

論中國履行其入世承諾的意願、 能力與政策

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中文摘要：

本文運用國際法學與國際關係學中新近出現的遵守理論，考察中國加入世界貿易組織協定（以下簡稱“入世協定”）、中國遵守加入世貿組織承諾的意願和能力。

通過分析，本文得出以下結論：第一，在 WTO 執行機制與評審機制和 WTO 主要成員的壓力下，中國將幾乎承擔執行“入世協議”的所有責任；第二，中國具有較強的遵守“入世協議”的意願，但是這一意願需要進一步加強；另外，中國履行其“入世協議”的能力相對較弱，需要通過各種能力建設方案和專案來進一步加強。中國法律文化總體上也需要調整更新，以便符合時代的需要。最後，中國必須令人信服地向 WTO 及其現有成員表明：中國是一個富有合作精神

的成員，並且應該以實際行動而非標語口號來有力地維護WTO規則。

迄今為止，中國履行入世承諾的記錄是喜憂參半。實際上，履行加入世界貿易組織承諾的過程是中國經濟改革進程的重要組成部分。這是一個漫長而不平坦的進程。中國加入世界貿易組織，是中國與世界貿易組織及其成員之間建立的一種長期性的“合資企業”，世界貿易組織及其現有成員（特別是其中的主要成員），應當承擔它們在履行中國入世協議中應當承擔的相應責任，而且應當善意誠信地履行它們各自所承擔的義務。



Compliance with its WTO Commitments: China's Intention, Capacity and Policy

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Key words : China, WTO, Transitional Review Mechanism, developing country status, Financial and Monetary, Trade

ABSTRACT

This paper uses the compliance theory to examine the China's WTO Accession Agreement, China's intention to comply and its capacity to comply, its WTO commitments. It concluded as follows: First, China will bear the nearly whole burden of implementing the China's WTO Accession Agreement under the pressure of the WTO and its major members by the enforcement and review mechanisms. Second, China has a comparatively strong intention to comply with the China's WTO Accession Agreement, but the intention needs to be further strengthened; China also has a less weak capacity to comply with the China's WTO Accession Agreement, but the capacity needs to be much further enhanced by capacity-building programs. Chinese legal

culture also needs to be thoroughly updated and transformed.

Last, China must start to convince the WTO and its current members that China is a good team player and a powerful defender of the WTO rules by its actions rather than its slogans. China's record of compliance with its WTO commitments is mixed so far since China became a member of the WTO. In fact, process of compliance with China's WTO commitments is a part of process of reforming Chinese economy. This is a long and uneven process. China's WTO entry is a unique "joint venture" enterprise between China, the WTO and its current members, the WTO and its current members (major members in particular) should bear their own shares in implementing the Chinese membership agreement and should fulfill their respective obligations in good faith.



Introduction

On 17 September 2001, the World Trade Organization successfully concluded negotiations on China's terms of membership of the WTO. Many Chinese applauded the completion of almost 15 years of negotiations on China's entry to the global trading system,¹ which were overshadowed by the terrorist attacks on the United States. On 10 November, some 900 pages of the agreement were adopted formally by the 142 member governments of the WTO at the WTO Ministerial Conference in Doha, Qatar. On 11 November, Shi Guangsheng, then Chinese Minister of Foreign Trade and Economic Cooperation, signed the protocol on China's accession to the World Trade Organization (WTO) and presented to then WTO Director-General Mr. Mike Moor a document signed by then Chinese President Jiang Zemin ratifying China's entry into the WTO.² China became the 143rd member of the WTO on 11 December 2001.

How to comply with or implement the China's WTO Accession Agreement, is generally considered to be one of the most important challenges to both China and the WTO in the

¹Under the chairmanship of Ambassador Pierre-Louis Girard of Switzerland, the Working Party (established in March and met for the first time in Geneva in October 1987) concluded almost 15 years of negotiations with China on 17 September 2001.

²'China Signs WTO Accession Protocol', People's Daily, 12 November 2001, available at http://english.peopledaily.com.cn/200111/12/eng20011112_84365.shtml (visited on 12 November 2003).

early 21st century. In the wake of the completion of lengthy negotiations on China's WTO Accession Agreement, compliance with the Agreement, in particular, whether China will implement its commitments, is increasingly becoming a focus of all WTO members' concerns.

What does compliance with the China's WTO Accession Agreement mean? In legal theoretical terms, compliance is defined to include both the implementing measures and the changes in the behavior of states and other relevant actors to bring their actions into accord with the international obligations. Compliance encompasses enforcement but is broader than enforcement, because it covers measures that bring behavior into accord with the obligations and thus prevent violations as well as those measures needed when violations occur. Compliance is related to, but not the same as, effectiveness. Countries may comply with an international agreement, but the agreement may not be effective in achieving its objectives.³

Thus, compliance with the China's WTO Accession Agreement means both the implementing measures and the changes in the behavior of China and other WTO members to bring their actions into accord with the international obligations stipulated by the China's WTO Accession Agreement and other legal instruments of the WTO Agreement. It will be a dynamic

³Edith Brown Weiss, 'Strengthening National Compliance with Trade Law: Insights from Environment' in M. Bronckers and R. Quick (eds.), *New Directions in International Economic Law* (The Hague: Kluwer Law International, 2000), 457-471 at 457.

process inherently involving interactions among many different domestic and international actors. This process also involves the factors affecting national compliance with WTO Agreement as a whole in the increasingly globalizing multilateral trade system. The most important parts of these factors or elements mainly include as follows: the China's WTO Accession Agreement, China's intention to comply and its capacity to comply, institutional compliance arrangements within the WTO, and the major WTO members' policies to implement the China's WTO Accession Agreement.

The following research note first offers a brief overview of the China's WTO Accession Agreement, with particular focus on its impacts on compliance. This is followed by an analysis of China's intention to comply and its capacity to comply. After briefly summing up the key implications of these major factors for compliance, last part will tentatively make further comments on China's compliance policy.

I. A Brief Overview of the China's WTO Accession Agreement

Generally speaking, at the time of accession to the WTO, the Protocol and the WP Report are prepared and these were the documents drafted in the case of China's accession. Annexes to the Protocol contain China's schedule of tariff concessions and

its schedule of specific commitments in services. "The Protocol (including the commitments referred to in Paragraph 342 of the WP Report) shall be an integral part of the WTO Agreement."

⁴Consequently, China has a legal obligation under the WTO Agreement to perform its commitments indicated.⁵ Thus, the China's WTO accession agreement (hereafter referred as "the Chinese membership agreement"⁶) contains two basic parts. First, there are the **schedules of commitments**, which set out the full range of market access obligations China is legally bound to grant to every Member after it enters the WTO. The schedules cover tariffs and non-tariff measures applicable to agricultural trade and industrial goods (commitments under the GATT), and services (commitments under the General Agreement on Trade in Services, or GATS).

Second, there are **the Protocol and Working Party Report** on the accession of China to the WTO. These documents, which also include legally binding commitments, essentially set out *how* China promises to fulfill its new WTO obligations. The protocol has a number of annexes. The annexes are an integral part of the protocol, are legally binding and address specific issues related to the China's trade regime. As with all other

⁴ see Protocol Part I -General Provisions I.

⁵ The texts of the accession-related documents can be obtained through the WTO web site (http://www.wto.org/english/thewto_e/acc_e/protocols_accmembership_e.htm).

⁶ The Chinese membership agreement runs to 1,500 pages, and weighs 13 kilograms. See 'Doha WTO Ministerial 2001: Summary of 11 November 2001', available at http://www-svca.wto-ministerial.org/english/thewto_e/minist_e/min01_e/min01_e.htm (visited on 14 November 2003).

accessions, the annexes, which have been a focus of the negotiations, are meant to provide WTO members with guarantees that the reforms or other transitional measures promised by China will actually be implemented. In other words, they serve as a kind of a negotiated timetable for bringing the China's trade regime into full conformity with the WTO rules and obligations. As well as containing detailed descriptions of, and obligations relating to, China's current and planned trade and investment régimes, they detail a number of special provisions to which China will be subject during the first years of its WTO Membership. These temporary derogations from normal WTO rules are intended to reflect the unique challenge of incorporating China into the world trading system. This is an economy in the midst of transition from state ownership to the market based system; a country that has taken many measures to introduce market economics, but where certain features of a state led economy still prevail. Most notably, the protocol affords other Members special protection for their own industries against damaging surges of exports from China.

A. Major Commitments Undertaken by China

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.⁷

1. Highlights of China's Main Commitments

Among some of the commitments undertaken by China are the following:⁸

- (a) 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 favorable than that accorded to enterprises in China with respect to the right to trade.
- (b) 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.
- (c) Price controls will not be used for purposes of affording protection to domestic industries or services providers.
- (d) China will implement the WTO Agreement in an

⁷ See WTO, 'Report of the Working Party on the Accession of China', WT/ACC/CHN/49 (1 October 2003).

⁸ See: *WTO successfully concludes negotiations on China's entry*, Press/243, 17 September 2001, available at http://www.wto.org/english/news_e/pres01_e/pr243_e.htm. (visited 27 October 2003).

effective and uniform manner by revising its current domestic laws and enacting new legislation fully in compliance with the WTO Agreement.

- (e) 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.
- (f) China will not maintain or introduce any export subsidies on agricultural products.

2. Summary of China's Commitments by Sector

(a) 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.

(b) Service

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.

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.

B. Trade Defense Instruments and Key Commitments of Other WTO Members

On the one hand, other WTO members' present legislation which provides specific procedures for dealing with cases of alleged dumping by Chinese exporters, which may not yet be operating in normal market economy conditions, will remain available for up to fifteen years after China enters the WTO. The China-specific safeguard provision, allowing safeguard action to be taken only with respect to imports from China (in contrast to the normal requirement for *erga omnes* action against all sources of imports) will be available for up to twelve years after China's accession. And as stated before, a further sector specific mechanism has been put in place to provide added protection in the textiles field until 2008.⁹

On the other hand, prohibitions, quantitative restrictions or

⁹ The textile provision was actually negotiated prior to the accession agreement in the bilateral textile agreement and was then incorporated into the accession agreement. The purpose of the textile provision was to address market disruption that could occur as China's textile trade was integrated into the phase-out of the textiles agreement.

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. In other words, the only obligation for WTO Members is that they must accord China so-called permanent MFN ('most favored nation') status, entitling it to be treated in the same way as every other WTO Member, unless exceptions are specified in the protocol of accession. For example, the EU, the United States and Mexico would have to phase out or otherwise deal with their respective measures maintained against imports from China in a manner inconsistent with the WTO Agreement.

As the EU has always accorded China this status in any event, there will be virtually no practical impact. The only notable consequence of according China the same treatment as other WTO Members will be the requirements to phase out China-specific quantitative restrictions (quotas) by 2005. This applies to the EU's remaining textile quotas applied to China, which must be dismantled in line with the Agreement on Textiles and Clothing. It also applies to the three industrial products for which the EU still maintains China-quotas: footwear, ceramic tableware and porcelain tableware. In recognition of these changes, as stated above, until 2008 a specific safeguard instrument for countering injurious imports of textile products

from China will be available.¹⁰

As the United States already apply the market access policies to China annually, there will also be virtually no practical impact. To simply maintain these policies by granting China unconditional Most Favored Nation status (i.e. Permanent Normal Trade Relations status), it was necessary for the United States to amend the Jackson-Vanik Clause, which required that the Most Favored Nation status of China and other non-market economies be reviewed annually. Then President Clinton signed the final PNTR legislation (H.R.4444, 106th Congress) on 10 October 2000.¹¹ "On and after the effective date of the accession of the People's Republic of China to the World Trade Organization, chapter 1 of title IV of the Trade Act of 1974 (as designated by section 103(a)(2) of this Act) shall cease to apply to that country."¹²

¹⁰ See: European Commission approves terms of accession of China and Taiwan to WTO, and Overview of the Terms of China's Accession to WTO, Press release, Brussels, 19 September, 2001, available at http://europa.eu.int/comm/trade/bilateral/china/pr190901_en.htm (visited 27 June 2004).

¹¹ "An act to authorize extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China, and to establish a framework for relations between the United States and the People's Republic of China." This act (the US-China Relations Act of 2000)(H.R.4444) was adopted by the Senate in the second Session of the 106th Congress of the United States on 25 May, and signed by former President Clinton on 10 October 2000. Text available online from the US GPO at http://fwwebgate.access.gpo.gov/cgi-bin/useftp.cgi?lpadress=162.140.64.21&file=namc-h4444pcs.txt&directory=/disk3/wais/data/106_cogbills (visited 27 July 2004).

¹² See: Sec.102. of this Act.

As part of its NAFTA membership, Mexico had initiated a very large number of AD actions, and has in place AD/CV measures, on imports from China of products, of some 1,420, at tariff line levels. All these are said to be WTO-illegal. In their prolonged talks, Mexico had wanted 15 years to phase them out, while China held out for five years. Under its bilateral agreement with China in the early September 2001, Mexico would phase out or bring these into conformity with the WTO rules during 6-year transition period starting from the date of China accession. The agreement concluded, other trade diplomats said, was perhaps one that gave Mexico a very good deal.”¹³

C. Transitional Review Mechanism

Achieving, measuring and monitoring compliance with the terms of China's accession is certain to be an issue for a WTO member - the size, complexity and commercial significance of China, and is sure to be a future active area in the WTO and bilaterally in the years following accession. Indeed, the WTO Membership as a whole has recognized the particular attention necessary to implementation of the WTO rules by China. The China accession protocol provides for a “Transitional Review Mechanism (TRM)” , with WTO bodies (within their competence) mandated to review Chinese implementation of its

¹³See Chakravarthi Raghavan, *China WTO accession terms settled*, TWN Third World Network (16 September 2001), available at <http://www.twinside.org.sg/> (visited 27 June 2004).

commitments.¹⁴ The "transitional review mechanism" will require annual progress reviews to be conducted in Geneva for eight years after accession, to be followed by a bi-annual review thereafter.

At an overall level, the WTO General Council has been directed to take up for review the Chinese implementation. These are to include reports and issues covered in the reports of the subsidiary bodies on their annual reviews; the development of China's trade with WTO members and other trading partners, including volume, direction and composition of trade; and recent developments and cross-sectoral issues regarding China's trade regime.

This review process would also enable China to bring up "all prohibitions, quantitative restrictions ('QRs') and other

¹⁴ See Article 18 of the Accession Protocol, Transitional Review Mechanism (TRM). At the multilateral level, the TRM is the central monitoring mechanism. It is not only intended to obtain information and to exchange views on related Chinese policies and measures at each of the WTO councils and committees to encourage China to implement its commitments, but also intended to serve as early warning indicators allowing parties to resolve potential disputes. It envisions that recommendations could be made to China by the TRM review bodies with respect to improving China's WTO compliance. This obligation mirrors the obligation US Congress sought to have included in China's protocol of accession in 2000 in agreeing to grant China most-favored nation status under US law. Because the United States was assenting to China's entry into the WTO before its economic and regulatory systems were consistent with WTO norms. i.e., before China had become a fully developed market economy the United States sought a method for accurately measuring China's implementation of WTO commitments as well as a process for encouraging China's compliance with its obligations. U.S. negotiators expected the TRM to be a robust mechanism for monitoring China's WTO compliance and applying multilateral pressure for improvement.

measures"¹⁵ maintained by WTO members against imports from China and are inconsistent with the WTO agreements. This review process is not to be with preconditions or the precluding of the consultation and dispute settlement process of the WTO.

The Transitional Review Mechanism (TRM) was initiated for the first time at the WTO General Council on December 10, 2002, and the second time on December 15, 2003. Prior to this, councils and committees working under the direction of the WTO General Council conducted their own TRMs and identified many issues.

D. A Balanced Agreement?

China's WTO Accession Agreement is absolutely a complicate package deal of rights and obligations after a long and difficult bargaining process between China and the interested WTO members. The top world trade politicians who involved directly in the China's WTO accession negotiation, Mr. Mike Moore, then WTO Director-General,¹⁶ U.S. Trade

¹⁵ All such prohibitions, QRs and other measures will be phased out or dealt with in accordance with mutually agreed terms and time-tables specified in the annex to the Chinese protocol, setting out the various bilateral agreements and market access commitments.

¹⁶ "International economic cooperation has brought about this defining moment in the history of the multilateral trading system," said Mike Moore, WTO Director-General, at the conclusion of the meeting of the Working Party on China's Accession. "With China's membership, the WTO will take a major step towards becoming a truly world organization. The near-universal acceptance of its rules-based system will serve a pivotal role in underpinning global economic cooperation." See: *WTO successfully*

Representative, Mr. Robert B. Zoellick,¹⁷ then vice Minister Long Yongtu, Head of the Chinese Delegation,¹⁸ and the EU Trade Commissioner, Mr. Pascal Lamy,¹⁹ presented positively

concludes negotiations on China's entry, Press/243, 17 September 2001, available at http://www.wto.org/english/news_e/pres01_e/pr243_e.htm. (visited 27 October 2003).

¹⁷ U.S. Trade Representative Robert B. Zoellick said, "Today's decision by WTO members endorsing the terms of China's entry into the WTO will strengthen the global economy and the international rule of law for trade. China has made a firm commitment to the rest of the world to open its markets and adhere to international, market-based rules, which will help American workers, consumers, farmers and exporters." USTR Press Release (01-70, 17 September 2001), available at <http://www.ustr.gov/> (visited on 29 July 2004).

¹⁸ Mr. Long Yongtu said, "The 1000-page document in front of us as a result of our painstaking negotiations will become the timeframe for China's opening-up in the years to come and will provide the legal basis for China's commitment to international rules. The outcome of China's accession to the WTO will be marked with the feature of a 'win-win' and 'all-win' for China as well as for the world. As for the rest of world, after China's accession, the great potential of China's market will be gradually translated into actual purchasing power, so as to provide a huge open market to all countries and regions in the world. This would be an important contribution to be made by China to the mankind. As for China, it will further improve the market economic system to be in line with the current international rules and the principles of the WTO. China will, in light of the WTO principle of market opening on reciprocal basis, strength its economic and technological cooperation with all the WTO members including developing members. China's economic reform towards market economy and its policy of further opening-up will greatly accelerate China's modernization drive and enhance its ability to participate into international economy." See: http://www.wto.org/english/news_e/news01_e/wpchina_longstat_17sept01_e.htm (visited 17 October 2004).

¹⁹ Mr. Pascal Lamy said on 19 September 2001: "These terms [of agreement] represent a balanced and ambitious package of market opening commitments, which will bring substantial benefits to China as well as to their WTO trading partners. This agreement to open and modernize China's market will create major new opportunities for EU firms to export to, and do business in, the world's most populous country. For China, it will be the crowning achievement of over two decades of carefully managed reform and opening to the outside world. It will mark the beginning of a new era, in which China's commitment to the international economic system will no longer be experimental, but enshrined in law." http://europa.eu.int/comm/trade/bilateral/china/pr190901_en.htm (visited 27 June

their respective political views on the China's WTO accession agreement after China's Working Party meeting concluded on 17 September 2001 in Geneva. In the legal terms, this agreement seems merely to be a comprehensive and complex bilateral trade treaty between China and existing WTO members on normalizing their trade relationships and further reforming China's trade regime by the China's WTO accession process. However, following five points are necessary to be further noted.

Firstly, the foregoing discussion reveals that China took on bound commitments and heavier obligations in exchange for a full and permanent MFN treatment²⁰ commitment with some reservations of the current WTO members. This means that China has to shoulder major burden of compliance with the China's WTO Accession Agreement alone. This also means that the current WTO members have overwhelming intention to make China implement the agreement of accession fully and effectively by all means. The WTO institutional compliance arrangements would be surely used by them frequently.

Second, regarding the China's rights and the present WTO members' obligations. As stated above, the current WTO members must accord China full and permanent MFN treatment, entitling it to be treated in the same way as every other WTO member, unless exceptions are specified in the protocol of

2004).

²⁰ In other words, as China is now a full member of the WTO, the full and permanent MFN treatment for China might be regarded as "a normal trade relationship future."

accession. This represents a significant improvement in international trade climate of China (in particular, market access for the China's exports) although China already is granted MFN treatment by the current WTO Members on a provisional and bilateral basis. China's WTO membership will mark a significant transition from a trade policy environment characterized by unilateral discretion and political distortion, where abuse of economic leverage by its key trading partners (e.g. the United States²¹) is a constant threat, towards a rule-based system, where trade disputes are resolved in a transparent manner in the WTO dispute settlement mechanism.

Third, regarding the China's obligations and the present WTO Members' rights. "To accede to the WTO means that the candidate state has to meet the requirements specified by the present WTO Members."²² To protect their vested interests and to secure greater access to growing Chinese market, taking advantage of that China was in a disadvantaged bargaining position and was eager for WTO membership, the current WTO members placed tremendous pressure on China to make numerous concessions. This means that the process consisted dominantly in the WTO Membership securing "concessions" or market opening improvements from China, without themselves altering their obligations within the WTO. Also important in this

²¹ See, e.g., Sylvia A. Rhodes and John H. Jackson, 'United States Law and China's WTO Accession Process', 2(3) *Journal of International Economic Law* 497-510(1999)

²² Anna Lanoszka, 'The World Trade Organization Accession Process: Negotiating Participation in a Globalizing Economy', 35(4) *Journal of World Trade* 575-602 (2001), at 602.

respect is the high standard of commitments given by China to open its economy to foreign imports, investors and businesses. China's trade regime will be significantly more liberal than most existing WTO members of a comparable level of development.²³ As explained above, the final results constitute an extremely substantial market-opening package. Obviously, China's legally binding commitment to join the WTO is both a one-way market opening process of China and an enormous gain in enforceable rights of the present WTO members with no significant change in their own commitments towards China.

Fourth, as mentioned above, 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.²⁴ By contrast, the current WTO members have right to unilaterally take discriminatory policies against Chinese exports by special antidumping methodology applied to non-market economies (15-year), a China-specific safeguard provision (12-year) and a textile-specific safeguard instrument (until 2008) for years after China's accession to the WTO. This could have serious consequences in the future. It could not only open the flood-gate for discriminatory measures against China in the future, but also seriously undermine the principle of non-discrimination. This is

²³One of the reasons the talks lasted so long was the concern of existing WTO members that China's entry should in no way lower the average standard of openness to trade in WTO. The tariff average will be low, quotas will be phased out quickly, service providers from virtually all sectors will have good market access, protection for intellectual property rights will be guaranteed in law.

²⁴China's step-by-step market opening in many areas will be implemented typically within a three to five year period.

consistent neither with the transition period allowed for market opening nor with the current status of marketization of the Chinese economy. If China were to commit to accomplish market-access reform in five years in almost all industries, the current WTO members' anti-dumping and countervailing practice and discriminatory unilateral import restrictions should cease to be applicable at the end of the transition when the Chinese trade regime is deemed to have become consistent with WTO rules.

Fifth, once the special anti-dumping and countervailing measures are allowed, permitting the current WTO members to target Chinese exports unilaterally at standards lower than the WTO safeguard agreement is a blatant violation of the non-discrimination principle. These so-called "trade defense instruments" could be used not only as a shield from injurious imports of products from China, but also as a sword to enforce their rights derived from the China's WTO Accession Agreement. With regard to these so-called "trade defense instruments" in the China's WTO Accession Agreement, one might well ask whether an agreement that allows parties to suspend obligations at their discretion is a legal obligation at all? In fact, to discriminate against Chinese enterprises across the board does not accord with reality. China's most competitive exports are produced by the non-state sector, which is only subject to very limited government interference in terms of pricing and subsidies. Even though it would be difficult to distinguish between state and non-state enterprises, it would have been logical to treat the

Chinese economy as market-based in five years on the condition that market-opening commitments be fully implemented.²⁵ Thus, it could present serious problems for implementation in future.

II. A Analysis of Intention and Capacity of China to Comply

It is stated by the compliance theory²⁶ that both intent and capacity to comply are essential. The level of a state's compliance depends on having the leaders and the citizenry understand that it is in their self-interest to comply and on their acting on this understanding. While external pressures and assistance can push a country towards compliance, there is no substitute for engaging "self-interest." The capacity to comply needs an honest and effective bureaucracy, economic resources, technical expertise, and public support. The following parts will concisely set out China's intent and capacity to comply with the China's WTO Accession Agreement by clearly analyzing the major relevant elements.

²⁵ Yongzheng Yang, 'China's WTO Accession: The Economics and Politics', 34 (4) *Journal of World Trade* 77-94 (2000), at 82.

²⁶ Edith Brown Weiss, 'Strengthening National Compliance with Trade Law: Insights from Environment' in M. Bronckers and R. Quick (eds.), *New Directions in International Economic Law* (The Hague: Kluwer Law International, 2000), 457-471 at 458-459.

A. The Chinese leaders and the citizenry understand that it is in their self-interest to comply with the China's WTO Accession Agreement?

1. Generally speaking, the Chinese leaders (at least, senior leaders from the national government) understood roughly that the WTO membership has a very important political significance for China.

Then vice Minister Long Yongtu, Head of the Chinese Delegation, stated at the conclusion of the meeting of the Working Party on China's Accession, "...WTO accession is a strategic decision made by the Chinese Government under economic globalization and is in line with China's reform and opening-up policy and the goal of establishing a socialist market economic system. ... It has been an unprecedented challenge to China and to the multilateral trading system to bring a developing country in transition from planned economy to market economy into the multilateral trading system. The Chinese leaders have courageously faced up this challenge with vision and wisdom and they have demonstrated China's confidence and persistence to undertake reform and opening-up. Their leadership has been the key to the success of the negotiation process."²⁷

²⁷ See: Statement by H.E. Vice Minister LONG Yongtu, Head of the Chinese Delegation, at the eighteenth session of the Working Party on China, http://www.wto.org/english/news_e/news01_e/wpchina_longstat_17sept01_e.htm (visited 17 October 2004).

Indeed, the WTO is worth acceding to since it plays the role of a much-needed global forum aimed at coordinating the growing volume of international economic transactions, and it has the capacity to mitigate the potential power struggles between the most powerful members.²⁸ The economic reforms and developments can be enhanced through greater international openness allowing for meaningful integration into the global markets. It would be difficult for any developing and transition economy to reform and to develop its economy without actively participating in the intensifying global economic transactions. Developing and transition economies must decide how quickly rather than whether they want to integrate their economies with the rest of the world and determine the role that they wish the WTO to play in that process and in the domestic economy. As with other acceding countries' leaders, Chinese leaders feel that China cannot afford to be either economically or politically excluded from the world's trading regime and fall behind the fast progressing pace of economic progress firmly advanced by the industrialized nations.²⁹

Theoretically speaking, the China's WTO accession agreement will in the first place benefit its own economy and people. WTO membership provides an unrivalled anchor for

²⁸ Anna Lanoszka, 'The World Trade Organization Accession Process: Negotiating Participation in a Globalizing Economy', 35 (4) *Journal of World Trade* 575-602 (2001), at 602.

²⁹ Further see Qingjiang Kong, 'China's WTO Accession: Commitments and Implications', 3 (4) *Journal of International Economic Law* 655-690 (2000); Yang Guohua and Cheng Jin, 'The Process of China's Accession to the WTO', 4 (2) *Journal of International Economic Law* 297-328 (2001).

reform. China's WTO accession can only lock in and deepen market reforms, empowering those in the leadership who support further and faster moves towards economic freedom. Entering the world trading system will be a catalyst for Chinese firms to become more efficient, to show that they can compete on fair terms with the rest of the world. This agreement will therefore also be good for Chinese companies and workers, as they draw the benefits of increasing foreign investment, and take on the most modern management practices and legal structures. But beyond the commercial opportunities it will offer, WTO membership will have a substantial impact on economic reform and development in China. On top of this, the agreement reached, when it is implemented as part of the multilateral system, will boost the rule of law in China. The rule of law will be strengthened as China finds itself obliged to play by the global trade rules. The fundamental principles which the WTO upholds of transparency, non-discrimination, efficient administration and independent judicial review will contribute to the positive evolution of China's economic, legal and social systems. The spillover of economic freedom and respect for commercial law into the political and social sphere will be gradual, but the contribution made by WTO entry will be positive.

2. In reality, both Chinese leaders and people don't yet fully enough understand what China's accession to the WTO really means to their self-interest.

Some Chinese officials and experts over-optimistically

calculated benefits of China obtaining from its WTO accession. In their views, once China's membership in the World Trade Organization is ratified, China's exports will largely expand, the FDI will surge into China, and there will be a level playing field for Chinese business in the international competitive environment of trade policy. As Bruce Stokes, a senior fellow of Council on Foreign Relations, pointed out: "Many Chinese officials continue to confound foreigners with their lack of even a superficial understanding of the implications of WTO membership. For example, some Chinese experts on the WTO naively argue that entry will protect them from the many dumping cases³⁰ now leveled against Chinese exports by both Europe and the United States. They fail to realize that WTO membership merely changes the location of the battlefield, it doesn't necessarily alter the nature of that war."³¹ China's WTO membership is increasingly causing panic anxiety among Chinese ordinary people and entrepreneurs who could be affected. Mr. Liqun Jin, then vice Minister of Chinese Finance Ministry, said at the Harvard China Review 4th Annual Conference on early May 2001, the banking sector and the SOEs are what the government worries most; China hopes for the best,

³⁰ Since August 1979, when the European Union took anti-dumping actions against the glucide and salt imported from China, some 422 anti-dumping cases involving China have been reported by about 29 countries and regions, involving a sum of more than US\$10 billion. See Xinhua, 'Chinese enterprises cautioned on anti-dumping checks', China Daily, 26 October 2001, available at web site, <http://chinadaily.com.cn> (visited on 5 November 2003).

³¹ Bruce Stokes (Senior Fellow, Council on Foreign Relations), 'The China WTO Dilemma.'

but prepares for the worst.³² "Friends, you clap, but even I don't yet know how big the competition is that we'll face after we enter the WTO," then China's prime minister, Zhu Rongji, told a gathering of private businessmen in Nanjing the week the Geneva talks concluded. "My heart isn't yet very settled."³³ In Brunei on 5 November 2001, Zhu said he was particularly worried about the impact of WTO membership on China's farmers. The prospect of more global competition for China's inefficient farms and business, he said, "gives me a headache." "Everyone is very happy about the WTO entry except me," he told a group of Chinese journalists who traveled with him to Brunei to attend a meeting of Southeast Asian leaders.³⁴ "Given the weak self-discipline and self-development mechanism, the weak infrastructure and the heavy historical burden, domestic institutions are not in an advantageous position," Dai Xianglong, then China's chief central banker, said in September 2001.³⁵ "China's admission into WTO will bring Chinese businesses both opportunities and challenges, there will be major changes in

³² Jin Chen, 'Harvard China Review 4th Annual Conference Summary', available at web site, <http://harvardchina.org/conference/conf2001/conferenceSummary.html> (visited on 5 November 2003).

³³ Craig S. Smith, 'China Braces for Impact of Membership in WTO', New York Times, 18 October 2001.

³⁴ Clay Chandler and Phillip P. Pan, 'China's Leaders Uneasy About WTO Entry Inefficient Farms, Businesses to Face Tough New Rivals', Washington Post, November 13, 2001, available at <http://www.washingtonpost.com/wp-dyn/articles/A18659-2001Nov12.html> (visited on 13 November 2003); 'Zhu Rongji's greatest worry is the impact of WTO membership on China's farmers (ZHU RONGJI: RUSHI ZUI DANXIN NONGYE)', November 6, 2001; available at <http://www.duoweinews.com> (visited on 6 November 2003).

³⁵ *ibid.*

the external environment for Chinese businesses, Chinese businesses and governments at all levels must adjust their mentality and take action for China's foreseeable admission into the World Trade Organization." Then vice Minister Long Yongtu, China's chief WTO negotiator, said at a high-ranking forum on the WTO and China's economy during the 90th China Export Commodities Fair held in Guangzhou on 23 October 2001. Meanwhile, he especially emphasized that there is no need to worry or panic as the changes will be step by step and businesses have enough time to take action.³⁶

3. Why can't the Chinese leaders and the citizenry properly understand what China's accession to the WTO really means to their self-interest?

(a) The process of accession to the WTO is very complicate and time-consuming.

As the WTO reported recently,³⁷ with 30 governments still in the queue for membership to the WTO, accession will remain a major challenge³⁸ for WTO members in the years ahead. The

³⁶ 'Chinese businesses urged to prepare well for WTO', China Daily, 23 October 2001, available at web site, <http://chinadaily.com.cn> (visited on 5 November 2003).

³⁷ Doha WTO Ministerial 2001: Briefing Notes, 'Members and Accession, Becoming a member of the WTO', available at web site, http://www-chijl.wto-ministerial.org/english/thewto_e/minst_e/min01_e/brief_e/brief00_e.htm (visited on 5 November 2003).

³⁸ The central challenge to the WTO is how to admit the transition economies to the WTO based on its established principles and rules proven to be beneficial to the world economy. The geopolitical landscape of the international system has been profoundly altered with the collapse of the Soviet Union, which has allowed for closer integration

WTO accession process is complex and lengthy due to the following reasons:

First, Article 12 of the WTO Agreement does not give on the "terms to be agreed", these being left to negotiations between the current WTO Members and the applicant.

Second, the WTO accession process operates on a case-by-case basis. Every case is driven by a set of distinct interests and priorities, and by very different realities. Operationally, the rules of the game are decided by the members of the Working Party, who are legally free to conduct their negotiations in the way they deem relevant and appropriate, to ensure compliance with the WTO legal code. Every interested WTO member can join the Working Party whose decision taken by consensus and become actively involved in the resulting accession negotiations. This is intended to ensure the transparency of the accession negotiations and the vested interests of the current WTO members. A single unresolved issue between the applicant and one other WTO member can slow down the entire process indefinitely. As experts pointed out,³⁹ the need for consensus, combined with the diversity both of the applicant and of current WTO members' interests, has played a

and increased liberalization of global economic transactions. Many of about 30 countries currently applying for the WTO membership are countries that are undergoing a transition from a state-controlled to an open market economy and share a past legacy of heavy state interventionism.

³⁹ Rolf J. Langhammer & Matthias Lücke, 'WTO Accession Issues', 22 (7) *The World Economy* 837-873 (1999).

large role in slowing down the accession process.⁴⁰ Moreover, the WTO accession process makes current WTO members push applicant countries to undertake far more commitments than WTO members at a similar level of economic development have made. Therefore, the current WTO accession process is highly tilted to protect the current WTO Members' expanding interests and puts the applicants at a very disadvantage.

Third, there are some substantial differences between WTO accessions and GATT accessions, despite their procedural processes are almost same. Non-market economies were allowed to join the GATT without making commitments to introduce pro-market reforms but they were treated differently within the system, since, in principle, their participation was regarded as incompatible with the GATT system. By contrast, the WTO Protocol of Accession indicates that the new member is prepared to observe all the rules included in the legal text of the Uruguay Round Agreements. Thus, the applicants confront comprehensive obligations covering not only border measures but also domestic regulatory policies. Since the functioning of WTO rules depends on members being market economies, the whole transition process in the applicant countries necessarily comes under close scrutiny in accession negotiations.

Fourth, the WTO is quite different from other international

⁴⁰ However, the slow pace of WTO accessions is in part due to a lack of preparedness on the part of the applicants and also a lack of administrative and training resources devoted to accession, not only in the WTO secretariat, but also on the part of current members and applicants.

economic organizations by virtue of its scope and its impact on the domestic economic policies of its members. Accessing to the WTO has a much greater significance for public policy options of state governments than has been the case with the GATT. This is because the WTO has specific new powers, and covers a much wider array of economic activities. Consequently, a move to join the WTO involves concrete policy obligations. In fact, the WTO accession process can provide a framework for reforming both political and economic institutions of the acceding countries.

The WTO accession process is good or bad for a truly globe-oriented multilateral trading system is a question to be further studied. Indeed, this process has a very deep and wide impact on the China's accession to the WTO.

(b) The process of China's accession to the WTO is the most complicate and longest accession to date in the history of the multilateral trade system.

China was one of the 23 original signatories of the General Agreement on Tariffs and Trade (GATT) in 1948. After China's revolution in 1949, the government in Taiwan announced that China would leave the GATT system. Although the government in Beijing never recognized this withdrawal decision, nearly 40 years later, in 1986, China notified the GATT of its wish to resume its status as a GATT contracting party. China also was one of 30 governments currently seeking accession to the World

Trade Organization. Like many of the countries now applying for WTO membership, China is in the process of implementing economic reforms and transforming its economy into more market-based one. China's accession process to the WTO has been guided by a Working Party whose membership consists of all interested WTO member governments. Initially, the Working Party on China's status was established under GATT in 1987 and concerned only China's trade regime for goods. In 1995, it was converted to a WTO Working Party and its scope was broadened to include trade in services, new rules on non-tariff measures and rules relating to intellectual property rights. The Working Party on China's WTO Accession, having 74 members, has been the largest working party so far. A substantial part of China's accession process involved bilateral negotiations between China and 37 WTO members. These were usually conducted privately, either at the WTO in Geneva or in capitals. Other meetings concern either informal or formal sessions of the Working Party. Under the chairmanship of Ambassador Pierre-Louis Girard of Switzerland, the Working Party (established in March and met for the first time in Geneva in October 1987) concluded almost 15 years of negotiations with China on 17 September 2001. On 10 November, the "accession package" was adopted formally by the 142 Member Governments of the WTO at the WTO Ministerial Conference in Doha, Qatar.

(c) *Politics has been playing a very complicate role.*

For China, political objective for its WTO accession is to

assert China's 'rightful' place in the world community, to normalize China's trade relationship with trading partners, and to promote China's national economic reform. Certainly, China's initial insistence on the resumption of its GATT membership and later insistence that it must join the WTO before Taiwan is politically motivated. For the key WTO Members, especially the United States, it is in the interest of the United States to see China join the WTO on commercially meaningful terms. China's emergence as a trade power is of major significance to the US and to the world. The manner in which the United States engages China will help determine whether it becomes integrated into international norms and institutions like the WTO, or whether it becomes more isolated and unpredictable. Joining the WTO means bringing China into a rules-based trading system. WTO accession represents an important opportunity for China to create and implement a rules-based trade regime. To meet WTO requirements, China must make laws public, require judicial review of all trade actions, apply all trade laws uniformly, and submit to WTO dispute settlement to ensure compliance with WTO rules. All of these measures will enhance the rule of law and the application of international norms in China's trade regime, to the benefit of China and the United States. The rule of law in trade has spillover benefits to the rule of law elsewhere.⁴¹ And internationally, the WTO accession will deepen and speed a process of integration that has helped China become a more

⁴¹ 'China and the World Trade Organization (WTO)', Fact sheet released by the Bureau of Public Affairs, U.S. Department of State, June 3, 1997.

integrated, responsible member of the Pacific community.⁴² Both China's and the key WTO members' political considerations mentioned above have been playing a positive and constructive role in the process of China's WTO accession.

However, a number of unanticipated political events have put much pressure on the process of China's WTO accession in the last years. In particular, the June 4th incident in 1989 and the subsequent collapse of Soviet Union eliminated the major reason for the United States to treat China strategically. The strategic rivalry between China and the United States has caused great tensions in virtually every aspect of their relationship. China's WTO accession issue has been intertwined with issues of human rights, Taiwan, Tibet, arms proliferation, the Korean Peninsula, US-Japan security alliance, and territorial disputes in the South China Sea. All these issues impacted upon the overall China-US relationship and had done of politicizing the process of China's WTO accession.⁴³ Even during 1999-2000, the United States had the most fractious and heated political debates - over "PNTR", the interests of business versus the cause of human rights, the conversion to capitalism versus the virtues of state control. Ironically, the bombing of the Chinese Embassy in Belgrade in May 1999 and the mid-air collision of the U.S. EP-3 and the Chinese F-8 in April 2001 appears to have provided an

⁴² Charlene Barshefsky (former U.S. Trade Representative), U.S. Trade Policy and the Trading System, Speech at School of Advanced International Studies, Washington, D.C., 2 March 2000.

⁴³ Yongzheng Yang, 'Completing the WTO Accession Negotiations: Issues and Challenges', 22 (4) *The World Economy* 513-534 (1999).

impetus to the improvement of the China-US relations and a breakthrough to the accession negotiations.⁴⁴

(d) *There has been a heated debate about China's developing country status.*

China is not only a developing country but also the largest one among the applicant economies in transition. Then vice Minister Long Yongtu, Head of the Chinese Delegation, stated at the 16th session of the Working Party on China's Accession as follows:

"The position we have taken to accede to the WTO as a developing country is not only a reflection of the actual economic level of China at the present stage, but also our political choice. ⁴⁵It has been one of the basic principles"

⁴⁴ Yongzheng Yang, 'China's WTO Accession: The Economics and Politics', 34 (4) Journal of World Trade 77-94 (2000). As Long Yongtu pointed out on 10 November 2001, "A case in point was the negotiation between China and the United States, when relations between the two countries tended to become relaxed, negotiation could proceed smoothly, otherwise, the negotiation would come upon a snag and would even be suspended. For instance, the question concerning MFN status had long been the crucial factor for difficulties in China-US negotiation, US Congress' involvement in it had made the negotiation more politicized. The reason why China and the United States could reach a bilateral agreement is, to a great extent, due to the fact that leaders of the two countries, from a strategic perspective, treated and handled some crucial difficult problems, thus bringing the negotiation to a "win-win" result. When the negotiation came to a deadlock, political force often played a decisive role." See, 'Interview: Long Yongtu on China's WTO Entry', People's Daily (Saturday, November 10, 2001, updated at 15:27), available at <http://english.peopledaily.com.cn/> (visited on 11 November 2003).

⁴⁵ In fact, China is already the largest beneficiary of unilateral tariff reductions for semi-manufactures and manufactures under the Generalized System of Preferences (GSP) offered by the OECD countries except the United States.

we stick to in the negotiations of the past 15 years. However, we have taken a pragmatic attitude towards the various treatments for the developing countries as embodied in the WTO agreements and practices. We have made specific commitments in different areas in light of our national situation, development level and capacity to implement these commitments.

“In some important areas, we insist on undertaking obligations in consistency with our own development level. We have rejected the request to reduce our average tariff level to that of developed countries and insisted that China’s average tariff level should be comparable to the average level of the developing countries. In service areas, we insisted that we can not offer to open our market as a developed country and we can only base our commitments on the degree of market opening of the developing countries.

“In some areas, however, where China has already had the capability to implement the obligations as all WTO Members, we deem not necessary for China to enjoy preferential treatments to the developing countries as provided for in the relevant WTO agreements. For instance, the TRIPS Agreement provides a 5-year

⁴⁶There are three principles on China's accession to the GATT/WTO negotiations as follows: 1, As an international organization, WTO is incomplete without China's membership; 2, China must undoubtedly attend as a developing country; 3, The principle of China's attendance is the balance of rights and obligations. These principles first were put forward by President Jiang Zemin at the APEC conference in November 1993.

transitional period for developing countries. Since the Chinese government has been working hard to raise the IPR protection level by improving the legal system and enhancing law-enforcement, we have already obtained the capacity of implementing the TRIPS Agreement fully. We, therefore, decided not to insist on the access to the transitional period. However, when we noted some developing countries are requesting for an extended transitional period due to their limitation on IPR protection, we support their request because of we believe that their request is reasonable. This is the approach that we have taken to deal with this matter—the approach of addressing different issues according to their specific situations.”⁴⁷

China's position above has been strongly resisted by some current WTO members (in particular, the United States), while other current WTO members (e.g. the EU) have understood and even supported China's developing country status with some reservations. The United States' insistence that the China's WTO Accession Agreement must be commercially meaningful in four different ways:

“First, it is comprehensive. It covers agriculture, industrial goods and services. It covers unfair trade practices including tariffs, quotas, other non-tariff measures, non-scientific agricultural standards, discriminatory regulatory processes, lack of transparency,

⁴⁷ Statement by Mr. Long Yongtu, Head of the Chinese Delegation, at the sixteenth session of the Working Party on China (Geneva, 4 July 2001), http://www.wto.org/english/news_e/news01_e/china_longstat_jul01_e.htm (visited on 11 July 2003).

export subsidies and other barriers to trade. It will address the tariffs and other barriers China applies at the border; the limits China places on sales, customer service and maintenance within the domestic market; China's unwarranted sanitary and phytosanitary standards; and limits on the rights of service providers to set up businesses in China.

"Second, it grants no special favors. It requires China to reduce its trade barriers to levels comparable to those of major trade partners, including industrial countries. For example, Chinese tariffs will fall to an average of 7.1% in our priority areas - well below the rates most developing countries apply and comparable to those of major industrial trade partners.

"Third, it is enforceable. The commitments China has made in all areas are specific, measurable, and will be fully enforceable.

"Fourth, it delivers market-based reforms fast. Immediately upon accession, China will make substantial cuts in agricultural and industrial tariffs; begin opening sectors from insurance to telecommunications to professional services to foreign service providers. The phase-in of further broad concessions in all these areas will be limited to five years in the vast majority of cases and in many cases between one and three years."⁴⁸

⁴⁸ USTR press release, 8 April 1999, available at

Obviously, the U.S. tends to emphasize the long-term benefits China will gain as a result of opening its economy more fully to international competition and to overlook the short term structural adjustment costs that must be borne in the short-run.

As Ellen L. Frost pointed out, "prior to the Uruguay Round, trade rules permitted 'special and differential treatment' for developing countries, meaning that poor countries did not have to undertake the same obligations as rich countries. The collapse of the socialist model discredited these alternative options. The Uruguay Round reduced most differential treatment to timing of implementation of obligations."⁴⁹ However, extended implementation periods will gradually go away with time because for recently acceded WTO members, all implementation periods are calculated from the entry into force of the WTO Agreement, not from the date of their accession to the WTO. This is now established practice and will also apply to future accessions. In practice, therefore, as stated above, all extensions to implementation periods will need to be negotiated and listed individually in the protocols of accession.⁵⁰ Moreover, developing countries have not obtained often special and differential treatment, despite the difficult economic situations confronting the applicants.

<http://www.ustr.gov/release/1999/04/99-34.html> (visited on 10 November 2003).

⁴⁹ Ellen L. Frost, 'China, the WTO and globalization: What happens next?', available at http://www.chinaonline.com/commentary_analysis/thiswk_comm/01 (visited on 8 August 2003).

⁵⁰ Rolf J. Langhammer & Matthias Lücke, 'WTO Accession Issues', 22 (7) *The World Economy* 837-873 (1999), at 859-860.

In the context of accession to the WTO, China's application to join the WTO has aroused a number of concerns from both developing and developed member states. Some of the issues raised have included how China's growth and accession will affect the world agricultural and merchandise markets; whether China's accession will further increase the US trade deficit; whether increased competition will result in lower real wages for skilled and unskilled workers; and how increased competition will affect the development prospects of other nations in the South Asia who compete with China in similar markets. China's accession required a unique agreement allowing China's early entry in exchange for firm commitments to implement a broad range of legal and regulatory reforms as well as tariff reductions, reflecting the need for special arrangements to address the fact that China does not have a market-based economy. To protect against trade distortions and unfair trade practices resulting from China's non-market status, the agreement includes a special WTO review mechanism—the Transitional Review Mechanism (TRM)—to monitor China's compliance and special safeguard provisions giving WTO members the right to protect themselves against sudden surges of Chinese imports. China was forced to agree to shorter phase-in periods and lower caps on certain subsidized exports than those granted to many low-income countries. Now, a high standard sets for China's WTO accession, only in terms of substantial uncompromising commitments to trade liberalization by China, rather than in terms of not imposing discriminatory measures against China by its trading partners. Such a compromise has symbolic and substantive

implications for Chinese leadership ambitions.⁵¹

(e) There is highly ill-informed the process of China's WTO accession and confused explanations from some so-called Chinese WTO experts on the process in China.

There are two very interesting events occurred recently, further protruding highly ill-informed the process of China's WTO accession in China.

In early November 2001, some Chinese government officials, corporate bosses and senior academics in Beijing have criticized the central government for a lack of transparency in making available the details of the agreement that China signed in September and for failing to prepare the country adequately for the challenges ahead. Even the state council's research body did not receive the agreement. While Chinese corporate bosses have been informed verbally of how the main contents of the agreement will affect their industry, they have been unable to secure any detailed documentation. As critics said, this had stifled informed debate on what the WTO will mean for the world's most populous country.⁵² It was common to hear corporate bosses complain that Beijing was giving away market concessions to foreigners without thought that this may result in

⁵¹ Ellen L. Frost, 'China, the WTO and globalization: What happens next?', available at http://www.chinaonline.com/commentary_analysis/thiswk_comm/01(visited on 8 August 2003).

⁵² James Kyng, 'China criticised for WTO admission secrecy', Financial Times, 8 November 2001, available at <http://news.ft.com/> (visited on 10 November 2003).

the destruction of domestic business. When the Chinese government will publish the terms and the results of the (WTO) negotiations? Then Minister Shi Guangsheng, head of the Chinese government delegation, said on 12 November 2001, China would release soon all the documents of China's WTO accession agreement now being translated.⁵³ In fact, the China's WTO accession agreement is first available for Chinese people nearly three months later than WTO made it distributed as WT/ACC/CHN/49 on 1 October 2001 and WT/ACC/CHN/49/Corr.1 in English only on 5 October 2001. In early January 2002, Law Press, a very famous governmental publisher, officially published an English-Chinese version of the China's WTO accession agreement.

The 4th WTO ministerial meeting passed of the "Decision on China's accession to the WTO" by consensus on 10 November 2001. At the same day, the People's Daily and China Daily published "Decision of the Standing Committee of the National People's Congress on China's Accession to the World Trade Organization"⁵⁴ adopted at the 17th Session of the Standing

⁵³ 'China will publish all the documents of China's WTO accession agreement soon', People's Daily (Chinese version), 12 November 2001, available at <http://www.people.com.cn/GB/jinji/31/179/index.html> (visited on 13 November 2003).

⁵⁴ The following is the full text of the Decision of the Standing Committee of the National People's Congress (NPC) on China's Accession to the World Trade Organization (WTO): "The 15th Session of the Standing Committee of the 9th National People's Congress heard and reviewed the Progress Report on China's Accession to the World Trade Organization delivered by the Ministry of Foreign Trade and Economic Cooperation at the behest of the State Council and fully endorsed the efforts made by the Chinese Government to seek WTO membership for the country.

Committee of the 9th National People's Congress on 25 August 2000. Then Minister Shi Guangsheng, head of the Chinese government delegation, signed the protocol for China's WTO accession after affirming its content and handed over the ratification of then Chinese President Jiang Zemin of the protocol to then WTO Director-General Mr. Mike Moore on 11 November. Thus China completed its domestic ratification procedures on China's WTO accession protocol. China would officially become a WTO member on 11 December 2001, just 30 days after the hand over the ratified protocol. Above China domestic procedures for WTO entry is quite unusual and unprecedented in China domestic ratifying international treaties history.

The Standing Committee of the National People's Congress [NPC], normally, should ratify the protocol for China's accession to the WTO after heard and reviewed the Report on the Protocol

The Session was of the view that China is the world's largest developing country and its accession to the WTO will contribute to the country's reform, opening up and economic development and also serve the need for the establishment of a complete and open international trading system. China can join the World Trade Organization only as a developing country and by adhering to the principles of balance between rights and obligations and of step-by-step market opening so as to ensure state control of national economic lifeline and safeguard national economic security and state sovereignty.

In the light of the latest development in the negotiations on China's accession to the WTO following the 15th Session, this Session decides to agree that the State Council, in accordance with the afore-mentioned principles, conclude the WTO accession negotiations and designate its representative to sign the Protocol on China's Accession to the World Trade Organization, thus completing the procedures on China's WTO accession subject to the ratification of the President of the country." Available at http://english.peopledaily.com.cn/200111/10/eng20011110_84252.shtml (visited on 11 November 2003).

on China's Accession to the World Trade Organization delivered by the Ministry of Foreign Trade and Economic Cooperation at the behest of the State Council before or after then Minister Shi Guangsheng signed the protocol for China's WTO accession on 11 November 2001. But by "Decision of the Standing Committee of the National People's Congress on China's Accession to the World Trade Organization" of 25 August 2000, the Standing Committee of the National People's Congress agreed that the State Council, in accordance with the relevant principles, conclude the WTO accession negotiations and designate its representative to sign the Protocol on China's Accession to the World Trade Organization, thus completing the procedures on China's WTO accession subject to the ratification of the President of the country. In fact, the Standing Committee of the National People's Congress handed over its ratification power to the Chinese President by this decision. Then Minister Shi Guangsheng signed the protocol for China's WTO accession and handed over the ratification of Chinese President Jiang Zemin of the protocol to then WTO Director-General Mr. Mike Moore on 11 November. This means China de facto completed its domestic legal procedures on China's WTO accession protocol by Minister Shi Guangsheng signed the WTO approved protocol for China's WTO accession. Such a highly politicized Chinese-styled "fast-track" act has certainly ensured that China join the WTO before Taiwan, but has obviously possessed very negative implications for domestic legitimacy of China's WTO

accession agreement.⁵⁵

The above China domestic procedures is an apex of the whole domestic China 's WTO accession process which is not transparent and not under democratic control and supervision.

Some Chinese experts and officials confusedly explained the China's WTO accession process and the WTO system. They didn't fully understand the GATT/WTO entry process, including the substantial differences between the GATT entry process and the WTO entry process, the main differences between the developing countries and the transitional economy countries in the WTO entry process. They never explained that the WTO entry process is substantially applicant's one-way concession process for the WTO membership. They overstated superficial rights of China obtaining from the developing country status, but understated substantial obligations of China's transition economy. They exaggerated benefits of China obtaining from the WTO membership, but lessened reform pressures of China in the WTO entry process. They exaggerated the significance of China for the WTO, but lowered the significance of WTO membership for China reform. They previously proposed a planned commodity

⁵⁵ Several Chinese lawyers and academics criticized that the manner in which China joined the world trade club not only violated the constitution but was also at odds with WTO principles of transparency and due process. It is really biggest ironic for the Chinese process of developing rule of law starts with a decision that itself disregards the requirements of law. See James Kyngé, 'International Economy: Academics hit at procedure to join WTO', Financial Times; 20 November 2001, available at <http://globalarchive.ft.com/globalarchive/article.html?id=011120000933> (visited on 25November 2003).

economy notion for GATT re-entry and now created a socialist market economy concept for joining the WTO. These highly politicized dogmas are helpless for explaining China's WTO accession but increase much more confusion of understanding the China's WTO membership.

In addition, while Chinese is not an official WTO language, after the Chinese membership agreement translated into Chinese version, some interpretation problems may appear. For example, as China going back on its commitments in the future may well turn to be a case of the Chinese having accepted something that carried a different meaning to them.

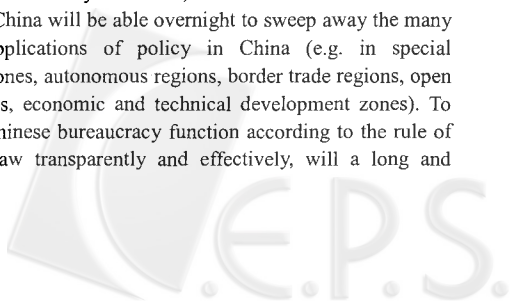
B. China has capacity to comply with its WTO Accession Agreement?

As stated above, the capacity to comply needs an honest and effective bureaucracy, technical expertise, public support and economic resources.

First, an honest and effective bureaucracy, objectively speaking, is what China does need for. As Mr. YU Youjun (then mayor of Shenzhen) said recently, "Which part of China will be the least adaptable to WTO? It's government, not enterprises."⁵⁶ The confusing historical condition of China's legal and

⁵⁶ Bill Savadove (Reuters), 'Worries Grow as China's WTO Entry Looms', 5 November 2001, available at http://dailynews.yahoo.com/hw/np/20011105/If/trade_wto_china_dc_1.html (visited on 5 November 2003).

administrative systems poses many questions about the implementation of all WTO obligations by China. Although the Chinese government has made enormous progress since the reforms began in the late 1970s, the development of a modern legal and administrative system has been uneven and lengthy. Long-held traditions under the authoritarian leaders have dictated the subordination of law to political considerations. To admire power rather than rule of law is Chinese bureaucratic culture. The latest example in this regard is the above-mentioned Chinese domestic ratification procedures for the China's WTO accession agreement. It is said that after WTO entry the greatest change facing China is that China will henceforth be incorporated into a system of rules. China's move to a much more transparent rules-based system for its trade and trade related regime will require fundamental changes in both recent and traditional Chinese governance. For example, China's acceptance of judicial review of its trade related regime is a fundamental change and a new step for China. China has also agreed to administer its trade-related policies uniformly throughout the country. However, it remains to be seen whether in practice China will be able overnight to sweep away the many different applications of policy in China (e.g. in special economic zones, autonomous regions, border trade regions, open coastal cities, economic and technical development zones). To make the Chinese bureaucracy function according to the rule of the WTO law transparently and effectively, will a long and



difficult agenda for the WTO and all WTO members including China.⁵⁷

Second, China lacks full technical expertise necessary to comply with the Chinese membership agreement. As the negotiation process of China's WTO accession showed, China has been learning the GATT/WTO rules from the negotiation process. China does not have its own GATT/WTO experts, nor have international trade experts, nor have international law experts with international recognized standards, nor have any experience of settling its disputes by International Court of Justice or any other international tribunals. Chinese lawyers are completely unfamiliar with WTO trade rules. "The biggest risk lies not just in the opening, but in China's ignorance or

⁵⁷ On the morning of 8 November 2001, Mr. Long Yongtu pointed out: "It is very difficult to be used to such a change, it needs a long-term process. We are used to dodging rules, or adopting an attitude of pragmatism toward rules, thus causing chaos in the market economic order. The phenomena, such as smuggling, tax fraud, the corruption of officials, fake and shoddy products, are resulted from the lack of rules and the sense of credit. Given this situation, it is foreseeable that government departments and enterprises alike will not be used to the change after WTO entry, but they have to pass the test of the new situation. In many cases, it is hard to get rid of old habits, often it is impossible to solve the problem by relying on one's own strength alone, a sound, effective external force can impel us to accomplish something which we want to do but have delayed to accomplish. As to the question of adaptability, I think: first, it is necessary to sort out, revise and perfect related laws and regulations in accordance with common international practices. Second, the whole nation should foster a sense of rules and credit, that is the foundation for us to honor our commitments. Third, we should continue to crack down on illegal acts of disrupting the market economic order, otherwise, implementation of the rules will become an empty talk." 'Interview: Long Yongtu on China's WTO Entry', People's Daily, 10 November 2001, available at http://english.peopledaily.com.cn/200111/10/eng20011110_84267.shtml (visited on 11 November 2003).

unfamiliarity with the rules of games. If you do not know the rules, you have no idea about what you should do, and what you shouldn't." said Mr. Long Yongtu, then Chinese chief WTO negotiator who arrived at Doha for the fourth WTO ministerial meeting. "China should give priority to strengthening understanding and study on the system of market economy. China should work harder to learn international rules."⁵⁸ While compliance with the WTO agreement is very complicated operation of knowledge-intensive, capital-intensive and labor-intensive, without sufficient technical expertise, it is difficult to make successful. China has taken positive first step to educate and to train officials about its WTO entry at the central, provincial and municipal levels since late 1999. At the moment, books on the WTO are one of the bestsellers in Chinese bookstores. Ordinary Chinese citizens eagerly try to know basic facts about WTO entry. But these education and training campaigns cannot make Chinese officials become experts on related WTO rules.

Third, public support the WTO entry in China is less predictable despite Chinese government's propaganda campaigns⁵⁹ about the WTO entry, because of the

⁵⁸ 'Long Yongtu: Biggest Risk Lies in Ignorance of Rules', People's Daily, 9 November 2001, available at http://english.peopledaily.com.cn/200111/09_eng20011109_84236.shtml (visited on 10 November 2003).

⁵⁹ For example, Information Bureau of Propaganda Department of Central Committee of the Communist Party of China (eds.), 'GUANYU WOGUO JIARU SHIMAOZUZH DE RUOGAN WENTI [A Number of Questions on the China's WTO Accession]', 1-93, 2000 People Press.

above-mentioned highly ill-informed the domestic process of China's WTO accession and lack of understanding the WTO rules.

By contrast, economic resources of China are very encouraging. China is an emerging economic powerhouse even though a developing one. China's transformation from a highly regulated, interventionist economy is continuing but much state control is still evident. China also has more than 20 years of experience in opening to the outside world and reform. Over the past 20 years, open market process and modernization process of China has taken a giant step forward, and many profound changes have taken place in Chinese old concept, Chinese have got a better understanding of common international practices. The process of WTO entry negotiation has given a strong impetus to a farewell to China's planned economic system and to thoroughly doing away with the closed-door policy, along with the negotiation, China's reform and opening process is not decelerated, but rather is accelerated. Since China decided to apply for WTO membership, Chinese government has been under pressure to meet assigned deadlines to introduce the required changes and to continue with its reform plans. Quick implementation of the reform and introduction of relevant laws and regulations were the necessary conditions to move the accession process forward. China must present a plan and timetable showing, for each of the main economic activities relevant to the WTO Agreements, what steps China has taken towards conformity with WTO rules, what remains to be done,

and how and when China expect to complete the reform process. Therefore, when the China's WTO accession is completed on 11 November 2001, its conclusion signifies not only the reaching of a compromise over market access concessions, the successful accession also tells a story about completing a certain threshold of economic transformation by China.

Then Minister Shi Guangsheng, head of the Chinese delegation to the Fourth Ministerial Conference of the World Trade Organization (WTO), following the adoption of the Decision on China's Accession to the WTO at the ongoing ministerial conference on 10 November 2001, stated as follows:

"China has made longstanding and unremitting efforts for resuming its GATT Contracting Party status and for acceding to the WTO, which fully demonstrates the resolve and confidence of China to deepen its reform and to open further to the outside world. The WTO accession is not only in the interests of China, but also in the interests of all WTO Members and conducive to the development of the multilateral trading system. It will inevitably exert widespread and far-reaching impact on China's economy and on the world economy in the new century. After its accession, China will, on the basis of the balance between rights and obligations, abide by the

WTO rules and honor its commitments while enjoying its rights. China will, as always, value and strengthen equal and mutually beneficial economic and trade relations with [other] countries and regions in the world, and play an active and constructive role in the multilateral trading system and make its positive contribution to the progress of world economy and trade together with other WTO Members.”⁶⁰

C. China's Legal Cultural Aspect of Compliance with its WTO Accession Agreement?

Generally speaking, Chinese legal culture, i.e. the attitudes of China and its people towards law generally, undeniably influence China's compliance with the Chinese WTO membership agreement. Regarding China domestic law, for both historical and cultural reasons, the Chinese tradition⁶¹ vests

⁶⁰ 'Head of Chinese Delegation on China's Entry into WTO', People's Daily, 11 November 2001, available at http://english.people.com.cn/200111/11/eng20011111_84304.shtml (visited on 12 November 2003).

⁶¹ Confucianism, the heart of ancient Chinese law, however, remains influential today. Moreover, although communists attempted to replace Confucian values with their own ideology and succeeded in destroying many Confucian traditions, most of the traditional values survived. A significant aspect of the Confucian attitude toward dispute resolution is Confucianism's emphasis on the principle of harmony. A second significant feature of Confucian thinking on dispute resolution is the traditional perception that Chinese law was primarily criminal. A third important characteristic of the Confucian attitude toward dispute resolution is Confucianism's emphasis on kinship and family. See Shin-yi Peng, 'The WTO Legalistic Approach and East Asia: From the Legal Culture From the

rights in the larger community or nation, and they are defined according to the ruler's determination of the society's greater good. Law is a set of rules designed to set freedom for bureaucrats rather than citizens. Law is not an instrument for private individuals and parties to protect themselves from government's intrusion of their rights, but just an instrument for government to protect social order. Chinese people habitually prefer personal, informal relationships forged on trust and good faith rather than formal, institutionalized relationships based on concrete legal rules.

In reality, the Chinese social order is relationship-driven under the control of the Chinese Communist Party. The legal system in today's China -- a system with a high degree of discretion on the part of government officials, political manipulation, and "back door" deals--is still quite far from "rule of law". Bureaucratic abuse and corruption, partially derived from the kinship emphasis, are pressing problems in China. Unless China fundamentally changes its ways, past rebellions by the have-nots against an entrenched corrupt elite will repeat in future. Thus, the WTO membership is important for China, because not only it gives China access to foreign markets, but also WTO law would help China fight off economic entrenchment. However, China may have a long way to go to develop a WTO-compatible legal system despite China is very hard working towards a new and Chinese-styled "rule of law" by

learning from the recognized international practices about state governance.

Regarding international law, since China was compelled to accept modern international law with imposition of extraterritorial and colonial rights upon China by foreign powers from the mid-19th to the mid-20th century, China has been seeking for a fair and reasonable new international legal order. Having had little role in shaping such a new order,⁶² China must ambivalently pose its desire to be accepted by an international community it did not create against the fear of being overwhelmed by the international norms and practices designed primarily to sustain the West global preeminence.

Therefore, China has sought to mutual trust, mutual benefit, equality and cooperation between China and other countries in accordance with the UN Charter, the five principles of peaceful coexistence and other universal recognized principles governing international relations, and has ever asserted equal sovereignty rather than absolute sovereignty. In Chinese jurists' point of view, sovereignty as an international legal principle is meaningful only in terms of mutuality, that is, the sovereignty of one state is restricted by that of others, and the sovereignty of all states are equally respected by all. China has always rejected the idea that sovereignty gives states unbridled freedom to whatever they

⁶² China is still a "weak" state, especially vis-a-vis developed nations.

want, including the right to resort to war.

Moreover, China's consistent practice in honoring its international obligations under the rule *pacta sunt servanda*, demonstrates that China's sovereignty-centered attitude towards international law conceives the exercise of sovereignty as within the parameters set out by international legal rules. As mentioned above, for China, one of the most important objectives of WTO entry, is establishing an equal and mutually beneficial economic and trade relationship with its trading partners on the basis of the balance between rights and obligations supported by the WTO law.

As China's practice of international law surveyed by professor James V. Feinerman at Georgetown University Law Center, showed that the overall record is more mixed. China has attempted to accommodate the international community in some areas⁶³ more than in others; its practice shows both admirable compliance with, and complete disregard of, international law; and the future participation of China in the international legal order is certain. Less predictable, particularly with respect to certain subjects, is China's acceptance of existing standards.⁶⁴

⁶³ Foreign trade and investment, environmental law areas demonstrated the China's good faith attempts to adhere to international law.

⁶⁴ James V. Feinerman, 'Chinese participation in the international legal order: rogue elephant or team player?', *The China Quarterly*, March 1995.

D. A Short Comment

To summarize analyses above, because the WTO is a club-styled international trade regulatory organization,⁶⁵ as a new member, China will bear the nearly whole burden of implementing the Chinese membership agreement under the pressure of the WTO and its major members by the enforcement and review mechanisms.

Generally speaking, China has a comparatively strong intention to comply with the Chinese WTO membership agreement, but the intention needs to be further strengthened; China also has a less weak capacity to comply with the Chinese WTO membership agreement, but the capacity needs to be much further enhanced by capacity-building programs. Chinese legal culture also needs to be thoroughly updated and transformed. Joining the WTO will not make China implement the Chinese WTO membership agreement overnight. As Professor William Alford of Harvard University pointed out,⁶⁶ it is not because China's sincerity to adhere to the WTO rules, but because many adjustments required by the WTO demands are extremely painful. These adjustments are even difficult to be carried out in rich, democratic countries with sound social safety net to take

⁶⁵ Robert O. Keohane & Joseph S. Nye, "The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy", in Roger B. Porter et al. (eds.), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium* (Washington: Brookings, 2001) pp.264-307.

⁶⁶ Jin Chen, 'Harvard China Review 4th Annual Conference Summary', 6 May 2001, available at <http://harvardchina.org/conference/conf2001/conferenceSummary.html> (visited on 10 October 2003).

care of laid off employees and with smooth channels for them to express grievances. In China there are essentially no such social safety net or channels for grievances, so social stability as a result of such adjustments will be very fragile. China's accession will also have important impacts on its bilateral relations with the US, the EU and other countries. It will also impose great challenges to the WTO as a global trade regulatory organization, as there will be an up surge of dispute matters and strains legal mechanism and capacity of the WTO.

China needs very urgently capacity-building projects and confidence-enhancing programs for a definite, vigorous and consistent national policy implementing its WTO entry commitments. Of course, China must amend existing and draft new legislation to comply with WTO rules, restructure government ministries and agencies to facilitate legislative and administrative changes in line with WTO disciplines, as well as strengthen capacity-building and confidence-enhancing activities for people and institutions implementing WTO rules.

More importantly, China should speed up whole economic regulatory regime transformation and legal reform by implementing the WTO rules as soon as possible. China must launch a genuine long march towards a rational and democratic economic structure by its WTO entry. It is not only for China complying fully with its commitments towards the WTO, but also for laying a corner stone of making China become a prosperous, open, accountable, reliable, predictable world trade

power in the 21st century. Last, as an emerging world trade power, China should seek positively to establish its own national law and policy implementing the WTO Agreement. It should not only comply with its obligations in good faith, but also closely monitor how other WTO members fulfill fully their commitments towards China and other WTO rules. Now, it is time for China start to convince the WTO and its current members that China is a good team player and a powerful defender of the WTO rules by its actions rather than its slogans.

III. A Analysis of China Policy to Comply

A. The Chinese organizations for WTO implementation

A number of different organizations within the Chinese State Council are responsible for WTO issues, led by the Ministry of Commerce (formerly the Ministry of Foreign Trade and Economic Cooperation -(MOFTEC)). The annex lists the primary Chinese agencies and details their responsibilities with respect to the WTO Agreements.

The Ministry of Commerce plays the central role in WTO implementation and has jurisdiction over the formulation of policies and laws covering trade, economic cooperation and foreign investments in China. It is also responsible for formulating foreign economic policy, conducting bilateral and

multilateral economic negotiations, and signing bilateral and multilateral treaties and agreements. The Ministry of Commerce has approximately 500 staff members. In addition to serving as the general liaison for WTO-related matters, the Ministry of Commerce has jurisdiction over the majority of the agreements.

In November 2001, the former MOFTEC replaced its Department of International Trade and Economic Affairs with a new Bureau of Fair Trade for Imports and Exports (responsible for anti-dumping, countervailing duties and dispute settlements, etc.) and a China WTO Notifications and Enquiry Center (responsible for notifications and enquiry). The WTO Department has a staff of 50. The government of China is in the process of revising domestic regulations and the WTO Department takes the lead in studying, formulating and implementing foreign trade policies and programs relevant to the WTO agreements. Though China established a Bureau of WTO Notifications to handle WTO-related inquiries, it is not necessarily able to adequately respond to the large numbers of questions posed by domestic and foreign governments and enterprises.

Annex Ministries and Commissions with primary jurisdiction over WTO agreements

Responsibility	Jurisdiction
Management of WTO accession	Ministry of Commerce
General Agreement on Tariffs and Trade	Ministry of Commerce, Customs General Administration

Implementation of customs obligations and concession tables	Ministry of Finance, Ministry of Commerce and Customs General Administration
Notification based on WTO agreements	Ministry of Commerce and other authorities
Agreement on Agriculture	Ministry of Commerce, Ministry of Agriculture and Ministry of Finance
Agreement on Sanitary and Phytosanitary Measures (SPS)	Bureau of State General Administration for Quality Supervision and Inspection and Quarantine (AQSIQ), and Customs General Administration
Agreement on Textiles and Textile Products (Including Clothing)	Ministry of Commerce
Agreement on Technical Barriers to Trade (TBT)	AQSIQ and other authorities
Agreement on Trade-Related Investment Measures (TRIMs)	Ministry of Commerce, State Administration for Industry and Commerce, State Development and Reform Committee
Anti-Dumping Agreement	Ministry of Commerce, State Tariff Commission
Agreement on Customs Valuation	Customs General Administration
Agreement on Pre-Shipments Inspection	Customs General Administration, AQSIQ
Agreement on Rules of Origin	Customs General Administration,

	AQSIQ
Agreement on Import Licensing	Ministry of Commerce
Agreement on Subsidies and Countervailing Measures	Ministry of Commerce
Agreement on Safeguards	Ministry of Commerce, State Development and Reform Committee
General Agreement on Trade in Services (GATS)	Ministry of Commerce and other authorities
GATS Protocol on Trade in Financial Services	Ministry of Commerce and People's Bank of China
GATS Protocol on Basic Telecommunications	Ministry of Commerce and Ministry of Information Industry
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)	Ministry of Commerce, and State Administration for Industry and Commerce, State Intellectual Property Rights Office, Customs General Administration and other authorities
Understanding on Rules and Procedures Governing the Settlement Dispute (DSU)	Ministry of Commerce and other authorities
Plurilateral Agreement on Government Procurement	Ministry of Commerce and Ministry of Finance
Other WTO issues	Ministry of Commerce

B. China's Compliance: Assessment to Date

There is nearly one month before the formal end of Year Three on December 11, 2004. China's compliance with its WTO commitments is mixed during more than thirty months since China became a member of the WTO.

According to "2004 Report to Congress of the U.S.-China Economic and Security Review Commission" on June 15, 2004,⁶⁷ China has complied with many of its WTO obligations.⁶⁸ China has not only completed a broad range of tariff reductions and legal revisions in accordance with its accession

⁶⁷ See http://www.uscc.gov/researchreports/2004/04annual_report.pdf (visited on August 12, 2004).

⁶⁸ China was obligated to implement the following salient measures by December 11, 2003: (1) Reduce tariffs on most imported goods to rates bound by the WTO accession agreement, has generally been fulfilled according to schedule. (2) Grant full trading rights-the right to import and export to foreign minority- and majority-owned joint ventures, despite some changes in regulations, has not been fulfilled. (3) Grant distribution rights to foreign minority- and majority-owned joint ventures, has not been fulfilled. (4) Ease geographic restrictions on operations of foreign financial services companies, has been fulfilled according to schedule. (5) Implement a transparent tariff-rate quota (TRQ) system in certain agricultural products, some improvements were made, but problems remain with the nature and transparency of TRQ regulations. (6) Permit foreign majority ownership in joint venture retail enterprises and open a number of additional cities to retail joint ventures, was only partially fulfilled, with foreign investment still problematic in some sectors. (7) Permit the use of commission agents for the sale and distribution of the products of foreign majority-owned entities, has been partially fulfilled, with restrictions remaining. (8) Allow foreign majority ownership, and place no geographic or quantitative restrictions on foreign service suppliers of most imported and domestically produced products, has been fulfilled.

agreement, but also improved its tariff-rate quota system for agricultural imports and somewhat reduced capitalization requirements for financial service operations. China has not only revised hundreds and thousands of its laws and regulations⁶⁹ to mirror WTO obligations, but also improved transparency in many aspects though not consistently and not to the level desired or committed to by China. Foreign governments and companies report improvements in China's legal framework supporting intellectual property rights.

As U.S. Chamber of Commerce reported ⁷⁰on September, 2004, Engaging China in the rules-based trading system has resulted in important progress in key areas, particularly in tariff reduction, revising existing laws and drafting and passing new ones to comply with its WTO requirements, and educating its officials and companies about its WTO obligations. Other areas of progress include China's early phase-in of trading rights for wholly foreign-owned companies on July 1; decisions by China's insurance and commercial regulators to reduce burdensome capitalization requirements for foreign investment in the insurance and trading sectors; and increased transparency in the Ministry of Commerce's (MOFCOM's) regulatory drafting process, especially with respect to the recently released

⁶⁹ "In order to implement WTO rules and China's commitments, the government also reviewed over 2,500 laws and regulations, abolished 840 and amended nearly 400 of them," Chinese Vice Minister of Commerce Ms. Ma Xiuhong told a Global Forum on International Investment on November 1, 2004.

⁷⁰ U.S. Chamber of Commerce, *China's WTO Implementation: A Three-Year Assessment*, Report Prepared By Myron A. Brilliant (Vice President, East Asia) and Jeremie Waterman (Director, Northeast Asia) on September, 2004.

Foreign Trade Law. China has also made some progress in addressing a range of problems with the implementation of its tariff-rate quota (TRQ) system, including poor transparency, delays in announcing quotas, insignificant and uneconomic quota allocations, and restrictions on foreign enterprises that are not required of domestic producers or merchants.

Mr. Robert A. Kapp, President United States-China Business Council said, the entry into force of the Administrative Licensing Law on July 1, 2004 may well prove a very important milestone in the continuing process of economic liberalization and reform leading China closer and closer to full market economy status.⁷¹

Though China has made progress in reducing tariffs and otherwise formally meeting a large number of its WTO accession commitments, significant compliance shortfalls persist in a number of key areas for U.S. trade. Among areas of concern are China's manipulation of its currency, continued provision of direct and indirect subsidies to Chinese producers, use of unjustified technical and safety standards to exclude foreign products, poor enforcement of intellectual property rights (IPR) as piracy and counterfeiting remain rampant, and discriminatory tax treatment for domestic semiconductor production. Moreover, China has deliberately frustrated the effectiveness and debased

⁷¹ Robert A. Kapp (President United States-China Business Council), Oral remarks to the trade policy staff committee hearing on China's progress in implementing its WTO accession commitments, September 23, 2004.

the value of the TRM,⁷² which was intended to be a robust mechanism for assessing China's WTO compliance and for placing multilateral pressure on China to address compliance shortfalls.

The 2003 China WTO compliance report⁷³ issued by the US Trade Representative found that China's WTO implementation efforts failed to meet its commitments in important areas, and that, in some cases, China has imposed new or additional trade

⁷² The US, EU, Japan and other countries believed that the Article 18 obligation would be robust, meaning that WTO members would be able to forward questions in advance, receive written responses and submit follow-up questions for similar treatment. This is normal WTO practice in all of the Committees for other reporting obligations. Other members (including the US) were also interested in setting up a schedule early in China's membership to ensure the process would be meaningful and would permit a thorough evaluation. China refused to permit the Article 18 process to go beyond the literal language of the protocol. China argues that the normal customs of the WTO do not apply, because the TRM is a discriminatory measure applying only to China. Since there was no timeline identified, China would not agree to early meetings and, in fact, blocked agendas being issued or meetings being held where the topic of the Article 18 TRM was included. China took the position that Article 18 did not mention written answers and so has refused to provide written responses or permit the process to be one in which a series of questions and answers takes place to provide better transparency on the operation of various Chinese programs. Because the WTO works on consensus, China has not agreed to have any document originate from the various standing committees or the councils that go beyond a review of topics identified. Consequently, no conclusions or recommendations have been made. As a result of China's behavior in 2002, expectations of WTO members for the Article 18 process were effectively lowered, as can be seen in the various 2003 TRM committee reports and notes. It is understood, however, that while China continues to refuse to provide answers in writing in advance of meetings of the TRM, it did regularly provide a copy of the statement of their spokesperson at the end of committee meetings during the 2003 TRM process.

⁷³ USTR: "2003 Report to Congress On China's WTO Compliance on December 11, 2003",

http://www.ustr.gov/assets/World_Regions/North_Asia/China/asset_upload_file425_4313.pdf (visited on August 10, 2004).

barriers. Among other problems, USTR found significant shortfalls with China's commitments regarding: agriculture (TRQs on bulk agricultural commodities -- problems with sub-quotas, import licensing, allocation); the TRQ on fertilizer; services (capitalization and other requirements that exceed international norms in such service sectors as banking, insurance, construction/engineering, and express courier); enforcement of intellectual property rights (continued IPR infringement affecting products, brands and technologies from a wide range of industries, including films, music, publishing, software, pharmaceuticals, chemicals, information technology, consumer goods, electrical equipment, automotive parts and industrial products); trading rights (continued restrictions); distribution rights (e.g., potential restrictions on the ability to sell imported and China-made autos from the same location); SPS (new requirements on seafood; a threatened ban on soybeans); customs (continued use of inaccurate valuation methods); VAT (discriminatory tax on semiconductors, fertilizer, and other products favors domestic producers over US exports); telecom standards (e.g., a requirement to use two mandatory encryption standards in wireless networks different from internationally-recognized standard used by US companies); the use of the China Compulsory Certification (CCC) mark (China safety certification process is duplicative and discriminatory); and transparency (uncertainty and lack of uniformity is common; limited opportunity to comment on proposed laws and regulations).

China's compliance has been criticized as follows:⁷⁴

1. The main obstacles to implementation are government protectionism and industry protectionism rather than a lack of understanding or resources.
2. China has fallen into a pattern of renegotiating its WTO entry terms line by line as questions arise about implementation problems.
3. China's interpretations of certain WTO terms violate the spirit, if not the letter, of its commitments, and new barriers China has erected in some areas make matters worse. Deadlines for important changes had not been met, there were ominous signs of the emergence of a "yard by yard ground game," in which each step toward implementation would come only after contentious arguments over terminological definitions, delays to or beyond mandated deadlines, or imposition of new measures -- ostensibly directed toward WTO compliance -- that actually created new serious obstacles to foreign business activity.⁷⁵

⁷⁴Julie Walton, WTO: China Enters Year Three, China Business Review, Jan-Feb 2004, <http://www.chinabusinessreview.com/public/0401-01.html> (visited on August 13, 2004).

⁷⁵Robert A. Kapp (President United States-China Business Council), Oral remarks to the trade policy staff committee hearing on China's progress in implementing its WTO accession commitments, September 23, 2004.

4. China's recent WTO implementation actions have rested with agencies belonging to the central government in Beijing, not at the local level as some have speculated.
5. The European Chamber of Commerce and the United States Chamber of Commerce pointed out in their latest reports, China has made progress in complying with WTO pledges but still has a long way to go in increasing transparency, protecting intellectual property rights and levelling the playing field for foreign businesses.⁷⁶

Mr. Terence P. Stewart, Managing Partner, Law Offices of Stewart and Stewart pointed out on February 5, 2004: “the problems with China's WTO compliance appear to fit into several categories. Some problems simply reflect the difficulties experienced with meeting timeline commitments and not a lack of desire or willingness to make the changes. Delays of a few months or longer in matters that China ultimately complied with would be examples of this category. Other problems appear to reflect internal problems within the Chinese government in getting ministries to make changes agreed to by the central

⁷⁶ AFP, *China's WTO compliance not up to scratch*, Business Report on October 15, 2004; U.S. Chamber of Commerce, *China's WTO Implementation: A Three-Year Assessment*, Report Prepared By Myron A. Brilliant (Vice President, East Asia) and Jeremie Waterman (Director, Northeast Asia) on September, 2004.

government in their areas of control. Problems in TRQ administration in agriculture and the delays and additional unwarranted burdens imposed in the financial services areas would be two typical examples of this category. Still other problems reflect the need for infrastructure changes or longer-term educational or normative behavior changes, the chronic and pervasive problem of piracy and counterfeiting of intellectual property in China and the need to make effective changes in the system of IPR enforcement is a prime example of this category.

It should be noted that China's WTO implementation efforts have taken place against a challenging political and social backdrop. In 2003, China underwent a major leadership change, passed through a harrowing national SARS epidemic, undertook a sizeable restructuring of the government's economic and trade functions, and confronted a host of dislocations inherent in its transition from a planned economy to a more market-oriented economy. These factors have presented challenges in implementing WTO commitments.

In sum, given the disappointing results of 2003 as noted in the USTR's compliance report, China's compliance with its WTO commitments would merit a grade of no better than 'C'. A new USCBC (United States-China Business Council) report on September 23, 2004 suggests that, overall progress on PRC WTO implementation has proceeded more vigorously. The

mythical "glass" is again well better than "half full." ⁷⁷ Although China has, in many areas, made a good faith effort in reforming its laws and regulations, in implementing changes to its tariffs, and in transforming its trade practices to conform to GATT/WTO requirements, China's record in the first two years of WTO membership shows that China has not fully complied with its obligations, and that there have been, and are still, significant problems in China's implementation of its WTO commitments which cannot be attributed simply to start-up difficulties." ⁷⁸

C. China has received substantial technical assistance⁷⁹

As a developing country, China is eligible for technical assistance from the WTO. In keeping with the Doha Ministerial mandate to increase and improve technical and capacity building assistance to developing countries, China has received substantial technical assistance from the WTO, as well as from

⁷⁷ Robert A. Kapp (President United States-China Business Council), Oral remarks to the trade policy staff committee hearing on China's progress in implementing its WTO accession commitments, September 23, 2004.

⁷⁸USCC: Statement of Terence P. Stewart, Esq. Managing Partner, Law Offices of Stewart and Stewart Before the U.S.-China Economic and Security Review Commission China and the WTO: Compliance and Monitoring, February 5, 2004, http://www.uscc.gov/hearings/2004hearings/hr04_02_05.htm (visited on August 10, 2004).

⁷⁹ 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>.

other multilateral organizations and from individual countries, including the United States and the EU. Much of the technical assistance to China has focused on helping China to understand and effectively implement its WTO obligations.

A major EU-China Cooperation Program to support China's integration into the world trading system was launched on 1 February 2004, further to a pilot program that ended in December 2003. With funding of 15 million Euro from the EU side and 5 million Euro from the Chinese side, this new five-year WTO program is the biggest of its type in China. The main objective is to support China's further integration into the world economy and to assist the Chinese government in implementing its obligations and commitments in the WTO. The target groups for the assistance are the relevant bodies of the Chinese government system, the higher education and research institutes, manufacturing industry and the service sector (public and private) and civil society in general. Among the deliverables the program is expected to yield are expert opinions or analysis, impact studies, development of possible solutions to specific questions or problems, dialogue facilitations, training sessions, seminars, workshops, policy advice and research, the whole leading to trade-related capacity building as a broader integrated concept, well ahead of market access improvements.

The new WTO Integration Program will focus on core elements of China's integration into the world trading system. It will consist of six components: Customs and import/export

regulatory system; Agriculture and Agro-food; Technical barriers to trade/Sanitary and Phytosanitary Measures; Services; Legislative and legal aspects of domestic implementation, IPR enforcement; and Policy development, co-operation and transparency. A Project Management Unit has been set up in Beijing where the main direct beneficiaries are located. However, activities will be implemented all over China, and will include study tours in Europe.

D. China has aggressively prevented the use of special safeguard mechanisms and non-market economy status in determining subsidies and dumping

As stated above, China's accession agreement includes two product-specific safeguard mechanisms, one for textiles⁸⁰ and the other for all products, including textiles. A couple of the WTO members made specific law for such safeguard mechanisms, for example, Council Regulation (EC) No 427/2003 and NO 1985/2003 in the EU, Section 421 of the Trade Act of 1974 in the USA and similar law or regulation in other WTO members.

In the USA, the main differences between the two safeguard mechanisms are the duration of protection and the mechanism for seeking approval. For textile safeguards, petitions are filed with the Commerce Department and the remedy lasts for one

⁸⁰ It allows WTO members under certain circumstances to invoke limited import relief – specifically a 7.5 percent cap on growth in imports of a given textile category for up to one year (6 percent for wool products) – until December 31, 2008.

year. For the product-specific safeguards, or section 421,⁸¹ petitions are filed with the International Trade Commission and, if the President grants relief, Chinese imports can be restricted for up to three years with no retaliation, and longer, with the possibility of retaliation. It was said that China lobbied heavily during early Section 421 cases and lobbied the Administration against using the textile safeguard provisions adopted by the US after China's accession.⁸² In the first Section 421 case involving pedestal actuators, press stories reported that the Chinese government conducted an intense and wide ranging lobbying campaign to block relief. Chinese officials met with US officials and argued that the use of Section 421 would undermine China's market access to the United States and have a negative political impact. The result has been that the first five cases brought under Section 421 were denied relief (three by the President), even though the purpose of the statute and Congressional intent was that relief would be reasonably available. With respect to the textile safeguard, the US administering agency (CITA) took

⁸¹ In the United States, the product-specific safeguard was codified as Section 421 of the Trade Act of 1974, as amended, and is available until December 11, 2013, this safeguard action is referred to as a Section 421 action. When Congress enacted Section 421 as part of the bill granting permanent normal trade relations with China, it indicated that Section 421 should be applied vigorously to address import surges from China. The rationale behind Section 421 was that US industries should not suffer job losses to competition from Chinese imports during a transitional period when China was still adjusting to WTO obligations. Moreover, Congress expressly stated that there was a statutory presumption in favor of providing relief to affected industries.

⁸² Stewart, *China's Compliance with World Trade Organization Obligations: A Review of China's 1st Two Years of Membership* (A Report Prepared for the U.S.-China Economic and Security Review Commission), Washington, DC: March 19, 2004.

almost 17 months to issue procedural rules detailing how petitions should be filed and the type of information that should be submitted. During those 17 months, the US textile industry repeatedly urged CITA to act expeditiously and even filed a number of petitions before CITA issued its rules. CITA did not act on these petitions and the US industry had to refile its petitions after CITA issued its procedural rules.

As mentioned above, according to article 15 of the Protocol on the Accession of China, WTO members will continue to have the ability to utilize a special non-market economy methodology for measuring dumping in anti-dumping cases and for determining subsidies in anti-subsidies cases against Chinese companies, for 15 years after China's accession to the WTO. Such an unfair article made by China leaves it at a disadvantage when other WTO members raise anti-dumping cases against Chinese companies, and this even threatens the sound development of China's foreign trade.

China is now a target of more anti-dumping investigations than any other country in the world, not least because it is not considered a market economy by most of its trading partners. After a series of losing of the lawsuits, from enterprises to industrial associations all had started to lobby the government. The choice that the Ministry of Commerce finally approbated is to require countries across the world, especially China's main trading partners, to acknowledge China's "market economy status (MES)". The Chinese government has marshaled its

diplomats and trade negotiators in a campaign to persuade other WTO members to recognize China as a market economy. This is a trade policy strategy Chinese government has been pushing among other trading partners in a bid to reduce its exposure to dumping claims. This is another major diplomatic campaign for China since it won membership in the World Trade Organization (WTO) in 2001. Negotiations with the United States on China's MES are currently on schedule. China had asked the EU Commission for MES last June and provided follow-up information in September and again this year, and the Commission had agreed to give a preliminary assessment by the end of June. The European Union has refused to grant China the coveted MES on June 28, 2004. The US Department of Commerce held its first public hearing on whether to grant market economy status to China on June 10, 2004.

China is also asking Australia and Japan to consider this issue. Recognition of its market economy is a threshold issue for China to enter Free Trade Agreement (FTA) negotiations with Australia. China is keen to win recognition as a market economy from Australia, which would be the most developed country to do so. A senior Australian official said on August 13, 2004, the Australian government will make a call on the status of China's economy after it receives a scoping study in the first half of calendar 2005 on the costs, benefits, opportunities and challenges of a FTA between the two nations. Until now,

Countries have recognized China's market economy status are New Zealand, the 10-member Association of Southeast Asian Nations (ASEAN), Congo (Brazzaville), Benin, Kyrgyzstan, Togo, South Africa, Russia, Vietnam, Georgia, Guyana, Barbados, Armenia, Antigua and Barbuda, Argentina, Brazil, Chile.

IV. Concluding Remarks

As mentioned above, WTO accession is a strategic decision made by the Chinese Government under economic globalization and is in line with China's reform and opening-up policy and the goal of establishing a socialist market economic system. It not only fully demonstrates the resolve and confidence of China to deepen its reform and to open further to the outside world, but also determines China's policy of complying with the WTO commitments in good faith.

Indeed, China's timely and full implementation of its WTO commitments is a principal vehicle for strengthening its credentials as a constructive player in the global economy. Positive steps by China to implement its outstanding and new WTO commitments not only improve the Chinese business environment to the benefit of foreign and Chinese companies alike, but they also underscore China's broader credibility as a trustworthy actor in the global trading system. In fact, process of compliance with China's WTO commitments is a part of process

of reforming Chinese economy. This is a long and uneven process. As a new member with a socialist tradition, China seems to have passed its compliance test in the first three years of membership not too bad. The future years may prove to be crucial as many of the more painful reforms start to bite. In order to both fulfill its obligations and underpin the healthy development of its economy, China has to do more in reforming its legal system, protecting intellectual property rights, and developing a rules-based, transparent commercial environment that complies with both the letter and spirit of China's WTO commitments.

It is, however, important to place WTO implementation issues in the broader context of the overall global relationship. China's entry into the WTO is arguably the most significant peaceful change in the global political economy in the post-Cold War world.⁸³ Never in the history of the world has a country committed so much, on a voluntary basis, to change as China has done to adhere to the rules of the World Trade Organization (WTO). China's entry into the world body in December 2001 signals the beginning of a shift in global political and economic power. Not only is the world's most populated country and potentially its largest market a member of the WTO now, China's entry also marks a milestone in its global behavior—from one based mainly on power and ideology to one based largely on commonly accepted rules. In addition, not only

⁸³ Chan G. *China and the WTO. the theory and practice of compliance*, International Relations of the Asia-Pacific, February 2004, vol. 4, no. 1, pp. 47-72(26).

has the power balance within the WTO been drastically altered, but also how global political economy is going to be governed. This is an event that goes beyond the immediate concerns of businesspeople alone to the way in which international relations in general, and international political economy in particular, is going to change.

Therefore, China's WTO entry is a unique "joint venture" enterprise between China, the WTO and its current members, the WTO and its current members (major members in particular) should bear their own shares in implementing the Chinese membership agreement and should fulfill their respective obligations in good faith. As the E.U., the U.S. and other major WTO members have already voluntarily given China technical assistance necessary to comply its legal binding obligations, they should develop a more constructive systematic mechanism of bilateral, multilateral dialogue and cooperation closely with China on the WTO implementation issues. In particular, while China is becoming the fourth or third global trading power, China's manufacturers have become the targets of numerous anti-dumping and protectionist complaints due mainly to mistrust among trading nations of each other's intentions and the conscious need to protect and promote one's own trading interests. Chinese people are looking forward to a genuine normal trade relation treatment rather than a special treatment nor a second-classed status. All in all, we hope that Chinese

people could be convinced China's WTO entry is a real starting point for such a normal relation between China and the rest of world rather than a replay of the unequal treaty regime upon China imposed by foreign powers in the 19th century. We also hope that China is a real equal trading partner of other members rather than second-class member within the WTO club.

