragraph 342 of the WPR in para. 2 of the General section):

- (a) Decision of 10 November 2001, 1 page (similar to all of the other accessions)
- (b) Protocol (excluding Annexes), 11 pages, 66 paragraphs:
 - (1) Preamble
 - (2) Part I - General Provisions
 - (A) General, 4 paragraphs
 - (B) Administration of the Trade Regime
 - (i) Uniform Administration, 4 paragraphs
 - (ii) Specific Economic Areas, 3 paragraphs
 - (iii) Transparency, 3 paragraphs
 - (iv) Judicial Review, 2 paragraphs
 - (C) Non-discrimination, 1 paragraph

- (D) Special Trade Arrangements, 1 paragraph
- (E) Right to Trade, 2 paragraphs (references Annexes 2A and 2B)
- (F) State Trading, 2 paragraphs
- (G) Non-Tariff Measures, 4 paragraphs (references Annex 3)
- (H) Import and Export Licensing, 2 paragraphs
- (I) Price Controls, 3 paragraphs (references Annex 4)
- (J) Subsidies, 3 paragraphs
- (K) Taxes and Charges Levied on Imports and Exports, 4 paragraphs (references Annex 6)
- (L) Agriculture, 2 paragraphs
- (M) Technical Barriers to Trade, 4 paragraphs
- (N) Sanitary and Phytosanitary Measures, 1 paragraph
- (O) Price Comparability in Determining Subsidies and Dumping, 1 paragraph
- (P) Transitional Product-Specific Safeguard Mechanism, 9 paragraphs
- (Q) Reservations by WTO Members, 1 paragraph (references Annex 7)
- (R) Transitional Review Mechanism, 4 paragraphs (references Annex 1A)
- (3) Part II - Schedules, 2 paragraphs
- (4) Part III - Final Provisions, 4 paragraphs
- (c) Annex 1A, information to be provided by China in the context of the transitional review mechanism, 6 pages
- (d) Annex 1B, issues to be addressed by the General Council in accordance with section 18.2 of China's protocol of accession, 1 page
- (e) Annex 2A1, Products Subject to State Trading (Import), 4 pages, lists 84 HS numbers (8-digit) from 8 product categories (grain, 18 HS; vegetable oil, 7 HS; sugar, 6 HS; tobacco, 18 HS; crude oil, 1 HS; processed oil 7 HS; chemical fertilizer, 25 HS; cotton, 2 HS)
- (f) Annex 2A2, Products Subject to State Trading (Export), 6 pages, lists 134 HS numbers (8-digit) from 21 product categories (tea, 4 HS; rice, 5 HS; corn, 3 HS; soy bean, 5 HS; tungsten ore, 3 HS, ammonium paratungstates, 2 HS; tungstate products, 8 HS; coal, 5 HS; crude oil, 1 HS; processed oil, 13 HS; silk, 13 HS; unbleached silk, 4 HS; cotton, 2 HS; cotton yarns, containing 85% or more by weight of cotton, 22 HS; cotton yarns, containing less than 85% by weight of cotton, 22 HS; woven fabrics of cotton, containing 85% or more by weight of cotton, 7 HS; woven fabrics of cotton, containing less than 85% by weight of cotton, 6 HS; antimony ores, 2 HS; antimony oxide, 1 HS; antimony products, 3 HS; silver, 3 HS)
- (g) Annex 2B, Products Subject to Designated Trading, 13 pages, lists 245 HS numbers (8-digit) from 6 product categories all to be liberalized within 3 years of accession (natural rubber, 4 HS; timber, 28 HS; plywood, 3 HS; wool, 9 HS; acrylic, 18 HS; steel, 183 HS)
- (h) Annex 3, Non-Tariff Measures Subject to Phased Eliminations, 21 pages broken into three segments:
 - (I) products subject to import license, import quota and import tendering, 18 pages, 377 HS items (8-digit) with phase outs occurring over

- various time periods from immediately upon accession (e.g., sugar and tobacco) to as long as 2005
- (II) product quotas and annual growth rate, 1 page, 15 quota categories (from (I) above) including processed oil, sodium cyanide, chemical fertilizer, natural rubber, tires of rubber used on automobiles, motorcycles and key parts, automobiles and key parts, airconditioners and compressors, recording apparatus and key parts, magnetic sound and video recording apparatus, recorders and transport mechanisms, color TV set and TV tuners, crane lorries and chassis, cameras and wrist watches
 - (III) Products subject to Import License Only, 2 pages, 47 HS (8-digit level), mainly agricultural products, liquors, photographic film) phased out at accession.
- (i) Annex 4, Products and Services Subject to Price Controls, 4 pages, lists:
 - (I) products subject to state price (4 categories: tobacco, 4 HS (8 digit); edible salt, 1 HS; natural gas, 1 HS; pharmaceuticals, 37 HS)
 - (II) products subject to government guidance pricing (6 categories: grain, 14 HS (durum, maize, rice, soybeans); vegetable oil, 4 HS; processed oil, 7 HS; fertilizer, 1 HS; silkworm cocoons, 2 HS; cotton, 1 HS)
 - (III) public utilities subject to government pricing (gas, tap water, electricity, heating power, water supplied by irrigation works)
 - (IV) service sectors subject to government pricing (postal and telecommunication services charges; entrance fee for tour sites; education services charges)
 - (V) service sectors subject to government guidance pricing (most transport services charges; professional services charges; charges for commission agents' services; charges for settlement, clearing and transmission services of banks; selling price and renting fee of residential apartments; health related services)
 - (j) Annex 5A, Notification pursuant to Article XXV of the Agreement on Subsidies and Countervailing Measures, 22 pages (listing 24 categories of subsidies provided)
 - (k) Annex 5B, Subsidies to Be Phased Out, 3 pages, listing three subsidy programs to be phased out: (I) subsidies provided to certain state-owned enterprises which are running at a loss, to be terminated by end of 2000, had provided 7.5 billion RMB in 1998 mainly to 9 industries -- metallurgic, ferrous-metal, machinery, coal, oil, chemical, textile, light industry and tobacco); (II) priority in obtaining loans and foreign currencies based on export performance, to be terminated by end of 2000; (III) preferential tariff rates based on localization rate of automotive production, to be terminated by end of 2000.
 - (l) Annex 6, Products Subject to Export Duty, 3 pages, 84 HS items (8-digit) with export duties ranging from 20% to 40% (4 agricultural items; various ores and concentrates; pig iron, various steel products and inputs, various copper products, nickel products and various aluminum products)

- (m) Annex 7, Reservations by WTO Members, 5 pages, lists by country various restraints imposed on imports from China before China's accession and timing of elimination by the importing country (assumes existing measures are inconsistent with obligations under WTO):
- (I) Argentina, textiles and clothing, footwear not used for sporting activities and toys
 - (II) EC, footwear, tableware, kitchenware of porcelain or china, ceramic tableware of kitchenware
 - (III) Hungary, footwear, overwear
 - (IV) Mexico, antidumping measures maintained against imports from China (for six years), 1310 8-digit HS numbers on bicycles, footwear and parts thereof, brass padlocks, baby carriages, door knob locks, malleable iron connections, non-refillable pocket lighters, gas fuelled, fluorite, furazolidone, tools, textiles, toys, pencils, bicycle tires and inner tubes, electrical machines, appliances and equipment and parts thereof, parathion-methyl, clothing, organic chemicals, ceramic and porcelain dishware and loose articles, iron and steel valves, candles
 - (V) Poland, antidumping measures and safeguard measures maintained on imports from China (pocket lighters; footwear; electric smoothing irons)
 - (VI) Slovak Republic, quantitative restraints on footwear
 - (VII) Turkey, quantitative restrictions on footwear, tableware, kitchenware of porcelain or china, ceramic tableware or kitchenware, other than of porcelain or china
- (n) Annexes 8 and 9, 2 pages, references to schedules of tariff commitments on goods and market access commitments on services.

The above somewhat overstates the differences between China and other countries because for many of the other acceding countries, materials identified in the annexes are also part of the overall accession package, just not part of the Protocol document as released by the WTO.

While China had made many changes to its trade regime over the fifteen years of the accession process, the complexity of the protocol and its annexes attest to the wide array of practices within China that remain non-WTO compliant at the time of accession as well as the concerns of existing WTO members on how well China's economic system would mesh in fact with underlying WTO obligations.

Attached as Attachment 3 is a table of commitments made by China in its Protocol of Accession. (Also included in Attachment 3 is a table showing the scheduled phase-in of protocol commitments). The write-up below (in Section C) provides a short textual review of the sections and commitments made. Language on the commitments is often from the protocol itself or is a paraphrase.

B. WTO Secretariat's Summary of Commitments Undertaken by China

Before reviewing the specific terms of the Protocol and Working Party Report, it is instructive and helpful to review a general summary of the commitments assumed by China as prepared by the WTO Secretariat. After the successful conclusion of negotiations on the terms of China's membership in the WTO, the WTO issued a press release in which it summarized the major results of the just-concluded negotiations, as follows:

As a result of the negotiations, China has agreed to undertake a series of important commitments to open and liberalize its regime in order to better integrate in the world economy and offer a more predictable environment for trade and foreign investment in accordance with WTO rules.

Among some of the commitments undertaken by China are the following:

- China will provide non-discriminatory treatment to all WTO Members. All foreign individuals and enterprises, including those not invested or registered in China, will be accorded treatment no less favourable than that accorded to enterprises in China with respect to the right to trade.
- China will eliminate dual pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export.
- price controls will not be used for purposes of affording protection to domestic industries or services providers.
- the WTO Agreement will be implemented by China in an effective and uniform manner by revising its existing domestic laws and enacting new legislation fully in compliance with the WTO Agreement.
- Within three years of accession all enterprises will have the right to import and export all goods and trade them throughout the customs territory with limited exceptions.
- China will not maintain or introduce any export subsidies on agricultural products.

While China will reserve the right of exclusive state trading for products such as cereals, tobacco, fuels and minerals and maintain some restrictions on transportation and distribution of goods inside the country, many of the restrictions that foreign companies have at present in China will be eliminated or considerably eased after a 3-year phase-out period. In other

areas, like the protection of intellectual property rights, China will implement the TRIPS (Trade-related Aspects of Intellectual Property Rights) Agreement in full from the date of accession.

During a 12-year period starting from the date of accession there will be a special Transitional Safeguard Mechanism in cases where imports of products of Chinese origin cause or threaten to cause market disruption to the domestic producers of other WTO members.

On the other hand, prohibitions, quantitative restrictions or other measures maintained against imports from China in a manner inconsistent with the WTO Agreement would be phased out or otherwise dealt with in accordance with mutually agreed terms and timetables specified in an annex to the Protocol of Accession.

1. Goods

The conclusion of the negotiations for market access on goods represents a commitment undertaken by China to gradually eliminate trade barriers and expand market access to goods from foreign countries. China has bound all tariffs for imported goods. After implementing all the commitments made, China's average bound tariff level will decrease to 15% for agricultural products. The range is from 0 to 65%, with the higher rates applied to cereals. For industrial goods the average bound tariff level will go down to 8.9% with a range from 0 to 47%, with the highest rates applied to photographic film and automobiles and related products. Some tariffs will be eliminated and others reduced mostly by 2004 but in no case later than 2010.

Textiles

Upon accession China will become a party to the Agreement on Textiles and Clothing and will be subject to its rights and obligations. As for all WTO members, quotas on textiles will end at 31 December 2004, but there will be a safeguard mechanism in place until the end of 2008 permitting WTO Member Governments to take action to curb imports in case of market disruptions caused by Chinese exports of textile products.

Agriculture

China agreed to limit its subsidies for agricultural production to 8.5% of the value of farm output (per Article 6.4 of the Agriculture Agreement). China also agreed to apply the same limit to subsidies covered by Article 6.2 of the Agriculture Agreement.

2. Services

Telecoms

Upon China's accession, foreign service suppliers will be permitted to establish joint venture enterprises, without quantitative restrictions, and provide services in several cities. Foreign investment in the joint venture shall be no more than 25%. Within one year of accession, the areas will be expanded to include services in other cities and foreign investment shall be no more than 35%. Within three years of accession, foreign investment shall be no more than 49%. Within five years of accession, there will be no geographic restrictions.

Banking

Upon accession, foreign financial institutions will be permitted to provide services in China without client restrictions for foreign currency business. For local currency business, within two years of accession, foreign financial institutions will be permitted to provide services to Chinese enterprises. Within five years of accession, foreign financial institutions will be permitted to provide services to all Chinese clients.

Insurance

Foreign non-life insurers will be permitted to establish as a branch or as a joint venture with 51% foreign ownership. Within two years of China's accession, foreign non-life insurers will be permitted to establish as a wholly-owned subsidiary. Upon accession, foreign life insurers will be permitted 50% foreign ownership in a joint venture with the partner of their choice. For large scale commercial risks, reinsurance and international marine, aviation and transport insurance and reinsurance, upon accession, joint ventures with foreign equity of no more than 50% will be permitted; within three years of China's accession, foreign equity share shall be increased to 51%; within five years of China's accession, wholly foreign-owned subsidiaries will be permitted.

WTO successfully concludes negotiations on China's entry, WTO Press/243 (17 September 2001).

C. Protocol of Accession

- 1. Uniform administration of the PRC trade regime** -- one of the major areas of concern for trading partners, China's ability to provide uniform administration of its trade laws and regulations includes three specific commitments, all of which should be in place as of accession:

- (a) application and administration of all laws, regulations and other measures in a uniform, impartial and reasonable manner re trade in goods, services and TRIPs and re control of foreign exchange; true both at national and sub-national level;
 - (b) regulations, rules and other measures of local governments at the sub-national level shall conform to WTO requirements and the Protocol;
 - (c) establish a mechanism for private sector to raise cases of non-uniform application.
- 2. Special economic areas** -- members had concerns about the consistency of the many special economic areas with rights of non-discrimination and national treatment. China assumed three obligations vis-à-vis the SEAs all applicable at accession:
- (a) transparency through notification to WTO;
 - (b) application of all taxes, charges and measures when goods exit SEAs to other parts of China that are applied to other imports;
 - (c) MFN and national treatment consistent with WTO.
- 3. Transparency of PRC trade regime** -- China's trading partners expect that their companies will be able to find out what laws, regulations and other measures are in existence and apply to their goods, services, TRIPs or control of foreign exchange and to be given notice of changes and an opportunity to submit views. This is an area that will presumably cause problems for some time as it involves a significant change of practice within China.¹⁷ Obligations undertaken (all to have been in place at accession) include:
- (a) only enforcing those laws, regulations and other measures that have been published and that are widely available; making such materials available to WTO members before enforcement absent emergency situations;
 - (b) designation of an official journal for the publication of laws, regulations and other measures related to trade in goods, services, TRIPs and control of foreign exchange, providing an opportunity to comment before the measures are implemented (with certain exceptions), and making the journal available to individuals and enterprises;
 - (c) establish an enquiry point where any individual, enterprise or WTO member can obtain all information with a time for reply of 30-45 days.
- 4. Rights of judicial review within the PRC trade regime** -- just as for other of these early sections of the protocol, WTO members placed great stock in ensuring that the Chinese legal system would permit individuals and companies to contest decisions that were adverse to their interests and to

¹⁷ See Stephen Kho, "The Impact of the World Trade Organization on the Lack of Transparency in the People's Republic of China" (graduate paper submitted in the spring of 1998 at Georgetown University Law Center).

ensure that such challenges would be handled in an impartial manner. Because of the lack of established systems of regular judicial review of administrative actions within China, the commitments undertaken will likely also prove difficult of early full compliance because of the change in practice needed within various parts of the Chinese government. WTO member governments have been providing technical assistance to help in the building of a system of judicial review but expect this area to be contentious going forward. Two specific commitments undertaken by China, to have been implemented at the time of accession, are:

- (a) ensuring that there are tribunals to review all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings covered by relevant GATT, GATS and TRIPS provisions; such tribunals to be impartial, independent and without any substantial interest in the outcome;
- (b) right of appeal from administrative actions guaranteed, decision to be given to private party with reasons for decision identified and any other rights of appeal.

5. Non-discrimination -- Because of the significant involvement of the state at both the central and sub-central level in the production of goods and provision of services, many WTO members had concerns that rights of their nationals who set up businesses in China not be harmed through discriminatory actions by such state entities. At the same time, there have been fairly pervasive requirements for trade balancing and other prohibited TRIMs within the Chinese system prior to accession. Two commitments of non-discrimination were undertaken vis-à-vis foreign individuals and enterprises:

- (a) in their access to goods or services for production of goods;
- (b) prices and availability of goods and services where supplied by national and sub-national authorities and state enterprises.

6. Special trade arrangements (e.g., Barter arrangements with other countries) -- requires such measures to be in conformity with WTO obligations at the time of accession.

7. Right to trade within China (both import and export of goods) -- One of the core issues in terms of reasonable access to the Chinese market is the commitment by China to phase out within three years the limitations on companies' rights to sell goods imported into China or to be able to export goods directly from China. China has obtained the right to continue to subject goods in Annex 2A to state trading requirements with no identified termination date. As reviewed above, 84 8-digit HS items are subject to state trading when imported (grain, vegetable oil, sugar, tobacco, crude oil, processed oil, chemical fertilizer, cotton) while 134 8-digit HS items are subject to state trading when exported (tea, rice, corn, soy bean, tungsten ore, ammonium paratungstates, tungstate products, coal, crude oil, processed oil, silk, unbleached silk, cotton, cotton yarns, woven fabrics of cotton, antimony

ores, antimony oxide, antimony products, silver). For some products, listed in Annex 2B, state trading limitations will be phased out over a three year time period (245 8-digit HS items including natural rubber, timber, plywood, wool, acrylic, and steel). Problems may arise in this important area based on China's services commitments in distribution.

- 8. State trading** -- The United States has had problems with many nations' state trading enterprises. In most other countries, the vast majority of such entities are involved with agricultural products. Because state ownership is so pervasive at both the central and sub-national levels, for US exporters as well as US companies investing in China, there have been many concerns about how Chinese state enterprises will actually behave after accession. The language obtained in the protocol offers some hope of fair dealing by such enterprises (obligations under Article XVII of GATT 1994 and the Understanding on the article have been difficult to enforce to date against other countries) but this is almost certain to be an area of continuing difficulty going forward. Commitments undertaken include the following:
- (a) transparency in purchasing procedures of state trading enterprises;
 - (b) non-interference by state in influencing or directing state trading enterprise re quantity, value, country of origin of goods purchased or sold;
 - (c) notification to WTO on the pricing mechanisms of its state trading enterprises for exported goods.
- 9. Non-tariff measures** -- This part of the protocol addresses problems companies have faced because of the various import license, quota and tendering provisions, the lack of uniform enforcement (particularly with sub-national governments affecting access to China's market) and the imposition of various TRIMs (*e.g.*, local content, trade or foreign exchange balancing, export requirements) on companies' operations. China has undertaken to phase out various NTMs as reviewed in Annex 3.
- (a) products subject to import license, import quota and import tendering: 377 8-digit HS items with phase outs occurring over various time periods from immediately upon accession (*e.g.*, sugar and tobacco) to as long as 2005;
 - (b) product quotas and annual growth rate: 15 quota categories (from (a) above) including processed oil, sodium cyanide, chemical fertilizer, natural rubber, tires of rubber used on automobiles, motorcycles and key parts, automobiles and key parts, air conditioners and compressors, recording apparatus and key parts, magnetic sound and video recording apparatus, recorders and transport mechanisms, color TV set and TV tuners, crane lorries and chassis, cameras and wrist watches;
 - (c) products subject to Import License Only: 47 8-digit HS items, mainly agricultural products, liquors, photographic film) phased out at accession.

China has committed to apply all NTMs in conformity with Article XIII of GATT 1994 and the Agreement on Import Licensing Procedures. Similarly,

China has committed to: (1) eliminate all TRIMs and cease to enforce any that may exist including in contracts, (2) not consider local content, offsets, transfer of technology, export performance or conduct of R&D in awarding import licenses, quotas or other market access elements; and (3) see that import and export prohibitions and restrictions and licensing is only conducted by the central government or sub-national authorities with authorization from the central government. While the commitments are important, their full implementation will require loss of authority at the sub-national level and a significant change in conduct. Accordingly, this will be another area where close monitoring will be important.

- 10. Import and export licensing** -- For the US and other WTO members, there have been concerns in the transparency of the operation of the licensing system and in the non-discriminatory distribution of licenses and quotas. China has undertaken transparency obligations, including notifications to the WTO after accession of licensing and quota requirements remaining in effect. China's commitment also requires import licenses to be given for at least six months (with certain exceptions) and requires non-discrimination.
- 11. Price controls** -- The US and many other members were interested in eliminating to the extent possible price controls maintained by the state where such controls were not consistent with WTO rights and obligations. Annex 4 to the Protocol reviews products and services where price controls or guidance are permitted. China undertakes (again subject to exceptions) not to extend such controls to products not listed and to make best efforts to reduce or eliminate the controls.
- (a) products subject to state price: tobacco, edible salt, natural gas, pharmaceuticals;
 - (b) products subject to government guidance pricing: grain (durum, maize, rice, soybeans), vegetable oil, processed oil, fertilizer, silkworm cocoons, cotton;
 - (c) public utilities subject to government pricing: gas, tap water, electricity, heating power, water supplied by irrigation works;
 - (d) service sectors subject to government pricing: postal and telecommunication services charges; entrance fee for tour sites; education services charges;
 - (e) service sectors subject to government guidance pricing: most transport services charges; professional services charges; charges for commission agents' services; charges for settlement, clearing and transmission services of banks; selling price and renting fee of residential apartments; health related services.
- 12. Subsidies** -- Concerns had been raised by many about state support to state-owned enterprises (coverage of losses by the central or sub-national governments). Commitments in this area are generally simply consistent with existing obligations under Article XVI of GATT 1994 and the Agreement on

Subsidies and Countervailing Measures ["SCM Agreement"], although China accepts that where state-owned enterprises are the predominant recipients or receive disproportionately large amounts of subsidies, the subsidy is "specific" within the meaning of Article 2 of the SCM Agreement and hence potentially actionable. China did agree to eliminate all subsidy programs that would be prohibited under Article 3 of the SCM Agreement (*e.g.*, coverage of operating losses) upon accession. This obligation is critical to many US industries, including steel, that face intense pressure from Chinese producers who are either state-owned or invested or who receive important inputs from such entities.

- 13. Taxes and charges on imports and exports** -- This section requires conformance with WTO obligations on import charges and fees (*e.g.*, cannot exceed the cost of supplying) at both central and sub-national levels. China also agreed to eliminate all taxes and charges applied to exports that are not provided in Annex 6 or otherwise consistent with WTO obligations.

Annex 6 identified a total of 84 8-digit HS items that are subject to export duties ranging from 20% to 40%: 4 agricultural items; various ores and concentrates; pig iron, various steel products and inputs, various copper products, nickel products and various aluminum products.

- 14. Agriculture** -- China has committed not to use export subsidies on agricultural products and to inform WTO members during the review process of fiscal and other transfers between or among state-owned enterprises in the agricultural sector.

- 15. Technical barriers to trade** -- An issue of significant difficulty during the accession negotiations was the bifurcated standards system in China where imported goods were evaluated by different bodies than domestic goods. China has undertaken to be in conformity with the TBT Agreement at accession, to ensure that the same regulations, standards and conformity assessment procedures are applied to all goods whether imported or domestic. Within eighteen months of accession, China must eliminate duplicate conformity assessment bodies and six months before then all bodies must be able to process both import and domestic goods, and it is the option of the applicant which body to use. Identical marks and fees will be used regardless of whether the product is domestic or imported. There are also transparency obligations. This is an area where problems are likely to continue until the duplicate bodies are eliminated.

- 16. Sanitary and phytosanitary measures** -- China was required by the Protocol to notify the WTO of all laws, regulations and other measures relating to its SPS measures within 30 days of accession. US and other agricultural exporters have been concerned about China's conformance with the norms of the SPS Agreement. This obligation is important to US agriculture. China did not begin to submit notification of its SPS measures until some time after the 30-day deadline. Indeed, the first notices published by the WTO were dated April 3, 2002 (almost 3 months after the Protocol requirement). It

should be noted that many countries, including periodically the United States, are late in their notification obligations to the WTO. China submitted additional notifications which were published on April 4, 5, 18 and 19. As of April 20, 2002, the WTO had published 140 notifications submitted by China regarding existing laws, regulations or other measures relating to SPS measures. A table listing China's initial SPS notifications is included as Attachment 4.

In addition to the SPS notifications submitted pursuant to the Protocol, China has submitted two notifications of emergency measures. The first emergency notification stated that China was taking an emergency interim quarantine measure applicable to wood packing materials made of coniferous trees from Korea.¹⁸ The measure was intended to prevent pinewood nematode from spreading into China. The second emergency notification concerned an emergency interim quarantine measure applicable to seedling pineapple, seedling banana and other host plants of burrowing nematode.¹⁹ This measure was intended to prevent burrowing nematode from entering China.

- 17. Price comparability in determining subsidies and dumping** -- The US in particular had negotiated with China for the right to continue applying its so-called "non-market economy" methodology to Chinese imports subject to antidumping investigations in the United States for 15 years after China's accession. This commitment was multilateralized to all WTO members for antidumping and countervailing duty cases upon principles which neither require a WTO member to so treat China and which prohibit countries from going back to such treatment once they have found China to be subject to normal rules in the area.
- 18. Transitional product-specific safeguard mechanism** -- In the history of the GATT and now the WTO, no other acceding nation has been subject to a transitional product-specific safeguard. The propriety of such an unusual requirement flows essentially from the fact that China remains a long way from fully accepting all obligations of the WTO as the lengthy protocol and Annexes demonstrates. Thus, until China has fully implemented its obligations under the Protocol and Working Party Report, existing WTO members have the right to bring a "China only" safeguard action where there is market disruption from increased imports from China. Under Article XIX of GATT 1994, safeguard actions are required to be brought against imports from all countries. The transitional product-specific safeguard mechanism will last for 12 years. The US made statutory changes pursuant to Public Law 106-286 which provide relief from market disruption from China. 19 USC. § 2451. The US International Trade Commission recently published interim rules implementing the new statutory authority. 67 Fed. Reg. 8183-93 (February 22, 2002).

¹⁸ See G/SPS/N/CHN/1 (13 February 2002).

¹⁹ See G/SPS/N/CHN/2 (11 March 2002).

19. Reservations by WTO members -- No other protocol of accession contains an Annex identifying measures inconsistent with WTO obligations that existing members will withdraw over time against the acceding member. Normally, when a country accedes, existing members are obligated to bring themselves into compliance vis-à-vis the new member at the time of accession absent invocation of the non-application clause (Article XIII of the WTO; Article XXXV of GATT 1947). China has agreed that the countries identified in Annex 7 can have various amounts of time to eliminate the import restraint measures identified in the Annex. While countries could take various WTO-inconsistent measures against China prior to its accession, the maintenance of these measures post accession can distort trade flows from China to the US by eliminating other export markets:

- (a) **Argentina:** textiles and clothing, footwear not used for sporting activities and toys;
- (b) **EC:** footwear, tableware, kitchenware of porcelain or china, ceramic tableware of kitchenware;
- (c) **Hungary:** footwear, overwear;
- (d) **Mexico:** antidumping measures maintained against imports from China (for six years), 1,310 8-digit HS numbers on bicycles, footwear and parts thereof, brass padlocks, baby carriages, door knob locks, malleable iron connections, non-refillable pocket lighters, gas fuelled, fluorite, furazolidone, tools, textiles, toys, pencils, bicycle tires and inner tubes, electrical machines, appliances and equipment and parts thereof, parathion-methyl, clothing, organic chemicals, ceramic and porcelain dishware and loose articles, iron and steel valves, candles;
- (e) **Poland:** antidumping measures and safeguard measures maintained on imports from China (pocket lighters; footwear; electric smoothing irons);
- (f) **Slovak Republic:** quantitative restraints on footwear;
- (g) **Turkey:** quantitative restrictions on footwear, tableware, kitchenware of porcelain or china, ceramic tableware or kitchenware, other than of porcelain or china.

20. Transitional review mechanism -- China has made important modifications to its trading system before accession and has significantly reduced tariff barriers and certain NTMs upon accession. However, as the preceding discussion reviews, there is a huge amount left to be done by China over a period of years before China is fully compliant with all obligations agreed to. It is not surprising, considering the importance of China in the trading system, that other WTO members wanted a mechanism that would help China stay focused on the implementation process by requiring an annual assessment of implementation to the WTO membership. This obligation is also unique to China. Annexes 1A and 1B review the types of information China will need to provide for the review and the types of issues that may be taken up in the

review. There will be an annual review for eight years starting in 2002 with one final review of final compliance/implementation two years later.

D. Working Party Report

In addition to the commitments identified in the Protocol, para. 1.2 of the Protocol references commitments made in the Working Party Report (para. 342). There are an extraordinary **144** paragraphs of the Working Party Report that identify specific commitments by China. By way of comparison, the other acceding countries had the following number of additional commitments identified in the Working Party Report:

Member	Commitments	Working Party Report
Ecuador	21 commitments	WT/L/77 (1/21/1996) para. 81
Bulgaria	27 commitments	WT/ACC/BGR/5 (12/1/1996) para. 92
Mongolia	17 commitments	WT/ACC/MNG/9 (1/29/1997) para.61
Panama	24 commitments	WT/ACC/PAN/19 (9/6/1997) para. 116
Kyrgyz Republic	29 commitments	WT/ACC/KGZ/26 (12/20/1998) para. 173
Latvia	22 commitments	WT/ACC/LVA/32 (2/10/1999) para. 131
Estonia	24 commitments	WT/ACC/EST/28 (11/13/1999) para. 141
Jordan	29 commitments	WT/ACC/JOR/33(4/11/2000) para. 248
Georgia	29 commitments	WT/ACC/GEO/31 (6/14/2000) para. 180
Albania	29 commitments	WT/ACC/ALB/51 + Corr.1 (9/8/2000) para. 167
Oman	26 commitments	WT/ACC/OMN/26 (11/9/2000) para. 157
Croatia	27 commitments	WT/ACC/HRV/59 (11/30/2000) para. 225
Lithuania	28 commitments	WT/ACC/LTU/52 (5/31/2001) para. 189
Moldova	28 commitments	WT/ACC/MOL/37 (7/26/2001) para. 237
Taiwan (Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu)	63 commitments	WT/ACC/TPKM/18 (1/2/2002) para. 224

Attachment 5 to this paper provides a Table which goes through each of the 144 paragraphs identified (plus an additional 50 paragraphs for background). (Also included in Attachment 5 is a table showing the scheduled phase-in of working party report commitments). Many of the subject areas are the same as contained in the Protocol review, although there are many commitments in particular sectors not otherwise addressed in the Protocol. For the aid of the reader, the organization of the Working Party Report is along the following lines. Paragraphs which are asterisked (66 in total) are, in the author's view, important commitments in the overall obtaining of reasonable access to China's market:

A. Economic policies

1. non-discrimination (4 paragraphs: 18, 19, 22, 23*)
2. monetary and fiscal policy (1 paragraph: 26)

3. foreign exchange and payments (4 paragraphs: 27, 34, 35,* 36)
 4. balance-of-payments measures (1 paragraph: 40)
 5. investment regime (1 paragraph: 42*)
 6. state-owned and state-invested enterprises (3 paragraphs: 46,* 47,* 49*)
 7. pricing policies (4 paragraphs: 52, 56, 60, 61)
 8. competition policy (1 paragraph: 65)
- B. Framework for making and enforcing policies
1. structure and powers of the government (2 paragraphs: 67,* 68*)
 2. authority of sub-national governments (1 paragraph: 70*)
 3. uniform administration of the trade regime (1 paragraph: 75)
 4. judicial review (2 paragraphs: 78, 79)
- C. Policies affecting trade in goods
1. trading rights
 - a. in general (2 paragraphs: 83*, 84)
 - b. designated trading (2 paragraphs: 85, 86*)
 2. import regulation
 - a. ordinary customs duties (6 paragraphs: 87, 91 (wood and paper products),* 92 (Information Technology Agreement),* 93, 94 (China agrees to support APEC's accelerated tariff liberalization initiative, included as Attachment 6),* 95)
 - b. other duties and charges (1 paragraph: 96 (bind other duties and charges at zero)*)
 - c. rules of origin (3 paragraphs: 100, 101, 102)
 - d. fees and charges for services rendered (1 paragraph: 103)
 - e. application of internal taxes to imports (1 paragraph: 107)
 - f. tariff exemptions (1 paragraph: 111)
 - g. tariff rate quotas (5 paragraphs: 115 (eliminate TRQs on barley, soybeans, rapeseed, peanut oil, sunflower seed oil, corn oil, and cottonseed oil; replace import restrictions with TRQs on sugar, cotton and three types of fertilizers),* 116, 117, 119,* 120)
 - h. quantitative import restrictions, including prohibitions and quotas (8 paragraphs: 122, 123, 126,, 127, 128, 129,* 130,* 131)
 - i. import licensing (3 paragraphs: 132, 136,* 138)
 - j. customs valuation (2 paragraphs: 140. 143*)
 - k. other customs formalities (1 paragraph: 144)
 - l. preshipment inspection (2 paragraphs: 145, 146)
 - m. antidumping, countervailing duties (2 paragraphs: 148,* 152*)
 - n. safeguards (1 paragraph: 154)

3. export regulations
 - a. customs tariffs, fees and charges for services rendered, application of internal taxes to exports (2 paragraphs: 155, 156)
 - b. export licensing and export restrictions (4 paragraphs: 157, 158, 162, 165)
 - c. export subsidies (2 paragraphs: 167,* 168* (elimination by accession of all prohibited subsidies))
4. internal policies affecting foreign trade in goods
 - a. taxes and charges levied on imports and exports (1 paragraph: 170)
 - b. industrial policy, including subsidies (4 paragraphs: 171 (forego invoking Art. 27.8, 27.9 and 27.13 of the SCM Agreement),* 172, 173, 174*)
 - c. technical barriers to trade: (17 paragraphs: 177, 178, 180, 182, 184, 185, 187,* 188, 189, 190,* 191,* 192, 193, 194, 195, 196 (chemicals, automobiles and parts, boilers and pressure vessels),* 197)
 - d. sanitary and phytosanitary measures (3 paragraphs: 199, 200,* 202)
 - e. trade-related investment measures (TRIMs) (5 paragraphs: 203,* 204 (conform government's Industrial Policy for the Automotive Sector with WTO rules),* 205,* 206*, 207* (204-207 deal with automotive issues))
 - f. state trading entities (5 paragraphs: 210, 212, 213,* 215, 217)
 - g. special economic areas (5 paragraphs: 222,* 223, 225, 227, 228)
 - h. transit (1 paragraph: 229)
 - i. agricultural policies (8 paragraphs: 231, 232, 233, 234,* 235,* 236, 237, 238*)
 - j. trade in civil aircraft (2 paragraphs: 239 (China will not join Agreement on Trade in Civil Aircraft), 240 (China will not impose offsets when purchasing civil aircraft)*)
 - k. textiles (2 paragraphs: 241, 242 (market disruption provisions apply until 12/31/2008)*)
 - l. measures maintained against China (2 paragraphs: 243, 244)
 - m. transitional safeguards (6 paragraphs: 245, 246, 247, 248, 249, 250)
- D. Trade-Related Intellectual Property Regime (TRIPs)
 1. General
 - a. Overview (2 paragraphs: 251 (overview of reforms made and being made), 252*)
 - b. responsible agencies for policy formulation and implementation (1 paragraph: 253)
 - c. participation in international intellectual property agreements (1 paragraph: 254)

- d. application of national and MFN treatment to foreign nationals (1 paragraph: 256*)
- 2. Substantive Standards of Protection, Including Procedures for the Acquisition and Maintenance of Intellectual Property Rights
 - a. copyright protection (2 paragraphs: 258, 259*)
 - b. trademarks (1 paragraph: 263*)
 - c. geographical indications (2 paragraphs: 264, 265)
 - d. industrial designs (1 paragraph: 266 (textile designs not protected))
 - e. patents (12 paragraphs: 267, 268, 269, 270, 271, 272, 273, 274, 275,* 276, 277, 278)
 - f. plant variety protection (1 paragraph: 279)
 - g. layout designs of integrated circuits (2 paragraphs: 280,* 281)
 - h. trade secrets (1 paragraph: 284*)
- 3. measures to control abuse of IP rights (1 paragraph: 286)
- 4. enforcement
 - a. general (2 paragraphs: 287, 288*)
 - b. civil judicial procedures and remedies (2 paragraphs: 290, 291*)
 - c. provisional measures (1 paragraph: 294*)
 - d. administrative procedures and remedies (1 paragraph: 299*)
 - e. special border measures (2 paragraphs: 301, 302*)
 - f. criminal procedures (2 paragraphs: 304,* 305)
- E. Policies Affecting Trade in Services
 - 1. Licensing (6 paragraphs: 307,* 308,* 309,* 310, 312,* 313* (312 and 313 deal with insurance issues))
 - 2. choice of partner (1 paragraph: 314*)
 - 3. modification of the equity interest (1 paragraph: 315)
 - 4. prior experience requirement for establishment in insurance sector (1 paragraph: 316)
 - 5. inspection services (1 paragraph: 317)
 - 6. market research (1 paragraph: 318*)
 - 7. legal services (1 paragraph: 319)
 - 8. minority shareholder rights (1 paragraph: 320)
 - 9. schedule of specific commitments (1 paragraph: 321)
- F. Other issues
 - 1. Notifications (1 paragraph: 322)
 - 2. special trade arrangements (1 paragraph: 323)

3. transparency (12 paragraphs: 324, 325, 326, 327, 328, 329, 330, 331, 332, 334,* 336)
4. government procurement (2 paragraphs: 339 (China intends to become member of GPA and until then would conduct procurement in a transparent manner and provide all foreign suppliers with equal opportunity to participate),* 341*)

E. Tariff commitments at accession and over time contained in schedules

China has assumed some major tariff reduction commitments as part of its accession process. The Schedule of Concessions and Commitments on Goods is contained in a 576 page document.²⁰ Tariff commitments and reductions take place either immediately or on a phased basis covering a few to as many as nine years (*i.e.*, to 2010). Pages 469 - 576 of the document are staging matrices for both agricultural and other goods; stated differently, they identify the various HS categories where China's tariff commitments will be phased in. These pages are included as Attachment 7 hereto. The following tables show the number of eight-digit HS items in each 2-digit category and the number of 8-digit items that complete their tariff reductions in the particular year. (Note: a listing of the product descriptions corresponding to the 2-digit HS categories is provided as Attachment 8.)

Summary of Staging Matrix

(a) Agriculture

2-digit Category	No. of 8-digit HS	Completion of Tariff Reductions									
		Jan '02	Jan '03	Jan '04	Jan '05	Jan '06	Jan '07	Jan '08	Jan '09	Jan '10	
02	37			37							
04	34			26	8						
05	7	1		5		1					
06	4			4							
07	14			14							
08	69			62	3	2				2	
09	18			17	1						
10	14			14							
11	28			28							
12	49		1	43	4	1					
13	4	2	1	1							
14	1			1							
15	33			19		14					

²⁰ WT/ACC/CHN/49/Add.1 (WT/MIN(01)/3/Add.1).

2-digit Category	No. of 8-digit HS	Completion of Tariff Reductions								
		Jan '02	Jan '03	Jan '04	Jan '05	Jan '06	Jan '07	Jan '08	Jan '09	Jan '10
42	22	11	1	8	2					
43	3			2	1					
44	43	10	4	21	8					
45	2	1		1						
48	111	19	21	29	41	1				
49	8		8							
50	15		4	11						
51	25	1	4	9	11					
52	126	30	48	48						
53	19	4	1	14						
54	105			59	46					
55	122	5		24	92					1
56	43			14	29					
57	27			7	20					
58	67			18	49					
59	41	9	8	17	7					
60	21			8	13					
61	111		3	48	60					
62	163		1	55	107					
63	98		11	62	25					
64	11			11						
65	9	4		5						
66	3	3								
67	9	7	2							
68	10	4	1	5						
69	16	2		8	6					
70	25	11	2	8	4					
71	23	11	9		3					
72	69	37	15	17						
73	45	31	9	4	1					
75	2	2								
76	24	15	3	6						
78	1	1								
79	1	1								
80	3	3								
81	1	1								
82	4	4								
83	15	5	6	4						
84	508	158	154	179	16	1				
85	337	142	97	67	31					

2-digit Category	No. of 8-digit HS	Completion of Tariff Reductions								
		Jan '02	Jan '03	Jan '04	Jan '05	Jan '06	Jan '07	Jan '08	Jan '09	Jan '10
86	3	3								
87	149	11	10	45	17	66				
88	2		2							
89	2	2								
90	127	68	41	11	7					
91	17	5	4	8						
92	8	3	2	3						
94	32	1		6	25					
95	30			1	29					
96	21	8	6	7						
Totals	3,367	907	616	989	740	78		36		1

As the table above shows, 3,367 8-digit HS were subject to staged reductions. In addition, as the table below shows, about the same number of 8-digit HS (3,309) were subject to a final bound rate at accession.

Final Bound Rate at Accession					
2-digit Category	No. of 8-digit HS	2-digit Category	No. of 8-digit HS	2-digit Category	No. of 8-digit HS
01	37	40	74	80	8
02	30	41	38	81	47
03	32	42	3	82	69
04	3	43	19	83	22
05	33	44	46	84	355
06	14	45	5	85	167
07	76	46	17	86	34
08	9	47	20	87	44
09	23	48	6	88	15
10	9	49	16	89	38
11	6	50	10	90	117
12	53	51	19	91	40
13	18	52	3	92	15
14	12	53	26	93	17
15	15	54	0	94	18
16	0	55	0	95	26
17	2	56	0	96	43
18	4	57	0	97	9

Final Bound Rate at Accession					
2-digit Category	No. of 8-digit HS	2-digit Category	No. of 8-digit HS	2-digit Category	No. of 8-digit HS
19	6	58	0		
20	34	59	0		
21	1	60	0		
22	5	61	9		
23	27	62	0		
24	3	63	3		
25	87	64	18		
26	37	65	4		
27	57	66	4		
28	222	67	2		
29	288	68	52		
30	16	69	15		
31	28	70	57		
32	37	71	44		
33	13	72	108		
34	6	73	107		
35	12	74	72		
36	10	75	20		
37	32	76	19		
38	61	78	11		
39	8	79	12		
				Total	3,309

F. Services commitments in schedules

In the Protocol of Accession, China annexed a Schedule of Specific Commitments on Services.²¹ China's schedule of commitments on services, to be annexed to the General Agreement on Services (GATS), was circulated in documents WT/ACC/CHN/49/Add.2 and WT/MIN(01)/3/Add.2.

In general, China has made two types of commitments on services: (1) horizontal commitments, *i.e.*, commitments that apply to all service sectors, and (2) specific commitments, *i.e.*, commitments that apply to particular service sectors.

With respect to specific industry commitments, the WTO Secretariat lists twelve broad sectors of services: (1) business; (2) communication; (3) construction and

²¹ See *General Council Decision and Protocol on the Accession of the People's Republic of China*, WT/L/432 (23 November 2001) at Part II, para. 1 and Annex 9.

engineering; (4) distribution; (5) education; (6) environment; (7) financial; (8) health; (9) tourism and travel; (10) recreation, cultural, and sporting; (11) transport; (12) "other".

Of these twelve sectors, China made commitments respecting nine sectors: business; communication; construction and engineering; distribution; education; environment; financial; tourism and travel; and transport. China made no commitments with respect to three sectors: health, recreation, cultural, and sporting, and "other".

The complete list of the service sectors and sub-sectors, with the UN Central Product Classification (CPC) number, that China has made commitments respecting are as follows:

Service Sectors And Sub-Sectors On Which China Has Made Commitments (using UN CPC numbers for the service sectors)
1. Business Services
A. Professional Services
a. Legal Services (CPC 861, excluding Chinese law practice)
b. Accounting, auditing and bookkeeping services (CPC 862)
c. Taxation services (CPC 8630)
d. Architectural services (CPC 8671)
e. Engineering services (CPC 8672)
f. Integrated engineering services (CPC 8673)
g. Urban planning services (except general urban planning) (CPC 8674)
h. Medical and dental services (CPC 9312)
B. Computer and Related Services
a. Consultancy services related to the installation of computer hardware (CPC 841)
b. Software implementation services (CPC 842)
- Systems and software consulting services (CPC 8421)
- Systems analysis services (CPC 8422)
- Systems design services (CPC 8423)
- Programming services (CPC 8424)
- Systems maintenance services (CPC 8425)
c. Data processing services (CPC 843)
- Input preparation services (CPC 8431)
- Data processing and tabulation services (CPC 8432)
- Time-sharing services (CPC 8433)
D. Real Estate Services
a. Real estate services involving own or leased property (CPC 821)
b. Real estate services on a fee or contract basis (CPC 822)
F. Other Business Services
a. Advertising Services (CPC 871)
c. Management Consulting services (CPC 865)
e. Technical testing and analysis services (CPC 8676) and freight inspection covered by CPC 749, excluding statutory inspection services for freight inspection services

Service Sectors And Sub-Sectors On Which China Has Made Commitments (using UN CPC numbers for the service sectors)
f. Services incidental to agriculture, forestry, hunting and fishing (CPC 881, 882)
m. Related scientific technical consulting services (CPC 8675)
- Offshore oil-field services geological, geophysical and other scientific prospecting services (CPC 86751)
- Sub-surface surveying services (CPC 86752)
- Onshore oil-field services
p. Photographic services (CPC 875)
q. Packaging services (CPC 876)
s. Convention services (CPC 87909)
t. Translation and interpretation services (CPC 87905)
- Maintenance and repair services (CPC 63, 6112 and 6122)
- Maintenance and repair services of office machinery and equipment including computers (CPC 845 and 886)
- Rental and leasing services (CPC 831, 832, excluding CPC 83202)
2. Communication Services
B. Courier Services (CPC 75121, except for those currently specifically reserved to Chinese postal authorities by law)
C. Telecommunication Services
Value-added Services Including the following:
h. Electronic mail
i. Voice mail
j. On-line information and database retrieval
k. Electronic data interchange
l. Enhanced/Value-added facsimile services (including store and forward, store and retrieve)
m. Code and protocol conversion
n. On-line information and/or data processing (including transaction processing)
Basic Telecommunication Services
Paging Services
Mobile Voice and Data Services:
- Analogue / Digital / Cellular Services
- Personal Communication Services
- Domestic Services
a. Voice services
b. Packet-switched data transmission services
c. Circuit-switched data transmission services
f. Facsimile services
g. Domestic private leased circuit services
- International Services
a. Voice services
b. Packet-switched data transmission services

Service Sectors And Sub-Sectors On Which China Has Made Commitments (using UN CPC numbers for the service sectors)
c. Circuit-switched data transmission services
f. Facsimile services
g. International closed user group voice and data services (use of private leased circuit service is permitted)
D. Audiovisual Services
- Videos, including entertainment software and (CPC 83202), distribution services
- Sound recording distribution services
- Cinema Theatre Services
3. Construction And Related Engineering Services
CPC 511, 512, 513 (including dredging services relating to infrastructure construction), 514, 515, 516, 517, 518 (limited only to the rental and leasing services of construction and/or demolition machines with operator which are owned and used by foreign construction enterprises in their supply of services)
4. Distribution Services (as defined in Annex 2)
A. Commission Agents' Services (excluding salt, tobacco)
B. Wholesale Trade Services (excluding salt, tobacco)
C. Retailing Services (excluding tobacco)
D. Franchising
E. Wholesale or retail trade services away from a fixed location
5. Educational Services (Excluding special education services e.g. military, police, political and party school education)
A. Primary education services (CPC 921, excluding national compulsory education in CPC 92190)
B. Secondary education services (CPC 922, excluding national compulsory education in CPC 92210)
C. Higher education services (CPC 923)
D. Adult education services (CPC 924)
E. Other education services (CPC 929, including English language training)
6. Environmental Services (excluding environmental quality monitoring and pollution source inspection)
A. Sewage Services (CPC 9401)
B. Solid Waste Disposal Services (CPC 9402)
C. Cleaning Services of Exhaust Gases (CPC 9404)
D. Noise Abatement Services (CPC 9405)
E. Nature and Landscape Protection Services (CPC 9406)
F. Other Environmental Protection Services (CPC 9409)
G. Sanitation Services (CPC 9403)

Service Sectors And Sub-Sectors On Which China Has Made Commitments (using UN CPC numbers for the service sectors)
7. Financial Services
A. All Insurance and Insurance-Related Services
a. Life, health and pension/annuities insurance
b. Non-life insurance
c. Reinsurance
d. Services auxiliary to insurance
B. Banking and Other Financial Services (excluding insurance and securities)
Banking services as listed below:
a. Acceptance of deposits and other repayable funds from the public;
b. Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
c. Financial leasing;
d. All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts(including import and export settlement);
e. Guarantees and commitments;
f. Trading for own account or for account of customers: foreign exchange.
- Motor vehicle financing by non-bank financial institutions
- Other financial services as listed below:
k. Provision and transfer of financial information, and financial data processing and related software by supplier of other financial services;
l. Advisory, intermediation and other auxiliary financial services on all activities listed in subparagraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- Securities
9. Tourism And Travel Related Services
A. Hotels (including apartment buildings) and Restaurants (CPC 641-643)
B. Travel Agency and Tour Operator (CPC 7471)
11. Transport Services
A. Maritime Transport Services
- International transport (freight and passengers) (CPC 7211 and 7212 less cabotage transport services)
H. Auxiliary Services
a. Maritime cargo-handling services (CPC 741)
c. Customs clearance services for maritime transport
d. Container station and depot services
e. Maritime agency services
B. Internal Waterways Transport
b. Freight transport (CPC 7222)
C. Air Transport Services

Service Sectors And Sub-Sectors On Which China Has Made Commitments (using UN CPC numbers for the service sectors)
d. Aircraft repair and maintenance services (CPC 8868)
- Computer Reservation System (CRS) services
E. Rail Transport Services
F. Road Transport Services
- Freight transportation by rail (CPC 7112)
- Freight transportation by road in trucks or cars (CPC 7123)
H. Services Auxiliary to all Modes of Transport
- Storage and warehousing services (CPC 742)
- Freight forwarding agency services (CPC 748 and 749 excluding freight inspection)

The schedule on services indicates the commitments undertaken in the service sector with respect to market access and national treatment. For each of those categories, the schedule indicates the commitments undertaken and any exceptions or limitations on those commitments. For both market access and national treatment, the schedules show commitments for the four modes of supply identified in Article 1 of the GATS: cross border supply; consumption abroad; commercial presence; and presence of natural persons. These four modes are described in GATS Article I.2 (a)-(d), as follows:

- **cross border supply:** supply of a service "from the territory of one Member into the territory of any other Member"
- **consumption abroad:** supply of a service "in the territory of one Member to the service consumer of any other Member"
- **commercial presence:** supply of a service "by a service supplier of one Member, through commercial presence in the territory of any other Member"
- **presence of natural persons:** supply of a service "by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member"

With respect to horizontal commitments applying to all sectors, China has limited market access and national treatment, as follows:

	Limitations on Market Access	Limitations on National Treatment
Commercial Presence	<ul style="list-style-type: none"> ▪ Foreign investment in Equity JV must be at least 25% of registered capital ▪ Branches of foreign enterprises are unbound except to the extent indicated in sector specific commitments ▪ Representative offices may not engage in profit-making activities (except for CPC 861-863, 865 in sector specific commitments) ▪ As of accession, conditions of ownership, operation and scope for existing foreign service suppliers will not be made more restrictive ▪ Use of land for various purpose is limited to terms of years 	<ul style="list-style-type: none"> ▪ Unbound for all existing subsidies to domestic suppliers of audiovisual, aviation and medical services.
Presence of Natural Persons	<ul style="list-style-type: none"> ▪ Unbound except for measures concerning entry and stay of natural persons in following categories: senior employees of a representative office (3 year initial stay); senior employees of a firm engaged in foreign invested enterprises (initial stay of the shorter of 3 years or contractual term); service salespersons engaged in negotiating sales (limited to 90 days) 	<ul style="list-style-type: none"> ▪ Unbound except for measures concerning entry and stay of natural persons set out in market access column

With respect to specific sector commitments, Attachment 9 is a summary table showing the sectors and sub-sectors in which China has made commitments, has not made commitments and is unbound, and has limited, restricted, or qualified its commitments. Attachment 10 is a table showing China's restrictions on its services commitments on market access with respect to commercial presence, and the phase out schedule for those restrictions.

In addition to the commitments and limitations shown in the summary tables (Attachments 9 and 10), China's schedule of services commitments shows that China made certain "additional commitments" with respect to certain sectors and sub-sectors. These additional commitments (shown below) are voluntary, positive undertakings by China and are not subject to scheduling under Articles XVI (market access) and XVII (national treatment) of the GATS.

Sector or sub-sector	Additional Commitments
<ul style="list-style-type: none"> • Professional Services <ul style="list-style-type: none"> • Accounting, auditing and bookkeeping services (CPC 862) 	<ul style="list-style-type: none"> - Foreign accounting firms are permitted to affiliate with Chinese firms and enter into contractual agreements with their affiliated firms in other WTO members. - Upon accession to the WTO, issuance of licenses to those foreigners who have passed the Chinese national CPA examination shall be accorded national treatment. - Applicants will be informed of results in writing no later than 30 days after submission of their applications. - Existing contractual joint venture accounting firms are not limited only to CPAs licensed by Chinese authorities. - Accounting firms providing services in CPC 862 can engage in taxation and management consulting services. They will not be subject to requirements on form of establishment in CPC 865 and 8630.
<ul style="list-style-type: none"> ▪□ Telecommunication Services <ul style="list-style-type: none"> ▪□ Value-added Services Including the following: Electronic mail; Voice mail; On-line information and database retrieval; Electronic data interchange; Enhanced/Value-added facsimile services (including store and forward, store and retrieve); Code and protocol conversion; On-line information and/or data processing (including transaction processing) 	<p>China undertakes the obligations contained in the Reference Paper in Annex I [to Services Schedule].</p>
<ul style="list-style-type: none"> ▪□ Basic Telecommunication Services <ul style="list-style-type: none"> ▪□ Paging services 	<p>China undertakes the obligations contained in the Reference Paper in Annex I [to Services Schedule].</p>
<ul style="list-style-type: none"> ▪□ Audiovisual Services <ul style="list-style-type: none"> ▪□ Videos, including entertainment software and (CPC 83202), distribution services ▪□ Sound recording distribution services 	<p>Without prejudice to compliance with China's regulations on the administration of films, upon accession, China will allow the importation of motion pictures for theatrical release on a revenue-sharing basis and the number of such imports shall be 20 on an annual basis.</p>

Sector or sub-sector	Additional Commitments
<ul style="list-style-type: none"> ▪□ Distribution Services (as defined in Annex 2) ▪□ Commission Agents' Services (excluding salt, tobacco) ▪□ Wholesale Trade Services (excluding salt, tobacco) 	<p>Foreign-invested enterprises are permitted to distribute their products manufactured in China, including the products listed in the market access or sector or sub-sector column, and provide subordinate services as defined in Annex 2. Foreign service suppliers are permitted to provide the full range of related subordinate services, including after sales services, as defined in Annex 2, for the products they distribute.</p>
<ul style="list-style-type: none"> ▪□ Retailing Services (excluding tobacco) 	<p>Foreign-invested enterprises may distribute their products manufactured in China, including those excepted products as listed in the market access or sector or sub-sector column, and provide subordinate services as defined in Annex 2. Foreign service suppliers are permitted to provide full range of related subordinate services, including after sales services, as defined in Annex 2, for the products they distribute.</p>
<ul style="list-style-type: none"> ▪□ Financial Services ▪□ Banking and other financial services (excluding insurance and securities) 	<p>For financial leasing services, foreign financial leasing corporations will be permitted to provide financial leasing service at the same time as domestic corporations.</p>
<ul style="list-style-type: none"> ▪□ Transport Services ▪□ Maritime transport services <ul style="list-style-type: none"> ▪□ International transport (freight and passengers) (CPC 7211 and 7212 less cabotage transport services) 	<p>The following services at the port are made available to international maritime transport suppliers on reasonable and non-discriminatory terms and conditions:</p> <ol style="list-style-type: none"> 1. Pilotage 2. Towing and tug assistance 3. Provisioning, fuelling and watering 4. Garbage collecting and ballast waste disposal 5. Port Captain's services 6. Navigation aids 7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies 8. Emergency repair facilities 9. Anchorage, berth and berthing services.

Source: WT/ACC/CHN/49/Add.2 (1 October 2001)

III. Implementation of obligations: technical assistance available from the WTO and individual nations to help the PRC fully implement its obligations and periodic reviews

A. Technical assistance from the WTO: announced and anticipated

The WTO, and the GATT before it, have provided technical cooperation and training to developing countries and economies in transition to improve understanding of rights and obligations of the WTO and to expand the capacity of such countries to participate fully in the organization. Moneys for technical assistance come both from the regular budget and from special contributions made by individual member nations. Types of assistance have included seminars, workshops, technical missions, briefing sessions and technical cooperation in electronic form. Such assistance can include help in how notifications get filed as well as education on the operation of specific agreements.²²

Because status as a developing country is a matter of self-selection, China will have the ability to request technical assistance from the WTO. Indeed, prior to accession, China had informally indicated to the Secretariat that they would be seeking significant assistance under this program. It is expected that the WTO will devote significant resources to helping China as the country seeks to implement its obligations although demands from other countries are also expected to be significantly greater in the coming years. For example, following the Doha Ministerial meeting in November 2001, the WTO's General Council "approved a revised budget proposal encompassing, *inter alia*, the doubling of training capacities over a transitional year allowing it, in principle, to be fully operational in 2003".²³

At least eleven (11) events have occurred or are being planned for China by the WTO Secretariat (some in conjunction with other multilateral or regional organizations) including five national seminars on various areas (agriculture, rules, trade and environment, dispute settlement, trade policy reviews), a national workshop on trade and investment and trade and competition policy (new areas under discussion as part of the Doha Development Round), a conference on the health implications of China's accession, a symposium on services and cross border movement of natural persons, and two technical missions one on the WTO Reference Centre program and the second to establish such a reference centre for MOFTEC.²⁴

²² See generally, Development: Technical Cooperation and Training, WTO assistance for developing countries, { HYPERLINK http://www.wto.org/english/tratop_e/develo_e/tct_e.htm } and Development: Technical Cooperation, Activities of WTO technical cooperation, { HYPERLINK http://www.wto.org/english/tratop_e/devel_e/teccop_act_3.htm }; see also WT/COMTD/W/89/Rev.1 and documents referenced therein.

²³ WT/COMTD/W/89/Rev.1 at 1 (14 January 2002).

²⁴ See Coordinated WTO Secretariat Annual Technical Assistance Plan 2002, WT/COMTD/W/95/Rev.3 (8 March 2002).

China has a large delegation in Geneva -- indeed, the largest of major countries in Geneva (including the US), although the head of the delegation was scheduled to arrive only towards the end of the first quarter of 2002. The delegation is understood to be actively involved in developing notifications required by the WTO agreements and the accession protocol. Members of the Chinese delegation can, if needed, obtain assistance in the notification process from the WTO Secretariat.

The following are WTO documents publicly available as of April 20, 2002 from the WTO webpage of either China notices or references to China activity within the WTO. Most pertain to required notices, however, a few reflect activities by China to pursue issues vis-à-vis other countries, including the US (e.g., dispute on steel 201).

WTO Doc.	Subject of Document
GATS/EL/135 (14 February 2002)	Final List of Article II (MFN) Exemptions
GATS/SC/135 (14 February 2002)	Schedule of Specific Commitments
G/SPS/GEN/49/Rev.3 (16 January 2002)	Membership in WTO and International Standard-Setting Bodies (showing China a member of two of the three bodies identified in the SPS Agreement)
G/SPS/GEN/27/Rev.9 (14 March 2002)	Table of notifications by Members re SPS enquiry point and national notification authority. Table shows China had notified an SPS enquiry point but had not notified a national notification authority.
G/SPS/N/CHN/1 (13 February 2002)	Notification by the PRC of an emergency measure by the State General Administration for Quality Supervision and Inspection and Quarantine on wood packing materials used by the Republic of Korea
G/SPS/N/CHN/2 (11 March 2002)	Notification by the PRC of an emergency measure by the State General Administration for Quality Supervision and Inspection and Quarantine on seedling pineapple, banana and other host plants of burrowing nematode from the Philippines
G/SPS/N/CHN/P/1 thru G/SPS/N/CHN/P/140 (3, 4, 5, 18, 19 April 2002)	Notifications of laws, regulations and other measures relating to SPS measures. These notifications were made pursuant to Section 14 of the Protocol of Accession. <i>See</i> Attachment 4.
G/TBT/2/Add.65 (29 January 2002)	Statement from the PRC re Article 15.2 of the Agreement on Technical Barriers to Trade – consistency of China's regulations, standards and conformity assessment procedures, notification of enquiry point and publication, transparency, etc. (relates to commitments under paras. 177, 184 and 185 of the Working Party Report)
G/TMB/N/420 (24 January 2002)	China's notification of its intention to retain right to use the transitional safeguard provision of the Textile Agreement
G/TMB/N/426 (15 February 2002)	Notification of quantitative export restrictions on Silk Yarn and Woven Fabrics of Silk

WTO Doc.	Subject of Document
G/TBT/ENQ/20 (13 March 2002)	Note by the Secretariat listing national enquiry points notified by Members, showing that China's enquiry point is the State General Administration for Quality Supervision and Inspection and Quarantine (AQSIQ).
WT/L/443 (10 January 2002)	Composition of Textiles Monitoring Body
G/TMB/R/85 (25 February 2002)	Report of the 86 th Meeting of the Textiles Monitoring Body
G/TMB/R/86 (11 April 2002)	Report of the 87 th Meeting of the Textiles Monitoring Body
G/TMB/N/436 (22 March 2002)	Submission of observations of China with respect to notification of quantitative restrictions by the EC
G/TMB/N/437 (22 March 2002)	Submission of observations of China with respect to notification of quantitative restrictions by Canada
G/TMB/N/441 (17 April 2002)	Notification by China under Articles 2.6 and 2.7(b) of the ATC -- stage 1 of the integration program
G/TMB/N/442 (17 April 2002)	Notification by China under Articles 2.8(a) and 2.11 of the ATC -- stage 2 of the integration program
G/TMB/N/443 (17 April 2002)	Notification by China under Articles 2.8(b) and 2.11 of the ATC -- stage 3 of the integration program
G/TMB/N/445 (18 April 2002)	Submission of observations of China with respect to notification of quantitative restrictions by United States
G/SG/40/Suppl.12 (18 March 2002)	Request under Article 12.3 of the Agreement on Safeguards for consultations with the United States regarding the US safeguard measure on certain steel products
WT/DS252/1, G/L/532, G/SG/D23/1 (2 April 2002)	Request for consultations with the United States regarding the US safeguard measure on certain steel products. Request made under Article XXII:1 of GATT 1994, Article 4 of DSU, and Article 14 of Agreement on Safeguards.

In addition, the WTO Secretariat will be working with the China delegation in the months ahead as preparations are made for the first transitional review in terms of gathering data from the Chinese delegation and responding to inquiries, etc.

B. Programs offered by the US, EU, Japan and others

"Implementation success will depend on the effectiveness of crucial education and training of ... Chinese officials at the local level."²⁵ To address this need for education, "foreign-funded efforts" have attempted to explain the "broader issues of WTO fundamentals" and give "specific advice on how China can make particular

²⁵ Brian L. Goldstein, Stephen J. Anderson, *Foreign Contributions to China's WTO Capacity Building*, The China Business Review, January -February 2002, available at <http://www.chinabusinessreview.com/0201/goldstein.html>.

regulatory processes WTO compliant."²⁶ These efforts have included the United States and other governments, as well as nongovernmental organizations such as the US-China Business Council, and multilateral institutions who have funded and operated training programs for several years.²⁷

1. United States

During the last decade, the US has had an active program of technical assistance for China where such assistance was sought, including in the enforcement of intellectual property rights area and involving various US agencies. While some challenges facing China are in terms of understanding the obligations undertaken, much more will be capacity and institution building. The US is good at this type of assistance whether from the government directly or through business, professional and other groups that work on rule of law concepts and other infrastructure issues.

As reviewed in a recent article:

A range of US government offices have sponsored these [educational] programs. Staff from the US Embassy and Consulate commercial sections, economic sections, agricultural sections, and public affairs sections (PAS) have all helped organize these programs. PAS in particular funds dozens of trips to bring WTO-related experts to China. Other activities the US government supports include PAS international visitor programs that send Chinese officials, journalists, and academics to the United States; grants for activities aimed at strengthening the rule of law; and donations of legal texts and translations to Chinese governmental and nongovernmental organizations.

Specific US government programs held in 2001 have included an April e-commerce policy and regulatory educational session for senior-level Chinese officials from the State Council. Also in April, the Department of Commerce (DOC) participated in US National Institute of Standards and Technology seminars in Beijing and Xi'an, Shaanxi, which provided training on standards and certification. In July, DOC organized and led an IPR Enforcement Training delegation to Shenyang; Hangzhou, Zhejiang; and Xiamen, Fujian. In August, FCS conducted an information technology technical assistance program in Beijing, which covered equipment standards and testing.²⁸

It is also true, however, that this type of assistance is measured in years in terms of changing a pattern of behavior. Consider the activity undertaken in the early 1990s

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

when the problems for US intellectual property rights holders were at a crisis level. USTR provided the following perspective on intellectual property rights protection in its 2002 National Trade Estimate Report:

China has made substantial progress in some aspects of intellectual property rights (IPR) protection since it signed agreements with the United States on IPR in 1992, 1995 and 1996. In 2001, China improved its legal framework considerably, amending its patent, trademark and copyright laws to comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In addition, China launched a major crackdown on counterfeiting. There is also a heightened focus on IPR protection as an important factor in domestic growth. Over the past several months, books, television talk shows, media articles, and government and academic reports have highlighted the importance of IPR protection to China's economic development. Recent speeches by China's leaders and papers on economic strategy stressed the importance of intellectual property.

However, significant problems remain, particularly in the area of enforcement. Although China has revised its laws to provide criminal penalties for certain IPR violations, poor enforcement, combined with weak punishments, mean that IPR violations are still rampant. Piracy and counterfeiting are sophisticated and widespread. Pirates find ways to get digital copies of blockbuster films and computer programs into the Chinese market almost immediately after they are released in the United States. Knock-off consumer products are readily available almost everywhere in China, and consumers are often unaware that they are purchasing IPR-infringing goods. Some US companies claim losses from counterfeiting equal to 15 to 20 percent of total sales in China. One US consumer products company estimates that it loses \$200 million annually due to counterfeiting. Industry notes that the destructive effect of widespread IPR violations has discouraged additional direct foreign investment and threatened the long-term viability of some US business operations in China. The inferior quality of fake and unauthorized products can also pose serious health and safety risks to Chinese consumers and damage the image of the product.²⁹

A similar assessment was expressed in a recent article:

Despite years of effort and a raft of new laws, problems in such areas as IPR enforcement remain acute. Specific programs have focused on the training of PRC judicial officers and others in agencies responsible for IPR enforcement. The US-China Legal Cooperation Fund has supported

²⁹ USTR, 2002 National Trade Estimate Report on Foreign Trade Barriers, at 57.

similar goals since 1998 with grants to programs that aid the development of open and accountable legal processes (see The CBR, September-October 2001, p.71). The US Congress has mandated rule-of-law programs and funded several events through the US DOC and its Market Access and Compliance offices of the International Trade Administration. The US-China Business Council also helped to fund, along with the Ford Foundation and the US Embassy, a donation of 100 WTO-related books to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) in November 2001.³⁰

While the US has provided in the past and presumably will supply broad assistance going forward, no area better reflects that fact than intellectual property. Developed countries provide information to the WTO Council for TRIPs on technical cooperation activities. In the US submission of September 4, 2001,³¹ a list of training programmes on intellectual property during the September 2000 - August 2001 time period was provided. China participated in programs or in programs for China alone on 20 occasions during the year.

The United States will continue to provide educational assistance in the future. An article in the China Business Review provides the following information about future programs and events:

The pace of US government-supported efforts will increase in 2002. Upcoming seminars organized by topic and region will draw on a cast of dozens of experts in China who now have off-the-shelf presentations on various aspects of China's WTO entry. FCS plans seminars with MOFTEC, the Ministry of Information Industry, and other PRC agencies and plans to organize events throughout China including Liaoning, Shandong, and Hebei provinces. Each commercial officer will stage at least one event within his or her geographic area.

To assist these and related WTO implementation efforts, the US Embassy will assign five more commercial officers solely to trade facilitation issues beginning in 2002. These officers will supplement the work of the US Department of Agriculture Foreign Agricultural Service officer who has been in Beijing since mid-2001 and the General Electric Co. employee who has, since September 2001, worked in FCS offices managing and advising on the implementation of WTO-related training programs.³²

³⁰ Brian L. Goldstein, Stephen J. Anderson, *Foreign Contributions to China's WTO Capacity Building*, The China Business Review, January -February 2002.

³¹ IP/C/W/306 (19 September 2001).

³² Brian L. Goldstein, Stephen J. Anderson, *Foreign Contributions to China's WTO Capacity Building*, The China Business Review, January -February 2002.

The US-China Security Review Commission should seek periodic updates from the Administration on the areas of priority in technical assistance being provided by the US and shifting priorities based on implementation issues that are arising in China.

2. The EU

The European Union has a wide range of what are termed "co-operation projects" with China. The European Commission has a web-page that goes through all of the activities in China.³³ The index of projects shows a wide range of endeavors grouped under six headings: general, human resource development, rule of law and good governance, economic & social reform, environment, rural and agricultural projects. The areas of "rule of law and good governance" and "economic & social reform" include projects clearly relevant to the ability of China to honor its various WTO obligations as the following titles indicate:

- Statistics (bring data dissemination up to international standards)
- Public procurement
- Intellectual property rights
- Legal and judicial cooperation
- WTO accession project (started in 1998 for three years)

Copies of the webpage printouts for these five projects are included as Attachment 11; they also show the types of activities the EU has undertaken in the past.

The following describes a number of the EU programs:

The EU-China Intellectual Property Rights Cooperation Program, established in 1998, has worked to aid the alignment of China's IPR regime with international norms. The EU-China Program for China's WTO Accession was launched in November 2000 with a budget of 3 million euros (\$2.67 million) to aid the training of Chinese government officials. The framework calls for four components: institutional strengthening, policy and regulatory advice on WTO issues, awareness raising and training, and documentation and translation work. The European Union also funds the EU-China Intellectual Property Rights Cooperation Program and the EU-China Judicial Cooperation Program.

The German Technology Cooperation Co. (GTZ), under the German government, is conducting training courses and workshops on the WTO legal framework, providing assistance to the National People's Congress Finance and Economic Committee, and cooperating with MOFTEC in the Sino-German Cooperation in Economic Law program. GTZ also helped

³³ See { HYPERLINK <http://www.ecd.org.cn/co/index.htm> }.

establish a WTO Inquiry Center under the China (Hainan) Institute of Reform and Development (CIRD).³⁴

A press release from the EU Trade Commissioner Pascal Lamy on November 30, 2001 about his December 3-4 visit to China is instructive on the EU's interest in continuing to work with China after accession to ensure full implementation:

WTO related aspects

This visit is taking place very shortly after the WTO Ministerial meeting in Doha, where two decisions of global importance and with a special impact on the future of EU-China trade relations have been taken: the formal approval of China's accession and the adoption of the Doha Development Agenda (DDA).

China will officially become a member of the WTO on 11 December 2001. In this context, Mr. Lamy will explore with his Chinese interlocutors how the EU and China can develop close co-operation in global trade affairs under the new circumstances, in particular in the perspective of the new multilateral trade negotiations and second he will be discussing the economic and legislative reforms to be brought forward by China in the context of her WTO accession in order to meet its WTO-commitments. The EU stands ready to support China in this effort.

By way of example, it sponsored an International Symposium on WTO Accession and Intellectual Property Rights enforcement in Chengdu on November 29 to 30.

This symposium has been organised jointly by the State Intellectual Property Office of China and the European Patent Office with funding from the European Commission, bringing together a significant number of key specialists in intellectual property from EU, as well as representatives of the Chinese business community and public authorities.

The EU welcomes the important steps that China has taken in order to implement the TRIPs Agreement, notably the adoption of new Patent, Trademarks and Copyright laws, whilst recognising much work still remains to be done by China.

See press release IP/01/1707, available at http://europa.eu.int/comm/trade/index_en.htm.

³⁴ Brian L. Goldstein, Stephen J. Anderson, *Foreign Contributions to China's WTO Capacity Building*, The China Business Review, January -February 2002.

Subsequently, in a press release issued prior to a meeting between EU Trade Commissioner Pascal Lamy and China's Minister for Trade and Co-operation, Shi Guangsheng, the EU again stressed the importance of technical assistance programs:

... Commissioner Lamy will stress the important role that the EU-China co-operation programme plays in providing technical assistance to China's WTO accession process, the continuing economic reform process and to co-operation in key areas of interest to both the EU and China, for example, the information society and the fight against illegal migration.

See press release IP/02/167, available at http://europa.eu.int/comm/trade/index_en.htm.

On April 19, 2002, the EU announced that the European Commission had launched "a series of seminars as part of the EU-China programme for China's accession to the World Trade Organization (WTO)."³⁵ The seminars "will offer audiences in Beijing and Shanghai access to top-level WTO specialists who will present the implications of China's membership for government and business."³⁶ The first seminar addressed the "impact of the regulatory environment for business."³⁷ Future seminars will cover such topics as "future trends in the key services sectors, food and agriculture, trade facilitation at the border and public procurement," as well as Doha Development Agenda issues such as investment, environment regulation and competition.³⁸

3. Japan and other countries

Technical assistance is provided by other countries, developed and developing, based on resources and interest. Some countries make contributions to the WTO for technical assistance to countries (either specified or not). Where there have been concerted programs to improve compliance (*e.g.*, TRIPs, Customs Valuation), countries may work through the WTO Council or Committee to report on support or may encourage support by other multilateral organizations (WIPO, WCO, etc.). Again, using intellectual property as an example, various countries filed a review of technical assistance provided nationally to the WTO Council for TRIPs including the United States, Japan, Australia, Switzerland, New Zealand and the EU and various individual member countries.³⁹ For all developed countries, assistance to China was among the activities undertaken.

In addition, " Australia, through its AusAid program, has been training Chinese officials in international economics, both in Australia and Beijing, since 1997. Japan has

³⁵ See *European Commission launches WTO-related seminars in China*, EU press release, April 19, 2002.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ See IP/C/W/306/Add.1-6.

also been active on a number of fronts and is gearing up for a more comprehensive program."⁴⁰

Thus, there should be no doubt that many WTO members have an active interest in seeing China succeed in fully implementing its obligations in a timely manner. Opportunities presumably exist for those providing technical assistance to coordinate with other nations, the WTO and other multilateral bodies to ensure maximum advancement for the efforts expended. Such an approach is, in fact, what Ambassador Zoellick has indicated is being pursued by the United States.⁴¹

4. Private and international organizations

In addition to assistance provided by governments, China has received significant assistance from a broad range of private and international organizations.

In addition to the US-China Business Council, private and international organizations have also initiated various WTO educational programs. These include the Ford Foundation and the Asia Foundation, as well as a number of university and business groups with specific regional or sectoral interests. US organizations are not alone in their efforts. Groups organizing events and training include the Asian Development Bank, the United Nations Industrial Development Organization, the World Bank, the European Union, and the German, British, Australian, and Japanese governments. Local chambers of commerce, including the American Chambers of Commerce in Beijing and Shanghai, have also lent support and expertise to WTO implementation efforts through policy recommendations and conversations with central government and local officials. The subjects of these seminars illustrate the full range of key WTO issues.⁴²

The US-China Business Council has been active in providing educational assistance regarding WTO issues, as the following illustrates:

The US-China Business Council has independently addressed [business manager] groups in Hebei, Jiangsu, Shaanxi, Shandong, and Sichuan provinces, and the cities of Beijing and Shanghai. The US-China Business Council's Beijing office has met with hundreds of municipal and provincial delegations to discuss WTO in a less formal setting.

* * *

⁴⁰ Brian L. Goldstein, Stephen J. Anderson, *Foreign Contributions to China's WTO Capacity Building*, The China Business Review, January -February 2002.

⁴¹ See statement of USTR Zoellick to Senate Finance Committee, February 6, 2002.

⁴² Brian L. Goldstein, Stephen J. Anderson, *Foreign Contributions to China's WTO Capacity Building*, The China Business Review, January -February 2002.

The US-China Business Council also helped to fund, along with the Ford Foundation and the US Embassy, a donation of 100 WTO-related books to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) in November 2001.

* * *

Cooperation with leading academic institutions in China has also been an important part of WTO education efforts. One of China's leading WTO research centers is the Shanghai WTO Affairs Consulting Center. The US-China Business Council cooperated with this center in 2001 to produce a series of six digital videoconferences with simultaneous translations on WTO-related topics, featuring US experts and a Chinese audience drawn from government, academia, and the media. The two organizations plan 20 more for 2002.⁴³

C. Transitional review program

Because of the tremendous challenges in front of China to achieve full compliance, other WTO members insisted on the inclusion of a transitional review mechanism in the protocol. The transitional review is comprehensive and annual for eight years with one final meeting within two years thereafter. The review is conducted within 13 Committees and the 3 overarching Councils and finally by the General Council which "may make recommendations to China and to other Members" for any commitments they have undertaken in the China protocol (basically the Annex 7 reservations).⁴⁴

China must submit "relevant information, including information specified in Annex 1A" in advance of the review being undertaken by the Committees. The information required is extensive and includes both economic information and information on legal changes to improve conformity since accession and specific matters in a variety of areas (*e.g.*, TRQs) to ensure members can evaluate how well China is meeting its obligations.⁴⁵ The Committees "shall report the results of such review promptly to the relevant Council * * * which shall in turn report promptly to the General Council."⁴⁶ No time frame for the conduct of the review is included in the protocol and there is no precedent for multiple-layer implementation reviews. Annex 1B indicates that "China shall submit any information and the documentation relating to the review no later

⁴³ Brian L. Goldstein, Stephen J. Anderson, *Foreign Contributions to China's WTO Capacity Building*, The China Business Review, January -February 2002.

⁴⁴ See Protocol of Accession, Para. 18.2.

⁴⁵ See WT/L/432 at 13-18.

⁴⁶ See Protocol, Para. 18.1.

than 30 days prior to the date of the review."⁴⁷ It is assumed that data will be needed by **early fall at the latest** for the WTO to, in fact, conclude the reviews in a timely manner. Through discussions with various missions in Geneva and with the WTO Secretariat, it is understood that each committee within the WTO will conduct its own review of the relevant information from China although the Accessions Division has been given the task of coordinating the overall effort of the China transitional reviews within the WTO. Countries will have to identify the type of information beyond that identified in the existing list (Annex 1A) and, presumably, the individual reviewing bodies will have to develop the procedures for consideration of the material submitted.

Controversy has already surfaced, however, as countries such as the US have sought to get the process started by raising particular issues within regular committee meetings. For example, the matter of China's compliance had been included on the Antidumping Committee's agenda for an April 25, 2002 meeting and had been discussed in earlier meetings of the Services Council and Committee on Agriculture. China objected to its inclusion in the AD Committee (in the antidumping arena, compliance would simply be a question of whether Chinese laws and regulations conform to the WTO Agreement). A compromise was apparently reached wherein the issue will be on the next semiannual meeting of the Antidumping Committee this October. See, e.g., BNA Daily Report for Executives, April 26, 2002 at A-6, "China Chafes at Dumping-Panel Agenda for Excessive Focus on Accession Issues"; Washington Trade Daily, April 26, 2002.

Considering the importance of the review process to securing full compliance by China, the Commission may wish to have the Administration keep it advised of developments in the initial review process and obtain an early indication that each Committee will have adequate time to review the materials submitted by China and that follow-up in the form of questions and answers from China is contemplated and will occur. The Commission may also wish to forward to the USTR a list of issues for possible consideration.

D. Governmental and private sector monitoring programs in the US

The US government views the implementation of China's WTO commitments and obligations as critical to the success of China's incorporation into the global trade regime. The US government, consequently, is devoting resources to monitor the implementation of China's commitments with an interagency effort led by the Office of the US Trade Representative but including Commerce, State, Labor and Agriculture.⁴⁸ Active monitoring of China's implementation is crucial to successful implementation and a means to ensure that issues of concern can be identified quickly and brought to the Chinese government's attention for action. The monitoring program of one agency

⁴⁷ WT/L/432 at 19.

⁴⁸ See *US Sets Up Interagency Group to Deal With China WTO Compliance*, Inside US-China Trade, December 5, 2001, at 1; *US Interagency Group Begins to Scrutinize China's WTO Compliance*, Inside US-China Trade, December 12, 2001, at 1.

(Commerce) was described in the January 2002 *Export America*. At pages 25 and 26, the Department of Commerce reviewed the steps that have been taken to permit bilateral resolution of problems:

Commerce's China Team holds semiweekly strategy sessions to review cases and implementation plans. A new China-specific website ({ HYPERLINK <http://www.export.gov/china> }) provides US business with detailed information on China's WTO obligations, compliance and market opportunities. China Team representatives meet regularly with the commercial staff from the Chinese Embassy in Washington, D.C. and Commercial Service officers meet regularly with Ministry of Foreign Trade and Economic Cooperation in Beijing, to review specific market access and compliance problems.

* * *

In Beijing, Commercial Service officers, along with State Economic officers, Foreign Agricultural Service officers and Customs Attaches, participate in a WTO Implementation Coordination Committee which meets regularly to assess progress and monitor problems, with input from US consulates in Shanghai, Guangzhou, Shenyang and Chengdu.

In addition to the work being done by the Commission, the GAO has been tasked with preparing a report to Congress by September to be based on questionnaires from 1000 companies exporting to or doing business in China and will be doing annual supplements to determine the compliance of China with its obligations.⁴⁹

The private sector also has a critical stake in the timely and full implementation by China of its many obligations assumed through WTO accession. Because US companies will experience the problems and face the loss of business and other difficulties if obligations are not complied with as promised, they can and should work with the US government in China and at home to get problems addressed where needed. Organizations like the US-China Business Council, the US Chamber of Commerce and the National Association of Manufacturers (NAM) are actively monitoring China's implementation of and compliance with China's WTO commitments and obligations. Their surveys of business reactions should form an important input into the Commission's ongoing work program. These and other private sector organizations should become important resources for identifying problems and searching for rapid solutions to problems that arise in the course of China's implementation.

As stated by Ambassador Zoellick at a February 6, 2002 Senate Finance Committee hearing:

In 2002, the Bush Administration will work closely with other countries, as well as a private sector network we are interconnecting, to monitor

⁴⁹ See *The Asia Insider*, February 2002 at 5 (US Chamber of Commerce).

China's * * * compliance. The backing we have received from the Congress -- in terms of resources and attention -- has been and will remain fundamental to the achievement of our mission. We will work with our businesses and with China * * * to address problems and take action if necessary.

IV. Current status of PRC compliance

A. Tariff Schedule

Given the extent and range of China's protocol and working party commitments, it would be unrealistic to assume that China would have fully implemented its commitments at the time of accession or can timely do so for all obligations as new obligations come due. This is not an excuse for Chinese non-performance but rather a reflection of what is left to be done and the likely difficulties in developing the institutions and new patterns of behavior needed for full implementation in a timely manner. Even on relatively straight forward issues like bound tariffs, there have been initial problems.

Although China's accession date was December 11, 2001, China did not make its tariff cut commitments on that date. Rather, China decided to make tariff cuts effective January 1, 2002. The People's Daily reported:

As announced China is going to cut tariffs and implement new customs rules and regulations from January 1, 2002.

According to the WTO agreement, China will attain formal WTO membership status as from 11th December 2001 and China is supposed to starting reducing its tariff from that very day on. Since China has promised to lower tariffs as soon as it enters into the WTO, why not cut tariffs on that day? Posed this question, Yi Xiaozhun, Director of the International Department within the Ministry of Foreign Trade and Economic Cooperation, explained that it is a usual practice for China to introduce new customs rules and regulations every January 1st. Chaos may occur if China reduces tariffs twice within a short time of 20 days between 11th December 2001 and 1st January 2002. Given this consideration, the Chinese government merged the two into one.

People's Daily Online, November 16, 2001.

One news report explained that, although China's failure to make the required tariff changes on the date of accession is a technical violation of its commitment, it was unlikely that other members would raise this issue as a point of dispute.

US government and industry sources acknowledged this week that China will not implement tariff cuts in the technology sector and numerous other

areas this year, even though it committed to cutting tariffs as soon as it joined the World Trade Organization on Dec. 11. Instead, sources said China is expected to push these cuts off until the beginning of next year.

But while this decision is technically a violation of China's WTO accession commitments, sources said that few if any governments or industry representatives are prepared to complain about the situation, mostly because of the expectation that China will issue a tariff schedule in early January that will bring it up to date with its WTO obligations.

* * *

[I]nformed sources this week offered several reasons why few other complaints would be lodged about China's failure to live up to the letter of its WTO accession obligations. For example, one source said that the work involved in changing and publishing a new tariff schedule is difficult enough that governments appear to have agreed to allow China to publish one new schedule in January that covers tariff commitments that were to be made upon accession, as well as commitments due at the beginning of next year.

Other sources noted that most assumed that China would join the WTO in January, but surprised members when it arrived at the fourth WTO ministerial meeting ready to deposit documents saying that it was already in compliance with all of its WTO concessions. In addition, sources said that it might take exporters a few weeks to realize that the tariffs have not been cut, and even if this were noticed, the holiday season means many corporate executives -- particularly those based in China -- are simply not around to advance such a complaint.

Aside from these practical realities, sources also agreed that US exporters have generally taken the position that China should be given some leeway in addressing the challenges it faces in trying to implement its WTO commitments. This attitude has led many to predict that the US in particular would be slow to bring a formal WTO dispute settlement action against China, and would instead opt for extended, informal consultations aimed at settling disputes before they reach the panel stage.

Finally, sources agreed that even if a company or country wanted to press China on its failure to implement tariff cuts on Dec. 11, China will most likely have announced a new tariff schedule in January before such a complaint could be advanced significantly.

Informed sources said all of these factors have resulted in an expectation that tariff cuts scheduled to be implemented upon accession would instead be implemented early next year. * * *

China Delays Tariff Cuts In High-Tech, Other Sectors Until 2002, *Inside US-China Trade*, December 19, 2001, at 1, 4.

It is understood that at least some trading partners have inquired as to whether China would be making tariff reductions retroactive or otherwise attempting to offset its failure to timely reduce tariffs in 2001. No action is reportedly under consideration by China. No dispute will be filed as there is no relief that could now be provided from the three week failure to conform.

Tariffs were modified effective January 1, 2002. Tariff rates are of considerable importance to the US and other trading nations and should be relatively easy to do and simple to monitor. While uniform application is an area of concern, as has been the introduction of end use certificates for certain Information Technology Agreement goods,⁵⁰ whether China has adopted tariff changes consistent with the WTO commitments on goods should be relatively straightforward.⁵¹

In early January 2002, despite indications that tariffs had been reduced, it was unclear whether China had implemented in its 2002 tariff schedule the tariff reductions agreed to under the protocol and working party report. One initial problem was access to the 2002 tariff schedule itself.

US industry sources said this week that it may be several weeks before exporters will be able to determine the extent to which China has implemented numerous tariff cuts that it was due to implement on Jan. 1, 2002, as it will be necessary to gather direct evidence of China's new tariff levels through exporting. In addition, sources said Chinese officials have told some US company representatives that a new tariff schedule reflecting the current level of duties imposed by China may not be made public until the end of this month, and possibly later.

US Companies Unsure If China Cut Tariffs On Jan. 1; Will Monitor Situation, *Inside US-China Trade*, January 9, 2002, at 1.

After an initial review of China's tariff schedule for 2002, US officials indicated that they found some isolated instances of non-compliance but that they did not encounter any systemic problems. The cases of non-compliance involved both higher tariffs than

⁵⁰ See, e.g., *US Blocks China Application to Join WTO Information Technology Agreement*, BNA's Daily Report for Executives, February 19, 2002, at A-1, and discussion *infra*.

⁵¹ A Chinese official has "confirmed US government and industry speculation earlier this year that China is finding it relatively easy to meet its numerical commitments -- such as simple tariff cuts -- but has more difficulty implementing more complicated commitments, such as extending trading rights to foreign-owned firms." *Official Says Industry Pressure Resulting in WTO Implementation Delays in China*, *Inside US-China Trade*, April 10, 2002, at 1.

agreed to as well as lower tariffs (digital cameras) than required. Determining the extent to which China has actually implemented its tariff cuts is likely to require several months.

US officials charged with reviewing China's new tariff schedule have so far found only "isolated problems" regarding consistency with the obligations China made in negotiations to join the World Trade Organization, according to a US trade official. While officials have not completed their review of the tariff schedule, which was published to reflect tariff cuts China made effective Jan. 1, it would appear that there are no "systemic problems," and instead are only a few cases in which China's tariff is higher than what it agreed to implement by the beginning of this year, this official said.

* * *

Aside from the possibility that some of China's tariffs are still too high, the trade official said there are some cases in which China is applying a lower tariff rate than is required under its WTO accession agreement.

Private-sector sources familiar with China's tariff commitments agreed that some products are at a lower tariff rate than expected. For example, China was bound to lower its tariff on digital cameras from 45 percent to 30 percent, but said in its new schedule that it is only applying a 15 percent tariff on this product, sources said.

* * *

But even with publication of its new bound tariffs, sources said it would still take some time to determine whether China is having any problems actually implementing its tariff schedule. Industry sources have said there could be some problems with the ability of local customs officials in China to implement the tariff cuts, but added that it might take several weeks or even months to uncover these kinds of problems. * * *

US Finds Few Problems So Far In Review Of China's New Tariff Schedule, Inside US-China Trade, January 16, 2002, at 1, 7.

In the 2002 National Trade Estimate Report, the USTR provided the following overview of China's tariff reductions.

Under the terms of its WTO accession, China was to reduce tariff rates upon accession. Because China acceded so late in the year (December 11, 2001), it delayed making its scheduled WTO tariff cuts until January 1, 2002, when it implemented two rounds of reductions. The overall average tariff rate fell from over 15 percent to 12 percent, with the average for industrial goods falling to 11.6 percent. Tariff treatment of certain products – including chicken parts and 15 products subject to the Information Technology Agreement (ITA), however, does not appear to fully match China's WTO commitments. The United States and other

WTO members have raised these issues with China and will ensure that China fully implements its tariff commitments.⁵²

Despite the initial concern over the availability of public information on China's 2002 tariff schedules, the schedules were available publicly certainly by mid-February. The evaluation below of tariff changes has been undertaken comparing the information contained in the WTO accession document WT/ACC/CHN/49/Add.1 (Schedule CLII - People's Republic of China, Part I - Schedule of Concessions and Commitments on Goods) with the information in Customs Import and Export Tariff of the People's Republic of China 2002, Compiled by the Department of Laws and Regulations of the Customs General Administration of the P.R.C. and showing rates enforced from January 1, 2002. The Editor's note to the 2002 China tariffs volume indicates that -

Customs Import and Export Tariff of the People's Republic of China has been amended on the basis of The Harmonized Commodity Description and Coding System 2002 promulgated by World Customs Organization.

There are altogether 7,316 headings in this edition. Comparing with edition 2001, 205 headings have been added.

In accordance with the resolution of The Tariff Commission under The State Council, tariff rates on imports shall fall into four categories, sphere of application of each category are as follows:

Most-Favored-Nation Rates: applying to import goods originating in the member countries or regions of WTO, with which China shares the general Most Favored Nation treatment; and applying to import goods originating in countries or regions with which China has concluded reciprocal tariff preferential agreements.

* * *

All import duty rates of the four categories mean ad valorem duties (Except the rates marked with * * ahead).

Rates marked with * * ahead mean specific duties, compound duties or sliding scale duties, see Appendix 3 (Page 638)

* * *

Heading Nos. marked with * ahead mean that if the commodity specified in the headings are, with certificates issued by The Information

⁵² USTR, 2002 National Trade Estimate Report on Foreign Trade Barriers, at 46.

Industry Ministry, imported for the purpose of manufacturing of information technological products, upon which Interim Import Duty Rates of Appendix 5 (Page 645) shall be levied.

An examination of the schedules suggests that, in general (and in accord with the early evaluation by US officials discussed above), implementation of tariff reductions called for by the WTO schedule for 2002 have been undertaken.⁵³ For some products, the HS listing in the 2002 schedule is different than what appeared in the WTO commitment (although the changes are usually traceable), but the tariff commitments nonetheless appear to be implemented in most HS changes. Consider a relatively simple chapter like Chapter 1 on live animals and animal products:

⁵³ China has reported a summary of its tariff cuts as follows:

China has cut the average tariff level of over 5,000 imported goods from 15.3 percent to 12 percent from the beginning of this year.

The average tariff rate of industrial products is lowered to 11.6 percent. The average tariff rate of agricultural products excluding aquatic products is lowered to 15.8 percent. The average tariff rate of aquatic products is lowered to 14.3 percent. Among imported industrial products, the average tariff rate of crude oil and refined oil is lowered to 6.1 percent, that of timber, paper and paper products to 8.9 percent, textile and garments to 17.6 percent, chemical products to 7.9 percent, transport vehicles to 17.4 percent, machinery to 9.6 percent and electronic products to 10.7 percent.

China Reports On Tariff Cuts; China Reduces Tariff Levels, MOFTEC, March 26, 2002 (from ChinaTradeExtra.com).

HS No. in China's WTO Schedule	Bound rate as of 1/1/2002	HS No. in China's 2002 tariff book	2002 MFN duty rate
0101 Live horses, asses, mules and hinnies			
01011100	0	01011010	0
01011900	10	01019010	10
01012010	0	01011020	0
01012090	1	01019090	1
0102 Live bovine animals			
01021000	0	01021000	0
01029000	10	01029000	10
0103 Live swine			
01031000	0	01031000	0
01039110	10	01039110	10
01039120	10	01039120	10
01039200	10	01039200	10
0104 Live sheep and goats			
01041010	0	01041010	0
01041090	10	01041090	10
01042010	0	01042010	0
01042090	10	01042090	10
0105 Live poultry			
01051110	0	01051110	0
01051190	10	01051190	10
01051210	0	01051210	0
01051290	10	01051290	10
01051910	0	01051910	0
01051990	10	01051990	10
01059210	0	01059210	0
01059290	10	01059290	10
01059310	0	01059310	0
01059390	10	01059390	10
01059910	0	01059910	0
01059991	10	01059991	10
01059992	10	01059992	10
01059993	10	01059993	10
01059994	10	01059994	10
0106 Other live animals			
01060011	0	01060011	0
01060012	0	01062011	0
01060019	0	01061110	0
		01061910	0
		01062019	0
		01063110	0

HS No. in China's WTO Schedule	Bound rate as of 1/1/2002	HS No. in China's 2002 tariff book	2002 MFN duty rate
		01063210	0
		01063910	0
		01069019	0
01060021	10	01063921	10
01060022	10	01063922	10
01060023	10	01063923	10
01060029	10	01063929	10
		01061920	10
		01062010	10
		01069020	10
01060090	10	01061190	10
		01061200	10
		01061990	10
		01063190	10
		01063290	10
		01069090	10

Compare WT/ACC/CHN/49/Add.1 at 5-7 with Customs Import and Export Tariff of the People's Republic of China 2002 at 25-27.

Basically, China's commitments for Chapter 1 products vary between whether the item imported is breeding stock ("pure-bred breeding") or not. Breeding stock enters duty free; other animals at 10%. Chapter 1 was complicated because of the change in HS between the schedules submitted as part of accession and the revisions in the HS schedule as published for duty collection. However, Chapter 1 commitments appear to have been implemented in full as of January 1, 2002. A similar comparison between China's WTO schedule of tariff commitments with China's actual tariff reductions as reflected in China's 2002 tariff schedule (Customs Import and Export Tariff of the People's Republic of China 2002) for the other HS chapters is provided in Attachment 24.

Other chapters face more complexity because tariff phase-downs required reductions beyond those at the time of accession. For example, there were many items in Chapter 2 (meat and edible meat offal) where China committed to phased reductions, some significant beginning in 2002. For example, China bound its tariff on HS category 02011000 (meat of bovine animals, fresh or chilled, carcasses and half-carcasses) at 35% with a further reduction to 30% effective January 1, 2002, 25% on January 1, 2003 and 20% on January 1, 2004. The reduction to 30% is properly reflected in the 2002 tariff rates. Chapter 2 is identical to the WTO commitments with two exceptions:

- (1) 0207.14.00 (meat and edible offal of the poultry of heading No. 0105, fresh, chilled or frozen: cuts and offal, frozen (of fowls of the species *Gallus domesticus*): the WTO commitments were for a tariff on accession of 16% ad valorem descending to 10% by 2004 and at 14% in 2002. WT/ACC/CHN/49/

Add.1 at 8 and 469. By contrast, the 2002 tariff schedule shows four 8-digit breakouts with "*" indicating the tariff is a specific tariff. The specific rates shown in the schedule are as follows (in RMB/unit):

- (a) 0207.14.11, 1.0/kg.
- (b) 0207.14.19, 1.5/kg.
- (c) 0207.14.21, 1.2/kg.
- (d) 0207.14.29, 0.8/kg.

See Customs Import and Export Tariff of the People's Republic of China 2002 at 29, 638. US export statistics show prices per kilogram (fas not cif) from \$0.420/kg. to \$0.688/kg. for exports to China during 2001. See USITC data web for 0207.14.00.00, 0207.14.00.10, 0207.14.00.25, 0207.14.00.30, 0207.14.00.45, 0207.14.00.50, 0207.14.00.90 for 2001 [<http://dataweb.usitc.gov>]. With the average value of the RMB in 2001 being US\$1 = 8.2771 RMB [IMF International Financial Statistics, March 2002 at 234], the duty rates likely exceed the bound 14% on much of US exports. For example, US exports of frozen leg quarters were at an average price of \$0.451/kg. and faced a duty of 1.0 RMB/kg. (\$0.1208/kg.). The CIF value would need to be \$0.8629/kg. or higher for the specific tariff not to exceed the bound rate. As noted, the US has reportedly raised the question of these specific duties with the Chinese government.

- (2) 0207.1200 is listed in the WTO schedule as being bound at 20% ad valorem at the time of accession. WT/ACC/CHN/49/Add.1 at 8. This HS number is shown as being at a specific tariff in the 2002 Chinese tariff schedules with a specific tariff of 1.6RMB/kg. See Customs Import and Export Tariff of the People's Republic of China 2002 at 29, 638. There were limited US exports of these two categories of frozen chicken (whole). See, US export categories 0207.12.00.20, 0207.12.00.40. However, exports to Hong Kong shows export values of as little as \$0.747 and \$0.7287/kg. during specific months in 2001. The specific duties translate into \$0.193/kg. meaning any cif values of less than \$0.965/kg. would be inconsistent with China's tariff binding in the category.

It is unclear from the tariff schedules whether the specific tariffs are based on average import prices in 2001 or some earlier period or are totally divorced from the scheduled values. The WTO dispute settlement system has established that having tariff schedules based on something other than the type of tariff binding (*e.g.*, specific tariffs instead of ad valorem) is not per se a violation. However, if the duties collected in fact exceed the tariff binding, then there would be a violation of WTO obligations.

To explore the number of HS items where compliance with WTO obligations might be a problem, Appendix 3 to the tariff schedules, entitled "Specific, Compound, Sliding Scale Duties," was examined. It consists of five pages and lists 43 HS items where China is applying a specific tariff, 35 of which pertain to photographic film, 1 to beer made of malt, 1 to crude petroleum oil, and 6 to agricultural products (in addition to the five in chapter 2, 05040021, broiler gizzard, chilled or frozen). Appendix 3 indicates

that seven 8-digit HS items will be subject to "compound rates" (although three of the items have a second compound rate under "B.A. Compound Duties"). Appendix 3 also lists three 8-digit HS items (newsprint, in rolls or sheet) where there is a sliding-scale duty.⁵⁴

The HS items contained in Appendix 3 and the corresponding bound tariff rates in the accession documents are as follows:

(a) Specific duties:

8-digit HS item	Bound rate 2002	Specific rate 2002 (RMB/unit)
02071200	20%	1.6/kg.
02071411	14%	1.0/kg.
02071419	14%	1.5/kg.
02071421	14%	1.2/kg.
02071429	14%	0.8/kg.
05040021	20%	1.7/kg.
WTO commitment on 05040090		
22030000	42%	3/litre
27090000	0%	0/ton
37013021	12%	9/m ²
37013022	12%	12/m ²
37013029	12%	9/m ²
37023100	50%	145/m ²
37023220	12%	9/m ²
37023290	22%	40/m ²
37023920	12%	9/m ²
37023990	22%	38/m ²
37024100	19.6%	58/m ²
37024221	12%	9/m ²
37024229	12%	9/m ²
37024290	35.4%	65/m ²
37024321	12%	9/m ²
37024329	12%	9/m ²
37024390	27.5%	90/m ²
37024421	10%	9/m ²
37024422	10%	9/m ²
37024429	10%	9/m ²
37024490	27.5%	65/m ²
37025100	53.5%	170/m ²

⁵⁴ See Customs Import and Export Tariff of the People's Republic of China 2002 at 638-642.

8-digit HS item	Bound rate 2002	Specific rate 2002 (RMB/unit)
37025200	53.5%	170/m ²
37025300	53.5%	170/m ²
37025410	42%	155/m ²
37025490	42%	150/m ²
37025520	26%	16/m ²
37025590	50%	145/m ²
37025620	24%	16/m ²
37025690	50%	145/m ²
37029100	24%	65/m ²
37029310	22.5%	65/m ²
37029390	22.5%	65/m ²
37029420	24%	15/m ²
37029490	24%	60/m ²
37029520	24%	15/m ²
37029590	24%	60/m ²

Source: Customs Import and Export Tariff of the People's Republic of China 2002; China's Schedule of Concessions on Goods, WT/ACC/CHN/49/Add.1 (Oct. 1, 2001).

(b) Compound duties:

8-digit HS item	Bound rate 2002	Compound rate 2002 (RMB/unit + ad valorem)
85211011 video tape recorders, broadcasting quality	36%	if USD \$2000/unit or less, 0 + 36%; if more than \$2000, 5480/set +3%
85211019 same as above other video tape recorders	36%	same as above
85211020 video tape reproducers	36%	same as above
85253091 television cameras, broadcasting quality	35%	if USD \$5000 or less, 0 + 35%; if more than \$5000, 13,280/set +3%
85253099 television cameras, not for specific uses	35%	same as 85253091
85254049 video camera recorders, not for specific uses, other than	22.5%	if USD \$5000 or less, 0 + 22.5%; if more than \$5000,

8-digit HS item	Bound rate 2002	Compound rate 2002 (RMB/unit + ad valorem)
household video camera rec. (85254090 in the WTO accession docs.)		8,100/set + 3%
85254050 camera with digital image storage	[not clear what item this is in China's schedule of tariff bindings]	if USD \$5000 or less, 0 + 30%; if more than \$5000, 11,200/set + 3%

Source: Customs Import and Export Tariff of the People's Republic of China 2002; China's Schedule of Concessions on Goods, WT/ACC/CHN/49/Add.1 (Oct. 1, 2001).

(c) Sliding scale duty:

This duty is applicable to three 8-digit HS items on newsprint, in rolls or sheet: 48010000 (bound at 11%), 48026110 (bound at 6.8%), 48026910 (bound at 6.8%).

The MFN rate is in a band from 3 - 45% ad valorem based on a formula contained at page 642 of the 2002 schedules. Taking some hypothetical values for the product of \$100/ton, \$150/ton, \$200/ton and \$250/ton, the calculated tariff would be (a) 45% (capped), (b) 19%, (c) 6%, and (d) 3% (floor). US exports of the newsprint categories are well about these hypotheticals (e.g., in 2001, \$548.17/metric ton under 4801.00.00.00), so there does not appear to be an issue for the sliding scale approach, at least for US exports.

Most of the combination rates appear (at least at the lower value imports) to be consistent with WTO obligations. It is assumed (although it would depend on the value of the Yuan over time) that the higher value items actually get lower duties, which is permitted.

More information is needed on both the specific tariffs and the sliding scale measures to determine whether these rates are likely violations of China's obligations. The test is whether the duty applied in China on imports from WTO members is in fact higher than the bound rate. As a test of likely compliance, Chinese import statistics as published by GTIS China World Trade Atlas were examined for 2001. The following table reviews the average import price (cif) in China for the HS categories listed for the full year 2001 as well as an estimate of the ad valorem equivalent based on the specific rate. These figures are then compared to the 2002 bound rate (ad valorem) with the difference noted in the last column. A negative number indicates that the estimated ad valorem equivalent rate for the specific tariff was lower than the bound rate. A positive number means that the specific tariff, based on 2001 average prices, is higher than the bound rate. As reviewed below, WTO case law is clear that where imports pay a higher

than bound rate tariff, there is a violation. Hence, many of the specific tariffs appear to present violations of China's WTO obligations.

{ EMBED Excel.Sheet.8 }

Specifically, in *Argentina-Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*,⁵⁵ the Appellate Body examined whether the application by a Member of a type of duty other than the type provided for in that Member's Schedule is, in itself, inconsistent with Article II of the GATT 1994.⁵⁶

The Appellate Body first noted that Article II:1(b) of GATT 1994 requires a Member to refrain from imposing ordinary customs duties in excess of those provided for in the Member's schedule. However, Article II:1(b) does not address whether applying a type of a duty different from the type provided for in a Member's schedule is inconsistent, in itself, with that provision.⁵⁷

In accordance with the rules of treaty interpretation, the Appellate Body interpreted Article II:1(b) in its context and in light of the object and purpose of GATT 1994. It stated:

Article II:1(a) is part of the context of Article II:1(b); it requires that a Member must accord to the commerce of the other Members "treatment no less favourable than that provided for" in its Schedule. It is evident to us that the application of customs duties *in excess of* those provided for in a Member's Schedule, inconsistent with the first sentence of Article II:1(b), constitutes "less favourable" treatment under the provisions of Article II:1(a). A basic object and purpose of the GATT 1994, as reflected in Article II, is to preserve the value of tariff concessions negotiated by a Member with its trading partners, and bound in that Member's Schedule. *Once a tariff concession is agreed and bound in a Member's Schedule, a reduction in its value by the imposition of duties in excess of the bound tariff rate would upset the balance of concessions among Members.*⁵⁸

The Appellate Body then examined whether Argentina had acted inconsistently with Article II:1(b) by applying the DIEM ["derechos importacion especificos minimos" - or minimum specific import duty] instead of the *ad valorem* duties provided in its Schedule. As understood by the Appellate Body, Argentina determined the DIEM by identifying a representative international price for each relevant tariff category of textile and apparel products. Argentina then multiplied the representative international price by the bound rate of 35 per cent, or by the actually applied rate of less than 35 per cent, to

⁵⁵ *Argentina-Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, Report of the Appellate Body, WT/DS56/AB/R, March 27, 1998 [hereinafter *Argentina-Footwear*].

⁵⁶ *Argentina-Footwear* at para. 38.

⁵⁷ *Argentina-Footwear* at para. 46.

⁵⁸ *Argentina-Footwear* at para. 47.

arrive at the DIEM for the products in that category. Customs officials were directed, in a specific transaction, to collect the higher of the two values: the applied *ad valorem* rate or the DIEM.⁵⁹ Thus, whether the amount of the DIEM was determined by applying 35 per cent, or a rate less than 35 per cent, to the representative international price, there was a possibility of a price that was sufficiently low to produce an *ad valorem* equivalent of the DIEM that was greater than 35 per cent.⁶⁰

The Appellate Body concluded that Argentina acted inconsistently with its obligations under Article II:1(b) because the structure and design of the DIEM regime resulted, with respect to a certain range of import prices in any relevant tariff category to which it applies, in the levying of customs duties in excess of the bound rate of 35 per cent *ad valorem* in Argentina's Schedule.⁶¹

As noted above, based on 2001 data, China appears to have a number of tariff rates in 2002 that violate their tariff bindings.

B. Legal reform within China

With increased intensity in recent years, China has been very active in terms of adopting and modifying its laws and regulations to bring them into conformity with WTO agreements. Hence, many obligations undertaken by China will be met in terms of statutory or regulatory language consistent with obligations. The tables contained in Attachments 12 and 13 show China's Protocol and Working Party Commitments and, to the extent applicable, related initial efforts by China to comply in the form of new or amended laws and regulations. Effective implementation of these laws and regulations, however, present different challenges. Some areas should be easier to implement than others. Problems are more likely in areas where enforcement actions are required by Chinese government officials or where the same government ministry is regulating foreign investors and state-owned enterprises. In such situations, there are often tremendous training needs, institution building and even cultural modifications needed for truly effective and fair implementation. As the US-China Business Council noted in its September 2001 review of PRC implementation (at page 1), "Uneven enforcement of IPR laws remains the central problem in China's IPR regime." This is true even though IPR rights and enforcement have been the subject of bilateral agreements and cooperation for many years.

One long-standing problem with China's trade framework has been transparency. As noted by the US Department of State:

Chinese officials routinely implement policies based on "guidance" or "opinions" not available to foreign firms and they have not

⁵⁹ As the Panel observed, Resolution No. 811/93 of 29 July 1993, expressly stated in Article 3 that "the specific import duties established by Article 1 of this decision shall operate as a minimum of the corresponding *ad valorem* import duty". See Panel Report, para. 6.19 and footnote 171.

⁶⁰ *Argentina-Footwear* at paras. 49 and 53.

⁶¹ *Argentina-Footwear* at para. 55.

always been willing to consult with Chinese and foreign industry representatives before new regulations are implemented. It can be extremely difficult to obtain copies of draft regulations, even when they have a direct effect on foreign investment. Furthermore, many decisions are left to the discretion of the implementing bureaucrats, who can make decisions without resorting to public comment or open procedures.

US Dep't of State, *China Country Commercial Guide FY 2002*, ch. 6. The ability to effectively monitor China's implementation will depend upon improvement in transparency.

1. China's notifications of law revisions during the accession process -- March 2000

During the accession process, China periodically submitted to the working party committee notifications regarding the status of its trade regime and its relevant laws and regulations. Such laws and regulations would be the subject of discussions and review by existing WTO members who were looking for whether legal changes addressed concerns identified by their companies or basic consistency with WTO obligations. Because significant pieces of compliance with WTO obligations predate accession, it is helpful to review the types of legislation and regulatory reform that was being notified to the Working Party during the 2000-2001 time frame.

In a submission in March 2000, China stated that it had the ability to effectuate the legal obligations it would assume upon WTO accession:

The Chinese Government has an adequate capability to comply with WTO obligations and to exercise WTO rights as provided in the relevant WTO Agreements. The Chinese Government insists that it accedes to WTO as a normal WTO Member, and WTO Members shall take necessary action to ensure the conformity of their laws, regulations and administrative procedures to ensure the full application of WTO rights to China.

In accordance with the Constitution of the PRC, the Standing Committee of the National People's Congress has the power to annul those regulations and administrative decrees issued by both central and local government that contravene the Constitution and laws. The State Council has the power to annul those inappropriate regulations and administrative decrees issued by both central and local government. The Chinese Government considers that these features of the Chinese legal system will ensure an effective and uniform implementation of the obligations resulting from China's accession to WTO.⁶²

⁶² *Communication From China*, WT/ACC/CHN/17 (21 March 2000) at 19.

In the same submission, China provided the following general information about the publication and administration of its trade regulations.

General sources of information

The Chinese Government regularly issues publications providing information on China's foreign trade system: "Almanac of Foreign Economic Relations and Trade" and "The Bulletin of MOFTEC" published by MOFTEC; "Statistical Yearbook of China", published by the State Statistical Bureau; "China's Customs Statistics" (Quarterly), edited and published by the Customs General Administration.

China's laws and administrative rules and regulations of the State Council relating to foreign trade are all published. So are the regulations issued by Ministries and Commissions. Such laws and regulations are available in the "Bulletin of the State Council", the "Collection of the Laws and Regulations of the People's Republic of China (PRC)" and "MOFTEC Gazette". The administrative regulations and directives relating to foreign trade are also published in MOFTEC's official website ([http:// www.moftec.gov.cn](http://www.moftec.gov.cn)) and periodicals.

Exchange controls affecting import and export

The State Administration of Foreign Exchange publishes all the valid laws and regulations of foreign exchange control on the website of the State Administration of Foreign Exchange (<http://www.safe.gov.cn>) and via the news media.

Administration of Import and Export

MOFTEC, together with the relevant departments, decides the items and specific quantities of products subject to import and export licensing and make timely adjustment according to the need of the current situation. These information will be published on "International Business" newspaper and "MOFTEC Gazette".

Customs tariffs and other charges on import and export

China's customs laws and regulations, import and export duty rates, and customs procedures are published in the "State Council Bulletin" and in the press media, and are available upon request. The procedures concerning application of duty rates, customs value and duty determination, drawback and duty recovery, as well as the procedures concerning duty exemptions and reduction, are also published.

The State Statistics Bureau publishes quarterly customs statistics, calculated according to country of origin and consumption. The Customs General Administration publishes trade figures on the basis of eight-digit H.S. headings.

Regulations concerning TBT and SPS

China has set up the TBT and SPS inquiry points of inspection and quarantine which have been notified to the WTO's SPS and TBT Committee.

Laws, regulations, rules, standards and procedures on entry-exit inspection and quarantine have been published in publications such as the "MOFTEC Gazette". The information can also be acquired from the State Administration of Entry-Exit Inspection and Quarantine, or from China's inquiring points of TBT and SPS for inspection and quarantine.

Governmental agreements affecting trade policy

The bilateral trade agreements between China and its trading partners and protocols on the exchange of goods negotiated under them are published in "The Treaty Series of the PRC".

Enterprises Engaged in Foreign Trade

The "Directory of China's Foreign Economic Relations and Trade Enterprises" and "China's Foreign Trade Corporations and Organizations" are two publications, which identify foreign trade corporations and other enterprises in China engaged in foreign trade.⁶³

Also in the March 2000 submission, China provided a list of 177 trade-related laws and regulations that had been enacted between 1949 and 1999.⁶⁴ This list is set out in Attachment 14.

2. China's notifications of law revisions during the accession process -- September 2000

In September 2000, China again submitted information regarding the revision of its laws to conform with the WTO agreements. With respect to the list of 177 laws and regulations submitted in March 2000, China clarified that many of the notified laws were already in conformity:

⁶³ *Communication From China*, WT/ACC/CHN/17 (21 March 2000) at 18-19.

⁶⁴ *See Communication From China*, WT/ACC/CHN/17 (21 March 2000) at 20-28.

It must be stressed that not all the laws and regulations included in that List need to be revised, as most of them are consistent with the WTO Agreement. The Chinese Representative believes that China is very responsible in providing legislation information. As far as we know, no other new member has ever supplied such great amount of information for this purpose.⁶⁵

In the September 2000 submission, China addressed the relationship of its domestic laws and regulations (both national and local) with the requirements of WTO membership, noting that it was actively engaged in revising those laws that were inconsistent with WTO rules.

2. Compliance of Domestic Laws with WTO Rules

Since the Reform and Opening-up in late 1970's, China has consistently paid great attention to the harmonization of its legislation with commonly accepted international practices, including those of the GATT/WTO. On the basis of a thorough review of all its related laws, regulations and other legal documents, the Chinese Government has initiated an ambitious action plan to make all its legislation in compliance with the WTO Agreement, in order that the WTO Agreement will be implemented effectively and uniformly in China after accession. Up to this stage, 31 laws and regulations of the 177 have been identified as not fully consistent with the WTO Agreement. They have been incorporated into a list titled "Revision of China's Laws in Conformity with the WTO Agreement". This list will be submitted to the Working Party via the Secretariat for Members' information. In addition, the Chinese Government has made great effort to organize various government departments in reviewing and examining relevant department rules. Consequently, 120 department rules are found not fully in conformity with the WTO Agreement. Based on the principle of priority and according to the degree of importance or emergency, some of them are abolished, and the rest will be either revised or invalidated. All of them have also been included in the said list. The process of revision and invalidation is still going on.

3. Consistency of Local Regulations and Rules with Laws and Administrative Regulations

China has committed in the Draft Protocol of Accession that it will apply WTO rules within its whole customs territory in a uniform manner. It will also ensure the consistency of domestic laws, regulations and policy

⁶⁵ *Communication From China*, WT/ACC/CHN/39 (22 September 2000) at 2.

measures pertaining to or affecting trade with WTO rules. As a constitutional principle, China will also ensure the consistency of local regulations and rules with the laws and administrative regulations of the Central Government through such statutory procedures as stipulated by the Constitution and the Law on Legislation.

4. Relationship between WTO Rules and China's Domestic Law

The WTO Agreement, as an international treaty that China accedes to, surely has a binding force on China. Under this treaty obligation, China will ensure that domestic laws and regulations relating to or affecting trade are consistent with WTO rules to fully perform its international obligations. China will implement the WTO Agreement in an effective and uniform manner, through revising its effective domestic laws and enacting new ones being fully in compliance with the WTO Agreement.⁶⁶

In the September 2000 submission, supplementing its prior list of enacted laws between 1949 and 1999, China submitted a list of 28 laws and regulations that had been enacted in 2000, noting that "in the year 2000, China has adopted 6 laws, 20 administrative regulations and 2 decisions relating to legal issues. Of these laws and administrative regulations, some have trade relevance, while others do not."⁶⁷ The list is set out in Attachment 15.

3. China's notifications of law revisions during the accession process -- November 2000

In November 2000, China submitted additional, updated information regarding the revision of its laws in conformity with the WTO agreements. First, China noted that "[s]ince the beginning of this year, 38 laws, amendments to laws and administrative regulations have been adopted and promulgated. Among them, 28 were promulgated from January to August and submitted to the WTO Secretariat during the 12th meeting of the Working Party"⁶⁸

Second, China again stressed that its laws were, in large measure, already consistent with WTO requirements.

It must be clarified and stressed that the laws and administrative regulations included in the List are submitted for the purpose of providing information to the Members, and the majority of them are in conformity with the rules of the WTO Agreement. The reason for that lies in the

⁶⁶ *Communication From China*, WT/ACC/CHN/39 (22 September 2000) at 2.

⁶⁷ *Communication From China*, WT/ACC/CHN/39 (22 September 2000) at 3.

⁶⁸ *Communication From China*, WT/ACC/CHN/40 (9 November 2000) at 2.

following facts: since China's Reform and Opening-up in the late 1970s, especially for the last 10 years or so, China has consistently paid great attention to absorbing and making reference to the international practices in its legislation and the harmonization of its legislation with commonly accepted international practices, including the rules of GATT/WTO. This has actually been followed by China as an important guiding principle for the formulation or revision of relevant laws and regulations. Therefore, the majority of China's relevant laws are not inconsistent with the WTO Agreement.⁶⁹

Third, China noted again in November 2000 that it had initiated a plan to review and revise its laws where necessary.

In order to fully perform China's international obligations and ensure that the WTO Agreement will be implemented effectively and uniformly in China after accession, the Chinese Government has initiated an action plan for revising its laws, based upon a thorough review of the existing laws and regulations. The 36 laws and administrative regulations included in the up-dated List for revision submitted to the Working Party Members on the 13th Working Party meeting have been selected from the 177 laws and regulations. They have been identified as not fully consistent with the WTO Agreement.

Additionally, the Chinese Government has made great efforts to organize various government departments in reviewing and examining relevant department rules. Consequently, 120 department rules are found not fully in conformity with the WTO Agreement. Some of them have been abolished and others will either be abolished or revised. A plan for their abolishment or revision is also included in the updated List.

In the TRIPS-related area, the Standing Committee of the National People's Congress adopted the Decision for Revising the Patent Law on 25 August 2000, which makes this Law in conformity with TRIPS. China's Trademark Law currently in force is also identified as not fully consistent with TRIPS in respect of its provisions for judicial remedies granted to parties and its corresponding provisions relating to geographical indications, etc.. It is now under revision according to the criteria set by TRIPS. Besides, the protection of collective and famous trademarks used to be provided for by administrative regulations or department rules. They are going to be incorporated into the Amendment proposal to the Trademark Law. Nor is China's Copyright Law currently in force fully consistent with TRIPS in respect of its provisions for protection of the rental rights of computer programs and cinematographic works, etc.. It is

⁶⁹ *Communication From China*, WT/ACC/CHN/40 (9 November 2000) at 2.

now being revised pursuant to the criteria set by TRIPS as well as other relevant international conventions. These two Amendment proposals to the Trademark Law and the Copyright Law are to be submitted by the State Council to the Standing Committee of the National People's Congress for review in its coming December session. After the adoption of these Amendments, the protection of trademarks and copyright in China will fully satisfy the requirements of TRIPS.

In terms of the customs-related laws and regulations, the Standing Committee of the National People's Congress adopted the Decision for Revising the Customs Law on July 8, 2000. The provisions of the revised Customs Law regarding customs valuation, the determination of product origin and the protection of intellectual property rights of import and export products are in conformity with the Agreement on the Implementation of Article VII of GATT 1994, the Agreement on Rules of Origin and TRIPS.

In terms of the laws relating to TRIMs, the draft Amendments to the Law on Chinese-foreign Equity Joint Ventures, the Law on Chinese-foreign Contractual Joint Ventures and the Law on Foreign Capital Enterprises were submitted to the Standing Committee of the National People's Congress by the State Council in September 2000. To be consistent with TRIMs, the draft Amendments have deleted the requirements for foreign-investment enterprises to give priority to purchases in China, maintain a balance between their foreign exchange receipts and expenditures and export their products. The draft Amendments to the Law on Chinese-foreign Contractual Joint Ventures and the Law on Foreign Capital Enterprises were adopted on October 31. The revision of the Law on Chinese-foreign Equity Joint Venture is a special case. That Law was made in 1979 and is the first law enforcing China's Reform and Opening policy. In order to keep the consistency of the Opening-up policy, Article 15 of the said Law provides that the power to revise this Law is vested with the National People's Congress. Because of this procedural requirement and since the session of the National People's Congress convenes only once a year, the Standing Committee made a decision on October to submit the Amendment to that Law to the National People's Congress for adoption in its March 2001 session.⁷⁰

The two lists of inconsistent laws referred to above that China submitted to the working party in November 2000 are provided as Attachment 16. The list of updated laws issued in the year 2000 (WT/ACC/CHN/40 (9 November 2000) at 4-5) (covering January through October) is set out in Attachment 17.

⁷⁰ *Communication From China*, WT/ACC/CHN/40 (9 November 2000) at 2-3.

C. Laws and regulations adopted in 2001/2002 to bring China into conformity with obligations

In anticipation of and following accession to the WTO, China continued its revision of laws and regulations in 2001 and into 2002. The press and other observers have taken note of and reported changes to China's laws. For example, one observer, the US-China Business Council, noted in its June 2001 and September 2001 implementation status reports (entitled "Toward WTO: Highlights of PRC Implementation Efforts to Date") that, as part of its conformance program, China had recently modified laws and regulations in such areas as trade remedy rules (antidumping and countervailing duty laws in China), intellectual property laws (to conform to Trade-Related Aspects of Intellectual Property Rights ("TRIPs") obligations) and joint venture laws (to conform, *inter alia*, to Trade-Related Investment Measures ("TRIMs") obligations), and telecommunications.⁷¹

⁷¹ See www.uschina.org/prcwtocompliance.pdf; www.uschina.org/wtocompliance2.pdf.

1. MOFTEC

China's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) also has been posting notices on its website⁷² regarding changes in Chinese laws. By way of example, the following eighteen notices were posted by MOFTEC in December 2001 addressing actions to implement WTO obligations, to enforce those obligations or to alert domestic producers of changed rights/obligations under the WTO:

• 12/30/2001: China Issues Governing Regulations for Overseas Financial Institutions
• 12/30/2001: WTO Entry to Challenge China's Administration System ("After the accession, 25 of the 30 government administrative regulations that need drafting or amending have been completed while 12 others have been abolished. The implementation of 36 State Council documents on administration will be stopped very soon")
• 12/30/2001: Private Firms to Be Allowed to Import Oil ("decision was made in accordance with China's commitments made on joining the World Trade Organization")
• 12/28/2001: China Seizes Over 114 Million Illegal Audio-Visual Products (seizures in 2001)
• 12/27/2001: China Publishes Chinese Version of Agreements on Its WTO Entry Online ("MOFTEC published the full English text of legal documents concerning China's accession to the WTO on its website on December 10. A guide book and bilingual version of the legal documents will also be published after the Chinese full text version is formally presented.")
• 12/26/2001: China Completes Rectification of WTO-related Laws ("China has completed the rectification of six laws, making them all conforming to the rules of the World Trade Organization (WTO)." "The six laws are: the Law on Chinese-Foreign Equity Joint Ventures, the Trademark Law and the Copy Right Law that were revised this year and the Law on Chinese-Foreign Contractual Joint Ventures, the Law on Foreign-Capital Enterprises and the Patent Law that were rectified last year. The six laws concern the use of foreign capital and the protection of intellectual property. Zhang said amending of such laws is in the spirit of the WTO and represents the principles of 'national treatment' and 'most-favored-nation clauses'.")
• 12/24/2001: New Regulations for Management of Overseas Funded Insurance Companies
• 12/18/2001: China's First Telecom Joint Venture to Start Service
• 12/17/2001: First Life Insurance Firm Open to Overseas Investors Set up in China (Heng'an Life Insurance Co., the first life insurance company authorized to set up a joint venture with overseas investors since China joined the World Trade Organization last week, was launched Sunday in Tianjin.)
• 12/14/2001: China to Improve Statistics Quality with IMF Standards ("The move is part of the Chinese government's drive to improve the quality of statistics and service in response to transparency requirements after the country's entry into the World Trade Organization.")
• 12/14/2001: New Body to Handle Anti-dumping
• 12/13/2001: China Promotes Anti-Dumping, Anti-Subsidy study ("Ma said fair trade policies and laws concerning imports and exports are important parts of China's foreign trade policies and laws. China will not only make anti-dumping, anti-subsidy and safeguard investigations against imports on the basis of WTO rules, but also guide domestic enterprises to actively defend their rights and interests in investigation cases against Chinese exports.")
• 12/13/2001: China Issues Protection Code for Local Industries (antidumping, anti-subsidy and safeguard provisions)

⁷² See { HYPERLINK http://www.moftec.gov.cn/moftec_en }.

- 12/12/2001: China to Cut Tariff Level to 12 Percent by End of 2002 ("China is to cut the average level of tariffs of imported goods from the current 15.3 percent to 12 percent by the end of 2002, the Ministry of Finance announced Tuesday. The reduction of tariffs will begin from January 1, 2002. The Chinese government has decided to lower the tariff rates of 5,300 items in 2002, accounting for 73 percent of the total items of tariffs." "He said in the next few years, China will continue to cut the tariff rates step by step according to its duty under the WTO.")
- 12/10/2001: China to Allow Renminbi Business for Overseas Banks in Shanghai, Shenzhen ("China will allow overseas financial institutions in Shanghai and Shenzhen to engage in Chinese Renminbi business as of December 11, the day when China will formally become a member of the World Trade Organization")
- 12/05/2001: 2002 to See Greatly Cut Auto Tariffs/Restrictions by China ("China's auto tariffs on auto imports will be cut to 25% level starting from 2002 to July 1, 2006. Of these the biggest cut will be seen in 2002 and scrapping of auto quota licensing in 2005." "Apart from tariff cuts on auto imports the official further noted that there are also some other commitments to be honored as compulsory. One is related to a complete scrapping of preferential policies honoring domestic auto products. Two is for a repeal of man-made restrictions on manufacturers' investment, auto models and types to be developed by 2003, making sure every manufacturer has the right to produce the types or auto models of their own choice. Aside from the above said, limits to a fixed JV share not over 50% by foreign partners will also be cancelled immediately after China's entry of the WTO.")
- 12/05/2001: Preparation for WTO Entry Well Under Way: Trade Minister ("The preparatory work for China's accession to the World Trade Organization (WTO) is going smoothly, said the Minister of Foreign Trade and Economic Cooperation Shi Guangsheng Tuesday." "China is busy revising and adjusting laws, to provide legislative assurance for the new situation after the entry. After completing the amendments to most national laws and regulations, China has started checking local laws and provisions")
- 12/04/2001: China's Pharmacy Sector to Explore New Ways for WTO Entry ("In 2000, the medicine manufacturers ranking the top ten in the world reported a sales volume accounting for about 47 percent of the global medicine industry. However, about 97 percent of the Chinese-made medicine and raw medicine made in China are somewhat copy of those made in the developed countries. With China's newly WTO entry the implementation of regulations on intellectual property protection will forbid the random replication of foreign patented medicine, which will be a great challenge to China's national pharmaceutical industry.")

2. New Chinese Laws 2001-2002

In 2001 and 2002, China enacted a significant amount of new legislation. In addition to MOFTEC announcements and news reports about the issuance of such new laws, one can review new Chinese laws through the services of specialized fee-based websites that collect new Chinese laws and provide English translations of them. One such website is Isinolaw (www.isinolaw.com). Attached as Attachment 18 is a chronological list of more than 350 laws, regulations, proposed rules and judicial interpretations issued in 2001 and 2002 affecting areas that, in some cases, relate directly to WTO obligations and commitments, and in other cases, may indirectly relate to WTO obligations and commitments. The list of laws (only national laws have been included in the attached list) passed in 2001 and 2002 reflects the broad extent of China's legal revision and modification. (Note: the English translations of the law titles in the attached list are provided by Isinolaw).

3. Working Party Report - transparency

With respect to the transparency of China's laws and regulations -- that is, information about where China's laws can be obtained and where they are published -- China provided information to the working party committee which was incorporated into the Working Party Report, as follows.

325. ... the representative of China noted that the Government of China regularly issued publications providing information on China's foreign trade system, such as the: "Almanac of Foreign Economic Relations and Trade" and "The Bulletin of MOFTEC" published by MOFTEC; "Statistical Yearbook of China", published by the State Statistical Bureau; "China's Customs Statistics (Quarterly)", edited and published by the Customs. China's laws and regulations of the State Council relating to foreign trade were all published, as were rules issued by departments. Such laws, regulations and rules were available in the "Gazette of the State Council", the "Collection of the Laws and Regulations of the People's Republic of China" and the "MOFTEC Gazette". The administrative regulations and directives relating to foreign trade were also published on MOFTEC's official website (<http://www.moftec.gov.cn>) and in periodicals.

326. He further noted that there were no forex restrictions affecting import or export. Information on forex measures was published by the SAFE and was available on SAFE's website (<http://www.safe.gov.cn>) and via the news media.

327. The representative of China noted that information concerning the administration of imports and exports would be published in the "International Business" newspaper and the "MOFTEC Gazette".

328. He also noted that information on China's customs laws and regulations, import and export duty rates, and customs procedures was published in the "Gazette of the State Council" and in the press media, and was available upon request. The procedures concerning application of duty rates, customs value and duty determination, drawback and duty recovery, as well as the procedures concerning duty exemptions and reduction, were also published. Customs also published monthly customs statistics, calculated according to country of origin and final destination, on the basis of eight-digit HS levels.

329. The representative of China noted that any bilateral trade agreements concluded between China and its trading partners, and protocols on the exchange of goods negotiated under them were published in "The Treaty Series of the PRC". He also noted that the "Directory of

China's Foreign Economic Relations and Trade Enterprises" and "China's Foreign Trade Corporations and Organizations" were two publications which identified foreign trade corporations and other enterprises in China engaged in foreign trade.

330. The representative of China stated that the full listing of official journals was as follows: Gazette of the Standing Committee of the National People's Congress of the People's Republic of China; Gazette of the State Council of the People's Republic of China; Collection of the Laws of the People's Republic of China; Collection of the Laws and Regulations of the People's Republic of China; Gazette of MOFTEC of the People's Republic of China; Proclamation of the People's Bank of the People's Republic of China; and Proclamation of the Ministry of Finance of the People's Republic of China.

331. The representative of China confirmed that publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex would include the effective date of these measures. It would also include the products and services affected by a particular measure, identified by appropriate tariff line and CPC classification. The Working Party took note of these commitments.

Report of the Working Party on the Accession of China, WT/MIN(01)/3 (10 November 2001) at para. 325-331.

As the Working Party Report above notes, China states that "information concerning the administration of imports and exports would be published in the ... the MOFTEC Gazette." The MOFTEC Gazette is an authoritative and official publication for the timely promulgation of foreign economic and trade laws and regulations. The Gazette is published weekly and generally includes 4-6 laws and regulations in each issue. Attachment 19 shows the table of contents to the MOFTEC Gazette for the first 6 issues of 2002. A sample MOFTEC Gazette is included in Attachment 20.

Also in the working party report, China provided information about the status of its laws concerning intellectual property rights. China stated that its "IPR protection system aimed at achieving world dimension and world standards." The working party report presents "lists of administrative rules concerning intellectual property rights currently in force in China" (Table A) and the "status of ongoing reforms and other relevant information" (Table B).⁷³

Table A of the Working Party Report shows the administrative rules regarding protection of intellectual property rights that were still in force in China. These cover three areas: Administrative Rules Regarding Protection of Patent Right; Administrative

⁷³ See *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at 50-53 (Tables A and B) (attached as Attachment 21).

Rules Regarding Protection of Trademark; and Administrative Rules Regarding Protection of Copyright. China noted that:

[F]or accession to the WTO Agreement and compliance with the TRIPS Agreement, further amendments had been made to the Patent Law. The amendments to the Copyright Law and the Trademark Law, as well as relevant implementing rules covering different areas of the TRIPS Agreement, would also be accomplished upon China's accession. The representative of China stated that laws adopted by the National People's Congress and administrative regulations, including implementing rules, issued by the State Council were applied and enforced by the people's courts.⁷⁴

Table B addresses revisions by China to conform to the TRIPS Agreement. China noted that it had "conducted an intensive work programme to examine and revise the IPR laws, administrative regulations and department rules relating to the implementation of the WTO Agreement and China's accession commitments."⁷⁵ In Table B, China listed eight laws and regulations and four department rules that would be revised or abolished.⁷⁶

⁷⁴ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at para. 252.

⁷⁵ *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001) at 53 (Table B).

⁷⁶ *See id.*

4. China Notification to the WTO Pursuant to Working Party Report and Protocol

As a Member of the WTO, China has so far submitted to several WTO bodies information regarding implementation of some of its WTO commitments. For example, on January 29, 2002, China submitted to the Committee on Technical Barriers to Trade a notice of implementation and administration of the TBT agreement. In that submission, China noted specifically that it was providing the submission pursuant to commitments made in the Working Party Report.

Pursuant to Article 15.2 of the *WTO Agreement on Technical Barriers to Trade (TBT Agreement)* and China's commitments in Article 177, 184 and 185 of the *Report of the Working Party on the Accession of China*, the Government of the People's Republic of China would like to inform the Committee on Technical Barriers to Trade following measures which have been in existence or taken to ensure the implementation and administration of the TBT Agreement.⁷⁷

China also has submitted a large number (up to 140 as of mid-April) of notifications of laws, regulations and other measures relating to SPS measures. *See* G/SPS/N/CHN/P/1 thru G/SPS/N/CHN/P/140 (3, 4, 5, 18, 19 April 2002). These notifications were made pursuant to Section 14 of the Protocol of Accession. *See* Attachment 4 for a list of the SPS notifications.

China's submission to the Committee on Technical Barriers to Trade addressed the following items: consistency with the TBT Agreement; notification body, enquiry point, and publication; transparency; technical regulations; and standards. Because it is one of China's initial notifications to the WTO regarding its implementation activities, excerpts from the submission are set out below:

II. CONSISTENCE WITH THE TBT AGREEMENT OF CHINA'S TECHNICAL REGULATIONS, STANDARDS AND CONFORMITY ASSESSMENT PROCEDURES

1. China's technical regulations, standards and conformity assessment procedures will be formulated and adopted to fulfill those legitimate objectives which are in line with the *TBT Agreement* and the following Chinese laws and regulations: *Law on Legislation of the People's Republic of China*; *Standardization Law of the People's Republic of China*; *Law of the People's Republic of China on Product Quality*; *Law of the People's Republic of China on Import-Export Commodity Inspection*; *Regulations on the Enactment Procedure of Administrative Regulations*; and *Regulations on the Enactment*

⁷⁷ *Implementation And Administration Of The Agreement On Technical Barriers To Trade, Communication from the People's Republic of China, G/TBT/2/Add.65 (29 January 2002) at 1.*

Procedure of Administrative Rules. These legitimate objectives are, *inter alia*: national security requirements; prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.

III. NOTIFICATION BODY, ENQUIRY POINT AND PUBLICATION

(i) Enquiry point

2. As stated in Paragraph 177 of the *Report of the Working Party on the Accession of China to the WTO*, China set up two TBT enquiry points in the year 2000 which were notified to the TBT Committee. Recently, these two enquiry points have been merged into one, which is now in the International Inspection and Quarantine Standards and Technical Regulations Research Center under the State General Administration of the Peoples Republic of China for Quality Supervision and Inspection and Quarantine (AQSIQ).

Address and contact means of the enquiry point are as follows:

15, Fang Cao Di West Street,
Chaoyang District,
Beijing 100020, China

Tel: 0086-10-65952460
Fax: 0086-10-65068143
E-mail: { HYPERLINK "mailto:srrcciq@163bj.com.cn" }

(ii) Notification authority

3. China WTO Notification and Enquiry Center of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) will be responsible for China's Notifications related to the TBT Agreement.

Address and contact means of the notification authority are as follows:

2, Dong Chang An Ave.,
Dong Cheng District,
Beijing 100731, China

Tel: 0086-10-6519 7336, 6519 7762
Fax: 0086-10-6519 7762
E-mail: { HYPERLINK mailto:wtonoti@moftec.gov.cn }

(iii) Publication

4. Technical regulations, standards and conformity assessment procedures will all be published on the Gazette of the Ministry of Foreign Trade and Economic Cooperation or the Bulletin of AQSIQ.

IV. TRANSPARENCY

5. When formulating technical regulations, standards and conformity assessment procedures, China will give non-discriminatory consideration to comments made by other WTO Members. This is stipulated in Articles 34 and 35 of the *Law on Legislation*, Articles 12, 19, 20, 21 and 22 of the *Regulations on the Enactment Procedure of Administrative Regulations* and Articles 14 and 15 of *Regulations on the Enactment Procedure of Administrative Rules*.

6. China will give a reasonable interval between the publication of technical regulations and their entry into force so that adaptation could be made by other WTO Members. This is stipulated in Article 29 of the *Regulations on the Enactment Procedure of Administrative Regulations* and Article 32 of *Regulations on the Enactment Procedure of Administrative Rules*.

V. TECHNICAL REGULATIONS AND RELEVANT CONFORMITY ASSESSMENT PROCEDURES

7. China will apply same technical regulations and conformity assessment procedures to both imported and domestic products. This is stipulated in Article 14 of the *Law on Standardization*, Article 2 of the *Law on Product Quality* and Article 4 of *Regulatory Provisions on Compulsory Product Certification*.

8. China will ensure that technical regulations are not formulated, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.

9. China's relevant authorities responsible for technical regulations will review regularly those regulations in existence according to the nature of these technical regulations to ensure their consistency with the expected reasonable objectives. This is stipulated in Article 13 of the *Standardization Law*.

10. China will use relevant international standards, guidelines and recommendations as a basis for its technical regulations and conformity assessment procedures. This is stipulated in Article 4 of

the *Standardization Law* and the *Regulatory Measures on Adoption of International Standards* promulgated by AQSIQ.

11. China will positively consider accepting as equivalent technical regulations of other Members.

12. China will recognize the product testing reports issued by IECCC CB laboratories.

13. China will apply the same conformity assessment procedures to both imported and domestic products and will set up fee-charging criteria on the basis of non-profit and national treatment principle. Same practices and criteria of other WTO members will be consulted. This is stipulated in Article 4 of the *Regulatory Provisions on Compulsory Product Certification*.

14. Relevant authorities at the central government level that can approve and promulgate technical regulations are as follows: AQSIQ, State Economic and Trade Commission, Ministry of Education, Commission of Science, Technology and Industry for National Defence, Ministry of Public Security, Ministry of Civil Affairs, Ministry of Land and Resources, Ministry of Construction, Ministry of Railways, Ministry of Communications, Ministry of Information Industry, Ministry of Foreign Trade and Economic Cooperation, Ministry of Agriculture, Ministry of Public Health, General Administration of Customs, State Environmental Protection Administration, General Administration of Civil Aviation, State Administration of Radio, Film and Television, State Drug Administration and State Forestry Administration.

15. Provincial quality and technical supervision authorities and entry-exit inspection and quarantine authorities, plus entry-exit inspection and quarantine authorities in the cities of Ningbo, Xiamen, Zhuhai and Shenzhen are the local government level authorities to approve and promulgate technical regulations.

16. AQSIQ and the China National Regulatory Commission for Certification and Accreditation are the authorities to adopt and promulgate conformity assessment procedures.

VI. STANDARDS AND RELEVANT CONFORMITY ASSESSMENT PROCEDURES

17. China will apply same standards and conformity assessment procedures to both imported and domestic products. This is stipulated in Article 14 of the *Standardization Law*, Article 2 of the *Law on*

Product Quality and Article 4 of the Regulatory Provisions on Compulsory Product Certification.

18. China will ensure that standards are not formulated, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.

19. China will take relevant international standards, guidelines and recommendations as the basis for standards and conformity assessment procedures. This is stipulated in Article 4 of the *Standardization Law* and the *Regulatory Measures on Adoption of International Standards*.

20. China will apply same standards and conformity assessment procedures to both domestic and imported products and will impose same fees on the basis of cost.⁷⁸

D. Evaluation of likely conformity

There is little question that China generally has put and continues to put substantial effort into bringing its laws and regulations into conformance with WTO obligations as the above recitation of developments over just the last two years demonstrates. Companies and associations that were interviewed as part of this research project typically viewed there as being good commitment at the top of the Chinese government for timely implementation while there continues to be a need for continued work with individual ministries and local government officials to ensure all parts of the governmental actors in China are on the same page as far as implementation goes. Where changes involve changes to historical practice and cultural approach (e.g., transparency, opportunity for comment, judicial review), most private sector contacts suggested some progress and a need to encourage movement while respecting the challenges that change means. At the same time, some obligations have been late (e.g., China's obligation to "notify to the WTO all laws, regulations and other measures relating to its sanitary and phytosanitary measures, including product coverage and relevant international standards, guidelines and recommendations, within 30 days after accession"), others may not be implemented in full (e.g., tariff commitments which are implemented with specific, compound or sliding scale tariffs instead of ad valorem rates) or have been implemented in ways that have not met the spirit of the obligations and may violate WTO obligations (e.g., end use certificates for certain IT products; limitations on biotechnology products without scientific basis). . None of these outcomes is unusual or unexpected. However, because of the size of the Chinese economy, ensuring Chinese implementation on as timely a basis as possible obviously remains commercially very important to the US

The tables included as Attachments 12 and 13 identify the laws, regulations and other actions that have been identified that appear to implement various obligations

⁷⁸ *Implementation And Administration Of The Agreement On Technical Barriers To Trade, Communication from the People's Republic of China, G/TBT/2/Add.65 (29 January 2002) at 1-3.*

undertaken. For many issues, implementation is likely to be reasonably complete. In other areas, language used will be vague and "the devil" will be in the detail. In others, regulations will have been posted but either no or too little time was provided for public comment, contrary to the transparency obligations and objectives of China's trading partners. Moreover, as reviewed in the next section, China has indicated that it is still working through its laws and regulations to bring them into compliance with much work left to be done yet this year. Hence, one can characterize progress to date as reasonably good with the real test being future changes and how the new laws and regulations work in fact. The US-China Commission will want to monitor this process in the years ahead to ensure reasonably full implementation in fact.

As an example of China's implementation of changed laws to conform to WTO obligations, look at China's revised antidumping, countervailing duty and safeguard laws. Included as Attachment 22 are examinations of these laws and an assessment of their China's conformity with the respective WTO agreements.⁷⁹ In each case, China has generally implemented the broad outlines of the WTO agreements but there are also areas of omission, conflict and vagueness that could result in nonconformity findings. China may through case law or revisions to the laws or other implementing documents released to date want to clarify or elaborate on their construction to reduce the likelihood of violations. *See* Attachment 22.

⁷⁹ The antidumping, anti-subsidy and safeguard laws examined were translated by isinolaw.com (an internet subscription website).

E. Laws and regulations identified by the PRC as under review/revision

Chinese officials have acknowledged that implementation of their WTO commitments has been slow in some areas and delayed due to pressure from domestic interests as well as technical problems.⁸⁰ When a US delegation traveled to China in April 2002, Chinese officials at MOFTEC indicated that they hoped to complete by June a review of more than 2,000 laws and regulations that were affected by China's WTO accession.⁸¹ MOFTEC officials also said that China hopes to complete a review of provincial regulations and laws affected by WTO commitments by the end of 2002.

In particular, MOFTEC told the US delegation that about 2,200 laws and regulations were affected by China's WTO entry, that about 1,400 of them were within MOFTEC's jurisdiction, that China had repealed 559 laws that were WTO-inconsistent, that 450 laws and regulations needed no change, that an additional 120 laws still needed to be amended or published, and that 60 laws had been amended in 2001.⁸²

In March 2002, Zhu Rongli, Premier of the State Council, issued a report on the work of the government. In that report, the Premier outlined the work needed to be done to complete implementation of China's WTO commitments.

In recent years and especially over the past few months, we have done a great deal of work to meet requirements for China's entry into the WTO. Review of relevant state laws and statutes has been completed by and large, and a number of laws and regulations have been repealed, revised and formulated. ... This year we need to concentrate on increasing our international competitiveness and fulfilling the following tasks on the basis of what has been achieved. First, following the principles of the uniformity of law, nondiscrimination, and openness and transparency, we need to quickly improve the system of foreign-related economic laws and statutes so that they are suitable to domestic conditions and the WTO rules and able to guarantee fair and efficient law enforcement. Second, according to China's commitments in its entry into the WTO, we need to gradually expand the spheres of activity open to foreign businesses. In addition, we need to promptly formulate and revise market access standards for quality, sanitation, epidemic prevention, environmental protection and safety. Third, we need to study, master and fully exercise all the rights that China enjoys as a member of the WTO, and promote and participate in regional economic cooperation. Fourth, we need to study and publicize information about the WTO and its rules, and we need to provide training to public servants, especially leading cadres at and above

⁸⁰ *Official Says Industry Pressure Resulting in WTO Implementation Delays in China*, Inside US-China Trade, April 10, 2002, at 1.

⁸¹ *China Announces Farm TRQs, Schedule of Reviewing Laws for WTO*, Inside US-China Trade, April 10, 2002, at 1, 6.

⁸² *Id.* at 6.

county and division level and to managerial staff in large and medium-sized enterprises by stages and in groups. We need to bring forth, through training, a contingent of people who are well acquainted with the WTO rules and international economic cooperation and trade.⁸³

F. Reactions from the private sector to internal reform

As part of this research project, contacts were made with a number of companies, associations or other groups actively involved in trade with China. It was not the intention of this exercise to duplicate work that is underway by the GAO and various business associations. The contacts were with participants in manufacturing, agriculture and services and were intended to determine the extent to which selected participants were seeing improvements in market conditions in China.

The following is a summary of some areas of concern identified in our discussions with the private sector representatives. For many private sector contacts, there was generally very positive comments on efforts of the central government to make the changes required by the WTO commitments. Many were pleased with changes in standard setting (TBT) matters, believed tariff commitments at least as of January 1, 2002 had been generally met and that the central government was focused on bringing China into conformity. This was less true in agriculture where problems with TRQs and SPS measures typically were raised by some as concerns with the ability/willingness of China to implement its commitments in a timely manner.

Transparency

Transparency is an issue that subsumes a large number of commitments and all areas of WTO coverage -- goods, services, TRIPs. Nearly all contacted indicated that China was making efforts to improve the transparency of how regulations were adopted. At the same time, many of those contacted indicated that due to cultural differences, China was not accustomed to open and public procedures in administrative affairs. This created certain practical problems to achieving effective implementation of transparency obligations. A particular example cited was the publication of regulations by an agency or ministry. Often, the regulation was issued without provision of advance drafts, was made effective on the day issued, and copies of the regulation were not always easy to obtain. These parties noted, however, that China is making progress in transparency and that it has recently begun to issue drafts of regulations for public comment. However, even when China did so, the time allotted for comment was often too short to be effective, and comments, if submitted at all, were not necessarily considered by the relevant authority. Transparency is of great importance to all sectors of the US business community. Most contacted indicated that the issue of transparency was one that would require perseverance and patience as China works through changing its approach to this very important issue.

⁸³ Zhu Rongli, Premier of the State Council, Report on the Work of the Government, March 16, 2002, at Section IV.

- Uniform application of the law

Generally, parties contacted felt that the central government had been clear on its intention for uniform application of the law. Many were aware that historically Customs laws (particularly the rate of duty) were not handled uniformly throughout the territory of China. Most felt there were improvements. Some were aware of ongoing rumors that some importers were receiving preferential rates of duty that was not authorized by statute. Some companies took particular pains to ensure that their entries came through ports where compliance with China's tariff schedules was likely or certain.

- State-owned and state-invested enterprises

For those entities that deal with state-owned or state-invested enterprises in China, concerns were raised that these entities are not conforming to China's obligations that such entities operate based on commercial considerations (as to price, quality marketability and availability, etc.) and allow adequate opportunity to foreign companies to compete for sales to and purchases from SOEs on a non-discriminatory basis. Issues of possible discrimination between foreign suppliers and between foreign suppliers and domestic suppliers in contract bid situations were raised by some. Some also questioned whether the central government's WTO commitments were understood and being followed by certain ministries.

Similarly, parties noted that it is often difficult to determine whether SOEs or SIEs are profitable or are being subsidized because of the cost structure of the SOEs or SIEs and the accounting system used in China. (This is an issue that will need close attention in the transitional review mechanism at the WTO.)

- Judicial review

Most contacts viewed the development of a system of meaningful judicial review as important for China's development and for its full implementation of their WTO obligations. Like transparency, a system of judicial review in all areas was viewed as a work in progress that would take years for full implementation. Cultural differences typically make judicial review a matter of last resort (more so than in western societies). Informal dispute resolution approaches are likely to dominate for companies who are in country for the foreseeable future. This was less likely for companies engaged largely in exporting from the US

- Agricultural subsidies

Some US producers of agricultural products say that they have encountered problems with Chinese exported products in third country markets where US parties have lost market share. These parties believe that China has continued to subsidize their agricultural products in violation of their WTO commitment to eliminate export

subsidies as of the date of accession. Generally, some representatives from the agricultural sector expressed frustration with the perceived slow pace of China's compliance with their agricultural commitments.

V. Other aspects of PRC accession relevant to US trade and security interests

A. Doha Development Round -- do implementation issues, Declaration on TRIPs and Public Health or the work program modify existing obligations of the PRC or otherwise raise issues for monitoring by the US-China Security Review Commission?

As part of the accession negotiations, China agreed to implement fully certain obligations without resort to various provisions included for developing countries. Thus, China agreed not to resort to transitional arrangements under Article 5 of the Agreement on Trade-Related Investment Measures⁸⁴ and agreed to eliminate upon accession any subsidy program falling within Article 3 of the Agreement on Subsidies and Countervailing Measures⁸⁵ despite certain potential waivers under Article 27.

Despite these specific commitments by China, China maintains the basic right of member nations to self-select the status of a developing country. It is clear from China's words after accession that it will be a champion of developing country rights:

We need to invite all members to formulate the international trade rules of the new century through equal participation and consultation, so as to enable more developing countries to share the opportunities and interests brought about by the economic globalization and to avoid the further widening of the gap between rich and poor and protect some countries against being marginalized.⁸⁶

The Doha Development Agenda becomes relevant because of the large agenda contained therein including efforts to clarify and possibly expand so-called "special and differential treatment" rights for developing and least developed countries within the WTO. While any "implementation" issues that would contradict a specific commitment in the Protocol or Working Party Report would almost certainly not apply to China (absent specific indication of coverage for China), there are many areas of "exploration" for implementation issues that would presumably affect China and all other countries viewing themselves as "developing." For example, efforts to increase the *de minimis* level of dumping margins or the level of negligible imports for developing countries in antidumping proceedings could reduce the effectiveness of the antidumping law in the US against Chinese imports. In addition, many agreements are subject to ongoing

⁸⁴ See Protocol, para. 7.3.

⁸⁵ See Protocol, para. 10.3.

⁸⁶ Shi Guangsheng, Minister of Foreign Trade and Economic Cooperation, quoted in WTO News, Press/252, 10 November 2001, WTO Ministerial Conference approves China's accession, available at { HYPERLINK http://www.wto.org/english/news_e/pr252_e.htm }.

"implementation" issues which could change market access or utility of multilateral rules in addressing actions by China or its companies.

One issue which is not marked "developing country" could be particularly troublesome for the US textile and clothing industries in future years. Specifically, members will exercise "particular consideration" before investigations under antidumping laws are initiated on textile and apparel imports within the first two years after the importing country has eliminated the quota. For a review of the Doha Development Agenda including the implementation issues being examined, see Attachment 23 (a publication by the author in November on the new agenda).

Similarly, while China assumed full compliance with the TRIPS Agreement upon accession, there may very well be concerns about what the Declaration on the TRIPS Agreement and Public Health, which clarifies countries' rights to invoke compulsory licensing to address health problems, will do for pharmaceutical companies trying to trade in China as well as whether the Declaration will be construed as opening up compulsory licensing opportunities in non-health related areas. The US position has been that the Declaration is a non-event as it simply clarifies rights that already existed under TRIPS. The reaction of some developing countries is different. See Attachment 23.

In short, the Doha Development Agenda opens up some important questions on whether the US will accept less from China (and other countries that have self-elected developing country status) than the initial accession package appeared to promise.

B. Accession of Taiwan -- implications of accessions of both the PRC and Taiwan on cross-straits relations and US interests

At the same time that China was concluding its accession negotiations, so too was Taiwan who became the 144th member of the WTO. Neither China nor Taiwan has opted out of its WTO obligations vis-à-vis the other under Article XIII of the Marrakesh Agreement Establishing the World Trade Organization, although there were rumors that Taiwan might not extend WTO rights to its neighbor. While China and Taiwan conduct considerable trade directly or indirectly and while China has been the recipient of tremendous investment flows from Taiwan, the ongoing conflict between the two on Taiwan's legal status has significantly complicated the consequences of accession for Taiwan. Specifically, Taiwan has been faced with the question of how quickly in fact does it remove the fairly considerable restrictions imposed on dealing with China, under the so-called "three links" policy.⁸⁷ Press releases indicate that Taiwan is liberalizing its market, including to goods from China, although the percentage of trade that will be liberalized is apparently still under review.

Taiwan has run a significant trade surplus with China for many years because of the restrictions imposed. Taiwan has concerns about the survival of various industries

⁸⁷ See Chieh Huang, *The New Economic Relationship Between Taiwan and China -- To Opt Out or Not?* (Georgetown University Law School Graduate Paper, Spring 2000).

after liberalization with China. Because of the ongoing political and military tensions, any rapid changes in trade flows between the two countries, particularly if destabilizing the Taiwanese government, could have non-trade implications for United States.

Indeed, the ongoing tensions between China and Taiwan raises questions about national security threats. A Los Angeles Times article by Eric Lichtblau on April 25, 2002 starts with the following paragraph, "US intelligence officials believe the Chinese military is working to launch wide-scale cyber-attacks on American and Taiwanese computer networks, including internet-linked military systems considered vulnerable to sabotage, according to a classified CIA report." According to the article and a quote attributed to a China analyst at the Rand Corporation, the cyber attacks are apparently part of China's assumed game plan to provide time for itself should an invasion or attack on Taiwan be deemed necessary. At the same time, the US runs large trade deficits on certain computer equipment and parts with China, and there is increased concerns within the US government over enhanced semiconductor technology capabilities in China.

C. What WTO accession does not currently address (e.g., investment restrictions not tied to trade flows, competition policy, elimination of state trading enterprises, mandatory participation in the Government Procurement Agreement). Will these issues be addressed in ongoing negotiations; do they matter in the Commission's evaluation?

In considering what benefits the United States obtains from China's accession, it is important to remember what the WTO does not currently address. Outside of services commitments and the obligation within goods not to invoke certain trade-related investment measures, investment is not part of the WTO, yet obviously affects trade flows. Similarly, anticompetitive practices engaged in by private or state-owned or invested entities are generally not addressable within the WTO (with certain exceptions, e.g., dumping and subsidization). Cartels, refusals to deal, price fixing, etc. can obviously affect trade flows as well. These issues, to some extent, are part of the Doha Development Agenda. The Commission should seek from the Administration and the private sector a review of the problems, if any, encountered by US companies exporting to or doing business in China in these areas. Possibly, the GAO study will explore these issues in their interviews with various US companies. Interviews conducted for this research report indicate concerns particularly where state-owned or state-invested companies are purchasing goods or services whether foreign suppliers are given access in accord with the commitments made by China at accession.

China continues to have a large part of its goods and services sectors either state-owned or state-invested. The Protocol and Working Party Report impose some obligations on Chinese companies that are state-owned or invested to deal fairly in their procurements and their purchases. Where such entities are engaged in commercial activity, they are not considered "government procurement" and, hence, are subject to WTO disciplines. Indeed, China has made specific commitments to have such entities make purchases on a commercial basis. Yet, interviews conducted for this research report indicate concerns particularly where state-owned or state-invested companies are

purchasing goods or services that foreign suppliers are not being given access in accord with the commitments made by China at accession. But for the specific commitments undertaken by China, it must be remembered that the normal disciplines on state trading entities under Article XVII of GATT 1994 are quite weak and have led to endless concerns about the fairness of the business dealings of such entities as the longstanding dispute with Canada on the Canadian Wheat Board would typify.⁸⁸ While the US has sought to have disciplines under Article XVII improved, such efforts have historically been opposed by the countries (including Canada, Australia and New Zealand) that use such entities (particularly in agriculture). With the importance such entities play in China, it is unrealistic to assume significant progress will be made at reform of such entities during the Doha Development Agenda negotiations. Hence, measuring on a regular basis the volume of trade within China from and to state-owned and state-invested enterprises is important to determining how much of the economy may be off limits in part or in whole to US exporters and companies investing in China.

China has committed to become a member of the Government Procurement Agreement (GPA) sometime in the future⁸⁹ and has committed to become an observer to the GPA upon accession and to table an offer "as soon as possible" (within two years had been proposed by Members).⁹⁰ USTR's 2002 National Trade Estimates on Foreign Trade Barriers report states: "China became an observer to the WTO Agreement on Government Procurement (GPA) in February 2002."⁹¹ Until assuming membership in the GPA, China has taken on transparency and MFN obligations where foreign vendors are permitted to bid.⁹² It is important that data be updated regularly on level of government procurement within China at both the central and subnational level and to the extent possible on a Ministry and product group level.

VI. Suggested conclusions on initial compliance

A. Areas of apparent non-compliance as of late April 2002

⁸⁸ In October 2000, the USTR initiated a Section 301 proceeding pursuant to a petition filed by the North Dakota Wheat Commission that investigated the Canadian Wheat Board's marketing practices in the United States and around the world. On February 15, 2002, the USTR announced that the United States would seek relief for North Dakota and all US wheat farmers from the trading practices of the Canadian Wheat Board, a Canadian government monopoly trading enterprise. The USTR announced a multi-faceted initiative: (1) possible dispute settlement case at the WTO; (2) examine possibilities of filing countervailing duty and antidumping petitions; (3) identify specific impediments to US wheat entering Canada; and (4) vigorous pursuit of comprehensive and meaningful reform of monopoly state trading enterprises in the WTO agriculture negotiations. *See United States to Pursue Action Against Monopolistic Canadian Wheat Board*, USTR press release 02-22 (Feb. 15, 2002).

⁸⁹ *See* WT/MIN(01)/3 at 72, para. 339.

⁹⁰ *See id.*, para. 341.

⁹¹ USTR, *2002 National Trade Estimates on Foreign Trade Barriers* at 55. Although USTR reports that China has become a GPA observer, as of mid-April 2002, China was not listed as an observer to the GPA on the WTO website, nor did there appear to be any documents filed by China making such a request.

⁹² *See id.* at para. 339.

Reviewed below in some detail are a number of areas where the US has perceived non-compliance by China with early commitments. Others have been reviewed elsewhere in the paper or have been noted in recent press articles:

- (1) market access commitments, goods: chicken parts are assessed duties which appear inconsistent with China's 2002 bound tariffs; China has imposed a user certification for certain ITA products contrary to the US understanding of China's obligations; customs duties on movies (based on length of film rather than projected royalties to be earned); other countries have raised concerns on other products (e.g., Japan re film);
- (2) TRQs -- China has been significantly late in publishing regulations governing TRQ issuance and has finally done so on basis objectionable to US under China's obligations (affects certain ag products; concerns as well on autos);
- (3) SPS measures -- US has been concerned about actions taken by China on GMO soybeans (lack of scientific basis); in general, China has made a major effort to provide notifications of its current SPS measures
- (4) Uniform administration of trade and customs laws -- private sector perceives that there has been progress made here, with central government seeking uniform administration but that there continue to be problems in achieving uniform administration (e.g., there are rumored to be special tariff rates available through some ports, etc.);
- (5) transparency -- private sector generally gives Chinese government good marks on starting the process of improving transparency; most, however, also indicate that while there are improvements, more needs to be done including reasonable chance to comment on proposed regulations and having government actually take views into account; most believe this is an evolutionary process that will improve with education and focus by the government.
- (6) Financial services -- slow movement by China in terms of approving additional financial service providers (including insurance companies).
- (7) Express courier service -- concerns have been raised on weight limits imposed and registration requirements which are viewed as inconsistent with rights before accession.
- (8) Agricultural export subsidies -- China undertook to eliminate all subsidies on accession; reports reviewed by USTR in NTE indicates that export subsidies continued on corn through at least March 2002 and on contracts entered into prior to accession

B. Areas where compliance will need to be monitored and whether apparent public information sources seem adequate to permit compliance monitoring

Most areas of China's implementation of obligations will need to be monitored as implementation extends beyond passage of a law or regulation and goes to how the government actually acts. In terms of areas where laws or regulations are needed, much should be known by the end of 2002 when the current main program is complete and when the first transitional review is complete. A review of Attachments 12 and 13 also identifies areas where laws or regulations were not identified in this exercise and where monitoring would be worthwhile.

- (1) Some areas, such as annual tariff rate reductions where staged reductions have been committed to, should be relatively easy to confirm through examination of the annual tariff schedules released by China. While most changes are complete by 2004, some continue until 2010. The same should be true in many service sector commitments (e.g., increased ownership percentages after 1, 2 or more years) where existing legislation or regulation or new ones will indicate conformance or not.
- (2) Other areas will depend on information received from the private sector and what information is provided by the Chinese government in its transitional review process or through notifications. For example, there are major commitments in many areas where the extent of activity will be known only to the Chinese government (e.g., continued subsidization of industrial or agricultural goods) or to state-owned or state-invested entities. For many sectors, including sectors such as steel and telecommunications equipment manufacturers, the value of China's accession is tied to the ability to sell to state-owned or state-invested enterprises or to know that inefficient capacity is not being maintained through coverage of operating losses or other WTO-inconsistent actions. At the same time, some important issues (uniform administration) are not likely to be easily captured from government data and will largely be dependent on private sector input and creative data requests to the Chinese government in the annual reviews.
- (3) In all areas, the extensive network that is in place of government outreach and business group surveys should ensure an ongoing database of implementation issues that will need follow-up.

As noted above, subsidies on industrial goods is an area that needs monitoring. As an example, one industrial sector in China that has received subsidies is the steel sector. China committed to notifying all subsidies within the meaning of Article 1 of the SCM agreement (protocol item 10). Annex 5a to the Protocol and Working Party Report lists China's "notification pursuant to article 25 of the SCM agreement. The first subsidy category listed in Annex 5A is "subsidies from central budget provided to certain state-

owned enterprises which are running at a loss."⁹³ One of the sectors shown receiving subsidies is the "ferrous-metal industry."⁹⁴

It is well known that China's "subsidies to the steel industry are massive, including over \$11 billion in forgiven debt in 1999-2000."⁹⁵ Moreover, a US official, in speaking about the possibility of China seeking dispute settlement over the US steel safeguard measures, said that:

this could lead the US to attack Chinese practices in the steel sector as violating international trade rules.

Speaking in Washington, the official said China has adopted a policy of granting subsidies to its steel companies that use domestic rather than imported inputs, which is known as import substitution and is illegal under WTO rules.⁹⁶

In a submission to the US Trade Representative requesting that steel be included in the National Trade Estimate Report on Foreign Trade Barriers in China, US steel companies outlined the subsidies that have been provided to the Chinese steel industry over the last twenty years. The companies note that "while China's steel industry is now the largest in the world, it is for the most part not internationally competitive, and most of the industry would disappear under conditions of open competition."⁹⁷ China has subsidized the steel industry through planned government investments, loan forgiveness and debt for equity swaps, and through export incentives.⁹⁸ With respect to export incentives, the US steel companies note:

With respect to steel, prior to China's WTO accession Chinese steel industry insiders were "particularly concerned that if the currently high export rebates are removed -- the China-USA WTO accord calls for the elimination of export subsidies -- Chinese exports of pig iron, slab and billet will cease. . . the mills will not be able to export these products because the mills are not competitive." Give[n] such comments, the US

⁹³ Annex 5A to Protocol, WT/L/432 (23 November 2001) at item I.

⁹⁴ *Id.*

⁹⁵ *Request for the Inclusion of Steel in the National Trade Estimate Report on Foreign Trade Barriers in China*, Submission of Bethlehem Steel, LTV Steel and US Steel to USTR, December 17, 2001, at 4.

⁹⁶ US Official Warns China Against Taking WTO Action Against US Steel Safeguard, Inside US-China Trade, March 27, 2002, at 1.

⁹⁷ *Request for the Inclusion of Steel in the National Trade Estimate Report on Foreign Trade Barriers in China*, Submission of Bethlehem Steel, LTV Steel and US Steel to USTR, December 17, 2001, at 17.

⁹⁸ *Id.* at 20. The domestic steel companies' submission also reviews the substance and effects of China's import substitution policy. *Id.* at 9.

government should monitor China's implementation of its WTO commitments.⁹⁹

As the domestic steel companies note, it will be important for the US to monitor China's compliance with the SCM agreement and its accession commitments with respect to subsidies, both generally and with respect to steel in particular.¹⁰⁰

⁹⁹ *Id.* at 20.

¹⁰⁰ *See also US Steelmakers Say China Keeps Import Barriers Despite Commitments*, Inside US-China Trade, January 9, 2002, at 3.

C. Areas where implementation appears complete

No areas should be viewed as "complete" because of the actual administration issues that arise for any member and certainly one facing the significant changes confronting China. However, a review of Attachments 12 and 13 will identify areas where there have been laws and/or regulations by individual commitments, signaling generally at least partial compliance. As noted on tariffs, 2002 tariffs largely conform to WTO obligations assumed by China. While there are some deviations, the number of HS items involved is relatively small. Many of these deviations are being pursued bilaterally by the US, Japan or others.

D. Time periods where significant changes in laws/regulations can be expected

The Chinese government has indicated that it intends to complete its review of existing laws and regulations at the central and local level during the remainder of 2002. Thus, hopefully much of the evaluation of compliance from a statutory and regulatory basis should be observable by the end of this year. However, both in goods and services, there are many obligations that phase in over time. In other areas, such as transparency and judicial review rights, most observers anticipate a lengthy process of change as laws and regulations are simply the starting point to a fundamental change to the cultural practices. The annual transitional review should be an excellent way to track movement towards full compliance in these areas.

E. Whether any identified areas of non-compliance or future implementation are being addressed within the PRC and by the WTO or individual countries

As was reviewed in the prior section, the US is actively pursuing non-compliance issues with China as issues arise. Some issues have seen positive progress, others are still in the bilateral informal consultation phase. Many individual problems have not been identified in the press but are hopefully resolved in the informal setting without public announcements. It is known that many countries besides the US are raising issues with China informally as China attempts to address its compliance requirements on an ongoing basis.

F. Whether any current actions by the PRC warrant bilateral action by the US

The answer depends on progress the US can obtain bilaterally with China. Issues such as charging duties in excess of the bound rate (chicken parts) or continual failure to abide by obligations on TRQs could be candidates if acceptable action by China is not forthcoming. As a general matter, the US is pursuing a strategy, along with most other trading partners, of trying to work with China when problems arise. This is the standard approach used with acceding countries and recognizes the large load of obligations being implemented.

G. Areas of initial friction

Since China's formal entry into the WTO as a Member in December 2001, initial tensions and disagreements have arisen in several areas with respect to actions taken by China. The following is a summary of six areas where initial frictions have arisen: (1) the Information Technology Agreement, (2) tariff rate quotas, (3) genetically modified organisms (GMOs); (4) insurance services, (5) courier services, and (6) export subsidies.

1. Information Technology Agreement (ITA)

The Working Party Report states that "upon accession China would participate in the Information Technology Agreement ("ITA") and would eliminate tariffs on all information technology products as set out in China's schedule."¹⁰¹ When China joined the WTO, it confirmed that it intended to "seek rapid adhesion to the WTO's Information Technology Agreement (ITA)," noting that "its tariff elimination plans for the covered IT products formed an integral part of its market access schedule for goods which made up part of the WTO accession package approved in Doha."¹⁰²

At the end of December, China issued *Measures for the Customs of the People's Republic of China to Examine and Approve the Tariff Value of Goods Imported and Exported* (December 31, 2001), which stated:

251 tariff items in the 2002 Tariff Schedule shall be subject to the WTO ITA tariff rate; the ITA tariff rate shall not be applicable to the products under 15 tariff items among the 251 tariff items unless these products are imported for producing the information technology products. Therefore, a unit that applies for importing the products under the aforesaid 15 tariff items and desires the application of the ITA tariff rate shall not apply the ITA tariff rate unless the Ministry of Information issues a certificate and the Customs confirms it.

By the end of January 2002, US officials were publicly criticizing China's position on ITA. In remarks to the US-China Business Council, USTR Zoellick stated that China's tariff schedule threatened to distort the intent of the WTO's ITA.

Zoellick cited China's decision to join the WTO's Information Technology Agreement (ITA), which requires China to eliminate tariffs on all information technology (IT) products by 2005, as one of the bright spots of the country's accession.

¹⁰¹ *Working Party Report*, WT/MIN(01)/3 (10 November 2001) at 18.

¹⁰² *China Affirms Intention to Move Fast to Join WTO's ITA Agreement on Tariffs*, BNA's Daily Report for Executives, November 30, 2001, at A-6.

He noted that Taiwanese companies--"the IT powerhouses of the region"--have invested almost \$9 billion in mainland assembly and production factories, and said that "within this decade" China will "become the world's largest supplier of IT hardware."

However, he also criticized China's new tariff schedule, which differentiates between IT equipment imported for domestic production and IT products intended to be sold in China, he said, "with the latter being subject to a tariff."

The "benefits [China] has accrued from the zero tariffs" of the ITA "will evaporate if it attempts to distort the basic intent of the agreement," Zoellick said. "We will make this point as often as necessary--and it will have to be made often--to the Chinese."¹⁰³

Subsequently, because of this dispute, the US blocked China's application to join the ITA at the February 15th meeting of the ITA working group in Geneva.

US officials told a meeting of the WTO's ITA committee Feb. 15 that while Washington was anxious to have China as an ITA member as soon as possible, there was a "problem of interpretation" with Beijing regarding its demand for the substitution of end-user certificates on the import of 15 categories of IT goods.¹⁰⁴

Specifically, US officials argued in Geneva that China must lift a requirement that certain information technology products be accompanied by an end use certificate when exported to China. ... The US has argued that this system unfairly discriminates against imports and violates China's commitments to adhere fully to the ITA.¹⁰⁵

US opposition to China's entry into the ITA is enough to keep China out of the agreement. The matter of China's ITA membership is likely to arise at each meeting of the working group if the matter is not resolved. The next meeting of the working group is scheduled for early May 2002.¹⁰⁶

¹⁰³ *Zoellick Outlines Concerns Raised By Lags in China's WTO Compliance*, BNA's Daily Report for Executives, at A-27 (Feb. 1, 2002).

¹⁰⁴ *US Blocks China Application to Join WTO Information Technology Agreement*, BNA's Daily Report for Executives, at A-1 (Feb. 19, 2002).

¹⁰⁵ *US Blocks China's Formal Entry into Information Technology Agreement*, Inside US-China Trade, February 20, 2002, at 1, 6.

¹⁰⁶ *Id.*

2. Tariff-rate Quotas (TRQs)

As part of its WTO commitments, China agreed to increase market access in trade of certain agricultural products by allocating TRQs to end users in China. The agricultural products subject to TRQs are wheat, corn, rice, soybean oil, palm oil, rapeseed oil, sugar, grain rice, wool, and cotton. At the end of 2001, end users applied for the right to import these products, but China had not determined how to allocate the TRQs.

In September 2001, prior to accession and after missing a September 15 deadline for publishing tariff rate quota regulations, China promised that it would allocate tariff rate quotas on agricultural products and non-tariff measure (NTM) quotas (*i.e.*, on autos) by the later of the end of the year or the date of accession.¹⁰⁷

When China issued draft regulations regarding TRQs for farm products, the US criticized the draft as inconsistent with WTO obligations. The US identified three problem areas: (1) the TRQ was divided into two sections (end users; processing trade), (2) the procedures for applying were burdensome, and (3) the criteria were vague.¹⁰⁸ The US was also concerned that sub-national authorities would play a part in allocating TRQs.¹⁰⁹ When China issued another draft of farm product TRQ regulations, US agricultural exporters said that it suffered from the same problems as the earlier draft.¹¹⁰

As with agricultural TRQs, as of January 2002, China had not yet published regulations on allocating its \$6 billion auto quota. It was noted that "the absence of regulations on this subject is only the latest example of China's failure to meet some of its early WTO commitments, as China has yet to produce regulations on how to distribute agricultural tariff-rate quotas and in other areas has published regulations that are so vague that they are essentially unusable by US companies and others."¹¹¹ US automakers, however, appeared "willing to give China the time it needs to finalize its regulations on auto TRQs," noting that it was "too early to get upset over the regulations."¹¹²

USTR Zoellick criticized China for lagging in its implementation of its commitments on agricultural tariff-rate quotas. The press reported:

¹⁰⁷ *China Promises to Ensure Agricultural TRQ Allocation Upon Accession*, Inside US-China Trade, September 26, 2001, at 3.

¹⁰⁸ *US Says China Already Violating WTO Farm Trade Obligations*, Inside US-China Trade, December 5, 2001, at 1.

¹⁰⁹ *Id.*

¹¹⁰ *China's Latest Farm TRQ Proposal Could Draw Fire from US Exporters*, Inside US-China Trade, February 13, 2002, at 1.

¹¹¹ *US Automakers Still Waiting for Chinese Auto TRQ Regulations*, Inside US-China Trade, January 30, 2002, at 3.

¹¹² *Id.* China still had not allocated its industrial product quotas by March 2002. See *US Hoping China Allocates Industrial Quotas This Month*, Inside US-China Trade, March 20, 2002, at 3.

As part of its WTO commitments, China agreed to significantly increase imports of wheat, corn, rice, and other agricultural commodities under the TRQ system.

However, China has yet to issue a final draft of implementing regulations for the TRQs, even though they were required to do so by Jan. 1. A previous draft of the regulations, issued in late November, was met with widespread criticism from US trade officials.

"Countering the forces of protectionism in China's agriculture sector will require a rigorous effort by the United States and by China's leadership," Zoellick said. He noted that "China has yet to ... issue regulations governing the allocation of tariff rate quotas, while its biotech regulations, as drafted, could serve as an unfair barrier to trade."

TRQs set a level of imports, or quotas, below which duties are low or nonexistent, and above which they are significantly higher.

The senior US trade official told BNA that the delay is likely a result of interagency disputes in China between the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), which agreed to China's agricultural commitments, the Ministry of Agriculture, which is most likely being lobbied by Chinese agricultural interests, and the State Development Planning Commission (SDPC), the agency charged with issuing the licenses and allocating the quotas among private buyers, he said.

Possibly referring to this dynamic, Zoellick noted that while "China is still a dictatorship ... this is not to say that it has no domestic politics, no center-province tensions, no interest groups, and no diversity of economic interests and players."

"They will be heard from," he continued, "and many domestic actors in China have at best a dubious commitment to the principles that underlie WTO membership."¹¹³

In March 2002, China again failed to meet a self-imposed deadline (March 5) for allocating agricultural TRQs.¹¹⁴ Also in March, the US raised two issues with China regarding fertilizer. First, the US complained that China had repealed a VAT tax on domestic fertilizer but maintained the tax on US products such as urea and diammonium

¹¹³ Zoellick *Outlines Concerns Raised By Lags in China's WTO Compliance*, BNA's Daily Report for Executives, February 1, 2002, at A-27.

¹¹⁴ *China Again Fails to Meet Deadline for Allocating Farm TRQs*, Inside US-China Trade, March 13, 2002, at 8.

phosphate (DAP).¹¹⁵ Second, the US said that China should immediately allocate its TRQ on fertilizer.¹¹⁶

After China missed a second self-imposed deadline to allocate TRQs, the US and Canada, at the March 24 meeting of the WTO Committee on Agriculture, raised the issue and asked when China would allocate the TRQs, as further delay could reduce exports to China in 2002.¹¹⁷

In April 2002, Chinese officials informed the US that information on the allocation of agricultural TRQs had been forwarded to the provinces.¹¹⁸ Initially, the US was not able to confirm that China had in fact allocated the TRQs.

US officials ... were still looking for new evidence that China has taken steps toward allocating agricultural and fertilizer tariff-rate quotas among end users, but as of early this week had not heard conclusively that China had done so. Chinese officials last week assured US Trade Representative Robert Zoellick during his trip to China that they were allocating farm TRQs, but the State Development and Planning Commission (SDPC) said it was not ready to meet with the US to go over the details related to the TRQ allocation for a broad list of agricultural products. *** But the US is aware that China has made some movement towards implementing its WTO obligations. "It appears that some sort of allocation process has begun, but we haven't spoken with" officials in China who could confirm this, he said. "I can't confirm that the TRQ has been allocated for fertilizer and agriculture."¹¹⁹

On April 12, China's State Economic and Trade Commission (SETC) "publicized the tariff quota for chemical fertilizer."¹²⁰ The announced quota amounts for fertilizer, however, were already known. SETC still did not state how the quota would be distributed to end users.¹²¹

¹¹⁵ See *US Formally Protests China's Fertilizer Import Regime at WTO Meeting*, Inside US-China Trade, March 20, 2002, at 1. The US raised this issue at a March 15 meeting of the WTO's Market Access Committee. *Id.*

¹¹⁶ See *US Formally Protests China's Fertilizer Import Regime at WTO Meeting*, Inside US-China Trade, March 20, 2002, at 1.

¹¹⁷ See *China Again Delays Tariff-Rate Quota Allocation for Agricultural Products*, Inside US-China Trade, March 27, 2002, at 1. The EU, Malaysia, Brazil and Argentina also expressed disappointment that the TRQs had not been allocated. *Id.*

¹¹⁸ *China Announces Farm TRQs, Schedule of Reviewing Laws for WTO*, Inside US-China Trade, April 10, 2002, at 1.

¹¹⁹ *US Searching for Evidence of China Compliance on Farm TRQs*, Inside US-China Trade, April 17, 2002, at 1.

¹²⁰ *China Releases Tariff Quotas For Fertilizer, Crude Oil*, MOFTEC news release (April 12, 2002)

¹²¹ *US Searching for Evidence of China Compliance on Farm TRQs*, Inside US-China Trade, April 17, 2002, at 4.

Subsequently, Chinese officials provided US officials with a summary of their TRQ allocation for fertilizers to end users in China. Early analysis by US officials, however, appeared to reveal several problems with the allocation.

“China does not appear to be in conformity with its WTO obligations,” the official said.

For example, he said, China does not appear to have allocated TRQ to as many new importing entities as the US anticipated, and instead seems to have allocated most of the TRQ to Chinese state-trading enterprises (STEs). “We don't see new players,” the official said. “It appears to be heavy on STEs.”

However, the official said the Chinese summary appears to have allocated the proper amount of fertilizer TRQ to Chinese end users.

The official stressed that the US will not make the argument that STEs should be left out altogether from the TRQ, as China is allowed to allocate up to 90 percent of its fertilizer TRQ to these entities in the first year of accession and the biggest Chinese customers for US fertilizer are STEs. However, he said the US wants China to grant new entities access to the TRQ.

* * *

The official predicted that another complaint the US will make is that China should have issued import licenses to Chinese end users at the same time they allocated TRQ to these end users. Failure to do so means end users with TRQ will have to undertake a second application process before they can import, which could act as a barrier to US exports.

In addition, US government and industry sources said some sources in China are reporting that the government has instructed its end users that received TRQ not to import the full amount, which, if true, would call into question whether China is meeting its WTO obligations. “The ability to use the full amount is in question,” the US official said.

* * *

After a thorough examination of China's fertilizer TRQ allocation, the US is expected to note its complaints in a report it will send to Chinese officials. The official said the US hopes that highlighting these complaints will lead to improvements when China allocates TRQ next year.¹²²

¹²² *China Allocates Fertilizer TRQ; Early US Analysis Sees Problems*, Inside US-China Trade, April 24, 2002, at 1, 6.

China still has not issued allocation information for the other agricultural products subject to TRQs.

3. Genetically Modified Organisms (GMOs)

Prior to accession, US agriculture and biotechnology organizations expressed concern over China's pending biotechnology regulations and new quarantine measures that would threaten \$1 billion in shipments of US soybean exports during the October-March period.¹²³ The Chinese regulations in questions concern imports of genetically modified crops, and about one half of US soybeans are genetically modified.¹²⁴ the quarantine measures would require additional documentation and inspections, raising the cost of the US soybeans and possibly pricing them out of the Chinese market.¹²⁵

In October 2001, China "proposed to temporarily accept shipments of US soybeans while China develops regulations for approving imports of genetically modified farm products, as long as the US government can certify that these shipments pass US safety regulations."¹²⁶

In November 2001, US government and industry sources said that China appeared to be allowing imports of US soybeans again, but that it was not certain that the shipments would be unloaded and actually used in China.¹²⁷ Later in November, China "formally agreed to accept US soybeans on an interim basis" while it continued to develop its GMO regulations.¹²⁸ Under the arrangement, China would accept US safety certificates for the US soybeans. US officials also asked that, once issued, China delay implementation of the GMO regulations to allow US exporters to adjust to any new requirements and to prevent disruption to export shipments.¹²⁹

In January 2002, China finally released its new GMO regulations, with an effective date of March 20, 2002. The GMO regulations were divided in three parts:

¹²³ *Ag, Biotech Groups Seek Bush Help on China Soybean Market Access Barriers*, Inside US-China Trade, October 3, 2001, at 1.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *US Seeking Specifics on Chinese GMO Soybean Proposal*, Inside US-China Trade, October 31, 2001, at 1.

¹²⁷ *US Sees Improvements in Ability to Export Soybeans to China*, Inside US -Trade, November 14, 2001, at 1.

¹²⁸ *China Formally Agrees to Interim Soybean Arrangement with US*, Inside US-Trade, December 5, 2001, at 6.

¹²⁹ *See US to Ask China for delay of GMO Rule to Protect Soybean Exports*, Inside US-China Trade, December 19, 2001, at 1; *US Warns China on Farm TRQs, Pleased with Progress on Soybeans*, Inside US-China Trade, January 2, 2002, at 5.

labeling, internal approval, and imports.¹³⁰ Problems were raised by the labeling requirement and the lengthy approval process:

China's rule ... prescribes a label of "genetically modified" for commodities, such as soybeans or corn, and "genetically modified products" for products made with GMOs. In cases where products are made with GMOs but no traces of bioengineered matter remain, China suggests a label explicitly stating this, according to the rule. The US has objected to a similar proposed EU regulation that would mandate labels for products made from, but containing no traces of, GMOs, saying these have no scientific justification and open the door to fraud.

* * *

Regarding approval of GMO imports, China said applications would be approved or disapproved within 270 days of receipt, and would prohibit the signing of export contracts until the exporter obtains a safety certificate from the Agricultural Ministry.¹³¹

The US sought to have the new GMO regulations delayed, as they threatened to "shut off trade in items like GMO soybeans, possibly until 2003."¹³² The American Farm Bureau filed a complaint about the GMO rules with the USTR, saying that the pending GMO regulations threatened to cut off all US farm exports to China.¹³³

As noted in the press, the US has both short- and long-term interests in this issue.

The short-term concern is that the regulations China issued Jan. 8 on genetically-modified organisms (GMOs), which require a lengthy process of inspections, safety assessments, and labeling that could take nine months to complete, will interrupt trade when the rules are scheduled to take effect March 20.

¹³⁰ *Chinese Biotech Rules Could be Problematic for US Exporters*, Inside US-China Trade, January 16, 2002, at 3.

¹³¹ *Chinese Biotech Rules Could be Problematic for US Exporters*, Inside US-China Trade, January 16, 2002, at 3. See also *China Will Meet Trading Partners at WTO to Discuss Agriculture Issues*, BNA's Daily Report for Executives, February 5, 2002, at A-8: "On Jan. 8, China's Ministry of Agriculture issued final regulations outlining procedures for testing, labeling, and obtaining import licenses for GMO products, procedures that are scheduled to go into effect March 20. US officials have complained that some of the procedures, in particular the labeling requirement for GMO products, do not have any scientific justification and could lead to lengthy delays in shipping farm goods to the Chinese market."

¹³² *US Asking China for Delay in Biotechnology Regulation This Week*, Inside US-China Trade, January 23, 2002, at 1.

¹³³ *Farm Bureau Lodges Formal Complaint About Chin's GMO Regs*, Inside US-China Trade, January 30, 2002, at 3. See also *Farm Groups Pressure Administration to Clarify Chinese GMO Rules*, Inside US-China Trade, February 13, 2002, at 4.

On a longer-term basis, the official said, the United States wants to ensure that China's GMO regulations are "science-based" and therefore "WTO-compliant."

Currently, the GMO regulations primarily impact US soybean exports to China, which total about \$1 billion annually.¹³⁴

During his visit to China in February 2002, President Bush raised the GMO issue with the Chinese government, but the matter was not resolved.

White House officials had indicated earlier that Bush would raise with the Chinese president his concern over regulations China passed in January requiring a 270-day inspection, approval, and labeling process for imported genetically modified products. The regulations state that all unapproved products would be blocked beginning March 20, and contracts for GMO products after that date have already been cancelled. The US exports about \$1 billion worth of GMO soybeans to China each year.

Rice said that "talks about soybeans came up in the presidential meeting," but added "this is still an issue that has to be resolved. There's not been any movement."¹³⁵

Given China's unwillingness to delay implementation of the GMO regulations, the US industry raised the possibility that it may be necessary to file a challenge to China's regulations at the WTO.

US agricultural exporters this week predicted that if China does not signal a willingness to delay the implementation of import rules for genetically modified organisms (GMOs) in the coming weeks, the US may have no choice but to launch a formal dispute settlement case against China in the World Trade Organization. The possibility of taking this step -- only months after China formally joined the trade body -- was raised by industry representatives after Chinese President Jiang Zemin told President Bush in a bilateral meeting last week that China is committed to implementing its rules for the approval and labeling of GMOs by March 20.

Industry sources stressed that it is too early to say whether a WTO case would be pursued, especially since US companies across a range of

¹³⁴ *Zoellick Outlines Concerns Raised By Lags in China's WTO Compliance*, BNA's Daily Report for Executives, February 1, 2002, at A-27.

¹³⁵ *Bush Raises Missile Non-Proliferation, WTO Trade Commitments in China Visit*, BNA's Daily Report for Executives, February 22, 2002, at A-1.

industry sectors have resisted the option of openly confronting China by launching a formal dispute settlement case. This resistance stems in large part from a desire to avoid any overt fights with China that could make it even more difficult to export to that country.

At the same time, these sources said, open discussion of a WTO case underlines the importance US companies attach to ensuring that China implements its GMO rule in a way that is consistent with its WTO obligations. US companies have argued that the operation of China's pending rules is not clear and would disrupt existing trade, which they say constitute violations of China's WTO obligations.¹³⁶

In March, China offered an interim proposal to resolve the GMO dispute -- China would allow US exports of GMO products to be accepted in China as long as they were certified safe by the US Government and exporters had begun the approval process in China.¹³⁷ US exporters encountered a "new hurdle" when China required soybean exporters to also apply for an interim safety certificate for GMO corn because traces of corn are often found in shipments of US soybeans.¹³⁸

In April 2002, China began to issue interim certificates for soybean imports, a step that appears to have resolved the GMO issue for the present.

Chinese officials late last week issued about 20 interim certificates to US exporters, which will allow those companies to export soybeans to China that contain genetically modified organisms (GMOs). The release of the import certificates, as well as approvals for labels that must accompany US GMO products sent to China, means US exporters of GMO soybeans should be able to resume shipments to China, according to a US official.

By granting these interim certificates on April 20, China met a self-imposed 30-day deadline that it set on March 20, sources said.

USTR is "cautiously pleased" that China has taken this step, according to the US official. He stressed that while there appear to be no immediate problems related to resuming shipments, USTR is on the lookout for new hurdles to exporting soybeans to China again.¹³⁹

¹³⁶ *Industry Says WTO Case Emerging as Option in China GMO Dispute*, Inside US-China Trade, February 27, 2002, at 1.

¹³⁷ *US Optimistic on Chinese Offer to Resolve GMO Fight; Waiting for Implementation*, Inside US-China Trade, March 13, 2002, at 1.

¹³⁸ *US Exporters Find New Difficulties With China's Interim GMO Solution*, Inside US-Trade, March 27, 2002, at 3.

¹³⁹ *China Issues Temporary GMO Certificates for Soybean Exports*, Inside US-China Trade, April 24, 2002, at 2.

4. Insurance Services

Prior to China's accession to the WTO, "China allowed selected foreign insurers to operate in China on a limited basis in two cities. Three US insurers had licenses to operate, and more than 20 additional US insurers were waiting for approval of their licenses by China's regulatory authorities."¹⁴⁰ "After accession, China is committed to award new licenses to qualified foreign insurers based solely on prudential criteria, with no quantitative limits on the number of licenses or restrictions such as an economics needs test."¹⁴¹ The Working Party Report noted that "the merging, division, restructuring or other change of legal form of an insurance company would not impact the prior experience requirements included in China's Schedule of Services Commitments if the new entity continued to supply insurance services."¹⁴²

In November and December 2001, China issued new laws covering foreign-invested insurance companies.¹⁴³ The administrative regulations issued by China have caused concern to the US insurance industry with respect to China's WTO commitments, as detailed in the following press report:

Chinese regulations for foreign-invested insurance companies set to take effect Feb. 1 include open-ended language that raises questions about China's future regulatory regime and does not fully spell out the market-opening commitments it made in joining the World Trade Organization, industry sources said.

* * *

Industry sources said that no clear-cut violations of China's WTO commitments are evident in the regulations, but that the regulations lack

¹⁴⁰ USTR Website, *China's Accession to the WTO* (www.ustr.gov/regions/china-hk-mongolia-taiwan/accesion.shtml).

¹⁴¹ *Id.* The language in the Services Schedule of Commitments (WT/ACC/CHN/49/Add.2) with respect to insurance licenses is as follows:

Upon accession, licenses will be issued with no economic needs test or quantitative limits on licenses. Qualifications for establishing a foreign insurance institution are as follows:

- the investor shall be a foreign insurance company with more than 30 years of establishment experience in a WTO member;
- it shall have a representative office for two consecutive years in China;
- it shall have total assets of more than US \$5 billion at the end of the year prior to application, except for insurance brokers.

Insurance brokers shall have total assets of more than US\$ 500 million. Within one year after accession, they shall have total assets of more than US\$ 400 million. Within two years after accession, they shall have total assets of more than US\$ 300 million. Within four years after accession, they shall have total assets of more than US\$ 200 million.

¹⁴² WT/MIN(01)/3 (10 November 2001) at para. 316.

¹⁴³ See *Regulations for Administration of Insurance Agencies* (issued November 16, 2001; effective January 1, 2002); *Administrative Regulations of the PRC on Foreign-Invested Insurance Companies* (promulgated December 12, 2001; effective date February 1, 2002).

the “transparency” China committed to apply in its regulatory regime. Some of China's commitments are also not reflected in the regulations, but that does not necessarily constitute a violation absent a decision or issuance of a rule by the Chinese government that runs counter to its WTO commitments.

* * *

The regulations also set out a potentially lengthy approval process before foreign-invested insurers can set up operations in China. ...

Industry sources highlighted a number of concerns prompted by the regulations. For example, the regulations say that the CIRC will provide written reasons for the denial of a foreign company's application to set up an insurance venture. But the regulation does not say that the company will be provided the opportunity to correct deficiencies in its application, as China promised in its working party report.

* * *

Also, the regulations also do not spell out the phase out of geographic restrictions on the insurance business, nor the products that are open to foreign insurance providers. ...

* * *

Another example of an omission relates to branching, where the regulations say “internal branching of a foreign-funded insurance company shall be reviewed and approved by CIRC based on relevant rules.” Those rules remain unspecified in the regulations.

* * *

The branching regulations are particularly relevant to American International Group, the sole US life insurer structured as a branch of its parent company and not as a joint venture. Problems over AIG's unique status held up conclusion of accession talks, but a deal giving the company new branches this December supposedly resolved the issue.

In its accession commitments, China committed that branches and sub-branches would be allowed as “extensions of the parent enterprise” a formulation that would allow AIG to maintain its 100 percent ownership structure. At the same time, the language refers to China's services schedule and its provisions on MFN treatment, which could potentially limit AIG to the 50 percent equity in future operations that other foreign life insurers are held to.

The regulations also contain other potentially open-ended formulations. For example, CIRC reserves the right to request “any other materials” in evaluating an application to do insurance business in China.

* * *

The regulations also leave open some crucial questions on the prudential requirements insurance companies must fulfill to assure regulators of their

solvency. It remains unclear how cash holdings must be demonstrated, for example, or what additional requirements will be imposed after companies reach a certain level of business.¹⁴⁴

Subsequently, at the March 19 meeting of the WTO Services Council, the US (joined by the EU, Canada, and Japan) criticized China for restrictions on foreign insurance companies.¹⁴⁵ The focus of the US criticism has been on the issues of branching and capital requirements.

On the insurance issue, the US says China's WTO commitments allow a non-life insurance company to expand its business to another Chinese city by branching. In contrast, Chinese regulators have insisted that non-life insurance companies can only expand in China based on a system of regional and national subsidiaries each of which would require separate pools of registered capital up to 1.5 billion Renminbi or 180 million US dollars, according to an informed source.

The registered capital functions as a security deposit for the Chinese government which could use it to rectify any problems that might occur with a given insurance company, the source said. It is different from solvency reserves which insurers must set-aside to cover potential claims, he said. Chinese officials have not made clear how much of the registered capital they are demanding could be used as operating capital, he said.

China's services schedule states that foreign non-life insurers will be permitted to establish as a branch or as a joint venture with 51 percent foreign ownership upon its accession to the WTO. Within two years of China's accession, foreign non-life insurers will be permitted to establish themselves as a wholly-owned subsidiary with no establishment restrictions. In the working party report, China also committed to permit internal branching for insurance firms "consistent with the phase-out of geographic restrictions."

But Chinese regulators are insisting that the company must apply for a regional subsidiary license for which it must set aside 200 million Renminbi in registered capital. Based on that license, the company can then do business in three additional cities with a set-aside of 100 million in registered capital for each city, the source said. Once a company

¹⁴⁴ *China Insurance Rules Omit Key Commitments, Hint At New Obstacles*, Inside US-China Trade, January 16, 2002, at 1, 6.

¹⁴⁵ *Quad Unites in Critique of China's Insurance, Express Delivery Rules*, Inside US-China Trade, March 20, 2002, at 3 ("The US raised the issue in an effort to seek clarification for China's insurance regulations that lack transparency and include branching and capital requirements that would force foreign-invested non-life insurance companies to expand through subsidiaries.")

has reached the 500 million Renminbi threshold, it can apply for what the Chinese government calls a national subsidiary license, the source said.

But even if granted such a license, a company would have to put up 50 million Renminbi for each location it would do business in until it reached a threshold of 1.5 million Renminbi, he said.¹⁴⁶

In response, China said the matter was complex and that the proper forum for raising the issue was in the context of the transitional review mechanism.¹⁴⁷

Prior to US officials traveling to China in April, the International Insurance Council spelled out its concerns in a letter to Grant Aldonas, Under Secretary of Commerce for International Trade.

First, we remain very disappointed that several of our member companies continue to face unnecessary obstacles as they pursue insurance licenses. China's WTO accession included commitments that licensing for insurance operations in China would be transparent, routine, and not constitute a barrier to market access. Further, China committed to acting promptly on applications for licenses and on keeping applicants informed. These commitments were hard won by USTR and repeatedly reaffirmed in the negotiations by the Chinese. Yet to date, qualified US insurers still await licensure. I encourage you to take active steps on behalf of those companies.

Second, as I'm sure others have mentioned, there are serious issues with regard to China's insurance regulations for foreign companies. These include:

Branching

China is denying foreign non-life insurers the ability to branch and sub-branch. This violates China's WTO commitments and specific provisions of the Working Party Report.

Transparency

China's insurance regulations are excessively vague. This creates confusion and permits a wide degree of bureaucratic interpretation. As a consequence and in light of historic difficulties in operating in China, our members are especially concerned.

¹⁴⁶ *US to Raise Two China Problems in WTO Services Council Next Week*, Inside US-China Trade, March 13, 2002, at 7.

¹⁴⁷ *Id.*

Capital Requirements

China's insurance regulations call for capital and solvency requirements that go far beyond normal prudential concerns. These requirements, which in large part will be the responsibility of foreign (US) joint-venture partners, place too great a burden on insurers looking to expand operations in China. Further, there is a great deal of uncertainty surrounding capital injections as insurers expand beyond their initial operations to additional municipal markets. Formal clarification of statements on this issue made by CIRC to USG officials is needed to allow companies to reasonably plan their China strategies.¹⁴⁸

At meetings in China in April, US officials raised the insurance issues of concern to the US insurance industry but no resolution was achieved.¹⁴⁹ However, US companies welcomed statements by Ma Yongwei, chairman of the China Insurance Regulatory Commission (CIRC), that "China plans to amend or correct rules that do not adhere to its WTO commitments"¹⁵⁰

5. Express Courier Services

With respect to courier services (except for those reserved to Chinese postal authorities), China committed to the following:

- Upon accession, foreign service suppliers will be permitted to establish joint ventures with foreign investment not exceeding 49 per cent.
- Within one year after China's accession, foreign majority ownership will be permitted.
- Within four years after China's accession, foreign service suppliers will be permitted to establish wholly foreign-owned subsidiaries.¹⁵¹

In addition, China generally committed that, as of accession, conditions of ownership, operation and scope for existing foreign service suppliers will not be made more restrictive.¹⁵²

¹⁴⁸ *IIC Letter on China's Insurance Policies* (March 22, 2002) (available at www.chinatradeextra.com).

¹⁴⁹ *See Aldonas to Raise Insurance Regulations in China Trip This Week*, Inside US-China Trade, April 3, 2002, at 1; *China Announces Farm TRQs, Schedule of Reviewing Laws for WTO*, Inside US-China Trade, April 10, 2002, at 6.

¹⁵⁰ *Aldonas to Raise Insurance Regulations in China Trip This Week*, Inside US-China Trade, April 3, 2002, at 1.

¹⁵¹ China's Schedule of Services Commitments, WT/ACC/CHN/49/Add.2 (1 October 2001).

¹⁵² *Id.*

Following the issuance of regulations by China concerning the operation of courier services, US courier services suppliers complained that China's actions were not in compliance with its WTO commitments and had actually raised market access barriers. The US raised the courier services matter at the WTO Services Council meeting on March 19. The following press excerpt summarizes the courier services problem:

The express delivery services issue arises from two new Chinese government notices that would restrict the activities of foreign couriers in terms of what they can deliver and how much they can charge for their services. The US hopes that China will repeal these notices and handle express couriers under existing regulations that were first issued in 1996 and updated in December of 2001 by the Ministry of Foreign Trade & Economic Cooperation, sources said.

* * *

The express delivery regulations at issue run counter to China's WTO commitment not to roll back market access on services existing before the WTO accession, according to informed sources. The regulations are notices issued by the China State Postal Bureau, the Ministry of Information Industry and MOFTEC, and are asking companies already doing business in China to apply for new licenses via an "entrustment process," sources said.

The first notice, issued on Dec. 24, 2001, required express courier services already licensed by MOFTEC to file for new licenses with postal authorities in each province. This requirement is burdensome and could lead to trade restrictions since the postal authorities are competing with the express delivery services, industry sources charge.

The second notice, issued on Feb. 24, 2002, places additional restrictions on express couriers in terms of their activity and imposes anticompetitive pricing restrictions, according to industry sources.

Specifically, the Feb. 20 notice restricts private firms' delivery of letters and similar materials above 500 grams in weight and sets price controls on deliveries below that weight limit. For example, express couriers could not deliver letters weighing more than 500 grams with the name and address of an individual, industry sources said.

The notices also set pricing restrictions aimed at benefiting the Chinese postal service if such materials weigh less than 500 grams, sources said. In that case, the foreign companies would have to price their services above those of the postal service, they said.

The deadline for applying for new licenses is May 4, and Chinese authorities, including the postal service, would have 45 days to decide

who should get a license. The process as now set up would allow the postal monopoly to use its power to keep competitors out of the market, industry sources said.

In its schedule of horizontal commitments applying to all services, China promised that “the conditions of ownership, operation and scope of activities, as set out in the respective contractual or shareholder agreement or in a license establishing or authorizing the operation or supply of services by an existing foreign service supplier, will not be made more restrictive than they exist as of the date of China's accession to the WTO.”¹⁵³

A story in the China press indicated that one motivation behind the new regulations is China Post's need to develop profitable operations.

The State Postal Bureau (China Post) is having problems protecting its express delivery service. Because of the high-speed development of international delivery giants in the home market, China Post decided to use the term "exclusive operator" in its letter delivery business.

In a recent announcement, China Post said all express delivery companies should be registered with the bureau before May 6. These companies would only deliver goods "weighing more than 500 grams" or they would have to charge more than China Post. The bureau said all the companies must stop "illegal" services after the May deadline.

China Post, which carries out duties of both a government organ and a commercial organization, has exclusive rights in letter delivery, a bureau spokesman said. China Post must provide service to all Chinese, no matter in poor or rich regions. In some very remote areas, China Post is relied upon as the major communications bridge between local residents and the outside world. But providing these universal and valued services has not proven profitable. China Post has lost money and needs subsidies from more successful businesses like EMS (express mail service), the bureau spokesman said. EMS' exclusive operation in certain businesses is a legal right granted by the government.

China Post has taken a series of steps to try to stop the "illegal operation" of other express delivery companies. The move irked express delivery companies, especially joint ventures with top international companies. The world's top four express delivery service providers, UPS, FedEx, TNT and DHL, have all launched joint ventures in China and recorded good

¹⁵³ *US to Raise Two China Problems in WTO Services Council Next Week*, Inside US-China Trade, March 13, 2002, at 1, 7.

business growth due to their wide-ranging delivery network and efficiency. The companies criticized the bureau's steps, saying the bureau is "protecting a monopoly" and "will hurt the whole economy." Li Limou, a representative of the express delivery companies, said China Post should not confuse letter delivery service with express delivery service.¹⁵⁴

When the US raised the matter at the WTO Services Council meeting, China did not respond to the issue directly but, as with the insurance issue, stated that the proper forum for discussion was the transitional review mechanism.¹⁵⁵ In April, US officials raised the courier services problem with Chinese officials, but the issue has not been resolved.¹⁵⁶

¹⁵⁴ *Express delivery at crossroads*, China Daily, March 29, 2002 (available at www1.chinadaily.com.cn/cndy/2002-03-29/63182.html).

¹⁵⁵ *Quad Unites in Critique of China's Insurance, Express Delivery Rules*, Inside US-China Trade, March 20, 2002, at 3.

¹⁵⁶ *See China's Courier Rules Worry US*, AP Online, April 23, 2002 ("American officials expressed concern Tuesday about new rules in China that restrict private courier services. ... Evans had promised to press China to ensure that its express delivery market remains open after its post office issued new rules limiting foreign deliveries. China Post, which is both the post office and the market regulator, has said international couriers must stop handling letters and packages under 18 ounces by May 6. The United States and the European Union are trying to persuade China to overturn the regulations."). *See also China Announces Farm TRQs, Schedule of Reviewing Laws for WTO*, Inside US-China Trade, April 10, 2002, at 6.

6. Export Subsidies

In the 2002 National Trade Estimate Report on Foreign Trade Barriers, the USTR reported the following regarding export subsidies provided by China and its WTO commitments.

China officially abolished direct budgetary outlays for exports of industrial goods on January 1, 1991, and Ministry of Finance officials have claimed that the government can no longer afford large-scale export subsidies. Nonetheless, several industries claim that many of China's exports benefitted from export subsidies through 2001.

China's export subsidies on industrial goods are difficult to identify and quantify because they are most often the result of internal administrative measures and not publicized or they may be provided through mechanisms such as credit allocations or low-interest loans. Other forms of export subsidies involve guaranteed provision of energy, raw materials or labor supplies.

US industry has expressed its concern, in particular, that China is subsidizing goods such as soda ash, wood products, fiberglass, auto glass, steel and flat glass through export (and other) subsidies.

Exports of some agricultural products, such as corn and cotton, have benefitted from export subsidies in recent years. Industry experts claim that China continued substantial corn export subsidies in 2000 and 2001. Traders also report that the government authorized subsidized corn exports through March 2002.

China agreed to stop all export subsidies on industrial and agricultural goods upon its accession to the WTO in December 2001.¹⁵⁷

As the NTE report above notes, China committed to eliminating all export subsidies by the date of accession.¹⁵⁸ Yet, as noted by the NTE report, China has maintained export subsidies past the date of accession, as the following press report details:

US agricultural producers are hopeful that China this month will finally stop subsidizing the export of its farm products to markets around the world, thus complying with its commitment to do so in the World Trade Organization. However, industry sources said China has not yet given up

¹⁵⁷ USTR, 2002 National Trade Estimate Report on Foreign Trade Barriers, at 56-57.

¹⁵⁸ See Working Party Report, WT/MIN(01)/3 (10 November 2001) at para. 167.

the use of its export subsidies, and said the issue is particularly sensitive for US corn exports.

Chinese subsidies will continue to make it difficult for US corn exports to find buyers in third-country markets, according to informed sources.

The issue was raised in a Feb. 21 report from the US Department of Agriculture, which said that China continues to subsidize exports of farm products that were contracted for sale before its WTO accession on Dec. 11. ...

* * *

The report also added that some US exporters have been told that China would stop the use of export subsidies in early March, "even for corn contracted before WTO entry." But ... industry sources said it was not yet apparent that China had ended its export subsidy program.

* * *

The continued use of agricultural export subsidies by China would be another early violation of its WTO commitments on agriculture. The final working party report on China's accession makes it clear that China was to cease all use of farm export subsidies upon accession.¹⁵⁹

VII. Likely implications for US-PRC bilateral trade relations and for US security interests

Increased trade with China pursuant to China's entry into the WTO as a member is the expected outcome of China's accession. Since China has enjoyed MFN treatment in its access to the US market for many years, the primary beneficiary in the bilateral context should be the United States that gains significantly improved market access to the large and growing Chinese market. However, certain sectors of the US economy that have benefited from quotas (e.g., textiles and apparel) will be potentially disadvantaged by the accession and the acceptance by the US of obligations vis-à-vis China as a WTO member that did not exist before. The ability of import sensitive sectors to maintain a level playing field in fact can present import dependency issues and by implication national security concerns. China, as the tables on trade flows show, has shown an extraordinary ability to expand trade in a wide range of products rapidly. It is unclear how much of this success flows from government subsidies and closed markets at home. National security implications presumably flow both from import dependency as well as control of certain exports. While the United States has maintained restrictions on the export of certain products and has imposed restrictions on transfer of sensitive technology to China for national security reasons, relatively little attention has been paid to import dependency on imported products from any one nation, including China.

¹⁵⁹ *Farm Groups Looking for China to End Export Subsidies This Month*, Inside US-China Trade, March 13, 2002, at 3.

Note, however, that WTO accession by itself does not necessarily change the ability of the United States to protect its national security interests. Article XXI of GATT 1994 addresses the ability of nations to invoke national security exceptions to MFN, national treatment and other WTO obligations. Ultimately, of course, nations remain able to take such action as they believe important for their security. At the present time, failure to conform to an adverse panel report or Appellate Body decision is still viewed as within the authority of a member nation albeit subjecting the country to potential retaliation by the adversely affected party.

Recent events that have raised security implications of trade with China include the following:

- In October 2001, Sen. Jon Kyl of Arizona introduced an amendment to the National Defense Authorization Act (NDAA) that would require the Defense Secretary to compile a “key list” of technology and to design an export control program aimed at preventing attempts by China to acquire certain technology.¹⁶⁰ The amendment would require an assessment of China's efforts to acquire certain technology, the relation of China's military strategy to its technology requirements, and how these factors affect US national interests and the ability to protect the Pacific area. Also, the amendment would require the US to seek cooperation with US trading partners to prevent China from obtaining key list technology products.¹⁶¹
- In January 2002, the Bush Administration announced that it would ease computer export controls for certain computers. The Administration said that export licenses would be needed for computers capable of 190,000 million theoretical operations per second (MTOPS), an increase from the prior threshold of 85,000 MTOPS. This measure allowed computer sales to so-called Tier III countries, which include China among other countries.¹⁶²
- In January 2002, the State Department fined Loral Space & Communication US\$ 20 million for transferring sensitive technology to China. The matter concerned an alleged violation by Loral of the Arms Export Control Act by forming and directing a group of worldwide aerospace experts that was funded by a Chinese state-owned corporation to investigate a failed launch of a US satellite in February 1996. The State Department claimed that the work of this group "resulted in the transfer of technology to China that could enhance its ballistic missile capabilities" and violated Loral's munitions license.¹⁶³

¹⁶⁰ *Kyl Offers New China Export Control Language on Defense Bill*, Inside US-China Trade, October 3, 2001, at 1.

¹⁶¹ *Id.*

¹⁶² *White House Eases Computer Export Controls for China, Others*, Inside US-China Trade, January 9, 2002, at 5.

¹⁶³ *State Hits Loral With Record \$20 Million Fine for Tech Transfer to China*, Inside US-China Trade, January 16, 2002, at 1.

- In January 2002, the State Department sanctioned three Chinese entities for transferring sensitive chemical and biological weapons equipment to Iran. The entities -- two Chinese companies, Liyang Chemical Equipment and China Machinery and Electric Equipment Import and Export Company, and an individual named Q.C. Chen -- were "barred for two years from selling equipment to the US government and from purchasing any military or dual-use technology from US suppliers."¹⁶⁴ The measures were criticized, however, as ineffective because they are directed at individual entities but fail to affect the Chinese central government.
- In February 2002, "the heads of 42 aerospace companies and related industry associations ... asked the Bush Administration to remove commercial satellites and components from the US Munitions List, which subjects these items to strict State Department export controls, and instead return jurisdiction on satellites to the Commerce Department."¹⁶⁵ The aerospace industry made this request "based on the argument that the placement of satellites on the Munitions List makes it much more difficult for US companies to export satellites and components not only to China, but to US allies."¹⁶⁶
- In February 2002, it was reported that the Bush Administration "has decided to reevaluate the US relationship with China due to that nation's continued failure to live up to promises made in November 2000 to stem weapons proliferation."¹⁶⁷ The reevaluation was the result of talks between President Bush and Chinese President Jiang Zemin in February in which Bush "tried unsuccessfully to convince China to implement an export control system for dual-use missile technology equipment."¹⁶⁸ China's resistance to an agreement on missile export controls was attributed to profit motive.¹⁶⁹
- With respect to reauthorization of the Export Administration Act, industry groups were "urging the Administration to get involved in the House debate ... as they believe the latest House version [of the bill] would hinder US investment and trade opportunities, particularly with respect to China."¹⁷⁰ One provision in the House

¹⁶⁴ *US Proliferation Sanctions Against China Draw Criticism*, Inside US-China Trade, January 30, 2002, at 1.

¹⁶⁵ *US Decision on Satellite Export Jurisdiction Stymied By China Link*, Inside US-China Trade, February 13, 2002, at 1.

¹⁶⁶ *Id.*

¹⁶⁷ *Weapons Proliferation Stalemate Pushing US to Rethink China Policy*, Inside US-China Trade, February 27, 2002, at 1. *See also US, China Make Little Progress on Non-Proliferation Issues*, Inside US-China Trade, December 5, 2001, at 3.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Industry Presses White House to Help Develop Acceptable EAA Bill*, Inside US-China Trade, March 13, 2002, at 1.

version of the EAA bill would give the Defense Departments a de facto veto on the export of dual use items. US business interests opposed this provision. "Because DoD is seen by industry as being interested in restricting high-technology trade with China, industry sources said providing it with more power could be particularly detrimental to future trade and investment in that country."¹⁷¹.

- In April 2002, the US the General Accounting Office issued a report titled *Rapid Advances in China's Semiconductor Industry Underscore Need for Fundamental US Policy Review*.¹⁷² The following is the GAO's summary of why it conducted the study, what it found, and what it recommended.

Why GAO Did This Study

The United States controls the export of certain technology, including some of the equipment and materials used to make semiconductors, or computer "chips," to sensitive destinations such as China for national security or foreign policy reasons.

In light of China's efforts to acquire modern semiconductor manufacturing technology, GAO was asked to assess (1) advances in China's manufacturing capability, and (2) US export control policy for this technology and its analytical basis.

What GAO Found

Since 1986, the gap between US and Chinese semiconductor manufacturing technology has rapidly narrowed. Today, China's advanced manufacturing facilities can make chips that are less than one generation behind the current, commercial state of the art. US policies and practices to control the export of semiconductor technology to China are unclear and inconsistent leading to uncertainty among US industry officials about the rationale for US government licensing decisions.

- While export regulations restrict certain sales that would make a direct and significant contribution to China's military capabilities, the United States generally approves most exports of semiconductor manufacturing equipment and materials to China.
- Although the stated practice of US export agencies has been to keep China two generations behind state of the art semiconductor production capabilities, US regulations do not describe the level of allowable technology that can be exported to China relative to the commercial state of the art.

¹⁷¹ *Industry Presses White House to Help Develop Acceptable EAA Bill*, Inside US-China Trade, March 13, 2002, at 6.

¹⁷² See GAO, *Export Controls: Rapid Advances in China's Semiconductor Industry Underscore Need for Fundamental US Policy Review*, Report No. GAO-02-620 (April 2002).

- The Departments of Commerce and Defense have not conducted recent national security and economic assessments to form a sound analytical basis for exporting semiconductor technology to China.

What GAO Recommends

GAO recommends that the secretaries of commerce, defense and state reassess, document, and update as necessary US policy and practices on exporting semiconductor manufacturing equipment and materials to China. The agencies disagreed with this recommendation stating that their current policies and practices are sufficient for making export licensing decisions to China. We disagree. US export regulations governing China contain inherent inconsistencies and are based on outdated government assessments of the availability of technology from non-US sources. Accordingly, our recommendations remain unchanged.¹⁷³

- As reviewed in an earlier section on Taiwan, on April 25, 2002, the Los Angeles Times reported that, according to a classified CIA report, "US intelligence officials believe the Chinese military is working to launch wide-scale cyber-attacks on American and Taiwanese computer networks, including Internet-linked military systems considered vulnerable to sabotage."¹⁷⁴ In addition, the LA Times stated that "US authorities are bracing for a possible wave of hacking attacks by Chinese students against the United States in coming weeks." According to the Los Angeles Times story:

The new CIA report, however, makes clear that US intelligence analysts have become increasingly concerned that authorities in Beijing are actively planning to damage and disrupt US computer systems through the use of Internet hacking and computer viruses.

Although the assessment concludes that China has not yet acquired the technical sophistication to do broad damage to US and Taiwanese systems, it maintains that this is the "intended goal" of the People's Liberation Army in China. "The mission of Chinese special forces includes physical sabotage" of vulnerable systems, the report says-- which some analysts said is driven by China's hostility toward Taiwan.

* * *

... [S]everal specialists in Chinese security and military affairs said the CIA's conclusions jibe with their own observations about China's research into offensive-minded cyber-tools.

¹⁷³ *Id.* at introductory page.

¹⁷⁴ Eric Lichtblau, *CIA Warns of Chinese Plans for Cyber-Attacks on US*, Los Angeles Times, April 25, 2002 (available at <http://www.latimes.com/news/nationworld/world/la-042502china.story>).

"We should be very worried about this issue," said James Mulvenon, a China analyst at the Rand Corp. think tank who has done extensive studies into Chinese computer capabilities.¹⁷⁵

The above events indicate that the US relationship with China will remain a complex one where the benefits of expanded trade will need to be balanced with the perceived needs in the national security arena. China is not the first country for which this balance is true or where our trading partners adopt policies adverse to those of the United States. One example involving our largest trading partner and close ally on many issues is Canada which has an ongoing active trade relationship with Cuba despite the US embargo on the island nation.

¹⁷⁵ *Id.*