

Executive Summary

1. **The Peoples Republic** of China's ("China") accession to the World Trade Organization ["WTO"] on December 11, 2001 was an important event both for China and for the other members of the WTO including the United States.
2. 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.
 - (a) Imports into -the US 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).
 - (b) At the same time, U.S. exports to China grew from S 12.0 billion to \$16.3 billion, an increase of \$4.3 billion or 35.5%.
 - (c) The U.S. 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%.
 - (d) By 2000, China accounted for 2.1% of U.S. exports, 8.2% of U.S. imports and 19.3% of the U.S. trade deficit in goods.
 - (e) Imports from China ranked fourth behind Canada (\$229.2 billion), Japan (S 146.6 billion) and Mexico (\$135.9 billion).
 - (f) China ranked 11th for U.S. – exports (Canada, Mexico, Japan, United Kingdom, Germany, Korea, Taiwan, Netherlands, France, Singapore).
 - (g) In 2000, China surpassed Japan in the magnitude of the trade surplus with the U.S. in goods - \$83.8 billion vs. \$81.3 billion. NOTE: China has for many years disputed the trade figures reported by the United States, viewing U.S. exports as larger (since some portion of U.S. exports to Hong Kong may be re-exported to China) and because a significant portion of exports to the U.S. reportedly contains US value added particularly true in electronics).
3. 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 was complicated, extended over 15 years and requires significant additional changes in the Chinese economic system in the future.
4. Normally, when a country accedes to the WTO, it is expected to *be in* compliance with all or nearly all obligations at the date of accession. It is normal for there to be a few exceptions where the acceding country needs additional time to be in compliance.
5. Because of the evolving nature of the Chinese economic system and the substantial differences between the Chinese system and those of most WTO members, the challenge for China to be able to accept WTO obligations has been enormous *while at* the same time, the need for clarification of commitments to ensure other WTO members of meaningful access to the Chinese market in fact complicated *the* accession process. Not surprisingly, 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.
6. This paper examines, based generally on publicly available information, the extent of compliance China to its initial commitments, areas of initial concern and areas to monitor going forward. [NOTE: By way of comparison, included as Attachment 25 to the report is a statement made on April 29, 2002 by China's Ambassador to the WTO Sun Zhenyu on China's implementation activities and its objectives in the ongoing Doha Round.]
7. **Initial obligations and summary of implementation issues:** China has made major efforts to changes its laws and regulations to make them -WTO-consistent. That effort continues with most laws and regulations expected to have been reviewed by the end of 2002. As a general matter, the central government appears supportive of full implementation although this may not be true of all ministries (a not uncommon situation for newly acceding countries). Support of the local governments, education of WTO rights and obligations to many levels of government personnel, changing patterns of behavior, allocating scarce resources to provide enforcement are just some of the challenges facing full and timely implementation of the many obligations undertaken by China. Below is a summary of some of the specific areas with an initial evaluation of compliance:

- (a) **tariffs:** China has assumed major tariff liberalization obligations in both industrial and agricultural goods with some ongoing liberalization until 2010, although most is complete by January 1, 2004.
- (1) Because China acceded on December 11, 2001, an early issue for China was whether to reduce tariffs as required by the WTO package for the last 21 days of 2001. China chose not to make these reductions instead issuing new tariff schedules effective January 1, 2002. China has not offered refunds to importers on imports for the 3 week time period and as China is now largely in compliance on tariffs there is no ongoing issue. (2) Tariffs in 2002 are largely in accordance with the Chinese government's commitments for 2002. There are some important exceptions: (A) chicken parts (specific duty applied violates bound ad valorem rate); (B) selected items from the Information Technology Agreement (China has required use certification); (C) duties on movies (differs from agreement with US); (D) photographic film (specific rates violate ad valorem bindings; issue raised by Japan).
- (b) **Services commitments:** China has undertaken market access and national treatment commitments in a wide range of service sectors, with rights of foreign enterprises evolving over time (e.g., percent ownership; access to expanded areas of China). It appears that there has been progress in services although important sectors have been experiencing delays in the actual implementation of obligations (e.g., financial services) or, in some cases, apparent backtracking of commitments (express delivery services; insurance).
- (c) **agriculture:** China has undertaken commitments in various areas of interest to US agricultural producers: (A) tariff reductions; (B) TRQ administration; (C) elimination and non-use of export subsidies; (D) SPS measures based on science; (E) state trading enterprises. As noted above, tariff reductions for most ag products are at agreed upon levels in 2002 (exception is chicken parts). China has not brought itself into compliance yet on TRQ administration to the dismay of various US ag interests although draft regulations have been circulated. China has continued to use export subsidies, although there may be interpretation issues involved (e.g., did the agreement cover preaccession contracts). Similarly, at least for US soybean producers, there have been SPS issues raised by China which are viewed as suspect. To date the state trading issue appears to be tied up with TRQ administration where the US has expressed concerns that too little of the volume is being allocated to non state-trading entities.
- (d) TRIPS: China has been working on bringing itself into compliance with TRIPs Obligations since long before accession and has received broad support from many trading partners including the US and EU. Laws are now largely consistent with WTO obligations and enforcement of IP rights has improved in China. Nonetheless, China remains a major center for pirated goods particularly in software and audio/visual and in trademarked products.
- (e) **Uniform application of trade and customs laws and regulations:** China has taken steps to ensure uniform application of trade and customs laws and reports are that the situation has improved. There remain rumors that preferential rates are available through some ports.
- (f) Transparency: An important issue in all areas of trade (goods, services, TRIPs), initial reports are that the Chinese government is making some efforts to improve overall transparency through the publication of proposed regulations, solicitation of comments and limiting actions to laws and regulations *that are* published in fact. Concerns expressed include that some regulations have not permitted comment or have provided too little time to effectively comment, that comments are not actually taken into account in final regulations. Staffing at inquiry points has been described as inadequate to permit timely response. This is an area where technical assistance could prove helpful in some areas. It should be an area of ongoing interest.
- (g) **Judicial review:** efforts are being made by the Chinese government to provide opportunities for administrative and judicial review as appropriate. Private sector participants in the Chinese market are highly supportive of the importance of this change, but believe that judicial review will be an evolutionary process in terms of actual acceptance within China.
- (h) Subsidies: China made a variety of subsidy commitments, including elimination of all prohibited subsidies by *accession*, agreement not to use export subsidies on agriculture. The agricultural export subsidy issue was discussed previously. *The* extent of compliance with other subsidy obligations is unclear and should be fully explored *in the* transitional reviews, the first of which will be concluded by the end of 2002. Some sectors in China, *such* as steel,

have historically received funds to cover operating losses, a matter of some concern to the US steel industry in light of the amount of excess, inefficient steelmaking capacity in the world.

- (i) **State-owned and state-invested enterprises:** China undertook important obligations to ensure that SOEs and SIEs operate on a commercial basis. Because of the large volume of purchases of goods and services by such entities, full - implementation of China's obligations is important to US exporters of goods and services. Comments from selected exporters suggest that little visible progress is being made in having such entities operate on commercial terms. This will be another area for careful examination during the transitional review and in bilateral consultations.
 - (j) **Trading rights:** a core limitation prior to accession, China has undertaken to eliminate limitations on the right to trade imported goods or to be able to export within three years of accession, with only limited exceptions. An important issue to monitor over time.
 - (k) **TBT (technical barriers to trade):** historically China had different entities examining domestic goods and imported goods for compliance with standards. China agreed to eliminate duplicate bodies within 18 months and within 12 months to ensure that all bodies can process domestic and imported goods and that choice of body is the applicants'. China has taken actions in this area, but it will be an area to watch moving forward.
 - (l) **SPS (sanitary and phytosanitary measures):** China has undertaken commitments beyond compliance with the SPS agreement including notifying all existing SPS measures within 30 days of accession. While China did not meet the 30 day commitment, it has provided (as of April 20, 2002) notifications on more than 140 SPS measures in effect within China. Whether SPS *measures are* scientifically based is a question that is raised particularly with GMOs (genetically modified organisms) by the US with regard to many trading partners including *the EU*. *The US* has had problems with soybean exports, although some progress appears to have been made in recent weeks. SPS compliance will be an *important area* of ongoing monitoring in the years ahead.
 - (m) **Rules:** China, like *other WTO* members, has the right to protect its producers against injurious dumping or subsidization or against import surges that cause serious injury. China has modified its laws in an effort to bring them into conformity with WTO obligations. As a relatively new "user" of trade remedies, Chinese laws are not fully developed (alone or in conjunction with various releases on particular topics) and hence whether there will be compliance issues will depend on how individual cases are handled. U.S. exporters have been involved in some cases in China. Accordingly, this will be an area to monitor going forward.
 - (n) **Textiles:** China has 'agreed to a longer availability of market disruption *provisions to other WTO members (12/31/2008 expiration date)*. *China also has* the rights and obligations of the Agreement on Textiles and Clothing. Article 5 of *the ATC requires* cooperation to avoid circumvention through transshipment and mismarking of product. This area has been one of concern for US producers prior to accession. The Commission *will* want to ensure that China is fulfilling its obligations under Article 5 going forward.
8. The value of Chinese commitments in the WTO are potentially affected by the *Doha Development Agenda ["DDA"]* in the WTO. While additional market liberalization in China may occur from the DDA, there are a host of issues raised in the "implementation" exercise *which* could result in the Chinese commitments or US rights being undermined or reduced.

9. What the Commission can do going forward:

(a) monitoring developments:

- (1) obtain periodic input from US government agencies monitoring implementation progress and problems arising and speed of resolution;
- (2) obtain periodic input from the various business organizations who are working *with their* members and the US and Chinese governments to identify issues and solutions;
- (3) monitor developments in the transitional review process;
- (4) update own research on implementation.

(b) encouraging technical assistance targeted at areas of concern

(1) Some problems that arise with China's implementation will be the result of internal political issues in China and will be addressable only by bilateral consultations *and, possibly, formal action* against China in the WTO. However, many implementation issues will likely be the result in whole or in part of the need for capacity building in country. The WTO and many individual nations (including the US) and various intergovernmental organizations and private sector organizations are providing various types of technical assistance to help educate China officials at various levels of government and business professionals on China's rights and obligations under the WTO.

(2) As US experience teaches in the area of intellectual property, technical assistance can be time consuming to achieve results. Areas where difficulties are understood to continue include transparency, judicial review, uniform ad ministration, SOEs and SIEs, TRQ administration, as well as standards (TBT and SPS).

(3) It is critical that the US and international commitment to this area remain firm over the coming years.

(4) The US-China Commission's input based on its review of developments should be welcome within the US government to focus resources,

(c) **identifying needs in the transitional review data collection**

Annex 1A to the Protocol identifies areas where data will be requested as part of the transitional review process. It is a minimum list and does not provide much information in various areas of potential importance to the United States. Some examples of other information requests could include the following:

For example, on the issue of **state-owned and state-invested enterprises**, there are no specific questions identified to get at purchases by such entities, amount purchased from foreign as opposed to domestic suppliers; if bids are used, whether bids are open to all foreign suppliers, basis for limitations, instances where low bidder was not selected, etc.

There is no information identified on subsidies provided, consistency with obligations under agriculture and 'otherwise, whether subsidies provided were to cover operating losses, were export subsidies, etc.

Uniform application does have specific questions identified (III.1.(a) and (b) but does not attempt to collect data that might be helpful in determining nonuniform application, such as data by port by 8-digit category showing volume, customs value and duty collected (data are collected on value of tariff revenues, non-tariff taxes, and other border charges but can be supplied at the digit level and is not port specific (see I.(d) of Annex I A).

Transparency as such is not included in the Annex although information on the laws and regulations passed since the last review is sought. Information on number of regulations which were promulgated in draft form, the time from issuance of draft to comments due, number of comments received, number of comments acted upon in final regulations would presumably be helpful in determining progress on transparency.

No specific data request exists for a list of all issues raised by trading partners since accession (or the last review) and how the issues have been resolved by China. Such a list would be a useful summary document for examining concerns raised about compliance with a wide variety of obligations (e.g.,-US concerns over tariffs on chicken parts, ITA products and movie films; Japan's issue on photographic film; TRQ administration problems raised by the US; service sector implementation problems raised by US re insurance and express delivery; etc.).

(d) **maintaining pressure on Administration to take such action is needed to ensure timely Implementation and achievement of full rights for US parties**

The Administration has to date been clear in its message that it will work all avenues with China hard to help them implement their obligations in a timely manner, to work to resolve differences, and to pursue lack of implementation however necessary. The approach to date *and the* resources being

used by *the* administration (and being authorized by Congress) are important to secure US commercial interests. China is too important an economic actor not to require timely compliance on a comprehensive basis. The Commission's ongoing efforts to understand *the* extent of compliance and the nature of the problems should help the Commission voice its concerns on matters that appear to be subjects for higher levels of action. For example, failure to honor tariff commitments is an area where prompt action by China to correct should be expected and where failure to act should be pursued aggressively. Similarly, failure to honor clear service commitments should lead to increased activity on a relatively abbreviated time basis. By contrast, where change is being promoted but is having difficulties at the local level in terms of implementation, the focus should be on technical assistance, education and increased pressure to help move the process in the right direction.